

DATED

2014

TRAFFORD BOROUGH COUNCIL

- and -

TRAFFORD HOUSING TRUST LIMITED

LAND POOLING AGREEMENT

relating to

Old Trafford Priority Regeneration Area Greater Manchester

DWF LLP
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Manchester
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MRB/TR619.1

CONTENTS

Clause		Page
1	DEFINITIONS AND INTERPRETATION	2
2	LAND POOLING MECHANISM	7
3	DUTIES OF THE COUNCIL AND THT	9
4	MASTER PLAN AND DELIVERY STRATEGY	11
5	DEVELOPMENT AGREEMENT	12
6	PROCUREMENT OF A DEVELOPER	13
7	ADMINISTRATION OF DEVELOPMENT ACCOUNT	15
8	FINANCIAL RETURNS	15
9	LAND TRANSACTIONS BETWEEN THE PARTIES	17
10	SIGNIFICANT MATTERS	17
11	MASTER PLAN BOARD	17
12	DISPUTE DETERMINATION	19
13	CURRENT LAND HOLDINGS	20
14	TERMINATION	22
15	CONSEQUENCES OF TERMINATION FOLLOWING DEFAULT	23
16	CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999	23
17	PARTNERSHIP	23
18	JURISDICTION	23
19	FREEDOM OF INFORMATION	24
20	CONFIDENTIALITY CLAUSE	24
21	MUTUAL DUTIES OF THE PARTIES	25
22	NO FETTER OF THE COUNCIL'S STATUTORY FUNCTIONS	25
23	SEVERABILITY	26
24	AGENCY	26
	SCHEDULE 1 LAND INTERESTS	27
	SCHEDULE 2 CORE DEVELOPMENT PRINCIPLES	28
	SCHEDULE 3 KEY CLAUSES	29

THIS AGREEMENT is made the day of 2013

BETWEEN:

- (1) **TRAFFORD BOROUGH COUNCIL** of Trafford Town Hall Talbot Road Stretford Manchester M32 0TH (“**Council**”); and
- (2) **TRAFFORD HOUSING TRUST LIMITED** (company number 04831118) whose registered office is at Sale Point 126-150 Washway Road Sale Manchester M33 6AG (“**THT**”).

BACKGROUND

- 1 The Council and THT wish to see the comprehensive regeneration of the Old Trafford Priority Regeneration Area and have agreed the Master Plan in this respect.
- 2 Through this Agreement the Council and THT agree to establish and operate a land pooling mechanism with a view to a development partner or partners being selected in the future to work with them to implement the Master Plan and the Delivery Strategy.
- 3 This Agreement sets out how the land pooling mechanism will be established and operated, including how Financial Returns from the regeneration process will be shared between the Council and THT.
- 4 The Council and THT will act reasonably and in good faith in the establishment and operation of the Land Pooling Mechanism in order to achieve the parties’ aspirations of:
 - (a) delivering the comprehensive regeneration of the Old Trafford Priority Regeneration Area through the implementation of the Master Plan and the Delivery Strategy;
 - (b) [[maximising land values for each party both individually and collectively;]¹]
 - (c) maximising the regeneration outputs for each site within the Land Pooling Mechanism; and
 - (d) maximising the regenerative impact for the surrounding areas[such aspirations being acknowledged as being of equal priority]².

AGREED TERMS

¹ Could we remove this aspiration? THT and TMBC are, in any event, bound by their status/legislation to sell at the Best Price reasonably obtainable and it could cause conflict when considered against the primary purpose of this arrangement which is to achieve regeneration of the area. The Council is not agreeable to the deletion of this aspiration.

² The Council and THT to confirm that each of the four stated aspirations are of equal priority – the parties to confirm. Note: subject to footnote 1, this is acceptable? Subject to the retention of aspiration (b) the Council is agreeable.

1 DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation set out in this Clause apply to this Agreement.

1.2 In this Agreement unless the context otherwise requires:

1.2.1 **“Break Date”** means the date which is 5 years from and including the date of this Agreement;

1.2.2 **“Calculation Dates”** means each of the following dates:

- (a) the fifth anniversary of the date of this Agreement;
- (b) the tenth anniversary of the date of this Agreement;
- (c) the earlier of the following:
 - (i) the date 12 months after the date of practical completion of the last phase of the Development; and
 - (ii) the end of the Term;
- (d) the date this Agreement is terminated pursuant to Clause 14; and
- (e) such other date or dates as the Council and THT may agree in writing (both parties acting reasonably)

and the expression “Calculation Date” shall be construed accordingly;

1.2.3 **“Confidential Information”** means each and every term of this Agreement including (without limitation) the Initial Valuations provided that any term shall cease to be Confidential Information for the purposes of this Agreement if and when the Master Plan Board agree to release such term into the public domain;

1.2.4 **“Core Development Principles”** mean the core development principles set out in Schedule 2;

1.2.5 **“Council’s Investment”** means the aggregate of the Initial Valuations for such of the Council’s Property that at the relevant Calculation Date has either (1) been drawn down by/transferred to a Development Partner for development pursuant to this Agreement or (2) is comprised in a Development Agreement entered into pursuant to this Agreement which is either unconditional or if conditional where all of the conditions have been satisfied by the relevant Calculation Date or (3) such of the Council Property has been transferred to THT and the parties have agreed as a condition of such sale that the Initial Valuation attributable to such land shall continue to form part of the Council’s Investment;

1.2.6 **“Council’s Property”** means such of the Land Interests as are referred to in Schedule 1 (as amended from time to time in accordance with the terms of this Agreement) as are for the time being owned by the Council;

- 1.2.7 **["Council Title Condition"]** means the Council serving written notice on THT confirming that the title to THT's Property is satisfactory to the Council (acting reasonably);]
- 1.2.8 **"DCLG"** means Department for Communities and Local Government and any successor agency or department having the same or similar powers or objectives;
- 1.2.9 **"Deadlock Event"** means a Disputed Matter which is not resolved pursuant to Clause 12;
- 1.2.10 **"Default"** means:
- (a) (in respect of the Council) the Council materially fails to observe and perform any of the obligations, covenants or conditions on its part contained in this Agreement;
 - (b) (in respect of THT) THT materially fails to observe and perform any of the obligations, covenants or conditions on its part contained in this Agreement; or
 - (c) an Event of Insolvency occurs in relation to THT;
 - (d) THT are no longer registered with the Homes and Communities Agency (or any successor body)
- 1.2.11 **["Delivery Strategy"]**
- 1.2.12 **["Development"]** means the comprehensive regeneration of the Old Trafford Priority Regeneration Area substantially in accordance with the Master Plan and the Delivery Strategy;]
- 1.2.13 **"Development Account"** means an interest bearing account to be established and administered by THT pursuant to Clause 7;
- 1.2.14 **"Development Agreement"** means such agreement(s) as shall be made by the Council and/or THT with a Development Partner in order to facilitate the Development or a part of it;
- 1.2.15 **"Development Partner"** means such party or parties as may be selected by the Parties via a lawful tender process which accords with the Procurement Strategy;
- 1.2.16 **"Event of Insolvency"** means:
- (a) THT proposes or passes a resolution for its winding-up (or otherwise proposes or determines that it will be wound up) or is dissolved by an instrument of dissolution or is subject to an order or notice issued by a court or other competent authority for its winding up or striking-off ; or
 - (b) THT or its shareholders resolve to give a notice of an intention to appoint an administrator or an application for an administration order in respect of

THT is made to the Court or a receiver or administrative receiver in respect of THT is appointed; or

- (c) THT has a receiver provisional liquidator or sequestrator appointed over any of its assets undertaking or income to enforce any security over any of the assets THT; or
- (d) THT is, or is adjudicated or found to be (in either case by a Court of competent jurisdiction) insolvent or stops or suspends payment of its debts or is unable to or admits inability to pay its debts as they fall due or proposes or enters into any composition or other arrangement for the benefit of its creditors generally or applies to the court for protection from its creditors or for any scheme of arrangement (other than for voluntary reconstruction or amalgamation);
- (e) THT is struck off from the Register of Companies or the making of an application for THT to be struck off; or
- (f) THT otherwise ceasing to exist;

1.2.17 **“Final Payment Date”** means the Payment Date referable to the final Calculation Date;

[Financial Commitment definition]

1.2.18 **“Financial Return”** means the payments to be made to the Council and THT in accordance with Clause 8 and the expression ‘Financial Returns’ shall be construed accordingly;

1.2.19 **“FOIA”** means the Freedom of Information Act 2000 and any subordinate legislation made thereunder from time to time together with any guidance and/or codes of practice issued pursuant to or in relation to such legislation;

1.2.20 **“Information”** has the meaning given to it in section 84 of the FOIA;

1.2.21 **“Initial Price”** means in respect of a Land Interest an amount equal to the Initial Valuation of that Land Interest or (if lower) the Updated Valuation of that Land Interest;

1.2.22 **“Initial Valuations”** means initial valuations of the Land Interests dated [November 2013] and recorded in Schedule 1 (as amended from time to time in accordance with the terms of this Agreement);

1.2.23 **“Key Clauses”** means those clauses which incorporate the Core Development Principles to be included in a Development Agreement as set out in Schedule 3];

1.2.24 **“Land Interests”** means the several land interests set out in Schedule 1 to this Agreement (as amended from time to time pursuant to this Agreement) and the expression **“Land Interest”** shall be construed accordingly;

- 1.2.25 **“Land Pooling Mechanism”** means the mechanism for pooling the Land Interests set out in this Agreement;
- 1.2.26 **“Market Value”** means Market Value as at the Valuation Date determined in accordance with the provisions of the RICS Professional Standards 2012 – Global & UK Edition (as amended or replaced from time to time);
- 1.2.27 **“Master Plan”** means the master plan setting out the shared regeneration objectives for the Old Trafford Priority Regeneration Area a copy of which is set out in Appendix 1 to this Agreement as amended from time to time pursuant to Clause 4.2;
- 1.2.28 **[“Master Plan Board”** means the board to be formed by the representatives of the Council and THT in accordance with Clause 11 who have responsibility for managing the delivery of the Development and the operation of the Land Pooling Mechanism];
- 1.2.29 **“Material Change”** means any act, matter, circumstance or thing in respect of or affecting THT’s Property or the Council’s Property or any part of them which adversely affects or prejudices (or which might reasonably be expected to adversely affect or prejudice) the ability of the parties to perform their obligations under this Agreement or the implementation of the Master Plan or the carrying out of the Development;
- 1.2.30 **“Minimum Sum”** means £10,000;
- 1.2.31 **“Model Form Development Agreement”** the model form development agreement to be agreed between the Council and THT pursuant to Clause 5.1, such model form development agreement to incorporate the Core Development Principles and the Key Clauses;
- 1.2.32 **“Old Trafford Land Pool”** means , in aggregate, the Council’s Property and THT’s Property;
- 1.2.33 **“Old Trafford Priority Regeneration Area”** means the area shown edged black on the plan attached as Appendix 4 to this Agreement as varied from time to time by agreement between the parties;
- 1.2.34 **“Overarching Conditions”** means:
- (a) the Council Title Condition; and
 - (b) the THT Title Condition;
- 1.2.35 **[“Overarching Conditions Longstop Date”** means the date 6 months from the date of this Agreement;]

- 1.2.36 **“Payment Date”** means for each Calculation Date the date which is 20 working days after the Council completes a reconciliation of the Development Account as at that Calculation Date;
- 1.2.37 **“Price Differential”** has the meaning ascribed to it in Clause 5.3;
- 1.2.38 **“Procurement Strategy”** means the procurement strategy to be agreed between the Council and THT pursuant to Clause 6.2;
- 1.2.39 **“Revised Land Valuation”** means a revaluation of a reduced Land Interest pursuant to Clause 4.2 such Revised Land Valuation to be the Market Value of such reduced Land Interest as at [] 20[13];
- 1.2.40 **“SDLT”** means Stamp Duty Land Tax and any similar replacement and any similar additional tax;
- 1.2.41 **“Term”** means the period of 10 years from and including the date of this Agreement subject to earlier termination in accordance with the terms of this Agreement or to extension by agreement in writing between the Council and THT;
- 1.2.42 **“Third Party Property”** means such of the Land Interests as are referred to in Schedule 1 (as amended from time to time in accordance with the terms of this Agreement) as are at the date of this Agreement owned by a third party;
- 1.2.43 **[“THT Title Condition”** means THT serving written notice on the Council confirming that the title to the Council’s Property is satisfactory to THT (acting reasonably);]
- 1.2.44 **“THT’s Investment”** means the aggregate of the Initial Valuations for such of THT’s Property that at the relevant Calculation Date has either been (1) drawn down by/transferred to a Development Partner for development pursuant to this Agreement or (2) is comprised in a Development Agreement entered into pursuant to this Agreement which is either unconditional or if conditional where all of the conditions have been satisfied by the relevant Calculation Date or (3) upon the prior written agreement of the Council is being (or has been) developed by THT.
- 1.2.45 **“THT’s Property”** means such of the Land Interests as are referred to in Schedule 1 (as amended from time to time in accordance with the terms of this Agreement) as are for the time being owned by THT;
- 1.2.46 **“Unconditional Date”** means the date the Overarching Conditions are satisfied;
- 1.2.47 **[“Updated Valuation”** means the Market Value of any Land Interest to be included in any Development Agreement on the basis that the relevant Land Interest has the benefit of planning permission for the development proposed by

the Development Agreement provided that where an Updated Valuation is to be carried out the identity of the valuer and the terms of his/her brief has previously been agreed between the Council and THT];

1.2.48 **“Valuation Date”** means , in the case of the Initial Valuation for the Land Interests as at the date hereof [] 20[] (being the date of Deloitte’s valuation report on such Land Interests) and/or in the case of an Updated Valuation or a Revised Land Valuation, the date the valuer is instructed to prepare the Updated Valuation or (as the case may require) the Revised Land Valuation.

2 **LAND POOLING MECHANISM**

2.1 [The Council and THT agree that the Land Interests shall from the Unconditional Date become part of the Old Trafford Land Pool.]

2.2 Clauses [3, 5, 7, 8, 9 and 13.2] of this Agreement are conditional on the satisfaction of the Overarching Conditions.

2.3 The Council shall within 3 months of the date of this Agreement deduce title to the Council’s Property to THT and shall provide such information and replies to enquiries as THT may reasonably require in order to enable THT to satisfy the THT Title Condition and THT shall serve notice on the Council within 5 working days of completing its investigation of the title to the Council’s Property (which it shall carry out as quickly as practicable following receipt of the Council’s title) notifying the Council whether or not the title to the Council’s Property is satisfactory to it and THT shall act reasonably in this regard.

2.4 THT shall within 3 months of the date of this Agreement deduce title to THT’s Property to the Council and shall provide such information and replies to enquiries as the Council may reasonably require in order to enable the Council to satisfy the Council Title Condition and the Council shall serve notice on THT within 5 working days of completing its investigation of the title to THT’s Property (which it shall carry out as quickly as practicable following receipt of THT’s title) notifying THT whether or not the title to THT’s Property is satisfactory to it and the Council shall act reasonably in this regard.

2.5 If the Overarching Conditions have not been satisfied by the Overarching Conditions Longstop Date then either party may at any time thereafter (but not after the Overarching Conditions have been satisfied) terminate this Agreement by giving written notice to such effect to the other and on the service of such notice this Agreement shall immediately cease and determine but without prejudice to the rights of either party in respect of any antecedent breach of this Agreement by the other.

2.6 [Nothing in this Agreement shall enable either party to unilaterally increase the scope of the Old Trafford Land Pool beyond that agreed as at the date hereof. Nevertheless, the Council and THT acknowledge and agree that if the parties identify land within the Old Trafford Priority Regeneration Area (or surrounding or neighbouring areas) that it would be mutually beneficial

to introduce into the Old Trafford Land Pool (whether to facilitate a particular phase of the Development or otherwise) then subject to the parties agreeing in writing to do so, the parties shall be at liberty to add such land into the Old Trafford Land Pool by way of a variation of the terms of this Agreement].

2.7 The Council and THT acknowledge that it is possible that, as a result of refinement of the Master Plan pursuant to Clause 4.2, not all of the Land Interests (as specified at the date of this Agreement) will be required for the Old Trafford Land Pool in which case the parties will agree to remove such interest and thereupon such interest shall cease to form part of the Old Trafford Land Pool. [Note: presumably, this means that, for the purposes of the financial return, the respective land interests are recalculated as against the date of the Deloitte's report on the Land Interests.]

2.8 Where any Land Interest (as specified at the date of this Agreement) is reduced in part pursuant to Clause 4 then the Council and THT shall procure that a Revised Land Valuation of such part of the Land Interest as remains within the Old Trafford Land Pool is carried out for the purpose of Clause 3.4 and the Initial Valuation for such part of the Land Interest shall be amended to the Revised Land Valuation.

2.9 As soon as practicable after:

2.9.1 the addition of any land to the Old Trafford Land Pool pursuant to Clause 2.2; and/or

2.9.2 the removal of any Land Interest from the Old Trafford Land Pool pursuant to Clause 2.7 or Clause 9³; and/or

2.9.3 the preparation of any Revised Land Valuation pursuant to Clause 2.8; and/or

2.9.4 the preparation of any Updated Valuation pursuant to Clause 4.4

the parties shall prepare a memorandum recording all of the consequential changes to Schedule 1 of this Agreement and such memorandum shall be signed by or on behalf of the Council and THT and endorsed on or attached to this Agreement in place of Schedule 1 or (if applicable) any previous memorandum so endorsed or attached. The Council and THT shall each bear their own costs in connection with the memorandum but such costs shall be recoverable by the relevant party pursuant to Clause 8.3.

³ This relates to land taken out because it is transferred to THT for direct development.

- 2.10 The Council and THT shall consult with and co-operate with each other to identify, implement and deliver such costs savings as may be achievable through the on-going management and maintenance of the Council's Property and THT's Property being undertaken on a joint or shared basis.

3 DUTIES OF THE COUNCIL AND THT

- 3.1 Subject to Clause 3.2 and Clause 3.3 each party shall bear 50% of the actual cost of:
- 3.1.1 establishing of the Development Account; [Note: is cost known?]
 - 3.1.2 preparing the Initial Valuations; [Presumably cost is known?]
 - 3.1.3 administration of the Development Account; [Note: is cost known?]
 - 3.1.4 community consultation activities which the parties agree shall be necessary from time to time to enable future revisions to the Master Plan and/or future planning application(s);
 - 3.1.5 engaging consultants to monitor progress of the Development provided that the identity and terms of engagement of any such consultant shall have previously been agreed in writing by the parties;
 - 3.1.6 legal advice for the parties in relation to the exchange of this Agreement; [Presumably known?]
 - 3.1.7 any third party appointed by the parties to prepare an Updated Valuation or a Revised Land Valuation;
 - 3.1.8 any other activities agreed in writing by the parties in order to facilitate the Development including (without limitation) the commissioning of any reports and surveys pursuant to Clause 3.10; and
 - 3.1.9 the selection of a Development Partner under the Procurement Strategy.

- 3.2 Where the Council or (as the case may require) THT pay the full amount of any cost identified in Clause 3.1 and not just its own 50% share of such cost then THT or (as the case may require) the Council shall pay to the other within 28 working days of written demand fifty percent (50%) of that cost and in the event of such payment not being made within such 28 working day period then the defaulting party shall pay to the Council or (as the case may require) THT in addition to the relevant sum interest thereon calculated on a daily basis at the rate of 4% per annum above the base rate from time to time of Barclays Bank plc.
- 3.3 The Council and THT undertake with each other to commit the necessary time at its own cost in connection with Clause 3.1.4.
- 3.4 The Council and THT agree that the valuations carried out on behalf of the Council and THT before the date of this Agreement as identified in Schedule 1 are the agreed Initial Valuations for the purposes of this Agreement in relation to the relevant Land Interests.
- 3.5 [The Council and THT shall bear their own costs for transferring their Land Interests to any Development Partner pursuant to a Development Agreement but such costs shall be recoverable by the relevant party pursuant to Clause 8.3].
- 3.6 [Where it is not practicable to transfer any Land Interest direct to a Development Partner then any SDLT charge arising as a result of the transfer of the relevant Land Interest to the Council or (as the case may require) THT shall be recoverable by the relevant party pursuant to Clause 8.3].
- 3.7 In agreeing the Model Form Development Agreement pursuant to Clause 5.1 and the transfer of any Land Interests the Council and THT will consider and use reasonable endeavours to agree the most tax efficient structure to the parties.
- 3.8 Where necessary to facilitate the Development or a substantial part of it the Council and THT shall (in consultation with each other) take such steps and action as shall be reasonable in order to acquire the Third Party Interests on such terms as the parties shall agree.
- 3.9 [Where necessary to facilitate the Development or a substantial part of it the Council shall take such steps and action as shall be reasonable in its capacity as owner of the Council's Property and as the regeneration agency for the Old Trafford Priority Regeneration Area to promote the compulsory purchase of land and/or the making of stopping up and/or highway diversion orders provided that the Council shall not be required to promote any compulsory purchase of land or make any stopping up and/or highway diversion orders unless it has received a costs indemnity from one or more Development Partners in a form satisfactory to the Council (acting reasonably)].
- 3.10 The Parties acknowledge that reports or surveys may need to be commissioned in order to facilitate the procurement of the Development and the appointment of a Development Partner. Those reports or surveys may include (inter alia):
- 3.10.1 building survey reports;

- 3.10.2 asbestos reports;
 - 3.10.3 ground investigation reports;
 - 3.10.4 phase 1 environmental assessment reports;
 - 3.10.5 traffic impact assessments.
- 3.11 No report or survey shall be commissioned unless agreed by the Parties. The costs incurred in commissioning such surveys shall be recovered [by deducting an equivalent sum from the Development Account subject to such deduction not causing the balance of the Development Account to fall below the Minimum Sum or (to the extent that such costs cannot be recovered from the Development Account) such costs shall be borne by the parties in accordance with the provisions of Clause 3.1.]

4 MASTER PLAN AND DELIVERY STRATEGY

- 4.1 The Council and THT agree that the Master Plan represents their current objectives for the comprehensive regeneration of Old Trafford Priority Regeneration Area and acknowledge that the Master Plan and the Delivery Strategy will continue to be reviewed and refined as a result of further feasibility work on the Old Trafford Priority Regeneration Area and as a consequence of the input of one or more Development Partners.
- 4.2 The Council and THT shall be jointly responsible for revising the Master Plan from time to time and, (where any revision results in less land being required) undertaking any Revised Land Valuations. Following any such revision, the revised Master Plan shall be attached to and take the place of the plan set out in Appendix 1 and the Initial Valuations shall be amended to reflect the Revised Land Valuations.
- 4.3 As soon as practicable after any revision of the Master Plan in accordance with Clause 4.2 that results in less land being required, the parties shall prepare a memorandum recording all of the consequential changes to Schedule 1 of this Agreement (including the amounts of the Revised Land Valuations) and such memorandum shall be signed by or on behalf of the Council and THT and endorsed on or attached to this Agreement in place of Schedule 1 or (if applicable) any previous memorandum so endorsed or attached. The Council and THT shall each bear their own costs in connection with the memorandum but such costs shall be recoverable by the relevant party pursuant to Clause 8.3.
- 4.4 [The parties acknowledge that prior to exchanging a Development Agreement it will be necessary to procure an Updated Valuation for the Land Interests comprised within that Development Agreement which will be noted in a memorandum in accordance with Clause 4.3 above].
- 4.5 The Council and THT shall as soon as practicable after the date of this Agreement prepare and agree the Delivery Strategy which shall accord with and encompass the principles set out

in the delivery strategy criteria set out in Appendix 3 and the parties shall be jointly responsible for revising the Delivery Strategy from time to time.

5 DEVELOPMENT AGREEMENT

5.1 The Council and THT will use their respective reasonable endeavours to agree the Model Form Development Agreement within 6 months from [the Unconditional Date] and the Council shall submit a draft of the Model Form Development Agreement to THT as soon as practicable after the Unconditional Date and such draft shall incorporate the Core Development Principles and the Key Clauses.

5.2 The following provisions shall apply to any Development Agreement:

5.2.1 THT shall be a party to a Development Agreement if the land comprised within that Development Agreement includes THT's Property or if rights are required to be granted over THT's Property (whether temporarily or permanently) in order to facilitate the development to be carried out under the Development Agreement or its subsequent use and occupation (but not further or otherwise);

5.2.2 the Council shall be a party to a Development Agreement if the land comprised within that Development Agreement includes the Council's Property or if rights are required to be granted over the Council's Property (whether temporarily or permanently) in order to facilitate the development to be carried out under the Development Agreement or its subsequent use and occupation or where required in order to receive or facilitate payments by the Development Partner into the Development Account (but not further or otherwise);

5.2.3 each Development Agreement will be in the form of the Model Form Development Agreement but with such amendments as the parties jointly agree (each party to act reasonably and without delay in determining whether to agree such change);

5.2.4 each Development Agreement to which the Council is a party will be conditional on the Council securing DCLG's consent under section 123 of the Local Government Act 1972 to the disposal of the relevant Council's Property (but only if such consent is required or has not been obtained by the date the relevant Development Agreement is exchanged) provided that the Council will use reasonable endeavours to secure such consent as soon as reasonably practicable if required;

5.2.5 [each Development Agreement to which THT is a party will be conditional on THT obtaining the release of any security granted in favour of THT's lender in respect of land to be transferred under the terms of the Development Agreement] and THT securing the appropriate consent under section 133 of the Local Government Act 1988 to the disposal of the relevant THT's Property (but only if such consent has not been obtained by the date the relevant Development

Agreement is exchanged) provided that THT shall use all reasonable endeavours to secure such consent as soon as practicable.

- 5.3 [In any Development Agreement the purchase price for a Land Interest shall be the higher of (1) the Updated Valuation of that Land Interest and (2) the price agreed by the Development Partner (the Developer's Price) but the parties agree that the relevant land owner shall only be entitled to receive from the Development Partner on the drawdown/development of that Land Interest the Initial Price of that Land Interest with the amount of the difference between the Updated Valuation/the Developer's Price and the Initial Price of that Land Interest ("the Price Differential") and any other sums due under the Development Agreement being paid by the Development Partner [attributable to the value of the relevant Land Interest] to the Council for placing into the Development Account].
- 5.4 Each Development Agreement shall provide that any overage payable by the Development Partner under that Development Agreement (whether calculated on plot sales based on increased planning density or a percentage of returns or otherwise) will be paid by the Development Partner to THT and THT will place all such overage received into the Development Account.

6 PROCUREMENT OF A DEVELOPER

- 6.1 The Council and THT shall as soon as reasonably practicable after the date of this Agreement prepare and agree a procurement strategy and the parties shall subsequently jointly procure the appointment of one or more Development Partners in accordance with the procurement strategy to refine and implement the Master Plan in each such case in accordance with the provisions of this Clause 6.
- 6.2 The Council and THT agree that any procurement strategy:
- 6.2.1 will take account of the procurement strategy principles set out in Appendix 2; and
 - 6.2.2 stresses the importance of achieving overall value for money, taking account of the aspirations of the parties set out in paragraph 4 of the recitals of this Agreement.

- 6.3 The Council and THT acknowledges that the Procurement Strategy needs to take account of any legal, regulatory or other relevant requirements that the Council and THT are bound to comply with (including but not limited to the provisions of the Local Government Acts 1972 and 2000, the Public Contracts Regulations 2006 or any modification or re-enactment thereof and state aid compliance).
- 6.4 The procurement of each Development Partner shall be undertaken jointly by the parties in accordance with the Procurement Strategy provided that in respect of each such procurement the parties shall agree (without limitation) each of the following (where relevant) prior to the relevant document or criteria (as the case may be) being issued:
- 6.4.1 the procurement process;
 - 6.4.2 the form of the OJEU notice;
 - 6.4.3 the pre-qualification questionnaire;
 - 6.4.4 the evaluation criteria in respect of the pre-qualification questionnaire;
 - 6.4.5 the tender document;
 - 6.4.6 the award criteria in respect of the tender documents.

- 6.5 Each party shall bear its own costs in respect of the procurement process and [(subject to Clause 8.3.9)] such costs shall be recoverable by the relevant party pursuant to Clause 8.3;
- 6.6 Neither party shall knowingly do or omit to do any act or thing as part of such approval process which causes or may reasonably be expected to cause the other party to be held in breach of the Public Contracts Regulations 2006 (or any statutory modification or re-enactment thereof) in respect of the procurement or appointment of a Development Partner;
- 6.7 In the event of there being any conflict between the Procurement Strategy and the terms of this Agreement then the terms of the Procurement Strategy shall prevail.
- 6.8 [The Council and THT may by agreement delegate the performance of one or more of their obligations under this Agreement to a Development Partner]. [Note: given that the obligations are now joint, I don't think the proviso is necessary.]

7 ADMINISTRATION OF DEVELOPMENT ACCOUNT

- 7.1 THT will establish and administer a Development Account to contain payments received from the Development Partner(s) pursuant to Clauses 5.3 and 5.4 and calculate the level of Financial Return due to the Council and THT (if any).
- 7.2 THT will prepare and submit to the Council statements setting out the movements on and the balance of the Development Account quarterly and will procure that the Development Account is audited annually.
- 7.3 All interest (net of tax) will be retained in the Development Account pending payment of sums out of the Development Account pursuant to Clause 8.
- 7.4 [Prior to each anniversary of the date of this Agreement (other than the fifth and tenth anniversaries which are already Calculation Dates) the Council and THT shall give due consideration to and shall take due account of any representations made by the other on whether or not it is appropriate for such forthcoming anniversary to be a Calculation Date with a view to a distribution of monies held in the Development Account in accordance with Clause 8 as at such forthcoming anniversary].

8 FINANCIAL RETURNS

- 8.1 THT will as soon as practicable following each Calculation Date carry out a reconciliation of the Development Account reflecting all transactions that have taken place between the last Calculation Date and this and shall provide details of such reconciliations to the Council together with such other information as the Council may reasonably require to establish the accuracy of such reconciliation.
- 8.2 The sums standing to the credit of the Development Account at each Calculation Date will be paid to the parties on the relevant Payment Date in accordance with the provisions of Clause 8.3 provided that:-

- 8.2.1 any party may elect to delay receipt of its Financial Return by leaving monies in the Development Account rather than withdrawing the same;
 - 8.2.2 no payment shall be made to the parties if the Development Account is in debit; and
 - 8.2.3 no payment shall be made to the parties which would cause the balance of the Development Account at the relevant Payment Date to fall below the Minimum Sum save in respect of the Payment Dates referable to the Calculation Dates detailed in Clauses 1.2.2(c) and 1.2.2(d) of the definition of Calculation Dates when the restriction in this Clause 8.2.3 shall not apply.
- 8.3 The payment of sums out of the Development Account pursuant to Clause 8.2 shall be made in the following order of priority:
- 8.3.1 the reasonable fees properly incurred by THT in administering the Development Account;
 - 8.3.2 any sum that a party has elected to delay receipt of at a previous Payment Date including (without limitation) the Initial Price of a Land Interest that the relevant party has elected to waive receipt of from a Development Partner;
 - 8.3.3 any sum due to a party at a previous Payment Date but which was not paid (whether due to there being insufficient funds in the Development Account or the provisions of Clause 8.2.3 or otherwise);
 - 8.3.4 [all reasonable costs properly incurred by either party after the date of this Agreement under or in respect of this Agreement and/or in the performance of that party's obligations under this Agreement];
 - 8.3.5 [all costs properly incurred by either party in acquiring Third Party Property pursuant to and in accordance with this Agreement;]
 - 8.3.6 [the Price Differential due to either party which has been received into the Development Account];

Provided that:

- 8.3.7 a sum claimed under one head shall not to that extent be claimed under another; [and]
- 8.3.8 a claim by one party under one head shall rank pari passu with a claim by the other party under that same head; [and]
- 8.3.9 [the costs and expenses incurred by either party under or in respect of this Agreement shall not include either party's own management time internal costs or overheads].

- 8.4 On the Final Payment Date (following release of monies payable to each party pursuant to clause 8.3 and repayment of the Financial Commitment to each party), any sum standing to the credit of the Development Account shall be shared between the Council and THT in the same proportion as the Council's Investment and THT's Investment bear to one another.
- 8.5 Any monies received into the Development Account following the payment envisaged pursuant to Clause 8.4 will be shared between the Council and THT in the same proportion as the Council's Investment and THT's Investment bear to one another and the Council will pay such share out of the Development Account on each anniversary of the Final Payment Date.
- 8.6 Each party will bear any tax due on its own Financial Return.

9 **LAND TRANSACTIONS BETWEEN THE PARTIES**

- 9.1 [Where the Council and THT agree to transfer Land Interests in Schedule 1 (as amended from time to time in accordance with this Agreement) between themselves whilst this Agreement is in effect]:
- 9.1.1 the Council and THT shall procure that the Master Plan is amended accordingly and thereupon such revised Master Plan shall be attached to this Agreement in place of the plan set out in Appendix 1;
- 9.1.2 the land shall no longer form part of the Old Trafford Land Pool and the obligations on the parties in this Agreement shall no longer apply insofar as they relate to the land released; and
- 9.1.3 the Initial Valuation relating to that land shall continue to form part of that party's investment for the purposes of this Agreement.
- 9.2 As soon as practicable after the transfer of any Land Interest pursuant to Clause 9.1, the parties shall prepare a memorandum recording all of the consequential changes to Schedule 1 of this Agreement and such memorandum shall be signed by or on behalf of the Council and THT and endorsed on or attached to this Agreement in place of Schedule 1 or (if applicable) any previous memorandum so endorsed or attached.
- 9.3 [The costs in relation to any transfers arising hereunder shall not be recoverable by the relevant party pursuant to Clause 8.3.]

10 **SIGNIFICANT MATTERS**

- 10.1 Not used

11 **MASTER PLAN BOARD**

- 11.1 The Council and THT shall develop a schedule of regular meetings of their respective representatives and appropriate advisors for the purposes of progressing and reviewing the progress of the Development, the operation of the Land Pooling Mechanism and the

implementation of any Development Agreements and the responsibilities of the parties under this Agreement.

11.2 [As at the date hereof the representatives of the various parties are as follows:]

Representative	Role	Organisation
		Council
		Council
		Council
		THT
		THT
		THT

11.3 The Master Plan Board will be chaired and administered by the Council.

11.4 The parties shall notify each other in writing of any changes to the representatives listed above and may appoint additional representatives (provided that there shall be no more than 6 in total in number making up the Master Plan Board or such other number as the Master Plan Board may from time to time agree).

11.5 The parties intend that the Master Plan Board shall:

11.5.1 undertake the day to day management and operation of the Land Pooling Mechanism on behalf of the parties;

11.5.2 agree any amendments to the Master Plan made pursuant to this Agreement;

11.5.3 (subject to Clause 11.6) endorse a proposed Development Partner;

11.5.4 review the progress and delivery of the Development;

11.5.5 generally provide the forum for overall/strategic review of the Development and progress proposals under this Agreement so far as possible into "Board-ready" proposals for submission to each of the parties for formal approval.

11.6 For the avoidance of doubt (but subject always to the provision of clause 11.8), the Master Plan Board will not have the authority to bind the parties and any “agreement” reached by the Master Plan Board will be subject to formal written approval by each of the respective parties and each representative on the Master Plan Board from time to time shall take all relevant steps within that representative’s control to progress the application for approval within their respective organisation and endeavour to obtain formal written approval from that party as soon as reasonably practicable.

11.7 A meeting of the Master Plan Board may be convened at any time by the Council or THT serving not less than two weeks written notice to the other’s representatives on the Master Plan Board of which it has notice under this Clause 11.

11.8 The Council and THT may with the consent of the other (such consent not to be unreasonably withheld or delayed) each delegate the performance of one or more of its obligations under this Agreement to the Master Plan Board provided that the Council or (as the case may require) THT shall remain fully responsible for the acts or omissions of any the Master Plan Board in relation to the performance of the obligations so delegated.

12 **DISPUTE DETERMINATION**

12.1 It is acknowledged between the parties that any dispute arising between the parties in relation to this Agreement (the “Disputed Matters”) shall be dealt with strictly in accordance with the procedure and timetable set out in Clause 12.2 below.

12.2 Any Disputed Matters shall:

12.2.1 be referred to the first meeting of the Master Plan Board following the Disputed Matter arising for discussion and resolution by the Master Plan Board; and

12.2.2 where the Master Plan Board are not able to resolve the Disputed Matters within 20 working days of such referral the Disputed Matter shall be referred to the escalation procedure set out in Clause 12.3.

12.3 Where a Disputed Matter is referred to the escalation procedure under this Clause 12 the persons listed in Clause 12.4 (the “Executive Group”) shall meet as soon as reasonably practicable to discuss the Disputed Matter and attempt to resolve the Disputed Matter. The Council and THT shall each procure that their respective representatives on the Executive Group shall cooperate and act in good faith with a view to resolving the Disputed Matter as soon as reasonably possible.

12.4 The Executive Group shall be:

12.4.1 [] of the Council;

12.4.2 [] of THT;

or such other persons (of at least equivalent seniority) as shall from time to time be notified by the Council or THT to the other by at least five working days notice in writing.

12.5 Where following the escalation procedure set out in Clause 12.3 the Executive Group are not able to resolve the Disputed Matter within 20 working days of the Disputed Matter being referred to them then a Deadlock Event shall be deemed to have occurred.

13 CURRENT LAND HOLDINGS

13.1 Should either party become aware of a Material Change it will immediately report this to the other and, at its own cost, respond to and act on any reasonable queries as requested and/or raised by the Council or (as the case may require) THT thereon.

13.2 Subject to Clause 13.3 below the Council shall not in relation to the Council's Property and THT shall not in relation to THT's Property during the Term (instruct or allow anyone else to):

13.2.1 encumber or deal with the title to the Council's Property or THT's Property (as appropriate) including without limitation extending the term of or otherwise varying the provisions of any tenancies or leases of any part of the Council's Property or (as appropriate) THT's Property (except with the prior written consent of the other such consent not to be unreasonably withheld or delayed where such dealing will not in any way delay or have any adverse impact upon the Development);

13.2.2 seek buyers for the Council's Property or THT's Property or entertain offers for the Council's Property or THT's Property (as appropriate) other than in accordance with this Agreement.

13.3 The provisions of Clause 13.2 shall be personal to the Council and THT and nothing in Clause 13.2 shall constitute an incumbrance on the relevant party's title and, in the case of THT, shall not fetter or interfere with any rights that THT's lenders may have under any security granted to them prior to the date of this Agreement nor shall it prevent or inhibit the Council or THT (and the Council or THT shall not be in breach of their respective obligations under Clause 13.2 above) in:

13.3.1 granting leases and tenancies which are (i) granted pursuant to statutory obligations or the exercise of statutory rights or (ii) granted pursuant to pre-existing contractual obligations as at the date hereof (which have been disclosed to the other parties prior to the date hereof) or (iii) which (in relation to business premises) are either periodic or for a fixed term of less than two years and excluded from sections 24 to and including 28 of the Landlord and Tenant Act 1954 (where applicable) or which (in relation to residential premises) are on a properly created Assured Shorthold Tenancy and in each such case on terms permitting the Council or THT (as applicable) to obtain vacant possession when required to implement the Development (or any part of it);

13.3.2 surrendering any lease or tenancy;

- 13.3.3 entering into licences to occupy on terms permitting the Council or THT (as appropriate) to obtain vacant possession when required to implement the Development (or any part of it);
- 13.3.4 approving a Development Partner or any development proposal notice served under a Development Agreement or entering into a Development Agreement with a Development Partner provided that such Development Partner has been appointed in accordance with Clause 6.

13.4 Subject to such insurance being available in the UK insurance market at reasonable commercial rates the Council shall in relation to the Council's Property and THT shall in relation to THT's Property maintain all such insurances as are in effect at the date of this Agreement for the period from the date of this Agreement to the date the relevant Land Interest is transferred to or drawdown by a Development Partner or (if earlier) the date the relevant Land Interest ceases to be part of the Old Trafford Land Pool.

13.5 The provisions of this Clause 13 shall not apply after the expiry of the Term or the earlier termination of this Agreement.

14 **TERMINATION**

14.1 Where a Default has occurred the non-defaulting party shall be entitled to serve notice of Default on the defaulting party specifying in reasonable detail the breach or breaches or event which comprise the Default and (where the breach is capable of remedy) specifying a reasonable period (the "Remedy Period") within which the defaulting party is to remedy the breach ("Default Notice").

14.2 Any Default Notice to be served on THT pursuant to this Clause 14 shall notwithstanding any other provision in this Agreement be in writing and served on the registered office of THT as at the relevant time appearing on the Register at Companies House and be marked in writing for the attention of the Company Secretary.

14.3 Any Default Notice to be served on the Council pursuant to this Clause 14 shall notwithstanding any other provision in this Agreement be in writing and served on the Council at Trafford Town Hall Talbot Road Stretford Manchester M32 0TH and be marked in writing for the attention of the Director of Legal Services.

14.4 Where a Default Notice is served and the breach or breaches specified is or are not remedied before the expiry of the Remedy Period or the breach or event comprising the Default is not capable of being remedied then the non-defaulting party may at any time thereafter (but not after any such breach is remedied) terminate this Agreement by serving written notice to such effect on the defaulting party.

14.5 Any termination of this Agreement shall be without prejudice to the claims of any party against the others for any antecedent breach or non performance of the terms of this Agreement.

14.6 Either party shall be entitled to terminate this Agreement on the Break Date by giving at least 6 months prior written notice to the other and if either party shall serve such notice then this Agreement shall cease and determine on the Break Date but without prejudice to the rights of either party in respect of any antecedent breach.

14.7 Either party shall be entitled to terminate this Agreement at any time following the occurrence of a Deadlock Event by giving at least 2 months prior written notice to the other and if such notice is given and the Deadlock Event has not been resolved by the expiry of such notice

then this Agreement shall cease and determine but without prejudice to the rights of either party in respect of any antecedent breach.

15 CONSEQUENCES OF TERMINATION FOLLOWING DEFAULT

Where this Agreement is terminated pursuant to Clause 14 then, notwithstanding any other terms of this Agreement the following shall apply:

15.1 The Council shall retain the Council's Property and THT shall retain THT's Property free from the obligations contained in this Agreement but subject to the obligations (if any) imposed on the parties in respect of their Land Interests by a Development Agreement.

15.2 The Council shall as soon as practicable carry out a final reconciliation of the Development Account and the provisions of Clause 8 shall apply in respect of such reconciliation provided that (save where the termination of this Agreement is pursuant to Clauses 14.6 and 14.7) for the purpose of Clauses 8.4 and 8.5 the surplus standing to the credit of the Development Account shall be shared between the Council and THT in the following proportions:

15.2.1 (where the defaulting party is THT) the proportion that the Council's Investment multiplied by 1.10 bears to THT's Investment multiplied by 0.90; or

15.2.2 (where the defaulting party is the Council) the proportion that the Council's Investment multiplied by 0.90 bears to THT's Investment multiplied by 1.10.

15.3 This Clause 15 and the provision of Clauses 19 and 20 shall survive such termination and notwithstanding such termination shall continue to apply in full force and effect.

16 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

A person who is not a party to this Agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

17 PARTNERSHIP

Nothing in this Agreement shall constitute a partnership or joint venture between the parties hereto for any purpose whatsoever.

18 JURISDICTION

This Agreement shall be governed by and construed in accordance with English Law.

19 FREEDOM OF INFORMATION

- 19.1 THT acknowledges that the Council is subject to the requirements of FOIA and all subordinate legislation and shall give its reasonable assistance to the Council to enable the Council to comply with its Information disclosure obligations.
- 19.2 THT shall and shall procure that any person engaged or employed by it shall:
 - 19.2.1 transfer to the Council all requests for Information made expressly under FOIA that they receive as soon as reasonably practicable and in any event within five (5) working days of receiving such a request for Information;
 - 19.2.2 provide all reasonable assistance as reasonably requested by the Council to enable the Council to respond to any such request for Information within the time limit for compliance set out in section 10 of FOIA.
- 19.3 The Council shall notify THT if they receive a request for Information relating to this Agreement and shall take account of any reasonable representations THT makes in relation to such request, but THT acknowledges that the Council shall ultimately be responsible for determining in their absolute discretion whether the Confidential Information and/or any other Information is exempt from disclosure in accordance with FOIA.
- 19.4 In no event shall THT respond directly to a request for Information made expressly pursuant to the FOIA unless expressly authorised to do so by the Council.
- 19.5 THT acknowledges that the Council may be obliged to disclose Information without consulting or obtaining consent from THT, or having taken THT's views into account.
- 19.6 THT shall ensure and shall procure that any persons engaged or employed by it shall ensure that all Information is retained securely and safely for the period of this Agreement.

20 CONFIDENTIALITY CLAUSE

- 20.1 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in this Agreement, each party to this Agreement shall:
 - 20.1.1 treat the Confidential Information as confidential and safeguard it accordingly;
 - 20.1.2 not disclose the Confidential Information to any other person without the prior written consent of the other party.
- 20.2 Clause 20.1 shall not apply to the extent that:
 - 20.2.1 such disclosure is a requirement of law placed upon the party making the disclosure, including any requirements for disclosure under FOIA pursuant to Clause 19;
 - 20.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

- 20.2.3 such information was obtained from a third party without obligation of confidentiality; or
 - 20.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement;
 - 20.2.5 such information is required to be registered at the Land Registry or other public register or record.
- 20.3 The Council and THT may only disclose the Confidential Information to those persons that it employs or engages directly and who need to know the information, and shall ensure that such persons are aware of and shall comply with these obligations as to confidentiality.
- 20.4 The Council and THT shall not, and shall procure that all those employed or engaged by them do not, use any of the Confidential Information received otherwise than for the purposes of this Agreement.

21 MUTUAL DUTIES OF THE PARTIES

- 21.1 The Council and THT shall co-operate with each other and act in fairness and good faith to enable each other to discharge their duties pursuant to this Agreement and to attain the objectives of this Agreement and accordingly shall respond promptly to requests properly made for approvals, consents, information or assistance.
- 21.2 Each of the Council and THT shall at all times make full disclosure to the other party of all relevant information data and reports with respect to this Agreement.
- 21.3 The Council and THT shall (and shall procure that any of their staff involved in the performance of this Agreement) comply with any notification requirements under the Data Protection Act 1998 ("DPA") and the Council and THT will duly observe all their obligations under the DPA which arise in connection with this Agreement and neither party shall knowingly do anything which places the other in breach of its obligations under the DPA and each party shall provide all reasonable co-operation to the other to enable that other party to comply with its own obligations under the DPA.
- 21.4 The Council and THT shall not do anything in relation to their Land Interests which would conflict with or adversely affect the principles and objectives of this Agreement.

22 NO FETTER OF THE COUNCIL'S STATUTORY FUNCTIONS

Nothing contained in this Agreement and no consent or approval given by the Council or THT pursuant to this Agreement shall prejudice, restrict, interfere with or otherwise affect any of the statutory or other rights, powers, obligations and duties for the time being vested in the Council or the performance by the Council of any such obligations or duties or the means by which the Council shall exercise its statutory rights or powers or fulfil or discharge any such obligations or duties and nothing done by the Council in the exercise or performance of its

rights, powers, obligations and duties as referred to above shall place it in breach of any obligation on its part contained in this Agreement.

23 SEVERABILITY

If any of the provisions of this Agreement are found by a Court or other competent authority to be void or unenforceable such provisions shall be deemed to be deleted from this Agreement and the remaining provisions of this Agreement shall continue in full force and effect. Notwithstanding the foregoing the Council and THT shall thereupon negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the provisions so found to be void or unenforceable.

24 AGENCY

24.1 THT will not and will procure that no person engaged or employed by it will in any circumstances or at any time hold itself or themselves out as:

24.1.1 being the servant or agent of the Council; or

24.1.2 being authorised to enter into any contract on behalf of the Council or in any other way to bind the Council to the performance, variation, release or discharge of any obligation; or

24.1.3 having the power to make, vary, discharge or waive any byelaw or regulation of any kind.

24.2 The Council will not and will procure that no person engaged or employed by it will in any circumstances or at any time hold itself or themselves out as:

24.2.1 being the servant or agent of THT; or

24.2.2 being authorised to enter into any contract on behalf of THT or in any other way to bind THT to the performance, variation, release or discharge of any obligation.

In witness whereof this Agreement has been executed as a deed on the date at the head of this Agreement.

SCHEDULE 1
Land Interests

1

SCHEDULE 2
Core Development Principles

- 1 All development progressed through this Agreement is to achieve the design standards set by the parties including a minimum of Code for Sustainable Homes – Level 3 (where applicable).[Note: this doesn't apply to commercial property.]
- 2 Any proposed transaction with a Development Partner must be state aid and EU Procurement Regulations compliant and controls deemed appropriate by the Council are to be placed on each development to ensure that the development remains state aid and EU Procurement Regulations compliant at all times.
- 3 Any development is to be structured (wherever possible) in such a way so as to achieve the most tax efficient structure for the parties and the Development Partner.
- 4 All roads to be to adoptable standards and any non-adoptable areas will not remain the responsibility of the parties to this Agreement.
- 5 Landscaping etc to be maintained (following construction) through the best value for money solution as agreed between the parties.
- 6 Timely progress of development (no land banking).
- 7 Any development to have the necessary infrastructure.
- 8 The capital receipt for the Land Interest(s) to be paid on the transfer/drawdown of the relevant Land Interest.
- 9 The incorporation of as few a conditions precedent as practicable.
- 10 Any development to accord with the requirements of the HCA as a funding body and any documentation issued by the Council in its capacity as the local planning authority

SCHEDULE 3
Key Clauses

Clauses which relate to:

- 1 Levels of profit share/payment/overage.
- 2 Timings of payment.
- 3 Transfer of land interests or grants/reservation of rights.
- 4 Termination/default provisions.
- 5 Alienation of the developer's interest including sub-letting/assignment/mortgage.
- 6 Changes to proposed scheme design/programme/infrastructure.
- 7 Conditions Precedent.
- 8 Securing Delivery.

THE COMMON SEAL of TRAFFORD BOROUGH COUNCIL

was affixed to this Deed in the presence of:

Authorised Signatory

Signature:

Name (in block capitals)

EXECUTED as a **DEED** by **TRAFFORD HOUSING TRUST LIMITED** acting by two directors or one director and the secretary:

Director:

Name (in block capitals)

Director/Secretary:

Name (in block capitals)

APPENDIX 1
Master Plan

APPENDIX 2

Draft Procurement Strategy Criteria

The Council and THT shall as soon as practicable after the date of the LPA prepare and agree a Procurement Strategy that encompasses the following principles.

- 1 Procurement of each Development Partner shall be undertaken jointly by the Council and THT.
- 2 Any proposed transaction with a Development Partner must be state aid and EU Procurement Regulations compliant
- 3 Controls deemed appropriate by the Council are to be placed on each development to ensure that the development remains state aid and EU Procurement Regulations compliant at all times.
- 4 In respect of each procurement the Council and THT will agree each of the following prior to the relevant document or criteria being issued:
 - § the procurement process
 - § the form of the OJEU notice
 - § the pre-qualification questionnaire
 - § the evaluation criteria in respect of the pre-qualification questionnaire
 - § the tender document
 - § the award criteria in respect of the tender documents
- 5 The Council and THT will procure a development partner/s via a development agreement where there is a contractual relationship to build/develop a specific site and the parties obligations are confirmed and limited by the contractual relationship. This arrangement can be set up to procure developers on a site by site basis or by combining sites and procuring developers to deliver a larger scale of projects over a longer time period.

Under the Procurement Strategy both parties will agree on the most suitable procurement approach to deliver the objectives of the Old Trafford Masterplan. This may be a single procurement if all the sites could be delivered by a single long-term private sector partner. Alternatively, there may be a multiple procurement with sites within the LPA packaged and taken to the market or marketed on a site by site basis. Figures 1 and 2 below set out how the procurement could operate.

Figure 1: Single Procurement

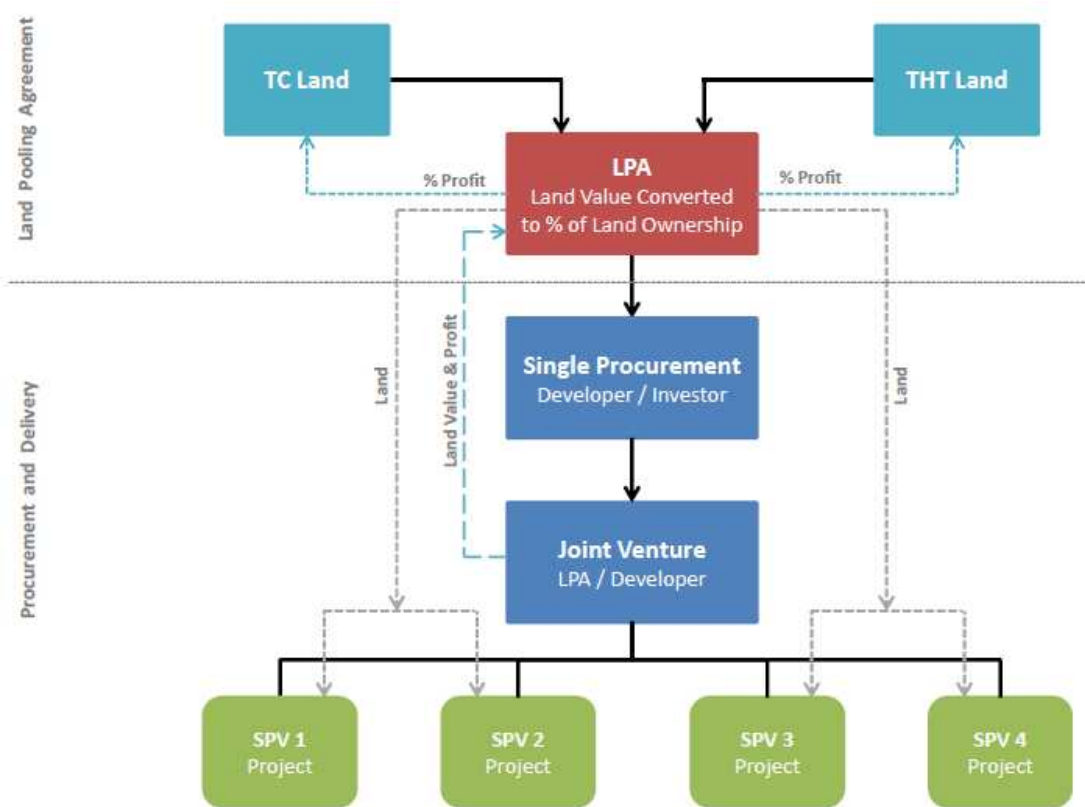
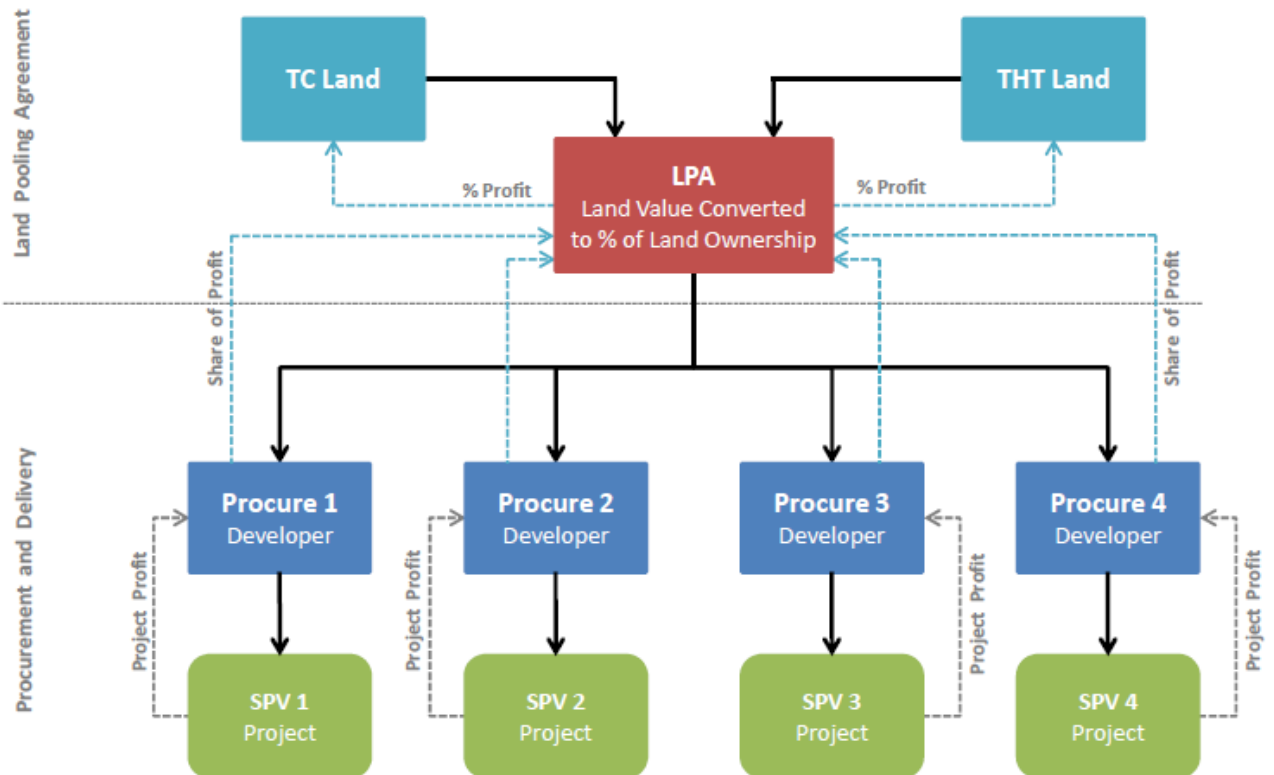


Figure 2: Multiple Procurement



APPENDIX 3

Draft Delivery Strategy Criteria

Under the LPA the Council and THT agree to ring-fence land assets within the vehicle for the purpose of supporting the delivery of the Old Trafford Masterplan and the comprehensive regeneration of the Old Trafford Priority Regeneration Area. The LPA has been identified as the approach provides the best mechanism within which both the Council and THT can operate to deliver required outputs, maximise opportunities and deal most effectively with the complexities of delivery over an extended time period.

The Council and THT shall as soon as practicable after the date of the LPA prepare and agree a Delivery Strategy that encompasses the following principles:

1. The Masterplan objectives will be taken forward in accordance with the delivery strategy criteria which will seek to plan a logical approach to development and refurbishment of the assets within the LPA.
2. The delivery team will report to the Old Trafford Masterplan Board which is made up of senior representatives of both organisations.
3. The Council and THT will procure a development partner/s via a development agreement.
4. Each Development Agreement will be in the form of the Model Development Agreement.
5. This arrangement can be set up to procure a developer partner/s on a site by site basis or by combining sites and procuring developers to deliver a larger scale of projects over a longer time period.
6. The development partner should acknowledge that ensuring delivery to a high standard is critical to the achievement of the Masterplan objectives.

APPENDIX 4
Old Trafford Priority Regeneration Area Plan