

DATED _____ **2017**

**Cabinet Report Draft
23.06.2017**

(1) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HARINGEY

(2) [HDV]

LAND ASSEMBLY AGREEMENT
relating to the redevelopment of Category 1 Properties in
the London Borough of Haringey



Pinsent Masons

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THIS AGREEMENT is made on the [] day of [] [2017]

BETWEEN:-

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HARINGEY** of Station Road, Wood Green, London N22 7TR ("**the Council**"); and
- (2) **[HDV] LLP** (Company Number []), whose registered office is at [] ("**HDV**").

IT IS AGREED as follows:-

1. **INTERPRETATION**

- 1.1 The provisions of Schedule 1 apply to the interpretation of this Agreement.
- 1.2 The provisions of each of the Schedules form part of this Agreement.

2. **BACKGROUND**

2.1 HDV has been set up to achieve the following objectives:

- 2.1.1 to deliver growth through new and improved housing; town centre development; and enhanced use of the Council's property portfolio;
- 2.1.2 to achieve and retain for the Council a long term stake and control in development of the Council's land, maintaining a long term financial return for the Council which can be reinvested, in accordance with the Council's statutory functions, on new housing, on social and economic benefits or on other Council Corporate Plan objectives;
- 2.1.3 in partnership with the private sector to catalyse delivery of financially challenging schemes;
- 2.1.4 to achieve estate renewal by intensification of land use and establishment of a range of mixed tenures, together with tenure change across the Borough where appropriate;
- 2.1.5 to secure wider social and economic benefits in areas affected, including community facilities, skills and training, health improvement and crime reduction for the benefit of existing residents;
- 2.1.6 to incorporate land belonging to other stakeholders, both public and private sector, into development; and
- 2.1.7 to achieve a commercially acceptable return.

2.2 The Council and HDV have entered into a Development Framework Agreement pursuant to which HDV will formulate development proposals in relation to each Category 1 Property and subject to certain pre-conditions, HDV will implement such proposals in accordance with the objectives as set out above.

2.3 The Category 1 Properties are currently occupied by owners or tenants falling broadly within the following (non-exclusive) categories:

- 2.3.1 residences which are privately owned and occupied (including those purchased pursuant to a "Right to Buy");
- 2.3.2 residences which are privately owned but let to occupational tenants;
- 2.3.3 residences which are owned by a registered provider (other than the Council);

- 2.3.4 residences which are owned by the Council and let to Secure Tenants or Introductory Tenants;
 - 2.3.5 residences which are owned by the Council which are vacant or which are let to Council tenants who are not Secure Tenants or Introductory Tenants;
 - 2.3.6 properties which are used for commercial or some other non-residential purposes;
 - 2.3.7 property which is held by the Council under the Education Act 2011 or any other similar legislation.
- 2.4 The Development Framework Agreement does not affect or fetter the exercise by the Council of its Statutory Powers and accordingly this Agreement sets out the procedures and steps which the Council and HDV have agreed to follow to ensure that where relevant, the preparation of a Category 1 Property for potential development is consistent with the due performance or exercise of the Council's Statutory Powers and Legal Responsibilities.
- 2.5 The Council and/or HDV may purchase Third Party Interests and this Agreement sets out the procedures and steps which (as between the Council and HDV) will be followed in relation to the acquisition of any such Third Party Interest.
- 2.6 HDV may request the Council to consider using Statutory Powers where necessary in order to enable any Category 1A Property to be redeveloped and this Agreement sets out the procedures and liability for costs in relation to exercise of any such Statutory Powers.
3. **THE COUNCIL'S LEGAL RESPONSIBILITIES**
- 3.1 HDV shall ensure that in drawing up any Development Business Plan or Planning Application for a Category 1A Property (or Phase thereof), it is consistent with:
- 3.1.1 the due performance or exercise of the Council's Statutory Powers and Legal Responsibilities;
 - 3.1.2 the Council's housing policies, as notified to HDV from time to time, including the Council's Housing Strategy and the Estate Renewal Re-Housing and Payments Policy;
 - 3.1.3 the Consultations required to be carried out by the Council pursuant to its Statutory Powers and Legal Responsibilities and any further Council decisions which may need to be taken; and
 - 3.1.4 the Council achieving the SOS Condition.
- 3.2 The parties agree that any amendment to a Business Plan that departs from the Estate Renewal Re-Housing and Payments Policy (as referred to at Clause 3.1.2 above, or elsewhere in this Agreement) will always be treated as a Business Plan Material Variation (as defined in the Members Agreement) to an existing Business Plan and be referable to Members (as defined in the Members Agreement) for approval
- 3.3 HDV shall prepare (as part of the Development Business Plan) and thereafter update as often as may be reasonably necessary a land acquisition schedule stipulating the anticipated costs of acquiring any remaining land interests within the relevant Category 1 Property with appropriate supporting evidence (a "**Schedule of Anticipated Acquisition Costs**").
4. **DISPOSAL CONDITION**
- 4.1 The Council shall confirm to HDV in writing the information it requires to enable it to comply with its then current and applicable Legal Responsibilities (including in particular) Consultations prior to it making any decisions contemplated by the Disposal Condition. The Council shall then decide (in consultation with HDV) the appropriate time for such Consultation to commence.

- 4.2 As a minimum, HDV shall provide the following material to the Council in relation to the relevant Category 1B Property (or Phase thereof) to allow it to carry out such Consultation:
- 4.2.1 a plan identifying the development proposals and phasing of demolition and construction and location of replacement housing units;
 - 4.2.2 computer-generated imagery showing the potential exterior appearance of typical units that may be constructed;
 - 4.2.3 floor plans showing the anticipated layout of such typical units;
 - 4.2.4 outline offers to be made to existing residents, occupiers, owners and other stakeholders; and
 - 4.2.5 details of how HDV's Business Plan will be implemented in a manner which meets the Council's housing policies (including the Estate Renewal Re-Housing and Payments Policy).

5. CONSULTATION AND ENGAGEMENT

- 5.1 In addition to the obligations set out in Clause 4, HDV must notify the Council in writing once it has sufficiently advanced proposals for a Category 1 Property or Phase thereof that it is able to provide the details set out in Clause 5.2 below. Once HDV has notified the Council of this (or wherever Consultation is required for the proper exercise of the Council's Statutory Powers or Legal Responsibilities), the Council shall confirm to HDV in writing the Consultation that it intends to undertake together with details of the information that it requires from HDV to facilitate the relevant Consultation. The Council shall then decide (in consultation with HDV) the appropriate time for the relevant Consultation to commence.
- 5.2 As a minimum, HDV will be expected to provide the following material to the Council to allow it to carry out any such Consultation:
- 5.2.1 a plan identifying the location of the proposed Category 1 Property or Phase thereof (the proposed "**Build Phase**") including any Demolition Phase, if applicable;
 - 5.2.2 computer-generated imagery showing the potential exterior appearance of typical units that may be constructed on the proposed Build Phase;
 - 5.2.3 floor plans showing the anticipated layout of such typical units;
 - 5.2.4 outline offers to be made to existing residents, occupiers, owners and other stakeholders; and
 - 5.2.5 details of how HDV's Business Plan will be implemented in a manner which meets the Council's housing policies (including the Estate Renewal Re-Housing and Payments Policy).
- 5.3 As soon as reasonably practicable after the date on which HDV provides to the Council all of the information that it is required to provide pursuant to clause 5.2, HDV and the Council shall together use reasonable endeavours to:
- 5.3.1 agree information in respect of the proposed Build Phase and such other information as will enable the Council fully to discharge its Legal Responsibilities in respect of Consultation; and
 - 5.3.2 agree the steps to be undertaken by both Parties as part of such Consultation process including the date on which the Consultation process shall commence and end.

5.4 No later than the date agreed by the Parties pursuant to clause 5.3.2, the Council (with the assistance of HDV where required) shall use reasonable endeavours to commence and progress Consultation in accordance with the timetable agreed pursuant to clause 5.3.1.

5.5 The Council and HDV each agree to allocate such reasonable resources and to make such personnel available as is reasonably required to take part in and conclude such Consultations within the agreed periods.

5.6 HDV and the Council shall share and review the responses received to such Consultations and HDV shall have regard to any reasonable requests that are made by the Council to modify HDV's proposals in the light of the responses received, which the Council has decided should be implemented.

6. **ASSESSMENT OF ACCOMMODATION REQUIREMENTS**

6.1 HDV shall, no later than [six] months prior to the proposed date for submission of an application for detailed Planning Permission or approval of detail where there is an extant outline Planning Permission, request the Council undertake an Assessment of Accommodation Requirements for residents who may become occupiers of the Build Phase.

6.2 The Council shall (following such written notice from HDV) carry out an Assessment of Accommodation Requirements for the relevant Build Phase. HDV shall provide all reasonable assistance to the Council in carrying out such Assessment of Accommodation Requirements.

6.3 HDV shall agree with the Council how the final design for the Build Phase shall enable the Assessment of Accommodation Requirements to be met. In consultation with the Council, the final design must incorporate allowances for alterations as a result of reasonably foreseeable changes to the Assessment of Accommodation Requirements which may occur before the relevant Build Phase has been completed.

7. **PRE-CPO ACQUISITIONS OF COUNCIL OWNED PROPERTIES**

7.1 Where HDV has adopted a Development Business Plan and the Council has approved land acquisition costs as part of any financial commitment in accordance with Clause 18.1 of the Members Agreement for a Category 1A Property, in relation to any land within the Category 1A Property where the Council is already the freehold owner, the Council will (at HDV's request and within the agreed financial commitment), use reasonable endeavours to acquire any Third Party Interests by private treaty prior to the Council being asked to consider the exercise of its CPO powers ("**Pre-CPO Acquisitions**").

7.2 The Council shall not be obliged to acquire any such interests. The parties may agree that HDV shall assist LBH with LBH's borrowing costs (net of any income actually received by LBH) from the date of acquisition by LBH until the date of land drawdown.

7.3 The consideration payable in respect of any Third Party Interest acquired pursuant to this clause 7 shall not exceed the amount shown in the Schedule of Anticipated Acquisition Costs (unless the Parties shall agree) and in any event shall (as a minimum) be in accordance with the Council's Estate Renewal Re-Housing and Payments Policy (except where a departure from such policy has been agreed in the relevant Development Business Plan).

7.4 The Council shall provide HDV with details of any Pre-CPO Acquisitions agreed with the relevant Owner such details to be provided for the information of HDV only.

7.5 On the drawdown of a Category 1A Property or Phase thereof in accordance with the DFA in respect of which Pre-CPO Acquisitions have been made, the Council will submit an invoice to HDV for the relevant Pre-CPO Acquisition Costs. The terms of issue and payment of such invoice are to be in accordance with Paragraph 3.9 of Schedule 7 to the Members Agreement.

8. PRE-CPO ACQUISITIONS OF NON-COUNCIL OWNED PROPERTIES

- 8.1 In relation to land within Category 1 Properties where the Council is not the freehold owner, HDV may request that the Council acquire by private treaty as many Third Party Interests as can be acquired prior to the Council being asked to consider the exercise of its CPO powers ("**Voluntary Acquisitions**").
- 8.2 The Council shall not be obliged to acquire any such interests. The parties may agree that HDV shall assist LBH with LBH's borrowing costs (net of any income actually received by LBH) from the date of acquisition by LBH until the date of land drawdown.
- 8.3 HDV may at any time acquire by private treaty any Third Party Interests in non-residential properties, but it may secure the acquisition in the name of the Council, if the parties so agree.
- 8.4 HDV will, at the request of the Council and in accordance with the provisions of this Clause 8 lead the private treaty negotiations for the acquisition of Third Party Interests in non-Council Properties with a view to acquiring them to minimise or reduce the need for a CPO.
- 8.5 HDV shall use all reasonable endeavours to negotiate by private treaty the acquisition of any Third Party Interest to which this Clause 8 applies on the basis of an outright acquisition of that Third Party Interest by the Council or (if agreed by the Parties) by way of conditional contract, pre-emption agreement or option arrangement with any Owner on terms agreed by HDV and the Council.
- 8.6 HDV shall provide the following for the Council's approval in relation to any Voluntary Acquisition:
- 8.6.1 details of the heads of terms agreed with the relevant Owner for the acquisition of their Outstanding Interest(s), such details to be provided within five Working Days of the same being agreed subject to contract; and
- 8.6.2 copies of all documents to be entered into between the proposed buyer and the Owner or Claimant, such copies to be provided within five Working Days of the same being agreed subject to contract.
- 8.7 Where documents are provided to the Council for its approval pursuant to paragraph 8.6, the Council's decision as to whether or not to approve the relevant document is not to be unreasonably withheld or delayed but shall have regard to:
- 8.7.1 the Schedule of Anticipated Acquisition Costs;
- 8.7.2 legislation relating to compulsory acquisition;
- 8.7.3 the CPO Guidance; and
- 8.7.4 the Council's Estate Renewal Re-Housing and Payments Policy
- insofar as they are relevant and applicable at the time.
- 8.8 The Council shall provide to HDV such assistance as HDV may reasonably request or require from time to time.
- 8.9 Where the Council in its capacity as a member under the Members Agreement has agreed to forward fund any Voluntary Acquisitions within a Category 1A Property or Phase thereof then on the drawdown of the Category 1A Property or Phase pursuant to the DFA in respect of which Voluntary Acquisitions have been made, the Council will submit an invoice to HDV for the relevant Voluntary Acquisition Costs. The terms of issue and payment of such invoice are to be in accordance with Paragraph 3.9 of Schedule 7 to the Members Agreement.
- 8.10 Where the parties to the Members Agreement have agreed that HDV is to forward fund any Voluntary Acquisitions within a Category 1A Property or Phase thereof then on the drawdown of

the Category 1A Property or Phase pursuant to the DFA in respect of which Voluntary Acquisitions have been made the Council may issue a D Loan Note to HDV for any Voluntary Acquisition Costs incurred in relation to that Category 1A Property or Phase. Such D Loan Note is to be issued in accordance with Paragraph 3.9 of Schedule 7 to the Members Agreement and payable in accordance with the terms of the relevant D Loan Note Instrument.

9. REPURCHASE OF ASSETS HELD BY HDV

9.1 Where HDV has acquired any Third Party Interest in accordance with Clause 8 or otherwise, HDV shall be obliged to transfer the interest acquired to the Council, in the following circumstances:

9.1.1 the DFA is terminated;

9.1.2 the Option Conditions Long Stop Date for the Category 1 Property or Phase of which the relevant Third Party Interest forms part is reached;

9.1.3 a PSP Default Event (as defined in the Members Agreement) exists; or

9.1.4 Clause 27.1.1(b) of the Members Agreement applies.

9.2 The value of any transfer pursuant to Clause 9.1 shall be at the book-value stated for the Third Party Interest in HDV's latest audited accounts, such accounts to be updated by HDV no more than 3 months prior to the date of transfer.

9.3 Following any acquisition of a Third Party Interest by HDV, HDV consents to the entry of the following restriction against HDV's title to the Third Party Interest at the Land Registry and will provide the Council with all necessary assistance and/or documentation to permit entry of the restriction:

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a consent in writing signed by [London Borough of Haringey] of [address] or their conveyancer that the provisions of clause [8.1] of an Agreement dated [] made between (1) The Mayor and Burgesses of the London Borough of Haringey and (2) [HDV LLP] have been complied with or that they do not apply to the disposition."

9.4 HDV acknowledges that any restriction registered in accordance with Clause 9.3 above, shall be registered in advance of any third party debt which HDV may register against the registered title.

10. OBLIGATIONS ON HDV RELATING TO COUNCIL TENANTS

10.1 The parties agree that the following principles shall apply to the relocation of Secure Tenants and Introductory Tenants and Right of Return:

10.1.1 Every Secure Tenant and Introductory Tenant in any Demolition Phase who is relocated by the Council out of a Category 1A Property for the purposes of the Development, shall have a Right to Return. Any assured tenancy granted in accordance with this Right to Return shall be in accordance with the Assessment of Accommodation Requirements for the relevant tenant, including any adaptations identified therein where these are in accordance with the Council's housing policies and can reasonably be accommodated.

10.1.2 The Council may offer alternative accommodation anywhere in the Borough which the Secure Tenant or Introductory Tenant is willing to accept.

10.1.3 Where consistent with the relevant Development Business Plan for the Phase, the Council assisted by HDV shall use reasonable endeavours to ensure that all Secure Tenants and Introductory Tenants move only once where this can reasonably be achieved.

10.1.4 If on completion of the development of the relevant Category 1A Property a Secure Tenant or Introductory Tenant is given the option and elects (in writing) to remain in any

alternative accommodation which has been provided by the Council or HDV in accordance with 10.1.2 above, then the Right to Return shall cease to apply to that Secure Tenant or Introductory Tenant.

10.2 Conditions of Tenancy

HDV covenants (and shall procure that any entity which will be the direct landlord for any former Secure Tenants and Introductory Tenants of the Council also covenants with the Council) and so that these provisions shall be included within the lease granted to HDV pursuant to the DFA:

- 10.2.1 to grant assured, non-shorthold periodic tenancies on terms and conditions which secure, so far as is reasonably possible, equivalent statutory and contractual rights to those that are enjoyed by the Council's Secure Tenants and Introductory Tenants (as applicable) from time to time save that the 'right to buy' shall be excluded and save where expressly provided for in the lease, HDV shall not be obliged to comply with the statutory functions of a housing authority;
- 10.2.2 to ensure that the rents charged throughout the tenancy are equivalent to the rents set by the Council, from time to time for Secure Tenants and Introductory Tenants;
- 10.2.3 not to use Ground 8 of schedule 2 of the Housing Act 1988 (as amended by the Housing Act 1996) (which allows mandatory eviction after eight weeks rent arrears) to enforce any rent arrears; and
- 10.2.4 for properties allocated by HDV for use by Secure Tenants or Introductory Tenants (or the tenants to be granted a tenancy by HDV in accordance with Clause 10.2.1), the Council shall in perpetuity have the right to nominate the tenant to whom the property shall be let and these properties will be made available by HDV or its successor in title in perpetuity to the Council for such tenants as are nominated by the Council and will be subject to the relevant provisions of this Clause 10 and for the avoidance of doubt this will include the letting of the dwelling at social or equivalent rents.

10.3 Estate Renewal and Re-Housing Payments Policy

- 10.3.1 HDV acknowledges that it has been provided with a copy of the draft ERRPP, which has been approved by Cabinet for consultation on [] (the "**Consultation Draft**").
- 10.3.2 The current Business Plans for the Category 1 Properties reflect the Consultation Draft (subject to the Qualifications)
- 10.3.3 When (following consultation) the final version of the ERRPP has been adopted by the Council, the parties agree that they shall, acting reasonably, review the form of the adopted policy and the implications of the adopted policy as it applies to HDV. If there are no material changes in the adopted policy as compared with the Consultation Draft, HDV will comply with the ERRPP as so adopted subject (in respect of those Properties that fall within Category 1 as at the date hereof) to the Qualifications and the intent of the Qualifications.
- 10.3.4 If there are material changes in the adopted policy compared with the Consultation Draft then the parties shall (both acting reasonably) seek to agree such changes as are appropriate to align the Project Agreements and the Business Plans with the principles set out in the then adopted ERRPP (subject always to the intent of the Qualifications in respect of those Properties that fall within Category 1 as at the date hereof only). This process will be repeated for any successor or replacement policy to the Estate Renewal Re-Housing and Payments Policy.
- 10.3.5 It is agreed that the intent of the Qualifications shall continue to apply in respect of those Properties that fall within Category 1 as at the date hereof, unless otherwise agreed.

11. **COMPULSORY PURCHASE ORDERS**

- 11.1 The provisions of Schedule 4 apply to any Compulsory Purchase Orders to be sought or which are obtained in respect of [Wood Green Estate], [Northumberland Park] and [Cranwood] (the "**CPO Properties**").
- 11.2 The provisions of Schedule 4 apply to any CPO Property in respect of which the following have occurred:
- 11.2.1 HDV considers and has confirmed to the Council that it considers that a CPO is likely to be required in order to achieve the Development Business Plan;
- 11.2.2 the relevant CPO Property is or has become a Category 1A Property.
- 11.3 The Council shall notify HDV that it considers that all of the events in clause 11.2 have occurred within ten Working Days of the date on which the last of the events occurs.

12. **PERFORMANCE BY HDV GROUP AND HDV LIABILITIES**

- 12.1 HDV is not to be relieved of liability for any breach of its obligations in this Agreement by:
- 12.1.1 transfer of the freehold or long leasehold interest in a Category 1A Property or part thereof or the grant of any Lease or creation of any interest in any Category 1A Property or part thereof;
- 12.1.2 any delay by the Council in enforcing the terms of this Agreement against HDV or any time allowed by the Council for HDV to comply with such terms;
- 12.1.3 any variation of the terms of this Agreement other than any variation recorded by Deed made between the parties; or
- 12.1.4 any legal limitation, immunity, disability, incapacity or other circumstances relating to the Council or HDV, whether or not known to the Council or HDV.
- 12.2 Without prejudice to HDV's liability hereunder, HDV shall be entitled to arrange for any of its obligations to the Council hereunder to be performed or undertaken by any HDV Subsidiary and due performance by an HDV Subsidiary will satisfy the obligations of HDV hereunder in respect of the relevant matter.

13. **SERVICE AND DELIVERY OF NOTICES AND OTHER DOCUMENTS**

- 13.1 Any notice or other communication pursuant to, or in connection with, this Agreement shall be in writing and delivered personally, or sent by pre-paid first class post, to the Party due to receive such notice at its registered office from time to time (or to such other address as may from time to time have been notified in writing to the other Parties in accordance with this Clause):
- | | |
|---------|-----------------------------|
| Council | Attention: |
| HDV | Attention [Chief Executive] |
| DevLLP | Attention [Chief Executive] |
| InvLLP | Attention [Chief Executive] |
- 13.2 Subject to Clause 13.3, any notice or other communication shall be deemed to have been served:
- 13.2.1 if delivered personally, when left at the address referred to in Clause 13.1; or
- 13.2.2 if sent by pre-paid first class post, two days after posting it.

13.3 If a notice is given or deemed given at a time or on a date which is not a Working Day, it shall be deemed to have been given on the next Working Day.

14. **DEALINGS**

14.1 Subject to the terms of this Clause 14, this Agreement may not be assigned, charged, held on trust or in any way dealt with by HDV.

14.2 HDV may, with the prior written consent of the Council assign or charge the benefit of this Agreement to a Funder subject to:

14.2.1 the Funder entering into a Step-In Agreement;

14.2.2 prior to exercising any of the rights under the Step-In Agreement the Funder entering into direct covenants with the Council to observe and perform the obligations of HDV hereunder in respect of the land to which the Step-In Agreement relates;

14.2.3 before any further assignment or charging of the benefit of this Agreement the Funder entering into a direct covenant with the Council to comply with the provisions of this clause 14;

14.2.4 HDV covenanting with the Funder and the Council to continue to comply with its obligations in this Agreement notwithstanding its assignment to the Funder.

15. **CONTRACT RATE AND LATE PAYMENT**

15.1 Any sum due from one party to any other under this Agreement which is not paid when it is due shall bear interest at the Contract Rate for the period from the date when it fell due to the date of payment but nothing in this Clause shall entitle either party to this Agreement to withhold or delay any payment of any sum payable under this Agreement after the date upon which it first becomes payable or in any other way affect any other rights which the party entitled to such payment shall have arising from any failure or delay in payment.

16. **VALUE ADDED TAX**

16.1 HDV shall pay and indemnify the Council from and against all VAT chargeable in respect of any supply made by the Council under any of the terms of or in connection with this Agreement and any sum payable by HDV under or in connection with this Agreement shall accordingly be exclusive of VAT.

17. **REGISTRATION OF AGREEMENT AT THE LAND REGISTRY**

HDV shall not be entitled to note this Agreement against the Council's registered titles in respect of the Category 1 Properties.

18. **DISPUTE RESOLUTION**

18.1 The parties shall use all reasonable endeavours to negotiate in good faith and settle any dispute or difference that may arise between the parties in relation to this Agreement (a "**Dispute**").

18.2 If any Dispute is not resolved between the parties within 20 working days of the date on which the Dispute arose, the parties may (by agreement) refer the Dispute to an Expert whose decision in relation to such matter is final and binding upon the parties.

18.3 The Expert shall act as an expert and not an arbitrator and the provisions of the Arbitration Act 1996 shall not apply to the Expert, his determination or the procedure by which he reaches his determination.

18.4 The party wishing to appoint the Expert will give notice in writing to that effect to the other party, together with details of the matter which he wishes to refer to the Expert (the "**Notice of Dispute**").

- 18.5 The identity of the Expert will be agreed by the parties in writing or, failing such agreement, within fourteen working days of the Service of the Notice of Dispute, the Expert will be appointed as set out in the definition of "Expert" in Schedule 1.
- 18.6 A person can only be appointed to act as an Expert if at the time of the appointment he is not:-
- 18.6.1 a director, office holder or employee of; or
 - 18.6.2 directly or indirectly retained as a consultant or in any other professional capacity by; any party to this Agreement or any company or person associated with any such party.
- 18.7 Within fifteen Working Days from his appointment the Expert will call the parties to a meeting at which he will give directions as to the future conduct of the matter and will from time to time give such further directions as he shall see fit. The Expert will allow the parties to make written representations and written counter-representations to him but will not be in any way fettered by such representations and counter-representations and will rely on his own judgment.
- 18.8 The parties will give to the Expert such assistance as the Expert considers necessary to carry out his function.
- 18.9 The Expert will give notice in writing of his decision to the parties within twenty Working Days of his appointment or within such extended period as the parties may agree in writing.
- 18.10 The costs of the reference to the Expert will be borne as he directs and failing any such direction will be shared equally between the parties. If any party pays the whole or part of the Expert's fees the other party will upon demand repay to the paying party the whole or part of any fees so paid, insofar as the Expert awards such fees against the non paying party. For the avoidance of doubt and subject to the foregoing the parties shall bear their own costs in respect of the process set out in this Clause 18.
- 18.11 If the Expert (the "**Original Expert**"):-
- 18.11.1 fails to determine the matter referred to him within the period referred to in Clause 18.9;
 - 18.11.2 fails to give notice of his decision within the time and in the manner provided for in this Clause;
 - 18.11.3 relinquishes or does not accept his appointment;
 - 18.11.4 dies; or
 - 18.11.5 it becomes apparent for any reason that he is unable to complete the duties of his appointment;
- any of the parties may apply to the President for a substitute to be appointed (but not after the Original Expert has given notice of his decision to the parties in dispute). In such event the Original Expert is no longer the Expert, the provisions of this Clause apply as if the Original Expert had not been appointed and will be repeated as many times as necessary. Any reference to the Expert in this Clause is deemed to include any substitute appointed pursuant to this Clause 18.11.

19. **GOOD FAITH**

- 19.1 Each of the parties undertakes with the other that it will at all times:-
- 19.1.1 act in an open and transparent manner with the utmost good faith towards the other in relation to the matters covered by this Agreement; and
 - 19.1.2 perform its obligations contained herein to enable the objectives in this Agreement to be fulfilled to the mutual benefit of the parties; and in particular:-

- (a) HDV agrees to maintain full and accurate records and accounts (with all accompanying receipts vouchers completion statements and other documents) in connection with its obligations under this Agreement; and
- (b) at any time upon reasonable request HDV shall provide the Council with such reasonable evidence as the Council may reasonably require in order to verify that HDV has complied and is continuing to comply with its obligations under this Agreement.

19.2 Nothing in this Agreement shall authorise any one party to act as the agent of any other party, for anything in relation to this Agreement.

20. LOCAL AUTHORITY POWERS

20.1 Nothing contained or implied in this Agreement will restrict prejudice or otherwise affect the duties, powers, rights and obligations of the Council granted to or imposed on it including (but without prejudice to the generality of the foregoing) the exercise of its functions as the local planning authority, highway authority, local authority or as any other statutory authority or as agent for any other competent authority and under any public or private bye-law, code of conduct, consent, direction, instrument, notice, order, permission, plan, regulation, rule, statute or statutory instrument all which duties, powers, rights and obligations will be as fully and freely exercisable in relation to the Category 1 Properties or any other land as if this Agreement had not been executed and any approval consent direction or authority given by the Council as local or other statutory authority shall not be or be deemed to be an approval consent direction or authority under this Agreement and vice versa.

20.2 The Council enters into this Agreement pursuant to Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other relevant statutory powers.

21. CONFIDENTIAL INFORMATION AND FREEDOM OF INFORMATION

21.1 During the term of this Agreement and for a period of 3 years after the termination or expiry of the Agreement for any reason whatsoever (the "**Confidentiality Period**"), the Receiving Party (as defined in Clause 21.2) will:-

21.1.1 keep Confidential Information (as defined in Clause 21.2) confidential;

21.1.2 not disclose Confidential Information to any other person other than with the written consent of the Disclosing Party (as defined in Clause 21.2) or in accordance with Clauses 21.2 to 21.5; and

21.1.3 not use Confidential Information for any purpose other than the performance of its obligations under this Agreement and the other Project Agreements.

21.2 For the purposes of this Clause 21, "**Confidential Information**" means all information of a confidential nature disclosed (whether in writing, verbally or by any other means and whether directly or indirectly) by one Party (the "**Disclosing Party**") to another Party ("**Receiving Party**") whether before or after the date of this Agreement including, without limitation, any information relating to the Disclosing Party's operations, processes, plans, proposals or intentions, its tenants (both existing and prospective), customers, existing and potential clients, know-how, design rights, trade secrets, any investment, development business or market opportunities and its business affairs.

21.3 During the Confidentiality Period, the Receiving Party may disclose Confidential Information to its employees, its own members, contractors, sub-contractors, agents and advisers (and its Group members) under conditions of confidentiality in each case to the extent that it is reasonably necessary for the purposes of this Agreement, or any other Project Agreement and may disclose Confidential Information under conditions of confidentiality to its funders, prospective funders, prospective Members of HDV, prospective funders of any HDV Party, and prospective purchasers of its or their assets (in each case, to the extent reasonably necessary). In each case the permitted

recipient of such Confidential Information shall be known as a "**Recipient**". In this Clause 21.3 "**Group**" shall refer to the Council Group, or PSP Group (as the context shall require).

- 21.4 The Receiving Party shall so far as practicable procure that each Recipient is made aware of and complies with all the Receiving Party's obligations of confidentiality under this Agreement as if the Recipient were a Party to this Agreement.
- 21.5 The obligations contained in Clauses 21.2 to 21.4 shall not apply to any Confidential Information which:-
- 21.5.1 is at the date of this Agreement in, or at any time after the date of this Agreement comes into, the public domain other than through a breach of this Agreement by the Receiving Party or any Recipient;
 - 21.5.2 can be shown by the Receiving Party to the reasonable satisfaction of the Disclosing Party to have been known by the Receiving Party and not subject to any obligations of confidentiality before disclosure by the Disclosing Party to the Receiving Party;
 - 21.5.3 subsequently comes lawfully into the possession of the Receiving Party from a third party and not subject to any obligations of confidentiality;
 - 21.5.4 is required to be disclosed by the relevant Party's audited and published accounts or is required to be disclosed to a tax authority in connection with the tax affairs of the Receiving Party; and/or
 - 21.5.5 is required to be disclosed by law or regulation having force of law or for the purposes of proceedings in any court arbitration or any tribunal or is required by any stock exchange or any or a regulatory authority or body or any Government Department or by the Project Agreements to be disclosed.
- 21.6 The Parties acknowledge that the Council is subject to the requirements of the FOIA and the EIR. For the purpose of Clauses 21.6 to 21.12 (inclusive) only, Information has the meaning given under section 84 of the FOIA and the meaning attached to "environmental information" contained in Section 2 of the EIR as appropriate.
- 21.7 Where the Council receives a Request for Information, to the extent that it comprises Confidential Information that HDV or any HDV Party is holding on behalf of the Council (as deemed by FOIA or EIR as the case may be), the Council shall notify HDV of the requested Information in writing as soon as practicable and HDV will:-
- 21.7.1 if necessary to identify and / or locate the Information, as soon as reasonably practicable and in any event within 5 Working Days notify the Council in writing of what reasonable additional information or clarification (if any) is required by it (or any relevant HDV Party) in order to enable HDV or HDV Party to identify and locate the Information requested (which additional information and / or clarification the Council shall obtain and provide as soon as possible); and
 - 21.7.2 provide the Council with a copy of all such requested Information held by HDV and / or and HDV Party on behalf of the Council in the form that the Council requires (acting reasonably) (or procure the provision of the same to the Council by an HDV Party, where applicable) as soon as reasonably practicable and within 10 Working Days after the Council's notification or provision by the Council of the requested additional information and / or clarification (whichever is the later).
- 21.8 Where the Council receives a Request for Information in relation to Information relating to this Agreement, the PSP, HDV, any HDV Party and/or any of the Project Agreement, (and / or any Confidential Information directly or indirectly provided by any one or more of the PSP, HDV, and / or any HDV Party), the Council shall, where reasonably practicable, provide both PSP and HDV in writing with the relevant details of the Request.

21.9 Following any notification under Clause 21.8, the PSP, and HDV (on its behalf and on behalf of each HDV Party) may make written representations to the Council within a period of 5 Working Days from the date of the Council's notification as to whether or not or on what basis Information requested should be disclosed, and if to be withheld, or redacted, to what extent and on what basis and the Council agrees that it shall consider such representations before making its decision on the relevant Request provided always that the Council shall be responsible for determining at its absolute discretion:-

21.9.1 whether the Information is exempt from disclosure under the FOIA or the EIR as applicable; and

21.9.2 whether the Information is to be disclosed in response to a Request for Information,

and in no event shall the PSP, HDV or any HDV Party respond directly or allow its subcontractors to reply directly to such a Request for Information in relation to this Agreement, the Council and / or any of the Project Agreements unless expressly authorised to do so by the Council.

21.10 HDV shall procure that all Information held on behalf of the Council (whether by itself or any other HDV Party) is retained for disclosure for at least 6 years from the date it is required and shall permit the Council between 9am to 5pm on Working Days and on reasonable prior written notice, to inspect such Information as requested from time to time (or procure the same, in relation to Information held by another HDV Party).

21.11 HDV shall transfer to the Council any Request for Information in relation to this Agreement, the Council and/or any of the Project Agreements received by HDV as soon as practicable and in any event within 5 Working Days of receiving it (and shall procure that each other HDV Party shall transfer to the Council any Request for Information in relation to this Agreement, the Council and / or any of the Project Agreements received by it as soon as practicable and in any event within 5 Working Days of receiving it).

21.12 HDV acknowledges (on behalf of itself and every other HDV Party) that any lists provided by it listing or outlining Confidential Information, are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information.

22. **NON MERGER**

So far as they remain to be performed or observed the provisions of this Agreement shall continue in full force and effect notwithstanding completion in relation to any Category 1 Property or Phase.

23. **TERMINATION**

23.1 The Council may determine this Agreement by written notice to HDV at any time if there is a Termination Event.

23.2 Where pursuant to Clause 27.1.1(a) of the Members Agreement parts of the HDV Group are not to be subject to the Winding Up Procedure ("**the Continuing HDV Parties**") then this Agreement shall not be terminated in respect of any Category 1 Property (or any Phase thereof) which forms part of the Development Business Plan for any Continuing HDV Party (but may be terminated as to any other Category 1 Property (or any Phase thereof) where a Termination Event applies to the relevant HDV Party).

23.3 If this Agreement is terminated:-

23.3.1 such termination shall not prejudice any rights or remedies which either party may have against the other in respect of any antecedent breach of this Agreement;

23.3.2 HDV shall forthwith return all documents plans and papers provided to it by the Council and shall cancel any entry it may have made at the Land Registry or the Land Charges Registry protecting this Agreement.

PROVIDED THAT termination of this Agreement under this clause or any other provision of this Agreement shall not trigger termination of any Lease granted prior to the date of termination.

24. **ENTIRE AGREEMENT**

24.1 This Agreement contains the entire agreement between the parties and may only be varied or amended by a document signed by or on behalf of all of the parties and making reference to this Clause.

24.2 The Council and HDV acknowledge that they are entering into this Agreement without placing any reliance upon any representation or statement (written or oral) which may have been made by the Council or any agent, advisor or other person acting for the Council and HDV shall not have any rights in relation to any representation or statement made by the Council or any agent, advisor or other person acting for the Council but the foregoing provisions of this Clause 24.2 shall not apply to any representation or statement as may be made in this Agreement or may have been made or confirmed in any written communication from the Council's Solicitors to the HDV's Solicitors.

24.3 No condition representation or warranty howsoever arising whether collaterally or directly or indirectly shall be made or implied either as to the state or condition of any Category 1 Property or any part or parts thereof or as to its fitness for the purposes of the Development and it shall be the sole responsibility of HDV to satisfy itself in respect thereof.

25. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT**

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or have the benefit of any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

26. **GOVERNING LAW AND JURISDICTION**

The provisions of this Agreement shall be governed by English Law and the parties agree to submit to the jurisdiction of the English courts.

EXECUTED AS A DEED by or on behalf of the parties on the date which first appears in this Agreement.

SCHEDULE 1

INTERPRETATION OF THIS AGREEMENT

1. The following further definitions apply to this Agreement:-

"1990 Act"	means the Town and Country Planning Act 1990
"2016 Act"	means the Housing and Planning Act 2016
"Advance Payment"	means any payment which the Council is lawfully required to make in respect of the implementation of the CPO pursuant to the provisions of sections 52, 52(ZA), 52(ZB) and 52A of the Land Compensation Act 1973
"Appropriation"	means the appropriation of land pursuant to section 122 of the Local Government Act 1972, section 19 of the Housing Act 1985 (subject to the Secretary of State's consent) or such other relevant statutory power, and "Appropriate" shall be construed accordingly
"Approved Expenditure"	means in respect of each Outstanding Interest the estimated amount of CPO Costs (excluding interest) that is (or if prior to the statutory valuation date would be) payable to the owner of each Outstanding Interest for its acquisition pursuant to the CPO and shall be:- <ul style="list-style-type: none">(a) the estimate set out in the Compensation Assessment for the specified Outstanding Interest; or(b) where there is no entry for an Outstanding Interest, or the entry is inaccurate in relation to the description of the Outstanding Interest, a figure to be agreed between the parties; or(c) where an Outstanding Interest is shown in the Compensation Assessment, but there is no figure shown, a figure to be agreed between the parties; or(d) any amount determined by the Expert in accordance with the terms of this Agreement; or(e) any amount determined by the Lands Tribunal
"Assessment of Accommodation Requirements"	means an assessment of the accommodation requirements of residents who may occupy the relevant Build Phase in accordance with Schedule 2, or as otherwise agreed between the parties in a form which can form part of the consultation to be carried out by the Council
"Blight Notice"	means a notice served under section 150 of the 1990 Act in relation to a CPO
"Build Phase"	means that part or parts of the Category 1 Property or Phase thereof on which HDV proposes to build, is

	building or has built the Development (and as may be related to the relevant Demolition Phase).
"Business"	has the meaning given to it in the Members Agreement
"Business Plan"	has the meaning given to it in the Members Agreement
"Business Plan Condition"	has the meaning set out in Part 4 of Schedule 2 of the DFA
"Category 1 Property"	means each of the properties which are described for identification only in Part 1 of Appendix 1 of the DFA (further sub-divided into Category 1A and Category 1B) the extent of the Council's ownership of which as at the date hereof being shown on the plans and title number listed in Part 2 of Appendix 1 of the DFA
"Category 2 Properties"	means: <ul style="list-style-type: none"> (a) Broadwater Farm Area N17 (b) Leabank and Lemsford Close N15 (c) Park Grove (inc Durnsford Road) N11 (d) Tunnel Gardens (inc Blake Road) N11 (e) Turner Avenue/ Brunel Walk N15 (f) Reynardson Court N17 (g) Demountables – Watts Close N15 (h) Barbara Hucklesbury N22 (i) Fred Morfill House, Bounds Green Rd, N11 (j) Land to the rear of Muswell Hill Library N10 and "Category 2 Property" shall mean any of them
"Category 3 Properties"	shall have the meaning given to it in paragraph 3.1 of Schedule 3 (Future Opportunities) and "Category 3 Property" shall mean any of them
"Claimant"	means a person entitled to the payment of compensation as a consequence of the making and/or implementation of the CPO and/or acceptance of a Blight Notice by the Council and/or determination by Lands Tribunal that a Claimant's objection to a counter-notice served by the Council in response to a Blight notice is valid and/or the carrying out of the Development who is not an Owner
"Communication Code Operators"	means a person to whom the electronic communications code is applied by virtue of a direction under section 106(3)(a) of the Communications Act 2003
"Companies Act"	means the Companies Act 1985 (as amended by the

Companies Act 2006)

"Compensation Assessment"	means the compensation schedule to be agreed between the parties pursuant to paragraph 3 of Schedule 4, and as subsequently varied or replaced pursuant to the terms of that paragraph
"Confirmation"	means confirmation of the CPO and/or Highways Order by the Secretary of State or by the Council (as the case may be) and "Confirmed" shall be construed accordingly
"Contract Rate"	(this information is contained in the exempt part of the report)
"Consultation"	reference to 'Consultation' by the Council includes consultation, engagement, fact finding, informing and taking views of residents, tenants, owners, occupiers and other stakeholders who may be affected by the proposed disposal of the relevant property and/or the Development or who may have a legitimate interest or views in relation thereto and/or any decision of the Council in respect thereof
"Consultation Draft"	has the meaning given to it in Clause 10.3.1;
"Council Costs"	means the reasonable and proper costs incurred by the Council pursuant to this Agreement in paying Third Parties for goods or services relating to: <ul style="list-style-type: none">• the CPO• any Highways Orders• any Housing Act 1985 proceedings• the acquisition of any Outstanding Interests• the Development including internal Council's costs, the cost of legal, surveyor and other external consultants' fees, counsel, proceedings, inquiries, court fees, statutory publicity, SDLT, VAT (where not recoverable), Land Registry fees, property insurance and management fees
"Council's Property" or "Council Property"	means any property or land owned by the Council as at the date of this Agreement
"Council's Solicitors"	means Pinsent Masons LLP of 1 Park Row, Leeds LS1 5AB or such other firm as the Council may instruct from time to time to advise it on the CPO, Highways Orders and related matters
"Council's Surveyor"	means [●] of [●] or such other firm of surveyors and property advisors as the Council may instruct from time to time to advise it on the CPO, Highways Orders and related matters
"Counsel"	means any one of Christopher Katkowski QC, Russell Harris QC, Neil King QC, David Elvin QC, Tim Corner

QC, William Hicks QC, Neil Cameron QC, Martin Kingston QC or James Strachan QC as HDV and the Council shall agree, or such other barrister with at least 10 years experience of advising on and promoting compulsory purchase orders as HDV and the Council shall agree, or (failing agreement) as shall be appointed by the Bar Council of England and Wales on the application of either party

"CPO"

means one or more compulsory purchase orders that may be made by the Council to acquire the Outstanding Interests, and references to "CPO" shall be construed to refer to (as relevant) the compulsory purchase orders collectively that are or may be made and/or a particular compulsory purchase order

"CPO Compensation Code"

means the principles for assessing and calculating compensation for compulsory acquisition laid down in the Compulsory Purchase Act 1965 and/or the Land Compensation Acts 1961 and 1973 and/or the 1990 Act and/or the 2016 Act together with case law and established practice

"CPO Costs"

means the aggregate of all compensation, consideration, costs and expenses payable to all Owners and Claimants (whether the same are (where relevant) agreed with the relevant Owner or Claimant or determined by the Lands Tribunal or the courts or other competent third party) that are incurred or committed both from:

- (1) the date of incorporation of HDV; and
- (2) on an ongoing basis,

including without limitation:

- (a) the purchase price or any compensation for or in respect of any Outstanding Interest which the Council acquires:-
 - (i) pursuant to the CPO; or
 - (ii) as a result of any Blight Notice or Purchase Notice; or
 - (iii) by agreement; or
 - (iv) through the termination or surrender of such interest; or
 - (v) compensation payable to a tenant including pursuant to the Housing Act 1985 or Landlord and Tenant Act 1954
- (b) any payment under the Compulsory Purchase Act 1965 and/or the Land Compensation Acts 1961 and 1973 made as a result of the acquisition of or interference with any land interest or right within or over the CPO Land

(including for the avoidance of doubt any payment pursuant to sections 23 - 29 of and Schedule 3 to the Land Compensation Act 1961);

- (c) any statutory interest and any costs payable to any Owner or Claimant (including without limitation interest which may be payable by virtue of the Council taking possession of any land or interest referred to in paragraphs (a) and (b) of this definition before the amount of any payments referred to in those paragraphs have been agreed);
- (d) any legal, valuation or other costs and expenses payable to or on behalf of an Owner or Claimant;
- (e) any disturbance, home loss, basic loss and/or occupiers loss payments to which any Owner or Claimant is entitled;
- (f) the purchase price or any compensation (including any payment for severance or injurious affection) payable as the result of the severance of land in common ownership and the cost of accommodation works required to be carried out as a result of the CPO in respect of land not included in the CPO and not otherwise acquired by the Council;
- (g) any Advance Payment;
- (h) any compensation payment pursuant to the provisions of section 236 of the 1990 Act or section 204 of the 2016 Act as a result of the construction, use or operation of the Development;
- (i) any compensation payable for depreciation payable under Part I of the Land Compensation Act 1973 as a result of physical factors caused by the use of public works comprised in or carried out as part of or to mitigate the effects of the Development;
- (j) any compensation or payments payable, and the cost of any works required to be carried out, pursuant to the Council's Estate Renewal Re-Housing and Payments Policy;
- (k) any compensation or payments arising from or in connection with any Highways Order;
- (l) any compensation or payments arising from or in connection with the Appropriation of any land to which this Agreement applies by the Council or, following such Appropriation, arising from the carrying out, use or occupation

of the Development; and

- (m) a sum or sums equal to any VAT arising for whatever reason whether directly or indirectly as a result of the implementation of the matters contemplated in this Agreement or in respect of any of the CPO Costs save to the extent that the Council obtains repayment or credit in respect of the same as an allowable input tax

"CPO Guidance"

means the document issued by the Department for Communities and Local Government entitled "Guidance on Compulsory purchase process and The Crichel Down Rules" and dated October 2015, and including any updates to it or any replacement guidance

"CPO Judicial Proceedings"

means any application or appeal to the High Court (including subsequent appeal to the Court of Appeal and/or Supreme Court) against or in respect of any order, action, omission or decision of the Council, the Secretary of State, the Lands Tribunal, or a Court in relation to a CPO or Highways Order or other action pursuant to this Agreement including:-

- (a) an application for judicial review under Civil Procedure Rule 54 including in each case any appeals to a higher court following a judgment of a lower court;
- (b) an application pursuant to section 23 of the Acquisition of Land Act 1981 including in each case any appeals to a higher court following a judgment of a lower court; or
- (c) an application to the High Court by a third party pursuant to the Human Rights Act 1998

"CPO Land"

means the land (and each and every part of it) in or over which interests or rights (including any New Rights) are to be acquired pursuant to a CPO as established pursuant to the process in paragraph 6 of Schedule 4, or any subsequent variation to it agreed between HDV and the Council

"CPO Programme"

means the programme for the preparation, making and implementation of a CPO

"D Loan Note"

has the meaning given to it in the Members Agreement

"D Loan Note Instrument"

has the meaning given to it in the Members Agreement

"Demolition Phase"

means a part of the relevant Category 1 Property or Phase thereof that HDV identifies as being a phase that it wishes to bring forward, in order to facilitate the demolition and construction of the Development, and in relation to which the Council will be obliged to achieve the Vacant Possession Condition

"Developer's Notice"

means a notice or notices served by HDV on the Council from time to time pursuant to paragraph 8 of Schedule 4

setting out the interests that HDV requests should be acquired by the Council and the date on which vacant possession is required for each such interest and the method by which all Outstanding Interests should be acquired, for the Council to approve in exercising its powers to secure vacant possession of the CPO Land pursuant to the CPO to enable the Development to proceed

"Development"

means the development of each Category 1 Property or Phase thereof to be undertaken or procured by HDV or an HDV Subsidiary pursuant to the relevant Development Business Plan and a Satisfactory Planning Permission as may be amended from time to time

"Development Business Plan"

means a Business Plan in relation to a Development as the same may be varied or updated from time to time by HDV which, as a minimum, shall contain anticipated target dates for obtaining detailed planning consent, and commencement and completion of works comprising the relevant Development

"Development Framework Agreement" or "DFA"

means a development framework agreement in relation to HDV on or around the date hereof and made between (1) the Council (2) [HDV]

"Disclosing Party"

has the meaning given to it in Clause 21.2

"Disposal Condition"

has the meaning given to it in the DFA

"Dispute"

has the meaning given to it in Clause 18.1

"EIR"

means the Environmental Information Regulations 2004

"Estate Renewal Re-Housing and Payments Policy" or ("ERRPP")

means the Council's policy from time to time, in respect of its strategy and requirements for estate renewal re-housing and payments but in respect of those Category 1 Properties as at the date hereof reference to the Estate Renewal Re-Housing and Payments Policy (or ERRPP) is subject to the intent of the Qualifications

"Expert"

means:-

- (a) (where a dispute, difference or matter hereunder is on a point of law or legal drafting) a Queen's Counsel practising in English real property law or construction law (as applicable) being such Counsel as may be appointed by the Parties (acting unanimously) or, failing agreement, such Counsel as shall be appointed at the request of either or both of the Parties by or on behalf of the President for the time being (or the next most senior available officer) of the Law Society of England and Wales; or
- (b) (where a dispute, difference or matter hereunder concerns a planning matter) a Queen's Counsel practising at the planning bar being such Counsel as may be appointed by

the Parties (acting unanimously) or, failing agreement, such Counsel as shall be appointed at the request of either or both of the Parties by or behalf of the President for the time being (or the next most senior available officer) of the Law Society of England and Wales;

(c) (where a dispute, difference or matter hereunder is in relation to finance) a senior Chartered Accountant having at least 10 years' post qualification experience in relation to dealing with disputes of a kind of those which may be referred to him or her hereunder as may be jointly appointed by the Parties (acting unanimously) or, failing agreement, such chartered accountant as shall be appointed at the request of either or both of the Parties by or on behalf of the President for the time being (or the next most senior available officer) of the Institute of Chartered Accountants in England and Wales;

(d) (in the case of any other matter) a senior chartered surveyor having at least 10 years' post-qualification experience in the development of premises in the London area as may be jointly appointed by the Parties (acting unanimously) or, failing agreement, such surveyor as shall be appointed at the request of either or both of the Parties by or on behalf of the President for the time being (or the next most senior available officer) of the Royal Institution of Chartered Surveyors, such experience to be in relation to dealing with disputes of a kind of those which may be referred to him or her hereunder,

and "**failing agreement**" shall for these purposes mean failing any such joint appointment by the Parties within 5 Working Days of notice by one Parties to the other that the dispute or difference is to be referred to an Expert

means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time

means a person who has entered into an agreement with HDV (or an HDV Subsidiary):

- (a) to purchase any Category 1 Property or Phase; or
- (b) to provide funding for the carrying out of the Development or Phase; or
- (c) to provide funding for the purchase of any Category 1 Property or Phase;

has the meaning set out in Part 6 of Schedule 2 of the

"FOIA"

"Funder"

"Funding Condition"

	DFA
"GVD"	means a general vesting declaration or general vesting declarations made by the Council pursuant to the CPO
"HDV Business Plan"	has the meaning given to it in the Members Agreement
"HDV Group"	has the meaning given to it in the Members Agreement
"HDV Party"	has the meaning given to it in the Members Agreement
"HDV Subsidiary"	means a subsidiary or subsidiary undertaking of an HDV Party from time to time
"HDV's Surveyor"	means such duly qualified and experienced surveyor to be appointed by HDV in accordance with this Agreement
"HDV's Surveyors Terms"	means the terms and conditions for the appointment of the HDV's Surveyor which shall include (without limitation): <ul style="list-style-type: none"> (a) that a duty of care is owed to HDV and, if requested by the Council at any time, the Council; (b) that the HDV's Surveyor shall comply with the relevant provisions of this Agreement; (c) the level and timing of payment of remuneration; (d) the level of professional indemnity insurance; (e) if required, reviewing and advising on the draft CPO and Highways Orders and any supporting documentation; (f) providing advice and its opinion from time to time when requested on the method and approach to be taken by the Council in the preparation, application for and making of or obtaining a CPO and/or Highways Orders, including their Confirmation or other statutory approval; (g) if a duty of care is owed to the Council, providing and sharing information with the Council and HDV on an equal basis; and (h) such other terms and conditions as the parties may reasonably agree
"Highways Act"	means the Highways Act 1980
"Highways Authority"	means the relevant highway authority as provided for in section 1 of the Highways Act
"Highways Order"	means any order made under Part X of the Act or under the Highways Act and/or any other relevant legislation in relation to the temporary or permanent diversion or

closure of any highway or the extinguishment of any right to use or any restriction upon the use of any highway and where such order is required to facilitate the Development

"Housing Strategy"

means the Council's adopted housing strategy (2017 - 2022), together with any such updates as may be adopted by the Council from time to time

"Indemnify"

means to indemnify against all actions, claims, demands and proceedings taken or made against the Council and all costs, damages, expenses, liabilities and losses incurred by the Council

"Inquiry"

means a public inquiry or public inquiries conducted by a person appointed for that purpose by the Secretary of State to report to him on the objections made to a CPO and/or the objections made to any Highways Order

"Introductory Tenant"

means a tenant whose tenancy has been granted pursuant to Part V of the Housing Act 1996

"Lands Tribunal"

means the Lands Chamber of the Upper Tribunal

"Lease"

has the meaning given to that term in the Members Agreement

"Lease Condition"

has the meaning set out in Part 7 of Schedule 2 of the DFA

"Legal Responsibilities"

means the Council's powers, functions and duties pursuant to:

- (k) the Local Government Act 1972, Landlord and Tenant Act 1985, Housing Act 1985, Housing Act 1988, Local Government Act 1988, Housing Act 1996, Equality Act 2010, Local Authorities (Functions and Responsibilities) (England) Regulations 2000, Housing and Regeneration Act 2008 and such other legislation and regulations and common law as may apply to the Council from time to time;
- (l) obligations to consult, whether required by statute, common law or otherwise;
- (m) the Council's standards, constitution and other internal procedures;
- (n) the Council's published and adopted policies in relation to its implementation and delivery of its statutory powers;
- (o) any other law or obligation binding upon the Council in relation to the exercise of its powers, duties or functions as local authority

as may be relevant and applicable at the time

"Member"

has the meaning given in the Members' Agreement and

	"Members" shall be construed accordingly
"Members' Agreement" or "MA"	means a members' agreement in relation to HDV dated today's date and made between (1) the Council (2) [PSP] (3) [HDV] (4) [InvLLP] (5) [DevLLP] (6) [Nominee Co] (7) [PSP Guarantor]
"Milestones"	means the development milestones in relation to the Category 1 Properties set out in the relevant Development Business Plan;
"New Right"	means any right (not in existence at the date a CPO is made but identified in the schedule to the CPO when made or as modified when the CPO is Confirmed) in or over the CPO Land required to implement the Development and as described in section 13(1) of the Local Government (Miscellaneous Provisions) Act 1976
"Notice of Dispute"	has the meaning given to it in Clause 18.4
"Option Conditions Longstop Date"	means the longstop dates for satisfaction of the Option Conditions set out in Schedule 4 to the DFA
"Option Conditions"	has the meaning set out in Clause 5 of the DFA
"Original Expert"	has the meaning given to it in Clause 18.11
"Outstanding Interest"	means:- <ul style="list-style-type: none"> (a) any New Right; and (b) any freehold or leasehold interest or any lease or tenancy or licence or any other right (including any right to light or right to enforce a covenant obligation or any other matter which would prevent or interfere with the Development) not in the ownership of the Council and/or HDV at the date of this Agreement (excluding any such interest acquired by HDV after the date of this Agreement in accordance with the terms of this Agreement) in or over the CPO Land
"Owner"	means any person owning an Outstanding Interest and/or from whom a New Right is to be acquired and (if applicable) the successors in title to such party
"Phase"	means (where a Category 1 Property is to be developed in more than one phase) any part of a Category 1 Property intended to be developed as a separate phase by HDV from time to time
"Planning Application"	has the meaning set out in the DFA
"Planning Condition"	has the meaning set out in Part 1 of Schedule 2 of the DFA
"Pre-CPO Acquisition"	has the meaning given to it in Clause 7.1

"Pre-CPO Acquisition Costs"

means in respect of any Pre-CPO Acquisition, the aggregate of:

- (a) the actual purchase price paid by the Council; and
- (b) any other compensation, consideration, costs and expenses incurred by or on behalf of the Council, which would have been a CPO Cost if such Third Party Interest had been acquired pursuant to a CPO

but excluding any cost of financing prior to drawdown of the Category 1 Property or Phase thereof

"Planning Permission"

has the meaning set out in the DFA

"Progress Condition"

has the meaning set out in Part 8 of Schedule 2 of the DFA

"Project Agreements"

has the meaning given to it in the Members Agreement

"Proposal"

has the meaning given to it in Paragraph 2.3 of Schedule 3 to this Agreement

"PSP"

has the meaning given to it in the Members Agreement

"Purchase Notice"

means a notice served pursuant to the provisions of section 137 of the 1990 Act

"Qualifications"

means in respect of those Category 1 Properties as at the date hereof the agreement of the Council and HDV that the HDV Business Plans for Category 1 Properties:

- (a) prioritise a single move for residents rather than Right of Return;
- (b) do not allow for rehousing of housing association tenants. Any private treaty/CPO compensation negotiation will be agreed with the housing association. Additional commitments to rehousing housing association/registered social landlord tenants will be a matter for the Council;
- (c) commit to re-provision of residential property calculated by reference to number of habitable rooms. The Council is committed to Right of Return and if needed will work with HDV in this regard recognising that this might involve a requirement for additional subsidy;
- (d) provide for rehousing within the Category 1 Properties and do not provide for rehousing across the borough outside of the Category 1 Properties which is a matter for the Council. This applies to tenants, resident leaseholders and resident freeholders;
- (e) allow for standard social rented tenancy terms and

rents;

- (f) provide that both resident leaseholders and resident freeholders of Category 1 Properties who have purchased through Right To Buy will be offered a shared equity product. These properties are assumed in the HDV Business Plans for Category 1 Properties to be within the 40% affordable housing provision. The shared equity offer is based on a habitable room like for like commitment; and
- (g) allow for two disturbance payments but seek to minimise this necessity.

"Receiving Party"

has the meaning given to it in Clause 21.2

"Recipient"

has the meaning given to it in Clause 21.3

"Reference"

means any reference to the Lands Tribunal of any claim for compensation made either against the Council by a Claimant or Owner or by the Council in respect of compensation that may be payable to a Claimant or Owner

"Referencing Agent"

means the referencing agent instructed in relation to a CPO pursuant to paragraph 5.2 of Schedule 4

"Referencing Agent ToA"

means the terms and conditions for the appointment of the Referencing Agent which shall include (without limitation):

- (a) where the Referencing Agent is appointed by HDV, that a duty of care is owed to both HDV and the Council;
- (b) that the Referencing Agent shall comply with the relevant provisions of this Agreement;
- (c) the timing and carrying out of the referencing exercise;
- (d) the level and timing of payment of remuneration;
- (e) the level of professional indemnity insurance;
- (f) preparation of the schedule of interests (tables 1 and 2 and of Statutory Undertakers and Communication Code Operators for the CPO) and reviewing and advising on the draft CPO and any supporting documentation;
- (g) identifying any special category land;
- (h) providing advice and its opinion from time to time on the method and approach to be taken by the Council in the preparation, application

for and making of a CPO, including its Confirmation;

- (i) preparing the Order map or maps to accompany the CPO;
- (j) preparing and serving statutory notices, if required by the Council;
- (k) providing and sharing information with the Council and HDV on an equal basis; and
- (l) such other terms and conditions as the Council and HDV may agree

"Relevant Expenses"

means all Council Costs reasonably and properly incurred or to be reasonably and properly incurred by the Council pursuant to this Agreement both

- (1) from the date of incorporation of HDV to the date of this Agreement; and
- (2) from the date of this Agreement on an ongoing basis,

arising from or in connection with:

- (a) the negotiation for and acquisition or termination/surrender of any Outstanding Interest by agreement or otherwise in advance of Confirmation of the CPO or in advance of the GVD or notice to treat (including any acquisition made consequent on any Blight Notice or Purchase Notice);
- (b) the holding and management of all Outstanding Interests (less any income received by the Council as a result of its holding and management of the Outstanding Interest);
- (c) the preparation (including without limitation preparing and/or agreeing a strategy for pursuing the CPO land referencing and any other preparatory procedures and/or the processes under the Housing Act 1985) and making and obtaining Confirmation of and the implementation of the CPO, any Highways Order and any Appropriation of land by the Council including all costs associated with an Inquiry and including the costs relating to the execution of any GVD and/or the service of notices to treat and/or notices to enter;
- (d) negotiations for the payment of compensation to Owners and Claimants and other matters relating to the acquisition of Outstanding Interests including relocation arrangements;
- (e) implementing the sheriff's and/or enforcement

officer warrant procedure or such other process necessary to secure vacant possession pursuant to section 13 of the Compulsory Purchase Act 1965 or otherwise;

- (f) the re-housing by the Council in accordance with the Land Compensation Act 1973 of any person displaced from a dwelling in consequence of the Council compulsorily acquiring any Outstanding Interest;
- (g) the termination/surrender of any interest and/or service of notice to quit on any tenant of the Council occupying land where possession is required in order to implement the Development;
- (h) reasonable legal, surveyors', valuation, land referencing, advertising, project management and other professional costs and disbursements relating to the CPO and/or processes under the Housing Act 1985 and the acquisition and termination/surrender of any Outstanding Interest by agreement or otherwise;
- (i) all SDLT and Land Registry fees and other disbursements arising out of the acquisition holding and management of all Outstanding Interests and the disposal of the property pursuant to this Agreement;
- (j) all outgoings in respect of any of the Outstanding Interests acquired by the Council such as (but not limited to) the payment of rent (other than arrears), insurance and service charge and for repairs and maintenance; and
- (k) all costs, charges and expenses in connection with (or in anticipation of) pursuing, prosecuting or defending (including taking advice from Counsel) in connection with any of the following:-
 - (i) any appeal or application for judicial review or High Court challenge in respect of the Confirmation, non-Confirmation or partial Confirmation of the CPO and/or Housing Act 1985 processes, any Highways Orders and/or any implementation of a CPO or Highways Order;
 - (ii) any Reference for the determination of the statutory compensation payable in respect of the acquisition of any of the Outstanding Interests;
 - (iii) any Reference following the service of a

Blight Notice and/or a Purchase Notice;

- (iv) any other claim reference or proceedings in connection with or arising out of the compulsory purchase process and/or the Housing Act Process pursued by the Council pursuant to this Agreement;
- (v) mediation or other costs associated with any alternative dispute resolution process connected with the CPO and/or any claim for compensation under the CPO and/or processes under the Housing Act 1985 and/or with the Highways Orders and/or any objection thereto;
- (vi) all costs, expenses and other monies awarded against the Council in connection with or arising out of any Inquiry, Reference and/or CPO Judicial Proceedings arising out of actions taken by the Council pursuant to this Agreement; or
- (vii) a sum or sums equal to any VAT in respect of any of the above items in this definition save to the extent that the Council is entitled to obtain repayment or credit in respect of the same

"Requests for Information"

shall have the meaning set out in the FOIA

"Right to Return"

means a right, following completion of the development of the relevant Category 1A Property where the Secure Tenant or Introductory Tenants was originally resident, to an assured tenancy within the new development (the ~~exact tenancy and terms of which is at the discretion of~~ has the meaning given to that term in Schedule 2 of the DFA

"Satisfactory Planning Permission"

has the meaning given to it in Clause 3.2;

"Schedule of Anticipated Acquisition Costs"

"SDLT"

means Stamp Duty Land Tax levied in accordance with the Finance Act 2003

"Secretary of State"

means the Secretary of State for Communities and Local Government or other ministry or court or authority and/or local planning authority and/or local authority and/or acquiring authority for the time being having or entitled to exercise the powers now conferred upon the Secretary of State for Communities and Local Government by Parts IX and X of the 1990 Act and the Acquisition of Land Act 1981 and any other relevant legislation, and where the context requires shall include a local planning authority and/or local authority and/or acquiring authority and/or highway authority exercising powers conferred on them to confirm a CPO and/or a Highways Order and a

person appointed by the said Secretary of State to make a determination on his behalf

"Secure Tenant"	means a tenant whose tenancy has been granted pursuant to Part IV of the Housing Act 1985
"Statutory Powers"	means the Council's powers and duties as local housing authority or local planning authority, including CPO or Appropriation, as may be relevant and applicable at the time
"Statutory Undertakers"	includes all persons who are statutory undertakers pursuant to the Acquisition of Land Act 1981 and/or the 1990 Act
"SOS Condition"	has the meaning set out in Part 2 of Schedule 2 of the DFA
"Step-In Agreement"	means any agreement to be made between (1) the Council (2) HDV and (3) a Funder providing for the remedying of any Termination Event or complying with the terms of this Agreement in a form acceptable to the Council (acting reasonably)
"Termination Event"	means the occurrence of one or more of the following events: <ul style="list-style-type: none">(a) a Termination Event (as such expression is defined in the Members Agreement) but subject to Clause 23.2 of this Agreement;(b) the Members Agreement is terminated or expires or otherwise ceases to exist;(c) HDV commits a material breach of this Agreement which cannot be remedied;(d) HDV commits a material breach of this Agreement which is capable of being remedied and:<ul style="list-style-type: none">(i) does not begin diligently to remedy that breach within fifteen (15) Working Days of written notice from the Council specifying the nature of the breach or immediately in case of emergency; and(ii) does not remedy the breach within a reasonable period of time according to the nature and severity of the breach, to be specified in the notice, to the reasonable satisfaction of the Council
"Third Party"	means a person other than a party to this Agreement
"Third Party Interests"	means any and all estates, interests or rights of third parties of whatsoever nature in, on, under or over any Category 1 Property or any other land which is the subject of a Development Business Plan or any part thereof which HDV reasonably considers it is necessary

to acquire or extinguish in order to facilitate the Development

"VAT"

means Value Added Tax or any equivalent or similar tax or duty which may be imposed in substitution for or in addition to Value Added Tax

"Vacant Possession Condition"

has the meaning set out in Part 5 of Schedule 2 of the DFA

"Viability Condition"

has the meaning set out in Part 3 of Schedule 2 of the DFA

"Voluntary Acquisition"

has the meaning given to it in Clause 8.1

"Voluntary Acquisition Costs"

means in respect of any Voluntary Acquisition, the aggregate of:

- (a) the actual purchase price paid by the Council; and
- (b) any other compensation, consideration, costs and expenses incurred by or on behalf of the Council, which would have been a CPO Cost, if such Third Party Interest had been acquired pursuant to a CPO

"Winding Up Procedure"

has the meaning given to it in the Members Agreement

"Working Day"

means 9.00 am to 5.00 pm on any day (other than a Saturday) on which clearing banks in the City of London are open for the transaction of normal sterling banking business

2. Where the context so admits, words importing the singular number include the plural number and vice versa, words importing one gender include all genders and references to a **"person"** are deemed to include any individual, firm, unincorporated association or body corporate;
3. Where the context so admits the expressions the **"Council"** and **"HDV"** shall include their respective successors in title and assigns and if at any time the Council and HDV shall consist of more than one person any obligations which they have under this Agreement or which they undertaken shall be enforceable against all jointly or against each individually;
4. References to Clauses or Schedules unless otherwise specified mean the Clauses of or the Schedules to this Agreement;
5. Reference to paragraphs in any Schedule unless otherwise specified means the paragraphs of that Schedule;
6. Headings to Clauses and Schedules are disregarded in interpreting this Agreement;
7. Any references to the consent or approval of any party to this Agreement not to be unreasonably withheld shall also include an obligation not to unreasonably delay such consent or approval;
8. It is acknowledged that (without prejudice to any of the other provisions of this Agreement) in assessing whether or not the Council has complied with any obligation to act reasonably it may have regard to all circumstances aims and interests that are relevant to it as a local authority;

9. Words denoting an obligation on a party to do any act, matter or thing include an obligation to procure that it be done, and words placing a party under a restriction include an obligation not to permit infringement of the restriction;
10. Any reference to a month is a reference to a calendar month;
11. Reference to a "party" means a party to this Agreement and "parties" shall be construed accordingly;
12. Any reference to satisfied or satisfaction shall include circumstances where such arises by deeming or waiver but only where deeming or waiver are expressly provided for hereunder;
13. The word or words "include", "including" or "in particular" shall not have effect so as to limit in any way the words to which such word or words relate;
14. Any consent or approval of either party required under this Agreement save in circumstances in which it is unreasonably withheld or delayed in breach of this Agreement shall be required to be obtained before the actual event to which it applies is carried out or done and shall be effective only when the consent or approval is given in writing or is deemed to have been given;
15. Where two or more people form a party to this Agreement the obligations they undertake may be enforced against them all jointly or against each individually;
16. In this Agreement references to any statute or statutory provision include references to:-
- 16.1.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom; and
 - 16.1.2 any subsequent statutes directly or indirectly amending, consolidating, extending, replacing or re-enacting that statute and also include any orders, regulations, instruments or other subordinate legislation made under that statute.

SCHEDULE 2 ASSESSMENT OF ACCOMMODATION REQUIREMENTS CRITERIA

1. The draft terms of the assured non-shorthold periodic tenancy to be offered to each Secure Tenant or Introductory Tenant;
2. Identity of the people to be re-housed;
3. A schedule of accommodation requirements for each tenancy;
4. Such adaptations as are required in a new property to make it reasonably suitable for the needs of a particular Secure Tenant or Introductory Tenant (including in particular for disadvantaged, disabled or and vulnerable residents).

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SCHEDULE 3

For the purposes of this Schedule only, the Council is acknowledging its obligations as set out below apply only to the Council in its capacity as landowner and not in its capacity as local planning authority or local housing authority or in relation to the exercise of any of its Statutory Powers.

1. **Process**

- 1.1 The properties identified as Category 2 Properties are likely future development opportunities which at the appropriate time, the Council intends to invite HDV to agree terms for their development by HDV upon similar terms as apply to the Category 1A Properties.
- 1.2 This Schedule 3 sets out the process by which the Council intends that HDV should have the first opportunity to agree appropriate terms to undertake such development opportunities without them being offered on the open market.
- 1.3 The parties acknowledge that any legal commitment for the disposal of any of the Category 2 Properties by the Council must meet the Objectives (as defined in the MA) as well as the Council's Legal Responsibilities relating to the disposal of such property and is subject in all cases to the Council first having complied with the Disposal Condition where relevant to any such property.
- 1.4 The Council's existing authority in respect of the procurement process for HDV stated that the identified Category 2 Properties may be transferred to HDV and should be considered to be within the scope of the procurement process subject to full consultation with residents, detailed planning and their future market position becoming clarified. These properties have not yet been subject to any consultation, consents or any other such processes and therefore nothing in this Schedule creates a legal commitment by the Council to sell, nor grant any option or exclusivity in relation to such properties unless such commitment is the outcome of the processes outlined below.
- 1.5 The process of first offering each of the Category 2 Properties to HDV for inclusion as a Category 1A Property or other acquisition, will apply unless circumstances arise in the future which in light of its duties and functions as a local authority and landowner, the Council considers to be of such significance as to necessitate it departing from this agreed procedure. The Council is not currently aware of any such circumstances and will advise HDV and PSP if the Council does so become aware.
- 1.6 The Council shall not be restricted as to its ownership, management and/or use of any of the Category 2 Properties in any respect prior to entering into a legal commitment for exclusivity or sale to HDV nor will this indicate any change in the situation for the residents or tenants of any of the Category 2 Properties.

2. **Category 2 Properties**

- 2.1 The parties have agreed the Category 2 Property Timetable setting out the proposed development timetable for each Category 2 Property which is set out in HDV Business Plan ("**Category 2 Property Timetable**").
- 2.2 The Category 2 Property Timetable shall be updated from time to time by the Parties (acting reasonably) to take into account (without limitation), factors such as the likely date by which the Council considers that such property may be available for re-development, compliance with the Council's statutory obligations, the prevailing market conditions, the Objectives and the Business of HDV (as defined in the Members Agreement).
- 2.3 HDV may bring forward a development proposal (a "**Proposal**") in respect of a Category 2 Property for consideration by the Council.
- 2.4 A Proposal need not contain all the information required to form a full Development Business Plan but must set out as a minimum:
 - 2.4.1 a description of the intended uses, tenures and areas;

- 2.4.2 an estimated development timetable;
- 2.4.3 an outline appraisal including cash flow/financial model and estimated (but not necessarily verified) costs and values;
- 2.4.4 an assessment of relevant market conditions/demand;
- 2.4.5 a decanting strategy and proposals for consultation (where required).
- 2.5 The Council will use reasonable endeavours to give a written response to HDV within three months of receipt of the Proposal. Such response will confirm whether or not the Council wishes HDV to proceed to the next stage set out in paragraph 2.7 and in any event will be subject to the Council complying with its Legal Responsibilities in relation to any disposal at the relevant time.. The approval by the Council in this Paragraph 2.5 is only confirmation that the Council agrees HDV should progress the Proposal to allow the Council to consider it in further detail.
- 2.6 If a Proposal is rejected the relevant property will no longer be the subject of the process contained in this Schedule 3 and the Council may deal with it as sees fit.
- 2.7 Upon the approval of a Proposal, the Council will agree a consultation period with HDV. During this period of consultation, HDV will prepare a full Development Business Plan (to such level of detail as would be sufficient for it to be adopted by HDV pursuant to the Members Agreement) and will also agree with the Council the terms and conditions (including all legal documentation) by which the property would be acquired by HDV and the process and timing for the Council to comply with its Legal Responsibilities in respect of any such disposal.
- 2.8 At least two months before due date for expiry of the exclusivity period, the Council will prepare the necessary reports to Cabinet, full Council (or others as appropriate) and undertake the appropriate procedures for seeking the statutory and other consents and approvals in accordance with the Council's Legal Responsibilities and Statutory Powers to allow it to enter into the proposed transaction which has been agreed with HDV. This may include an outright sale of the property to HDV or its inclusion as a Category 1A Property under the DFA (or similar document with appropriate option conditions). The consultation period will be extended if required until the Council's decision is known (and where appropriate allowing a reasonable opportunity to finalise the transaction documentation). If by the expiry of the consultation period such approvals have not been obtained and/or the necessary documentation has not been entered into with HDV, then the Council may offer the relevant property to the open market or otherwise deal with it as it sees fit.
3. **Category 3 Properties**
- 3.1 Category 3 Properties are Council or Third Party owned sites within the Borough of Haringey which have not been identified as being suitable for inclusion as part of the business of HDV. They may be so identified at any time and may include properties which become owned by the Council in the future. The suitability of these sites for transfer to HDV will be assessed by the Council taking into account their priority for regeneration or development; their attractiveness to the market and their potential contribution to the delivery of the Council's socio-economic aspirations.
- 3.2 The Council, HDV or the PSP may at any time propose that a property may be considered for inclusion as a Category 3 Property.
- 3.3 Where the Council and HDV agree that a property may be included as a Category 3 Property then the same procedures commencing with the preparation of a Proposal as set out above will apply as if it were a Category 2 Property.

SCHEDULE 4 COMPULSORY PURCHASE ORDERS

1. APPLICATION OF SCHEDULE TO A CATEGORY 1A PROPERTY OR A PHASE

1.1 The provisions of this Schedule 4 apply:

1.1.1 once the matters set out in clause 11.2 have occurred and once the Council has notified HDV in accordance with clause 11.3; and

1.1.2 in respect of each Category 1A Property or to each Phase.

1.2 Paragraph 1.1 does not prevent the provisions of this Schedule applying to more than one Category 1A Property or more than one Phase.

1.3 In the event that this Schedule applies and there is any conflict between the provisions of this Schedule and any other provision in this Agreement then the provisions of this Schedule shall prevail.

2. CPO PROGRAMME

2.1 [As soon as practicable after the date of the Council's notice pursuant to Clause 11.3](#), the Council and HDV must agree a CPO Programme which takes into account:

2.1.1 the Development Business Plan; and

2.1.2 CPO Guidance.

2.2 The Council and HDV may agree to amend the CPO Programme at any time having regard to the same matters as are set out in paragraph 2.1.

3. COMPENSATION ASSESSMENT

3.1 The Council and HDV agree that a Compensation Assessment for any Category 1A Property or Phase thereof is to be produced and agreed in conjunction with the satisfaction of the relevant Business Plan Condition and that the Compensation Assessment is to set out:

3.1.1 each of the Outstanding Interests; and

3.1.2 an estimate of the level of compensation or monies payable in respect of each Outstanding Interest.

3.2 HDV and the Council agree that the Compensation Assessment will be kept under review by them with a review having been completed:

3.2.1 at least one month prior to the date on which each CPO is likely to be made;

3.2.2 within four weeks of the publication by the Council of the notice of Confirmation of each CPO;

3.2.3 prior to the exercise of each CPO;

3.2.4 at any time when six months have elapsed since the previous review (unless a further review is anticipated by the Council and HDV within two months); and

3.2.5 at any other time when either the Council or HDV notifies the other party in writing that there has been a material change in circumstance or information available and that therefore the Compensation Assessment should be reviewed and updated.

3.3 The initial production of the Compensation Assessment pursuant to paragraph 3.1 and each review required by paragraph 3.2 must be carried out as follows:

- 3.3.1 HDV must produce:
- (a) the initial draft of the Compensation Assessment; and
 - (b) where a review is being carried out, an updated version of it and shall provide (as appropriate) evidence to support changes made to the Compensation Assessment or if changes are not proposed then evidence as to why changes are not required to the Compensation Assessment;
- 3.3.2 The Council must review the draft Compensation Assessment provided by HDV and within 15 Working Days either:
- (a) approve it in writing; or
 - (b) not approve it and in which case:
 - (i) the Council must provide comments in writing to HDV as to why the revised Compensation Assessment is not approved and the amendments which the Council seeks to be made to it (including providing supporting evidence); and
 - (ii) HDV must review the Council's comments and evidence and consider whether to revise the Compensation Assessment and (within 15 Working Days of receipt of those comments) re-submit it to the Council, and following which the process in this paragraph 3.3.2 shall apply again until the Council has approved the Compensation Assessment (subject to paragraph 3.3.4).
- 3.3.3 Following the written approval by the Council of a revised Compensation Assessment pursuant to this paragraph such revised Compensation Assessment shall replace the previous version for the purposes of this Agreement.
- 3.3.4 In the event that the Compensation Assessment has not been agreed between the parties within three months of the date that the initial or revised version is first issued by HDV pursuant to paragraph 3.3.1 then either party may refer the Compensation Assessment to the Expert for determination.

4. OBLIGATIONS TO NEGOTIATE TO ACQUIRE INTERESTS

- 4.1 From the date on which the provisions of this Schedule apply pursuant to clause 11 of this Agreement:
- 4.1.1 the Council shall use reasonable endeavours to secure the acquisition by the Council by private treaty of all Outstanding Interests which are owned by or constitute Secure Tenants and Introductory Tenants, leaseholders, residential occupiers or other interests in housing estates or other land owned by the Council in which there are such interests (to include where appropriate the instigation of procedures under the Landlord and Tenant Act 1954); and
 - 4.1.2 HDV [and the Council shall work together to] use reasonable endeavours to secure the acquisition by the Council by private treaty of all Outstanding Interests excluding those set out in paragraph above and shall ensure that any such private treaty agreements provide for the Outstanding Interests to be transferred to the Council.
- 4.2 The Council and HDV may agree in writing at any time that the split of responsibility for negotiations set out paragraph 4.1 may be altered so that a different party is then responsible for the conduct of negotiations with owners of certain Outstanding Interests.

4.3 Provisions Relating to Negotiations

The Council and HDV agree that the provisions of this paragraph 4.3 apply to any party which is under an obligation under this Agreement to carry out negotiations to seek to acquire Outstanding Interests, referred to in this paragraph as the "Negotiating Party":

- 4.3.1 The Negotiating Party shall use all reasonable endeavours to ensure that the consideration payable in respect of any Outstanding Interest shall be based on the CPO Compensation Code and subject always to negotiations and acquisitions taking place in accordance with the Council's Estate Renewal Re-Housing and Payments Policy (except where a departure from such policy has been agreed in the relevant Development Business Plan);
- 4.3.2 The Negotiating Party may not make an offer or accept an offer proposed by the relevant Owner or Claimant in excess of the Approved Expenditure amount for the relevant Outstanding Interest nor effect a transaction on that basis without the prior written consent of the other party (acting reasonably);
- 4.3.3 The Negotiating Party shall use reasonable endeavours to negotiate the acquisition of any Outstanding Interest on the basis of an outright acquisition of that Outstanding Interest by the Council or (if agreed by the Parties) by way of conditional contract, pre-emption agreement or option arrangement with any Owner on terms agreed by HDV and the Council;
- 4.3.4 The other party shall provide to the Negotiating Party such assistance as the Negotiating Party may reasonably request or require from time to time;
- 4.3.5 The Negotiating Party shall provide:
- (a) where an acquisition is proposed to be by way of immediate acquisition of a leasehold interest in a residential unit where the Council is the freehold owner, details of the heads of terms agreed with the relevant Owner, such details provided for the information of the other party;
 - (b) in all other cases the following for the other party's approval:
 - (i) details of the heads of terms agreed with the relevant Owner for the acquisition of their Outstanding Interest(s), such details to be provided within five Working Days of the same being agreed subject to contract; and
 - (ii) copies of all documents to be entered into between the proposed buyer and the Owner or Claimant, such copies to be provided within five Working Days of the same being agreed subject to contract.
- 4.3.6 Where documents are provided to the Council for its approval pursuant to paragraph 4.3.5, the Council's decision as to whether or not to approve the relevant document shall be based only on its consistency with:
- (a) legislation relating to compulsory acquisition;
 - (b) the CPO Guidance;
 - (c) the amount of the Approved Expenditure; and
 - (d) the Council's Estate Renewal Re-Housing and Payments Policy
- insofar as they are relevant and applicable at the time.
- 4.3.7 Subject to the preceding provisions of this Clause 4.3 being complied with, the Negotiating Party shall:-

- (a) use all reasonable endeavours to enter into the relevant contract as soon as reasonably practicable and following its exchange:
 - (i) within 10 Working Days provide a certified copy to the other party to this Agreement;
 - (ii) observe and perform the obligations on the part of the purchaser contained in such contract;
 - (iii) use all reasonable endeavours to enforce the observance and performance by the relevant vendor of the obligations on its part contained in such contract; and
- (b) following completion of the relevant purchase:-
 - (i) within 10 Working Days provide the other party to this Agreement with a certified copy of the relevant assignment transfer or other instrument;
 - (ii) promptly secure the payment of the SDLT and Land Registry fees in connection with the same and use all reasonable endeavours to procure registration of the Council as proprietor of the same with good and marketable title absolute; and
 - (iii) observe and perform the obligations and other matters on the part of the purchaser contained in such transfer or conveyance; and
 - (iv) within 10 Working Days following registration at the Land Registry of the Council's title to the relevant Outstanding Interest provide HDV with official copy entries and a title plan of the title in question.

4.4 In the event that:-

- 4.4.1 the Council and HDV do not agree such purchase or purchases negotiated by the Negotiating Party; or
- 4.4.2 the Negotiating Party is unable to agree terms for such purchase or purchases with the relevant Owner or Owners

then it is agreed that the acquisition of the relevant Outstanding Interests shall (subject to the terms of this Agreement and subject always to the obligations on the parties to continue to negotiate to acquire all Outstanding Interests) be pursued by means of a CPO.

4.5 **Restriction on HDV Acquiring Interests**

4.6 HDV covenants that it shall not:

- 4.6.1 indicate to an Owner or Claimant that HDV will acquire any Outstanding Interests; nor
- 4.6.2 acquire any Outstanding Interests

but in the event that HDV does acquire any Outstanding Interests then it shall forthwith:

- 4.6.3 notify and offer to transfer the relevant interest to the Council; and
- 4.6.4 co-operate with the Council to effect the transfer of the relevant interest to the Council as soon as reasonably practicable for the contract price paid by HDV.

4.7 The provisions of paragraph 4.6 may be waived at any time by the Council in writing in relation to any or all Outstanding Interests.

5. REFERENCING AND VALUATION

5.1 Referencing Agent

5.2 In accordance with the CPO Programme:

5.2.1 the Council shall appoint the Referencing Agent and shall procure that the Referencing Agent shall owe a duty of care to HDV; or

5.2.2 upon the Council's request, HDV shall appoint the Referencing Agent in accordance with the Referencing Agent ToA on behalf of the Council and HDV,

(referred to in this Agreement as the "**Appointing Party**").

5.3 Without prejudice to any other provision in this Agreement:

5.3.1 the Council and HDV shall each provide the Referencing Agent such assistance as it may reasonably request or require from time to time; and

5.3.2 the Council shall, if reasonably necessary in order to carry out the referencing exercise consider the use of statutory or other powers to obtain or require a third party to supply information as to ownership or occupation of land or interests in land.

5.4 The Appointing Party shall procure that the Referencing Agent is required to:

5.4.1 carry out and complete the referencing exercise as soon as is practicable and to furnish the information gathered as a result of that in such form as may be reasonably required by the Council, and so that such information gathered and supplied complies with all requirements in relevant statutes and the CPO Guidance in relation to the preparation, making and Confirmation of the CPO and/or any Highways Orders; and

5.4.2 as soon as reasonably practicable after its appointment and in accordance with the CPO Programme, produce to HDV and the Council based upon the best evidence then available a schedule listing all known or anticipated Outstanding Interests in the CPO Land together with a schedule detailing all parties with interests affected by any Highways Orders.

5.5 Surveyors

5.6 If requested by the Council, HDV shall appoint the HDV's Surveyor in accordance with the HDV's Surveyors Terms on behalf of the Council and HDV and otherwise HDV shall be free to appoint the HDV's Surveyor on such reasonable commercial terms as it determines.

5.7 HDV shall (or shall procure that the HDV's Surveyor shall):

5.7.1 periodically review the Compensation Assessment and where any material change occurs provide an updated schedule to HDV and the Council in the light of further information as to:

- (a) Outstanding Interests;
- (b) relocation prospects;
- (c) performance of an Owner's or Claimant's business;
- (d) the property market;
- (e) the completion of acquisitions;
- (f) the Owner's or Claimant's entitlement to serve a Blight Notice; and

- (g) the Owner's or Claimant's entitlement to any compensation arising from any Highways Orders

produce to HDV and the Council, based upon the best evidence then available, updates to the Compensation Assessment for every Outstanding Interest in accordance with paragraph 3.3 and which for the avoidance of doubt shall also have regard to compensation payable arising from any Highways Orders and to the schedules produced by the Referencing Agent pursuant to paragraph 5.4.2, including:

- (h) all known or anticipated Outstanding Interests in the CPO Land to be acquired and all known or anticipated claimants for compensation arising from any Highways Orders;
- (i) the heads of claim that the owner of those interests could be entitled to make;
- (j) an estimated amount (or range of amounts) of compensation for that interest;
- (k) the assumptions used in making that estimate, including assumptions as to the future accommodation available for any business;
- (l) whether that claimant could be entitled to serve a Blight Notice; and
- (m) an estimated amount of compensation for claims arising from any Highways Orders.

6. DRAFTING AND MAKING THE CPO

6.1 At any time after the following conditions have been satisfied HDV may, in relation to the relevant Category 1A Property or Phase, confirm to the Council that HDV is of the view that there is no prospect of all Outstanding Interests being acquired without the CPO and may then request that the Council considers whether to make a CPO in respect of it:

6.1.1 the SoS Condition;

6.1.2 the Planning Condition (provided that upon written request by HDV the Council may (at its absolute discretion) agree to consider whether to make the CPO earlier than the satisfaction of the Planning Condition);

6.1.3 the Viability Condition;

6.1.4 the Business Plan Condition; and

6.1.5 (where applicable) the Progress Condition.

6.2 HDV's request pursuant to paragraph 6.1 must specify the land in relation to which HDV considers the CPO should be made and whether any New Rights are required.

6.3 The obligations on the Council in paragraphs 6.4 to 6.10 are conditional on:

6.3.1 the Council and HDV having agreed the proposed approach to the phasing (if any) of CPOs for the Development and the boundary of the proposed CPO;

6.3.2 the Council is satisfied that the land acquisition costs for the relevant CPO Property will be available to HDV;

6.3.3 HDV having requested in writing that the Council considers whether to make a CPO pursuant to paragraph 6.1; and

6.3.4 the Referencing Agent completing the land referencing exercise for the proposed CPO and having provided details of it to the Council.

- 6.4 The Council shall as soon as reasonably practicable after the conditions in paragraph 6.3 have been complied with in respect of the proposed CPO prepare drafts of the CPO, the order map and the statement of reasons (together "the Drafts") in accordance with the agreed CPO phasing (if any) and HDV's notice received pursuant to paragraph 6.1 and submit them:
- 6.4.1 to HDV for its review in accordance with paragraph 6.5; and
 - 6.4.2 (if the Council deems it appropriate at this point or later) to the Secretary of State for technical review and in order to secure compliance with the relevant requirements as to the form and contents of the CPO.
- 6.5 The Drafts shall be reviewed in accordance with the following provisions:
- 6.5.1 HDV shall review the Drafts and within 20 Working Days of receipt of them provide its written comments on and proposed amendments to them to the Council, with such explanation of and supporting evidence as is reasonable in the circumstances;
 - 6.5.2 the Council will diligently consider HDV's comments provided pursuant to paragraph 6.5.1 including (where appropriate) seeking advice from the Council's Solicitors and the Council's Surveyor and, where the Council does not propose to accept or implement an amendment or comment proposed by HDV, shall within 20 Working Days provide HDV with updated Drafts and a written response confirming the amendments the Council has not accepted and providing reasons for the Council's decisions;
 - 6.5.3 where the Council issues revised Drafts pursuant to paragraph 6.5.2 HDV shall review and confirm to the Council within 20 Working Days whether or not it has any further comments on the Drafts;
 - 6.5.4 the Council will diligently consider any further comments provided by HDV pursuant to paragraph 6.5.3 including (where appropriate) seeking advice from the Council's Solicitors and the Council's Surveyor, and shall thereafter produce a final version of the Drafts, a copy of which the Council shall provide to HDV; and
 - 6.5.5 the Council and HDV shall cooperate and meet with each other during and to facilitate the process of reviewing the Drafts.
- 6.6 In providing its review of and comments on the Drafts HDV shall, if the relevant proposed amendments are accepted by the Council, be deemed to acknowledge that the CPO includes all land and New Rights necessary to enable HDV to implement the Development.
- 6.7 The Council shall, subject always to this Agreement not fettering its statutory discretion, use reasonable endeavours to seek authority from the Council's Cabinet (or other relevant committee within the Council) to make the proposed CPO (in the form issued by the Council pursuant to paragraph 6.5.4) as soon as is reasonably practicable following the completion of the process described in paragraph 6.5 PROVIDED THAT the following conditions are met:
- 6.7.1 the Council is satisfied (at its absolute discretion) that there is a compelling case in the public interest to make and pursue the CPO;
 - 6.7.2 the obligations on HDV in relation to the carrying out of negotiations by it in paragraph 4.1 have been and continue to be satisfied;
 - 6.7.3 no update to the Compensation Assessment is outstanding and there is no outstanding request from any Party to review any entry or omission from it;
 - 6.7.4 neither the Members Agreement nor Development Framework Agreement has been terminated;
 - 6.7.5 no part of this Agreement, the Members Agreement or the Development Framework Agreement is the subject of legal proceedings or a determination by the Expert;

- 6.7.6 any required Highways Orders have been or will be applied for in a manner and on a timescale which has been agreed with the Council; and
 - 6.7.7 the Planning Condition has been satisfied (provided that upon written request by HDV the Council may (at its absolute discretion) agree to make the CPO earlier than the satisfaction of the Planning Condition).
- 6.8 Following approval by the Council's Cabinet (and subject to the Council remaining satisfied that the conditions in paragraphs 6.7.1 to 6.7.7 remain satisfied) the Council shall:
- 6.8.1 make the CPO in the form approved by the Council's Cabinet and (if appropriate) taking into account comments provided by the Secretary of State on the Drafts; and
 - 6.8.2 seek Confirmation of the CPO
- in accordance with all relevant statutory requirements and in accordance with the CPO Guidance.
- 6.9 The Council shall keep HDV informed of the progress of the CPO throughout the statutory process.
- 6.10 Without prejudice to the generality of paragraph 6.9 the Council shall following service of notice of making the CPO promptly supply HDV with:-
- 6.10.1 a certified list of the names and addresses of all those persons on whom notice of making has been served and in each case the date of service; and
 - 6.10.2 copies of all relevant documents submitted to the Secretary of State as the confirming authority for the CPO.

7. **OBLIGATIONS FOLLOWING THE MAKING OF THE CPO**

7.1 **Amendments to the CPO**

7.2 The Council shall be entitled to request from the Secretary of State or to pursue:-

- 7.2.1 such amendments, additions, variations and/or substitutions to the CPO; and
- 7.2.2 such other application or applications in relation thereto

as it shall reasonably determine to be necessary or desirable to assist in procuring the Confirmation of the CPO save that no such change as is mentioned in this paragraph 7.2 shall be proposed to the Secretary of State or any Third Party, nor made, without the prior written approval of HDV.

7.3 **Opposed CPO**

7.4 The Council shall send copies of all objections made to the CPO to HDV within 2 Working Days of the Council's receipt of them.

7.5 Following the end of the statutory objection period and receipt of the objections from the Secretary of State the Council (in consultation with HDV) shall decide whether or not to proceed with the CPO.

7.6 If having considered the objections and having given due regard to the comments of HDV the Council is not to proceed with the CPO then in relation to that particular CPO (and not otherwise) this Schedule shall, save for paragraph 15 (and save for such other parts of the Agreement as are required to give effect to or interpret that paragraph) forthwith determine and cease to have effect but without prejudice to any claim of the Council against HDV in respect of:

- 7.6.1 Paragraph 12.5 with regard to any Relevant Expenses which the Council became liable for on or before the date of termination of this Schedule or could not reasonably avoid

becoming liable for in relation to that particular CPO (subject to the Council, acting reasonably, seeking to mitigate or reduce such liabilities); or

7.6.2 any breach of an obligation hereunder in relation to that particular CPO.

7.7 In the event that the CPO is opposed and the Council is to proceed with the CPO:

7.7.1 the Council and HDV shall work together with the aim of securing the withdrawal of every objection made to the CPO by negotiation with the relevant Third Parties; and

7.7.2 the Council shall:-

- (a) (unless otherwise agreed with HDV) use all reasonable endeavours to obtain the earliest practicable date for the holding of the Inquiry;
- (b) keep HDV informed of and co-operate with HDV in relation to the arrangements for the holding of the Inquiry;
- (c) use all reasonable endeavours to prepare for the Inquiry in liaison with HDV including providing regular updates to HDV;
- (d) liaise with and have due regard to (but the Council shall not be bound by) the views of HDV in connection with the preparation for the Inquiry;
- (e) liaise with HDV as to the content of the CPO statement of case prior to its submission, the content and nature of instructions to Counsel and all evidence to be submitted to the Inquiry and as to the overall strategy in relation to the conduct of the Inquiry;
- (f) generally permit HDV to take an active part in the preparation of and strategy for the Inquiry (including use of HDV's consultants where the Council deem it reasonable and appropriate to do so) and facilitate the exchange of all relevant evidence by the Council and HDV with the aim of securing the Confirmation of the CPO;
- (g) invite HDV to attend all consultations with Counsel and/or provide HDV with all instructions and written opinions of Counsel instructed by the Council which are relevant to the CPO;
- (h) within four weeks of the date on which the Secretary of State confirms in writing that he intends to hold an Inquiry the Council shall provide HDV with an estimate of the Relevant Expenses likely to be incurred in preparing the case and evidence for the Inquiry and at the Inquiry itself;
- (i) keep HDV advised of the progress and result of the Inquiry; and
- (j) notify HDV of any challenge to the confirmation of the CPO.

7.8 **Confirmation of the CPO**

7.9 If the CPO is Confirmed the Council shall comply with all relevant statutory requirements in relation to it (including publishing and serving notice of such Confirmation) as soon as reasonably practicable and in any event in accordance with any statutory timescales.

7.10 Upon Confirmation of the CPO the Council will:

7.10.1 forthwith upon receipt of the Secretary of State's decision supply to HDV a copy of the decision, the CPO and CPO plan as Confirmed and any inspector's report on the CPO; and

7.10.2 if relevant update the entry in the Local Land Charges Register in respect of the CPO as Confirmed.

7.11 **Legal Challenge**

7.12 In the event that:-

7.12.1 the Secretary of State declines to confirm the whole or part of the CPO; or

7.12.2 a Third Party applies to the court to challenge the decision of the Secretary of State or another decision made in relation to the CPO

the Council shall (in either event) consult with and have due regard to (but not be bound by) the comments of HDV as to the appropriate manner in which to respond to such decision or challenge in order to facilitate the implementation of the Development and bearing in mind the Development Business Plan, provided always that the Council's decision on the appropriate response shall be at its absolute discretion.

7.13 HDV may request that the Council seeks Counsel's opinion on the prospects of success in relation to any action proposed to be taken by the Council in respect of such challenge and if such request is made the Council shall, having consulted HDV on the form of instructions to Counsel, obtain Counsel's opinion as soon as practicable and in any event within five Working Days of the instructions being sent (subject to Counsel availability).

7.14 If Counsel advises that there is more than a 50% chance of the Council's proposed action being successful (so that the Development Business Plan is likely to be achieved or facilitated) then the Council's Costs of pursuing such legal action shall be a Relevant Expense for the purposes of this Agreement.

7.15 If Counsel advises that there is a 50% chance or less of the Council's proposed action being successful (so that the Development Business Plan is likely to be achieved or facilitated) then the Council's Costs of pursuing such legal action shall not be a Relevant Expense for the purposes of this Agreement and shall be borne by the Council, provided that if the Council's action is successful the Council's Costs of taking that action shall be a Relevant Expense for the purposes of this Agreement.

7.16 The provisions of this paragraph 7 shall apply mutatis mutandis to a Highways Order.

8. **ACQUISITION BY / VESTING IN THE COUNCIL**

8.1 Following (and not before) the CPO being Confirmed and no longer open to challenge in any way by the issue of CPO Judicial Proceedings HDV may serve the Developer's Notice on the Council.

8.2 Following receipt of the Developer's Notice and the Council's written approval of it the Council shall use all reasonable endeavours to secure title to and possession of the Outstanding Interests in accordance with the approved Developer's Notice by means of the GVD procedure and/or the notice to treat/notice of entry procedure PROVIDED THAT the Council shall not be obliged to exercise such powers until all of the following have been agreed, determined or resolved:-

8.2.1 any request to review the Compensation Assessment which was initiated prior to the issue of the Developer's Notice; and

8.2.2 any matter which has been referred to the Expert under the terms of this Agreement.

8.3 As soon as any Outstanding Interests shall become vested in the Council the Council shall apply to register the same at the Land Registry and shall otherwise deal with the properties acquired in accordance with the terms of the Development Framework Agreement.

8.4 If agreed between the Council and HDV the Council will (subject to this Agreement not fettering its statutory discretion and the Council being satisfied as to its lawful ability to do so and subject always to the conditions in Clause 8.5 having been met):

- 8.4.1 when acquiring any interest within the relevant site, do so for planning purposes; and
- 8.4.2 in respect of the Council's Property hold and/or Appropriate such land for planning purposes

such that section 236 of the 1990 Act and section 203 of the 2016 Act will apply.

8.5 The conditions referred to in Clause 8.4 are that the Council is satisfied that:

- 8.5.1 (at its absolute discretion) Appropriation is lawful and justified;
- 8.5.2 the obligations on HDV in relation to the carrying out of negotiations by it in Clause 4.1 have been and continue to be satisfied;
- 8.5.3 neither the Members Agreement nor the Development Framework Agreement has been terminated; and
- 8.5.4 no part of this Agreement, the Members Agreement nor the Development Framework Agreement is the subject of legal proceedings or a determination by the Expert.

8.6 Where there is less than six months left in which to serve a Notice to Treat or Notice of Entry or make a GVD:

- 8.6.1 the Council may implement the CPO (in whole or part) without HDV's approval and notwithstanding that the Council has not received or approved a Developer's Notice pursuant to this paragraph 8; and
- 8.6.2 it is agreed that the provisions of paragraph 12 do not apply to the CPO Costs and Relevant Expenses incurred or created from taking such action, unless at any time HDV is to be granted a Lease pursuant to the DFA in respect of all or part of such land and in which case the provisions of paragraph 12 shall apply again immediately on the grant of such Lease in relation to that land.

9. **BLIGHT AND PURCHASE NOTICES**

9.1 In the event that the Council is served with a Blight Notice or a Purchase Notice the Council shall:

- 9.1.1 supply a copy of the Blight Notice or Purchase Notice to HDV as soon as reasonably practicable and in any event within three Working Days of receipt of the relevant notice together with copies of documents which the Council may receive in relation to it;
- 9.1.2 consult with HDV as to the appropriate manner in which to respond to such Blight Notice or Purchase Notice so as to ensure that the Council can (following such consultation) respond within the statutory time limit; and
- 9.1.3 respond to such Blight Notice or Purchase Notice in an appropriate manner and (where provided) taking due and proper account of HDV's views.

10. **COVENANTS BY HDV IN RELATION TO CPO AND HIGHWAYS ORDERS**

10.1 HDV covenants with the Council not to object to any CPO nor any Highways Order.

10.2 HDV shall co-operate with and support the Council in the preparation for and the making, Confirmation and implementation of the CPO and any Highways Orders and (without prejudice to the generality of the foregoing) HDV shall at the Council's reasonable request and at no cost to the Council:

- 10.2.1 provide information and assistance to the Council in relation to the Council's obligations in Clauses 6, 7, 8, 9, 11 and 13 inclusive;

- 10.2.2 provide information and assistance to the Council and make such reasonable attendances and/or appearances and make available such suitably qualified witnesses as the Council may reasonably require in connection with the CPO and Highways Orders (and including any Inquiry, CPO Judicial Proceedings and References); and
- 10.2.3 assist the Council in any and all negotiations with any party who objects to or defends (as relevant) the CPO or the Highways Order so as to secure the withdrawal of and/or to resist such objections as expeditiously as possible on terms approved by the Council.

11. THE HIGHWAYS ORDERS

- 11.1 HDV (or the Council, as applicable) shall make an application to the Council, the Secretary of State or other appropriate person (as applicable) for any Highways Order on a programme approved by the Council and if appropriate HDV will seek to ensure that the relevant part of the Development can proceed without undue delay as soon as planning permission shall have been granted and the land acquisition has been completed and (without limitation) so that (if so agreed) any objections to the Highways Order can be dealt with at the Inquiry as a conjoined inquiry in the event that such objections cannot be resolved to enable the Highways Order to be Confirmed as an unopposed order.
- 11.2 The Council and HDV will each (at HDV's cost) use reasonable endeavours to assist the other party in obtaining any Highways Order.

12. INDEMNITY AND PAYMENT PROVISIONS

12.1 Payment of CPO Costs

- 12.2 On the drawdown of the Category 1A Property or Phase thereof in accordance with the DFA, in respect of which CPO Costs have been incurred, the Council will submit an invoice to HDV for the relevant CPO Costs (to the extent that the same have not already been included within an invoice pursuant to Clauses 7.5, 8.9 or 8.10 above), and the terms of issue and payment of such invoice are to be in accordance with Paragraph 3.9 of Schedule 7 to the Members Agreement.

- 12.3 All payments by HDV to the Council pursuant to paragraphs 12.2 shall be by way of indemnity.

- 12.4 The Council shall provide reasonable evidence and information with each request for a payment of CPO Costs.

12.5 Payment of Relevant Expenses

- 12.6 The Council will produce and submit to HDV on a quarterly basis (the first to be on the first quarter day following the date of this Agreement) its estimate of the anticipated Relevant Expenses for the next quarter and shall pay due and proper regard to any reasonable representation made by HDV in relation to such estimate (including, if appropriate, reproducing and reissuing such estimate).

- 12.7 As soon as reasonably practicable following the expiry of each quarter referred to in paragraph 12.6 the Council and HDV shall review the Relevant Expenses for the previous quarter and the Council's estimate of such Relevant Expenses for the forthcoming quarter.

- 12.8 The payment of Relevant Expenses shall be carried out in accordance with the following procedure:

- 12.8.1 the Council shall submit to HDV on a quarterly basis an account (with where possible and lawful a VAT invoice addressed to HDV) (the "**Account**") together with invoices, bills, vouchers, receipts and other documents including details of the work, the basis of charging (if different to that previously notified to HDV), the activities carried out and providing reasonable evidence as to the Relevant Expenses referred to in the Account and where relevant cross-referring to the relevant estimate provided to HDV pursuant to paragraph 12.6; and

12.8.2 HDV shall pay to the Council the total sum set out in the Account within 10 Working Days of receipt of each Account.

12.9 All payments by HDV to the Council pursuant to paragraph 12.8 shall be by way of indemnity.

12.10 HDV may by notice in writing served within five Working Days on the Council seek such reasonable further information or explanation as it may reasonably require in order to verify any item of Relevant Expense referred to in the Account.

13. **COMPENSATION NEGOTIATIONS AND LANDS TRIBUNAL**

13.1 HDV's Surveyor shall lead the negotiation of any claim for compensation payable to an Owner or a Claimant unless the Parties agree that a particular negotiation should be led by the Council's Surveyor.

13.2 All negotiations to settle a claim for compensation shall be in accordance with the CPO Compensation Code and the Compensation Assessment.

13.3 Neither HDV's Surveyor nor the Council's Surveyor (as appropriate) shall offer nor settle any outstanding claim at a figure which exceeds the Approved Expenditure without obtaining the prior written approval of the other party to the proposed higher figure.

13.4 In the event that HDV's Surveyor and/or the Council's Surveyor (as appropriate) is unable to agree the amount of any compensation payable to an Owner or a Claimant the Council shall if it deems appropriate (having consulted with HDV and paid due regard to its views):

13.4.1 refer the matter to the Lands Tribunal; and

13.4.2 liaise with HDV in relation to the Reference and supply to HDV copies of all correspondence, papers and documents as HDV shall reasonably require.

13.5 In relation to any Reference as mentioned in paragraph 13.4, or any Reference made by any Owner or a Claimant, the Council shall:

13.5.1 have conduct of the Reference and any associated negotiations and shall keep HDV informed of the progress of the Reference PROVIDED THAT the Council shall conduct the Reference and any negotiations in accordance with the CPO Compensation Code and the Compensation Assessment;

13.5.2 consult with HDV on the appointment of Counsel and the expert witnesses to represent the Council and shall consider the use where appropriate of HDV's consultants as expert witnesses;

13.5.3 consult with HDV in relation to the amount of any sealed offer to be made;

13.5.4 use all reasonable endeavours to prepare for the hearing of the Reference in consultation with HDV, and to liaise with and have due regard to (but shall not be bound by) the views of HDV in connection with the preparation for the hearing of the Reference and in particular shall:

(a) consult HDV as to the content and nature of all evidence to be submitted to the Lands Tribunal including all applications which may be made in connection with the Reference and as to the overall strategy in relation to the conduct of the Reference;

(b) invite HDV to attend consultations with Counsel and/or provide HDV with all instructions to and written opinions of Counsel instructed by the Council which are relevant to the Reference; and

- (c) liaise with and have due regard to (but shall not be bound by) the views of HDV in relation to any appeal against any decision of the Lands Tribunal and in prosecuting any such appeal the Council shall:
 - (i) supply copies of all relevant correspondence and other documents pertaining to the appeal to HDV;
 - (ii) use all reasonable endeavours to prosecute the appeal;
 - (iii) liaise with and have due regard to (but without being bound by) the views of HDV as to the manner of prosecution of the appeal; and
 - (iv) keep HDV apprised of the progress and result of the appeal.

13.6 The Council shall not in advance of any Lands Tribunal hearing make any sealed offer nor settle any outstanding claim at a figure which exceeds the Approved Expenditure without obtaining either:

13.6.1 the prior written approval of HDV to the proposed higher figure; or

13.6.2 Counsel's written opinion that the higher proposed figure is necessary in order to avoid a likely adverse judgment by the Lands Tribunal (as to the outstanding claim and/or any costs payable by the Council).

13.7 Each party shall provide the other with such assistance in satisfying their respective obligations within this paragraph 13 as the other party may reasonably request from time to time.

14. **APPOINTMENT OF THIRD PARTY CONSULTANTS**

14.1 The Council shall adopt the following process in respect of work to be undertaken on its behalf by any Third Party in relation to the CPO and Highways Orders under this Agreement:

14.1.1 the Council shall notify HDV of its intention to appoint a Third Party and issue to HDV for its comment the scope and brief for the relevant work and a list of consultants to whom an invitation to respond to the brief is to be sent and HDV shall provide any comments within 15 Working Days of receipt of the documents;

14.1.2 following receipt of HDV's comments in accordance with Clause 14.1.1 which the Council must give due consideration to, the Council shall conduct such procurement exercise as it is required to do (and/or considers appropriate) and shall notify HDV of the identities of the short list of candidates (if part of the procurement process) and shall provide HDV with an opportunity to comment on such short list; and

14.1.3 following any comments received pursuant to Clause 14.1.2 (if any) and taking due account of the comments and any further representations by HDV as to the appropriate candidate to appoint, the Council shall appoint its chosen consultant and the Council shall use reasonable endeavours to secure value for money (in accordance with and as one element of its usual procurement process and assessment of tenders) in respect of the costs which will be incurred under such appointments;

14.2 The appointment of any Third Party by the Council prior to the date of this Agreement (including the Council's Solicitors and the Council's Surveyor) shall be deemed to have been carried out in accordance with the provisions of Clause 14.1.

14.3 In the event that the Council wishes to undertake any task that would otherwise be undertaken by a Third Party:

14.3.1 it may notify HDV accordingly setting out for HDV's comment the scope of the proposed task, its methodology and proposed charges, and the Council shall take due account of HDV's comments on its proposal;

14.3.2 if the Council is to undertake any such task it shall do so with all due care and expedition and in accordance with the charges contained in its proposal; and

14.3.3 the Council's charges shall be a Relevant Expense.

15. IMPACT OF TERMINATION ON OBLIGATIONS IN THIS SCHEDULE

15.1 If this Agreement is terminated for whatever reason in accordance with the terms hereof paragraph 12 of this Schedule (and such other provisions as are required to give effect to or interpret it) shall nevertheless remain in full force and effect in relation to any Relevant Expenses or CPO Costs incurred by the Council prior to the date of such termination or reasonably and properly incurred by the Council after the date of such termination in withdrawing the CPO from the confirmation process or in withdrawing from or compromising or otherwise concluding any CPO Judicial Proceedings that may have commenced prior to the date of such determination or in respect of any other Relevant Expenses or CPO Costs which the Council could not reasonably avoid incurring or incurring liability for.

15.2 It is agreed that land held by the Council or HDV at the date of termination of this Agreement is to be dealt with pursuant to the terms of the Members Agreement.

DRAFT

EXECUTION BLOCKS:

**THE COMMON SEAL of THE)
MAYOR AND BURGESSES OF THE)
LONDON BOROUGH OF HARINGEY)
was hereunto affixed by Order:)**

Authorised Officer:

Seal No:

**EXECUTED and DELIVERED as a)
deed on the date hereinbefore first)
mentioned by)
[HDV LLP] acting by its designated)
members:-**

The London Borough of Haringey (in
its capacity as a member of [HDV
LLP])

[PSP] (in its capacity as a member of
[HDV LLP])