

DATED _____ **2017**

**Cabinet Report Version
23.06.2017**

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

(2) [HDV]

DEVELOPMENT FRAMEWORK AGREEMENT
relating to the redevelopment of Category 1 Properties in
the London Borough of Haringey



Pinsent Masons

CONTENTS

Particulars

Clause		Page
1	INTERPRETATION	4
2	OBJECTIVES	4
3	SOS CONSENT FOR HRA ASSETS	4
4	CALL OPTION	4
5	OPTION CONDITIONS	5
6	DRAWDOWN PRICE	6
7	TITLE	6
8	ENGROSSMENTS AND EXECUTION OF BUILDING LICENCE	6
9	DEVELOPMENT	7
10	CONDITION DAMAGE AND INSURANCE	7
11	PERFORMANCE BY HDV GROUP AND HDV LIABILITIES	7
12	SERVICE AND DELIVERY OF NOTICES AND OTHER DOCUMENTS	8
13	DEALINGS	8
14	CONTRACT RATE AND LATE PAYMENT	9
15	VALUE ADDED TAX	9
16	REGISTRATION OF AGREEMENT AT THE LAND REGISTRY	9
17	DISPUTE RESOLUTION	9
18	GOOD FAITH	10
19	LOCAL AUTHORITY POWERS	11
20	CONFIDENTIAL INFORMATION AND FREEDOM OF INFORMATION	11
21	NON MERGER	13
22	TERMINATION	13
23	ENTIRE AGREEMENT	14
24	CONTRACTS (RIGHTS OF THIRD PARTIES) ACT	14
25	INDEMNITIES	14
25	GOVERNING LAW AND JURISDICTION	14
	SCHEDULE 1 - INTERPRETATION OF THIS AGREEMENT	15

SCHEDULE 2 - OPTION CONDITIONS	24
PART 1 - PLANNING CONDITION	24
PART 2 - DISPOSAL CONDITION	30
PART 3 - SOS CONDITION	30
PART 4 - VIABILITY CONDITION	31
PART 5 - BUSINESS PLAN CONDITION	31
PART 6 - VACANT POSSESSION CONDITION	31
PART 7 - FUNDING CONDITION	32
PART 8 - LEASE CONDITION	32
PART 9 - PROGRESS CONDITION	32
SCHEDULE 3 - EARLY ACCESS AND PRE-DEVELOPMENT WORKS	33
SCHEDULE 4 - LONGSTOP DATES	35
SCHEDULE 5 - VARIATIONS TO THE STANDARD CONDITIONS	36
SCHEDULE 6 - MATTERS AFFECTING THE SITES	38
SCHEDULE 7 - DRAWDOWN PRICE	39
APPENDIX 1	40
PART 1 – LIST OF CATEGORY 1 PROPERTIES	40
PART 2 – LIST OF COUNCIL'S EXISTING OWNERSHIPS	40
APPENDIX 2 - LEASE	41
APPENDIX 3 - FORM OF COMPLETION NOTICE	42
APPENDIX 4 – (THIS INFORMATION IS CONTAINED IN THE EXEMPT PART OF THE REPORT)	43

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**").
- each a "**Party**" (and together "**the Parties**")

IT IS AGREED as follows:-

1. **INTERPRETATION**

The provisions of Schedule 1 apply to the interpretation of this Agreement.

2. **OBJECTIVES**

The Parties' objective is that HDV should undertake financially viable development and regeneration of each Category 1A Property in accordance with the Members' Agreement and the objectives set out in the Business Plan.

3. **SOS CONSENT FOR HRA ASSETS**

The provisions of Clause 4 of this Agreement shall not come into effect in respect of any Category 1A Property for which SOS Consent would be required unless and until the SOS Condition has been satisfied in relation to such property.

4. **CALL OPTION**

4.1 In consideration of the sum of £1.00 which has been paid by HDV to the Council on the date hereof (receipt of which is acknowledged by the Council) the Council grants to HDV the Call Option in respect of each Category 1A Property upon the terms contained in this Agreement.

4.2 The Call Option will come into effect on the date of this Agreement save in respect of any property in relation to which Clause 3 applies, where the Call Option will come into effect when the SOS Condition has been satisfied.

4.3 The Call Option applies separately to each Category 1A Property and separately to any Phase of Development for a Category 1A Property.

4.4 The Call Option applies to all such parts of the Category 1A Properties as are owned by the Council at the date hereof and will also apply to such further or additional parts of Category 1A Properties as are acquired by the Council or as are re-categorised as Category 1A Properties in accordance with the terms of this Agreement after the date hereof.

4.5 The Call Option shall not apply to any Category 1B Property unless and until that Category 1B Property has been re-categorised as a Category 1A Property upon satisfaction of the Disposal Condition.

4.6 The Council shall enter into such further deeds or documents as HDV shall reasonably require to confirm the Call Option in respect of all such further Category 1A Properties and interests therein which are acquired or re-categorised as Category 1A Properties by the Council after the date hereof.

4.7 The Call Option may only be exercised by HDV serving a Drawdown Notice upon the Council during the Call Option Period for the land to which such Drawdown Notice relates.

4.8 The Call Option shall not be exercised whilst a No Drawdown Event exists but where the No Drawdown Event consists only of the circumstances set out in limb (a) then the No Drawdown Event shall be restricted to the relevant Category 1A Property only.

4.9 Upon exercise of a Drawdown Notice, a Lease of the land to which such Drawdown Notice relates will be granted by the Council to such HDV Subsidiary (or third party) as HDV shall nominate.

5. **OPTION CONDITIONS**

5.1 The "Option Conditions" for each Category 1A Property (or where a Category 1A Property is to be developed in Phases, the first Phase only) are:

5.1.1 the Planning Condition (Schedule 2 Part 1);

5.1.2 the Viability Condition (Schedule 2 Part 4);

5.1.3 the Business Plan Condition (Schedule 2 Part 5);

5.1.4 the Vacant Possession Condition (Schedule 2 Part 6);

5.1.5 the Funding Condition (Schedule 2 Part 7); and

5.1.6 the Lease Condition (Schedule 2 Part 8).

5.2 Where a Category 1A Property is to be developed in Phases, the Option Conditions in respect of any Phase subsequent to the first Phase are:

5.2.1 the Option Conditions set out in Clause 5.1 (updated as applicable to the subsequent Phase); and

5.2.2 the Progress Condition (Schedule 2 Part 9).

5.3 HDV will use reasonable endeavours to satisfy (or procure that they will be satisfied) as soon as reasonably practicable in respect of each Category 1A Property (and where applicable all subsequent Phases thereof) each of the following Option Conditions (insofar as is within the reasonable control of HDV):

5.3.1 the Planning Condition;

5.3.2 the Viability Condition;

5.3.3 the Business Plan Condition;

5.3.4 the Funding Condition;

5.3.5 the Lease Condition; and

5.3.6 the Progress Condition (where applicable).

5.4 Subject to Clause 5.8, the Council will follow the procedures referred to in Part 2 of Schedule 2 in respect of the Disposal Condition, and Part 3 of Schedule 2 in respect of the SOS Condition.

5.5 The Council and HDV will each comply with their respective obligations set out in the Land Assembly Agreement for the purposes of satisfying the Vacant Possession Condition.

5.6 In relation to each Category 1 Property or Phase, if any Option Condition remains unsatisfied (and in the case of Category 1B Properties, the Disposal Condition and the SOS Condition (if applicable) have not been satisfied) on the Option Conditions Longstop Date for the relevant Category 1 Property or Phase (subject to such extensions as are permitted under this Agreement) then the

Council may at any time thereafter serve written notice on HDV withdrawing the relevant Category 1 Property (or remaining Phases thereof) from the ambit of this Agreement. Upon service of such notice:-

5.6.1 the relevant Category 1 Property or remaining Phases shall be deemed to have been withdrawn from this Agreement (but (a) not so as to affect and without prejudice to any Lease which has already been granted in respect of such Category 1 Property or Phase thereof and (b) without prejudice to any rights of either Party against the other in respect of or arising out of any antecedent breach of any provisions of this Agreement);

5.6.2 the Call Option in respect of the Category 1 Property or Phase which has been withdrawn pursuant to this Agreement shall automatically lapse;

5.6.3 HDV will as soon as reasonably practicable return any documents received from the Council in respect of such Category 1 Property to the Council and will cancel any registrations of this Agreement or any Call Option in relation to such Category 1 Property or Phase.

5.7 None of the Option Conditions may be waived otherwise than by written agreement signed by both Parties and the Parties acknowledge that the Disposal Condition, SOS Condition and Vacant Possession Condition may not be waived by either Party.

5.8 The Parties acknowledge and agree that nothing in this Agreement shall affect or impose any obligation on the Council as regards the satisfaction of the Disposal Condition or the SOS Condition. In particular, the Parties acknowledge and agree that a decision by the Council not to satisfy the Disposal Condition or the SOS Condition will not give rise to any legal liability of the Council to the HDV under this Agreement or otherwise.

6. **DRAWDOWN PRICE**

(this information is contained in the exempt part of the report)

7. **TITLE**

HDV acknowledges that it has investigated the title to the Category 1 Properties prior to the date of this Agreement. Accordingly HDV shall not raise any requisition on matters arising before that date other than the usual pre-completion requisitions.

8. **COMPLETION OF LEASE**

8.1 The Lease for each Category 1A Property will be in the form which has been agreed or determined as satisfying the Lease Condition subject to any matters to which such Category 1A Property is subject and/or any matters referred to at Schedule 6.

8.2 The Council shall procure that the Council's Solicitors shall prepare engrossments of the relevant Lease and a duplicate or counterpart thereof in relation to each Category 1A Property (or where a Category 1A Property is intended to be developed in Phases, each Phase within such Category 1A Property) and supply such engrossments to HDV's Solicitors not later than five Working Days prior to the relevant Completion Date for such Lease.

8.3 HDV shall procure that the engrossments of the relevant Lease and the duplicate or counterpart thereof duly executed by HDV shall be returned to the Council's Solicitors not later than five Working Days after such engrossments have been delivered to HDV's Solicitors.

8.4 Completion of each Lease shall take place on the relevant Completion Date, which date shall also be the "completion date" for the purposes of the Standard Conditions.

8.5 Completion will take place at the Council's Solicitors' offices or elsewhere in the United Kingdom as they reasonably require.

8.6 The Council shall provide all necessary assistance to HDV to enable it to register each Lease at the Land Registry, including providing any consents or certificates required by the Land Registry to comply with any restrictions on title.

9. DEVELOPMENT AND EARLY ACCESS

9.1 If HDV wishes to carry out site investigation or other pre-development works on parts of the Category 1 Properties which are owned by the Council but in respect of which a Lease has not been granted, then it may on not less than 10 Working Days notice request the Council to issue an early access licence in the form set out in Schedule 3. The Council shall not unreasonably withhold its consent to such request. In such event:-

9.1.1 such request shall stipulate the Category 1 Property or part of a Category 1 Property in respect of which access is required, the nature of the works and/or investigations to be carried out, the estimated timescales in which they are to be carried out and whether any necessary statutory consents for the proposed works and/or investigations have been secured;

9.1.2 if such request relates to a vacant and unoccupied Category 1 Property or part thereof, upon receipt of HDV's request the Council shall grant to HDV a licence to enter the area within which the works and/or investigations are to be carried out on the terms contained in Schedule 3 and HDV shall carry out such works and/or investigations as specified in the request and within the timescales set out in the request; and

9.1.3 if such request relates to property which is occupied or not vacant, or in relation to which any third party has an interest or rights, any such licence for early access shall be upon terms which the Council reasonably requires to ensure that any such access is consistent with the rights of anyone in occupation (or having an interest or other rights), and will not expose the Council to any claims for disturbance, trespass or other liabilities.

10. CONDITION, DAMAGE AND INSURANCE

10.1 The Council shall not be liable for any dilapidations, disrepair or damage which may occur to any Category 1A Property after the date hereof.

10.2 If any Category 1A Property shall be damaged or destroyed prior to the grant of a Lease thereof, the Council shall not be obliged to reinstate it but if the Council does not reinstate, then the Council will make available to HDV any insurance proceeds available for reinstatement which are received by the Council (less any amounts payable to third parties), after the grant of the Lease of the relevant Category 1A Property.

11. PERFORMANCE BY HDV GROUP AND HDV LIABILITIES

11.1 HDV shall be entitled to arrange for any of its obligations to the Council hereunder and the carrying out of any Development 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.

11.2 HDV is not to be relieved of liability for any breach of its obligations in this Agreement by:

11.2.1 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;

11.2.2 any unreasonable delay by the Council in enforcing the terms of this Agreement or any time allowed by the Council for their performance;

11.2.3 any variation of the terms of this Agreement other than any variation recorded by deed made between the Parties; or

11.2.4 any legal limitation, immunity, disability, incapacity of other circumstances relating to the Council or HDV, whether or not known to the Council or HDV.

12. SERVICE AND DELIVERY OF NOTICES AND OTHER DOCUMENTS

12.1 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

12.2 Subject to Clause 12.3, any notice or other communication shall be deemed to have been served:

12.2.1 if delivered personally, when left at the address referred to in Clause 12.1; or

12.2.2 if sent by pre-paid first class post, two days after posting it.

12.3 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.

13. DEALINGS

13.1 Subject to the terms of this Clause 13, this Agreement may not be assigned, charged, held on trust or in any way dealt with by HDV.

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

13.2.1 the Funder entering into a Step-In Agreement;

13.2.2 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;

13.2.3 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 13; and

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

13.3 The Council shall not, in respect of the Council's interest in any Category 1A Property create any interests or otherwise encumber any property in a manner which is inconsistent with the relevant Development Business Plan (including land assembly costs and the programme for achieving Vacant Possession).

13.4 The Council consents to the entry of the following restriction against the Council's title to each Category 1A Property at the Land Registry and will provide the HDV with all necessary assistance and/or documentation to permit entry of the restriction:

"No disposition of the freehold of or the grant of a leasehold interest for a term exceeding 40 years of the registered estate by the proprietor of the registered estate is to be registered without a consent in writing signed by [HDV LLP] of [address] or their conveyancer that the provisions of Clause 13.3 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."

14. **CONTRACT RATE AND LATE PAYMENT**

14.1 The "contract rate" referred to in the Standard Conditions shall be the Contract Rate as defined in Schedule 1 to this Agreement.

14.2 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.

15. **VALUE ADDED TAX**

15.1 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.

15.2 Standard Condition 1.4 shall not apply.

16. **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 1A Properties other than by way of a unilateral notice and shall not without the written consent of the Council (such consent not to be unreasonably withheld or delayed) send either the original or a copy of this Agreement to the Land Registry.

17. **DISPUTE RESOLUTION**

17.1 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**").

17.2 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.

17.3 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.

17.4 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**").

17.5 The identity of the Expert will be agreed by the Parties in writing or, failing such agreement, within 14 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.

17.6 A person can only be appointed to act as an Expert if at the time of the appointment he is not:-

17.6.1 a director, office holder or employee of; or

17.6.2 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.

17.7 Within 15 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.

- 17.8 The Parties will give to the Expert such assistance as the Expert considers necessary to carry out his function.
- 17.9 The Expert will give notice in writing of his decision to the Parties within 20 Working Days of his appointment or within such extended period as the Parties may agree in writing.
- 17.10 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 17.
- 17.11 If the Expert (the "**Original Expert**"):-
- 17.11.1 fails to determine the matter referred to him within the period referred to in Clause 17.9;
 - 17.11.2 fails to give notice of his decision within the time and in the manner provided for in this Clause;
 - 17.11.3 relinquishes or does not accept his appointment;
 - 17.11.4 dies; or
 - 17.11.5 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 (or the next most senior available officer) of the Royal Institution of Chartered Surveyors or the Law Society or the Institute of Chartered Accountants 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 17.11.

18. **GOOD FAITH**

- 18.1 Each of the Parties undertakes with the other that it will at all times:-
- 18.1.1 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
 - 18.1.2 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.
- 18.2 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.

19. **LOCAL AUTHORITY POWERS**

- 19.1 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.
- 19.2 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.

20. **[CONFIDENTIAL INFORMATION AND FREEDOM OF INFORMATION**

- 20.1 During the term of this Agreement and for a period of three years after the termination or expiry of the Agreement for any reason whatsoever (the "**Confidentiality Period**"), the Receiving Party (as defined in Clause 20.2) will:-
- 20.1.1 keep Confidential Information (as defined in Clause 20.2) confidential;
 - 20.1.2 not disclose Confidential Information to any other person other than with the written consent of the Disclosing Party (as defined in Clause 20.2) or in accordance with Clauses 20.2 to 20.5; and
 - 20.1.3 not use Confidential Information for any purpose other than the performance of its obligations under this Agreement and the other Project Agreements.
- 20.2 For the purposes of this Clause 20, "**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.
- 20.3 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 the 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 20.3 "**Group**" shall refer to the Council Group, or PSP Group (as the context shall require).
- 20.4 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.

- 20.5 The obligations contained in Clauses 20.2 to 20.4 shall not apply to any Confidential Information which:-
- 20.5.1 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;
 - 20.5.2 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;
 - 20.5.3 subsequently comes lawfully into the possession of the Receiving Party from a third party and not subject to any obligations of confidentiality;
 - 20.5.4 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
 - 20.5.5 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.
- 20.6 The Parties acknowledge that the Council is subject to the requirements of the FOIA and the EIR. For the purpose of Clauses 20.6 to 20.12 (inclusive) only, "Information" has the meaning given to it under Section 84 of the FOIA and the meaning attached to "environmental information" contained in Section 2 of the EIR (as appropriate).
- 20.7 Where the Council receives a Request for Information, to the extent that it comprises Information that the 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 the HDV of the requested Information in writing as soon as practicable and the HDV will:-
- 20.7.1 if necessary to identify and / or locate the Information, as soon as reasonably practicable and in any event within five 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 the 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
 - 20.7.2 provide the Council with a copy of all such requested Information held by the HDV and/or 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).
- 20.8 Where the Council receives a Request for Information in relation to Information relating to this Agreement, the PSP, the 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 for Information.
- 20.9 Following any notification under Clause 20.8, 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 five 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 for Information provided always that the Council shall be responsible for determining at its absolute discretion:-

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

20.9.2 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.

20.10 The 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 six 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).

20.11 The 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 the HDV as soon as practicable and in any event within five 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 five Working Days of receiving it).

20.12 The 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.]

21. **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 1A Property or Phase.

22. **TERMINATION**

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

22.2 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 1A 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 1A Property (or any Phase thereof) where a Termination Event applies to the relevant HDV Party).

22.3 If this Agreement is terminated:-

22.3.1 the Call Option shall cease and determine absolutely without the Council making to HDV any compensation or allowance whatsoever;

22.3.2 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;

22.3.3 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.

23. **ENTIRE AGREEMENT**

23.1 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.

23.2 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 23.2 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.

23.3 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 the HDV to satisfy itself in respect thereof.

24. **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.

25. **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 Particulars annexed to this Agreement form part of this Agreement, and terms specified in them bear the same meanings when used elsewhere in this Agreement.

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

(this information is contained in the exempt part of the report)

"Business Plan"

(this information is contained in the exempt part of the report)

has the meaning given to it in the Members' Agreement

"Business Plan Condition"

has the meaning set out in Part 5 of Schedule 2

"Call Option"

means the options granted in Clause 4 for HDV to call for a Lease from the Council of property which is at the date of this Agreement a Category 1A Property and any other Property which subsequently becomes a Category 1A Property (with effect from the date that it does so) (or where a Category 1A Property is being developed in Phases, each separate Phase thereof)

"Call Option Period"

means the period commencing when all the Option Conditions in relation to the relevant Category 1 Property (or Phase thereof) have been satisfied (or waived where waiver is permitted) and expiring on the later of:

- (a) (this information is contained in the exempt part of the report); or
- (b) (this information is contained in the exempt part of the report) after Detailed Planning Permission in relation to the relevant Category 1 Property (or phase thereof) is obtained

"Category 1 Properties"

means the Category 1A Properties and the Category 1B Properties and a **"Category 1 Property"** shall mean any of them

"Category 1A Property"

means each of the properties which are described for identification only in Part 1A of Appendix 1 the extent of the Council's ownership as at the date hereof being shown on the plans and title number listed in Part 2 of Appendix 1 and any other Property which subsequently becomes a Category 1A Property

"Category 1B Property"

means each of the properties which are described for identification only in Part 1B of Appendix 1 the extent of the Council's ownership as at the date hereof being shown on the plans and title number listed in Part 2 of Appendix 1

"Companies Act"

means the Companies Act 1985 (as amended by the Companies Act 2006)

"Completion"

means completion of the grant of a Lease of a Category 1A Property (or where a Category 1A Property is being developed in Phases, each Phase) pursuant to this

	Agreement
"Completion Date"	means the first Working Day 14 days after the service of a Drawdown Notice
"Confidentiality Period"	has the meaning given to it in Clause 20.1
"Confidential Information"	has the meaning given to it in Clause 20.2
"Continuing HDV Parties"	has the meaning given to it in Clause 22.2
"Contract Rate"	(this information is contained in the exempt part of the report) above the base lending rate from time to time of Barclays Bank PLC or if such rate shall cease to be published the Law Society's interest rate from time to time in force
"Council Group"	has the meaning given to it in the Members' Agreement
"Council's Solicitors"	means the solicitors appointed by the Council and notified to the HDV in writing from time to time
(this information is contained in the exempt part of the report)	(this information is contained in the exempt part of the report)
"Detailed Planning Permission"	has the meaning given to it in Schedule 2
"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 or replaced 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 Permission, and commencement and completion of works comprising the relevant Development
"Development (Council) A Loan Note"	has the meaning given to it in the Members' Agreement
"Development (Council) C Loan Note"	has the meaning given to it in the Members' Agreement
"Disclosing Party"	has the meaning given to it in Clause 20.2
"Disposal"	means the transfer or grant of a Lease for either a capital value or a rent to a party other than an HDV Subsidiary
"Disposal Condition"	has the meaning set out in Part 2 of Schedule 2
"Dispute"	has the meaning given to it in Clause 17.1
"Drawdown Notice"	means the written notice exercising a Call Option in the form set out at Appendix 3 and signed on behalf of HDV
(this information is contained in the exempt part of the report)	(this information is contained in the exempt part of the report)

"EIR"

means the Environmental Information Regulations 2004

"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 estate 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 on 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 a "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
"FOIA"	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
"Funder"	means a person who has entered into an agreement with HDV (or an HDV Subsidiary): <ul style="list-style-type: none"> (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;
"Funding Condition"	has the meaning set out in Part 7 of Schedule 2
"Group"	has the meaning given to it in Clause 20.3
"HDV's Solicitors"	means the solicitors appointed by HDV and notified to the Council in writing from time to time
"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
"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
"Information"	has the meaning given to in in Clause 20.6
"Land Assembly Agreement"	means the land assembly agreement made between the Council (1) and HDV (2) on or around the date hereof
"Lease"	means a lease substantially in the form at Appendix 2, to be amended and agreed in accordance with the terms of this Agreement
"Lease Condition"	has the meaning set out in Part 8 of Schedule 2
"Legal Responsibilities"	means compliance with: <ul style="list-style-type: none"> (a) the Local Government Act 1972, Landlord and Tenant Act 1985, Housing Act 1985, Housing Act 1988, Local Government Act 1988, Housing Act 1996, 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;

- (b) the Council's standards, constitution and other internal procedures;
- (c) the Council's published policies in relation to its implementation and delivery of its statutory powers;
- (d) the Council's obligations to consult with residents and other interested parties;

"Member"

has the meaning given in the Members' Agreement and **"Members"** shall be construed accordingly

"Members' Agreement"

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;

"No Drawdown Event"

means:

- (a) HDV or any HDV Subsidiary is in material and continuing breach of its obligations under a Lease entitling the Council to terminate the Lease; or
- (b) a PSP Default Event (as defined in the Members' Agreement) exists; or
- (c) the Council ceases to be a Member of HDV other than due to a voluntary sale of its interests therein; or
- (d) Clause 27.1.1(b) of the Members' Agreement applies; or
- (e) within 18 months (or such other period as set out in the Business Plan or Development Business Plan) after the later of:
 - (i) the date on which the first planning application is submitted in respect of Wood Green; and
 - (ii) the Disposal Condition being satisfied in respect of Northumberland Park

a hybrid planning application with detail in respect of the first phase has not been submitted in respect of Northumberland Park.

"Notice of Dispute"

has the meaning given to it in Clause 17.4

"Option Conditions Longstop Date"

means the longstop dates set out in Schedule 4 as extended in accordance with the notes set out in Schedule 4 or such other dates arising from variations to Phases sequencing of Phases or extent of Phases as

	set out in the relevant Development Business Plan and notified by HDV to the Council from time to time.
"Option Conditions"	has the meaning set out in Clause 5
"Original Expert"	has the meaning given to it in Clause 17.11
"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
"Phase Completion"	means the date that is (this information is contained in the exempt part of the report) Working Days after the earliest of: <ul style="list-style-type: none"> (a) the date of Disposal of the last unit to be built at the relevant Phase (by reference to the agreed Development); or (b) such date notified by the Council to HDV in writing which cannot be before the date that (this information is contained in the exempt part of the report) of all units built or to be built at the Phase (by reference to the agreed Development) have been disposed of
"Planning Condition"	has the meaning set out in Part 1 of Schedule 2
"Programme of Works"	means the programme of works to be adopted by HDV in relation to the delivery of development for each Category 1 Property or Phase which shall incorporate and be consistent with the Milestones
"Progress Condition"	has the meaning set out in Part 9 of Schedule 2
"Project Agreements"	has the meaning given to it in the Members' Agreement
"PSP"	has the meaning given to it in the Members' Agreement
"PSP Group"	has the meaning given to it in the Members' Agreement
"Receiving Party"	has the meaning given to it in Clause 20.2
"Recipient"	has the meaning given to it in Clause 20.4
"Request for Information"	shall have the meaning set out in the FOIA
"Satisfactory Planning Permission"	has the meaning given to it in Part 1 of Schedule 2
"Secure"	means no application to the Court by any third party for judicial review or any ultra vires claim or any other challenge has been made in the time prescribed by the Civil Procedure Rules 54.5.(1)(b), or in the event that any such application, challenge or proceedings are commenced, the application, challenge or proceedings are finally disposed of, leaving in place the Council's

	original decision
"Standard Conditions"	means Part 1 of the Standard Commercial Property Conditions (Second Edition) as amended or varied as stated either in Schedule 5 to this Agreement or in any other part of this Agreement
"SOS Condition"	has the meaning set out in Part 3 of Schedule 2
"SOS Consent"	has the meaning set out in Part 3 of Schedule 2
"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 22.2 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"> (iii) 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 (iv) 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
"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"	has the meaning set out in Part 6 of Schedule 2
"Vacant Possession Condition"	has the meaning set out in Part 6 of Schedule 2
"Viability Condition"	has the meaning set out in Part 4 of Schedule 2
"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

3. 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;
4. 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;
5. References to Clauses or Schedules unless otherwise specified mean the Clauses of or the Schedules to this Agreement;
6. Reference to paragraphs in any Schedule unless otherwise specified means the paragraphs of that Schedule;
7. Headings to Clauses and Schedules are disregarded in interpreting this Agreement;
8. This Agreement is deemed to incorporate the Standard Conditions with such amendments (including the use of capital letters) as are necessary to make the Standard Conditions referable to this Agreement. If there is any conflict between the Standard Conditions and the express provisions of this Agreement, this Agreement prevails;
9. 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;
10. 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;
11. 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;
12. Any reference to a month is a reference to a calendar month;
13. Reference to a **"Party"** means a Party to this Agreement and **"Parties"** shall be construed accordingly;
14. 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;
15. 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;
16. 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;
17. 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;
18. In this Agreement references to any statute or statutory provision include references to:-

- 18.1.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom;
and
- 18.1.2 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.

DRAFT

SCHEDULE 2

OPTION CONDITIONS

PART 1

PLANNING CONDITION

1. DEFINED TERMS IN THIS SCHEDULE

1.1 In this Schedule:-

"Call-In" means a direction by the Secretary of State that a Planning Application be referred to him for determination under section 77 of the Planning Act

"Challenge Period" means the following periods, each calculated from and including the Permission Date:-

(a) following the grant of Satisfactory Planning Permission by the Planning Authority (including after the determination of an application under section 73 of the Planning Act), the period of 6 weeks; or

(b) following the grant of Satisfactory Planning Permission by or on behalf of the Secretary of State, the period of six weeks

"Deemed Refusal" means a failure by the Planning Authority to give notice as described in section 78(2) of the Planning Act within the prescribed period (and including any extended period agreed between HDV and the Planning Authority in accordance with the terms of this Schedule)

"Detailed Planning Permission"

means:

(a) Satisfactory Planning Permission together with corresponding reserved matters approval; or

(b) an equivalent detailed planning permission;

that does not contain:

(i) any Onerous Conditions; or

(ii) any requirement that a Planning Obligation be entered into by HDV or the Council as a condition or necessary requirement for the implementation of the Planning Permission on terms which include Onerous Conditions

"Inspector"

means any person appointed by the Secretary of State under the Planning Act to determine appeals made under Section 78 of the Planning Act or to determine a Call-In

"Onerous Conditions"

means any condition which has the effect of:-

- (a) making a Planning Permission temporary in nature;
- (b) making a Planning Permission personal to HDV or to any specific persons or class of persons;
- (c) preventing or limiting the Development of the Category 1 Property or any part thereof or the implementation of a Planning Permission without the agreement or co-operation of a third party save where such agreement or co-operation of the third party is capable of being obtained at a reasonable cost or where such agreement or co-operation is reasonably foreseeable as a result of the Development;
- (d) having a materially adverse effect on the ability to satisfy the Viability Condition or delivery of the Development in accordance with the Development Business Plan;
- (e) imposing time limits within which the development of the Category 1 Property must be commenced or applications for approval of reserved matters must be made which are more restrictive than those set out in Sections 91 and 92 of the Planning Act

"Permission Date"

means the date of the Satisfactory Planning Permission which means:-

- (a) the date written, printed or stamped on the Planning Permission issued by the Planning Authority; or
- (b) the date written, printed or stamped on the letter or other document issued by the Secretary of State or the Inspector following a Planning Appeal or a Call-In

"Planning Act"

means the Town and Country Planning Act 1990 and includes any statute or statutory instrument modifying, amending, consolidating or replacing it for the time being in force

"Planning Appeal"

means all or any of the following:-

- (a) an application to the Secretary of State under Sections 78 and 79 of the Planning Act following a Planning Refusal by the Planning Authority; or
- (b) an application to the Planning Authority under Section 73 of the Planning Act for development without complying with one or more Onerous Condition(s) in a Planning Permission; or

	(c) a Call-In
"Planning Application"	means any application(s) made by or on behalf of HDV for Planning Permission for any of the Category 1 Properties and any further applications or variations or modifications made to the application in each case in such form as shall have been prepared by HDV and approved by the Council in accordance with paragraph 2
"Planning Authority"	means the Council in its capacity as local planning authority or any successor authority and/or the Greater London Authority
"Planning Condition"	has the meaning set out in paragraph 2 of this Schedule
"Planning Condition Longstop Date"	means the longstop dates set out in Schedule 4, unless on any of the above dates any of the following apply:- <ul style="list-style-type: none"> (a) a decision notice from the Planning Authority is awaited in respect of any Planning Application; (b) the relevant Challenge Period has not yet elapsed following the grant of Satisfactory Planning Permission; (c) a Planning Refusal has been issued and less than twenty Working Days have elapsed since the date of such refusal; (d) a Planning Appeal has been made and has not been concluded or determined; (e) Proceedings have been commenced but have not been concluded or determined; <p>in which case the Planning Condition Longstop Date shall be the date five Working Days after the earliest of:-</p> <ul style="list-style-type: none"> (a) the expiry of the period of thirty Working Days beginning on the date of a Planning Refusal unless by that date a Planning Appeal has been made or issued or Proceedings have been commenced; (b) the date on which the relevant Challenge Period expires following the grant of Satisfactory Planning Permission provided that no Proceedings have commenced; (c) the expiry of the period of twenty Working Days beginning on the date on which any Proceedings are concluded and a Planning Refusal is upheld or a Satisfactory Planning Permission is quashed, <p>but in any event the Planning Condition Longstop Date shall be no later than longstop dates listed in column B at Schedule 4</p>

"Planning Counsel"	means a barrister with not less than 10 years call in planning law whom the Council may select and who is appointed in accordance with paragraph 8.4
"Planning Decision"	means a Planning Refusal or the grant of Planning Permission whether by the Planning Authority, the Secretary of State or an Inspector
"Planning Obligation"	<p>means an agreement or undertaking relating to the Category 1 Property (whether or not also affecting other Category 1 Properties or any other Site) pursuant to:-</p> <ul style="list-style-type: none"> (a) Section 106 of the Planning Act; or (b) Section 111 Local Government Act 1972; or (c) Sections 38,184 or 278 Highways Act 1980; or (d) Section 33 Local Government (Miscellaneous Provisions) Act 1982; or (e) Section 98 or 104 Water Industry Act 1991; or (f) Section 2 of the Local Government Act 2000; or (g) any other statutory provisions whereby the Category 1 Property is bound by obligations enforceable by any third party
"Planning Permission"	means outline planning permission in relation to the relevant Development granted by the Planning Authority or by the Secretary of State pursuant to a Planning Application
"Planning Refusal"	<p>means any of the following:-</p> <ul style="list-style-type: none"> (a) the refusal of a Planning Application by the Planning Authority; (b) a refusal by the Planning Authority to vary or remove an Onerous Condition pursuant to an application made by HDV under section 73 of the Planning Act; (c) a Secretary of State Refusal; (d) a Deemed Refusal; or (e) subject to the provisions of paragraph 4 of this Schedule 2 the grant of a Planning Permission which is not a Satisfactory Planning Permission;
"Proceedings"	<p>means all or any of the following:-</p> <ul style="list-style-type: none"> (a) an application made to the High Court under Part 54 of the Civil Procedure Rules 1998 for judicial review by a third party following the grant of a Planning Permission by the Planning Authority;

- (b) an application made to the High Court under Part 54 of the Civil Procedure Rules 1998 for judicial review following a Planning Refusal by the Planning Authority;
- (c) an application to the High Court made under Section 288 of the Planning Act by a third party following the grant of Planning Permission by the Secretary of State or an Inspector; or
- (d) an application to the High Court made under Section 288 of the Planning Act following a Planning Refusal by the Secretary of State or an Inspector,

and includes any appeal to a higher court following a judgment of a lower court

"Reconsidered Application"

means a reconsideration of a Planning Application by the Secretary of State or the Planning Authority (as appropriate) following a previous Satisfactory Planning Permission or a Secretary of State Refusal having been quashed and the matter having been remitted to the Secretary of State or the Planning Authority (as appropriate)

"Satisfaction Date"

means:-

- (a) the date on which the relevant Challenge Period has expired provided that no Proceedings have been commenced before that date; or
- (b) in the event that Proceedings are commenced during the Challenge Period, the date on which those proceedings are finally disposed of leaving in place a Satisfactory Planning Permission

"Satisfactory Planning Permission"

means a Planning Permission that does not contain:-

- (a) any Onerous Conditions; or
- (b) any requirement that a Planning Obligation be entered into by HDV or the Council as a condition or necessary requirement for the implementation of the Planning Permission on terms which include Onerous Conditions

"Secretary of State"

means the Secretary of State or any other minister or authority for the time being entitled to exercise the powers given under Sections 77, 78 and 79 of the Planning Act

"Secretary of State Refusal"

means a refusal by or on behalf of the Secretary of State to grant planning permission following a Planning Appeal or a Call-In

1.2 References in this Schedule to paragraphs are unless otherwise stated references to paragraphs to this Schedule.

- 1.3 References to primary or secondary legislation include any statute or statutory instrument modifying, amending, consolidating or replacing it for the time being in force.

2. **PLANNING CONDITION**

The "**Planning Condition**" is:

- (1) the grant of Satisfactory Planning Permission; and
- (2) the Satisfaction Date having been reached,

by the Planning Condition Longstop Date.

3. **SUBMISSION OF THE PLANNING APPLICATION**

- 3.1 HDV shall consult with the Council (in its capacity as landowner) and where appropriate the Planning Authority on the preparation of any Planning Application.
- 3.2 Each Planning Application is to be submitted in the name of HDV or a HDV Subsidiary.
- 3.3 HDV shall at its own expense submit the Planning Application to the Planning Authority by the dates set out in the relevant Development Business Plan (or such later date as agreed between the Parties).
- 3.4 Following submission of any Planning Application HDV shall use reasonable endeavours to obtain Satisfactory Planning Permission as soon as reasonably practicable after the date of its submission.
- 3.5 HDV may at its own expense amend and/or withdraw any Planning Application made to the Planning Authority and immediately submit a revised or new Planning Application where it is reasonable to do so in order to obtain Satisfactory Planning Permission.
- 3.6 HDV will meet all costs and expenditure connected with the Planning Application.
- 3.7 At the request of HDV, the Council shall enter into any Planning Obligation as landowner as may be required by the Planning Authority or as may be required in connection with the Development, provided that such Planning Obligation shall not impose any positive obligations or liabilities on the Council unless the Council as landowner is implementing the relevant Planning Permission (otherwise than as a Member of HDV).

4. **PLANNING DECISIONS AND ONEROUS CONDITIONS**

If a Planning Permission is granted subject to one or more Onerous Conditions and/or a Planning Obligation is required to be entered into containing one or more Onerous Conditions HDV shall nevertheless still be entitled to decide to treat the Planning Permission and/or Planning Obligation as providing a Satisfactory Planning Permission. Where this is the case, HDV shall within ten Working Days of the relevant Permission Date give the Council notice in writing to that effect and thereafter the Planning Permission and/or Planning Obligation shall be deemed to constitute the grant of Satisfactory Planning Permission with effect from the date of the notice.

5. **RESTRICTION ON HDV**

HDV shall not and shall procure that any holding or subsidiary company of HDV (as defined in has the meaning ascribed to it by Section 1159 of the Companies Act) shall not whilst this Agreement is subsisting submit any application for planning permission in respect of the Category 1 Properties other than in accordance with the terms of this Agreement.

PART 2

DISPOSAL CONDITION

6. The Disposal Condition means that the Council, having complied with its Legal Responsibilities, has decided to dispose of a Category 1B Property and include it within the Call Option.
7. The Disposal Condition will be satisfied when the Council notifies HDV that it has made the decision referred to in paragraph 6 above and such decision is Secure.
8. When the Disposal Condition has been satisfied the relevant Category 1B Property shall be re-categorised as a Category 1A Property and upon satisfaction of the SOS Condition the Call Option will come into effect in relation to it.

PART 3

SOS CONDITION

1. The SOS Condition means that in respect of those Category 1A Properties where consent is required, consent has been given by the Secretary of State pursuant to Section 32 and/or 43 of the Housing Act 1985 or pursuant to Section 77 of the School Standards and Framework Act 1998 and/or Schedule 35A to the Education Act 1996 (the "**SOS Consent**") for the Disposal of land pursuant to the Call Option and/or the appropriation by the Council of any land which is the subject of the Call Option for planning purposes pursuant to (without limitation) Section 19 of the Housing Act 1985 and Section 122 of the Local Government Act 1972.
2. The SOS Condition shall be satisfied when there exists an SOS Consent which:
 - 2.1 imposes no conditions, limitations or caveats which would prevent or limit the Development of the relevant land in accordance with the Development Business Plan and/or would adversely affect the ability to satisfy the Viability Condition;
 - 2.2 includes no requirement for the consent or any matter authorised by it to be further reviewed or reconsidered by the Secretary of State (or any other person);
 - 2.3 imposes no time limit to such consent or any element of it or any activity pursuant thereto;
 - 2.4 takes effect on the date the consent is issued and not at some future date; and
 - 2.5 is no longer capable of being the subject of an application to the Court by any third party for judicial review or any ultra vires claim or any other challenge.
3. If the Secretary of State shall refuse to issue an SOS Consent or if any such consent does not meet the requirements of paragraph 2 of this Part 3 then HDV may require the Council to follow the procedures necessary to authorise the Council to make one or more further applications to the Secretary of State for his consent but if the SOS Condition has not been satisfied within [12 months] of the date that the Option arises in respect of the Category 1A Property then the Category 1A Property (or relevant parts thereof) in respect of which the SOS Condition applies, will cease to be the subject of this Agreement.
4. At the time indicated in the relevant Development Business Plan, the Council (in compliance with its Legal Responsibilities) will follow all appropriate procures which are necessary for the Council to seek authority to make an application for SOS Consent. HDV will assist the Council to obtain the Secretary of State's consent by providing (so far as it is able) such supporting information and other material as may reasonably be required in support of the Council's application to the Secretary of State.

PART 4

VIABILITY CONDITION

1. The Viability Condition is that HDV has approved and adopted a Development Business Plan pursuant to which after satisfaction of the Planning Condition, an appraisal has been carried out (and verified where practical) which demonstrates that the Category 1 Property or Phase is viable for Development in accordance with the viability test which forms part of the Development Business Plan.
2. The Viability Condition will be satisfied when HDV notifies the Council that the Category 1 Property or Phase is viable for Development, in accordance with paragraph 1 of this Part 4.

PART 5

BUSINESS PLAN CONDITION

1. The Business Plan Condition is that HDV has approved and adopted a Development Business Plan (including a Programme of Works with Milestones) in respect of the relevant Category 1 Property or Phase.
2. A Development Business Plan may relate to part only of a Category 1 Property where such property is to be developed in Phases but it must include appropriate provisions for both initial and later phases (having regard to the overall timetable for Development of the whole of the relevant Category 1 Property).
4. If HDV is in the process of adopting a new iteration of a Development Business Plan or a new Development Business Plan for a particular Category 1 Property, then notwithstanding any old or preceding version of such Development Business Plan HDV shall not be deemed to have settled the Development Business Plan for that Category 1 Property until the new Development Business Plan or the new iteration of it has adopted by HDV.
3. The Business Plan Condition will be satisfied when HDV notifies the Council that the relevant Development Business Plan has been adopted.

PART 6

VACANT POSSESSION CONDITION

1. The Vacant Possession Condition is that the Council has Vacant Possession of the whole of the land in respect of which the Call Option is to be exercised (other than where HDV or an HDV Subsidiary already owns the freehold or a long leasehold interest in such land).
2. **"Vacant Possession"** means that the Council is able to provide immediate possession of the relevant land with no other person in or entitled to possession or occupation thereof but not so as to require the Council to remove any buildings, chattels, or other things on, over or under the relevant land.
3. Both the Council and HDV will comply with their respective obligations under the Land Assembly Agreement in order to ensure that Vacant Possession can be achieved as soon as reasonably practicable.
4. The Vacant Possession Condition will be satisfied when the Council notifies HDV that the Council is able to provide Vacant Possession of the relevant land.

PART 7

FUNDING CONDITION

1. The Funding Condition is that HDV has secured from a Funder full and sufficient financing for the carrying out and completion of the Development and the funding agreement being or becoming unconditional, or subject only to the satisfaction of the Option Conditions or in the event that such funding is not available HDV being permitted to access development finance in accordance with the provisions of the Members' Agreement so that the Development for the relevant Category 1 Property is adequately funded.
2. The Funding Condition will be satisfied when HDV notifies the Council that the HDV has determined that funding (as referred to in paragraph 1 of this Part 7 of this Schedule) has been obtained.

PART 8

LEASE CONDITION

1. The Lease Condition is that the Parties have agreed any changes to the form of Lease to reflect the title and any easements, rights or similar matters relating to the land to be comprised in such Lease.
2. Neither Party will unreasonably refuse to agree appropriate or necessary amendments to the form of Lease but if the Party shall be unable to agree the same it shall be determined by an independent solicitor who will be appointed as Expert under the provisions of Clause 17.

PART 9

PROGRESS CONDITION

1. The Progress Condition is that HDV has achieved all the Milestones for the relevant Development which ought to have been achieved at that time.
2. The Progress Condition will be deemed to have been satisfied unless the Council has notified HDV that the Council considers that the Progress Condition has not been satisfied (in which case, any Dispute in respect thereof shall be determined under Clause 17).

SCHEDULE 3

EARLY ACCESS AND PRE-DEVELOPMENT WORKS (FORM OF LICENCE WHICH MAY BE ISSUED UNDER CLAUSE 9.1)

1. EARLY ACCESS

The Council hereby grants to HDV a licence to enter the [relevant Category 1 Property] (the "Site") (exercisable on prior written notice served on the Council, during the times specified below) in order to carry out the site investigations and inspections specified below (the "Investigation Works"); and from the date of entry:-

- 1.1 the Licence will be exercisable by HDV, any HDV Subsidiary, their contractors and all those authorised by HDV or any HDV Subsidiary including any potential Funder, purchaser or occupier (the "Licensees");
- 1.2 the Licensees may enter during the following times [**Drafting Note: to be agreed when licence issued**], with or without vehicles workmen plant machinery and equipment;
- 1.3 the Licensees may carry out and complete environmental testing, preparatory works and undertake the Investigation Works;
- 1.4 the Licence is subject to all rights easements restrictions subsisting highway rights and other matters whatsoever affecting the Site;
- 1.5 the Licensees shall observe the work conditions set out in paragraph 1.10 below;
- 1.6 the Investigation Works shall be at the risk of HDV and HDV shall be responsible for:-
 - 1.6.1 the security of the Site (or parts thereof) and the Investigation Works; and
 - 1.6.2 all health and safety matters relating to the Site (or parts thereof) and the Investigation Worksand shall indemnify and keep indemnified the Council and its servants agents visitors and invitees from and against all loss damage actions costs claims demands expenses and liability of whatsoever nature which may arise in connection with these responsibilities;
- 1.7 HDV acknowledges that:-
 - 1.7.1 all materials goods plant machinery equipment and other items belonging to HDV or its servants agents or contractors shall be at the sole risk and responsibility of HDV and that the Council has no responsibility therefor; and
 - 1.7.2 that the Council has no responsibility for servant's agents and contractors of HDV;
- 1.8 HDV shall indemnify and keep indemnified the Council from and against all loss costs claims demands expenses actions proceedings damages and liabilities whatsoever arising as a result of its access to the Site and the carrying out of the Investigation Works in this exercise of the rights under this Licence:-
 - 1.8.1 in respect of any injury to or death of any person resulting from any act or default of the Licensees or any of their respective servants agents and sub-contractors; and
 - 1.8.2 in respect of any loss of or damage to any real or personal property (including without limitation any land and buildings roads footpaths service media and street furniture);

1.9 HDV:-

- 1.9.1 shall maintain or shall procure that its contractor maintains adequate insurance cover against the risk of such loss damage actions claims and demands in a sum not less than (this information is contained in the exempt part of the report);
- 1.9.2 shall produce or shall procure that its contractor produces to the Council details of the insurance cover effected pursuant to paragraph 1.9.1 and evidence of payment of the last premium therefor whenever there is a material change to the same and (in addition) whenever reasonably required by the Council in writing (but not more than once in any 6 months); and
- 1.9.3 shall pay to the Council on demand any costs incurred by the Council in effecting the insurance cover referred to in paragraph 1.9.1 in default of the contractor maintaining such cover;

1.10 the works conditions are:-

- 1.10.1 to take all reasonable precautions to prevent unauthorised access to the Site (or parts thereof) and the Investigation Works and to ensure that the Site (or parts thereof) and the Investigation Works remain secure;
- 1.10.2 to carry out the Investigation Works in such a way that as little damage as possible is caused to any service media land buildings or other structures adjoining or neighbouring the Site (and to forthwith make good or procure that its contractor makes good at its own expense any damage caused to Council's reasonable satisfaction);
- 1.10.3 to put in place and observe and perform appropriate health and safety measures and arrangements to protect the health and safety of (and use all reasonable endeavours to avoid or mitigate any nuisance disturbance or danger to) the Council its tenants or licensees or to the owners or occupiers of any adjoining or neighbouring land or buildings or to members of the public; and
- 1.10.4 not to use the Site for any purpose other than the carrying out of the Investigation Works nor for any illegal purpose.

2. **INVESTIGATION WORKS**

The Investigation Works will consist of: []

SCHEDULE 4

LONGSTOP DATES

(this information is contained in the exempt part of the report)

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SCHEDULE 5

VARIATIONS TO THE STANDARD CONDITIONS

1. Standard Conditions 3.3 and 6.4.2 do not apply.
2. Standard Condition 1.3 is amended to read as follows:-
 - "1.3 Notices and Documents
 - 1.3.1 A notice required or authorised by the contract must be in writing.
 - 1.3.2 Where delivery of the original document is not essential, a notice or document is validly given or sent if it is sent by fax (but it is not validly given or sent if sent by e-mail) provided that in the case of fax transmission the same is acknowledged by the recipient as having been received.
 - 1.3.3 Subject to conditions 1.3.4 to 1.3.6, a notice is given and a document delivered when it is received.
 - 1.3.4
 - (a) A notice or document sent through the document exchange is received when it is available for collection.
 - (b) A notice or document which is received after 4.00 pm on a working day, or on a day which is not a working day, is to be treated as having been received on the next working day.
 - 1.3.5 Condition 1.3.6 applies unless there is proof:-
 - (a) that a notice or document has not been received, or
 - (b) of when it was received.
 - 1.3.6 Unless the actual time of receipt is proved, a notice or document sent by the following means is treated as having been received as follows:-
 - (a) by first class post: before 4.00 pm on the second working day after posting unless returned undelivered;
 - (b) by second-class post: before 4.00 pm on the third working day after posting unless returned undelivered;
 - (c) through a document exchange: before 4.00 pm on the first working day after the day on which it would normally be available for collection by the addressee unless returned undelivered;
 - (d) by fax: one hour after despatch unless it is proved that the fax was not received.
 - 1.3.7 In condition 1.3.6, "first class post" means a postal service which seeks to deliver posted items no later than the next working day in all or the majority of cases.

1.3.8 In addition:-

- (a) any notice addressed to a Party by name shall not be rendered invalid by reason of the Party having died, become insolvent or changed name, whether or not the Party serving notice is aware of the fact;
- (b) any notice required to be given by a Party may be given on that Party's behalf by that Party's conveyancer;
- (c) a notice shall be considered as given to a Party if delivered to the address given for that Party in this agreement. If such Party shall wish, during the currency of this agreement, to nominate an alternative address for service, such other address shall only be deemed to be substituted for the original address for service when such Party's conveyancer shall have advised the other Party's conveyancer in writing of such alternative address and such advice shall have been acknowledged in writing by the other Party's conveyancer; and
- (d) the foregoing provisions of this condition 1.3 shall also apply (mutatis mutandis) to the delivery of documents."

3. Standard Condition 3.1.2 is amended as follows:-

3.1 Standard Condition 3.1.2(d) is amended to read:-

"entries made before the date of the contract in any public register except mortgages and monetary charges protected by such entries in registers maintained by the Land Registry or its Land Charges Department or by the Companies Registry."

3.2 Standard Condition 3.1.2 is extended as follows:-

"(f) any matters, other than mortgages and monetary charges, which would have been revealed to the buyer if before the date of the contract he had made all searches enquiries and inspections regarding the Sites which a prudent buyer would make

so far as the same are still subsisting at completion, are capable of taking effect and relate to the Sites."

4. In Standard Condition 6.6.4(a) the words "(but by way of indemnity only and not further or otherwise) to observe and perform the obligations and to indemnify the seller against all costs, expenses, losses, demands, actions, liabilities, claims or proceedings whatsoever arising in respect of any future breach, non performance or non observance of such obligation" are substituted for the words "to indemnify the seller against liability for any future breach of the obligation and to perform it from then on".

5. In Standard Condition 8.1.2 the time of 1.00 pm shall be substituted for 2.00 pm.

SCHEDULE 6

MATTERS AFFECTING THE SITES

1. The rights, covenants, easements and other matters contained or referred to in the Property Register and Charges Register of the title numbers set out in Part 2 of Appendix 1.
2. All unregistered interests which in accordance with the Land Registration Act 2002 will in the case of each and any estate to be disposed of pursuant to this Agreement:-
 - 2.1 override the disposition of any such estate which is currently registered or will be registered prior to Completion; or
 - 2.2 override the first registration of title to any such estate which is currently not registered and will not be registered prior to Completion or would override first registration of title to such estate if such estate were capable of being registered.
3. The matters mentioned in Standard Condition 3.1.2 (as amended by Schedule 7).
4. All local land charges, whether or not registered before this Agreement was entered into and all matters capable of registration as local land charges, whether or not actually registered.
5. All notices served and orders, demands, proposals or requirements made by any local or any public authority after the date of this Agreement.
6. All actual or proposed orders, directions, notices, charges, restrictions, conditions, agreements and other matters arising under any legislation affecting the Sites.

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SCHEDULE 7

DRAWDOWN PRICE

(this information is contained in the exempt part of the report)

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APPENDIX 1

PART 1 – LIST OF CATEGORY 1 PROPERTIES

PART 1A - LIST OF CATEGORY 1A PROPERTIES

(this information is contained in the exempt part of the report)

PART 1B - LIST OF CATEGORY 1B PROPERTIES

(this information is contained in the exempt part of the report)

PART 2 – LIST OF COUNCIL'S EXISTING OWNERSHIPS

(this information is contained in the exempt part of the report)

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APPENDIX 2

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APPENDIX 3¹
FORM OF COMPLETION NOTICE

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¹ To be completed.

APPENDIX 4

(this information is contained in the exempt part of the report)

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