

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

(2) [LENDLEASE]

(3) [HDV]

(4) [INVLP]

(5) [DEVLLP]

(6) [NOMINEE CO1]

(7) [NOMINEE CO2]

(8) [NOMINEE CO3]

(9) LENDLEASE CORPORATION LIMITED

MEMBERS' AGREEMENT

Relating to the Haringey Development Vehicle and its Group



Pinsent Masons

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DRAFT

BETWEEN:-

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HARINGEY** of Civic Centre, High Road, Wood Green, London NE2 8LE ("**Council**");
- (2) **[LENLEASE]**¹ a company registered in England, (Company Number [xxx]) whose registered office is at 20 Triton Street, Regent's Place, London NW1 3BF (the "**PSP**");
- (3) **[HARINGEY DEVELOPMENT VEHICLE]** a limited liability partnership registered in England, (LLP Number [xxx]) whose registered office is at [xxx] (the "**HDV**");
- (4) **[INVLP]**² a private fund limited partnership registered in England, (LP Number [xxx]) whose registered office is at 20 Triton Street, Regent's Place, London NW1 3BF ("**InvLP**") [acting by Nominee Co1];
- (5) **[DEVLLP]**³ a limited liability partnership registered in England, (LLP Number [xxx]) whose registered office is at 20 Triton Street, Regent's Place, London NW1 3BF ("**DevLLP**");
- (6) **[NOMINEE CO1]** a Company registered in England, (Company Number [xxx]) whose registered office is at 20 Triton Street, Regent's Place, London NW1 3BF ("**Nominee Co1**");
- (7) **[NOMINEE CO2]** a company registered in England (Company Number [xxx]) whose registered office is at 20 Triton Street, Regent's Place, London NW1 3BF ("**Nominee Co2**");
- (8) **[NOMINEE CO3]** a company registered in England (Company Number [xxx]) whose registered office is at 20 Triton Street, Regent's Place, London NW1 3BF ("**Nominee Co3**"); and
- (9) **LENLEASE CORPORATION LIMITED (ACN 000 226 228)** a company registered in New South Wales whose registered office is at Level 14, Tower Three, International Towers Sydney, Exchange Place, 300 Barangaroo Avenue, Barangaroo NSW 2000 ("**PSP Guarantor**"),

together the "**Parties**" and each a "**Party**".

RECITALS:-

- (A) The HDV was incorporated in England and Wales as a limited liability partnership on [DATE] 2017 under the Act with the details that are set out in Clause 1.3.3 of this Agreement. The Council and the PSP wish to participate as members of the HDV which shall (amongst other things) develop (or procure the development of) certain development sites in the Borough and own the developed sites for investment purposes or to sell or fund such properties and own and manage a portfolio of investment properties within the Borough.
- (B) In order to facilitate its activities, the HDV may (amongst other things) purchase, develop and sell (or procure the development and sale of) land, enter into leases with third parties and enter into income generating arrangements with third parties. InvLP and DevLLP were established as wholly owned subsidiaries of the HDV on [DATE] 2017 in order to deliver some of the HDV's activities. Nominee Co1 has been incorporated to act as the second member of InvLP. Nominee Co2 has been set up to act as second legal owner of properties held by InvLP to provide a valid receipt of purchase monies to any future purchaser of properties from InvLP. Nominee Co3 has been set up to act as the second member of DevLLP.

¹ Exact entity TBC – this will be a UK subsidiary of Lendlease Europe Holdings Limited

² full name to be agreed

³ full name to be agreed

- (C) The Parties have agreed to execute this Agreement to regulate the responsibilities and dealings between them in relation to the conduct of the business, management and affairs of the HDV, InvLP and DevLLP and its or their subsidiaries from time to time.

IT IS AGREED AS FOLLOWS:-

1. CONDITIONALITY, DEFINITIONS AND INTERPRETATION

- 1.1 This Agreement shall be interpreted in accordance with the provisions of Schedule 1.
- 1.2 This Agreement shall be conditional on:-
- 1.2.1 the resignation of [INSERT START-UP MEMBER]⁴ as a Member of the HDV;
 - 1.2.2 the admission of the Council as a new Member to the HDV;
 - 1.2.3 the adoption by Nominee Co1, Nominee Co2 and Nominee Co3 of new articles of association in a form agreed by and initialled by the Council and the PSP;
 - 1.2.4 the appointment by Nominee Co1, Nominee Co2 and Nominee Co3 of the following individuals as the only Directors of each such company:-
 - (a) [];
 - (b) [];
 - (c) [];
 - (d) (this information is contained in the exempt part of the report)
 - 1.2.5 the incorporation of InvLP and DevLLP; and
 - 1.2.6 the appointment of the first Council Nominees to the boards of HDV, InvLP and DevLLP.
- 1.3 The PSP warrants and undertakes to the Council that, immediately prior to the satisfaction of the conditions in Clause 1.2:-
- 1.3.1 HDV:-
 - (a) has not traded;
 - (b) has no assets (save for its shareholding in Nominee Co1, Nominee Co2 and Nominee Co3 and its interests in DevLLP and InvLP as more particularly set out in Clauses 1.4 to 1.6 (inclusive) below), contracts, employees, indebtedness, encumbrances or any other liabilities, except for those associated with the opening up of bank accounts for the HDV, InvLP and/or DevLLP (as applicable) and the costs of incorporation of HDV, Nominee Co1, Nominee Co2, Nominee Co3, InvLP and/or DevLLP, as applicable (including Companies House costs) whatsoever whether actual or contingent;
 - (c) has not declared any distribution;
 - (d) has not prepared any accounts; and
 - (e) has complied with all relevant requirements of the Act.
 - 1.3.2 save as directly set out in Clauses 1.4 to 1.6 (inclusive), HDV owns (either directly or indirectly) no shares or interests in any body corporate, partnership or venture;

⁴ LL entity TBC

1.3.3 the particulars of HDV are as set out in this Clause 1.3.3 and such particulars are true and accurate in all respects:-

Name:	[Haringey Development Vehicle] ⁵ LLP
Nature of HDV:	A limited liability partnership pursuant to the Act
Date of Incorporation:	[DATE]
Country of Incorporation:	England and Wales
Registered Number:	[INSERT]
Registered Office:	[INSERT]
Members:	PSP and [INSERT START-UP MEMBER] (both designated members)
Legal, economic and management proportions	PSP 50% [INSERT START-UP MEMBER] 50%

1.4 PSP warrants and undertakes to the Council that immediately prior to the satisfaction of the conditions in Clause 1.2 that:-

1.4.1 Nominee Co1:-

- (a) has not traded;
- (b) has no assets (save for its interest in InvLP as more particularly set out in Clause 1.5 contracts, employees, indebtedness, encumbrances or any other liabilities except for any costs of incorporation of Nominee Co1 (including Companies House costs) whatsoever whether actual or contingent);
- (c) has not declared any distribution;
- (d) has not prepared any accounts; and
- (e) has complied with the Companies Act 1985 and 2006;

1.4.2 the particulars of Nominee Co1 which are set out in this Clause 1.4.2 are true and accurate in all respects:-

Name:	[INSERT] Limited
Nature of Nominee:	A company limited by shares
Date of Incorporation:	[DATE]
Country of Incorporation:	England and Wales
Registered Number:	[INSERT]
Registered Office:	20 Triton Street, Regent's Place, London NW1 3BF
Sole shareholder	HDV

⁵ LL and Council to confirm name

Authorised Share Capital	100 ordinary shares of £1 each
Issued Share Capital	HDV: 1 ordinary share of £1
Directors:	[INSERT] and [INSERT]
Accounting Reference Date:	[31 March]

1.4.3 Nominee Co2:-

- (a) has not traded;
- (b) has no assets, contracts, employees, indebtedness, encumbrances or other liabilities except for any costs of incorporation of Nominee Co2 (including Companies House costs) whatsoever whether actual or contingent;
- (c) has not declared any distribution;
- (d) has not prepared any accounts; and
- (e) has complied with the Companies Act 1985 and 2006;

1.4.4 The particulars of Nominee Co2 which are set out in this Clause 1.4.4 are true and accurate in all respects:-

Name:	[INSERT] Limited
Nature of Nominee:	A company limited by shares
Date of Incorporation:	[DATE]
Country of Incorporation:	England and Wales
Registered Number:	[INSERT]
Registered Office:	20 Triton Street, Regent's Place, London NW1 3BF
Sole shareholder	HDV
Authorised Share Capital	100 ordinary shares of £1 each
Issued Share Capital	HDV: 1 ordinary share of £1
Directors:	[INSERT] and [INSERT]
Accounting Reference Date:	[31 March]

1.4.5 Nominee Co3:-

- (a) has not traded;
- (b) has no assets (save for its interest in DevLLP as more particularly set out in Clause 1.6 contracts, employees, indebtedness, encumbrances or other liabilities except for any costs of incorporation of Nominee Co3 (including Companies House costs) whatsoever whether actual or contingent);
- (c) has not declared any distribution;

- (d) has not prepared any accounts; and
- (e) has complied with the Companies Act 1985 and 2006;

1.4.6 The particulars of Nominee Co3 which are set out in this Clause 1.4.6 are true and accurate in all respects:-

Name:	[INSERT] Limited
Nature of Nominee:	A company limited by shares
Date of Incorporation:	[DATE]
Country of Incorporation:	England and Wales
Registered Number:	[INSERT]
Registered Office:	20 Triton Street, Regent's Place, London NW1 3BF
Sole shareholder	HDV
Authorised Share Capital	100 ordinary shares of £1 each
Issued Share Capital	HDV: 1 ordinary share of £1
Directors:	[INSERT] and [INSERT]
Accounting Reference Date:	[31 March]

1.5 HDV and Nominee Co1 together own the entire legal, beneficial and economic interests in InvLP, the particulars of which are set out in this Clause 1.5 and PSP, HDV and Nominee Co1 jointly and severally warrant and undertake to the Council that immediately prior to the satisfaction of the conditions in Clause 1.2 that:-

1.5.1 InvLP:-

- (a) has not traded;
- (b) has no assets, contracts, employees, indebtedness, encumbrances or other liabilities except for those associated with the opening up of any bank accounts for InvLP and the costs of incorporation of InvLP [(including Companies House costs)] whatsoever whether actual or contingent;
- (c) has not declared any distribution;
- (d) has not prepared any accounts; and
- (e) has complied with all relevant requirements of the Partnership Act;

1.5.2 the particulars of InvLP set out in this Clause 1.5.2 are true and accurate in all respects:-

Name:	[INSERT] LP
Nature of InvLP:	A limited partnership
Date of Incorporation:	[DATE]
Country of Incorporation:	England and Wales

Registered Office:	20 Triton Street, Regent's Place, London NW1 3BF
Partners:	HDV as limited partner and Nominee Co1 as general partner
Economic proportion	HDV 99.999 % Nominee Co1 0.001%
Management proportion	Nominee Co1 100%

1.6 HDV and Nominee Co3 together own the entire legal beneficial and economic interests in DevLLP the particulars of which are set out in this Clause 1.6 and PSP, HDV and Nominee Co3 jointly and severally warrant and undertake to the Council that immediately prior to the satisfaction of the conditions in Clause 1.2 that:-

1.6.1 DevLLP:-

- (a) has not traded;
- (b) has no assets, contracts, employees, indebtedness, encumbrances or other liabilities except for those associated with the opening up of any bank accounts for DevLLP and the costs of incorporation of DevLLP (including Companies House costs) whatsoever whether actual or contingent;
- (c) has not declared any distribution;
- (d) has not prepared any accounts; and
- (e) has complied with all relevant requirements of the Act;

1.6.2 the particulars of DevLLP set out in this Clause 1.6.2 are true and accurate in all respects:-

Name:	[INSERT] LLP
Nature of InvLP:	A limited liability partnership pursuant to the Act
Date of Incorporation:	[DATE]
Country of Incorporation:	England and Wales
Registered Number:	[INSERT]
Registered Office:	20 Triton Street, Regent's Place, London NW1 3BF
Members:	HDV and Nominee Co3 (both designated members)
Legal, economic and management proportions	HDV 99.999 % Nominee Co3 0.001%

2. COMPLETION

2.1 On the Effective Date:-

2.1.1 the relevant Parties thereto shall execute the following associated agreements and deeds which relate to the HDV, InvLP and DevLLP:-

- (a) Agreement for Sale;

- (b) Development Framework Agreement;
- (c) PSP Guarantees;
- (d) Development Management Agreement;
- (e) Asset Management Agreement;
- (f) Property Management Agreement (Investment Portfolio);
- (g) Property Management Agreements (Council owned land);
- (h) Contractor Framework Agreement;
- (i) Land Assembly Agreement;
- (j) LPA;
- (k) Admission Agreement;
- (l) Investment (Council) A Loan Note Instrument;
- (m) Investment (Council) A Loan Note Security Agreement;
- (n) Investment (PSP) A Loan Note Instrument;
- (o) Investment (PSP) A Loan Note Security Agreement;
- (p) Development (Council) A Loan Note Instrument;
- (q) Development (Council) A Loan Note Security Agreement;
- (r) Development (PSP) A Loan Note Instrument;
- (s) Development (PSP) A Loan Note Security Agreement;
- (t) HDV Intercreditor Deed;
- (u) DevLLP Subsidiary Intercreditor Deed(s);
- (v) Internal Loan Note Instrument(s);
- (w) Internal Loan Note Security Agreement(s);
- (x) Internal B Loan Note Instrument;
- (y) Internal B Loan Note Security Agreement;
- (z) Investment (Council) B Loan Note Instrument;
- (aa) Investment (Council) B Loan Note Security Agreement;
- (bb) Development (Council) C Loan Note Instrument(s);
- (cc) Development (Council) C Loan Note Security Agreement(s);
- (dd) Land Assembly (Council) D Loan Note Instrument(s);
- (ee) Land Assembly (Council) D Loan Note Security Agreement(s);

- (ff) Council Costs Security Agreement; and
 - (gg) any ancillary deeds or documents requiring execution by the Parties and connected to the foregoing documents.
- 2.1.2 the Council shall transfer the Investment Portfolio Properties to InvLP in accordance with the terms of the Agreement for Sale;
- 2.1.3 to reflect the transfer referred to in Clause 2.1.2, the relevant Parties shall comply with the obligations set out in Schedule 7 (Loans and Security) in relation to consideration;
- 2.1.4 in relation to the HDV:-
- (a) the HDV Board shall be formed by the HDV (or shall be deemed to have been formed by the HDV) in accordance with Clause 7;
 - (b) the Auditors and the Bank shall be appointed (or shall be deemed to have been appointed) by the HDV;
 - (c) the first Business Plans shall be adopted (or shall be deemed to have been adopted) by the HDV (as applicable);
 - (d) the Delegation Policy and the Procurement Policy shall be adopted (or shall be deemed to have been adopted) by the HDV Parties;
 - (e) the Council shall procure that the Council Nominees shall each deliver to the HDV a duly signed Letter of Appointment; and
 - (f) the PSP shall procure that the PSP Nominees shall each deliver to the HDV a duly signed Letter of Appointment;
- 2.1.5 in relation to InvLP:-
- (a) the InvLP Board shall be formed by InvLP (or shall be deemed to have been formed by InvLP) in accordance with Clause 7;
 - (b) the Auditors and the Bank shall be appointed (or shall be deemed to have been appointed) by InvLP;
 - (c) the first Investment Business Plan shall be adopted (or shall be deemed to have been adopted) by InvLP; and
 - (d) the Delegation Policy and the Procurement Policy (insofar as it relates to InvLP's business) shall be adopted (or shall be deemed to have been adopted) by InvLP;
- 2.1.6 in relation to DevLLP:-
- (a) the DevLLP Board shall be formed by DevLLP (or shall be deemed to have been formed by DevLLP) in accordance with Clause 7;
 - (b) the Auditors and the Bank shall be appointed (or shall be deemed to have been appointed) by DevLLP;
 - (c) the first Development Business Plans shall be adopted (or shall be deemed to have been adopted) by DevLLP; and
 - (d) the Delegation Policy and the Procurement Policy (in so far as it relates to DevLLP's business) shall be adopted (or shall be deemed to have been adopted) by DevLLP;

- 2.1.7 in relation to each of Nominee Co1, Nominee Co2 and Nominee Co3:-
- (a) the Directors shall be appointed in accordance with Clause 7; and
 - (b) the Auditors and the Bank shall be appointed;
- 2.1.8 the Council and PSP shall initial each of the following documents as being in the Agreed Form:-
- (a) the HDV Business Plan;
 - (b) the Investment Business Plan;
 - (c) the Development Business Plans for the following Category 1 Properties:
 - (i) Wood Green, being a Category 1A Property; and
 - (ii) Northumberland Park and Cranwood, both currently being Category 1B Properties;
 - (d) the [Standard Form Construction Documents;]
 - (e) a DevLLP Subsidiary Intercreditor Deed;
 - (f) an Internal Loan Note Instrument;
 - (g) an Internal Loan Note Security Agreement;
 - (h) a Development (Council) C Loan Note Instrument;
 - (i) a Development (Council) C Loan Note Security Agreement;
 - (j) a Land Assembly (Council) D Loan Note Instrument; and
 - (k) a Land Assembly (Council) D Loan Note Security Agreement.

3. THE PARTNERSHIP AND BUSINESS OF THE HDV AND EACH HDV PARTY

- 3.1 The substantive Business of the HDV (and the business of each HDV Party) shall for the duration of this Agreement be carried on and undertaken from a location within the Borough.
- 3.2 The name of the HDV shall be "[Haringey Development Vehicle LLP]" or such other name as may be agreed between the Members.
- 3.3 The Council and the PSP shall be Members who are "designated members" of the HDV for the purposes of the Act and shall comply with all obligations which are required of them under the Act. The designated members of the HDV shall not be entitled to any remuneration or reimbursement in connection with their status as designated members. The Members shall be required to maintain an office for the HDV (and the HDV Parties) to be located within the Borough.
- 3.4 The Council and the PSP hereby delegate to their respective Nominees from time to time the responsibility for delivering any document on behalf of the HDV which is required to be delivered to the Registrar of Companies in England and Wales in connection with the HDV.
- 3.5 The HDV and Nominee Co3 shall be the "designated members" of DevLLP [(and any other HDV Party that is a limited liability partnership from time to time from the date of its incorporation)] for the purposes of the Act and shall comply with all obligations which are required of them under the Act. The designated members of DevLLP (and any other HDV Party that is a limited liability partnership from the date of its incorporation) shall not be entitled to any remuneration or reimbursement in connection with their status as designated members of such entities.

3.6 The HDV shall be the limited partner of InvLP and Nominee Co1 shall be the general partner for the purposes of the Partnership Act and each Partner shall comply with all obligations which are required of it under the Partnership Act. Neither Partner shall be entitled to any remuneration or reimbursement in connection with their status as Partners of InvLP.

3.7 Nominee Co2 is a wholly owned subsidiary of the HDV and shall hold property on behalf of InvLP.

3.8 The HDV, Nominee Co1, Nominee Co2 and Nominee Co3 hereby delegate to the Nominees of the HDV Board (and to the Nominees on the board of any other HDV Party that is a limited liability partnership from the date of its incorporation) from time to time the responsibility for delivering any document on behalf of such entity which is required to be delivered to the Registrar of Companies in England and Wales in connection with such entity.

4. **OBJECTIVES**

4.1 The following shall be the objectives of the HDV ("**HDV Objectives**"):-

4.1.1 to deliver growth through new and improved housing; town centre development; and enhanced use of the Council's property portfolio;

4.1.2 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;

4.1.3 in partnership with the private sector to catalyse delivery of financially challenging schemes;

4.1.4 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;

4.1.5 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;

4.1.6 to incorporate land belonging to other stakeholders, both public and private sector, into development; and

4.1.7 to achieve a commercially acceptable return.

4.2 The following shall be the objectives of InvLP ("**InvLP Objectives**"):-

4.2.1 to optimise financial returns for the benefit of the HDV;

4.2.2 to increase the capital value of the Investment Portfolio held by InvLP;

4.2.3 to maintain long term revenue streams;

4.2.4 to use the Investment Portfolio to contribute to the wider socio-economic objectives of the HDV and the Council, and to the statutory functions of the Council where appropriate;

4.2.5 to deliver a high quality asset management service in relation to the Investment Portfolio including acquisition and disposal as appropriate; and

4.2.6 to contribute to the financial operation and viability of the HDV and HDV development schemes.

4.3 The HDV Objectives shall also be the objectives of DevLLP ("**DevLLP Objectives**"), insofar as they relate to the Development Site(s) (or part thereof).

4.4 The Parties hereby agree that:-

- 4.4.1 the Council's intention in its original procurement process for the procurement of a private sector partner was to structure the HDV so that further property in addition to Category 1 Properties may be included in the future (subject to prior agreement of the Members), from either (or both) of the Category 2 Properties and the Category 3 Properties and in such circumstances the provisions of Schedule 3 (Future Opportunities) of the Land Assembly Agreement will apply;
- 4.4.2 the HDV and the HDV Parties may seek additional investment and development opportunities proposed by the PSP in accordance with Clause 16.1; and
- 4.4.3 without prejudice to Clauses 4.4.1 and 4.4.2, the HDV is being established as a long term development and investment vehicle and the arrangements in relation to the contribution of land and finance set out in this Agreement may differ from time to time depending on individual circumstances, including (but not limited to) the funding of part or all of any investments or developments by either (or a combination of both) of the Members or third parties.

5. CAPITAL, FINANCE AND SECURITY

- 5.1 Within 15 Working Days after the date of this Agreement, each of the Members shall provide to the HDV, in cash, the sum of £1 (one pound) by way of its Capital Contribution and the HDV shall credit such amounts (to the extent received by a Member) against the relevant Member's Capital Account.
- 5.2 Neither Member shall be required or entitled to provide any additional Capital Contribution to the HDV in addition to the amount set out in Clause 5.1, save in circumstances where the Members unanimously agree otherwise. Any agreed additional Capital Contribution shall be made by both Members simultaneously in the same amount, and shall be provided on the same terms.
- 5.3 No interest shall be payable on a Member's Capital Contribution.
- 5.4 No Member shall have the right to the return of its respective Capital Contribution save as provided under the terms of Clause 28.
- 5.5 Each Member's liability as a member of the HDV shall be limited to the aggregate amount of that Member's Capital Contribution provided subject to and in accordance with this Clause 5.
- 5.6 Save as expressly provided otherwise in this Agreement, no Member shall be obliged to provide any additional loan, or provide any other funding, including by way of capital contribution, to the HDV or any HDV Party except with their express prior written consent.
- 5.7 The Business Plans shall, amongst other matters, identify the envisaged funding requirements of the HDV, DevLLP, InvLP and any other HDV Subsidiary. It is intended that the funding requirements of the HDV shall be met as detailed in Schedule 7.

6. LOAN NOTES, LOAN COMMITMENTS

- 6.1 The Parties agree to provide the loan commitments and loan notes in the manner and at the time(s) as specified in Schedule 7.

7. CONSTITUTION OF THE HDV BOARD

7.1 Constitution and authority of the HDV Board

- 7.1.1 The HDV Board is hereby constituted by the HDV (acting by its Members) for the purposes of carrying out the Business of the HDV. The Members and the HDV agree to maintain the HDV Board for the duration of this Agreement. The Members and the HDV further agree that the HDV Board shall operate in accordance with this Agreement, the Business Plans, the Delegation Policy and the Procurement Policy.

- 7.1.2 Save to the extent this Agreement expressly provides otherwise, the management and operations of the HDV shall be vested in the HDV Board.
- 7.1.3 Subject to Clause 7.1.4 and Clause 7.1.5, the decision making of the HDV shall be governed by the Delegation Policy, provided that the delegation of decisions by the HDV Board; any appointed sub-committees of the HDV Board; and/or to certain individuals (as more particularly identified in the Delegation Policy), and its or their authorisation to make decisions on behalf of the HDV Board (and therefore on behalf of the HDV) shall be at the absolute discretion of the HDV Board from time to time.
- 7.1.4 Where there is any ambiguity, uncertainty or inconsistency in relation to how any decision of the HDV is to be properly made (in relation to whether it should properly be made by the Members, the HDV Board or otherwise), the matter shall first be referred to the HDV Board for determination, provided that at any time before the HDV Board makes the relevant determination, any Nominee shall be entitled, by notice in writing to the HDV and the other Nominees, to refer such matter to the Members for determination in accordance with Clause 12, in which case the matter shall be determined by the Members in place of the HDV Board.
- 7.1.5 Where there is any ambiguity, uncertainty or inconsistency in relation to the Delegation Policy and the main body of this Agreement, the terms of the main body of this Agreement shall prevail.

7.2 Nominees

- 7.2.1 The Members shall each be entitled to elect and appoint up to three Nominees to the HDV Board provided that there shall always be at least two and no more than three Nominees on the HDV Board appointed by each Member.
- 7.2.2 The first Nominees shall be:-
- (a) Council Nominees: []
[]
[]
- (b) PSP Nominees: (this information is contained in the exempt part of the report)
- 7.2.3 Subject to Clauses 7.2.1, 7.2.4, 7.2.5 and 10 each Member is entitled to:-
- (a) remove and replace the Nominees appointed by it and appoint further Nominees at any time; and
- (b) appoint persons as alternate nominees to the HDV Board to act as a substitute for any absent Nominee appointed by it (an "**Alternate Nominee**") to do all such things as the absent Nominee would be entitled to do in their capacity as Nominee and to remove or replace any Alternate Nominee appointed by it and, unless otherwise expressly stated or unless the context requires otherwise, subsequent references in this Agreement to a Nominee shall be interpreted as also referring to any Alternate Nominee.
- 7.2.4 No appointment of a Nominee shall be valid unless that person has accepted and signed a Letter of Appointment or such other terms as the HDV Board may agree from time to time.
- 7.2.5 Any appointment, replacement or removal by a Member of a Nominee appointed or intended to be appointed by that Member shall be effected by notice in writing to the HDV signed by or on behalf of the relevant Member and, subject to any contrary intention

expressed in the notice, shall take effect with effect from that date and time that the notice is delivered to the HDV.

- 7.2.6 No Nominee shall receive any remuneration or expenses reimbursement from the HDV for its services as a Nominee.
- 7.2.7 Unless otherwise determined by the HDV Board, the HDV Board shall have a Chairman and such position shall be occupied either by a PSP Nominee or by a Council Nominee. The first Chairman shall be appointed at the first meeting of the HDV Board and a new Chairman shall be appointed each year provided that occupation of the position shall alternate between the PSP Nominees and the Council Nominees (such that if a PSP Nominee is appointed as the Chairman at the first meeting of the HDV Board, a Council Nominee shall be appointed as the Chairman one year later, and vice versa). The Chairman shall not have a second or casting vote. The Parties hereby agree that an independent Chairman may be appointed by way of a unanimous decision of the HDV Board and, in the event that an independent Chairman is appointed, the provisions of this Clause 7.2.7 shall cease to apply for such time as an independent Chairman is so appointed save that it is acknowledged that the independent Chairman shall not be entitled to vote.
- 7.2.8 The Parties hereby agree that the Nominees shall have a duty of care to act in good faith towards the HDV and to act in the best interests of the HDV and the Business when acting in their capacity as a Nominee.
- 7.2.9 The Parties hereby agree that the Nominees in acting on behalf of HDV and the directors or nominees (as applicable) in acting on behalf of InvLP and DevLLP shall act in the best interests of the relevant HDV Party on whose behalf they are acting and without prejudice to the provisions of Clause 9 shall avoid conflicts of interest.

7.3 HDV Parties

- 7.3.1 Save to the extent expressly identified in Clause 18.8 as relating to DevLLP, the provisions of this Clause 7 shall apply *mutatis mutandis* to each HDV Party, provided that references in this Clause 7 to the HDV shall be construed as being references to such HDV Party; references to HDV Board shall be construed as being references to a board of nominees of such HDV Party; and references to Nominees shall be construed as being references to the nominees on the board of such HDV Party (or, where applicable) as being references to directors.
- 7.3.2 The Parties shall procure that the Council Nominees and the PSP Nominees on the HDV Board from time to time shall also be nominees or directors (as applicable) on the board of each HDV Party.
- 7.3.3 For the avoidance of doubt, any reference to a Member in this Clause 7 (insofar as it applies to an HDV Party) shall continue to be a reference to such Member, and shall not be construed as a reference to the members of such HDV Party.
- 7.3.4 In relation to Nominee Co1, Nominee Co2 and Nominee Co3, where there is any inconsistency or conflict between the terms of this Clause 7 and the articles of association of Nominee Co1, Nominee Co2 and Nominee Co3 respectively, this Clause 7 shall take precedence.

8. HDV BOARD MEETINGS AND RESOLUTIONS

- 8.1 At the first HDV Board Meeting and annually thereafter the Nominees shall agree a programme for Quarterly HDV Board Meetings which shall be supplemented with such additional HDV Board Meetings as may be required to deal appropriately with the Business of the HDV or any HDV Party as applicable.
- 8.2 At least 10 Working Days' prior written notice of any proposed meeting of the HDV Board shall be given to each of the Nominees provided that a shorter period of notice may be given with the

written approval of at least one PSP Nominee and at least one Council Nominee. Unless otherwise agreed by all of the Nominees, each such notice shall specify the date, time and place of the meeting which shall be in the Borough (save in those circumstances set out in Clause 8.3.2) and a meeting agenda identifying the matters to be discussed at the meeting and shall be accompanied by copies of any materials to be discussed at the meeting. Any matter to be decided at an HDV Board Meeting not appearing in the agenda shall not be decided upon unless agreed by all of the Nominees entitled to attend and vote at the meeting.

8.3 Unless otherwise agreed by the HDV Board:-

- 8.3.1 meetings of the Nominees shall be held not less than Quarterly on such dates as they may agree;
- 8.3.2 a telephone conference call or video conference or a combination of the same, at which all participants are able to speak to and hear each of the other participants shall be valid as an HDV Board Meeting provided that at all times at that telephone or video conference (or combination as appropriate) a quorum of the Nominees is able to so participate and provided that such medium of communication for the HDV Board Meeting has been approved by one Council Nominee and one PSP Nominee;
- 8.3.3 a resolution (which may be in counterparts) in writing (which includes email or other electronic format) signed by two Council Nominees and two PSP Nominees (which, in respect of electronic resolutions shall be by way of electronic signature) entitled to receive notice of and vote at an HDV Board Meeting shall be as valid as if it had been passed at an HDV Board Meeting duly convened and held in person; and
- 8.3.4 any Nominee is entitled to convene a meeting of the Nominees called in accordance with Clauses 8.1 and 8.2.

8.4 Subject to Clauses 9 and 26:-

- 8.4.1 the quorum for any meeting of the HDV Board shall be at least two Council Nominees and at least two PSP Nominees. If there is no quorum within 30 minutes following the start time of the meeting or if there ceases to be a quorum at any time when Business is to be transacted during the meeting, the meeting shall be adjourned for 5 Working Days or such other period as the Nominees may unanimously decide;
- 8.4.2 at any quorate meeting of the HDV Board, the Council Nominees shall have one collective vote and the PSP Nominees shall have one collective vote and where the Council Nominees and/or the PSP Nominees (as applicable) cannot agree how to exercise their collective vote, the Council Nominees and/or the PSP Nominees (as applicable) shall be deemed to have voted against the resolution; and
- 8.4.3 resolutions of the HDV Board shall be passed only by a unanimous vote in favour of the resolution.

8.5 Except as otherwise set out in the Delegation Policy or otherwise agreed by the Members or the HDV Board pursuant to a resolution of the Members or the HDV Board, all documents, agreements and deeds to be executed by the HDV must be signed by a duly authorised signatory of each Member.

8.6 Unless otherwise agreed by all the Nominees, draft minutes of meetings of the HDV Board shall be prepared and sent to each Nominee for approval as soon as practicable after each meeting. Responsibility for the preparation of such draft minutes shall be agreed between the Nominees.

8.7 **HDV Parties**

- 8.7.1 Save to the extent expressly identified in Clause 18.8 as relating to DevLLP, the provisions of this Clause 8 shall apply *mutatis mutandis* to each HDV Party, provided that references in this Clause 8 to the HDV shall be construed as being references to such HDV Party; references to HDV Board shall be construed as being references to a board

of nominees or directors (as applicable) of such HDV Party; and references to Nominees shall be construed as being references to nominees or directors (as applicable) on the board of such HDV Party save that any documents, agreements and deeds to be executed by an HDV Party must be duly signed by a member of the relevant HDV Party (as authorised by the relevant HDV Party Board).

8.7.2 For the avoidance of doubt, any reference to a Member in this Clause 8 (insofar as it applies to an HDV Party) shall continue to be a reference to such Member, and shall not be construed as a reference to the members of such HDV Party.

8.7.3 In relation to Nominee Co1, Nominee Co2 and Nominee Co3, where there is any inconsistency or conflict between the terms of this Clause 8 and the articles of association of Nominee Co1, Nominee Co2 and Nominee Co3 respectively, this Clause 8 shall take precedence.

9. **NOMINEE CONFLICT**

9.1 Where there is a Council Conflict Matter to be considered by the HDV Board, the Council Nominees shall be entitled to attend and speak at the HDV Board Meeting considering the Council Conflict Matter but shall not be entitled to count in the quorum or vote on the Council Conflict Matter (whether the vote is taken at an HDV Board Meeting or otherwise). Where a vote is being taken in these circumstances at a meeting of the HDV Board, the Council Nominees in attendance shall absent themselves from the meeting to enable the vote to take place in their absence. In such circumstances, Clause 8.4 shall apply save that, in respect of the Council Conflict Matter, a minimum of two PSP Nominees shall constitute a quorum, the Council Nominees shall have no vote and the PSP Nominees shall have one collective vote and the resolution shall be passed only where the collective vote of the PSP Nominees is exercised in favour of the resolution.

9.2 Where there is a PSP Conflict Matter to be considered by the HDV Board, the PSP Nominees shall be entitled to attend and speak at the HDV Board Meeting considering the PSP Conflict Matter but shall not be entitled to count in the quorum or vote on the PSP Conflict Matter (whether the vote is taken at an HDV Board Meeting or otherwise). Where a vote is being taken in these circumstances at a meeting of the HDV Board, the PSP Nominees in attendance shall absent themselves from the meeting to enable the vote to take place in their absence. In such circumstances, Clause 8.4 shall apply save that, in respect of the PSP Conflict Matter a minimum of two Council Nominees shall constitute a quorum, the PSP Nominees shall have no vote and the Council Nominees shall have one collective vote and the resolution shall be passed only where the collective vote of the Council Nominees is exercised in favour of the resolution.

9.3 Where there is a conflict between the InvLP Board and the DevLLP Board the matter shall be referred to an Expert who shall be instructed to have regard to the following matters in making his decision:-

9.3.1 the provisions of the Project Agreements; and

9.3.2 the Objectives.

9.4 **HDV Parties**

9.4.1 The provisions of this Clause 9 shall apply *mutatis mutandis* to each HDV Party, provided that references in this Clause 9 to the HDV shall be construed as being references to such HDV Party; references to HDV Board shall be construed as being references to a board of nominees or directors (as applicable) of such HDV Party; and references to Nominees shall be construed as being references to nominees or directors (as applicable) on the board of such HDV Party.

9.4.2 In relation to Nominee Co1, Nominee Co2 and Nominee Co3, where there is any inconsistency or conflict between the terms of this Clause 9 and the articles of association of Nominee Co1, Nominee Co2 and Nominee Co3 respectively, this Clause 9 shall take precedence.

10. REMOVAL OF A NOMINEE

10.1 If a Member removes (or is deemed to have removed) a Nominee appointed by it then such Member shall procure that such Nominee vacates office without any claim to the HDV for loss of office or otherwise relating to his removal and the removing Member shall indemnify and hold harmless, to the fullest extent permitted by law, the HDV against any loss, cost, damage, expense or liability suffered or incurred:-

10.1.1 by reason of any claim by the vacating Nominee for wrongful or unfair dismissal or redundancy; and

10.1.2 in connection with it having been or being a party or having been or being threatened to be made party to any threatened, pending or completed action, suit or proceedings, whether civil, criminal, administrative or investigative by reason of any of the matters referred to in Clause 10.1.1 above,

provided always that the HDV shall not be so indemnified with respect to any matter resulting from its wilful default, negligence or fraud.

10.2 The indemnities contained in this Clause 10 shall continue notwithstanding the termination (in whole or in part) of this Agreement and/or the winding up of the HDV (for any reason whatsoever).

10.3 Notwithstanding any other term of this Agreement, a Member shall immediately remove a Nominee appointed by it (by written notice to the HDV and the other Member) if:-

10.3.1 the appointing Member ceases to be a member of the HDV (in which circumstances, the outgoing Member shall remove all Nominees appointed by it and the outgoing Member shall not be entitled to replace any Nominee);

10.3.2 the Nominee exercises his voting rights in contravention of this Agreement (in which circumstances the Members shall co-operate with each other as appropriate to rectify any adverse consequences of that Nominee's actions or omissions);

10.3.3 the Nominee becomes bankrupt or makes any arrangement or composition with his creditors generally (or any step is taken towards the same);

10.3.4 the Nominee is, or may be, suffering from mental disorder and either:-

(a) is admitted to hospital under an application for admission for treatment under the Mental Health Act 1983; or

(b) an order is made (by a court having jurisdiction) for the Nominee's detention or for the appointment of a receiver or other person to exercise powers with respect to the Nominee's property or affairs due to the Nominee's mental disorder;

10.3.5 the Nominee resigns from office of Nominee by providing 20 Working Days' written notice to the HDV;

10.3.6 the Nominee is convicted of any offence of fraud or dishonesty;

10.3.7 in relation to a Council Nominee, he ceases to be employed or engaged by the Council or ceases to be an elected member of the Council (as the case may be); or

10.3.8 in relation to a PSP Nominee, he ceases to be employed or engaged by the PSP or any member of the PSP Group,

and the relevant Member shall be deemed to have removed a Nominee immediately upon the occurrence of the relevant event listed above.

10.4 HDV Parties

- 10.4.1 The provisions of this Clause 10 shall apply *mutatis mutandis* to each HDV Party, provided that references in this Clause 10 to the HDV shall be construed as being references to such HDV Party; references to HDV Board shall be construed as being references to a board of nominees or directors (as applicable) of such HDV Party; and references to Nominees shall be construed as being references to nominees or directors (as applicable) on the board of such HDV Party.
- 10.4.2 For the avoidance of doubt, any reference to a Member in this Clause 10 (insofar as it applies to an HDV Party) shall continue to be a reference to such Member, and shall not be construed as a reference to the members of such HDV Party.
- 10.4.3 In relation to Nominee Co1, Nominee Co2 and Nominee Co3, any reference to a Nominee in this Clause shall be construed as a reference to a Director, and where there is any inconsistency or conflict between the terms of this Clause 10 and the articles of association of Nominee Co1, Nominee Co2 and Nominee Co3 respectively, this Clause 10 shall take precedence.

11. MEMBERS

11.1 Subject to Clauses 22, 23 and 24:-

- 11.1.1 a person shall only be admitted to the HDV as a new Member if his admission is unanimously approved in writing by the Members and such person executes a Deed of Adherence; and
- 11.1.2 a Member may only resign or withdraw from the HDV (and/or otherwise cease to be a member of the HDV) with the prior written agreement of the remaining Members.

11.2 HDV Parties

- 11.2.1 A person shall only be admitted to an HDV Party as a new Member thereof if his admission is unanimously approved in writing by the Members and such person executes a Deed of Adherence.
- 11.2.2 A Member of an HDV Party may only resign or withdraw from the HDV Party (and/or otherwise cease to be a member thereof) with the prior written agreement of the Members.

12. MEMBERS' MEETINGS AND RESOLUTIONS

- 12.1 Subject to the matters reserved to Members pursuant to the Delegation Policy, and save to the extent otherwise expressly provided in this Agreement, the Members have vested the management and operations of the HDV in the HDV Board.
- 12.2 Unless otherwise agreed by the Members acting unanimously, at the first Members' Meeting and annually thereafter the Members shall agree a programme for regular Members' Meetings which shall be supplemented with such additional Members' Meetings as may be required to deal appropriately with the Business of the HDV or any HDV Party as applicable.
- 12.3 At the regular Members Meetings and additional Members Meetings (as applicable) the affairs and direction of the HDV shall be discussed and an account of the HDV's Business and progress against the Business Plans shall be given to the Members.
- 12.4 At least 10 Working Days' prior written notice of any proposed meeting of the Members (in relation to the HDV) shall be given to each Member provided that a shorter period of notice may be given with the written approval of each Member. Unless otherwise agreed by each Member, each such notice shall specify the date, time and place of the meeting which shall be in the Borough (save in the circumstances set out in Clause 12.6) and a meeting agenda identifying the matters to be discussed and shall be accompanied by copies of any materials to be discussed at the meeting. Any matter to be decided at the Members' Meeting not appearing in the agenda shall not be decided upon unless each of the Members agrees.

- 12.5 Subject to Clauses 13 and 26:-
- 12.5.1 the quorum for any meeting of the Members shall be both of the Members and there shall be no quorum unless both of the Members are represented by a duly authorised person;
 - 12.5.2 no business shall be transacted at any Members' Meeting unless there is a quorum; and
 - 12.5.3 resolutions of the Members of the HDV shall only be passed where each Member votes in favour of the resolution.
- 12.6 Unless otherwise agreed unanimously by the Members:-
- 12.6.1 a telephone conference call or video conference or a combination of the same, at which all participants are able to speak to and hear each of the other participants and at which for all times a quorum of the Members is able to so participate, shall be valid as a Members' Meeting provided that such medium of communication for the Members' Meeting has been approved unanimously by both Members; and
 - 12.6.2 a resolution in writing (which includes e-mail or other electronic format and which may be in counterparts) signed by each Member (which in respect of electronic resolutions shall be by way of electronic signature) shall be as valid as if it had been passed at a Members' Meeting duly convened and held.
- 12.7 **HDV Parties**
- 12.7.1 Subject to Clause 12.7.2, the provisions of this Clause 12 shall apply *mutatis mutandis* to each HDV Party, provided that references in this Clause 12 to the HDV shall be construed as being references to such HDV Party, references to HDV Board shall be construed as being references to the board of such HDV Party; and references to the HDV Business shall be construed as being references to the business of such HDV Party.
 - 12.7.2 For the avoidance of doubt, any reference to a Member in this Clause 12 (insofar as it applies to an HDV Party) shall continue to be a reference to such Member, and shall not be construed as a reference to the members of such HDV Party. As set out in the Delegation Policy, decisions of Members are taken by the Members regardless of whether the relevant decision is to be made by or on behalf of HDV, InvLP, a DevLLP or any other HDV Party.
 - 12.7.3 In relation to Nominee Co1, Nominee Co2 and Nominee Co3, where there is any inconsistency or conflict between the terms of this Clause 12 and the articles of association of Nominee Co1, Nominee Co2 and Nominee Co3 respectively, this Clause 12 shall take precedence.
13. **MEMBER CONFLICTS**
- 13.1 Where there is a Council Conflict Matter in relation to the HDV to be considered by the Members, the Council (represented by a duly authorised person) shall be entitled to attend and speak at a Members' Meeting at which the Council Conflict Matter is considered but shall not be entitled to count in the quorum for or vote on the Council Conflict Matter (whether the vote is taken at the Members' Meeting or otherwise). Where a vote is being taken in these circumstances at a meeting of the Members, the Council (represented by a duly authorised person) shall absent itself from the meeting to enable the vote to take place in its absence. In such circumstances the provisions of Clause 12.5 shall apply save that the PSP (represented by a duly authorised person) shall constitute a quorum and shall be entitled to make any decision in relation to the HDV, acting in its sole discretion, in respect of the Council Conflict Matter.
 - 13.2 Where there is a PSP Conflict Matter in relation to the HDV to be considered by the Members, the PSP (represented by a duly authorised person) shall be entitled to attend and speak at a Members' Meeting at which the PSP Conflict Matter is considered but shall not be entitled to count in the quorum for or vote on the PSP Conflict Matter (whether the vote is taken at the Members' Meeting or otherwise). Where a vote is being taken in these circumstances at a meeting of the Members,

the PSP (represented by a duly authorised person) shall absent itself from the meeting to enable the vote to take place in its absence. In such circumstances the provisions of Clause 12.5 shall apply save that the Council (represented by a duly authorised person) shall constitute a quorum and shall be entitled to make any decision in relation to the HDV, acting in its sole discretion, in respect of the PSP Conflict Matter.

13.3 HDV Parties

13.3.1 The provisions of this Clause 13 shall apply *mutatis mutandis* to each HDV Party, provided that references in this Clause 13 to the HDV shall be construed as being references to such HDV Party;

13.3.2 For the avoidance of doubt, any reference to a Member in this Clause 13 (insofar as it applies to an HDV Party) shall continue to be a reference to such Member, and shall not be construed as a reference to the members of such HDV Party.

13.3.3 In relation Nominee Co1, Nominee Co2 and Nominee Co3, where there is any inconsistency or conflict between the terms of this Clause 13 and the articles of association of Nominee Co1, Nominee Co2 and Nominee Co3 respectively, this Clause 13 shall take precedence.

14. MANAGEMENT OF THE HDV'S AFFAIRS

14.1 Business of the HDV

The Members and the HDV shall procure that the business of the HDV shall consist exclusively of the Business.

14.2 Member Obligations

14.2.1 Each Member undertakes to the other that, in its capacity as a Member, it shall use its reasonable endeavours (insofar as it is lawfully able by the exercise of its rights and powers) to procure that:-

- (a) it at all times carries out its duties as a Member observing the highest standards of efficiency, economy and integrity;
- (b) it acts in a manner that is consistent with and exercises all voting rights and other powers of control available to it in relation to the HDV and each HDV Party so as to procure (insofar as it is lawfully able by the exercise of such rights and powers) that the HDV and each HDV Party complies with the provisions of the Project Agreements and any other agreements to which it is a party;
- (c) it, the HDV and each HDV Party complies at all times with the Procurement Policy, the Delegation Policy and the Business Plans in all material respects (except to the extent that any of the foregoing contradicts the main body of this Agreement);
- (d) it, the HDV and each HDV Party acts in a manner consistent with achievement of its Objectives (as applicable to such HDV Party, in accordance with the terms of this Agreement);
- (e) it notifies the HDV and each HDV Party immediately on becoming aware of any matter which it considers (acting reasonably) is likely to materially affect the HDV and relevant HDV Party (where applicable) and/or the HDV's and relevant HDV Party's (where applicable) business or any arrangement or proposed arrangement between the HDV (or any HDV Party) and any of the Members;

- (f) each Nominee it appoints will, at all times, act in the best interests of the HDV and the Business when acting in its capacity as Nominee and will, at all times, comply with the terms of this Agreement;
- (g) each nominee or director (as applicable) it appoints to the board of an HDV Party will, at all times, act in the best interests of such HDV Party and its business when acting in its capacity as a nominee or director (as applicable) and will, at all times, comply with the terms of this Agreement;
- (h) it acts in a manner that shall promote the Business of and acts at all times in good faith towards, and co-operates with, the HDV, each HDV Party and the other Members and enter into such agreements in their own names as are referred in the Business Plans;
- (i) it does not enter into any transaction at an undervalue with or on behalf of the HDV or an HDV Party without the approval of the HDV or such HDV Party (as applicable) (and such approval shall be deemed given where this is in accordance with the Delegation Policy);
- (j) the HDV and each HDV Party maintains true and accurate accounts of all transactions in accordance with International Financial Reporting Standards ("IFRS"), the Act and (to the extent that the same applies to the relevant party) Part 15 of the Companies Act and makes available both draft and final copies of such accounts to Members on reasonable request;
- (k) the HDV and each HDV Party maintains adequate insurance (with a reputable insurer) against risks as determined by the HDV (in accordance with the Delegation Policy) as appropriate including third party liability insurance and otherwise in accordance with Clause 45;
- (l) the HDV and each HDV Party opens the accounts specified in Schedule 5 in its name with the Bank and that any transactions carried out by the HDV or such HDV Party (as applicable) are carried out through one of these accounts in accordance with the provisions of Schedule 5;
- (m) the HDV and each HDV Party shall take appropriate action (including, without limitation, pursuing legal proceedings) in the event of negligence or material misconduct on the part of any of its contractors, advisors or agents or any other third party;
- (n) the HDV shall adopt the Business Plans and update the HDV Business Plan and the Social and Economic Business Plan at least annually, subject always to Clause 18.2.1;
- (o) the HDV and DevLLP shall adopt the first Development Business Plan and subsequent Development Business Plan(s) and the DevLLP shall update the Development Business Plan(s) at least every six months and in accordance with this Agreement, subject always to Clause 18.3.1;
- (p) the HDV and InvLP shall adopt the first Investment Business Plan and InvLP shall update the Investment Business Plan at least every six months and in accordance with this Agreement, subject always to Clause 18.4.1;
- (q) the HDV and each HDV Party complies with the Act (or Partnership Act as applicable), the Regulations and (to the extent that the same applies to the HDV) the Companies Act and all other applicable laws, regulations and requirements of any competent jurisdiction or authority affecting them, their businesses and the content of the Business Plans;

- (r) any person employed, engaged or contracted by the HDV and each HDV Party complies with the terms of their engagement and (to the extent relevant) the Business Plans and the Delegation Policy;
- (s) the HDV and each HDV Party adopts the Procurement Policy in accordance with Clause 1.1 and procures works, equipment, goods and services in accordance with the principles of value for money and best practice;
- (t) the HDV and each HDV Party shall document its decision-making process and maintain appropriate audit trails for decisions made; and
- (u) the HDV and (to the extent applicable) each HDV Party complies with the HDV Policies in all material respects.

14.3 HDV Obligations

- 14.3.1 The HDV shall comply with the Act, the Regulations and (to the extent that the same applies to the HDV) the Companies Act and all other applicable laws, regulations and requirements of any competent jurisdiction or authority affecting the HDV, its Business and the content of the Business Plans.
- 14.3.2 Without prejudice to the provisions of Clause 14.2, the HDV undertakes to the other Parties to this Agreement to use all reasonable endeavours to enforce the terms of the Project Agreements to which the HDV is a party from time to time, save where the HDV Board resolves that to enforce the terms of a Project Agreement is not in the best interests of the HDV.
- 14.3.3 No payment shall be made by the HDV and no cheque or payment instruction of the HDV shall be signed other than in accordance with the mandates (general or specific) authorised by the HDV Board from time to time and in accordance with the Delegation Policy.
- 14.3.4 The HDV shall conduct its Business and affairs in a proper and efficient manner for its own benefit:-
 - (a) in accordance with the Delegation Policy (except to the extent that the same contradicts the terms of the main body of this Agreement);
 - (b) in accordance with the Procurement Policy (except to the extent that the same contradicts the terms of the main body of this Agreement);
 - (c) in accordance with the HDV Policies;
 - (d) in accordance with the PSP Global Minimum Requirements;
 - (e) in a manner consistent with its Objectives; and
 - (f) otherwise in accordance with the terms of this Agreement.
- 14.3.5 The HDV shall at all times exercise its powers and shall use best endeavours to comply with the Business Plans (for the avoidance of doubt including any outlined or detailed planning obligations contained in them) in all material respects (except to the extent that the same contradicts the terms of the main body of this Agreement) and except to the extent that continuing to pursue the Business Plans would adversely impact the achievement of the HDV's Objectives due to changing market conditions or project circumstances in which case the Business Plans shall be updated in accordance with Clause 18 provided that the best endeavours obligation will not require a Member to act contrary to its legitimate business interests or incur financial liability over that as set out in the Business Plans.

14.3.6 The HDV shall, if it requires any statutory or third party approval, consent or licence for the carrying on of its Business in the places and in the manner in which it is from time to time carried on or proposed to be carried on, use all reasonable endeavours to obtain, comply with and maintain the same in full force and effect.

14.3.7 Neither the HDV nor any HDV Party shall make political donations.

14.4 HDV Parties

14.4.1 The Members and the HDV (insofar as they are able by the exercise of their rights and powers) shall procure that each HDV Party shall (from the date of its incorporation) comply with the provisions of Clause 14.3 as if it applied *mutatis mutandis* to each HDV Party, provided that references in Clause 14.3 to:-

- (a) the HDV shall be construed as being references to such HDV Party;
- (b) the HDV Board shall be construed as being references to the board of nominees or directors (as applicable) of such HDV Party;
- (c) Nominees shall be construed as being references to nominees or directors (as applicable) on the board of such HDV Party;
- (d) the HDV's Business shall be construed as being references to the HDV Party's business;
- (e) the Objectives shall be construed as being references to the Objectives of the relevant HDV Party; and
- (f) the Business Plans shall be construed as being references to the Business Plans insofar as they apply to the relevant HDV Party.

14.4.2 In relation to Nominee Co1, Nominee Co2 and Nominee Co3, where there is any inconsistency or conflict between the terms of this Clause 14.4 and the articles of association of Nominee Co1, Nominee Co2 and Nominee Co3 respectively, this Clause 14.4 shall take precedence.

14.5 PSP Obligations (Social Impact Vehicle)⁶

14.5.1 For the purposes of this Clause 14.5 the phrase "**Social Impact Vehicle**" means a Community Interest Company (or such other type of entity as the PSP and the Council shall consider appropriate from time to time) that shall be an HDV Subsidiary whose purpose operation and governance is intended to be on the basis set out in the remainder of this Clause 14.5 which shall be set up within three months after the Investment Portfolio Transfer Date or such other date as the Parties shall agree.

14.5.2 The PSP intends to invest £20 million in the Social Impact Vehicle over the duration of the HDV.

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

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

14.5.5 The HDV shall procure that the Social Impact Vehicle will be run as an investment fund, with funds allocated with the intention of securing repayment of capital back to the fund and its investors, and a level of return (which may include a philanthropic component). A formal fund mandate and terms of investment will be developed by the HDV in accordance with the Social and Economic Business Plan.

⁶ This Clause sets out the principles of the SIV and may need to be updated to reflect ongoing discussions about the specific nature of the SIV and how it will be managed.

- 14.5.6 The HDV shall procure that a governance structure will be set up for the Social Impact Vehicle reflecting its nature as an investment fund, and intention to involve wider community representation.
- 14.5.7 The PSP shall procure that a general manager and investment manager will be seconded from the PSP on terms to be agreed between the PSP and the HDV to assist in the initial establishment of the Social Impact Vehicle, with the intention that it will become self-sustaining in respect of its administrative and management costs after the first 12-24 months.
- 14.5.8 The PSP, as the "Cornerstone Investor" in the Social Impact Vehicle recognises this is a higher risk investment category and not all monies may be returned to the PSP.
- 14.5.9 Whilst the PSP is a Member, it is its intention that any additional financial returns that would be payable to the PSP from the social impact investments made by the Social Impact Vehicle will be reinvested by the PSP in the Social Impact Vehicle. The PSP acknowledges that other investors may have different intentions as regards reinvestment of returns and accordingly the HDV shall set up the Social Impact Vehicle to be flexible and cater for different potential investor requirements.
- 14.5.10 If the HDV Board determines that the Social Impact Vehicle is failing to operate effectively during the life of the HDV and is not successful in delivering its investment mandate, then PSP's intention at the date of this Agreement will be to invest the balance remaining in the original intended £20m, in a similar phased manner in alternative approaches to pursue the HDV's socio-economic aims. This alternative PSP investment would also need to be made on a recovery of capital and return type basis, and the PSP would similarly commit to reinvest any returns whilst the PSP is a Member.
- 14.5.11 If the HDV Board determines that the Social Impact Vehicle is operating satisfactorily through the life of the HDV and delivers its investment mandate, the PSP intends to keep the intended £20 million invested (or such other total amount invested by the PSP at the time including reinvestment of returns to date) in the Social Impact Vehicle as a long-term legacy of the HDV and the PSP involvement which would be capable of surviving the winding up of the HDV if so desired by the Members. From the point that the PSP is no longer a Member then the PSP would have the option to receive returns from its investment in the Social Impact Vehicle as income, i.e. not to be obligated to reinvest these returns in the Social Impact Vehicle.
- 14.5.12 Should the HDV or the HDV Subsidiaries acquire Category 2 Properties or Category 3 Properties from the Council for the HDV or the HDV Subsidiaries to then develop, pursuant to the Development Framework Agreement or an analogous agreement for the Category 2 Properties or Category 3 Properties where the HDV or the HDV Subsidiaries acquire a land interest in the Category 2 Properties or Category 3 Properties, the PSP intends to increase its contribution to the Social Impact Vehicle, provided that these further sites meet the viability requirements of the HDV Business Plan. The intention in this scenario is for additional contributions to be committed by the PSP once the relevant Category 2 Properties or Category 3 Properties have been acquired by the HDV or the HDV Subsidiaries and the relevant amounts paid out upon Practical Completion of the relevant Phase. (this information is contained in the exempt part of the report)

14.6 **HDV, InvLP and DevLLP Authority**

- 14.6.1 Subject always to the provisions of this Agreement, the HDV shall have full power and authority to carry out all and any of the Objectives of the HDV and do all acts and things which the HDV may in its absolute discretion consider necessary or desirable (including, without limitation, executing, delivering and performing all contracts and other undertakings and participating in any activities and transactions) pursuant to the Business.
- 14.6.2 Subject always to the provisions of this Agreement, InvLP shall have full power and authority to carry out all and any of the InvLP Objectives, and any of the HDV Objectives

insofar as they relate to the Investment Portfolio and do all acts and things which InvLP may in its absolute discretion consider necessary or desirable (including, without limitation, executing, delivering and performing all contracts and other undertakings and participating in any activities and transactions) pursuant to the business of InvLP.

- 14.6.3 Subject always to the provisions of this Agreement, DevLLP shall have full power and authority to carry out all and any of the DevLLP Objectives, and any of the HDV Objectives insofar as they relate to the relevant Development Site(s), and do all acts and things which DevLLP may in its absolute discretion consider necessary or desirable (including, without limitation, executing, delivering and performing all contracts and other undertakings and participating in any activities and transactions) pursuant to the business of DevLLP.
- 14.6.4 It is intended that (save where otherwise agreed by the Members) DevLLP shall act as a developer in respect of the Category 1A Properties and enter into direct contractual arrangements with contractors in accordance with the Procurement Policy and otherwise in accordance with Clause 15.

15. **PROCUREMENT OF SUPPLY CHAIN**

- 15.1 The HDV, DevLLP, InvLP and each HDV Party shall each adopt the Procurement Policy in accordance with Clause 2.1.
- 15.2 The Procurement Policy shall be updated by the HDV from time to time and the HDV and each HDV Party shall, at all times, comply with the Procurement Policy when procuring works, goods and/or services and proposing to enter into contractual arrangements in relation to the provision of such works, goods and/or services.
- 15.3 The Procurement Policy as the same may be updated pursuant to Clause 15.2 shall at all times incorporate the principles set out below:-
 - 15.3.1 works, equipment, goods and services shall be procured in accordance with the principles of value for money, transparency and best practice;
 - 15.3.2 the relevant HDV Party shall maintain a written record of the reasons for making any single direct appointment for the provision of works, goods and/or services, where a competitive process has not been followed; and
 - 15.3.3 the relevant HDV Party shall use reasonable endeavours to maximise the social and economic benefits for the Borough through its procurement activity including (without limitation): use of local contractors, suppliers and labour based in the Borough; and the promotion and development of the Borough and local contractor supply chain initiatives.
- 15.4 The Members (insofar as they are able by the exercise of their rights and powers) shall procure that each HDV Party shall from the Effective Date comply with the provisions of this Clause 15.

16. **RESTRICTIONS ON ACTIVITIES OF THE PSP**

16.1 **Opportunities**

- 16.1.1 For such period as the PSP holds a Member Interest and subject always to Clauses 16.1.2 and 16.1.3, in the event that the PSP or member of the PSP's Group is presented with, is aware of or becomes aware of, any opportunity to enhance or add value (including any opportunity to acquire any interest) to the Business within the Borough by reference to the Business Plans in place at the date of such opportunity (the "**Opportunity**"), the following provisions shall apply:
 - (a) the PSP shall first procure that the Opportunity is offered to the HDV by giving written notice of such Opportunity to the HDV Board within ten (10) Working Days of becoming aware of the Opportunity and furnishing the HDV Board with

such information as it shall reasonably require in order to appraise the Opportunity;

- (b) the HDV Board shall have ten (10) Working Days ("**Opportunity Period**") from the later of:
 - (i) the date the Opportunity is notified in writing to the HDV Board; and
 - (ii) the date that the information referred to in Clause 16.1.1(a) is provided,

to consider and decide if the HDV wishes to pursue the Opportunity or not;

- (c) in the event that the HDV Board elects to pursue the Opportunity, the HDV Board shall issue a notice to the Members before the expiry of the Opportunity Period advising that it will pursue the Opportunity including the equity contributions required from each Member and subject to Clause 16.1.1(d) the PSP will not pursue such Opportunity; and
- (d) if no notice is issued by the HDV Board prior to the expiry of the Opportunity Period, or if the HDV Board subsequently advises the PSP that it is no longer pursuing the Opportunity, or if the HDV has not entered into legal agreements relating to the same within 3 months of the expiry of the Opportunity Period as a result of its failure to diligently progress the Opportunity, the PSP shall be entitled to pursue such Opportunity for itself.

16.1.2 Clause 16.1.1 shall be subject to the following provisions:

- (a) Clause 16.1.1 shall not apply to any site or interest which is owned by the PSP or any member of the PSP's Group or which is the subject of an agreement to acquire (or equivalent) in each case entered into prior to 21 March 2016;
- (b) where the Opportunity relates to an interest which has been acquired by the PSP or the PSP's Group (the "**Owner**") and the HDV Board elects to pursue the Opportunity then such Owner shall transfer the relevant interest to an entity nominated by the HDV Board at the request of the HDV Board and the consideration for such transfer shall be:
 - (i) the price paid by the Owner when it acquired such interest, where such acquisition was completed or agreement to acquire was entered into prior to the date of this Agreement; or
 - (ii) in all other circumstances the market value,

and for the purposes of this Clause 16.1.2 only "**market value**" shall mean the market value that a third party purchaser would be willing to pay for the relevant interest in the open market assuming a willing seller and a willing purchaser and otherwise in accordance with the edition of RICS Valuation Standards that is current at the relevant valuation date as such market value is agreed between the PSP and the Council or, in the absence of agreement within ten (10) Working Days, determined by an Expert.

16.1.3 The provisions of Clause 16.1 shall not apply to:

- (b) the opportunity at High Road West; or
- (c) opportunities where only construction works and/or pre-construction services and/or consultancy services provided by the PSP Group and in which the PSP Group has no developer interest.

- 16.2 The PSP shall not and shall procure that no member of the PSP Group shall do or omit to do anything to bring the standing of any HDV Party or the Council (as applicable) into serious disrepute or to attract material adverse publicity for any HDV Party or the Council (as applicable) and the following provisions shall apply:-
- 16.2.1 the obligations of the PSP shall apply for the duration of this Agreement and, thereafter, until the expiry of two (2) calendar years following the PSP (or any member of the PSP Group) ceasing to be a member of the HDV;
- 16.2.2 where an event occurs which does, in the reasonable opinion of the Council, bring the standing of any HDV Party or the Council (as applicable) into serious disrepute or attracts material adverse publicity for any HDV Party or the Council (as applicable) (an "**Adverse Reputation Event**"), the Council shall be entitled to serve written notice on the PSP setting out its concerns, such notice to be served within 5 Working Days of the Adverse Reputation Event occurring;
- 16.2.3 the Council shall be entitled to serve notice on the PSP within 10 Working Days of the date upon which the written notice referred to in Clause 16.2.2 was served requiring the PSP to prepare a remedial plan to remedy the Adverse Reputation Event and specifying a reasonable timescale for the preparation of such remedial plan having regard to the nature of the event;
- 16.2.4 the PSP shall provide the Council with the remedial plan within the timescale provided in Clause 16.2.3 and the Council shall, acting reasonably having regard to the nature of the Adverse Reputation Event and its potential impact:-
- (a) approve or amend the remedial plan; and
- (b) specify a timetable for implementation of the plan and activities contained therein;
- 16.2.5 if the PSP fails to provide the remedial plan in the timescales set out in Clause 16.2.3, or the Council fails to approve or amend such plan, or specify a timetable for implementation of such plan pursuant to Clauses 16.2.4(a) and 16.2.4(b), or if the PSP and Council fail to agree the remedial plan within 10 Working Days of the PSP providing such plan pursuant to Clause 16.2.4, such matter shall be deemed to be a Deadlock Matter and the provisions of Clauses 25.1 to 25.5 shall apply;
- 16.2.6 the remedial plan (agreed by the Parties or determined by the Expert, as applicable) (the "**Adverse Reputation Event Remedial Plan**") shall specify:-
- (a) the actions to be undertaken by the PSP;
- (b) the timescales within which those actions are to be effected; and
- (c) the period of time during which the impact of the activities within the Adverse Reputation Event Remedial Plan shall be assessed (the "**Impact Assessment Period**"),
- and the PSP shall undertake those actions identified within the Adverse Reputation Event Remedial Plan within the timescales specified therein; and
- 16.2.7 the PSP and the Council shall co-operate and act in good faith towards one another in meeting their obligations under this Clause 16.2.
- 16.3 Subject to Clause 16.4, the Council shall not do or omit to do anything to bring the standing of any HDV Party or the PSP (as applicable) into serious disrepute or to attract material adverse publicity for any HDV party or the PSP (as applicable) and the following provisions shall apply:

- 16.3.1 the obligations of the Council shall apply for the duration of this Agreement and thereafter until the expiry of two (2) calendar years following the Council ceasing to be a member of the HDV;
- 16.3.2 where an event occurs which does in the reasonable opinion of the PSP bring the standing of any HDV Party or the PSP (as applicable) into serious disrepute or attracts material adverse publicity for any HDV Party or the PSP (as applicable) (an "**PSP Reputation Event**") the PSP shall be entitled to serve written notice on the Council setting out its concerns;
- 16.3.3 the PSP shall be entitled to serve notice on the Council within ten (10) Working Days of the date upon which the written notice referred to in Clause 16.3.2 was served requiring the Council to make a written proposal as to proposed actions to remedy the PSP Reputation Event and specifying a reasonable timescale to carry out such actions ("**Actions**");
- 16.3.4 subject to the Actions being within the control of the Council and subject always to Clause 31 of this Agreement the Council shall undertake the Actions within the proposed timescales with a view to remedying the PSP Reputation Event; and
- 16.3.5 the PSP and the Council shall co-operate and act in good faith towards one another in meeting their respective obligations under this Clause 16.3.
- 16.4 The Parties acknowledge the autonomous relationship between the Council and its Members and agree that Clause 16.3 shall apply only to officers and employees of the Council. Furthermore, Clause 16.3 shall not apply where the Council is acting legitimately in accordance with its statutory functions (such as undertaking an enforcement action in its capacity as planning authority).
17. **FINANCIAL MATTERS AND FINANCIAL INFORMATION**
- 17.1 The HDV shall (and shall procure that each HDV Party shall), in relation to its financial statements, adopt accounting policies and/or principles in accordance with IFRS or its successors and shall comply with the Act, the Regulations and (to the extent that the same applies to the HDV) Part 15 of the Companies Act.
- 17.2 Each of the Members shall be entitled to:-
- 17.2.1 examine (and take copies of) at any time upon the provision of reasonable notice all documents, information, records, separate books and accounts of any description held by the HDV and each HDV Party and each Member shall be allowed access to the building premises of any HDV Party and any employees of any HDV Party for these purposes;
- 17.2.2 be supplied with all information regarding the Business, including (without limitation) monthly management accounts and operating statistics records and other trading and financial information relating to the HDV and the other HDV Parties, in such form as the Members may reasonably require; and
- 17.2.3 be kept properly informed about the business and affairs of the HDV and each HDV Party.
- 17.3 The HDV's annual budget for each Accounting Period shall form part of the HDV Business Plan and shall be reviewed by the HDV Board at least every three months.
- 17.4 The HDV and each HDV Party shall at all times keep proper books of account and make true and complete entries of all its dealings and transactions of and in relation to its business.
- 17.5 The HDV shall supply each of the Members with the following information:-
- 17.5.1 the management accounts for each HDV Party for each Accounting Period forthwith on their completion;

- 17.5.2 the audited statutory accounts of the HDV and each HDV Party for each Accounting Period as soon as practicable and, at the latest, by five months after the Accounting Period to which they relate; and
- 17.5.3 Quarterly cash flow statements and cash flow forecasts for the HDV and each HDV Party as soon as practical and at the latest by ten (10) Working Days after the end of each Quarter.
- 17.6 Notwithstanding the provisions of Clause 32:-
- 17.6.1 each Member may disclose information received from the HDV, any HDV Party or a Nominee to its auditors and/or (in the case of the Council), to its external auditors; and
- 17.6.2 the HDV and each HDV Party shall permit all records thereof to be examined and copied from time to time by a Member's auditor and its or their representatives and/or by the Council's external auditors (or their representatives).
- 17.7 Without prejudice to Clause 24, a Member shall immediately notify the other in writing if it becomes aware of anything which it considers (acting reasonably) is likely to adversely affect its ability to comply with its obligations in accordance with this Agreement.
18. **BUSINESS PLANS AND PROGRESS MONITORING**
- 18.1 **Business Plans**
- 18.1.1 Save as set out in the Project Agreements, nothing in any Business Plan shall constitute a financial commitment by a Member (including but not limited to any item which is intended to lead to a financial obligation/delayed financial return in respect of a Member, guarantee or reinvestment receipts) unless such commitment has been:
- (a) expressly flagged as a financial commitment requiring approval in the Business Plan; and
 - (b) such identified financial commitment has been specifically approved by the Members,
- and the Development Manager shall be responsible pursuant to the Development Management Agreement for managing the amendment process of the Business Plans and the process of obtaining Member approval.
- 18.2 **HDV Business Plan and Social and Economic Business Plan**
- 18.2.1 Subject to Clause 18.1, the first HDV Business Plan and the Social and Economic Business Plan are in the Agreed Form and are hereby adopted by the HDV and such HDV Business Plan and Social and Economic Business Plan shall be reviewed and updated within 6 months of the date of this Agreement by the HDV Board. Thereafter, the HDV Board shall, no earlier than 60 Working Days and no later than 30 Working Days before the end of each Accounting Period, prepare (or procure the preparation of), finalise, agree and circulate to the Members a draft HDV Business Plan and draft Social and Economic Business Plan for the next following Accounting Period which shall comply with the relevant provisions of Schedule 2 (Form of Business Plans). The Members shall use all reasonable endeavours to seek to agree such draft HDV Business Plan and draft Social and Economic Business Plan (making any amendments they may unanimously agree) and to adopt them as the formal HDV Business Plan and Social and Economic Business Plan within 30 Working Days of the date they are first circulated to the Members.
- 18.2.2 The draft HDV Business Plan and draft Social and Economic Business Plan circulated under Clause 18.2.1 (with such amendments thereto as may be agreed by the Members) shall replace the then current HDV Business Plan and Social and Economic Business

Plan as the formal HDV Business Plan and Social and Economic Business Plan of the HDV upon the date of the Members' approval to it in accordance with Clause 18.2.1.

18.2.3 Subject to Clause 18.7, until such time as it is replaced in accordance with Clause 18.2.2, the HDV Business Plan and Social and Economic Business Plan that have most recently been adopted as the formal HDV Business Plan and Social and Economic Business Plan pursuant to Clause 18.2.2 shall continue to be the formal binding HDV Business Plan and Social and Economic Business Plan.

18.2.4 Where the draft HDV Business Plan and/or draft Social and Economic Business Plan circulated under Clause 18.2.1 have not been approved by the Members by the date 6 calendar months following the start of the Accounting Period to which it relates, then either the Council or the PSP shall be entitled to serve written notice on the other stating that the matter shall be deemed to be a Deadlock Matter and Clause 25 shall apply.

18.3 **Development Business Plan(s)**

18.3.1 Subject to Clause 18.1, the Development Business Plans for the Category 1 Properties are in the Agreed Form and are hereby adopted by DevLLP.⁷

18.3.2 The DevLLP Board shall procure that each of the Development Business Plans referred to in Clause 18.3.1 are reviewed and updated at least once every 12 months (or upon the occurrence of any event that has a material political, legislative, commercial or economic impact on the content of the Business Plan) and shall seek the consent of the Members, acting unanimously, to any Business Plan Material Variation. It is, however, acknowledged that the DevLLP Board shall have the delegated authority to progress (and procure the progression of) each Development Site in accordance with the staged approvals process set out in Schedule 2 (Services) of the Development Management Agreement, subject always to the provisions of the Delegation Policy.

18.3.3 In relation to any other Development Business Plans for future Development Sites (or parts thereof) identified in accordance with Schedule 3 (Future Opportunities) of the Land Assembly Agreement or Clause 16.1 (Opportunities), the DevLLP Board shall procure the preparation of a draft Development Business Plan for approval by the Members. Once any such Development Business Plan is approved by the Members it shall be progressed by the DevLLP Board. Any Business Plan Material Variation to such Development Business Plan shall require the consent of the Members, acting unanimously. It is, however, acknowledged that the DevLLP Board shall have the delegated authority to progress (and procure the progression of) each Development Site in accordance with the staged approvals set out in Schedule 2 (Services) of the Development Management Agreement, subject always to the provisions of the Delegation Policy.

18.3.4 Until such time as it is replaced in accordance with Clause 18.3.2 or 18.3.3 (as applicable), the relevant Development Business Plan that has most recently been adopted pursuant to Clause 18.3.2 or 18.3.3 (as applicable) shall continue to be the relevant formal binding Development Business Plan.

18.4 **Investment Business Plan**

18.4.1 Subject to Clause 18.1, the first Investment Business Plan is in the Agreed Form and is hereby adopted by InvLP. Following the Effective Date, the InvLP Board shall, no earlier than 60 Working Days and no later than 30 Working Days before the end of each Accounting Period, prepare (or procure the preparation of), finalise, agree and circulate to the Members a draft Investment Business Plan for the next following Accounting Period which shall comply with the relevant provisions of Schedule 2 (Form of Business Plans). The Members shall use all reasonable endeavours to agree such draft Investment Business Plan (making any amendments they may unanimously agree) and to adopt it as the formal Investment Business Plan within 30 Working Days of the date it is first circulated to the Members.

⁷ PMDN: Subject to confirmation of Business Plans.

- 18.4.2 Any draft Investment Business Plan circulated pursuant to Clause 18.4.1 (with such amendments thereto as may be agreed by the Members) shall replace the then current Investment Business Plan as the formal Investment Business Plan of InvLP and the HDV upon the date of the Members' approval of it in accordance with Clause 18.4.1.
- 18.4.3 Until such time as it is replaced in accordance with Clause 18.4.2, the Investment Business Plan that has most recently been adopted as the formal Investment Business Plan pursuant to Clause 18.4.2 shall continue to be the formal binding Investment Business Plan.
- 18.4.4 Where the draft Investment Business Plan circulated under Clause 18.4.1 has not been approved by the Members by the date 6 calendar months following the start of the Accounting Period to which it relates then either the Council or the PSP shall be entitled to serve written notice on the other stating that the matter shall be deemed to be a Deadlock Matter and Clause 25 shall apply.

18.5 **Progress Monitoring**

- 18.5.1 Progress against the HDV Business Plan and the Social and Economic Business Plan shall be reviewed at Quarterly meetings of the HDV Board called in accordance with Clause 8.
- 18.5.2 Progress against each Development Business Plan shall be reviewed at Quarterly meetings of the DevLLP Board called in accordance with Clause 8.
- 18.5.3 Progress against each Investment Business Plan shall be reviewed at Quarterly meetings of the InvLP Board called in accordance with Clause 8.
- 18.5.4 If, at any HDV Board Meeting convened under Clauses 18.5.1 to 18.5.3 (inclusive) above, either the Council Nominee(s) or the PSP Nominee(s), in their reasonable opinion, believes that there has been a material failure of:-
- (a) DevLLP to comply with its relevant Development Business Plan; or
 - (b) InvLP to comply with the Investment Business Plan,

the HDV Board shall meet with the Development Manager (in the case of a failure to comply with any Development Business Plan) or the Asset Manager (in the case of a failure to comply with the Investment Business Plan) to discuss appropriate action to immediately rectify the relevant failure and/or mitigate the effects of such failure as far as possible, which may include a review of the Development Manager's and/or Asset Manager's service, and to determine whether there has been a breach of a Project Agreement in relation thereto.

18.6 Subject to Clause 18.7, any variations to:-

- 18.6.1 the HDV Business Plan or the Social and Economic Business Plan;
- 18.6.2 a Development Business Plan; and/or
- 18.6.3 an Investment Business Plan,

shall be effective only if approved by the Members in accordance with Clause 12;

18.7 **Incorporation of the HDV Business Plan into the Investment Business Plan and Development Business Plans**

The Investment Business Plan, any Development Business Plans and the Social and Economic Business Plan shall conform with the terms set out in the HDV Business Plan from time to time.

Upon a draft HDV Business Plan and/or the Social and Economic Business Plan being approved in accordance with this Clause 18, or an approved Investment Business Plan or Development Business Plan being validly varied or updated in accordance with this Clause 18, the Investment Business Plan and any Development Business Plans shall be deemed to have been amended on and with effect from the date of the same insofar as such amendments to the Investment Business Plan and any Development Business Plans are necessary in order to ensure that the Investment Business Plan and any Development Business Plans are fully consistent, and do not conflict, with the HDV Business Plan and/or the Social and Economic Business Plan. The contents of the HDV Business Plan shall be deemed to have been consolidated into the Investment Business Plan and any Development Business Plans automatically from time to time in accordance with this Clause 18.7.

18.8 Contractor Framework Agreement

- 18.8.1 On the Effective Date, the HDV shall enter into the Contractor Framework Agreement with LLC.
- 18.8.2 On or before the Investment Portfolio Transfer Date, the HDV shall seek to appoint consultants as the Independent Cost Consultant, Independent Programme Auditor and the Development Solicitor to provide the relevant Services. Unless and until the HDV appoints such persons to provide the relevant Services, a Development Business Plan for a Development Site shall not be updated (and DevLLP Board⁸ and the HDV Parties shall not proceed to procure such an update) pursuant to this Clause 18.8.
- 18.8.3 The HDV shall not terminate the appointment of any member of the Independent Verification Team or the appointment of the Development Solicitor without having appointed a replacement of the relevant consultant (save where immediate termination of the appointment of the relevant consultant is considered necessary by the HDV, acting reasonably, in which case the HDV shall seek to appoint a replacement as soon as reasonably practicable following such termination).
- 18.8.4 Subject to Clause 18.8.2, prior to the commencement of any relevant activity in relation to a Development Site, the DevLLP Board shall procure that the Development Manager provides a proposed update to the relevant Development Business Plan to include a proposed Procurement Recommendation for the relevant Development Site.⁹
- 18.8.5 The HDV shall procure that during the development of the proposed update to the relevant Development Business Plan pursuant to Clause 18.8.4, the Development Manager, the Independent Verification Team and the Development Solicitor shall liaise with one another in relation to the proposed update in accordance with their respective Appointments.
- 18.8.6 The DevLLP Board may provide comments on the proposed update to the relevant Development Business Plan provided by the Development Manager pursuant to Clause 18.8.4 no later than the date falling [INSERT] days after receipt thereof by the DevLLP Board and the DevLLP Board shall procure that the Development Manager shall, in accordance with the terms of the Development Management Agreement, consider such comments and either:
- (a) confirm that the proposed update will remain as originally submitted by the Development Manager pursuant to Clause 18.8.4; or
 - (b) issue a revised proposed update to the DevLLP Board to which the provisions of Clause 18.8.5 and this Clause 18.8.6 shall apply.
- 18.8.7 Where:

⁸ It will need to be made clear for governance purposes that, where there is a reference to "DevLLP Board" in this clause 18.7 that this is to be to the DevLLP Board who owns the Development Business Plan for the relevant Development Site. Terminology to be discussed.

⁹ DMA to be updated to reflect services referred to as DM services in this Agreement.

- (a) the relevant proposed update is confirmed by the Development Manager pursuant to Clause 18.8.6(a); or
- (b) the DevLLP Board does not provide any comments on the relevant proposed update pursuant to Clause 18.8.6,

the HDV shall procure reports from the relevant members of the Independent Verification Team and the Development Solicitor on that proposed update in accordance with their respective Appointments. If all members of the Independent Verification Team and the Development Solicitor support the adoption of the relevant proposed update to the relevant Development Business Plan in its entirety, then the proposed Procurement Recommendation contained therein shall be a Procurement Recommendation for the purposes of Clause 2.1 of the Contractor Framework Agreement.

18.8.8 Following receipt by the DevLLP Board of all of the reports from the Independent Verification Team and the Development Solicitor pursuant to Clause 18.8.7, the relevant proposed update shall be considered at a DevLLP Board meeting for approval by the DevLLP Board.

18.8.9 If upon consideration by the DevLLP Board pursuant to Clause 18.8.8, the DevLLP Board approves the relevant proposed update, then the relevant Development Business Plan shall be updated accordingly. Where the DevLLP Board does not approve the relevant proposed update in its entirety, then the DevLLP Board shall procure that the Development Manager prepares the update of the relevant Development Business Plan in accordance with the directions of the DevLLP Board.

18.8.10 Where the relevant Development Business Plan as updated pursuant to Clause 18.8.9 provides for LLC to be given the opportunity to seek the award of a Vertical Works Contract or a Horizontal Works Contract for a relevant Phase, then HDV shall offer LLC the opportunity to seek the award of the same pursuant to and in accordance with the Contractor Framework Agreement.

18.8.11 Where the relevant Development Business Plan as updated pursuant to Clause 18.8.9 provides for LLC to be appointed under a PCSA in respect of either a proposed Vertical Works Contract and/or a proposed Horizontal Works Contract for a relevant Phase, then the HDV or the relevant HDV Party (as applicable) shall proceed to duly execute and deliver the relevant PCSA in accordance with Clause 2.5 of the Contractor Framework Agreement.

18.8.12 Where:

- (a) the relevant Development Business Plan as updated pursuant to Clause 18.8.9 recommends that a further consultant is engaged by the HDV to provide specified services as part of the Independent Verification Team in connection with a Bid Process for any Vertical Works Contract and/or Horizontal Works for the relevant Phase, or
- (b) after the relevant Development Business Plan has been updated pursuant to Clause 18.8.9, the HDV acting reasonably considers that it is appropriate for a further consultant to be engaged by the HDV to provide services as part of the Independent Verification Team in connection with a Bid Process for any Vertical Works Contract and/or Horizontal Works for the relevant Phase,

then the HDV shall seek to appoint such further consultant to provide the relevant services. Unless and until the HDV appoints such further consultant to provide the relevant services, the HDV shall procure that the Development Manager does not commence the relevant Bid Process. Such further consultant shall not be a member of the PSP Group or the Council Group.

18.8.13 The DevLLP Board shall:

- (a) regularly and at appropriate stages decide whether to proceed with a Bid Process; and
- (b) at the end of a Bid Process, decide whether to approve the award of the relevant Vertical Works Contract or Horizontal Works Contract (as applicable) to LLC and, if so approved, the HDV or the relevant HDV Party (as applicable) shall proceed to duly execute and deliver the relevant contract in accordance with Clause 2.2 of the Contractor Framework Agreement.

18.8.14 Throughout the development of any Development Sites (including during a Bid Process), the HDV shall procure that the Independent Verification Team, the Development Solicitor and the Development Manager provide their respective services in accordance with their respective Appointments, which include monitoring LLC's performance of its obligations under the Contractor Framework Agreement and the performance of LLC against the KPI's and providing recommendations, verification, endorsement, approval and the like to the HDV Parties in relation to various matters to, *inter alia*, assist the DevLLP Board in taking such actions.

18.8.15 In the event that the Contractor Framework Agreement is terminated, then the provisions of this Clause 18.8 shall cease to apply.

19. ACCOUNTS

The relevant Parties shall establish, maintain and operate accounts in accordance with the provisions of Schedule 5 .

20. RECEIPTS

All monies received by HDV or any HDV Party shall be dealt with in accordance with the provisions of Schedule 8.

21. PROFITS

Any profit realised by HDV or any HDV Party shall be dealt with in accordance with the provisions of Schedule 8.

22. ASSIGNMENT/TRANSFER OF INTERESTS

22.1 General prohibition on transfers

Save as expressly provided for in this Agreement, a Member shall not sell, assign, transfer, exchange, pledge, encumber or otherwise dispose of all or any part of its rights and obligations under this Agreement, or voluntarily dissolve or voluntarily withdraw or resign as a member of the HDV.

22.2 Permitted Intra-group transfers

22.2.1 Notwithstanding any other provision of this Agreement, the Council may at any time transfer the whole (but not part only) of its Member Interest to a Public Sector Body provided that:-

- (a) prior to any such transfer taking place, the Council shall inform the PSP in writing of such proposed transfer;
- (b) prior to any such transfer taking place, the PSP shall have consented to such transfer (such consent not to be unreasonably withheld or delayed), save where the proposed transfer is due to a change in the statutory remit or obligations of the Council in which case such consent shall not be required;
- (c) the Council shall procure that the transferee enters into (simultaneously, at the time of the transfer) a deed of assignment or novation to it in respect of the

benefit of the associated Council Loan Notes and Council Loan Note Security Agreements;

- (d) prior to any such transfer taking place, the Council shall procure that the transferee shall execute and deliver to the PSP and the HDV a Deed of Adherence (which shall become effective as at the date of the relevant transfer) in the form set out in Schedule 9; and
- (e) if the first transferee or any subsequent transferee (in each case being, as at the date of such transfer to it, a Public Sector Body) ceases, at any time thereafter to be a Public Sector Body, the Council (or, where the Council is no longer existing in law, any successor body thereof) shall procure that such entity will, immediately prior to so ceasing, transfer all of the Member Interest held by it to such other Public Sector Body that is nominated by the Council (or its successor, as applicable) subject to the PSP's prior written approval thereto (such approval not to be unreasonably withheld or delayed).

22.2.2 Notwithstanding any other provision of this Agreement, the PSP may at any time transfer all (but not part only) of its Member Interest to another member of the PSP Group resident in the UK for the purposes of UK taxation provided that:-

- (a) it is not a Prohibited Party;
- (b) prior to any such transfer taking place, the PSP shall inform the Council in writing of such proposed transfer;
- (c) the transferee shall be of at least equal covenant strength to the PSP or PSP Guarantor (as applicable) either (i) having a Net Asset Value at least equal to the Acceptable Net Asset Value; or (ii) providing a guarantee from another company within the PSP Group with an Acceptable Net Asset Value in substantially the form of the PSP Guarantee, subject to any amendments which the PSP may propose and the Council approves. Where a guarantee is provided pursuant to this Clause 22.2.2 the provisions of Clauses 24.6 and 24.1.2(b) shall be construed to apply in relation to the Net Asset Value of the company which has provided the guarantee;
- (d) the PSP shall procure that the transferee enters into (simultaneously, at the time of the transfer) a deed of assignment or novation to it in respect of the benefit of the associated Investment (PSP) A Loan Notes, Investment (PSP) A Loan Note Security Agreement, Development (PSP) A Loan Note and Development (PSP) A Loan Note Security Agreement (as applicable);
- (e) prior to any such transfer taking place, the PSP shall procure that the transferee shall execute and deliver to the Council and the HDV a Deed of Adherence (which shall become effective as at the date of the relevant transfer) in the form set out in Schedule 9;
- (f) if the first transferee or any subsequent transferee (in each case being, as at the date of such transfer to it, a member of the PSP Group) ceases, at any time thereafter to be a member of the PSP Group, the PSP (or, where the PSP is no longer existing in law, any successor thereof) shall procure that such entity shall, immediately prior to so ceasing, transfer all (and not part only) of the Member Interest held by it to:-
 - (i) the PSP or such other member of the PSP Group resident in the UK for the purposes of taxation that is nominated by the PSP (or its successor, as applicable) subject to the Council's prior written approval thereto (such approval not to be unreasonably withheld or delayed); or

- (ii) (where there is no such entity existing in law), such other third party as the Council may direct.

22.3 Permitted Transfers to a Third Party

22.3.1 Save as provided in Clause 22.2 or as otherwise expressly agreed in writing by the Members, no transfer of any Member Interest, in whole or part shall take effect:-

- (a) in circumstances where the proposed transferee does not enter into (simultaneously, at the time of the transfer) a deed of assignment or novation to it in respect of the benefit of the associated Loan Notes and a deed of novation to it in respect of any remaining obligations in relation to the transferring Member's Member Loan;
- (b) within the Lock In Period;
- (c) in circumstances where the proposed transferee is not resident in the United Kingdom for the purposes of UK taxation;
- (d) in case of transfer by the PSP to a Council Prohibited Party;
- (e) in case of transfer by the Council to a PSP Prohibited Party;
- (f) in circumstances where the proposed transferee has not executed a Deed of Adherence (which shall become effective as at the date of the relevant transfer) in the form set out in Schedule 9;
- (g) in circumstances where Clause 23 has not been fully complied with;
- (h) in case of transfer by the PSP to a proposed transferee who does not have an Acceptable Net Asset Value or where the HDV has not received an executed guarantee in the form of the PSP Guarantee from a party with at least an Acceptable Net Asset Value; and/or
- (i) in the case of a transfer by the Council, where such transferee does not have the capacity to fulfil the Council's obligations pursuant to this agreement.

22.4 Residency

The Members agree and undertake that they shall remain resident in the UK for the purposes of UK taxation and each Member agrees to indemnify and keep the other Member indemnified for any direct loss; liability; cost; claim; and/or expense whatsoever suffered or incurred as a result of any breach of this undertaking.

23. PRE-EMPTION RIGHTS

23.1 Subject always to Clause 27.2, this Clause 23 shall apply if either of the Members (a "**Potential Seller**") wishes to dispose of all (but not part only) of its Member Interest (the "**Sale Interest**") which is not a permitted intra-group transfer falling under Clause 22.2.

23.2 Notification of interest to sell

23.2.1 If a Potential Seller wishes to dispose of its Sale Interest it shall give notice in writing of such intention together with details of any proposed Third Party transferee (the "**Transfer Notice**") to the HDV. Neither the Council nor the PSP shall be entitled to serve a Transfer Notice in circumstances where the proposed transfer detailed in the Transfer Notice would breach any of the provisions of Clause 23.3.1.

23.2.2 The HDV will, within 5 Working Days after receipt of the Transfer Notice, notify the other Member (the "**Potential Purchaser**") of the Potential Seller's wish to dispose of the Sale Interest.

23.3 Setting the Transfer Price

- 23.3.1 The price at which the Sale Interest shall be offered to the Potential Purchaser (the "**Transfer Price**") shall be such price as is agreed between the Potential Seller and the Potential Purchaser and notified to the HDV.
- 23.3.2 If the Potential Purchaser and the Potential Seller cannot agree a Transfer Price within 20 Working Days after service of the Transfer Notice, the HDV Board shall:-
- (a) instruct an Expert and shall procure that the Expert shall, within 30 Working Days after the date on which the Transfer Notice was served, determine the Member Interest Value of the Sale Interest (which shall become the Transfer Price) and notify the HDV Board of the Transfer Price; and
 - (b) within 2 Working Days of such notification by the Expert, notify the Transfer Price to the Potential Seller and the Potential Purchaser;
- and following such notification, the Potential Seller shall have 5 Working Days (the "**Revocation Period**") to revoke the Transfer Notice by serving written notice on the HDV (the "**Revocation Notice**"). If the Revocation Notice is served within the Revocation Period the subsequent provisions of this Clause 23 shall not apply.
- 23.3.3 The costs of any Expert and any professionals consulted by him shall be borne by the Potential Seller.
- 23.3.4 If no Revocation Notice is served on the HDV within the Revocation Period or the Transfer Price is agreed by the Potential Purchaser and the Potential Seller in accordance with Clause 23.3.1 then within 3 Working Days after the expiry of the Revocation Period or notification by the Potential Purchaser and the Potential Seller to the HDV of the Transfer Price (as applicable), the HDV shall give confirmatory notice to the Potential Purchaser that the Potential Seller wishes to sell the Sale Interest to the Potential Purchaser for the Transfer Price (the "**Offer**").

23.4 The Offer – Sale to Member

- 23.4.1 The Potential Purchaser may, within 90 Working Days of receipt of the Offer (the "**Offer Period**") accept the Offer in whole but not in part by notice in writing to the HDV and the Potential Seller.
- 23.4.2 If the Offer is accepted by the Potential Purchaser in writing within the Offer Period, then completion of the transfer and novation of the Sale Interest to the Potential Purchaser (a "**Sale To Member**") shall take place at the registered office of the HDV, or at such other address as may be agreed between the Potential Seller and the Potential Purchaser, within 30 Working Days after the date of the written acceptance of the Offer.
- 23.4.3 On completion of a Sale To Member:-
- (a) the Member acquiring the Sale Interest (the "**Purchaser**") shall pay the Transfer Price by telegraphic transfer to a bank account designated by the Member selling the Sale Interest (the "**Seller**");
 - (b) the Seller shall deliver to the Purchaser duly executed deeds of novation in relation to such Sale Interest in the form agreed in writing between the Seller and the Purchaser and the Purchaser shall deliver to the Seller duly executed counterparts; and
 - (c) the Seller shall execute, deliver and do all such other deeds, documents, acts and things as may be necessary in such form as the Purchaser may reasonably request to complete the Sale To Member and ensure the Sale Interest passes with full title guarantee and free from any option, lien, charge, equity or other

encumbrance and together with all rights and liabilities attaching to the Sale Interest at the date of service of the Transfer Notice.

23.5 Sale to a Third Party

23.5.1 If the Offer is not accepted by the Potential Purchaser within the Offer Period then the Potential Seller shall (exercising its absolute discretion) be entitled at any time within 6 months after the expiry of the Offer Period to exchange legally binding contracts for the transfer and novation of the Sale Interest to any person (the "**Third Party Purchaser**") (a "**Sale To Third Party**") at a price not less than the Transfer Price without any deduction, rebate or allowance whatsoever and otherwise on no more favourable terms to the Third Party Purchaser than were offered to the Potential Purchaser provided that:-

- (a) the Potential Purchaser has given its prior written consent to the transfer and novation, such consent to be exercised reasonably and not to be unreasonably withheld, having regard to the standing, reputation, capacity, capability and expertise of the Third Party Purchaser to be the Council's or the PSP's (as applicable) strategic investment partner; and
- (b) the Sale to Third Party otherwise complies with Clause 22.3.1,

and the Potential Purchaser shall be entitled to receive such details of the proposed Sale To Third Party to satisfy itself that the Sale To Third Party shall comply and (following the transfer) has complied with Clause 22.3.1 and this Clause.

23.5.2 For the avoidance of doubt no Sale To Third Party shall complete unless the provisions of Clause 22.3.1(a) have been complied with (and the Third Party Purchaser has first executed a Deed of Adherence pursuant to Clause 22.3.1(f)) and the provisions of Clause 22.3.1(h) (delivery of an executed guarantee for the Third Party Purchaser or confirmation of an Acceptable Net Asset Value in respect of the Third Party Purchaser) have been complied with. Each Party agrees to execute the Deed of Adherence upon the Third Party Purchaser executing the same. As security for the performance of the obligations of the relevant Parties under this Clause, each of such Parties hereby irrevocably appoints any other Party as his attorney to execute the Deed of Adherence on his behalf.

23.6 Notwithstanding the time periods set out in this Clause, the relevant Parties undertake to use all reasonable endeavours to minimise the time between the date of the Transfer Notice to completion of the transfer (whether by Sale To Member or Sale To Third Party) provided that the all reasonable endeavours obligation will not require a Member to act contrary to its legitimate business interests.

24. DEFAULT

24.1 The following events shall each be a "**Default Event**":-

24.1.1 in the case of the Council only:-

- (a) the Council commits a Material Breach,
- and such event shall be a "**Council Default Event**";

24.1.2 in the case of the PSP or PSP Guarantor (as applicable):-

- (a) the PSP or PSP Guarantor commits a Material Breach;
- (b) the Net Asset Value of the PSP Guarantor falling below the Acceptable Net Asset Value and the PSP failing to remedy or procure a remedy for such default pursuant to Clause 24.6 within the time period specified in Clause 24.6;
- (c) the PSP or PSP Guarantor is insolvent;

- (d) the PSP or PSP Guarantor is unable to pay its debts as they fall due or admits its inability to pay its debts as they fall due;
- (e) the PSP ceases payment on all or any class of its debts or a moratorium takes effect or is declared in respect of its indebtedness;
- (f) the PSP enters into a voluntary arrangement with any of its creditors as is described in the relevant insolvency legislation or a composition, assignment, reconstruction or arrangement with any of its creditors, or it enters into such composition, assignment or arrangement (other than a scheme of arrangement which is a bona fide business reorganisation not in any way linked or pursuant to any financial difficulty);
- (g) a petition is presented for the winding-up or dissolution (except for the purposes of and followed by a bona fide solvent commercial reorganisation, amalgamation or reconstruction) of the PSP or PSP Guarantor (other than a frivolous or vexatious petition);
- (h) a liquidator, provisional liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or other similar officer is appointed in respect of any of the assets and/or undertaking or any part thereof of either the PSP or PSP Guarantor;
- (i) the enforcement of any security over any material assets of the PSP or PSP Guarantor;
- (j) any litigation, arbitration or administrative proceedings are successfully concluded against (and successfully concluded in this Clause 24.1.2(j) shall mean that the relevant judge, arbitrator or relevant decision making individual or body finds in favour of the claimant) the PSP or PSP Guarantor which in the Council's opinion (acting reasonably) is likely to have a material adverse effect on the activities or business of the Council or the HDV or any HDV Party;
- (k) the PSP is determined no longer to be resident in the United Kingdom for the purposes of UK taxation;
- (l) where, in accordance with Clause 16.2, the PSP fails to undertake the actions required of it set out in any Adverse Reputation Event Remedial Plan within the timescales specified therein, save that it shall not be a Default Event where the PSP is frustrated in implementing the actions in such plan by reasons beyond its control or by reason or any act or omission of the Council;
- (m) the PSP or the PSP Guarantor fails to advance in cleared funds the PSP element of the A Loan or C Loan as required in accordance with Schedule 7; or
- (n) the PSP Guarantor ceasing to Control the PSP in circumstances where the Council has not consented to such change of Control (other than where such change of Control relates to a change in the legal or beneficial ownership of any shares in a company that is listed on a Recognised Investment Exchange (as defined in Section 285 of the Financial Services and Marketing Act 2000)),

and each such an event shall be a "**PSP Default Event**" or "**PSP Guarantor Default Event**" as applicable.

24.2 Consequences of a Default Event

Any Member who has committed a Default Event (the "**Defaulting Member**") shall notify the other (the "**Non-Defaulting Member**") as soon as practicable after becoming aware that a Default Event has occurred and unless the Default Event is waived by the Non-Defaulting Member or remedied in accordance with Clause 24.3 or 24.4, the Winding Up Procedure set out in Clause 27 shall automatically be triggered.

24.3 **The Council's opportunity to remedy**

- 24.3.1 If a Council Default Event occurs which is capable of remedy (to be determined by the PSP acting reasonably) the PSP will, within 20 Working Days after becoming aware of the Council Default Event serve a written notice on the Council identifying the Council Default Event ("**PSP Grievance Notice**"). The PSP Grievance Notice shall specify that the Council Default Event must be remedied within a specified period of at least 20 Working Days after the date of service of the PSP Grievance Notice (the "**Council Remedy Period**").
- 24.3.2 The Council shall not be required to wait until the PSP Grievance Notice is received before attempting to remedy any Council Default Event.
- 24.3.3 Where a Council Default Event is either not deemed capable of remedy or has not been remedied to the reasonable satisfaction of the PSP within the Council Remedy Period the Winding Up Procedure set out in Clause 27 shall automatically be triggered.

24.4 **PSP's opportunity to remedy**

- 24.4.1 If a PSP Default Event occurs which is capable of remedy (determined by the Council acting reasonably) the Council will, within 20 Working Days after becoming aware of the PSP Default Event serve a written notice on the PSP identifying the PSP Default Event (the "**Council Grievance Notice**"). The Council Grievance Notice shall specify that the PSP Default Event must be remedied within a specified period of at least 20 Working Days after the date of service of the Council Grievance Notice (the "**PSP Remedy Period**").
- 24.4.2 The Parties agree that a Default Event under Clauses 24.1.2(c) to 24.1.2(n) (inclusive) (save for 24.1.2(m)) shall be deemed not capable of remedy.
- 24.4.3 The PSP shall not be required to wait until the Council Grievance Notice is received before attempting to remedy the PSP Default Event.
- 24.4.4 Without prejudice to any other PSP Default Event(s), where a PSP Default Event is either not deemed capable of remedy or has not been remedied to the reasonable satisfaction of the Council within the PSP Remedy Period, the Winding Up Procedure set out in Clause 27 shall automatically be triggered.

24.5 **Remedy on a Default Event**

- 24.5.1 Each Member undertakes to the other that, in circumstances where it has breached any obligation on its part that is specifically set out in this Agreement and:-
- (a) the HDV and/or other Member (as the case may be) has informed it in writing of the relevant breach and the Member in breach has agreed to enter into discussions regarding a resolution of that breach and/or an out of court settlement in relation to it, the Member in breach hereby agrees to co-operate and act in good faith with the other Parties in relation to such discussions and not to unreasonably prolong such discussions; and/or
 - (b) the HDV and/or the other Member (as the case may be) has brought a claim against it in respect of such breach, the Member in breach hereby agrees to co-operate and act in good faith in relation to the conduct of such claim (or defence of it) and not unreasonably prolong the litigation process.

24.6 **Net Asset Value**

- 24.6.1 The PSP shall provide the Council with such information as it shall require from time to time (acting reasonably) to satisfy itself that the Net Asset Value of the PSP Guarantor from time to time shall be the Acceptable Net Asset Value. Without prejudice to the Council's rights to request such information, the PSP shall in any event:-

- (a) provide the Council with the annual audited accounts of the PSP Guarantor within 10 Working Days of them being made public; and
- (b) immediately notify the Council in writing where the PSP Guarantor's Net Asset Value falls below the Acceptable Net Asset Value (the "**Net Asset Value Trigger Event**").

24.6.2 If at any time the Net Asset Value of the PSP Guarantor falls below the Acceptable Net Asset Value, the PSP shall be obliged as follows:-

- (a) to procure that the PSP Guarantor returns to a position where it has an Acceptable Net Asset Value; or
- (b) to transfer its Member Interest in the HDV together with any interest, obligations or liabilities under this Agreement and any Project Agreement to another company in the PSP Group with an Acceptable Net Asset Value (and subject to the provisions of Clause 22); or
- (c) to procure a guarantee to the HDV from another company in the PSP Group with an Acceptable Net Asset Value in substantially the form of the PSP Guarantee subject to any amendments which the PSP may propose and the Council approves (without any interruption in the coverage provided under the original PSP Guarantee pursuant to Clause 2.1.1(c)). Where a guarantee is provided pursuant to this Clause 24.6.2(c) the provisions of Clauses 24.6.1, 24.6.2, 24.6.3 and 24.1.2(b) shall be construed to apply in relation to the Net Asset Value of the replacement PSP Guarantor,

and the PSP shall be entitled to choose which remedy it shall offer pursuant to this Clause 24.6.2 but such remedy must be provided within 15 Working Days of the Net Asset Value Trigger Event occurring.

24.6.3 Where the PSP fails to maintain an Acceptable Net Asset Value and fails to remedy such default pursuant to Clause 24.6.2 within the period specified in that Clause then this shall be a Default Event for the purposes of Clause 24.1.2(b).

25. **DISPUTE/DEADLOCK**

25.1 Subject to Clause 25.7, if:-

- 25.1.1 the Nominees by reason of disagreement between themselves are unable to arrive at a unanimous decision on any matter relating to the HDV which requires their approval and consideration within 10 Working Days after the date on which the matter was first presented to them at a meeting of the HDV Board; or
- 25.1.2 the Members by reason of disagreement between themselves are unable to arrive at a unanimous decision on any matter relating to the HDV which requires their approval and consideration within 10 Working Days after the date on which the matter was first presented to them,

then such matter shall constitute a "**Deadlock Matter**" and within 20 Working Days after the Deadlock Matter first being presented to the HDV Board or the Members (as applicable), either Member may give notice to the other in writing (a "**Deadlock Notice**") setting out, in detail, its position on the Deadlock Matter and proposed course of action. The Members shall use all reasonable endeavours to resolve the Deadlock Matter within 10 Working Days after receipt of the Deadlock Notice.

25.2 **Referral to Senior Officers and Chief Executives**

25.2.1 If the Deadlock Matter is not resolved to the reasonable satisfaction of either of the Members within 10 Working Days after receipt of the Deadlock Notice then:-

- (a) within 2 Working Days, the PSP shall nominate (by written notice to the HDV) a senior officer(s) of the PSP who has the authority of the PSP to resolve the Deadlock Matter on behalf of the PSP (the "**PSP Senior Officer**") and the Council shall nominate (by written notice to the HDV) a senior officer of the Council who has the authority of the Council to resolve the Deadlock Matter on behalf of the Council (the "**Council Senior Officer**"); and
- (b) the PSP Nominees (acting collectively) and the Council Nominees (acting collectively) will, immediately thereafter, each prepare and contemporaneously serve on both the PSP Senior Officer and the Council Senior Officer a memorandum setting out their respective positions on the Deadlock Matter and the reasons for adopting such position (a "**Memorandum**"). Thereafter, the PSP and the Council shall procure that the PSP Senior Officer and the Council Senior Officer (respectively) each consider both Memoranda and use all reasonable endeavours to resolve the Deadlock Matter.

25.2.2 If the PSP Senior Officer and the Council Senior Officer agree on a resolution or disposition of the Deadlock Matter within 10 Working Days of receipt of the Memoranda (the "**Resolution Period**"), the PSP shall procure that the PSP Senior Officer will, and the Council shall procure that the Council Senior Officer will, jointly draft and sign a statement setting out the terms of such resolution or disposition and serve the same on the HDV. Following receipt of such statement by the HDV the Nominees shall procure that such resolution or disposition is fully and promptly carried into effect.

25.2.3 If the PSP Senior Officer and the Council Senior Officer do not resolve the matter in dispute within the Resolution Period then the Deadlock Matter shall be referred to the respective Chief Executives of the Council and the PSP.

25.2.4 The Members' Chief Executives shall meet within 20 Working Days to attempt to resolve any Deadlock Matters referred to them pursuant to Clause 25.2.3.

25.2.5 If the Members' Chief Executives resolve a Deadlock Matter referred to them pursuant to Clause 25.2.4, they will as soon as practicable jointly draft and sign a statement setting out the terms of such resolution and serve the same on the HDV. Following receipt of such statement by the HDV, the Nominees shall procure that such resolution is fully and promptly carried into effect.

25.2.6 If the Members' Chief Executives do not resolve the Deadlock Matter within 20 Working Days then the Deadlock Matter shall be referred back to the Members and the provisions of Clause 25.3 shall apply.

25.3 **Referral to Expert**

25.3.1 If the Members agree the Deadlock Matter is reasonably capable of being determined by an appropriate Expert then it shall be referred by the Members to an appropriate Expert and the provisions of Clauses 25.3.2 and 25.3.3 shall apply. Where the Members are unable to agree whether the matter is reasonably capable of being determined by an appropriate Expert within 5 Working Days of the referral referred to in Clause 25.2.6 Clause 25.4 shall apply, and the Members shall refer the Deadlock Matter to mediation.

25.3.2 The Expert shall act as an independent and impartial expert and not as an arbitrator and shall be entitled to seek and rely upon such other independent professional advice and assistance as he or she shall in his or her absolute discretion deem desirable when considering the Deadlock Matter. The Expert shall be required to reach his/her decision and notify this decision to the Members within 30 Working Days of the date of their appointment or such other date as agreed by both Members in writing. The decision of the Expert (including his or her decision as to the payment of his or her fees) shall be final and binding upon the Members without appeal (provided it is notified to the Members within the specified or agreed timescale) and the Members shall implement such decision in relation to the HDV and its Business as soon as reasonably practicable after the Expert informs the Members of his decision.

- 25.3.3 If the Expert relinquishes their appointment or dies or if it becomes apparent that they shall be unable to complete their duties under their appointment then any Member may apply to the appropriate President (or the next the most senior available officer) of the Royal Institution of Chartered Surveyors or the Law Society of England and Wales or the Institute of Chartered Accountants in England and Wales (as appropriate to the subject of the Deadlock Matter) for a substitute to be appointed in the Expert's place (which procedure may be repeated as many times as necessary).
- 25.3.4 For the avoidance of doubt, the Members shall bear their own costs in respect of the process set out in this Clause 25.3.
- 25.3.5 The Members agree that (unless agreed otherwise on a case by case basis by the Members) matters not suitable for determination by an Expert shall include (but not be limited to):-
- (a) decisions relating to the Business of the HDV (which is a subjective decision regarding the activities and Objectives of the HDV (and not one of fact) and which shall not be appropriate for third party determination);
 - (b) any decision to adopt, amend or update any Business Plan;
 - (c) a decision on the Viability Condition as defined under the Development Framework Agreement; and/or
 - (d) any decision to appeal or challenge any matter relating to planning which shall instead be dealt with in accordance with Clause 25.3.6 below.
- 25.3.6 Where a decision to appeal or challenge any matter relating to planning becomes a Deadlock Matter then:
- (a) any Member may instruct Planning Counsel to provide a written opinion on whether the prospect of success in respect of such appeal or challenge would be equal to or greater than 60%;
 - (b) the identity of Planning Counsel shall be agreed between the Members as soon as reasonably practicable and in default of agreement within 10 Working Days from a suggestion by a Member as to the proposed Planning Counsel any Member shall be entitled to refer the matter for determination by the Expert in accordance with Clauses 25.3.2 to 25.3.4 inclusive above (*mutatis mutandis*);
 - (c) if Planning Counsel advises that the prospect of success in respect of such appeal or challenge would be equal to or greater than 60% any Member shall be entitled to require the HDV to pursue such appeal or challenge by service of written notice upon the other Members; and
 - (d) upon service of such written notice(s) in accordance with sub-clause 25.3.6(c) above the HDV shall pursue such appeal or challenge.

25.4 Mediation

- 25.4.1 If the Members agree that the Deadlock Matter is not suitable for decision by an Expert or if the Members are unable to reach agreement on this point within 10 Working Days of this matter being first presented to the Members or if the Expert fails to notify the Members of his/her decision within the specified or agreed period as set out in Clause 25.3.2, then the Members shall attempt to settle the Deadlock Matter by mediation in accordance with the Centre for Effective Dispute Resolution ("**CEDR**") Model Mediation Procedure. Unless otherwise agreed between the Members, the mediator will be nominated by CEDR. To initiate the mediation a Member must give notice in writing ("**Mediation Notice**") to the other Member requesting a mediation. A copy of the request should be sent to CEDR. The mediation will take place in Haringey, and will start not later than 20 Working Days after the date of the Mediation Notice.

25.4.2 If the dispute is not settled by mediation within 40 Working Days of commencement of the mediation or within such further period as the Members may agree in writing, then the provisions of Clause 25.5 shall apply.

25.5 **Deadlock Event**

25.5.1 If a Deadlock Matter relating to the HDV has been referred to mediation pursuant to Clause 25.4 and the Deadlock Matter has not been resolved within the relevant time period specified in Clause 25.4, then the Deadlock Matter shall crystallise into a "**Deadlock Event**" in relation to the HDV and the provisions of Clause 27 shall apply.

25.6 **Good faith**

Each of the Members hereby covenants with and undertakes to the other at all times to act in good faith towards each other and the HDV and each HDV Party in connection with the Project Agreements and this Agreement generally and the performance of their respective obligations under all such documents.

25.7 **Matters not giving rise to a Deadlock Matter:-**

25.7.1 This Clause 25 shall not apply to (and no Deadlock Matter shall arise in relation to):-

- (a) any decision to amend the Objectives;
- (b) any decision to amend this Agreement;
- (c) any decision to adopt a new Development Business Plan relating to a Category 2 Property or a Category 3 Property; or
- (d) the land valuation mechanism in Schedule 7 of the Development Framework Agreement and the proposal that following referral to senior officers and chief executive any dispute is referred to an external assessor,

which in the absence of a unanimous decision to amend, shall remain as drafted.

25.8 **HDV Parties**

25.8.1 The provisions of Clause 25 shall apply *mutatis mutandis* to each HDV Party (save for [Nominee Co1, Nominee Co2 and Nominee Co3], in relation to which this Clause 25 shall not apply), provided that references in Clause 25 to:-

- (a) the HDV shall be construed as being references to such HDV Party;
- (b) HDV Board shall be construed as being references to the board of nominees or directors (as applicable) of such HDV Party;
- (c) references to Nominees shall be construed as being references to the nominees or directors (as applicable) on the board of such HDV Party;
- (d) the HDV's Business shall be construed as being references to the HDV Party's business;
- (e) the Objectives shall be construed as being references to the Objectives of the relevant HDV Party; and
- (f) the Business Plans shall be construed as being references to the Business Plans insofar as they apply to the relevant HDV Party,

provided that any reference to a Member in this Clause 25 (insofar as it applies to an HDV Party) shall continue to be a reference to such Member, and shall not be construed as a reference to the members of such HDV Party.

26. **CLAIMS AND RELATED PARTY CONTRACTS**

- 26.1 Subject to Clause 26.2 where the PSP or any member of the PSP Group asserts any claim against the HDV or any HDV Party or it is proposed that the HDV or any HDV Party asserts any claim against the PSP or any member of the PSP Group, the Council and the Council Nominees shall have full authority on behalf of the HDV or relevant HDV Party (but acting bona fide in the best interests of the HDV or relevant HDV Party as appropriate) to negotiate, litigate and settle such claim in the name and at the expense of the HDV (or other HDV Party as appropriate) without the PSP or the PSP Nominees' further authority and, notwithstanding any other provision of this Agreement, where there is any decision to be taken by the HDV Board (or board of the relevant HDV Party) or the Members in relation to such claim, the same shall be deemed to be a PSP Conflict Matter and the provisions of Clauses 9.2 and 13.2 shall apply respectively.
- 26.2 Where the Council or any member of the Council Group asserts any claim against the HDV or any HDV Party, or it is proposed that the HDV or any HDV Party asserts any claim against the Council or any member of the Council Group, the PSP and the PSP Nominees shall have full authority on behalf of the HDV or relevant HDV Party (but acting bona fide in the best interests of the HDV or relevant HDV Party as appropriate) to negotiate, litigate and settle such claim in the name and at the expense of the HDV or relevant HDV Party without the Council or the Council Nominees' further authority and, notwithstanding any other provision of this Agreement, where there is any decision to be taken by the HDV Board (or board of the relevant HDV Party) or the Members in relation to such claim, the same shall be deemed to be a Council Conflict Matter and the provisions of Clauses 9.1 and 13.1 shall apply respectively.
- 26.3 When taking any decisions, steps or actions relating to the negotiation, litigation or settlement of any such claim referred to in Clauses 26.1 and/or 26.2, the Member(s) and Nominees authorised to take any such decisions, steps or actions on behalf of the HDV or relevant HDV Party shall act bona fide in the best interests of the HDV or relevant HDV Party (as applicable).
- 26.4 Each HDV Party which is a party to this Agreement hereby severally covenants with each Member that any monies or property which it recovers or receives in relation to the matters set out in this Clause 26 shall be applied by it in a proper and efficient manner and for its own benefit.
- 26.5 The PSP shall procure that, for so long as any amounts are due and payable (but not paid) to the HDV or any HDV Party or any member of the Council Group under any Project Agreement (the "**Indebted Person**"), no member of the PSP shall exercise any rights which that person may have to be indemnified by or claim any contribution from the Indebted Person by reason of that same Project Agreement.
- 26.6 The Council shall procure that, for so long as any amounts are due and payable (but not paid) to the HDV or any HDV Party or any member of the PSP Group under any Project Agreement (the "**Indebted Person**"), no member of the Council Group shall exercise any rights which that person may have to be indemnified by or claim any contribution from the Indebted Person by reason of that same Project Agreement.
- 26.7 Notwithstanding anything in the Delegation Policy in relation to the proposed entry into by the HDV or any HDV Party of any contract (whether for the provision of supplies, services or works or for the acquisition or disposal of assets or otherwise) with the PSP, any member of the PSP Group, the Council or any member of the Council Group (a "**Related Party Contract**") (or any material amendment or variation to a Related Party Contract), the entry into of (or the material amendment or variation to) the Related Party Contract shall be:-
- 26.7.1 approved at an HDV Board Meeting of the HDV (or board of the relevant HDV Party, as applicable); and
- 26.7.2 subject to a written report provided to the HDV Board (or board of the relevant HDV Party, as applicable) at least five (5) Working Days prior to the meeting referred to in Clause 26.7.1 which:-

- (a) summarises the material terms of the Related Party Contract (or the proposed material amendment or variation to the Related Party Contract as the case may be); and
- (b) confirms that the proposed Related Party Contract (or the proposed material amendment or variation to the Related Party Contract as the case may be) is, in the opinion of the Nominees appointed by the Party which is not part of the PSP Group or Council Group (as applicable) seeking to enter into or benefit from the Related Party Contract, on arm's length commercial terms.

27. DURATION, TERMINATION AND WINDING UP OF THE HDV PARTIES

27.1 The winding up procedure set out in this Clause 27 ("**Winding Up Procedure**") shall apply on the occurrence of any of the following "**Termination Events**":-

- 27.1.1 a Deadlock Event occurring under Clause 25.5, in which case the Winding Up Procedure shall apply:
 - (a) subject to sub-clause (b), in relation to a particular HDV Party if the Deadlock Event is isolated to that HDV Party, does not apply to the whole of the HDV Group and the remainder of the HDV Group can continue to operate in accordance with respective Objectives and the Business Plans; or
 - (b) in relation to the HDV Group where the Deadlock Event is so fundamental that more than one HDV Party or the whole HDV Group can no longer continue to operate in accordance with respective Objectives and any relevant Business Plans; or
 - (c) in relation to the HDV Group in the event that three Termination Events relating to individual HDV Parties pursuant to Clause 27.1.1(a) have occurred in any rolling five year period.
- 27.1.2 any Default Event occurring which is not capable of remedy or is not remedied or waived by the Non-Defaulting Member in accordance with Clauses 24.3 or 24.4, in which case the Winding Up Procedure shall apply in relation to the HDV Group;
- 27.1.3 the insolvency, dissolution or liquidation of any HDV Party (the "**Insolvent HDV Party**") (other than for the purposes of an amalgamation or reconstruction), in which case the Winding Up Procedure shall apply to the relevant Insolvent HDV Party only, except where the relevant insolvent HDV Party is the HDV in which case the Winding Up Procedure shall apply in respect of the whole HDV Group;
- 27.1.4 the written agreement of the Members to voluntarily wind up the relevant HDV Party or HDV Parties, in which case the Winding Up Procedure shall apply in respect of the relevant HDV Party or HDV Parties that are the subject of such written agreement; and
- 27.1.5 the twentieth anniversary of the Effective Date (save in circumstances where, prior to such twentieth anniversary, the Members agree in writing to extend this Agreement by an additional period of not more than 10 years), in which case the Winding Up Procedure shall apply in respect of the HDV Group.

27.2 Wind Up Transfers and Winding Up Procedure

- 27.2.1 On the occurrence of any Termination Event, each HDV Party and the Members shall procure that, and shall do all such acts and execute all such documents as may be necessary to ensure that, the Winding Up Procedure set out in this Clause 27 is followed.
- 27.2.2 In circumstances where the Winding Up Procedure applies to one HDV Party only (and not the HDV itself), it shall not be applied to the other HDV Parties or the HDV. In circumstances where the Winding Up Procedure applies in respect of the HDV, the Winding Up Procedure shall also apply in respect of InvLP, DevLLP and any other HDV

Party and the Council shall have the first option to require the transfer by the PSP of the PSP's Member Interest to the Council or to a third party nominated by the Council at the relevant price set out in Clause 27.2.3 ("**Wind Up Transfer Price**") by the service of a written notice upon the PSP within 90 Working Days after the occurrence of the Termination Event (or the date upon which the Council first became aware thereof) (a "**Wind Up Transfer Notice**"). In circumstances where the Council serves a Wind Up Transfer Notice pursuant to this Clause 27.2.2, the provisions of Clauses 27.2.3 to 27.2.6 (inclusive) shall apply and the provisions of Clauses 27.2.7 and 27.3 shall not apply. For the avoidance of doubt, where the Wind Up Procedure applies to any individual HDV Party (and not to the HDV) the provisions of Clause 27.3 shall apply.

- 27.2.3 Where the Council has served a Wind Up Transfer Notice pursuant to Clause 27.2.2 and where the Termination Event is a PSP Event of Default, the Winding Up Transfer Price shall be the Member Interest Value of the PSP's Member Interest (which Member Interest Value shall be determined by an Expert which the HDV Board shall instruct, less a (this information is contained in the exempt part of the report)).
- 27.2.4 Where the Termination Event is not a PSP Default Event, the (this information is contained in the exempt part of the report) referred to in Clause 27.2.3 shall not apply and a (this information is contained in the exempt part of the report) shall apply where the Termination Event is a Council Default Event.
- 27.2.5 The completion of the transfer and novation of the PSP's Member Interest to the Council or the third party nominated by the Council (as the case may be) (the "**Wind Up Transfer**") shall take place at the registered office of the HDV, or at such other address as may be agreed between the Members, within 45 Working Days after the date of the determination of the Wind Up Transfer Price in accordance with Clause 27.2.3.
- 27.2.6 On completion of a Wind Up Transfer:-
- (a) the Council shall pay the relevant Wind Up Transfer Price by telegraphic transfer to a bank account designated by the PSP;
 - (b) the PSP shall deliver to the Council duly executed deeds of novation in relation to its Member Interest in the form agreed in writing between the Members and the Council shall deliver to the PSP duly executed counterparts; and
 - (c) the PSP shall execute, deliver and do all such other deeds, documents, acts and things as may be necessary in such form as the Council may reasonably request to complete the Wind Up Transfer (including (without limitation) the novation of any supply or works agreements relating to any transferring land interests from the HDV to the Council) and ensure the PSP's Member Interest passes with full title guarantee and free from any option, lien, charge, equity or other encumbrance and together with all rights and liabilities attaching to the PSP's Member Interest at the date of service of the Wind Up Transfer Notice.
- 27.2.7 In circumstances where the Council has not served a Winding Up Transfer Notice pursuant to Clause 27.2.2 within the relevant time period specified therein or, if earlier, has indicated in writing to the PSP that it will not serve a Winding Up Transfer Notice, the Parties shall procure that (notwithstanding any other term of this Agreement) the following procedure shall apply in respect of the relevant HDV Party or HDV Parties (each a "**Winding Up HDV Party**"):-
- (a) the Council shall have the first option to purchase the relevant HDV Party to which the Winding Up Procedure applies upon payment of Appropriate Consideration taking into account the fact that Development Sites or properties already transferred to the HDV shall be developed to Practical Completion (in accordance with Clause 27.4) and if the application of the Winding Up Procedure is pursuant to a PSP Event of Default a (this information is contained in the exempt part of the report) shall be applied to the Appropriate Consideration payable by the Council and if the application of the Winding Up

Procedure is pursuant to a Council Default Event a (this information is contained in the exempt part of the report) shall be applied to the Appropriate Consideration payable by the Council. The Council shall also have the option to set off an amount equal to the Appropriate Consideration against any outstanding capital or interest on the Council's Loan Notes;

- (b) the Parties shall execute, deliver and do all such other deeds, documents, acts and timings as may be necessary in such form as the Council may reasonably request to complete the actions referred to in Clause 27.2.7(a) including (without limitation) the novation of any supply or works agreements relating to any transferring land interests from the HDV to the Council;
- (c) properties already transferred to the HDV Group shall be developed out/completed (or sold if applicable) where possible in accordance with the Business Plan and Project Agreements and each Project Agreement which has been entered into by a Winding Up HDV Party in relation to any works and/or services to be carried out in relation to any land in which the Winding Up HDV Party has a legal or equitable interest shall continue until all of the obligations on the part of the contractor have been satisfied (save in circumstances where the relevant HDV Party has resolved to terminate such agreement in accordance with its terms);
- (d) the legal and beneficial interest in properties which have not transferred to the HDV Group will remain in the ownership of the Council and the Development Framework Agreement will terminate in relation to such properties;
- (e) no further contracts for works or otherwise to third parties will be awarded or entered into save as required to complete such works and realise development proceeds;
- (f) any existing building licences or leases shall be terminated (except where Clause 27.2.7(a) applies);
- (g) save for in circumstances in which the Termination Event is as a result of the default of the PSP under the Development Management Agreement (in which case the Development Management Agreement will terminate and a new Development Manager may be appointed to carry out the services by the HDV) the Development Management Agreement will continue only to the extent required to manage the completion of the works on properties under existing construction contracts and any other contracts necessary to complete such works and realise development proceeds, and the development management fee to be paid to the Development Manager pursuant to the Development Management Agreement will be reduced on a pro rata basis. The Development Management Agreement will automatically terminate after the completion of such works and other actions required in order to realise development proceeds;
- (h) an appropriate sale or purchase mechanism in favour of the Council will operate in relation to all Affordable Tenure Stock and the PRS units;
- (i) no further activities or operations of the Winding Up HDV Party shall be conducted except as required pursuant to and in accordance with this Clause 27.2;
- (j) unless the board of the Winding Up HDV Party agrees otherwise (taking into account the provisions of Clause 27.2.7(a) and acting in the best interests of the Winding Up HDV Party) the Parties shall use all reasonable endeavours to procure the termination of all other agreements and contracts to which the Winding Up HDV Party is party (including any other Project Agreements) provided that such termination shall not constitute a breach of the relevant contract; and

- (k) where the HDV is a Winding Up HDV Party, a Winding Up Practitioner shall be appointed in accordance with Clause 27.3, to ensure that the Partnership Assets shall be distributed in accordance with Clause 27.3 and Clause 28.

27.3 Winding Up Practitioner's appointment

Winding Up of HDV and DevLLP

27.3.1 Where the HDV is a Winding Up HDV Party, a Winding Up Practitioner shall be appointed in respect of the Winding Up HDV Parties within 30 Working Days of the date upon which Clause 27.2.7 first applies in respect of the HDV, and subject to Clauses 27.3.5 and 27.3.6, shall be instructed to wind up the HDV and its Business (and the business of each Winding Up HDV Party) in an efficient manner and to ensure that its Partnership Assets (and those of the other Winding Up HDV Parties) shall be distributed in accordance with Clause 28.

DevLLP Winding Up

27.3.2 Where DevLLP is a Winding Up HDV Party (in circumstances where the HDV is not a Winding Up HDV Party), a Winding Up Practitioner shall be appointed in respect of DevLLP within 30 Working Days of the date upon which the later of the relevant Termination Event first occurs and, if applicable, the date upon which Clause 27.2.7 first applies in respect of DevLLP, and subject to Clauses 27.3.5, and 27.3.6 shall be instructed to wind up the DevLLP and its business (only) in an efficient manner and to ensure that its Partnership Assets shall be distributed in accordance with Clause 28.

InvLP Winding Up

27.3.3 Where InvLP is a Winding Up HDV Party winding up shall be dealt with in accordance with the LPA.

Other HDV Party Winding Up

27.3.4 Where any other HDV Party is a Winding Up HDV Party (in circumstances where the HDV is not a Winding Up HDV Party), a Winding Up Practitioner shall be appointed in respect of such HDV Party within 30 Working Days of the date upon the later of the relevant Termination Event first occurs and, if applicable, the date upon which Clause 27.2.7 first applies in respect of such HDV Party, and subject to Clauses 27.3.5, and 27.3.6 shall be instructed to wind up the relevant HDV Party and its business (only) in an efficient manner and to ensure that its Partnership Assets shall be distributed in accordance with Clause 28.

Efficient Manner of Wind Up

27.3.5 The Parties have agreed that references to winding up in an efficient manner in Clauses 27.3.1 to 27.3.4 (inclusive) shall not include selling off assets in a fire-sale but shall be sold appropriately in order to maximise returns for the HDV. This would include the PSP continuing to develop out part built assets in accordance with Clause 27.2.7(c) above.

27.3.6 The Parties agree that:

- (a) any member of the PSP Group shall be entitled to acquire the relevant HDV Party or its business or assets as the case may be on such winding up; and
- (b) where the Council Group has opted not to send a Wind Up Transfer Notice pursuant to Clause 27.2.2, the Council Group shall not be entitled to acquire the relevant HDV Party or its business or assets as the case may be on such winding up.

27.4 Completion of Developments Prior to Wind-up Transfer

Following the occurrence of a Termination Event due to a Deadlock Event occurring under Clause 25.5, the Parties agree that prior to the determination of the Appropriate Consideration by an Expert pursuant to Clause 27.2.7(a), the HDV have the right to develop to Practical Completion any Development Sites or properties already transferred to the HDV or transferred to any HDV Party in accordance with the relevant Business Plans and the Project Agreement.

28. **DISTRIBUTION OF ASSETS¹⁰**

28.1 In relation to any return of capital or assets to Members, including, but not limited to, following the completion of the process set out in Clause 27.3 in relation to the HDV or HDV Party, subject to:-

28.1.1 the Act, the Partnership Act, the Regulations, the Companies Act 2006 and the Insolvency Act 1986;

28.1.2 the terms of any third party funding; and

28.1.3 the terms of any security documentation,

(save as otherwise agreed in writing by the Members) the Parties shall procure that, and the Members shall exercise all voting rights and other powers of control available to them to procure that, any such Partnership Assets, capital or assets shall be distributed in the descending order of priority and in the proportions set out in this Clause 28.

InvLP

28.2 The distributions and order of priority referred to in Clause 28.1 in relation to InvLP shall be as follows (to the extent not already paid):-

28.2.1 payment of the expenses of the winding up (if any);

28.2.2 repayment to the Council directly of the whole of any amount of its Investment (Council) B Loan Notes plus accrued interest;

28.2.3 repayment of any Internal Loan Notes (plus accrued interest);

28.2.4 repayment of any surplus to the account of HDV;

DevLLP

28.3 The distributions and order of priority in relation to DevLLP shall be as follows (to the extent not already paid):-

28.3.1 payment of the expenses of the winding up (if any);

28.3.2 repayment of any C Loan Notes (plus accrued interest) on a pari passu basis;

28.3.3 repayment of any Internal Loan Notes (plus accrued interest);

28.3.4 payment of any surplus to the account of HDV.

HDV

28.4 The distributions and order of priority in relation to HDV shall be as follows (to the extent not already paid):-

28.4.1 repayment of the expenses of the winding up (if any);

28.4.2 repayment of any A Loans (plus accrued interest) on a pari passu basis;

¹⁰ To be updated to follow schedules 7 and 8 and read across with the LPA.

- 28.4.3 distribution to each Member of amounts allocated as being credited to its Current Account;
- 28.4.4 repayment to each Member of its Outstanding Capital Contribution; and
- 28.4.5 subject to Clause 28.5, distributions of profits due to the Members pro rata to their Member Proportions.
- 28.5 For the purposes of Section 74 Insolvency Act 1986 as it is applied to limited liability partnerships under the Act and the Regulations no Member is liable to contribute any amount to the assets of the HDV on a winding up to cover any of the matters set out in that section.
- 28.6 Each Member (the "**Indemnifying Member**") shall indemnify the other on demand against any Direct Losses which that other Member suffers or incurs as a result of any claim, action or proceedings issued by any creditor or administrator of any member of the Indemnifying Member's Group relating to the procedure set out in Clause 27 and Clause 28. In this Clause 28.6 "**Group**" shall refer to the Council Group, or PSP Group (as the context shall require).
- 28.7 Where a payment is made pursuant to Clause 28.5, the Parties agree that the Termination Event shall not give rise to any other remedy to the PSP, HDV or any HDV Party.
29. **INTELLECTUAL PROPERTY**
- 29.1 Any Intellectual Property created or discovered by a person while a Member, or employed or engaged by a Member, which relates to the business of an HDV Party and is capable of being used or adopted for use by an HDV Party ("**Relevant Intellectual Property**"), shall be disclosed to such HDV Party immediately and shall belong to and be the absolute property of such HDV Party. This does not affect any rights of a Member, who is also an employee of the HDV, under the Patents Act 1977.
- 29.2 To the extent that the legal title in any Relevant Intellectual Property fails to vest in the relevant HDV Party, the relevant Members agree to hold such rights on trust for such HDV Party. Each Party further agrees to use his reasonable endeavours to do (or procure the doing of) all such acts and execute (or procure the execution of) all such documents as may be reasonably required by each HDV Party (the relevant HDV Party paying any reasonable expenses incurred by doing so) in order to vest the legal title in the relevant HDV Party.
- 29.3 If requested by an HDV Party (and at its expense), each Member shall give all necessary assistance to such HDV Party to enable it to enforce its Intellectual Property rights against third parties and apply for registration of the rights, where appropriate throughout the world, for the full term of those rights.
30. **WARRANTIES**
- 30.1 The PSP, the HDV and each HDV Party severally warrants and represents to each of the Members at the date of their execution or adherence to this Agreement that:-
- 30.1.1 it is duly incorporated under the law of England and Wales and has the corporate power to enter into and to exercise its rights and perform its obligations under the Project Agreements to which it is a Party;
- 30.1.2 each Project Agreement to which it is a party constitutes, or shall when executed constitute legal, binding and enforceable obligations on each of them;
- 30.1.3 it has taken all necessary action to authorise the execution of and the performance of its obligations under the Project Agreements to which they are respectively parties (and in the case of a Project Agreement executed after the date of this Agreement will take all necessary action to authorise the execution of that Project Agreement);
- 30.1.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge, is pending or threatened against it

or any of its assets which will or might have a material adverse effect on its ability to perform their obligations under the Project Agreements;

30.1.5 it is not subject to any contractual obligation, compliance with which is (in its reasonable opinion) likely to have a material adverse effect on its ability to perform its obligations under any Project Agreement to which it is a party; and

30.1.6 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for its winding-up or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, administrator or similar officer in relation to its assets or revenue.

30.2 The PSP represents and warrants to the Council that at the date of this Agreement:-

30.2.1 the legal and beneficial ownership of the PSP and the PSP Parent Company is as follows: -

Name:	[INSERT] ("PSP")
Company Number:	[INSERT]
Shareholder (s)	[INSERT] ("PSP Parent Company")

Name:	[INSERT] ("PSP Parent Company")
Company Number:	[INSERT]
Shareholder (s)	[INSERT]

and

30.2.2 that, other than any shareholder pre-emption rights, no arrangements are in place that have or result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any or all of the shares in PSP or the PSP Parent Company.

Non-Solicitation

30.3 No Interested Party (which for the purposes of Clauses 30.3 and 30.4 shall mean any member of the PSP Group) will (directly or indirectly, for the benefit of itself or any other person), for a period of six (6) months after the Parties enter into this Agreement, solicit or hire as an employee or consultant any employee of the Council Group who is involved with the performance of this Agreement, except where agreed in writing by the Council. Provided however that this Clause 30.3 will not prevent any Interested Party from hiring:

30.3.1 any person who has ceased to be an employee of the Council Group at least six months before being employed or engaged by the hiring Interested Party and who was not solicited during that six month period;

30.3.2 any employee of the Council Group who contacts the hiring Interested Party on his own initiative without any direct or indirect solicitation by or encouragement from or on behalf of the hiring Interested Party; or

30.3.3 any employee of the Council Group as a result of placing general advertisements in trade journals, newspapers or similar publications which are not directed at the Council Group or its employees.

30.4 Each Party agrees that in all the circumstances of this Agreement the restriction contained in Clause 30.3 is reasonable and necessary for the protection of any member of the Council Group, and acknowledges:

30.4.1 that having regard to those circumstances such restriction does not work harshly on it

30.4.2 that if such restriction is breached by an Interested Party damages would be an inadequate remedy and that (without prejudice to any other remedies or rights which any other Party may have in respect of such breach) equitable reliefs including without limitation injunctions and specific performance are available to the other Parties for the enforcement of such restriction; and

30.4.3 that the other Parties have entered into this Agreement in full reliance upon the extent and effect of such restriction and the willingness of the Interested parties to be bound by it.

31. LOCAL AUTHORITY POWERS

31.1 Nothing contained or implied in any of the Project Agreements or any consent or approval granted pursuant to any of them shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions as the local authority or local planning authority or as the highway authority or as any other statutory authority and such rights powers duties and obligations under Statutory Requirements may be as fully and effectually exercised in relation to the Development Sites or any other land or property as if it were not party to the Project Agreements 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 given under any of the Project Agreements and vice versa.

32. CONFIDENTIAL INFORMATION AND FREEDOM OF INFORMATION¹¹

32.1 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 32.2) will:-

32.1.1 keep Confidential Information (as defined in Clause 32.2) confidential;

32.1.2 not disclose Confidential Information to any other person other than with the written consent of the Disclosing Party (as defined in Clause 32.2) or in accordance with Clauses 32.2 to 32.5; and

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

32.2 For the purposes of this Clause 32, "**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.

32.3 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

¹¹ Noted that FOIA provisions across the documents are to be refined to ensure consistency.

the permitted recipient of such Confidential Information shall be known as a **'Recipient'**. In this Clause 32.3 **"Group"** shall refer to the Council Group, or PSP Group (as the context shall require).

- 32.4 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.
- 32.5 The obligations contained in Clauses 32.2 to 32.4 shall not apply to any Confidential Information which:-
- 32.5.1 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;
 - 32.5.2 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;
 - 32.5.3 subsequently comes lawfully into the possession of the Receiving Party from a third party and not subject to any obligations of confidentiality;
 - 32.5.4 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
 - 32.5.5 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.
- 32.6 The Parties acknowledge that the Council is subject to the requirements of the FOIA and the EIR. For the purpose of Clauses 32.6 to 32.12 (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.
- 32.7 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:-
- 32.7.1 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 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
 - 32.7.2 provide the Council with a copy of all such requested Information held by the 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).
- 32.8 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.

32.9 Following any notification under Clause 32.8, 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:-

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

32.9.2 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.

32.10 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 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).

32.11 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 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).

32.12 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.

33. **RELATIONSHIPS WITH GROUPS**

33.1 Each Party shall procure that any contracts between (i) the HDV (or any other HDV Party); and (ii) members of the Council Group or PSP Group (as applicable), shall be made on an arm's length commercial basis and on terms that are not unfairly prejudicial to the interests of any other Party. Each Member undertakes to the other to use all reasonable endeavours to ensure that such terms are negotiated and settled in good faith.

33.2 Each of the Members undertakes that, if the HDV (or any other HDV Party) shall have or may have any claim against it or any member of the Council Group or the PSP Group (as applicable), it shall procure that the Council Nominees (in the case of the Council) or the PSP Nominees (in the case of the PSP) shall not do anything to prevent or hinder the assertion or enforcement of any such claim by the HDV (or other HDV Party) against it (but without prejudice to any right it may have to dispute such claim).

34. **HDV AND HDV SUBSIDIARY OBLIGATIONS**

Each Party undertakes with the other that (so far as it is legally able) it will exercise all voting rights and powers, direct and indirect, available to it in relation to its subsidiaries and to the HDV (and any other HDV Party) so as to ensure the complete and punctual fulfilment, observance and performance of the provisions of this Agreement and each Project Agreement and generally that full effect is given thereto.

35. **ANNOUNCEMENTS**

35.1 Subject to Clause 35.2, no Member shall make nor send any announcement, communication or circular relating to the subject matter of this Agreement unless such Member has first obtained the

other Member's written consent to the form and content of such announcement, such consent not to be unreasonably withheld or delayed.

- 35.2 Clause 35.1 does not apply to an announcement, communication or circular required by Law or by the rules of any stock exchange or by any governmental authority, in which event the Member required to make or send such announcement, communication or circular shall, where practicable, first consult with the other Members as to the content of such announcement.

36. **NOTICES**

- 36.1 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: Chief Executive
PSP	Attention: General Counsel
HDV	Attention: HDV Chief Executive
DevLLP	Attention: HDV Chief Executive
InvLP	Attention: HDV Chief Executive
Nominee Co1	Attention: HDV Chief Executive
Nominee Co2	Attention: HDV Chief Executive
Nominee Co3	Attention: HDV Chief Executive
PSP Guarantor	Attention: []

- 36.2 Subject to Clause 36.3, any notice or other communication shall be deemed to have been served:-

36.2.1 if delivered personally, when left at the address referred to in Clause 36.1; or

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

- 36.3 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.

37. **INVALIDITY AND SEVERANCE**

If any provision of this Agreement is held to be invalid, unenforceable or illegal, in whole or in part, such provision or part shall to that extent be deemed not to form part of this Agreement but the enforceability of the remainder of this Agreement shall remain unaffected. Notwithstanding the foregoing, the Parties shall thereupon negotiate in good faith in order to agree the terms of a mutually satisfactory provision, achieving so nearly as possible the same commercial effect, to be substituted for the provision so found to be invalid, unenforceable or void.

38. **WAIVER**

- 38.1 The failure by a Party to exercise or delay in exercising any right or remedy under this Agreement shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies such Party may otherwise have and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

38.2 Subject to the provisions of Clauses 27.2.4 and 28.7, the Parties' rights and remedies contained in this Agreement are in addition to, and not exclusive of, any other rights or remedies available at Law.

39. **THIRD PARTY RIGHTS**

Save to the extent expressly set out in this Agreement, a person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of this Agreement provided that this does not affect any right or remedy of the third party which exists or is available apart from that Act. No party may declare itself as a trustee of the rights under this Agreement for the benefit of any third party save as expressly provided in this Agreement.

40. **OBLIGATIONS OF THE HDV**

To the extent to which it is able to do so by Law, the HDV undertakes with each of the Members that it shall comply with each of the provisions of this Agreement. Each undertaking by the HDV in respect of each provision of this Agreement shall be construed as a separate undertaking and if any of the undertakings is unlawful or unenforceable, the remaining undertakings shall continue to bind the HDV.

41. **COSTS**

Each of the Parties shall pay its own costs in relation to the negotiation, preparation, execution and implementation of this Agreement and of each document referred to in this Agreement. The costs of and incidental to the incorporation and establishment of the HDV, InvLP and DevLLP shall be borne and paid by the HDV.

42. **ENTIRE AGREEMENT**

42.1 This Agreement and the Project Agreements set out the entire agreement and understanding between the Parties. Accordingly this Agreement and the Project Agreements supersede and extinguish any heads of agreement or memorandum of understanding or other preliminary documents as between the Parties. It is agreed that:-

42.1.1 no Party has entered into this Agreement in reliance upon any representation, warranty or undertaking of any other Party which is not expressly set out or referred to in this Agreement or the Project Agreements;

42.1.2 a Party may claim in contract for breach of warranty under this Agreement but shall have no claim or remedy in respect of any misrepresentation (whether negligent or otherwise, and whether made before or in this Agreement) or any untrue statement made by any other Party;

42.1.3 this Clause shall not exclude any liability or remedy for fraud or fraudulent misrepresentation by a Party; and

42.1.4 save as expressly set out in this Agreement or in any other agreement or document referred to in this Agreement, no Party shall owe any duty of care to any other Party.

43. **AMENDMENTS**

This Agreement may be amended only by an instrument in writing signed by duly authorised representatives of each of the Parties, provided that the amendment of any provision of this Agreement solely affecting any of the respective rights or obligations of the Parties or either of them inter se shall not require the agreement of the HDV.

44. **FURTHER ASSURANCE**

44.1 Each Party will:-

- 44.1.1 execute any document and do anything; and
- 44.1.2 use all reasonable endeavours to procure that any third party (where necessary) executes any deed or document and does anything,
- reasonably necessary to implement the terms of this Agreement.

44.2 Where there is any contradiction, ambiguity or consistency between any of the following documents referred to in this Agreement they shall be interpreted in the following descending order of priority:-

- 44.2.1 this Agreement;
- 44.2.2 the then current HDV Business Plan; and
- 44.2.3 the then current Development Business Plan(s) and Investment Business Plan.

45. **INSURANCE**

- 45.1 From the Effective Date the HDV shall take out and maintain with reputable insurers all insurances required to be maintained by Law and such other prudent insurances against such risks as are normally insured against by businesses carrying on activities similar to those of the HDV (including, but not limited to, an appropriate level of third party liability insurance) and (without prejudice to the generality of the foregoing) shall insure its assets of an insurable nature for their full replacement or reinstatement value. The HDV shall comply with its obligations under the Project Agreements in respect of insurance.
- 45.2 From the Effective Date InvLP shall take out and maintain with reputable insurers all insurances required to be maintained by Law and such other prudent insurances against such risks as are normally insured against by businesses carrying on activities similar to those of InvLP (including, but not limited to, an appropriate level of third party liability insurance) and (without prejudice to the generality of the foregoing) shall insure the Investment Portfolio and its assets of an insurable nature for their full replacement or reinstatement value. InvLP shall comply with its obligations under the Project Agreements in respect of insurance.
- 45.3 From the Effective Date DevLLP shall take out and maintain with reputable insurers all insurances required to be maintained by Law and such other prudent insurances against such risks as are normally insured against by businesses carrying on activities similar to those of such DevLLP (including, but not limited to, an appropriate level of third party liability insurance) and (without prejudice to the generality of the foregoing) shall insure its assets of an insurable nature for their full replacement or reinstatement value. The HDV shall procure that the DevLLP shall comply with its obligations under the Project Agreements in respect of insurance.

46. **SUCCESSORS AND ASSIGNS**

Except as otherwise specified in this Agreement, the provisions of this Agreement shall be binding on and enure to the benefit of the heirs, personal representatives, successors and assigns of the respective parties to this Agreement.

47. **LAW**

- 47.1 This Agreement shall be governed by and construed in accordance with English law.
- 47.2 Each Party hereby submits to the exclusive jurisdiction of the English courts to hear and determine any suit, action or proceeding and to settle any disputes which may arise out of or in connection with this Agreement and each Party irrevocably waives any objection which it may have to the Courts of England being nominated as the forum to hear and determine any such proceedings and to settle any such disputes and agrees not to claim that the courts of England are not a convenient or appropriate forum.

48. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts and by each of the Parties on separate counterparts, each of which when executed and delivered shall be deemed to be an original, but all the counterparts together shall constitute one and the same agreement.

49. PREVENTION OF BRIBERY

49.1 The PSP and the Council:-

49.1.1 shall not, and shall procure that any member of the PSP Group or Council Group (as applicable) shall not, in connection with the Project Agreements commit a Prohibited Act;

49.1.2 warrants, represents and undertakes that it is not aware of any improper financial or other advantage being given to any person working for or engaged by the PSP or the Council as the case may be in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the PSP or the Council as the case may be before execution of this Agreement;

49.1.3 shall have and comply with Adequate Procedures; and

49.1.4 shall provide evidence of its Adequate Procedures to the PSP or the Council as the case may be within 30 days of written request.

49.2 The PSP and the Council shall operate and maintain through the term of this Agreement an anti-bribery policy (which shall be disclosable to the PSP or the Council as the case may be within 7 days of written request) to prevent any employee from committing a Prohibited Act and shall enforce it where appropriate.

49.3 If any breach of Clause 49 is suspected or known by the PSP or the Council, that Party must notify the PSP or the Council as the case may be immediately.

49.4 If the PSP or the Council notifies the other that it suspects or knows that there may be a breach of Clause 49.1 the notifying Party must respond promptly to related enquiries, co-operate with any investigation of the PSP or the Council as the case may be and allow the PSP or the Council as the case may be to audit books, records and any other relevant documentation on request.

49.5 The PSP or the Council may, without prejudice to any other rights and remedies available under this Agreement, terminate this Agreement by written notice with immediate effect to the PSP or the Council as the case may be for breach of Clause 49.1 and recover from the Party in breach any loss suffered arising from such termination. In determining whether to exercise the right of termination under this Clause 49, the PSP or the Council as the case may be shall give all due consideration, where appropriate, to action other than termination of this Agreement unless the Prohibited Act is committed by an individual or a member of the PSP Group or Council Group not acting independently of the Party in breach. The expression "not acting independently of" (when used in this Clause) shall be construed as acting:-

49.5.1 with the authority; or

49.5.2 with the actual knowledge

of any one or more of the directors or nominees (as applicable) of the Party in breach, or

49.5.3 in circumstances where one or more of the directors or nominees (as applicable) of the Party in breach ought reasonably to have had knowledge.

49.6 Any notice of termination under Clause 49.5 must specify:-

49.6.1 the nature of the Prohibited Act;

49.6.2 the identity of the party believed to have committed the Prohibited Act; and

49.6.3 the date on which this Agreement will terminate.

- 49.7 Any termination under Clause 49.5 shall be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Party terminating the Agreement.
- 49.8 Any termination under Clause 49.5 as a result of a breach of Clause 49.1 by the Council shall be a Council Default Event and the provisions of Clause 24 shall apply.
- 49.9 Any termination under Clause 49.5 as a result of a breach of Clause 49.1 by the PSP shall be a PSP Default Event and the provisions of Clause 24 shall apply.
- 49.10 For the avoidance of doubt, the PSP and the Council shall be responsible for the acts and omissions of members of the PSP Group and the Council Group (as applicable) and for the purpose of this Clause 49 any act, default or omission of any such group member shall be deemed to be an act, default or omission of the PSP or the Council as applicable.
- 49.11 HDV will, and the PSP and the Council will use all their powers in relation to HDV to ensure that HDV will:-
- 49.11.1 not do or omit to do any act or thing which would constitute a Prohibited Act; and
 - 49.11.2 within 30 days of Completion prepare and implement an anti-bribery policy to prevent any employee from committing a Prohibited Act and shall enforce it where appropriate and have in place Adequate Procedures; and
 - 49.11.3 comply with the Adequate Procedures and the anti-bribery policy.

50. **ILLUSTRATIVE EXAMPLE OF FINANCIAL OPERATION OF THE HDV**

- 50.1 Schedule 6 sets out an explanatory summary of the potential financial operation of the HDV.
- 50.2 The Parties acknowledge that the contents of Schedule 6 are for illustrative purposes only and are not intended to be legally binding. However, the Parties agree that Schedule 6 should be used as a guide to the interpretation of this Agreement and subject to Clause 50.3 shall be considered before other sources if there is any dispute in relation to the terms of the rest of this Agreement.
- 50.3 Notwithstanding Clause 50.2, if there is a direct conflict between Schedule 6 and any other Clause or Schedule of this Agreement, such other Clause or Schedule shall take priority.

EXECUTED AS A DEED by the Parties on the date which first appears in this deed.

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)
[PSP] acting by a Director:)

Director

Witness Signature

Witness Name

Witness Address

.....

.....

.....

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])

EXECUTED and **DELIVERED** as a)
deed on the date hereinbefore first)
mentioned by)
[INV LP] acting by its member, [HDV)
LLP]

.....

on behalf of [HDV LLP]

Witness Signature

Witness Name

Witness Address

.....

.....

.....

EXECUTED and **DELIVERED** as a)
deed on the date herein before first)
mentioned by)
[NOMINEE CO1] acting by a director:)

Director

Witness Signature

Witness Name

Witness Address

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.....

EXECUTED and **DELIVERED** as a)
deed on the date herein before first)
mentioned by)
[NOMINEE CO2] acting by a director:)

Director

Witness Signature

Witness Name

Witness Address

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.....

EXECUTED and **DELIVERED** as a)
deed on the date herein before first)
mentioned by)
[NOMINEE CO3] acting by a director:)

Director

Witness Signature

Witness Name

Witness Address

.....

.....

.....

EXECUTED and **DELIVERED** as a)
deed on the date hereinbefore first)
mentioned by)
[DEVLLP] acting by its member, **[HDV**)
LLP]

.....

on behalf of [HDV LLP]

Witness Signature

Witness Name

Witness Address

.....

.....

.....

EXECUTED and **DELIVERED** as a)
deed on the date hereinbefore first)
mentioned by)
[PSP GUARANTOR] acting by a)
Director)

Director

Witness Signature

Witness Name

Witness Address

.....

.....

.....

SCHEDULE 1

DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

1.1 In this Agreement, unless the context otherwise requires:-

"Admission Agreement"	means the admission agreement in the Agreed Form between (1) the Council and [(2) the PSP]
"A Loan"	means Council A Loan or PSP A Loan as applicable
"A Loan Note Instruments"	means the Investment (Council) A Loan, Development (Council) A Loan and/or the Development (PSP) A Loan as applicable
"Acceptable Net Asset Value"	means a Net Asset Value of (this information is contained in the exempt part of the report)
"Accounting Date"	means [31 March] in each year or such other date as the Members may from time to time agree
"Accounting Period"	means any period of 12 calendar months from and including one Accounting Date up to but excluding the next Accounting Date
"Acquisition Costs"	means the costs of acquiring the Investment Portfolio
"Act"	means the Limited Liability Partnerships Act 2000
"Adequate Procedures"	adequate procedures designed to prevent persons associated with it from undertaking conduct causing it to be guilty of an offence under section 7 of the Bribery Act 2010
"Adverse Reputation Event"	shall have the meaning given to it in Clause 16.2.2
"Adverse Reputation Event Remedial Plan"	shall have the meaning given to it in Clause 16.2.6
"Aggregate Transfer Value"	means the total price that is paid for the Investment Portfolio Properties that are transferred to Inv LP pursuant to the Agreement for Sale (which for the whole Investment Portfolio would total forty five million pounds (£45,000,000))
"Agreed Form"	means the form agreed prior to the execution of this Agreement and initialled by the Members for the purposes of identification or annexed to this Agreement for the purposes of identification or executed and delivered contemporaneously with the execution of this Agreement
"Agreement"	means this deed (including any Schedule or Appendix to it), as amended, varied, supplemented or replaced from time to time in accordance with its terms
"Agreement for Sale"	means the agreement made on the Effective Date between (1) the Council; and (2) InvLP, relating to the sale and transfer of the Investment Portfolio Properties (as more particularly described in that agreement) from the Council to InvLP in the Agreed Form

"Alternate Nominee"	has the meaning in Clause 7.2.3
"Appointments"	means as the context so requires: <ul style="list-style-type: none"> <li style="margin-left: 40px;">(c) the Development Management Agreement; and <li style="margin-left: 40px;">(d) the appointment of any member of the Independent Verification Team or the Development Solicitor by HDV as referred to in Clause 18.8.2 or Clause 18.8.3 or Clause 18.8.12
"Appropriate Consideration"	means the consideration payable in respect of the relevant HDV Party calculated in accordance with the principles set out in Schedule 11
"Asset Management Agreement"	means the strategic asset management agreement in respect of the Investment Portfolio in the Agreed Form expressed to be made between (1) InvLP and (2) the Asset Manager
"Asset Management Resource Plan"	the resource plan for the delivery of the asset management services which are the subject of the Asset Management Agreement, as set out in Schedule 3 of the Asset Management Agreement
"Asset Manager"	means Lendlease Real Estate Investment Services Limited or such other asset manager who is appointed by InvLP to perform the services set out in the Asset Management Agreement
"Auditors"	means the auditors of the HDV and HDV Parties from time to time
"Bank"	means the bank of the HDV and HDV Parties from time to time
"Bid Process"	means the process of LLC seeking the award of a Vertical Works Contract or a Horizontal Works Contract (as applicable) pursuant to the Contractor Framework Agreement when the Contractor Framework Agreement applies
"Bid Vertical Build"	means the Vertical Build by Gross Internal Area to be constructed on the Development Sites, which those Vertical Works Contracts which LLC has been given the opportunity to seek the award of in accordance with the Contractor Framework Agreement relate to
"Board Meeting"	means any meeting of the board of Nominees (or Directors, as applicable) in accordance with the provisions of Clause 8
"Borough"	means the geographical area of the London Borough of Haringey from time to time
"Bribery Act"	means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued from the relevant government department concerning the legislation
"Business"	means the business of the HDV as described in recital (A) and all matters reasonably ancillary to any such matters pursuant to

	the HDV Objectives
"Business Plan Material Variation"	any amendment, variation, update or change falling within the following categories: <ul style="list-style-type: none"> (a) any item specifically identified within a Business Plan itself as being material; (b) any item specifically identified within this Agreement (including, but not limited to, Part 5 of Schedule 2 and the Delegation Policy) as requiring Member approval; or (c) any matter which the HDV Board determines as sufficiently material to require a referral to Members.
"Business Plan(s)"	means the business plans consisting of the HDV Business Plan, the Social and Economic Business Plan, the Development Business Plans and the Investment Business Plan (or any of them as the context may require) as agreed by the Members in accordance with the provisions of this Agreement and as the same may be varied or updated from time to time in accordance with the provisions of this Agreement
"C Loan"	means the Development (Council) C Loan
"C Loan Note"	means a loan note constituted by a Development (Council) C Loan Note Instrument
"Capital Account"	means the account ledger maintained by the HDV in the name of a Member against which its Capital Contribution is credited in accordance with Clause 5.1 and which, shall not require (for the avoidance of doubt, a separate bank account)
"Capital Contribution"	means, in respect of a Member, any financial contribution made by that Member to the HDV in accordance with Clause 5
"Category 1 Properties"	shall have the meaning given to such expression in the Development Framework Agreement
"Category 1A Properties"	shall have the meaning given to such expression in the Development Framework Agreement
"Category 1B Properties"	shall have the meaning given to such expression in the Development Framework Agreement
"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
"Category 3 Properties"		shall have the meaning given to it Schedule 3 (Future Opportunities) of the Land Assembly Agreement
"Chairman"		means the chairman from time to time of the HDV Board or the board of the relevant HDV Party (as applicable) who shall appointed in accordance with the provisions of Clause 7.2.7 and approved by the Members
"CM Protocol"		means the procedure set out in schedule 2 of the Contractor Framework Agreement
"Companies Act"		means the Companies Act 1985 (as amended by the Companies Act 2006)
"Confidential Information"		has the meaning given in Clause 32.2
"Confidentiality Period"		shall have the meaning set out in Clause 32
"Conflict Matter"		means a Council Conflict Matter or a PSP Conflict Matter as the case may be
"Constructed Vertical Build"		means the Vertical Build by Gross Internal Area constructed on the Development Sites, which a Vertical Works Contract awarded to LLC pursuant to the Contractor Framework Agreement relates to
"Construction Management Agreement"		means the form of construction management agreement annexed at Schedule 5 of the Contractor Framework Agreement
"Contractor Framework Agreement"		means an agreement between the HDV and LLC dated on or around the Effective Date which sets out, amongst other things, the basis on which LLC will be given an opportunity to seek the award of Vertical Works Contracts and Horizontal Works Contracts
"Control"		means where a party holds any of the following rights:- <ul style="list-style-type: none"> (a) more than 50% of the voting rights in an entity; (b) is a member of such entity and has the right to appoint or remove a majority of the directors or board representatives of such entity; or (c) is a member and controls alone, under an agreement with the other members, a majority of the voting rights, and "Controlled" shall be construed accordingly
"Council A Loan"		means the aggregate sums of the Development (Council) A Loan and the Investment (Council) A Loan
"Council B Loan"		means the Investment (Council) B Loan

"Council C Loan"	means the Development (Council) C Loan
"Council Conflict Matter"	means the matters listed below (being matters where the Council Nominees or the Council (as the case may be) shall be considered to have a conflict):- <ul style="list-style-type: none"> (a) any decision by or on behalf of the HDV (or member of the HDV Group) to exercise any of the legal rights of the HDV (or member of the HDV Group) in relation to a Council A Loan, Council B Loan or Council C Loan and any associated loan note or security documentation (as the case may be) and/or; (b) any decision by or on behalf of the HDV (or member of the HDV Group) to enforce its legal rights under the Development Framework Agreement or Agreement for Sale; (c) any decision by or on behalf of the HDV (or member of the HDV Group) to enforce its legal rights against Homes for Haringey
"Council Corporate Plan"	means the Haringey Corporate Plan 2015-20 ¹⁸ which can be found at: http://www.haringey.gov.uk/sites/haringeygovuk/files/corporate_plan_2015-18.pdf , and any replacement corporate plans subsequently published by the Council from time to time
"Council Costs Security Agreement"	means the security agreement in the Agreed Form to be granted by the relevant DevLLP Subsidiary in favour of the Council to secure the payment of the LAA Invoiced Costs
"Council Default Event"	has the meaning given to it in Clause 24.1.1
"Council Grievance Notice"	has the meaning given to it in Clause 24.4.1
"Council Group"	means:- <ul style="list-style-type: none"> (a) the Council and its Subsidiaries from time to time other than Homes for Haringey; and/or (b) any company or Subsidiary of a company identified in (a) above (other than Homes for Haringey) where at least one fifth of the issued equity share capital is beneficially owned by the person concerned (whether or not a company), <p>provided that, for the purposes of this definition, any references to companies shall be interpreted as including limited liability partnerships and the definition of "Subsidiary" shall be such that any references to companies therein shall include references to limited liability partnerships</p>
"Council's Economic Development and Growth Strategy"	means the Council's strategy for economic growth and development as updated from time to time
"Council's Investment Portfolio Annual Return"	means the sum of (this information is contained in the exempt part of the report) per annum

"Council's Investment Portfolio Annual Return Top Up"	[●] ¹²
"Council Loan Note Instruments"	means the Investment (Council) A Loan Note Instrument; Investment (Council) B Loan Note Instrument; Development (Council) A Loan Note Instrument, Development (Council) C Loan Note Instrument and Land Assembly (Council) D Loan Note Instrument; and "Council Loan Note Instrument" means any of them as the context may require
"Council Loan Note"	means any loan note issued pursuant to a Council Loan Note Instrument
"Council Loan Note Security Agreements"	means the Investment (Council) A Loan Note Security Agreement; Investment (Council) B Loan Note Security Agreement; Development (Council) A Loan Note Security Agreement; Development (Council) C Loan Note Security Agreement; and Land Assembly (Council) D Loan Note Security Agreement and "Council Loan Note Security Agreement" means any of them as the context may require
"Council Prohibited Party"	means in the Council's reasonable discretion a third party that would not be appropriate for the Council to contract with because: <ul style="list-style-type: none"> (a) such party would not satisfy the mandatory or financial qualification requirements for a PSP set out in the pre-qualification questionnaire relating to the procurement exercise procuring the PSP for the HDV structure; or (b) such party's business or parent's business is substantially concerned with the sale, distribution or manufacture of arms or weapons, tobacco or tobacco related products, alcoholic beverages, gaming or gambling, or pornography; or (c) such party would not be a fit and proper person for the Council to contract with having regard to the Council being a public sector body
"Council Remedy Period"	has the meaning given in Clause 24.3.1
"Council Nominees"	means the nominees appointed by the Council to the HDV Board or the board of the relevant HDV Party (as applicable) pursuant to Clause 7
"Council Senior Officer"	has the meaning given in Clause 25.2.1
"Current Account"	in respect of each Member, each Member's Member Current Account ledger (as defined in paragraph 1.2 of Schedule 5 (Accounts)) and which shall not require, for the avoidance of doubt, a separate bank account
"D&B Contract"	means the form of design and build contract annexed at Schedule 4 of the Contractor Framework Agreement

¹² Drafting to flow out of note referred to in Schedule 6 covering how Council's (this information is contained in the exempt part of the report) is made up

"D&B Protocol"	means the procedure set out in schedule 1 of the Contractor Framework Agreement
"Deadlock Event"	has the meaning given in Clause 25
"Deadlock Matter"	has the meaning given in Clause 25
"Deadlock Notice"	has the meaning given in Clause 25
"Deed of Adherence"	means a deed of adherence in substantially the same form as that set out at Schedule 9 (Deed of Adherence)
"Default Event"	means a Council Default Event or a PSP Default Event as the context so requires
"Defaulting Member"	has the meaning given in Clause 24.2
"Delegation Policy"	means the document contained in Schedule 3 (Delegation Policy) identifying how certain decisions will be made by the HDV and the HDV Parties (as amended from time to time in accordance with this Agreement)
"DevLLP Board"	means the board of nominees constituted in accordance with Clause 7 in order to determine certain matters relating to DevLLP in accordance with Clause 8 and in relation to Clause 18.8 shall not include the board of nominees of any subsidiary of DevLLP
"DevLLP Current Account"	means the current account to be established by DevLLP in accordance with paragraph 1.7 of Schedule 5 (Accounts)
"DevLLP Objectives"	means the objectives of DevLLP as set out in Clause 4.3
"DevLLP Subsidiary Intercreditor Deed"	means each intercreditor agreement in the Agreed Form to be entered into between (1) the relevant DevLLP Subsidiary; (2) DevLLP; (3) the Council; and (4) the PSP
"Development"	means the development of any of the Development Sites or any part of them
"Development Business Plan"	means a Business Plan in relation to a Development Site as the same may be varied or updated from time to time in accordance with the provisions of this Agreement, which, as a minimum, shall comply with the relevant provisions of Schedule 2 (Form of Business Plans), and " Development Business Plan(s) " or " Development Business Plans " shall be construed accordingly
"Development Costs"	means those costs included in the Development Business Plan for a Category 1 Property plus any other costs reasonably and properly incurred by DevLLP progressing the relevant Category 1 Property
"Development (Council) A Loan Note"	means a loan note constituted by the Development (Council) A Loan Note Instrument
"Development (Council) A Loan Note Instrument"	means a loan note instrument to be entered into between (1) the HDV; and (2) the Council in respect of the Development (Council) A Loan Notes to be issued to the Council from time to time pursuant to this Agreement

"Development (Council) A Loan Note Security Agreement"	means the debenture entered into on or around the date of the Development (Council) A Loan Note Instrument between (1) the HDV; and (2) the Council in respect of the Development (Council) A Loan Notes outstanding from time to time
"Development (Council) C Loan Note"	means a loan note constituted by the Development (Council) C Loan Note Instrument
"Development (Council) C Loan Note Instrument"	means a loan note instrument to be entered into between (1) the relevant DevLLP Subsidiary; and (2) the Council in respect of the Development (Council) C Loan Notes to be issued to the Council from time to time pursuant to this Agreement relating to the relevant Development Site or Phase (as applicable)
"Development (Council) C Loan Note Security Agreement"	means the debenture entered into on or around the date of the relevant Development (Council) C Loan Note Instrument between (1) the relevant DevLLP Subsidiary; and (2) the Council in respect of the Development (Council) C Loan Notes outstanding from time to time relating to the relevant Development Site or Phase (as applicable)
"Development Framework Agreement"	means the development framework agreement entered into between (1) the Council and (2) HDV relating to the Category 1 Properties on the Effective Date
"Development Management Agreement"	means the property development management agreement entered into between (1) DevLLP; (2) the Development Manager; (3) Lendlease Europe Holding Limited; and (4) the HDV in relation to the development and management of the Development Sites
"Development Manager"	means Lendlease Development (Europe) Limited or such other development manager who is appointed by DevLLP to perform the services set out in the Development Management Agreement
"Development Programme"	means the programme for Development of a Phase contained in a Procurement Recommendation including the proposed periods for completion of works or part thereof comprised within any Vertical Works Contract or Horizontal Works Contract proposed for the relevant Phase
"Development (PSP) A Loan "	means a loan made in return for Development (PSP) A Loan Notes
"Development (PSP) A Loan Note"	means a loan note constituted by the Development (PSP) A Loan Note Instrument
"Development (PSP) A Loan Note Instrument"	means a loan note instrument to be entered into between (1) the HDV; and (2) the PSP in respect of the Development (PSP) A Loan Notes to be issued to the PSP from time to time pursuant to this Agreement
"Development (PSP) A Loan Note Security Agreement"	means the debenture entered into on or around the date of the Development (PSP) A Loan Note Instrument between (1) the HDV; and (2) the PSP in respect of the Development (PSP) A Loan Notes outstanding from time to time
"Development Receipts"	means any receipts received by DevLLP or its subsidiaries in connection with the Disposal of part or all of a Development Site after all expenditure and provisions in line with the accounting

	policy in the HDV Business Plan save for LAA Invoiced Costs
"Development Resource Plan"	the resource plan for the delivery of the development management services which are the subject of the Development Management Agreement, as set out in Schedule 3 of the Development Management Agreement
"Development Sites"	means any Category 1 Properties or Category 2 Properties or Category 3 Properties (as applicable) and references to a "Development Site" shall be construed as references to the whole or any part of a Development Site as the context shall require;
"Development Solicitor"	means a firm of solicitors appointed by HDV (which shall not be either a member of the PSP Group or Council Group) to perform the Legal Services
"Direct Losses"	means all damages, losses, liabilities, injuries, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an indemnity basis) proceedings, demands or judgements whether arising under statute, contract or at common law but excluding Indirect Losses
"Director"	means a director of Nominee Co1, Nominee Co2 or Nominee Co3 (as applicable)
"Disclosing Party"	has the meaning given in Clause 32.2
"Disposal"	means the completed sale or lease of any legal or beneficial estate or interest in the whole or any part of a Development Site or Investment Portfolio Property (as the context shall require) to a purchaser or leaseholder for a premium on an arm's length basis but and for the avoidance of doubt this excludes any uncompleted agreements to dispose and any Excluded Disposals and "Disposed of" shall be construed accordingly
"Drawdown Price"	shall have the meaning given to such expression in the Development Framework Agreement
"Effective Date"	means the date upon which the conditions set out at Clause 1.2 are satisfied
"EIR"	means the Environmental Information Regulations 2004
"Employment Skills Policy"	means an HDV Policy in relation to the provision of apprenticeships, training, work experience and other employment matters particularly for local people having regards to the aims set out in the Council's Economic Development and Growth Strategy, to be developed and adopted by the HDV Board within three (3) months of the Effective Date
"Estate Renewal, Re-Housing and Payments Policy"	has the meaning given to it in the Land Assembly Agreement
"Excluded Disposals"	means a Disposal of the whole or any part of the Site:- <ul style="list-style-type: none"> (a) to a statutory undertaker, utility company or other similar body acquiring land for the provision of an electricity sub-station, gas governor, pumping station, service media or other similar facility (including by way

of grant of a wayleave or easement); or

- (b) to a highways authority or other relevant authority in respect of highway works; or
- (c) to a local or other authority or body where land is to be used as public realm, public open space, woodland, play area, tree belt, recreation area or other amenity or landscaped area or facility or where it is to be used for any social sporting or community purposes; or
- (d) [to a tenant on a rack rent lease for a term of years not exceeding 99 years]; or
- (e) to a management company for the sole purpose of management of any common parts or facilities;
- (f) to a funder to take a charge

"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 or partnership law or banking law (as applicable) being such Counsel as may be appointed by the Members (acting unanimously) or, failing agreement, such Counsel as shall be appointed at the request of either or both of the Members 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 Members (acting unanimously) or, failing agreement, such Counsel as shall be appointed at the request of either or both of the Members 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 Members (acting unanimously) or, failing agreement, such Chartered Accountant as shall be appointed at the request of either or both of the Members 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) (where a dispute, difference or matter hereunder concerns potential third party funding), a professional adviser, expert or investment banker with at least 10 years' experience of advising borrowers in relation to the commercial aspects of debt funding packages or,

failing agreement, such adviser, expert or investment banker as shall be appointed at the request of either or both of the Members 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;

- (e) (in the case of any other matter) a senior Chartered Surveyor having at least 10 years' post-qualification experience in the development and/or management of premises in the London area as may be jointly appointed by the Members (acting unanimously) or, failing agreement, such surveyor as shall be appointed at the request of either or both of the Members 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 Members within 5 Working Days of notice by one Members to the other that the dispute or difference is to be referred to an Expert

"Finance Agreements"	means the loan note instruments, security agreements, intercreditor deeds and loan agreements referred to in Clause 2.1.1 and any other such agreements or instruments as any of the HDV Parties shall enter into from time to time
"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
"General KPI's"	means the key performance indicators set out in Schedule 3 of the Contractor Framework Agreement
"Gross Internal Area"	means the gross internal area of the relevant premises measured or calculated in accordance with the RICS Code of Measuring Practice (6th Edition);
"HDV Board"	means the board of Nominees constituted in accordance with Clause 7 in order to determine certain matters relating to the HDV in accordance with Clause 8
"HDV Business Plan"	means the over-arching HDV business plan as the same may be varied or updated from time to time in accordance with the provisions of this Agreement, which, as a minimum, shall comply with the relevant provisions of Schedule 2 (Form of Business Plans)
"HDV Current Account"	means the current account to be established by HDV in accordance with paragraph 3.1 of Schedule 5 (Accounts)
"HDV Chief Executive"	means the Chief Executive of the HDV from time to time who is employed by the Development Manager
"HDV Financial Model"	means the Microsoft Excel based financial appraisal tool adopted by HDV from time to time in accordance with the HDV

	Business Plan
"HDV Group"	means the HDV, InvLP, DevLLP, Nominee Co1, Nominee Co2, Nominee Co3 and any HDV Party
"HDV Intercreditor Deed"	the intercreditor agreement in the Agreed Form to be entered into between (1) the Council; (2) PSP; and (3) HDV on or around the date of this Agreement
"HDV Objectives"	means the objectives of the HDV as set out in Clause 4.1
"HDV Party"	means the HDV, Nominee Co1, Nominee Co2, Nominee Co3, InvLP, DevLLP and each other HDV Subsidiary from time to time (or any such entities as the case may be)
"HDV Policies"	such policies for the HDV and each HDV Party which are adopted by the HDV and each HDV Party from time to time and are in a form approved by the Members, acting unanimously
"HDV Subsidiary"	means a subsidiary or subsidiary undertaking of an HDV Party from time to time
"HDV Uplift"	has the meaning given to it in the Development Framework Agreement
"Holding Company"	has the meaning given to it by section 1159 of the Companies Act amended to include any limited liability partnership which would fall within that meaning if it were a company
"Homes for Haringey"	means the Council's Arm's Length Management Organisation which is responsible for the day to day management of Council houses – currently more than 20,000 tenant and leasehold properties
"Horizontal Works Contract"	means a proposed contract (with the HDV or the relevant HDV Party) for, inter alia, the carrying out of or the management of the carrying out of any construction works for the Development of a Phase which do not include the construction of any Vertical Build
"ICC Services"	means the scope of services to be performed by the consultant appointed as the Independent Cost Consultant which shall include but not be limited to the services referred to in Schedule [] of the Development Management Agreement
"Impact Assessment Period"	has the meaning given in Clause 16.2.6(c)
"Indebted Person"	has the meaning given in Clauses 26.5 and 26.6 (each to be construed as required in each Clause)
"Indemnifying Member"	shall have the meaning given in Clause 28.6
"Independent Cost Consultant"	means a consultant which shall not be either a member of the PSP Group or Council Group appointed by the HDV to perform the ICC Services
"Independent Programme Auditor"	means a consultant which shall not be either a member of the PSP Group or Council Group appointed by the HDV to perform

	the IPA Services
"Independent Verification Team"	means the following advisers (which shall not be either a member of the PSP Group or Council Group) appointed by the HDV: <ul style="list-style-type: none"> (a) Independent Cost Consultant; (b) Independent Programme Auditor, and any other consultant to be included in the Independent Verification Team pursuant to Clauses 18.8.3 and 18.8.12
"Indirect Losses"	means loss of profit, loss of use, loss of production, loss of business, loss of business opportunity or any claim for consequential loss or for indirect loss of any nature
"Information"	has the meaning given under section 84 of the Freedom of Information Act 2000
"Insolvent HDV Party"	has the meaning given in Clause 27.1.3
"Internal B Loan"	means the loan(s) made in return for Internal B Loan Notes
"Internal B Loan Notes"	means a loan note constituted by an Internal B Loan Note Instrument
"Internal B Loan Note Instrument"	means the loan note instrument in the Agreed Form made by InvLP, in respect of Internal B Loan Notes to be issued to the HDV in respect of Investment Portfolio Properties
"Internal B Loan Note Security Agreement"	means each debenture in the Agreed Form granted by:- <ul style="list-style-type: none"> (a) InvLP in favour of HDV: in respect of Internal B Loan Notes outstanding from time to time
"Internal Loan"	means the loan(s) made in return for Internal Loan Notes
"Internal Loan Notes"	means a loan note constituted by an Internal Loan Note Instrument
"Internal Loan Note Instrument"	means each loan note instrument in the Agreed Form made by InvLP, DevLLP or any DevLLP Subsidiary in respect of certain loan notes to be issued to the HDV or DevLLP (as applicable) in respect of a specific Phase or Development Site or Investment Portfolio Property
"Internal Loan Note Security Agreement"	means each debenture in the Agreed Form granted by:- <ul style="list-style-type: none"> (a) InvLP in favour of HDV; (b) DevLLP in favour of HDV; (c) any DevLLP Subsidiary in favour of DevLLP, in respect of Internal Loan Notes outstanding from time to time
"Intellectual Property"	means all patents, trademarks, service marks, goodwill, registered designs, utility models, design right, copyright

	(including copyright in computer software), semi-conductor, topography, rights, inventions, trade secrets and other confidential information, know-how, and all other intellectual and industrial property and rights of a similar or corresponding nature in any part of the works, whether registered or not or capable of registration or not and including the right to apply for and all applications for any of the foregoing rights and the right to sue for past infringements of any of the foregoing rights
"InvLP Board"	means the board of Directors of Nominee Co1 constituted in accordance with Clause 7 in order to determine certain matters relating to InvLP in accordance with Clause 8
"InvLP Current Account"	means the account to be established by InvLP in accordance with paragraph 3.6 of Schedule 5 (Accounts)
"InvLP Objectives"	means the objectives of InvLP as set out in Clause 4.2
"Investment (Council) A Loan Note"	means a loan note constituted by the Investment (Council) A Loan Note Instrument
"Investment (Council) A Loan Note Instrument"	means the loan note instrument in the Agreed Form made by the HDV on or around the Effective Date in respect of Investment (Council) A Loan Notes to be issued to the Council (in part consideration of the transfer to InvLP of the Investment Portfolio)
"Investment (Council) A Loan Note Security Agreement"	means the debenture in the Agreed Form entered into on or around the Effective Date between (1) the HDV; and (2) the Council, in respect of Investment (Council) A Loan Notes outstanding from time to time
"Investment (Council) B Loan Note"	means a loan note constituted by the Investment (Council) B Loan Note Instrument
"Investment (Council) B Loan Note Instrument"	means the loan note instrument in the Agreed Form made by InvLP on or around the Effective Date in respect of Investment (Council) B Loan Notes to be issued to the Council (in part consideration of the transfer to InvLP of the Investment Portfolio)
"Investment (Council) B Loan Note Security Agreement"	means the debenture in the Agreed Form entered into on or around the Effective Date between (1) InvLP; and (2) the Council, in respect of Investment (Council) B Loan Notes outstanding from time to time
"Investment (PSP) A Loan "	means the loan(s) made in return for the issue of Investment (PSP) A Loan Notes
"Investment (PSP) A Loan Note"	means a loan note constituted by the Investment (PSP) A Loan Note Instrument
"Investment (PSP) A Loan Note Instrument"	means the loan note instrument in the Agreed Form made by the HDV on or around the Effective Date in respect of Investment (PSP) A Loan Notes to be issued to the PSP pursuant to this Agreement
"Investment (PSP) A Loan Note Security Agreement"	means the debenture in the Agreed Form entered into on or around the Effective Date between (1) the HDV; and (2) PSP in respect of Investment (PSP) A Loan Notes outstanding from

	time to time
"Investment Business Plan"	means the business plan referred to in Clause 18.4 in relation to the Investment Portfolio, as the same may be varied or updated from time to time in accordance with the provisions of this Agreement, which, as a minimum, shall comply with the relevant provisions of Schedule 2 (Form of Business Plans)
"Investment Portfolio"	means any property owned by InvLP from time to time pursuant to the Agreement for Sale and, as the context shall require, Investment Portfolio shall include reference to additional investment assets acquired by the HDV and/or InvLP (or any other HDV Party) from time to time in the Borough from the Council in return for Investment (Council) B Loan Notes and each asset within the Investment Portfolio shall be referred to as an "Investment Portfolio Property" (and "Investment Portfolio Properties" shall be construed accordingly)
"Investment Portfolio Year"	means a period of one year from and including the corresponding date in the relevant calendar year on which the Investment Portfolio Transfer Date occurs and every subsequent one year period
"Investment Portfolio Asset Disposal Receipts"	means receipts received by InvLP in respect of the Disposal of any Investment Portfolio Property
"Investment Portfolio Income"	means all sums received by InvLP in relation to the Investment Portfolio (of whatever nature) other than: <ul style="list-style-type: none"> (a) monies in relation to service charge; and (b) Investment Portfolio Asset Disposal Receipts, but after deduction of sums to meet all expenses to be met by InvLP in accordance with the Investment Business Plan (other than interest on Internal B Loans)
"Investment Portfolio Transfer Date"	means the date of actual completion of the transfer of the first properties to be transferred pursuant to the Agreement for Sale
"IPA Services"	means the scope of services to be performed by the consultant appointed as the Independent Programme Auditor which shall include but not be limited to the services referred to in Schedule [] of the Development Management Agreement
"Key Agreements"	means this Agreement; the Development Management Agreement; the Contractor Framework Agreement; and the Land Assembly Agreement
"Key Commercial Terms"	means the commercial terms relating to (and the approach to any optional provisions under) each proposed Horizontal Works Contract or Vertical Works Contract for a Phase to include (but not limited to) the following: <ul style="list-style-type: none"> (a) any proposed caps on liability for the contractor who will enter into the relevant Vertical Works Contract or Horizontal Works Contract; (b) levels of professional indemnity

	insurance for the contractor who will enter into the relevant Vertical Works Contract or Horizontal Works Contract;
	(c) construction costs contingencies;
	(d) fees;
	(e) proposed levels of any liquidated and ascertained damages to be paid or allowed under or pursuant to the relevant Vertical Works Contract or Horizontal Works Contract and the basis upon which they will be paid or allowed.
"KPI's"	means the General KPI's and the Project Specific KPI's;
"LAA Invoiced Costs"	means: <ul style="list-style-type: none"> (f) Pre-CPO Acquisition Costs (as that term is defined in the Land Assembly Agreement); (g) Voluntary Acquisition Costs (as that term is defined in the Land Assembly Agreement) pursuant to Clause 8.8 of the Land Assembly Agreement; and (h) CPO Costs (as that term is defined in the Land Assembly Agreement).
"Land Assembly (Council) D Loan Note"	means a Loan Note constituted by the Land Assembly (Council) D Loan Note Instrument
"Land Assembly (Council) D Loan Note Instrument"	means a loan note instrument to be entered into between (1) any DevLLP Subsidiary; and (2) the Council in respect of the Land Assembly (Council) D Loan Notes to be issued to the Council from time to time pursuant to this Agreement in respect of a specific Phase or Development Site
"Land Assembly (Council) D Loan Note Security Agreement"	means each debenture in the Agreed Form between (1) any DevLLP Subsidiary; and (2) the Council, in respect of Land Assembly (Council) D Loan Notes outstanding from time to time in respect of a specific Phase or Development Site
"Land Assembly Agreement"	means the agreement in the Agreed Form entered into on or around the Effective Date in respect of the assembly of land that is the subject of the Development Framework Agreement between (1) the Council and (2) the HDV
"Law"	means any applicable Act of Parliament, sub-ordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable Community right within the meaning of section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any regulatory body with which

	any Party is bound to comply and/or which relate to or affect this Agreement
"Lease"	shall have the meaning given to such expression in the Development Framework Agreement
"Legal Services"	means the scope of services to be performed by the solicitor appointed as the Development Solicitor which shall include but not be limited to the services referred to in Schedule [] of the Development Management Agreement
"Letter of Appointment"	means a letter of appointment of a Nominee or a Director of Nominee Co1, Nominee Co2 or Nominee Co3 in the form set out in Schedule 10 (Letter of Appointment of a Nominee/Director).
"LLC"	means Lendlease Construction (Europe) Limited
"Loan Note Instruments"	means the Council Loan Note Instruments and PSP Loan Note Instruments and "Loan Note Instrument" means any of them as the context may require
"Loan Notes"	means the loan notes to be issued by the HDV or any HDV Party to a Member, the HDV or any HDV Party pursuant to the Loan Note Instruments and the provisions of this Agreement (and "Loan Note" shall be construed accordingly)
"Lock In Period"	means:- <ul style="list-style-type: none"> (a) in relation to the PSP and any member of the PSP Group to whom it transfers its Member Interest pursuant to Clause 22.2.2, the period expiring on the 10th anniversary of the date of this Agreement; and (b) in relation to the Council and any Public Sector Body to whom it transfers its Member Interest pursuant to Clause 22.2.1, the period expiring on the 10th anniversary of the date of this Agreement
"LPA"	means the limited partnership agreement entered into on the Effective Date between the HDV and Nominee Co1 in respect of InvLP
"Material Breach"	means a breach of any of the terms of the Key Agreements which is material and/or persistent having regard to all relevant circumstances including, without limitation, the nature of the relationship between the parties to that Key Agreement the need for each such party to maintain the confidence of the others, the nature of the breach (and in particular whether it be intentional, negligent or otherwise), the regularity with which the obligation which has been breached falls to be performed under this Agreement and the consequences of the breach
"Mediation Notice"	have the meaning given in Clause 25.4.1
"Member Interest"	means the entire legal and beneficial interest a Member has in the HDV from time to time including that Member's rights and obligations under this Agreement and the Finance Agreements
"Member Interest Value"	means, in relation to a Member Interest, the price which a third party would pay in the open market to acquire such Member

	Interest and all other rights and liabilities comprised in the relevant Member Interest (including, for the avoidance of doubt and where applicable, any outstanding obligations to make payments to the HDV in respect of the Loan Notes) as such value may be agreed between the Members or, in the absence of agreement, as determined by an Expert
"Member Loan"	means any amount required to be provided by a Member pursuant to the terms of this Agreement in consideration for the issue to such Member by the HDV or an HDV Party of one or more Loan Notes
"Member Proportion"	means, in respect of each Member, 50%
"Members"	(subject to any such persons ceasing to be a Member in accordance with this Agreement) the Council, the PSP and any other persons who may from time to time and for the time being be admitted as Members of the HDV in accordance with the terms of this Agreement
"Members' Meeting"	means a duly convened meeting of the Members in accordance with Clause 12
"Net Asset Value"	the aggregate value of the consolidated fixed and current assets of the relevant entity from time to time less the aggregate value of the consolidated liabilities of the relevant entity from time to time
"Net Asset Value Trigger Event"	has the meaning given in Clause 24.6.1(b)
"Net Profits" or "Net Profit"	the profits of the HDV or the relevant HDV Subsidiary (as the context admits) for an Accounting Period as shown in the audited accounts of the HDV or the relevant HDV Subsidiary after all expenditure and provisions including the payment of all interest, if any, accrued and payable on moneys borrowed by the HDV or the relevant HDV Subsidiary and any salaries or drawings paid or payable by the HDV or the relevant HDV Subsidiary (but, for the avoidance of doubt, before providing for reserves in working capital and re-investment in the HDV or the relevant HDV Subsidiary)
"Nominees"	means the Council Nominees and/or the PSP Nominees as the context may require
"Non-Defaulting Member"	has the meaning given in Clause 24.2
"Objectives"	means the HDV Objectives, InvLP Objectives and/or DevLLP Objectives (as applicable)
"Offer"	has the meaning given in Clause 23.3.4
"Offer Period"	has the meaning given in Clause 23.4.1
"Outstanding Capital Contribution"	means, in respect of any Member, an amount equal to its Capital Contribution less the sum of any repayments of Capital Contributions by the HDV to that Member
"Parties"	the Parties to this Agreement and references to a Party means any of the Parties to this Agreement as the context may require

"Partnership Act"	means the Limited Partnership Act 1907;
"Partnership Assets"	means any property held by the HDV or any of the HDV Parties (as the context shall require) and, for the avoidance of doubt, including any Intellectual Property
"Partner"	means (subject to any person ceasing to be a Partner in accordance with the LPA) the HDV, Nominee Co 1 and any other persons who may from time to time and for the time being be admitted as Partners of InvLP in accordance with the terms of the LPA
"PCSA"	means an agreement with the HDV or the relevant HDV Party to provide pre-construction services prior to the award of any Vertical Works Contract or Horizontal Works Contract in relation to the development of a Phase;
"Phase"	[means either a Development Site or where the Development Business Plan for a Development Site divides that Development Site into distinct and separate parts so as to differentiate between the Development of such parts, each such part of that Development Site]
"Planned Total Vertical Build"	means the total Vertical Build by Gross Internal Area which it is planned to procure the construction of on the Development Sites as provided for in the Development Business Plans
"Planning Counsel"	means a barrister of not less than ten years' call in planning law
"Potential Purchaser"	has the meaning given in Clause 23.2.2
"Potential Seller"	has the meaning given in Clause 23.1
"Practical Completion"	means the completion of works on a Development Site as defined in the appropriate building contract for those works
"Procurement Policy"	means the procurement policy of the HDV in the form set out in Schedule 4 (Procurement Policy) to be adhered to by the HDV, InvLP and DevLLP and as well as any HDV Subsidiary as such procurement policy may be amended from time to time by the HDV
"Procurement Recommendation"	<p>means a recommendation in relation to the procurement of goods, services or works in respect of a Development Site to include (but not limited to) the following:</p> <ul style="list-style-type: none"> (a) details of the construction works proposed for the relevant Development Site; (b) the proposed Phases into which the Development Site is being divided and the following in relation to each Phase; <ul style="list-style-type: none"> (i) the proposed division of the works within the relevant Phase into Vertical Works Contracts and Horizontal Works Contracts; (ii) the quantity of Vertical Build proposed

for that Phase;

(iii) whether, at that time, the Bid Vertical Build has already exceeded or would exceed the Vertical Build Cap in the event that LLC were given the opportunity to seek the award of any of the Vertical Works Contracts proposed for the Phase;

(iv) whether, at that time, the Constructed Vertical Build has already exceeded the Vertical Build Cap or would exceed the Vertical Build Cap in the event that LLC were awarded one or more of the Vertical Works Contracts proposed for the Phase;

(v) confirmation as to whether or not LLC wishes to be offered the opportunity to seek the award of a Vertical Works Contract on the relevant Phase and, if so, which Vertical Works Contract;

(vi) the proposed Development Programme for the relevant Phase;

(vii) the proposed procurement route for the works within each Vertical Works Contract and each Horizontal Works Contract for the relevant Phase (whether design and build, construction management or any other procurement route);

(viii) where it is recommended that LLC is given the opportunity to seek the award of a Vertical Works Contract or a Horizontal Works Contract for a relevant Phase:

(a) and the procurement route is either design and build or construction management, the proposed amendments to the CM Protocol and/or the DM Protocol in the Contractor Framework Agreement (as applicable) for each such Vertical Works Contract and Horizontal Works Contract;

(b) and the procurement route is not design and build or construction management, the proposed Substitute Protocol;

(c) the proposed forms of construction documents proposed to be entered

into between the HDV (or the relevant HDV Party) and LLC for each Vertical Works Contract and Horizontal Works Contract (as applicable) and if any of the Standard Form Construction Documents are proposed for a Vertical Works Contract and/or a Horizontal Works Contract, any proposed amendments to such forms;

(d) whether it is recommended that a further consultant is engaged by the HDV to provide specified services as part of the Independent Verification Team in connection with a Bid Process for any Vertical Works Contract and/or Horizontal Works Contract for the relevant Phase;

(ix) the outline development budget for the Phase;

(x) proposed Key Commercial Terms for each proposed Horizontal Works Contract and Vertical Works Contract for the relevant Phase; and

(xi) whether a PCSA is recommended for a Phase and if so the terms and scope of such PCSA and whether or not it is proposed that LLC be awarded such PCSA

"Prohibited Act"

the following constitute Prohibited Acts:-

- (a) to directly or indirectly offer, promise or give any person in relation to the Project Agreements a financial or other advantage to:
- (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) committing any offence:-
- (i) under the Bribery Act;
 - (ii) under legislation creating offences concerning fraudulent acts relating to this

Agreement or any other contract with the Council or PSP (as applicable); or

- (iii) defrauding, attempting to defraud or conspiring to defraud the Council or PSP (as applicable)

"Prohibited Party"

means in the Council's absolute discretion a third party that would not be appropriate for the Council to contract with because:

- (a) such party would not satisfy the mandatory or financial qualification requirements for a PSP set out in the pre-qualification questionnaire relating to the procurement exercise procuring the PSP for the HDV structure; or
- (b) such party's business or parent's business is substantially concerned with the sale, distribution or manufacture of arms or weapons, tobacco or tobacco related products, alcoholic beverages, gaming or gambling, or pornography; or
- (c) such party would not be a fit and proper person for the Council to contract with having regard to the Council being a public sector body

"Project Agreements"

means each and any contract(s) to be entered into relating to the business of an HDV Party, including but not limited to this Agreement, the Agreement for Sale, the Development Framework Agreement, the Finance Agreements, the Asset Management Agreement, the Development Management Agreement, the Property Management Agreement (Investment Portfolio), the Property Management Agreement Tier 1 (Council owned land) and the Property Management Agreement Tier 2 (Council owned land)

"Project Specific KPIs"

has the meaning given to it in the Contractor Framework Agreement

"Property Management Agreement (Investment Portfolio)"

means the property management agreement in respect of the Investment Portfolio in the Agreed Form expressed to be made between (1) InvLP and (2) the Property Manager; on the Effective Date

"Property Management Agreements (Council owned land)"

means the Property Management Agreement Tier 1 (Council owned land) and the Property Management Agreement Tier 2 (Council owned land)

"Property Management Agreement Tier 1 (Council owned land)"

means the property management agreement in respect of the relevant Council owned land in the Agreed Form expressed to be made between (1) the Council; and (2) the HDV

"Property Management Agreement Tier 2 (Council owned land)"

means the property management agreement in respect of the relevant Council owned land in the Agreed Form expressed to be made between (1) the HDV; and (2) the Property Manager

"Property Manager"

means Workman or such other property manager as selected by the InvLP or the Council (as appropriate) from time to time to perform the services set out in the Property Management Agreement (Investment Portfolio) or the Property Management

	Agreement (Council owned land) (where HDV is the Employer)
"PSP A Loan"	means the aggregate of the Development (PSP) A Loan and the Investment (PSP) A Loan
"PSP AMA Guarantee"	means the guarantee from Lendlease Europe Holdings Limited (Company Number 02594928) to the Council entered into on or about the date of this Agreement guaranteeing the obligations of the PSP under the Asset Management Agreement
"PSP Completion Loan"	means £[] which shall be advanced to the HDV on the Effective date by the PSP and which forms part of the PSP A Loan
"PSP Conflict Matter"	means the matters listed below (being matters where the PSP Nominees and/or PSP (as the case may be) shall be considered to have a conflict):- <ul style="list-style-type: none"> (a) any decision by the HDV (or member of the HDV Group) to enforce the provisions of any guarantee for the PSP's (or member of its group's) obligations; and /or (b) any decision by or on behalf of the HDV (or member of the HDV Group) to exercise any of the rights of the HDV (or member of the HDV Group) in relation to a PSP A Loan and any associated loan note instrument or security documentation (as the case may be) or any other arrangement for finance entered into between the HDV and the PSP from time to time; and/or (c) any decision by the HDV (or member of the HDV Group) to award any contract or otherwise enter into a contract or other arrangement or transaction with any member of or persons otherwise connected with the PSP Group (save where the decision is a decision to be made pursuant to Clause 18.8 of this Agreement); (d) any decision by or on behalf of the HDV (or member of the HDV Group) to enforce its legal rights under any contract, arrangement or transaction with any member of the PSP Group (including under or pursuant to the Contractor Framework Agreement and any contract, arrangement or transaction with any member of the PSP Group entered into pursuant to the same), or to take any legal action (including the conduct thereof) under such contract, arrangement or transaction; (e) any decision by or on behalf of the HDV (or member of the HDV Group) as to whether LLC or any other member of the PSP Group should be given the opportunity to seek the award of any Vertical Works Contract in circumstances where the Bid Vertical Build or the Constructed Vertical Build has already exceeded the Vertical Build Cap; and/or (f) any decision by the HDV (or member of the HDV Group) in relation to the appointment of any member of the Independent Verification Team or the Development Solicitor including in relation to the identity, terms of appointment and variation to the terms of

appointment of any such person and the termination of the appointment of any such person or replacement of any such person from time to time

[LLDN: At PB stage the intention is that the Council and LL will agree the matters that will require HDV Board approval under the procurement process set out in the proposed Contractor Framework Agreement. These decisions of the HDV Board will be a PSP Conflict Matter save where the Council and LL agree at PB stage that appropriate checks and balances and controls are in place which results in the Council agreeing that the decisions will be a full HDV Board decision. Where such a decision is a PSP Conflict Matter the Council and LL will agree a set of criteria to ensure the decision of the Council Nominees at HDV Board is justified. At PB stage the Council and LL will agree standard form construction documents to be attached to the Contractor Framework Agreement as templates for procurement when LLC is appointed (to include pre-construction services agreement, forms of main building contract (e.g. design & build and construction management), forms of warranty/third party rights and performance security packages. These standard form documents will provide a fall-back position in the event the HDV Board are not in a position to approve the relevant consultation documentation and a Deadlock Event will not occur where the standard form documents are to be put in place.]

- "PSP Default Event"** has the meaning given to it in Clause 24.1.2
- "PSP DMA Guarantee"** means the guarantee from Lendlease Europe Holdings Limited (Company Number 02594928) to the Council entered into on or about the date of this Agreement guaranteeing the obligations of the PSP under the Development Management Agreement
- "PSP Global Minimum Requirements"** means the PSP Parent Company's global minimum requirements (as varied from time to time) relating to health and safety standards to be incorporated in the design, construction and asset management of all developments of the HDV Group and which are attached to this Agreement as Annexure [x]
- "PSP Grievance Notice"** shall have the meaning given in Clause 24.3.1
- "PSP Group"** means:-
- (a) the PSP;
 - (b) any company which in relation to the PSP is a Subsidiary or Holding Company or a Subsidiary of any such Holding Company; and/or
 - (c) any company or Subsidiary of a company identified in (a) or (b) above where at least one fifth of the issued equity share capital is beneficially owned by the person concerned (whether or not a company),

provided that, for the purposes of this definition, any references to companies shall be interpreted as including limited liability partnerships and the definitions of "**Subsidiary**" and "**Holding**"

	Company " shall be such that any references to companies therein shall include references to limited liability partnerships
"PSP Guarantees"	means the PSP MA Guarantee, the PSP DMA Guarantee and the PSP AMA Guarantee
"PSP Loan Note Instruments"	means the Investment (PSP) A Loan Note Instrument and the Development (PSP) A Loan Note; and "PSP Loan Note Instrument" means any of them as the context may require
"PSP MA Guarantee"	means the guarantee from the PSP Guarantor to the Council entered into on or about the date of this Agreement guaranteeing the obligations of the PSP under this Agreement
"PSP Parent Company"¹³	[xxxx] (registered number: [xxxx]) or such other member of the PSP Group which Controls the PSP from time to time
"PSP Prohibited Party"	means in the PSP's reasonable discretion a third party that would not be appropriate for the PSP to contract with because: <ul style="list-style-type: none"> (a) such party would in the context of the proposed transfer not have satisfactory financial covenant strength or financial resources; or (b) such party's business or parent's business is a competitor of the PSP Group in the development field; or (c) such party would not be a fit and proper person for the PSP to contract with having regard to the PSP's "Know Your Business Partner" policies from time to time.
"PSP Remedy Period"	has the meaning given in Clause 24.4.1
"PSP Nominees"	means the nominees appointed by the PSP to the HDV Board or the board of the relevant HDV Party (as applicable) pursuant to Clause 7
"PSP Senior Officer"	shall have the meaning given in Clause 25.2.1(a)
"Public Sector Body"	means any UK person classified as falling within the public sector for the purposes of the national accounts by the Office of National Statistics or any entity controlled by one or more such persons
"Purchaser"	has the meaning given in Clause 23.4.3
"Quarter"	each period from 1 January to 31 March, 1 April to 30 June, 1 July to 30 September or 1 October to 31 December, and "Quarterly" shall be construed accordingly
"Receipt"	means all sums received of whatever nature
"Receiving Party"	shall have the meaning given in Clause 32.2
"Recipient"	shall have the meaning given in Clause 32.3

¹³ PMDN: Ashurst to complete.

"Regulations"	means the Limited Liability Partnerships Regulations 2001 as amended by the Limited Liability Partnerships (Application of the Companies Act 2006) Regulations 2009 (in turn as amended by the Limited Liability Partnerships (Amendment) Regulations 2009)
"Related Party Contract"	has the meaning given in Clause 26.7
"Relevant Base Value"	has the meaning given to it in schedule 7 of the Development Framework Agreement
"Relevant Intellectual Property"	has the meaning given in Clause 29.1
"Requests for Information"	has the meaning set out in the FOIA or the EIR as relevant
"Resolution Period"	has the meaning given in Clause 25.2.2
"Revocation Notice"	has the meaning given in Clause 23.3.2
"Revocation Period"	has the meaning given in Clause 23.3.2
"Sale Interest"	has the meaning given in Clause 23.1
"Sale to Member"	shall have the meaning given in Clause 23.4.2
"Sale to Third Party"	shall have the meaning given in Clause 23.5.1
"Seller"	shall have the meaning given in Clause 23.4.3
"Services"	shall mean the ICC Services, IPA Services and the Legal Services as the context so requires
"Social and Economic Business Plan"	means the business plan in relation to the HDV's socio-economic aspirations to be delivered in accordance with and subject to the terms of the main HDV Business Plan
"Social Impact Vehicle"	shall have the meaning given in Clause 14.5.1
"Standard Form Construction Documents"	means the Construction Management Agreement and the D&B Contract
"Statutory Requirements"	means all or any of the following:- <ul style="list-style-type: none"> (a) Acts of Parliament and any statutory instruments, rules, orders, regulations and bye-laws for the time being made under or deriving validity from an Act of Parliament, in each case whether public or private; (b) European directives or regulations and rules; and (c) regulations, rules, orders, codes of practice, notices, policies or bye-laws imposed by any statutory agency, body or authority (whether local, regional, national or European) (a "Regulatory Requirement") but excluding any Regulatory Requirement imposed by the Council unless and to the extent that the Council is required to impose such Regulatory Requirement as a direct consequence of and so as to comply with:- <ul style="list-style-type: none"> (i) a Statutory Requirement falling under (a) or

(b) above; or

- (ii) a Regulatory Requirement of any such agency, body or authority other than the Council; and/or
- (iii) a Regulatory Requirement imposed by the Council acting in its capacity as a planning authority (provided it is acting impartially);

and in each case either having the force of law in England and/or with which the Council is required to comply

"Subsequent Transfer Date"

means each date of actual completion of the sale of properties in the Investment Portfolio pursuant to the terms of the Agreement for Sale that is subsequent to the Investment Portfolio Transfer Date

"Subsidiary"

save where expressly extended or it is stated to the contrary in this Agreement, has the meaning ascribed to it by section 1159 of the Companies Act and includes any limited liability partnership which would fall within that meaning if it were a company

"Substitute Protocol"

means a protocol other than the D&B Protocol or the CM Protocol that a Procurement Recommendation recommends for the use of for a Bid Process for a Vertical Works Contract or Horizontal Works Contract under the Contractor Framework Agreement

"Termination Event"

means an event listed in Clause 27.1

"Third Party"

means a party who is not a member of the PSP Group, the Council Group, or the HDV Group

"Third Party Purchaser"

has the meaning given in Clause 23.5.1

"Total Vertical Build"

means the total Vertical Build by Gross Internal Area which has been constructed on the Development Sites

"Transfer Notice"

has the meaning given in Clause 23.2.1

"Transfer Price"

has the meaning given in Clause 23.3

"Transfer Value"

in respect of each individual Investment Portfolio Property either:-

- (a) the Transfer Value set against its name at Schedule 1 of the Agreement for Sale; or
- (b) where (a) does not apply because the Transfer Value referred to applies to part of the Investment Portfolio Property being disposed of, an amount equivalent to a proper and reasonable apportionment of the Investment Portfolio Property Transfer Value based upon the value of the relevant part of the Investment Portfolio Property which is the subject of the Disposal)

"Vertical Build"

means buildings including foundations and sub-structure

"Vertical Build Cap"	means 60% of, prior to completion of the construction of all Vertical Build on the Development Sites, the Planned Total Vertical Build and thereafter the Total Vertical Build
"Vertical Works Contract"	means a proposed contract (with the HDV or the relevant HDV Party) for, inter alia, the carrying out of or the management of the carrying out of any construction works for the Development of a Phase which include the construction of any Vertical Build
"Winding Up Practitioner"	means an agreed independent third party appointed by the Members to administer a winding up of the HDV including distributing the assets of the HDV to those entitled and, in the case of a voluntary insolvent winding up, means a liquidator as referred to under section 91 of the Insolvency Act 1986
"Winding Up Procedure"	has the meaning given in Clause 27.1
"Winding Up HDV Party"	has the meaning given in Clause 27.2.7
"Winding Up Transfer"	shall have the meaning given in Clause 27.2.5
"Winding Up Transfer Notice"	has the meaning given in Clause 27.2.2
"Winding Up Transfer Price"	has the meaning given in Clause 27.2.2
"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

1.2 Interpretation

This Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:-

1.2.1 the headings and marginal notes and references to them in this Agreement shall be deemed not to be part of this Agreement and shall not be taken into consideration in the interpretation of this Agreement;

1.2.2 a statutory provision includes a reference to:-

- (a) the statutory provision as modified or re-enacted or both from time to time (whether before or after the date of this Agreement); and
- (b) any subordinate legislation made under the statutory provision (whether before or after the date of this Agreement);

provided that any such modification, re-enactment or legislation made after the date of this Agreement does not materially change the relevant provision.

1.2.3 except where the context expressly requires otherwise, references to Clauses, sub-Clauses, paragraphs, sub-paragraphs, parts and Schedules are references to Clauses, sub-Clauses, paragraphs, sub-paragraphs and parts of and Schedules to this Agreement and references to Sections, Appendices and Attachments (if any) are references to Sections, Appendices and Attachments to or contained in this Agreement;

1.2.4 the Schedules to this Agreement are an integral part of this Agreement and a reference to this Agreement includes a reference to the Schedules. In the event of any inconsistency between the provisions of the body of this Agreement and the Schedules, the body of this Agreement shall take precedence;

- 1.2.5 words importing persons shall, where the context so requires or admits, include individuals, firms, partnerships, trusts, companies, corporations, governments, governmental bodies, authorities, agencies, unincorporated bodies of persons or associations and any organisations having legal capacity;
- 1.2.6 where the context so requires words importing the singular only also include the plural and vice versa and words importing the masculine shall be construed as including the feminine or the neuter or vice versa;
- 1.2.7 the language of this Agreement is English. All correspondence, notices, and information shall be in English;
- 1.2.8 references to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation;
- 1.2.9 the words in this Agreement shall bear their natural meaning. The Parties have had the opportunity to take legal advice on this Agreement and no term shall, therefore, be construed *contra proferentem*;
- 1.2.10 in construing this Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach to the construction of this Agreement and accordingly general words introduced or followed by the word other or including or in particular shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words;
- 1.2.11 where this Agreement states that an obligation shall be performed **no later than** or **within** or **by** a stipulated date or event which is a prescribed number of Working Days after a stipulated date or event the latest time for performance shall be noon on the last Working Day for performance of the obligations concerned;
- 1.2.12 unless expressly stated otherwise, where consent or approval of any party to this Agreement is required for any purpose under or in connection with the terms of this Agreement it shall be given in writing and within a reasonable time following a receipt for a request in writing for such consent or approval;
- 1.2.13 unless otherwise specified or the context otherwise requires, a reference to a document, instrument or agreement (including, without limitation, to this Agreement) is a reference to any such document, instrument or agreement as modified, amended, varied, supplemented or novated from time to time and as it may be adhered to by other parties from time to time.
- 1.2.14 Any reference to InvLP is a reference to InvLP acting through its general partner, Nominee Co1.

SCHEDULE 2
FORM OF BUSINESS PLANS¹⁴
PART 1
HDV BUSINESS PLAN

DRAFT

¹⁴ Headings to be extracted from relevant Business Plans and set out here.

PART 2
INVESTMENT BUSINESS PLAN

DRAFT

PART 3
DEVELOPMENT BUSINESS PLAN

DRAFT

PART 4
SOCIAL ECONOMIC BUSINESS PLAN

DRAFT

PART 5

MATERIAL ELEMENTS OF BUSINESS PLANS

The following elements to Business Plans will always be considered to be material and as such variations to these elements will be Business Plan Material Variations. It is acknowledged by the Parties that this list shall be updated from time to time by the Members.

Indicative list with final details and tolerances for each to be agreed.

1. [High Level Approach to Schedule of Business Plan Material Variations
 - 1.1 General/Commercial Financial – informed by development plans
 - 1.1.1 Funding approach to development;
 - 1.1.2 Changes to IRR or Returns profile (X%);
 - 1.1.3 Adherence or otherwise to the Council's Estate Renewal, Re-Housing and Payments Policy;
 - 1.1.4 Decisions on ownership and management of housing;
 - 1.1.5 Outside the terms of the procurement;
 - 1.1.6 Outside the terms of the consultation;
 - 1.1.7 Gives rise to increase of challenge;
 - 1.1.8 Outside terms of approval by SOS or Council decision to dispose in accordance with the Disposal Condition;
 - 1.1.9 New planning applications;
 - 1.2 Scheme changes
 - 1.2.1 Quantum of development (GIA) (10%);
 - 1.2.2 Mix of uses (5%);
 - 1.2.3 Tenure changes (5%);
 - 1.2.4 Phase/programme changes (12 months);
 - 1.2.5 Major masterplan boundary changes – incorporation of other land;
 - 1.2.6 Matters relating to new civic offices for Wood Green;
 - 1.2.7 Departures from the Council's Estate Renewal, Re-Housing and Payments Policy;
 - 1.3 Investment Portfolio
 - 1.3.1 Extent of disposal;
 - 1.3.2 Extent of purchase of new assets;
 - 1.3.3 Issues with regard to transfer – i.e. if they say no to some properties;
 - 1.4 Social and economic
 - 1.4.1 Significant variations to the outcomes of the Social Economic Business Plan;

1.4.2 Significant changes to the level of investment;

1.4.3 Alterations to the SIV and its investment funding (10%)]¹⁵

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¹⁵ Final details and relevant tolerances for each to be agreed.

SCHEDULE 3

DELEGATION POLICY

	Column A	Column B	Column C	Column D
Activity	Members (in each case, being the members of the HDV, regardless of whether the relevant decision is to be made by or on behalf of (1) HDV; (2) a DevLLP; (3) InvLP; or (4) any other HDV Party)	Board (of the relevant HDV Party, as applicable)	Development Manager	Asset Manager
Corporate				
Approval and adoption of each Business Plan and any Business Plan Material Variation	Approval	Recommendation	Creation and Implementation	Creation and Implementation
Approval and adoption of each HDV Policy and any amendments/variations/updates thereto (other than the Procurement Policy and this Delegation Policy)		Approval	Creation and Implementation	Creation and Implementation
Non-material amendments to Business Plans		Approval	Creation and Implementation	Creation and Implementation
Alteration of the Objectives, or the nature/scope of the business of the relevant HDV Party, closing down/commencing any business which is not ancillary or otherwise incidental to the business of such party	Approval	Recommendation		
Taking any action outside the parameters of the Business Plans which increases any indebtedness of the relevant HDV Party outside the parameters of the Business	Approval	Recommendation		

	Column A	Column B	Column C	Column D
Activity	Members (in each case, being the members of the HDV, regardless of whether the relevant decision is to be made by or on behalf of (1) HDV; (2) a DevLLP; (3) InvLP; or (4) any other HDV Party)	Board (of the relevant HDV Party, as applicable)	Development Manager	Asset Manager
Plans				
Taking any action which constitutes a variation to the total costs allocated for a Phase as set out in the budget section of the Business Plans		Approval above the lower of (i) (this information is contained in the exempt part of the report); and (ii) (this information is contained in the exempt part of the report) of budget heading in relevant Business Plan	Recommendation / approval if below the threshold for Board approval.	Recommendation / approval if below the threshold for Board approval.
Acquiring, disposing or agreeing to acquire or dispose of any asset, any interest in any asset (including the exercise of an option) or any other land or buildings	Approval if not set out in Business Plans	Approval if set out in Business Plans	Recommendation	Recommendation
Declaring or paying any distribution in respect of profits, assets or reserves or in any other way reducing the reserves of the relevant HDV Party	Approval if otherwise than on the terms set out in this Agreement	Approval if on the terms of this Agreement	No	No
Forming any subsidiary, acquiring shares in any other company (subscription or transfer) such that the relevant HDV Party becomes a subsidiary, entering into joint	Approval if not set out in Business Plans	Approval if set out in Business Plans	No	No

	Column A	Column B	Column C	Column D
Activity	Members (in each case, being the members of the HDV, regardless of whether the relevant decision is to be made by or on behalf of (1) HDV; (2) a DevLLP; (3) InvLP; or (4) any other HDV Party)	Board (of the relevant HDV Party, as applicable)	Development Manager	Asset Manager
ventures or partnerships (but excluding the creation of HDV Subsidiaries contemplated in a Business Plan)				
Alteration of authorised or issued partnership capital, or classification thereof, allotment of partnership capital or securities, granting options or rights to subscribe to the HDV; issuing loan capital of the HDV	Approval	Recommendation		
Admitting members, partners and/or appointing persons as additional Nominees or directors of the relevant HDV Party, save where such Nominees are Council Nominees and/or PSP Nominees appointed in accordance with this Agreement	Approval	Recommendation		
Approval of statutory accounts	Approval	Recommendation	No	No
Appointment of auditors		Approval	Recommendation	
Changing accounting and reporting policies	Approval	Recommendation		
Granting or entering into any license agreement or arrangement concerning the trading name and goodwill	Approval	Recommendation		

	Column A	Column B	Column C	Column D
Activity	Members (in each case, being the members of the HDV, regardless of whether the relevant decision is to be made by or on behalf of (1) HDV; (2) a DevLLP; (3) InvLP; or (4) any other HDV Party)	Board (of the relevant HDV Party, as applicable)	Development Manager	Asset Manager
attached thereto				
Making any variation to any of the Project Agreements (excluding Business Plans which are dealt with separately in this Delegation Policy)	Approval	Recommendation	Recommendation	Recommendation
Waiving or delaying rights of the relevant HDV Party which are to be exercised under any Project Agreement		Approval	Recommendation	Recommendation
Capitalising, repaying or otherwise distributing any amount standing to the credit, or any reserve, of the relevant HDV Party	Approval	Recommendation		
Making any petition or passing any resolution to wind up the relevant HDV Party or making any application for an administration or winding up order or any order having similar effect or giving notice of intention to appoint an administrator or file a notice of appointment of an administrator	Approval	Recommendation		
Changing the name of the relevant HDV Party	Approval	Recommendation	Recommendation	
The creation of any subsidiary or associated undertaking or any involvement by the relevant	Approval	Recommendation	Recommendation	

	Column A	Column B	Column C	Column D
Activity	Members (in each case, being the members of the HDV, regardless of whether the relevant decision is to be made by or on behalf of (1) HDV; (2) a DevLLP; (3) InvLP; or (4) any other HDV Party)	Board (of the relevant HDV Party, as applicable)	Development Manager	Asset Manager
HDV Party in any other entity other than any contemplated in a Business Plan				
Change in corporate status of the relevant HDV Party	Approval	Recommendation		
Entry by the relevant HDV Party into any partnership or profit share arrangement	Approval		Recommendation	Recommendation
The admission of a new member or the expulsion of any then existing Member (save in accordance with this Agreement)	Approval	Recommendation		
The engagement of (and terms of engagement) of any individual person as consultant (excluding for such purposes any professional and technical advisers)		Approval	Recommendation	Recommendation
Making any loan or advance or giving credit (other than trade credit in the ordinary course of business)		Approval	Recommendation	Recommendation
Operational				
Arrangements for future land identification within the Borough and acquisition and transfer of such land to the relevant HDV Party and gateway criteria for	Approval	Recommendation		

	Column A	Column B	Column C	Column D
Activity	Members (in each case, being the members of the HDV, regardless of whether the relevant decision is to be made by or on behalf of (1) HDV; (2) a DevLLP; (3) InvLP; or (4) any other HDV Party)	Board (of the relevant HDV Party, as applicable)	Development Manager	Asset Manager
future project selection.				
Procurement of works, services and supplies, contracting (other than with any member of PSP Group or Council Group) and/or entering into a commitment to contract expenditure in each case within the parameters of activity (as set out in the budget) contemplated by the Business Plans and in compliance with the Procurement Policy.		Approval where proposed contract value/expenditure is (this information is contained in the exempt part of the report) or above for Development Management works and (this information is contained in the exempt part of the report) or above for Asset Management works.	Below (this information is contained in the exempt part of the report)	Below (this information is contained in the exempt part of the report)
The variation/extension of existing contracts for works/services/supplies within the parameters of activity (as set out in the budget) contemplated by the Business Plans and in compliance with the Procurement Policy (but for the avoidance of doubt excluding the Development Management Agreement, Asset Management Agreement, Property Management Agreement (Investment Portfolio), and Property Management Agreements		Approval where proposed value of the variation/extension is (this information is contained in the exempt part of the report) or above or (this information is contained in the exempt part of the report) or above of the original contract value (whichever is the	Below (this information is contained in the exempt part of the report) or less than (this information is contained in the exempt part of the report) of the original contract value (whichever is the lower)	Below (this information is contained in the exempt part of the report) or less than (this information is contained in the exempt part of the report) of the original contract value (whichever is the lower)

	Column A	Column B	Column C	Column D
Activity	Members (in each case, being the members of the HDV, regardless of whether the relevant decision is to be made by or on behalf of (1) HDV; (2) a DevLLP; (3) InvLP; or (4) any other HDV Party)	Board (of the relevant HDV Party, as applicable)	Development Manager	Asset Manager
(Council owned land)		lower)		
The variation/extension of the Development Management Agreement, Asset Management Agreement, Property Management Agreement (Investment Portfolio), Property Management Agreements (Council owned land)		Approval		
Approval of payments to suppliers other than the Development Manager, the Asset Manager, and the Property Manager			Approval where award of contract previously approved by the relevant party under this Delegation Policy and payment in accordance with contracted terms.	Approval where award of contract previously approved by the relevant party under this Delegation Policy and payment in accordance with contracted terms.
Development Plan Delivery ¹⁶				
"Stage One" development approval – appraisal of opportunity		Approval	Recommendation	N/A
"Stage Two" development approval – entering into binding commitments to progress an opportunity		Approval	Recommendation	N/A

¹⁶ PMDN: Needs to correlate with the services agreed under the Development Management Agreement. JBD/Bek to confirm please.

	Column A	Column B	Column C	Column D
Activity	Members (in each case, being the members of the HDV, regardless of whether the relevant decision is to be made by or on behalf of (1) HDV; (2) a DevLLP; (3) InvLP; or (4) any other HDV Party)	Board (of the relevant HDV Party, as applicable)	Development Manager	Asset Manager
"Stage Three" development approval – commencement of project, acquiring a land interest and letting construction contracts or similar contracts		Approval	Recommendation	N/A
Submission of any Planning Application (and any subsequent material variation to a submitted application) and the approval of heads of terms for any planning obligations/CIL requirements etc)		Approval	Recommendation	Recommendation
Agreeing or carrying out the re-letting of any part of any property and/or re-negotiation of existing leases including lease renewals, rent reviews, the grant and termination of rent concessions		Approval if total rent per annum exceeds (this information is contained in the exempt part of the report) on average over the term of the lease	Approval if total rent per annum is less than or equal to (this information is contained in the exempt part of the report) on average over the term of the lease.	Approval if total rent per annum is less than or equal to (this information is contained in the exempt part of the report) on average over the term of the lease.
A decision to terminate any existing letting arrangements		Approval		Recommendation
Agreeing or carrying out the sale of any property where not included in the Business Plans		Approval	N/A	N/A
Entering into deeds in respect of properties (easements, wayleave, consents or other		Approval if material impact on value of property	Approval if no material impact on value of	Approval if no material impact on value of

	Column A	Column B	Column C	Column D
Activity	Members (in each case, being the members of the HDV, regardless of whether the relevant decision is to be made by or on behalf of (1) HDV; (2) a DevLLP; (3) InvLP; or (4) any other HDV Party)	Board (of the relevant HDV Party, as applicable)	Development Manager	Asset Manager
impact on title)			property	property
Approving and paying remuneration to the Development Manager, Asset Manager, or Property Manager under the terms of their appointments		Approval	No	No
Approving the identity of a replacement Development Manager, Asset Manager or Property Manager (including any novation and/or step-in proposal)	Approval	Recommendation		
Approving the appointment of any additional development manager under the terms of the Development Management Agreement		Approval	Recommendation	
Changing the Development Management Resource Plan or Asset Management Resource Plan		Approval of significant variations to budget above (this information is contained in the exempt part of the report) of total budget	(In case of Development Resource Plan) Recommendation for significant variations to budget, otherwise approval.	(In case of Asset Management Resource Plan) Recommendation for significant variations to budget, otherwise approval.
Approval, termination of, or variation to secondment arrangements (other than in respect of the HDV Chief		Approval	Recommendation	Recommendation

	Column A	Column B	Column C	Column D
Activity	Members (in each case, being the members of the HDV, regardless of whether the relevant decision is to be made by or on behalf of (1) HDV; (2) a DevLLP; (3) InvLP; or (4) any other HDV Party)	Board (of the relevant HDV Party, as applicable)	Development Manager	Asset Manager
Executive)				
Appointment of the HDV Chief Executive and any variation to the terms of such appointment including termination	Approval	Recommendation	Recommendation	
Entry into confidentiality agreements		Manager to inform the Board of terms/obligations	Approval	Approval
Operational				
Appointment of asset valuers and approval of valuations		Approval	No	No
Giving a guarantee, suretyship or indemnity to secure the liabilities of any person or assume the obligations of any person		Approval	No	No
Write down of asset value		Approval	No	No
Writing off debts		Approval	Recommendation	Recommendation
Making any agreement with any revenue authorities or any other taxing authority or making a claim, disclaimer, election or consent of a material nature for tax purposes in relation to the relevant HDV Party or its their business, assets and/or undertaking.		Approval		

	Column A	Column B	Column C	Column D
Activity	Members (in each case, being the members of the HDV, regardless of whether the relevant decision is to be made by or on behalf of (1) HDV; (2) a DevLLP; (3) InvLP; or (4) any other HDV Party)	Board (of the relevant HDV Party, as applicable)	Development Manager	Asset Manager
Commencing any claim, proceedings or other litigation brought by or settling or defending any claim, proceedings or other litigation brought against the relevant HDV Party, except in relation to debt collection in the ordinary course of the business		Approval		
Save where the Contractor Framework Agreement applies or where a bona fide arms length tender process approved by the HDV Board has first been followed, or any additional services referenced in paragraph 8.1.5 of Part B of Schedule 4, entering into any contract, transaction or arrangement of any nature with any Member of the PSP Group or Council Group (including any decision to vary any such existing contract, transaction or arrangement) ¹⁷	Approval		Recommendation	Recommendation
Approval of any additional services referenced in paragraph 8.1.5 of Part B of Schedule 4		Approval	Recommendation	

¹⁷ PMDN: Construction elements of the Delegation Policy still subject to confirmation by construction teams. These will need to be reviewed and updated as and when the principles in the CFA and the MA relating to construction exclusivity are further progressed

	Column A	Column B	Column C	Column D
Activity	Members (in each case, being the members of the HDV, regardless of whether the relevant decision is to be made by or on behalf of (1) HDV; (2) a DevLLP; (3) InvLP; or (4) any other HDV Party)	Board (of the relevant HDV Party, as applicable)	Development Manager	Asset Manager
Approval of Procurement Recommendation (provided no Business Plan Material Variation to the Development Business Plan)		Approval	Recommendation	
Approval of identity terms of appointment and any variations to terms of appointment of the members of the Independent Verification Team		Approval	Recommendation	
Approval of Procurement Recommendation which comprises a Business Plan Material Variation to the Development Business Plan	Approval	Recommendation	Recommendation	
Approval of Project Specific KPI's		Approval	Recommendation	
Inclusion of LLC in a tender list for Vertical Build falling outside the Vertical Build Cap		Approval	Recommendation	
Entering into any contract with LLC pursuant to the Contractor Framework Agreement which is in accordance with the Procurement Recommendation and endorsed by the relevant members of the Independent Verification Team			Approval	

	Column A	Column B	Column C	Column D
Activity	Members (in each case, being the members of the HDV, regardless of whether the relevant decision is to be made by or on behalf of (1) HDV; (2) a DevLLP; (3) InvLP; or (4) any other HDV Party)	Board (of the relevant HDV Party, as applicable)	Development Manager	Asset Manager
Entering into any contract with LLC which is either not in accordance with the Procurement Recommendation and/or endorsed by the Independent Verification Team		Approval	Recommendation	
Approval to procurement outside the provisions of Clause 15 and the Procurement Policy	Approval		Recommendation	Recommendation
Variation of the Procurement Policy	Approval	Recommendation		
Variation of this Delegation Policy	Approval	Recommendation		
Terminating any agreements which are material to the relevant HDV Party's business (save in accordance with this Agreement)	Approval	Recommendation		
Disposing of a substantial part of the business and/or assets of the relevant HDV Party (i.e. comprising in excess of (this information is contained in the exempt part of the report) of the balance sheet surplus credit figure from time to time)	Approval if outside the Business Plan	Approval if within the Business Plan and recommendation if outside Business Plan		
Making any announcements or releases of whatever nature in	Approval if there is an	Approval if outside of day to day	Approval provided within day to day	Approval provided within

	Column A	Column B	Column C	Column D
Activity	Members (in each case, being the members of the HDV, regardless of whether the relevant decision is to be made by or on behalf of (1) HDV; (2) a DevLLP; (3) InvLP; or (4) any other HDV Party)	Board (of the relevant HDV Party, as applicable)	Development Manager	Asset Manager
relation to the business of the relevant party	impact on the Members	operation of the relevant party's business and where there is no impact on the Members	operation of the relevant party's business and where there is no impact on the Members	day to day operation of the relevant party's business and where there is no impact on the Members
Finance				
Entering into (or agreeing to enter into) any borrowing arrangement on behalf of the relevant HDV Party and giving any security in respect of any such borrowing (including creating any encumbrance over the whole or any part of the undertaking or assets of the relevant entity or over any capital of the relevant entity)	Approval	Recommend	Recommend	Recommend
Reinvestment of Members' profit share other than where agreed in any Business Plan	Approval	Recommend		
Save to the extent expressly flagged and approved as a financial commitment pursuant to Clause 18.1, any item which is intended to lead to a financial obligation in respect of a Member, including, but not limited to, Member funding, guarantee or reinvestment of	Approval	Recommend		

	Column A	Column B	Column C	Column D
Activity	Members (in each case, being the members of the HDV, regardless of whether the relevant decision is to be made by or on behalf of (1) HDV; (2) a DevLLP; (3) InvLP; or (4) any other HDV Party)	Board (of the relevant HDV Party, as applicable)	Development Manager	Asset Manager
receipts				
Development Framework Agreement				
Approving the Planning Condition		Approval	Recommendation	
Approving the Viability Condition	Approval if outside a Business Plan	Approval if within a Business Plan	Recommendation	
Approving the Business Plan Condition	Approval		Recommendation	
Approving the Funding Condition	Approval		Recommendation	
Approving the Lease Condition		Approval	Recommendation	
General				
Any other matters not covered in this Delegation Policy		Approval	No	No
The making of any charitable donation	Approval if outside the Business Plan	Approval if within the Business Plan		

1. The thresholds and categories identified in this Schedule 3 are intended to be aggregate where such matters relate to one item or a series of connected or linked items of expenditure or activity.

2. If anything in this Schedule conflicts with any other provision of this Agreement then the provision of this Agreement (save for this Schedule) shall prevail to the exclusion of this Schedule.

DRAFT

SCHEDULE 4

PROCUREMENT POLICY

PART A GENERAL

1. INTRODUCTION

- 1.1 This policy (the "**Procurement Policy**") applies to the procurement of goods, services or works by the HDV or any subsidiary or any other party undertaking such activity for and on behalf of the HDV (together in this Schedule 4 referred to as the "**HDV Group**" and any such references in this Procurement Policy shall be construed as applying to the whole HDV Group or a single entity as the context requires).
- 1.2 Subject to paragraph 1.4, this Part A applies to all procurements, Part B applies only to the procurement of goods and/or services and Part C applies to the procurement of works. Where a procurement includes a combination of works and services and/or goods, then either Part B or Part C shall be applied dependant on what is the predominant subject matter of the procurement.
- 1.3 Any person appointed to carry out procurement activity for and on behalf of the HDV Group (a "**Manager**") in relation to any agreement for goods, works or services must always comply with this Procurement Policy and the Delegation Policy set out in Schedule 3 of this Agreement.
- 1.4 Where, under a Horizontal Works Contract or Vertical Works Contract awarded pursuant to the Contractor Framework Agreement LLC has been appointed to manage the carrying out of construction works by others who are to be appointed by HDV or an HDV Party, then this Schedule 4 shall not apply insofar as LLC's appointment provides for LLC to manage the procurement of any goods, services or works.
- 1.5 The provisions of this Schedule 4 are subject to Clause 18.8 of this Agreement.

2. PROCUREMENT OBJECTIVES

- 2.1 The following procurement objectives ("**Procurement Objectives**") have been set to support the HDV's vision and aims:
- 2.1.1 that all procurement activity carried out by the HDV Group enables local contractors (and in particular small and medium sized enterprises (SMEs)) to have a chance of securing new business with the HDV Group;
 - 2.1.2 that where possible contractors, suppliers and labour based within the Borough will be utilised, with a particular emphasis on creation of job opportunities for individuals from minority and hard to reach groups within the Borough (as set out in the Council's Economic Development and Growth Strategy).
 - 2.1.3 to comply with the Employment Skills Policy;
 - 2.1.4 to comply with the PSP Global Minimum Requirements;
 - 2.1.5 where local contractors are not available further to paragraph 2.1.2, to attract new contractors to the Borough to widen the supply chain available in the Borough and increase employment opportunities in the Borough;
 - 2.1.6 that effective procurement leads to innovation in the HDV Group's supply chain by encouraging new and diverse contractors to work with the HDV Group;
 - 2.1.7 that sustainable procurement is embedded into the procurement cycle in order to achieve environmental, social and economic benefits consistent with the HDV's Objectives;
 - 2.1.8 to secure value for money in relation to the procurement of goods, works and/or services by the HDV Group (as detailed in paragraph 3 below);

- 2.1.9 to take into account social considerations and wider benefits to the Borough through its procurement activity (as detailed in paragraph 4 below);
- 2.1.10 to embody procurement best practice and to view sustainable procurement as integral to this approach (as detailed in paragraph 6 below);
- 2.1.11 to ensure fairness and equality of opportunity in the treatment of all contractors (including, but not limited to, the use of the evaluation criteria set out in paragraph 2 of Part B or C (as applicable) of this Procurement Policy);
- 2.1.12 to continuously improve the procurement procedures of the HDV Group (as detailed in paragraph 5 below);
- 2.1.13 that all decisions in relation to the procurement are approved in accordance with paragraph 7 below;
- 2.1.14 that all extensions and variations to contracts procured under this Procurement Policy are extended or varied (as the case may be) only in accordance with paragraph 8 below;
- 2.1.15 to ensure that the HDV Group has a sound rationale for the selection of all of its contractors (including but not limited to the use of the evaluation criteria set out in paragraph 2 of Part B or C (as applicable) of this Procurement Policy);
- 2.1.16 to use the most appropriate route to procurement in accordance with Part B or C (as applicable) of this Procurement Policy; and
- 2.1.17 to ensure that specifications are sufficiently robust without negating the contractor's expertise of innovation in delivery (as detailed in paragraph 1 of Part B and Part C respectively).

3. **VALUE FOR MONEY**

The HDV Group will seek to achieve value for money through the procurement process by ensuring that the procurement of goods, works and/or services are made not just on the basis of the lowest price but by also taking into account other factors such as quality (albeit that as far as possible, any quality requirements will be included within the specification) relevant environmental performance and the whole-life cost of purchases.

4. **SUSTAINABILITY, EQUALITY AND DIVERSITY**

The HDV Group will strive to embody procurement best practice (wherever possible) and view sustainable procurement as integral to this approach. To that end, the HDV Group will develop tender specifications to enable contractors to meet the wider environmental and social objectives for projects for goods, works and services (wherever relevant) including (without limitation) the creation of job opportunities for individuals from minority and hard to reach groups within the Borough (as set out in the Council's Economic Development and Growth Strategy).

5. **BEST PRACTICE AND CONTINUOUS IMPROVEMENT**

One of the key roles and responsibilities of the Manager is to utilise best practice and continuously improve the HDV Group's procurement procedures. To that end, it is vital that staff engaged in procurement activity on behalf of the HDV Group follow the procedure as set out in this Procurement Policy. The Manager will undertake regular reviews of procured activity in order to identify areas where improvements in procured activity can be made and highlight areas of best practice as a learning tool for the HDV Group.

6. **PUBLIC PROCUREMENT**

- 6.1 Where public grant funding or the use of the Council's funds as development finance or gap funding or otherwise is required to deliver all or part of a particular contract, the Manager will select

the most appropriate route to procurement, in accordance with Part B or C (as applicable) of this Procurement Policy and, if applicable, the EU Procurement Rules.

7. **APPROVALS**

All procurement activity (including the selection of the relevant procurement route under this policy and the award of any contract) shall be approved by the relevant authorised decision maker in accordance with the terms of the Delegation Policy.

8. **EXTENSIONS AND VARIATIONS TO CONTRACTS**

All proposed extensions or variations to existing contracts shall be approved in advance by the relevant authorised decision maker in accordance with the terms of the Delegation Policy.

9. **EMPLOYMENT**

[These principles will be adopted:

- Recognition of a worker's right to be a member of a Trade Union and the provision of appropriate facilities for Trade Union representatives to hold meetings of members
- Intolerance of backlisting
- Wages at the London Living Wage
- Health & Safety and training measures to be in accordance with required standards as provided in Lendlease GMRs
- Appropriate measures to prevent false self-employment and to provide for direct employment of workers including the supply chain]¹⁸

¹⁸ To be refined.

PART B – APPLICABLE TO ALL PROCUREMENT OTHER THAN CONSTRUCTION WORKS

1. DEVELOPING SPECIFICATIONS

- 1.1 It is important when the HDV Group is procuring goods or services that the specifications are written in such a way as to be sufficiently robust, whilst not being so explicit that the information provided negates a contractor's expertise and stifles their innovation in delivery.
- 1.2 The HDV Group will ensure that the specifications it draws up will:
- 1.2.1 state the requirements clearly, concisely, logically and unambiguously, including any requirements for quality;
 - 1.2.2 contain enough information for potential contractors to decide and provide unqualified costs and pricing information for the goods or services they will offer;
 - 1.2.3 be consistent with the terms of the evaluation criteria and methodology (as detailed in paragraph 2 below);
 - 1.2.4 contain only the essential features or characteristics of the requirement and are, where appropriate, output based;
 - 1.2.5 provide equal opportunities to all contractors to offer a product or service that satisfies the needs of the HDV Group;
 - 1.2.6 not over-specify requirements or contain features which directly or indirectly discriminate in favour or against any contractor, product, process or source;
 - 1.2.7 where appropriate contain proposed terms and conditions; and
 - 1.2.8 ensure compliance with the HDV Group's legal obligations.

2. EVALUATION CRITERIA

- 2.1 The price component shall never be less than (this information is contained in the exempt part of the report) of the total evaluation score, except where this has been agreed in advance as a matter reserved to the Council.
- 2.2 All bidders must be notified of the evaluation criteria used to select the winning bid and undisclosed evaluation criteria shall not be used to evaluate bids under any circumstances. The evaluation criteria for any appointment will be as follows (unless otherwise determined by the Manager, acting on the instruction of the HDV Group):
- 2.2.1 bids will be evaluated on a price/ non-price assessment based upon a range of weightings of (this information is contained in the exempt part of the report) price and (this information is contained in the exempt part of the report) non-price.
 - 2.2.2 price evaluation will be based on the fee submitted together with an assessment of hourly rates and disbursements.
- 2.3 Non-price evaluation needs to reference:
- 2.3.1 the CV's of staff who are proposed to provide goods or to undertake the services together with a resource plan;
 - 2.3.2 experience of similar commissions and a clear demonstration how such experience will be applied for the benefit of the HDV Group;
 - 2.3.3 response to the quality questions set out in the tender documentation;
 - 2.3.4 delivery proposal setting out their suitability and 'added value' in undertaking the services;

- 2.3.5 references from a minimum of three previous clients;
- 2.3.6 innovation contained within proposed services;
- 2.3.7 any modifications to any proposed terms and conditions; and
- 2.3.8 deliverability of proposed services.

3. **SUPPLIES AND SERVICES UP TO AND INCLUDING (THIS INFORMATION IS CONTAINED IN THE EXEMPT PART OF THE REPORT)**

- 3.1 For individual contracts (or series of connected contracts) with a value up to and including (this information is contained in the exempt part of the report) the route of procurement shall be seeking written quotations in accordance with paragraph 6 below.

4. **SUPPLIES AND SERVICES ABOVE (THIS INFORMATION IS CONTAINED IN THE EXEMPT PART OF THE REPORT)**

- 4.1 For individual contracts (or series of connected contracts) with a value over (this information is contained in the exempt part of the report) up to and including (this information is contained in the exempt part of the report), there are two routes to procure, exercised at the option of the Manager (taking into account the Procurement Objectives) as follows:

- 4.1.1 subject to paragraph 4.2 below, seeking written quotations in accordance with paragraph 6 below; or
- 4.1.2 a formal tender process in accordance with paragraph 7 below.

- 4.2 Seeking written quotations will only be permitted on the following grounds:

- 4.2.1 for reasons of urgency and where for the purposes of expediency the relevant authorised decision maker in accordance with the Delegation Policy has agreed in writing to the use of written quotations;
- 4.2.2 where specialist knowledge or skills are required for a specific procurement; or
- 4.2.3 where the Manager is of the view that following the competitive procurement route cannot be reasonably expected to achieve any commercial benefit for the HDV Group (in terms of price and/or quality).

- 4.3 The Manager shall be required to document in writing the reasons for relying on the provisions of paragraph 4.2 having regard to the terms of this Procurement Policy.

5. **SUPPLIES AND SERVICES ABOVE (THIS INFORMATION IS CONTAINED IN THE EXEMPT PART OF THE REPORT)**

- 5.1 For individual contracts (or series of connected contracts) with a value above (this information is contained in the exempt part of the report), the procurement process shall be pursuant to a formal, appropriately advertised, tender process in accordance with paragraph 7 below.

6. **PROCUREMENT BY WAY OF WRITTEN QUOTATION**

- 6.1 Subject to paragraph 6.2, the methodology for the appointment of contracts under the written quotation process will be as follows:

- 6.1.1 agree parameters and pre-selection criteria for the potential appointment, to include, without limitation:
 - (a) sufficiently robust financial standing;
 - (b) necessary expertise, capability and capacity to undertake the services;

- (c) necessary health and safety procedures in place; and
 - (d) a relevant demonstrable track record;
- 6.1.2 request written quotations based upon the relevant specification referred to in paragraph 1 from a minimum of five independent contractors (two of whom may be nominated by the Council in its absolute discretion) who satisfy the criteria specified in paragraph 6.1.1;
- 6.1.3 reserve the right to request that a bidder clarify or modify a quotation and reserve the right to withdraw from the procurement entirely without incurring costs;
- 6.1.4 agree list of bidders (being a minimum of 3 where reasonably practicable) for interview, based on the selection criteria. This process will be driven by the Manager as part of its project manager services under the Development Management Agreement; and
- 6.1.5 select the bidder with the highest aggregate score against the selection criteria.
- 6.2 The methodology set out above at paragraph 6.1 may in certain circumstances be varied but only by prior written agreement by the relevant authorised decision maker in accordance with the terms of the Delegation Policy.

7. **PROCUREMENT BY WAY OF FORMAL TENDER PROCESS**

- 7.1 Subject to paragraph 7.2, the methodology for the appointment of contracts under the formal tender process will be as follows:
- 7.1.1 agree parameters and pre-selection criteria for the PQQ stage, to include, without limitation:
 - (a) sufficiently robust financial standing;
 - (b) necessary expertise, capability and capacity to undertake the services;
 - (c) necessary health and safety procedures in place; and
 - (d) a relevant demonstrative track record;
 - 7.1.2 advertise the opportunity in appropriate trade press, the Council's own procurement web pages and notify the Haringey Chamber of Commerce to ensure (as far as possible) that at least 6 contractors of suitable quality will respond to the tender. The Council reserves the right to nominate up to three (3) potential contractors at its absolute discretion;
 - 7.1.3 issue a form of PQQ via a suitable mechanism;
 - 7.1.4 prepare the specification for services in accordance with paragraph 1, tender documents and selection criteria;
 - 7.1.5 down-select to a minimum of 6 bidders (where reasonably practicable) based on the pre-selection criteria set out in the tender documentation;
 - 7.1.6 issue tender documents via a suitable mechanism;
 - 7.1.7 agree shortlist for interview (being a minimum of 3 where reasonably practicable), based on selection criteria. This process will be driven by the Manager as part of its project manager services under the Development Management Agreement;
 - 7.1.8 conduct post tender interviews to (without limitation) clarify the proposed key personnel, scope of services, deliverables and pricing model;
 - 7.1.9 following interviews, reserve the right to require the 2 bids offering best value (as determined under the stated evaluation criteria) to submit a best and final offer tender;

- 7.1.10 reserve the right to request that a bidder clarify or modify a final tender and reserve the right to withdraw from the procurement entirely without incurring costs;
- 7.1.11 appoint the best value offer (as determined under the evaluation criteria set out in paragraph 2); and
- 7.1.12 offer feedback to the unsuccessful bidders,

and the Council shall have the right as a matter reserved to the Council to participate in the tender process, to include (without limitation) the attendance at interviews and the evaluation of bids.

- 7.2 The methodology set out above at paragraph 7.1 may in certain circumstances be varied but only by prior written agreement by the relevant authorised decision maker in accordance with the terms of the Delegation Policy.

8. **EXCLUSIONS FROM THE PROCUREMENT POLICY**

- 8.1 The procurement of the following goods and/or services shall be excluded from the scope of this Procurement Policy:
 - 8.1.1 any services provided to the HDV Group directly by the Development Manager pursuant to the Development Management Agreement;
 - 8.1.2 any services provided to the HDV Group directly by the Asset Manager pursuant to the Asset Management Agreement, or any extension thereto (both in duration beyond the initial 5 years, and in scope to include the management of assets developed on the Development Sites), subject to the Asset Manager being able to demonstrate value for money through market benchmarking and approval of the HDV Board;
 - 8.1.3 any services provided to the HDV Group directly by the Property Manager pursuant to the Property Management Agreement (Investment Portfolio) or the Property Management Agreements (Council owned land);
 - 8.1.4 the initial appointment by the HDV Group of consultants included within the PSP's bid team, as outlined in the Business Plans;
 - 8.1.5 any additional services (as agreed by the HDV Board) set out in paragraph 20 of Schedule 2 of the Development Management Agreement which are budgeted within the HDV Financial Model;
 - 8.1.6 any services provided to any HDV Party directly by the Council pursuant to a Council services agreement, for which the Council shall be entitled to charge the relevant HDV Party the costs incurred by the Council in providing such services; or
 - 8.1.7 any services provided to the HDV Group by the IVT.

PART C – APPLICABLE ONLY TO PROCUREMENT OF CONSTRUCTION WORKS

1. DEVELOPING SPECIFICATIONS

- 1.1 It is important when the HDV Group is procuring construction works (whether or not including design of those works) that the specifications, quality standards and/or performance requirements are written in such a way as to be sufficiently robust, whilst not being so explicit that the information provided negates a contractor's expertise and stifles their innovation in delivery within the context of the selected contracting structure for the relevant works (the "**Requirements**").
- 1.2 The HDV Group will ensure that the Requirements it draws up will:
- 1.2.1 state the technical requirements clearly, concisely, logically and unambiguously, including any requirements for quality;
 - 1.2.2 contain enough information for potential contractors to decide and provide unqualified costs and pricing information for the construction works they will offer, which will include but not be limited to the proposed form of construction contract, collateral warranties and required forms of performance security;
 - 1.2.3 be consistent with the terms of the evaluation criteria and methodology (as detailed in paragraph 2 below);
 - 1.2.4 provide equal opportunities to all contractors to offer a solution that satisfies the needs of the HDV Group;
 - 1.2.5 contain requirements at a level of detail as is reasonably appropriate to the selected contracting strategy for those works (including as appropriate any terms and conditions of contract and ancillary documents) and will not contain features which directly or indirectly discriminate in favour of or against any contractor, product or source; and
 - 1.2.6 ensure compliance with the HDV Group's legal obligations.

2. EVALUATION CRITERIA

- 2.1 The price component shall never be less than (this information is contained in the exempt part of the report) of the total evaluation score, except where this has been agreed in advance as a matter reserved to the Council.
- 2.2 All bidders must be notified of the evaluation criteria used to select the winning bid and undisclosed evaluation criteria shall not be used to evaluate bids under any circumstances. The evaluation criteria for any appointment will be as follows (unless otherwise determined by the Manager, acting on the instruction of the HDV Group):
- 2.2.1 bids will be evaluated on a price/ non-price assessment based upon a range of weightings of (this information is contained in the exempt part of the report) price and (this information is contained in the exempt part of the report) non-price.
 - 2.2.2 where lump sum, percentage based and/or cost share threshold prices are to be submitted as appropriate to the selected contracting strategy, price evaluation will be based on the lump sum, percentage and/or threshold prices submitted; and
 - 2.2.3 otherwise, price evaluation shall be based on a qualitative assessment of the bidder's delivery proposals for cost management, capability and relevant experience of cost management including a clear demonstration of how that capability and experience will be applied for the benefit of the HDV Group.
- 2.3 Non-price evaluation needs to reference the following:

- 2.3.1 experience of similar commissions and a clear demonstration how such experience will be applied for the benefit of the HDV Group;
- 2.3.2 response to the quality questions set out in the tender documentation;
- 2.3.3 delivery proposal setting out their suitability and 'added value' in undertaking the works;
- 2.3.4 references from a minimum of three previous clients;
- 2.3.5 innovation contained within proposed works;
- 2.3.6 any proposed modifications to any proposed terms and conditions; and
- 2.3.7 deliverability of proposed works.

3. **PROCUREMENT OF ALL WORKS**

3.1 All works shall be procured by way of the formal tender process set out in this paragraph 3.

3.2 Subject to paragraph 3.3, the methodology for the appointment of contracts under the formal tender process will be as follows:

- 3.2.1 agree parameters and pre-selection criteria for a PQQ stage, to include, without limitation:
 - (a) sufficiently robust financial standing;
 - (b) necessary expertise, capability and capacity to undertake the works (including, where and insofar as relevant, design of the works or relevant part thereof);
 - (c) satisfactory health and safety record, as judged against health and safety records of contractors generally appointed on projects of a similar size, scope nature and complexity;
 - (d) a relevant demonstrable track record;
 - (e) has had no formal legal proceedings issued against it in relation to the provision of works similar to the current works being procured in the period of eighteen (18) months prior to the date of proposal;
 - (f) has had no convictions for criminal offences including (but not limited to) bribery, corruption, conspiracy, terrorism, fraud or money laundering nor been the subject of a binding legal decision that found a breach of legal obligations to pay tax or social security obligations (except where this is disproportionate e.g. only minor amounts involved); and
 - (g) has sufficient available resource (including experienced supervisors) to be able to perform the works in accordance with any proposed programme for the same;
- 3.2.2 advertise the opportunity in appropriate trade press, the Council's own procurement web pages and notify the Haringey Chamber of Commerce to ensure (as far as possible) that at least 6 contractors of suitable quality will respond to the tender. The Council reserves the right to nominate up to three (3) potential contractors at its absolute discretion;
- 3.2.3 issue a form of PQQ via a suitable mechanism;
- 3.2.4 prepare the works requirements specification in accordance with paragraph 1, tender documents and selection criteria;

- 3.2.5 down-select to a minimum of 6 bidders (where reasonably practicable) based on the pre-selection criteria set out in the tender documentation;
- 3.2.6 issue tender documents via a suitable mechanism;
- 3.2.7 agree shortlist for interview (being a minimum of 3 where reasonably practicable), based on selection criteria. This process will be driven by the Manager as part of its project manager services under the Development Management Agreement;
- 3.2.8 conduct post tender interviews to (without limitation) clarify the proposed key personnel, scope of works, deliverables and pricing model;
- 3.2.9 following interviews, reserve the right to require the 2 bids offering best value (as determined under the stated evaluation criteria) to submit a best and final offer tender;
- 3.2.10 reserve the right to request that a bidder clarify or modify a final tender and reserve the right to withdraw from the procurement entirely without incurring costs;
- 3.2.11 appoint the best value offer (as determined under the evaluation criteria at paragraph 2); and
- 3.2.12 offer feedback to the unsuccessful bidders,

and the Council shall have the right as a matter reserved to the Council to participate in the tender process, to include (without limitation) the attendance at interviews and the evaluation of bids.

- 3.3 The methodology set out above at paragraph 3.1 may in certain circumstances be varied but only by prior written agreement by the relevant authorised decision maker in accordance with the terms of the Delegation Policy.

SCHEDULE 5

ACCOUNTS

1. CURRENT ACCOUNTS

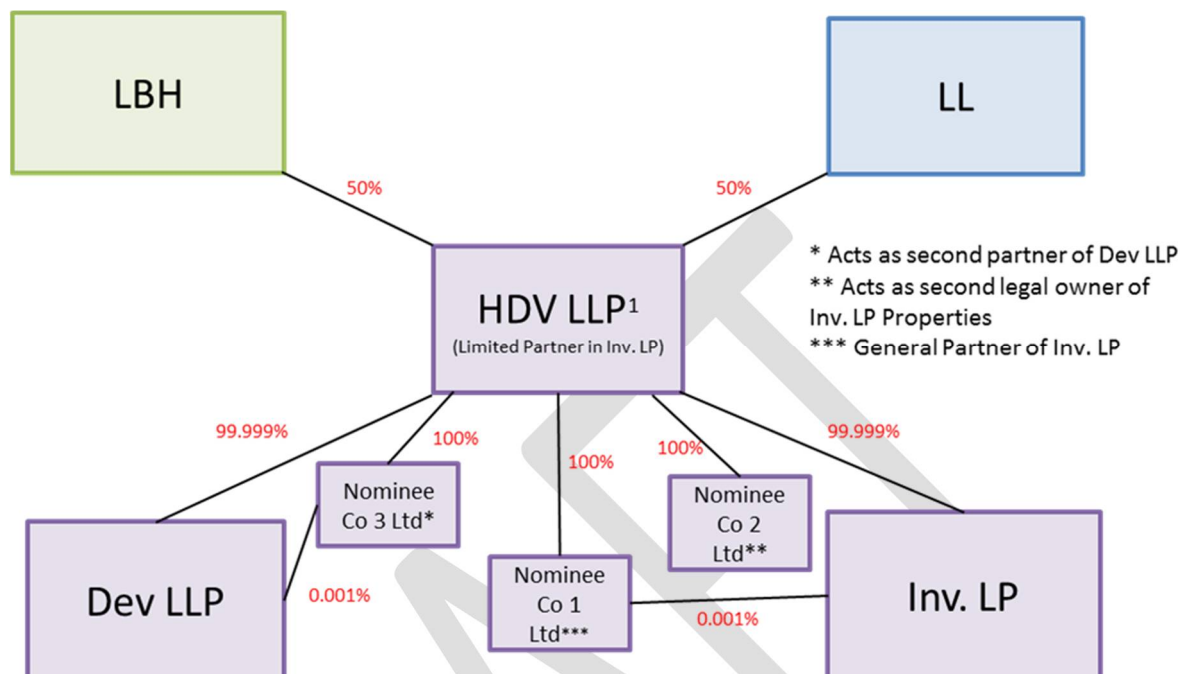
- 1.1 The HDV shall establish and thereafter maintain a current account ("**HDV Current Account**") to be utilised by the HDV to hold HDV monies prior to any determination (pursuant to paragraph 4 of Schedule 8) of apportionment of Net Profit.
- 1.2 The HDV shall establish and thereafter maintain an account ledger in the name of each Member ("**Member's Current Account**") and hold the contents of each Member's Current Account on trust for the relevant Member. For the avoidance of doubt, the HDV shall not be required to open up a separate bank account for each Member.
- 1.3 The HDV shall credit to each Member's Current Account that Member's share of the Net Profits (if any) in accordance with paragraph 4 of Schedule 8 (Receipts and Profits).
- 1.4 For the avoidance of doubt, the only amounts which shall be credited to a Member's Current Account shall be such amounts as the HDV Board determines in accordance with Schedule 8 and there shall be no accrual of any amounts constituting the profits of the HDV during the course of an Accounting Period. Any amounts allocated to the credit of a Member's Current Account which are distributed to that Member shall be debited from the balance of that Member's Current Account ledger.
- 1.5 Subject to Schedule 8, the HDV may at any time (if proposed by any Member and/or any Nominee and/or the HDV Board (in each case by written notice to the HDV)) distribute the whole or part of any amounts allocated as standing to the credit of Members' Current Accounts to the Members. Any such distribution shall be made to the Members in amounts pro-rata to the amounts at that time allocated as standing to the credit of their respective Current Accounts.
- 1.6 InvLP shall establish and thereafter maintain a current account ("**InvLP Current Account**") and hold the contents of the InvLP Current Account on trust¹⁹ for the HDV. Such account shall be a separate InvLP bank account.
- 1.7 DevLLP shall establish and thereafter maintain a current account ("**DevLLP Current Account**") and hold the contents of the DevLLP Current Account on trust for the HDV. Such account shall be a separate DevLLP bank account.

¹⁹ Ashurst 24/04: to check holding account on trust for HDV correct expression given an LP

SCHEDULE 6

ILLUSTRATIVE NARRATIVE OF FINANCES [DRAFT]

1. HDV STRUCTURE²⁰



1.1 The Haringey Development Vehicle LLP (HDV) is a 20 year partnership (with an option to extend by up to 10 years) between the members: London Borough of Haringey (LBH); and Lendlease (LI). The partnership legal structure is a 50:50 joint venture, with 50:50 funding parity and 50:50 profit shared equally between both members.

1.2 There are currently two subsidiary partnership SPVs under the parent HDV. DevLLP exists as a holding SPV in order to undertake all the development activities for the HDV, over time a number of subsidiary SPVs will sit under DevLLP in order to deliver each Phase within each of the Development Sites (refer to section 4 below). The Inv. LP purpose is to hold the Investment Portfolio assets purchased from LBH on day one (refer to section 3 below).

1.3 The preference is for the Investment SPV to be set up as an LP rather than an LLP. By using an LP it gives the HDV greater flexibility to attract future investors in order to achieve the most benefit for the partners, should HDV decide that is appropriate, since:

1.3.1 investors tend to be more familiar with holding investment properties through an LP rather than an LLP and it is the more common vehicle to use than an LLP; and

1.3.2 certain investors such as pension funds and other tax exempt entities are taxed by way of income tax according to their individual status and circumstances but not taxed on investment profits or gains. As there is no tax at the level of an LP but rather it is tax transparent, if correctly structured, an LP will not generally be regarded as carrying on a trade in its own right so no income tax liability will be created on distributions from the LP and consequently tax exempt investors will have no liability to tax in respect of their returns.

²⁰ PMDN: Please remove erroneous footnote number in HDV LLP box

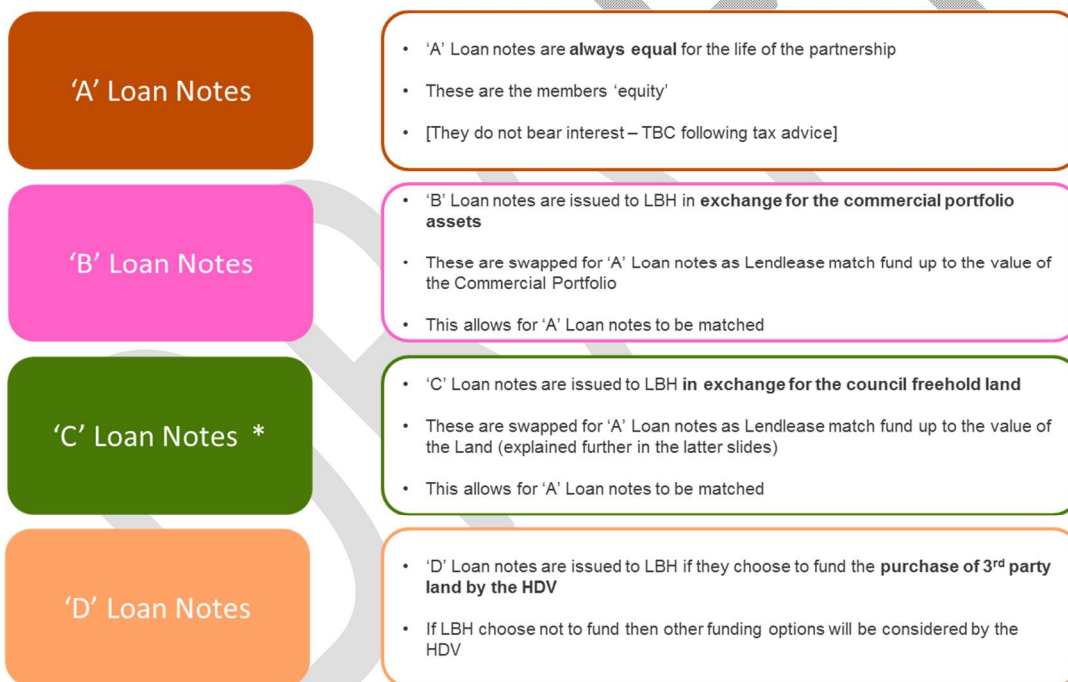
1.4 An LP and an LLP require at least two members, hence Nominee Co 1 is part of the structure to hold a nominal interest in InvLP and Nominee Co 3 holds a nominal interest in DevLLP. Different nominees act as the relevant second members so that the ownership of DevLLP and InvLP are ring fenced as far as possible. An LP requires a general partner to carry out its day to day business as it does not have a legal personality and so Nominee Co 1 will also perform this role. Nominee Co 2 Ltd's role is to act as second trustee of the legal title to the Investment Portfolio as an LP cannot hold property itself and future funders and purchasers will require two entities to act as trustees in order to give a proper receipt of sale proceeds on any future sale.

2. **LOAN NOTES**

2.1 A loan note is a contract stating the terms of a loan, such as the principal, the interest rate, and the payment schedule. A loan note states the rights and obligations of both the lender and the borrower. If one party does not fulfil his/her obligations, the other may sue for redress.

2.2 Loan notes are used within the HDV instead of shares due to the legal status of the SPV's being partnerships (either LLP's or LP's) rather than companies.

2.3 There are 4 types of loan note which are used within the HDV which are listed in the table below. They are all loan notes which have different terms attached to them which attract differing interest rates and differing treatment with regard to repayment, distribution and security.²¹



* Please note in the LL submitted business plan, C loan notes were used as potential Mezz loan notes if required. The labelling has been revised here to match legals.

2.4 'A' Loan Notes are considered similar to 'equity' (though not legally) as they represent the members funding which is always equal for the duration of the HDV.

2.5 'B' Loan Notes are issued when LBH leases the Investment Portfolio to Inv. LP entity. These 'B' Loan Notes are temporary loan notes which are convertible to 'A' Loan Notes as LI match funds up to the value of the Investment Portfolio. LI has committed to match fund the value of the Investment Portfolio which will be backed on inception by a LI Corporation Parent Company Guarantee. The 'B' Loan Notes attract an interest rate of (this information is contained in the exempt part of the report),

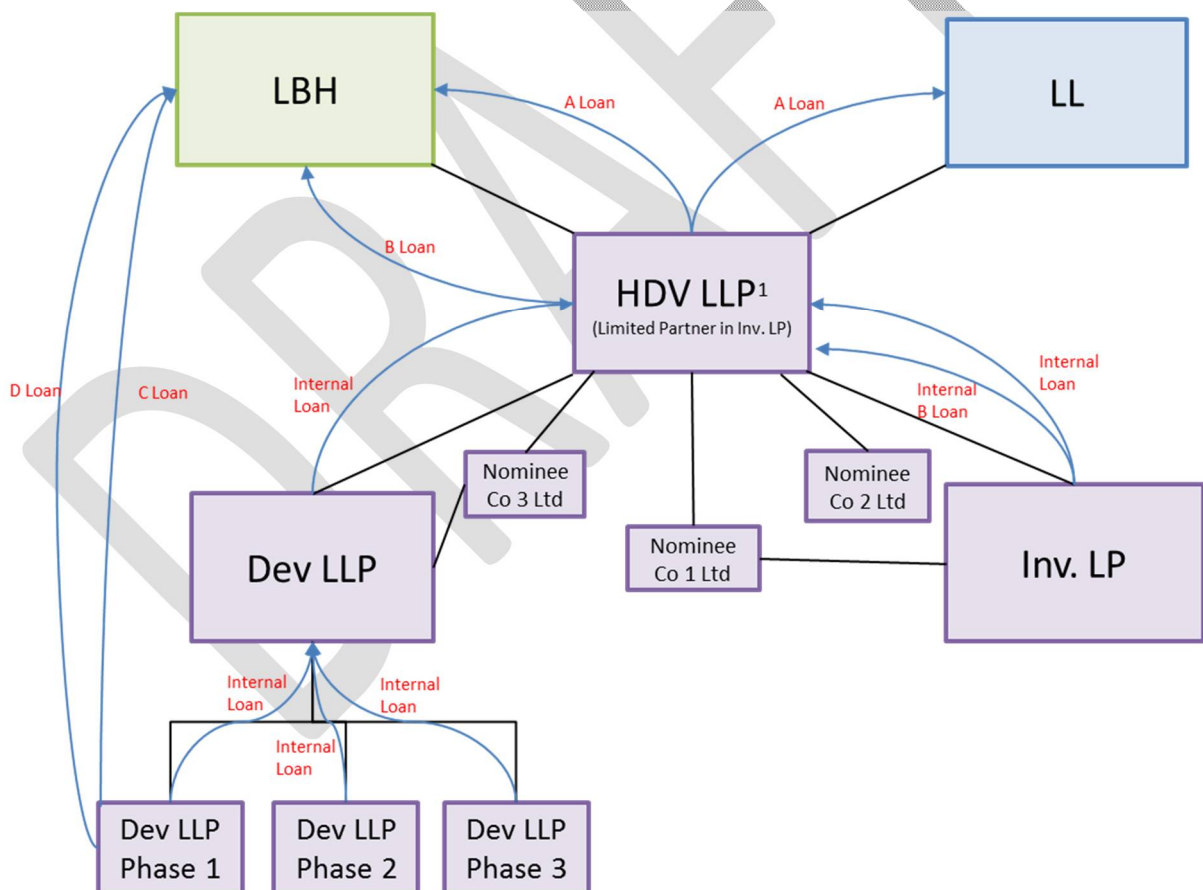
²¹ PMDN: Please remove the note following the chart. Please also remove comment in square brackets if this is now agreed.

payable quarterly in arrears. If either LBH, LL or both want to reduce their holding in Inv. LP, an equity release could be used to fund the development of the Development Sites by DevLLP in exchange for 'A' Loan Notes. Any such decision would be subject to Member approval. This mechanism would allow LBH to fund the HDV by assets rather than cash.

2.6 'C' Loan Notes are issued to LBH in return for LBH granting DevLLP or its relevant subsidiary a 250 year long lease over a relevant Development Site. These loan notes are convertible to 'A' Loan Notes as LI match funds up to the value of the lease premium as determined within schedule 7 of the Development Framework Agreement. LI's commitment to the equity requirements as required are supported by its guarantor. The 'C' Loan Notes attract an interest rate of (this information is contained in the exempt part of the report), with a HDV preference (but no obligation) for accrued interest to be held within the HDV by LBH to fund the development of future Phases in line with Schedule 8 of this Agreement. An 'A' Loan Note will be issued for this additional member funding which will need to be match funded by LI. This allows LBH to fund the HDV by assets rather than cash.

2.7 'D' Loan Notes are optional loans which LBH have the option but not the obligation to provide to the HDV in order to acquire third party land within the Category 1 properties boundaries. 'D' Loan Notes will attract an interest rate of (this information is contained in the exempt part of the report) payable quarterly as is shown within Schedule 7 of this Agreement.

2.8 The diagram below illustrates how the loan notes move through the different levels of the partnership.



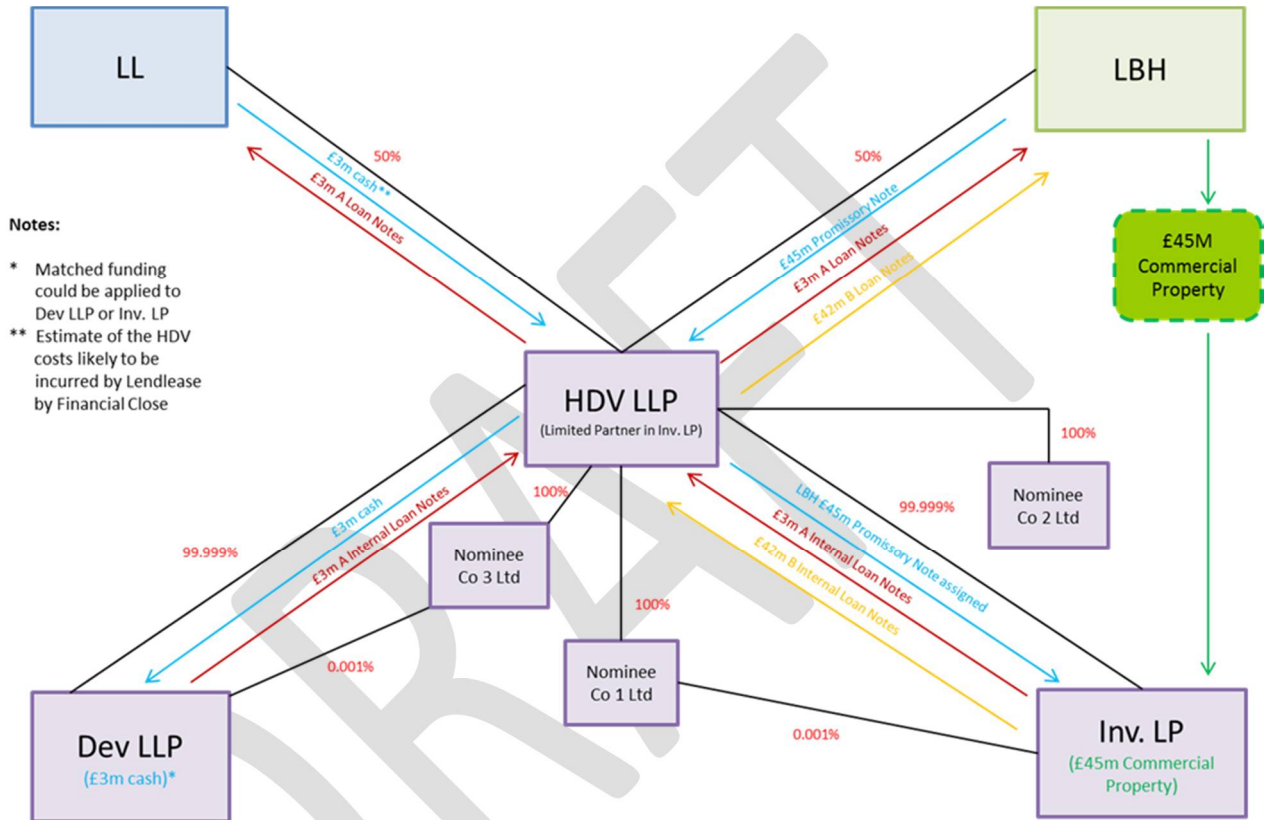
2.9 'A' Loan notes are issued through the structure from the HDV to LBH and LI and as 'Internal Loans' from the relevant DevLLP Phase SPV up to DevLLP and then on up to the HDV or Inv.LP to the HDV.

2.10 'B' Loan notes are issued by the HDV to LBH and by Inv.LP as an 'Internal B Loan' to the HDV.

- 2.11 'C' Loan notes are issued directly by the relevant DevLLP Phase SPV to which the land was drawdown from LBH.
- 2.12 'D' Loan notes are issued directly by the relevant DevLLP Phase SPV which the borrowing was taken by, to LBH.

3. **STRUCTURE – FINANCIAL CLOSE**

3.1 The figure below gives a diagrammatical example of how the loan notes might flow between the members and the HDV SPV's on financial close and day 1 of operations.



- 3.2 On financial close LBH will grant a lease for a term of up to 250 years of those properties in the Investment Portfolio that are ready to be transferred. It is currently envisaged that some leases will be granted at a later date or dates, subject to a final longstop date. Once all the properties are transferred the total value of the portfolio of £45m transferred to Inv. LP will represent LBH's initial funding
- 3.3 The mechanism for the payment of premium for the lease will be through the 'B' Loan Notes which are then swapped for 'A' Loan notes.
- 3.4 The Investment Portfolio assets will be held directly within Inv. LP, therefore the leases will be directly between LBH and Inv. LP.
- 3.5 In order for Inv. LP to acquire the Investment Portfolio assets, LBH has to initially issue promissory notes of £45m down to Inv. LP through the HDV which Inv. LP can use to acquire the Investment Portfolio assets. On the completion of the leases, LBH exchanges the promissory notes for 'B' Loan Notes in Inv. LP which go up from Inv. LP through the HDV.
- 3.6 By the time of financial close, LI will have already incurred costs from work undertaken prior to financial close in accordance with the budget agreed in advance by the HDV Steering Group (a combination of LI and LBH employees). The amount forecast and held as an assumption within the

HDV Financial Model for this spend is circa (this information is contained in the exempt part of the report). These costs will be novated into either DevLLP or Inv. LP depending on whether they were incurred as part of the development activities on the Category 1 Properties (DevLLP) or on investment activities in relation to the Investment Portfolio (Inv. LP).

3.7 As LI novates the agreed HDV costs into the HDV, LI will receive (this information is contained in the exempt part of the report) 'A' Loan Notes from the HDV. At this point LBH will then swap (this information is contained in the exempt part of the report) of their 'B' Loan Notes in the HDV for (this information is contained in the exempt part of the report) 'A' Loan notes. 'A' Loan notes are always equal between the members maintaining the 50:50 joint venture relationship.

4. **STRUCTURE – PHASE DEVELOPMENT AND DEVLPP FUNDING**

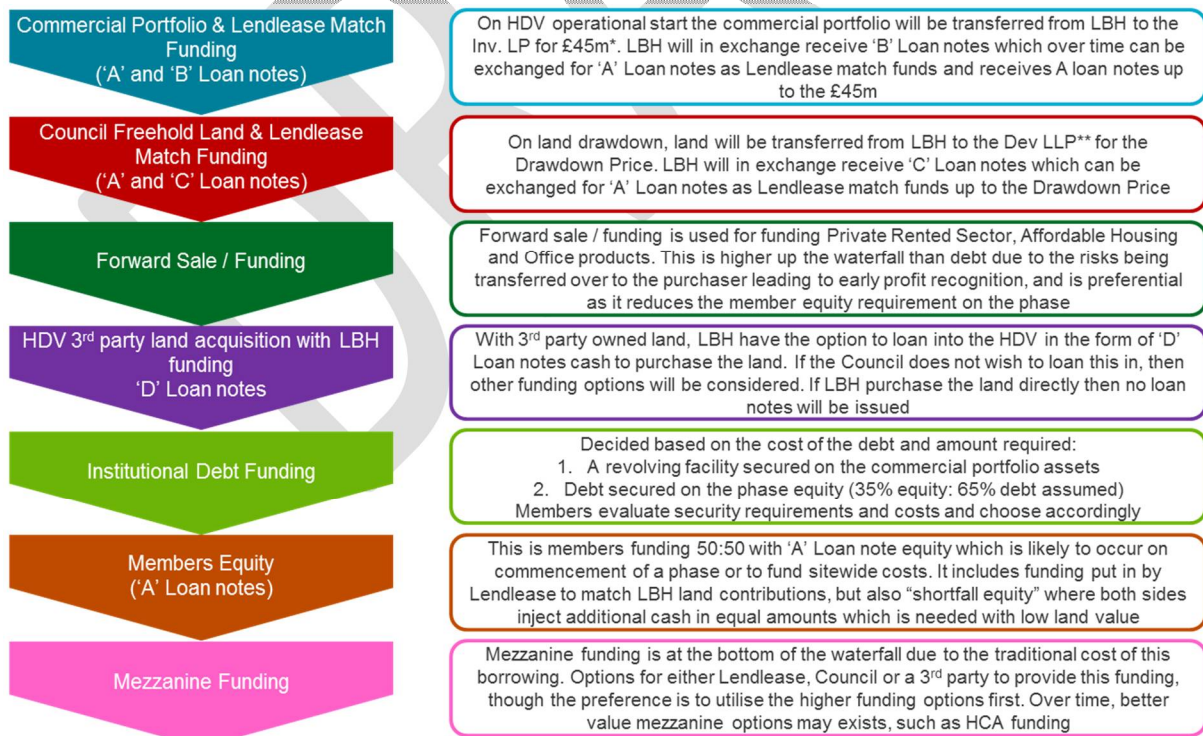
(this information is contained in the exempt part of the report)

5. **FUNDING PREFERENCE**

5.1 Below is an indicative funding preference list which sets out the proposed/default funding preference for operating the HDV's Business. Over the life of the partnership this is likely to evolve as other new forms of funding become available to the HDV.

5.2 The HDV will always apply the most cost effective funding solution when deciding which funding option it will adopt at the time.

5.3 Prior to the commencement of detailed design on each Phase the HDV Board will decide which are the most appropriate funding options to proceed with. For certain funding options, there will need to be Member approval. Prior to securing this debt this will also be revisited to ensure this is the most appropriate funding option and provides best value to the HDV from the options available at the time.



5.4 The LBH Investment Portfolio assets ('B' Loan Notes) and the LI match funding up to the value of those assets will be the initial source of funding for the HDV. No external debt will be secured

through the HDV prior to all LBH 'B' Loan Notes being match funded by LI funding and swapped for 'A' Loan Notes.

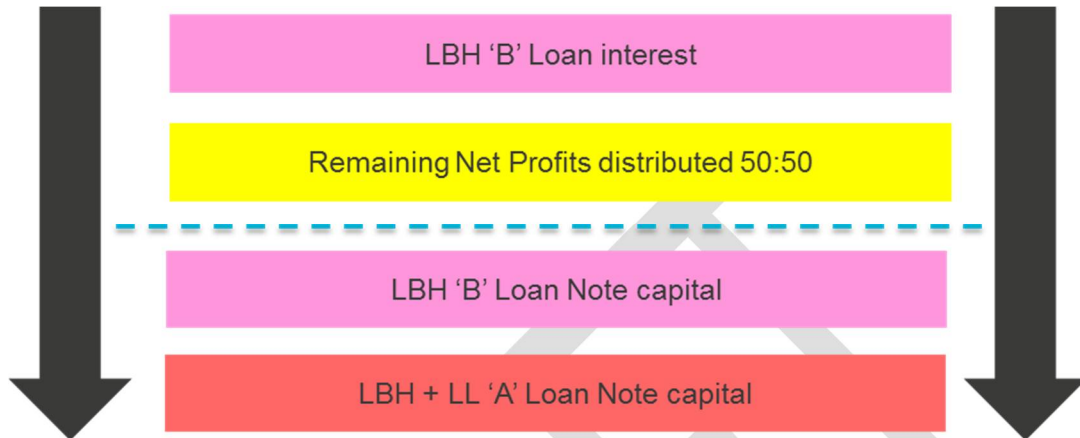
- 5.5 The-next source of funding in the funding preference list is LI cash funding to match LBH's funding by way of leasing land into DevLLP (or its subsidiaries). The relevant lease is granted at land drawdown prior to start on site (construction) in exchange for 'C' Loan Notes which are then match funded by LI and swapped for 'A' Loan Notes. Again as with 'B' Loan Notes funding on the Phase will need to be matched by LI prior to external financing or any other member financing being secured on the Phase to ensure the 50:50 JV relationship is maintained.
- 5.6 Forward funding with a sale and leaseback or similar arrangement is higher up the funding preference list as it reduces the overall risk of the Phase, as the sales risk is transferred over to the purchaser. This allows profit to be recognised earlier, and also the cash is received by the HDV earlier, minimising the HDV's peak funding ('A' Loan Note / 'equity') requirements.
- 5.7 Where the HDV purchases third party land directly, LBH have the option but not an obligation to provide the HDV with a loan which is classified as a 'D' Loan Note with a defined interest rate and distribution as set out in Schedule 7 of this Agreement and section 7 and 8 below. If LBH decide not to fund this purchase then the other sources of funding would be considered:-
- 5.8 Institutional debt funding is next in the funding preference above members 'A' Loan Note funding in order to ensure the peak capital requirements from the HDV members are kept to a minimum. There are currently two potential ways for this funding to be secured;
 - 5.8.1 using the Investment Portfolio assets once these have been leased to Inv. LP. The Investment Portfolio will need to have fulfilled certain requirements stipulated by the lender before the assets can be used as a security, these include full due diligence (in line with the lenders requirements), red book valuation, insurance being taken out and statutory compliance. It is expected that only then will lenders be able to provide a revolving bank facility secured off the value of these assets.
 - 5.8.2 using equity within a Phase, once both members have funded spend up to (this information is contained in the exempt part of the report) then it is currently assumed that external debt can be secured (this information is contained in the exempt part of the report) of the Phase costs.
- 5.9 In order to maintain the members' equity at a minimal level, members' equity secured by way of 'A' Loan Notes is next in the funding preference. Members will need to fund the initial costs within each Phase which may include taking a Phase through planning determination and land drawdown prior to external funding being secured. Therefore the current base preference (but not obligation) within the HDV Financial Model is that profits from the developments are re-invested to fund the development of future Phases until an appropriate time when it is suitable for profit to be distributed.
- 5.10 Mezzanine funding is at the bottom of the funding preference since it will generally attract a priority return (higher cost of borrowing) in return for this lending. This is less preferable as additional terms within the lending arrangement will be required which may impact the 50:50 JV relationship which is currently assumed within the base assumptions. Possible options for this funding could include either member or an external party. This funding option might be used in the instance that all other funding options have been exhausted and this is the only funding option in order to deliver a Phase. As with all other options, this selection will need to be decided by the HDV Board and potentially approved by the members prior to the commencement of a Phase.
6. **INV. LP FUNDING AND CASH AND SECURITY DISTRIBUTIONS WATERFALL**
 - 6.1 There is a separate distribution waterfall within each SPV to ensure that the loan notes relate to the activities and relevant HDV entity which they fund. Therefore clear loan note accounts will be set up prior to the commencement of each Phase to ensure that there is a clean and traceable repayment of loan notes and other distributions.

6.2 For Inv. LP which holds the Investment Portfolio assets there are two distribution waterfalls which exist:

6.2.1 an operational cash distributions waterfall where profits are distributed annually; and

6.2.2 an Investment Portfolio exit waterfall which would apply if any of the assets are sold or on a winding up of the partnership.

6.3 The following figure covers the operational cash distributions waterfall.

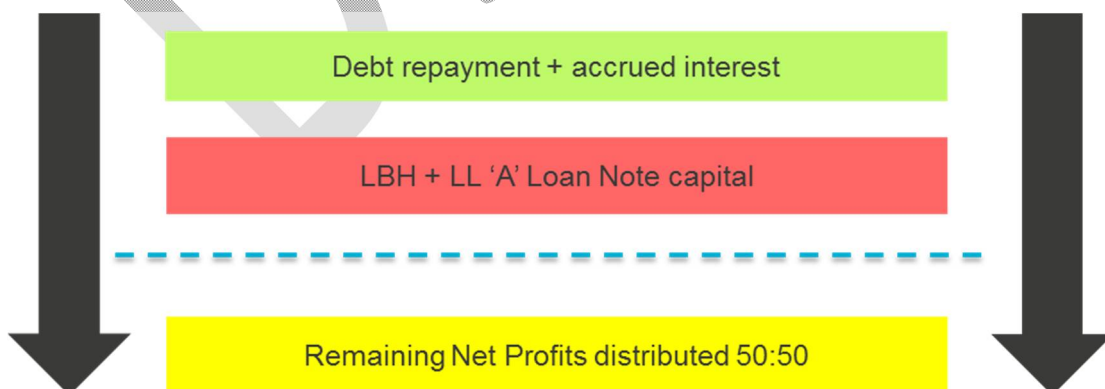


6.4 'B' loan notes in relation to LBH's Investment Portfolio leased to Inv. LP are matched by LI and swapped for 'A' Loan notes over time, prior to the HDV securing external debt. Since there will be no debt secured prior to the 'B' Loan Notes being fully swapped, 'B' Loan Notes sit at the top of the cash and also security distributions waterfall.

6.5 The Investment Portfolio Income (being more particularly defined in schedule 1 but broadly being income after all costs in relation to Inv. LP have been deducted, which may include but are not limited to asset management fees and property management fees) is distributed after 'B' Loan Note interest incurred on the 'B' Loan Notes has been paid out on a quarterly basis in arrears.

6.6 The base assumption is that the members' 'A' Loan Notes are retained within Inv. LP until the end of the partnership, though there is the option for either member to reduce their equity holding in Inv. LP if agreed at HDV Board level and approved by the relevant member.

6.7 The following figure covers the exit waterfall in respect of the sale of assets or the winding up of the HDV.



6.8 On winding up of Inv. LP in 20 years (or as extended in accordance with this Agreement), there will be no 'B' Loan Notes or interest incurred on the 'B' Loan Notes as the 'B' Loan Notes will have been swapped for 'A' Loan Notes as LI will have matched funded, and all interest will have been distributed in full.

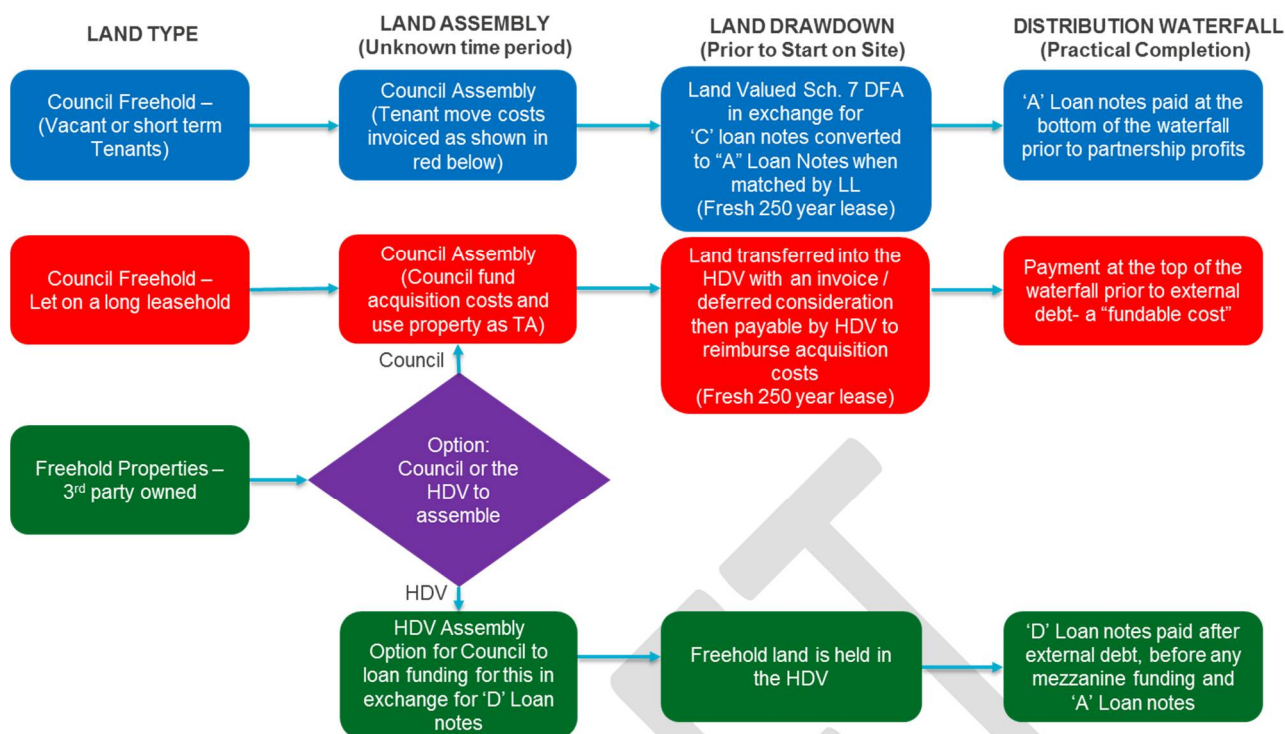
- 6.9 In circumstances where debt has been secured on the Investment Portfolio to be reinvested in future assets to achieve the best rate of funding for the HDV this will be at the top of the waterfall in order to give it a higher security in the waterfall than the 'A' Loan Notes.
- 6.10 If the HDV decides to dispose of the Investment Portfolio at the end of 20 years (or as extended in accordance with this Agreement), the Net Profit would be made up of the sales proceeds, less selling costs and value which the Investment Portfolio held on the balance sheet of Inv. LP. This would be available for distribution to the members in accordance with and subject to the provisions of Schedule 8.
- 6.11 As part of the management of the Investment Portfolio, a strategic decision might be made to sell assets in order to purchase other assets. The assumption is that the members would seek to keep these proceeds within the HDV for re-investment.

7. A TYPICAL PHASE EXAMPLE

- 7.1 Prior to design start on a Phase the HDV will confirm that the Phase meets the viability hurdles as defined in the HDV Strategic Partnership Business Plan: Finance & Commercial section.
- 7.2 Prior to the commencement of construction on a Phase the option condition set out in the Development Framework Agreement will need to be satisfied and then land will be drawdown by the HDV (through a subsidiary of DevLLP) from LBH as described in section 8 below.
- 7.3 In order for the land to be drawdown by the HDV prior to construction the land needs to have been assembled by LBH or HDV as shown in section 8 below.

8. LAND ASSEMBLY FOR ACQUISITION OF CATEGORY 1 PROPERTIES FOR DEVLPP IN ACCORDANCE WITH THE DFA AND LAND ASSEMBLY AGREEMENT

- 8.1 There are three different types of land which the HDV will be required to assemble through the life of the partnership. They are shown in the figure below:
- 8.1.1 LBH freehold with vacant or short-term tenants;
 - 8.1.2 LBH freehold properties which have been let on a long-leasehold (generally where the tenant has taken up their Right to Buy); and
 - 8.1.3 any other third party land.



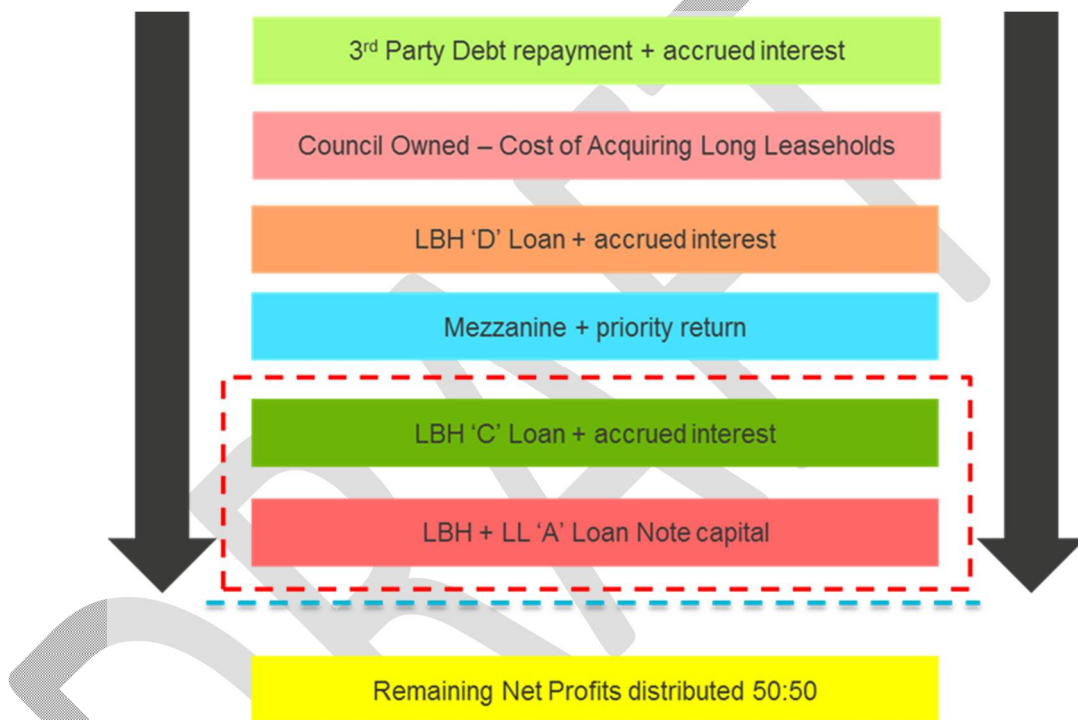
- 8.2 LBH will secure vacant possession of its freehold land in accordance with the terms of the Land Assembly Agreement. The professional fees of the external consultants and other process costs in relation to achieving vacant possession are budgeted within the HDV and will be paid by the HDV to LBH on a quarterly basis in accordance with the Land Assembly Agreement as 'Relevant Expenses'.
- 8.3 Payments made to residents pursuant to LBH's obligations and policies as housing authority are invoiced in the same way as other acquisition costs, as set out at paragraph 8.6 below.
- 8.4 Upon land drawdown, LBH will grant the HDV a 250 year leasehold interest. Upon land drawdown HDV will issue LBH with 'C' Loan Notes in respect of the land value (as calculated in accordance with Schedule 7 to the DFA). Such 'C' Loan Notes are interest bearing with the rate and security as set out in schedule 7 of this Agreement. These 'C' Loan Notes will be swapped for 'A' Loan Notes as LI match funds to the value of the land.
- 8.5 For LBH freehold land subject to long leaseholds, these may be purchased by LBH in accordance with the Land Assembly Agreement either through a private treaty purchase or through a CPO process. If these are purchased in advance, the day to day costs of LBH's borrowing to acquire these is assumed to be offset with LBH's ability to use these to alleviate the current temporary accommodation requirement in the borough and not charged to the HDV.
- 8.6 On land drawdown the LAA Invoiced Costs (save for any Voluntary Acquisition Costs – see paragraph 8.8 below) will be invoiced to HDV as deferred consideration for the land with payment to be made three months following practical completion of the Phase. LBH and HDV 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. After drawdown, the invoice will accrue interest at the agreed rate until paid.
- 8.7 On land drawdown LBH will grant the relevant DevLLP Subsidiary a 250 year leasehold. LBH will be granted a fixed and floating charge over the long leasehold as security for such deferred consideration. The invoice shall be paid in accordance with paragraph 2 of Schedule 8, ahead of any third party debt. However, the security granted by such charge would have to rank behind any security granted to a third party funder in respect of that Phase or Development Site and the terms of the charge need to be sufficiently flexible so as not to hinder development and sales in relation to the relevant Phase.

8.8 For third party land (defined as 'Voluntary Acquisitions' in the Land Assembly Agreement) this can either be assembled through the HDV or by LBH. If this is purchased and funded by LBH this will follow the same treatment as in 8.6 above. If this is to be purchased through the HDV, LBH has the option, but not the obligation, to fund the purchase of this property through a loan from LBH in exchange for 'D' Loan Notes (these are interest bearing with interest payable to LBH quarterly which are repaid according to the distributions waterfalls set out in sections 9 and 10 below). If LBH decides not to loan this money into the HDV, then other funding options will need to be considered. If there is a purchase of the freehold directly by the HDV this would mean that the HDV would own the full freehold over the land acquired.

9. **DEVELOPMENT CASH DISTRIBUTIONS WATERFALL – PHASE COMPLETION**

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

10. **DEVELOPMENT SECURITY DISTRIBUTION WATERFALL**



10.1 The only difference to the cash distributions waterfall shown in section 9 is that the security for external debt would rank above the security for payment of the invoice for LBH's costs of acquiring long leasehold interests. This is because it is envisaged that top ranking security would need to be offered to external funders in order for HDV to achieve the best rates. LBH will be granted security for payment of their invoice by way of a floating charge.

11. **(THIS INFORMATION IS CONTAINED IN THE EXEMPT PART OF THE REPORT)**

12. **(THIS INFORMATION IS CONTAINED IN THE EXEMPT PART OF THE REPORT)**

13. **(THIS INFORMATION IS CONTAINED IN THE EXEMPT PART OF THE REPORT)**

14. **FINANCE SECURITY PRINCIPLES**

14.1 Each loan note instrument will be secured by a loan note security agreement which will take the form of an all asset debenture, incorporating both fixed and floating charges, granted by the issuer of the loan notes in favour of the loan note holder.

- 14.2 Invoices relating to the land costs of the advanced assembly of long-leasehold land by the Council (excluding "process costs" dealt with under the Land Assembly Agreement) will be issued by the Council to the relevant DevLLP Subsidiary, repayment of which will also be secured by way of an all asset debenture, incorporating both fixed and floating charges, to be issued by the relevant DevLLP in favour of the Council.
- 14.3 The various loan note debentures and long-leasehold land debentures will be in substantially the same form.
- 14.4 The debentures will contain a typical suite of fixed charges, including a fixed charge (but not a mortgage) over each of the properties owned by the grantor of the debenture. Whilst the debentures will be registered at Companies House, the fixed charges over the properties will not be registered against the titles at the Land Registry as the process of having these interests removed from the titles as and when the property is sold could become administratively burdensome. The process of the fixed charge holders releasing their security over the properties to enable a sale will be simplified by a form of deed of release being agreed in advance (and appended to the debentures) and the security holders authorising the board of the relevant HDV Party to populate and sign the deeds of release on their behalf to facilitate the sale.
- 14.5 (this information is contained in the exempt part of the report)
- 14.6 Care must be taken to ensure that the suite of fixed charges contained in the debenture do not restrict the ability of the grantor of the fixed charges to carry out its objectives (for example, carrying out development works and sub-letting the property), although controls will be included that apply once the security has become enforceable.
- 14.7 An intercreditor agreement will need to be entered into whenever an entity grants security in favour of more than one beneficiary (or a single beneficiary but in different capacities). Currently the following intercreditor agreements are anticipated:
- 14.7.1 at HDV level, an intercreditor agreement ranking the security granted by HDV in support of the PSP A loan notes, the Council A loan notes and the Council B loan notes; and
- 14.7.2 at each DevLLP Subsidiary level, an intercreditor agreement ranking the security granted by the DevLLP Subsidiary in support of the internal loan notes, the Council C loan notes, the Council D loan notes and the long-leasehold land invoice.
- 14.8 The ranking of the security will follow the distribution waterfalls contained in schedule 8 (*Receipts and Profits*) of this Agreement.
- 14.9 If, in the future, third party funding is injected, a separate intercreditor will be required ranking the third party security in priority to the HDV structure security set out in this Agreement. The relevant intercreditor agreement ranking the HDV structure security set out in this Agreement will continue to rank the loan notes/long-leasehold invoice amongst the relevant entities/parties.
15. **COUNCIL INCOME**
- (this information is contained in the exempt part of the report)

SCHEDULE 7

LOANS AND SECURITY

1. LOANS

- 1.1 The Parties agree that the PSP A Loan and the Council A Loan are intended to at all times be equal.
- 1.2 The Parties acknowledge that save for its obligation to transfer the Investment Portfolio under the Agreement for Sale and the Category 1A Properties in accordance with the Development Framework Agreement the Council is not obliged under the terms of this Agreement to fund the HDV.

2. LOANS RELATING TO THE INVESTMENT PORTFOLIO

- 2.1 The PSP agrees to contribute the Aggregate Transfer Value representing PSP A Loan in relation to the transfer of the Investment Portfolio to InvLP comprised of:
- 2.1.1 (this information is contained in the exempt part of the report) relating to agreed costs incurred by the PSP on behalf of the HDV or HDV Subsidiaries prior to the Investment Portfolio Transfer Date;
- 2.1.2 a PSP Completion Loan of £[INSERT] on the Investment Portfolio Transfer Date in cleared funds to the HDV which shall be used to allow InvLP to pay Acquisition Costs and to provide InvLP with working capital; and
- 2.1.3 the remainder to be drawn down by the HDV in accordance with the draw down profile contained in the HDV Business Plan, however the PSP A Loan drawn in relation to the Investment Portfolio at any time shall not exceed the cumulative value of the Investment Portfolio then transferred to InvLP pursuant to the Agreement for Sale.
- 2.2 In consideration of the payment of PSP A Loan to the HDV referred to at paragraph 2.1 above, the PSP shall have issued to it such number of Investment (PSP) A Loan Notes as equals the amount of PSP A Loan drawn down by the HDV.
- 2.3 The Parties acknowledge the long stop date in the Agreement for Sale at which point the entirety of the Investment Portfolio capable of transfer to InvLP under the agreement for sale must have been transferred to InvLP. At that point the PSP's obligation to contribute the Aggregate Transfer Value is crystallised. It is agreed that the PSP may not contribute the full sum immediately as that would be financially inefficient, however the PSP shall ultimately contribute the full Aggregate Transfer Value. Until such time that the Aggregate Transfer Value has been contributed by the PSP, the HDV shall not enter into any arrangements to obtain third party debt or other financing.
- 2.4 HDV agrees to contribute HDV Internal Loan to InvLP and/or DevLLP (depending on the allocation of the PSP A Loan to the relevant HDV Subsidiary in accordance with the Business Plan) in a sum equal to and at the same time as it draws down the PSP A Loan pursuant to paragraph 2.1
- 2.5 On the Investment Portfolio Transfer Date the following steps shall occur in the order set out below:
- 2.5.1 the Council shall issue a promissory note to HDV [as equals the total value of the Investment Portfolio] to be transferred pursuant to the Agreement for Sale (the "**Promissory Note**");
- 2.5.2 HDV shall issue to the Council;
- (a) Investment (Council) B Loan Notes in a sum equal to the Transfer Value of the extent of the Investment Portfolio that is transferred on such date less the amount of PSP A Loan PSP has agreed to contribute to HDV pursuant to paragraphs 2.1.1 and 2.1.2 above; and

- (b) Investment (Council) A Loan Notes in a sum equal to the amount of PSP A Loan that PSP has agreed to contribute to HDV pursuant to paragraphs 2.1.1 and 2.1.2 above;

2.5.3 HDV shall assign the Promissory Note to InvLP in return for:

- (a) Internal Loan Notes in a sum equal to the Investment (Council) A Loan Notes; and
- (b) Internal B Loan Notes in the sum equal to the Investment (Council) B Loan Notes;

2.5.4 on actual completion of the transfer of the first tranche of the Investment Portfolio. InvLP shall purchase the first tranche of the Investment Portfolio in consideration of the issue of the Promissory Note to the Council such that the Promissory Note shall be cancelled in respect of an amount equal to the Transfer Value of the tranche of the Investment Portfolio that has been purchased;

2.5.5 further to paragraph 2.2, HDV shall issue to the PSP Investment (PSP) A Loan Notes in a sum equal to the PSP A Loan that the PSP has agreed to contribute to HDV pursuant to paragraphs 2.1.1 and 2.1.2 above; and

2.5.6 HDV shall contribute an Internal Loan to InvLP of the apportioned value of the PSP A Loan (as allocated to InvLP in the HDV Business Plan) that has been contributed to HDV pursuant to paragraphs 2.1.1 and 2.1.2 above in return for an equal amount of Internal Loan Notes from InvLP.

2.5.7 HDV shall contribute an Internal Loan to DevLLP of the apportioned value of the PSP A Loan (as allocated to DevLLP in the HDV Business Plan) that has been contributed to HDV pursuant to paragraphs 2.1.1 and 2.1.2 above in return for an equal amount of Internal Loan Notes from DevLLP.

2.6 On each Subsequent Transfer Date:

2.6.1 HDV shall issue to the Council Investment (Council) B Loan Notes in an amount equal to the Transfer Value of the relevant properties transferred on the Subsequent Transfer Date less the amount of any PSP A Loan contributed by PSP on the Subsequent Transfer Date;

2.6.2 HDV shall issue Investment (Council) A Loan Notes to the Council in a sum equal to the amount of PSP A Loan contributed by PSP on the Subsequent Transfer Date;

2.6.3 The Promissory Note shall be cancelled in respect of an amount equal to the Transfer Value of the properties transferred on the Subsequent Transfer Date; and

2.6.4 further to paragraph 2.2, HDV shall issue to the PSP Investment (PSP) A Loan Notes in a sum equal to the amount of any PSP A Loan contributed by PSP on the Subsequent Transfer Date; and

2.6.5 HDV shall contribute an Internal Loan to InvLP of the apportioned value of the PSP A Loan (as allocated to InvLP in the HDV Business Plan) that has been contributed to HDV pursuant to paragraphs 2.1.1 and 2.1.2 above in return for an equal amount of Internal Loan Notes from InvLP.

2.6.6 HDV shall contribute an Internal Loan to DevLLP of the apportioned value of the PSP A Loan (as allocated to DevLLP in the HDV Business Plan) that has been contributed to HDV pursuant to paragraphs 2.1.1 and 2.1.2 above in return for an equal amount of Internal Loan Notes from DevLLP.

2.7 Upon draw down by the HDV of an amount of additional PSP A Loan under paragraph 2.1.3 (the "**Drawdown Amount**") simultaneously;

- 2.7.1 HDV shall issue to the Council such number of Investment (Council) A Loan Notes equal to the Drawdown Amount;
 - 2.7.2 HDV shall redeem such number of Investment (Council) B Loan Notes equal to the Drawdown Amount; and
 - 2.7.3 InvLP shall issue to HDV such number of Internal Loan Notes equal to the Drawdown Amount and redeem such number of Internal B Loan Notes equal to the Drawdown Amount.
 - 2.7.4 further to paragraph 2.2, HDV shall issue to the PSP Investment (PSP) A Loan Notes in a sum equal to the Drawdown Amount; and
 - 2.7.5 HDV shall contribute an Internal Loan to InvLP equal to the Drawdown Amount in return for an equal amount of Internal Loan Notes from InvLP.
- 2.8 For the avoidance of doubt, should they occur concurrently, the issuing of Investment (Council) B Loan Notes under paragraph 2.6 and the redemption of Investment (Council) B Loan Notes under paragraph 2.7 may be set off.
- 3. LOANS RELATING TO DEVELOPMENT SITES**
- 3.1 Upon the grant of a Lease of a Development Site or a Phase, the Council shall have issued to it:
 - 3.1.1 such number of Development (Council) A Loan Notes by HDV as equal the Relevant Base Value of such Development Site or Phase less the amount of Development (Council) C Loan pursuant to paragraph 3.1(b) below (if any); and
 - 3.1.2 such number of Development (Council) C Loan Notes by the HDV as may be identified in the relevant Development Business Plan as the Development (Council) C Loan relating to the Category 1 Property or Phase to which the Lease relates (if any).
 - 3.2 In relation to each Category 1 Property or the relevant Phase, the Development Business Plan relating to such Category 1 Property or the relevant Phase shall identify in respect of such Category 1 Property or Phase:-
 - 3.2.1 the proposed amount of Development (Council) A Loan by reference to the Relevant Base Value;
 - 3.2.2 the proposed drawdown profile in relation to PSP A Loan; and
 - 3.2.3 the proposed amount of Development (Council) C Loan (if any).
 - 3.3 Subject to paragraph 3.5 in relation to each Category 1 Property or the relevant Phase, the PSP agrees to contribute:-
 - 3.3.1 prior to the grant of a Lease, Development (PSP) A Loan in an amount set out in the relevant Development Business Plan so far as it relates to such Category 1 Property, such monies to be drawn down by the HDV in accordance with the drawdown profile in such Development Business Plan; and
 - 3.3.2 upon the grant of a Lease in relation to such Category 1 Property or the relevant Phase, to the extent the relevant Base Value is greater than the PSP A Loan already drawn down, to match the Drawdown Price by way of Development (PSP) A Loan.
 - 3.4 Upon contribution of the monies identified in paragraph 3.3 above, the PSP shall have issued to it by the HDV Development (PSP) A Loan Notes reflecting the relevant financial contributions.
 - 3.5 PSP's agreement to contribute Development (PSP) A Loan in accordance with paragraph 3.3 will be capped at the aggregate amount of unredeemed Investment (Council) B Loan Notes and Development (Council) C Loan Notes as at the time of draw down so as to adhere to the principle

of matched equity funding between the Members as set out in paragraph 1 of this Schedule 7. Unless otherwise agreed by the Members, until such time as the Development (PSP) A Loan has been contributed by the PSP in accordance with paragraph 3.3, the HDV shall not enter into any arrangements to obtain third party debt or other financing.

- 3.6 On the Relevant Phase Completion Date the HDV shall issue:
- 3.6.1 Development (PSP) A Loan Notes to PSP in a sum equal to half of the HDV Uplift;
 - 3.6.2 Development (Council) A Loan Notes to the Council in a sum equal to half of the HDV Uplift; and
 - 3.6.3 cash to the Council by way of payment of the Council's Uplift (as that term is defined in the Development Framework Agreement and in its capacity as landowner rather than a Member of HDV).
- 3.7 Where a DevLLP Subsidiary acquires properties for development from third parties using finance made available by the Council (at its option), the DevLLP Subsidiary shall issue Land Assembly (Council) D Loan Notes to the Council in a sum equal to the finance drawn down at the time such finance is drawn down.
- 3.8 The Parties acknowledge that Relevant Expenses shall be dealt with under the Land Assembly Agreement.
- 3.9 LAA Invoiced Costs are to be invoiced by the Council (in its capacity as landowner) to the relevant DevLLP Subsidiary that takes a lease of the relevant Phase in accordance with the Development Framework Agreement on the date that such lease is completed. The terms of the invoice shall state that interest is payable on the unpaid capital amount for the period from the date of the invoice until the date of payment at a rate of (this information is contained in the exempt part of the report) per annum. On the date of issue of such invoice DevLLP shall procure that the relevant DevLLP Subsidiary enters into the Council Costs Security Agreement in favour of the Council. Each invoice shall be paid (this information is contained in the exempt part of the report) the date 3 months after the last date of practical completion of the relevant Phase.
- 4. INTERNAL LOANS AND LOAN NOTES**
- 4.1 The Parties shall procure that where the HDV pays any sums to InvLP and DevLLP to meet the operational requirements of InvLP and DevLLP as contemplated by the Business Plans:-
- 4.1.1 DevLLP shall issue to the HDV such number of Internal Loan Notes as equals any amount it receives; and
 - 4.1.2 InvLP shall issue to the HDV such number of Internal Loan Notes as equals any amount it receives.
- 4.2 The principle of paragraph 4.1 shall apply *mutatis mutandis* in relation to DevLLP and InvLP in relation to meeting the operational requirements of their Subsidiaries from time to time.
- 4.3 In consideration of the HDV issuing the Investment (PSP) A Loan Notes pursuant to paragraph 2.2 above, and issuing the Investment (Council) A Loan Notes pursuant to paragraphs 2.5(b) and 2.6 above in respect of the transfer of the Investment Portfolio which is to be held by InvLP, and by reference to (but without double counting) paragraph 4.1 above, the HDV shall have issued to it by InvLP such number of Investment (HDV) A Loan Notes as equals the amount referred to in paragraphs 2.2, 2.5(b) and 2.6 above.
- 4.4 In consideration of the HDV issuing any Development (Council) A Loan Notes to the Council pursuant to paragraph 3.1.1 above or Development (PSP) A Loan Notes to the PSP pursuant to paragraph 3.4 above, and by reference to (but without double counting) paragraph 4.1 above, the HDV shall have issued to it by DevLLP such number of Internal Loan Notes as referred to in paragraphs 3.1.1 and 3.4 above.

- 4.5 Internal Loan Notes shall bear interest at the same rate as A Loan Notes.
- 4.6 Internal B Loan Notes shall bear interest at the same rate as B Loan Notes.
- 4.7 Internal Loan Notes shall be redeemed and repaid in accordance with paragraphs [1, 2 and 3] of Schedule 8 (Receipts and Profits).

5. **A LOAN NOTES**

- 5.1 Investment (PSP) A Loan Notes, Investment (Council) A Loan Notes, Development (PSP) A Loan Notes and Development (Council) A Loan Notes, Investment (HDV) A Loan Notes and Development (HDV) A Loan Notes shall bear (this information is contained in the exempt part of the report) unless otherwise agreed by the HDV Board²².
- 5.2 Notwithstanding the provisions of Schedule 8, which provides for repayment of A Loan Notes in specified circumstances, all amounts outstanding pursuant to A Loan Notes shall be repayable in accordance with the provisions of the relevant A Loan Note Instruments.

6. **B LOAN NOTES**

- 6.1 Interest shall be payable pursuant to the Investment (Council) B Loan Note Instrument at a rate of (this information is contained in the exempt part of the report) payable quarterly in arrears and in accordance with the terms of the Investment (Council) B Loan Note Instrument.
- 6.2 Notwithstanding the provisions of Schedule 8 (Receipts and Profits) which provides for repayment of certain Investment (Council) B Loan Notes in specified circumstances, all amounts outstanding pursuant to the Investment (Council) B Loan Notes (including any interest accrued thereon), shall be repayable in accordance with the Investment (Council) B Loan Note Instrument.

7. **C LOAN NOTES**

- 7.1 C Loan Notes will be issued directly from the relevant DevLLP Subsidiary to the Council, without any Intervening Internal Loan Notes.
- 7.2 C Loan Notes will (this information is contained in the exempt part of the report) and shall be payable as provided for in paragraph 7.3 below.
- 7.3 Notwithstanding the provisions of Schedule 8, which provides for repayment of certain C Loan Notes in specified circumstances, all amounts outstanding pursuant to the C Loan Notes (including any accrued interest thereon), shall be payable by the relevant DevLLP Subsidiary to the Council in accordance with the relevant C Loan Note Instrument.

8. **D LOAN NOTES**

- 8.1 D Loan Notes will be issued directly from the relevant DevLLP Subsidiary to the Council, without any intervening Internal Loan Notes.
- 8.2 D Loan Notes will (this information is contained in the exempt part of the report) and shall be payable as provided for in paragraph 8.3 below.
- 8.3 Notwithstanding the provisions of Schedule 8 which provides for repayment of certain D Loan Notes in specified circumstances, all amounts outstanding pursuant to the D Loan Notes (including any accrued interest thereon), shall be payable by the relevant DevLLP Subsidiary to the Council in accordance with the relevant D Loan Note Instrument.

²² It may be tax efficient for HDV to have the A Loan Notes bearing interest – to be considered further as part of tax review and repayment timing/terms will need to be considered as well as the interest rate

9. **FURTHER FUNDING**

9.1 As at the date of this Agreement the Parties envisage funding further stages of the Business of the HDV Parties and their projects in the following order of preference subject always to the HDV Business Plan:

9.1.1 PSP match funding B Loans;

9.1.2 PSP match funding C Loans;

9.1.3 forward selling;

9.1.4 Council D Loan for acquisition of third party land;

9.1.5 third party debt finance;

9.1.6 Member finance through additional A Loans; and

9.1.7 mezzanine financing.

10. **SUBDIVISION OF LOAN NOTES TO RELEVANT PHASES/PROJECTS**

Each A Loan Note, C Loan Note and D Loan Note and corresponding form of Internal Loan Note that is issued shall, where appropriate, be allocated to a particular Phase, Phases or project (each then a "**Subdivided Note**") with the intention where legally permissible of keeping the funding income and receipts of each particular Phase or project separate and transparent such that the provisions of this Schedule 7 shall be applied separately in relation to each Subdivided Note.

SCHEDULE 8

RECEIPTS AND PROFITS

1. INVLP RECEIPTS

1.1 Where InvLP receives any Investment Portfolio Income such money shall be applied by InvLP in accordance with the following order of priority:

1.1.1 to pay any outstanding interest on any Internal B Loans to HDV (and HDV shall use such money to pay any corresponding interest on any Investment (Council) B Loan Notes to the Council);

1.1.2 (for the period of five years from the Investment Portfolio Transfer Date only) to pay annually the Council's Annual Investment Portfolio Return Top Up; and²³

1.1.3 any remaining money shall be paid into the InvLP Current Account.

1.2 Where InvLP Disposes of any Investment Portfolio Property in accordance with the terms of the Project Agreements, the Investment Portfolio Asset Disposal Receipts from such Disposal shall be utilised in the following order of priority:-

1.2.1 to pay the costs of such Disposal;

1.2.2 to pay any interest and capital on any third party funding;

1.2.3 to pay any outstanding interest on any Internal B Loans to HDV (and HDV shall use such money to pay any corresponding interest on any Investment (Council) B Loan Notes to the Council);

1.2.4 any remaining Transfer Value for the relevant Investment Portfolio Property shall be paid by InvLP to the HDV in order to redeem a corresponding number of Internal B Loan Notes, and the HDV shall make the payment to the Council in order to redeem a corresponding number of Investment (Council) B Loan Notes (or such amount that has not been converted into Investment (Council) A Loan Notes) in accordance with paragraph 2.6 of Schedule 7; and

1.2.5 any remaining balance shall be paid into the InvLP Current Account.

2. DEVLDP AND DEVLDP SUBSIDIARY RECEIPTS

2.1 Where DevLLP or its Subsidiaries receives Development Receipts in relation to a particular Phase ("**Phase Receipts**") such money shall be applied by DevLLP in accordance with the following order of priority:-

2.1.1 to discharge LAA Invoiced Costs (to the extent not paid as part of expenditure under Development Receipts) that relate to that Development Site for the Phase to which such Phase Receipts relate;

2.1.2 to discharge outstanding capital and interest in relation to third party debt that relates to that Development Site or Phase in accordance with the terms of the relevant third party debt instruments;

2.1.3 to discharge capital and interest on any Land Assembly (Council) D Loan Notes for that Development Site for the Phase to which such Phase Receipts relate in accordance with the terms of the relevant Land Assembly (Council) D Loan Note Instrument;

²³ See new definition – an operative clause estimating the instalment of this annual amount (assuming to be paid out quarterly?) and then reconciling after each year will need to be included.

- 2.1.4 to discharge any interest on any Development (Council) C Loan Notes for that Development Site for the Phase to which such Phase Receipts relate;
- 2.1.5 to discharge on a pari passu basis any Development (Council) C Loan Notes for that Development Site for the Phase to which such Phase Receipts relate;
- 2.1.6 to discharge capital and interest on any mezzanine finance that relate to that Development Site for the Phase to which such Phase Receipts relate in accordance with the terms of such mezzanine financing agreements;
- 2.1.7 to discharge any Internal Loan Notes (plus accrued interest) for the Phase to which such Phase Receipts relate to; and
- 2.1.8 any remaining balance shall be paid into the DevLLP Current Account.

3. **HDV RECEIPTS**

- 3.1 Where HDV receives Receipts such money shall be applied by HDV in accordance with the following order of priority:-
 - 3.1.1 to discharge any interest on any Investment (Council) B Loan Notes in accordance with the terms of the relevant Investment (Council) B Loan Note Instrument;
 - 3.1.2 to discharge capital on any Investment (Council) B Loan Notes in accordance with the terms of the relevant Investment (Council) B Loan Note Instrument;
 - 3.1.3 to discharge any A Loan Notes (plus accrued interest) on a pari passu basis;
 - 3.1.4 any remaining balance shall be paid into the HDV Current Account.

4. **HDV PROFITS**

- 4.1 Subject to paragraph 4.2 the Net Profits of the HDV shall be apportioned equally between the Members to reflect their equal Capital Contributions.
- 4.2 The HDV Board shall decide (having taken the advice of the Auditors, if appropriate) not later than 20 Working Days before the beginning of each Accounting Period what amount (if any) of the estimated Net Profits (based on management accounts) shall be retained by the HDV in respect of:-
 - 4.2.1 reserves for general working capital purposes of the HDV (or other HDV Parties) for the following Accounting Period; or
 - 4.2.2 reinvestment back into the HDV (or other HDV Parties) in accordance with the Business Plans,

and subject to paragraph 4.4 each Member's share of the Net Profits (after deducting any retentions as determined by the Board pursuant to paragraphs 4.2.1 and 4.2.2) for any Accounting Period shall be allocated to the credit of the relevant Member's Current Account within 30 days after the signing of the annual audited accounts of the HDV for that Accounting Period.

- 4.3 Subject to paragraph 4.4, if it is apparent that there has been over-payment of Net Profit to a Member, the amount of such over-payment shall either be carried forward as a debit on such Member's Current Account or, where the HDV so determines, be repaid on demand by the relevant Member in whole or in part (if in part and if there has been over payments of Net Profits to more than one Member, each such Member shall be liable to contribute such proportion of the repayment to be made pursuant to this paragraph 4.3 as is equal to the proportion of the total overpayment received by it).
- 4.4 The HDV shall not make any Net Profit distribution under this paragraph 4:-

- 4.4.1 unless there is sufficient cash available at the time of the proposed payment;
- 4.4.2 in circumstances where the same would render the HDV insolvent;
- 4.4.3 in circumstances where, in the reasonable opinion of the HDV Board, the same would or might leave the HDV with insufficient funds to meet any future contemplated obligations or contingencies;
- 4.4.4 in circumstances where, and to the extent that, a Member requests that the HDV withholds its share of Net Profit until after it requests payment of such amount (in whole or in part) provided that the withheld share of Net Profit shall continue to accrue to the ledger of the Member's Current Account of the relevant Member and shall not delay or otherwise affect distributions to a Member that has not requested any such withholding of their share of Net Profit. Upon a request for payment of a withheld amount by the relevant Member, the HDV shall distribute the requested amount as soon as reasonably practicable (and in any event within 10 Working Days of the request subject to the provisions of paragraphs 4.4.1, 4.4.2 and 4.4.3);
- 4.4.5 in circumstances where, and to the extent that, the same would be to any Member who has committed a Default Event until the earlier of (i) (where the Default Event is capable of remedy in accordance with this Agreement) remedy of the Default Event; or (ii) waiver by the non-Defaulting Party of the Default Event; or
- 4.4.6 in a manner which would constitute a distribution in specie.

5. **INVLP PROFITS**

- 5.1 Subject to paragraphs 5.2 and 5.3 Net Profit of InvLP shall be apportioned to the HDV as Limited Partner in accordance with the LPA.
- 5.2 The InvLP Board shall decide (having taken advice of the Auditors, if appropriate) Quarterly what amount (if any) of InvLP's Net Profit shall be retained by InvLP in respect of:-
 - 5.2.1 reserves for general working capital purposes of InvLP for the following Quarter; and
 - 5.2.2 reinvestment back into InvLP in accordance with the Investment Business Plan.
- 5.3 InvLP shall not make any Net Profit distribution under this paragraph 5:-
 - 5.3.1 unless there is sufficient cash available in the InvLP Current Account at the time of the proposed payment;
 - 5.3.2 in circumstances where, in the reasonable opinion of the InvLP Board, the same would or might leave InvLP with insufficient funds to meet any future contemplated obligations or contingencies;
 - 5.3.3 unless it is in accordance with the LPA;
 - 5.3.4 in a manner which would constitute a distribution in specie.

6. **DEVLLP PROFITS**

- 6.1 Subject to paragraphs 6.2 and 6.3 Net Profit of DevLLP shall be apportioned entirely to the HDV.
- 6.2 The DevLLP Board shall decide (having taken advice of the Auditors, if appropriate) Quarterly what amount (if any) of DevLLP's Net Profit shall be retained by DevLLP in respect of:-
 - 6.2.1 reserves for general working capital purposes of DevLLP for the following Quarter; and
 - 6.2.2 reinvestment back into DevLLP in accordance with the DevLLP Business Plans.

- 6.3 DevLLP shall not make any Net Profit distribution under this paragraph 6:-
- 6.3.1 unless there is sufficient cash available in the DevLLP Current Account at the time of the proposed payment;
 - 6.3.2 in circumstances where the same would render DevLLP insolvent;
 - 6.3.3 in circumstances where, in the reasonable opinion of the DevLLP Board, the same would or might leave DevLLP with insufficient funds to meet any future contemplated obligations or contingencies; or
 - 6.3.4 in a manner which would constitute a distribution in specie.

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SCHEDULE 9

DEED OF ADHERENCE

THIS DEED is made on

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- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HARINGEY** of [] (the "**Council**");
- (2) [xxxx] a company registered in England, (Company Number []) whose registered office is at [] (the "**PSP**");
- (3) [xxxx] **LLP** a limited liability partnership registered in England, (LLP Number []) whose registered office is at [] (the "**HDV**");
- (4) [xxxx] **LLP** a limited liability partnership registered in England, (LLP Number []) whose registered office is at [] ("**InvLP**");
- (5) [xxxx] **NOMINEE LIMITED** a company registered in England, (Company Number []) whose registered office is at [] ("**Nominee Co**");
- (6) [xxxx] **LLP** a limited liability partnership registered in England, (LLP Number []) whose registered office is at [] ("**DevLLP**"); and
- (7) [xxxx] a [xxxx] [xxxx] registered in England (Company Number []) whose registered office is at [] ("**PSP Guarantor**"),

the parties listed at (1) to (7) above being the "**Original Parties**"; and

- (8) [**NAME OF NEW PARTY**] a [company / limited liability partnership] registered in [England] ([Company/LLP Number] []) whose registered office is at [] ("**New Party**").

[DN: Parties who have executed earlier deeds of adherence also to be listed.]

1. This Deed is supplemental to the members' agreement (the "**Members' Agreement**") dated [] 2017 and made between the Original Parties (as such Members' Agreement has been amended, varied and/or supplemented).
2. Other words and expressions defined in the Members' Agreement have the same meanings when used in this Deed.
3. The New Party and each of the Original Parties undertake with each other and with any other person who becomes a party to the Members' Agreement after the date of this Deed to be bound by, observe and perform the Members' Agreement as if the New Party had been an original party to the Members' Agreement and was named in the Members' Agreement.
4. The address and details for notices of [name] for the purposes of Clause 36 (Notices) of the Members' Agreement are: []. All of the other terms of the Members' Agreement shall be unamended.
5. This Deed, and any disputes or claims arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims), are governed by and construed in accordance with the law of England and Wales. The parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this deed or its subject matter or formation (including non-contractual disputes or claims).
6. This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

In witness whereof this Deed has been executed by the parties hereto and is intended to be and is hereby delivered on the date first above written

[Execution Clauses to be inserted for Parties to Members' Agreement including those who have executed earlier deeds of adherence.]

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SCHEDULE 10

LETTER OF APPOINTMENT OF A NOMINEE / DIRECTOR

[on the headed notepaper of the HDV]

[Name and address of Nominee/Director]

[Date]

Dear [REDACTED]

Terms of your appointment to the boards of [xxxx] LLP (the "HDV"), [xxxx] LLP ("InvLP"), [xxxx] LLP ("DevLLP") and [xxxx] ("Nominee Co")

1. This letter contains the terms which we have discussed and agreed for your appointment as a as a [REDACTED] Nominee on the HDV Board, the InvLP Board the DevLLP Board and Director on the Nominee Co Board. Your appointment is made pursuant to and is subject to the terms and conditions set in the members' agreement dated [REDACTED] and made between (1) the Council; (2) the PSP; (3) the HDV; (4) InvLP; (5) DevLLP; (6) Nominee Co; and (7) the PSP Guarantor ("**Members' Agreement**").
2. You shall not be entitled to any other fees or remuneration in connection with your appointments to such boards unless expressly agreed in writing.
3. You shall be expected to attend board meetings and Members' Meetings of each of the HDV, DevLLP, InvLP and Nominee Co (respectively), as required. You shall receive details of all such meetings in advance.
4. You shall not, whether during the appointment or after its termination, except in the proper course of your duties or as required by law, use or divulge, and shall use all reasonable endeavours to prevent the use or disclosure of, any trade or business secrets or any information concerning the business or finances of the HDV, InvLP, DevLLP and/or Nominee Co and/or any HDV Subsidiary or of any dealings, transactions, or affairs of such party or any client, customer or supplier thereof which comes to your knowledge during the course of this appointment and shall comply with the provisions of Clause 32 (Confidential Information and Freedom of Information) of the Members' Agreement as if it applied to you. You will, however, be entitled to disclose information to the Member appointing you as permitted under the Members' Agreement.
5. The appointment as Nominee/Director shall automatically cease in relation to the HDV, InvLP, DevLLP, Nominee Co and any other HDV Subsidiary in the event that:-
 - 5.1 you resign as a Nominee/Director; or
 - 5.2 upon the lodgement or delivery of a notice from the Member(s) removing you as Nominee/Director; or
 - 5.3 in any of the circumstances set out in (and in accordance with) Clause 10 (Removal of a Nominee) of the Members' Agreement.

Without limitation to the paragraphs above, in signing this letter, you acknowledge that your position as Nominee/Director is subject to the terms of and you shall comply with the Members' Agreement and may be terminated as permitted under the terms of the Members' Agreement and that upon such termination you shall vacate your position as Nominee/Director in relation to the HDV, InvLP, DevLLP, Nominee Co and any other HDV Subsidiary forthwith without raising any claim whatsoever against any such party in relation to such vacation (otherwise than in respect of any properly incurred and unpaid expenses due to you up to the date you vacate your position as Nominee/Director).

6. On termination of your appointment as Nominee/Director, you agree that you shall promptly return to the HDV Chairman all papers and property of the HDV, InvLP, DevLLP, Nominee Co and any other HDV Subsidiary which are in your possession or under your control.
7. Upon request, you agree that you shall promptly enter into a letter addressed to each and every HDV Subsidiary in the form requested by the HDV or such HDV Subsidiary, provided that such form is substantially similar to the form of this letter (amended to the extent necessary).

Please indicate your acceptance and acknowledgement of these terms by signing the attached copy and returning it to me. I look forward to seeing you at the first board meeting.

Yours sincerely

.....
Signatory, duly authorised
for and on behalf of [xxxx] LLP

.....
Signatory, duly authorised
for and on behalf of [xxxx]LLP

.....
Signatory, duly authorised
for and on behalf of [xxxx]LLP

.....
Signatory, duly authorised
for and on behalf of [Insert name of any other HDV Subsidiary in existence at the time]

I agree to and acknowledge the terms and conditions set out above relating to my appointment as a nominee of [xxxx] LLP, [xxxx] LLP, [xxxx] LLP and [HDV Subsidiary/ies].

Signed

Dated

SCHEDULE 11

APPROPRIATE CONSIDERATION

1. This Schedule 11 sets out the principles of calculating the Appropriate Consideration payable by the Council to the PSP pursuant to Clause 27.2.2
2. The Parties acknowledge that the remainder of this Schedule is based largely upon the principles of calculating the value of a company pursuant to a share sale and accordingly set out below are principles which will need to be applied with necessary changes being agreed by the HDV Board to apply specifically to the HDV or relevant HDV Subsidiary taking into account its status as a Limited Liability Partnership, a Limited Partnership or a Company (as the case may be) and to the specific business and operations of the HDV or relevant HDV Subsidiary from time to time.
3. In the event the HDV Board cannot agree the specific mechanics to calculate the Appropriate Consideration from the principles set out below, within 20 Working Days of being required to do so, either Member may refer the matter for determination by an Expert in accordance with Clauses 25.3.2 to 25.3.4

Part A

[Accounting Principles to be Adopted]

1. The completion accounts shall be accompanied by an electronic spreadsheet showing workings and calculations.
2. The balance sheets that form part of the completion accounts shall be in the form set out in Part B of this Schedule.
3. The completion accounts will be prepared:
 - 3.1 In accordance with the specific accounting bases, principles, policies, procedures, practices and estimation techniques set out in the HDV Business Plan, Finance and Commercial section;
 - 3.2 Subject to paragraph 3.1, in accordance with the accounting bases, principles, policies, procedures, practices and estimation techniques as were used in the preparation of the accounts which are set out in the HDV Business Plan, Finance and Commercial section which may be updated from time to time (including in relation to the exercise of accounting discretion and judgement), consistently applied.
 - 3.3 Subject to paragraphs 3.1 and 3.2, in accordance with IFRS or the appropriate accounting standard applied by the HDV or HDV Subsidiary in preparation of its statutory accounts as set out in the HDV Business Plan, Finance and Commercial section.

For the avoidance of doubt, paragraph 3.1 shall take precedence over paragraph 3.2 and paragraphs 3.1 and 3.2 shall take precedence over paragraph 3.3.
4. The completion accounts will be prepared adopting the following specific accounting policies, practices and procedure:
 - 4.1 General
 - 4.1.1 The completion accounts shall be drawn up in pounds sterling.
 - 4.1.2 No account shall be taken of events taking place after 13:30 (London time) on the completion date and only information available to the parties up to the date of delivery of the notice of an adjustment by the Council to the PSP shall be taken into consideration in the completion accounts and only where such information provides additional evidence of

matters existing at the completion date and affecting amounts in the draft completion accounts. Save as detailed in this Schedule, no account shall be taken of any transaction undertaken by the HDV or HDV Subsidiary at completion in accordance with this agreement.

- 4.1.3 Prior to finalisation the completion accounts will be subject to an audit to be undertaken by the HDV auditors as appointed at the time. The purpose of the audit will be to provide confirmation that the completion accounts reflect a 'true and fair' view and are prepared on a going concern basis in line with the specific accounting policies, practices and procedures that are set out in section 3 of this Schedule.
- 4.1.4 The development costs incurred to date which are included within "Work in Progress" in Part B of this Schedule means the aggregate costs, expenses, liabilities and other sums properly and reasonably paid or payable or incurred (or anticipated to be incurred) by or on behalf of the HDV or HDV Subsidiary in connection with the preparation for, acquisition, holding, design, financing, development, marketing, letting or disposal of the development both on-site and off-site and the carrying out and completion of works exclusive of any VAT (other than irrecoverable VAT as set out below) including (without limitation to the foregoing);
- (a) The HDV or HDV Subsidiary's legal fees in the negotiation and entry into this Agreement;
 - (b) site preparation costs;
 - (c) SDLT payable in respect of any land acquired by the HDV or HDV Subsidiary and land registration fees in respect of the registration of the same;
 - (d) the cost of all site preparation works, soil, site, archaeological and any other surveys, tests or investigations in connection with the development including service diversion costs, local and other authority fees, environmental survey and remediation costs;
 - (e) all costs in relation to the obtaining of any consents (including the costs of any proceedings or any appeal, the fees of the relevant authority and entering into any agreement required to enable any consent to be effectually granted) as may be necessary or desirable to commence, carry out, maintain and complete the works and the cost of complying with the same
 - (f) the construction cost (including the costs of carrying out demolition (but not the costs of the demolition works which are borne by the Council unless otherwise agreed), stripping out and site clearance works and the work of construction and refurbishment) and the costs of carrying out the works including all costs paid to contractors, sub-contractors and suppliers;
 - (g) sums paid or payable pursuant to any planning obligation, CIL, highways agreement or any other statutory agreement;
 - (h) the fees of the professional team and any other consultant or professional appointed in connection with the preparation for, acquisition, holding, design, financing, management, development, marketing, letting or disposal of the development;
 - (i) the cost of letting and attempting to let units, which shall include irrecoverable payments to and the cost of works for tenants (where not recoverable from the tenants) including advertising, marketing and promotional costs and the proper and reasonable legal fees, agents' fees and commission in connection therewith and the external costs of abortive attempts to let units but excluding any costs incurred in any activity which are in breach of any statute applicable in England
 - (j) surveyors' fees in connection with the matters referred to in this definition;

- (k) legal fees and agents' fees in connection with the matters referred to in this definition, including fees for abortive transactions, and in connection with the implementation of this agreement;
- (l) the cost of management, repair and maintenance of the site or any other land required for the development and any buildings on it including the purchase or leasing of equipment for the repair, maintenance, cleaning or security of the development;
- (m) all costs under or in connection with any utility or other supply agreements (including without limitation any connection charges);
- (n) all costs of providing services or facilities to obtain required carbon efficiency requirements or to satisfy the local planning authority or otherwise;
- (o) annual, recurring and capital outgoings, rates and taxes whether parliamentary, parochial or otherwise in respect of the development and/or the site or any part of it (including any planning gain supplement or equivalent tax or liability) and any consultant or professional adviser's fees or costs in relation to such liabilities;
- (p) the cost of insurance of the works and the site and against public, third party and employer's liability and all other insurances effected by the HDV or HDV Subsidiary, as required or permitted under this agreement, including loss of rent insurance;
- (q) all costs in connection with the obtaining of warranty cover or defects insurance in respect of any part of the development including (without limitation) any costs payable to the National House Building Council;
- (r) the costs relating to the conduct of negotiations with insurers in relation to any claims under the insurance of the works and/or the site;
- (s) any irrecoverable costs in or in connection with any proceedings, arbitration, expert determination, mediation or other disputes resolution undertaken or defended by the HDV or HDV Subsidiary in relation to a planning permission, the site, the works and the development and otherwise of enforcing rights and remedies against the building contractors, the professional team and other professional advisers, the Council(s), tenants, licensees and other occupiers and any other third parties provided that this paragraph does not include any costs associated with any dispute between the Council and the PSP in respect of this Agreement, the costs for which shall be borne as directed;
- (t) the cost of any contributions to fitting out costs or other incentive payments or allowances including lease take-backs, surrender fees, dilapidation payments and associated professional fees ("Tenant Incentives") for the letting of any unit and the cost of reasonably anticipated Tenant Incentives for unlet units;
- (u) the void costs properly attributable to any unit in respect of outgoings, service charges, insurance premiums and the cost of maintaining such units from their respective completion during the period prior to any such unit becoming let;
- (v) the costs of audits and valuations pursuant to this agreement;
- (w) the cost of indemnifying the Council under this Agreement save in so far as the indemnity arises as a result of breach or default by the HDV or HDV Subsidiary under the terms of this Agreement;
- (x) the cost of promoting, marketing and advertising the development but excluding any costs incurred in any activity which would be generally accepted standards

in England be considered immoral or which are in breach of any statute applicable in England;

- (y) all sums payable to any contractor or service provider whether on site or offsite in connection with the provision of mock ups, sample works, testing or any other like works related to the design and carrying out of the development;
- (z) all costs in connection with the entering into and compliance with any sale agreements or forward funding agreements but not including the development costs incurred by any Council (save for any contribution or other inducement made by the HDV or HDV Subsidiary to the Council);
- (aa) all sums paid to any third party in connection with the infringement by the carrying out of the development of any rights or covenants which the HDV or HDV Subsidiary, or any third party have the benefit of or are subject to, or the release or modification of such rights or covenants including costs of any agreement required to be completed by any third party and the costs of negotiating, preparing and completing such agreements;
- (bb) the costs payable to any third party of any party wall agreements, easements, rights of way, crane oversailing licences, archaeological surveys and investigations, facade oversailing, rights of light, accommodation works and improvement works required to carry out the Works;
- (cc) the cost of rectifying any damage;
- (dd) all fees costs and expenses (including interest) in connection with obtaining and the service of finance for the Development (whether on a debt or equity basis) and the carrying out and completion of the works including fees, costs and expenses of any adviser to any party providing such finance;
- (ee) all fees costs and expenses in connection with obtaining and keeping in place any financial security (including without limitation any guarantees or bonds or letters of credit) relating to the development;
- (ff) any other item of expenditure (or consideration in kind) in relation to the discharge by the HDV or HDV Subsidiary of its obligations under this agreement and/or the works and/or the development and/or the site not specifically mentioned in the foregoing paragraphs;
- (gg) any irrecoverable VAT in relation to any of the above items;
- (hh) the costs and fees of a development manager and a project manager and the costs of appointing the same;
- (ii) (this information is contained in the exempt part of the report)
- (jj) (this information is contained in the exempt part of the report)

And Further Provided that, notwithstanding that it may fall within one or more of the above categories, no item or cost shall be counted more than once;

And Further Provided that any costs which would qualify by virtue of paragraph [1.1.4] of this Schedule that are applicable to the Phase in question but as yet have not been transferred into the HDV Party in question, will be deemed as having been transferred and qualifying for the purposes of this Schedule and the calculation of Appropriate Consideration.

- 4.1.5 Intra group debt shall be included in the completion accounts at its full value (so as to reduce the estimated net asset value and the net asset value (as the case may be)).

- 4.1.6 Accruals and provisions shall be made for all periodic receipts, rents payable by the HDV or HDV Subsidiary, any insurance premium payable to third party landlords by the HDV or HDV Subsidiary, charges, outgoings and liabilities relating to the HDV or HDV Subsidiary as at completion with all receipts and disbursements of a periodic nature being apportioned on a pro rata basis so that the period prior to completion and 50% of the day of completion (the "PSP's Period") shall be for the PSP and the period from and after completion and 50% of the day of completion (the "Council's Period") shall be for the Council (in each case based on 365 day annual apportionment).
- 4.1.7 The principal rent payable under the occupational leases shall be accounted for on an accruals basis consistent with the Accounts provided that the principal rent under the occupational leases received by or on behalf of the Company shall be apportioned so that the Seller's Period shall be for the PSP and the Council's Period shall be for the Council (in each case based on a 365 day annual apportionment).
- 4.1.8 The completion accounts shall be prepared on the basis that the HDV or HDV Subsidiary is a going concern and shall exclude the effect of any change of control or ownership of the HDV or HDV Subsidiary or any adjustments arising from a liquidation or cessation of the business of the HDV or HDV Subsidiary or disposal by the HDV or HDV Subsidiary of any of its assets including property after HDV or HDV Subsidiary.
- 4.1.9 Cash at bank (which shall include all and any bank accounts of the HDV or HDV Subsidiary or its agents) shall only be included to the extent that it relates to monies received by the HDV or HDV Subsidiary in respect of the period prior to the completion date but shall include amounts received in the HDV or HDV Subsidiary 's bank account on any day following the day of completion where it is evident that such monies were received by the company in respect of the period prior to the completion date.
- 4.1.10 The provisions of this Schedule shall be interpreted so as to avoid double counting (whether positive or negative) of any item to be included in the completion accounts.
- 4.1.11 Appropriate provision shall be made for all liabilities of the HDV or HDV Subsidiary as at completion in accordance with IFRS or the appropriate accounting standard applied by the HDV or HDV Subsidiary in preparation of its statutory accounts as set out in the HDV Business Plan, Finance and Commercial section.

Part B

Indicative Form of Completion Accounts

The completion accounts below are illustrative only and the final completion accounts will include figures to be in accordance with the provisions of part A of Schedule 11:

	£
Current Assets	
Debtors – other	[●]
Debtors – prepaids and accrued income	[●]
Cash at bank and in hand	[●]
Work in Progress	[●]
Creditors: amounts falling due within one year	
Trade creditors	([●])
Other creditors	([●])
Accruals	([●])
Creditors: amounts falling due after more than one year	
[Intra Group Debt]	([●])
	([●])
COMPANY VALUE	[●]