

MEMBERS' AGREEMENT

relating to

[HOUSING DEVELOPMENT VEHICLE] LLP

between

[HOUSING DEVELOPMENT VEHICLE] LLP

HARROW COUNCIL

and

[HOLDING COMPANY LTD]

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THIS DEED is dated [DATE]

PARTIES

- (1) **HARROW COUNCIL** of Civic Centre, Station Road, Harrow, HA1 2XY (the **Council**);
- (2) **[HOLDING COMPANY]** a limited company, with registered number [], whose registered office is at [Civic Centre, Station Road, Harrow, HA1 2XY] (the **Holding Company**);
- (3) **[NAME LLP]** a limited liability partnership with registered number [], whose registered office is at [Civic Centre, Station Road, Harrow, HA1 2XY] (**LLP**).

Together the Council and the Holding Company are referred to as the **Initial Members** and each an **Initial Member**.

BACKGROUND

- (A) The Initial Members have incorporated¹ the LLP to operate the Business.
- (B) The Initial Members have agreed to enter into this agreement with the LLP to set out the basis on which the LLP is to be organised and the rights and obligations of the Members of the LLP.

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Accounting Reference Date: 31 March or such other date as determined in accordance with this agreement.

Act: the Limited Liability Partnerships Act 2000 and any amendments to that Act.

Auditors: such auditors as may be appointed in accordance with this agreement.

Board Member: a member of the Management Board whose is appointed as a Board Member in accordance with this agreement.

Business: has the meaning given at clause 4.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

¹ This agreement assumes that the LLP has been incorporated

Capital Account: the account established for each Member by the LLP in accordance with this agreement to which his capital contribution to the LLP is credited.

Companies Act 2006: the relevant provisions of the Companies Act 2006 (as amended), as are applied to LLPs in accordance with regulations made under the Act.

Confidential Information: any of the following information, documents, papers or property which, at any time, comes into the LLP or any Member's possession or under his control in the course of the Business and which the LLP regards or could reasonably be expected to regard as confidential, whether or not such information is, in itself, confidential, marked as "confidential" or reduced to tangible form:

- (a) any information relating to the Members, the LLP or the Business;
- (b) any information relating to the prospective business, technical processes, computer software, Intellectual Property or finances of the LLP;
- (c) any information relating to the affairs of any clients, supplier, agent, distributor or sub-contractor of the LLP;
- (d) all documents, papers and property which may have been made or prepared by, or at the request of, the LLP or any Member or which come into the LLP or any Member's possession or under his control in the course of the Business; and
- (e) compilations of two or more items of such information and all information which has been, or may be, derived or obtained from any such information.

Deed of Adherence: a deed substantially in the form set out in Schedule 2 under which a Member, other than an Initial Member, agrees to become a Member of the LLP after the date of this agreement.

Designated Members: the Members from time to time.

EIR: the Environmental Information Regulations 2004 and any subordinate legislation made under the Regulations from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Financial Year: each financial accounting period of 12 months ending on the Accounting Reference Date other than in relation to the first accounting reference period which shall run on and from the date of this agreement to and including the Accounting Reference Date in the following calendar year, or such longer or shorter period as the Council shall from time to time determine.

FOIA: the Freedom of Information Act 2000 and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Insolvency Act 1986: the relevant provisions of the Insolvency Act 1986 (as amended), as are applied to LLPs in accordance with regulations made under the Act.

Intellectual Property: copyright and related rights, trade marks and service marks, business names and domain names, goodwill and the right to sue for passing off or unfair competition, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Interest: the entire legal and economic interest, rights and obligations a Member has in and against the LLP from time to time to the extent the same is in its capacity as a member of the LLP (and not, for the avoidance of doubt, in its capacity as a debt provider or service provider or counterparty to any arm's length agreement with the LLP), whether arising under this agreement, the Act (or other law or regulation relating to limited liability partnerships) or otherwise, including:

- (a) all of its interest in the capital of the LLP;
- (b) all of its rights to receive the profits of the LLP;
- (c) all of its rights to receive any other payments or repayments from the LLP;
- (d) all of its rights to receive any distribution of the assets of the LLP; and
- (e) all of its rights to participate in the management of the LLP including the right (if any) to appoint a Board Member in accordance with this agreement.

Management Board: the board of management of the LLP representing the Members as appointed in accordance with this agreement.

Members: the Initial Members and such other or additional persons as are admitted as members of the LLP in accordance with this agreement and whose membership of the LLP has not ceased in accordance with this agreement.

Name: the name of the LLP that the Designated Members have registered with the Registrar of Companies.

Outgoing Member: a party which ceases to be a Member of the LLP for any reason.

Registered Office: the registered office of the LLP that the Designated Members have registered with the Registrar of Companies.

Regulations: the Limited Liability Partnerships Regulations 2001 (SI 2001/1090) (as amended).

Reserved Matters: those matters set out at Schedule 3.

- 1.2 Clause and Schedule headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 This agreement shall be binding on, and enure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 A reference to **writing** or **written** includes faxes but not email.
- 1.10 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.11 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.12 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. INCORPORATION

- 2.1 The LLP was incorporated under the Act on [DATE].
- 2.2 The LLP shall keep the certificate of registration of the LLP issued by the Registrar of Companies at the Registered Office.

3. COMMENCEMENT AND DURATION

- 3.1 This agreement shall be deemed to have commenced on incorporation of the LLP.
- 3.2 This agreement and the LLP shall continue until terminated in accordance with the provisions of clause 19.

4. THE BUSINESS

- 4.1 The business of the LLP (the **Business**) shall be:
- (a) to purchase, develop, own, maintain and sell property, predominantly within the Borough of Harrow;
 - (b) to undertake such other business(es) as the Council may from time to time determine in accordance with 12.1; and
 - (c) to undertake the Business in accordance with the Business Plan.

5. BUSINESS PLAN

- 5.1 Other than in respect of the first Financial Year (where the Business Plan will be approved by the Council on or before the date of this agreement), the LLP shall prepare a Business Plan for each Financial Year before the relevant Accounting Reference Date and in accordance with the timetable approved by the Council from time to time.
- 5.2 The Business Plan shall be approved by the Council and adopted by the LLP, subject to any changes or revisions required by the Council in writing. The Council and the LLP agree to work together in good faith to procure that the Business Plan is prepared and approved in accordance with clause 5.1.

6. ACCOUNTS, AUDITORS AND AUDIT

- 6.1 The LLP shall ensure that proper books of account giving a true and fair view of the Business, the state of affairs and profit or loss of the LLP are properly kept and preserved and are open to inspection by the Members at all times.

- 6.2 The LLP's books of account shall be kept at the Registered Office or at such other place as the Management Board determine in accordance with clause 14.11.
- 6.3 The LLP annual accounts (together with a report by the Auditors where relevant) shall be:
- (a) laid before a meeting of the Members for consideration and if thought fit approved, in accordance with clause 15, subject only to any approved variation; and
 - (b) distributed to all Members as required by the Companies Act 2006.

7. CAPITAL

- 7.1 The Initial Members have contributed the total sum of capital in the proportions specified in Schedule 1 on incorporation of the LLP as shall be credited to each Member's Capital Account.
- 7.2 At incorporation of the LLP, each of the Initial Members acquires its Interest in the LLP in accordance with the amount or value of its contribution to the LLP on incorporation.
- 7.3 The Members shall contribute any further capital which they determine, in accordance with this agreement, as being required for the purposes of the LLP.
- 7.1 Where, in accordance with instructions from the Members, a Member contributes capital to the LLP at any time after incorporation of the LLP, that Member acquires a share in the LLP in accordance with the amount or value of that contribution and the contribution shall be credited to the Member's Capital Account.
- 7.2 The allocation of gains and losses of a capital nature shall be made between the Members in the same proportions as their capital contributions as set out in Schedule 1 and shall be recorded in the Capital Accounts. No Member shall be liable to contribute to any losses of the LLP in excess of that Member's capital contribution.
- 7.3 No Member is entitled to receive interest on the amount of his proportion of the capital contributions to the LLP unless otherwise agreed between the Members.

7.4 Subject to clause 19.4 or unless otherwise decided by the Members in accordance with this agreement, a Member shall not withdraw or receive back any part of the sum credited to his Capital Account.

8. PROFITS

8.1 As soon as the annual accounts for the relevant accounting year of the LLP are approved by the Members in accordance with clause 12.1, the Members shall decide, having taken into account the advice of the Auditors (if relevant), what amount (if any) of the profits shall be retained by the LLP in respect of:

- (a) reserves for general working capital requirements of the LLP for the following financial year; and/or
- (b) reinvestment back into the LLP in accordance with the Business Plan.

8.2 Any remaining profits shall be allocated to the Members in proportion to their capital contributions to the LLP, and credited to such bank account as each Member shall nominate in writing to the LLP in advance.

8.3 The allocation of profit, pursuant to this clause 8, to a Member who joined the LLP in accordance with this agreement part way through the relevant accounting year shall be reduced in proportion to that part of the relevant accounting year during which he was a Member.

9. ADMISSION OF MEMBERS

9.1 The Members may resolve, in accordance with clause 12.1, to admit as a Member to the LLP any person who wishes to become a Member.

9.2 No person may become a Member until he has executed a Deed of Adherence to become a party to this agreement (as amended) and be bound by its terms.

9.3 The Designated Members shall notify the appointment of a Member to the Registrar of Companies in accordance with the Act.

10. TRANSFER OF INTEREST

10.1 Subject always to clause 10.2 the Council may assign or charge or hold on trust the whole or any part of its Interest on notice to the other Members and the other Members may assign or charge or hold on trust the whole or any part of its Interest subject to receiving the prior written consent of the Council.

- 10.2 In relation to any transfer of Interest under clause 10.1:
- (a) the costs and expenses of the LLP and the other Members in relation to such transfer shall be borne by the transferor;
 - (b) the transferee and the LLP shall enter into a Deed of Adherence;
 - (c) the transferee and transferor shall deliver to the LLP duly executed assignment deeds of the relevant Interests;
 - (d) the transferee shall release the transferor from all of its obligations under this agreement (save in respect of any breach of this agreement at the date of transfer).
 - (e) the relevant Board Members appointed by the transferor shall (if necessary) retire and be replaced by those appointed by the transferee;
 - (f) the transferor shall resign as a Designated Member and be replaced by the transferee.

11. DESIGNATED MEMBERS

- 11.1 The Members shall be *Designated Members* for the purposes of the Act but shall not receive any remuneration or reimbursement in connection with their status as Designated Members.
- 11.2 The Council and Holding Company hereby delegate to their respective Board Members from time to time the responsibility for ensuring compliance with all registration and other requirements of the Act and other applicable legislation, including:
- (a) notifying any change in the Members or their personal details or in the Accounting Reference Date to the Registrar of Companies;
 - (b) notifying any change in the Name or Registered Office to the Registrar of Companies;
 - (c) signing the annual accounts of the LLP and filing them with the Registrar of Companies in accordance with the Companies Act 2006;
 - (d) preparing, signing and filing the annual return with the Registrar of Companies;
 - (e) when appropriate, appointing, re-appointing, fixing the remuneration of and removing the LLP auditors.

12. RESERVED MATTERS

- 12.1 Subject to clause 12.2, the parties shall procure that the LLP shall not undertake a Reserved Matter without the prior approval of the Council, which may be given in writing or at a Members' Meeting.

12.2 Any Reserved Matter specifically set out in a Business Plan shall be deemed approved via the approval of the Business Plan, and the Management Board shall have delegated authority to implement such Reserved Matters.

13. MANAGEMENT OF THE LLP

13.1 With the exception of the Reserved Matters, the Business and all affairs of the LLP shall be managed by the Management Board in accordance with the Business Plan. To that end but subject to those exceptions, the Management Board shall have full and complete authority, power and discretion to direct, manage and control the Business and the affairs and properties of the LLP, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incidental to the management of the Business.

13.2 The parties agree to maintain the Management Board for the duration of this agreement and agree (and agree to procure) that the Management Board shall operate in accordance with the provisions of this agreement.

13.3 The Members shall procure that the LLP, and in so far as it may legally do so, the LLP agrees that it shall:

- (a) carry on and conduct its Business and affairs in accordance with:
 - (i) the Business Plan from time to time;
 - (ii) all laws relating to limited liability partnerships from time to time;
 - (iii) sound governance and good business practice; and
 - (iv) in a proper and efficient manner, for its own benefit; and
- (b) use all reasonable endeavours to obtain and, if necessary, maintain in full force and effect all licences (including statutory licences), consents and authorities necessary to own and operate its assets and to carry on its Business properly and effectively.

14. MANAGEMENT BOARD

14.1 The Members shall procure that the number of Board Members of the Management Board shall not be less than 2. The Council shall determine the maximum number of Board Members of the Management Board from time to time.

14.2 The Council shall be entitled to appoint and remove Board Members to the Management Board in accordance with this agreement.

- 14.3 The Council may nominate a Board Member, and remove a Board Member whom it nominated, by giving notice to the LLP. The appointment or removal takes effect on the date on which the notice is received by the LLP or, if a later date is given in the notice, on that date.
- 14.4 The Management Board shall be composed of up to 3 Board Members (one of whom may be a non-executive who shall have suitable experience and skills).
- 14.5 For the avoidance of doubt, no statutory officers of or elected members of the Council shall be appointed as Board Members.
- 14.6 The Council may allocate specific roles to the Board Members from time to time and may by notice to the Management Board, appoint and remove the chairman.
- 14.7 The Council shall indemnify and keep indemnified the LLP against any claim connected with a Board Member's removal from office.
- 14.8 The parties intend that meetings of Board Members shall take place at least 2 times each year, with each meeting being no more than 7 months apart.
- 14.9 Any person who wishes to resign as a Board Member shall give written notice of his resignation to the Management Board and his resignation shall be effective on the date falling one month after the date of receipt by the Management Board of such written notice.
- 14.10 Every meeting of the Management Board shall be governed by the following provisions:
- (a) a meeting of the Management Board may be called by any Board Member giving notice of the meeting of at least one Business Day to all Board Members, specifying the place, day and time of the meeting and a statement of the matters to be discussed at the meeting, provided that valid shorter notice is deemed to have been given if all Board Members attend the meeting or if it is ratified by the Board Members at a subsequent duly convened meeting;
 - (b) the quorum for a meeting of the Management Board is two Board Members present in person or by video or telephone conference call or by alternate (which shall mean another Board Member appointed in writing to attend and vote on behalf of the appointing Board Member);
 - (c) where the appropriate quorum is not present within 30 minutes of the start time stated in the notice of the meeting, any resolution passed

at the inquorate meeting is deemed to have been passed if it is ratified later by the required majority in attendance at a duly convened quorate meeting;

- (d) if the chairman is not present within 10 minutes of the time at which the meeting was to start, the participating Board Members must appoint one of themselves to chair it.
- (e) decisions of the Management Board shall be determined by a simple majority vote at a duly convened meeting and each Board Member present, whether in person or by video or telephone conference call or by alternate, shall have one vote. If the vote is tied, the chairman of the Management Board shall have a casting vote.²
- (f) the Board Members may give effect to any decision of the Management Board for any purpose by way of written resolution signed by all the Board Members;
- (g) meetings of the Management Board may be conducted by electronic means, such as via telephone or video conference. Board Members participating in a Management Board meeting via electronic means shall be deemed to be present in person at the meetings and shall be entitled to be counted in the quorum and to vote; and
- (h) minutes shall be prepared of all Management Board meetings and shall be approved and signed by the chairman of the Management Board as evidence of the proceedings.

14.11 The Management Board shall carry on and manage its responsibilities with the assistance from time to time of the Members and of agents or employees of the LLP as it shall deem necessary.

14.12 The Management Board undertakes to each Member and the LLP that it shall not make, or agree to make, or procure or allow the LLP to make, without the approval of the Council decisions on any of the Reserved Matters.

14.13 The Board Members shall not be liable, responsible or accountable in damages or otherwise to the LLP or to any of the Members, their successors, or assigns, except by reason of acts or omissions due to bad faith, negligence or wilful default, material breach of this agreement, or for not having acted in good faith in the reasonable belief that the Management Board's or their actions were in, or not opposed to, the best interests of the LLP.

² Is this required?

15. MEETINGS OF THE MEMBERS

15.1 Every meeting of the Designated Members or Members, as the case may be, shall be governed by the following provisions:

- (a) a meeting of the Designated Members may be called by any of the Designated Members and a meeting may be called by any Member. A meeting may also be called by any liquidator of the LLP appointed under the Insolvency Act 1986;
- (b) a meeting may be held at such time and place as the Designated Members, Members or liquidator calling the meeting think fit;
- (c) a notice of meeting shall be served on all those entitled to attend the meeting and such notice shall specify the place, day and time of the meeting and a statement of the matters to be discussed at the meeting;
- (d) not less than 10 clear days' notice is to be given of a meeting to all those entitled to attend, provided that valid shorter notice is deemed to have been given if all Designated Members or Members attend the meeting or if it is ratified by the Designated Members or Members at a subsequent duly convened meeting;
- (e) at the commencement of any meeting, those in attendance shall elect the chairman of the meeting who shall not have a casting vote;
- (f) the quorum for a meeting is any two Designated Members or Members (one of which must be the Council representative) present in person or by video or telephone conference call or by proxy (which shall mean another Designated Member or Member appointed in writing to attend and vote on behalf of the appointing Designated Member or Member);
- (g) where the appropriate quorum is not present within 30 minutes of the start time stated in the notice of the meeting, any resolution passed at the inquorate meeting is deemed to have been passed if it is ratified later by the required majority in attendance at a duly convened quorate meeting;
- (h) decisions of the Designated Members or Members shall be determined by a simple majority vote at a duly convened meeting and each Designated Member or Member present, whether in person or by video or telephone conference call or by proxy, shall have one vote;
- (i) where there are an equal number of votes cast for and against a matter proposed at a meeting, the Council representative shall have a casting vote³;

³ This effectively means that all matters are reserved to the approval of the Council whilst there are only two members but will require amendment in the event that a new member is admitted

- (j) a meeting may be conducted by electronic means, such as via telephone or video conference. Designated Members or Members participating in a meeting via electronic means shall be deemed to be present in person at the meetings and shall be entitled to be counted in the quorum and to vote;
 - (k) a Member (being a body corporate) may by resolution of its directors or other governing body authorise persons to act as its representative at a meeting and any person so authorised shall be entitled to exercise the same powers on behalf of the body corporate which he represents as that body corporate could exercise if it were an individual Member; and
 - (l) minutes shall be prepared of all meetings and shall be approved and signed by the chairman of the meeting as evidence of the proceedings.
- 15.2 The Designated Members or Members may take any decision regarding the LLP for any purpose by way of written resolution signed by all the Designated Members or Members, as the case may be. In the case of a Member being a body corporate, a written resolution may be signed on its behalf by one of its directors, its LLP secretary or by its duly authorised representative.
- 15.3 The Designated Members or Members may delegate (or revoke the delegation of) any of their powers of managing or conducting the affairs of the LLP to the Management Board or to a committee or committees consisting of such Designated Members, Members, Board Members and employees of the LLP as are appointed in the appropriate resolution.
- 15.4 The procedure for the conduct of any committee formed in accordance with clause 15.3 is as prescribed by the resolution establishing it or, if the resolution does not so provide, as determined by a majority of that committee.

16. ACCESS TO INFORMATION

- 16.1 The LLP shall provide to the Members:
- (a) quarterly management accounts;
 - (b) draft annual accounts;
 - (c) final audited annual accounts (if applicable);
 - (d) a quarterly report providing an overview of delivery of the LLP's Business as against the Business Plan including key issues relating to the LLP;
 - (e) copies of the Management Board meeting papers prior to the meeting of the Management Board to which they relate, and minutes

of the Management Board meetings five (5) Business Days after the relevant the Management Board meeting to which they relate.

- 16.2 The LLP and its authorised representatives (including internal and external auditors and other inspection bodies) shall have the right, on giving to the LLP reasonable advance notice, during normal working hours on a Business Day to inspect the books and records of the LLP and, in addition to the information to be provided pursuant to clause 16.1, to be supplied with all trading, financial management information, monthly reports, quarterly reports and minutes of any progress meetings and other information in such form as it or they may reasonably require to keep it properly informed about the business and affairs of the LLP, and shall have the right (at its expense) to take copies of any such books and records or parts thereof.

17. MEMBERS' DUTIES

- 17.1 Each Member shall at all times:
- (a) comply with the terms of this agreement;
 - (b) be just and faithful to the LLP in all matters relating to the LLP; and
 - (c) comply with all statutes, regulations, professional standards and other provisions as may from time to time govern the conduct of the Business.

18. INDEMNITY

- 18.1 The LLP shall indemnify any Member or Board Member in respect of payments made and personal liabilities incurred by him in the performance by him of his duties as a Member, Designated Member or Board Member in the ordinary and proper conduct of the Business or in respect of anything necessarily done by him for the preservation of the Business or property of the LLP.

19. TERMINATION AND LIQUIDATION

- 19.1 The LLP shall be wound up and this agreement shall terminate following the occurrence of any of the following events (each a Termination Event):
- (a) the insolvency, dissolution or liquidation of the LLP (other than for the purposes of an amalgamation or reconstruction);
 - (b) the written agreement of the Members to voluntarily wind up the LLP.

- 19.2 The termination of this agreement and/or the winding up of the LLP (in each case howsoever arising) shall be without prejudice to the rights and duties of any party accrued prior to such expiry, termination and/or winding up.
- 19.3 For the purposes of section 74 of the Insolvency Act 1986, no Member is liable to contribute any amount to the assets of the LLP on liquidation to cover any of the matters set out in that section.
- 19.4 If the LLP is wound up, and a surplus sum remains at the conclusion of the winding up, after payment of all money due to the creditors of the LLP and all expenses of the winding up, the liquidator shall pay that surplus sum to the Members in accordance with the respective proportions to which the Members share profits under clause 8.
- 19.5 On winding up of the LLP, the provisions of this agreement shall terminate, provided that this clause 19 and clause 20 shall survive and continue in full force and effect.

20. CONFIDENTIALITY

- 20.1 Each Member and Outgoing Member undertakes that he shall not at any time disclose to any person any Confidential Information concerning the Business or affairs of the LLP or the other Members except as permitted by clause 20.2
- 20.2 Each Member and Outgoing Member may disclose Confidential Information:
- (a) to his employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out his obligations under or in connection with this agreement. Each Member and Outgoing Member shall ensure that its employees, officers, representatives or advisers to whom he discloses Confidential Information comply with this clause 19;
 - (b) required by law (where no relevant exemption is available or, pursuant to section 2 of the Freedom of Information Act 2000, the public interest in keeping the Confidential Information confidential outweighs the public interest in disclosing the Confidential Information) or by a court of law;
 - (c) required by any regulatory, tax, governmental or other authority with relevant powers to which the Member is subject or submits;
 - (d) required by its professional advisors or auditors;
 - (e) that such Confidential Information has come into the public domain through no fault of that Member;
 - (f) the Council has given prior written consent to the disclosure; or

- (g) it is necessary to obtain any relevant tax clearances from any appropriate tax authority.

- 20.3 No Member or Outgoing Member shall use any Confidential Information for any purpose other than to exercise his rights and perform his obligations under or in connection with this agreement.
- 20.4 All Confidential Information shall, as between each Member, Outgoing Member and the LLP, be deemed to be the property of the LLP.
- 20.5 Each Member and Outgoing Member shall immediately inform the LLP if he becomes aware of the possession, use or knowledge of any Confidential Information by any person who is not authorised to possess, use or have knowledge of it and shall, at the LLP's request, provide such reasonable assistance as is required to deal with such event.
- 20.6 Without prejudice to any other right or remedy of the other LLP or Members howsoever arising, any failure by a Member or an Outgoing Member to comply with the provisions of this clause shall constitute a breach of this agreement, entitling the LLP to require that Member or Outgoing Member to account to the LLP for any personal benefit thereby acquired.

21. DEFAULT PROVISIONS

None of the default provisions in regulations 7 and 8 of the Regulations shall apply to the mutual rights and duties of the Members and the mutual rights and duties of the LLP and the Members.

22. ENTIRE AGREEMENT

- 22.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 22.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.
- 22.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

22.4 Nothing in this clause shall limit or exclude any liability for fraud.

23. FREEDOM OF INFORMATION

23.1 The Council, the Holding Company and the LLP acknowledge that each of them is subject to the requirements of the FOIA and the EIR and each party shall, where reasonable, assist and co-operate (at its own expense) with the other party for the provision of information to enable that party to comply with these information disclosure obligations.

23.2 Where the LLP receives a request for information under either the FOIA or the EIR in relation to information which it is holding on behalf of the Council in relation to the LLP, it shall:

- (a) transfer the request for information to the Council as soon as practicable after receipt and in any event within two Business Days of receiving a request for information;
- (b) provide the Council with a copy of all information requested by the Council, which is in its possession or power in the form that the Council requires within ten Business Days (or such longer period as the Council may specify) of the Council requesting that information; and
- (c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a request for information within the time for compliance set out in the FOIA or the EIR.

23.3 Where the Council or Holding Company receive a request under FOIA or EIR which relates to the operations of the LLP, they shall notify the LLP and afford it an opportunity to make any comments or representations in respect of the disclosure of the information sought. The LLP shall respond within five (5) Business Days of receipt of this notification. The Council and/or Holding Company (as appropriate) shall take into account any such comments or representations in so doing and shall not respond to the request until the five (5) Business Day response period referred to above has passed.

24. PREVENTION OF BRIBERY

24.1 The LLP:

- (a) shall not, and shall procure that any Board Member, officer, employee, adviser or representative of the LLP shall not, in connection with this agreement commit a Prohibited Act;
- (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to

that effect, in connection with the execution of this agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this agreement.

24.2 The LLP shall:

- (a) if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
- (b) within five (5) Business Days of the date of this agreement, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the LLP) compliance with this clause 24 by the LLP and all persons associated with it or other persons who are supplying goods or services in connection with this agreement. The LLP shall provide such supporting evidence of compliance as the Council may reasonably request.

24.3 The LLP shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any Board Member, officer, employee, adviser or representative of the LLP from committing a Prohibited Act and shall enforce it where appropriate.

24.4 If any breach of clause 24.1 is suspected or known, the LLP must notify the Council immediately.

24.5 If the LLP notifies the Council that it suspects or knows that there may be a breach of clause 24.1, the LLP must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation.

24.6 The Council may terminate this agreement by written notice with immediate effect if the LLP, Director, officer, employee, adviser or representative of the LLP (in all cases whether or not acting with the LLP's knowledge) breaches clause 24.1.

24.7 Any notice of termination under clause 24.6 must specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the party whom the Council believes has committed the Prohibited Act; and
- (c) the date on which this agreement will terminate.

24.8 Any dispute relating to:

- (a) the interpretation of clause 24; or
- (b) the amount or value of any gift, consideration or commission;

shall be determined by the Council and its decision shall be final and conclusive.

24.9 Any termination under clause 24.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

25. NOTICES

25.1 Any notice or other communication to be served under this agreement shall be delivered or sent by first class post, or electronic communication to the party to be served at its address, or email address as set out in **Schedule [] or in any Deed of Adherence (as the case may be).**

25.2 Subject to clause 25.3 and in the absence of earlier receipt, any notice or communication shall be deemed to have been served:

- (a) if delivered personally, at the time of delivery;
- (b) if sent by first class post, two (2) Business Days after the date of posting; and
- (c) if sent by email, twenty four (24) hours after the time of sending

25.3 Any notice or communication served under this agreement either: (i) on a day other than a Business Day; or (ii) after 5pm on a Business Day, shall be deemed not to have been served until the start of the next Business Day.

25.4 In proving service of a notice or communication, it shall be sufficient to prove that delivery was made or that the envelope containing the notice or communication was properly addressed and posted as a prepaid first class letter, that the facsimile message was transmitted to the facsimile number of the recipient, or in the case of electronic communication, that it was sent in accordance with the guidance issued by the Institute of Chartered Secretaries and Administrators.

26. COSTS

Except as expressly provided in this agreement, each party shall pay its own costs incurred in connection with the negotiation, preparation, and execution of this agreement and any documents referred to in it.

27. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

28. FURTHER ASSURANCE

Each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this agreement.

29. SET-OFF

All amounts falling due under this agreement shall be paid in full without any set-off or counterclaim.

30. SEVERANCE

30.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

30.2 If [one party gives notice to the other of the possibility that] any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

31. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 31.1 The parties to this agreement do not intend that any of its terms should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this agreement.

32. COUNTERPARTS

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

33. GOVERNING LAW AND JURISDICTION

- 33.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 33.2 Each party 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 agreement, its subject matter or formation (including non-contractual disputes or claims).

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Schedule 1 Capital contributions and treatment of profits

Member	% Interest
Council	95%
Holding Company	5%

DRAFT

Schedule 2 Deed of Adherence

This Deed of Adherence is made on _____ 20[●●]

Between:

- (1) [●] of [●] (the "**New Member**"); and
- (2) [●] LLP (registration number: OC[●]) whose registered office is at [●] (the "**LLP**"), on its own behalf and on behalf of each of the other Members.

Introduction:

- (A) Under the terms of an agreement dated [●] (the "**Members' Agreement**") and entered into between the Initial Members (as defined therein) and the LLP [and to which [●] of [●] is a party by virtue of a Deed of Adherence dated [●]], the New Member has agreed to become a Member of the LLP on the terms of the Members' Agreement, as amended by this Deed of Adherence.

This Deed witnesses as follows:

1. Words and expressions defined in the Members' Agreement shall (unless the context otherwise requires) have the same meaning when used in this Deed of Adherence.
2. The New Member confirms that he has been supplied with a copy of the Members' Agreement and undertakes to and covenants with each of the other parties thereto to comply, from the date of this Deed of Adherence, with the provisions of and to perform all the obligations in the Members' Agreement so far as they may remain to be observed and performed as if he had been a party to the Members' Agreement as an Initial Member.
3. The LLP for itself and as attorney for the other parties to the Members' Agreement covenants with the New Member that the New Member shall be entitled, from the date of this Deed of Adherence, to the benefit of the terms of the Members' Agreement as if he were a party to it and named in it as a Member.
4. The New Member shall have no liability for any costs, claims, damages or liabilities arising from the Members' Agreement by reason of an act or omission prior to the date of this Deed of Adherence]
5. Unless the Members by Unanimous Resolution otherwise permit, the New Member shall not be entitled to share in the profits or gains of the LLP earned and/or accrued prior to the date of this Deed of Adherence.
6. The schedule attached to this Deed of Adherence shall replace schedule 1 in the Members' Agreement and any other such schedule in any earlier Deed of Adherence.
7. This Deed of Adherence and any dispute, claim or obligation (whether contractual or non-contractual) arising out of or in connection with it, its

subject matter or formation shall be governed by and construed in accordance with English law.

This Deed has been executed on the date appearing at the head of page 1.
[Replacement schedule 1 to be inserted]

Executed as a Deed by [●] LLP
(on its own behalf and as attorney
on behalf of each of the other Members) acting by [] its duly authorised signatory

in the presence of:

Signature of witness:

Name:

Address:

Occupation:

Executed as a Deed
by [New Member] acting by [●]
its duly authorised signatory
in the presence of:

.....

.....
Signature of witness

Name:

Address:

Occupation:

Schedule 3 Reserved Matters

All Reserved Matters shall only be effective if approved by the Council.

Any dispute relating to whether or not something is material under Reserved Matters 20 or 21 will be determined by the Council and its decision shall be final and conclusive.

The following matters are Reserved Matters:

Officers and Members of the LLP

1. Agreeing the appointment and the appointment terms (including any remuneration terms) of all Board Members.
2. Agreeing the removal of all Board Members (including any terms on which Board Members are removed from their office as Board Members).
3. Approving the admission of further Members to the LLP or agreeing any rights or restrictions attaching to any shares allocated to such new Members.
4. Agreeing the appointment or removal of the chair of the Management Board (except where the chair is absent in which case the Management Board will appoint an alternate chair).
5. Agreeing or approving the maximum size of the Management Board.
6. Agreeing or approving what (if any) goods or services Board Members may provide to the LLP.

Future direction and development of the LLP

7. Agreeing to enter into or entering into any debt facility or loan agreement.
8. Forming any subsidiary or acquiring an interest in any other LLP or participating in any partnership or joint venture (incorporated or not).
9. Amalgamating or merging with any other LLP or business undertaking.
10. Selling or disposing of any part of the LLP.
11. Entering into any arrangement, contract or transaction with either a capital value over £10,000 (ten thousand pounds) or otherwise a value of over £10,000 (ten thousand pounds)⁴.

⁴ These values need to be confirmed by Finance

12. Passing any resolution for its winding up or presenting any petition for its administration (unless it has become insolvent).
13. Apply for the listing or trading on any stock exchange or market.

Management of the business of the LLP

14. Changing the Registered Office.
15. Changing the Name.
16. Creating or agreeing to create a charge, security or Encumbrance over the LLP's assets, Interest or income.
17. Adopting or agreeing any changes to any remuneration and redundancy policies⁵ of any employees of the LLP.
18. Adopting or agreeing any changes to any pension arrangements of any employees or Board Members of the LLP.
19. Changing the nature of the Business or commencing any new business which is not ancillary or incidental to the Business.
20. Agreeing to enter into or entering into any acquisition or disposal of any material assets by the LLP.
21. Giving notice of termination of any arrangements, contracts or transactions which are material in the nature of the Business or materially varying any such arrangements, contracts or transactions.
22. Granting rights (by license or otherwise) in or over any Intellectual Property owned or used by the LLP.
23. Appointing and changing the LLP's auditors.
24. Agree to make or making any loan (otherwise than by way of a deposit with a bank or other institution, the normal business of which includes the acceptance of deposits or in the ordinary course of business) or granting any credit (other than in the normal course of trading or giving any guarantee (other than in the normal course of trading) or indemnity).
25. Changing the Accounting Reference Date of the LLP.
26. Accepting any capital contributions in the LLP.
27. Allocating and distributing any profit of the LLP.

⁵ Linda Cohen to provide advice regarding off the shelf policies

Executed as a deed by **HARROW**)
COUNCIL, by affixing the common seal)
in the presence of an Authorised Officer:) **Signature**
)
)
) **Full Name**
)
)
)
) **Position**

Executed as a deed by)
[HOLDING COMPANY LTD])
by **[NAME OF FIRST DIRECTOR]**, a)
director in the presence of:)
)
)
)
)
)
.....)
[SIGNATURE OF WITNESS])
NAME)
ADDRESS)
OCCUPATION)

Executed as a deed by)
[HOUSING DEVELOPMENT VEHICLE)
LLP])
Acting by duly authorised signatories on)
behalf of its Initial Members)
)
)
)