

**AGENDA ITEM: 6**

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Meeting	Cabinet Resources Committee
Date	4 <sup>th</sup> November 2004
<b>Subject</b>	<b>Dollis Valley estate regeneration – Underwriting agreement with the Home Group Ltd (Warden Housing Association)</b>
Report of	Cabinet Member for Housing, Neighbourhoods & Community Safety
Summary	The report details the underwriting agreement between the Council and Warden HA for the Dollis Valley estate

Officer Contributors	Regeneration Manager, Borough Treasurer.
Status (public or exempt)	Public (with a separate exempt section)
Wards affected	Underhill
Enclosures	None
For decision by	Cabinet Resources Committee
Function of	Executive
Reason for urgency / exemption from call-in (if appropriate)	Not Applicable

Contact for further information: Jon Lloyd-Owen x7126

## **1 RECOMMENDATIONS**

### **1.1 That approval be given to enter into the proposed underwriting agreement with Warden Housing Association**

## **2. RELEVANT PREVIOUS DECISIONS**

2.1 At its meeting on 1 December 2003 the Cabinet resolved the following:

“That the Council enter into further negotiations with Warden Housing Association for the regeneration of the Dollis Valley estate in order to consider possible amendments to the two schemes under consideration.”

2.2 It was noted that underwriting provisions were anticipated in relation to Warden HA master planning and related costs . It was also clearly noted that these would be on the basis of risk-sharing between the Council and Warden Housing Association.

2.3 On 27<sup>th</sup> September 2004 the Cabinet agreed to endorse Warden Housing Association as its preferred partner to take forward the regeneration of the Dollis Valley estate.

## **3 CORPORATE PRIORITIES AND POLICY CONSIDERATIONS**

3.1 The proposed regeneration will help towards meeting the Council’s obligations to achieve decent homes standards by 2010.

3.1 The proposal supports the corporate policy of “Putting the Community First”, and contributes to the five key Priorities for our Community in the Corporate Plan:

3.2 A First Class Education Service: Each of the bidders proposed radical changes to Barnet Hill Primary and proposed working with further education providers and contractors to provide a first class education service and good quality opportunities to learn and strengthen business success and the health and quality of life of the residents.

3.3 Tackling Crime: The bids promoted community safety through “Secure by Design” principles

3.4 Supporting the Vulnerable in our Community:Regeneration of priority estates is one of the keys for helping the diverse members of the community to participate in shaping their future and accessing wider opportunities.

3.5 A Cleaner Greener Barnet: The bidders were encouraged to use the adjacent green belt to improve the vista for residents and incorporate access to the green belt from the regenerated estate

- 3.6 Repairing Roads and Pavements: The proposals allow for the renewal and replacement of the existing highway infrastructure and for improvement to public transport services.

#### **4 RISK MANAGEMENT ISSUES**

- 4.1 Similar agreements in respect of projects at Grahame Park and Stonegrove have been underwritten against the value of surplus land on those estates. As with West Hendon, this is not available and it is proposed that these costs be underwritten against the Housing Revenue Account (HRA) working balance.
- 4.2 The budget estimate and capped amount to be underwritten is £1,300,000 inclusive of VAT.
- 4.3 Should this be called upon, it will impact on the proposed investment towards meeting Decent Homes standards in the Council's housing stock and generally supporting the HRA for financial years 2004/05 to 2006/07.

#### **5 FINANCIAL, STAFFING, ICT AND PROPERTY IMPLICATIONS**

- 5.1 Details of the amounts involved are included in the report containing exempt information
- 5.2 This agreement will commit the Council to underwriting up to a maximum of £1.3m. Comparable underwriting provisions have been agreed for the Grahame Park, Stonegrove & Spur Rd and West Hendon regeneration projects.
- 5.3 The maximum total value of the underwriting agreements to date is £4.49m. If the Dollis valley agreement is entered into, this takes the maximum commitment to some £5.79m. However, the agreements for Stonegrove & Spur Road and Grahame Park contain the opportunity to meet those underwritten sums from the value of land released by the relevant regeneration schemes. This could fund up to £3.19m of the overall commitment.
- 5.4 The ultimate source of any remaining funds necessary to meet the residual sums required for the overall underwriting provision would be the Housing Revenue Account (HRA) working balance. The forecast of the HRA balance position at the end of 2004-05 currently stands at £5.4m and current good practice means we assume a minimum requirement of £2m. However a full monitoring exercise is currently underway on the HRA and this will update the balances position. Alternative funding can also be considered around opportunities presented by the new housing capital financing regulations.
- 5.5 Regular risk assessment appraisals for the existing underwriting commitments are carried out and these have been used to establish the context for this final underwriting agreement.

## **6 COMMENTS, IF ANY, OF THE COUNCIL'S STATUTORY OFFICERS (Head of Paid Service, Chief Finance Officer, Monitoring Officer)**

6.1 Comments have been incorporated within the main body of the report

## **7 BACKGROUND INFORMATION**

- 7.1 Following the decision of Cabinet on 1<sup>st</sup> December 2003, the Council entered into further negotiations with Warden Housing Association. These negotiations have now reached a stage where more detailed work and extensive consultation needs to take place. On 1<sup>st</sup> July 2004 Warden Housing Association became a division of the Home Group Ltd, therefore the underwriting agreement will be made directly with the parent company.
- 7.2 Over the next period the masterplan will be developed in consultation with residents to the point of submission of an Outline Planning Application by June 2005.
- 7.3 Warden Housing Association has incurred substantial expense to date and the next stage in the project's development will involve the expenditure of considerable resources, including a large proportion of costs on external consultants. Warden Housing Association currently has no contractual relationship with the Council and has been proceeding entirely at risk.
- 7.4 Over the next period it is intended to negotiate a detailed Principal Development Agreement that will establish a contractual relationship between the Council and the consortium which will be reported to Members for agreement in 2005/06.
- 7.5 In the interim, it is proposed to enter into an underwriting agreement. This will commit to a sharing of risk between the Council and its selected partner and provide for certain costs to be underwritten in specific circumstances that are substantially outside of Warden Housing Association's control.
- 7.6 The Underwriting Agreement will exclude costs relating to Warden HA's own personnel and services, with the exception of dedicated project staff. The primary costs eligible to be underwritten will relate to third party consultants, their fees and disbursements.
- 7.7 Warden HA has provided a breakdown of its own projected costs, its budgeted costs for third party consultants and cost incurred to date and this is provided in the Exempt Report. The Council has engaged construction cost consultants Davis Langdon to carry out an initial review of the projected costs.
- 7.8 It is envisaged that the circumstances under which payments may become due under the Agreement would be the following:
- Outline Planning Consent – Provided the consortium has used its reasonable endeavours, the Council would commit to underwrite a proportion of eligible costs in the event that outline planning consent was not obtained.

- Compulsory Purchase Order (CPO) – In the event that the Council decides to use a CPO to purchase certain leasehold and freehold interests to enable the scheme the Council will be responsible for the CPO's promotion and for setting out the case for its approval. The decision on whether to approve a CPO is reserved to the Secretary of State. If the CPO was required for the scheme to proceed and was not confirmed the Council would commit to underwrite a proportion of eligible costs.
- Council withdrawal from the project – Until a Principal Development Agreement is in place the Council will agree to underwrite eligible costs in the event that it withdraws from the project and its partnership with Warden HA .
- Failure to gain resident support for the regeneration proposals. Following development of the masterplan, management and associated proposals a survey to establish residents support will be held. If residents do not support the proposals a proportion of the costs will be underwritten

7.9 Warden HA also indicated their willingness to underwrite a certain proportion of the Council's costs relating to third-party consultants (e.g. external legal advisers), in the event that they unreasonably withdraw from the project.

## **8 LIST OF BACKGROUND PAPERS**

None

MO: POJ  
BT: JO

DATED

2004

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HOME GROUP LIMITED

and

THE MAYOR AND BURGESSES OF THE  
LONDON BOROUGH OF BARNET

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UNDERWRITING AGREEMENT  
DOLLIS VALLEY ESTATE

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Nabarro Nathanson  
Lacon House  
Theobald's Road  
London WC1X 8RW

Tel: 020 7524 6000

## AGREEMENT

DATE

2004

### PARTIES

- (1) HOME GROUP LIMITED (an Industrial and Provident Society registered under number IP22981R) whose registered office is at Ridley House, Regent Centre, Gosforth, Newcastle-upon-Tyne NE3 3JE (the “**Association**”); and
- (2) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BARNET of Town Hall, The Burroughs, London NW4 (the “**Council**”).

### WHEREAS:

- (A) The Council has selected the Association to be their preferred bidder following the submission by the Association of a tender on 5 September 2003 in respect of the regeneration of the Estate at Dollis Valley.
- (B) The Council is negotiating with the Association with regard to the details of the arrangements which will conclude with the entry by the Council into an agreement with the Association.
- (C) The Parties shall use all reasonable endeavours to agree the terms of and complete the Principal Development Agreement for the Redevelopment by the Association by 1 April 2006.
- (D) The Parties will negotiate in good faith for the inclusion of reasonable provisions on Overage and an indemnity for the costs of the CPO process and to agree to the disposal of Council owned land in the Principal Development Agreement.

### IT IS AGREED AS FOLLOWS:

1. In this Agreement the following expressions shall where the context so admits be deemed to have the following meanings:

#### “Allowable Costs”

means those costs (which are not Internal Costs except where expressly provided for) properly and reasonably incurred by the Association in connection with undertaking those activities for the Redevelopment which are set out in Column A of **Schedule 1** together with any activities ancillary thereto and which in the case of each activity payment (if any) shall be made under the provisions of this Agreement;

**“Category”**

means an element or subgroup of the Services each of which are set out in Column A of **Schedule 1**;

**“Category Costs”**

means subject to the provisions of this Agreement the maximum sum which is payable by the Council as Allowable Costs for each Category which are more particularly set out in Column B of **Schedule 1**;

**“Consultant” or “Consultants”**

shall mean any body, partnership or legal person who undertakes or provides Services commissioned or ordered by the Association for the Redevelopment and whose costs are or may be Allowable Costs;

**“CPO”**

means a compulsory purchase order to be made by the Council to acquire any outstanding Third Party Interests and Third Party Rights;

**“Estate”**

means the Council’s property outlined in red on the attached plan;

**“Financial Non-Viability”**

means that with reference to the currently available financial information it is not economically feasible for the Association to undertake or complete the Redevelopment;

**“Financial Review”**

means a review of the financial viability of the Redevelopment, with reference to the currently available financial information, which is undertaken by the Association in consultation with the Council;

**“Internal Costs”**

means costs whether incurred by members of the Association or their parent or subsidiary undertakings or a subsidiary of their parent undertakings (and “parent undertaking” and “subsidiary undertaking” shall have the meanings attributed thereto in sections 258 and 259 of the Companies Act 1985) in the operation of their business including (but not limited to) the payment of employees;

**“Master Plan”**

means an outline plan for the Estate and adjacent land which shall set out sufficient detail for the Redevelopment including design information, road utility



and communications plans together with milestones for delivery of the Redevelopment;

**“Overage”**

means the excess surplus or excess profit generated by the sale of any dwelling constructed during the Redevelopment after allowing for the reasonable and properly incurred costs of the Redevelopment;

**“Parties”**

means the parties to this Agreement;

**“Planning Permission”**

means all outline planning permissions and planning agreements ancillary thereto including but not limited to agreements under section 106 of the Town and Country Planning Act 1990 (and if necessary listed buildings consents, buildings regulations consents, fire officer approvals and other permissions, approvals, licences and similar consents (including any modifications from time to time)) which are necessary for the Redevelopment to proceed without breach of any statute or lawful requirement of any competent authority and which is to the satisfaction of the Association acting reasonably;

**“Principal Development Agreement”**

means a contractual agreement to record the requirements, benefits and obligations of the Parties in connection with the Redevelopment and which at the date of this Agreement the Parties intend to enter into;

**“Redevelopment”**

means the construction of newly built dwellings, community facilities, infrastructure and other works at the Estate or on adjacent land substantially in accordance with the Association’s Tender in response to the Council’s Tendering Instructions or such varied scheme as shall be agreed between the Association and the Council;

**“Services”**

means the work and provision of services by any Consultant to the Association in connection with the Redevelopment to the extent that the same is such that Allowable Costs may be payable under the provisions of this Agreement;

**“Tender”**

means the tender submitted by the Association to the Council on 5 September 2003;

**“Tendering Instructions”**

means the invitation to negotiate made by the Council on 18 February 2003;

**“Third Party Interests”**

means the interests of leaseholders or other interests of third parties on the Estate (but excluding any interests of statutory undertakers, periodic tenants or licensees);

**“Third Party Rights”**

means any third party rights or interests over land adjoining the Estate and which land is required for the Redevelopment.

**2. FORM OF AGREEMENT**

- 2.1 The provisions of this Agreement are subject to the statutory rights, duties and powers of the Council and nothing contained herein shall fetter or otherwise interfere with the exercise of the same by the Council.
- 2.2 This Agreement does not create, and shall not in any circumstances create, or be deemed to create, a legal partnership or joint venture between the Parties.
- 2.3 None of the provisions of this Agreement bind either the Council’s or the Association’s successors in title or those deriving title from them.
- 2.4 This Agreement will be governed by and construed in accordance with English law.

**3. ASSOCIATION OBLIGATIONS**

The Association agrees that it shall:

- 3.1 without undue delay, use all reasonable endeavours to proceed with the development of a Master Plan and all appropriate work pursuant to the terms of the Master Plan suitable for the submission of an outline planning application for the Redevelopment, to include resident consultation, and proceed diligently with negotiations in good faith for the agreement and execution of the Principal Development Agreement with the Council for the Redevelopment by the Association;
- 3.2 without undue delay, after agreement of the terms of the Master Plan by the Parties, use its reasonable endeavours to obtain Planning Permission for the Redevelopment;
- 3.3 without undue delay, regularly inform, consult, report to and liaise with the Council with regard to the Redevelopment, Planning Permission connected to it, the Estate, the Services, Consultants and any other matters in respect of which the Association has obligations to the Council in connection with the Redevelopment;
- 3.4 without undue delay grant to the Council an irrevocable non-exclusive royalty free licence at the Council’s expense (to the extent that such cost is reasonable and properly incurred and in any one instance does not exceed £1,000) to copy and use all documents and information (excluding financial information) prepared by the Association in connection with the Redevelopment and to reproduce their contents for any purpose;

- 3.5 upon reasonable request expeditiously provide the Council with copies of all relevant material presented to the Association by Consultants which relates to the provision of the Services including any plans and building designs which may be procured from the Consultants;
- 3.6 use all reasonable endeavours to procure for the Council from any Consultant engaged after 5 September 2003 an irrevocable non-exclusive royalty free licence at the Council's expense (to the extent that such cost is reasonable and properly incurred and in any one instance does not exceed £1,000) to copy and use all documents and information prepared by the Consultants in connection with the Redevelopment and to reproduce their contents for any purpose including without limitation the construction completion maintenance letting advertisement reinstatement and repair thereof and following formal appointment of any such Consultant a collateral warranty in favour of the Council substantially in the form set out in **Schedule 2**;
- 3.7 in undertaking or causing to be undertaken any activities set out in **clause 4.1**, comply with and ensure its agents comply with any relevant statutory requirements and good practice in connection with the health and safety of any person in or near the locality of the Estate; and
- 3.8 fully indemnify and hold the Council harmless against any third party claim which may arise directly or substantially from the activities set out in **clause 4.1** undertaken by it or its agents or sub-contractors.

#### **4. COUNCIL'S OBLIGATIONS**

The Council agrees with the Association that:

- 4.1 upon receipt of reasonable prior written notice the Council shall permit the Association, its advisers and Consultants access to the Estate (subject to the rights of residents and any third parties and such reasonable practical arrangements as the Council shall require acting reasonably) for the purpose of inspecting, carrying out surveys, valuations, site and ground tests and environmental audits, designing the Redevelopment and other matters as may be approved by the Council acting reasonably in writing provided that the Association, its advisers and Consultants shall cause no damage and shall make good without delay and at their own cost any damage which may be caused, such damage to be made good to the reasonable satisfaction of the Council;
- 4.2 it shall use all reasonable endeavours to obtain if necessary the consent of the First Secretary of State of the Office of the Deputy Prime Minister pursuant to section 25 of the Local Government Act 1988 in respect of the payment contemplated by **clause 5.2** and **5.3**; and
- 4.3 subject to **clause 2.1**, it shall use all reasonable endeavours to assist the Association in circumstances where the Association's obligations under this Agreement require the involvement of the Council and including but not limited to the expedition of any decisions in connection with consents or permissions required from the Council and the provision of information and documentation.

## 5. FINANCIAL MATTERS

5.1 The Association shall be solely responsible for paying the Consultants for the Allowable Costs.

5.2 If:

5.2.1 Planning Permission is not granted within 12 (twelve) calendar months of the date of submission of such application by the Association and the cause of such failure is not due to the unreasonable behaviour of the Association or a breach of their obligations set out in **clause 3.2 (“Planning Failure”)**; or

5.2.2 the Council has not within nine months of the date of resolution to grant planning applied to the ODPM for confirmation of the CPO (**“Application Failure”**);

5.2.3 a CPO is not confirmed on a date which is no later than that which falls 24 months after the date on which the Association are granted Planning Permission and the cause of such failure is not due to the unreasonable behaviour of the Association (**“CPO Failure”**); or

5.2.4 the Council resolves to abandon or cancel the Redevelopment (**“Council Failure”**); or

5.2.5 the residents of the Estate reject the Redevelopment by a numerical majority in the formal consultation and the Redevelopment is abandoned (**“Resident Failure”**),

then subject to **clauses 5.3 and 5.4** the Council will in accordance with **clause 5.5** reimburse the Association for Allowable Costs.

5.3 The Council shall reimburse the Association for Allowable Costs:

5.3.1 in any event to a sum which shall not exceed the sum of one million three hundred thousand pounds (£1,300,000) (inclusive of VAT) (**“Maximum Allowable Costs”**);

5.3.2 in each Category to a sum which does not exceed the larger of that Category’s Category Costs plus £5,000 or 120% of that Category’s Category Costs except where, subsequent to this Agreement, the relevant Category Costs have been increased on application by the Association and with the written agreement of the Council; and

5.3.3 in the event of Planning Failure the Council shall be liable to make payment of a sum which shall not exceed 50% of the Allowable Costs and shall never exceed 50% of the Maximum Allowable Costs;

5.3.4 in the event of CPO Failure the Council shall be liable to make payment of a sum which shall not exceed 50% of the Allowable Costs and shall never exceed 50% of the Maximum Allowable Costs;

5.3.5 in the event of either Application Failure or Council Failure the Council shall be liable to make payment of a sum which shall not exceed 100% of the Allowable Costs and shall never exceed 100% of the Maximum Allowable Costs; or

5.3.6 in the event of Resident Failure shall be liable to make payment of a sum which shall not exceed 50% of the Allowable Costs and shall never exceed 50% of the Maximum Allowable Costs.

- 5.4 Notwithstanding any other provision of this Agreement, the Council shall be under no obligation to make any payment to the Association under this Agreement in relation to the Allowable Costs unless and until:
- 5.4.1 the Association provide evidence to the Council of payments made to the Consultants including a receipted invoice or invoices which shall set out the correct amount of VAT paid thereon; and
- 5.4.2 the Association complies with its obligations under **clauses** 3.4, 3.5 and 3.6 of this Agreement.
- 5.5 In the event the Council is required to make a payment to the Association in accordance with the provisions of **clause** 5.2 then subject to the provisions of **clause** 5.4 the Council shall make such payment forthwith (the “**Reimbursement**”). In the event that the Council does not make the Reimbursement within 56 days of **clause** 5.4 being satisfied then the Council shall pay interest to the Association (both before and after any relevant judgment) at the rate of two per cent above the base lending rate of Barclays Bank PLC applicable at the relevant times for the period from the later of either the date **clause** 5.4 is satisfied or the date the Reimbursement is due until the date upon which the Association receives payment.
- 5.6 Notwithstanding any other provision of this Agreement, in the event the Association completes the necessary documentation with the Council so as to enable the Redevelopment or a similar project to proceed, then the Association shall repay to the Council any sums paid under the provisions of this Agreement within 56 days of such completion (the “**Repayment**”). In the event the Association fails to make the Repayment then the Association shall pay interest to the Council (both before and after any relevant judgment) at the rate of two per cent above the base lending rate of Barclays Bank PLC applicable at the relevant times for the period from the date the Repayment was due to be paid to the Council until the date upon which the Council receives payment.
- 5.7 In the event the Association abandons or otherwise than as specified in **clauses** 5.2.1, 5.2.2, 5.2.3, 5.2.4 and 5.2.5 fails to commence the Redevelopment then it shall within 56 days of such an event make payment to the Council of a sum which shall not exceed three hundred and fifty thousand pounds (£350,000) (inclusive of VAT) such payment being conditional upon:
- 5.7.1 the Council having properly incurred costs for external legal services or other external professional services in connection with the Redevelopment; and
- 5.7.2 the Council providing evidence satisfactory to the Association (acting reasonably) of it incurring such costs including any receipted invoice or invoices.
- 5.8 In the event that the Association does not make the payment due in accordance with **clause** 5.7 within 56 days then the Association shall pay interest to the Council (both before and after any relevant judgment) at the rate of two per cent above the base lending rate of Barclays Bank PLC applicable at the relevant times for the period from the date the payment is due until the date upon which the Council receives payment.

## **6. TERMINATION OF THE REDEVELOPMENT**

- 6.1 Without prejudice to the obligations in **clauses** 3 and 4, the Parties may agree to terminate the negotiations for the proposed Redevelopment (the “**Negotiations**”), prior to signing the Principal Development Agreement, having acted in good faith.
- 6.2 Where, in accordance with **clause** 6.1 above, the Negotiations have been terminated, the provisions in **clauses** 5.2 to 5.7 shall not apply and each party shall be responsible for meeting its own costs incurred in relation to the Redevelopment.
- 6.3 In the event that the Parties agree to terminate Negotiations in accordance with **clause** 6.1 above then both Parties shall sign a written statement to that effect.
- 6.4 In the event that the Parties agree to terminate Negotiations then **clause** 9.5 shall not apply and this Agreement shall terminate on a date agreed by the Parties, without prejudice to any rights and/or remedies in respect of any pre-existing breaches of this Agreement.

## **7. FINANCIAL REVIEW**

- 7.1 The Association in consultation with the Council shall conduct a Financial Review on or about [date] and every 6 months thereafter.
- 7.2 Within 30 days of a Financial Review the Association shall provide written notice (the “**Financial Review Notice**”) to the Council stating whether the Redevelopment is in a state of Financial Non-Viability or not.
- 7.3 Where the Financial Review Notice states that the Redevelopment is financially viable and the Council notifies the Association in writing of its acceptance of the contents of the Financial Review Notice then the Financial Review shall be deemed to have been completed and the remainder of the clause shall not apply.
- 7.4 Where the Financial Review Notice states that the Redevelopment is Financially Non-Viable and the Council notifies the Association in writing of its acceptance of the contents of the Financial Review Notice the Redevelopment shall under the provisions of this Agreement be in a state of Financial Non-Viability and **clause** 7.7 will apply.
- 7.5 Where the Council notifies the Association that it does not accept (acting reasonably) the contents of the Financial Review Notice, then the Association and the Council shall use all reasonable endeavours to reach a consensus as to the financial viability of the Redevelopment.
- 7.6 If the Association and the Council fail to agree as to the financial viability of the Redevelopment within 10 weeks of the Council receiving a Financial Review Notice then either Party may refer the matter to dispute resolution (pursuant to the terms of **clause** 8) as to whether the Redevelopment is in a state of Financial Non-Viability.
- 7.7 Where either:

- 7.7.1 the Parties agree that the development is in a state of Financial Non-Viability;
- 7.7.2 or where a dispute has been referred to an Expert in accordance with **clause 7.6** and the Expert has determined that the Redevelopment is Financially Non-Viable
- then the Association and the Council shall use all reasonable endeavours to vary the Redevelopment to the extent that it would be financially viable.
- 7.8 Where, having used all reasonable endeavours, the Parties agree that the Redevelopment cannot be varied so that it becomes financially viable, then the Parties will terminate the Negotiations and the provisions of **clause 6** will apply.

## **8. DISPUTE RESOLUTION**

- 8.1 All disputes and differences arising out of or in connection with this Agreement (a “**Dispute**”) shall be resolved pursuant to the terms of this **clause 8**.
- 8.2 The Parties shall use reasonable endeavours to resolve any Dispute between them arising out of or in connection with this Agreement without delay by way of negotiations which shall be conducted between senior representatives of the Council and of the Association in good faith in an effort to resolve the Dispute without the necessity of any formal proceedings.
- 8.3 The following provisions of this **clause 8** shall apply to any matter or Dispute which is expressly stated to be subject to expert determination related to:
- 8.3.1 disputes in relation to payment of Allowable Costs pursuant to **clause 5**;
- 8.3.2 disputes in relation to the Repayment pursuant to **clause 5**; and
- 8.3.3 disputes in relation to whether an amount or item of expenditure is an Allowable Cost.
- 8.4 Any matter or Dispute to which **clause 8.3** refers shall be referred to and settled by an expert (the “**Expert**”) who shall be an independent person agreed between the Parties or, failing agreement within five working days after either party shall have given to the other a written request to concur in the appointment of such person, to be appointed on the request of either party by the President for the time being of the Chartered Institute of Arbitrators.
- 8.5 The Expert shall be:
- 8.5.1 a suitably qualified solicitor or barrister in relation to any Dispute concerning the meaning or construction of any part of this Agreement; or
- 8.5.2 a suitably qualified member of the Consultative Committee of Accounting Bodies in relation to any Dispute concerning a calculation of costs.
- 8.6 The Expert shall:
- 8.6.1 act as an expert and not as an arbitrator, and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Expert or his determination or the procedure by which he reaches his determination;

- 8.6.2 have the power to determine the procedures to be complied with by the Parties in resolving the Dispute and to request either party to provide him with such written or other statements, documents or information as he may require in order to determine the respective rights of the Parties and the Parties shall comply fully and promptly with any such request; and
- 8.6.3 exercise his powers under this **clause 8** with fairness and impartiality.
- 8.7 In determining a Dispute, other than a Dispute which is expressly stated to be subject to the provisions of this **clause 8**, the Expert shall:
- 8.7.1 give each party a reasonable opportunity, in the light of any agreed timetable, of putting its case and dealing with that of the other party;
- 8.7.2 use his best endeavours to reach a conclusion on any Dispute referred to him within 30 days of first receiving notification of it, and shall in any event make his determination as soon as practicable after receipt of all statements, documents and information requested pursuant to **clause 8.6.2** and the conclusion of such further work as the Expert may consider necessary; and
- 8.7.3 give written notice of his decision to the Parties as soon as practicable after reaching a conclusion, which notice shall include a concise statement by the Expert of the reasons for his decision and shall be supported by a schedule summarising the documentation, investigations and other evidence considered by the Expert in arriving at his decision.
- 8.8 The liability for the Expert's fees shall be dealt with as follows:
- 8.8.1 the fees and expenses of the Expert shall be as the Expert shall award but in the absence of an award shall be borne equally between the Parties unless they otherwise agree; and
- 8.8.2 the Expert shall be entitled to order that the costs incurred by the Parties in preparing and submitting their case to the Expert (including the costs of obtaining any legal or technical advice) shall be paid by the Parties in whatever proportions he thinks fit, and in the absence of any such order the Parties shall bear their own such costs.
- 8.9 Where any matter (whether it is a Dispute or otherwise) has been referred to an Expert for determination, the Parties shall forthwith give full effect to the decision of the Expert, which shall be final and binding on them save where the Expert has made a manifest error.
- 8.10 No reference of any Dispute to an Expert pursuant to this clause shall relieve either party from any liability for the due and punctual performance of its obligations under this Agreement.
- 8.11 If and to the extent that the Parties do not resolve any Dispute or any issue therein following the application of **clause 8.1** (save where such matter or Dispute is subject to Expert determination under **clause 8.3**) then either party shall be at liberty to serve a claim form in respect of that Dispute.



## **9. GENERAL PROVISIONS**

The Parties mutually agree that:

- 9.1 they owe each other a duty of confidentiality with regard to this Agreement and its contents except for any disclosure as may be required by law;
- 9.2 this Agreement does not form an agreement for the sale and purchase of the Estate and does not impose an obligation on any party to proceed to exchange of contracts for the sale and purchase of the Estate;
- 9.3 they are acting in reliance upon the terms of this Agreement and that they are bound by its terms;
- 9.4 in the event that any part of this Agreement is unenforceable for any reason, the remaining parts of this Agreement shall remain in full force and be binding upon the Parties;
- 9.5 this Agreement shall terminate and cease to have effect on the later of the date that the Principal Development Agreement is entered into or of any Repayment being made to the Council in accordance with clause 5.6;
- 9.6 sums payable under this Agreement for the supply of goods and services are inclusive of VAT chargeable on the payment;
- 9.7 this Agreement is personal to the Council and the Association and neither party may part with or assign this Agreement without the prior consent of the other;
- 9.8 unless the right of enforcement is expressly granted, it is not intended that a third party should have a right to enforce a provision of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999; and
- 9.9 the Parties may rescind or vary this Agreement without the consent of a third party to whom an express right to enforce any of its terms has been provided.

## **10. VIRES**

The Council hereby represents and warrants that it has the power and authority to enter into and to observe and perform the terms and obligations on its part to be observed and performed by it under this Agreement and has taken all necessary action to authorise the execution and delivery of this Agreement and the performance of its obligations thereunder in accordance with its respective terms.

## **11. AMALGAMATION AND TRANSFER OF ENGAGEMENTS**

- 11.1 Where there is an amalgamation or reorganisation involving the Association or a transfer of the engagements of the Association (a “**Transaction**”), then:
  - 11.1.1 the Association shall give written notice to the Council at least 30 days prior to the Transaction taking place; and

11.1.2 within 30 days of the Transaction, the Association shall procure that the Association's successor enters into a direct covenant, in an enforceable form, to perform the Association's obligations under this Agreement and provide a certified copy of the covenant to the Council.

11.2 All of the Council's obligations under this Agreement shall cease, unless **clause** 11.1 is complied with and/or the Association can demonstrate to the Council's satisfaction that the Association's successor assumes all of the Association's obligations under this Agreement.

**IN WITNESS** whereof the Parties executed this Agreement as a deed the day and year first before written.

Executed as a Deed by )  
HOME GROUP LIMITED )  
by affixing its Common Seal hereto in the )  
presence of: )

The Common Seal of )  
THE MAYOR AND BURGESSES OF THE )  
LONDON BOROUGH OF BARNET )  
was hereunto affixed in the presence of: )

Mayor

Borough Solicitor

## SCHEDULE 1

### Allowable Costs

#### COLUMN A

Category

#### COLUMN B

Category Costs

Internal Costs	£132,000
Site presence	£32,000
Architects fees	£585,000
Solicitors fees	£70,000
Engineer fees	£100,000
Quantity surveyor fees	£40,000
Landscape consultants fees	£50,000
Traffic consultants fees	£30,000
Environmental consultants fees	£25,000
Neighbourhood Plan	£30,000
Communication	£120,000
Community Development	£27,000
	£1,241,000

**SCHEDULE 2**

Form of Collateral Warranty

**Date** \_\_\_\_\_

[ ] (1)

**-and-**

**THE MAYOR AND BURGESSES OF THE  
LONDON BOROUGH OF BARNET (2)**

**-and-**

**HOME GROUP LIMITED (3)**

**WARRANTY**

**Relating to works/a development at Dollis Valley**

**THIS WARRANTY** is made the [ ] day of [ ]

**BETWEEN:-**

(1) **[EITHER]**

[ ] LIMITED (Company Number ) whose registered office is situate at [ ] (the “Consultant”)

**[OR]**

[ ] of [ ] and [ ] of [ ] (the “Partners”) carrying on business together in partnership as [ ] (the “Consultant”)

(2) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BARNET of Town Hall, The Burroughs, London NW4 (the “Council” which expression shall include its successors in title and assigns); and

(3) HOME GROUP LIMITED (an Industrial and Provident Society registered under number IP22981R) whose registered office is at Ridley House, Regent Centre, Gosforth, Newcastle-upon-Tyne NE3 3JE (the “Developer”).

**WHEREAS:-**

(A) The Developer has procured or proposes to procure the carrying out of [ ], (the “Development”) at [ ] (the “Property”)

(B) The Consultant has been appointed by the Developer to act for the Developer in the capacity of [ ] in connection with the Development upon the terms and conditions contained in an agreement dated [ ] (the “Appointment”)

(C) The Developer and the Council have entered into an underwriting agreement dated [ ] in connection with the Development and it is intended that the Developer and the Council may subsequently enter into a development agreement in connection with the Development (together and severally referred to as the “Development Agreement”).

(D) The Consultant has agreed to enter into this warranty in favour of the Council.

**NOW IN CONSIDERATION OF THE SUM OF £10 (TEN POUNDS) RECEIPT OF WHICH THE CONSULTANT HEREBY ACKNOWLEDGES IT IS NOW AGREED AS FOLLOWS:-**

**1. WARRANTY**

1.1 The Consultant hereby warrants and undertakes to the Council:-

- (a) that in respect of all matters which lie within the scope of its professional responsibilities in relation to the Development:
- (i) it has exercised and will continue to exercise all reasonable skill and care to be expected of a properly qualified and competent firm of [ ] experienced in carrying out services in relation to projects of a similar size scope and complexity to the Development;
  - (ii) it shall owe a duty of care to the Council in respect of such matters provided that the Consultant shall owe no greater duty of care to the Council under this Warranty than it would have done if the Council has been named in place of the Developer in the Appointment; and
  - (iii) it has exercised and will continue to exercise the standard of skill and care set out in sub-clause (i) above not to specify any substances generally known in the United Kingdom to be deleterious including but not limited to substances not in accordance with British Standards and Codes of Practice or which are published in the Building Research Establishment Digests as being deleterious at the time of specification for the Development and otherwise to only specify materials for use in the Development in accordance with the guidance set out in the publication by the British Property Federation Council of Offices current at the date of specification of any such materials and/or substances, prepared by Ove Arup & Partners, entitled “Good Practice in the Selection of Construction Materials” and it shall use all reasonable skill and care to see that this sub-clause is adhered to in the use of materials and/or substances in connection with the Development.
- and the Council shall be deemed to have relied upon the Consultant’s professional skill and judgement in respect of such matters; and
- (b) that it has performed and shall continue to perform all of its duties and obligations under the Appointment.

## 2. LICENCE

The Consultant as beneficial owner hereby grants to the Council an irrevocable royalty-free non-exclusive licence to copy and use all documents and information prepared by the Consultant or on its behalf in connection with the Development (the “**Documents**”) and to reproduce their contents for any purpose including but without limitation the construction, completion, maintenance, letting, advertisement, reinstatement and repair thereof. Such licence shall carry the right to grant two further sub-licences and shall be transferable to a maximum of two further third parties.

## 3. ASSIGNMENT

The Council shall be entitled to assign charge and/or transfer all or any of its rights and/or obligations under this Warranty to two (2) further parties without the consent of the Consultant. No further assignments shall be permitted.

#### 4. **STEP IN RIGHTS**

- 4.1 The Consultant agrees that if an event of default occurs under the Development Agreement and/or if the Development Agreement is terminated, the Consultant shall, if so required by notice in writing given by the Council in accordance with clause 4.5, accept the instructions of the Council or its appointee to the exclusion of the Developer upon the terms and conditions of the Appointment. The Developer acknowledges that the Consultant will be entitled to rely on a notice given to the Consultant under clause 4.1 as conclusive evidence for the purposes of this Warranty of the occurrence of an event of default or termination under the Development Agreement.
- 4.2 The Consultant further agrees that it will not exercise any right it may have to terminate its appointment under the Appointment or to treat the Appointment as having been repudiated by the Developer or (subject to clause 4.7) to discontinue the performance of its obligations under the Appointment without first giving the Council not less than 21 days' notice specifying the grounds for such termination, repudiation or discontinuance and including a statement of any sums due or to become due to the Consultant.
- 4.3 Any period stipulated in the Appointment for the exercise by the Consultant of a right of termination will nevertheless be extended as may be necessary to take account of the period of notice required under clause 4.2, and compliance by the Consultant with the provisions of clause 4.2 will not be treated as a waiver of any breach on the part of the Developer giving rise to the right of termination or otherwise prevent the Consultant from exercising its rights after the expiry of the notice, unless the right of termination has ceased under the provisions of clause 4.4.
- 4.4 The right of the Consultant to terminate its appointment under the Appointment or to treat the Appointment as having been repudiated by the Developer or (subject to clause 4.7) to discontinue the performance of any of its obligations under the Appointment will cease if within the period of 21 days referred to in clause 4.2 the Council gives notice to the Consultant requiring the Consultant to accept the instructions of the Council or its appointee to the exclusion of the Developer upon the terms and conditions of the Appointment.
- 4.5 Notice given by the Council under clause 4.1 or 4.4 will be deemed to:
- 4.5.1 acknowledge that the Council assumes all the obligations of the Developer under the Appointment;
  - 4.5.2 require the Consultant to continue with the performance of its duties and obligations under the Appointment;
  - 4.5.3 undertake unconditionally to the Consultant to discharge all payments which may subsequently become properly due to the Consultant under the terms of the Appointment; and
  - 4.5.4 undertake unconditionally to the Consultant to pay within 21 days of receipt of a valid VAT invoice from the Consultant, any such sums which have become due to the Consultant under the Appointment and, where clause 4.2 applies, were included in the Consultant's notice, but which are at the date of the Council's notice unpaid and remain unpaid.

- 4.6 Upon compliance by the Council with the requirements of clause 4.5 the Appointment will continue in full force and effect as if the right of termination on the part of the Consultant had not arisen and in all respects as if the Appointment had been made between the Council and the Consultant to the exclusion of the Developer. The Consultant, the Developer and the Council will enter into an agreement for the novation of the Appointment in such form as may be reasonably required by the Council to give effect to this transfer, if required by the Council.
- 4.7 Where the Consultant exercises its right to suspend performance under section 112 of the Housing Grants, Construction and Regeneration Act 1996 or any provision of the Appointment giving effect to that section, the periods referred to in clauses 4.2 and 4.4 shall be reduced to seven days.
- 4.8 The Developer acknowledges that the Consultant will not be in breach of the terms of the Appointment by complying with the terms of clause 4.

## **5. NOTICES**

- 5.1 Any notice to be given hereunder shall be deemed to be duly given if it is delivered by hand at or sent by registered post or recorded delivery to the parties' registered office and any notice given by the Council hereunder shall be deemed to be duly given if it is addressed to The Managing Director/Senior Partner and delivered by hand at or sent by registered post or recorded delivery to the above-mentioned address of the Consultant or to the principal business address of the Consultant for the time being and, in the case of any such notices the same shall if sent by registered post or recorded delivery be deemed to have been received forty eight hours after being posted.

## **6. INSURANCE**

- 6.1 The Consultant warrants to the Council that the Consultant will maintain in full force and effect from the date of the Consultant's commencement of its services under the Appointment until the expiry of a period of 12 years from the later of the completion of the services under the Appointment or the completion of the Development a policy of professional indemnity insurance in an amount of not less than ten million pounds (£10,000,000) for each and every claim provided that such insurance is available to practices/organisations of equivalent size and type as the practice/organisation of the Consultant at commercially reasonable rates and on commercially reasonable terms.
- 6.2 The Consultant shall upon each reasonable request by the Council produce for inspection documentary evidence to show that its professional indemnity insurance is being maintained in accordance with this Warranty.



**7. JOINT AND SEVERAL LIABILITY**

**[Applicable for Partnership only]**

7.1 Where the Consultant consists of more than one person the covenants warranties and undertakings on the part of the Consultant herein contained shall be deemed to be made by each and every such person jointly and severally.

**8. LAW**

8.1 This Warranty shall be governed by and construed in accordance with the laws of England and Wales and all differences or disputes of whatever nature arising under this Warranty and such dispute or difference shall be resolved in accordance with the dispute resolution provisions of the Appointment.

**9. LIMITATION**

9.1 Save for any successor in title and/or assigns the parties hereby agree that notwithstanding any other provision of this Warranty nothing in this Warranty confers or purports to confer any right to enforce any of its terms on any person who is not a party to it.

9.2 Notwithstanding the completion of the Development or any part thereof this Warranty shall continue to have effect for a period expiring no earlier than 12 years from completion of the services under the Appointment.

**EXECUTED AS A DEED** by the parties on the date which first appears

Executed as a Deed by )  
[ ] )  
)  
)  
)  
)

[Authorised signatory]

[Authorised signatory]

Executed as a Deed by )  
HOME GROUP LIMITED )  
by affixing its Common Seal hereto in the )  
presence of: )

The Common Seal of )  
THE MAYOR AND BURGESSES OF THE )  
LONDON BOROUGH OF BARNET )  
was hereunto affixed in the presence of: )

Mayor

Borough Solicitor