

Living Wage Joint Venture

Illustrative Heads of Terms v.3 12.09.16

1 BACKGROUND

- 1.1 Hyde Housing Group (**Hyde**) and Brighton & Hove Council (**Council**) wish to work together in partnership. They intend to establish a limited liability partnership (**LLP**) to act as a joint venture vehicle for the construction of 1000 (and up to 2000) homes in the Greater Brighton area. These will include a new Living Wage rent housing model for low income working households and shared ownership homes. The activity will generate an annual surplus to be distributed to the partnership members.
- 1.2 These heads of terms are not exhaustive or intended to be legally binding¹.

2 DOCUMENTATION

- 2.1 The joint venture will be based around the following principal documentation:
- 2.1.1 overarching strategic land agreement (**OSLA**)
 - 2.1.2 limited liability partnership members' agreement (**Members' Agreement**)
 - 2.1.3 [funding agreements]
 - 2.1.4 development management agreement (**DMA**)
 - 2.1.5 asset management agreement (**AMA**)
 - 2.1.6 residential management agreement (**RMA**)
 - 2.1.7 corporate and financial services agreement (**CFSA**)

3 OSLA

- 3.1 Parties:
- 3.1.1 Council;
 - 3.1.2 [Hyde]; and
 - 3.1.3 LLP.
- 3.2 The OSLA will govern the arrangements between the Council [and Hyde] as landowners and the LLP. This will allow the Council [and Hyde] to establish a clear separation of duties and responsibilities when dealing with the LLP in their capacity as a landowner.
- 3.3 The Council owned sites by set out in Appendix [] have been identified as being suitable for the joint venture and will be transferred subject to satisfactory conditions precedents being met.
- 3.4 The OSLA will provide appropriate controls, protections and mechanisms for the timing of the drawdown of land from the Council and/or Hyde into the LLP. The following such controls, protections and mechanisms are envisaged:
- 3.4.1 the circumstances under which properties will be transferred into the LLP;

¹ Confidentiality and exclusivity are normally elements that are sometimes made legally binding. It is assumed that there are no legally binding elements given the NDA that has been signed and no proposal for exclusivity.

- 3.4.2 an option for the LLP to call down identified properties once the relevant property is vacant;
- 3.4.3 The OSLA will set out the obligations to be performed by each of the Council or Hyde and the LLP in order to prepare and enable properties to be drawn down.
- (a) When a property is ready to be drawn down, the LLP will have a period of [] months within which to exercise a drawdown option and if the option is not exercised within this period it will lapse and the property will cease to be included in the OSLA.
- (b) All properties will be drawn down on the basis of a [[] year lease] [freehold transfer] which will be granted by the landowner to the LLP. Properties may not be drawn down for land banking but must be developed in accordance with the agreed Business Plan. The option preconditions will be framed so that at the time of draw down, a property must be ready for development in accordance with the Business Plan for that Property.
- 3.5 The price to be paid for a property will be established (or verified) upon draw down on the basis of a pre-agreed appraisal methodology [including circumstances where less than market value consideration is to be provided].
- 3.6 Preconditions for exercise of draw down option – any option to draw down a property will become exercisable by the LLP when the following have been achieved:
- 3.6.1 the LLP has adopted a Business Plan for the relevant property (which is consistent with the overarching LLP Business Plan) and includes a development programme with milestones for the property;
- 3.6.2 the proposed development scheme satisfies a viability test in accordance with the overarching LLP Business Plan and there is a development appraisal adequately costed and verified in sufficient detail to support the viability test;
- 3.6.3 [construction costs have been market-tested in sufficient detail to support the viability test and demonstrate "value for money"];
- 3.6.4 there is an independent professional report (addressed to the LLP and the landowner) on likely values and costs within specified parameters to support the development appraisal;
- 3.6.5 vacant possession can be obtained when needed (and/or arrangements for further decant are in place);
- 3.6.6 planning consent has where relevant been obtained by the LLP for the development (or first phase if a multi phased scheme);
- 3.6.7 funding has been agreed for the development (or first phase);
- 3.6.8 any required amendments to the pro forma lease or transfer documentation for the relevant property have been approved by the landowner (acting reasonably); and
- 3.6.9 any consents for disposal which have not already been obtained have been given (e.g. Secretary of State consent for disposal of HRA land).
- 3.7 Viability test – prior to exercising any draw down option, the LLP must be satisfied that development in accordance with the Business Plan is viable. Viability testing (and market analysis) will be on the basis of pre-agreed required levels for [IRR/ROCE] for development so that the viability test (and the resulting residual land value), is determined by external or objective market criteria. Elements such as construction costs and anticipated values must have been costed and verified in sufficient detail

to ensure that the viability test is robust and that the resulting land value and "value for money" analysis, meets the landowner's regulatory requirements for land disposals.

3.8 The OSLA will include Proforma Agreement for Sale between the [Council/Hyde] and the LLP (**AFS**);

4 MEMBERS' AGREEMENT

4.1 Parties:

4.1.1 Council;

4.1.2 [Hyde] [Hyde New Build]; and

4.1.3 LLP.

4.2 The parties will make the following funding by way of [capital contributions] [debt] to the LLP:

4.2.1 Council: £[] on the timetable provided at Schedule [];

4.2.2 [Hyde] [HNB]: £[] on the timetable provided at Schedule [];

on the following principal terms:

4.2.3 [].

4.3 The parties will hold the following interests and voting rights in the LLP:

4.3.1 Council: [50]%

4.3.2 [Hyde] [HNB]: [50]%

4.4 The Members' Agreement will govern the commercial terms of the joint venture and how the two parties will jointly run and fund the LLP.

4.5 The stated business of the LLP will be: [].

4.6 The parties will establish an LLP management board comprising of [six] individuals:

4.6.1 Hyde appointees: [];

4.6.2 Council appointees: [].

4.7 Strategic control over the operation of the LLP will be retained by the members through the right to:

4.7.1 Approve the LLP business plan;

4.7.2 Make reserved decisions [as included at Schedule []] on a unanimous basis.

4.8 The management board will have the task of delivering the business plan.

5 DEVELOPMENT MANAGEMENT AGREEMENT

5.1 Development Management Agreement between the LLP and HNB for the management of all development services (**DMA**).

5.2 The LLP will appoint HNB pursuant to the DMA in a form to be agreed, but which will include the following key items:

- 5.2.1 a fee calculated on a costs-incurred basis, to be payable in accordance with the agreed relevant financial model;
- 5.2.2 an agreed scope of service;
- 5.2.3 *[other key terms to be determined including relationship with proposed project monitor role]*

6 ASSET MANAGEMENT AGREEMENT & RESIDENTIAL MANAGEMENT AGREEMENT

- 6.1 The new homes will be managed by [Hyde] [HNB] who will provide both housing management and asset management services.
- 6.2 The LLP will appoint [Hyde HA] pursuant to a management agreement in a form to be agreed, but which will include the following key items:
 - 6.2.1 a fee calculated on a costs-incurred basis, to be payable being not less than [TBA] subject to [RPI] increase;
 - 6.2.2 an agreed scope of services;
 - 6.2.3 []

7 CORPORATE AND FINANCIAL SERVICES AGREEMENT

- 7.1 Corporate and Financial Services Agreement between the LLP and [] for company secretarial, tax and accounting services (**CFSA**);
- 7.2 The LLP will appoint [] pursuant to a services agreement in a form to be agreed, but which will include the following key items:
 - 7.2.1 a fee calculated on a costs-incurred basis, to be payable being not less than [£[] a month subject to RPI increase];
 - 7.2.2 an agreed scope of services;
 - 7.2.3 []

These heads of terms are non - binding and subject to contract.

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Signed for and on behalf of Hyde

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Date

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Signed for and on behalf of the Council

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Date