

Appendix : D

Capital Letters Limited
Officers' Mandate and Guidance Note

CONTENTS

| Clause | Page |
|--|------|
| 1. INTRODUCTION..... | 1 |
| 2. WHAT IS MEANT BY GOOD GOVERNANCE? | 1 |
| 3. APPOINTMENT OF REPRESENTATIVES | 1 |
| 4. CODE OF CONDUCT FOR MEMBERS/OFFICERS..... | 1 |
| 5. INTENDED GOVERNANCE FRAMEWORK | 2 |
| 6. THE PROPOSED STRUCTURE | 3 |

CAPITAL LETTERS LIMITED – OFFICERS' MANDATE AND GOVERNANCE NOTE

1. INTRODUCTION

- 1.1 This mandate/governance note is intended to assist in relation to the governance arrangements the Council will put in place to monitor and control its interest in Capital Letters Limited (“the Company”) The note is particularly drafted as a guidance and mandate for officers of the Council in fulfilling their roles in the Company as representatives of the Council.

2. WHAT IS MEANT BY GOOD GOVERNANCE?

- 2.1 Governance means having in place the right structures and processes to ensure that the best decisions are made, i.e. that they are informed and transparent.

- 2.2 In the context of the Company this would include:

2.2.1 having regard to the need to ensure that there is good use of any public funds and resources being paid to or provided to the Company by the Council;

2.2.2 having an understanding of the objectives of the Company and the responsibilities of the Council as a Member of the Company and its Representative on the Board of the Company;

2.2.3 ensuring that no conflicts of interest arise; and

2.2.4 ensuring that there is suitable oversight and accountability over the activities of the Company and the Representative on the Borough’s Representative Body

2.2.5 ensuring that there is suitable oversight and accountability over the selection and activities of the Director nominated to represent the South-East London Housing Sub-Region on the Board of the Company .

- 2.3 This all needs clearly defined functions and roles so that there is effective performance, both in terms of the governance and the activities of the Company.

3. APPOINTMENT OF COUNCIL’S REPRESENTATIVE ON THE BOROUGH’S REPRESENTATIVE BODY

- 3.1 The matters reserved for this tier of Governance are those required of all members of companies such as the appointment of auditors, receiving the Company’s accounts, amending the Articles and appointing Directors. The Borough’s Representative Body must also make decisions on the Reserved Matters under the Members Agreement referred to below.

- 3.2 Council appointment (and removal) of the Council’s Representative on the Board of the Company will be undertaken in accordance with the Constitution of the Council and any appropriate delegations as well as the Member’s Agreement.

4. APPOINTMENT OF COUNCIL’S REPRESENTATIVE ON THE BOARD OF THE COMPANY

- 4.1 The Board of Directors is not a representative body. The responsibility of the Directors is to act in the best interests of the Company, to pursue a fiduciary duty in ensuring at all times the Company is trading responsibly in pursuit of its objectives and in compliance with the policies and direction set down by the Borough’s Representative Body.

- 4.2 One Director on the Board of the Company will be drawn from the South-East London Housing Sub-Region which comprises Lewisham, Greenwich, Southwark, Bexley and Bromley. The Council will consult with participating boroughs within the sub-region to appoint a Director who will be recommended to the Borough Representative Body for formal appointment. Directors will be appointed for periods of 3 years after which they will be re-elected or replaced.

5. CODE OF CONDUCT FOR MEMBERS/OFFICERS

- 5.1 The Council's Guidance Code for Members on Outside Bodies (Appendix 5 of the Council's Constitution) needs to be considered in the context of governance. As a summary of the resulting practical points:
- 5.1.1 the role of Representative may give rise to occasional uncertainty and perhaps to conflicts of interest. The Representative must report to the Council on their involvement with the Company by reporting to the Executive Director for Customer Services at least monthly and the Executive Director for Customer Services will report to the Mayor & Cabinet and Housing Select Committee as required;
 - 5.1.2 if the Company comes into conflict with the Council, it is likely that the Representative's prime duty would be to the Company in the conduct of the Company's affairs. However, the Representative is also given certain specific dispensations in the Code to participate in the Council decision-making affecting the Company;
 - 5.1.3 if there is a major dispute between the Company and the Council, the Representative may be placed in an untenable situation. Before taking precipitate action, the Representative is advised to seek the advice of the Chief Executive or the Head of Law; and
 - 5.1.4 in the end, the Representative must act in accordance with the interests of the Company. A mandate from the Council to vote one way or the other would put the Representative in breach of duty to the Company. It is permissible to take account of the Council's wishes but not to vote simply in accordance with them. The overriding duty in considering an item before the Company is to vote in accordance with the interests of the Company.

6. INTENDED GOVERNANCE FRAMEWORK

- 6.1 The Council will retain control and supervision over the strategic direction, activities and finance of the Company and decisions concerning investment in the Company through:-
- 6.1.1 the Member's Agreement between all Members and Capital Letters Limited; and
 - 6.1.2 the Service Level Agreement between the Council and Capital Letters Limited
- 6.2 The Company as a commercial enterprise needs to have freedom to make operational decisions within the framework set by its governing documents and the approved Business Plan.
- 6.3 The Representative should be provided with a properly resourced and suitable induction and should regularly refresh and update skills.
- 6.4 The Council intends to set up the reporting structure shown in section 6 to monitor the JV's performance and give the Council's input into it. The Executive Director for Customer Services will be responsible for the Company and for monitoring the Representative;
- 6.5 The Annual Business Plan agreed between Members and the Company will form the basis of how the Company will conduct its business. Any decision-making relating to the Company required to be taken by the Council will be delegated to the Executive Director for Customer Services. See paragraph 6 below for further details. The Executive Director Customer Services will refer any matter in question to Mayor & Council should they consider this appropriate.
- 6.6 If the Representative is concerned that the wishes of the Council do not coincide with their views as to what is in the best interests of the Company, he/she should seek the advice of the Chief Executive or the Head of Law as noted in paragraph 4.1.3 above.
- 6.7 The appointment of the Director to sit on the Board of the Company is a sub-regional appointment and the Director will represent the interests of all the participating boroughs within the sub-region

on the Board. Arrangements will need to be put in place within the sub-region to agree a reporting structure for the Director back to participating boroughs.

7. THE PROPOSED STRUCTURE

Approvals and Reporting

The Executive Director for Resources & Regeneration, in consultation with the Executive Director for Customer Services, will approve the Annual Business Plan for the Company. This will set out the key elements and parameters of how the Company is to operate during that year.

Decisions to be made by the Council as a Member of the Company will be made in accordance with the table below by the Representative following consultation with the Executive Director for Customer Services. In the event of any disagreement between the Executive Director for Customer Services and the Representative, the Executive Director for Customer Services will refer the matter to Mayor and Cabinet.

Decisions in relation to the Service Level Agreement between the Council and Capital Letters Limited will be made in accordance with authority delegated by Mayor and Cabinet or otherwise in accordance with the Council's Contract Procedure Rules.

A Project Board will be established to oversee the delivery of temporary accommodation supply. This will be attended by the Head of Housing & Refugee Services (LBL), Private Sector Housing Agency Manager (LBL), Property & Business Accounts Service Manager (LBL) and the Housing Needs and Refugee Services Manager (LBL).

The Council Representative on the Borough's Representative Body will report to the Project Board and the Executive Director for Customer Services and Mayor and Cabinet as appropriate.

The Executive Director for Customer Services will liaise with the Executive Director for Resources & Regeneration and report on the Company to Mayor and Cabinet and Housing Select Committee as appropriate.

The table below demonstrates how decisions in relation to the Company will be made:

| <u>Matter</u> | <u>Nature</u> | <u>Decision Making Body</u> | <u>Who makes the decision</u> |
|---|---------------|-------------------------------|---|
| All Reserved Matters under the Member's Agreement | Strategic | Borough's Representative Body | Representative who will refer back to the Executive Director for Customer Services prior to voting at Board Level (subject expressly to the provisions of paragraphs 5.1.3, 5.1.4 and 6.6). |
| | | | |
| Operational matters | Operational | Board | The Director is authorised to make these decisions at Board Level without reference back to the Council |

Reserved Matters under the Member's Agreement

Matters that require seventy-five percent (75%) approval by the "A" Members at a duly convened general meeting or in writing:

| | |
|----|--|
| 1 | Permitting the admission of any additional Members of the Company. |
| 2 | Adopting or amending the Annual Business Plan in respect of each Financial Year. |
| 3 | Forming any Subsidiary or acquiring membership or shares in any other company or participating in any partnership or joint venture (incorporated or not). |
| 4 | Amalgamating or merging with any other company or business undertaking. |
| 5 | Entering into any arrangement, contract or transaction with either a capital or revenue value over £500,000 which is not included in the current approved Business Plan. |
| 6 | Agreeing the appointment and the appointment terms (including any remuneration terms) of all Directors of the Company Directors. |
| | |
| 7 | Appointing or removing the chair of the Company. |
| 8 | Making any petition or resolution to wind up the Company or any Subsidiary. |
| 9 | Making any amendment to the Articles or any Subsidiary articles of association, including (without limitation) any rights of the Members. |
| 10 | Giving any guarantee to secure the liabilities of any person. |
| 11 | Creating any Encumbrance over the whole or any part of the Company or assets of any Subsidiary company. |
| 12 | Giving or taking any loans, borrowing or credit (other than Normal Trade Credit in the ordinary course of business) save as specifically provided for in the Annual Business Plan. |
| 13 | Any acquisitions, assimilations or asset transfers by or to the Company other than those approved in the Annual Business Plan. |
| 14 | The approval of any redundancy of any employees or the approval of any redundancy policy under which the Board will be authorised to make employees of the Company redundant. |

| | |
|----|--|
| 15 | Establishing any pension scheme in respect of Company employees or the alteration of any pension scheme or arrangements operated by the Company. |
| 16 | Any decisions relating to the strategic objectives of the Company (to the extent that these are not in any case reflected by the Company's Annual Business Plan). |
| 17 | Creating or granting any encumbrance over the whole or any part of the Company or its business, undertaking or assets other than liens arising in the normal course of business. |