



Executive
20 August 2012

**Report from the Director of
Regeneration and Major Projects**

Wards affected:
ALL

**Brent Meanwhile Partnership including the Meanwhile
Foundation**

1. Summary

- 1.1 The council is taking forward temporary use and meanwhile projects across the borough to assist with delivering regenerative outcomes. To ensure the appropriate governance of existing and future projects, it is proposed that a governance vehicle is established to ensure their success in the short, medium and long terms. The governance vehicle is proposed to be known as the “Brent Meanwhile Partnership” and will consist of a relationship between the council and a newly formed national charity known as the “Meanwhile Foundation”.

2. Recommendations

- 2.1 That the Executive authorise the Director for Regeneration and Major Projects to formally establish the Meanwhile Foundation, a new national charitable organisation in partnership with Locality and other founding partners.
- 2.2 That the Executive authorise the Director of Regeneration and Major Projects to enter into a Framework agreement on behalf of the Council with the Meanwhile Foundation.

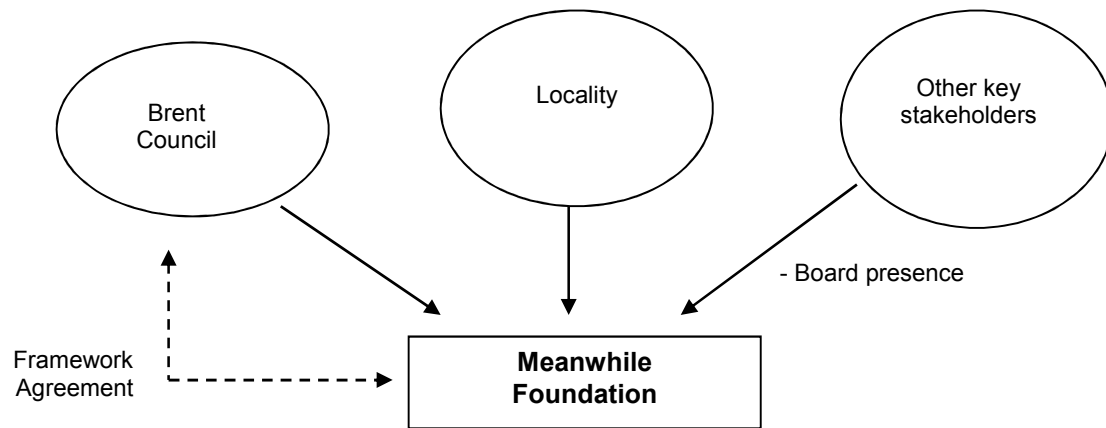
3. Detail

- 3.1 The term “meanwhile” is used to describe the use of vacant premises or land while it is not being used – it is the pause in the development process

between the old and the new. This pause can be a few months or a number of years. The use of vacant premises has become an issue high on political agendas as people see the impact of the recession at street level. Vacancy often suggests an area is in decline, and vacancy often leads to further vacancy.

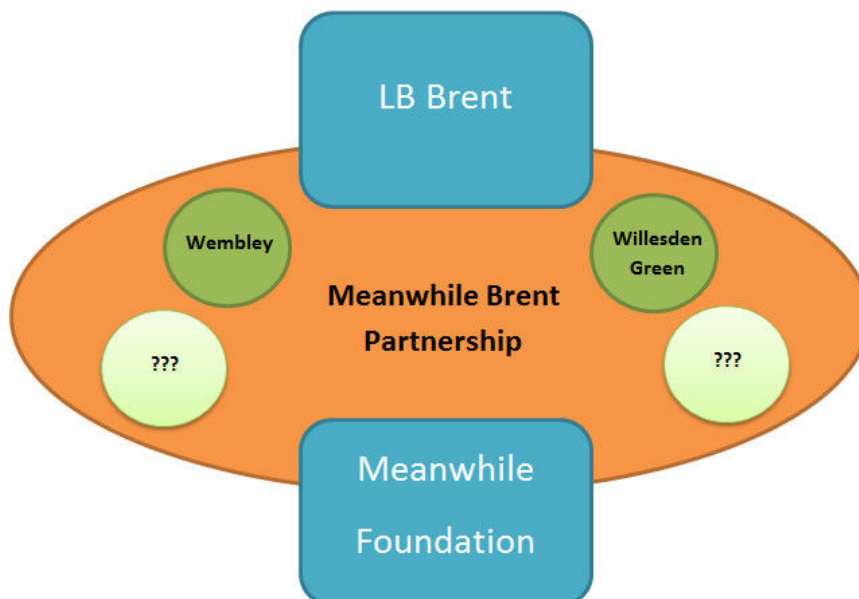
- 3.2 Using vacant premises can have cumulative beneficial impacts on high streets within regeneration areas: the reduction in vacancy can lead to further business investment in an area that appears lively and animated; the spaces can be used for business start ups or community based projects; and they can reduce the incidence of vandalism.
- 3.3 Empty property is now readily available. Landlords are becoming wise to the benefits of letting their premises on a 'meanwhile tenancy' as this relieves them of empty premises business rates liabilities and security costs. As demonstrated in Willesden Green and Wembley, these premises can be secured on favourable terms.
- 3.4 In the last two years, the council has embarked on a series of successful meanwhile projects to assist with delivering regeneration within South Kilburn, Wembley and Willesden Green. The South Kilburn Studios project transformed a derelict portacabin site in the estate and, now within its second year, is providing workspace and valuable training opportunities to local people. In the Wembley Triangle section of the High Road and Wembley Hill Road, a long term vacant shop unit is being brought into use to provide people with an opportunity to explore how they want to interact with Wembley and use the high number of empty spaces to develop ideas for business and community ideas and try them in a low cost and low risk arena.
- 3.5 In Wembley there are also swathes of vacant land that is not due for development for several years. This could be used to help deliver the council's regenerative objectives in the area. In South Kilburn, the council has already delivered South Kilburn Studios in partnership with the South Kilburn Neighbourhood Trust and it is likely that further opportunities for projects will be presented as the regeneration programme rolls forward. In Willesden Green, the council has delivered an Outer London Fund project on the high street taking on vacant units, providing design advice to existing traders, using space in the Willesden Green Library Centre and forming a local town team of interested stakeholders.
- 3.6 Lessons learned from these projects include:
 - there is significant inherent value in property that can lever regenerative benefits by extracting social benefits from physical assets;
 - business rates liabilities can render meanwhile projects unviable;
 - procuring a team that can deliver the quality of outcomes can be difficult when constrained by the existing procurement guidelines and financial regulations required by the council;
 - projects that intend to use privately owned commercial premises can benefit from specialist meanwhile property expertise to secure tenancies;

- imported and curated project start ups can miss opportunities to develop and foster grassroots interest to the particular local neighbourhood; and
 - projects without a sustainable business model can require an on-going subsidy, albeit these can be small sums that may be justified by the quality of outcomes from projects.
- 3.7 In consideration of the lessons learned, it has become apparent that existing and future projects could substantially benefit from a form of governance vehicle that can be “asset controlling”, “asset using” and “enabling” to strengthen the council’s ability to set up and maintain effective meanwhile projects, and in particular:
- help to relieve the council of tenancy risks that can arise from such projects;
 - allow projects to benefit from business rates relief to enable projects to be financially viable;
 - ensure the quality of outcomes for projects by streamlining procurement process and allowing the forward funding of projects; and
 - secure the sustainability and proper governance of successful projects.
- 3.8 Officers have been working with consultants Locality (formerly known as the Development Trusts Association) and Meanwhile Space Community Interest Company to develop options for a governance model. The council has investigated options for an organisation with charitable status to act as a vehicle for temporary use projects, including at the local neighbourhood, local authority area and nationwide levels. The options have been considered on the basis of the desire or ability to carry risk and make decisions and then deliver effective engagement on the ground.
- 3.9 The preferred model for this is the “Brent Meanwhile Partnership”, which will consist of a relationship between the council and a newly formed “Meanwhile Foundation” – a nationwide charitable trust of which Brent Council will be a founder member.
- 3.10 The Brent Meanwhile Partnership will not itself have an incorporated status. There would however be a Framework Agreement between the Council, the Meanwhile Foundation and any other local stakeholders which sets out how the Partnership will work, which could have contractual status or could be a memorandum of understanding. The Framework Agreement will be a contract between the Foundation and Brent Council, setting out the remit of the Brent Meanwhile Partnership and ensuring that the Council's consent is required to certain changes or key decisions.
- 3.11 The relationship is illustrated below.



- 3.12 This type of model is common among regeneration partnerships, as it enables participation whilst limiting liability, and also allows for the involvement of a range of interested parties, such as the local authority and other public sector organisations. The framework agreement will be a contract between the Foundation and the Council that will set some parameters for the operation of the Foundation and will ensure that there is an appropriate degree of protection for the Council.
- 3.13 It will provide that certain decisions can only be taken with the consent of the Council. These will include as a minimum:
- i. changing the constitution of the Foundation in respect of the Council's right to appoint a Director, or the size of the Board;
 - ii. changing the nature of the Foundation; and
 - iii. changing the business of the Foundation.
- 3.14 The Framework Agreement will also include a positive obligation on the Foundation to prepare its strategic plan in conjunction with key partners, including the Council and other key stakeholders.
- 3.15 The Meanwhile Foundation will be a company limited by guarantee and a registered charity. It will have a formal constitution (Articles of Association), a board of 10 directors (trustees) who will also be members of the limited company. Brent Council and Locality will each appoint one of these as of right with the likely Brent representation being the Director of Regeneration and Major Projects. The GLA and the Department of Communities and Local Government are in discussions about representation on the board. These four organisations will each make a financial contribution to the Foundation for the first 2 years (see paragraph 4.2 below). A further 6 trustees will be co-opted and will be chosen from the field of charity and property law, and high profile urban regeneration and property practitioners.
- 3.16 The Council will not, corporately, be a member of the charity, but will have a clear relationship with it. The Articles of Association are contained within a background paper to this report.

- 3.17 The governance vehicle model has three drivers: *strategic decision-making; instrumental risk-taking; engagement and local momentum*. Each of these is covered at a different geographical scale in the proposed interconnected solution.
- 3.18 The Brent Meanwhile Partnership will be jointly convened by Brent Council and the proposed new Meanwhile Foundation. The Foundation is to be a 'plug-in instrument' to enable ongoing lease-holding. It will be a new national charity with Brent as a co-founder and exemplar. As a co-founder and in recognition of the importance of Brent to the Foundation (and vice versa) it is anticipated that the Annual General Meeting of the Foundation will be held in Brent.
- 3.19 Other public bodies, including local authorities will be able to establish their own Partnerships, and to do this will need to become members of the Foundation. In this way, the Foundation will grow in membership and its ability to spread risk. For example, hypothetically speaking Haringey Council could establish its own Haringey Meanwhile Partnership by becoming contributing members of the Foundation.
- 3.20 This cost-effective approach offers increased viability and sustainability, providing maximum impact for individual local partners at minimal cost and minimising ongoing liabilities, while offering local stakeholders full governance of the decisions about their area. The other elements in the partnership are town teams at neighbourhood level – represented on the local Meanwhile Partnership and able to access the support of the Foundation.
- 3.21 Within the partnership at the neighbourhood level local projects such as Willesden Windows and Wembley Coming Soon Club and other forthcoming interventions will sit and benefit from the charitable status of the Foundation.



- 3.22 The proposed model allows the council to continue to make strategic decisions regarding regeneration activities. The risk of carrying tenancies is taken away from the council and vested with the Foundation. The quality and relevance of activities to be delivered at a neighbourhood level, but benefiting from the strategic decision making of the council. As the Foundation will carry tenancies on premises, it will benefit from mandatory business rates relief. The table below in paragraph 3.25 describes how activity can be taken at the most appropriate level within this model.
- 3.23 The Foundation will be a 'plug-in instrument' to enable on-going meanwhile lease-holding enabling the best use of land and buildings for the promotion of regeneration, relief of poverty, advancement of education, and promotion of arts. Generally operating in deprived urban areas and working through local partnerships, it is cost-effective at the nationwide scale because it can be shared. Although the Foundation will be nationwide, the Brent Meanwhile Partnership will not deliver activities or take risks beyond the Brent Local Authority level. The nationwide status also ensures that Partnership can enjoy the benefits of charitable status without taking full responsibility for the Foundation's costs and sustainability.
- 3.24 It will benefit from Charity Commission registration and so enable local partnership areas to make the best use of land and buildings for public benefit including the economic development and the relief of poverty, advancement of education, promotion of arts and culture, and the regeneration of urban areas.
- 3.25 Its activities include the carrying of tenancy risks by taking leases, and potentially providing small grants and technical advice, undertaking research and promoting the use of land and premises for public benefit.

Scale/purpose	NATIONWIDE	LOCAL AUTHORITY-WIDE	NEIGHBOURHOOD
INSTRUMENTAL & RISK-TAKING	Meanwhile Foundation	<i>[risk burden without benefit of wider opportunities to share costs]</i>	<i>[unable to take risk burden without significant investment]</i>
STRATEGIC DECISION-MAKING	<i>[goes against localism]</i>	Meanwhile Brent Partnership	<i>[too distant from strategy and control]</i>
ENGAGEMENT & LOCAL MOMENTUM	<i>[too far from the ground]</i>	<i>[too close to the council]</i>	Town Teams or local projects

- 3.26 The Brent Meanwhile Partnership will operate at local authority and neighbourhood levels. At the local authority level the objectives of the Partnership will be to:
- Make strategic decisions regarding future projects
 - Enable the use of physical assets to deliver social and economic interventions
 - Become a means to direct the expenditure of s106 receipts secured for employment purposes
- 3.27 At the neighbourhood level the objectives of the Partnership will be to:
- Initiate, deliver and sustain meanwhile projects as a means to deliver social, economic and environmental regeneration in priority areas
 - Use the Foundation to carry tenancies for premises
 - Use the Foundation to enable Business Rates relief for projects within premises
 - Streamline procurement procedures that can cause delays and inadvertently diminish the quality of the meanwhile interventions
- 3.28 The first step to set up the Foundation and the Partnership is to establish the Foundation as a company limited by guarantee. This means that each member of the Foundation will guarantee to pay a maximum of £1 in the event that the company becomes insolvent but this would be the extent of their liability in this regard. The Foundation board will then appoint the remainder of the first directors. Having a full board in place, the Foundation can then apply to be registered with the Charity Commission.
- 3.29 Alongside the process of seeking charitable status the Framework Agreement will then be finalised with officers, so that the Foundation can become fully operational. Having completed the governance elements for the Foundation, there will then be a process of formalising the arrangements for the Brent Meanwhile Partnership.

4. Financial Implications

- 4.1 In partnership with Locality, Brent Council will jointly form the Meanwhile Foundation as a new national charity with Brent contributing the essential £5,000 start-up income and Locality providing development time and expertise in kind. The £5000 will be drawn from the New Initiatives budget.
- 4.2 The Brent Meanwhile Partnership will then contribute to the Meanwhile Foundation a sum of £10,000 per annum for 5 years. In the first two years, this sum will be paid from the council's New Initiatives budget, but it is intended that from years 3 – 5, the contribution will be paid by surpluses generated from using assets on a temporary basis (it is these assets that the Foundation will carry the tenancies for). The council should keep under review its involvement beyond five years. The contributions will be used to meet the on-going administrative costs of the Foundation.

- 4.3 Surpluses generated from projects making use of the Foundation will be recycled back into the Foundation to deliver regeneration outputs in line with its constitution. Meanwhile Partnerships will apply for funding and will be discharged in the form of grants through applications determined by the Foundation trust membership.
- 4.4 The Foundation will be a company limited by guarantee as well as a registered charity. Therefore, beyond the contribution of £10,000 for a period of 5 years there will not be further liabilities for the council. Any losses incurred by the Foundation will be contained within the corporate structure of the Foundation and the Council's liability will be strictly limited.
- 4.5 It is not anticipated that the Foundation will be registered for VAT, although this will continue to be reviewed. The Foundation will be responsible for preparing Statutory Accounts and this will not be the responsibility of the council.
- 4.6 In the event of insolvency of the Foundation, the Framework Agreement would require the Foundation to work with the Council and the Charity Commission to decide what would happen with its assets.
- 4.7 Activities carried out by charities are not subject to Corporation Tax requirements, provided any income generated from those activities arises from or is applied to charitable purposes. This is known as being 'exempt' from Corporation Tax deadlines and requirements. Exempt activities of charities include:
- trading profits generated where those profits arise from and are applied to charitable purposes
 - profits from any fundraising events provided that those profits are applied to charitable purposes
- 4.8 HM Revenue & Customs (HMRC) defines charitable purposes as carrying out the primary purpose of the charity and/or directly serving the beneficiaries of the charity. By meeting these requirements, it is not expected that the charity will be liable for Corporation Tax and will not be required to complete a Company Tax Return.
- 4.9 Charities and registered community amateur sports clubs receive 80% mandatory rate relief, for which there is no cost to the Council. The Council has the discretion to grant additional relief up to the 100% maximum, but has to bear 75% of the cost of this from the Discretionary Relief Budget.
- 4.10 Non-profit making organisations do not receive any mandatory relief, but the Council has the discretion to grant rate relief up to the 100% maximum. The Council has to bear 25% of the cost of any relief granted. The Council, where it has decided to grant relief, has followed a general guideline of granting 100% of the discretionary element to local charities and 25% of the discretionary element to non-local charities.

- 4.11 As of 1st April 2013, the Non Domestic Discretionary Rates regime will change as a result of the introduction of the Localism Act 2011. Local Authorities will be able to grant business rates discounts entirely as they see fit within the limits of the primary legislation and European rules on state aid. The council will then be liable for 100% of the discretionary and mandatory elements of charitable Non Domestic Discretionary Rates Relief. At this time of writing, little more is known regarding the expected changes to the regime and officers await further information from central government. With this in mind, it is important that the impact of projects upon the council's business rates receipts should be kept in mind when considering whether to proceed with projects. "The Framework Agreement will ensure that the Council will be kept informed as to the Foundation's work, it's financial position, and its strategic development."

5. Legal Implications

- 5.1 The Council will become a founding partner of the Meanwhile Foundation nationwide charity, although other public bodies, including Local Authorities will be invited to join, and in so doing form their own Meanwhile Partnership.
- 5.2 The Meanwhile Foundation will be formally established and registered by the Charity Commission. It will have normal charitable powers including the taking and granting of leases and the giving of grants. It will have a formal governance structure comprising of a board of trustees chosen for appropriate skills and expertise and influence. As a founder member, Brent Council will have a presence on the board of trustees and it is recommended that this is an Elected Member. It will require formal Articles of Association and a draft is contained within a background paper to this report.
- 5.3 In most cases, the Foundation will enter into a tenancy with the landlord of a property - this is known as a 'meanwhile lease'. The purpose of the lease is to provide a legal instrument to minimise administrative and legal costs for both landlords and tenants and to enable temporary occupation to take place as soon as possible, without the need for lengthy legal procedures. The meanwhile lease was drafted by solicitors Denton Wilde Sapte on behalf Department of Communities and Local Government and consulted with the British Property Federation and the Royal Institute of Chartered Surveyors.
- 5.4 The lease is most commonly used for tenants that will occupy the property for up to six months, but a longer lease of up to five years can be agreed, provided that appropriate mutual break clauses are included. A particular characteristic of the lease is that it removes provisions in respect of security of tenure under the Landlord and Tenant Act 1954. For tenants this means that they have no legal right to remain in the property at the end of the term and no legal right to apply to the landlord for a new lease. The tenant might request a new lease from the landlord but the landlord is not obliged to agree to this and it will be a matter for negotiation between the parties. In this respect, the lease protects landlords from

occupants from claiming “squatters’ rights” and remaining in the premises beyond the agreed term.

- 5.5 For longer term projects beyond 5 years, it is likely that premises or land will be secured through the planning process using a section 106 agreement (even with the introduction of the Community Infrastructure Levy, s106 agreements can still be used for such matters). It is anticipated that the tenancy model for this scenario would be that there is a head lease signed between the landlord and the council, and then a meanwhile tenancy between the council and the Foundation. This agreement will be tilted in favour of the council so that it is not exposed to tenancy risks.
- 5.6 Projects that use spaces secured by the Foundation will enter in to Participation Agreements with the Foundation that will set out the parameters of its operation. This will be developed in due course as the Foundation is established, but an example Partnership Agreement developed and used by Meanwhile Space CIC is contained within a background paper to this report.
- 5.7 Under the Local Government Finance Act 1988, charities are only liable to pay 20% of the NNDR that would otherwise be payable where a property is used wholly or mainly for charitable purposes. This award amounts to 80% mandatory relief of the full amount due. For the purposes of the Act, a charity is an organisation or trust established for charitable purposes, whether or not it is registered with the Charity Commission. Under the Local Government Act 2003, registered Community Amateur Sports Clubs also now qualify for 80% mandatory relief.
- 5.8 The Council has discretion to grant relief of up to 100% of the amount otherwise due to charities, Community Amateur Sports Clubs, and non-profit making organisations meeting criteria set out in the legislation. These criteria cover those whose objects are concerned with philanthropy, religion, education, social welfare, science, literature, the fine arts, or recreation. Guidance has been issued in respect of the exercise of this discretion and authorities are advised to have readily understood policies for deciding whether or not to grant relief and for determining the amount of relief.
- 5.9 The Non-Domestic Rating (Discretionary Relief) Regulations 1989 allow Brent to grant the relief for a fixed period. One year’s notice is required of any decision to revoke or vary the amount of relief granted, if in the case of a variation, it would result in the amount of rates increasing. The notice must take effect at the end of the financial year.
- 5.10 The operation of blanket decisions to refuse relief across the board would be susceptible to legal challenge on grounds that the Council would be fettering its discretion. The legal advice to officers and Members is that each case should be considered on its merits.

6. Diversity Implications

- 6.1 The constitution of the Meanwhile Foundation will have a clear equal opportunities statement and applications for membership from other organisations must demonstrate how this will be reflected in their activities.
- 6.2 Specific projects delivered by within the Brent Meanwhile Partnership will be required to adhere to the same equal opportunities statement as the Foundation will be carrying the tenancy.

7. Staffing/Accommodation Implications (if appropriate)

- 7.1 Regeneration and Major Projects staff will be involved in the administrative procedures of establishing the Meanwhile Foundation, although much of the work will be carried out by Locality.
- 7.2 The Director of Regeneration and Major Projects will sit on the board of directors of the Foundation.
- 7.3 Regeneration and Major Projects staff will continue to procure and client temporary use projects on land and premises in the borough.

Contact Officers

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Regeneration and Major Projects
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Andy Donald,
Director of Regeneration and Major Projects

Annexe

1. Proposed Framework Agreement

Background papers

1. Draft Meanwhile Foundation Articles of Association
2. A typical Meanwhile Lease Agreement
3. A typical Meanwhile Participation Agreement

Annexe

DATED

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MEANWHILE FOUNDATION (1)

THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BRENT (2)

FRAMEWORK AGREEMENT

MEANWHILE FOUNDATION

FRAMEWORK AGREEMENT

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THIS AGREEMENT is made the

day of

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BETWEEN

- (1) **MEANWHILE FOUNDATION** (“the Company”) incorporated and registered in England with company number [number] whose registered office [address]

- (2) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BRENT** (“the Council”), whose principal office is at the Town Hall, Forty Lane, Wembley, Middlesex, HA9 9HD

RECITALS

1. The Council has been working with partners including Meanwhile Space CIC, Locality and CLG on the delivery of meanwhile use in the Area of Benefit.

2. The partners in that process have now agreed to work together to establish the Company to take forward meanwhile use on a national basis, including in the Area of Benefit through the Brent Meanwhile Project.

3. As a major strategic partner in the work of the Company, the Council seeks to be actively involved in the key decisions of the Company and to take forward the work of the Company in the Area of Benefit.

4. This agreement sets out the range of decisions of the Company with which the Council is to be involved, and the mechanism for that involvement.

1. Definitions and Interpretations

IN this Agreement (which expression shall be deemed to include any Schedules)

1.1 unless there be something in the subject or context inconsistent therewith the following expressions have the following meanings:-

“Area of Benefit” means the geographical area of the Council

"Articles" means the articles of association of the Company as amended from time to time (and any reference to an Article shall be a reference to that article of the said articles of association)

"associate" means, in relation to any person, a person who is connected with that person (and whether a person is so connected shall be determined in accordance with Section 286 of the Taxation of Chargeable Gains Act 1992)

“Board” means the Board of Directors of the Company

“Business” means the taking forward of meanwhile use across the country, including in the Area of Benefit, for the purpose of the regeneration of areas suffering deprivation, focussing on the reduction of unemployment, promotion of high standards in education, community safety and the reduction of crime, improving health and developing

the physical environment

"Business Plan" means the framework for the business of the Company agreed by the Directors on an annual basis

"Companies Act" means the Companies Act 2006, save where the relevant provisions of the Companies Act 1985 or the Companies Act 1989 still apply, where it shall mean the relevant provisions in question

"Council Director" means the Director appointed by the Council under the Articles

"Director" means a director for the time being of the Company or, as the case may be, of any other company in the Group and unless otherwise stated includes any duly appointed alternate

"group" means, in relation to a company, that company or any company which is a holding company of that company or a subsidiary of that company or of such holding company

"the Group" means the Company and its holding company (if any) and/or its subsidiaries (if any) for the time being

"Member" means a member of the Company and/or of any other company in the Group

"Membership" includes all rights and duties attributable to a person being a Member

"Party" means a party to this Agreement, and 'Parties' shall mean both of them

1.2 Reference to any statute or statutory provision includes a reference:

1.2.1. to any Regulations made under this Agreement; and

1.2.2. to that statute or statutory provision as from time to time amended
extended
or re-enacted

1.3 Words and phrases the definitions of which are contained or referred to in the Companies Act shall be construed as having the meaning thereby attributed to them but excluding any statutory modification of it not in force on the date of this Agreement

1.4 Words importing the singular number shall include the plural and vice versa, words importing the masculine shall include the feminine and neuter and vice versa and words importing persons shall include bodies corporate, unincorporated associations and partnerships

1.5 References to clauses, schedules and recitals are references to clauses, schedules and recitals of this Agreement and references to sub-clauses, paragraphs and sub-paragraphs are (unless otherwise stated) references to sub-clauses of the clause, or paragraphs of the sub-clause (or, as the case may be, schedule) or sub-paragraph in which the reference appears.

1.6 All warranties, representations, indemnities, covenants, agreements and

obligations given or entered into by more than one person are given or entered into severally unless otherwise specified

1.7 The headings to the clauses and paragraphs are inserted for ease of reference only and shall not affect the interpretation or construction of this Agreement

2. **Consideration**

In consideration of the mutual agreements and undertakings set out in the Agreement, the Parties have granted the rights and accepted the obligations herein.

3. **General Obligations**

The Council shall use reasonable endeavours to ensure that the Council Director shall attend each meeting of the Directors and if for 3 consecutive meetings of the Directors properly convened in accordance with the Articles the Council Director shall not so attend then the Council shall appoint some other person to act as the Council Director, if requested to do so by the Company.

3. **Matters Requiring Approval of the Council**

4.1 To the extent that it can lawfully do so the Company undertakes to the Council that the Company (acting by its Board) will not take a decision on any of the matters listed in Clause 4.2 unless the criterion set out in Clause 4.3 is met.

4.2 The matters referred to in Clause 4.1 (above) are:-

4.2.1 approving any proposed amendment to the Articles relating to the Council's right to appoint a Director or to change the composition or size of the Board (such amendment to then be put before the

Members in accordance with company law);

4.2.2 resolving to change the classification or status of the Company whether pursuant to the Companies Acts or otherwise;

4.2.3 changing the nature or scope of the Business or commence any new business not being ancillary or incidental to the Business;

4.2.4 undertaking any activity or doing anything which is likely to prejudice the status of the Company as a registered charity;

4.2.5 approving any proposal which relates to:

4.2.5.1 the winding up of the Company;

4.2.5.2 the insolvency of the Company,

4.2.5.3 the making of any composition, arrangement or assignment for the benefit of its creditors, or

4.2.5.4 any transaction the effect of which is either that the Business is to be operated by another person outside of the Group or more than 50% of the membership of the Company or the Group is transferred or held (as the case may be) by persons who currently hold less than 50% of the membership of the Company.

4.3 The Company may only make a decision on the matters set out in Clause 4.2 where the prior written consent of the Council has been obtained.

4. **Obligations of the Company**

5.1 The Company shall:

5.1.1 use reasonable endeavours to prepare and adopt a Business Plan for each year of operation, in consultation with the Council where that Business Plan relates to the Area of Benefit;

5.1.2 draw up and adopt a set of financial regulations;

- 5.1.3 carry on and conduct its business and affairs in a proper and efficient manner, in accordance with the adopted financial regulations, and with any agreed Business Plan;
- 5.1.4 maintain with a well established and reputable insurer adequate insurance against all risks usually insured against by companies carrying on the same or a similar business;
- 5.1.5 keep books of account and therein make true and complete entries of all its dealings and transactions of and in relation to its business;
- 5.1.6 prepare its accounts on an historical cost basis and adopt such accounting policies as may from time to time be generally accepted for charities in England and Wales.

6 **Joint Obligations**

6.1 Both of the Parties to this Agreement shall:

- 6.1.1 use all reasonable and proper means in their power to further the reputation and to maintain and improve the business of the Company and its subsidiaries (if any) and work in the spirit of partnership with other relevant agencies in relation to the Area of Benefit;
- 6.1.2 use all reasonable and proper means in their power to cooperate towards the preparation and implementation of:
 - 6.1.2.1 the Business Plan; and
 - 6.1.2.2 any other documentation created in the implementation of the Business Plan;
- 6.1.3 act at all times in accordance with the documents referred to in Clause 6.1.2 above;
- 6.1.4 cooperate and work together in good faith in the fulfilment of the Company's objects contained within its Articles.

7 Consents

Where this Agreement provides that any particular transaction or matter requires the consent, approval or agreement of either Party to this Agreement such consent approval or agreement may be given subject to such terms and conditions as that Party may reasonably impose and any breach of such terms and conditions by any person subject to them shall be deemed to be a breach of the terms of this Agreement.

8 The Articles

8.1 If, whilst this Agreement is in force, during the continuance of this Agreement there shall be any conflict between the provisions of this Agreement and the provisions of the Articles or of the articles of association of any company in the Group then during such period the provisions of this Agreement shall prevail.

8.2 Nothing contained in this Agreement shall be deemed to constitute an amendment of the Articles or of the articles of association of any company in the Group or of any previous articles of association of the Company or of any company in the Group.

9. Winding Up and Insolvency

In the event of the winding up or insolvency of the Company, the Company will consult with the Charity Commission and the Council regarding any proposals for the distribution of any remaining assets of the Company.

10. General

Notices

10.1 All notices which are required to be given under this Agreement shall be in writing and shall be sent to the address of the recipient set out in this Agreement or such other address as the recipient may designate by notice given in accordance with the provisions of this sub-clause. Any such notice may be delivered personally or by first class prepaid letter or facsimile transmission and shall be deemed to have been served if by personal delivery when delivered if by first class post 48 hours after posting and if by facsimile transmission when despatched.

Successors Bound

10.2 This Agreement shall be binding on and shall endure for the benefit of the successors and assigns and personal representatives (as the case may be) of each of the Parties.

Assignment

10.3 Neither the Company nor the Council may assign their rights and obligations in whole or in part under this Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed) **PROVIDED THAT** this sub-clause shall not prevent a transfer of Membership pursuant to the Articles.

Good Faith

10.4 Each of the Parties undertakes with the other to do all things reasonably within its power which are necessary or desirable to give effect to the spirit and intent of this Agreement and the Articles.

Further Assurance

10.5 Each of the Parties shall, and shall use their respective reasonable endeavours to, procure that any necessary third parties shall do, execute and perform all such further deeds, documents, assurances, acts and things as the other Part may reasonably require to carry out the provisions of this Agreement and the Articles into full force and effect.

Counterparts

10.6 This Agreement may be executed in any number of counterparts and by the parties to it on separate counterparts each of which when executed and delivered will be an original.

Variation

10.7 No variation of this Agreement shall be valid or effective unless made by one or more instruments in writing signed by both Parties.

Law

10.8 This Agreement shall be governed by and construed in accordance with English law and the Parties irrevocably submit to the exclusive jurisdiction of the English Courts in respect of any dispute or matter arising out of or connected with this Agreement.

No Partnership

10.9 Nothing in this Agreement shall constitute or be deemed to constitute a partnership between the Parties and none of them shall have any authority to bind the others in any way.

Duration

10.10 The terms of this Agreement shall remain in full force and effect for five years from the date of this Agreement.

Termination

10.11 The termination of this Agreement however caused, shall be without prejudice to any obligations or rights of the other Party which shall have accrued prior to such termination of this Agreement which is expressly or by implication provided to come into effect on, or to continue in effect after, such termination or cesser.

Waiver

10.12 No failure to exercise, and no delay in exercising on the part of either Party, any right, power or privilege under this Agreement shall operate as a waiver of it nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise of it or the exercise of any other right power or privilege. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies otherwise provided by law.

Severability

10.13 Notwithstanding that any provision of this Agreement may prove to be illegal or unenforceable the remaining provisions of this Agreement shall continue in full force and effect.

Exercise of Powers

10.14 Where any person is required under this Agreement to exercise his powers in relation to the Company and/or any company in the Group to procure a particular matter or thing such obligation shall be deemed to include an obligation to exercise his powers both as a Member and as a Director (where applicable) of the Company and/or any company in the Group and to procure that any Member or Director nominated, appointed or approved by him (whether alone or jointly with any other person) shall procure such matter or thing.

Costs

10.15 Each of the Parties shall pay their own costs and expenses incurred in relation to the negotiation, preparation and execution of this Agreement.

Third Party Rights

10.16 The terms of this Agreement are not enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person not a Party.

Confidentiality

10.17 The Parties shall at all times keep confidential information acquired in consequence of this Agreement, except for information which they may be entitled or bound to disclose under compulsion of law or where requested by regulatory agencies or to their professional advisers where reasonably necessary for the performance of their professional services.

IN WITNESS whereof the Parties have executed this document as the deed of such parties the day and year first before written

EXECUTED AS A DEED by
the Meanwhile Foundation
and signed by:-

Director

Director/Secretary

EXECUTED AS A DEED by)
the Mayor and Burgesses of the)
London Borough of Brent)
by the affixing of its Common Seal)
in the presence of:)

:-

[authorised signatory]

YOUR ACKNOWLEDGEMENT

I have read and understood the terms of the Participation Agreement and warrant that I am duly authorised to sign this Participation Letter and agree to the terms of the Participation Agreement.

Name: _____

Signed: _____

Date: _____

Address: _____

Phone: _____

Email: _____

PLEASE READ: Insurance Acknowledgement

By signing this you here by confirm that you have the necessary liability insurance cover, to accept full Occupant responsibility/liability during your Project, i.e. removing all liability from The Meanwhile Foundation for the duration of your events and activities including set-up and breakdown?

Signed: _____

Date: _____