

POLICY AND RESOURCES COMMITTEE MEETING

Date: Tuesday 23 July 2019
Time: 6.30 pm
Venue: Town Hall, High Street, Maidstone

Membership:

Councillors Mrs Blackmore, M Burton, Chappell-Tay, Clark, Cox (Chairman), English, Mrs Gooch, Harvey, McKay, Mortimer, Newton, Perry (Vice-Chairman), Purle, Round and Springett

The Chairman will assume that all Members will read the reports before attending the meeting. Officers are asked to assume the same when introducing reports.

AMENDED AGENDA

Page No.

1. Apologies for Absence
2. Notification of Substitute Members
3. Urgent Items
4. Notification of Visiting Members
5. Disclosures by Members and Officers
6. Disclosures of Lobbying
7. To consider whether any items should be taken in private because of the possible disclosure of exempt information.
8. Minutes of the Meeting Held on 26 June 2019
9. Presentation of Petitions (if any)
10. Questions and answer session for members of the public (if any)
11. Committee Work Programme
12. Corporate Planning Timetable
13. Medium Term Financial Strategy 2020/21-2024/25 - Initial Scoping and Assumptions
14. Capital Strategy

Issued on Monday 15 July 2019

Continued Over/:

Alison Broom

Alison Broom, Chief Executive

15. Business Rates Retention (Pilot) – Update
16. Property Asset Review Update
17. Biodiversity and Climate Change Review
18. Planning Training for Policy and Resources Committee Members
19. Outside Body Report 2019/20
20. **Maidstone Property Holdings - Governance** 144 - 272

PART II

To move that the public be excluded for the item set out in Part II of the Agenda because of the likely disclosure of exempt information for the reason specified having applied the Public Interest Test.

Head of Schedule 12 A and Brief Description

- | | |
|---------------------------------|--|
| 21. Additional Land Acquisition | 3 – Information relating to the financial affairs or business affairs of any particular person (including the authority holding that information). |
|---------------------------------|--|

PUBLIC SPEAKING AND ALTERNATIVE FORMATS

If you require this information in an alternative format please contact us, call **01622 602899** or email committee@maidstone.gov.uk.

In order to speak at this meeting, please contact Democratic Services using the contact details above, by 5 p.m. one clear working day before the meeting (i.e. Friday 19 July 2019). If asking a question, you will need to provide the full text in writing. If making a statement, you will need to tell us which agenda item you wish to speak on. Please note that slots will be allocated on a first come, first served basis.

To find out more about the work of the Committee, please visit www.maidstone.gov.uk.

DATED

2019

OPERATIONAL AGREEMENT

between

(1) MAIDSTONE PROPERTY HOLDINGS LIMITED

(2) MAIDSTONE BOROUGH COUNCIL

Anthony Collins Solicitors LLP

134 Edmund Street

Birmingham B3 2ES

Tel: 0121 200 3242

Ref: OJD 47740.0002

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PARTIES

- (1) **Maidstone Property Holdings Limited** (Company Registration Number: 10368924 whose registered office is at Maidstone House, King Street, Maidstone, United Kingdom, ME15 6JQ (the “**Company**”);
- (2) **Maidstone Borough Council** of Maidstone House, King Street, Maidstone, United Kingdom, ME15 6JQ (the “**Council**”);

BACKGROUND

- (A) The Company is a private company limited by shares incorporated in England and Wales under the Companies Act 2006 and at the date of this Agreement is wholly owned by the Council.
- (B) The Council has established the Company under section 1 and section 4, Localism Act 2011 to act as a commercial purpose and trading entity.
- (C) The Company is a controlled company within the meaning of the Local Government and Housing Act 1989 and a regulated company within the meaning of the Local Authorities (Companies) Order 1995.
- (D) The Parties have agreed to execute this Agreement to regulate their respective responsibilities, the governance arrangements and the operation and management of the Company and the relationship between the Company and the Council.
- (E) The Council’s role as shareholder is primarily exercised by the Policy & Resources Committee of the Council with power delegated to the Director of Finance and Business Improvement and references in this agreement to decision making on behalf of the Council shall be taken to refer to the Policy & Resources Committee and/or the Director of Finance and Business Improvement unless otherwise stated, or unless the Council otherwise decides.

AGREED TERMS

1. INTERPRETATION

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

“**Act**”: means the Companies Act 2006;

“Adequate Procedures”:	means adequate procedures, as referred to in section 7(2) of the Bribery Act 2010 and any guidance issued by the Secretary of State under section 9 of the Bribery Act 2010;
“Articles”:	means the articles of Association of the Company as amended or superseded from time to time;
“Board”:	means the board of Directors of the Company as constituted from time to time;
“Borough”	means the administrative area of the Council;
“Business”:	has the meaning given in clause 2.1 and as may be further defined in any adopted Business Plan;
“Business Case”:	means any business case for a particular activity by the Company that has been developed by the Company and adopted by the Board (where in accordance with the Business Plan or any other authority given to the Board by the Council) or by the Council;
“Business Day”:	means any day (other than a Saturday, Sunday or public holiday in the United Kingdom) on which clearing banks in the City of London are generally open for business;
“Business Plan”:	means the document that may be agreed and adopted by the Company in accordance with clause 6;
“Confidential Information”:	has the meaning given in clause 11;
“Director”:	means a director of the Company;
“electronic form”:	has the meaning given in section 1168 of the Act;
“Encumbrance”:	means any mortgage, charge (fixed or floating), pledge, lien, hypothecation, guarantee, trust, right of set-off or other third party right or interest (legal or equitable) including any assignment by way of security, reservation of title or other security interest of any kind, howsoever created or

	arising, or any other agreement or arrangement (including a sale and repurchase agreement) having similar effect;
“Financial Year”:	in relation to the Company, means the period of 12 months commencing on 1 April and ending on 31 March each year;
“Group”:	in relation to a company, means that company, any Subsidiary or Holding Company from time to time of that company and any Subsidiary from time to time of a Holding Company of that company; and each company in a Group is a member of the Group;
“Holding Company and Subsidiary and Wholly-Owned Subsidiary”:	mean a "holding company", "subsidiary" and "wholly-owned subsidiary" as defined in section 1159 of the Act and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c) of the Act, as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee;
“Named Officer”:	the officer or officers of the Council who is/are notified by the Council to the Company from time to time for the purposes set out in this Agreement. As at the date of this Agreement the Named Officer is the Director of Finance and Business Improvement of the Council;
“Party/Parties”:	the Council and/or the Company as appropriate;
“Share(s)”:	means the 100 £1 shares in the Company;
“Shareholders”:	means the holders of Shares in the Company;
“Shareholder Reserved Matters”:	means the Shareholder Reserved Matters listed in Schedule 2;
“Support Services”:	has the meaning set out in Schedule 1;
“Support Services	the agreement(s) made between the Council and

Agreement”: the Company relating to the provision of support services by the Council to the Company,

- 1.2 Clause, schedule and paragraph headings do not affect the interpretation of this Agreement.
- 1.3 A reference to a clause or a schedule is a reference to a clause of, or a schedule to, this Agreement. A reference to a paragraph is to a paragraph of the relevant schedule.
- 1.4 A **person** includes a natural person, a corporate or unincorporated body (whether or not having a separate legal personality).
- 1.5 Unless the context otherwise requires, references to the singular include the plural and vice versa, and to the whole include part and vice versa.
- 1.6 Unless the context otherwise requires, a reference to one gender includes a reference to the other genders.
- 1.7 All warranties, representations, agreements and obligations expressed to be given or entered into by more than one person are given or entered into jointly and severally by the persons concerned.
- 1.8 A reference to a particular statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time taking account of any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts and subordinate legislation for the time being in force made under it provided that, as between the Parties, no such amendment or re-enactment shall apply for the purposes of this Agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any Party.
- 1.9 A reference to **writing** or **written** includes faxes but no other electronic form.
- 1.10 Documents in **agreed form** are documents in the form agreed by the Parties to this Agreement and initialled by them or on their behalf for identification.
- 1.11 A reference in this Agreement to a document is a reference to the document whether in paper or electronic form.
- 1.12 A reference in this Agreement to **other documents referred to in this Agreement** is a reference to the following documents- the Articles and the Support Services Agreement.
- 1.13 Where the words **include(s)**, **including** or **in particular** are used in this Agreement, they are deemed to have the words "without limitation" following them.
- 1.14 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.

- 1.15 Where the context permits, **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.
- 1.16 References to times of day are, unless the context requires otherwise, to London time and references to a day are to a period of 24 hours running from midnight on the previous day.

2. THE BUSINESS OF THE COMPANY

- 2.1 The business of the Company is to undertake activities for commercial purposes and to trade within the Borough and beyond and in particular, but without limitation, to act as a private market residential landlord with the Borough (the “**Business**”). In undertaking the Business the Company will seek to maximise commercial returns to the Shareholder and to set new standards in terms of the quality of private rented stock offered and service delivered to residents.
- 2.2 The Business may be modified to include such further activities as the Council may designate.
- 2.3 The Business shall be carried out by the Company in accordance with any Business Plan adopted and any Business Case adopted under that Business Plan or otherwise approved by the Council.
- 2.4 The Company shall at all times:
- (a) comply with any adopted Business Plan;
 - (b) comply with the provisions of this Agreement and the Articles.

3. DIRECTORS AND MANAGEMENT

- 3.1 The Directors of the Company are appointed and dismissed by the Council.
- 3.2 The Board has responsibility for the supervision and management of the Company and its business. The Board shall ensure that the Company shall not transact any of the business described in the Shareholder Reserved Matters without first referring the matter to the Council for decision.
- 3.3 Where the Directors are employees or officers of the Council they shall not be entitled to any remuneration from the Company in their capacity as Directors and their expenses shall be reimbursed by the Council (and re-charged to the Company by the Council). Where the Directors are elected members of the Council then they shall only be entitled to remuneration and expenses in accordance with the Local Authorities (Companies) Order 1995.
- 3.4 Any Secretary appointed in accordance with Article 21 who is an employee or officer of the Council shall not be entitled to any remuneration from the

Company in their capacity as Secretary and their expenses shall be reimbursed by the Company.

- 3.5 The Company shall procure that Board meetings occur at least quarterly.
- 3.6 For the purposes of the Articles this Agreement is an operational agreement (as that term is defined in the Articles) and replaces any previous operational agreement in force before the date of this Agreement.

4. LAND AND FINANCE FOR THE COMPANY

- 4.1 There is no obligation on the Council to provide any land, capital or other finance to the Company unless the Parties agree otherwise in writing.
- 4.2 If the Council provides land, capital or other finance pursuant to this clause 4 the Parties shall negotiate in good faith on any terms to apply to such capital or other finance.

5. ANTI-CORRUPTION

- 5.1 The Company undertakes to the Council that:
 - (a) it will not in the course of the operation of the Business, engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010;
 - (b) it will maintain in place, anti-corruption procedures in substantially the same form as the Council's anti-corruption procedures which the Parties agree constitute Adequate Procedures; and
 - (c) from time to time, at the request of the Council it will confirm in writing that it has complied with its undertakings under clause 5.1(a) and clause 5.1(b) and will provide any information reasonably requested by the Council in support of such compliance.

6. THE BUSINESS PLAN

- 6.1 The Company must adopt a Business Plan for each Financial Year except for any Financial Year where the Council by ordinary resolution disapplies this requirement.
- 6.2 The Board is responsible for preparing, reviewing and updating any Business Plan.
- 6.3 In accordance with the Shareholder Reserved Matters, the Council must approve the adoption of any Business Plan and any revision or update thereof ahead of adoption by the Board.

- 6.4 The Company shall consult the Named Officer of the Council ahead of presenting a Business Plan or revision or update thereof to the Council for approval under clause 6.3.

7. ACCOUNTING

- 7.1 The Company shall at all times maintain accurate and complete accounting and other financial records including all corporation tax computations and related documents and correspondence with HM Revenue & Customs in accordance with the requirements of all applicable laws and generally accepted accounting principles applicable in the United Kingdom.
- 7.2 The Company shall at all times maintain accurate and complete accounting and other financial records to the standard required by the Council including the accounting standards and financial reporting timescales required by the Council.
- 7.3 The Council and its authorised representatives shall be allowed access at all reasonable times to examine the books and records of the Company and to discuss the Company's affairs with the Directors and any employees (if any) of the Company.
- 7.4 The Company shall supply the Named Officer of the Council with the financial and other information necessary to keep the Council informed about how effectively the Business is performing and in particular shall supply the Council with:
- (a) a copy of any proposed Business Plan for approval in accordance with clause 6 and the Shareholder Reserved Matters;
 - (b) a copy of the audited accounts of the Company prepared in accordance with the laws applicable in and the accounting standards, principles and practices generally accepted in the United Kingdom, within two months of the end of the year to which the audited accounts relate; and
 - (c) quarterly management accounts of the Company to be supplied as soon as reasonably practicable following the end of the months to which they relate and in any event by the final day of the month following the month to which the accounts relate and the accounts shall include a profit and loss account, a balance sheet and a cashflow statement and such other information as the Council may reasonably require.
 - (d) a copy of any report reviewing or monitoring the implementation and operation by the Company of Adequate Procedures such report to be provided within 10 Business Days of it being reported to the Board.
 - (e) copies of any proposed or adopted Business Cases.

- 7.5 The Council may require the Company, and the Company shall as soon as possible comply with such a request, to provide any documents, information and correspondence necessary to enable the Council to comply with filing, elections, returns or any other requirements of HM Revenue & Customs or of any other revenue or tax authority.

8. DIVIDENDS

- 8.1 The Parties agree that the Company shall consult and have regard to the views of the Named Officer of the Council prior to:
- (a) the Board recommending any dividend payment/distribution for approval by the Council; and/or
 - (b) the Board making any interim dividend payments.

9. TERMINATION

- 9.1 This Agreement may be terminated at any time by the Council serving notice to terminate on the Company.
- 9.2 The following provisions of this Agreement remain in full force after termination:
- (a) Clause 1 (Interpretation);
 - (b) this clause 9;
 - (c) Clause 11 (Confidentiality);
 - (d) Clause 13 (Whole Agreement);
 - (e) Clause 16 (Variation and Waiver);
 - (f) Clause 17 (Costs);
 - (g) Clause 21 (Notice);
 - (h) Clause 23 (Language);
 - (i) Clause 24 (Severance);
 - (j) Clause 27 (Governing Law and Jurisdiction); and
 - (k) Clause 28 (Dispute Resolution).
- 9.3 Termination of this Agreement shall not affect any rights or liabilities that the Parties have accrued under it.

10. STATUS OF THE AGREEMENT

- 10.1 If there is at any time any conflict, ambiguity or discrepancy between the provisions of this Agreement and the Articles, then the provisions of this

Agreement shall prevail over the Articles unless the Council directs otherwise. The Parties shall procure that the Articles are amended to accord with the provisions of this Agreement in the event of any conflict.

11. CONFIDENTIALITY

11.1 In this clause Confidential Information means any information which:

- (a) any Party may have or acquire (whether before or after the date of this Agreement) in relation to the customers, suppliers, business, assets or affairs of the Company (including, without limitation, any information provided pursuant to clause 7);
 - (b) any Party or any member of its Group may have or acquire (whether before or after the date of this Agreement) in relation to the customers, suppliers, business, assets or affairs of another Party or any member of the other Party's Group, as a consequence of the negotiations relating to this Agreement or any other agreement or document referred to in this Agreement or the performance of the Agreement or any other agreement or document referred to in this Agreement; or
 - (c) relates to the contents of any adopted Business Plan or Business Case.
- but excludes the information in clause 11.2.

11.2 Information is not Confidential Information if:

- (a) it is or becomes public knowledge other than as a direct or indirect result of the information being disclosed in breach of this Agreement;
- (b) a Party can establish to the reasonable satisfaction of the other Parties that it found out the information from a source not connected with the other Parties or its Group and that the source is not under any obligation of confidence in respect of the information;
- (c) either Party can establish to the reasonable satisfaction of the other Parties that the information was known to the first Party before the date of this Agreement and that it was not under any obligation of confidence in respect of the information; or
- (d) the Parties agree in writing that it is not confidential.

11.3 Each Party shall at all times use all reasonable endeavours to keep confidential (and to ensure that its employees, agents, Subsidiaries and the employees and agents of such Subsidiaries shall keep confidential), any Confidential Information and shall not use or disclose any such Confidential Information except:

- (a) to a Party's professional advisers where such disclosure is for a purpose related to the operation of this Agreement;

- (b) with the written consent of the Party to whom the Confidential Information belongs or relates to or any member of its Group that the information relates to;
- (c) as may be required by law (to include without limitation the Local Authorities (Companies) Order 1995) or by the rules of any recognised stock exchange, or governmental or other regulatory body, when the Party concerned shall, if practicable, supply a copy of the required disclosure to the other before it is disclosed and incorporate any amendments or additions reasonably required by the other Parties and which would not thereby prevent the disclosing Party from complying with its legal obligations;
- (d) to any tax authority to the extent reasonably required for the purposes of the tax affairs of the Party concerned or any member of its Group;
- (e) if the information comes within the public domain (otherwise than as a result of the breach of this clause 11.3)

11.4 Each Party shall inform (and shall use all reasonable endeavours to procure that any Subsidiary informs) any officer, employee or agent or any professional adviser advising it in relation to the matters referred to in this Agreement, or to whom it provides Confidential Information, that such information is confidential and shall require them:

- (a) to keep it confidential; and
- (b) not to disclose it to any third party (other than those persons to whom it has already been disclosed in accordance with the terms of this Agreement).

11.5 Upon termination of this Agreement, any Party may demand from any other Party the return of any documents containing Confidential Information in relation to the first Party by notice in writing whereupon the second Party shall (and shall use all reasonable endeavours to ensure that its Subsidiaries, and its officers and employees and those of its Subsidiaries shall):

- (a) return such documents; and
- (b) destroy any copies of such documents and any other document or other record reproducing, containing or made from or with reference to the Confidential Information,

save, in each case, for any submission to or filings with governmental, tax or regulatory authorities. Such return or destruction shall take place as soon as practicable after the receipt of any such notice.

11.6 The obligations of the Parties in this clause 11 shall continue without limit in time and notwithstanding termination of this Agreement for any cause.

12. INFORMATION, SCRUTINY AND ACCOUNTABILITY

- 12.1 Subject to clause 12.4, the Parties acknowledge that the Council and the Company are each subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 (**Information Legislation**). The Parties shall use reasonable endeavours to assist, within the timescale specified by a Party in receipt of a request for information under the Information Legislation (“the receiving Party”), the receiving Party in responding to any requests for information under that legislation to include the provision of any and all documents that the receiving Party considers reasonably necessary to enable it to respond to the information request.
- 12.2 The Company shall, and shall procure that its employees and agents shall, comply at all times with the Council’s policies and procedures on Freedom of Information.
- 12.3 Notwithstanding clauses 12.1 and 12.2, the Company shall comply at all times with the Information Legislation as that legislation applies directly to the Company.
- 12.4 Where the Company is in receipt of any request for information under the Information Legislation, then it shall as soon as reasonably practicable pass the request to the Council and have regard to the views of the Council before responding to any such request.
- 12.5 The Company shall use reasonable endeavours to assist the Council in complying with any and all transparency obligations including without limitation compliance with the Local Government Transparency Code 2015 and any successor codes, policies or guidance.
- 12.6 The Company shall use reasonable endeavours to assist the Council in responding to any requests for information about the Company and/or the Business submitted by elected members of the Council.
- 12.7 The Company shall, if the Council on reasonable notice so decides, make available officers and/or employees of the Company to attend before and answer questions at any meeting of:
- (a) the [Policy & Resources Committee] of the Council;
 - (b) any other committee or sub-committee of the Council; and/or
 - (c) officers and/or elected members of the Council (other than those in (a) and (b));
- 12.8 The Company shall supply any information to the [Policy & Resources Committee], or any other committee or sub-committee of the Council, or officers and/or elected members of the Council as the Council may reasonably request.

12.9 The Company shall allow one or more representatives of the Council to attend as Observers at meetings of the Board of the Company; or at committees of the Board.

12.10 The Company shall use reasonable endeavours to assist the Council in responding to any inquiry or investigation of/by the Local Government and Social Care Ombudsman (or any successor).

13. LOCAL AUTHORITIES (COMPANIES) ORDER 1995

13.1 The Company shall at all times comply with the Local Authorities (Companies) Order 1995, any successor legislation or statutory instrument and any other laws in force from time to time relation to the operation, management and activities of a local authority owned company.

14. WHOLE AGREEMENT

14.1 This Agreement, and any documents referred to in it, constitute the whole agreement between the Parties and supersede all previous arrangements, understandings and agreements between them, whether oral or written, relating to their subject matter.

14.2 Each Party acknowledges that in entering into this Agreement, and any documents referred to in it, it does not rely on, and shall have no remedy in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement or those documents.

14.3 Nothing in this clause 14 shall limit or exclude any liability for fraud.

15. ASSIGNMENTS

15.1 The Company may not assign, or grant any Encumbrance over or sub-contract, or deal in any way with, any of its rights or obligations under this Agreement or any document referred to in it without the prior written consent of the Council in accordance with Schedule 2.

15.2 Each person that has rights under this Agreement is acting on its own behalf.

16. VARIATION AND WAIVER

16.1 A variation of this Agreement shall be in writing and signed by or on behalf of all Parties.

16.2 A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the person to which the waiver is addressed and the circumstances for which it is given.

- 16.3 A person that waives a right in relation to one person or takes or fails to take any action against that person, does not affect its rights against any other person.
- 16.4 No failure to exercise or delay in exercising any right or remedy provided under this Agreement or by law constitutes a waiver of such right or remedy or shall prevent any future exercise in whole or in part thereof.
- 16.5 No single or partial exercise of any right or remedy under this Agreement shall preclude or restrict the further exercise of any such right or remedy.
- 16.6 Unless specifically provided otherwise, rights and remedies arising under this Agreement are cumulative and do not exclude rights and remedies provided by law.

17. COSTS

Unless otherwise provided or agreed in writing, all costs in connection with the negotiation, preparation, execution and performance of this Agreement, shall be borne by the Party that incurred the costs.

18. NO PARTNERSHIP

The Parties to this Agreement are not in partnership with each other and there is no relationship of principal and agent between them.

19. GOOD FAITH

- 19.1 Each Party shall at all times act in good faith towards the other and shall use all reasonable endeavours to ensure that this Agreement is observed.
- 19.2 Each Party shall do all things necessary and desirable to give effect to the spirit and intention of this Agreement.

20. THIRD PARTY RIGHTS

- 20.1 A person who is not a Party to this Agreement shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999 except where such rights are expressly granted in this Agreement.
- 20.2 The right of the Parties to terminate, rescind or agree any amendment, variation, waiver or settlement under this Agreement is not subject to the consent of any person that is not a Party to the Agreement.

21. NOTICE

21.1 A notice given under this Agreement:

- (a) shall be in writing in the English language (or be accompanied by a properly prepared translation into English);
- (b) shall be sent for the attention of the person, and to the address, or fax number, given in this clause 21 (or such other address, fax number or person as the relevant Party may notify to the other Party); and
- (c) shall be:
 - (i) delivered personally; or
 - (ii) delivered by commercial courier; or
 - (iii) sent by fax; or
 - (iv) sent by pre-paid United Kingdom first-class post or recorded delivery.

21.2 The addresses for service of notice are:

- (a) The Council and the Company – the addresses stated at the beginning of this Agreement.

21.3 If a notice has been properly sent or delivered in accordance with this clause, it will be deemed to have been received as follows:

- (a) if delivered personally, at the time of delivery; or
- (b) if delivered by commercial courier, at the time of signature of the courier's delivery receipt; or
- (c) if sent or supplied by fax, one hour after the notice was sent or supplied; or
- (d) if sent by pre-paid United Kingdom first class post to an address in the United Kingdom, 48 hours after it was posted or 5 Business Days after posting either to an address outside the United Kingdom or from outside the United Kingdom to an address within the United Kingdom, if (in each case) sent by reputable international overnight courier addressed to the intended recipient, provided that delivery in at least 5 Business Days was guaranteed at the time of sending and the sending Party receives a confirmation of delivery from the courier service provider; or
- (e) if deemed receipt under the previous paragraphs of this sub-clause is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of receipt), when business next starts in the place of deemed receipt and all references to time are to local time in the place of deemed receipt.

- 21.4 To prove delivery, it is sufficient to prove that notice was transmitted by fax to the fax number of the Party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

22. INTEREST ON LATE PAYMENT

- 22.1 Where a sum is required to be paid under this Agreement but is not paid before or on the date the Parties agreed, the person due to pay the sum shall also pay an amount equal to interest on that sum at the rate set out in clause 22.2 for the period beginning with the date on which the payment was due and ending with the date the sum is paid (and the period shall continue after as well as before judgment).
- 22.2 The rate of interest shall be 2% per annum above the base lending rate from time to time of the Bank of England. Interest shall accrue on a daily basis and be compounded quarterly.

23. LANGUAGE

If this Agreement is translated into any language other than English, the English language text shall prevail.

24. SEVERANCE

- 24.1 If any provision of this Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 24.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted or modified, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the Parties.

25. FURTHER ASSURANCE

Each Party shall promptly execute and deliver all such documents, and do all such things, as the other Party may from time to time reasonably require for the purpose of giving full effect to the provisions of this Agreement.

26. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which is an original and which together have the same effect as if each Party had signed the same document.

27. GOVERNING LAW AND JURISDICTION

- 27.1 This Agreement and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England.
- 27.2 The Parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

28. DISPUTE RESOLUTION

- 28.1 In the event that any dispute arises between the Council and the Company then in the first instance the dispute shall be referred for resolution to the Named Officer of the Council and the Chair of the Board.
- 28.2 If any dispute cannot be resolved by the Named Officer and the Chair of the Board within 20 Business Days then the Parties agree to enter into mediation in good faith to settle such dispute and will do so in accordance with the Centre for Effective Dispute Resolution (**CEDR**) Model Mediation Procedure. Unless otherwise agreed between the Parties within 10 Business Days of notice of the dispute, the mediator will be nominated by CEDR. To initiate the mediation a Party must give notice in writing (**ADR Notice**) to the other Party to the dispute, referring the dispute to mediation. A copy of the referral should be sent to CEDR.
- 28.3 If there is any point on the logistical arrangements of the mediation, other than nomination of the mediator, upon which the Parties cannot agree within 10 Business Days from the date of the ADR Notice, where appropriate, in conjunction with the mediator, CEDR will be requested to decide that point for the Parties having consulted them.
- 28.4 Unless otherwise agreed, the mediation will start not later than 20 Business Days after the date of the ADR Notice. The commencement of a mediation will not prevent the Parties commencing or continuing court proceedings.
- 28.5 Where the Parties are unable to resolve a dispute having followed the procedure at clauses 28.1 to 28.4 then the Council may at any time serve a notice in writing on the Company directing the Company and the Board to take and/or refrain from taking actions specified in the notice – such notice to be lawful and consistent with the Act, any applicable legislation and/or the fiduciary duties of the Directors and the Board shall be permitted a reasonable period of time to seek independent legal advice if they reasonably believe that they may or will be in breach thereof.

28.6 The Company must comply with any notice served pursuant to clause 28.5 within the timescales specified in the notice, provided always that where the relevant Board considers that compliance with any such notice may, in the view of the Board, place the Directors in breach of their fiduciary duties to the Company then the Board shall seek shareholder approval before implementing the requirements of the notice.

29. INTERNAL COUNCIL DECISION MAKING

29.1 The Company acknowledges that the Council in its capacity as the Shareholder will make decisions through the Policy & Resources Committee and the Director of Finance and Business Improvement acting under delegated authority and that the Policy & Resources Committee may report on its activities (and those of the Director of Finance and Business Improvement) and the performance of the Company to the Council (including meetings of the Full Council and other Council committees and sub-committees). References therefore in this agreement to the Council refer to the Policy & Resources Committee and/or the Director of Finance and Business Improvement unless the Council decides otherwise and notifies the Company in writing.

29.2 The Company shall ensure that:

- (a) Copies of Board minutes are made available to the Council following each Board meeting; and
- (b) Not less than twice in every Financial Year, the Board produces a report on the performance and activities of the Company and provides the same to the Council.

29.3 Notwithstanding, clause 12.7 the Company shall make available the Chair of the Board (or a substitute Director) to attend meetings of the Council unless the Council confirms in writing that attendance is not required.

29.4 The Company shall consult the Council prior to adopting any policy or procedure for the operation and management of the Company.

29.5 The Council may require that the Company adopts certain policies or procedures in the Company's operation from time to time.

29.6 Where the Board considers that compliance with any requirement of the Council under this Agreement would place the Directors in breach or at risk of breach of the Act, any applicable legislation and/or their duties to the Company then the Board shall seek shareholder approval of the actions required and the Board shall be permitted a reasonable period of time to seek independent legal advice if they reasonably believe that they may or will be in breach thereof.

This Agreement has been executed and delivered as a deed on the date stated at the beginning of it.

Schedule 1 Support Services

The Council will provide all support services to the Company unless the services provided by the Council does not meet the needs of the Company.

The Council and the Company will enter into a separate services level agreement.

Schedule 2 Shareholder Reserved Matters

Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated by the Board for Approval by individual Directors or another named employee or officer of the Company
1. Business Plan	<p>Adopting the first and all future Business Plans.</p> <p>Approving any material change to any previously approved Business Plan, which the Board is unable to approve.</p>	<p>Varying the timing, scale or programme of works or projects that are included in the Business Plan where the change in the budgeted revenue is more than £100,000 but less than £500,000 in any one financial year.</p> <p>Non-material departures from the Business Plan</p>	<p>The Board shall be entitled to delegate decisions as detailed in the Business Plan and/or decisions as follows:</p> <p>One director - commitments up to a value of £20,000.</p> <p>Two or more directors – commitments between £20,000 and £100,000</p>
2. Appointment and Removal of Directors	Appointment and removal of all Directors; including the approval of the list of possible Alternate Directors.	Appointment and removal of all Board advisers (to include terms and conditions of relationship).	None.
3. Variations to the Articles of Association	Any variations to the Company's Articles.	None.	None.

Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated by the Board for Approval by individual Directors or another named employee or officer of the Company
4. Executive Director Remuneration	The approval of the terms and conditions of employment of any executive director of the Company (if any).	Non-material alterations to terms and conditions Performance related pay awards	None.
5. Employee Recruitment and Remuneration	Approval of a pay framework and job evaluation scheme for the Company (if any).	Recruitment of employees and/or agreeing the remuneration of employees where the total remuneration for that position is greater than £75K and is within the approved pay framework.	Recruitment of employees and/or agreeing the remuneration of employees where the total remuneration for that position is no more than £75K and is within the approved pay framework.
6. Shares	The acquisition of any shares or any option over shares in the capital of any company. The creation, allotment, issuing or redemption of any shares or securities, or the granting of any right to require the creation, allotment, issuing or redemption of any such shares or securities.	None.	None.
7. Issuing or Accepting of	Entering into any borrowing, the issuing of any loan capital or	Entering into any borrowing or issuing any loan capital where this is approved in	None.

Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated by the Board for Approval by individual Directors or another named employee or officer of the Company
Borrowing / Loan Capital	entering into any commitments with any person regarding the issue of any loan capital outside of the approved Business Plan. Agreeing, as part of the approved Business Plan, the extent of any permitted borrowing delegated for Board approval, and the terms on which that borrowing can be entered into.	the current Business Plan, to the extent and on the terms set out in the approved Business Plan.	
8. Nature of Company Business	Any material changes to the nature of the Company's business, or commencing any new business not contemplated by the approved Business Plan.	Any changes to the nature of the Company's business, or commencing any new business, but only where this is contemplated by the approved Business Plan.	None.
9. Acquisitions or Disposals	The acquisition of any freehold or leasehold land or building or the entering into of any option in respect of any land or building where this is not contemplated	The acquisition of any land or building or the entering in of any option in respect of any land or building specifically contemplated by the approved Business Plan.	None.

Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated by the Board for Approval by individual Directors or another named employee or officer of the Company
	by the approved Business Plan.		
10. Company / Group Structure	Forming any subsidiary or acquiring an interest in any other company or participating in any partnership or corporate joint venture Amalgamating or merging with any other company or undertaking	None.	None.
11. Stock Exchange Listing	The listing or trading of any shares or debt securities on any stock exchange or market.	None.	None.
12. Appointment of Agents or Subcontractors or Arms' Length Transactions	None	Appointment of contractors or subcontractors where this is in pursuance of the approved Business Plan	Appointment of contractors or subcontractors in pursuance of the approved Business Plan: One director - up to a value of £20,000. Two or more directors – a value between £20,000 and £100,000

Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated by the Board for Approval by individual Directors or another named employee or officer of the Company
13. Part sale of the business	Selling any part of the business, unless specifically contemplated and authorised in the approved Business Plan.	None.	None.
14. Business Name and Location	Changing the Company name, trading name, or registered office, or changing the location of any offices outside of the Company's registered office to a location outside of the Borough.	Changing the location of any offices outside of the Company's registered office to another location within the Borough only.	None.
15. Intellectual Property	The disposal, sale, assignment or granting of any rights in the Company's intellectual property outside of the normal course of business.	The granting of any rights (by licence or otherwise) in or over any intellectual property owned or used by the Company in the normal course of business	Where necessary to effect decisions delegated as above: One director – up to £20,000 Two or more directors – between £20,000 and £100,000
16. Encumbrances	Creating or granting any encumbrance over the whole or any part of the Company or its business, undertaking or assets, or over any shares in the Company other than liens	None	None

Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated by the Board for Approval by individual Directors or another named employee or officer of the Company
	arising in the normal course of business.		
17. Redundancy	None	Dismissing any employee in circumstances in which the Company will incur or agrees to bear redundancy or other costs (including actuarial costs) in excess of £75K.	Dismissing any employee in circumstances in which the Company will incur or agrees to bear redundancy or other costs (including actuarial costs) no greater than £75K.
18. Pension	<p>Establishing any new pension scheme, or granting any pension rights to any director, former director, or any members of any such person's family.</p> <p>Changes to pension arrangements for staff whether in the Local Government Pension Scheme or otherwise.</p> <p>Any other decisions of the Company which will have an effect on liabilities of the Shareholder under the Local Government Pension Scheme</p>	Establishing any new pension scheme, or amending any pension scheme, provided by the Company to employees.	None.

Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated by the Board for Approval by individual Directors or another named employee or officer of the Company
	or any associated guarantee.		
19. Company Winding up	Passing any resolution for the winding up of the Company or presenting any petition for its administration (save for in insolvency).	None.	None.

Maidstone Property Holdings Ltd - Governance

Final Decision-Maker	Council
Lead Head of Service	Patricia Narebor, Head of Legal Partnership
Lead Officer and Report Author	Estelle Culligan, Principal Solicitor, Governance Mark Green, Director of Finance and Business Improvement
Classification	Public
Wards affected	All

Executive Summary

This report advises the Committee of, and seeks approval for, proposed changes to the governance arrangements of Maidstone Property Holdings Limited, the Council's wholly owned property company, to enable it to fulfil the objectives of the Housing Development and Regeneration Plan.

Purpose of Report

Decision

This report makes the following recommendations to this Committee:

1. To agree that this Committee is the appropriate body to exercise the shareholder function in relation to Maidstone Property Holdings Limited.
2. To recommend to Council to delegate to the Company Board, Policy and Resources Committee and the Director of Finance and Business Improvement the various reserved matters set out in the schedule to the Operational Agreement attached at Appendix 1.
3. To recommend to Council the following:
 - a) To approve the updated business plan of Maidstone Property Holdings Limited attached at appendix 2.
 - b) To approve the amended Operational Agreement (including reserved matters) attached at appendix 1.
 - c) To approve the amended Articles of Association at Appendix 3.
 - d) To approve the Service Agreement at Appendix 4.
 - e) To approve the addition to the Terms of Reference of Policy and Resources Committee at Appendix 5 and to authorise the Head of Legal Partnership to make any necessary changes to the Constitution.
 - f) To authorise the Director of Finance and Business Improvement to take all decisions he considers necessary (following consultation with the Head of Legal Partnership) to implement the changes outlined in this report and the documents at a) to d) to include making all shareholder decisions.

Timetable	
Meeting	Date
Policy and Resources Committee	23 July 2019
Council	25 September 2019

Maidstone Property Holdings Ltd - Governance

1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	<p>The four Strategic Plan objectives are:</p> <ul style="list-style-type: none"> • Embracing Growth and Enabling Infrastructure • Safe, Clean and Green • Homes and Communities • A Thriving Place <p>Accepting the recommendations will materially improve the Council's ability to achieve priorities 2, 3 and 4 as the proposals aim to improve and increase the provision of homes for rent in the borough and to provide a quality letting management service.</p>	Principal Solicitor, Corporate Governance
Cross Cutting Objectives	<p>The four cross-cutting objectives are:</p> <ul style="list-style-type: none"> • Heritage is Respected • Health Inequalities are Addressed and Reduced • Deprivation is Reduced and Social Mobility is Improved • Biodiversity and Environmental Sustainability is respected <p>Through the provision of high quality rented accommodation, which is well managed, the recommendations support the achievement of all of the objectives.</p>	Principal Solicitor, Corporate Governance
Risk Management	Refer to section 9 of the report.	Section 151 Officer
Financial	The property acquired by the Council under its housing development and regeneration investment plan is leased to Maidstone Property Holdings Limited on market terms and then	Section 151 Officer & Finance Team

	operated by the company. The income and expenditure associated with the Company is therefore factored into investment appraisals for housing development and regeneration. Regular reports on the company are presented to Policy and Resources Committee as part of the quarterly financial monitoring report.	
Staffing	We will deliver the recommendations with a combination of our current staffing and external support through Sibley Pares, who have been procured to provide property management support.	Head of Housing and Community Services
Legal	It is accepted law though various legislation, including s1 of the Localism Act that councils can form and operate local authority wholly owned trading and commercial companies. Many councils now have at least one commercial company, usually for housing and property.	Principal Solicitor, Corporate Governance
Privacy and Data Protection	As a wholly Council owned Company, the Company is subject to the requirements of FOI and data protection and account has been taken of these requirements in the drafting of the company documents	Policy and Information Team
Equalities	The recommendations do not propose a change in service therefore will not require an equalities impact assessment	Principal Solicitor, Corporate Governance
Public Health	In providing high quality rental housing through the operation of the company, which is well managed, the Council intends to have a positive impact on the health, security and well-being of the population of the borough.	Principal Solicitor, Corporate Governance
Crime and Disorder	There is unlikely to be any impact in this area and, if anything, the impact will be positive.	Principal Solicitor, Corporate Governance
Procurement	As a non-teckal company, the company will have to compete in the open market in future to provide additional services – if any – to the council. The company is a commercial outward facing company and is not intended to be subject to the public procurement rules when it is acting as a purchaser.	Principal Solicitor, Corporate Governance

2. INTRODUCTION AND BACKGROUND

2.1 In September 2016, the Council incorporated a wholly owned company limited by shares called Maidstone Property Holdings Limited (“the

Company"). Its directors are currently William Cornell, Director of Regeneration and Place and John Littlemore, Head of Housing and Communities.

- 2.2 The Company was established to hold property leased to it by the Council and to undertake other property development/management activities. The Company is governed by Articles of Association ("the Articles") which have not been changed since 2016. There is also an Operational Agreement between the Council and the Company which covers how the Company interacts with the Council and lists matters which are reserved to the Council, as shareholder, for decision.
- 2.3 The Council has two properties currently leased to the Company: Granada House, a mixed use building with 20 residential units and Lenworth House, which comprises 14 rental residential units. In the future the Council intends to transfer two further buildings upon completion: Union Street and Brunswick Street, which both comprise private market rental flats and flats for sale. The Company will seek to offer rents set at a level which is affordable for residents. The Council will provide working capital to the Company on commercial terms as set out in section 5 of the Business Plan.
- 2.4 In December 2017, the Company's structure was subject to a report by Internal Audit. The report identified a number of areas for improvement within the Company's governance structure and assurance mechanisms which would need to be addressed as the scope of the Company's activities expanded. This led to a review of the Company's aims, objectives and governance structure, which has been undertaken with the assistance of external solicitors, Anthony Collins Solicitors LLP. The review has resulted in confirmation of the Company's future aims and objectives; an amended draft Business Plan and various other company documents; clarity on the Service Agreement required; clarity on the different roles of the Company and the Council.

3 THE PURPOSE OF THE COMPANY

- 3.1 The Company will be a vehicle through which market rented accommodation will be provided to a high standard and which will be affordable to its target market. It will aim to provide a more balanced housing market in the borough. It will assist with the regeneration of brownfield sites and stimulate local economy growth through creation of additional jobs.
- 3.2 As the Company's aims are commercial, it will not be a "Teckal" Company. A "Teckal" Company is one which is set up by a local authority primarily to provide its own services in a more commercial way, back to the Council itself. Such a company has severe limits on its ability to trade externally. The intention for MPH Ltd is that it will have freedom to operate commercially in the market. In exchange for this freedom, the Council's relationship with the Company must be on arms length commercial terms.
- 3.3 These aims and objectives are set out in the draft Business Plan set out in Appendix 2.

4 THE ROLE OF THE COUNCIL

- 4.1 The Council is the sole shareholder of the Company and the Company is wholly owned by the Council. This means that the Company will be included in the consolidated accounts of the Council, once it achieves a material level of activity. The Council will therefore have financial auditing requirements in respect of the Company and the Company's finances will appear in the Council's accounts and will be subject to external financial auditing.
- 4.2 As shareholder, the Council is responsible for certain functions in respect of the Company. These are called the "reserved matters" and are set out in a schedule at the back of the Operational Agreement at Appendix 1. The schedule sets out those matters which the Council will delegate to the Board and which will be reserved to the Council to decide. It is proposed that the Council delegates the function to make shareholder decisions to the Policy and Resources Committee. This Committee already makes various decisions on behalf of the Council in respect of the Company and receives reports on the Company's business. However, there is nothing formal setting out in the Committee's terms of reference. It is therefore proposed to amend the wording of the terms of reference to include specific reference to its responsibility for shareholder decisions. The proposed addition to the terms of reference is set out in Appendix 5.
- 4.3 Although Policy and Resources Committee will receive regular reports on the Company's business and operations, it is not feasible for the committee to constantly meet to make the decisions required as shareholder. Therefore, it is proposed that the Committee delegates certain shareholder reserved matters to a nominated officer, who, it is suggested, should be the Director of Finance and Business Improvement. The extent of the delegation is shown in the additional wording to the terms of reference of Policy and Resources Committee in Appendix 5

5 THE OPERATION OF THE COMPANY

- 5.1 The 2017 Audit report highlighted a number of areas where it was appropriate to formalise the operation of the Company. The amended arrangements include the following:
- 5.2 There will be four directors. They will be: The Director of Regeneration and Place, The Head of Housing and Community Services, the Head of Commissioning and Business Improvement and a senior member of the legal team (the precise person yet to be confirmed). There is provision for alternate directors. This means that if a director is not available at a board meeting, another director may vote on his/her behalf, as proxy. There is also provision for representatives of the Council to attend and observe Board meetings. It is agreed that this will generally be the Director of Finance and Business Improvement. He will also represent the Council at the Annual General Meeting.
- 5.3 There will be regular Board meetings at least once a quarter. At the first meeting, the directors will formally adopt the new company documents

and the Business Plan. They will also make any declarations of interests as Directors, which will formally be recorded. Democratic Services will provide a company secretarial function. There will be no extra remuneration for the directors, members of democratic services or any officer who undertakes work for the Company but the work will be recharged to the Company through agreement under the Services Agreement. Any travel expenses claimed on behalf of company business will be claimed at the usual rates through the Council's iTrent system and will be recharged to the Company. Reporting lines for the Company to the shareholder will be via regular reports to Policy and Resources Committee. In general, the operation of the Company is set out more clearly in the Operational Agreement and Articles of Association, which are at Appendices 1 and 3.

6 SERVICES AGREEMENT

- 6.1 The Internal Audit report recommended that there be a mechanism to record and re-charge the work that officers do for the Company. It is proposed therefore to adopt a Services Agreement in the form set out at Appendix 4. The Services Agreement contains a schedule detailing the work and the costs to be charged to the Company. For the time being, the following areas are listed: Finance, Legal, Housing Management, Democratic Services and Directors' time.

7 AVAILABLE OPTIONS

- 7.1 The only available alternative option is not to proceed with the Company and wind it up. This is not recommended, as the Company provides market rental properties to the market and will develop this area of work, to the benefit of the borough. In order for the Company to continue to operate properly, it is necessary to revise and update the governance arrangements.

8 PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 8.1 The preferred options are as set out in the recommendations of this report.

9 RISK

- 9.1 Maidstone Property Holdings is subject to a range of business risks arising from its property management activities. These are outside the scope of this report, being addressed generally as part of the Housing Development and Regeneration Investment Plan, and then in relation to individual properties as and when they are acquired.
- 9.2 The risks specifically addressed by this report concern compliance with legislation and the Council's own constitution. The purpose of the measures set out in this report is to minimise the risk of non-compliance and fully establish the Company as a commercial undertaking separate from the Council in its dealings. Any support from the Council to the Company will be on commercial terms. The proposed measures are based on professional advice from Mid Kent Legal Services and external solicitors

Anthony Collins Solicitors LLP, which ensures that the risk is mitigated as much as possible. Going forward, adopting these measures and operating them on a regular basis will likewise minimise the risk of non-compliance.

10 CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 10.1 The report follows on from several meetings between the current Company directors, the Council's external legal advisor and MKLS. The report has not yet been considered by a committee.

11 NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 11.1 If approved, a report will be presented to Council to formally approve the new company documents, amend the terms of reference of Policy and Resources Committee and amend the delegations in the Constitution.

12 REPORT APPENDICES

- 12.1 The following documents are to be published with this report and form part of the report:
- Appendix 1: Draft Operational Agreement and Schedule of Reserved Matters
 - Appendix 2: Draft Business Plan
 - Appendix 3: Draft Articles of Association
 - Appendix 4: Draft Services Agreement
 - Appendix 5: Proposed addition to the terms of reference of Policy and Resources Committee

13 BACKGROUND PAPERS

None

DATED

2019

OPERATIONAL AGREEMENT

between

(1) MAIDSTONE PROPERTY HOLDINGS LIMITED

(2) MAIDSTONE BOROUGH COUNCIL

Anthony Collins Solicitors LLP

134 Edmund Street

Birmingham B3 2ES

Tel: 0121 200 3242

Ref: OJD 47740.0002

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PARTIES

- (1) **Maidstone Property Holdings Limited** (Company Registration Number: 10368924 whose registered office is at Maidstone House, King Street, Maidstone, United Kingdom, ME15 6JQ (the “**Company**”);
- (2) **Maidstone Borough Council** of Maidstone House, King Street, Maidstone, United Kingdom, ME15 6JQ (the “**Council**”);

BACKGROUND

- (A) The Company is a private company limited by shares incorporated in England and Wales under the Companies Act 2006 and at the date of this Agreement is wholly owned by the Council.
- (B) The Council has established the Company under section 1 and section 4, Localism Act 2011 to act as a commercial purpose and trading entity.
- (C) The Company is a controlled company within the meaning of the Local Government and Housing Act 1989 and a regulated company within the meaning of the Local Authorities (Companies) Order 1995.
- (D) The Parties have agreed to execute this Agreement to regulate their respective responsibilities, the governance arrangements and the operation and management of the Company and the relationship between the Company and the Council.
- (E) The Council’s role as shareholder is primarily exercised by the Policy & Resources Committee of the Council with power delegated to the Director of Finance and Business Improvement and references in this agreement to decision making on behalf of the Council shall be taken to refer to the Policy & Resources Committee and/or the Director of Finance and Business Improvement unless otherwise stated, or unless the Council otherwise decides.

AGREED TERMS

1. INTERPRETATION

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

“**Act**”: means the Companies Act 2006;

“Adequate Procedures”:	means adequate procedures, as referred to in section 7(2) of the Bribery Act 2010 and any guidance issued by the Secretary of State under section 9 of the Bribery Act 2010;
“Articles”:	means the articles of Association of the Company as amended or superseded from time to time;
“Board”:	means the board of Directors of the Company as constituted from time to time;
“Borough”	means the administrative area of the Council;
“Business”:	has the meaning given in clause 2.1 and as may be further defined in any adopted Business Plan;
“Business Case”:	means any business case for a particular activity by the Company that has been developed by the Company and adopted by the Board (where in accordance with the Business Plan or any other authority given to the Board by the Council) or by the Council;
“Business Day”:	means any day (other than a Saturday, Sunday or public holiday in the United Kingdom) on which clearing banks in the City of London are generally open for business;
“Business Plan”:	means the document that may be agreed and adopted by the Company in accordance with clause 6;
“Confidential Information”:	has the meaning given in clause 11;
“Director”:	means a director of the Company;
“electronic form”:	has the meaning given in section 1168 of the Act;
“Encumbrance”:	means any mortgage, charge (fixed or floating), pledge, lien, hypothecation, guarantee, trust, right of set-off or other third party right or interest (legal or equitable) including any assignment by way of security, reservation of title or other security interest of any kind, howsoever created or

	arising, or any other agreement or arrangement (including a sale and repurchase agreement) having similar effect;
“Financial Year”:	in relation to the Company, means the period of 12 months commencing on 1 April and ending on 31 March each year;
“Group”:	in relation to a company, means that company, any Subsidiary or Holding Company from time to time of that company and any Subsidiary from time to time of a Holding Company of that company; and each company in a Group is a member of the Group;
“Holding Company and Subsidiary and Wholly-Owned Subsidiary”:	mean a "holding company", "subsidiary" and "wholly-owned subsidiary" as defined in section 1159 of the Act and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c) of the Act, as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee;
“Named Officer”:	the officer or officers of the Council who is/are notified by the Council to the Company from time to time for the purposes set out in this Agreement. As at the date of this Agreement the Named Officer is the Director of Finance and Business Improvement of the Council;
“Party/Parties”:	the Council and/or the Company as appropriate;
“Share(s)”:	means the 100 £1 shares in the Company;
“Shareholders”:	means the holders of Shares in the Company;
“Shareholder Reserved Matters”:	means the Shareholder Reserved Matters listed in Schedule 2;
“Support Services”:	has the meaning set out in Schedule 1;
“Support Services	the agreement(s) made between the Council and

Agreement”: the Company relating to the provision of support services by the Council to the Company,

- 1.2 Clause, schedule and paragraph headings do not affect the interpretation of this Agreement.
- 1.3 A reference to a clause or a schedule is a reference to a clause of, or a schedule to, this Agreement. A reference to a paragraph is to a paragraph of the relevant schedule.
- 1.4 A **person** includes a natural person, a corporate or unincorporated body (whether or not having a separate legal personality).
- 1.5 Unless the context otherwise requires, references to the singular include the plural and vice versa, and to the whole include part and vice versa.
- 1.6 Unless the context otherwise requires, a reference to one gender includes a reference to the other genders.
- 1.7 All warranties, representations, agreements and obligations expressed to be given or entered into by more than one person are given or entered into jointly and severally by the persons concerned.
- 1.8 A reference to a particular statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time taking account of any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts and subordinate legislation for the time being in force made under it provided that, as between the Parties, no such amendment or re-enactment shall apply for the purposes of this Agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any Party.
- 1.9 A reference to **writing** or **written** includes faxes but no other electronic form.
- 1.10 Documents in **agreed form** are documents in the form agreed by the Parties to this Agreement and initialled by them or on their behalf for identification.
- 1.11 A reference in this Agreement to a document is a reference to the document whether in paper or electronic form.
- 1.12 A reference in this Agreement to **other documents referred to in this Agreement** is a reference to the following documents- the Articles and the Support Services Agreement.
- 1.13 Where the words **include(s)**, **including** or **in particular** are used in this Agreement, they are deemed to have the words "without limitation" following them.
- 1.14 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.

- 1.15 Where the context permits, **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.
- 1.16 References to times of day are, unless the context requires otherwise, to London time and references to a day are to a period of 24 hours running from midnight on the previous day.

2. THE BUSINESS OF THE COMPANY

- 2.1 The business of the Company is to undertake activities for commercial purposes and to trade within the Borough and beyond and in particular, but without limitation, to act as a private market residential landlord with the Borough (the “**Business**”). In undertaking the Business the Company will seek to maximise commercial returns to the Shareholder and to set new standards in terms of the quality of private rented stock offered and service delivered to residents.
- 2.2 The Business may be modified to include such further activities as the Council may designate.
- 2.3 The Business shall be carried out by the Company in accordance with any Business Plan adopted and any Business Case adopted under that Business Plan or otherwise approved by the Council.
- 2.4 The Company shall at all times:
- (a) comply with any adopted Business Plan;
 - (b) comply with the provisions of this Agreement and the Articles.

3. DIRECTORS AND MANAGEMENT

- 3.1 The Directors of the Company are appointed and dismissed by the Council.
- 3.2 The Board has responsibility for the supervision and management of the Company and its business. The Board shall ensure that the Company shall not transact any of the business described in the Shareholder Reserved Matters without first referring the matter to the Council for decision.
- 3.3 Where the Directors are employees or officers of the Council they shall not be entitled to any remuneration from the Company in their capacity as Directors and their expenses shall be reimbursed by the Council (and re-charged to the Company by the Council). Where the Directors are elected members of the Council then they shall only be entitled to remuneration and expenses in accordance with the Local Authorities (Companies) Order 1995.
- 3.4 Any Secretary appointed in accordance with Article 21 who is an employee or officer of the Council shall not be entitled to any remuneration from the

Company in their capacity as Secretary and their expenses shall be reimbursed by the Company.

- 3.5 The Company shall procure that Board meetings occur at least quarterly.
- 3.6 For the purposes of the Articles this Agreement is an operational agreement (as that term is defined in the Articles) and replaces any previous operational agreement in force before the date of this Agreement.

4. LAND AND FINANCE FOR THE COMPANY

- 4.1 There is no obligation on the Council to provide any land, capital or other finance to the Company unless the Parties agree otherwise in writing.
- 4.2 If the Council provides land, capital or other finance pursuant to this clause 4 the Parties shall negotiate in good faith on any terms to apply to such capital or other finance.

5. ANTI-CORRUPTION

- 5.1 The Company undertakes to the Council that:
 - (a) it will not in the course of the operation of the Business, engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010;
 - (b) it will maintain in place, anti-corruption procedures in substantially the same form as the Council's anti-corruption procedures which the Parties agree constitute Adequate Procedures; and
 - (c) from time to time, at the request of the Council it will confirm in writing that it has complied with its undertakings under clause 5.1(a) and clause 5.1(b) and will provide any information reasonably requested by the Council in support of such compliance.

6. THE BUSINESS PLAN

- 6.1 The Company must adopt a Business Plan for each Financial Year except for any Financial Year where the Council by ordinary resolution disapplies this requirement.
- 6.2 The Board is responsible for preparing, reviewing and updating any Business Plan.
- 6.3 In accordance with the Shareholder Reserved Matters, the Council must approve the adoption of any Business Plan and any revision or update thereof ahead of adoption by the Board.

- 6.4 The Company shall consult the Named Officer of the Council ahead of presenting a Business Plan or revision or update thereof to the Council for approval under clause 6.3.

7. ACCOUNTING

- 7.1 The Company shall at all times maintain accurate and complete accounting and other financial records including all corporation tax computations and related documents and correspondence with HM Revenue & Customs in accordance with the requirements of all applicable laws and generally accepted accounting principles applicable in the United Kingdom.
- 7.2 The Company shall at all times maintain accurate and complete accounting and other financial records to the standard required by the Council including the accounting standards and financial reporting timescales required by the Council.
- 7.3 The Council and its authorised representatives shall be allowed access at all reasonable times to examine the books and records of the Company and to discuss the Company's affairs with the Directors and any employees (if any) of the Company.
- 7.4 The Company shall supply the Named Officer of the Council with the financial and other information necessary to keep the Council informed about how effectively the Business is performing and in particular shall supply the Council with:
- (a) a copy of any proposed Business Plan for approval in accordance with clause 6 and the Shareholder Reserved Matters;
 - (b) a copy of the audited accounts of the Company prepared in accordance with the laws applicable in and the accounting standards, principles and practices generally accepted in the United Kingdom, within two months of the end of the year to which the audited accounts relate; and
 - (c) quarterly management accounts of the Company to be supplied as soon as reasonably practicable following the end of the months to which they relate and in any event by the final day of the month following the month to which the accounts relate and the accounts shall include a profit and loss account, a balance sheet and a cashflow statement and such other information as the Council may reasonably require.
 - (d) a copy of any report reviewing or monitoring the implementation and operation by the Company of Adequate Procedures such report to be provided within 10 Business Days of it being reported to the Board.
 - (e) copies of any proposed or adopted Business Cases.

- 7.5 The Council may require the Company, and the Company shall as soon as possible comply with such a request, to provide any documents, information and correspondence necessary to enable the Council to comply with filing, elections, returns or any other requirements of HM Revenue & Customs or of any other revenue or tax authority.

8. DIVIDENDS

- 8.1 The Parties agree that the Company shall consult and have regard to the views of the Named Officer of the Council prior to:
- (a) the Board recommending any dividend payment/distribution for approval by the Council; and/or
 - (b) the Board making any interim dividend payments.

9. TERMINATION

- 9.1 This Agreement may be terminated at any time by the Council serving notice to terminate on the Company.
- 9.2 The following provisions of this Agreement remain in full force after termination:
- (a) Clause 1 (Interpretation);
 - (b) this clause 9;
 - (c) Clause 11 (Confidentiality);
 - (d) Clause 13 (Whole Agreement);
 - (e) Clause 16 (Variation and Waiver);
 - (f) Clause 17 (Costs);
 - (g) Clause 21 (Notice);
 - (h) Clause 23 (Language);
 - (i) Clause 24 (Severance);
 - (j) Clause 27 (Governing Law and Jurisdiction); and
 - (k) Clause 28 (Dispute Resolution).
- 9.3 Termination of this Agreement shall not affect any rights or liabilities that the Parties have accrued under it.

10. STATUS OF THE AGREEMENT

- 10.1 If there is at any time any conflict, ambiguity or discrepancy between the provisions of this Agreement and the Articles, then the provisions of this

Agreement shall prevail over the Articles unless the Council directs otherwise. The Parties shall procure that the Articles are amended to accord with the provisions of this Agreement in the event of any conflict.

11. CONFIDENTIALITY

11.1 In this clause Confidential Information means any information which:

- (a) any Party may have or acquire (whether before or after the date of this Agreement) in relation to the customers, suppliers, business, assets or affairs of the Company (including, without limitation, any information provided pursuant to clause 7);
 - (b) any Party or any member of its Group may have or acquire (whether before or after the date of this Agreement) in relation to the customers, suppliers, business, assets or affairs of another Party or any member of the other Party's Group, as a consequence of the negotiations relating to this Agreement or any other agreement or document referred to in this Agreement or the performance of the Agreement or any other agreement or document referred to in this Agreement; or
 - (c) relates to the contents of any adopted Business Plan or Business Case.
- but excludes the information in clause 11.2.

11.2 Information is not Confidential Information if:

- (a) it is or becomes public knowledge other than as a direct or indirect result of the information being disclosed in breach of this Agreement;
- (b) a Party can establish to the reasonable satisfaction of the other Parties that it found out the information from a source not connected with the other Parties or its Group and that the source is not under any obligation of confidence in respect of the information;
- (c) either Party can establish to the reasonable satisfaction of the other Parties that the information was known to the first Party before the date of this Agreement and that it was not under any obligation of confidence in respect of the information; or
- (d) the Parties agree in writing that it is not confidential.

11.3 Each Party shall at all times use all reasonable endeavours to keep confidential (and to ensure that its employees, agents, Subsidiaries and the employees and agents of such Subsidiaries shall keep confidential), any Confidential Information and shall not use or disclose any such Confidential Information except:

- (a) to a Party's professional advisers where such disclosure is for a purpose related to the operation of this Agreement;

- (b) with the written consent of the Party to whom the Confidential Information belongs or relates to or any member of its Group that the information relates to;
- (c) as may be required by law (to include without limitation the Local Authorities (Companies) Order 1995) or by the rules of any recognised stock exchange, or governmental or other regulatory body, when the Party concerned shall, if practicable, supply a copy of the required disclosure to the other before it is disclosed and incorporate any amendments or additions reasonably required by the other Parties and which would not thereby prevent the disclosing Party from complying with its legal obligations;
- (d) to any tax authority to the extent reasonably required for the purposes of the tax affairs of the Party concerned or any member of its Group;
- (e) if the information comes within the public domain (otherwise than as a result of the breach of this clause 11.3)

11.4 Each Party shall inform (and shall use all reasonable endeavours to procure that any Subsidiary informs) any officer, employee or agent or any professional adviser advising it in relation to the matters referred to in this Agreement, or to whom it provides Confidential Information, that such information is confidential and shall require them:

- (a) to keep it confidential; and
- (b) not to disclose it to any third party (other than those persons to whom it has already been disclosed in accordance with the terms of this Agreement).

11.5 Upon termination of this Agreement, any Party may demand from any other Party the return of any documents containing Confidential Information in relation to the first Party by notice in writing whereupon the second Party shall (and shall use all reasonable endeavours to ensure that its Subsidiaries, and its officers and employees and those of its Subsidiaries shall):

- (a) return such documents; and
- (b) destroy any copies of such documents and any other document or other record reproducing, containing or made from or with reference to the Confidential Information,

save, in each case, for any submission to or filings with governmental, tax or regulatory authorities. Such return or destruction shall take place as soon as practicable after the receipt of any such notice.

11.6 The obligations of the Parties in this clause 11 shall continue without limit in time and notwithstanding termination of this Agreement for any cause.

12. INFORMATION, SCRUTINY AND ACCOUNTABILITY

- 12.1 Subject to clause 12.4, the Parties acknowledge that the Council and the Company are each subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 (**Information Legislation**). The Parties shall use reasonable endeavours to assist, within the timescale specified by a Party in receipt of a request for information under the Information Legislation ("the receiving Party"), the receiving Party in responding to any requests for information under that legislation to include the provision of any and all documents that the receiving Party considers reasonably necessary to enable it to respond to the information request.
- 12.2 The Company shall, and shall procure that its employees and agents shall, comply at all times with the Council's policies and procedures on Freedom of Information.
- 12.3 Notwithstanding clauses 12.1 and 12.2, the Company shall comply at all times with the Information Legislation as that legislation applies directly to the Company.
- 12.4 Where the Company is in receipt of any request for information under the Information Legislation, then it shall as soon as reasonably practicable pass the request to the Council and have regard to the views of the Council before responding to any such request.
- 12.5 The Company shall use reasonable endeavours to assist the Council in complying with any and all transparency obligations including without limitation compliance with the Local Government Transparency Code 2015 and any successor codes, policies or guidance.
- 12.6 The Company shall use reasonable endeavours to assist the Council in responding to any requests for information about the Company and/or the Business submitted by elected members of the Council.
- 12.7 The Company shall, if the Council on reasonable notice so decides, make available officers and/or employees of the Company to attend before and answer questions at any meeting of:
- (a) the [Policy & Resources Committee] of the Council;
 - (b) any other committee or sub-committee of the Council; and/or
 - (c) officers and/or elected members of the Council (other than those in (a) and (b));
- 12.8 The Company shall supply any information to the [Policy & Resources Committee], or any other committee or sub-committee of the Council, or officers and/or elected members of the Council as the Council may reasonably request.

12.9 The Company shall allow one or more representatives of the Council to attend as Observers at meetings of the Board of the Company; or at committees of the Board.

12.10 The Company shall use reasonable endeavours to assist the Council in responding to any inquiry or investigation of/by the Local Government and Social Care Ombudsman (or any successor).

13. LOCAL AUTHORITIES (COMPANIES) ORDER 1995

13.1 The Company shall at all times comply with the Local Authorities (Companies) Order 1995, any successor legislation or statutory instrument and any other laws in force from time to time relation to the operation, management and activities of a local authority owned company.

14. WHOLE AGREEMENT

14.1 This Agreement, and any documents referred to in it, constitute the whole agreement between the Parties and supersede all previous arrangements, understandings and agreements between them, whether oral or written, relating to their subject matter.

14.2 Each Party acknowledges that in entering into this Agreement, and any documents referred to in it, it does not rely on, and shall have no remedy in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement or those documents.

14.3 Nothing in this clause 14 shall limit or exclude any liability for fraud.

15. ASSIGNMENTS

15.1 The Company may not assign, or grant any Encumbrance over or sub-contract, or deal in any way with, any of its rights or obligations under this Agreement or any document referred to in it without the prior written consent of the Council in accordance with Schedule 2.

15.2 Each person that has rights under this Agreement is acting on its own behalf.

16. VARIATION AND WAIVER

16.1 A variation of this Agreement shall be in writing and signed by or on behalf of all Parties.

16.2 A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the person to which the waiver is addressed and the circumstances for which it is given.

- 16.3 A person that waives a right in relation to one person or takes or fails to take any action against that person, does not affect its rights against any other person.
- 16.4 No failure to exercise or delay in exercising any right or remedy provided under this Agreement or by law constitutes a waiver of such right or remedy or shall prevent any future exercise in whole or in part thereof.
- 16.5 No single or partial exercise of any right or remedy under this Agreement shall preclude or restrict the further exercise of any such right or remedy.
- 16.6 Unless specifically provided otherwise, rights and remedies arising under this Agreement are cumulative and do not exclude rights and remedies provided by law.

17. COSTS

Unless otherwise provided or agreed in writing, all costs in connection with the negotiation, preparation, execution and performance of this Agreement, shall be borne by the Party that incurred the costs.

18. NO PARTNERSHIP

The Parties to this Agreement are not in partnership with each other and there is no relationship of principal and agent between them.

19. GOOD FAITH

- 19.1 Each Party shall at all times act in good faith towards the other and shall use all reasonable endeavours to ensure that this Agreement is observed.
- 19.2 Each Party shall do all things necessary and desirable to give effect to the spirit and intention of this Agreement.

20. THIRD PARTY RIGHTS

- 20.1 A person who is not a Party to this Agreement shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999 except where such rights are expressly granted in this Agreement.
- 20.2 The right of the Parties to terminate, rescind or agree any amendment, variation, waiver or settlement under this Agreement is not subject to the consent of any person that is not a Party to the Agreement.

21. NOTICE

21.1 A notice given under this Agreement:

- (a) shall be in writing in the English language (or be accompanied by a properly prepared translation into English);
- (b) shall be sent for the attention of the person, and to the address, or fax number, given in this clause 21 (or such other address, fax number or person as the relevant Party may notify to the other Party); and
- (c) shall be:
 - (i) delivered personally; or
 - (ii) delivered by commercial courier; or
 - (iii) sent by fax; or
 - (iv) sent by pre-paid United Kingdom first-class post or recorded delivery.

21.2 The addresses for service of notice are:

- (a) The Council and the Company – the addresses stated at the beginning of this Agreement.

21.3 If a notice has been properly sent or delivered in accordance with this clause, it will be deemed to have been received as follows:

- (a) if delivered personally, at the time of delivery; or
- (b) if delivered by commercial courier, at the time of signature of the courier's delivery receipt; or
- (c) if sent or supplied by fax, one hour after the notice was sent or supplied; or
- (d) if sent by pre-paid United Kingdom first class post to an address in the United Kingdom, 48 hours after it was posted or 5 Business Days after posting either to an address outside the United Kingdom or from outside the United Kingdom to an address within the United Kingdom, if (in each case) sent by reputable international overnight courier addressed to the intended recipient, provided that delivery in at least 5 Business Days was guaranteed at the time of sending and the sending Party receives a confirmation of delivery from the courier service provider; or
- (e) if deemed receipt under the previous paragraphs of this sub-clause is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of receipt), when business next starts in the place of deemed receipt and all references to time are to local time in the place of deemed receipt.

- 21.4 To prove delivery, it is sufficient to prove that notice was transmitted by fax to the fax number of the Party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

22. INTEREST ON LATE PAYMENT

- 22.1 Where a sum is required to be paid under this Agreement but is not paid before or on the date the Parties agreed, the person due to pay the sum shall also pay an amount equal to interest on that sum at the rate set out in clause 22.2 for the period beginning with the date on which the payment was due and ending with the date the sum is paid (and the period shall continue after as well as before judgment).
- 22.2 The rate of interest shall be 2% per annum above the base lending rate from time to time of the Bank of England. Interest shall accrue on a daily basis and be compounded quarterly.

23. LANGUAGE

If this Agreement is translated into any language other than English, the English language text shall prevail.

24. SEVERANCE

- 24.1 If any provision of this Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 24.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted or modified, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the Parties.

25. FURTHER ASSURANCE

Each Party shall promptly execute and deliver all such documents, and do all such things, as the other Party may from time to time reasonably require for the purpose of giving full effect to the provisions of this Agreement.

26. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which is an original and which together have the same effect as if each Party had signed the same document.

27. GOVERNING LAW AND JURISDICTION

- 27.1 This Agreement and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England.
- 27.2 The Parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

28. DISPUTE RESOLUTION

- 28.1 In the event that any dispute arises between the Council and the Company then in the first instance the dispute shall be referred for resolution to the Named Officer of the Council and the Chair of the Board.
- 28.2 If any dispute cannot be resolved by the Named Officer and the Chair of the Board within 20 Business Days then the Parties agree to enter into mediation in good faith to settle such dispute and will do so in accordance with the Centre for Effective Dispute Resolution (**CEDR**) Model Mediation Procedure. Unless otherwise agreed between the Parties within 10 Business Days of notice of the dispute, the mediator will be nominated by CEDR. To initiate the mediation a Party must give notice in writing (**ADR Notice**) to the other Party to the dispute, referring the dispute to mediation. A copy of the referral should be sent to CEDR.
- 28.3 If there is any point on the logistical arrangements of the mediation, other than nomination of the mediator, upon which the Parties cannot agree within 10 Business Days from the date of the ADR Notice, where appropriate, in conjunction with the mediator, CEDR will be requested to decide that point for the Parties having consulted them.
- 28.4 Unless otherwise agreed, the mediation will start not later than 20 Business Days after the date of the ADR Notice. The commencement of a mediation will not prevent the Parties commencing or continuing court proceedings.
- 28.5 Where the Parties are unable to resolve a dispute having followed the procedure at clauses 28.1 to 28.4 then the Council may at any time serve a notice in writing on the Company directing the Company and the Board to take and/or refrain from taking actions specified in the notice – such notice to be lawful and consistent with the Act, any applicable legislation and/or the fiduciary duties of the Directors and the Board shall be permitted a reasonable period of time to seek independent legal advice if they reasonably believe that they may or will be in breach thereof.

28.6 The Company must comply with any notice served pursuant to clause 28.5 within the timescales specified in the notice, provided always that where the relevant Board considers that compliance with any such notice may, in the view of the Board, place the Directors in breach of their fiduciary duties to the Company then the Board shall seek shareholder approval before implementing the requirements of the notice.

29. INTERNAL COUNCIL DECISION MAKING

29.1 The Company acknowledges that the Council in its capacity as the Shareholder will make decisions through the Policy & Resources Committee and the Director of Finance and Business Improvement acting under delegated authority and that the Policy & Resources Committee may report on its activities (and those of the Director of Finance and Business Improvement) and the performance of the Company to the Council (including meetings of the Full Council and other Council committees and sub-committees). References therefore in this agreement to the Council refer to the Policy & Resources Committee and/or the Director of Finance and Business Improvement unless the Council decides otherwise and notifies the Company in writing.

29.2 The Company shall ensure that:

- (a) Copies of Board minutes are made available to the Council following each Board meeting; and
- (b) Not less than twice in every Financial Year, the Board produces a report on the performance and activities of the Company and provides the same to the Council.

29.3 Notwithstanding, clause 12.7 the Company shall make available the Chair of the Board (or a substitute Director) to attend meetings of the Council unless the Council confirms in writing that attendance is not required.

29.4 The Company shall consult the Council prior to adopting any policy or procedure for the operation and management of the Company.

29.5 The Council may require that the Company adopts certain policies or procedures in the Company's operation from time to time.

29.6 Where the Board considers that compliance with any requirement of the Council under this Agreement would place the Directors in breach or at risk of breach of the Act, any applicable legislation and/or their duties to the Company then the Board shall seek shareholder approval of the actions required and the Board shall be permitted a reasonable period of time to seek independent legal advice if they reasonably believe that they may or will be in breach thereof.

This Agreement has been executed and delivered as a deed on the date stated at the beginning of it.

Schedule 1 Support Services

The Council will provide all support services to the Company unless the services provided by the Council does not meet the needs of the Company.

The Council and the Company will enter into a separate services level agreement.

Schedule 2 Shareholder Reserved Matters

Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated by the Board for Approval by individual Directors or another named employee or officer of the Company
1. Business Plan	<p>Adopting the first and all future Business Plans.</p> <p>Approving any material change to any previously approved Business Plan, which the Board is unable to approve.</p>	<p>Varying the timing, scale or programme of works or projects that are included in the Business Plan where the change in the budgeted revenue is more than £100,000 but less than £500,000 in any one financial year.</p> <p>Non-material departures from the Business Plan</p>	<p>The Board shall be entitled to delegate decisions as detailed in the Business Plan and/or decisions as follows:</p> <p>One director - commitments up to a value of £20,000.</p> <p>Two or more directors – commitments between £20,000 and £100,000</p>
2. Appointment and Removal of Directors	Appointment and removal of all Directors; including the approval of the list of possible Alternate Directors.	Appointment and removal of all Board advisers (to include terms and conditions of relationship).	None.
3. Variations to the Articles of Association	Any variations to the Company's Articles.	None.	None.

Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated by the Board for Approval by individual Directors or another named employee or officer of the Company
4. Executive Director Remuneration	The approval of the terms and conditions of employment of any executive director of the Company (if any).	Non-material alterations to terms and conditions Performance related pay awards	None.
5. Employee Recruitment and Remuneration	Approval of a pay framework and job evaluation scheme for the Company (if any).	Recruitment of employees and/or agreeing the remuneration of employees where the total remuneration for that position is greater than £75K and is within the approved pay framework.	Recruitment of employees and/or agreeing the remuneration of employees where the total remuneration for that position is no more than £75K and is within the approved pay framework.
6. Shares	The acquisition of any shares or any option over shares in the capital of any company. The creation, allotment, issuing or redemption of any shares or securities, or the granting of any right to require the creation, allotment, issuing or redemption of any such shares or securities.	None.	None.
7. Issuing or Accepting of	Entering into any borrowing, the issuing of any loan capital or	Entering into any borrowing or issuing any loan capital where this is approved in	None.

Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated by the Board for Approval by individual Directors or another named employee or officer of the Company
Borrowing / Loan Capital	entering into any commitments with any person regarding the issue of any loan capital outside of the approved Business Plan. Agreeing, as part of the approved Business Plan, the extent of any permitted borrowing delegated for Board approval, and the terms on which that borrowing can be entered into.	the current Business Plan, to the extent and on the terms set out in the approved Business Plan.	
8. Nature of Company Business	Any material changes to the nature of the Company's business, or commencing any new business not contemplated by the approved Business Plan.	Any changes to the nature of the Company's business, or commencing any new business, but only where this is contemplated by the approved Business Plan.	None.
9. Acquisitions or Disposals	The acquisition of any freehold or leasehold land or building or the entering into of any option in respect of any land or building where this is not contemplated	The acquisition of any land or building or the entering in of any option in respect of any land or building specifically contemplated by the approved Business Plan.	None.

Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated by the Board for Approval by individual Directors or another named employee or officer of the Company
	by the approved Business Plan.		
10. Company / Group Structure	Forming any subsidiary or acquiring an interest in any other company or participating in any partnership or corporate joint venture Amalgamating or merging with any other company or undertaking	None.	None.
11. Stock Exchange Listing	The listing or trading of any shares or debt securities on any stock exchange or market.	None.	None.
12. Appointment of Agents or Subcontractors or Arms' Length Transactions	None	Appointment of contractors or subcontractors where this is in pursuance of the approved Business Plan	Appointment of contractors or subcontractors in pursuance of the approved Business Plan: One director - up to a value of £20,000. Two or more directors – a value between £20,000 and £100,000

Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated by the Board for Approval by individual Directors or another named employee or officer of the Company
13. Part sale of the business	Selling any part of the business, unless specifically contemplated and authorised in the approved Business Plan.	None.	None.
14. Business Name and Location	Changing the Company name, trading name, or registered office, or changing the location of any offices outside of the Company's registered office to a location outside of the Borough.	Changing the location of any offices outside of the Company's registered office to another location within the Borough only.	None.
15. Intellectual Property	The disposal, sale, assignment or granting of any rights in the Company's intellectual property outside of the normal course of business.	The granting of any rights (by licence or otherwise) in or over any intellectual property owned or used by the Company in the normal course of business	Where necessary to effect decisions delegated as above: One director – up to £20,000 Two or more directors – between £20,000 and £100,000
16. Encumbrances	Creating or granting any encumbrance over the whole or any part of the Company or its business, undertaking or assets, or over any shares in the Company other than liens	None	None

Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated by the Board for Approval by individual Directors or another named employee or officer of the Company
	arising in the normal course of business.		
17. Redundancy	None	Dismissing any employee in circumstances in which the Company will incur or agrees to bear redundancy or other costs (including actuarial costs) in excess of £75K.	Dismissing any employee in circumstances in which the Company will incur or agrees to bear redundancy or other costs (including actuarial costs) no greater than £75K.
18. Pension	<p>Establishing any new pension scheme, or granting any pension rights to any director, former director, or any members of any such person's family.</p> <p>Changes to pension arrangements for staff whether in the Local Government Pension Scheme or otherwise.</p> <p>Any other decisions of the Company which will have an effect on liabilities of the Shareholder under the Local Government Pension Scheme</p>	Establishing any new pension scheme, or amending any pension scheme, provided by the Company to employees.	None.

Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated by the Board for Approval by individual Directors or another named employee or officer of the Company
	or any associated guarantee.		
19. Company Winding up	Passing any resolution for the winding up of the Company or presenting any petition for its administration (save for in insolvency).	None.	None.

The **COMMON SEAL** of **MAIDSTONE**
BOROUGH COUNCIL

was affixed to this Deed in the presence of:

.....
[INSERT DETAILS]

Executed as a **DEED** by
MAIDSTONE PROPERTY HOLDINGS
LIMITED

Acting by [.....], a director and [.....], a director

.....
Director

.....
Director

Maidstone Property Holdings

Business Plan

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2. Purpose
3. MPH Values
4. Governance Arrangements
5. MPH Structure
6. Financial

1. VISION

- 1.1 In adopting this Business Plan, Maidstone Property Holdings intends to become a significant residential landlord in the private rented sector operating within the Maidstone Borough.
- 1.2 Maidstone Property Holdings seeks to maximise commercial returns to the Council as its sole shareholder but also to set new standards in terms of the quality of private rented stock offered and service delivered to residents.

2. PURPOSE

2.1 Maidstone Property Holdings will be a vehicle to:

- 2.1.1 Demonstrate market rented accommodation can provide high quality homes and service that is affordable to its target audience;
- 2.1.2 Provide an alternative solution to enabling a balanced housing market within the Maidstone Borough;
- 2.1.3 Develop innovative models that champion quality;
- 2.1.4 Generate a sustainable income stream for the Council that will contribute towards the delivery of public services for the benefit of Maidstone's community;
- 2.1.5 Regenerate brownfield and smaller sites that may not be attractive to volume house builders;
- 2.1.6 Stimulate local economic growth through job creation and supporting local businesses during the construction and management of its assets;

3. MPH VALUES

- Giving best value for agreed quality.
- Never compromise on the health and safety of our customers and staff.
- Openness, transparency, trust and integrity for all customer relationships.
- Be accountable for our conduct and decisions.
- Offering continuous operational improvements.
- To manage all resources in a responsible, efficient and effective manner.
- Being environmentally aware – Eco friendly solutions.
- Committed to sourcing local services, where possible.

4. GOVERNANCE ARRANGEMENTS

- 4.1 Maidstone Property Holdings (MPH) was incorporated on 11th September 2016 with the intention of establishing a Local Authority Trading Company (LATC). The Council's Medium Term Financial Strategy (MTFS) has an overarching objective of relying on self-generated resources. MPH is part of the solution to achieving this aim, whilst further benefiting our residents by providing high quality homes and housing management services.
- 4.2 The Council is legally able to establish a wholly owned trading company. The Council is the sole shareholder and all shareholder decision making is undertaken through the Council's Policy & Resources Committee or delegated to the Council's Director of Finance and Business Improvement (who will also be the corporate representative on behalf of the Council at any general meeting).
- 4.3 The governance arrangements between the Council and MPH are set out in the Articles of Association and the Operational Agreement that they have entered into.
- 4.4 This Business Plan will be delivered in full compliance with the governance requirements set out by the Council. MPH will seek to maintain and enhance MBC's reputation and brand for high standards.
- 4.5 MPH will establish and maintain an effective service and financial performance management reporting system, which will include transparent and regular reporting to the MPH Board and the Council's Policy & Resources Committee.
- 4.6 MPH is a company limited by shares. MPH is a commercial company that does not exist to provide services back to the Council. MPH is a responsible residential landlord of wholly commercial character. It is established to meet needs in the general interest having a commercial or industrial character. Notwithstanding its public sector ownership, MPH is not a contracting authority under public procurement law.
- 4.7 MPH will be subject to the audit and inspection by the Council and its auditors.

5. MPH STRUCTURE

- 5.1 Strong and transparent governance of MPH is critical to success to ensure that the strategic objectives, commercialism and on-going performance required by MPH's Board and this Business Plan are achieved.
- 5.2 The MPH Board of Directors shall comprise:

- 5.2.1 At least four Directors appointed by the Council, one of whom will be an appropriate officer drawn from the Mid Kent Legal Services team. The Directors will appoint a Chair for the MPH Board from within their number.
- 5.2.2 The MPH Board will appoint an officer to carry out company secretarial duties from within the Council's Democratic Services Team. Additional support for MPH will be provided by the Council's support services upon request.
- 5.2.3 The MPH Board will be responsible for day to day operations. Each Director shall be able to make decisions on behalf of MPH to ensure its proper and legal functions are discharged, where this has a monetary value of up to £20,000.
- 5.2.4 Decisions likely to incur a value in excess of £20,000 and below £100,000 must be approved by at least two Directors. Decisions with a value higher than £100,000 must be agreed by the full MPH Board.
- 5.2.5 Substantial or significant changes to the operation of MPH and/or this Business Plan must be approved by the Council as Shareholder.
- 5.2.6 MPH may enter into contract or agreement with third parties in order to ensure the purpose of MPH, as detailed in this Business Plan, is achieved.

6. FINANCIAL

- 6.1 The Council will make up to £35,000,000 (thirty five million pounds) available in order to deliver private market rental units over a five-year period expiring 2024. The final decision on the amount of funding and the form this takes will be made by the Council. This will not preclude MPH from sourcing funding externally if appropriate and where the requisite authority of the Council as Shareholder is obtained. The investment assumes an average amount of £200,000 per property. This is in addition to the first tranche of properties acquired by MPH, being 20 residential units at Granada House but includes Lenworth House.
- 6.2 The PRS portfolio that MPH operates will be acquired and or/developed by the Council. The acquisition or development will be funded by the Council. The Council will retain the freehold interest in the entire portfolio but let the properties to MPH on a long term fully repairing lease on commercial terms. MPH will then, in accordance with this Business Plan, determine the way in which the properties are managed.
- 6.3 Therefore, assuming that the £35m portfolio were to generate a 6% gross return, the MPH income / turnover will eventually rise to as much as £2.1m per annum.

6.4 The financial ambition therefore for MPH will be to generate a modest profit rent each year, in terms of the following;

- Rental income received from tenants, less;
- Rent payable to the Council
- Management
- Voids & Bad Debt
- Maintenance
- All associated overheads

6.5 The MPH Board will target a 5% profit rent on all properties that it agreed to lease from the Council, as a buffer against cost overrun, and as annual profits are banked, and reserves accrue, these monies may be returned to the Council as a dividend, or utilised for investment in housing management infrastructure and systems.

6.6 In terms of committing this additional £35m, the MPH pipeline for indicative schemes is as follows;

Scheme	Units	Total Scheme Cost	Handover	Status
Scheme A	14	£ 2,475,000	Jan-19	Complete
Scheme B	14	£ 3,383,709	Jun-20	On site
Scheme C	16	£ 3,107,170	Sep-20	On site
Scheme D	24	£ 4,490,970	Oct-20	On site
Scheme E	36	£ 7,200,000	Jun-22	Feasibility
Scheme F	50	£ 10,000,000	Oct-22	Feasibility
TBC	25	£ 5,000,000	TBC	TBC
	179	£ 35,656,849		

6.7 The Council may determine to change the financing provided to MPH and/or the volume of properties to be leased to MPH and the duration of the delivery period.

6.8 MPH will provide the Council with regular information concerning MPH's performance on delivery against the agreed targets.

PRIVATE COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

of

MAIDSTONE PROPERTY HOLDINGS LIMITED
(the "company")

Adopted by special resolution dated [] 2019

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ARTICLES OF ASSOCIATION

of

MAIDSTONE PROPERTY HOLDINGS LIMITED

PART 1

INTERPRETATION AND LIMITATION OF LIABILITY

1. DEFINED TERMS

1.1 In the articles, unless the context requires otherwise:

"alternate director"	has the meaning given in Article 10A.1;
"articles"	means the company's articles of association;
"bankruptcy"	includes individual insolvency proceedings in a jurisdiction other than England and Wales and Northern Ireland which have an effect similar to that of bankruptcy;
"chairman"	has the meaning given in article 12;
"chairman of the meeting"	has the meaning given in article 53;
"Companies Acts"	means the Companies Acts (as defined in section 2 of the Companies Act 2006), in so far as they apply to the company;
"conflict"	has the meaning given in article 14;
"director"	means a director of the company, and includes any person occupying the position of director, by whatever name called;
"distribution recipient"	has the meaning given in article 43;
"document"	includes, unless otherwise specified, any document sent or supplied in electronic form;
"electronic form"	has the meaning given in section 1168 of the Companies Act 2006;
"eligible director"	means a director who would be entitled to vote on the matter at a meeting of directors (but excluding any director whose vote is not to be counted in respect of that particular matter);
"hard copy form"	has the meaning given in section 1168 of the Companies Act 2006;
"holder"	in relation to shares means the person whose name is entered in the register of members as the holder of the shares;
"instrument"	means a document in hard copy form;
"observers"	means those persons (other than directors) present under Article 10 at a meeting of the directors;

"operational agreement"	means any agreement entered into between Maidstone Borough Council and the company relating to the operation and management of the company;
"ordinary resolution"	has the meaning given in section 282 of the Companies Act 2006;
"paid"	means paid or credited as paid;
"participate"	in relation to a directors' meeting, has the meaning given in article 10;
"proxy notice"	has the meaning given in article 60;
"shareholder"	means a person who is the holder of one or more shares;
"shares"	means shares in the company;
"special resolution"	has the meaning given in section 283 of the Companies Act 2006;
"subsidiary"	has the meaning given in section 1159 of the Companies Act 2006;
"transmittee"	means a person entitled to one or more shares by reason of the death or bankruptcy of a shareholder or otherwise by operation of law; and
"writing"	means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise.

1.2 Unless the context otherwise requires, other words or expressions contained in these articles bear the same meaning as in the Companies Act 2006 as in force on the date when these articles become binding on the company.

1.3 The regulations contained in the model articles for private companies limited by shares (as set out in schedule 1 of the Companies (Model Articles) Regulations 2008 (SI 3229/2008)) shall not apply to the company.

2. **LIABILITY OF MEMBERS**

The liability of the members is limited to the amount, if any, unpaid on the shares held by them.

PART 2

DIRECTORS

DIRECTORS' POWERS AND RESPONSIBILITIES

3. **DIRECTORS' GENERAL AUTHORITY**

Subject to the articles and the terms of any operational agreement, the directors are responsible for the management of the company's business, for which purpose they may exercise all the powers of the company.

4. SHAREHOLDERS' RESERVE POWER

- 4.1 Subject always to the provisions of the articles and the Companies Acts, the shareholders may, by special resolution, direct the directors to take, or refrain from taking, specified action.
- 4.2 No such special resolution invalidates anything which the directors have done before the passing of the resolution.

5. DIRECTORS MAY DELEGATE

- 5.1 Subject to the articles, the directors may delegate any of the powers which are conferred on them under the articles:
 - 5.1.1 to such person or committee;
 - 5.1.2 by such means (including by power of attorney);
 - 5.1.3 to such an extent;
 - 5.1.4 in relation to such matters or territories; and
 - 5.1.5 on such terms and conditions,as they think fit.
- 5.2 If the directors so specify, any such delegation may authorise further delegation of the directors' powers by any person to whom they are delegated.
- 5.3 The directors may revoke any delegation, in whole or part, or alter its terms and conditions.

6. COMMITTEES

- 6.1 Committees to which the directors delegate any of their powers must follow procedures which are based as far as they are applicable on those provisions of the articles which govern the taking of decisions by directors.
- 6.2 The directors may make rules of procedure for all or any committees which prevail over rules derived from the articles if they are not consistent with them.

DECISION-MAKING BY DIRECTORS

7. DIRECTORS TO TAKE DECISIONS COLLECTIVELY

- 7.1 The general rule about decision-making by directors is that any decision of the directors must be either a majority decision at a meeting or a decision taken in accordance with article 8.
- 7.2 If:
 - 7.2.1 the company only has one director; and
 - 7.2.2 no provision of the articles requires it to have more than one director,the general rule does not apply, and the director may (for so long as he remains the sole director) take decisions without regard to any of the provisions of the articles relating to directors' decision-making.

8. UNANIMOUS DECISIONS

- 8.1 A decision of the directors is taken in accordance with this article when all eligible directors indicate to each other by any means that they share a common view on a matter.
- 8.2 Such a decision may take the form of a resolution in writing where each eligible director has signed one or more copies of it, or to which each eligible director has otherwise indicated agreement in writing.
- 8.3 A decision may not be taken in accordance with this article if the eligible directors would not have formed a quorum at such a meeting.

9. CALLING A DIRECTORS' MEETING

- 9.1 Any director may call a directors' meeting by giving reasonable notice of the meeting to the directors or by authorising the company secretary (if any) to give such notice.
- 9.2 Notice of any directors' meeting must indicate:
 - 9.2.1 its proposed date and time;
 - 9.2.2 where it is to take place; and
 - 9.2.3 if it is anticipated that directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.
- 9.3 Notice of a directors' meeting must be given to each director, but need not be in writing.
- 9.4 Notice of a directors' meeting need not be given to directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the company not more than 7 days after the date on which the meeting is held. Where such waiver is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.

10. PARTICIPATION IN DIRECTORS' MEETINGS

- 10.1 Subject to the articles, directors participate in a directors' meeting, or part of a directors' meeting, when:
 - 10.1.1 the meeting has been called and takes place in accordance with the articles; and
 - 10.1.2 they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.
- 10.2 In determining whether directors are participating in a directors' meeting, it is irrelevant where any director is or how they communicate with each other.
- 10.3 If all the directors participating in a meeting are not in the same place, the meeting shall be deemed to take place where the largest number of participators is assembled or, if no such group can be identified, the directors may decide that the meeting is to be treated as taking place wherever any of them is.
- 10.4 The directors may allow individuals who are not directors to attend a directors' meeting as observers on whatever terms they decide. Observers may not vote but

may take part in discussions unless the directors decide otherwise. The directors may exclude observers from any part of a directors' meeting where the directors consider the business is private.

10A ALTERNATE DIRECTORS

10A.1 Any director (the "appointer") may appoint as an alternate ("alternate director") any other director, or any other person from a list of persons approved by resolution of the shareholders to:

10A.1.1 exercise that director's powers; and

10A.1.2 carry out that director's responsibilities;

in relation to the taking of decisions by any directors' meeting or any committee in the absence of the relevant appointer.

10A.2 Any appointment or removal of an alternate director must be effected by notice in writing to the company signed by the appointer or in any other manner approved by the directors.

10A.3 The notice must:

10A.3.1 identify the proposed alternate director; and

10A.3.2 in the case of a notice of appointment of an alternate director contain a statement signed by the proposed alternate director that he is willing to act as the alternate of the director giving the notice.

10A.4 An alternate director's appointment terminates on the earlier of either of the following:

27A.4.1 the date specified in a notice from the appointer to the company revoking the appointment of the alternate director; or

27A.4.2 the date the appointer ceases to be a director in accordance with the Articles

10B RIGHTS AND RESPONSIBILITIES OF ALTERNATE DIRECTORS

10B.1 An alternate director may act as an alternate director to more than one director and has the same rights in relation to any decision of the directors as the relevant appointer.

10B.2 Except as the Articles specify otherwise, alternate directors:

10B.2.1 are deemed for all purposes to be directors when acting as an alternate director;

10B.2.2 are liable for their own acts and omissions;

10B.2.3 are subject to the same restrictions as their appointer;

10B.2.4 are not deemed to be agents of or for their appointer; and

- 10B.2.5 in particular and without limitation, each alternate director shall be entitled to receive notice of all meetings of the directors and all committees of which his appointer is a member.
- 10B.3 An alternate director who is not in their own right a director:
- 10B.3.1 may be included for the purposes of determining whether a quorum is present for any directors' meeting or a committee provided that his appointer is eligible to be included in the quorum and is not participating;
- 10B.3.2 may participate in a decision of the directors' meeting or any committee provided that his appointer is eligible to participate in the decision of the meeting or committee but is not participating; and
- 10B.3.3 shall be counted as more than one director for the purposes of article 10B.3.1 where he is appointed by two different appointers.
- 10B.4 An alternate director who is a director in his own right is entitled in the absence of his appointer:
- 10B.4.1 to be counted twice for the purposes of quorum in his own right as a director and as an alternate director for his appointer provided that both he and his appointer are eligible for quorum; and
- 10B.4.2 to have a separate vote on behalf of his appointer, in addition to his own vote on any decision of the directors' meeting or a committee provided that he and his appointer are both eligible to take part in the decision. Where only the appointer is eligible to take part then the alternate director will only have one vote.
- 10B.5 An alternate director may be paid expenses and may be indemnified by the Company to the same extent as his appointer but shall not be entitled to receive any fee from the company for serving as an alternate director except such part of the appointer's fee (to the extent the appointer receives any fee in accordance with articles 19 and 20) as the appointer may direct by notice in writing to the company. An alternate director may only receive part of the appointer's fee or expenses in accordance with this article where this would be permitted by articles 19 and 20 if references to a director in that article were read as an alternate director.

11. QUORUM FOR DIRECTORS' MEETINGS

- 11.1 At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.
- 11.2 Subject to article 7.2 and the following provisions of this article 11.2, the quorum for directors' meetings is two eligible directors.
- 11.3 For the purposes of any meeting (or part of a meeting) held pursuant to article 14 to authorise a conflict, if there is less than three eligible directors in office other than the conflicted director(s), the quorum for such meeting (or part of a meeting) shall be equal to the number of eligible directors in office.

11.4 If the total number of directors for the time being is less than the quorum required, the directors must not take any decision other than a decision:

11.4.1 to appoint further directors pursuant to article **Error! Reference source not found.**; or

11.4.2 to call a general meeting so as to enable the shareholders to appoint further directors.

12. CHAIRING OF DIRECTORS' MEETINGS

12.1 Subject to the terms of any Operational Agreement and with the prior consent of the majority of the shareholders, the directors may appoint a director to chair their meetings.

12.2 The person so appointed for the time being is known as the chairman.

12.3 The directors may, with the prior consent of the majority of the shareholders, terminate the chairman's appointment at any time.

12.4 If the chairman is not participating in a directors' meeting within ten minutes of the time at which it was to start, the participating directors must appoint one of themselves to chair it.

13. CASTING VOTE

13.1 If the numbers of votes for and against a proposal are equal, the chairman or other director chairing the meeting has, subject to article 13.2, a casting vote.

13.2 If, in accordance with the articles, the chairman or other director is not to be counted as participating in the decision making process for quorum or voting purposes, he shall not have a casting vote.

14. CONFLICTS AND DECLARATIONS OF INTEREST

14.1 Without prejudice to articles 14.6 and 14.7, the directors shall, for the purposes of section 175 of the Companies Act 2006, have the power to authorise any matter which would or might otherwise constitute or give rise to a breach of the duty of a director under that section to avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company ("**conflict**").

14.2 Authorisation of a matter under article 14.1 shall be effective only if:

14.2.1 the matter in question shall have been proposed in writing for consideration at a meeting of the directors in accordance with the directors' normal procedures or in any other manner as the directors may determine;

14.2.2 any requirement as to the quorum at the meeting of the directors at which the matter is considered is met without counting the director in question or any other interested director (together the "**Interested Directors**", and each an "**Interested Director**"; and

14.2.3 the matter was agreed to without any Interested Director voting or would have been agreed to if the votes of the Interested Directors had not been counted.

- 14.3 Any authorisation of a matter under article 14.1 shall be subject to such conditions or limitations as the directors may determine (including, without limitation, such conditions or limitations as are contemplated by article 14.17), whether at the time such authorisation is given or subsequently and may be terminated by the directors at any time. A director shall comply with any obligations imposed on him by the directors pursuant to any such authorisation.
- 14.4 Any authorisation of a matter under article 14.1 extends, subject to any conditions or limitations imposed under article 14.3, to any actual or potential conflict which may reasonably be expected to arise out of the matter so authorised.
- 14.5 Subject to any conditions or limitations imposed under article 14.3, a director shall not, save as otherwise agreed by him, be accountable to the company for any benefit which he (or any person connected in any way with him) derives from any matter authorised by the directors under article 14.1 and no contract, transaction, arrangement or proposal relating thereto shall be liable to be avoided on the grounds of any such benefit.
- 14.6 Article 14.1 does not apply to a conflict arising in relation to a transaction or arrangement with the company.
- 14.7 Subject to compliance with article 14.8, a director may, notwithstanding his office, have any interest of any of the following kinds (and no authorisation under article 14.1 shall be necessary in respect of any such interest):
- 14.7.1 where the director (or any person connected in any way with him) is a director or other officer of, is employed by or is otherwise interested (including, without limitation, by the holding of shares or other securities) in any body corporate with which the company is associated (within the meaning of section 256(a) of the Companies Act 2006);
 - 14.7.2 where the director (or any person connected in any way with him) is a party to, or otherwise interested in, any contract, transaction, arrangement or proposal with the company or any body corporate with which the company is associated (within the meaning of section 256(a) of the Companies Act 2006), or in which the company is otherwise interested;
 - 14.7.3 an interest such that the situation or the interest cannot reasonably be regarded as likely to give rise to a conflict;
 - 14.7.4 an interest, or a contract, transaction, arrangement or proposal giving rise to an interest, of which the director is not aware; and
 - 14.7.5 any other interest authorised by an ordinary resolution of the company.
- 14.8 Subject to sections 177 and 182 of the Companies Act 2006, the director concerned shall declare the nature and extent of any interest, whether direct or indirect, referred to in article 14.7 and not falling within article 14.9 either at a meeting of the directors by written declaration to the company (or in any other manner as the directors may determine) or by general notice in accordance with section 177(2)(b)(ii) or section 182(2)(c) (as the case may be) and section 185 of the Companies Act 2006.
- 14.9 No declaration of an interest shall be required by a director under article 14.8 in relation to an interest:
- 14.9.1 falling within article 14.7.3 or article 14.7.4;

- 14.9.2 if, or to the extent that, the other directors are already aware of such interest (and for this purpose the other directors are treated as being aware of anything of which they ought reasonably to be aware); or
- 14.9.3 if, or to the extent that, it concerns the terms of his service contract (as defined in section 227 of the Companies Act 2006) that have been or are to be considered by a meeting of the directors or by a committee of directors appointed for the purpose under these articles.
- 14.10 A director shall not, save as otherwise agreed by him, be accountable to the company for any benefit which he (or any person connected in any way with him) derives from any interest referred to in article 14.7 and no contract, transaction, arrangement or proposal shall be liable to be avoided on the grounds of any such interest.
- 14.11 Provided he has disclosed to the directors any interest of which he is aware (not being an interest which cannot reasonably be regarded as likely to give rise to a conflict) in accordance with the requirements of the Companies Act 2006 and these articles, a director shall, subject to any applicable conditions or limitations imposed under article 14.3, be entitled to vote at a meeting of the directors or of a committee of the directors in respect of any contract, transaction, arrangement or proposal in which he is interested and shall also be counted in determining whether a quorum is present at such a meeting.
- 14.12 Without prejudice to article 14.11, if a question arises at any time as to whether any interest of a director prevents him or should prevent him from voting or being counted in the quorum under this article 14 and such question is not resolved by his voluntarily agreeing to abstain from voting and/or attending, such question shall be referred to the chairman of the meeting and his ruling in relation to any director other than himself shall be final and conclusive, except in a case where the nature or extent of the interest of such director (so far as it is known to him) has not been fairly disclosed.
- 14.13 Without prejudice to article 14.11, if any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the chairman, the question shall be decided by a decision of the directors, for which purpose the chairman is not to be counted as participating in the meeting (or part of the meeting) for voting and quorum purposes, and the decision shall be conclusive, except in a case where the nature or extent of the interest of the chairman of the meeting (so far as it is known to him) has not been fairly disclosed to the directors.
- 14.14 Subject to article 14.15, if a director, otherwise than by virtue of his position as a director, receives information in respect of which he owes a duty of confidentiality to a person other than the company, he shall not be required to disclose such information to the company or the directors or any of them, or otherwise use or apply such confidential information for the purpose of or in connection with the performance of his duties as a director.
- 14.15 Where a duty of confidentiality as referred to in article 14.14 arises out of a situation in which the director has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company, article 14.14 shall apply only if the conflict arises out of a matter which has been authorised under article 14.1 or falls within article 14.7.
- 14.16 Article 14.14 is without prejudice to any enactment, equitable principle or rule of law which may excuse or release a director from disclosing information in circumstances where disclosure may otherwise be required.
- 14.17 Where a director has an interest which can reasonably be regarded as likely to give rise to a conflict, the director may, and shall if so requested by the directors, take such additional steps as may be necessary or desirable for the purpose of managing such

conflict, including compliance with any procedures laid down from time to time by the directors for the purpose of managing conflicts generally and/or any specific procedures approved by the directors for the purpose of or in connection with the relevant matter or situation, including without limitation:

- 14.17.1 absenting himself from any meeting or part of a meeting of the directors or of any committee of the directors at which the relevant matter or situation falls to be considered or is otherwise significant; and
 - 14.17.2 not reviewing documents or information made available to the directors generally in relation to such matter or situation.
- 14.18 The company may by ordinary resolution ratify any contract, transaction, arrangement or proposal not properly authorised by reason of a contravention of any provision of this article 14.
- 14.19 For the purposes of this article 14, where the context permits, any reference to an interest includes a duty and any reference to a conflict of interest includes a conflict of interest and duty and a conflict of duties.
- 14.20 For the purposes of this article, references to proposed decisions and decision-making processes include any directors' meeting or part of a directors' meeting.
- 14.21 In addition to the above provisions of this article 14, subject to the provisions of the Companies Acts and provided (if these articles so require) that he has declared to the directors in accordance with the provisions of these articles, the nature and extent of his interest, a director may (save to the extent not permitted by law from time to time), notwithstanding his office, have an interest arising from any duty he may owe to, or interest he may have as an employee, director, trustee, member, partner, officer or representative of, or a consultant to, Maidstone Borough Council.

15. RECORDS OF DECISIONS TO BE KEPT

The directors must ensure that the company keeps a record, in writing, for at least 10 years from the date of the decision recorded, of every unanimous or majority decision taken by the directors.

16. DIRECTORS' DISCRETION TO MAKE FURTHER RULES

Subject to the articles, the directors may make any rule which they think fit about how they take decisions, and about how such rules are to be recorded or communicated to directors.

APPOINTMENT OF DIRECTORS

17. METHODS OF APPOINTING DIRECTORS

- 17.1 Any person who is willing to act as a director, and is permitted by law to do so, may be appointed to be a director by ordinary resolution.
- 17.2 In any case where, as a result of death or bankruptcy, the company has no shareholders and no directors, the transmittes of the last shareholder to have died or to have a bankruptcy order made against him (as the case may be) have the right, by notice in writing, to appoint a natural person who is willing to act (and is permitted to do so) to be a director.
- 17.3 For the purposes of paragraph 17.2, where 2 or more shareholders die in circumstances rendering it uncertain who was the last to die, a younger shareholder is deemed to have survived an older shareholder.

18. TERMINATION OF DIRECTOR'S APPOINTMENT

18.1 A person ceases to be a director as soon as:

- 18.1.1 that person ceases to be a director by virtue of any provision of the Companies Act 2006 or is prohibited from being a director by law;
- 18.1.2 a bankruptcy order is made against that person;
- 18.1.3 a composition is made with that person's creditors generally in satisfaction of that person's debts;
- 18.1.4 a registered medical practitioner with appropriate qualifications and experience gives a written opinion to the company stating that that person has become physically or mentally incapable of acting as a director and, on the balance of probabilities, is likely to remain so for more than three months;
- 18.1.5 the board serves notice on that person to the effect that his appointment is terminated by reason of repeated non-attendance at meetings of the board (without the consent of the other directors, such consent not to be unreasonably withheld or delayed) over a period of 6 consecutive months;
- 18.1.6 by reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have; or
- 18.1.7 notification is received by the company from the director that the director is resigning from office, and such resignation has taken effect in accordance with its terms; or that the controlling shareholder has removed them;
- 18.1.8 that person ceases to be an elected member or officer/employee of Maidstone Borough Council (only where that person was elected member or officer/employee on appointment as a director).

19. DIRECTORS' REMUNERATION

- 19.1 Subject article 19.3, article 19.4 and to the terms of any agreement in writing between the company and the holders of a majority of the shares, the directors are entitled to such remuneration as the directors determine:
 - 19.1.1 for their services to the company as directors; and
 - 19.1.2 for any other service which they undertake for the company.
- 19.2 Unless the directors decide otherwise, directors are not accountable to the company for any remuneration which they receive as directors or other officers or employees of the company's subsidiaries or of any other body corporate in which the company is interested.
- 19.3 Where any director is an elected member of Maidstone Borough Council then such a director may only be paid such fees and/or expenses as are permitted by the Local Authorities (Companies) Order 1995.
- 19.4 Where any director or secretary is an officer/employee of Maidstone Borough Council then they shall not be entitled to any remuneration from the company.

20. **EXPENSES**

20.1 Subject article 19.3, article 20.2 and to the terms of any agreement in writing between the Company and the holders of a majority of the shares, the company may pay any reasonable expenses which the directors and the secretary properly incur in connection with their attendance at:

20.1.1 meetings of directors or committees of directors;

20.1.2 general meetings; or

20.1.3 separate meetings of the holders of any class of shares or of debentures of the company,

or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the company.

20.2 Where any director or secretary is an officer/employee of Maidstone Borough Council then they shall not be entitled to claim expenses from the Company.

21. **SECRETARY**

The directors may appoint any person who is willing to act as the secretary for such term, at such remuneration and upon such conditions as they may think fit and from time to time remove such person and appoint a replacement, in each case by a decision of the directors.

PART 3

SHARES AND DISTRIBUTIONS

SHARES

22. **COMPANY'S LIEN OVER SHARES**

22.1 The company has a lien (the "**company's lien**") over every share, whether or not fully paid, which is registered in the name of any person indebted or under any liability to the company, whether he is the sole registered holder of the share or one of several joint holders, for all monies payable by him (either alone or jointly with any other person) to the company, whether payable immediately or at some time in the future.

22.2 The company's lien over a share:

22.2.1 takes priority over any third party's interest in that share; and

22.2.2 extends to any dividend or other money payable by the company in respect of that share and (if the lien is enforced and the share is sold by the company) the proceeds of sale of that share.

22.3 The directors may at any time decide that a share which is or would otherwise be subject to the company's lien shall not be subject to it, either wholly or in part.

23. **ENFORCEMENT OF THE COMPANY'S LIEN**

23.1 Subject to the provisions of this article, if:

23.1.1 a lien enforcement notice has been given in respect of a share; and

- 23.1.2 the person to whom the notice was given has failed to comply with it,
the company may sell that share in such manner as the directors decide.
- 23.2 A lien enforcement notice:
- 23.2.1 may only be given in respect of a share which is subject to the company's lien, in respect of which a sum is payable and the due date for payment of that sum has passed;
- 23.2.2 must specify the share concerned;
- 23.2.3 must require payment of the sum within 14 clear days of the notice (that is, excluding the date on which the notice is given and the date on which that 14 day period expires);
- 23.2.4 must be addressed either to the holder of the share or to a transmittee of that holder; and
- 23.2.5 must state the company's intention to sell the share if the notice is not complied with.
- 23.3 Where shares are sold under this article:
- 23.3.1 the directors may authorise any person to execute an instrument of transfer of the shares to the purchaser or to a person nominated by the purchaser; and
- 23.3.2 the transferee is not bound to see to the application of the consideration and the transferee's title is not affected by any irregularity in or invalidity of the process leading to the sale.
- 23.4 The net proceeds of any such sale (after payment of the costs of sale and any other costs of enforcing the lien) must be applied:
- 23.4.1 first, in payment of so much of the sum for which the lien exists as was payable at the date of the lien enforcement notice; and
- 23.4.2 second, to the person entitled to the shares at the date of the sale, but only after the certificate for the shares sold has been surrendered to the company for cancellation, or an indemnity in a form reasonably satisfactory to the directors has been given for any lost certificates, and subject to a lien equivalent to the company's lien for any money payable (whether payable immediately or at some time in the future) as existed upon the shares before the sale in respect of all shares registered in the name of such person (whether as the sole registered holder or as one of several joint holders) after the date of the lien enforcement notice.
- 23.5 A statutory declaration by a director or the company secretary that the declarant is a director or the company secretary and that a share has been sold to satisfy the company's lien on a specified date:
- 23.5.1 is conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the share; and
- 23.5.2 subject to compliance with any other formalities of transfer required by the articles or by law, constitutes a good title to the share.

24. **CALL NOTICES**

24.1 Subject to the articles and the terms on which shares are allotted, the directors may send a notice (a "**call notice**") to a shareholder requiring the shareholder to pay the company a specified sum of money (a "**call**") which is payable to the company at the date when the directors decide to send the call notice.

24.2 A call notice:

24.2.1 may not require a shareholder to pay a call which exceeds the total amount of his indebtedness or liability to the company;

24.2.2 must state when and how any call to which it relates is to be paid; and

24.2.3 may permit or require the call to be made in instalments.

24.3 A shareholder must comply with the requirements of a call notice, but no shareholder is obliged to pay any call before 14 clear days (that is, excluding the date on which the notice is given and the date on which that 14 day period expires) have passed since the notice was sent.

24.4 Before the company has received any call due under a call notice the directors may:

24.4.1 revoke it wholly or in part; or

24.4.2 specify a later time for payment than is specified in the notice,

by a further notice in writing to the shareholder in respect of whose shares the call is made.

25. **LIABILITY TO PAY CALLS**

25.1 Liability to pay a call is not extinguished or transferred by transferring the shares in respect of which it is required to be paid.

25.2 Joint holders of a share are jointly and severally liable to pay all calls in respect of that share.

25.3 Subject to the terms on which shares are allotted, the directors may, when issuing shares, provide that call notices sent to the holders of those shares may require them:

25.3.1 to pay calls which are not the same; or

25.3.2 to pay calls at different times.

26. **WHEN CALL NOTICE NEED NOT BE ISSUED**

26.1 A call notice need not be issued in respect of sums which are specified, in the terms on which a share is issued, as being payable to the company in respect of that share:

26.1.1 on allotment;

26.1.2 on the occurrence of a particular event; or

26.1.3 on a date fixed by or in accordance with the terms of issue.

26.2 But if the due date for payment of such a sum has passed and it has not been paid, the holder of the share concerned is treated in all respects as having failed to comply

with a call notice in respect of that sum, and is liable to the same consequences as regards the payment of interest and forfeiture.

27. FAILURE TO COMPLY WITH CALL NOTICE: AUTOMATIC CONSEQUENCES

- 27.1 If a person is liable to pay a call and fails to do so by the call payment date:
- 27.1.1 the directors may issue a notice of intended forfeiture to that person; and
 - 27.1.2 until the call is paid, that person must pay the company interest on the call from the call payment date at the relevant rate.
- 27.2 For the purposes of this article:
- 27.2.1 the "call payment date" is the time when the call notice states that a call is payable, unless the directors give a notice specifying a later date, in which case the "call payment date" is that later date; and
 - 27.2.2 the "relevant rate" is:
 - (a) the rate fixed by the terms on which the share in respect of which the call is due was allotted;
 - (b) such other rate as was fixed in the call notice which required payment of the call, or has otherwise been determined by the directors; or
 - (c) if no rate is fixed in either of these ways, 5 per cent per annum.
- 27.3 The relevant rate must not exceed by more than 5 percentage points the base lending rate most recently set by the Monetary Policy Committee of the Bank of England in connection with its responsibilities under Part 2 of the Bank of England Act 1998.
- 27.4 The directors may waive any obligation to pay interest on a call wholly or in part.

28. NOTICE OF INTENDED FORFEITURE

- 28.1 A notice of intended forfeiture:
- 28.1.1 may be sent in respect of any share in respect of which a call has not been paid as required by a call notice;
 - 28.1.2 must be sent to the holder of that share (or all the joint holders of that share) or to a transmittee of that holder;
 - 28.1.3 must require payment of the call and any accrued interest and all expenses that may have been incurred by the company by reason of such non-payment by a date which is not less than 14 clear days after the date of the notice (that is, excluding the date on which the notice is given and the date on which that 14 day period expires);
 - 28.1.4 must state how the payment is to be made; and
 - 28.1.5 must state that, if the notice is not complied with, the shares in respect of which the call is payable will be liable to be forfeited.

29. DIRECTORS' POWER TO FORFEIT SHARES

If a notice of intended forfeiture is not complied with before the date by which payment of the call is required in the notice of intended forfeiture, the directors may decide that any share in respect of which it was given is forfeited, and the forfeiture is to include all dividends or other moneys payable in respect of the forfeited shares and not paid before the forfeiture.

30. EFFECT OF FORFEITURE

30.1 Subject to the articles, the forfeiture of a share extinguishes:

- 30.1.1 all interests in that share, and all claims and demands against the company in respect of it; and
- 30.1.2 all other rights and liabilities incidental to the share as between the person whose share it was prior to the forfeiture and the company.

30.2 Any share which is forfeited in accordance with the articles:

- 30.2.1 is deemed to have been forfeited when the directors decide that it is forfeited;
- 30.2.2 is deemed to be the property of the company; and
- 30.2.3 may be sold, re-allotted or otherwise disposed of as the directors think fit.

30.3 If a person's shares have been forfeited:

- 30.3.1 the company must send that person notice that forfeiture has occurred and record it in the register of shareholders;
- 30.3.2 that person ceases to be a shareholder in respect of those shares;
- 30.3.3 that person must surrender the certificate for the shares forfeited to the company for cancellation;
- 30.3.4 that person remains liable to the company for all sums payable by that person under the articles at the date of forfeiture in respect of those shares, including any interest (whether accrued before or after the date of forfeiture); and
- 30.3.5 the directors may waive payment of such sums wholly or in part or enforce payment without any allowance for the value of the shares at the time of forfeiture or for any consideration received on their disposal.

30.4 At any time before the company disposes of a forfeited share, the directors may decide to cancel the forfeiture on payment of all calls and interest and expenses due in respect of it and on such other terms as they think fit.

31. PROCEDURE FOLLOWING FORFEITURE

31.1 If a forfeited share is to be disposed of by being transferred, the company may receive the consideration for the transfer and the directors may authorise any person to execute the instrument of transfer.

31.2 A statutory declaration by a director or the company secretary that the declarant is a director or the company secretary and that a share has been forfeited on a specified date:

- 31.2.1 is conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the share; and
 - 31.2.2 subject to compliance with any other formalities of transfer required by the articles or by law, constitutes a good title to the share.
- 31.3 A person to whom a forfeited share is transferred is not bound to see to the application of the consideration (if any) nor is that person's title to the share affected by any irregularity in or invalidity of the process leading to the forfeiture or transfer of the share.
- 31.4 If the company sells a forfeited share, the person who held it prior to its forfeiture is entitled to receive from the company the proceeds of such sale, net of any commission, and excluding any amount which:
 - 31.4.1 was, or would have become, payable; and
 - 31.4.2 had not, when that share was forfeited, been paid by that person in respect of that share,but no interest is payable to such a person in respect of such proceeds and the company is not required to account for any money earned on them.
- 31.5 Any sale of a forfeited share shall be subject to the pre-emption rights contained in article 38.

32. SURRENDER OF SHARES

- 32.1 A shareholder may surrender any share:
 - 32.1.1 in respect of which the directors may issue a notice of intended forfeiture;
 - 32.1.2 which the directors may forfeit; or
 - 32.1.3 which has been forfeited.
- 32.2 The directors may accept the surrender of any such share.
- 32.3 The effect of surrender on a share is the same as the effect of forfeiture on that share.
- 32.4 A share which has been surrendered may be dealt with in the same way as a share which has been forfeited.

33. SHARE CAPITAL

- 33.1 The issued share capital of the company as at the date of adoption of these articles is £100, comprising one hundred shares with a nominal value of £1 each.
- 33.2 The directors of the company may not exercise any power of the company to:
 - 33.2.1 allot shares in the company; or
 - 33.2.2 grant any right to subscribe for, or to convert any security into, shares in the company,other than to the extent authorised by resolution of the company from time to time. For the avoidance of doubt, the prohibition set out in this article 33.2 extends to shares or

rights granted in pursuance of employees' share scheme as defined in section 1166 of the Companies Act 2006.

34. COMPANY NOT BOUND BY LESS THAN ABSOLUTE INTERESTS

Except as required by law, no person is to be recognised by the company as holding any share upon any trust, and except as otherwise required by law or the articles, the company is not in any way to be bound by or recognise any interest in a share other than the holder's absolute ownership of it and all the rights attaching to it.

35. SHARE CERTIFICATES

35.1 The company must issue each shareholder, free of charge, with one or more certificates in respect of the shares which that shareholder holds.

35.2 Every certificate must specify:

35.2.1 in respect of how many shares, of what class, it is issued;

35.2.2 the nominal value of those shares; and

35.2.3 any distinguishing numbers assigned to them.

35.3 No certificate may be issued in respect of shares of more than one class.

35.4 If more than one person holds a share, only one certificate may be issued in respect of it.

35.5 Certificates must:

35.5.1 have affixed to them the company's common seal; or

35.5.2 be otherwise executed in accordance with the Companies Acts.

36. REPLACEMENT SHARE CERTIFICATES

36.1 If a certificate issued in respect of a shareholder's shares is:

36.1.1 damaged or defaced; or

36.1.2 said to be lost, stolen or destroyed,

that shareholder is entitled to be issued with a replacement certificate in respect of the same shares.

36.2 A shareholder exercising the right to be issued with such a replacement certificate:

36.2.1 may at the same time exercise the right to be issued with a single certificate or separate certificates;

36.2.2 must return the certificate which is to be replaced to the company if it is damaged or defaced; and

36.2.3 must comply with such conditions as to evidence and indemnity as the directors decide.

37. SHARE TRANSFERS

- 37.1 Subject to article 38, shares may be transferred by means of an instrument of transfer in any usual form or any other form approved by the directors, which is executed by or on behalf of the transferor.
- 37.2 No fee may be charged for registering any instrument of transfer or other document relating to or affecting the title to any share.
- 37.3 The company may retain any instrument of transfer which is registered.
- 37.4 The transferor remains the holder of a share until the transferee's name is entered in the register of members as holder of it.
- 37.5 The directors may refuse to register the transfer of a share; if they do so, the instrument of transfer must be returned to the transferee with the notice of refusal within two months unless they suspect that the proposed transfer may be fraudulent.

38. **TRANSFER OF SHARES SUBJECT TO PRE-EMPTION RIGHTS**

- 38.1 In this article, references to a transfer of a share include the transfer or assignment of a beneficial or other interest in that share or the creation of a trust or encumbrance over that share and reference to a share includes a beneficial or other interest in a share.
- 38.2 Any transfer of shares by a shareholder shall be subject to the pre-emption rights in this article.
- 38.3 A shareholder wishing to transfer some or all of his shares ("**Seller**") shall, before transferring or agreeing to transfer any shares, give a notice in writing to the company ("**Transfer Notice**") specifying:
 - 38.3.1 the number of the shares for sale ("**Sale Shares**");
 - 38.3.2 if the Seller wishes to sell the Sale Shares to a third party, the name of the proposed transferee;
 - 38.3.3 the price (in cash) per share at which he wishes to transfer the Sale Shares subject to the directors being satisfied (and to that end being provided with such evidence as they may reasonably require) that the proposed price represents a fair value for the Sale Shares and, if the directors are not satisfied with the specified price, it shall be determined in accordance with article 38.4 ("**Transfer Price**"); and
 - 38.3.4 whether the Transfer Notice is conditional on all, or a specific number of, the Sale Shares being sold ("**Minimum Transfer Condition**").
- 38.4 If the directors are not satisfied with the price specified in the Transfer Notice then within 10 days of the Transfer Notice being received:
 - 38.4.1 the Seller and the directors shall use all reasonable endeavours to agree the fair value of the Sale Shares; or
 - 38.4.2 if no such agreement can be reached within the said 10 day period, fair value for the Sale Shares shall be determined by the auditors for the time being of the company or (if the Seller shall require) by some other chartered accountant to be nominated by the President for the time being of the Institute of Chartered Accountants in England and Wales who shall act as an expert and not as an arbitrator, and whose determination as to the fair value of the Sale Shares shall be conclusive.

- 38.5 Within 48 hours of the fair value being determined in accordance with article 38.4.2 the directors shall notify the Seller of the fair value of the Sale Shares. If the Seller disputes the fair value, he may, by written notice to the directors within 48 hours of receiving notice of the same, withdraw the Transfer Notice. If the Seller does not withdraw the Transfer Notice within the 48 hour period or he indicates his agreement to the fair value during that time, the directors shall, as soon as practicable thereafter, offer the Sale Shares for sale to the shareholders in the manner set out in article 38.8. Each offer shall be in writing and give details of the number and Transfer Price of the Sale Shares offered.
- 38.6 Otherwise than in accordance with article 38.5 once given (or deemed to have been given) under these articles, a Transfer Notice may not be withdrawn.
- 38.7 A Transfer Notice appoints the company the agent of the Seller for the sale of the Sale Shares at the Transfer Price.
- 38.8 The directors shall offer the Sale Shares to all shareholders other than the Seller ("**Continuing Shareholders**"), inviting them to apply in writing within 28 days of the date of the offer ("**First Offer Period**") for the maximum number of Sale Shares they wish to buy.

If the Sale Shares are subject to a Minimum Transfer Condition, any allocation made under this article 38.8 and article 38.9 shall be conditional on the fulfilment of the Minimum Transfer Condition.

If, at the end of the First Offer Period, the number of Sale Shares applied for is equal to or exceeds the number of Sale Shares, the directors shall allocate the Sale Shares to each Continuing Shareholder who has applied for Sale Shares in the proportion which his existing holding of shares bears to the total number of shares held by those Continuing Shareholders who have applied for Sale Shares. Fractional entitlements shall be rounded to the nearest whole number. No allocation shall be made to a Continuing Shareholder of more than the maximum number of Sale Shares which he has stated he is willing to buy.

If, at the end of the First Offer Period, the total number of Sale Shares applied for is less than the number of Sale Shares, the directors shall allocate the Sale Shares to the Continuing Shareholders in accordance with their applications. The balance ("**Initial Surplus Shares**") shall be dealt with in accordance with article 38.9.

- 38.9 At the end of the First Offer Period, the Board shall offer the Initial Surplus Shares to all the Continuing Shareholders, inviting them to apply in writing within 28 days of the date of the offer ("**Second Offer Period**") for the maximum number of Initial Surplus Shares they wish to buy.

If, at the end of the Second Offer Period, the number of Initial Surplus Shares applied for exceeds the number of Initial Surplus Shares, the directors shall allocate the remaining Initial Surplus Shares to each Continuing Shareholder who has applied for Initial Surplus Shares in the proportion that his existing holding of shares (including any Sale Shares) bears to the total number of shares (including any Sale Shares) held by those Continuing Shareholders who have applied for Initial Surplus Shares during the Second Offer Period. Fractional entitlements shall be rounded to the nearest whole number. No allocation shall be made to a Continuing Shareholder of more than the maximum number of Initial Surplus Shares which he has stated he is willing to buy.

If, at the end of the Second Offer Period, the number of Initial Surplus Shares applied for is less than the number of Initial Surplus Shares, the directors shall allocate the Initial Surplus Shares to the Continuing Shareholders in accordance with their

applications. The balance ("**Second Surplus Shares**") shall be dealt with in accordance with articles 38.14 and 38.15.

38.10 If the Transfer Notice includes a Minimum Transfer Condition and the total number of Sale Shares applied for is less than the number of Sale Shares specified in the Minimum Transfer Condition, the company itself may, subject to compliance with all statutory requirements, purchase the Sale Shares not accepted by the Continuing Shareholders on the terms set out in the Transfer Notice. If the company does not purchase the Sale Shares, the directors shall notify the Seller and all those to whom Sale Shares have been conditionally allocated under article 38.8 and article 38.9, stating that the Minimum Transfer Condition has not been met and that the relevant Transfer Notice has lapsed with immediate effect.

38.11 If:

38.11.1 the Transfer Notice includes a Minimum Transfer Condition and such Minimum Transfer Condition has been satisfied, or the Transfer Notice does not include a Minimum Transfer Condition; and

38.11.2 allocations under article 38.8 and, if necessary, article 38.9 have been made in respect of some or all of the Sale Shares,

the directors shall give written notice of allocation ("**Allocation Notice**") to the Seller and each Continuing Shareholder to whom Sale Shares have been allocated (including the company if it is willing to purchase any Sale Shares in accordance with article 38.10) ("**Applicant**"). The Allocation Notice shall specify the number of Sale Shares allocated to each Applicant, the amount payable by each Applicant for the number of Sale Shares allocated to him ("**Consideration**") and the place and time for completion of the transfer of the Sale Shares (which shall be not more than the later of 28 days after the date of the Allocation Notice or, if the company is an Applicant, the date upon which the company complies, in full, with all statutory requirement in relation to the purchase of the Sale Share).

38.12 On the service of an Allocation Notice, the Seller shall, against payment of the Consideration, transfer the Sale Shares allocated in accordance with the requirements specified in the Allocation Notice.

38.13 If the Seller fails to comply with the requirements of the Allocation Notice:

38.13.1 the chairman of the company (or, failing him, one of the other directors, or some other person nominated by a resolution of the directors) may, on behalf of the Seller:

(a) complete, execute and deliver in his name all documents necessary to give effect to the transfer of the relevant Sale Shares to the Applicants;

(b) receive the Consideration and give a good discharge for it; and

(c) (subject to the transfers being duly stamped) enter the Applicants in the register of shareholders as the holders of the shares purchased by them; and

38.13.2 the company shall pay the Consideration into a separate bank account in the company's name on trust (but without interest) for the Seller until he has delivered his certificate for the relevant shares (or an indemnity, in a form reasonably satisfactory to the directors, in respect of any lost

certificate, together with such other evidence (if any) as the directors may reasonably require to prove good title to those shares) to the company.

- 38.14 If an Allocation Notice does not relate to all of the Sale Shares then the company itself may, subject to compliance with all statutory requirements, purchase the remaining Sale Shares on the terms set out in the Transfer Notice.
- 38.15 If the company does not purchase the Sale Shares in accordance with article 38.14 then, subject to article 38.16 and within 4 weeks following service of the Allocation Notice, the Seller may transfer the Second Surplus Shares to any person at a price at least equal to the Transfer Price.
- 38.16 The Seller's right to transfer shares under article 38.15 does not apply if the directors, acting reasonably, are of the opinion that:
- 38.16.1 the transferee is a person (or a nominee for a person) who is a competitor with (or an associate of a competitor with) the business of the company or with an associated company (companies being associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate); or
 - 38.16.2 the sale of the Sale Shares is not bona fide or the price is subject to a deduction, rebate or allowance to the transferee; or
 - 38.16.3 the Seller has failed or refused to provide promptly information available to the Seller and reasonably requested by the directors to enable them to form the opinion mentioned above.
- 38.17 The restrictions imposed by this article may be waived in relation to any proposed transfer of Shares with the consent of shareholders who, but for the waiver, would or might have been entitled to have such shares offered to them in accordance with this article.

39. TRANSMISSION OF SHARES

- 39.1 If title to a share passes to a transmittee, the company may only recognise the transmittee as having any title to that share.
- 39.2 A transmittee who produces such evidence of entitlement to shares as the directors may properly require:
- 39.2.1 may, subject to the articles, choose either to become the holder of those shares or to have them transferred to another person; and
 - 39.2.2 subject to the articles, and pending any transfer of the shares to another person, has the same rights as the holder had.
- 39.3 Transmittees do not have the right to attend or vote at a general meeting, or agree to a proposed written resolution, in respect of shares to which they are entitled, by reason of the holder's death or bankruptcy or otherwise, unless they become the holders of those shares.

40. **EXERCISE OF TRANSMITTEES' RIGHTS**

- 40.1 Transmittees who wish to become the holders of shares to which they have become entitled must notify the company in writing of that wish.
- 40.2 If the transmittee wishes to have a share transferred to another person, the transmittee must execute an instrument of transfer in respect of it.
- 40.3 Any transfer made or executed under this article is to be treated as if it were made or executed by the person from whom the transmittee has derived rights in respect of the share, and as if the event which gave rise to the transmission had not occurred and all the provisions of the articles relating to transfers of shares shall apply.

41. **TRANSMITTEES BOUND BY PRIOR NOTICES**

If a notice is given to a shareholder in respect of shares and a transmittee is entitled to those shares, the transmittee is bound by the notice if it was given to the shareholder before the transmittee's name, or the name of any person(s) named as the transferee(s) in an instrument of transfer executed under article 40.2, has been entered in the register of members.

DIVIDENDS AND OTHER DISTRIBUTIONS

42. **PROCEDURE FOR DECLARING DIVIDENDS**

- 42.1 The company may by ordinary resolution declare dividends, and the directors may decide to pay interim dividends.
- 42.2 A dividend must not be declared unless the directors have made a recommendation as to its amount. Such a dividend must not exceed the amount recommended by the directors.
- 42.3 No dividend may be declared or paid unless it is in accordance with shareholders' respective rights.
- 42.4 Except as otherwise provided by the rights attached to shares, all dividends shall be declared and paid according to the amounts paid up on the shares on which the dividend is paid. All dividends shall be apportioned and paid proportionately to the amounts paid up on the shares during any portion or portions of the period in respect of which the dividend is paid. However, if any share is issued on terms providing that it shall rank for dividend as from a particular date, that share shall rank for dividend accordingly.
- 42.5 If the company's share capital is divided into different classes, no dividend may be paid on shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrear.
- 42.6 The directors may pay at intervals any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment.
- 42.7 If the directors act in good faith, they do not incur any liability to the holders of shares conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on shares with deferred or non-preferred rights.

43. **PAYMENT OF DIVIDENDS AND OTHER DISTRIBUTIONS**

- 43.1 Where a dividend or other sum which is a distribution is payable in respect of a share, it must be paid by one or more of the following means:

- 43.1.1 transfer to a bank or building society account specified by the distribution recipient, either in writing or as the directors may otherwise decide;
 - 43.1.2 sending a cheque made payable to the distribution recipient by post to the distribution recipient at the distribution recipient's registered address (if the distribution recipient is a holder of the share), or (in any other case) to an address specified by the distribution recipient, either in writing or as the directors may otherwise decide;
 - 43.1.3 sending a cheque made payable to such person by post to such person at such address as the distribution recipient has specified, either in writing or as the directors may otherwise decide; or
 - 43.1.4 any other means of payment as the directors agree with the distribution recipient, either in writing or by such other means as the directors decide.
- 43.2 In the articles, "the distribution recipient" means, in respect of a share in respect of which a dividend or other sum is payable:
- 43.2.1 the holder of the share; or
 - 43.2.2 if the share has two or more joint holders, whichever of them is named first in the register of members; or
 - 43.2.3 if the holder is no longer entitled to the share by reason of death or bankruptcy, or otherwise by operation of law, the transmittee.

44. NO INTEREST ON DISTRIBUTIONS

- 44.1 The company may not pay interest on any dividend or other sum payable in respect of a share unless otherwise provided by:
- 44.1.1 the terms on which the share was issued; or
 - 44.1.2 the provisions of another agreement between the holder of that share and the company.

45. UNCLAIMED DISTRIBUTIONS

- 45.1 All dividends or other sums which are:
- 45.1.1 payable in respect of shares; and
 - 45.1.2 unclaimed after having been declared or become payable;
- may be invested or otherwise made use of by the directors for the benefit of the company until claimed.
- 45.2 The payment of any such dividend or other sum into a separate account does not make the company a trustee in respect of it.
- 45.3 If:
- 45.3.1 twelve years have passed from the date on which a dividend or other sum became due for payment; and
 - 45.3.2 the distribution recipient has not claimed it,

the distribution recipient is no longer entitled to that dividend or other sum and it ceases to remain owing by the company.

46. NON-CASH DISTRIBUTIONS

46.1 Subject to the terms of issue of the share in question, the company may, by ordinary resolution on the recommendation of the directors, decide to pay all or part of a dividend or other distribution payable in respect of a share by transferring non-cash assets of equivalent value (including, without limitation, shares or other securities in any company).

46.2 For the purposes of paying a non-cash distribution, the directors may make whatever arrangements they think fit, including, where any difficulty arises regarding the distribution:

46.2.1 fixing the value of any assets;

46.2.2 paying cash to any distribution recipient on the basis of that value in order to adjust the rights of recipients; and

46.2.3 vesting any assets in trustees.

47. WAIVER OF DISTRIBUTIONS

47.1 Distribution recipients may waive their entitlement to a dividend or other distribution payable in respect of a share by giving the company notice in writing by way of a deed to that effect, but if:

47.1.1 the share has more than one holder; or

47.1.2 more than one person is entitled to the share, whether by reason of the death or bankruptcy of one or more joint holders, or otherwise,

the notice is not effective unless it is expressed to be given, and signed, by all the holders or persons otherwise entitled to the share.

CAPITALISATION OF PROFITS

48. AUTHORITY TO CAPITALISE AND APPROPRIATION OF CAPITALISED SUMS

48.1 Subject to the articles, the directors may, if they are so authorised by an ordinary resolution:

48.1.1 decide to capitalise any profits of the company (whether or not they are available for distribution) which are not required for paying a preferential dividend, or any sum standing to the credit of the company's share premium account or capital redemption reserve; and

48.1.2 appropriate any sum which they so decide to capitalise (a "capitalised sum") to the persons who would have been entitled to it if it were distributed by way of dividend (the "persons entitled") and in the same proportions and apply such sum on their behalf either towards paying up the amounts, if any, for the time being unpaid on any shares held by them respectively.

48.2 Capitalised sums must be applied:

48.2.1 on behalf of the persons entitled; and

- 48.2.2 in the same proportions as a dividend would have been distributed to them.
- 48.3 Any capitalised sum may be applied in paying up new shares of a nominal amount equal to the capitalised sum which are then allotted credited as fully paid to the persons entitled or as they may direct.
- 48.4 A capitalised sum which was appropriated from profits available for distribution may be applied in paying up new debentures of the company which are then allotted credited as fully paid to the persons entitled or as they may direct.
- 48.5 Subject to the articles the directors may:
- 48.5.1 apply capitalised sums in accordance with paragraphs 48.3 and 48.4 partly in one way and partly in another;
 - 48.5.2 make such arrangements as they think fit to deal with shares or debentures becoming distributable in fractions under this article (including the issuing of fractional certificates or the making of cash payments); and
 - 48.5.3 authorise any person to enter into an agreement with the company on behalf of all the persons entitled which is binding on them in respect of the allotment of shares and debentures to them under this article.

PART 4

DECISION-MAKING BY SHAREHOLDERS

ORGANISATION OF GENERAL MEETINGS

49. CALLING A GENERAL MEETING

- 49.1 The directors may call general meetings of the company.
- 49.2 In accordance with the provisions of the Companies Act 2006, and on the requisition of shareholders representing at least 5% of the paid up capital of the company carrying the right to vote at general meetings, the directors shall forthwith convene a general meeting.

50. NOTICE OF GENERAL MEETINGS

- 50.1 General meetings (other than adjourned meetings) shall be called on at least 14 days' notice.
- 50.2 General meetings may be called by shorter notice if agreed to by a majority in number of the shareholders having the right to attend and vote at the meeting, being a majority who together hold not less than 90% in nominal value of the shares giving a right to attend and vote at the meeting.
- 50.3 Subject to the provisions of the articles and any restrictions imposed on any shares, the notice shall be given to all shareholders, to all transmittes and to the directors and auditors.
- 50.4 Subject to the provisions of the Companies Act 2006, the accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

- 50.5 Notice of a general meeting must be given:
- 50.5.1 in hard copy form;
 - 50.5.2 in electronic form; or
 - 50.5.3 subject to the provisions of the Companies Act 2006, by means of a website.
- 50.6 Notice of a general meeting must state:
- 50.6.1 the time and date of the meeting;
 - 50.6.2 the place of the meeting; and
 - 50.6.3 the general nature of the business to be transacted at the meeting.

51. **ATTENDANCE AND SPEAKING AT GENERAL MEETINGS**

- 51.1 A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.
- 51.2 A person is able to exercise the right to vote at a general meeting when:
- 51.2.1 that person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and
 - 51.2.2 that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.
- 51.3 The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.
- 51.4 In determining attendance at a general meeting, it is immaterial whether any two or more members attending it are in the same place as each other.
- 51.5 Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have (or were to have) rights to speak and vote at that meeting, they are (or would be) able to exercise them.

52. **QUORUM FOR GENERAL MEETINGS**

- 52.1 Save in the case where the company has a single shareholder, 2 persons entitled to vote on the business to be transacted at the meeting, each being a shareholder or a proxy for a shareholder or a duly authorised representative of a corporate shareholder, shall be a quorum.
- 52.2 No business other than the appointment of the chairman of the meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum.

53. **CHAIRING GENERAL MEETINGS**

- 53.1 If the directors have appointed a chairman, the chairman shall chair general meetings if present and willing to do so.

53.2 If the directors have not appointed a chairman, or if the chairman is unwilling to chair the meeting or is not present within ten minutes of the time at which a meeting was due to start:

53.2.1 the directors present; or

53.2.2 (if no directors are present) the meeting,

must appoint a director or shareholder to chair the meeting, and the appointment of the chairman of the meeting must be the first business of the meeting.

53.3 The person chairing a meeting in accordance with this article is referred to as “the chairman of the meeting”.

54. **ATTENDANCE AND SPEAKING BY DIRECTORS AND NON-SHAREHOLDERS**

54.1 Directors may attend and speak at general meetings, whether or not they are shareholders.

54.2 The chairman of the meeting may permit other persons who are not:

54.2.1 shareholders of the company; or

54.2.2 otherwise entitled to exercise the rights of shareholders in relation to general meetings,

to attend and speak at a general meeting.

55. **ADJOURNMENT**

55.1 If the persons attending a general meeting within half an hour of the time at which the meeting was due to start do not constitute a quorum, or if during a meeting a quorum ceases to be present, the chairman of the meeting must adjourn it.

55.2 The chairman of the meeting may adjourn a general meeting at which a quorum is present if:

55.2.1 the meeting consents to an adjournment; or

55.2.2 it appears to the chairman of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.

55.3 The chairman of the meeting must adjourn a general meeting if directed to do so by the meeting.

55.4 When adjourning a general meeting, the chairman of the meeting must:

55.4.1 either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the directors; and

55.4.2 have regard to any directions as to the time and place of any adjournment which have been given by the meeting.

55.5 If the continuation of an adjourned meeting is to take place more than 14 days after it was adjourned, the company must give at least 7 clear days’ notice of it (that is, excluding the day of the adjourned meeting and the day on which the notice is given):

- 55.5.1 to the same persons to whom notice of the company's general meetings is required to be given; and
- 55.5.2 containing the same information which such notice is required to contain.
- 55.6 If at an adjourned meeting a quorum is not present within half an hour from the time appointed, then, provided that the shareholders present hold at least 75% in nominal value of the ordinary shares of the company in issue, any resolution agreed to by such members shall be valid and effectual as if it had been passed unanimously at a general meeting of the company duly convened and held.
- 55.7 No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

VOTING AT GENERAL MEETINGS

56. VOTING

- 56.1 On a vote on a resolution on a show of hands at a meeting, each shareholder present in person has one vote.
- 56.2 Subject to article 56.3, on a vote on a resolution on a show of hands at a meeting, every proxy present who has been duly appointed by one or more shareholders entitled to vote on the resolution has one vote.
- 56.3 On a vote on a resolution on a show of hands at a meeting, a proxy has one vote for and one vote against the resolution if:
 - 56.3.1 the proxy has been duly appointed by more than one shareholder entitled to vote on the resolution; and
 - 56.3.2 the proxy has been instructed by one or more of those shareholders to vote for the resolution and by one or more other of those shareholders to vote against it.
- 56.4 On a poll taken at a meeting of the company all or any of the voting rights of a shareholder may be exercised by one or more duly appointed proxies.
- 56.5 Where a shareholder appoints more than one proxy, article 56.3 does not authorise the exercise by the proxies taken together of more extensive voting rights than could be exercised by the shareholder in person.

57. ERRORS AND DISPUTES

- 57.1 No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.
- 57.2 Any such objection must be referred to the chairman of the meeting, whose decision is final.

58. POLL VOTES

- 58.1 A poll on a resolution may be demanded:
 - 58.1.1 in advance of the general meeting at which that resolution is to be put to the vote; or

58.1.2 at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.

58.2 A poll may be demanded by:

58.2.1 the chairman of the meeting;

58.2.2 the directors;

58.2.3 two or more persons having the right to vote on the resolution;

58.2.4 a person or persons representing not less than one tenth of the total voting rights of all the shareholders having the right to vote on the resolution; or

58.2.5 a person or persons holding shares conferring the right to vote on the resolution, being shares on which an aggregate sum has been paid up equal to not less than 10% of the total sum paid up on all the shares conferring the right to vote on the resolution,

and a demand by a person as proxy for a shareholder shall be the same as a demand by the shareholder.

58.3 A demand for a poll may be withdrawn if:

58.3.1 the poll has not yet been taken; and

58.3.2 the chairman of the meeting consents to the withdrawal.

58.4 A demand so withdrawn shall not invalidate the result of a show of hands declared before the demand was made.

58.5 Polls must be taken immediately upon demand (subject to being withdrawn in accordance with article 58.3) and in such manner as the chairman of the meeting directs.

59. **RIGHT TO APPOINT PROXIES**

59.1 A shareholder is entitled to appoint another person as his proxy to exercise all or any of his rights to attend and speak and vote at a meeting of the company.

59.2 A shareholder may appoint more than one proxy in relation to a meeting, provided that each proxy is appointed to exercise the rights attached to a different share or shares held by him.

60. **CONTENT OF PROXY NOTICES**

60.1 Proxies may only validly be appointed by a notice in writing (a "proxy notice") which:

60.1.1 states the name and address of the shareholder appointing the proxy;

60.1.2 identifies the person appointed to be that shareholder's proxy and the general meeting in relation to which that person is appointed;

60.1.3 is signed by or on behalf of the member appointing the proxy, or is authenticated in such manner as the directors may determine;

- 60.1.4 is delivered to the company in accordance with the articles not less than 48 hours before the time appointed for holding the meeting at which the right to vote is being exercised and in accordance with any instructions contained in the notice of the general meeting or adjourned meeting to which they relate;
 - 60.1.5 in the case of a poll taken more than 48 hours after it is demanded, is delivered to the company after the poll has been demanded and not less than 24 hours before the time appointed for the taking of the poll; and
 - 60.1.6 where the poll is not taken forthwith but is taken not more than 48 hours after it was demanded, is delivered at the meeting at which the poll was demanded to the chairman or any director or the company secretary.
- 60.2 A proxy notice which is not delivered in accordance with article 60.1 shall be invalid unless the directors, in their discretion, accept the notice at any time before the meeting.
- 60.3 The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.
- 60.4 Proxy notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.
- 60.5 Unless a proxy notice indicates otherwise, it must be treated as:
- 60.5.1 allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting; and
 - 60.5.2 appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

61. DELIVERY OF PROXY NOTICES

- 61.1 A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the company by or on behalf of that person.
- 61.2 An appointment under a proxy notice may be revoked by delivering to the company a notice given by or on behalf of the person by whom or on whose behalf the proxy notice was given.
- 61.3 A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.
- 61.4 If a proxy notice is not executed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor's behalf.

62. AMENDMENTS TO RESOLUTIONS

- 62.1 An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if:
- 62.1.1 notice of the proposed amendment is given to the company in writing by a person entitled to vote at the general meeting at which it is to be proposed

not less than 48 hours before the meeting is to take place (or such later time as the chairman of the meeting may determine); and

62.1.2 the proposed amendment does not, in the reasonable opinion of the chairman of the meeting, materially alter the scope of the resolution.

62.2 A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if:

62.2.1 the chairman of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed; and

62.2.2 the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.

62.3 If the chairman of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairman's error does not invalidate the vote on that resolution.

62A SHAREHOLDER WRITTEN RESOLUTIONS

62A.1 Subject to the Companies Acts, a written resolution signed by a simple majority (or in the case of a special resolution by a majority of not less than 75%) of the holders of the shares entitled to attend and vote at a general meeting is as valid as if it had been passed at a general meeting.

62A.2 A resolution under article 62A.1 may consist of several documents in similar form each signed by one or more shareholders;

62A.3 A resolution under article 62A.1 may be signed for a corporate body or an organisation which is a shareholder by its authorised representative, a member of its governing body or secretary, its solicitor or by an attorney.

PART 5

ADMINISTRATIVE ARRANGEMENTS

63. MEANS OF COMMUNICATION TO BE USED

63.1 Subject to the articles, anything sent or supplied by or to the company under the articles may be sent or supplied in any way in which the Companies Act 2006 provides for documents or information which are authorised or required by any provision of that Act to be sent or supplied by or to the company.

63.2 Subject to the articles, any notice or document to be sent or supplied to a director in connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such notices or documents for the time being.

63.3 A director may agree with the company that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

64. COMPANY SEALS

64.1 Any common seal may only be used by the authority of the directors.

64.2 The directors may decide by what means and in what form any common seal is to be used.

64.3 Unless otherwise decided by the directors, if the company has a common seal and it is affixed to a document, the document must also be signed by at least one authorised person in the presence of a witness who attests the signature.

64.4 For the purposes of this article, an authorised person is:

64.4.1 any director of the company;

64.4.2 the company secretary (if any); or

64.4.3 any person authorised by the directors for the purpose of signing documents to which the common seal is applied.

65. NO RIGHT TO INSPECT ACCOUNTS AND OTHER RECORDS

Except as provided by law or authorised by the directors or an ordinary resolution of the company, no person is entitled to inspect any of the company's accounting or other records or documents merely by virtue of being a shareholder.

66. PROVISION FOR EMPLOYEES ON CESSATION OF BUSINESS

The directors may decide to make provision for the benefit of persons employed or formerly employed by the company or any of its subsidiaries (other than a director or former director or shadow director) in connection with the cessation or transfer to any person of the whole or part of the undertaking of the company or that subsidiary.

DIRECTORS' INDEMNITY AND INSURANCE

67. INDEMNITY

67.1 Subject to paragraph 67.2, but without prejudice to any indemnity to which a relevant officer is otherwise entitled, a relevant officer of the company or an associated company may be indemnified out of the company's assets against:

67.1.1 any liability incurred by that relevant officer in connection with any negligence, default, breach of duty or breach of trust in relation to the company or an associated company;

67.1.2 any liability incurred by that relevant officer in connection with the activities of the company or an associated company in its capacity as a trustee of an occupational pension scheme (as defined in section 235(6) of the Companies Act 2006); and

67.1.3 any other liability incurred by that relevant officer as an officer of the company or an associated company,

including (in each case) any liability incurred by him in defending any civil or criminal proceedings, in which judgment is given in his favour or in which he is acquitted or the proceedings are otherwise disposed of without any finding or admission of any material breach of duty on his part or in connection with any application in which the court grants him, in his capacity as a relevant officer, relief from liability for negligence, default, breach of duty or breach of trust in relation to the company's (or any associated company's) affairs.

67.2 This article does not authorise any indemnity which would be prohibited or rendered void by any provision of the Companies Acts or by any other provision of law.

67.3 In this article:

67.3.1 companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate; and

67.3.2 a “relevant officer” means any director or secretary or former director or secretary of the company or an associated company.

68. **INSURANCE**

68.1 The directors may purchase and maintain insurance, at the expense of the company, for the benefit of any relevant officer in respect of any relevant loss.

68.2 In this article:

68.2.1 a “relevant officer” means any director or secretary or former director or secretary of the company or an associated company;

68.2.2 a “relevant loss” means any loss or liability which has been or may be incurred by a relevant director in connection with that relevant director’s duties or powers in relation to the company, any associated company or any pension fund or employees’ share scheme of the company or an associated company; and

68.2.3 companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

MISCELLANEOUS

69. **OPERATIONAL AGREEMENT**

The directors shall, to the fullest extent permissible under law, exercise their powers in relation to the company in compliance with, and in a manner which is consistent with, the terms of any operational agreement.

MAIDSTONE BOROUGH COUNCIL
and
MAIDSTONE PROPERTY HOLDINGS LIMITED

SERVICES AGREEMENT

Ref: OJD (ADL)/47740.0002

Anthony Collins Solicitors LLP

134 Edmund Street

Birmingham

B3 2ES

THIS SERVICES AGREEMENT is made on

2019

BETWEEN

- (1) **MAIDSTONE BOROUGH COUNCIL** of Maidstone House, King Street, Maidstone, United Kingdom, ME15 6JQ (the “**Council**”);
- (2) **MAIDSTONE PROPERTY HOLDINGS LIMITED** (Company Registration Number: 10368924 whose registered office is at Maidstone House, King Street, Maidstone, United Kingdom, ME15 6JQ (the “**Company**”)

WHEREAS

- (A) The Council is a local authority in England and has established the Company using its power under the General Power of Competence (sections 1 and 4, Localism Act 2011) to allow the Council to trade and act for commercial purpose.
- (B) The Company is not a contracting authority under the Public Contracts Regulations 2015 because it is a body established for the purpose of meeting needs in the general interest, having an industrial or commercial character.
- (C) The Company wishes to purchase support services from the Council.
- (D) The Council is required by The Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009 to recover the costs of any accommodation, goods, services, staff or any other thing that it supplies to the Company.

NOW IT IS HEREBY AGREED as follows:

1 INTERPRETATION

1.1 In this Services Agreement where the context so admits:

1.1.1 The following words and phrases shall bear the following meanings:

“**Commencement Date**” means 2019

Appendix 4

Draft Services Agreement

“Employees” means persons employed by the Council or any contractor of the Council and engaged in the delivery of the Services and **Employee** means any one of them as the context requires;

“Operational Agreement” means the agreement entered into by the Council and the Company dated 2019

“Parties” means the Council and Company;

“Price” shall mean the sum payable by the Company to the Council for the provision of the Services as referred to in Clause 3 and in Schedule B as amended in accordance with Clause 2.3 or Schedule B;

“Services” shall mean the Services to be provided under this Services Agreement as set out in Schedule A; and

- 1.1.2 Words denoting the singular shall include the plural and vice versa, words denoting the masculine gender shall include the feminine gender and vice versa and words denoting persons shall include corporations.
- 1.1.3 Reference to any statutory provisions or instruments shall be deemed to include reference to any such provisions or instruments as from time to time amended, varied, replaced, extended or re-enacted and to any orders or regulations under such provisions.
- 1.1.4 Reference to a Clause or a Schedule shall be deemed to be references to a clause or a schedule to this deed and references to a sub-clause shall be deemed to be references to a sub-clause of the clause in which the reference appears.
- 1.2 Clause headings are included for ease of reference only and shall not affect this Services Agreement or the interpretation hereof. Words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2 PROVISION OF SERVICES

- 2.1 The Council shall provide to the Company the Services set out in Schedule A.

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- 2.2 Such Services shall be provided by the Council to the level and standard specification agreed between the Parties from time to time and the Council agrees to use reasonable endeavours to meet those standards. Where no standards are specified the Council shall provide the Services in a competent and professional manner to provide a high quality service.
- 2.3 The Parties agree to comply with any relevant policies of the Council and the Company applicable to the Services, standing orders and financial regulations binding on any or all Parties from time to time provided that the Council shall be entitled to vary at any time the Price for the Services inter alia if any amendment to such policies and procedures (whether by the Company or the Council or both) would result in additional expenditure or cost for the Council.

3 PAYMENT FOR SERVICES

- 3.1 The Company hereby agrees to pay the Council the Price for the Services, such payments to be made in the manner and at the times set out in Part II of Schedule B.
- 3.2 For the avoidance of doubt all sums payable under this agreement are exclusive of VAT and any other duties or taxes and any such duties or taxes shall be payable in addition to such sums.

4 PROVISION OF AND PAYMENT FOR OTHER SERVICES

- 4.1 The Parties may agree to add additional services to the definition of Services from time to time and shall record any such agreement (including the price to be paid for those additional services) in writing signed by both Parties.

5 TERM OF THE AGREEMENT

- 5.1 This Services Agreement shall commence on the Commencement Date and remain in force until such time as it is terminated in accordance with Clause 8.

6 REVIEW OF OPERATION

- 6.1 The Council shall, at the request of the Company, report in writing to the Company on the Services delivered by the Council to the Company [in any financial year to 31

March], such report to be delivered within three months following the end of the financial year in question.

- 6.2 A Party may request a review meeting at any time during a financial year to be co-ordinated by the [Director of Finance and Business Improvement of the Council (or such person authorised by the Director of Finance and Business Improvement to act in his place).
- 6.3 Following such a review meeting, at which the Services and any relevant service standards in respect of the then current year of operation may be revised by consent, any amendments to this Services Agreement shall be noted in writing signed on behalf of the Parties and shall operate as variations to this Services Agreement.

7 EMPLOYEES

- 7.1 The Parties do not intend that any of the Employees shall be employed by or seconded to the Company.
- 7.2 The Company and the Council shall comply with the General Data Protection Regulation (Regulation (EU) 2016/679) and the Data Protection Act 2018 in respect of any personal data processed pursuant to this Services Agreement and shall further comply with the provisions set out at Schedule [C].
- 7.3 The Company shall fulfil all duties relating to the Employees' health, safety and welfare as if the Employees were the Company's employees and shall comply with the Council's reasonable requests in connection with the Council's duties in relation to the Employees.
- 7.4 The Company shall indemnify the Council fully and keep the Council indemnified fully at all times against any loss, injury, damage or costs suffered, sustained or incurred by:
- 7.4.1 the Employees in relation to any loss, injury, damage or costs arising out of any act or omission by the Company or its employees or agents in the course of carrying out the Services; or
- 7.4.2 a third party, in relation to any loss, injury, damage or costs arising out of any act or omission of the Employee in the course of carrying out the Services.
- 7.5 The Council shall indemnify the Company fully and keep the Company indemnified fully at all times against any claim or demand by the Employees arising out of their employment by the Council or their termination, except for any claim relating to any act
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or omission of the Company or its employees or agents for which the Company shall indemnify the Council fully.

- 7.6 The Council shall indemnify the Company against any claim that the Employees are employed by the Company.

8 TERMINATION

- 8.1 The Parties may agree to terminate this Services Agreement or the provision of any Service under it at any time.
- 8.2 Notwithstanding Clause 11.3, the Council may serve notice in writing on the Company to terminate this Services Agreement or the provision of any Service under it at any time.

9 RESOLUTION OF DISPUTES AND NOTICES

The Parties agree that Clause 28 (Dispute Resolution) of the Operational Agreement shall apply to the resolution of any dispute under this Services Agreement and the provisions of Clause 28 are hereby incorporated into this Services Agreement.

10 ILLEGALITY

- 10.1 If any provision of this Services Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 10.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted or modified, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the Parties.

11 FORCE MAJEURE

- 11.1 No Party shall be in breach of this Services Agreement or any part thereof if there is any total or partial failure of performance by it or its duties or obligations under this Services Agreement occasioned by act of God, natural disaster, fire, act or intervention of government or state riot or civil commotion, insurrection or industrial dispute of whatever nature or any other reason beyond the control of a Party.
- 11.2 If a Party is unable to perform any of its duties or obligations under this Services Agreement as a direct result of the effect of one of the reasons detailed in Clause 11.1 that Party shall give written notice to the other of the inability stating the reason.
- 11.3 Following service of a notice under Clause 11.2, the operation of this Services Agreement or the relevant part of the Services Agreement shall be suspended during the period (and only during the period) in which such reason continues and forthwith upon such reason ceasing to exist the Party relying upon it shall give written notice to the other of this fact, provided that if the reason continues for a period of more than 90 days and substantially affects the commercial basis, financial viability or practicality of this Services Agreement the Party not claiming relief under this Clause shall have the right to terminate this Services Agreement upon giving 30 days written notice of such termination to the other Party.

12 ASSIGNMENT

- 12.1 The Council may assign its rights under this Services Agreement at any time.
- 12.2 The Company may only assign its rights under this Services Agreement with the prior written consent of the Council.

13 INCORPORATION OF TERMS FROM THE OPERATIONAL AGREEMENT

- 13.1 The following terms of the Operational Agreement (as amended from time to time) apply and are incorporated into this Services Agreement:
- 13.1.1 Clause 11 (Confidentiality);
 - 13.1.2 Clause 12 (Information, Scrutiny and Accountability);
 - 13.1.3 Clause 16 (Variation and Waiver);
 - 13.1.4 Clause 17 (Costs);
 - 13.1.5 Clause 18 (No Partnership);

Appendix 4

Draft Services Agreement

- 13.1.6 Clause 19 (Good Faith);
- 13.1.7 Clause 20 (Third Party Rights);
- 13.1.8 Clause 21 (Notice);
- 13.1.9 Clause 22 (Interest on Late Payment);
- 13.1.10 Clause 27 (Governing Law and Jurisdiction).

13.2 References in the provisions of the Operational Agreement listed at Clause 13.1 to “Agreement” are to be read for the purposes of this “Services Agreement” as references to “Services Agreement”. References to “Company” and “Council” in this Services Agreement and the Operational Agreement have the same meaning.

EXECUTED and delivered as a deed at the date specified at the beginning of this Services Agreement.

The COMMON SEAL of

MAIDSTONE BOROUGH COUNCIL

was affixed to this Agreement in the presence of:

.....

Executed as a DEED by **MAIDSTONE PROPERTY HOLDINGS LIMITED** acting by

[.....], a director and [.....], a director

.....

Director

.....

Director

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SCHEDULE A

SERVICES DESCRIPTION

SERVICES to be provided by the Council to the Company are:

Legal

- To be provided by the Mid Kent Legal Partnership (MKLS).
- To include all areas of work provided by MKLS, except in any instance when MKLS and the Company agree that the work should be outsourced, because of lack of internal resource or specialist knowledge.
- All work for the Company will be charged at the same hourly rate in force at any time for work which MKLS carries out for Maidstone Borough Council.

Finance

- To maintain the accounting records of MPH Limited, including related financial accounting systems
- To process all payments and receipts
- To prepare regular quarterly monitoring reports for the Board and for Policy & Resources Committee
- To liaise with the MPH Limited external accountants

Directors

1. MPH Directors
 - To attend MPH company meetings
 - To fulfil the statutory responsibilities of a director
 - To commission goods and services on behalf of MPH
 - To liaise with the management provider on operational matters
2. MBC representative
 - To represent MBC at MPH company meetings
 - To advise MPH from a shareholder perspective
 - To report to Policy & Resources Committee on MPH activities

Democratic Services

- To be provided by the Democratic and Electoral Services Team.
- To provide administrative support for all formal meetings of the Board including minutes, agendas and arranging meetings.
- To undertake the company secretary role for the Company.
- All work for the company will be charged at an hourly rate.

Property Management:

MPH has entered into an arrangement with Sibley Pares to provide the marketing and residential management of Lenworth House and Grenada House.

The services provided by Sibley Pares includes:

- marketing and letting of vacancies;
- rent collection;
- property inspection and tenancy liaison;
- receiving maintenance requests from residents;
- liaising with MBC concerning repairs;
- payment of utilities;
- compliance with gas safety certificates.

Maidstone Borough Council's Housing Service provide MPH with an interface and contract management of the agreement between Sibley Pares and MPH.

Sibley Pares charges MPH fee incorporated into the agreement between MPH and Sibley Pares dated 1 February 2019.

Maidstone Borough Council's Housing Service will charge MPH a fee calculated as an hourly rate based on each officers' time utilised in contract management.

SCHEDULE B

PART I

1. Calculation of the Price

The Price will be a reasonable, fair and consistent price as determined by the Council from time to time as part of its budget-setting processes.

PART II

Procedure for Payment of the Price

1. The budgetary Price shall be payable monthly in arrears by the Company to the Council
2. The final adjustment charge / credit must be paid by the Company to the Council by 30th June each year.

SCHEDULE C

DATA PROTECTION

In this Schedule C the following additional definitions shall apply:

“Data Protection Legislation”	means the Data Protection Act 2018, as amended, replaced or superseded from time to time including by the GDPR. This definition also includes all guidance, standards and codes of practice published by the Information Commissioner’s Office, or any replacement body, which relate to data protection;
“GDPR”	means the General Data Protection Regulation 2016/679;
“Personal Data”	has the meaning set out in Article 4 of the GDPR and relates only to personal data supplied by one party to another under this Services Agreement, or which is collected or generated in the performance of services delivered pursuant to this Services Agreement;
Controller, Data Subject, Personal Data Breach, Processor, and Process(ing) have the meaning assigned to them in the GDPR.	

1. The Parties acknowledge that for the purposes of this Services Agreement either of them could be the Controller or the Processor of Personal Data. The parties set out in Annex 1 and Annex 2 (as may be varied from time to time in accordance with paragraph 2 below) to this Schedule C the different types of Personal Data that they are the Processor of and the basis, as at the date of this Agreement that they process that Personal Data. The terms of this Schedule C shall apply and references to Processor or to Controller are to the Processor or Controller for the purposes of the Personal Data in question.
2. The Processor shall process Personal Data only on documented instructions from the Controller, to the extent that is necessary for the purposes and in the manner specified in such documented instructions. Annexes 1 and 2 shall constitute the first such documented instructions and the Controller shall have the right to amend such table unilaterally by giving new documented instructions.

3. If the Processor is required by law to process the Personal Data in a manner which is not specified by the Controller in accordance with paragraph 2 above, the Processor must inform the Controller about such legal requirement in writing promptly upon discovering it. The Processor shall under no circumstances process Personal Data in such manner before it gives written notice to the Controller unless the same law prohibits notification on important grounds of public interest.
4. The Processor will keep records of any processing of Personal Data it carries out on behalf of the Controller which are sufficient to demonstrate compliance by the Controller and the Processor with the Data Protection Legislation, and which shall include as a minimum the information referred to in article 30 of the GDPR.
5. The Processor agrees to:
 - a. promptly comply with the Controller's written instructions and requirements from time to time, including in particular requests to amend, delete or transfer data;
 - b. immediately inform the Controller if the Processor thinks that it has been given an instruction which does not comply with Data Protection Legislation;
 - c. abide by the Controller's data protection policy as it may be updated from time to time;
 - d. act in a manner that ensures that at all times the Controller is compliant with Data Protection Legislation, including in particular articles 32, 33, 34, 35 and 36 of the GDPR, as well as to fully cooperate with and assist the Controller to ensure that the Controller is compliant;
 - e. upon request, provide the Controller with all the information that the Controller needs to show that both the Controller and the Processor have met the data protection obligations set out in this agreement and especially article 28 of the GDPR;
 - f. fully cooperate and assist the Controller to give effect to the rights of Data Subjects, by having appropriate technical and organisational measures in place.
6. If the Processor receives any complaint, request (including a subject access request), notice or communication which relates directly or indirectly to the Personal Data or to either Party's compliance with Data Protection Legislation, it shall immediately forward it to the Controller and shall provide the Controller with full information, co-operation and assistance in relation to any such complaint, request, notice or

communication, as the Controller may require. The Processor shall not respond to any such request or otherwise deal with it except as instructed by the Controller.

7. Personal Data is to be treated as Confidential Information (as that term is defined in Clause 11 of the Operational Agreement). The Processor shall ensure that all persons involved in the processing of Personal Data are reliable and are under a duty to keep the Personal Data confidential. Access to the Personal Data shall be limited to individuals who need to know and/or access the relevant Personal Data for the purposes of this Services Agreement.
8. The Processor undertakes to, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk (which may be of varying likelihood and severity) for the rights and freedoms of natural persons, implement appropriate technical and organisational measures to effectively keep the Personal Data secure and implement the principles of data protection by design and by default. Security measures should:
 - a. to the greatest extent possible involve pseudonymisation and encryption of Personal Data;
 - b. ensure the ongoing confidentiality, integrity, availability and resilience of Processing systems and the Services;
 - c. be able to restore the availability and access to Personal Data in a timely manner in the event of a physical and technical incident;
 - d. include regular testing, assessing and evaluating of effectiveness of technical and organisational measures to ensure security of Processing in the manner required by article 32 of the GDPR and any relevant guidance and codes
9. In assessing the appropriate level of security the Processor shall take into account in particular the risks that are posed by the Processing as well as those of a potential Personal Data Breach.
10. The Processor shall notify the Controller about any Personal Data Breach immediately upon discovering the breach, which notification shall:
 - a. describe the nature of the breach including the categories and number of Data Subjects and records concerned;
 - b. communicate the name and contact details of all persons from whom more information can be obtained about the breach;
 - c. describe the likely consequences of the breach;

- d. describe the measures taken by the Processor and the measures which the Processor proposes to be taken by the Controller to address the Personal Data Breach and mitigate its possible adverse effects.
11. Where any Personal Data is lost or destroyed or becomes damaged, corrupted, or unusable the Processor will restore such Personal Data at its own expense.
12. If a Personal Data Breach occurs the Processor shall co-operate with the Controller and take all reasonable steps as are directed by the Controller to assist in the containment, mitigation, remediation and investigation of such Personal Data Breach.
13. The Processor shall not subcontract any of its processing operations performed on behalf of the Controller under this agreement without the prior written consent of the Controller.
14. Where the Processor wishes to appoint a Subprocessor the Processor shall make a request in writing to the Controller and provide the Controller with evidence that the proposed Subprocessor is capable of performing the obligations of the Processor under this agreement and under Data Protection Legislation.
15. The Controller may require the Processor to provide it with any additional evidence the Controller may require and the Controller shall have no obligation to grant consent under this clause.
16. Any appointment of a Subprocessor shall be made on the basis of a written agreement which imposes on the Subprocessor the same obligations which are imposed on the Processor under this Services Agreement, and which permits the Controller to enforce such obligations directly against the Subprocessor (and to exercise the rights of the Processor directly against the Subprocessor).
17. The appointment of a Subprocessor shall not relieve the Processor from any of its obligations under this Services Agreement and where the Subprocessor fails to fulfil its obligations the Processor shall remain fully liable to the Controller for the performance of the Subprocessor's obligations.
18. The Processor shall not transfer Personal Data outside the European Economic Area without the prior written consent of the Controller.
19. If a transfer of Personal Data from the Controller to the Processor constitutes a transfer of Personal Data outside the European Economic Area, the Parties agree to be bound, and such transfer shall be governed by the standard contractual clauses contained in the European Commission Decision 2010/87/EU or any replacement standard contractual clauses which may be approved by the European Commission or the Information Commissioner's Office, unless the Parties agree to rely on and

comply alternative conditions for transferring Personal Data outside the European Economic Area under Chapter V of the GDPR. References therein to the data exporter shall be construed as references to the Controller and references to the data importer shall be construed as references to the Processor.

20. The Controller or persons nominated by it shall be entitled to inspect and audit the Processor's premises, facilities, equipment, records, documents and electronic data relating to the processing of Personal Data, and to audit the Processor's processes, for the purpose of ensuring compliance by the Processor with its data protection obligations, including its obligations under this agreement. The Processor shall cooperate with the Controller in carrying out such inspections and audits and shall ensure that all persons involved in the processing of personal data are available to be interviewed by the Controller.
21. The Processor shall indemnify the Controller against all liability, loss, damage and expense of whatsoever nature incurred or suffered by the Controller due to any failure by the Processor or its employees, agents or Subprocessors to comply with any of its obligations under this Services Agreement and/or under Data Protection Legislation.
22. Upon the termination or expiry of this Services Agreement the Processor shall, at the choice of the Controller, return all the Personal Data and/or irretrievably delete the Personal Data in accordance with the instructions of the Controller, unless the Processor is required to retain the Personal Data by law.
23. The provisions of this Schedule shall continue in effect notwithstanding the termination or expiry of this Services Agreement.
24. Nothing in this Agreement shall relieve the Processor of its own direct responsibilities and liabilities under the Data Protection Legislation

Annex 1 to Schedule C – Data Processing Activities (Council)

The Council as Processor shall Process Personal Data only to the extent that is necessary for the purposes specified in the table below (and not for any other purpose) and only in the specified manner:

Description of Personal Data and categories of Data Subjects	Method and purpose of Processing	Duration

The above table can be unilaterally modified by the Company as Controller from time to time by giving notice to the Council in writing.

Annex 2 to Schedule 6 – Data Processing Activities (Company)

The Company as Processor shall Process Personal Data only to the extent that is necessary for the purposes specified in the table below (and not for any other purpose) and only in the specified manner:

Description of Personal Data and categories of Data Subjects	Method and purpose of Processing	Duration

The above table can be unilaterally modified by the Company as Controller from time to time by giving notice to the Provider in writing.

Proposed Addition to the Terms of Reference of Policy and Resources Committee

Functions	Delegations of Functions
To be responsible for exercising the Council's functions as shareholder in Maidstone Property Holdings Limited to include making all Shareholder decisions.	Director of Finance and Business Improvement
To receive all reports to the Council as shareholder from the Company	