

DATED

2017

[RENTCO] LIMITED

JOINT VENTURE SHAREHOLDERS' AGREEMENT

between

CLARENDON LIVING LIMITED

and

THREE RIVERS DISTRICT COUNCIL

Anthony Collins Solicitors LLP
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Birmingham B3 2ES
(MC1.45213.0001)

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PARTIES

- (1) **Clarendon Living Limited** of Gateway House, 59 Clarendon Road, Watford, WD17 1LA (“**Clarendon**”); and
- (2) **Three Rivers District Council** of Three Rivers House, Northway, Rickmansworth WD3 1RL (“the **Council**”).

BACKGROUND

- (A) [RentCo] Limited (registered company number []) whose registered office is at [] (“the **JVCo**”) is a private company limited by shares incorporated in England and Wales under the Companies Act 2006 and at the date of this Agreement Clarendon and the Council each beneficially holds one ordinary share of £1.00.
- (B) Clarendon and the Council have established the JVCo for the purposes of promoting housing led developments and generating additional income through undertaking residential landlord activities on an on-going basis thereby maximising capacity for each to deliver its strategic aims.
- (C) The Parties have agreed to execute this Agreement to regulate their respective responsibilities, the governance arrangements and the operation and management of JVCo and the relationship between the shareholders.

AGREED TERMS

1. INTERPRETATION

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

Act: the Companies Act 2006.

Adequate Procedures: 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: the new articles of association of the JVCo in the agreed form to be adopted on or prior to Completion as amended or superseded from time to time.

Auditors: means the auditors of the JVCo at the relevant time.

Board: the board of Directors of the JVCo as constituted from time to time.

Business: has the meaning given in clause 2.1 and as set out in the Business Plan.

Business Day: 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 attached to Schedule 2 and includes the five year Business Plan and Annual Business Plan referred to in clause 11 as the context requires.

Buyer: means either Party to this Agreement acquiring Shares from the other Party to this Agreement in accordance with this Agreement.

Completion: the completion of the formation of the JVCo in accordance with clause 4 on the Completion Date.

Completion Date: has the meaning given in clause 4.2.

Conditions: the conditions set out in clause 5.

Confidential Information: has the meaning given in clause 22.

Connected Person: any person who is, or has at any time been treated for the purposes of any Tax as being a member of the same group of companies as Clarendon or as being associated or connected with Clarendon.

Connected Transfer Event: has the meaning given in clause 17.2.

Council Director: any person appointed to the Board as a Director by the Council in accordance with clause 6.4.

Council Interest: means B Shares which together amount to 50 per cent or more of the Shares in issue at the relevant time.

Council Shares or **B Shares:** means the "B" Ordinary Shares of £1 each in the capital of the JVCo.

Deadlock Notice: has the meaning given in clause 14.3.

Deadlock Resolution Notice: has the meaning given in clause 14.10.

Director: a director of the JVCo.

EBITDA: means earnings before interest, tax depreciation and amortisation based on an average of the JVCo's 12 months historic EBITDA and 12 months forecast EBITDA.

Electronic form: has the meaning given in section 1168 of the Act.

Eligible Director: any Eligible Clarendon Director or Eligible Council Director (as the case may be).

Eligible Council Director: a Council Director who would be entitled to vote on the matter at a meeting of the Board (but excluding any Council Director whose vote is not to be counted in respect of the particular matter).

Eligible Clarendon Director: a Clarendon Director who would be entitled to vote on the matter at a meeting of the Board (but excluding any Clarendon Director whose vote is not to be counted in respect of the particular matter).

Encumbrance: includes 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.

Expert: a person appointed in accordance with clause 16 to resolve a matter under this Agreement.

Fair Value: means the value of any shares determined in accordance with clause 18.

Financial Year: in relation to the JVCo, means the period of 12 months commencing on 1 April and ending on 31 March each year.

Clarendon Director: any Director appointed to the Board by Clarendon in accordance with clause 6.4.

Clarendon Interest: means A Shares which together amount to 50 per cent or more of the Shares in issue at the relevant time.

Clarendon Shares or A Shares: means the "A" Ordinary Shares of £1 each in the Capital of the JVCo.

Group: in relation to a company, 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 excluding, for the avoidance of doubt in relation to Clarendon, the JVCo.

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.

Nominated Account: means the JVCo's bank account, details of which will be provided to the Parties in writing by JVCo prior to the Completion Date.

Notice of Obligatory Transfer Event: has the meaning given in clause 18.1.

Objectives: the objectives of the JVCo listed in clause 2.3 of this Agreement.

Obligatory Transfer Event: in relation to a Party, any event specified in clause 17.1 that happens to that Party.

Party/Parties: the Council and/or Clarendon as appropriate.

Reserved Matters: the matters listed in Schedule 1.

Respective Proportions: in relation to a Party, the proportion which the number of shares held by that Party in the JVCo bears to the total number of issued shares of the JVCo.

Sale Shares: means the Shares specified (or deemed to be specified) in a Transfer Notice or Shares which a Shareholder is otherwise obliged to transfer in accordance with this Agreement.

Share(s): means Clarendon Shares and Council Shares.

Shareholders: the holders of Shares in the JVCo.

Support Services: has the meaning set out in Schedule 3.

Support Services Agreement: the agreement(s) made between Watford Community Housing Trust and / or Clarendon and JVCo relating to the provision of support services executed on the same date as this Agreement.

Transfer: means the transfer of the entire legal and beneficial ownership of any individual Share.

Transfer Notice: means a Transfer Notice deemed to have been given under clause 15.4.

Transferor: means a Shareholder which has given (or is deemed to have given) a Transfer Notice in relation to any Shares or which otherwise wishes or is obliged to Transfer any Shares in accordance with this Agreement.

Watford Community Housing Trust: an exempt charity and registered society under the Co-Operatives and Community Benefits Societies Act 2014 (Registered Number 30183R) whose registered office is at Gateway House, 59 Clarendon Road, Watford, WD17 1LA.

- 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, words in the singular include the plural and in the plural include the singular.

- 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, save for the purposes of clause 6.4 to clause 6.18 where a reference to **writing** or **written** includes electronic forms and the sending or supply of notices in 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 OBJECTIVES AND BUSINESS OF THE JVCO

- 2.1 The business of JVCo is to undertake residential landlord activities on an on-going basis in Three Rivers District and such other wider geographical areas, as agreed (the “**Business**”).
- 2.2 The Business may be modified to include such further activities as the JVCo may develop and as agreed by a unanimous decision of the Shareholders.
- 2.3 The Objectives of the JVCo are to:
- (a) to maximise the potential of the parties’ land holdings in the district and the surrounding area through housing led development whether for affordable, shared ownership or private market rental and including any commercial and retail development where it is ancillary to such housing led development;
 - (b) to maximise the potential of the parties’ land holdings in the district and the surrounding area through the acquisition of existing residential developments for improvement and / or refurbishment whether for affordable, shared ownership or private market rental and including any commercial and retail development where it is ancillary to such development; and
 - (c) to achieve a commercial return for the Parties through capital and/or revenue receipts and/or through participation in the JVCo as a Shareholders and/or the Parties’ commercial support services activities.
- 2.4 The Parties hereby acknowledge and agree that:-
- (a) the Objectives will be incorporated as the objects of the JVCo;
 - (b) the JVCo will conduct its business in order to achieve the Objectives; and
 - (c) the Objectives will be set out in the Business Plan.
- 2.5 The Business shall be carried out by the JVCo in accordance with the Business Plan.
- 2.6 Each of the Shareholders shall procure (so far as it is within their power to do so) that the JVCo shall at all times:
- (a) comply with the Business Plan;
 - (b) pursue and achieve the Objectives; and
 - (c) comply with the provisions of this Agreement, (subject to clause 21.2) the Articles and the Reserved Matters.

2.7 Subject to the provisions of this Agreement and (subject to clause 21.2) the Articles, the Parties shall have the discretion, powers and authority to carry out the Objectives and Business of the JVCo as they see fit in furtherance of the Business.

2.8 All Parties shall use their reasonable endeavours to promote and develop the Business to the best advantage of the JVCo.

3. PERIOD TO COMPLETION

3.1 The Parties shall procure that prior to Completion and except as required by clause 4, or otherwise agreed in writing by the Parties, the JVCo shall not carry on any trade or business or be engaged in any activities of any sort nor have any assets or liabilities.

4. COMPLETION

4.1 Completion shall take place at midday on the Completion Date at JVCo's registered office.

4.2 Completion Date means **[insert]** 2017 but if the Conditions have not been satisfied or waived in accordance with clause 5 (Conditions) on or before that date means:

- (a) the second Business Day after they are all satisfied or waived; or
- (b) any other date agreed in writing by the Parties.

4.3 At Completion the Parties shall procure that such Shareholder and board meetings of the JVCo are held as may be necessary to:

- (a) adopt the Articles in the agreed form;
- (b) change the JVCo's name to a name that will be agreed between the Parties prior to the Completion Date (if the current name is not to be retained);
- (c) confirm the appointment of JVCo's directors as agreed between the Parties;
- (d) confirm the appointment of Tina Barnard as the secretary of the JVCo;
- (e) confirm that the registered office of the JVCo shall be Gateway House, 59 Clarendon Road, Watford Hertfordshire WD17 1LA (or as otherwise agreed between the Parties post to Completion);
- (f) confirm the appointment of Mazars LLP as the Auditors of the JVCo;
- (g) confirm that the JVCo's Financial Year shall end on 31 March in each year; and
- (h) adopt the Business Plan attached to Schedule 2.

- 4.4 At Completion:
- (a) the Parties shall procure that the JVCo shall issue credited as fully paid 1 A Share to Clarendon and enter Clarendon in the register of members of the JVCo as the holder of such A Share and issue a share certificate to Clarendon in respect of such share; and
 - (b) in consideration for the issue of A Shares, (in (a) above), Clarendon shall pay the sum of £1 to the JVCo on the Completion Date in accordance with clause 4.5 below; and
 - (c) the Parties shall procure that the JVCo shall issue credited as fully paid 1 Council Share to the Council and enter the Council in the register of members of the JVCo as the holder of such Council Share and issue a share certificate to the Council in respect of such share; and
 - (d) in consideration for the issue of the Council Shares the Council shall pay the sum of £1 to the JVCo on the Completion Date in accordance with clause 4.5 below.
- 4.5 The payments to be made to JVCo in accordance with clause 4.4 shall be made in sterling by electronic transfer of immediately available funds to the Nominated Account.
- 4.6 The Parties waive, or agree to procure the waiver of, any rights or restrictions which may exist in the Articles or otherwise which might prevent the allotment and issue of the A Shares and Council Shares pursuant to clause 4.4.

5. CONDITIONS

- 5.1 Completion is conditional on the satisfaction or waiver of the following Conditions:
- (a) all Parties having passed the appropriate resolutions approving the entry into this Agreement.
 - (b) no person having threatened or commenced any proceedings to prohibit or otherwise challenge the transaction.
- 5.2 The Parties shall use all reasonable endeavours to procure that the Conditions are satisfied as soon as practicable and in any event no later than 6.00 pm:
- (a) on [insert] 2017; or
 - (b) where a later date has been agreed in writing by Clarendon and the Council, on that date.
- 5.3 A Condition may only be waived by the Parties in writing.

- 5.4 If at any time any Party becomes aware of a fact or circumstance that might prevent a Condition being satisfied, it shall immediately inform the other Parties.
- 5.5 If the Conditions have not been satisfied or waived by 6.00 pm on [.....] 2017 this Agreement shall cease to have effect immediately after that time on that date except for:
- (a) Clause 1 (interpretation);
 - (b) this Clause 5 (conditions);
 - (c) Clause 22 (confidentiality);
 - (d) Clause 24 (whole agreement);
 - (e) Clause 26 (variation and waiver);
 - (f) Clause 27 (costs);
 - (g) Clause 31 (notice);
 - (h) Clause 33 (language);
 - (i) Clause 34 (severance);
 - (j) Clause 38 (governing law and jurisdiction); and
 - (k) any rights or liabilities that have accrued under this Agreement.

6. DIRECTORS AND MANAGEMENT

- 6.1 The Board has responsibility for the supervision and management of the JVCo and its business but shall procure that the JVCo shall not transact any of the business described in Schedule 1 (Reserved Matters) without the prior written approval of each of the holders of the Clarendon Shares and the Council Shares. If, in respect of any of the business set out in the Reserved Matters, the prior written approval of one of the Shareholders is not forthcoming in circumstances where the other Shareholder wishes to transact the relevant business, then the matter shall be referred to the Chief Executive of the Council and the chair of Clarendon for their consideration. If the Chief Executive of the Council and the chair of Clarendon fail to reach agreement within 20 Business Days of the date on which the matter is referred to them, the Shareholders shall procure that the relevant business is not transacted and clause 14 shall apply.
- 6.2 There shall be four Directors on the Board of which the number of Council Directors shall be two and the number of Clarendon Directors shall be two. The Directors shall not be entitled to any remuneration from the JVCo in their capacity as Directors and their expenses shall be met by the relevant Party appointing them and not the JVCo.

- 6.3 The post of chair shall be held by a Clarendon Director for one Financial Year and by a Council Director for the next Financial Year or as otherwise agreed by the Parties in writing. Each Party shall nominate the relevant Director to be chair in writing (and each Party may remove the relevant Director as chair at any time during the chair's term in the same manner). Prior to such appointment being made each Party shall consult with the other as to its proposed candidate. The chair shall not have a casting vote. If the chair for the time being is unable to attend any meeting of the Board, the relevant Party shall be entitled to appoint another Director to act as chair at the meeting.
- 6.4 A Party may appoint a Director, and remove a Director whom it appointed, by giving advance notice to the JVCo and the other Party. The appointment or removal takes effect on the date on which the notice is received by the JVCo or, if a later date is given in the notice, on that date.
- 6.5 A Director shall cease to be a Director immediately in the following circumstances (and in such circumstances shall be deemed to have been removed as a Director by the Party appointing him pursuant to clause 6.4 above):-
- (a) he is disqualified from acting as a Director of a company for any reason; or
 - (b) he has been convicted of an indictable offence which is not, or cannot be, spent; or
 - (c) a composition is made with his creditors generally in satisfaction of his debts; or
 - (d) he has absented himself from three consecutive meetings of the board in one rolling twelve-month period without special leave of absence from the board; or
 - (e) a registered medical practitioner who is treating him gives a written opinion to the Parties stating that he has become physically or mentally incapable of acting as a Director and may remain so for more than three months; or
 - (f) by reason of his mental health, a court makes an order which wholly or partly prevents him from personally exercising any powers or rights which he would otherwise have; or
 - (g) being a Council Director, he is an employee, officer, elected member or nominee of the Council and ceases to be such for any reason; or

- (h) being a Clarendon Director, he is an employee, officer, elected member or nominee of Watford Community Housing Trust and ceases to be such for any reason.
- 6.6 The Party removing a Director pursuant to clause 6.4 or being deemed to have removed a Director pursuant to clause 6.5 above shall indemnify and keep indemnified the other Shareholder and the JVCo against any loss, liability or cost which either of them may suffer or incur as a result of any claim connected with the Director's removal from office.
- 6.7 A Director may, and at the request of a Director, a Director shall, call a meeting of the Board.
- 6.8 The Parties shall ensure that at least five Business Days' notice of a meeting of Directors is given to all Directors entitled to receive notice accompanied by:
 - (a) an agenda specifying in reasonable detail the matters to be raised at the meeting; and
 - (b) copies of any papers to be discussed at the meeting.
- 6.9 A shorter period of notice of a meeting of Directors may be given if at least one Clarendon Director and one Council Director agree in writing.
- 6.10 Matters not on the agenda, or business conducted in relation to those matters, may not be raised at a meeting of Directors unless all the Directors present agree in writing.
- 6.11 The quorum at any meeting of Directors (including adjourned meetings) is one Eligible Council Director (or his alternate) and one Eligible Clarendon Directors (or their alternates) present when the meeting proceeds to business.
- 6.12 No business shall be conducted at any meeting of Directors unless a quorum is present at the beginning of the meeting and at the time when there is to be voting on any business.
- 6.13 If a quorum is not present within 30 minutes after the time specified for a Directors' meeting in the notice of the meeting then it shall be adjourned for 5 Business Days at the same time and place. If at the adjourned meeting a quorum is not present within 30 minutes after the time specified for the directors' meeting in the adjourned notice of the meeting, then it shall be adjourned for 5 Business Days at the same time and place. If at the second adjourned meeting a quorum is not present within 30 minutes after the time specified for the directors' meeting in the second adjourned notice of meeting, then those directors present will constitute a quorum.
- 6.14 The Parties shall use their respective reasonable endeavours to ensure that their respective appointees as Directors (or their duly appointed alternates)

attend each Board meeting (or meeting of a committee of the Board) and to procure that a quorum (in accordance with the provisions of this Agreement and the Articles) is present throughout each Board meeting and every general meeting of the JVCo.

- 6.15 A meeting of Directors shall be adjourned to another time or date at the request of all the Clarendon Directors or all the Council Directors present at the meeting. No business may be conducted at a meeting after such a request has been made. No more than one such adjournment may be made in respect of a meeting.
- 6.16 The Board shall be responsible for the appointment and dismissal of senior managers to be employed by the JVCo. The Parties shall ensure that the Council's Directors shall participate in the recruitment and dismissal processes for the senior management appointments.
- 6.17 Subject to clause 6.1, no resolution of the Directors is effective unless carried by all the Directors present.
- 6.18 The Shareholders shall join in passing any resolution required to ensure that no Director is in breach of section 175 Companies Act 2006 by reason only of also being a member, director or employees of, or otherwise in contract with, a Shareholder or any member of a Shareholder's Group.
- 6.19 Clarendon shall provide written notice to the Council of any early notice of termination of, or material changes to any arrangements, contracts or transactions which are material to the nature of the JVCo's Business.

7. SHAREHOLDERS' MEETINGS

- 7.1 The Shareholders shall use all reasonable endeavours to procure that their respective representatives attend each general meeting of the JVCo and that a quorum (in accordance with the provisions contained in the Articles) is present throughout each general meeting.
- 7.2 If a quorum is not present within 30 minutes after the time specified for a general meeting in the notice of the meeting then it shall be adjourned for 5 Business Days at the same time and place. If at the adjourned meeting a quorum is not present within 30 minutes after the time specified for the general meeting in the adjourned notice of the meeting, the Shareholders present shall adjourn the meeting to a date 5 Business Days from the meeting. Failure to reach a quorum at any third such adjourned general meeting will require a meeting between the Chief Executive of the Council and the chair of Watford Community Housing Trust acting on behalf of Clarendon (or such other senior personnel of Clarendon and the Council as the Shareholders may jointly agree) to be held to resolve any apparent issue in accordance with clause 14.

8. LAND AND FINANCE FOR THE JVCO

- 8.1 There is no obligation on either Party to provide any land, capital or other finance to the JVCo unless both Parties agree otherwise in writing.
- 8.2 If a Party provides capital or other finance pursuant to clause 8 the Parties shall negotiate in good faith on any terms to apply to such capital or other finance.

9. EXCLUSIVITY AND RESTRICTIONS ON THE PARTIES

- 9.1 The Parties agree that neither Party nor any of its Group members shall be prohibited from carrying on or being employed, engaged or interested in any other business in the Three Rivers District and surrounding area.

10. ANTI-CORRUPTION

- 10.1 Each Party undertakes to the other that:
- (a) it will not, and will procure that the JVCo 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) the Council has provided a copy of its anti-corruption policies and procedures to Clarendon and these are in agreed form (**the Council's Anti-corruption Procedures**). Each Party undertakes to the other that it will maintain in place, and will procure that the JVCo 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 reasonable request of the other Party it will confirm in writing that it has complied with its undertakings under clause 10.1(a) and clause 10.1(b) and will provide any information reasonably requested by the other Party in support of such compliance.
- 10.2 Breach of any of the undertakings in this clause shall be deemed to be a material breach of the Agreement for the purpose of clause 17.

11. THE BUSINESS PLAN

- 11.1 The Parties must approve and adopt the Business Plan which covers a period of 5 years from the Completion Date.
- 11.2 The Board is responsible for preparing, reviewing and updating the Business Plan annually (the "**Annual Business Plan**") and as a minimum it will include:
- (a) Introduction:

- (i) aims of the JVCo;
 - (ii) the Objectives;
 - (iii) the scope of the Agreement between the Parties.
- (b) Funding strategy and cashflow statement for that Financial Year giving:
- (i) an estimate of the Working Capital requirements of the JVCo;
 - (ii) an indication of the amount (if any) that it is considered prudent to retain, for the purpose of meeting such Working Capital requirements, out of those profits of the previous Financial Year that are available for distribution to Shareholders; and
 - (iii) operating budget (including capital expenditure requirements) for that Financial Year and balance sheet forecast.
- (c) Management report reflecting how the Objectives will be pursued through activities in that Financial Year and in subsequent years;
- (d) Financial report which shall include an analysis of the results of the JVCo for the previous Financial Year compared with the Business Plan for that Financial Year, identifying variations in sales, revenues, costs and other material items;
- (e) Approval process for investments and further projects for the JVCo;
- (f) Master planning process including consideration of the commercial implications of projects, potential procurement options and set out the rationale and commercial arrangements associated with the chosen procurement route;
- (g) Development principles and viability. Demonstrating the achievability of current and proposed further projects by setting out how deliverability will be managed over the lifetime.

11.3 The Annual Business Plan for every Financial Year shall be:

- (a) prepared by the Board not less than 10 days before the end of the preceding Financial Year (the first day being the first day of the Financial Year to which the plan relates); and
- (b) adopted and approved by the Parties in general meeting as Shareholders as soon as possible after it has been prepared and in any event before the first day of the Financial Year to which the plan relates.

11.4 After five years from the Completion Date the Board shall review the Business Plan and prepare, review and recommend a replacement Business Plan which shall underpin the subsequent Annual Business Plans.

12. ACCOUNTING

12.1 The Parties shall procure that the JVCo 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.

12.2 Each Party and its authorised representatives shall be allowed access at all reasonable times to examine the books and records of the JVCo and to discuss the JVCo's affairs with its Directors and senior management.

12.3 The Parties agree that the JVCo shall supply the Chief Executive of the Council and the chair of Clarendon with the financial and other information necessary to keep the Party informed about how effectively the Business is performing and in particular shall supply each Party with:

- (a) a copy of each year's Business Plan for approval in accordance with clause 11.3;
- (b) a copy of the audited accounts of the JVCo prepared in accordance with the laws applicable in and the accounting standards, principles and practices generally accepted in the United Kingdom, within three months of the end of the year to which the audited accounts relate; and
- (c) monthly management accounts of the JVCo to be supplied within ten Business Days of the end of the month to which they relate (the first day being the first day of the following month) and the accounts shall include a profit and loss account, a balance sheet and a cashflow statement and such other information as each Party may reasonably require.
- (d) a copy of a report prepared by the JVCo in respect of each Financial Year, demonstrating the implementation by the JVCo of Adequate Procedures such report to be provided within 20 Business Days of the end of the Financial Year to which it relates.

12.4 Each Party shall be entitled to require the JVCo, and the Parties procure that the JVCo shall as soon as possible comply with such a request, to provide any documents, information and correspondence necessary (at the cost of the Party making the request) to enable the relevant Party to comply with

filing, elections, returns or any other requirements of HM Revenue & Customs or of any other revenue or tax authority.

13. DIVIDEND POLICY

13.1 The Shareholders agree to procure that the JVCo shall comply with regulatory requirements. Unless otherwise agreed by the Shareholders, in each financial year that this Agreement remains in force, the Board shall resolve that dividend payments/distribution will be set at the maximum distributable sum utilising Free Cash. "**Free Cash**" shall mean available profits earned and received after the deduction of tax and interest.

14. DEADLOCK

14.1 There is a deadlock if one of the following applies:

- (a) at a properly convened meeting of Shareholders there is no quorum at the meeting and a meeting has been required to be held between the Chief Executive of the Council and the chair of Clarendon pursuant to clause 7.2 and no resolution has been reached;
- (b) the situation described in clause 15.4(b) arises; or
- (c) if a resolution to approve a Reserved Matter is not passed as a result of a failure to achieve unanimity and:
 - (i) a meeting has been required to be held between the Chief Executive of the Council and the chair of Clarendon pursuant to clause 6.1 and no resolution has been reached; and
 - (ii) a Party (the **Serving Party**) serves notice on the other Party (the **Receiving Party**) requiring the particular matter to be considered again at a special meeting of the Shareholders of the JVCo (to be held no earlier than seven Business Days after the date of deemed receipt by the Shareholders of the notice of the special meeting in accordance with the provisions of clause 31.3), and at such meeting the resolution is again not passed due to a failure to achieve unanimity or because there is no quorum at the meeting as a result of the Receiving Party either not attending or voting against the resolution.

14.2 There is no deadlock if a meeting, or adjourned meeting, is inquorate because the person who proposed the resolution does not attend.

14.3 Either Party may within 28 days of the meeting at which the deadlock arises (the first day being the day after the meeting or the date of the resolution, as the case may be) serve notice on the other Party (**Deadlock Notice**):

- (a) stating that in its opinion a deadlock has occurred; and
 - (b) identifying in reasonable detail the matter giving rise to the deadlock.
- 14.4 If the deadlock cannot be resolved within 20 Business Days from the date the deadlock matter is referred to the Chief Executive of the Council and/or the chair of Clarendon (as appropriate) the Shareholders shall then proceed in accordance with clauses 14.5 – 14.9 or 14.10.
- 14.5 The Shareholders shall prepare a notice (the “**Mediation Notice**”) which shall state the Shareholders desire to commence mediation in accordance with either:
 - (a) the Centre for Effective Dispute Resolution (“**CEDR**”) Model Mediation Procedure (“**Model Procedure**”); or
 - (b) the CEDR Expert Determination Process (“**Expert Determination**”),and a copy of Mediation Notice shall be sent to CEDR. For the avoidance of doubt, if one Shareholder fails to co-operate in selecting either procedure set out at clauses 14.5(a) or 14.5(b) above then the other Shareholder will ask CEDR to make a determination as to whether the Model Procedure or Expert Determination process will be followed.
- 14.6 If there are any issues relating to the conduct of the mediation (including nomination of the mediator) upon which the Shareholders cannot agree within 5 Business Days from the date of the Mediation Notice, CEDR will (at the request of either Shareholder) decide those issues on behalf of the Shareholders (having first consulted them).
- 14.7 The procedure for mediation will be:
 - (a) The Shareholders will make themselves available to commence mediation no later than 15 Business Days after the date of the Mediation Notice.
 - (b) If the Shareholders have elected to use Expert Determination, the Shareholders shall endeavour to agree the identity of the independent expert between themselves. If the Shareholders cannot agree within 5 Business Days from the date of the Mediation Notice, CEDR will (at the request of either Shareholder) appoint an appropriate expert.
 - (c) No party may terminate the mediation until both Shareholders have made their opening presentations and the mediator or the expert has met each Shareholder separately for at least one hour.
 - (d) In resolving any discrepancy between the contents of this Agreement and the Model Procedure or the Expert Determination, this Agreement shall take precedence.

- 14.8 If the deadlock is not resolved by either the Model Procedure or Expert Determination and in any event if a deadlock is still continuing 20 Business Days following the end of either the Model Procedure process or the Expert Determination process (**Resolution Period**) the Shareholders shall proceed by way of deadlock resolution in accordance with clauses 14.9 – 14.10.
- 14.9 The Parties shall inform each other by written notice (the “**Deadlock Resolution Notice**”) of their intention to terminate the Agreement with a view to wind the JVCo up. The notice shall specify that the JVCo will be in deadlock from the date of service by either Party of the Deadlock Resolution Notice and will operate until such time as all current on-going projects (“**on-going projects**”) have been completed with a view to the JVCo being wound-up in an orderly fashion upon completion of the on-going projects. **On-going projects** comprise all projects where work is being undertaken on the project site or which the Parties otherwise agree has not been completed.
- 14.10 Once given, a Deadlock Resolution Notice may not be revoked without mutual agreement between the Chief Executive of the Council and/or the chair of Watford Community Housing Trust acting on behalf of Clarendon.

15. TRANSFER OF SHARES

- 15.1 Transfer of shares is only permitted between the Parties. Each of the Shareholders undertakes with the other that, for the period of five years following the Completion Date, it shall not sell or transfer all or any of the Shares or any legal or beneficial interest in them or assign or otherwise purport to deal with them or with any interest in them.
- 15.2 Each of the Shareholders undertakes with the other that, subject to clause 15.1, so long as this Agreement remains in force, it shall not:
- (a) mortgage (whether by way of fixed or floating charge), pledge or otherwise encumber its legal or beneficial interest in the whole or any of the Shares;
 - (b) sell, transfer or otherwise dispose of all or any of the Shares or any legal or beneficial interest in them or assign or otherwise purport to deal with them or with any interest in them;
 - (c) enter into any agreement with respect to the voting rights attached to all or any of the Shares; or
 - (d) agree, whether conditionally or otherwise, to do any of the above, other than, in any case, with the prior consent in writing of the other Shareholder or in accordance with this Agreement.
- 15.3 Each of Clarendon and the Council undertakes to the other that it shall observe, and shall procure that any member of its Group holding Shares (or

shares in another member of the same Group which holds the Shares) observes, the provisions of clauses 15.1 and 15.2 as if references in that clause to “Shares” included references to shares in the capital of each member of its Group holding Shares.

15.4 If either of the Shareholders or any member of their respective Groups shall purport to deal with any of the shares referred to in clause 15.3 in contravention of the provisions of this clause 15 it shall automatically be deemed to have given a Transfer Notice in respect of its entire holding of Shares and the Parties shall either:

- (a) appoint an Expert in accordance with the provisions of clause 16 to determine the Fair Value of the Sale Shares to be sold to the other Party; or
- (b) if the other Party does not wish to buy the entirety of the other Party's shares, there will be a deadlock and the provisions of clause 14 shall apply.

15.5 If and so long as a Shareholder is a member of a Group, the following provisions shall apply to that Shareholder and its Group:

- (a) a Shareholder which is a Party (the “**Original Shareholder**”) may at any time Transfer all of its Shares (the “**Relevant Shares**”) to any one member of its Group (the “**Transferee**”) and that Transferee may at any time Transfer all of the Relevant Shares back to that Original Shareholder or to another member of the Group (also a “**Transferee**”) of that Original Shareholder provided that:
 - (i) this Agreement shall be varied so that each Transferee shall be bound by this Agreement as a Shareholder in respect of each Share transferred to it;
 - (ii) the Original Shareholder and (so long as it remains within the Original Shareholder's Group) any member of the Group of that Original Shareholder which has at any time held Relevant Shares shall be jointly and severally liable with the Transferee (as if each of them had remained a Shareholder) for the performance of all its obligations under this Agreement in respect of each Relevant Shareholder; and
 - (iii) the Transfer shall be of all the Shares held by the transferring Shareholder,
- (b) if Relevant Shares are held by a Transferee which ceases to be a member of the Group of the Original Shareholder than that Transferee shall forthwith transfer the Relevant Shares to that Original Shareholder or (at the option of that Original Shareholder) to

another member of the Group of that Original Shareholder. The Original Shareholder shall procure that each Transferee irrevocably appoints by way of security for the performance of its obligations under this Agreement any Director of the JVCo as its attorney to execute any documents which the Transferee shall fail or refuse to execute in accordance with this Agreement. The Board shall be obliged to register any transfer executed in exercise of that power of attorney (provided the relevant stock transfer form has been duly stamped); and

- (c) the Board may require (and, if so required, the Original Shareholder shall procure) the holder of the Relevant Shares or the person named as transferee in any stock transfer form lodged for registration to provide to the Board such information as the Board may reasonably consider necessary for the purpose of ensuring that transfer is permitted under clause 15.5(a). If the information is not provided within ten Business Days of the request the Shareholders shall procure that the Board shall refuse to register the transfer of the Relevant Shares unless and until the information is provided or the Shareholders otherwise agree in writing.

- 15.6 A Transfer Notice may not be given in circumstances where clause 15.4(b) applies, or where clause 17.2 applies or where a Deadlock Resolution Notice in accordance with clause 14 or a Notice of Obligatory Transfer Event in accordance with clauses 17 and 18 has been given unless and until the procedures and actions relating to that notice have been completed.
- 15.7 Each of the Shareholders appoints the other (and each of its directors for the time being) irrevocably, and by way of security for the performance of its obligations under this clause 15 and as its attorney or attorneys to execute any necessary document for the performance of those obligations, including any Transfer of Shares.
- 15.8 Each Shareholder irrevocably authorises the Board to approve the registration of any Transfer of Shares made in accordance with this clause 15.
- 15.9 On a Transfer of Shares in accordance with this clause 15 from one Shareholder to the other Shareholder or another member of that other Shareholder's Group this Agreement shall terminate subject to clause 19.
- 15.10 If, while this Agreement remains in force, one Shareholder disposes of all its Shares to the other Shareholder or to a member of the other Shareholder's Group, then the other Shareholder shall (notwithstanding the termination of other provisions of this Agreement) use all reasonable endeavours to obtain

the release of the disposing Shareholder from any guarantee, indemnity or other security which that Shareholder may have given under this Agreement.

15.11 Each Shareholder shall procure that the Board only approves for registration a transfer of Shares carried out in accordance with this Agreement and the Articles.

15.12 The Shareholders shall procure that each share certificate issued by the JVCo shall carry the following statement:

“Any disposition, transfer, charge of or dealing in any other manner in the Shares represented by this certificate is restricted by a Shareholders Agreement dated [.....] and made between Clarendon Living Limited (1) and Three Rivers District Council (2).”

16. EXPERT

16.1 An Expert is a person appointed in accordance with this clause to determine the Fair Value of Sale Shares in accordance with clause 15.4 or clause 18.2.

16.2 The Parties shall endeavour to agree on the identity of an independent Expert and such independent Expert shall be jointly appointed by the Parties.

16.3 If the Parties are unable to agree on the identity of an Expert within 20 Business Days of either Party serving details of a suggested expert on the other, either Party shall then be entitled to request the then President of the Institute of Chartered Accountants in England and Wales to appoint an Expert who is an accountant of repute with experience in the valuation of private companies limited by Shares.

16.4 Subject to clause 18.6, the Expert is required to prepare a written decision and give written notice (including a copy) of the decision to the Parties within a maximum of three months of the matter being referred to the Expert.

16.5 If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause then:

(a) either Party may apply to the then President of the Institute of Chartered Accountants in England and Wales to discharge the Expert and to appoint a replacement Expert with the required expertise; and

(b) this clause applies in relation to the new Expert as if he were the first Expert appointed.

16.6 All matters under this clause shall be conducted, and the Expert's decision shall be written, in the English language.

16.7 The Parties are entitled to make written submissions to the Expert and shall provide (or procure that others including the JVCo provide) the Expert with

such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision, subject to the Expert agreeing to give such confidentiality undertakings as the Parties may reasonably require. In making any such submissions the Shareholders and the Board shall state their respective best estimates of any relevant monetary amounts. Subject to those rights, the Expert shall have power to determine the procedure to be followed in relation to the determination of the Fair Value.

- 16.8 The Expert shall be given by the Board, and shall take account, of all information which a prudent prospective purchaser of the entire issued share capital of the JVCo might reasonably require if that purchaser were proposing to purchase it from a willing seller by private treaty and at arm's length (and the Shareholders and the Board shall provide the Expert with access at all reasonable times to all relevant personnel, information and records for the purposes of determining the Fair Value).
- 16.9 To the extent not provided for by this clause, the Expert may in his reasonable discretion determine such other procedures to assist with the conduct of the determination as he considers just or appropriate, including (to the extent he considers necessary,) instructing professional advisers to assist him in reaching his determination.
- 16.10 Each Party shall with reasonable promptness supply (and procure that others including the JVCo supply) each other with all information and give each other access to all documentation and personnel as the other Party reasonably requires to make a submission under this clause.
- 16.11 The Expert shall act as an expert and not as an arbitrator. The Expert's written decision on the matters referred to him shall be final and binding on the Parties in the absence of manifest error or fraud.
- 16.12 Each Party shall bear its own costs in relation to the reference to the Expert. The Expert's fees and any costs properly incurred by him in arriving at his determination (including any fees and costs of any advisers appointed by the Expert) shall be borne by the Parties in their Respective Proportions or in such other proportions as the Expert shall direct.

17. OBLIGATORY TRANSFER EVENT

- 17.1 If anything mentioned in this clause 17.1 (each an Obligatory Transfer Event) happens to a Party it is an Obligatory Transfer Event in respect of that Party and the provisions of clause 18 apply:
- (a) in respect of Clarendon:
 - (i) the passing of a resolution for the liquidation of Clarendon other than a solvent liquidation for the purpose of the reconstruction or amalgamation of all or part of Clarendon's

Group in which a new company assumes (and is capable of assuming) all the obligations of the Party provided that such reconstruction or amalgamation does not result in a transfer of the Clarendon's Shares in the JVCo to any person other than a company in Clarendon's Group; or

- (ii) the presentation at court by any competent person of a petition for the winding up of Clarendon and which has not been withdrawn or dismissed within seven days of such presentation; or
- (iii) the issue at court by any competent person of a notice of intention to appoint an administrator to Clarendon, a notice of appointment of an administrator to Clarendon or an application for an administration order in respect of Clarendon; or
- (iv) any step is taken by any person to appoint a receiver, administrative receiver or manager in respect of the whole or a substantial part of the assets or undertaking of Clarendon; or
- (v) Clarendon is deemed or declared for the purpose of any applicable law to be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or calls a meeting for the purpose of passing a resolution to wind it up (other than for a members' voluntary winding up for the purpose of a solvent reconstruction or an amalgamation); or
- (vi) Clarendon enters into a composition or arrangement with its creditors; or
- (vii) any chargor taking any step to enforce any charge created over any Shares held by Clarendon in the JVCo (other than by the appointment of a receiver, administrative receiver or manager); or
- (viii) if a process has been instituted that could lead to Clarendon being dissolved and its assets being distributed among Clarendon's creditors, Shareholders or other contributors; or
- (ix) Clarendon commits a material or persistent breach of this Agreement which if capable of remedy has not been so remedied within 20 Business Days of the Council requiring such remedy; or
- (x) in the case of the Obligatory Transfer Events set out in sub-clauses (i), (ii), (iv) or (v) above, any competent person takes

any analogous step in any jurisdiction in which Clarendon carries on business;

- (b) in respect of the Council:
 - (i) it commits a material or persistent breach of this Agreement which if capable of remedy has not been so remedied within 20 Business Days of Clarendon requiring such remedy; or
 - (ii) the Council is to be wound up by a statutory process without statutory successors capable of becoming a Shareholder taking over some or all of its functions carried on at such time;

17.2 The Parties reserve the right for either Shareholder to transfer their shares upon reorganisation. Reorganisation shall mean:

- (a) for Clarendon; merger, amalgamation or becoming a subsidiary of any other body subject to Clarendon first giving the Council at least fifty-six days' notice of the change of status and the reasons for it. Clarendon will give reasonable consideration to any representations the Council may make within 28 days of such notice in respect of the change of status and respond in writing promptly to such representations giving reasons why Clarendon does not accept the Council's views, if that be the case, in which case clause 15.5 shall apply; or
- (b) for the Council; a statutory successor capable of becoming a Shareholder.

17.3 If any of the events listed in (i) to (vii) of clause 17.1(a) (each a **Connected Transfer Event**) above occur in relation to any company within Clarendon's Group (other than for the purpose of the reconstruction or amalgamation of all or part of Clarendon's Group, and where such reconstruction or amalgamation does not result in a transfer of Clarendon's Shares in the JVCo to any person other than a company in Clarendon's Group) in which a new company (being a member of Clarendon's Group) assumes (and is capable of assuming) all the obligations of Clarendon, Clarendon will notify the Council of the occurrence of the Connected Transfer Event and the Council may, acting reasonably, deem this to not be an Obligatory Transfer Event for the purpose of clause 17.

18. TRANSFER FOLLOWING OBLIGATORY TRANSFER EVENT

18.1 Where an Obligatory Transfer Event happens to a Party (in this clause the "**Seller**") it shall give notice of it to the other Party (in this clause the "**Buyer**") as soon as possible and, if it does not, it is deemed to have given such notice on the date on which the Buyer becomes aware of such Obligatory Transfer Event (the "**Notice of Obligatory Transfer Event**").

- 18.2 As soon as practicable after service, or deemed service, of the Notice of Obligatory Transfer Event, the Parties shall appoint an Expert in accordance with the provisions of clause 16 to determine the Fair Value of the Sale Shares.
- 18.3 The Buyer has the right, within 10 Business Days of receiving notification of the Fair Value determined by the Expert (the first day being the day after the Buyer receives the Fair Value notification) to serve a notice on the Seller to buy all of the Sale Shares at the Fair Value.
- 18.4 In this clause 18 the Fair Value of the Sale Shares shall be the value that the Expert certifies to be the fair market value in his opinion based on the following assumptions:
- (a) the value of the Shares in question is that proportion of the fair market value of the entire issued Shares capital of the JVCo that the Sale Shares bear to the then total issued Shares capital of the JVCo (with no premium or discount for the size of the Seller's Shareholding or for the rights or restrictions applying to the Sale Shares under this Agreement or the Articles);
 - (b) the sale is between a willing buyer and a willing seller on the open market;
 - (c) the sale is taking place on the date that the Obligatory Transfer Event occurred;
 - (d) if the JVCo is then carrying on its Business as a going concern, on the assumption that it shall continue to do so;
 - (e) the Shares are sold free of all Encumbrances; and
 - (f) to take account of any other factors that the Expert reasonably believes should be taken into account.
- 18.5 If any problem arises in applying any of the assumptions set out in clause 18.4, the Expert shall resolve the problem in whatever manner he shall, in his absolute discretion, think fit.
- 18.6 The Expert shall be requested to determine the Fair Value of the Sale Shares within 30 Business Days of his appointment and to notify the Buyer and Seller in writing of his determination.
- 18.7 The service of a notice to buy under clause 18.3 shall bind the Parties to buy and sell the Shares, as the case may be, in accordance with clause 19.
- 18.8 If at the end of the period specified in clause 18.3 the Buyer has not served a notice to buy the Sale Shares, the Buyer may elect by written notice served on the Seller for the JVCo to be wound up in accordance with clause 19.

19. TERMINATION AND LIQUIDATION

19.1 Except for the provisions which this clause states shall continue in full force after termination, this Agreement shall terminate:

- (a) when, as a result of transfers of Shares made in accordance with this Agreement or the Articles, only one Party remains as legal and beneficial holder of the Shares in the JVCo; or
- (b) when a resolution is passed by Shareholders or creditors, or an order made by a court or other competent body or person instituting a process that shall lead to the JVCo being wound up and its assets being distributed among the JVCo's creditors, Shareholders or other contributors.

19.2 The following provisions of this Agreement remain in full force after termination:

- (a) Clause 1 (Interpretation);
- (b) Clause 9 (Restrictions on the Parties);
- (c) this clause 19;
- (d) Clause 22 (Confidentiality);
- (e) Clause 24 (Whole Agreement);
- (f) Clause 26 (Variation and Waiver);
- (g) Clause 27 (Costs);
- (h) Clause 31 (Notice);
- (i) Clause 33 (Language);
- (j) Clause 34 (Severance); and
- (k) Clause 38 (Governing Law and Jurisdiction).

19.3 Termination of this Agreement shall not affect any rights or liabilities that the Parties have accrued under it.

19.4 If this Agreement terminates (other than by reason of a transfer of Shares pursuant to clause 15.5) each Party shall, if requested by the other, procure that the name of the JVCo is changed to avoid confusion with the name of the Party making the request.

19.5 Where the JVCo is to be wound up and its assets distributed, the Parties shall agree a suitable basis for dealing with the interests and assets of the JVCo and shall endeavour to ensure that:

- (a) all existing contracts of the JVCo are performed to the extent that there are sufficient resources;

- (b) the Parties procure that the JVCo shall not enter into any new contractual obligations;
 - (c) the JVCo is dissolved and its assets are distributed as soon as practical;
 - (d) any assets transferred to the JVCo pursuant an asset transfer agreement shall be returned to the original party or as the original party directs; and
 - (e) any other proprietary information or intellectual property rights belonging to or originating from a Party shall be returned to it by the other Party or the JVCo and all such proprietary information or intellectual property rights shall be erased from the computer systems (to the extent possible) of the JVCo and the Party who is returning it.
- 19.6 Where any Party is required by any law, regulation or governmental or regulatory authority to retain any proprietary information (or copies of such information) of the other Party or the JVCo, it shall notify the other Party in writing of such retention giving details of the information that it has been required to retain and the reason for such retention.

20. COMPLETION OF THE SALE AND PURCHASE OF SHARES IN THE JVCO

- 20.1 This clause applies only to transfers between the Parties pursuant to clause 14 (Deadlock) and clause 18 (Transfer following an Obligatory Transfer Event).
- 20.2 The sale of shares under this Agreement shall be completed at the JVCo registered office on the 20th Business Day:
- (a) after the price has been agreed by the Parties or determined by the Expert (as the case may be) in respect of the shares the subject of a Deadlock Resolution Notice under; or
 - (b) after service of a notice to buy under clause 18.3.
- 20.3 At completion the Party selling the shares shall:
- (a) transfer the shares free from all Encumbrances by way of a duly completed shares transfer form to the other Party buying the shares together with the relevant shares certificate and such other documents as the buyer may reasonably require to show good title to the shares or enable it to be registered as the holder of the shares;
 - (b) deliver the resignations of any Directors appointed by the selling Party to take effect at completion and acknowledging that they have no claims against the JVCo;

- (c) warrant that it has no right to require the JVCo to issue it with any shares capital or other securities and that no Encumbrance affects any unissued shares or other securities of the JVCo;
 - (d) warrant that it is selling the shares with full title guarantee;
 - (e) warrant that no commitment has been given to create an Encumbrance affecting the shares being sold (or any unissued shares or other securities of the JVCo) and that no person has claimed any rights in respect thereof;
 - (f) undertake to do all it can, at its own cost, to give the other Party buying the shares the full legal and beneficial title to the shares; and
 - (g) provide the JVCo with a waiver in writing of any rights it may have to be issued with any shares capital or other securities in the JVCo.
- 20.4 At completion the buying Party shall pay the purchase price by telegraphic transfer for value to the selling Party or its lawyers (who have been irrevocably authorised by the selling Party to receive it).
- 20.5 At or before completion the Parties procure that the JVCo shall repay any loans made by the selling Party to the JVCo (together with any interest accrued thereon) and the Parties shall use their best endeavours to procure that the selling Party is released from any guarantees, security arrangements and other obligations that it has given in respect of the JVCo and its business.
- 20.6 The Parties shall procure the registration (subject to due stamping by the buyer) of the transfer of shares in the JVCo pursuant to this clause and each of them consents to such transfer and registration pursuant to this Agreement and the Articles.
- 20.7 The shares shall be sold with all rights that attach, or may in the future attach, to them (including the right to receive all dividends and distributions declared, made or paid on or after the events referred to in clause 20.2(a) and clause 20.2(b)).
- 20.8 The Party buying the shares is not obliged to complete the purchase of any of the shares being sold unless the purchase of all the shares being sold is completed simultaneously.
- 20.9 If the Party selling the shares fails to complete the transfer of shares as required under this clause, the JVCo:
- (a) is irrevocably authorised to appoint any person to transfer the Shares on the selling Party's behalf and to do anything else that the Party buying the shares may reasonably require to complete the sale; and

- (b) may receive the purchase price in trust for the Party selling the shares, giving a receipt that shall discharge the Party buying the shares.

21. STATUS OF THE AGREEMENT

- 21.1 Each Party shall, to the extent that it is able to do so, exercise all its voting rights and other powers in relation to the JVCo to procure that the provisions of this Agreement are properly and promptly observed and given full force and effect according to the spirit and intention of the Agreement.
- 21.2 If there is at any time any conflict, ambiguity or discrepancy between the provisions of this Agreement and the Articles, the Shareholders shall procure that the Articles are amended to accord with the provisions of this Agreement, which shall prevail as between the Shareholders for so long as this Agreement remains in force.
- 21.3 The Parties shall, when necessary, exercise their powers of voting and any other rights and powers they have to amend, waive or suspend a conflicting provision in the Articles to the extent necessary to permit the JVCo and its business to be administered as provided in this Agreement.

22. CONFIDENTIALITY

- 22.1 In this clause Confidential Information means any information which:
 - (a) either 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 JVCo (including, without limitation, any information provided pursuant to clause 12);
 - (b) either 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 the other 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 the Business Plan (or any Annual Business Plan drafted pursuant to this Agreement).

but excludes the information in clause 22.2.

- 22.2 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) either Party can establish to the reasonable satisfaction of the other Party that it found out the information from a source not connected with the other Party 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 Party 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.

22.3 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, and the JVCo (in respect of information specified in clause 22.1(b) and clause 22.1(c)) shall keep confidential) any Confidential Information and shall not use or disclose any such Confidential Information except:

- (a) to another member of the Clarendon Group or Council Group, as the case may be, or 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 such of the JVCo or the Party or any member of its Group that the information relates to;
- (c) as may be required by law 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 Party 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; or
- (e) if the information comes within the public domain (otherwise than as a result of the breach of this clause 22.3).

22.4 Each Party shall inform (and shall use all reasonable endeavours to procure that any Subsidiary and the JVCo shall inform) 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).

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

22.6 The obligations of each of the Parties in this clause 22 shall continue without limit in time and notwithstanding termination of this Agreement for any cause.

22.7 On the signing of this Agreement the Parties shall issue a joint announcement about the formation of the JVCo in the agreed form.

23. WARRANTIES

23.1 Each Party warrants and represents to the other that, at the date of this Agreement, the JVCo has not carried on any business, has no assets or liabilities, has no employees and is not a Party to any contracts except as necessary to comply with clause 4.

23.2 Each Party warrants and represents to the other Party that:

- (a) it is a legal person duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation;
- (b) it has full power and authority and has obtained all necessary authorities and consents to enter into and perform its obligations under this Agreement and such other agreements and arrangements referred to in this Agreement; and
- (c) the signing of this Agreement and the performance of its obligations under this Agreement and the other agreements and arrangements referred to in this Agreement will not result in a breach of any other agreement or arrangement to which it is a Party, nor give rise to any right of termination of any other agreement or arrangement to which it is a Party.

24. WHOLE AGREEMENT

- 24.1 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.
- 24.2 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.
- 24.3 Nothing in this clause 24 shall limit or exclude any liability for fraud.

25. ASSIGNMENTS

- 25.1 No person may 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 all the Parties (such consent not to be unreasonably conditioned, withheld or delayed).
- 25.2 Each person that has rights under this Agreement is acting on its own behalf.

26. VARIATION AND WAIVER

- 26.1 A variation of this Agreement shall be in writing and signed by or on behalf of all Parties.
- 26.2 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.
- 26.3 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.
- 26.4 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.
- 26.5 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.
- 26.6 Unless specifically provided otherwise, rights and remedies arising under this Agreement are cumulative and do not exclude rights and remedies provided by law.

27. COSTS

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

28. 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.

29. GOOD FAITH

29.1 All transactions entered into between either Party or any of its Subsidiaries and the JVCo shall be conducted in good faith and on the basis set out or referred to in this Agreement or, if not provided for in this Agreement, as may be agreed by the Parties and, in the absence of such agreement, on an arm's length basis.

29.2 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.

29.3 Each Party shall do all things necessary and desirable to give effect to the spirit and intention of this Agreement.

30. THIRD PARTY RIGHTS

30.1 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.

30.2 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.

31. NOTICE

31.1 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 31 (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; or
- (v) sent by email to an email address notified by the relevant Party to the other Party for such purpose (if the notice is served or given under any of clauses 6.4 to clauses 6.18).

31.2 The addresses for service of notice are:

- (a) Clarendon

Address: Gateway House, 59 Clarendon Road, Watford, Herts, WD17 1LA

For the attention of: Tina Barnard

Fax number: 01923 209001

- (b) The Council,

Address: Three Rivers House, Northway, Rickmansworth, Hertfordshire WD3 1RL.

For the attention of: [REDACTED]

Fax number: [REDACTED]

31.3 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 electronic means, 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.

31.4 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.

32. INTEREST ON LATE PAYMENT

32.1 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 32.2 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).

32.2 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.

33. LANGUAGE

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

34. SEVERANCE

34.1 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.

34.2 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.

35. FURTHER ASSURANCE

Without prejudice to clause 4, 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.

36. 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.

37. AGREEMENT SURVIVES COMPLETION

This Agreement (other than obligations that have already been fully performed) remains in full force after Completion.

38. GOVERNING LAW AND JURISDICTION

38.1 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.

38.2 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).

This Agreement has been entered into on the date stated at the beginning of it.

Schedule 1 Matters reserved for Shareholder approval

	Activity	Reserved Shareholders save where expressed otherwise
1.	Varying in any respect the Articles or the rights attaching to any of the Shares in the JVCo.	
2.	Varying the quorum provisions for Director or Shareholder meetings.	
3.	Permitting the registration (upon subscription or transfer) of any person as a member of the JVCo other than the parties.	
4.	The creation, allotment or issue of any shares or the variation of any rights attaching to any share	
5.	Granting any option or other interest (in the form of convertible securities or in any other form) over or in its Shares capital, redeeming or purchasing any of its own Shares or effecting any other reorganisation of its Shares capital.	
6.	Issuing any loan capital in the JVCo or entering into any commitment with any person with respect to the issue of any loan capital.	
7.	Making any borrowing other than the existing loan arrangement for working capital purposes.	
8.	Passing any resolution for its winding up or presenting any petition for its administration (unless it has become insolvent).	
9.	Altering the Head Office location.	
10.	Changing the nature/scope of the JVCo's Business or commencing any new business by the JVCo which is not	

	ancillary or incidental to the Business.	
11.	Taking any action or decision which would not be consistent with the Annual Business Plan.	
12.	Forming any subsidiary or acquiring Shares in any other company or participating in any partnership or joint venture (incorporated or not).	
13.	Amalgamating or merging with any other company or business undertaking.	
14.	Creating or granting any Encumbrance over the whole or any part of the Business, undertaking or assets of the JVCo or over any Shares in the JVCo or agreeing to do so other than liens arising in the ordinary course of business or any charge arising by the operation or purported operation of title retention clauses and in the ordinary course of business.	
15.	Making any loan (otherwise than by way of deposit with a bank or other institution the normal business of which includes the acceptance of deposits or in the ordinary course of business) or granting any credit (other than in the normal course of trading) or giving any guarantee (other than in the normal course of trading) or indemnity (other than in the normal course of trading).	
16.	Altering any mandate given to the JVCo's bankers relating to any matter concerning the operation of the JVCo's bank accounts other than by the substitution of any person nominated as a signatory by the party entitled to make such nomination.	
17.	Entering into any arrangement, contract or transaction (including the appointment of any agent or intermediary to conduct any of the JVCo's Business) outside the normal course of its business (which for the avoidance of doubt shall include entering into any arrangement, contract or transaction with any Party to this Agreement or a member of its Group) or otherwise than on arm's length terms (except where measurably favourable to the JVCo).	

18.	Except as otherwise provided for in the Support Services Agreement, granting any rights (by licence or otherwise) in or over any intellectual property owned or used by the JVCo.	
19.	Making or permitting to be made any change in the accounting policies and principles adopted by the JVCo in the preparation of its audited and management accounts where such change would have an impact on the EBITDA.	Ratify following Board recommendation and approval
20.	Declaring or paying any dividend (other than in accordance with the Dividend Policy) or making any other distribution (by way of capitalisation, repayment or in any other manner) out of the JVCo's distributable profits or any of its reserves.	
21.	Granting any pension rights to any director, officer, employee, former director, former officer or former employee, or any member of any such person's family.	Except in relation to the new starters and currently serving directors, officers and employees on standard JVCo terms per the agreed pensions policy.
22.	Dismissing any director, officer or employee in circumstances in which the JVCo incurs or agrees to bear redundancy or other costs in excess of £50,000 in total.	
23.	Instituting, settling or compromising any material legal proceedings (other than debt recovery proceedings in the ordinary course of business) instituted or threatened against the JVCo or submitting to arbitration or alternative dispute resolution any dispute involving the JVCo.	Reserved where specific to the reputation and/or business interests to either or both of the Shareholders
24.	Factoring or assigning any of the book debts of the JVCo.	

25.	Establishing or amending any profit-sharing, Shares option or other incentive scheme (other than bonus schemes) of any nature for directors or employees of the JVCo.	
26.	Agreeing to remunerate (by payment of fees, the provision of benefits-in-kind or otherwise) any officer of or consultant to the JVCo at a rate in excess of £100,000 per annum or increasing the remuneration of any such person to a rate in excess of £100,000 per annum or otherwise in accordance with the Business Plan.	
27.	Entering into or varying any contract of employment providing for the payment of remuneration (including pension and other benefits) in excess of a rate of £100,000 per annum or increasing the remuneration of any staff (including pension and other benefits) to a rate in excess of £100,000 per annum.	
28.	Adopting or amending any standard terms of business (including prices) on which the JVCo is prepared to provide goods or services to third parties.	Delegated to the Board save where the impact is contrary to the Business Plan.
29.	Making any agreement with any revenue or tax authorities or making any claim, disclaimer, election or consent exceeding £250,000 for tax purposes in relation to the JVCo or its business.	

Schedule 2 Business Plan

Clarendon and TRDC to draft Business Plan and include method of working together and process to agree sites and projects – to include working drafts as agreed between the parties.

Schedule 3 Support Services

The following support services will be provided by Watford Community Housing Trust and / or Clarendon to the JVCo (as required):

Company Secretariat:

- Provide the Company Secretary
- Ensure that all the necessary documentation is submitted to Companies House in the formation of the company
- Draft the Terms of Reference for the Board and ensure annual reviews
- Convene all meetings
- Ensure that meetings are quorate and conducted appropriately
- Produce and/or circulate all Board papers and retain the records of all meetings
- Ensure that all statutory returns are agreed by the Board and submitted in the prescribed time


Financial Services

- To open such Bank Accounts as may be necessary and as directed by the Board
- Establish and maintain systems to ensure separation of activities between the Trust/Clarendon and JVCo
- Process all financial transactions relating to JVCo
- Maintain records of all transactions
- Procure auditors as directed by the Board
- Produce the draft annual financial statements for audit
- Facilitate the annual audit
- Produce a draft annual budget for approval by the Board
- Produce quarterly, or at such intervals as may be required, management accounts to the Board

Financial Planning

- Prepare a Financial Plan in line with the JVCo Business Plan
- Prepare cashflow forecasts to match the plan
- Monitor cashflow against projections and report on variances
- Arrange drawdown of funds in accordance with project needs and the Financial Plan
- Ensure that JVCo remains within its financial targets
- Advise of changes that would be required to remain within the Plan

The **COMMON SEAL** of
THREE RIVERS DISTRICT COUNCIL
was affixed to this Deed in the presence
of:

.....


Executed as a **DEED** by
CLARENDON LIVING LIMITED
acting by two Directors or one
Director and its secretary:

.....
Director

.....
Director/Secretary