

Merton Council

Local Authority Property Company (LAPC) Sub-Committee Agenda

Membership

Councillors:

Stephen Alambritis
Mark Allison
Martin Whelton

Date: Monday 16 October 2017

Time: 8.15 pm

Venue: Committee Rooms C,D,E, 1st floor, Merton Civic Centre

This is a public meeting and attendance by the public is encouraged and welcomed.
For more information about the agenda please contact
democratic.services@merton.gov.uk or telephone [020 8545 3616](tel:02085453616).

All Press contacts: press@merton.gov.uk, 020 8545 3181

Local Authority Property Company (LAPC) Sub-Committee Agenda

16 October 2017

- 1 Election of Chair
- 2 Apologies for absence
- 3 Declarations of pecuniary interest
- 4 Housing Company Shareholder Sub-Committee Report 1 - 64

Note on declarations of interest

Members are advised to declare any Disclosable Pecuniary Interest in any matter to be considered at the meeting. If a pecuniary interest is declared they should withdraw from the meeting room during the whole of the consideration of that matter and must not participate in any vote on that matter. If members consider they should not participate because of a non-pecuniary interest which may give rise to a perception of bias, they should declare this, withdraw and not participate in consideration of the item. For further advice please speak with the Assistant Director of Corporate Governance.

Local Authority Property Company Shareholder Sub-Committee

16 October 2017

Agenda item: **Merantun Development Ltd Company Set Up**

Lead officer: Chris Lee, Director of Environment and Regeneration

Lead members: Councillor Stephen Alambritis – Leader of the Council

Councillor Martin Whelton, Cabinet Member for Regeneration, Environment and Housing

Councillor Mark Allison Deputy Leader and Cabinet Member for Finance

Contact officer: James McGinlay – Assistant Director for Sustainable Communities
Paul McGarry – Head of Future Merton

1. PURPOSE OF SUB COMMITTEE REPORT

- 1.1 To note the Terms of Reference and Sub-Committee Membership;
- 1.2 To provide the Sub-Committee with an update on Merantun Development Ltd's progress;
- 1.3 To approve the nomination of the Director of Environment and Regeneration as the Shareholder Representative and to delegate authority to the Director to :
 - (i) act as the Shareholders representative in Company meetings for the purposes of passing ordinary and special resolutions and
 - (ii) to grant delegated authority to the Shareholder Representative to make decisions on company matters unless the matter is specifically reserved to the Sub-Committee;
- 1.4 To note the draft Shareholders Agreement and the Reserved Matters contained in Schedule 1 (Appendix 1) and the draft Amended Articles of Association (Appendix 2) and delegate authority to the Shareholder Representative in consultation with the Chair of the Sub-Committee to:
 - (i) agree these documents (save where there is a material change) and
 - (ii) enter into the Shareholders Agreement and approve adoption of the Amended Articles of Association.
- 1.5 On the Shareholder Agreement being entered into, the Sub-Committee reserves to itself the Reserved Matters contained in Schedule 1 of the agreement and

delegates authority to the Shareholder Representative with regards decisions relating to Reserved Matters in consultation with the Chair as and when necessary save for the following:

- (i) Altering in any respect the Articles or the rights attaching to any of the shares in MERANTUN DEVELOPMENT LTD (except as provided in clause 16.3 of the Draft Shareholder Agreement).
- (ii) Permitting the registration of any person as a member of MERANTUN DEVELOPMENT LTD other than the Council.
- (iii) Increasing the amount of MERANTUN DEVELOPMENT LTD's issued share capital, granting any option or other interest (in the form of convertible securities or in any other form) over or in its share capital, redeeming or purchasing any of its own shares or effecting any other reorganisation of its share capital.
- (iv) Incurring expenditure or entering into any arrangement, contract or transaction in excess of:
 - (a) Other than in relation to any land acquisition, £2,000,000 (2 million pounds);
 - (b) In relation to any land acquisition, £2,000,000 (2 million pounds).
- (v) Issuing any loan capital in MERANTUN DEVELOPMENT LTD or entering into any commitment with any person with respect to the issue of any loan capital.
- (vi) Applying for the listing or trading of any shares or debt securities on any stock exchange or market.
- (vii) Passing any resolution for its winding up or presenting any petition for its administration (unless it has become insolvent).
- (viii) Altering the name of MERANTUN DEVELOPMENT LTD or its registered office.
- (ix) Adopting or amending the Business Plan in respect of each Financial Year.
- (x) Changing the nature of MERANTUN DEVELOPMENT LTD's Business or commencing any new business by MERANTUN DEVELOPMENT LTD which is not ancillary or incidental to the Business.

- (xi) Forming any Subsidiary or acquiring shares in any other company or participating in any partnership or joint venture (incorporated or not).
 - (xii) Amalgamating or merging with any other company or business undertaking.
 - (xiii) Creating or granting any Encumbrance over the whole or any part of the Business, undertaking or assets of MERANTUN DEVELOPMENT LTD or over any shares in MERANTUN DEVELOPMENT LTD 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.
 - (xiv) Factoring or assigning any of the book debts of MERANTUN DEVELOPMENT LTD.
 - (xv) Changing the auditors of MERANTUN DEVELOPMENT LTD or its Financial Year end.
 - (xvi) Establishing or amending any profit-sharing, share option, bonus or other incentive scheme of any nature for Directors or employees.
 - (xvii) Establishing or amending any pension scheme or granting any pension rights to any Director, officer, employee, former Director, officer or employee, or any member of any such person's family.
 - (xviii) Appointing or dismissing any Director or Chairman.
 - (xix) Making any agreement with any revenue or tax authorities or making any claim, disclaimer, election or consent for tax purposes in relation to MERANTUN DEVELOPMENT LTD or its business.
 - (xx) Purchasing any housing or commercial unit(s) or land which is situated outside of the Council's administrative area.
- 1.6 To require the Shareholder Representative to report any decisions made under the delegated authority contained in 1.5 to be reported to the next Sub-Committee meeting after the decision was taken;
- 1.7 To approve the equity subscription of £160,560.00 to the Company in relation to the working capital as described in paragraph 4.1 below and to grant delegated authority to the Shareholder Representative in consultation with the Chief Financial Officer (the S151 officer) to approve the terms of the equity subscription and to enter into an Equity Subscription Agreement in relation to this sum;

- 1.8 To grant delegated authority to the Shareholder Representative in consultation with the S151 Officer and the Chair to negotiate the terms of Finance Agreements and/or Equity Subscription Agreements subsequently required after the Equity Subscription Agreement (referred to in 1.7 above) and to enter into such agreements;
- 1.9 To recommend the Sub-Committee approve the appointment of James McGinlay as a Director of Merantun Development Ltd;
- 1.10 To agree dates for information sessions on the financial documentation and the forward plan agenda items.

2. **Set up/Governance**

- 2.1 Since full council agreed the set up of the company on the 12th April 2017, significant progress has been made around the set up and legal structure of the company. The company, Merantun Development Ltd (10907028) was incorporated on the 9th August 2017 and currently has the Memorandum and Articles of Association in model form further to the Companies Act 2006.
- 2.2 The draft Shareholder's Agreement attached at Appendix 1 sets out how the council will act as the owner of the company, including the list of decisions reserved to shareholders, board appointment rights, any funding obligations and agreed arrangements around exiting as shareholders. The Council and the Company will need to execute this document in order that the Council can act as the owner of the company as set out in the Shareholder of the Agreement.
- 2.3 The Articles of Association set out the governance arrangements for the company and the procedural framework for meetings at both board and shareholder level. The draft Articles attached at Appendix 2 have been amended for the purposes of the Company and once approved will replace the model articles currently registered at Companies House. Under Schedule 1 of the Shareholders Agreement amendments to the articles are a Reserved matter for shareholder approval. There needs to be a company board meeting after approval of the directors has been given by the sub- committee to authorise entry into the shareholders agreement, the equity subscription agreement etc.
- 2.4 In addition to the documents in paragraphs 2.2 and 2.3 the following documents have been drafted by Trowers & Hamlin and will need to be approved at a future date as they are required for the loan facility being provided by the Council to the Company:
 - Equity Subscription Agreement
 - Facility Agreement
 - Debenture
 - Borrower board minutes
 - Officer's Certificate
- 2.5 Local Authority Property Company Proposed Governance Structure for Agreement

The company has three key structures as part of its set up: (i) The company structure required to deliver the development (ii) The company board to take decisions and to provide support on a monthly basis and (iii) The shareholder sub-committee will be in place to oversee progress on behalf of the council, and take key decisions as set out in the proposed shareholder reserved matters list, and agree future proposals/business plans.

The following set up is the recommendation for each of these key structures.

The Company Structure		
Paul McGarry	James McGinlay	(Interim)
Director of Design	Company Director	Director of Delivery

The Company Board Structure (Proposed)		
Ian McKinnon	James McGinlay	Roger Kershaw
Director	Director	Director

The Shareholder Sub - Committee		
Martin Whelton	Stephen Alambritis	Mark Alison
Cabinet Member	Leader	Deputy Leader

- 2.6 The Shareholder Sub-Committee is asked at recommendation 1.9 to appoint James McGinlay as a Director of the Merantun Development Ltd and will be asked to approve the appointment of the remaining directors at its meeting on 12 December 2017.

3.0 Project Update – Site Preparation

- 3.1 The project has started site preparation works to try and ensure the deadline of April 2019 is met. The legal and governance structure may take some time to establish fully, however this should not affect the financial viability of the project.
- 3.2 The desktop surveys for the sites have been sent out for quotations and subsequently commissioned. The following surveys have been commissioned.
- 3.3 Ecology Survey of The Canons site. The canons site is covered in bramble and will need to be cleared outside of the nesting season window, if this window is missed the site development will be delayed by three to six months.
- 3.4 Rights of light for planning and development risk. These surveys will allow the company to manage and assess the risk upfront of the development heights planned for the two Mitcham sites which are adjacent to other residential properties.

3.5 Geotechnical surveys for all four sites. The geotechnical survey will take samples and drill boreholes to assess the sites ground composition and look for any contamination on site. The geotechnical surveys if they come back clear de-risk the sites for development.

4.0 Finances

4.1 Please see Appendix 3, the phase 1 cash flow. This includes site surveys but excludes site preparation. The phase 1 cash flow will take the project to the commission stage for design and planning consent, followed by an tender issued for the construction and fit out of the developments and provide the construction costs. The total requested is £160,560.00.

4.2 The phase 1 funding required by the company will be undertaken through an equity subscription agreement between Merton Council as the lender and Merantun Developments Ltd.

4.3 A share certificate will be issued by Merantun Development Ltd for the amount transferred through the equity subscription based on the value of each share valued at £1.00.

4.4 The phase 1 cash flow timeline show's that the company set/development is slightly behind schedule, however the undertakings of the site investigations as set out in paras 3.2 – 3.5 will allow for progression to detailed design and submission of planning applications in early 2018.

5.0 Legal

5.1 Merantun Development Ltd has now been incorporated with the Council holding one share and James McGinlay having been registered as a Director of the Company. As stated in the main body of the report the Memorandum and Articles of Association is in model form further to the Companies Act 2006.

5.2 As the Shareholders Agreement and amended Model Articles of Association have not been finalised, this report is recommending that the delegations that have been proposed in paragraphs 1.3 to 1.4 of section 1 of this report be made. This is in order that pending the next meeting of the Sub-Committee in December 2017, the Shareholders Agreement can be entered into and the amended Articles of Association can be adopted.

5.3 It is also proposed in paragraph 1.5, that once the Shareholders Agreement has been entered into by the Council and the Company, that the Sub-Committee reserves the Reserved Matters to itself and save for the ones listed in paragraph 1.5 (i) to (xx), gives delegated authority to the Shareholder Representative to make decisions in consultation with the Chair. This is to enable the Reserved Matters that have been delegated to the Shareholder Representative to be made during the period before the next meeting of the Sub-Committee if so required.

- 5.4 As the Company requires working capital in the coming months, it is being proposed that an Equity Subscription Agreement be entered into. As the Shareholders Agreement and Amended Articles of Association are still in draft form, as a private company with only one class of shares there are no restrictions on the ability of Merantun to offer, allot or grant rights to subscribe for shares. The authority for this is section 551 of the Companies Act 2006 and Article 20.1 of Merantun's Articles of Association filed at Companies House. The delegation proposed in para 1.7 above is to enable the Equity Subscription Agreement to be entered into prior to the next meeting of the Sub-Committee.
- 5.5 Under the current Model Articles of Association registered at Companies House, it is the owner of the Company who appoints Directors of the company and this again requires the approval of the Sub-Committee. As currently James McGinlay is registered at Companies House as a Director, paragraph 1.9 is seeking formal approval under the current model Articles of Association from the Sub-Committee for his appointment.

6. CONSULTATION UNDERTAKEN OR PROPOSED

- 6.1 As part of the preparation of the specification for the design of the housing sites consultation will be undertaken with relevant officers within Merton Council as part of pre-application planning. Subsequent consultation will be undertaken in line with the statutory planning process.

7. TIMETABLE

- 7.1 Please see attached Appendix 4 which gives a high level timetable for the project up to planning and key decisions of the company.
- 7.2 Appendix 4 also shows the key decisions required to be made by the Shareholder Sub Committee relating to its role in approving the funding of the company through equity subscription agreements (for the transfer of land and liquid assets) and loan facilities for the construction phase of the developments.

8. HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1 There are no human rights, equalities and community cohesion implications for the purposes of this report.

9. CRIME AND DISORDER IMPLICATIONS

- 9.1 There are no crime and disorder implications for the purposes of this report.

10. RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 10.1 There are no risk management and health and safety implications for the purposes of this report. The company will be managing the risks set out in the business plan on an ongoing basis.

11. APPENDICES

1. Shareholder Agreement
2. Articles
3. Merantun Short Term Cash Flow
4. Key decisions (August 2017 – March 2018)

DATED 2017

SHAREHOLDER AGREEMENT

between

THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF MERTON

and

MERANTUN DEVELOPMENT LTD

DRAFT

CONTENTS

CLAUSE

1.	Interpretation.....	1
2.	Business of MERANTUN DEVELOPMENT LTD.....	5
3.	Completion.....	5
4.	Matters requiring consent of the Council.....	7
5.	Directors and management.....	7
6.	Finance for MERANTUN DEVELOPMENT LTD and Land.....	8
7.	Compliance with Procurement Law.....	9
8.	Restrictions on the Parties.....	9
9.	Anti-corruption.....	9
10.	Business Plan.....	10
11.	Accounting and other Information.....	11
12.	Dividend policy.....	13
13.	Tax Matters.....	13
14.	Issue of further shares.....	13
15.	Intellectual Property.....	13
16.	Termination and liquidation.....	13
17.	Status of the agreement.....	14
18.	Confidentiality, FOIA and EIRs.....	15
19.	Data Protection.....	17
20.	Announcements.....	17
21.	Warranties.....	18
22.	Assignment and other dealings.....	18
23.	Dispute Resolution.....	18
24.	Entire agreement.....	19
25.	Variation and waiver.....	19
26.	Costs.....	20
27.	No partnership or agency.....	20
28.	Notices.....	20
29.	Severance.....	22
30.	Agreement survives Completion.....	22
31.	Third party rights.....	22
32.	Counterparts.....	22
33.	Rights and remedies.....	23
34.	Inadequacy of damages.....	23
35.	Governing law and jurisdiction.....	23

SCHEDULE

SCHEDULE 1	MATTERS RESERVED FOR SHAREHOLDER APPROVAL.....	24
SCHEDULE 2	DEED OF ADHERENCE.....	27

THIS AGREEMENT is dated [] 2017.

PARTIES

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF MERTON**, of Civic Centre, London Road, Morden, SM4 5DX(**the COUNCIL**).
- (2) **MERANTUN DEVELOPMENT LIMITED** incorporated and registered in England and Wales with company number **10907028** whose registered office is at Civic Centre, London Rd, Morden SM4 5DX (**MERANTUN DEVELOPMENT LTD**).

BACKGROUND

- (A) MERANTUN DEVELOPMENT LTD is a newly formed company incorporated in England and Wales on 9th August 2017 and has one ordinary share of £1 in issue, which is registered in the name of and the beneficial ownership of the Council.
- (B) MERANTUN DEVELOPMENT LTD has been established for the purpose of making profit by way of building or acquiring housing and commercial units for either sale or rental at full market rates (in relation to housing units on assured shorthold tenancies) (with affordable housing as required by the local planning authority conditions).
- (C) MERANTUN DEVELOPMENT LTD shall carry on business in accordance with the terms and conditions of this Agreement.
- (D) THE COUNCIL shall exercise its rights as shareholder in relation to MERANTUN DEVELOPMENT LTD in accordance with the terms and conditions of this Agreement.

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 articles of association of MERANTUN DEVELOPMENT LTD in agreed form to be adopted on or prior to Completion as amended or superseded from time to time.

Associated Person: a person (including an employee or agent) who performs services for or on behalf of MERANTUN DEVELOPMENT LTD.

Board: the board of Directors of the MERANTUN DEVELOPMENT LTD as constituted from time to time.

Business: has the meaning given in clause 2.

Business Day: any day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Business Plan: has the meaning given in clause 9.

Chairman: means the Council Director appointed by the Council to preside over a meeting of the Directors.

Completion: the completion of the formation of MERANTUN DEVELOPMENT LTD.

Confidential Information: means any information or data in whatever form disclosed, which by its nature is confidential or which the disclosing party acting reasonably states in writing to the receiving party is to be regarded as confidential, or which the disclosing party acting reasonably has marked 'confidential' (including, without limitation, information concerning the business, affairs, customers, clients or suppliers of a party, financial information, or marketing or development or work force plans and information, and information relating to services or products) but which is not personal data (as defined in the Data Protection Act 1998), pursuant to an FOIA or EIRs request, or information which is published as a result of government policy in relation to transparency.

Council Director: any Director appointed to the Board by the Council pursuant to clause 5.3, excluding any Independent Director.

Director: a director of MERANTUN DEVELOPMENT LTD, including a managing Director or chief executive or other chief officer of MERANTUN DEVELOPMENT LTD.

Directors' Service Agreements means the service agreements in the agreed form to be entered into by MERANTUN DEVELOPMENT LTD with each of Executive Director on appointment to the Board at Completion.

EIRs: the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

Encumbrance: any interest or equity of any person (including any right to acquire, option or right of pre-emption) or any mortgage, charge, pledge, lien, assignment, hypothecation, security interest, title retention or any other security agreement or arrangement.

Executive Director: means a Director that is also an employee of MERANTUN DEVELOPMENT LTD.

Finance Agreement: a finance agreement to be entered into by MERANTUN DEVELOPMENT LTD and the Council on or about the date of this Agreement and any other funding and security documentation which is entered into by

the Council and MERANTUN DEVELOPMENT LTD pursuant to which the Council shall provide funding to MERANTUN DEVELOPMENT LTD.

Financial Year: in relation to MERANTUN DEVELOPMENT LTD, means its accounting reference period of 12 months ending on the date given in clause 3.1(f) or such other date as MERANTUN DEVELOPMENT LTD may determine in accordance with section 392 of the Act but, in the first year in which MERANTUN DEVELOPMENT LTD is formed, means the period starting with the day MERANTUN DEVELOPMENT LTD is formed and ending on the date given in clause 3.1(f), subject to the Act.

FOIA: the Freedom of Information Act 2000, and any subordinate legislation made under that act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Independent Director: a Director that is not an Executive Director or an employee, officer or member of the Council.

Intellectual Property Rights/IPR: any and all patents, inventions, trademarks, logos, service marks, domain names, registered designs, utility models, copyright, moral rights, rights in design, know-how, confidential information and all or any other intellectual or individual property rights whether or not registered or capable of registration and whether now or in the future residing in the U.K. or any other part of the world together with all or any goodwill and accrued rights of action.

Land Transfer Agreements: agreements to be entered into by the MERANTUN DEVELOPMENT LTD and the Council, the first agreement to be signed on or about the date of this Agreement pursuant to which the Council will transfer land to MERANTUN DEVELOPMENT LTD as part of its equity investment in MERANTUN DEVELOPMENT LTD.

Procurement Law: means all U.K. and European law relevant to public procurement activities including, without limitation the Public Contracts Regulations 2015 (SI 102/2015), the Treaty on the Functioning of the European Union, the Directive 2014/24/EU and all other relevant legislation, case law, guidance and codes of practice with which the Council is bound to comply (or any updates, re-enactments or replacements).

Remuneration Policy: a policy adopted by the MERANTUN DEVELOPMENT LTD (following receipt of Council written approval) in relation to the provision of remuneration (including salary, bonus, the provision of benefits-in-kind or otherwise) for its employees, officers and consultants.

Reserved Matters: the matters listed in Schedule 1.

Secondment Agreement means the secondment agreement in agreed form to be entered into by MERANTUN DEVELOPMENT LTD with the Council at Completion.

Subsidiary: has the meaning given in section 1159 of the Act.

Support Agreement: the agreement pursuant to which the Council provides support services to MERANTUN DEVELOPMENT LTD, to be entered into by MERANTUN DEVELOPMENT LTD and the Council in agreed form.

Support Services: the support services to be provided by the Council to MERANTUN DEVELOPMENT LTD as set out in the Support Agreement.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 Unless otherwise stated to the contrary, references to clauses and Schedules are to clauses of and Schedules to this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.4 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 1.5 A reference to this Agreement or to any other agreement or document referred to in this Agreement is a reference to this Agreement or such other agreement or document as varied or novated in accordance with its terms from time to time.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.9 A reference to any party shall include that party's successors and permitted assigns.
- 1.10 Unless otherwise stated to the contrary, a reference to writing or written includes email and faxes.
- 1.11 In construing this Agreement, the ejusdem generis rule does not apply and the interpretation of general 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.
- 1.12 Where the context permits, other and otherwise are illustrative and shall not limit the sense of the words preceding them.

- 1.13 References to a document in “agreed form” are to that document in the form agreed by the parties and initialled by them or on their behalf for identification.
- 1.14 A reference to a statute or statutory provision is a reference to it as amended, consolidated, extended or re-enacted from time to time (whether made before or after the date of this Agreement).
- 1.15 A reference to a statute or statutory provision shall include all statutory instruments and subordinate legislation (as defined in section 21(1) of the Interpretation Act 1978) or orders made from time to time under that statute or statutory provision (whether made before or after the date of this Agreement).
- 1.16 A reference to a statutory or regulatory body shall include its successors and any substituted body.
- 1.17 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.18 Unless the context requires otherwise, words and expressions defined in the Articles shall have the same meaning when used in this Agreement.

2. BUSINESS OF MERANTUN DEVELOPMENT LTD

- 2.1 The business of MERANTUN DEVELOPMENT LTD is:
- (a) to operate as a commercial company;
 - (b) primarily to build and acquire housing and commercial units for either sale or to be rented at full market rates (in relation to housing units on assured shorthold tenancies) (with affordable housing only as required by local planning authority conditions)
- together with any activities reasonably incidental to the above (“**Business**”).
- 2.2 The principle place of business of and for management of MERANTUN DEVELOPMENT LTD shall be within the London Borough of Merton, unless otherwise agreed in writing by the Council.
- 2.3 In order to maximise the potential of successful lettings/sales of the homes to potential tenants/owners MERANTUN DEVELOPMENT LTD shall ensure that the homes are available to a modern standard and are well managed and maintained.
- 2.4 MERANTUN DEVELOPMENT LTD shall circulate a draft Remuneration Policy to the Council on or before [31 December 2017] (or such later date as shall be agreed between the parties). The Council shall use reasonable endeavours to respond to confirm whether it has approved the Remuneration Policy within twenty (20) Business Days of its receipt

2.5 Following approval of the Remuneration Policy by the Council the MERANTUN DEVELOPMENT LTD shall comply with the Remuneration Policy in making remuneration payments to all personnel, including consultants, architects and others, who are entitled to receive remuneration payments from the MERANTUN DEVELOPMENT LTD.

3. COMPLETION

3.1 At Completion the parties shall procure that such shareholder resolution and board meetings of MERANTUN DEVELOPMENT LTD are held as may be necessary to:

- (a) adopt the Articles in agreed form;
- (b) appoint:
 - (i) Ian McKinnon and Roger Kershaw Council Directors; and
 - (ii) James McGinlay as Council Director and seconded to MERANTUN DEVELOPMENT LTD from the Council to act as Managing Director of MERANTUN DEVELOPMENT LTD;
- (c) resolve that the registered office of MERANTUN DEVELOPMENT LTD shall be the Council's address at the heading of this Agreement;
- (d) appoint EY of 1 More London Place, London, SE1 2AF as the auditors of MERANTUN DEVELOPMENT LTD;
- (e) appoint Lloyds Banking Group of 25 Gresham Street, London, EC2V 7HN as the principal bankers to MERANTUN DEVELOPMENT LTD; and
- (f) resolve that MERANTUN DEVELOPMENT LTD's Financial Year shall end on 31st March in each year.

3.2 At Completion:

- (a) in consideration for the issue to the Council of its share, the Council shall:
 - (i) enter into the Finance Agreement;
 - (ii) enter into one or more Land Transfer Agreement(s);
 - (iii) provide Support Services to MERANTUN DEVELOPMENT LTD in accordance with the terms of the Support Agreement.

3.3 At Completion the parties shall adopt the Business Plan for the Financial Year in which MERANTUN DEVELOPMENT LTD is formed in agreed form. The Business Plan shall be revised annually, three calendar months before the end of the relevant Financial Year.

3.4 At Completion the parties shall procure that the following agreements are executed in the agreed form:

- (a) the Support Agreement;
- (b) the Finance Agreement;
- (c) the Land Transfer Agreement;
- (d) the Secondment Agreement;
- (e) the Directors' Service Agreements.

3.5 The parties waive, or agree to procure the waiver of, any rights or restrictions which may exist in the Articles or otherwise which may prevent the allotment and issue of the share in MERANTUN DEVELOPMENT LTD pursuant to clause 3.2.

4. MATTERS REQUIRING CONSENT OF THE COUNCIL

MERANTUN DEVELOPMENT LTD shall not, without the prior written approval of the Council, carry out any of the Reserved Matters.

5. DIRECTORS AND MANAGEMENT

5.1 The Board has responsibility for the supervision and management of MERANTUN DEVELOPMENT LTD and its Business, subject to clause 4.

5.2 Without prejudice to the generality of the foregoing, the Directors will determine the general policies of MERANTUN DEVELOPMENT LTD and the manner in which the Business is to be carried out, subject to the Business Plan, to the Reserved Matters (requiring Council consent pursuant to clause 4) and to any other express provisions of this Agreement. In particular, but without limitation to the generality of the foregoing, the Directors shall exercise all voting rights and other powers of control available to them in relation to MERANTUN DEVELOPMENT LTD so as to procure (in so far as they are able in the exercise of such rights and power) that, at all times during the term of this Agreement, the Company shall:

- (a) carry on and conduct its business and affairs in a proper and efficient manner, for its own benefit and in accordance with the Business Plan and with good business practices; and
- (b) transact all its business on arm's length terms.

5.3 Subject to clause 5.5, the Council may appoint a Director and remove a Director, by giving notice in writing to MERANTUN DEVELOPMENT LTD, and to the Director being removed, in the case of removal of a Director. Such appointment or removal shall take effect on the date on which the notice is given. Any Director appointed pursuant to this clause 5.3 shall be a Council Director.

- 5.4 In the event that the number of directors is reduced to one (1) and such director is not the Executive Director the Council shall be entitled to appoint an Executive Director to be the managing director
- 5.5 The parties shall agree on the appointment the Independent Director.
- 5.6 The Council shall indemnify and keep indemnified MERANTUN DEVELOPMENT LTD against any claim connected with the removal by the Council of any Director from office.
- 5.7 The post of Chairman shall be held by a Council Director. The Chairman shall have a casting vote. If the Chairman for the time being is unable to attend or to vote on any matter at any meeting of the Board, the Chairman shall be entitled to appoint another Council Director to act as Chairman at the meeting or in relation to that matter and such person shall have the casting vote.
- 5.8 Unless agreed otherwise, the parties intend there to be a meeting of Directors at least four (4) times each year, with a period of not more than twelve (12) weeks between any two meetings.
- 5.9 The parties shall use their respective reasonable endeavours to ensure that any meeting of the Board (or meeting of a committee of the Board) has the requisite quorum.
- 5.10 MERANTUN DEVELOPMENT LTD shall be entitled to reimburse any Independent Director his or her reasonable expenses arising in connection with his/her role as Independent Director.

6. **FINANCE FOR MERANTUN DEVELOPMENT LTD AND LAND**

- 6.1 The parties shall procure that MERANTUN DEVELOPMENT LTD arranges a loan facility for its initial working capital (**Facility**) from the Council (or such bank or financial institution as the Board shall select if it offers more favourable terms (**Bank**)). The amount of the Facility shall be £13,022,000.00 (thirteen million twenty two thousand pounds) and shall be on the terms set out in the Finance Agreement.
- 6.2 Unless set out otherwise in the Finance Agreement, there is no obligation on the Council to provide any further finance to MERANTUN DEVELOPMENT LTD but if it does so this shall be on the same terms as set out in the Finance Agreement unless the parties agree otherwise in writing.
- 6.3 If MERANTUN DEVELOPMENT LTD requires any additional loan facility, this may be financed, as far as is practicable, from external funding and on such terms as agreed between the Board, the Council and the relevant third parties. The parties agree that any security required in relation to such

external funding shall, if possible, be provided by MERANTUN DEVELOPMENT LTD.

- 6.4 Any loan facility to be provided by a Bank or other third party shall be provided on the basis that the Bank or other third party will not acquire the right to participate in the share capital of MERANTUN DEVELOPMENT LTD or otherwise in MERANTUN DEVELOPMENT LTD's business.
- 6.5 The parties shall enter into such Land Transfer Agreements as are considered appropriate from time to time. If MERANTUN DEVELOPMENT LTD wishes to enter into any agreements for the acquisition of land (whether freehold or leasehold) from any third party, it shall:
- (a) prepare a business case setting out the rationale and supporting arguments for acquiring the land;
 - (b) not, without the prior agreement of the Council, enter into any agreement to acquire the land where the acquisition price is in excess of £1,000,000 (one million pounds) or such other lower or higher figure as the Council may from time to time agree;
 - (c) irrespective of the acquisition price, retain and make available for inspection by the Council, any business case prepared pursuant to clause (a).

7. COMPLIANCE WITH PROCUREMENT LAW

- 7.1 MERANTUN DEVELOPMENT LTD shall in carrying out any relevant procurement exercise, comply with all Procurement Law and shall, upon request, provide evidence to the Council of such compliance.
- 7.2 Without prejudice to clause 7.1, MERANTUN DEVELOPMENT LTD shall permit the Council at any time to monitor any procurement exercise to which Procurement Law applies (or which the Council reasonably considers may apply).

8. MERANTUN DEVELOPMENT LTD ANTI-CORRUPTION

- 8.1 MERANTUN DEVELOPMENT LTD undertakes to the Council that:
- (a) it will not, and will procure that all Associated Persons do 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 has and will maintain in place Adequate Procedures designed to prevent any Associated Person from undertaking any conduct that would give rise to an offence under section 7 of the Bribery Act 2010; and

- (c) from time to time, at the reasonable request of the Council, it will confirm in writing that it has complied with its undertakings under clause 8.1(a) and clause 8.1(b) and will provide any information reasonably requested by the Council in support of such compliance.

9. BUSINESS PLAN

9.1 The Business Plan is an annual business plan (unless otherwise agreed by the Council) for MERANTUN DEVELOPMENT LTD prepared by the Board and it shall include in relation to the Financial Year to which it relates:

- (a) a cashflow statement giving:
 - (i) an estimate of the working capital requirements; and
 - (ii) an indication of the amount (if any) that it is considered prudent to retain, for the purpose of meeting those requirements, out of those profits of the previous Financial Year that are available for distribution to the Council as shareholder;
- (b) a monthly projected profit and loss account;
- (c) an operating budget (including capital expenditure requirements) and balance sheet forecast;
- (d) a management report setting out:
 - (i) business objectives for the year;
 - (ii) Land Transfer Agreements and Finance Agreements proposed to be entered into; and
 - (iii) proposals for acquisition of any land (freehold or leasehold) from any third party; and
- (e) a financial report which shall include an analysis of the estimated results of MERANTUN DEVELOPMENT LTD for the previous Financial Year compared with the Business Plan for that year, identifying variations in sales, revenues, costs and other material items.

9.2 The Business Plan for the Financial Year in which MERANTUN DEVELOPMENT LTD is formed shall be that identified in clause 3.3.

9.3 The Business Plan for every other Financial Year shall, subject to clause 9.4, be:

- (a) prepared by the Board and circulated to the Council at least twenty eight (28) Business Days before the end of the preceding Financial Year;

- (b) approved or commented upon by the Council as soon as reasonably possible and in any event the Council shall use reasonable endeavours to approve/comment within ten (10) Business Days of receipt;
 - (c) updated by the Board if required to reflect any comments provided by the Council pursuant to clause (b) within five (5) Business Days of receipt of any comments from the Council; and
 - (d) adopted by the Board following approval by the Council.
- 9.4 Where the Business Plan includes a proposal to enter into a Land Transfer Agreement, Finance Agreement or incur capital borrowing above £1 million pounds, the Business Plan shall be circulated to the Council at least thirty (30) Business Days before the end of the preceding Financial Year and the timescale for approval or comment by the Council set out in clauses 9.3(b) shall be increased by ten (10) Business Days.
- 9.5 For the avoidance of doubt, no Business Plan shall be adopted, varied or replaced without the prior written approval of the Council.
- 9.6 For any period when a proposed Business Plan circulated pursuant to clause 9.3(a) has not been approved by the Council and adopted by the Board in accordance with this Agreement, the relevant existing Business Plan shall continue to be the Business Plan of MERANTUN DEVELOPMENT LTD.

10. ACCOUNTING AND OTHER INFORMATION

- 10.1 MERANTUN DEVELOPMENT LTD shall at all times maintain effective and appropriate control systems in relation to its financial, accounting and record-keeping functions. Without prejudice to the generality of the foregoing, MERANTUN DEVELOPMENT LTD 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.
- 10.2 The Council and its authorised representatives shall be allowed access at all reasonable times to examine the books, accounts, documents and records of MERANTUN DEVELOPMENT LTD and to discuss MERANTUN DEVELOPMENT LTD's affairs, finances and accounts with its Directors and senior management and MERANTUN DEVELOPMENT LTD shall permit such persons to discuss such matters with the Council and its authorised representatives. The Council and its authorised representatives shall be entitled to make copies of such books, accounts, documents and records as it/they consider appropriate.

- 10.3 MERANTUN DEVELOPMENT LTD shall supply 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 each year's Business Plan for approval in accordance with clause 9.3;
 - (b) a copy of each business case prepared pursuant to clause 6.5(a);
 - (c) a copy of the audited accounts of MERANTUN DEVELOPMENT LTD prepared in accordance with the laws applicable in and the accounting standards, principles and practices generally accepted in the United Kingdom, within two (2) months of the end of the year to which the audited accounts relate;
 - (d) monthly management accounts of MERANTUN DEVELOPMENT LTD to be supplied within ten(10) Business Days of the end of the month to which they 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; and
 - (e) a copy of a report prepared by MERANTUN DEVELOPMENT LTD in respect of each Financial Year, demonstrating the implementation by MERANTUN DEVELOPMENT LTD of Adequate Procedures, such report to be provided within forty (40) Business Days of the end of the Financial Year to which it relates.
- 10.4 MERANTUN DEVELOPMENT LTD shall, as soon as possible, comply with any request made by the Council, 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.
- 10.5 MERANTUN DEVELOPMENT LTD shall not carry out any activity which would render the holding of shares by the Council unlawful provided that where a proposed change of law would render such shareholding unlawful shall use its reasonable endeavours to take such steps as are necessary to allow it to continue lawfully to hold its shares.
- 10.6 MERANTUN DEVELOPMENT LTD shall, if it requires any approval, consent or licence for the carrying on of its Business in the manner in which it is from time to time carried on or proposed to be carried on, use all reasonable endeavours to obtain and maintain the same in full force and effect.
- 10.7 [MERANTUN DEVELOPMENT LTD] shall not breach nor cause the Council to be in breach of the Local Authorities (Companies) Order 1995.

11. DIVIDEND POLICY

11.1 Any decision relating to the distribution or otherwise of a dividend shall be a Reserved Matter.

12. NOT USED

13. ISSUE OF FURTHER SHARES

Any decision relating to the issue of any shares or other equity securities (within the meaning of section 560(1) of the Act) shall be a Reserved Matter.

14. INTELLECTUAL PROPERTY

14.1 The Council shall retain ownership of all IPR arising from the operation of the Business by MERANTUN DEVELOPMENT LTD.

14.2 The Council grants to MERANTUN DEVELOPMENT LTD a fully paid up, non-exclusive, royalty-free, non-transferable licence to use the IPR for the term of this Agreement.

14.3 MERANTUN DEVELOPMENT LTD shall promptly, at the Council's request, do (or procure the doing of) all such acts and things and execute (or procure the execution of) all such documents as the Council may from time to time require for the purpose of securing for the Council all its rights, title and interest in and to the IPR.

15. TERMINATION AND LIQUIDATION

15.1 Subject to clause 15.2, this Agreement shall terminate:

- (a) upon written agreement of the parties in accordance with the agreed terms; or
- (b) when the Council ceases to hold any shares in MERANTUN DEVELOPMENT LTD;
- (c) when a resolution is passed by the Council or creditors, or an order is made by a court or other competent body or person instituting a process that shall lead to MERANTUN DEVELOPMENT LTD being wound up and its assets being distributed among MERANTUN DEVELOPMENT LTD's creditors, shareholder or other contributors.

15.2 On termination of this Agreement, the following clauses shall continue in force:

- (a) Clause 1 (Interpretation);
- (b) this clause;

- (c) Clause 17 (Confidentiality);
- (d) Clause 21 (Assignment and Other Dealings);
- (e) Clause 22 (Entire Agreement);
- (f) Clause 24 (Variation and Waiver);
- (g) Clause 25 (Costs);
- (h) Clause 26 (No Partnership or Agency);
- (i) Clause 27 (Notices);
- (j) Clause 28 (Severance);
- (k) Clause 30 (Third Party Rights)
- (l) Clause 33 (Inadequacy of Damages); and
- (m) Clause 34 (Governing Law and Jurisdiction).

15.3 Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination.

15.4 Where, following an event referred to in clause 15.1(c), MERANTUN DEVELOPMENT LTD is to be wound up and its assets distributed, the parties shall endeavour to ensure that, before dissolution:

- (a) all existing contracts of MERANTUN DEVELOPMENT LTD are performed to the extent that there are sufficient resources;
- (b) MERANTUN DEVELOPMENT LTD shall not enter into any new contractual obligations;
- (c) MERANTUN DEVELOPMENT LTD's assets are distributed as soon as practical; and
- (d) any assets transferred to MERANTUN DEVELOPMENT LTD pursuant to any relevant agreement shall be returned to the Council or dealt with as the Council directs.

16. STATUS OF THE AGREEMENT

16.1 Each party shall, to the extent that it is able to do so, exercise all its voting rights and other powers in relation to MERANTUN DEVELOPMENT LTD 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 this Agreement.

16.2 If there is an inconsistency between any of the provisions of this Agreement and the provisions of the Articles, the provisions of this Agreement shall prevail as between the parties.

16.3 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 MERANTUN DEVELOPMENT LTD and its Business to be administered as provided in this Agreement.

17. CONFIDENTIALITY, FOIA AND EIRS

17.1 In this clause, Confidential Information excludes the information in clause 17.2.

17.2 Information is not Confidential Information if:

- (a) it is or becomes generally available to the public (other than as a result of its disclosure in breach of this Agreement); or
- (b) either party can establish to the reasonable satisfaction of the other party that it found out the information from a person not connected with the other party and that such person is not under any obligation of confidence in respect of the information; or
- (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.

17.3 Each party shall at all times keep confidential (and use all reasonable endeavours 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 such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with this Agreement, and shall not disclose 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; or
- (b) with the written consent of the party that the information relates to; or
- (c) as may be required by law or by the rules of any recognised stock exchange, or governmental or other regulatory authority or by a court or other authority of competent jurisdiction, including pursuant to the FOIA or EIRs; or
- (d) a party may, provided it has reasonable grounds to believe that the other party is involved in activity that may constitute a criminal offence under the Bribery Act 2010, disclose Confidential Information to the Serious Fraud Office without first informing the other party of such disclosure; or

- (e) to any tax authority to the extent reasonably required for the purposes of the tax affairs of the party concerned or any party connected with that party.
- 17.4 Each party shall inform (and shall use all reasonable endeavours to procure that any connected party 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).
- 17.5 On termination of this Agreement, each party shall (and shall use all reasonable endeavours to procure that its subsidiaries, and its officers and employees and those of its subsidiaries shall):
 - (a) return to the other party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information; and
 - (b) erase all the other party's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically and legally practicable),

provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority.
- 17.6 The provisions of this clause 17 shall continue to apply after termination of this Agreement for any cause.

Freedom of Information and Environmental Information Regulations

- 17.7 Each party acknowledges that the other party is subject to the requirements of the FOIA and the EIRs and each party shall assist and co-operate with the other party to enable that other party to comply with its obligations under the FOIA and the EIRs. This shall include complying with any timescales set by the relevant party for providing information and/or assistance and providing all such information and/or assistance as the relevant party shall request to enable the relevant party to comply with its obligations under the FOIA and the EIRs.

17.8 Where a party (the “Recipient”) receives a request for information in relation to information which it is holding on behalf of the other party in relation to this Agreement, it shall:

- (a) transfer the request for information to the other party as soon as practicable after receipt and in any event within two (2) Business Days of receiving a request for information;
- (b) provide the other party with a copy of all information in its possession or power in the form that the other party requires within ten (10) Business Days (or such longer period as the other party may specify) of the other party requesting that information; and
- (c) provide all necessary assistance as is reasonably requested by the other party to enable it to respond to a request for information within the time for compliance set out in the FOIA or the EIRs.

17.9 The parties acknowledge that (notwithstanding the provisions of clause 17.3 and notwithstanding any information designated as Confidential Information by a party) the Recipient may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under part I of the Freedom of Information Act 2000, be obliged under the FOIA or the Environmental Information Regulations to disclose Information concerning the other Party:

- (a) in certain circumstances without consulting with the other Party; or
- (b) following consultation with the other Party and having taken their views into account.

18. DATA PROTECTION

18.1 The parties undertake to comply with the provisions of the Data Protection Act 1998 (and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner ; and any successor legislation specifically including the General Data Protection Regulation when it enters into force on 25th May 2018) in so far as the same relates to any subject matter of this Agreement.

19. ANNOUNCEMENTS

19.1 Subject to clause 19.2 and clause 19.3, neither party shall make, or permit any person to make, any public announcement, communication or circular (**announcement**) concerning this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed). The parties shall consult together on the timing, contents and manner of release of any announcement.

19.2 Where an announcement is required by law or any governmental or regulatory authority (including, without limitation, any relevant securities exchange), or by any court or other authority of competent jurisdiction, the party required to make the announcement shall promptly notify the other party. The party concerned shall make all reasonable attempts to agree the contents of the announcement before making it.

19.3 On the signing of this Agreement the parties shall issue a joint announcement about the formation of MERANTUN DEVELOPMENT LTD in agreed form.

20. WARRANTIES

20.1 Each party warrants and represents to the other that, at the date of this Agreement, MERANTUN DEVELOPMENT LTD 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 2.4.

20.2 Each party warrants and represents to the other party that:

- (a) 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
- (b) 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.

21. ASSIGNMENT AND OTHER DEALINGS

21.1 Neither party shall assign, transfer, mortgage, charge, sub-contract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement (or any other document referred to in it) without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).

21.2 Each party confirms that it is acting on its own behalf and not for the benefit of any other person.

22. DISPUTE RESOLUTION

22.1 The parties shall endeavour to resolve a dispute arising in connection with this Agreement by referring the dispute for resolution to internal representatives of the parties and escalating as appropriate to relevant senior

officers. If such persons are unable to resolve the dispute either party may request mediation by serving a notice for mediation (“Mediation Notice”) on the other party and sending a copy to the Centre for Effective Dispute Resolution (CEDR) or to such alternative mediator as the parties may agree. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. The mediation will start not later than ten (10) Business Days after the date of the Mediation Notice, and the costs of such mediation shall be borne in such proportions as the mediator may determine to be fair and reasonable in all the circumstances or if the mediator makes no such determination by the parties in equal proportions.

- 22.2 No party may commence any court proceedings/arbitration in relation to any dispute arising out of this Agreement until the dispute resolution process provided for in this clause 23 has ended or the other party has failed to participate in the dispute resolution process, provided that the right to issue proceedings is not prejudiced by a delay.

23. ENTIRE AGREEMENT

- 23.1 This Agreement (together with any documents referred to in it) constitutes the entire agreement between the parties and supersedes and extinguishes all previous discussions, correspondence, negotiations, drafts, agreements, promises, assurances, warranties, representations, arrangements and understandings between them, whether written or oral, relating to its subject matter.
- 23.2 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 remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement or those documents.

24. VARIATION AND WAIVER

- 24.1 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives). In the context of this clause, writing does not include email.
- 24.2 A waiver of any right or remedy under this Agreement or by law is only effective if it is given in writing and is signed by the person waiving such right or remedy. Any such waiver shall apply only to the circumstances for which it is given and shall not be deemed a waiver of any subsequent breach or default.
- 24.3 A failure or delay by any person to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any

other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy.

24.4 No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

24.5 A person that waives any right or remedy provided under this Agreement or by law in relation to one person, or takes or fails to take any action against that person, does not affect its rights or remedies in relation to any other person.

25. COSTS

Except as expressly provided in this Agreement, each party shall pay its own costs and expenses incurred in connection with the negotiation, preparation, execution and performance of this Agreement (and any documents referred to in it).

26. NO PARTNERSHIP OR AGENCY

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership between the parties or constitute any party the agent of another party.

27. NOTICES

27.1 A notice given to a party under or in connection with this Agreement:

- (a) shall be in writing and in English;
- (b) shall be signed by or on behalf of the party giving it;
- (c) shall be sent to the relevant party for the attention of the contact and to the address or email address specified in clause 27.2, or such other address, email address or person as that party may notify to the other in accordance with the provisions of this clause 27; and
- (d) shall be:
 - (i) delivered by hand; or
 - (ii) sent by pre-paid first class post, recorded delivery or special delivery; or
 - (iii) sent by email provided that the subject heading of the email must be stated as a notice being sent pursuant to this Agreement and the email must be tagged as "high importance" (or similar); and

- (e) unless proved otherwise is deemed received as set out in clause 27.4.

27.2 The addresses for service of notices are:

- (a) Council:
 - (i) address: Civic Centre, London Road, Morden, SM4 5DX
 - (ii) for the attention of: Chris Lee, Director of Environment and Regeneration
 - (iii) email address: Chris.Lee@merton.gov.uk;
- (b) MERANTUN DEVELOPMENT LTD:
 - (i) address: Civic Centre, London Road, Morden SM4 5DX
 - (ii) for the attention of: James McGinlay, Director of Merantun Development Ltd
 - (iii) email address:
James.McGinlay@merantundevelopment.co.uk

27.3 A party may change its details for service of notices as specified in clause 27.2 by giving notice to the other party, provided that the address for service is an address in the United Kingdom following any change. Any change notified pursuant to this clause shall take effect at 9.00 am on the later of:

- (a) the date (if any) specified in the notice as the effective date for the change; or
- (b) five (5) Business Days after deemed receipt of the notice.

27.4 Delivery of a notice is deemed to have taken place (provided that all other requirements in this clause have been satisfied):

- (a) if delivered by hand, on signature of a delivery receipt; or
- (b) if sent by pre-paid first class post, recorded delivery or special delivery to an address in the United Kingdom, at 9.00 am on the second Business Day after posting; or
- (c) if sent by email, one (1) hour after the notice was sent; and
- (d) if deemed receipt under the previous paragraphs of this clause 27.4 is not within business hours (meaning 9.00 am to 5.30 pm on a Business Day), at 9.00 am on the next Business Day.

27.5 To prove service, it is sufficient to prove that:

- (a) if delivered by hand the notice was delivered to the correct address;
or

- (b) if sent by post, the envelope containing the notice was properly addressed, paid for and posted; or
- (c) if sent by email, the notice was properly addressed (as described in clause 27.1(d)(iii)) and sent to the email address of the recipient.

27.6 This clause 27 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, method of dispute resolution.

28. SEVERANCE

28.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

28.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable or if it is agreed or determined to be the case, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

29. AGREEMENT SURVIVES COMPLETION

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

30. THIRD PARTY RIGHTS

30.1 A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

30.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any person.

31. COUNTERPARTS

31.1 This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

31.2 Transmission of an executed counterpart of this Agreement (but for the avoidance of doubt not just a signature page) by:

- (a) fax; or
- (b) email (in PDF, JPEG or other agreed format),

shall take effect as delivery of an executed counterpart of this Agreement. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party shall provide the other with the original of such counterpart as soon as reasonably possible thereafter.

31.3 No counterpart shall be effective until each party has executed at least one counterpart.

32. RIGHTS AND REMEDIES

The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

33. INADEQUACY OF DAMAGES

Without prejudice to any other rights or remedies that a party may have, each party acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of clause 7 or clause 17 by that party. Accordingly, the other party shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of clause 7 or clause 17 of this Agreement.

34. GOVERNING LAW AND JURISDICTION

34.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

34.2 Each party irrevocably agrees that the courts of England and Wales shall 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

1. Altering in any respect the Articles or the rights attaching to any of the shares in MERANTUN DEVELOPMENT LTD (except as provided in clause 16.3 of the agreement).
2. Permitting the registration of any person as a member of MERANTUN DEVELOPMENT LTD other than the Council.
3. Increasing the amount of MERANTUN DEVELOPMENT LTD's issued share capital, granting any option or other interest (in the form of convertible securities or in any other form) over or in its share capital, redeeming or purchasing any of its own shares or effecting any other reorganisation of its share capital.
4. Incurring expenditure or entering into any arrangement, contract or transaction in excess of:
 - (a) other than in relation to any land acquisition, £500,000 (five hundred thousand pounds);
 - (b) in relation to any land acquisition, £1,000,000 (one million pounds) unless otherwise agreed.
5. Issuing any loan capital in MERANTUN DEVELOPMENT LTD or entering into any commitment with any person with respect to the issue of any loan capital.
6. Making any borrowing other than the initial loan for working capital purposes from its bankers in the ordinary and usual course of business.
7. Applying for the listing or trading of any shares or debt securities on any stock exchange or market.
8. Passing any resolution for its winding up or presenting any petition for its administration (unless it has become insolvent).
9. Altering the name of MERANTUN DEVELOPMENT LTD or its registered office.
10. Adopting or amending the Business Plan in respect of each Financial Year.
11. Changing the nature of MERANTUN DEVELOPMENT LTD's Business or commencing any new business by MERANTUN DEVELOPMENT LTD which is not ancillary or incidental to the Business.
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. Making any acquisition or disposal by MERANTUN DEVELOPMENT LTD of any material asset(s) otherwise than in the ordinary course of business.
15. Creating or granting any Encumbrance over the whole or any part of the Business, undertaking or assets of MERANTUN DEVELOPMENT LTD or over any shares in MERANTUN DEVELOPMENT LTD 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.
16. 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.
17. Altering any mandate given to MERANTUN DEVELOPMENT LTD's bankers relating to any matter concerning the operation of MERANTUN DEVELOPMENT LTD] s bank accounts other than by the substitution of any person nominated as a signatory by the party entitled to make such nomination.
18. Appointing any agent or other intermediary to conduct any of MERANTUN DEVELOPMENT LTD's Business.
19. Giving notice of termination of any arrangements, contracts or transactions which are material in the nature of MERANTUN DEVELOPMENT LTD's Business, or materially varying any such arrangements, contracts or transactions.
20. Adopting or amending any standard terms of business (including prices) on which MERANTUN DEVELOPMENT LTD is prepared to provide goods or services to third parties.
21. Granting any rights (by licence or otherwise) in or over any intellectual property owned or used by MERANTUN DEVELOPMENT LTD.
22. Factoring or assigning any of the book debts of MERANTUN DEVELOPMENT LTD.
23. Changing the auditors of MERANTUN DEVELOPMENT LTD or its Financial Year end.
24. Making or permitting to be made any change in the accounting policies and principles adopted by MERANTUN DEVELOPMENT LTD in the preparation

of its audited and management accounts except as may be required to ensure compliance with relevant accounting standards under the Act or any other generally accepted accounting principles in the United Kingdom.

25. Dealing with any surpluses of MERANTUN DEVELOPMENT LTD.
26. Making any decision relating to the distribution or otherwise of a dividend.
27. Establishing or amending any profit-sharing, share option, bonus or other incentive scheme of any nature for Directors or employees.
28. Establishing or amending any pension scheme or granting any pension rights to any Director, officer, employee, former Director, officer or employee, or any member of any such person's family.
29. Dismissing any officer or employee in circumstances in which MERANTUN DEVELOPMENT LTD incurs or agrees to bear redundancy or other costs in excess of £30,000 (thirty thousand pounds) in total.
30. Appointing or dismissing any Director or Chairman.
31. Amending the Remuneration Policy.
32. Agreeing to remunerate (by payment of fees, the provision of benefits-in-kind or otherwise) any officer of, or consultant to, MERANTUN DEVELOPMENT LTD at a rate in excess of £100,000 (one hundred thousand pounds) per annum or increasing the remuneration of any such person to a rate in excess of £100,000 (one hundred thousand pounds) per annum.
33. Agreeing to remunerate (by payment of fees, the provision of benefits-in-kind or otherwise) any Independent Director.
34. 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 (one hundred thousand pounds) per annum or increasing the remuneration of any staff (including pension and other benefits) to a rate in excess of £100,000 (one hundred thousand pounds) per annum.
35. Instituting, settling or compromising any [material] legal proceedings (other than debt recovery proceedings in the ordinary course of business) instituted or threatened against MERANTUN DEVELOPMENT LTD or submitting to arbitration or alternative dispute resolution any dispute involving MERANTUN DEVELOPMENT LTD.
36. Making any agreement with any revenue or tax authorities or making any claim, disclaimer, election or consent for tax purposes in relation to MERANTUN DEVELOPMENT LTD or its business.

37. Purchasing any housing or commercial unit(s) or land which is situated outside of the Council's administrative area.

DRAFT

AS WITNESS the hands of the parties or their duly authorised representatives
the day and year first written above

Executed as a deed by affixing the)
common seal of)
THE LONDON BOROUGH OF)
MERTON)
)
In the presence of:)

.....
Authorised signatory

Executed as a deed by)
[MERANTUN DEVELOPMENT)
LTD])
acting by)

Director

.....

Director/Secretary

SCHEDULE 1

Regulation 2

ARTICLES FOR PRIVATE COMPANIES LIMITED BY
SHARES

INDEX TO THE ARTICLES

PART 1

INTERPRETATION AND LIMITATION OF LIABILITY

1. Defined terms
2. Liability of members

PART 2

DIRECTORS

DIRECTORS' POWERS AND RESPONSIBILITIES

3. Directors' general authority
4. Shareholders' reserve power
5. Directors may delegate
6. Committees

DECISION-MAKING BY DIRECTORS

7. Directors to take decisions collectively
8. Unanimous decisions
9. Calling a directors' meeting
10. Participation in directors' meetings
11. Quorum for directors' meetings
12. Chairing of directors' meetings
13. Casting vote
14. Conflicts of interest
15. Records of decisions to be kept
16. Directors' discretion to make further rules

APPOINTMENT OF DIRECTORS

17. Methods of appointing directors
18. Termination of director's appointment
19. Directors' remuneration
20. Directors' expenses

PART 3

SHARES AND DISTRIBUTIONS

SHARES

21. All shares to be fully paid up
22. Powers to issue different classes of share
23. Company not bound by less than absolute interests
24. Share certificates
25. Replacement share certificates

26. Share transfers
27. Transmission of shares
28. Exercise of transmitters' rights
29. Transmitters bound by prior notices

DIVIDENDS AND OTHER DISTRIBUTIONS

30. Procedure for declaring dividends
31. Payment of dividends and other distributions
32. No interest on distributions
33. Unclaimed distributions
34. Non-cash distributions
35. Waiver of distributions

CAPITALISATION OF PROFITS

36. Authority to capitalise and appropriation of capitalised sums

PART 4

DECISION-MAKING BY SHAREHOLDERS

ORGANISATION OF GENERAL MEETINGS

37. Attendance and speaking at general meetings
38. Quorum for general meetings
39. Chairing general meetings
40. Attendance and speaking by directors and non-shareholders
41. Adjournment

VOTING AT GENERAL MEETINGS

42. Voting: general
43. Errors and disputes
44. Poll votes
45. Content of proxy notices
46. Delivery of proxy notices
47. Amendments to resolutions

PART 5

ADMINISTRATIVE ARRANGEMENTS

48. Means of communication to be used
49. Company seals
50. No right to inspect accounts and other records
51. Provision for employees on cessation of business

DIRECTORS' INDEMNITY AND INSURANCE

52. Indemnity
53. Insurance

PART 1
INTERPRETATION AND LIMITATION OF LIABILITY

Defined terms

1. In the articles, unless the context requires otherwise—
- “articles” means the company’s articles of association;
 - “bankruptcy” includes individual insolvency proceedings in a jurisdiction other than England and Wales or 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 39;
 - “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;
 - “Council” means the Mayor and Burgesses of the London Borough of Merton
 - “Council director” means a director appointed by the Council excluding any Independent Director
 - “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 31;
 - “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;
 - “Executive Director” means a Director that is also an employee of the Company
 - “fully paid” in relation to a share, means that the nominal value and any premium to be paid to the company in respect of that share have been paid to the company;
 - “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;
 - “Officer of the Council” means an officer who is an employee of the Council
 - “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 45;

“shareholder” means a person who is the holder of a share;

“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 a share 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.

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.

Liability of members

2. 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

Directors’ general authority

3. Subject to the articles, the directors are responsible for the management of the company’s business, for which purpose they may exercise all the powers of the company.

Shareholders’ reserve power

- 4.—(1) The shareholders may, by special resolution, direct the directors to take, or refrain from taking, specified action.
(2) No such special resolution invalidates anything which the directors have done before the passing of the resolution.

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—

- (a) to such person or committee;
- (b) by such means (including by power of attorney);
- (c) to such an extent;
- (d) in relation to such matters or territories; and
- (e) on such terms and conditions;

as they think fit.

(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.

(3) The directors may revoke any delegation in whole or part, or alter its terms and conditions.

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.

(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.

(3) Where a provision of the articles refers to the exercise of a power, authority or discretion by the Directors and that power, authority or discretion has been delegated by the Directors to a Committee, the provision shall be construed as permitting the exercise of the power, authority or discretion by the Committee

DECISION-MAKING BY DIRECTORS

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.

(2) If—

- (a) the company only has one director, and
- (b) no provision of the articles requires it to have more than one director,

the general rule does not apply, and the director may take decisions without regard to any of the provisions of the articles relating to directors' decision-making.

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.

(2) Such a decision may take the form of a resolution in writing, copies of which have been signed by each eligible director or to which each eligible director has otherwise indicated agreement in writing.

(3) References in this article to eligible directors are to directors who would have been entitled to vote on the matter had it been proposed as a resolution at a directors' meeting.

(4) 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.

Calling a directors' meeting

9.—(1) Any director may call a directors' meeting by giving notice of the meeting to the directors or by authorising the company secretary (if any) to give such notice.

(2) Notice of any directors' meeting must indicate—

(a) its proposed date and time;

(b) where it is to take place; and

(c) 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.

(3) Notice of a directors' meeting must be given to each director, but need not be in writing.

(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 notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.

Participation in directors' meetings

10.—(1) Subject to the articles, directors participate in a directors' meeting, or part of a directors' meeting, when—

(a) the meeting has been called and takes place in accordance with the articles, and

(b) they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.

(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.

(3) If all the directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.

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.

(2) The quorum for directors' meetings may be fixed from time to time by a decision of the directors, but it must never be less than two (made up of at least one Council director and at least one executive director), and unless otherwise fixed it is two.

(3) 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 to call a general meeting so as to enable the shareholders to appoint further directors.

(4) A directors' meeting shall not be quorate if the number of executive directors and independent directors attending a meeting or participating in a vote at a meeting exceeds the number of Council directors attending or participating in a vote.

Chairing of directors' meetings

- 12.**—(1) The directors may appoint a director to chair their meetings.
 (2) The person so appointed for the time being is known as the chairman.
 (3) The directors may terminate the chairman's appointment at any time.
 (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.

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 a casting vote.
 (2) Any person appointed in accordance with article 12(4) in place of the Chairman shall not have the casting vote in the circumstances described in 13 (1).
 (3) Article 13.1 will not apply 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.

Conflicts of interest

- 14.**—(1) If a proposed decision of the directors is concerned with an actual or proposed transaction or arrangement with the company in which a director is interested, that director is not to be counted as participating in the decision-making process for quorum or voting purposes.
 (2) But if paragraph (3) applies, a director who is interested in an actual or proposed transaction or arrangement with the company is to be counted as participating in the decision-making process for quorum and voting purposes.
 (3) This paragraph applies when—
 (a) the company by ordinary resolution disapplies the provision of the articles which would otherwise prevent a director from being counted as participating in the decision-making process;
 (b) the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or
 (c) the director's conflict of interest arises from a permitted cause.
 (4) For the purposes of this article, the following are permitted causes—
 (a) a guarantee given, or to be given, by or to a director in respect of an obligation incurred by or on behalf of the company or any of its subsidiaries;
 (b) subscription, or an agreement to subscribe, for shares or other securities of the company or any of its subsidiaries, or to underwrite, sub-underwrite, or guarantee subscription for any such shares or securities; and
 (c) arrangements pursuant to which benefits are made available to employees and directors or former employees and directors of the company or any of its subsidiaries which do not provide special benefits for directors or former directors.

(5) For the purposes of this article, references to proposed decisions and decision-making processes include any directors' meeting or part of a directors' meeting.

(6) Subject to paragraph (7), if a question arises at a meeting of directors or of a committee of directors as to the right of a director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the chairman whose ruling in relation to any director other than the chairman is to be final and conclusive.

(7) 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 is to be decided by a decision of the directors at that meeting, for which purpose the chairman is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.

Authorisation of directors' conflicts of interest

(8) For the purposes of section 175 of the Companies Act, shareholders shall have the power to authorise any matter which would or might otherwise constitute or give rise to a breach by a director of the duty to avoid conflicts of interest set out in that section of the Companies Act. Any reference in these articles to a conflict of interest includes a conflict of interest and duty and a conflict of duties.

(9) Unless otherwise determined by the shareholders, any authorisation of a matter under article 14.8 shall extend to any actual or potential conflict of interest of the director in question and any other interested director (together the "Interested Directors") which may reasonably be expected to arise out of the matter so authorised.

(10) Any authorisation of a matter under article 14.8 shall be on such terms and/or conditions as the shareholders may determine, whether at the time such authorisation is given or subsequently and may be varied or terminated by the shareholders at any time. Such terms or conditions may include (without limitation) terms and conditions as to the duration, renewal and/or revocation of the authorisation, and/or the exclusion of the Interested Directors from all information and discussion of the matter in question. A director shall comply with any obligations imposed on him by the shareholders pursuant to any such authorisation.

(11) A director, notwithstanding his office, may be a director or other officer of, employed by, a member of or otherwise interested (including by the holding of shares) in, the Council or in a shareholder who has appointed him as a director of the Company, or any other member of such shareholder's group, or an employee of another local authority placed at the disposal of the Council [pursuant to section 113 of the Local Government Act 1972], and no authorisation under article 14.8 shall be necessary in respect of any such interest.

(12) Any director shall be entitled from time to time to disclose to a shareholder that appointed that director such information concerning the business and affairs of the company as he shall at his discretion see fit.

(13) If a director receives or has received any information otherwise than by virtue of his position as a director of the company and in respect of which he owes a duty of confidentiality to another person, the director is under no obligation to:

14.13(1) disclose any such information to the company, the directors or any other director or employee of the company; or

14.13(2) use or apply any such information in connection with the performance of his duties as a director;

provided that to the extent that such duty of confidentiality arises out of a situation or relationship which would or might otherwise constitute or give rise to a breach by the director of the duty to avoid conflicts of interest set out in section 175 of the Companies Act, this article shall apply only if such situation or relationship has been authorised by the shareholders under article 14(8).

(14) A director shall not, save as otherwise agreed by him, be accountable to the company for any benefit which he (or a person connected with him) derives from any matter authorised by the directors under article 14.8 and any contract, transaction or arrangement relating thereto shall not be liable to be avoided on the grounds of any such benefit."

Records of decisions to be kept

15. 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.

Directors' discretion to make further rules

16. 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

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.

(2) Notwithstanding any other provision of these articles, the holder or holders of a majority in nominal value of the issued ordinary shares in the capital of the company may, for as long as it is a member of the company, at any time and from time to time:

(a) appoint any person to be a director (provided that any such appointment does not cause the number of directors to exceed a number fixed by or in accordance with these articles as the maximum number of directors); or

(b) remove any director from office,

and every such appointment or removal shall be effected by notice in writing to the company and shall take effect immediately (or on such later date, if any, specified in the notice). Any such notice of appointment or removal may consist of several documents in similar form, each signed by or on behalf of one or more holders.

(3) For the purposes of paragraph (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.

Termination of director's appointment

18. A person ceases to be a director as soon as—

- (a) 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;
- (b) a bankruptcy order is made against that person;
- (c) a composition is made with that person's creditors generally in satisfaction of that person's debts;
- (d) a registered medical practitioner who is treating that person gives a written opinion to the company stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than three months;
- (e) 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.
- (f) that a person ceases to be an Officer of the Council.
- (g) the Company receives written notice to that effect from the Council.

Directors' remuneration

19.—(1) Directors may undertake any services for the company that the directors decide.

(2) Directors are entitled to such remuneration as the directors determine—

- (a) for their services to the company as directors, and
- (b) for any other service which they undertake for the company.

(3) Subject to the articles, a director's remuneration may—

- (a) take any form, and
- (b) include any arrangements in connection with the payment of a pension, allowance or gratuity, or any death, sickness or disability benefits, to or in respect of that director.

(4) Unless the directors decide otherwise, directors' remuneration accrues from day to day.

(5) 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.

Directors' expenses

20. The company may pay any reasonable expenses which the directors properly incur in connection with their attendance at—

- (a) meetings of directors or committees of directors,
- (b) general meetings, or
- (c) 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.

PART 3**SHARES AND DISTRIBUTIONS****SHARES****All shares to be fully paid up**

21.—(1) No share is to be issued for less than the aggregate of its nominal value and any premium to be paid to the company in consideration for its issue.

(2) This does not apply to shares taken on the formation of the company by the subscribers to the company's memorandum.

Powers to issue different classes of share

22.—(1) Subject to the articles, but without prejudice to the rights attached to any existing share, the company may issue shares with such rights or restrictions as may be determined by ordinary resolution.

(2) The company may issue shares which are to be redeemed, or are liable to be redeemed at the option of the company or the holder, and the directors may determine the terms, conditions and manner of redemption of any such shares.

Company not bound by less than absolute interests

23. 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.

Share certificates

24.—(1) The company must issue each shareholder, free of charge, with one or more certificates in respect of the shares which that shareholder holds.

(2) Every certificate must specify—

- (a) in respect of how many shares, of what class, it is issued;
- (b) the nominal value of those shares;
- (c) that the shares are fully paid; and
- (d) any distinguishing numbers assigned to them.

- (3) No certificate may be issued in respect of shares of more than one class.
- (4) If more than one person holds a share, only one certificate may be issued in respect of it.
- (5) Certificates must—
 - (a) have affixed to them the company's common seal, or
 - (b) be otherwise executed in accordance with the Companies Acts.

Replacement share certificates

- 25.**—(1) If a certificate issued in respect of a shareholder's shares is—
- (a) damaged or defaced, or
 - (b) said to be lost, stolen or destroyed, that shareholder is entitled to be issued with a replacement certificate in respect of the same shares.
- (2) A shareholder exercising the right to be issued with such a replacement certificate—
- (a) may at the same time exercise the right to be issued with a single certificate or separate certificates;
 - (b) must return the certificate which is to be replaced to the company if it is damaged or defaced; and
 - (c) must comply with such conditions as to evidence, indemnity and the payment of a reasonable fee as the directors decide.

Share transfers

- 26.**—(1) 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.
- (2) No fee may be charged for registering any instrument of transfer or other document relating to or affecting the title to any share.
 - (3) The company may retain any instrument of transfer which is registered.
 - (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.

Transmission of shares

- 27.**—(1) If title to a share passes to a transferee, the company may only recognise the transferee as having any title to that share.
- (2) A transferee who produces such evidence of entitlement to shares as the directors may properly require—
- (a) may, subject to the articles, choose either to become the holder of those shares or to have them transferred to another person, and
 - (b) subject to the articles, and pending any transfer of the shares to another person, has the same rights as the holder had.
- (3) But transferees 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.

Exercise of transmitters' rights

28.—(1) Transmitters who wish to become the holders of shares to which they have become entitled must notify the company in writing of that wish.

(2) If the transmitter wishes to have a share transferred to another person, the transmitter must execute an instrument of transfer in respect of it.

(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 transmitter has derived rights in respect of the share, and as if the event which gave rise to the transmission had not occurred.

Transmitters bound by prior notices

29. If a notice is given to a shareholder in respect of shares and a transmitter is entitled to those shares, the transmitter is bound by the notice if it was given to the shareholder before the transmitter's name has been entered in the register of members.

DIVIDENDS AND OTHER DISTRIBUTIONS

Procedure for declaring dividends

30.—(1) The company may by ordinary resolution declare dividends, and the directors may decide to pay interim dividends.

(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.

(3) No dividend may be declared or paid unless it is in accordance with shareholders' respective rights.

(4) Unless the shareholders' resolution to declare or directors' decision to pay a dividend, or the terms on which shares are issued, specify otherwise, it must be paid by reference to each shareholder's holding of shares on the date of the resolution or decision to declare or pay it.

(5) If the company's share capital is divided into different classes, no interim dividend may be paid on shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrear.

(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.

(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.

Payment of dividends and other distributions

31.—(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—

- (a) transfer to a bank or building society account specified by the distribution recipient either in writing or as the directors may otherwise decide;
 - (b) 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;
 - (c) 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
 - (d) 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.
- (2) In the articles, "the distribution recipient" means, in respect of a share in respect of which a dividend or other sum is payable—
- (a) the holder of the share; or
 - (b) if the share has two or more joint holders, whichever of them is named first in the register of members; or
 - (c) if the holder is no longer entitled to the share by reason of death or bankruptcy, or otherwise by operation of law, the transmittee.

No interest on distributions

- 32.** The company may not pay interest on any dividend or other sum payable in respect of a share unless otherwise provided by—
- (a) the terms on which the share was issued, or
 - (b) the provisions of another agreement between the holder of that share and the company.

Unclaimed distributions

- 33.—**(1) All dividends or other sums which are—
- (a) payable in respect of shares, and
 - (b) 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.
- (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.
- (3) If—
- (a) twelve years have passed from the date on which a dividend or other sum became due for payment, and
 - (b) 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.

Non-cash distributions

- 34.—**(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).

(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—

- (a) fixing the value of any assets;
- (b) paying cash to any distribution recipient on the basis of that value in order to adjust the rights of recipients; and
- (c) vesting any assets in trustees.

Waiver of distributions

35. 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 to that effect, but if—

- (a) the share has more than one holder, or
- (b) 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

Authority to capitalise and appropriation of capitalised sums

36.—(1) Subject to the articles, the directors may, if they are so authorised by an ordinary resolution—

- (a) 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
- (b) 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.

(2) Capitalised sums must be applied—

- (a) on behalf of the persons entitled, and
- (b) in the same proportions as a dividend would have been distributed to them.

(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.

(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.

(5) Subject to the articles the directors may—

- (a) apply capitalised sums in accordance with paragraphs (3) and (4) partly in one way and partly in another;
- (b) 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
- (c) 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

Attendance and speaking at general meetings

37.—(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.

(2) A person is able to exercise the right to vote at a general meeting when—

- (a) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and
- (b) 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.

(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.

(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.

(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.

Quorum for general meetings

38. 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.

Chairing general meetings

39.—(1) If the directors have appointed a chairman, the chairman shall chair general meetings if present and willing to do so.

(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—

- (a) the directors present, or
- (b) (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.

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

Attendance and speaking by directors and non-shareholders

40.—(1) Directors may attend and speak at general meetings, whether or not they are shareholders.

(2) The chairman of the meeting may permit other persons who are not—

(a) shareholders of the company, or

(b) otherwise entitled to exercise the rights of shareholders in relation to general meetings,

to attend and speak at a general meeting.

Adjournment

41.—(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.

(2) The chairman of the meeting may adjourn a general meeting at which a quorum is present if—

(a) the meeting consents to an adjournment, or

(b) 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.

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

(4) When adjourning a general meeting, the chairman of the meeting must—

(a) 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

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

(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)—

(a) to the same persons to whom notice of the company’s general meetings is required to be given, and

(b) containing the same information which such notice is required to contain.

(6) 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

Voting: general

42. A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with the articles.

Errors and disputes

43.—(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.
(2) Any such objection must be referred to the chairman of the meeting, whose decision is final.

Poll votes

44.—(1) A poll on a resolution may be demanded—
(a) in advance of the general meeting where it is to be put to the vote, or
(b) 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.
(2) A poll may be demanded by—
(a) the chairman of the meeting;
(b) the directors;
(c) two or more persons having the right to vote on the resolution; or
(d) 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.
(3) A demand for a poll may be withdrawn if—
(a) the poll has not yet been taken, and
(b) the chairman of the meeting consents to the withdrawal.
(4) Polls must be taken immediately and in such manner as the chairman of the meeting directs.

Content of proxy notices

45.—(1) Proxies may only validly be appointed by a notice in writing (a “**proxy notice**”) which—
(a) states the name and address of the shareholder appointing the proxy;
(b) identifies the person appointed to be that shareholder’s proxy and the general meeting in relation to which that person is appointed;
(c) is signed by or on behalf of the shareholder appointing the proxy, or is authenticated in such manner as the directors may determine; and
(d) is delivered to the company in accordance with the articles and any instructions contained in the notice of the general meeting to which they relate.
(2) The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.

- (3) 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.
- (4) Unless a proxy notice indicates otherwise, it must be treated as—
 - (a) 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
 - (b) 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.

Delivery of proxy notices

- 46.**—(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.
- (2) An appointment under a proxy notice may be revoked by delivering to the company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.
- (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.
- (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.

Amendments to resolutions

- 47.**—(1) An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if—
- (a) 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
 - (b) the proposed amendment does not, in the reasonable opinion of the chairman of the meeting, materially alter the scope of the resolution.
- (2) A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if—
- (a) the chairman of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed, and
 - (b) the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.
- (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.

PART 5
ADMINISTRATIVE ARRANGEMENTS

Means of communication to be used

48.—(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.

(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.

(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.

Company seals

49.—(1) Any common seal may only be used by the authority of the directors.

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

(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.

(4) For the purposes of this article, an authorised person is—

(a) any director of the company;

(b) the company secretary (if any); or

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

No right to inspect accounts and other records

50. The Council shall be entitled to inspect any of the company's accounting or other records or documents upon request..

Provision for employees on cessation of business

51. 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.

52. Objects

The Company's objects are unrestricted.

DIRECTORS' INDEMNITY AND INSURANCE

Indemnity

53.—(1) Subject to paragraph (2), a relevant director of the Company or an associated company may be indemnified out of the Company's assets against—

- (a) any liability incurred by that director in connection with any negligence, default, breach of duty or breach of trust in relation to the Company or an associated company,
- (b) any liability incurred by that director 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),
- (c) any other liability incurred by that director as an officer of the Company or an associated company.

(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.

(3) In this article—

- (a) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate, and
- (b) a “relevant director” means any director or former director of the company or an associated company.

Insurance

54.—(1) The directors may decide to purchase and maintain insurance, at the expense of the company, for the benefit of any relevant director in respect of any relevant loss.

(2) In this article—

- (a) a “relevant director” means any director or former director of the company or an associated company,
- (b) a “relevant loss” means any loss or liability which has been or may be incurred by a relevant director in connection with that 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 associated company, and
- (c) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

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Merantun Short Term Cash Flow

Description	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	TOTAL
Company										
Legal set up costs	0	0	0	0	0	0	15,000	0	15,000	30,000
Secondments	0	0	0	0	0	0	5,333	5,333	5,333	16,000
Overheads - Technical Staff	0	0	0	0	8,190	8,190	8,190	8,190	8,190	40,950
Overheads - Finance Staff - Commercial Accountant	0	0	0	0	0	0	1,670	1,670	1,670	5,010
Total company	0	0	0	0	8,190	8,190	30,193	15,193	30,193	91,960
Tranche 1 sites										
Financially Modelling/surveyors Fees - BBP/PWC	0	0	0	0	0	0	5,000	5,000	5,000	15,000
Survey - Geotechnical / utilities	0	0	0	0	0	0	0	10,000	0	10,000
Survey - Rights to light x2	0	0	0	0	0	0	0	5,000	5,000	10,000
Model Cost - PWC Model	0	0	0	0	0	0	0	17,000	0	17,000
Survey - Ecology x 1	0	0	0	0	0	0	0	2,000	0	2,000
Total Tranche 1 sites	0	0	0	0	0	0	5,000	39,000	10,000	54,000
Contingency @ 10%										
Total Expenditure	0	0	0	0	0	0	5,000	39,000	24,600	160,560

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Appendix 4

Key decisions (August 2017 – March 2018)

Merantun Developments Ltd Board

December 2017

1. Approve revised business case.
2. Approve design brief.

January 2018

Approve procurement of design and planning consultants.

Approve land transfer programme.

April 2018

Approve submission of planning applications.

Approve commencement of procurement of construction contractor.

Shareholder Sub-Committee

December 2017

1. Approve appointment of company directors.
2. Approve further equity subscriptions (funding design and planning).

March 2018

1. Approve further equity subscriptions (ongoing development work).
2. Approve land transfer subscriptions agreement as required.

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