

[V.28/09/2016]

DATED

2016

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**SHAREHOLDER AGREEMENT**

between

**THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF MERTON**

and

**[LAPC LTD]**

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**THIS AGREEMENT** is dated [ ] 2016.

## **PARTIES**

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF MERTON**, of Civic Centre, London Road, Morden, SM4 5DX (**the COUNCIL**).
- (2) **[LAPC LIMITED]** incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**LAPC**).

## **BACKGROUND**

- (A) LAPC is a newly formed company incorporated in England and Wales on [ ] and has one ordinary share of £1 in issue, which is registered in the name of and the beneficial ownership of the Council.
- (B) LAPC 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) LAPC 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 LAPC 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the articles of association of [LAPC] in agreed form to be adopted on or prior to Completion as amended or superseded from time to time.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 [LAPC].

**Board:** the board of Directors of the [LAPC] 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 10.

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

**Completion:** the completion of the formation of [LAPC].

**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, excluding any Independent Director.

**Director:** a director of [LAPC], including a managing Director or chief executive or other chief officer of [LAPC].

**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 [LAPC].

**Finance Agreement:** a finance agreement to be entered into by [LAPC] 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 [LAPC] pursuant to which the Council shall provide funding to [LAPC].

**Financial Year:** in relation to [LAPC], means its accounting reference period of 12 months ending on the date given in clause 3.1(g) or such other date as [LAPC] may determine in accordance with section 392 of the Act but, in the first year in which [LAPC] is formed, means the period starting with the day [LACH] is formed and ending on the date given in clause 3.1(g), 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 [LAPC] 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 [LAPC] as part of its equity investment in LAPC.

**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 [LAPC] (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.

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

**Support Agreement:** the agreement pursuant to which the Council provides support services to [LAPC], to be entered into by LAPC and the Council in agreed form.

**Support Services:** the support services to be provided by the Council to [LAPC] 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 [LAPC]**

2.1 The business of [LAPC] 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 [LAPC] 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 the Company shall ensure that the homes are available to a modern standard and are well managed and maintained.

2.4 [LAPC] shall circulate a draft Remuneration Policy to the Council on or before [ ] 2016 (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 [LAPC] 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 [LAPC].

## **3. COMPLETION**

3.1 At Completion the parties shall procure that such [shareholder resolution] and board meetings of [LAPC] are held as may be necessary to:

- (a) adopt the Articles in agreed form;
- (b) give the Directors the authority to allot the Council its share[s] in accordance with clause 3.2;
- (c) appoint:
  - (i) Fiona Thomsen and Paul Dale Council Directors; and
  - (ii) James McGinlay as Executive Director;

- (d) resolve that the registered office of [LAPC] shall be the Council's address at the heading of this Agreement;
- (e) appoint PwC as the auditors of [LAPC];
- (f) appoint [NAME] as the principal bankers to [LAPC]; and
- (g) resolve that [LAPC's] Financial Year shall end on 31<sup>st</sup> March in each year.

3.2 At Completion:

- (a) [LAPC] shall issue credited as fully paid one (1) share to the Council and enter the Council in the register of members of [LAPC] as the holder of such share and issue a share certificate to the Council in respect of such share;
- (b) in consideration for the issue to the Council of its share, the Council shall:
  - (i) pay £1 to [LAPC];
  - (ii) enter into the Finance Agreement;
  - (iii) enter into one or more Land Transfer Agreement(s);
  - (iv) provide Support Services to [LAPC] 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 [LAPC] 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 [LAPC] pursuant to clause 3.2.

**4. MATTERS REQUIRING CONSENT OF THE COUNCIL**

[LAPC] 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 [LAPC] 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 the Company 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 [LAPC] 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 [LAPC], 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.
- 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 [LAPC] against any claim connected with the removal by the Council of any Director from office.
- 5.7 Unless the Council shall determine otherwise, there shall be a minimum number of three (3) Directors on the Board made up of two (2) Council Directors and an Executive Director.
- 5.8 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.
- 5.9 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.

- 5.10 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.
- 5.11 [LAPC] 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 LAPC AND LAND

- 6.1 The parties shall procure that [LAPC] 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 £[AMOUNT] 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 [LAPC] 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 [LAPC] 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 [LAPC].
- 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 [LAPC] or otherwise in [LAPC's] business.
- 6.5 The parties shall enter into such Land Transfer Agreements as are considered appropriate from time to time. If [LAPC] 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 [LAPC] 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, [LAPC] 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. RESTRICTIONS ON THE PARTIES**

8.1 Neither party shall, during the times specified below, offer employment to, enter into a contract for the services of, or attempt to solicit or seek to entice away from the other party any individual who is at the time of the offer or attempt, a Director, officer or employee [holding an executive or managerial position] with the other party or procure or facilitate the making of any such offer or attempt by any other person. The times during which the restrictions apply are:

- (a) any time when the Council is a shareholder; and
- (b) for a period of twelve (12) months after the Council ceases to be a shareholder in [LAPC].

**9. ANTI-CORRUPTION**

9.1 LAPC 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 9.1(a) and clause 9.1(b) and will provide any information reasonably requested by the Council in support of such compliance.

**10. BUSINESS PLAN**

10.1 The Business Plan is an annual business plan (unless otherwise agreed by the Council) for [LAPC] 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 [LAPC] for the previous Financial Year compared with the Business Plan for that year, identifying variations in sales, revenues, costs and other material items.

10.2 The Business Plan for the Financial Year in which [LAPC] is formed shall be that identified in clause 3.3.

10.3 The Business Plan for every other Financial Year shall, subject to clause 10.4, be:

- (a) prepared by the Board and circulated to the Council at least twenty eight (90) 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 (20) 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.

10.4 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 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 10.3(b) shall be increased by ten (10) Business Days.

- 10.5 For the avoidance of doubt, no Business Plan shall be adopted, varied or replace without the prior written approval of the Council.
- 10.6 For the any period when a proposed Business Plan circulated pursuant to clause 10.3(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 the Company.

## **11. ACCOUNTING AND OTHER INFORMATION**

- 11.1 [LAPC] 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, [LAPC] 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.
- 11.2 The Council and its authorised representatives shall be allowed access at all reasonable times to examine the books, accounts, documents and records of [LAPC] and to discuss [LAPC's] affairs, finances and accounts with its Directors and senior management and the Company 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.
- 11.3 [LAPC] 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 10.3;
  - (b) a copy of each business case prepared pursuant to clause 6.5(a);
  - (c) a copy of the audited accounts of [LAPC] 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 [LAPC] 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 [LAPC] in respect of each Financial Year, demonstrating the implementation by [LAPC] of Adequate Procedures, such report to be provided within forty (40) Business Days of the end of the Financial Year to which it relates.

11.4 [LAPC] 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.

11.5 The Company 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.

11.6 The Company 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.

11.7 The Company shall not breach nor cause the Council to be in breach of the Local Authorities (Companies) Order 1995.

## **12. DIVIDEND POLICY**

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

## **13. NOT USED**

## **14. 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.

## **15. INTELLECTUAL PROPERTY**

15.1 The Council shall retain ownership of all IPR arising from the operation of the Business by [LAPC].

15.2 The Council grants to [LAPC] a fully paid up, non-exclusive, royalty-free, non-transferable licence to use the IPR for the term of this Agreement.

15.3 [LAPC] 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.

## 16. TERMINATION AND LIQUIDATION

16.1 Subject to clause 16.2, 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 [LAPC];
- (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 [LAPC] being wound up and its assets being distributed among [LAPC's] creditors, shareholder or other contributors.

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

- (a) Clause 1 (Interpretation);
- (b) Clause 7 (Restrictions on Parties);
- (c) Clause **Error! Reference source not found.** (Tax Matters);
- (d) this clause;
- (e) Clause 18 (Confidentiality);
- (f) Clause 22 (Assignment and Other Dealings);
- (g) Clause 23 (Entire Agreement);
- (h) Clause 25 (Variation and Waiver);
- (i) Clause 26 (Costs);
- (j) Clause 27 (No Partnership or Agency);
- (k) Clause 28 (Notices);
- (l) Clause 29 (Severance);
- (m) Clause 34 (Inadequacy of Damages);
- (n) Clause 35 (Governing Law and Jurisdiction); [and **OR.**]
- (o) [INCLUDE ANY OTHER RELEVANT PROVISIONS.

- 16.3 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.
- 16.4 Where, following an event referred to in clause 16.1(c), [LAPC] is to be wound up and its assets distributed, the parties shall endeavour to ensure that, before dissolution:
- (a) all existing contracts of [LAPC] are performed to the extent that there are sufficient resources;
  - (b) [LAPC] shall not enter into any new contractual obligations;
  - (c) [LAPC's] assets are distributed as soon as practical; and
  - (d) any assets transferred to [LAPC] pursuant to any relevant agreement shall be returned to the Council or dealt with as the Council directs.

## **17. STATUS OF THE AGREEMENT**

- 17.1 Each party shall, to the extent that it is able to do so, exercise all its voting rights and other powers in relation to [LAPC] 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.
- 17.2 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.
- 17.3 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 [LAPC] and its Business to be administered as provided in this Agreement.

## **18. CONFIDENTIALITY, FOIA AND EIRs**

- 18.1 In this clause, Confidential Information excludes the information in clause 18.2.
- 18.2 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.

18.3 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].

18.4 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).

18.5 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.

- 18.6 The provisions of this clause 18 shall continue to apply after termination of this Agreement for any cause.

### **Freedom of Information and Environmental Information Regulations**

- 18.7 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.

- 18.8 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.

- 18.9 The parties acknowledge that (notwithstanding the provisions of clause 18.3 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.

## **19. DATA PROTECTION**

19.1 The parties undertake to comply with the provisions of the Data Protection Act 1998 in so far as the same relates to any subject matter of this Agreement.

## **20. ANNOUNCEMENTS**

20.1 Subject to clause 20.2 and clause 20.3, 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.

20.2 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.

20.3 On the signing of this Agreement the parties shall issue a joint announcement about the formation of [LAPC] in agreed form.

## **21. WARRANTIES**

21.1 Each party warrants and represents to the other that, at the date of this Agreement, [LAPC] 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.

21.2 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.

**22. ASSIGNMENT AND OTHER DEALINGS**

- 22.1 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)].
- 22.2 Each party confirms that it is acting on its own behalf and not for the benefit of any other person.

**23. DISPUTE RESOLUTION**

- 23.1 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.
- 23.2 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.

**24. ENTIRE AGREEMENT**

- 24.1 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.

- 24.2 Each party acknowledges that in entering into this Agreement (and any documents referred to in it), it does not rely on, and shall have no 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.

**25. VARIATION AND WAIVER**

- 25.1 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.

- 25.2 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.

- 25.3 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.

- 25.4 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.

- 25.5 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.

**26. 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).

**27. 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.

## 28. NOTICES

28.1 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, fax number or email address specified in clause 28.2, or such other address, fax number, email address or person as that party may notify to the other in accordance with the provisions of this clause 28; and
- (d) shall be:
  - (i) delivered by hand; or
  - (ii) sent by fax; or
  - (iii) sent by pre-paid first class post, recorded delivery or special delivery; or
  - (iv) 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 28.4.

28.2 The addresses and fax numbers 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) fax number: [NUMBER]
  - (iv) email address: [EMAIL ADDRESS];
- (b) [LAPC]:
  - (i) address: [ADDRESS]
  - (ii) for the attention of: [NAME]
  - (iii) fax number: [NUMBER]
  - (iv) email address: [EMAIL ADDRESS].

28.3 A party may change its details for service of notices as specified in clause 28.2 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.
- 28.4 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 fax, at the time of transmission provided the sender has received a successful transmission report; or
  - (c) 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
  - (d) if sent by email, one (1) hour after the notice was sent; and
  - (e) if deemed receipt under the previous paragraphs of this clause 28.4 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.
- 28.5 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 fax, a transmission report was received confirming that the notice was successfully transmitted to the correct fax number; or
  - (c) if sent by post, the envelope containing the notice was properly addressed, paid for and posted; or
  - (d) if sent by email, the notice was properly addressed (as described in clause 28.1(d)(iv) and sent to the email address of the recipient.
- 28.6 This clause 28 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, method of dispute resolution.

## **29. SEVERANCE**

- 29.1 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.

29.2 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.

**30. AGREEMENT SURVIVES COMPLETION**

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

**31. THIRD PARTY RIGHTS**

31.1 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.

31.2 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.

**32. COUNTERPARTS**

32.1 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.

32.2 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.

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

**33. 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.



**34. 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 18 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 18 of this Agreement.

**35. GOVERNING LAW AND JURISDICTION**

35.1 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.

35.2 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 [LAPC] (except as provided in clause 17.3 of the agreement).
2. Permitting the registration of any person as a member of [LAPC] other than the Council.
3. Increasing the amount of [LAPC]'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 [LAPC] 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 [LAPC] or its registered office.
10. Adopting or amending the Business Plan in respect of each Financial Year.
11. Changing the nature of [LAPC]'s Business or commencing any new business by [LAPC] 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 [LAPC] 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 [LAPC] or over any shares in [LAPC] 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 [LAPC]'s bankers relating to any matter concerning the operation of [LAPC]'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 [LAPC]'s Business.
19. Giving notice of termination of any arrangements, contracts or transactions which are material in the nature of [LAPC]'s Business, or materially varying any such arrangements, contracts or transactions.
20. Adopting or amending any standard terms of business (including prices) on which [LAPC] 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 [LAPC].
22. Factoring or assigning any of the book debts of [LAPC].
23. Changing the auditors of [LAPC] or its Financial Year end.
24. Making or permitting to be made any change in the accounting policies and principles adopted by [LAPC] 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 [LAPC].
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 [LAPC] 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, [LAPC] 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 [LAPC] or submitting to arbitration or alternative dispute resolution any dispute involving [LAPC].
36. Making any agreement with any revenue or tax authorities or making any claim, disclaimer, election or consent for tax purposes in relation to [LAPC] or its business.
37. Purchasing any housing or commercial unit(s) or land which is situated outside of the Council's administrative area.

**Schedule 2 Deed of adherence**

**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 )  
**[LAPC]** )  
acting by ..... )  
).....

Director

.....

Director/Secretary