

Agenda

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Shareholder Meeting

Date: **Monday 17 December 2018**

Time: **6.00 pm**

Place: **St Aldate's Room - Oxford Town Hall**

For any further information please contact the Committee Services Officer:

Catherine Phythian, Committee and Member Services Officers

Telephone: 01865 252402

Email: democraticservices@oxford.gov.uk

Shareholder Meeting

Membership

Chair Councillor Susan Brown

Councillor Mary Clarkson

Councillor Alex Hollingsworth

Councillor Christine Simm

Councillor Ed Turner

Councillor Nigel Chapman

Councillor Tom Hayes

Councillor Mike Rowley

Councillor Linda Smith

Councillor Louise Upton

The quorum for this meeting is three members.

Copies of this agenda

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- subscribed to electronically by registering online at mycouncil.oxford.gov.uk

AGENDA

	Pages
Items to be considered in public	
1 Apologies for absence	
2 Declarations of interest	
3 Minutes of the previous meeting	7 - 12
Recommendation: That the Housing Group Shareholder resolves to approve the minutes of the previous meeting held on 11 June 2018.	
4 Scrutiny recommendations	
To consider any recommendations of the Companies' Scrutiny Panel. These will be forwarded as a supplement following the Panel meeting on 12 December 2018.	
5 Proposed amendment to the Housing Group Shareholder Agreement	13 - 32
Report of: The Company Secretary for the Housing Group	
Purpose of report: To request that the Shareholder considers, and if appropriate agrees, the proposed amalgamation of the original Shareholder's Agreement for Oxford City Housing Limited and its two subsidiaries Oxford City Housing (Investment) Ltd and Oxford City Housing (Development) Ltd (together "the Housing Group") with a short Supplemental Agreement previously agreed by the Shareholder Group in December 2017.	
Recommendation: That the Housing Group Shareholder resolves to:	
1. Agree the amended Shareholder's Agreement for the Housing Group as attached to this report as Appendix 1, so that the original provisions agreed in March 2017 can be amalgamated in one single document with the additional provision, agreed in December 2017, to facilitate inter-company loan transfers.	
Items to be considered in private - matters exempt from publication	
If the Shareholder wishes to exclude the press and the public from the meeting during consideration of any of the items on the exempt from	

publication part of the agenda, it will be necessary for the Shareholder to pass a resolution in accordance with the provisions of Paragraph 4(2)(b) of the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2012 on the grounds that their presence could involve the likely disclosure of exempt information as described in specific paragraphs of Schedule 12A of the Local Government Act 1972.

The Shareholder may maintain the exemption if and so long as, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

6 The future strategic direction of OCHL

33 - 36

Stephen Clarke, Director and Chair of the OCHL Board, has submitted a report to inform the OCHL Shareholder Group of both implemented changes to Government housing policy and potential outcomes of recent Government consultations that could impact on OCHL's operating environment and strategic purpose

Recommendation:

That the OCHL Shareholder resolves to:

1. Note the Government's recent changes and consultations associated with its housing policy and to request a further report examining options for the future direction of OCHL together with a revised business plan for approval.

7 OCHL Development Programme

37 - 41

To receive a report detailing the progress made by the Housing Group on the delivery of the housing development projects.

The report will also be considered by the Companies Scrutiny Panel on 12 December 2018.

Recommendation:

The Shareholder is invited to consider the report, and make any comments or recommendations as appropriate.

Councillors declaring interests

General duty

You must declare any disclosable pecuniary interests when the meeting reaches the item on the agenda headed "Declarations of Interest" or as soon as it becomes apparent to you.

What is a disclosable pecuniary interest?

Disclosable pecuniary interests relate to your* employment; sponsorship (ie payment for expenses incurred by you in carrying out your duties as a councillor or towards your election expenses); contracts; land in the Council's area; licenses for land in the Council's area; corporate tenancies; and securities. These declarations must be recorded in each councillor's Register of Interests which is publicly available on the Council's website.

Declaring an interest

Where any matter disclosed in your Register of Interests is being considered at a meeting, you must declare that you have an interest. You should also disclose the nature as well as the existence of the interest.

If you have a disclosable pecuniary interest, after having declared it at the meeting you must not participate in discussion or voting on the item and must withdraw from the meeting whilst the matter is discussed.

Members' Code of Conduct and public perception

Even if you do not have a disclosable pecuniary interest in a matter, the Members' Code of Conduct says that a member "must serve only the public interest and must never improperly confer an advantage or disadvantage on any person including yourself" and that "you must not place yourself in situations where your honesty and integrity may be questioned". What this means is that the matter of interests must be viewed within the context of the Code as a whole and regard should continue to be paid to the perception of the public.

*Disclosable pecuniary interests that must be declared are not only those of the member her or himself but also those member's spouse, civil partner or person they are living with as husband or wife or as if they were civil partners.

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Minutes of a meeting of the SHAREHOLDER MEETING on Monday 11 June 2018

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Committee members:

Councillor Brown (Chair)

Councillor Linda Smith

Councillor Hayes

Councillor Hollingsworth

Councillor Rowley

Officers:

Anita Bradley, Head of Law & Governance / Monitoring Officer

Jane Winfield, Housing Group Director

Lindsay Cane, Legal Services Manager / Company Secretary

Nigel Kennedy, Head of Financial Services

Alan Wylde, Housing Development & Enabling Manager

Catherine Phythian, Committee Services Officer

Stefan Robinson, Scrutiny Officer

Apologies:

Councillor(s) Turner, Chapman, Clarkson, Tidball and Upton sent apologies.

1. Declarations of interest

There were no declarations of interest.

2. Minutes of the previous meeting

The Housing Group Shareholder resolved to approve the minutes of the previous meeting held on 20 March 2018.

Minute item 13, sub-heading Capacity

Councillor Hollingsworth asked whether the Housing Group's concerns about resource constraints in the Council's planning service had been resolved. The Director said that the Housing Group had offered to finance additional staff resource through a planning partnership agreement but this had been rejected as the problem was in identifying suitably qualified people rather than being purely financial. The situation had now improved as a result of further meeting with the Head of Planning Services and a planning officer had been allocated to deal specifically with the Housing Group's applications.

3. Scrutiny recommendations

The Shareholder noted that Councillor Fry, Chair Scrutiny Companies Panel, had sent apologies and that Stefan Robinson (Scrutiny Officer) was in attendance to present the views of the Scrutiny Companies Panel which had met on 7 June 2018.

The Scrutiny Officer explained that the Panel had not made any formal recommendations to the Shareholder but wished to register their concerns regarding the following issues:

- whether the priorities of the Housing Group and the Council were fully aligned, as the company's ambition to meet revenue targets may not be conducive to maximising the delivery of affordable housing units.
- the decline in deliverable units across the sites following discussions with planning officers regarding the acceptability of proposed density and layout from a planning perspective.
- that the delays experienced in 2018 should not continue into 2019

Those concerns had been raised with the Housing Group at the Scrutiny Panel meeting and their responses were recorded in the minutes of that meeting (previously circulated as a supplement to the agenda for the Shareholder meeting).

Councillor Rowley said that it was important to recognise that the reduction in the number of units was due to challenges presented by the planning services' assessment of the schemes against planning policy. These were specific instances and there was no reason to think that the Council and the Housing Group were not in full agreement about the overall objective to increase the supply of affordable housing within the city.

The Scrutiny Officer left the meeting at the end of this item.

4. Housing Group - Business Plan progress update

The Housing Development Manager gave a presentation on the Housing Group's portfolio of development schemes and property acquisition. He explained that the slippage in the completion dates for the development sites was in part due to the delays experienced in planning pre-application process but that he was confident that the current schedule was a realistic assessment.

Harts Close

This was at an advanced stage in the planning process and was due for completion in May 2019.

Warren Crescent

Work would begin on site in January 2019 on completion of the water monitoring programme; it was due for completion in January 2020.

The Shareholder said that it was important to remind local residents that this was still a valid planning application and to ensure that there was a comprehensive communications plan to brief residents on the timescales and details for the construction phase of the site development.

The Housing Group gave assurances that a communications plan was in place and that it would address the concerns raised by the Shareholder.

Underhill Circus

The current focus was on acquiring the maisonettes above the shops on the site; completion was scheduled for late 2020.

Two sites at Rose Hill

Due to their proximity the two sites at Rose Hill would be treated as a single development. Pre-application feedback had resulted in a reduction in the number of deliverable units on this site. Public consultation was due to start on site in June 2018. Completion was due in March 2020.

Cumberlege Close and Elsfield Hall

The scheduled completion for these two sites was late 2019 – early 2020. It was proposed to treat these two locations as a combined development. There was an Oxford Preservation Trust Covenant on Cumberlege Close. Initial pre-application feedback had resulted in a reduction in the number of deliverable units at Elsfield Hall.

The Shareholder observed that the Elsfield Hall site was in a highly sustainable location with good transport links and green space and as such should be able to support a higher level of units.

The Shareholder asked for a report to the next meeting detailing the background to and status of the discussions about the Oxford Preservation Trust Covenant on Cumberlege Close.

Between Towns Road

Pre-application feedback had resulted in a reduction in the number of deliverable units on this site. Public consultation was due to start on site in July 2018.

Lucy Faithfull House

Demolition was underway. Initial design proposals were based on a high density scheme in keeping with its city centre location. Design details and construction timescales for this site would be heavily influenced by the outcomes of the archaeological survey.

Barton Park

The Housing Development Manager said that the first homes were due to transfer to the Housing Group in August 2018. He explained that the Building Cost Information Service (BCIS) index recorded a cost increase in 2017 which would impact on the Phase 1 property prices paid by the Housing Group. This increase was expected to be within the Housing Group financial parameters. The prediction was that the BCIS index would be negative in 2018 and so would have a more favourable impact on the purchase prices for Phase 2 properties.

Property acquisitions from Oxford City Council

The Housing Development Manager said that to date two properties had been identified for possible transfer in 2018 and that he reviewed a weekly list of vacant properties to identify other possibilities. The actual number of properties that the Housing Group

could acquire in any year, within the regulatory limits, was determined by whether or not a suitable property became vacant.

The Shareholder noted that the following properties had already been transferred to the Housing Group:

2016/17

1. 32 Union Street
2. 9 Pauling Road
3. 66 Sandy Lane
4. 26 Valentia Road
5. 2 Dynham Place

2017/18

6. 16 Sparsey Place
7. 51 Weirs Lane

Housing Group status

The Chair reminded the meeting that the possibility of the Housing Group assuming Registered Social Landlord (RSL) status in order to access grant opportunities had been discussed at the previous meeting and that it had been agreed that a report detailing these issues and recommending a course of action should be presented to the Shareholder. Any decision about assuming RSL status would have significant implications for the Housing Group Business Plan, the Council's Medium Term Financial Plan and delivery of the Oxfordshire Housing and Growth Deal.

The Housing Group Company Secretary said that they were seeking further professional advice on the implications of assuming RSL status and that he anticipated that a report would be prepared within 2 to 3 months ready for consideration at the September Shareholder meeting.

The Chair said that this timescale was too long and that an earlier meeting of the Shareholder may have to be convened to consider the matter. The Chair rejected a suggestion that the matter could be addressed in correspondence and said that such a significant governance issue must be considered in public to demonstrate clear and accountable decision making.

The Monitoring Officer stated that there were in fact two separate decisions to be made in relation to RSL status: the City Executive Board would need to decide whether it was appropriate for the Council with regard to housing policy; and the Shareholder would need to decide whether it was in the best interests of the Housing Group. On receipt of the professional advice the Monitoring Officer would advise the City Executive Board and Shareholder; while the deputy Monitoring Officer, in his role as Company Secretary, would advise the Housing Group.

Procurement

In response to questions from the Shareholder the Housing Development Manager said that where appropriate the Housing Group would consider letting the construction contracts to small, local and independent companies.

The Shareholder asked for a report at the next meeting detailing the Housing Group approach to maximising social impact through its procurement arrangements.

The meeting started at 5.00 pm and ended at 6.15 pm

Chair

Date:

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To: Shareholder meeting – Housing Group
Date: 17 December 2018
Report of: Company Secretary
Title of Report: Proposed amendment to Shareholder’s Agreement

Summary and recommendations	
Purpose of report:	To request that the Shareholder considers, and if appropriate agrees, the proposed amalgamation of the original Shareholder’s Agreement for Oxford City Housing Limited and its two subsidiaries Oxford City Housing (Investment) Ltd and Oxford City Housing (Development) Ltd (together “the Housing Group”) with a short Supplemental Agreement previously agreed by the Shareholder Group in December 2017.
Recommendation(s): That the Housing Group Shareholder resolves to:	
1.	Agree the amended Shareholder’s Agreement for the Housing Group as attached to this report as Appendix 1, so that the original provisions agreed in March 2017 can be amalgamated in one single document with the additional provision, agreed in December 2017, to facilitate inter-company loan transfers.

Appendices	
Appendix 1	Amended Shareholder Agreement (Dec 2018)

Introduction and Proposal

1. At its meeting on 28 March 2017 the Shareholder Group agreed the terms of a Shareholder’s Agreement for the Housing Group of companies, to be made between the Council (as shareholder) and Oxford City Housing Limited. Since that date this Shareholder’s Agreement has remained in full force and effect.
2. On 20 December 2017 the Shareholder Group agreed a minor amendment to the Shareholder’s Agreement. This amendment was made to permit the transfer of loans between Housing Group companies without the need for express Shareholder consent on each occasion. This amendment was recorded in a short Supplemental Agreement.

3. To seek to avoid any unnecessary confusion, it is now recommended that rather than having to refer to two separate documents, the December 2017 amendment now be incorporated within the main Shareholder’s Agreement. As redrafted, the amendment to facilitate inter-group loans would now appear within Clause 20 of Schedule 1 Part A, which lists matters reserved for Shareholder consent. The amended clause 20 would read as follows:

The Company and any Group Company shall not, unless it has Shareholder Consent:

make 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 grant any credit (other than in the normal course of trading) or give any guarantee (other than in the normal course of trading) or indemnity (other than in the normal course of trading), *save that the Shareholder shall be deemed to have granted to the Boards of the Group Companies continuous authority (until notified to the contrary) to permit any of the said companies to make and accept inter-group loans and inter-group transfers, where any such loans or transfers are made to facilitate any company activity which is consistent with the Group’s Business Plan;*

Financial implications

4. There are no direct financial implications arising from this report.

Legal issues

5. If agreed, the revised Shareholder’s Agreement, incorporating the above amendment, will be executed on behalf of both the Council and OCHL, and will form a single document setting out all relevant terms.

Report author	Lindsay Cane, Company Secretary
Telephone	01865 01865 252570
e-mail	lcane@oxford.gov.uk

dated

2018

Oxford City Council

and

Oxford City Housing Limited

Shareholder Agreement

in respect of Oxford City Housing Limited

Shareholder Agreement

dated

2018

Parties

- (1) **Oxford City Council** of St Aldate's Chambers, 109 St Aldate's, Oxford OX1 1BX ("the **Council**").
- (2) **Oxford City Housing Limited** (company no 10212716) whose registered office is St Aldate's Chambers, 109 St Aldate's, Oxford OX1 1BX ("the **Company**").

Introduction

- (A) The Company was incorporated in England under the Companies Act 2006 on 3 June 2016 and, at the date of this Agreement, 100 Shares are in issue and are registered in the name of and are beneficially owned by the Council.
- (B) The Company has been incorporated to exercise the power to trade contained in the Local Government Act 2003 and/or pursuant to the general power of competence in the Localism Act 2011.
- (C) This Agreement sets out the terms upon which the Council will participate in the Company as its shareholder.

Agreed Terms

1 Definitions and Interpretation

1.1 In this Agreement:

Articles means the articles of association of the Company;

Business means the business of the Company as set out in clause 2;

Business Day means a day (other than a Saturday or Sunday) on which the banks in the City of London are open for retail business;

Business Plan means the Company's plan for delivery of the Business as set out in schedule 2 as updated or amended in accordance with clause 2.4

CA2006 means the Companies Act 2006;

Council means Oxford City Council of St Aldate's Chambers, 109 St Aldate's, Oxford OX1 1BX

Tenant Debt Recovery Policy means the policy of the Company in relation to the recovery of debt owed to it by a tenant of a Dwelling as adopted by the Company (as amended from time to time);

Director means a director of the Company;

Dwelling means any dwelling owned by the Company from time to time;

Environmental Information Regulations means the Environmental Information Regulations 2004;

Finance Documents means a development facility agreement to be entered into by the Company and the Council on or about the date of this Agreement, or a loan note instrument to be entered into by the Company on or about the date of this Agreement, and any other funding and security documentation which is entered into by the Company relating to the provision of funding for the Business from the Council;

FOIA means the Freedom of Information Act 2000;

Group means the Company and its subsidiary undertakings from time to time, or any of them as the context requires and **Group Company** shall be construed accordingly;

Information has the meaning given to it under section 84 of the FOIA;

Policies mean (where appropriate) the Rent and Lettings Policy, Sales Policy, Debt Recovery Policy and Remuneration and Expenses Policy;

Quarter Date means 31 March, 30 June, 30 September or 31 December;

Rent and Lettings Policy means the policy of the Company under which it will set the rents of Dwellings and let Dwellings, as adopted by the Company (and amended from time to time) ;

Request for Information has the meaning set out in the FOIA or any apparent request for information made under the FOIA or the Environment Information Regulations;

Sales Policy means the policy of the Company under which it will sell Dwellings as adopted by the Company (and amended from time to time) ;

Shareholder means any holder of any Share(s) from time to time, being the Council at the date of this Agreement;

Shareholder Comment means the comments of the Shareholder given to the Directors in accordance with clause 2.2 ;

Shareholder Consent Matters means those matters listed in schedule 1;

Shares means the ordinary shares of £1 each in the issued share capital of the Company;

Subsidiary has the meaning given in the CA2006;

United Kingdom means the geographical area of the United Kingdom of Great Britain and Northern Ireland as at the date of this Agreement.

1.2 A reference to a statutory provision includes a reference to:

1.2.1 a statutory amendment, consolidation or re-enactment (whether before or after the date of this Agreement),

1.2.2 statutory instruments or subordinate legislation (as defined in section 21(1) of the Interpretation Act 1978) or orders made under the statutory provision (whether made before or after the date of this Agreement), and

1.2.3 statutory provisions of which the statutory provision is an amendment, consolidation or re-enactment.

1.3 Reference to:

1.3.1 a person includes a legal or natural person, partnership, trust, company, government or local authority department or other body (whether corporate or unincorporate),

- 1.3.2 a statutory or regulatory body shall include its successors and any substituted body,
 - 1.3.3 an individual includes, where appropriate, his personal representatives,
 - 1.3.4 the singular includes the plural and vice versa, and
 - 1.3.5 one gender includes all genders.
- 1.4 Unless otherwise stated, a reference to a clause or schedule is a reference to a clause or schedule to this Agreement and a reference to this Agreement includes its schedules.
- 1.5 Clause headings in this Agreement are for ease of reference only and do not affect its construction.
- 1.6 In construing this Agreement the so-called ejusdem generis rule does not apply and accordingly the interpretation of general words shall not be restricted by words indicating a particular class or particular examples.
- 1.7 For the purposes of this Agreement **Party** means a party to this Agreement and reference to **Parties** shall be to all or more than one of them as applicable.
- 1.8 Where a provision of this Agreement imposes an obligation, cost or liability on the Parties, that obligation, cost or liability shall be construed as being against those Parties jointly and severally, and where a provision of this Agreement gives a claim, benefit or right to the Parties, that claim, benefit or right attaches to those Parties jointly.
- 1.9 Where a consent and/or permission is required under this Agreement from one Party to the other that consent and/or permission shall not be unreasonably withheld or delayed.

2 **Business**

- 2.1 The Business of the Company shall be:
- 2.1.1 to operate as a commercial company (for trading or other purposes) and deliver a financial return for the benefit of the Council and/or to fund the Company's future Business activities;
 - 2.1.2 to purchase land and property within the United Kingdom either from the Council or on the open market; and
 - 2.1.3 to acquire, develop, construct and/or refurbish residential homes and retail and commercial premises within the United Kingdom which it will either sell or rent in accordance with the objects of the Company and the provisions of the Business Plan.

together with any activities reasonably incidental to the above.

- 2.2 The first Business Plan of the Company is set out in Schedule 2 to this Agreement. The Company shall send any new or materially revised version of the then current Business Plan to the Shareholder(s) when available and invite the Shareholder(s) to provide comments on the proposed new or revised Business Plan . The Shareholder(s) will respond to the Company on the proposed Business Plan as soon as reasonably

practicable (and in any event within two weeks) following receipt. The Directors shall consider all comments received and, if appropriate, include appropriate amendments into the new or revised Business Plan. No adoption of a new, or of a material variation to or replacement of any Business Plan shall take effect until the Shareholder's comments have been received and considered in accordance with the provisions of this Clause..

2.3 Each Business Plan shall be substantially in the format of the first Business Plan (unless otherwise agreed between the Company and the Shareholder(s)).

2.4 Notwithstanding any other provision of this clause 2, for any period when a proposed or materially revised Business Plan has not been adopted by the Directors in accordance with clause 2.2 the relevant existing Business Plan shall continue to be the Business Plan of the Company.

2.5 Upon any Shareholder's request, the Company will provide copies of the Policies to that Shareholder.

3 **Conduct of the Company's Affairs**

3.1 Meetings of the Directors shall be held no less than six times in every year and at not longer than two monthly intervals.

3.2 With the exception of those matters requiring Shareholder Consent pursuant to clause 3.6, the management of the Company shall be vested in the Directors. The Directors may appoint a managing director on such terms as they may think fit, who shall be responsible for the day to day management of the Business within the terms of the Business Plan and this Agreement and perform such duties as may be delegated to him by the Directors. The Directors may also remove such managing director and appoint a replacement on such terms as they may think fit providing that no such appointment shall be made without Shareholder Consent.

3.3 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 (a) Business Plan, (b) those matters requiring Shareholder Consent pursuant to clause 3.6 and (c) any other express provisions of this Agreement. In particular, the Directors shall exercise all voting rights and other powers of control available to them in relation to the Company so as to procure (in so far as they are able in the exercise of such rights and powers) that, at all times during the term of this Agreement, the Company shall:

3.3.1 carry on and conduct its business and affairs in a proper and efficient manner, for its own benefit and in accordance with both the Business Plan and good business practices, and

3.3.2 transact all its business on arm's length terms.

3.4 The Company shall not carry out any activity which would render the holding of Shares by any Shareholder unlawful provided that where a proposed change of law would render such shareholding unlawful such Shareholder will use its reasonable endeavours to take such steps as are necessary to allow it to continue lawfully to hold its Shares.

- 3.5 If the Company 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, the Company will obtain and maintain the same in full force and effect.
- 3.6 The Company shall ensure that none of the Shareholder Consent Matters shall be carried out without the prior consent in writing of the Shareholder(s) holding either all, or the aggregate (between them) majority, of the Shares then in issue.
- 3.7 The Company shall permit any Director to discuss the affairs, finances and accounts of the Company and its subsidiaries with any designated officers and executives of the Shareholder(s) at any time. All books, records, accounts and documents relating to the business and the affairs of the Company and any subsidiaries shall be open to the inspection of any such person, who shall be entitled to make any copies thereof as he or she deems appropriate to keep the (relevant) Shareholder properly informed about the business and affairs of the Company or to protect its interests as Shareholder. Any information secured as a consequence of such discussions and examinations shall be kept confidential by the requesting Shareholder and its designated officers and executives in accordance with the terms of clause 6.
- 3.8 The Company agrees with the Shareholder(s) that it will maintain effective and appropriate control systems in relation to the financial, accounting and record-keeping functions of the Group and will generally keep the Shareholder(s) informed of the progress of each Group Company's business and affairs and in particular will procure that any Shareholder is given such information and such access to the officers, employees and premises of the Group as it may reasonably require.
- 3.9 The Company agrees with the Shareholder(s) that it will:
- 3.9.1 maintain effective and appropriate control systems in relation to the financial, accounting and record-keeping functions of the Company; and
 - 3.9.3 keep the Shareholder(s) informed of the progress of the Company's business and affairs and in particular will procure that each Shareholder is given such information and such access to the directors and premises of the Company as it may reasonably require.
- 3.10 The Company shall not breach nor cause the Council to be in breach of the Local Authorities (Companies) Order 1995.

4 **Covenants**

The Company covenants to the Shareholder(s) in accordance with the terms of Schedule 3.

5 **Termination**

5.1 This Agreement shall terminate upon

- 5.1.1 the written agreement of the Parties in accordance with the terms agreed; or
- 5.1.2 when a resolution is passed by the Shareholder(s) or creditors of the Company, or any order made by a court or other competent body or person instituting a

process that shall lead to the Company being wound up and its assets being distributed among the creditors, Shareholder(s) or other contributors;

5.1.3 the Company ceasing to carry on its business; or

5.1.4 the Company being convicted of a criminal offence; or

5.1.4 the Shareholder giving not less than 90 days written notice to the Company of the date on which all or part of this Agreement will terminate,

but shall cease and determine in respect of a Shareholder (without prejudice to that Shareholder's accrued rights, obligations or liabilities) upon that Shareholder ceasing to hold Shares in the Company

6 **Confidentiality**

6.1 Each Party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other Party or of any member of the Group of companies to which the other Party belongs, except as permitted by clause 6.2.

6.2 Either Party may disclose the other Party's confidential information:

6.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the Party's obligations under this Agreement. Either Party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other Party's confidential information comply with this clause 6; or

6.2.2 as may be required by law, court order or any governmental or regulatory authority.

6.3 Either Party acknowledges that the other Party is subject to the requirements of the FOIA and the Environmental Information Regulations, and shall facilitate the other Party's compliance with its Information disclosure requirements pursuant to and in the manner provided for in clauses 6.4 and 6.7.

6.4 If either Party (the **Recipient**) receives a Request for Information in relation to Information that the other Party is holding and which the Recipient does not hold itself, the Recipient shall refer to the other Party such Request for Information as soon as practicable and in any event within five Business Days of receiving a Request for Information, and the other Party shall:

6.4.1 provide the Recipient with a copy of all such Information in the form that the Recipient requires as soon as practicable and in any event within ten Business Days (or such other period as the Recipient acting reasonably may specify) of the Recipient's request; and

6.4.2 provide all necessary assistance as reasonably requested by the Recipient to enable the Recipient to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

6.5 Following notification under clause 6.4, and up until such time as the other Party has provided the Recipient with all the Information specified in clause 6.4, the other Party may make representations to the Recipient as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Recipient shall be responsible for determining, at its absolute discretion:

6.5.1 whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and

6.5.2 whether Information is to be disclosed in response to a Request for Information; and

6.5.3 in no event shall the other Party respond directly to a Request for Information unless the Request for Information is addressed to it.

6.6 The Parties acknowledge that (notwithstanding the provisions of clause 6.1) 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:

6.6.1 in certain circumstances without consulting with the other Party; or

6.6.2 following consultation with the other Party and having taken their views into account.

6.7 Each Party shall transfer to the other Party any Request for Information which it receives but is addressed to the other Party as soon as practicable and in any event within three Business Days of receiving it.

6.8 The Parties acknowledge that any lists provided which list or outline Confidential Information are of indicative value only and that a Recipient may nevertheless be obliged to disclose Confidential Information in accordance with clause 6.6.

7 **No Partnership**

Nothing in this Agreement gives rise to a partnership between the Parties or constitutes one Party the agent of another.

8 **Contracts (Rights of Third Parties) Act 1999**

8.1 Unless the right of enforcement is expressly granted, it is not intended that a third party, other than a lawful successor in title or a lawful assignee, should have the right to enforce a provision of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

8.2 The Parties may rescind or vary this Agreement without the consent of a third party to whom an express right to enforce any of its terms has been provided.

9 **Costs of this Agreement**

Each party shall pay its own costs in connection with the negotiation, preparation, execution and performance of this Agreement.

10 **Waiver**

10.1 The rights of each of the Parties in respect of a breach of this Agreement shall not be affected by completing, by rescinding, or failing to rescind, this Agreement, or by failing to exercise, or delaying in exercising, a right or remedy, or by anything else, except a specific authorised written waiver or release. A single or partial exercise of a right or remedy provided by this Agreement or by law does not prevent its further exercise or the exercise of another right or remedy.

10.2 Waiver of a breach of a term of this Agreement, or of a default under it, does not constitute a waiver of another breach or default nor affect the other terms of this Agreement.

10.3 The rights and remedies provided in this Agreement are cumulative and not exclusive of any other rights or remedies.

11 **Variation**

A purported variation of this Agreement is not effective unless in writing and signed by or on behalf of each of the Parties.

12 **Invalidity**

If a provision of this Agreement is held to be illegal or unenforceable, in whole or in part, under an enactment or rule of law, it shall to that extent be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement shall not be affected. The Parties agree to negotiate in good faith to agree the terms of a mutually satisfactory provision to be substituted for the provision found to be illegal or unenforceable.

13 **Entire Agreement**

13.1 This Agreement (together with any documents entered into under it or at the same time as it) supersedes all prior understandings and agreements between the Parties (whether written or oral) relating to its subject matter and contains the entire agreement between the Parties relating to its subject matter.

13.2 Each Party acknowledges that it does not enter into this Agreement on the basis of, and does not rely on, warranties or representations made, or agreed to, by any person (whether a party to this Agreement or not).

13.3 Each Party waives its rights against the other Party in respect of warranties and representations (whether written or oral) not expressly set out or referred to in this Agreement.

13.4 Nothing in this clause 13 limits or excludes liability for fraud.

14 **Status of this Agreement**

14.1 In the event of any ambiguity or discrepancy between the provisions of this Agreement and the Articles, then it is the intention of the Shareholder(s) that the provisions of this Agreement shall prevail. Accordingly, the Shareholder(s) shall take all available steps and do all practicable acts and things as may be necessary or desirable, including, without limitation, exercising all voting and other rights and powers of control available to it in relation to the Company, so as to give effect to the provisions of this Agreement and shall

further if necessary procure (insofar as it is able to do so by the exercise of those rights and powers) any required amendment to the Articles.

15 **Consents**

15.1 Consents, notices, approvals or agreements to be given by the Shareholder(s) under this Agreement shall be given in writing.

15.2 Where this Agreement provides that a matter is subject to the consent, approval or Agreement of any Party then (except as expressly provided otherwise), it shall be in the absolute discretion of the Party concerned as to whether (and if so, on what terms and conditions) the consent, approval or agreement is made.

16 **Communications**

16.1 Any notice or other communication under or in connection with this Agreement shall be in writing and shall be delivered personally or sent by first-class post (and by air mail if overseas) or by facsimile or by email as follows:

16.1.1 if to the Council, to:

Address: St Aldates Chambers, 109 St Aldate's, Oxford OX1 1BX

Email: []

marked for the attention of [; The Head of Finance

16.1.2 if to the Company, to:

Address: St Aldates Chambers, 109 St Aldate's, Oxford OX1 1BX

Email: lcane@oxford.gov.uk

marked for the attention of Mr L.D Cane ;

or to such other person, address, or fax number or email as any Party may specify by notice in writing to the other.

16.2 In the absence of evidence of earlier receipt, any notice or other communication shall be deemed to have been duly given:

16.2.1 if delivered personally, when left at the address referred to in clause 16.1;

16.2.2 if sent by mail, other than airmail, two Business Days after posting it;

16.2.3 if sent by fax, on completion of its legible transmission; and

16.2.4 if sent by email, when sent provided there has been no communication by the recipient to the senders that the email has not been received,

16.2.5 provided always that a notice given in accordance with the above but received on a day which is not a Business Day or after business hours on a Business Day will only be deemed to be given on the next Business Day.

16.3 The original of any notice or other communication by fax shall be forwarded to the recipient(s) but the non-arrival of that original shall not affect the validity of the notice or other communication by fax.

17 **Counterparts**

17.1 This Agreement may be executed in a number of counterparts and by the Parties on different counterparts, but shall not be effective until each Party has executed at least one counterpart.

17.2 Each counterpart, when executed, shall be an original, but all the counterparts together constitute the same document.

18 **Governing Law and Jurisdiction**

18.1 This Agreement and the rights and obligations of the Parties shall be governed by and construed in accordance with the laws of England and Wales.

18.2 The Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales in respect of any dispute or claim arising out of or in connection with this Agreement or any of the documents to be executed pursuant to this Agreement or their subject matter or formation (including non-contractual disputes or claims).

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

Schedule 1

Shareholder Consent Matters – Part A (Corporate Matters)

The Company and any Group Company shall not, unless it has Shareholder Consent:

1. vary in any respect its articles of association or the rights attaching to any of its shares; or
2. permit the registration (upon subscription or transfer) of any person as a member of the Company other than the Shareholder(s) in accordance with the terms of this Agreement and/or any permitted transferees, or permit the registration (upon subscription or transfer) of any person as a member of any other Group Company save for the Company; or
3. increase the amount of its issued share capital except as provided in this Agreement, grant any option or other interest (in the form of convertible securities or in any other form) over or in its share capital, redeem or purchase any of its own shares or effect any other reorganisation of its share capital; or
4. issue any loan capital or enter into any commitment with any person with respect to the issue of any loan capital; or
5. make any borrowing other than under the Finance Documents; or
6. apply for the listing or trading of any shares or debt securities on any stock exchange or market; or
7. pass any resolution for its winding up or present any petition for its administration (unless it has become insolvent); or
8. engage in any business other than as contemplated by the Business Plan or defray any monies other than in good faith for the purposes of or in connection with the carrying on of such business; or
9. form any Subsidiary or acquire shares in any other company or participate in any partnership or joint venture (incorporated or not); or
10. close down any business operation, or dispose of or dilute its interest in any of its Subsidiaries for the time being, unless in each case such closure or disposal is expressly contemplated by the Business Plan; or
11. amalgamate or merge with any other company or business undertaking; or
12. alter its name or registered office; or
13. enter into any transaction or arrangement of any nature whatsoever (including, for the avoidance of doubt, a service contract) with any of its directors or any person who is connected (within the meaning of sections 1122 and 1123 of the Corporation Tax Act 2010) to any of its directors whether or not any other person shall be party to such transaction or arrangement; or
14. enter into any arrangement, contract or transaction outside the normal course of its business or otherwise than on arm's length terms; or

15. enter into, as lessor or as lessee, any finance lease falling outside the provisions of the Business Plan; or
16. create or permit to be created any mortgage, charge, encumbrance or other security interest whatsoever on any material asset or its business in whole or in part or any of its shares other than:
 - (a) pursuant to the Finance Documents;
 - (b) liens arising in the ordinary course of business; or
 - (c) any charge arising by the operation or purported operation of title retention clauses and in the ordinary course of business; or
17. adopt or amend its Business Plan (other than in accordance with Clause 2.2); or
18. change either:
 - (a) its statutory auditors; or
 - (b) its financial year end; or
19. make or permit to be made any material change in the accounting policies and principles adopted by the Company in the preparation of its accounts except as may be required to ensure compliance with relevant accounting standards under the CA 2006 or any other generally accepted accounting principles in the United Kingdom; or
20. make 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 grant any credit (other than in the normal course of trading) or give any guarantee (other than in the normal course of trading) or indemnity (other than in the normal course of trading), **save that the Shareholder shall be deemed to have granted to the Boards of the Group Companies continuous authority (until notified to the contrary) to permit any of the said companies to make and accept inter-group loans and inter-group transfers, where any such loans or transfers are made to facilitate any company activity which is consistent with the Group's Business Plan;** or
21. give any guarantee, suretyship or indemnity to secure the liability of any person or assume the obligations of any person outside the scope of its Business Plan; or
22. establish or amend any profit-sharing, share option, bonus or other incentive scheme of any nature for directors, officers or employees; or
23. establish or amend any pension scheme or grant any pension rights to any director, officer, employee, former director, officer or employee, or any member of any such person's family; or
24. dismiss any director
25. adopt any remuneration and expenses policy or amend any existing Remuneration and Expenses Policy; or

26. agree to remunerate (by payment of salary, bonus, the provision of benefits-in-kind or otherwise) or to increase the remuneration of any employee, officer of or consultant to the Company unless the annual aggregate amount of such remuneration (by payment of salary, bonus, the provision of benefits-in-kind or otherwise) is in accordance with the Company's current Remuneration or Expenses Policy or Business Plan; or
27. institute, settle or compromise any material legal proceedings (other than debt recovery proceedings in the ordinary course of business or where the Value of such claim is reasonably believed by the Company to be less than £500,000 instituted or threatened against it or submit to arbitration or alternative dispute resolution any dispute if the effect of this is that its solvency may be imperilled, or it may require additional funding in order to undertake its Business Plan; or
28. make any agreement with any revenue or tax authorities or make any claim, disclaimer, election or consent for tax purposes if the effect of this is that its solvency may be imperilled, or it may require additional funding in order to undertake its Business Plan.

Shareholder Consent Matters – Part B (Operational Matters)

Part B (Operational Matters)

The Company shall not, unless it has Shareholder Consent:

- 1 acquire any land or assets with a value in excess of £1,000,000 where such acquisition is inconsistent with the provisions of the current Business Plan or
- 2 enter into any contract with a value in excess of £100,000 where the entry into such contract would be inconsistent with the provisions of the current Business Plan ; or
- 3 enter into, as lessor or as lessee, any finance lease where by so doing the Company would be acting in a way inconsistent with the current Business Plan.
- 4 adopt or make a material amendment to the Rent and Lettings Policy:

Schedule 2

**First Business Plan
(Indicative draft as at date of Agreement)**

Schedule 3
Company Covenants

The Company covenants with the Shareholder(s) as follows:

- 1 Only to acquire land or assets if any such acquisition is in accordance with the Business Plan.
- 2 To comply with the Rent and Lettings Policy.
- 3 To comply with the Sales Policy.
- 4 To comply with the Debt Recovery Policy
- 5 To appoint the Council's auditors as its statutory auditors (where the Council so requires) and to maintain the Council's financial year end as the Company's financial year end.

In witness whereof the parties have executed this Agreement as a deed.

The **Common Seal** of)
Oxford City Council)
was hereunto)
affixed in the presence of:)

Nominated Officer

executed as a deed by)
Oxford City Housing Limited)
acting by:)

.....
Director

.....
Director/Secretary

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

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Agenda Item 7

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

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