

# Public Document Pack

Legal and Democratic Services



## SHAREHOLDER SUB COMMITTEE

Tuesday 27 November 2018 at 2.00 pm

Town Hall, Epsom

The members listed below are summoned to attend the Shareholder Sub Committee meeting, on the day and at the time and place stated, to consider the business set out in this agenda.

Councillor Eber Kington (Chairman)  
Councillor Tina Mountain  
Councillor Barry Nash

Councillor Clive Smitheram  
Councillor Clive Woodbridge

Yours sincerely

A handwritten signature in black ink, appearing to read 'J.C. Beldan'.

Chief Executive

For further information, please contact Fiona Cotter, te: 01372 732124 or email: [fcotter@epsom-ewell.gov.uk](mailto:fcotter@epsom-ewell.gov.uk)

### AGENDA

#### 1. DECLARATIONS OF INTEREST

Members are asked to declare the existence and nature of any Disclosable Pecuniary Interests in respect of any item of business to be considered at the meeting.

#### 2. EEPIC SHAREHOLDER AGREEMENT (Pages 3 - 22)

Approval of the Shareholder Agreement for Epsom & Ewell Property Investment Company.

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## EEPIC Shareholder Agreement

<b>Head of Service/Contact:</b>	Amardip Healy, Chief Legal Officer
<b>Urgent Decision?(yes/no)</b>	No
<b>If yes, reason urgent decision required:</b>	
<b>Annexes/Appendices (attached):</b>	<b>Annex 1</b> – Draft Shareholder Agreement
<b>Other available papers (not attached):</b>	Reports to Council 19.9.2017 & Strategy & Resources Committee 19..9.2017

### Report summary

**Approval of the Shareholder Agreement for Epsom & Ewell Property Investment Company**

### Recommendation (s)

- (1) Approve the draft Shareholder Agreement with Epsom & Ewell Property Company subject to such minor amendments as may be necessary as agreed by the Chief Legal Officer in consultation with the Chairman of the Shareholder Sub Committee, and**
- (2) To authorise the Chief Legal Officer to complete the Shareholder Agreement.**

## **1 Implications for the Council's Key Priorities, Service Plans and Sustainable Community Strategy**

- 1.1 This will support the delivery of the Council's four year Corporate Plan and the Medium Term Financial Strategy. One of the key priorities is Managing our Resources and will achieve:
  - Maximising returns from properties and other investments
  - Identify new sources of revenue and maximising our existing income

## 2 Background

- 2.1 In 2016 the Council agreed to establish a £20m Commercial Property Acquisition Fund with the aim of securing an income producing portfolio. Following its success, in 2017 the Council agreed to establish a wholly owned local authority property company, Epsom & Ewell Property Investment Company (referred to as 'EEPIC'). EEPIC operates as a commercial business which has acquired properties.
- 2.2 Council approved a number of documents, including the Articles of Association, a Property Investment Strategy, the company's annual business plan, and also the shareholder agreement.
- 2.3 Council also approved a number of appointments to the Company Board. The Chief Executive is the Chair of the Board of Directors, with a number of other heads of service appointed as Directors. To avoid any conflict of interest, the Council's Chief Legal Officer is not a Director of EEPIC.
- 2.4 As a part of the oversight arrangements for EEPIC, Council also approved the creation by Strategy & Resources Committee of a Shareholder Sub Committee, to which the Council's functions as sole shareholder of EEPIC were delegated. Strategy & Resources Committee approved the setting up and terms of reference for the Shareholder Sub Committee at a Special Meeting on 19 September 2017.
- 2.5 The delegation and terms of reference for the Sub Committee are:
  - a) Power to remove and appoint company directors.
  - b) Approve the annual company business plan, ensuring that it aligns with the corporate objectives of the Council.
  - c) Periodically evaluate financial performance of a company, and
  - d) Consider any recommendations to cease trading by a company
  - e) Monitor compliance with relevant legislation.
  - f) Approve any Shareholder Agreement with the company, or any variation to such agreement.
  - g) Consider such other matters, as require prior consultation with shareholders or as are reserved to the Shareholders in general meeting, and make such decision on those matters as they think fit.
- 2.6 The Council has three distinct roles in relation to EEPIC: Shareholder, Funder and one of scrutiny.

- 2.7 The Council's relationship with EEPIC is primarily governed by the Council's rights under EEPIC's Articles; a Shareholder's Agreement and future credit/funding financial agreements.
- 2.8 As a Funder, the Council's primary concerns are that the loans it makes to EEPIC are safe, that there is a high prospect of the Council being repaid; that EEPIC's proposals for project funding (to acquire or develop property) are sound; that the loans are lawful and compliant with state aid regulations; and that EEPIC is monitored to ensure its continuing financial performance does not undermine or reduce the prospect of the Council being repaid debts to agreed schedules. In the Funder Role the Council is not concerned about EEPIC out performing its business plan, making greater profits than any assumptions which a loan was made on or about any other EEPIC matters which do not affect the likelihood of EEPIC repaying its debts.
- 2.9 The Shareholder Role of the Council is wider than its Funder Role. The shareholder agreement is entered into by the shareholders to regulate their relationship with the Company. Although strictly not necessary where a company has one shareholder, the agreement helps to set out what decisions are reserved to shareholders, ie its scope of responsibilities.
- 2.10 The Shareholder Role should have the right to review and approve business plans and prevent EEPIC assuming liabilities or debt beyond pre-agreed thresholds. EEPIC would be free to operate within the terms of its agreed business plan and governance arrangements. The Shareholder Role's approval in this context would only be required to renew EEPIC's business plan or for material (by value or business type) initiatives which were not included in any current agreed business plan.

### 3 Proposals

- 3.1 Being a wholly owned company of the Council, the Council has ultimate control of the company. Since September 2017, the Council has considered a number of matters relating to the governance of EEPIC. Some of this work has resulted in a new draft shareholder agreement being proposed for approval. The proposed draft shareholder agreement, at **Annex 1**, sets out the duties and responsibilities of both EEPIC and the Council as the sole shareholder.
- 3.2 There are a number of differences between the shareholder agreement submitted to Council in 2017 and the one now being proposed. The proposed agreement is not more or less onerous than the previous agreement, but there are differences in approach and extent of obligations, which are felt would better suit the needs of the Council as Shareholder.

- 3.3 In accordance with the terms of reference of the Shareholder Sub Committee, the Shareholder agreement needs to be approved by the Sub Committee.

#### **4 Financial and Manpower Implications**

- 4.1 The Shareholder agreement along with EEPIC's approved business plan provide clear boundaries in which the company will operate.
- 4.2 **Chief Finance Officer's comments:** No comments for the purposes of this report

#### **5 Legal Implications (including implications for matters relating to equality)**

- 5.1 The Company is a controlled company as defined in the Local Government and Housing Act 1989 as it is a subsidiary company of a local authority and as such the shareholder (the Council) has ultimate control over the activities and operational matters of the Company.
- 5.2 Although Directors are not remunerated as they are all Council employees, if at some time the Company needs to employ staff, then the ability to pay those staff has been preserved through the provisions of the Shareholder Agreement.
- 5.3 External advice has been taken on the Shareholder Agreement, and the proposed draft ensures there is certainly and clarity around the decision making processes of the Company and the Council as Shareholder.
- 5.4 **Monitoring Officer's comments:** none arising from the contents of this report.

#### **6 Sustainability Policy and Community Safety Implications; Partnerships**

- 6.1 None arising

#### **7 Risk Assessment**

- 7.1 Agreeing and entering into a Shareholder Agreement with EEPIC mitigates any risks around governance and decision-making.

#### **8 Conclusion and Recommendations**

- 8.1 The proposed Shareholder Agreement is recommended for approval and completion.

**Ward(s) affected:** (All Wards);



**dated**

**2018**

**Epsom & Ewell Borough Council**

and

**Epsom & Ewell Property Investment Company Limited**

## **Shareholder's Agreement**

Epsom & Ewell Property Investment Company Limited

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**Draft version**

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## Shareholder's Agreement

dated 2018

### Parties

- (1) **Epsom & Ewell Borough Council** having its head office at the Town Hall, the Parade, Epsom, Surrey, United Kingdom, KT18 5BY (the **Council**);
- (2) **Epsom & Ewell Property Investment Company Limited** (company no 10922872) whose registered office is at the Town Hall, the Parade, Epsom, Surrey, United Kingdom, KT18 5BY (the **Company**).

### Introduction

- (A) The Company was incorporated in England under the Companies Act 2006 on 18 August 2017 and, at the date of this Agreement, 24,117,100 Shares are in issue and are registered in the name of and are beneficially owned by the Council.
- (B) The Company has been established for the purposes of making profit by commercially letting and/or leasing property (which may include the development or refurbishment of such property).
- (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:

**Agreed Form** means a form agreed by the Shareholder from time to time, a copy of which has been initialled for the purpose of identification by or on behalf of the Shareholder

**Articles** mean 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 business.

**CA2006** means the Companies Act 2006.

**Director** means a director of the Company.

**Environmental Information Regulations** means the Environmental Information Regulations 2004.

**Finance Documents** means the two loan agreements and a debenture entered into by the parties on the 25<sup>th</sup> May 2018.

**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;

**Remuneration Policy** means a policy adopted by the Company (following receipt of Shareholder Consent) in relation to the provision of remuneration (including salary, the provision of benefits-in-kind or otherwise) for its employees, officers and consultants;

**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;

**Shareholder** means any holder of any Shares from time to time, being the Council at the date of this Agreement.

**Shareholder Consent** means the prior written consent of the Shareholder notified to the Company which permits the Company to undertake a particular course of action or make a particular decision.

**Shareholder Consent Matters** means those matters listed in schedule 1.

**Shares** mean 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 two or more Parties, that obligation, costs 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 two or more 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 should not be unreasonably withheld or delayed.

## 2 **Business**

- 2.1 The Business of the Company and of each other Group Company shall be:
- 2.1.1 to operate as a commercial company;
  - 2.1.2 to purchase land and property within the United Kingdom at market value from either the Council or on the open market; and
  - 2.1.3 to rent or lease such land and property on the open market, and
  - 2.1.4 to develop and/or construct and/or refurbish such land or property;
- together with any activities reasonably incidental to the above.
- 2.2 In order to maximise the potential of successful lettings or leasing of property to potential tenants the Company shall ensure that such properties are well managed and maintained.
- 2.3 The first Business Plan of the Company is set out in schedule 2 to this Agreement. The Company shall circulate a revised version of the then current Business Plan to the Shareholder by the end of November in each year and invite the Shareholder to provide comments on the proposed Business Plan or to provide Shareholder Consent. The Shareholder will use reasonable endeavours to respond by the end of the following February. Subject to the receipt of Shareholder Consent, before the end of each Accounting Period the Directors shall (in accordance with this Agreement) consider and, if appropriate, adopt an updated and revised Business Plan. No adoption, variation or replacement of any Business Plan shall take effect unless the same has received Shareholder Consent.
- 2.4 Each Business Plan shall (unless the parties agree otherwise) be substantially in the format of the first Business Plan and shall be for a one year period.

- 2.5 For any period when a proposed Business Plan presented under clause 2.3 has not been approved by the Shareholder the current or immediately preceding Business Plan shall continue to be the Business Plan of the Company.
- 2.6 The principal place of business of the Company and of each other Group Company and the principal place for management of the Company and of each other Group Company shall be within the Borough of Epsom & Ewell, unless otherwise agreed in writing by the Council.
- 3 **Conduct of the Company's Affairs**
- 3.1 Meetings of the Directors shall be held no less than four times in every year and at not more than three 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, subject to obtaining Shareholder Consent, appoint a managing director 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 subject to obtaining Shareholder Consent remove such managing director.
- 3.3 Subject to the provisions of this Agreement (including the rights of the Shareholder) the Directors may determine the general policies of the Company and the manner in which the Business is to be carried out. In so determining the Directors shall seek to ensure that the Company will:
- 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 the Business Plan and with 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 the 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 The Company shall comply with the law and will if it requires any approval, consent or licence for the carrying on of its Business it shall use all reasonable endeavours to obtain and maintain the same in full force and effect.
- 3.6 The Company shall ensure Shareholder Consent Matters shall not be carried out nor undertaken without it having obtained such Shareholder Consent.
- 3.7 The Company permits and requires any Director to discuss the affairs, finances and accounts of the Company and its subsidiaries with any person notified to it in writing from time to time by the Shareholder (a **designated person**). The Shareholder may in such notification stipulate limitations on the nature of the information which a particular designated person may be given. The Shareholder may from time to time also notify the Company that a particular individual has ceased to qualify as a designated person.

3.8 All books, records, accounts and documents relating to the business and the affairs of the Company and its subsidiaries shall be open to the inspection of a **designated 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 a 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 5.

3.9 The Company agrees with the Shareholder 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 informed of the progress of each Group Company's business and affairs and in particular will procure that each Shareholder is given such information and such access to the officers, employees and premises of the Group as it may reasonably require for the purposes of enabling it to monitor its investment in the Group.

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

#### 4 **Termination**

4.1 This Agreement shall terminate upon

4.1.1 the Council giving written notice of its termination to the Company; or

4.1.2 the written agreement of the Parties in accordance with such terms as they might agree; or

4.1.3 if a resolution is passed by the Shareholder or creditors of the Company, or any order made by a court or other competent body that results in the Company being wound up and its assets being distributed among the creditors, Shareholder or other contributors,

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.

#### 5 **Confidentiality**

5.1 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 5.2.

5.2 Each Party may disclose the other Party's confidential information:

5.2.1 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. Each Party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other Party's confidential information comply with this clause 5; or

- 5.2.2 as may be required by law, court order or any governmental or regulatory authority.
- 5.3 Each 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 5.4 and 5.7.
- 5.4 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 (5) Business Days of receiving a Request for Information, and the other Party shall:
- 5.4.1 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 (10) Business Days (or such other period as the Recipient acting reasonably may specify) of the Recipient's request; and
- 5.4.2 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.
- 5.5 Following notification under 5.4, and up until such time as the other Party has provided the Recipient with all the Information specified in clause 5.4, 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:
- 5.5.1 whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and
- 5.5.2 whether Information is to be disclosed in response to a Request for Information, and in no event shall the other Party respond directly to a Request for Information unless the Request for Information is addressed to it.
- 5.6 The Parties acknowledge that (notwithstanding the provisions of clause 5.1) 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:
- 5.6.1 in certain circumstances without consulting with the other Party; or
- 5.6.2 following consultation with the other Party and having taken their views into account.
- 5.7 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 3 Business Days of receiving it.

5.8 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 5.6.

6 **No Partnership**

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

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

7.1 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.

7.2 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.

8 **Costs of this Agreement**

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

9 **Waiver**

9.1 The rights of each of the Parties in respect of a breach of this Agreement shall not be affected by completion, by its rescinding, or failing to rescind, this Agreement, or 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.

9.2 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.

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

10 **Variation**

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

11 **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.

**12 Entire Agreement**

- 12.1 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.
- 12.2 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).
- 12.3 Each Party waives its rights against the others in respect of warranties and representations (whether written or oral) not expressly set out or referred to in this Agreement.
- 12.4 Nothing in this clause 12 limits or excludes liability for fraud.
- 12.5 The Parties acknowledge that they have had the benefit of legal advice on the effects of this clause 12 and confirm that they consider this clause 12 to be reasonable in all circumstances of this Agreement.

**13 Status of this Agreement**

- 13.1 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 that the provisions of this Agreement shall prevail. Accordingly, each Shareholder (so far as each is able) shall take all such steps and do all such 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.

**14 Consents**

- 14.1 Consents, notices, approvals or agreements to be given by the Shareholder under this Agreement shall be given in writing.
- 14.2 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.

**15 Communications**

- 15.1 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 email as follows:

15.1.1 if to the Council, to:

Address: The Town Hall, the Parade, Epsom, Surrey, United Kingdom, KT18 5BY



Email: [INSERT OFFICER'S EMAIL ADDRESS]

marked for the attention of [INSERT OFFICER'S TITLE];

15.1.2 if to the Company, to:

Address: The Town Hall, the Parade, Epsom, Surrey, United Kingdom, KT18 5BY

Email: [INSERT EMAIL ADDRESS]

marked for the attention of [INSERT PERSON'S JOB TITLE];

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

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

15.2.1 if delivered personally, when left at the relevant address referred to in clause 15.1;

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

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

provided always that a notice given in accordance with the above but received on a day which is not a Business Day or after 17.00 on a Business Day will only be deemed to be given on the next Business Day.

## 16 Counterparts

16.1 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.

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

## 17 Governing Law and Jurisdiction

17.1 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.

17.2 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**

The Company and no Group Company shall, 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 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 and the Shareholder; or
3. increase the amount of its issued share capital, 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, or dispose of any material asset 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. 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) the Finance Documents;
  - (b) liens arising in the ordinary course of business;
  - (c) any charge arising by the operation or purported operation of title retention clauses and in the ordinary course of business; or
16. adopt or amend its annual Business Plan; or
17. change either:
  - (a) its statutory auditors; or
  - (b) its financial year end; or
18. make or permit to be made any material change in the accounting policies and principles adopted by the Company in the preparation of its audited 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
19. 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); or
20. give any guarantee, suretyship or indemnity to secure the liability of any person or assume the obligations of any person; or
21. factor or assign any of its book debts; or
22. establish or amend any profit-sharing, share option, bonus or other incentive scheme of any nature for directors, officers or employees (but for the avoidance of doubt, this will not prevent any Group Company from awarding a discretionary cash bonus to 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. appoint or dismiss any director or company secretary; or
25. adopt or amend any Remuneration 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); or

## Agenda Item 2 Annex 1

27. institute, settle or compromise any material legal proceedings (other than debt recovery proceedings in the ordinary course of business) 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 in relation to the Group Company or its business 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
29. approving delegated limits of authority within the company in line with the current adopted practice under the Council's Constitutions; or
30. deciding whether the company should pay any dividend or make any other distribution other than that that paid to the Council; or
31. approving the strategic direction of the Company; or
32. deciding whether to alter or add to this list



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

**Executed as a deed by:**

**Epsom & Ewell Property** )  
**Investment Company Limited** )  
acting by

Name: .....  
(Director)

\_\_\_\_\_  
Signature

Name: .....  
(Director / Secretary)

\_\_\_\_\_  
Signature

The Common Seal of )  
**Epsom & Ewell Borough Council** )  
was affixed in the presence of :

\_\_\_\_\_  
Mayor (Signature)

\_\_\_\_\_  
Authorised Officer (Signature)