

Dated

2024

**SHAREHOLDER AGREEMENT**

between

**West Norfolk Property Limited**

and

**The Borough Council of King's Lynn & West Norfolk**

DRAFT

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## PARTIES

- (1) **West Norfolk Property Limited** (Company Registration Number: 11305606) whose Registered Office is at Kings Court, Chapel Street, King's Lynn, Norfolk, PE30 1EX (the "**Company**");
- (2) **Borough Council of King's Lynn & West Norfolk** of Kings Court, Chapel Street, King's Lynn, Norfolk, PE30 1EX (the "**Council**");

## BACKGROUND

- (A) The Company is a private company limited by shares incorporated in England and Wales under the Companies Act 2006 with Company Registration Number 11305606 and at the date of this Agreement is wholly owned by the Council.
- (B) The Council has established the Company under section 1 and section 4, Localism Act 2011 to act as a commercial purpose and trading entity.
- (C) The Company is a controlled company within the meaning of the Local Government and Housing Act 1989 and a regulated company within the meaning of the Local Authorities (Companies) Order 1995.
- (D) The Parties have agreed to execute this Agreement to regulate their respective responsibilities, the governance arrangements and the operation and management of the Company and the relationship between the Company and the Council.
- (E) The Council's Shareholder Function is exercised by the Cabinet on behalf of the Council as an Executive function. The Cabinet has delegated the Shareholder Function, including the determination of Shareholder Reserved Matters, to the Shareholder Committee.

## 1. INTERPRETATION

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

**"Act"** means the Companies Act 2006;

**"Adequate Procedures"** means 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;

<b>“Agreement”</b>	means this shareholder agreement;
<b>“Articles”</b>	means the articles of association of the Company as amended or superseded from time to time and “Article” shall be construed accordingly;
<b>“Board”</b>	means the board of the Company comprising the directors and (where appropriate) includes a committee of the board and the directors acting by written resolution;
<b>“Board Meeting”</b>	means a meeting of the board or (where appropriate) a committee of the board.
<b>“Business”</b>	has the meaning given in clause 2.1 and as may be further defined in any adopted Business Plan;
<b>“Business Case”</b>	means any business case for a particular activity by the Company that has been developed by the Company and adopted by the Board (where in accordance with the business plan or any other authority given to the Board by the Council) or by the Council;
<b>“Business Day”</b>	means any day (other than a Saturday, Sunday or public holiday in the United Kingdom) on which clearing banks in the City of London are generally open for business;
<b>“Business Plan”</b>	means the document that shall be agreed and adopted by the Company in accordance with clause 3;
<b>“Cabinet”</b>	means the cabinet comprising the leader of the Council and portfolio holders and forming the executive;
<b>“Chair”</b>	means (subject to the context) either the person appointed as chair of the Company under Article 36 or the person appointed as Chair under Article 22;
<b>“Commencement Date”</b>	means <b>[INSERT DATE]</b>
<b>“Confidential Information”</b>	has the meaning given in clause 13;
<b>“Councillor”</b>	means an elected councillor of the Council;
<b>“Council Officer”</b>	means an employee or other officer of the Council;
<b>“Director”</b>	means a director of the Company for the time being and includes alternate directors any person occupying

	the position of director by whatever name called;
<b>“Data Protection Legislation”</b>	means all law relating to privacy and the processing of personal data, or any replacement EU or UK data protection or related privacy law in force in England and Wales, including all applicable guidance and codes of practice issued by the Information Commissioner’s Office;
<b>“District”</b>	means the administrative area of the Council.
<b>“electronic form”</b>	has the meaning given in section 1168 of the Act;
<b>“Encumbrance”</b>	means any mortgage, charge (fixed or floating), pledge, lien, hypothecation, guarantee, trust, right of set-off or other third party right or interest (legal or equitable) including any assignment by way of security, reservation of title or other security interest of any kind, howsoever created or arising, or any other agreement or arrangement (including a sale and repurchase agreement) having similar effect;
<b>“Executive”</b>	means the Cabinet of the Council and (where appropriate) any executive committee/sub-committee of the Cabinet and includes any individual executive/portfolio holder or Council officer acting under delegated authority;
<b>“Financial Year”</b>	in relation to the Company, means the period of 12 months commencing on 1 April and ending on 31 March each year;
<b>“Group”</b>	in relation to a company, means that company, any subsidiary or holding company from time to time of that company and any subsidiary from time to time of a holding company of that company; and each company in a group is a member of the group;
<b>“Group Relief”</b>	The tax relief mechanism that allows companies within the same Group to offset their taxable profit against each other’s losses
<b>“Holding Company and Subsidiary and Wholly-Owned Subsidiary”</b>	mean a "holding company", "subsidiary" and “wholly-owned subsidiary” as defined in section 1159 of the Act and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c) of the Act, as a member of another

company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee;

**“law”**

means any and all of the following:

any Act of Parliament;

any subordinate legislation (as defined in section 21(1) of the Interpretation Act 1978);

any exercise of the royal prerogative;

any retained or assimilated European Union law in force in England and Wales;

the EU/UK Trade and Co-operation Agreement (so far as directly applicable under the European Union (Future Relationship) Act 2020);

any applicable judgement of a relevant court of law which is a binding precedent in England; and

any determination, direction, statutory guidance or code of practice having the force of law;

**“Party/Parties”**

means the Council and/or the Company as appropriate;

**“Registered Office”**

means the registered office of the Company;

**“Share(s)”**

means the shares in the Company;

**“Shareholder(s)”**

means the holder(s) of shares in the Company;

**“Shareholder Committee”**

means the committee of the Cabinet authorised to exercise the Shareholder Function for and on behalf of the Council in accordance with the Council’s constitution and notified to the Company in writing;

**“Shareholder Function”**

means the role of the Shareholder in relation to the Company (including Shareholder decision-making) as exercised by the Cabinet for and on behalf of the Council and delegated to the Shareholder Committee;

**“Shareholder Representative”**

means the person(s) appointed by the Shareholder Committee from time to time to act as such and as notified to the Company in writing;

<b>“Shareholder Reserved Matters”</b>	means the matters listed in schedule 1;
<b>“Support Services”</b>	Means operational and administrative support provided by the Council to the Company from time to time, as formalised within a Support Service Agreement;
<b>“Service Level Agreement”</b>	the agreement(s) made from time to time between the Council and the Company relating to the provision of Support Services.

- 1.2 Clause, schedule and paragraph headings do not affect the interpretation of this Agreement.
- 1.3 A reference to a clause or a schedule is a reference to a clause of, or a schedule to, this Agreement. A reference to a paragraph is to a paragraph of the relevant schedule.
- 1.4 A person includes a natural person, a corporate or unincorporated body (whether or not having a separate legal personality).
- 1.5 Unless the context otherwise requires, references to the singular include the plural and vice versa, and to the whole include part and vice versa.
- 1.6 Unless the context otherwise requires, a reference to one gender includes a reference to the other genders.
- 1.7 All warranties, representations, agreements and obligations expressed to be given or entered into by more than one person are given or entered into jointly and severally by the persons concerned.
- 1.8 A reference to a particular statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time taking account of any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts and subordinate legislation for the time being in force made under it provided that, as between the Parties, no such amendment or re-enactment shall apply for the purposes of this Agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any Party.
- 1.9 A reference to “writing” or “written” includes email but no other electronic form.
- 1.10 Documents in “agreed form” are documents in the form agreed by the Parties to this Agreement and initialled by them or on their behalf for identification.
- 1.11 A reference in this Agreement to a “document” is a reference to the document whether in paper or electronic form.
- 1.12 Where the words “include(s)”, “including” or “in particular” are used in this Agreement, they are deemed to have the words "without limitation" following them.



- 1.13 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.14 Where the context permits, “other” and “otherwise” are illustrative and shall not limit the sense of the words preceding them.
- 1.15 References to times of day are, unless the context requires otherwise, to London time and references to a day are to a period of 24 hours running from midnight on the previous day.

## **2. THE BUSINESS OF THE COMPANY**

- 2.1 The Business of the Company is the letting and operating of residential properties owned or leased by the Company for commercial purposes within the District.
- 2.2 The Business may be modified to include such further activities as the Council may designate.
- 2.3 The Business shall be carried out by the Company in accordance with the Business Plan and any Business Case under that Business Plan or otherwise approved by the Council.
- 2.4 The Company shall at all times comply with:
  - 2.4.1 the Business Plan;
  - 2.4.2 the provisions of this Agreement and the Articles; and
  - 2.4.3 all applicable law.

## **3. THE BUSINESS PLAN**

- 3.1 The Company must adopt a Business Plan for each Financial Year except for any Financial Year where the Shareholder(s) may by ordinary resolution disapply this requirement.
- 3.2 The Board is responsible for preparing, reviewing and updating any Business Plan.
- 3.3 In accordance with the Shareholder Reserved Matters, the Shareholder(s) must by ordinary resolution approve the final draft of the Business Plan before the Company's adoption of the Business Plan and any revision or update thereof.
- 3.4 The Company shall consult the Shareholder Committee no less than ten Business Days before presenting a Business Plan or a revision or update thereof for the approval of the Shareholder(s).

## **4. DIRECTORS AND MANAGEMENT**

- 4.1 All Directors are to be appointed or reappointed by ordinary resolution of the Shareholder(s) in accordance with the Articles.
- 4.2 Subject to sections 168 and 169 of the Act, the Shareholder(s) may remove any or all of the Directors at any time by ordinary resolution in accordance with the Articles.

- 4.3 The Company shall have a Chair who shall be appointed and may be removed from the office of Chair (but not as a Director) by the Board in accordance with the Articles.
- 4.4 On the appointment of a Council Officer or a Councillor as a Director of the Company, the Company shall issue to that person a "Letter of Appointment" in the form or substantially in the form contained in schedule 2.
- 4.5 On the appointment of a Council Officer as a Director of the Company, the Council shall issue to that person a Letter of Appointment in the form or substantially in the form contained in schedule 3.
- 4.6 On the appointment of a Councillor as a Director of the Company, the Council shall issue to that person a Letter of Appointment in the form or substantially in the form contained in schedule 4.
- 4.7 On the appointment of any other person as a Director of the Company, the Company shall issue to that person a Letter of Appointment in the form or substantially in the form contained in schedule 5
- 4.8 The Board has responsibility for the supervision and management of the Company and its Business in accordance with the Articles and this Agreement. and shall ensure that the Company does not transact any of the Business described in the Shareholder Reserved Matters as set out in schedule 1 without first referring the matter to the Shareholder for determination.
- 4.9 A Director who is a Council Officer or Councillor shall not be entitled to any remuneration from the Company for their services to the Company and expenses incurred in their capacity as a Director shall be reimbursed by the Council in accordance with the relevant policy of the Council and recharged to the Company by the Council.
- 4.10 Any Company Secretary appointed in accordance with the Articles who is a Council Officer or Councillor shall not be entitled to any remuneration from the Company in their capacity as Company Secretary and expenses incurred in their capacity as a Company Secretary shall be reimbursed by the Council in accordance with the relevant policy of the Council and recharged to the Company by the Council.
- 4.11 The payment or reimbursement of Directors' expenses is subject to the production of satisfactory receipts.

## **5. LAND AND FINANCE FOR THE COMPANY**

- 5.1 There is no obligation on the Council to provide any land, capital or other finance to the Company unless the Parties agree otherwise in writing.

## **6. SUPPORT SERVICES**

- 6.1 The Council may provide Support Services to the Company. Such Support Services shall be subject to full cost recovery and formalised via a Service Level Agreement or other written agreement between the Parties.

## **6A DIRECTORS' AND OFFICERS' INSURANCE**

- 6A.1 The Company shall, at its own expense, procure and maintain in full force and effect a policy of directors' and officers' liability insurance. The Insurance shall cover all Directors and Council Officers who undertake work on behalf of the Company against any liability incurred by them in their capacity as directors or officers of the Company, including but not limited to any liabilities arising out of any actual or alleged act, error, omission, misstatement, misleading statement, neglect, or breach of duty.
- 6A.2 The Company may request that the Council arrange the insurance policy required by clause 6A.1 and in doing so the Company shall be deemed to have complied with clause 6A.1. In the event of a failure of the Council to arrange a policy of insurance that is compliant with clause 6A.1, following such a request from the Company, the Council shall indemnify the Company, its Directors and/or any Council Officer from any loss suffered as a result.
- 6A.3 The cost of any insurance policy obtained by the Council under clause 6A.2 shall be recovered from the Company.

## **7. ANTI-CORRUPTION**

- 7.1 The Company undertakes to the Council that:
- 7.1.1 it will not in the course of the operation of the Business, engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010;
  - 7.1.2 it will maintain in place anti-corruption procedures in substantially the same form as the Council's anti-corruption procedures which the Parties agree constitute Adequate Procedures;
  - 7.1.3 it will maintain in place anti-money laundering procedures; and
  - 7.1.4 from time to time, at the request of the Council it will confirm in writing that it has complied with its undertakings under clause 7.1.1 to clause 7.1.3 and will provide any information reasonably requested by the Council in support of such compliance.

## **8. MODERN SLAVERY**

- 8.1 The Company undertakes to the Council:
- 8.1.1 it will not in the course of the operation of the Business engage in any activity, practice or conduct which would constitute an offence under sections 1,2,3 or 4 of the Modern Slavery Act 2015;
  - 8.1.2 it will maintain in place anti-modern slavery procedures in substantially the same form as the Council's anti-modern slavery procedures which the parties agree constitute adequate procedures.

## 9. ACCOUNTING

- 9.1 The Company 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.
- 9.2 The Company shall at all times maintain accurate and complete accounting and other financial records to the standard required by the Council including the accounting standards and financial reporting timescales required by the Council.
- 9.3 The Council, the Shareholder Representative and the Shareholder Committee shall be allowed access at all reasonable times to examine the books and records of the Company and to discuss the Company's affairs with the Directors and any Council Officer that undertakes work on behalf of the Company.
- 9.4 The Company shall supply the Shareholder Committee and/or the Shareholder Representative of 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:
  - 9.4.1 a copy of any proposed Business Plan for approval in accordance with clause 3 and the Shareholder Reserved Matters;
  - 9.4.2 a copy of the audited accounts of the Company once the same have been submitted to Companies House for the relevant year, which shall have been prepared in accordance with the laws applicable in and the accounting standards, principles and practices generally accepted in the United Kingdom;
  - 9.4.3 quarterly management accounts of the Company as soon as reasonably practicable following the end of the months to which they relate and in any event by the final day of the month following the month to which the accounts 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;
  - 9.4.4 a copy of any report reviewing or monitoring the implementation and operation by the Company of Adequate Procedures within 10 Business Days of it being reported to the Board; and
  - 9.4.5 copies of any proposed or adopted Business Case.
- 9.5 The Council may require the Company, and the Company shall as soon as possible comply with such a request, 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.

## **9A INTERNAL AUDIT**

- 9A.1 The Company agrees to submit to an annual internal audit programme conducted by the Council in relation to the Business and the Company's governance to provide assurance on compliance with regulatory requirements and best practice.
- 9A.2 The internal audit programme shall be determined by the Council. The Council will provide notice to the Company of the projected internal audit programme for the following Financial Year by 31 January each year. The Board may provide their feedback on the projected internal audit programme to the Council by 28 February each year. The Council will take account of any feedback received and will finalise the annual internal audit programme for the following Financial Year by 15 March each year. The Council may make in-year changes to the annual internal audit programme by giving not less than 28 days' notice to the Board with supporting reasons for the change.
- 9A.3 The Company shall provide access at all reasonable times to the Council to examine the books and records of the Company and to discuss the Company's affairs with the Directors and any Council Officer that undertakes work on behalf of the Company for the purpose of undertaking an internal audit.
- 9A.4 The Council shall notify the Company in writing at least 21 days in advance of any internal audit commencing and shall provide the Board with a draft of the internal audit report with at least 21 days to review and provide comments back to the Council in advance of a final report being issued.
- 9A.5 The final internal audit report issued shall be owned by the Council and the Company jointly. The Company shall respond to any recommendations within the audit report within 21 days, outlining the corrective actions to be taken and the timeline for implementation.
- 9A.6 The Council shall consult the Company on the exempt status under Schedule 12A of the Local Government Act 1972 of any internal audit findings before issuing any information publicly for the Council's Audit Committee.
- 9A.7 The cost of conducting the internal audit shall be borne by the Company.
- 9A.8 Progress on the implementation of internal audit recommendations shall be reported to the Shareholder Committee by the Board.

## **10. DIVIDENDS**

- 10.1 The decision to recommend or not recommend any dividend payment shall be a reserved matter to the Shareholder Committee.

## 11. COMMENCEMENT, DURATION AND TERMINATION

11.1 This Agreement shall commence on the Commencement Date and shall remain in force until terminated any time by the Shareholder serving three months' notice to terminate on the Company.

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

11.2.1 clause 0 (Interpretation);

11.2.2 this clause 11;

11.2.3 clause 13 (Confidentiality);

11.2.4 clause 17 (Data Protection);

11.2.5 clause 19 (Whole Agreement);

11.2.6 clause 21 (Variation and Waiver);

11.2.7 clause 22 (Costs);

11.2.8 clause 26 (Notice);

11.2.9 clause 28 (Severance);

11.2.10 clause 31 (Dispute Resolution);

11.2.11 clause 32 (Governing Law and Jurisdiction);

11.3 The termination of this Agreement shall not affect any rights or liabilities that the Parties have accrued under it.

## 12. STATUS OF THE AGREEMENT

12.1 If there is at any time any conflict, ambiguity or discrepancy between the provisions of this Agreement and the Articles, then the provisions of this Agreement shall prevail over the Articles unless the Shareholder directs otherwise. The Parties shall procure that the Articles are amended to accord with the provisions of this Agreement in the event of any conflict.

## 13. CONFIDENTIALITY

13.1 In this clause "**Confidential Information**" means any information which:

13.1.1 any Party may have or acquire (whether before or after the date of this Agreement) in relation to the customers, suppliers, business, assets or affairs of the Company (including, without limitation, any information provided pursuant to clause 9 (Accounting));

13.1.2 any Party or any member of its Group may have or acquire (whether before or after the date of this Agreement) in relation to the customers, suppliers, business, assets or affairs of another Party or any member of the other Party's Group, as a consequence of the negotiations relating to this Agreement or any other agreement or document referred to in this Agreement or the performance of the Agreement or any other agreement or document referred to in this Agreement; or

13.1.3 relates to the contents of any adopted Business Plan or Business Case.

but excludes the information in clause 13.2 below.

13.2 Information is not Confidential Information if:

13.2.1 it is or becomes public knowledge other than as a direct or indirect result of the information being disclosed in breach of this Agreement;

13.2.2 a Party can establish to the reasonable satisfaction of the other Parties that it found out the information from a source not connected with the other Parties or its Group and that the source is not under any obligation of confidence in respect of the information;

13.2.3 either Party can establish to the reasonable satisfaction of the other Parties 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

13.2.4 the Parties agree in writing that it is not confidential.

13.3 Each Party shall at all times use all reasonable endeavours to keep confidential (and to ensure that its employees, agents, Subsidiaries and the employees and agents of such Subsidiaries shall keep confidential), any Confidential Information and shall not use or disclose any such Confidential Information except:

13.3.1 to a Party's professional advisers where such disclosure is for a purpose related to the operation of this Agreement;

13.3.2 with the written consent of the Party to whom the Confidential Information belongs or relates to or any member of its Group that the information relates to;

13.3.3 as may be required by law (to include without limitation the Local Authorities (Companies) Order 1995 and the Freedom of Information Act 2000), or governmental or other regulatory body, when the Party concerned shall, if practicable, supply a copy of the required disclosure to the other before it is disclosed and incorporate any amendments or additions reasonably required by the other Parties and which would not thereby prevent the disclosing Party from complying with its legal obligations;

- 13.3.4 to any tax authority to the extent reasonably required for the purposes of the tax affairs of the Party concerned or any member of its Group;
- 13.3.5 if the information comes within the public domain (otherwise than as a result of the breach of this clause 13.3)
- 13.4 Each Party shall inform (and shall use all reasonable endeavours to procure that any Subsidiary informs) any Council Officer, employee, agent or professional adviser advising it in relation to matters referred to in this Agreement, or to whom it provides Confidential Information, that such information is confidential, and shall require them:
- 13.4.1 to keep it confidential; and
- 13.4.2 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).
- 13.5 Upon termination of this Agreement, any Party may demand from any other Party the return of any documents containing Confidential Information in relation to the first Party by notice in writing whereupon the second Party shall (and shall use all reasonable endeavours to ensure that its Subsidiaries, and its Council Officers and employees and those of its Subsidiaries shall):
- 13.5.1 return such documents; and
- 13.5.2 destroy any copies of such documents and any other document or other record reproducing, containing or made from or with reference to the Confidential Information,
- save, in each case, for any submission to or filings with governmental, tax or regulatory authorities. Such return or destruction shall take place as soon as practicable after the receipt of any such notice.
- 13.6 The obligations of the Parties in this clause 13 shall continue without limit in time and notwithstanding termination of this Agreement for any cause.

#### **14. INFORMATION, SCRUTINY AND ACCOUNTABILITY**

- 14.1 Subject to clause 14.4, the Parties acknowledge that the Council and the Company are each subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 (together the “**Information Legislation**”). The Parties shall use reasonable endeavours to assist, within the timescale specified by a Party in receipt of a request for information under the Information Legislation (“**the receiving Party**”), the receiving Party in responding to any requests for information under that legislation to include the provision of any and all documents that the receiving Party considers reasonably necessary to enable it to respond to the information request.
- 14.2 The Company shall, and shall procure that its employees and agents shall, comply at all times with the Council’s policies and procedures on Freedom of Information.



- 14.3 Notwithstanding clauses 14.1 and .14.2, the Company shall comply at all times with the Information Legislation as that legislation applies directly to the Company.
- 14.4 Where the Company receives any request for information under the Information Legislation, it shall as soon as reasonably practicable pass the request to the Council and have regard to the views of the Council before responding to any such request.
- 14.5 The Company shall use reasonable endeavours to assist the Council in complying with any and all transparency obligations including without limitation compliance with the Local Government Transparency Code 2015 and any successor codes, policies or guidance.
- 14.6 The Company shall use reasonable endeavours to assist the Council in responding to any requests for information about the Company and/or the Business submitted by Councillors.
- 14.7 The Company shall, if the Council on reasonable notice so requests, make available Council Officers and/or employees of the Company to attend before and answer questions at any meeting of:
- 14.7.1 the Shareholder Committee;
  - 14.7.2 the Cabinet;
  - 14.7.3 a Policy Review and Development Panel of the Council; and/or
  - 14.7.4 the Audit Committee of the Council.
- 14.8 The Company shall supply any information to the Shareholder Representative, Shareholder Committee, Cabinet, Policy Review & Development Panels or Audit Committee of the Council as may be reasonably requested by any of them.
- 14.9 The Company shall allow the Shareholder Representative(s) to attend as observers at Board Meetings or at meetings of any committee of the Board.
- 14.10 The Company shall use reasonable endeavours to assist the Council in responding to any inquiry or investigation of or by the Local Government and Social Care Ombudsman, the Information Commissioner or other regulators (or any successor).
- 15. INTERNAL COUNCIL DECISION MAKING BY THE SHAREHOLDER COMMITTEE AND SHAREHOLDER REPRESENTATIVE**
- 15.1 The Parties each acknowledge that the Council in its capacity as the Shareholder will exercise the Shareholder Function and make Shareholder decisions through the Cabinet and that the Cabinet has delegated the exercise of the Shareholder Function and the making of Shareholder decisions, including without limitation Shareholder Reserved Matters, to the Shareholder Committee.

- 15.2 The Shareholder Committee shall be established as a committee of the Cabinet and arrangements for the Shareholder Committee shall be provided for in the Council's constitution.
- 15.3 The Shareholder Committee may report on its activities and the performance of the Company to the Cabinet, and the Cabinet and/or the Shareholder Committee may report on their activities and the performance of the Company to the Council (including meetings of the Full Council, the Policy Review and Development Panels and Audit Committee) for the purposes of the scrutiny of the exercise of the Shareholder Function.
- 15.4 The Company shall ensure that:
- 31.4.1 copies of Board minutes are made available to the Shareholder Committee following each Board meeting; and
  - 31.4.2 not less than twice in every Financial Year, the Board produces a report on the performance and activities of the Company and provides the same to the Shareholder Committee
- 15.5 Notwithstanding clause 14.7 above upon reasonable written notice the Company shall make available the Chair (or a substitute Director of the Chair's choosing) to attend meetings of the Council;
- 15.6 The Company shall consult the Shareholder Committee prior to adopting any policy or procedure for the operation and management of the Company.
- 15.7 The Shareholder Committee may require from time to time that the Company adopts certain policies or procedures for the Company's operation.
- 15.8 The Shareholder Committee may designate a Council Officer(s) as the Shareholder Representative to be a single point of contact for the Company and the Shareholder Committee and to undertake operational actions on behalf of the Shareholder Committee. The Shareholder Representative may delegate to another Council Officer the duties of liaising between the Company and the Shareholder Committee on a day-to-day basis and for such other purposes as may be determined by the Shareholder Representative.
- 15.9 The Shareholder Representative does not have authority to make decisions on Shareholder Reserved Matters save in respect of Shareholder Reserved Matter 24 which may be exercised by the Shareholder Representative.
- 15.10 Where the Board considers that compliance with any requirement of the Shareholder and / or the Council under this Agreement would place the Directors in breach or at risk of breach of the Act, any applicable legislation and/or their duties to the Company then the Board shall seek Shareholder approval of the actions required and the Board shall be permitted a reasonable period of time to seek independent legal advice if it reasonably believes that the Board will or may be in breach of the Act, any applicable legislation and/or their duties to the Company

## **16. CONFLICTS OF INTEREST**

- 16.1 The Parties acknowledge and accept that where a Council Officer is appointed to the Board as a Director, when acting as a Director they must act in the best interests of the Company at all times in accordance with the statutory, fiduciary and common law duties of company directors and that a Director is required to perform their duties to the Company faithfully, diligently and to a standard commensurate with the role and their knowledge, skills and experience, and with particular regard to the duty to promote the success of the Company and the duties of directors under Part 10 of the Act.
- 16.2 The Parties acknowledge and accept that where a Council Officer is appointed as a Director a conflict of interests may arise between their duty to act in the best interests of the Company as a Director and their duty to act in the best interests of the Council as a Council Officer, and the Parties further acknowledge and accept that where such a conflict of interests arises the Director shall act in the best interests of the Company.
- 16.3 Where a Council Officer is appointed as a Director of the Company, the Council shall acknowledge and accept the conflict of interests in the Letter of Appointment issued pursuant to clause 4.5.
- 16.4 The Parties acknowledge and accept that where a Councillor is appointed as a Director they cannot disregard or delegate their public law duties as a Councillor and that where such a conflict of interest arises it shall be managed by the Board in accordance with the Articles and by the Councillor in accordance with the Council's councillor code of conduct.
- 16.5 Where a Councillor is appointed as a Director, the Council shall acknowledge and accept the conflict of interests in the Letter of Appointment issued pursuant to clause 4.6.

## **17. DATA PROTECTION**

- 17.1 The Company shall maintain in place data protection procedures and otherwise comply with the requirements of the Data Protection Legislation.

## **18. LOCAL AUTHORITIES (COMPANIES) ORDER 1995**

- 18.1 The Company shall at all times comply with the Local Authorities (Companies) Order 1995, any successor legislation or statutory instrument and any other laws in force from time to time in relation to the operation, management and activities of a local authority owned company.

## **19. WHOLE AGREEMENT**

- 19.1 This Agreement, read together with the Company's Articles and any Service Level Agreement from time to time, constitute the whole agreement between the Parties and supersede all previous arrangements, understandings and agreements between them, whether oral or written, relating to their subject matter.

19.2 Each Party acknowledges that in entering into this Agreement, it does not rely on, and shall have no remedy in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement, the Articles or the Service Level Agreement.

19.3 Nothing in this clause 19 shall limit or exclude any liability for fraud.

## **20. ASSIGNMENTS**

20.1 The Company may not assign, or grant any Encumbrance over or sub-contract, or deal in any way with, any of its rights or obligations under this Agreement or any document referred to in it without the prior written consent of the Council in accordance with the Shareholder Reserved Matters.

20.2 Each person that has rights under this Agreement is acting on its own behalf.

## **21. VARIATION AND WAIVER**

21.1 A variation of this Agreement shall be in writing and signed by or on behalf of the Parties and shall be subject to the approval of the Shareholder(s).

21.2 A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the person to which the waiver is addressed and the circumstances for which it is given.

21.3 A person that waives a right in relation to one person or takes or fails to take any action against that person, does not affect its rights against any other person.

21.4 No failure to exercise or delay in exercising any right or remedy provided under this Agreement or by law constitutes a waiver of such right or remedy or shall prevent any future exercise in whole or in part thereof.

21.5 No single or partial exercise of any right or remedy under this Agreement shall preclude or restrict the further exercise of any such right or remedy.

21.6 Unless specifically provided otherwise, rights and remedies arising under this Agreement are cumulative and do not exclude rights and remedies provided by law.

## **22. COSTS**

22.1 Unless otherwise provided or agreed in writing, costs in connection with the negotiation, preparation, execution and performance of this Agreement or any variation of it shall be borne by the Party that incurred the costs.

## **23. NO PARTNERSHIP**

23.1 The Parties to this Agreement are not in partnership with each other and there is no relationship of principal and agent between them.

## **24. GOOD FAITH**

- 24.1 Each Party shall at all times act in good faith towards the other and shall use all reasonable endeavours to ensure that this Agreement is observed.
- 24.2 Each Party shall do all things necessary and desirable to give effect to the spirit and intention of this Agreement.

## **25. THIRD PARTY RIGHTS**

- 25.1 A person who is not a Party to this Agreement shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999 except where such rights are expressly granted in this Agreement.
- 25.2 The right of the Parties to terminate, rescind or agree any amendment, variation, waiver or settlement under this Agreement is not subject to the consent of any person that is not a Party to the Agreement.

## **26. NOTICE**

- 26.1 A notice given under this Agreement:

24.1.1 shall be sent for the attention of the person and to the address given in this clause 26 (or such other address, or person as the relevant Party may notify to the other Party); and

24.1.2 shall be:

- (a) delivered personally; or
- (b) delivered by commercial courier; or
- (c) sent by email to such email addresses as may be notified by each Party to the other; or
- (d) sent by pre-paid first-class post or recorded delivery.

- 26.2 The addresses for service of notice are:

24.2.1 for the Company: the Company's Registered Office;

24.2.2 for the Shareholder: stated at the beginning of this Agreement.

- 26.3 If a notice has been properly sent or delivered in accordance with this clause 26, it will be deemed to have been received as follows:

24.3.1 if delivered personally, at the time of delivery; or

24.3.2 if delivered by commercial courier, at the time of signature of the courier's delivery receipt; or

24.3.3 if sent by email, on the day of transmission if the transmission is before 1600hours on a Business Day otherwise at 1000hours on the next Business Day thereafter provided that the sender has a transmission report showing a successful transmission to the correct email address (delivery receipt) and evidence of the email having been opened (read receipt); or

24.3.4 if sent by pre-paid first-class post or recorded delivery, 5 Business Days after posting.

26.4 To prove delivery, it is sufficient in the case of post that the envelope containing the notice was properly addressed and posted, and in the case of email, that the sender has a report showing a successful transmission to the correct email address (delivery receipt) and evidence of the email having been opened (read receipt).

## **27. INTEREST ON LATE PAYMENT**

27.1 Where monies are required to be paid under this Agreement but are not paid before or on the date the Parties agreed, the person due to pay the monies shall also pay an amount equal to interest on those monies at the rate set out in this clause for the period beginning with the date on which the payment was due and ending with the date the monies are paid (and the period shall continue after as well as before judgment).

27.2 The rate of interest shall be 2% per annum above the base lending rate from time to time of the Bank of England. Interest shall accrue on a daily basis and be compounded quarterly.

## **28. SEVERANCE**

28.1 If any provision of this Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

28.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted or modified, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the Parties.

## **29. FURTHER ASSURANCE**

29.1 Each Party shall promptly execute and deliver all such documents, and do all such things, as the other Party may from time to time reasonably require for the purpose of giving full effect to the provisions of this Agreement.

## **30. COUNTERPARTS**

30.1 This Agreement may be executed in any number of counterparts, each of which is an original and which together have the same effect as if each Party had signed the same document.

## **31. DISPUTE RESOLUTION**

- 31.1 If any dispute arises between the Company and the Shareholder out of or in connection with this Agreement, its subject matter or formation (including non-contractual disputes or claims) (a “**Dispute**”), in the first instance this shall be referred in writing for resolution to the Chair of the Company and the “Chief Executive” of the Shareholder.
- 31.2 Where the Chair of the Company and the Chief Executive of the Shareholder are unable to resolve the Dispute within one month of it first being referred in accordance with clause 31.1, then at the request of either Party the Dispute shall be referred to an independent and professional mediator who shall be nominated without delay by agreement between the Chair and the Chief Executive (or in the absence of such agreement), by the President of the Law Society (or their authorised representative). Such mediation shall then be carried out in confidence and on a without prejudice basis in relation to any subsequent proceedings and the Parties shall bear their own expenses and one half of the mediator’s resulting charges.
- 31.3 If, regardless of whether or not the Parties have implemented the procedures specified in clause 31.1 or clause 31.2, the Parties fail to resolve the Dispute within three months of the dispute first arising, then either Party may serve notice on the other to require the Dispute to be subject to the institution of legal proceedings in court in accordance with clause 32 (Governing Law and Jurisdiction).
- 31.4 If any Dispute is resolved pursuant to the provisions of this clause 31 then the Parties shall record the resolution of the Dispute in writing and shall each promptly sign the same and the signed document shall form a legally binding agreement between the Parties to the Dispute by way of a supplement to this Agreement.

## **32. GOVERNING LAW AND JURISDICTION**

- 32.1 This Agreement and any Disputes are governed by and construed in accordance with the law of England.
- 32.2 Subject to the provisions of Clauses 31.1 – 31.3 of this Agreement, the Parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any Dispute.

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

**SCHEDULE 1      SHAREHOLDER RESERVED MATTERS**

<b>Matters</b>	<b>Reserved Matters for Shareholder Approval</b>	<b>Matters Delegated for Board Approval</b>	<b>Matters Delegated by the Board for Approval by individual Directors</b>
<p><b>1. Business Plan</b></p>	<p>Approving the first and all future Business Plans before the Company's adoption pursuant to Clause 8.</p> <p>Approving any material change to any previously approved Business Plan, which the Board is unable to approve.</p>	<p>Varying the timing, scale or programme of works or projects that are included in the Business Plan where the change amounts to less than £250,000 in any one financial year.</p> <p>Non-material departures from the Business Plan</p>	<p>None</p>
<p><b>2. New Business</b></p>	<p>Approval of any new Business not contemplated in the approved Business Plan</p>	<p>None</p>	<p>None</p>
<p><b>3. Appointment and Removal of Directors</b></p>	<p>Approval of the appointment and removal of any Directors (save where those appointments terminate as a</p>	<p>Review of proposed Council (member or officer) appointees in advance of appointment.</p>	<p>None.</p>



Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated by the Board for Approval by individual Directors
	result of the operation of the Articles) and of the terms and conditions of employment or severance package of any all Directors.	Recruitment of independent Directors Appointment and removal of all Board advisers (to include terms and conditions of relationship).	
<b>4. Adoption and variation of the Articles of Association</b>	Adopting the Company's Articles; Approving any variations to the Company's Articles.	None.	None.
<b>5. Shareholder Agreement</b>	Adopting the Shareholder Agreement. Approving any material variation to the Shareholder Agreement	Any non-material variation to the Shareholder Agreement in consultation with the Chair of the Shareholder Committee	None
<b>6. Executive Director</b>	Approval of the appointment or dismissal and the terms and	Non-material alterations to the terms and conditions of service	None.

Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated by the Board for Approval by individual Directors
<b>Appointment, Dismissal and Remuneration</b>	conditions of service or any severance package of any executive director of the Company.	Performance related pay awards (if any) contemplated in the terms and conditions of service	
7. <b>Senior Employee Recruitment, Dismissal and Remuneration</b>	<p>Approval of the appointment or dismissal and the terms and conditions of employment or severance package of any senior employee of the Company.</p> <p>Approval of a pay framework and job evaluation scheme for the Company.</p>	Recruitment or dismissal of employees and/or agreeing the remuneration of employees where the total remuneration for that position is greater than £75K and is within the approved pay framework.	Recruitment of employees and/or agreeing the remuneration of employees where the total remuneration for that position is £75K or less and is within the approved pay framework.
8. <b>Shares</b>	<p>The acquisition of any shares or any option over shares in the capital of any company.</p> <p>The creation, allotment, issuing</p>	None.	None.

Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated by the Board for Approval by individual Directors
	or redemption of any shares or securities, or the granting of any right to require the creation, allotment, issuing or redemption of any such shares or securities.		
<b>9. Additional Shareholders</b>	The admission of additional shareholders to the Company.  Agreeing any rights or restrictions attaching to any shares allocated to such additional shareholders	None	None
<b>10. Issuing or of Accepting Borrowing / Loan Capital</b>	Entering into any borrowing, the issuing of any loan capital or entering into any commitments with any person regarding the issue of any loan capital outside of the approved Business Plan.	Entering into any borrowing or issuing any loan capital where this is approved in the current Business Plan, to the extent and on the terms set out in the approved Business Plan.	None.

Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated by the Board for Approval by individual Directors
	Agreeing, as part of the approved Business Plan, the extent of any permitted borrowing delegated for Board approval, and the terms on which that borrowing can be entered into.		
<b>11. Nature of the Company's Business</b>	Any material changes to the nature of the Company's Business not contemplated by the approved Business Plan.	Any changes to the nature of the Company's business where it is contemplated in the approved Business Plan.	None.
<b>12. Reputation of Council</b>	Approving any matter which is reasonably likely to have an adverse effect on the reputation of the Council	None	None
<b>13. Acquisitions or</b>	The acquisition of any freehold or leasehold land or building or	The acquisition of any freehold or leasehold land or building or the entering	None.

Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated by the Board for Approval by individual Directors
<b>Disposals</b>	the entering into or granting of any option in respect of any land or building or the acquisition or disposal of any asset where this is not contemplated in the approved Business Plan.	into or granting of any option in respect of any land or building or the acquisition or disposal of any asset where it is contemplated in the approved Business Plan.	
<b>14. Company / Group Structure</b>	Forming any subsidiary or acquiring an interest in any other company or participating in any partnership or corporate joint venture  Amalgamating or merging with any other company or undertaking	None.	None.
<b>15. Stock Exchange Listing</b>	The listing or trading of any shares or debt securities on any stock exchange or market.	None.	None.

Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated by the Board for Approval by individual Directors
<b>16. Appointment of Agents or Subcontractors or Arms' Length Transactions</b>	Appointment or termination of agents, contractors or subcontractors where this is outside of the approved Business Plan.	Appointment of contractors or subcontractors where this is in pursuance of the approved Business Plan.	Appointment of contractors or subcontractors in pursuance of the approved Business Plan up to a value of £100K.  The day-to-day management of the Company's contracts and agreements.
<b>17. Part sale of the business</b>	Selling any part of the business, unless specifically contemplated and authorised in the approved Business Plan.	None.	None.
<b>18. Business Name and Location</b>	Changing the Company name, trading name, or Registered Office, or changing the location of any offices outside of the Company's Registered Office to	Changing the location of any offices outside of the Company's Registered Office to another location within the District.	None.

Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated by the Board for Approval by individual Directors
	a location outside of the District.		
<b>19. Intellectual Property</b>	The disposal, sale, assignment or granting of any rights in the Company's intellectual property outside of the normal course of business.	The granting of any rights (by licence or otherwise) in or over any intellectual property owned or used by the Company in the normal course of business	Where necessary to effect delegated decisions up to a value of £100K
<b>20. Encumbrances</b>	Creating or granting any Encumbrance over the whole or any part of the Company or its business, undertaking or assets, or over any shares in the Company other than liens arising in the normal course of business.	None	None
<b>21. Redundancy</b>	Removal of Directors.	Dismissing any employee in circumstances in which the Company will incur or agrees to bear redundancy or	Dismissing any employee in circumstances in which the Company will incur or agrees to bear

Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated by the Board for Approval by individual Directors
		other costs (including actuarial costs) in excess of £75K.	redundancy or other costs (including actuarial costs) of £75K or less.
<b>22. Pension</b>	<p>Establishing any new pension scheme, or granting any pension rights to any director, former director, or any members of any such person's family.</p> <p>Changes to pension arrangements for staff whether in the Local Government Pension Scheme or otherwise. Any other decisions of the Company which will have an effect on liabilities of the Shareholder under the Local Government Pension Scheme or any associated guarantee.</p>	Establishing any new pension scheme, or amending any pension scheme, provided by the Company to employees.	None.



Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated by the Board for Approval by individual Directors
<b>23. The Winding-Up or alternative Dissolution of the Company</b>	Passing any resolution for the winding-up or the otherwise dissolution of the Company or presenting any petition for its administration (except where the Company is insolvent)	None.	None.
<b>24. Accounting and Audit</b>	Deciding whether to change the Company's accounting period.  Appointment and removal of auditor.	None  Review of proposed replacement auditor prior to appointment.	None
<b>25. Dividends</b>	Deciding whether to declare or not declare a dividend in each financial year	Payment and distribution of any approved dividend.	None
<b>26. Group Relief on Corporation Tax</b>	The allocation and application of Group Relief in respect of	None	None

Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated by the Board for Approval by individual Directors
	corporation tax liabilities		

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## SCHEDULE 2

### COMPANY LETTER OF APPOINTMENT FOR COUNCIL OFFICERS / COUNCILLORS AS DIRECTORS [AMEND LETTER TEMPLATE AS APPROPRIATE]

Dear

#### **West Norfolk Property Limited (the "Company")**

- 1 This letter contains the terms which we have discussed and agreed for your appointment as a Director of the Company. You have been appointed by ordinary resolution of the Company passed by the Borough Council of King's Lynn & West Norfolk as the sole shareholder of the Company in accordance with the Shareholder Agreement between the Borough Council of King's Lynn and the Company, and the Company's Articles of Association.
- 2 By accepting this appointment as a Director, you agree that this letter is a contract for services and is not a contract of employment with the Company and you confirm that you are not subject to any restrictions which prevent you from holding office as a director of the Company.
- 3 You are a [Council Officer / Councillor] [*delete as appropriate*] of the Borough Council of King's Lynn & West Norfolk and so will not be paid a fee by the Company and you are not entitled to claim expenses from the Company. Arrangements as regards any fee for your directorship are a matter for you and the Borough Council of King's Lynn & West Norfolk. You will claim any expenses from the Borough Council of King's Lynn & West Norfolk in accordance with [your contract of employment / the Members' Allowances Scheme of the Borough Council of Kings' Lynn and West Norfolk] [*delete as appropriate*] Your fee (if any) and expenses may be re-charged to the Company for payment in accordance with the arrangements agreed between the Company and the Borough Council of King's Lynn & West Norfolk.
- 4 You will be expected to attend the Board Meetings and General Meetings of the Company. You will receive details of all such meetings in advance. You may be required to serve on one or more Board committees. You will be provided with the relevant terms of reference on your appointment to such a committee. You also may be asked to serve as a director on the board of any of the Company's subsidiaries or joint ventures. Any such appointment will be covered in a separate communication.
- 5 You are expected to perform your duties as a Director of the Company (whether statutory, fiduciary or common law) faithfully, diligently and to a standard commensurate with the functions of your role and your knowledge, skills and experience.

- 6 You shall exercise your powers in your role as a Director of the Company having regard to relevant obligations under prevailing law and regulations, including the Companies Act 2006. The Company is wholly owned by a local authority and so is a controlled company within the meaning of the Local Government and Housing Act 1989. This means that the Company is subject to additional obligations, reporting and enhanced transparency (in particular it is subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004).
- 7 You shall have particular regard to the general duties of directors in Part 10 of the Companies Act 2006, including the duty to promote the success of the Company under which all directors must act in the way they consider, in good faith, would be most likely to promote the success of the Company for the benefit of its members as a whole. In doing so, as a Director of the Company must have regard (among other matters) to:
- (a) the likely consequences of any decision in the long term;
  - (b) the interests of the Company's employees (if any);
  - (c) the need to foster the Company's business relationships with suppliers, customers and others;
  - (d) the impact of the Company's operations on the community and the environment;
  - (e) the desirability of the Company maintaining a reputation for high standards of business conduct; and
  - (f) the need to act fairly as between the members of the Company (i.e. the Shareholders).
- 8 The Company will collect and process information relating to you in accordance with the privacy notice which is [on the intranet][annexed to this letter][available from [POSITION]] [*delete as appropriate*] You are required to sign and date the privacy notice and return it to [NAME OR POSITION].
- 9 When handling personal data in connection with your appointment by the Company on the terms of this letter, you shall comply with the Company's data protection policy to include any privacy notices issued by the Company.
- 10 You acknowledge that:
- (a) the Company and the Borough Council of King's Lynn & West Norfolk as the sole Shareholder, are subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004; and

- (b) where either of the Company and the Shareholder are in receipt of a request for information under the legislation referred to in paragraph 10 (a) then it is for the Company or the Shareholder to determine in its absolute discretion, subject to the Shareholder Agreement, what information, if any, is disclosable.
- 11 You will not, whether during the appointment or after its termination, except in the proper course of your duties or as required by law, use or divulge, and shall use all reasonable endeavours to prevent the use or disclosure of, any trade or business secrets or any information concerning the business or finances of the Company or of any dealings, transactions, or affairs of the Company or any client, customer or supplier of the Company which comes to your knowledge during the course of this appointment and will comply with the provisions of the confidentiality provisions of the Shareholder Agreement as if it applied to you. You will, however, be entitled to disclose information to the Borough Council of King's Lynn & West Norfolk where this is required to enable the Company to comply with the Shareholder Agreement between the Company and the Borough Council of King's Lynn & West Norfolk.
- 12 Your appointment may be terminated or will otherwise cease in accordance with the Shareholder Agreement Company's Articles of Association. Please note that if you cease to be a [Council Officer / Councillor] [*delete as appropriate*] of the Borough Council of King's Lynn & West Norfolk then you will cease to be a director of the Company at the same time.
- 13 In signing this letter, you acknowledge that your office is subject to the terms of the Shareholder Agreement and the Company's Articles of Association and may be determined as permitted under the terms of the Shareholder Agreement and the Articles, and that upon such termination you will vacate office in relation to the Company forthwith without raising any claim whatsoever against the Company in relation to your vacation of office (otherwise than in respect of any properly incurred and unpaid expenses due to you from the Company up to the date you vacate your office).
- 14 On termination of your appointment, you agree that you will promptly return to the Company all papers and property of the Company which are in your possession or under your control.

Please indicate your acceptance and acknowledgement of these terms by signing the attached copy and returning it to me. I look forward to seeing you at our next Board meeting.

Yours sincerely

.....

Signatory, duly authorised for and on behalf of the Company

I agree to and acknowledge the terms and conditions set out above relating to my appointment as a Director of West Norfolk Property Limited.

.....  
Signed

Dated

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### SCHEDULE 3

#### **COUNCIL LETTER OF APPOINTMENT FOR COUNCIL OFFICERS AS DIRECTORS (CONFLICTS OF INTERESTS)**

Dear

#### **Appointment of Council Officers as Directors of West Norfolk Property Limited and Conflicts of Interests.**

Thank you for supporting the Council through your agreement to undertake a director role on the board of West Norfolk Property Limited (the "Company").

#### Conflicts of Interests

The Council acknowledges and accepts the conflict of interest that your role as a Director of the Company will have with your role as a Council Officer and will require you to declare this in future, in accordance with the governance documents, policies and procedures of the Company and the Council, for example at the beginning of any official meetings.

This conflict comes about because you have a duty (as a Council Officer) to act in the best interests of the Council but also a duty (as a Director of the Company) to act in the best interests of the Company. Therefore, your appointment means that there are some aspects of Council decision-making regarding the Company that you may not be able to be part of and instead, the Council's s151 Council Officer or Monitoring Council Officer will advise the Council in such matters.

The Council acknowledges and accepts that when you are acting as a Director of the Company that you should always act in the best interests of the Company and in compliance with your statutory duties to the Company. In this context your duty to the Company will take precedence over your duty to the Council as a Council Officer.

#### Appointment as Director of the Company

As you have accepted the role of a Director of the Company due to your position and employment within the Council, should you leave your employment with the Council for any reason then your role as a director of the Company will automatically be ended on the same day.

A copy of this letter will be placed on your personal file. Should you wish to discuss this, please do not hesitate to contact me.

Yours sincerely,

## SCHEDULE 4

### COUNCIL LETTER OF APPOINTMENT FOR COUNCILLORS AS DIRECTORS (CONFLICTS OF INTERESTS)

Dear

#### **Appointment of Councillors as Directors of West Norfolk Property Limited and Conflicts of Interests.**

Thank you for supporting the Council through your agreement to undertake a director role on the board of West Norfolk Property Limited (the "Company").

#### Conflicts of Interests

The Council and the Company acknowledge and accept the conflict of interest that your role as a Director of the Company will have with your role as a Councillor and will require you to declare this in future, in accordance with the governance documents, policies and procedures of the Company and the Council, for example at the beginning of any official meetings.

This conflict comes about because as Councillor you have a public law duty always to act in the best interests of the Council, and as a Director of the Company also a duty to always act in the best interests of the Company. Therefore, you will be unable to participate in a decision to be made in the best interests of the Company where the decision is, or may be, adverse to your public law duties to the Council. Where such an occasion arises this conflict of interests will be managed by the Company's Board in accordance with the Shareholder Agreement between the Council and the Company, and Company's Articles of Association.

#### Appointment as Director of the Company

You have accepted the role of a Director of the Company due to your position as Councillor. Should you cease to be a Councillor for whatever reason your role as a Director of the Company will automatically be ended on the same day in accordance with the Shareholder Agreement and the Articles of Association.

Should you wish to discuss this, please do not hesitate to contact me.

Yours sincerely,



## SCHEDULE 5

### COMPANY LETTER OF APPOINTMENT OF DIRECTORS (OTHER THAN A COUNCIL OFFICER OR COUNCILLOR)

Dear

**West Norfolk Property Limited (the "Company")**

- 1 This letter contains the terms which we have discussed and agreed for your appointment as a Director of the Company. You have been appointed by ordinary resolution of the Company passed by the Borough Council of King's Lynn & West Norfolk as the sole shareholder of the Company in accordance with the Shareholder Agreement between the Borough Council of King's Lynn and the Council, and the Company's Articles of Association. .
- 2 By accepting this appointment as a Director, you agree that this letter is a contract for services and is not a contract of employment with the Company and you confirm that you are not subject to any restrictions which prevent you from holding office as a Director of the Company.
- 3 You shall be entitled to such fees / remuneration and expenses in respect of your directorship as detail in the annex to this letter.
- 4 You will be expected to attend the Board Meetings and General Meetings of the Company. You will receive details of all such meetings in advance. You may be required to serve on one or more Board committees. You will be provided with the relevant terms of reference on your appointment to such a committee. You also may be asked to serve as a director on the board of any of the Company's subsidiaries or joint ventures. Any such appointment will be covered in a separate communication.
- 5 You are expected to perform your duties as a Director of the Company (whether statutory, fiduciary or common law) faithfully, diligently and to a standard commensurate with the functions of your role and your knowledge, skills and experience.
- 6 You shall exercise your powers in your role as a Director of the Company having regard to relevant obligations under the prevailing law and regulations. including the Companies Act 2006. The Company is wholly owned by a local authority and so is a controlled company within the meaning of the Local Government and Housing Act 1989. This means that the Company is subject to additional obligations, reporting and enhanced transparency (in particular it is subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004).

- 7 You shall have particular regard to the general duties of directors in Part 10 of the Companies Act 2006, including the duty to promote the success of the Company under which all directors must act in the way they consider, in good faith, would be most likely to promote the success of the Company for the benefit of its members as a whole. In doing so, as a Director of the Company, you must have regard (among other matters) to:
- (a) the likely consequences of any decision in the long term;
  - (b) the interests of the Company's employees (if any);
  - (c) the need to foster the Company's business relationships with suppliers, customers and others;
  - (d) the impact of the Company's operations on the community and the environment;
  - (e) the desirability of the Company maintaining a reputation for high standards of business conduct; and
  - (f) the need to act fairly as between the members of the Company (i.e. the Shareholders).
- 8 The Company will collect and process information relating to you in accordance with the privacy notice which is [on the intranet OR annexed to this letter OR available from [POSITION]]. You are required to sign and date the privacy notice and return it to [NAME OR POSITION].
- 9 When handling personal data in connection with your appointment by the Company on the terms of this letter, you shall comply with the Company's data protection policy to include any privacy notices issued by the Company.
- 10 You acknowledge that:
- (a) the Company and the Borough Council of King's Lynn & West Norfolk as the sole Shareholder, are subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004; and
  - (b) where either of the Company and the Shareholder are in receipt of a request for information under the legislation referred to in paragraph 10 (a) then it is for the Company or the Shareholder to determine in its absolute discretion, subject to the Shareholder Agreement, what information, if any, is disclosable.
- 11 You will not, whether during the appointment or after its termination, except in the proper course of your duties or as required by law, use or divulge, and shall use all reasonable endeavours to prevent the use or disclosure of, any

trade or business secrets or any information concerning the business or finances of the Company or of any dealings, transactions, or affairs of the Company or any client, customer or supplier of the Company which comes to your knowledge during the course of this appointment and will comply with the provisions of the confidentiality provisions of the Shareholder Agreement as if they applied to you. You will, however, be entitled to disclose information to the Borough Council of King's Lynn & West Norfolk where this is required to enable the Company to comply with the Shareholder Agreement between the Company and the Borough Council of King's Lynn & West Norfolk.

- 12 Your appointment may be terminated or will otherwise cease in accordance with the Shareholder Agreement and the Articles of Association.
- 13 In signing this letter, you acknowledge that your office is subject to the terms of the Shareholder Agreement and the Articles of Association and may be determined as permitted under the terms of the Shareholder Agreement and the Articles of Association, and that upon such termination you will vacate office in relation to the Company forthwith without raising any claim whatsoever against the Company in relation to your vacation of office (otherwise than in respect of any properly incurred and unpaid expenses due to you from the Company up to the date you vacate your office).
- 14 On termination of your appointment, you agree that you will promptly return to the Company all papers and property of the Company which are in your possession or under your control.

Please indicate your acceptance and acknowledgement of these terms by signing the attached copy and returning it to me. I look forward to seeing you at our next Board meeting.

Yours sincerely

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Signatory, duly authorised for and on behalf of the Company

I agree to and acknowledge the terms and conditions set out above relating to my appointment as a Director of West Norfolk Property Limited.

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Signed

Dated

