

Dated _____ **2019**

WILTSHIRE COUNCIL

STONE CIRCLE DEVELOPMENT COMPANY LIMITED

SHAREHOLDER AGREEMENT

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PARTIES

- (1) **WILTSHIRE COUNCIL**, of County Hall, Bythesea Road, Trowbridge, Wiltshire, BA14 8JN (**Council**)
- (2) **STONE CIRCLE DEVELOPMENT COMPANY LIMITED** (company number [●]) whose registered office is at County Hall, Bythesea Road, Trowbridge, Wiltshire, BA14 8JN (**Company**)

BACKGROUND

- (A) As at the date of this Agreement, the Council is the sole member of the Company.
- (B) The parties have entered into this Agreement to regulate the manner in which the Company carries out the Business (as defined herein) and to ensure that the Council retains decisive influence over both the strategic objectives and significant decisions of the Company.

AGREED TERMS

1 DEFINITIONS AND INTERPRETATION

In this Agreement:

Accounting Reference Date means 31 March

Approval Date has the meaning given to it in clause 11.4

Approved Distribution has the meaning given to it in clause 11.4

Articles means the articles of association of the Company in agreed form to be adopted on Completion pursuant to clause 2.2, as amended or superseded from time to time

Biannual Report means the report as specified in clause 8.1.1

Board means the board of Directors of the Company or such of them as are present at a duly convened and quorate meeting of the Directors

Business has the meaning given to it in clause 3.1

Business Day means a day (other than a Saturday, a Sunday or a public holiday in the United Kingdom) on which banks in the United Kingdom are ordinarily open to effect transactions of the kind contemplated in this Agreement and, if a payment is to be made in euros, on which such payment system as the Council chooses is operating for the transfer of funds for the same day value

Business Plan means the operational business plan and budget of the Company as adopted and amended in accordance with clause 3

Cabinet means the cabinet of the Council as constituted from time to time

CEDR means the Centre for Effective Dispute Resolution

Completion means the completion of this Agreement in accordance with clause 2

Completion Date means the date of this Agreement

Confidential Information means, in relation to a person, all technical, commercial, financial or other information of whatever nature relating to that person's business, products, developments, services, trade secrets, know-how, personnel, supplies or historic current or potential customers, whether or not

designated as confidential and whether disclosed orally, pictorially, in writing, by demonstration, by viewing, in machine readable form or by any other means

Deadlock has the meaning given to it in clause 14.2

Deadlock Date has the meaning given to it in clause 14.2

Deed of Adherence means a deed in the form or substantially in the form set out in Schedule 4

Directors means the directors of the Company and **Director** means any one of them

Dispute has the meaning given to it in clause 14.1

EIR means the Environmental Information Regulations 2004 and any subordinate legislation made under the Regulations from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation

Encumbrance means:

- (a) a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person; or
- (b) any arrangement under which money or claims to, or the benefit of, a bank or other account may be applied, set-off or made subject to a combination of accounts so as to effect payment of sums owed or payable to any person; or
- (c) any other type of preferential arrangement (including title transfer and retention arrangements) having a similar effect

Financial Year means each accounting reference period of 12 months ending on the Accounting Reference Date other than the First Accounting Reference Period or such longer or shorter period as the Council shall from time to time determine.

First Accounting Reference Period means the period which shall run on and from the date of incorporation of the Company to and including the Accounting Reference Date in the calendar year following the date of this Agreement

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

Initial Consideration Date has the meaning given to it in clause 14.2

Intellectual Property means present and future patents, trade marks, service marks, trade names, designs, copyrights, inventions, topographical or similar rights, confidential information and know-how and any interest in any of these rights, whether or not registered, including all applications and rights to apply for registration and all fees, royalties and other rights derived from, or incidental to, these rights

Law means:

- (a) any Act of Parliament;
- (b) any subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978;
- (c) any exercise of the Royal Prerogative; and
- (d) any enforceable community right within the meaning of section 2 of the European Communities Act 1972,

in each case in force in the United Kingdom

Mediation Referral Notice has the meaning given to it in clause 14.3

Prohibited Act means any of the following acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Council; or
 - (iv) defrauding, attempting to defraud or conspiring to defraud the Council

Project Plan means a plan for the development of a site consistent with the parameters of the Business Plan containing the information set out at Schedule 2 approved pursuant to clause 3.6

Reserved Matters means the matters specified in Schedule 1

Resourcing Contract means the contract for the provision of resourcing and support services to be entered into between the Council and the Company on or around the date of this Agreement, as the same may be varied, amended or replaced from time to time

RICS means the Royal Institution of Chartered Surveyors

1.2 In this Agreement:

- 1.2.1 clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement;
- 1.2.2 unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this Agreement and a reference to a paragraph is to a paragraph of the relevant Schedule;
- 1.2.3 a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality) and that person's personal representatives, successors, permitted assigns and permitted transferees;
- 1.2.4 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- 1.2.5 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;

- 1.2.6 a reference to a **party** or the **parties** are to a party or the parties to this Agreement from time to time and any person who agrees to be bound by the provisions of this Agreement from time to time by executing a Deed of Adherence but, for the avoidance of doubt, shall not refer to any person who has ceased to have any obligations under this Agreement from time to time. A reference to a party shall include that party's successors, permitted assigns and permitted transferees;
- 1.2.7 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 1.2.8 a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- 1.2.9 a reference to **writing** or **written** includes email but not fax;
- 1.2.10 an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- 1.2.11 a reference to **this Agreement** (or any provision of it) or to any other agreement or document referred to in this Agreement is a reference to this Agreement, that provision or such other agreement or document as varied, amended or supplemented (in each case, other than in breach of the provisions of this Agreement) from time to time;
- 1.2.12 any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 1.2.13 a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and amended shall be construed accordingly);
- 1.2.14 a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it;
- 1.2.15 references to a **month** shall be construed as a reference to a period starting on one day in a calendar month and ending on the day immediately preceding the numerically corresponding day in the next calendar month or, if there is no numerically corresponding day in the next calendar month, the last day in the next calendar month; and
- 1.2.16 the expressions **body corporate, holding company, subsidiary, parent undertaking, subsidiary undertaking** and **parent company** shall have the respective meanings given in the Companies Act 2006, and, for the purposes of sections 1159(1) and 1162(2)(b) and (d) of that Act, a company or undertaking (the **first person**) shall be treated as a member of another company or undertaking if:
- (a) any of the first person's subsidiaries or subsidiary undertakings is a member of that other company or undertaking; or
 - (b) any shares or capital interests in that other company or undertaking are held by a person acting on behalf of the first person or any of its subsidiaries or subsidiary undertakings; or
 - (c) any shares or capital interests in that other company or undertaking are registered in the name of a person (or its nominee) by way of security or in connection with the granting of security over those shares or capital interests by the first person.

In the case of a limited liability partnership which is (or might constitute) a subsidiary or subsidiary undertaking of a company or another limited liability partnership, sections 1159 and 1162 of the Companies Act 2006 shall be amended so that:

- (i) references in sections 1159(1)(a) and (c) and 1162(2)(a) and (d) to "voting rights" are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and
- (ii) references in sections 1159(1)(b) and 1162(2)(b) to the "right to appoint or remove a majority of its board of directors" is to the right: (i) to appoint or remove a majority of the directors (or equivalent) of that limited liability partnership; or (ii) if no such directors (or equivalent) exist by virtue of the constitution of that limited liability partnership, members holding a majority of the voting rights,

and unless the context otherwise requires, the application of the definitions of body corporate, holding company, subsidiary, parent undertaking, subsidiary undertaking and parent company shall apply as to the Company or undertaking as it is at that time.

- 1.3 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.

2 COMPLETION

- 2.1 Completion shall take place on the Completion Date at the offices of Bevan Brittan LLP, Fleet Place House, 2 Fleet Place, London EC4M 7RF or any other place or time agreed in writing by the parties.

- 2.2 At Completion:

2.2.1 the parties shall procure that such shareholder resolutions are passed and meetings of the Board are held as may be necessary to:

- (a) adopt the Articles in the agreed form;
- (b) adopt the Business Plan applicable to the First Accounting Reference Period;
- (c) appoint the following individuals (identified by their position within the Council) as directors:
 - (i) Cabinet Member responsible for Housing;
 - (ii) a member nominated from an opposition party identified to be a director;
 - (iii) Executive Director of Growth, Investment and Place; and
- (d) enter into the Resourcing Contract.

3 THE BUSINESSES AND BUSINESS PLANNING

- 3.1 The business of the Company (**Business**) shall be to develop land and/ or property for the provision of housing in accordance with any Business Plan then in force or as otherwise determined by the Shareholder from time to time.

- 3.2 The Business shall be pursued, and the Company shall be governed, in a manner which ensures that the Company:

3.2.1 is and remains controlled (both by way of membership of the Company and decisive influence over both its strategic objectives and significant decisions) by the Council;

- 3.2.2 carries out the essential part of its activities for the Council and other legal persons controlled by the Council; and
 - 3.2.3 carries out those activities in furtherance of the Council's public service tasks.
- 3.3 The Company shall prepare in respect of each Financial Year a Business Plan to include:
- 3.3.1 an annual operating revenue plan and capital expenditure requirements (including details of funding sources);
 - 3.3.2 a balance sheet forecast;
 - 3.3.3 a minimum five year term financial strategy plan to include (amongst other items) all proposed investments, borrowings and new business of the Company and a list of key risks of its business;
 - 3.3.4 long term projections to cover a period of [] years from the Completion Date;
 - 3.3.5 identification of any surpluses made in a Financial Year and the making of any distribution of profit subject to the provisions of the Companies Act 2006;
 - 3.3.6 an annual profit and loss account; and
 - 3.3.7 such other content as the Council may require from time to time and notify to the Company in writing.
- 3.4 The Business Plan for a given Financial Year shall be:
- 3.4.1 prepared by the Board and circulated by the Board to the Council in draft form not less than three months prior to the end of the Financial Year preceding the Financial Year to which the draft Business Plan relates, save that in the event that there is no Cabinet meeting in January of such preceding Financial Year the Business Plan shall be circulated by the Board to the Council in advance of the preceding Cabinet meeting; and
 - 3.4.2 considered and, if thought fit, approved as soon as possible by the Council and in any event within one month of the date of receipt of the draft Business Plan from the Board.
- 3.5 The parties agree to work both together and with any third parties where required in good faith, to procure that each Business Plan is prepared and approved in accordance with clause 3.3 and clause 3.4 and that the business of the Company is carried out, where appropriate, to interface as seamlessly as possible with the operations and services of the Council.
- 3.6 The Board shall prepare a draft Project Plan in respect of each proposed development (which may either be referred to it from the Council or sourced independently). Upon Council approval (pursuant to clause 4.3) the Business Plan shall be deemed amended to include the Project Plan.

4 COUNCIL'S ROLE AS SHAREHOLDER

- 4.1 The Council will monitor and control the business and operations of the Company through the:
- 4.1.1 approval of the Business Plan;
 - 4.1.2 the right to make decisions on the Reserved Matters;
 - 4.1.3 receiving reports in accordance with clause 8;
 - 4.1.4 exercising the other rights provided to the Council under this agreement and through its role as the sole shareholder of the Company.

- 4.2 The Council:
- 4.2.1 shall, upon request, have unlimited, unrestricted and prompt access to the Company information and documents pursuant to clause 8;
 - 4.2.2 will not usurp the functions of the Board but will monitor the activities of the Company to ensure that they are acceptable and accountable to the Council as owner of the Company; and
 - 4.2.3 may, in addition to those matters requiring Council consent pursuant to clause 5:
 - (a) make recommendations from time to time to the Board; and/or
 - (b) give directions by notice in writing from time to time to the Board.
- 4.3 Where a consent or approval is expressed in this Agreement to be required of the Council, it shall be given in writing in advance of the decision or matter requiring consent or approval and the Council shall use its reasonable endeavours to communicate any such decision, consent or approval (including any decision not to give consent or approval) to the Company within a period of 30 days from receipt of the requests provided that the Council shall not be deemed to have made a decision or given its consent or approval by virtue of the fact that it has not communicated the same within that time limit. Where the Company requires the Council to make any decision or provide any consent or approval, the Company shall provide such material information as the Council may require to enable it to consider the decision, consent or approval in question.
- 4.4 The Company shall ensure that the Board chair and and/or any employees of the Company as requested by the Council shall attend such meetings or parts of meeting(s) of the Council as the Council may require and shall answer questions put by the Council and provide information regarding the activities of the Company as reasonably requested.

5 DECISION-MAKING

- 5.1 Subject to the Articles and with the exception of the Reserved Matters, the Board shall have full and complete authority, power and discretion to direct, manage and control the Business and the affairs and assets of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incidental to the management of the Business.
- 5.2 The Company agrees that it shall (subject to this clause 5) and in so far as it is legally able to:
- 5.2.1 carry on and conduct its business and affairs in accordance with:
 - (a) this Agreement;
 - (b) the Business Plan then in force;
 - (c) the Articles;
 - (d) all laws relating to companies as amended from time to time;
 - (e) sound governance and good business practice; and
 - (f) in a proper and efficient manner, for its own benefit; and
 - 5.2.2 use all reasonable endeavours to obtain and, if necessary, maintain in full force and effect all licences (including statutory licences), consents and authorities necessary to own and operate its assets and to carry on its business properly and effectively and in accordance with the Business Plan then in force.

5.3 Except as set out in clause 5.4, insofar as a matter is a Reserved Matter relating to the Company, the Company shall not make any decision in relation to, or undertake, that Reserved Matter except with the prior written consent of the Council and such consent shall be sought with the intention to facilitate decisions being given by the Council as quickly as reasonably practicable.

5.4 Clause 5.3 shall not apply in connection with any decision or action relating to a Reserved Matter:

5.4.1 approved in the Business Plan then in force;

5.4.2 which has been properly delegated in accordance with this Agreement to the Board or to a particular person or committee; or

5.4.3 to the extent the same decision has been taken by the Council in accordance with this Agreement,

and in those circumstances only, any reference in this Agreement to the approval of the Council (or similar wording) shall be amended so that it is a reference to the approval of the Board or the approval of that other person, as the case may be.

5.5 Any variation to the list of Reserved Matters must be approved by the Council in writing. For the avoidance of doubt, the Reserved Matters may be varied and/or replaced in part or entirely, by the Council at its absolute discretion. Upon the Council giving notice in writing to the Board that such a variation or replacement has occurred, this Agreement and Schedule 1 shall be deemed modified from the date specified in the varied or replacement schedule.

5.6 If this Agreement is validly varied in accordance with its terms, the relevant sections of the Business Plan shall be deemed amended on and with effect from the date of the variation of this Agreement to the extent (but only to the extent) such amendment is necessary to ensure that the Business Plan is fully consistent, and does not conflict, with the terms of this Agreement (as varied).

6 BOARD

6.1 Subject to the Articles, there shall be a minimum of three Directors, which:

6.1.1 shall be appointed by the Council in accordance with clause 6.2;

6.1.2 for the avoidance of doubt, shall not be the elected member of the Council who has responsibility for planning or the Council leader; and

6.1.3 shall be comprised of such number of executive or non-executive Directors as the Council shall see fit.

6.2 Subject to the Articles, any appointment(s) or termination(s) of a Director made under this clause 6 shall be effected by the Council by giving notice in writing to the Company, on the date on which the notice from the Council is received by the Company, or if a later date is specified in the notice, on that date.

6.3 The Company shall review its Board every year to ensure that the composition and membership of the Board is such that it has the ability to sufficiently understand the Company's obligations and make sufficiently robust decisions in relation to those obligations.

6.4 On the appointment of a Director to the Board, the Board shall issue to that person a letter of appointment which in the case of Council appointed Directors shall be substantially in the form contained in Schedule 3, as may be amended or updated from time to time by the Council, together with a summary of a Director's duties in relation to the Company.

7 POLICIES AND PROCEDURES

7.1 In respect of policies and procedures of the Company (**Policies and Procedures**):

- 7.1.1 the Company shall adopt necessary Policies and Procedures that enable it to act legally, efficiently and appropriately as a subsidiary of a local authority, and in the absence of any such Policies and Procedures, the Company shall adopt the relevant Policies and Procedures of the Council from time to time;
- 7.1.2 Policies and Procedures shall be approved by the Board; and
- 7.1.3 the Policies and Procedures shall be subject to an internal audit and audit by the Council when requested by the Council.
- 7.2 The employment terms and conditions of the Company shall be approved by the Board. The Board shall not implement such terms without prior written approval from the Council.
- 7.3 The Board shall adopt and apply an agreed policy as to how conflicts of interest are to be dealt with both in recruitment and in carrying out its Business. This agreed policy shall be approved by the Council for use by the Company and may thereafter be revised as required by the Council. Any such revisions shall be implemented by the Board.
- 7.4 The Company specifically confirms that no arrangement or contract has already been entered into which would require the approval of the Council under this Agreement if it were entered into after the date on which it becomes a party to this Agreement.

8 PROVISION OF INFORMATION

- 8.1 The Company shall provide to the Council:
 - 8.1.1 a Biannual Report before 5pm on the 30th day after the end of each six month period of a Financial year, which shall include:
 - (a) a balance sheet (based on trial balance without timing adjustments such as accruals and prepayments) for the Company as at close of business on the last day of the month just ended (including comparatives from previous month);
 - (b) a profit and loss account (based on trial balance i.e. excluding timing adjustments) for the Company covering the period from the start of the Financial Year to the end of the month just ended;
 - (c) for each business division, profit and loss performance against the Business Plan and the Business Plan targets;
 - (d) a statement of cash flow for the Company covering the period from the start of the Financial Year to the end of the month just ended;
 - (e) forecast profit and loss account for the Company for the period to the end of the current Financial Year on an accruals basis;
 - (f) a note of all matters in respect of which legal action (potential or actual) has been commenced by or against the Company and an update on ongoing legal action;
 - (g) an assurance statement from the Directors that all core account reconciliations have been carried out, with exceptions listed if necessary; and
 - (h) any other information reasonably required by the Shareholder as shareholder from time to time;
 - 8.1.2 the annual accounts of the Company, audited if that is a requirement, as soon as practicable together with a general review of the business in the year to which the annual accounts apply and a copy of the current Business Plan, at the latest by the end of two months after the end of the relevant Financial Year;

- 8.1.3 minutes of all Board meetings within 20 Business Days after the relevant Board meeting to which they relate;
 - 8.1.4 any other information reasonably required by the Council from time to time, as notified to the Company in writing by the Council.
- 8.2 The Company shall respond promptly to all reasonable requests from the Shareholder for clarification of any parts of the information and shall forthwith upon such request supply any additional information and/or evidence that the Shareholder may require.
- 8.3 The Council and its authorised representatives shall have the right during the standard working hours of the Council (as prescribed by the Council's policies from time to time), on giving to the Company reasonable advance notice, and at the Council's own cost, to inspect the books and records of the Company from time to time and to be supplied with all information in such form as it or they may reasonably require to keep the Council properly informed about the business and affairs of the Company and shall have the right to take copies of any such books and records or parts thereof.
- 8.4 The Company agrees that it shall give notice of any Directors' meeting to the Council at the same time as it gives notice to the Directors.
- 8.5 The Company shall immediately notify the Council of any legal action (potential, threatened or actual) of which it becomes aware which has been commenced by or against the Company.

9 AUDIT AND FRAUD

The Company shall operate in accordance with, and comply with, all of the Council's guidance, policies, codes, standards and practices in respect of audit and fraud in place from time to time.

10 PREVENTION OF BRIBERY

- 10.1 The Company:
- 10.1.1 shall not, and shall procure that any Director, officer, employee, adviser or representative of any of them shall not, in connection with this Agreement commit a Prohibited Act;
 - 10.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Agreement;
 - 10.1.3 shall, if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and
 - 10.1.4 within five Business Days of the date of this Agreement, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of such company) compliance with this clause 10 by such company and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. Such company shall provide such supporting evidence of compliance as the Council may reasonably request.
- 10.2 The Company shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any of its Directors, officers, employees, advisers or representatives of the company from committing a Prohibited Act and shall enforce it where appropriate.
- 10.3 If any breach of clause 10.1 is suspected or known, the Company must notify the Council immediately.

- 10.4 If the Company notifies the Council that it suspects or knows that there may be a breach of clause 10.1, the Company must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation.
- 10.5 The Council may terminate this Agreement or any other agreement with the Company by written notice with immediate effect if the Company or any Director, officer, employee, adviser or representative of the Company (in all cases whether or not acting with such Company's knowledge) breaches clause 10.1.
- 10.6 Any notice of termination under clause 10.5 must specify:
- 10.6.1 the nature of the Prohibited Act;
 - 10.6.2 the identity of the party whom the Council believes has committed the Prohibited Act; and
 - 10.6.3 the date on which this Agreement shall terminate.
- 10.7 Any dispute relating to:
- 10.7.1 the interpretation of this clause 10; or
 - 10.7.2 the amount or value of any gift, consideration or commission;
- shall be determined by the Council and its decision shall be final and conclusive.
- 10.8 Any termination under clause 10.5 shall be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

11 FINANCE AND RETURNS

- 11.1 The Company shall not seek third party funding without written approval of the Council.
- 11.2 The Board may recommend a distribution of the Company's profits, which recommendation may take the form of year end and/ or interim distribution(s). The Board shall not approve any distribution of profits if and to the extent that:
- 11.2.1 it is contrary to any distribution policy contained in a Business Plan;
 - 11.2.2 there is insufficient cash available;
 - 11.2.3 it would render the Company insolvent;
 - 11.2.4 the Board resolves that the Company would be left with insufficient funds to meet any current or future contemplated obligations or contingencies; or
 - 11.2.5 it would materially adversely affect the ability of the Company to comply with a Business Plan.
- 11.3 A distribution of profits to the Council shall require the approval of the Council which shall be given within ten Business Days of the Board recommending the same to the Council.
- 11.4 Upon approval from the Council with ten Business Days the proposed distribution would become an **Approved Distribution** and the date on which that approval is given shall be the **Approval Date**.
- 11.5 The Company shall credit an Approved Distribution to the Council within ten Business Days of the Approval Date. Payments will be in cash, unless a distribution was expressly approved by the Council in specie.

12 CONTRACTS

- 12.1 The Company shall retain a contracts register into which every contract entered into with an aggregate annual value which is greater than any threshold set in respect of the Council's own contracts from time to time shall be recorded.

13 DEALINGS IN SHARES AND NEW SHAREHOLDERS

- 13.1 The Company shall not create any Encumbrance over, transfer, or otherwise dispose of or give any person any rights in or over any share in its capital unless it is:

13.1.1 permitted under this Agreement and the Articles; and/or

13.1.2 carried out in accordance with the terms of this Agreement and the Articles.

- 13.2 Admitting a person as a new shareholder or member of the Company is a Reserved Matter and shall also be subject to such person executing a Deed of Adherence. Should the Company wish to admit a new shareholder or new member, the Board must procure that Deed of Adherence is signed and the prior written consent of the Council is obtained, prior to such new shareholder or member being admitted.

14 DISPUTE RESOLUTION

- 14.1 In the event of any disagreement or dispute arising between the parties in connection with this Agreement (a **Dispute**), the parties shall use all reasonable endeavours to resolve the matter on an amicable basis. If one party serves formal written notice on one or more of the others that a Dispute has arisen and the parties are unable to resolve the Dispute within a period of 20 Business Days from the service of such notice, then the Dispute shall be referred to an executive director of each of the parties or such other director nominated by each party for the purpose of this clause 14 who shall attempt to resolve the Dispute within the next following 20 Business Days. No recourse to arbitration or litigation by any party against any other under this Agreement shall take place unless and until such procedure has been followed.

- 14.2 If the executive directors or other nominated director of each of the parties (as the case may be) to whom the Dispute was referred in accordance with clause 14.1 are unable to resolve a Dispute within two months of such Dispute being referred to them (**Initial Consideration Date**), then a **Deadlock** shall be deemed to have arisen on the date either two months after the Initial Consideration Date or the date on which the parties agree that Deadlock has arisen, if earlier (the **Deadlock Date**). Any Deadlock shall be dealt with in accordance with clause 14.3.

- 14.3 In the event that a Deadlock has arisen, then any party shall be entitled to serve a notice in writing on the other parties referring the Deadlock to mediation (**Mediation Referral Notice**) in accordance with clause 14.4.

- 14.4 On the service of a Mediation Referral Notice, the parties shall jointly appoint a mediator to mediate the Deadlock, the cost of which shall be borne equally between the parties.

- 14.5 If:

14.5.1 the parties do not agree on the appointment of a mediator within 15 Business Days of service of the Mediation Referral Notice (the first day of that 15 Business Day period being the first Business Day after the service of the Mediation Referral Notice); or

14.5.2 the person appointed or to be appointed is unable or unwilling to act,

the mediator shall be appointed by the Chief Executive for the time being of CEDR or RICS (whichever is the most relevant having regard to the subject matter of the dispute) following a request made by any party to the Chief Executive for that purpose.

- 14.6 The mediation shall be conducted in the English language in accordance with the then current CEDR Model Mediation Procedure or RICS procedure, which is deemed to be incorporated in this Agreement.
- 14.7 If an agreement is reached on the Deadlock during the mediation, that agreement shall be reduced to writing and, once signed by the parties, shall be binding on all parties.
- 14.8 The mediation will take place where the Council deems appropriate.
- 14.9 Unless concluded with a written legally binding agreement, the mediation shall be concluded in confidence and without prejudice to the rights of any of the parties in any further proceedings.
- 14.10 If the Deadlock cannot be resolved following mediation, the parties shall be entitled to commence arbitration or litigation proceedings to settle the Dispute.

15 TERMINATION

- 15.1 Subject to clause 15.2, this Agreement may be terminated by the Council serving no less than six months' written notice on the Company.
- 15.2 The Council may terminate this Agreement immediately where required in accordance with any Law.
- 15.3 Termination of this Agreement shall not affect any accrued rights or liabilities of any person or any liability or obligation arising under or pursuant to this Agreement or any other agreement or arrangement between any of the parties hereto or, except where this Agreement expressly provides to the contrary, affect the provisions of:
- 15.3.1 clause 1 (*Definitions and Interpretation*);
 - 15.3.2 this clause 15 (*Termination*);
 - 15.3.3 clause 16 (*Confidentiality*);
 - 15.3.4 clause 17 (*Freedom of Information*);
 - 15.3.5 clause 21 (*Assignment and Subcontracting*);
 - 15.3.6 clause 22 (*Waivers and Consents*);
 - 15.3.7 clause 23 (*Rights and Remedies*);
 - 15.3.8 clause 27 (*Notices*);
 - 15.3.9 clause 28 (*Entire Agreement*);
 - 15.3.10 clause 29 (*Variation*);
 - 15.3.11 clause 30 (*Conflict with the Articles*);
 - 15.3.12 clause 31 (*Costs and Expenses*);
 - 15.3.13 clause 32 (*Set-off*);
 - 15.3.14 clause 33 (*No Partnership or Agency*); and
 - 15.3.15 clause 34 (*Governing Law and Jurisdiction*);
- which shall continue in full force and effect after termination.

- 15.4 Where the Company is to be wound up and its assets distributed, the parties shall endeavour to ensure that:
- 15.4.1 all existing contracts of the Company are performed to the extent that there are sufficient resources;
 - 15.4.2 the Company shall not enter into any new contractual obligations;
 - 15.4.3 the Company is dissolved and its assets are distributed as soon as practical in accordance with clauses 15.4.4 or 15.4.5 as applicable;
 - 15.4.4 any other proprietary information or Intellectual Property Rights belonging to or originating from a party shall be returned to it by the other party or the Company and all such proprietary information or Intellectual Property Rights shall be erased from the computer systems (to the extent possible) of the person who is/are returning it; and
 - 15.4.5 the assets of the Company remaining after payment of all debts and liabilities of such company and of all costs, charges and expenses of winding up the same, shall be distributed amongst the current shareholders or members of the Company.

16 CONFIDENTIALITY

- 16.1 Each party undertakes that they shall not at any time hereafter use or disclose (in each case except for the purpose of exercising its rights and fulfilling its obligations under this Agreement) to any person any Confidential Information of any other party which may have or may in future come to its knowledge or possession, provided that any party may share such information:
- 16.1.1 with its professional advisers or to those of its directors, members, officers, employees, advisers and representatives who are directly concerned with the relevant party or its business;
 - 16.1.2 as may be required by any applicable law or by any supervisory or regulatory body with whose rules it is necessary for that party to comply;
 - 16.1.3 in connection with any proceedings arising out of or in connection with this Agreement; or
 - 16.1.4 once it enters the public domain otherwise than by reason of a breach of this clause 16.1.
- 16.2 All parties shall use its reasonable endeavours to prevent the use or disclosure of any such Confidential Information otherwise than in accordance with this clause 16.
- 16.3 Notwithstanding the restrictions in clauses 16, any party may use such Confidential Information for the purpose of the promotion of the Business.
- 16.4 Each Director shall be entitled to disclose to the Council, all information to which the Council is entitled pursuant to clause 8 from time to time.
- 16.5 The parties shall use their reasonable endeavours to procure that any of their officers, employees, advisers and representatives coming into receipt of such Confidential Information shall be informed upon receipt that such information is confidential and (so far as such party is able to procure the same) shall comply with the provisions of this clause 16.5 in respect of such Confidential Information as if they were parties.
- 16.6 Where any party is required by any law, regulation or governmental or regulatory authority to retain any information (or copies of such information) of any other party, it shall notify the other party in writing of such retention giving details of the information that it is required to retain.

17 FREEDOM OF INFORMATION

- 17.1 The parties acknowledge that the parties are subject to the requirements of the FOIA and the EIR and the parties shall, where reasonable, assist and co-operate (at their own expense) with the other parties for information to enable the other parties (where required) to comply with their information disclosure obligations.
- 17.2 Subject to clause 17.1, where the Company receives a request for information under either the FOIA or the EIR which it is holding on behalf of any other party, it shall:
- 17.2.1 transfer the request for information to the relevant party (or such other party as it is otherwise agreed between the parties is the best person to deal with such request) as soon as practicable after receipt and in any event within two Business Days of receiving a request for information;
 - 17.2.2 provide the relevant or other party with a copy of all information in its possession or power in the form that the relevant or other party requires within ten Business Days (or such longer period as the relevant or other party may specify) of the relevant or other party requesting that information; and
 - 17.2.3 provide all necessary assistance as reasonably requested by the relevant or other party to enable the relevant or other party to respond to a request for information within the time for compliance set out in the FOIA or the EIR.
- 17.3 Where the Council receives a request under FOIA or EIR which relates to the operations of the Company, it shall notify the Company and afford them an opportunity to make any comments or representations in respect of the disclosure of the information sought. The Company shall respond within five Business Days of receipt of this notification. The Council shall take into account any such comments or representations in so doing and shall not respond to the request until the five Business Days response period referred to above has passed.
- 17.4 Each party shall be responsible for determining in its absolute discretion whether any information requested under the FOIA and EIR:
- 17.4.1 is exempt from disclosure; or
 - 17.4.2 is to be disclosed in response to a request for information.
- 17.5 Each party acknowledges that the other party may be obliged under the FOIA and EIR to disclose information:
- 17.5.1 without consulting with the other parties where it has not been practicable to achieve such consultation; or
 - 17.5.2 following consultation with the other parties and having taken their views into account.

18 DATA PROTECTION

The parties shall comply with Law relating to data protection at all times when carrying out their respective obligations pursuant to this Agreement and any other agreement to which it is a party.

19 UNLAWFUL FETTER ON THE COMPANY'S POWERS

Notwithstanding any other provision contained in this Agreement, the Company shall not be bound by any provision of this Agreement to the extent that it would constitute an unlawful fetter on any of its statutory powers, but any such provision shall remain valid and binding as regards all other parties to which it is expressed to apply.

20 FURTHER ASSURANCE

Each party shall at its own cost and expense, on being required to do so by another party now or at any time in the future, do or procure the doing of all such acts and things and/or execute or procure the execution of all such deeds and documents in a form satisfactory to such other party which such other party may reasonably consider necessary for giving effect to this Agreement.

21 ASSIGNMENT AND SUB-CONTRACTING

21.1 This Agreement is personal to the parties and no party shall assign, transfer, subcontract or deal in any other manner with any of its rights and obligations under this Agreement without the prior written consent of the Council. Each party hereby undertakes and represents to the other parties that it is entering into this Agreement only for its own benefit.

21.2 This Agreement shall be binding on and shall endure for the benefit of each party's successors.

22 WAIVERS AND CONSENTS

22.1 A waiver of any right or remedy under this Agreement or by Law, or any consent given under this Agreement, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

22.2 A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this Agreement. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this Agreement by the Council shall be effective unless it is in writing.

23 RIGHTS AND REMEDIES

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

24 SEVERANCE

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

25 COUNTERPARTS

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

26 THIRD PARTY RIGHTS

Except as expressly provided elsewhere in this Agreement, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this Agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

27 NOTICES

27.1 Delivery

Any notice or other communication required to be given to a party under or in connection with this Agreement shall be:

27.1.1 in writing;

27.1.2 delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by electronic mail; and

27.1.3 sent to:

(a) the Council at:

Address: County Hall, Bythesea Road, Trowbridge, Wiltshire, BA14 8JN

Email: simon.hendey@wiltshire.gov.uk

Attention: Simon Hendey, Director of Housing & Commercial

(b) the Company

Address: County Hall, Bythesea Road, Trowbridge, Wiltshire, BA14 8JN

Email: [•]

Attention: **Company Secretary**

or to any other address or email address as is notified in writing by one party to the other from time to time.

27.2 Receipt

Any notice or other communication shall be deemed to have been received:

27.2.1 if delivered by hand, at the time it is left at the relevant address;

27.2.2 if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; and

27.2.3 if sent by electronic mail, upon receipt by the party to which it is given.

A notice or other communication given as described in clause 27.2.1 or clause 27.2.3 on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

27.3 Receipt by Council

Any notice or other communication given to the Council shall be deemed to have been received only on actual receipt.

28 ENTIRE AGREEMENT

28.1 This Agreement and the documents referred to in it (including the Articles and any Deed of Adherence) constitute the entire agreement between the parties relating to its/their subject matter and supersede all previous agreements between the parties relating to such matters.

28.2 Each of the parties acknowledges that in agreeing to enter into this Agreement it has not relied on any representation, warranty, collateral contract or other assurance (except those set out in this Agreement and/or the documents referred to in it) made by or on behalf of any other party before the signature of this Agreement. Each of the parties waives:

28.2.1 all rights and remedies which, but for this clause 28.2, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance; and

28.2.2 all rights and remedies, other than remedies for breach of contract available in respect of a breach of this Agreement and/or the documents referred to in it, which, but for this clause 28.2, might otherwise be available to it in respect of the falsity of any representation or warranty set out in this Agreement and/or the documents referred to in it,

provided that nothing in this clause 28.2 shall limit or exclude any liability for fraud or dishonesty on the part of any party.

29 VARIATION

No variation to the terms of this Agreement shall be effective unless made in writing and signed by each of the parties and any person who agrees to be bound by this Agreement.

30 CONFLICT WITH THE ARTICLES

If any provision of this Agreement is inconsistent with a provision of the Articles, then the terms of this Agreement shall prevail and the member(s) of such Company agree to procure the making of any amendment to the Company's Articles as soon as reasonably practicable which is required in order to make the Articles consistent with the provisions of this Agreement and the Council hereby consents to any such changes to the Company's Articles.

31 COSTS AND EXPENSES

All costs and expenses in relation to the negotiation, preparation, execution and carrying into effect of this Agreement and all other documents referred to in it shall be borne by the Council, save for any private advice sought by any party which shall be for the cost of that party.

32 SET-OFF

All amounts falling due under this Agreement shall be paid in full without any set-off or counterclaim.

33 NO PARTNERSHIP OR AGENCY

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties or any of them, or to authorise any party to act as agent for any other party, and no party shall have authority to act in the name or on behalf of or otherwise to bind any other party in any way.

34 GOVERNING LAW AND JURISDICTION

34.1 This Agreement is governed by and shall be construed in accordance with the laws of England and each party submits to the exclusive jurisdiction of the courts of England for all purposes relating to this Agreement.

34.2 Each party irrevocably consents to any process in any legal action or proceedings arising out of or in connection with this Agreement being served on it in accordance with the provisions of clause 14. Nothing contained in this Agreement shall affect the right to serve process in any other manner permitted by law.

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

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

Executed as a deed by affixing) Seal
the common seal of)
WILTSHIRE COUNCIL)
)
)
in the presence of)
)
.....)
Authorised signatory)

Executed as a deed by)
STONE CIRCLE DEVELOPMENT)
COMPANY LIMITED)
acting by,)
a director, in the presence of) **Director**

Signature:

Name of witness:

Address:

.....

.....

Occupation of witness:

SCHEDULE 1 – RESERVED MATTERS

Number	Reserved Matter
	Constitution of the company
1	Varying in any respect the articles or the rights attaching to any of the shares or memberships (as applicable) in the company.
	Officers and Shareholders of the company
2	The appointment and the appointment terms (including any remuneration terms) of any Directors.
3	The appointment and the appointment terms (including any remuneration terms) of any employees.
4	The removal of any Directors (including any terms on which such Directors are removed from their office as Directors).
5	The admission of further shareholders or members to the Company or agreeing any rights or restrictions attaching to any shares or memberships allocated to such new shareholders or members as applicable).
	Future direction and development of the company
6	Forming any subsidiary or acquiring shares in any other company or participating in any partnership or incorporated joint venture vehicle.
7	Amalgamating or merging with any other company or business undertaking.
8	Selling or disposing of any part of the business of the Company.
9	Agreeing the Business Plan and any in-year material changes.
10	Undertaking any business or action which is inconsistent with the Business Plan then in force or omitting to undertake any action which is required by that Business Plan except with the prior written consent of the Council
11	Passing any resolution for its winding up or presenting any petition for its administration (unless it has become insolvent).
12	Agreeing or approving any other material services the total value of which exceeds £10,000 per annum to be provided by the Company to a third party not approved under the Business Plan.
13	Appointing any agent (not being a subcontractor) to conduct the whole or any part of the business of the Company, other than the appointment of an agent to conduct an area of the business of the Company
14	Applying for the listing or trading of any shares in its issued capital or debt securities on any stock exchange or market (where applicable).
	Management of the business of the company

15	Changing the Company's registered office.
16	Changing the Company's name.
17	Creating or agreeing to create a charge, security or encumbrance over the Company's assets, shares or income
18	Approving any matter that will have an adverse effect on the reputation of the Council.
19	Changing the nature of the business or commencing any new business which is not ancillary or incidental to the business of the Company.
20	Agreeing to enter into or entering into any acquisition or disposal of any material assets by the Company the total value of which exceeds £30,000 per annum not approved in the Business Plan.
21	Giving notice of termination of any arrangements, contracts or transactions the total value of which exceeds £500,000 per annum or materially varying any such arrangements, contracts or transactions and such termination or variation is likely to have an adverse impact on the financial status of a Company.
22	Granting rights (by licence or otherwise) in or over any intellectual property owned or used by the Company.
23	Appointing and changing the Company's auditors.
24	Changing the Financial Year of the Company.
25	Agreeing to make or making any loan (otherwise than by way of a deposit with a bank or other institution, the normal business of which includes the acceptance of deposits or in the ordinary course of business) or granting any credit (other than in the normal course of trading or the granting of trade credit to a company which has been approved under the Business Plan) or giving any guarantee or indemnity (other than in the normal course of trading).
26	Increasing or reducing the amount of its issued share capital, granting any option over or in its share capital, redeeming or purchasing any of its own shares or otherwise altering, or effecting any reorganisation of, its share capital (where applicable).
27	Declaring or paying any end of year dividend of the Company.

SCHEDULE 2– PROJECT PLAN

1. Identification of site
2. Comment on the legal title
3. Description of the development proposed, which will include feedback from the Council's planning department.
4. Proposed land transfer value
5. Estimated development costs of project
6. Funding requirement and a plan for how this will be met (from equity or debt from the Council and/ or third party debt)
7. Estimated proceeds of sale – i.e. transfer value

SCHEDULE 3 – LETTER OF APPOINTMENT OF A DIRECTOR

[on the headed notepaper of the Company]

To: [Name and address of Director]

[Date]

Dear ●

● Limited (the **Company**)

This letter contains the terms which we have discussed and agreed for your appointment as a director of the Company, as [a][the] Director of Wiltshire Council (the **Council**). Your appointment is made pursuant to and is subject to the terms and conditions set in the Shareholder Agreement dated ● 2019 (**Agreement**).

You shall not be entitled to any fees or remuneration save as paid to you by your appointer or as otherwise expressly agreed in writing.

You shall be expected to attend Board meetings and general meetings (where requested) of the Company. You shall receive details of all such meetings in advance.

You shall 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 shall comply with the provisions of clause 16 (*Confidentiality*) of the Agreement as if it applied to you. You shall, however, be entitled to disclose information to the shareholder appointing you as permitted under the Agreement.

The appointment shall automatically cease in relation to the Company in the event that: (a) you resign as a director; or (b) upon the delivery of a notice from the Council in accordance with the Company's Articles of Association removing you from office in relation to the Company. Without limitation to (a) and (b) above, in signing this letter, you acknowledge that your office is subject to the terms of the Agreement and the Company's Articles of Association and may be determined as permitted under the terms of the Agreement and the Articles and that upon such termination you shall vacate office in relation to the Company forthwith without raising any claim whatsoever against the Company.

On termination of your appointment, you agree that you shall 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 director of the Company.

Signed

Dated

SCHEDULE 4 – DEED OF ADHERENCE

THIS DEED is made on

BY ● (company number ●) whose registered office is at ● (the **Covenantor**) in favour of the persons whose names are set out in the schedule to this deed and is supplemental to the Shareholder Agreement dated ● (the **Agreement**)

THIS DEED WITNESSES as follows:

- 1 The Covenantor confirms that it has been given and read a copy of the Agreement and covenants with each person named in the schedule to this deed to perform and be bound by all the terms of the Agreement and to perform the obligations contained in the Agreement which are expressed to be performed by the Company (as defined in the Agreement), as if the Covenantor were a party to the Agreement.
- 2 This deed is governed by the laws of England and Wales.

IN WITNESS WHEREOF this deed has been executed by the Covenantor and is intended to be and is hereby delivered on the date first above written.

[Insert correct execution block]

Executed as a deed by)	
●)	
acting by a director and a director/ Secretary)
)	Director
)	
)
)	Director/Secretary

SCHEDULE – List of parties to Shareholder Agreement including those who have executed earlier deeds of adherence