Date 7 October 2016

DOVER DISTRICT COUNCIL

and

DOVER STREET PROPERTIES LIMITED

and

FBSE FINANCE LIMITED

and

STERLING INVESTMENTS LLC-FZ

PLANNING OBLIGATION BY DEED OF AGREEMENT
Under Section 106 of the Town and Country Planning Act 1990 (as amended)
Relating to the development of land at the Old Sorting Office, Charlton Green, Dover

---

[redacted]

THIS DEED is made the 7th day of October 2016

PARTIES

(1) DOVER DISTRICT COUNCIL ("the District Council") whose address is White Cliffs Business Park, Dover, Kent, CT16 3PJ

(2) DOVER STREET PROPERTIES LIMITED ("the Owner") (Company Registration number 08511213) whose registered office is at 6 Exhibition House, Addison Bridge Place, Kensington, London, W14 8XP

(3) FBSE FINANCE LIMITED ("the 1st Mortgagee") (Company Registration number 96853189) whose registered office is at Ground Floor, Regent House, Theobald Street, Borehamwood WD6 4RS

(4) STERLING INVESTMENTS LLC-FZ ("the 2nd Mortgagee") (registration no. 1203783; License No. 747981) whose registered office is situated at 3rd Floor, The Meydan Office Tower, P.O. Box 450676, Dubai, UAE

RECITALS

1 The Owner is the freehold owner of the Land registered under title number K563712 ("the Title") at HM Land Registry.

2 The District Council is the Local Planning Authority for the purposes of the Act for the area in which the Land is situated.

3 The Planning Application has been submitted by the Owner to the District Council seeking permission to undertake the Development and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed the need for which would not be generated but for the Development.

4 The District Council resolved on 7 October 2016 by way of officer delegated authority to grant planning permission to carry out the Development subject to the prior completion of this Deed and the conditions to which the Planning Permission is expressed to be subject.

5 The 1st Mortgagee is the registered proprietor of the charge dated 23 August 2016 and has agreed to enter into this Deed to give its consent to the terms of this Deed.

6 The 2nd Mortgagee is the registered proprietor of the charge dated 23 August 2016 and has agreed to enter into this Deed to give its consent to the terms of this Deed.

[redacted]

NOW THIS DEED WITNESSETH as follows:

1 **DEFINITIONS AND INTERPRETATION**

1.1 In this Deed the following words and phrases shall have the following meanings:

"The Act"	means the Town and Country Planning Act 1990 as amended
"Commencement of the Development"	means the date on which the Development commences on the Land by the carrying out of a material operation pursuant to the Planning Application within the meaning of section 56(4) of the Act save that for the purposes of this Deed and for no other purpose operations consisting of: (a) site clearance (b) demolition work (c) archaeological investigations (d) investigations for the purpose of assessing ground conditions (e) remedial work in respect of any contamination or other adverse ground conditions (f) diversion and laying of services (g) erection of temporary means of enclosure (h) the temporary display of site notices or advertisements shall not amount to commencement and all references to commencement shall be construed accordingly
"the Development"	the development of the Land by the Owner and for the use in the manner as set out in the Planning Application

[redacted]

"the Disputes Resolution Procedure"	means the procedure referred to in clause 13 and set out in the Third Schedule hereto
"the Index"	means the "all items" index figure of the Index of Retail Prices published by the Office of National Statistics or such other index as the District Council may reasonably nominate in the event that the Index of Retail Prices shall no longer be published or its name or methodology be materially altered
"Interest"	interest at 4 per cent above the base rate of HSBC PLC from time to time
"the Land"	means the land known as The Old Sorting Office, Charlton Green, Dover against which this Deed may be enforced as shown more particularly delineated edged red on the Plan and registered at the Land Registry under the Title
"the Plan"	means the plans annexed to this Deed
"the Planning Application"	means the application for planning permission to carry out the Development on the Land and given the District Council's reference number DOV/16/00417
"the Planning Permission"	means the planning permission to be granted by the District Council pursuant to the Planning Application
"Statutory Undertakers"	means statutory undertakers as defined in Article 2 of the Town and Country Planning (General Permitted Development) Order 2015.
"Trigger Date"	means each date an event occurs that triggers a payment of any sum by the Owner and/or the coming into effect of any other obligation under

[redacted]

this Deed

2 CONSTRUCTION OF THIS DEED

2.1 References to any party to this Deed shall include the successors in title to the party and to any person deriving title through or under that party and in the case of the District Council the successors to their respective statutory functions.

2.2 In the absence of any contrary provision any reference to a statute shall include any statutory extension modification or re-enactment for the time being in force and shall include all statutory instruments directions orders regulations plans permissions or byelaws for the time being made issued or given under the statute or deriving validity from it.

2.3 Words importing the masculine gender shall include the feminine and neuter gender and vice versa.

2.4 Words importing persons include companies corporations and firms and vice versa.

2.5 Unless the context otherwise requires words importing the singular shall include the plural and vice versa

2.6 Headings are for ease of reference only and shall not be construed as part of this Deed.

2.7 Reference to any recital clause schedule or paragraph (or any part of them) shall (unless the context otherwise requires) be reference to a recital clause schedule or paragraph (or any part of them) in this Deed.

2.8 Wherever there is more than one person named as a party or where more than one party undertakes an obligation all their obligations shall be enforceable against all of them jointly and/or against each individually unless there is an express provision otherwise.

2.9 Any covenant by a party to this Deed not to do an act or thing shall be deemed to include an obligation not to permit or knowingly suffer such act or thing to be done by any other person.

3 STATUTORY PROVISIONS

3.1 This Deed is made pursuant to Section 106 of the Act and Section 111 of the Local Government Act 1972 and all other enabling powers.

3.2 All the covenants restrictions and requirements obtained herein create planning obligations pursuant to Section 106 of the Act and are entered into by the Owner to the intent that it shall bind the Owner and its successors in title to each and every part of the Land and its/their assigns and shall be enforceable by the District Council against the Owner.

3.3 None of the planning obligations contained in this Deed shall be binding upon:

3.3.1 purchasers, tenants or occupiers of individual completed residential units, of whatever nature, within the Development or their chargees mortgagees or receivers.

3.3.2 Statutory Undertakers holding land for their operational purposes.

[redacted]

3.3.3 a Registered Provider.

4 CONDITIONALITY

4.1 This Deed is conditional on:

4.1.1 the grant of the Planning Permission; and

4.1.2 the Commencement of Development

save for the provisions of clauses 2, 3, 5.2.3, 11, 12, 14 and 15 and the Third Schedule which shall come into effect immediately upon the completion of this Deed.

5 THE OWNER'S COVENANTS

5.1 The Owner covenants with the District Council to observe the restrictions and perform the obligations set out in the First Schedule.

5.2 The Owner covenants with the District Council:

5.2.1 To give notice to the District Council of the date of the Commencement of the Development not less than 7 (seven) days before such date occurs ("the Commencement Notice").

5.2.2 Within 14 (fourteen) days after any Trigger Date to notify the District Council of the date and the event that occurred on the Trigger Date ("the Trigger Notice").

5.2.3 To pay on or before the date of this Deed the District Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, negotiation, completion and registration of this Deed.

6 THE DISTRICT COUNCIL'S COVENANTS

The District Council covenants with the Owner to perform the obligations set out in the Second Schedule.

7 MISCELLANEOUS

7.1 No person shall be liable for a breach of any of the planning obligations or other provisions of this Deed after they have irrevocably parted with all their interest in the Land, but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

7.2 This Deed shall determine and cease to have effect (insofar only as it has not already been complied with) if the Planning Permission is quashed revoked or modified by the District Council pursuant to the Act without the written consent of the Owner or if the Planning Permission expires or is otherwise withdrawn prior to the Commencement of Development.

7.3 If the District Council agrees pursuant to an application by the Owner under Section 73

[redacted]

or 73A of the Planning Act to any variation or release of any condition contained in the Planning Permission or if any such condition is varied or released following an appeal by the Owner under Section 78 of the Planning Act this Agreement shall also apply to any development carried out pursuant to such varied planning permission granted pursuant to section 73 or 73A or 78 of the Planning Act and the covenants or provisions in this Agreement shall be accordingly modified to correspond to any such varied permission

7.4 Any notice consent or approval to be given under this Deed shall be in writing and shall be deemed to be served if delivered personally or sent by pre-paid first class recorded delivery or registered post to the address of the relevant party as described if this Deed or such other address as shall have been notified in writing to the party giving the notice consent or approval and in the case of a notice to be served on the District Council it should be addressed to the Head of Regeneration and Development quoting reference (Application Number).

7.5 Where any approval consent directions action or authority is required to be given by any of the parties hereto such approval consent directions action or authority shall (unless otherwise stated) not be unreasonably delayed or withheld and shall only be effective if given in writing signed by or on behalf of the relevant party and given for the purposes of this Deed.

7.6 If any provision in this Deed shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions of this Deed shall not in any way be deemed thereby to be affected or impaired

7.7 This Deed is a Local Land Charge and shall be registered as such by the District Council.

7.8 Nothing contained or implied in this Deed shall fetter prejudice or affect the rights discretions powers duties and obligations of the District Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

7.9 No variation or modification of this Deed shall be valid unless made by Deed and executed by all the parties or their respective successors.

7.10 Nothing in this Deed is or amounts to or shall be construed as a planning permission or approval.

7.11 All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

7.12 Nothing in this Deed shall prohibit or limit the right to develop any part of the and in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

8 1st and 2nd MORTGAGEE'S CONSENT

8.1 The 1st Mortgagee consents to the completion of this Deed and declares that its interest in the Land shall be bound by the terms of this Deed as if it had been executed and registered as a land charge prior to the creation of the 1st Mortgagee's interest in the Land.

[redacted]

8.2 The 1st Mortgagee shall not be personally liable for any breach of the obligations in this Deed unless committed or continuing at a time when the 1st Mortgagee is in possession of all or any part of the Land.

8.3 The 2nd Mortgagee consents to the completion of this Deed and declares that its interest in the Land shall be bound by the terms of this Deed as if it had been executed and registered as a land charge prior to the creation of the 2nd Mortgagee's interest in the Land.

8.4 The 2nd Mortgagee shall not be personally liable for any breach of the obligations in this Deed unless committed or continuing at a time when the 2nd Mortgagee is in possession of all or any part of the Land.

9 WAIVER

No waiver (whether express or implied) by the District Council or the Owner of any breach or default by another party in performing or observing any of the covenants and terms and conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the District Council or the Owner from enforcing any of the said terms or conditions which they are entitled to enforce or from acting upon any subsequent breach or default in respect thereto by that party.

10 INDEXATION

Any sum which becomes payable under this Deed (other than the District Council's costs payable pursuant to clause 5.2.3) shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable.

11 OVERDUE PAYMENT

In the event of any delay in making payment required under this Deed Interest shall be payable on the amount payable from the date that the relevant payment falls due to the date of actual payment.

12 CHANGE IN OWNERSHIP

The Owner agrees with the District Council to give the District Council immediate written notice of any change in ownership of any of its interests in the Land occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Land or unit of occupation purchased by reference to a scale plan.

[redacted]

13 DISPUTE RESOLUTION

13.1 Any dispute between the parties under the terms of this Deed may be referred to an expert under the Dispute Resolution Procedure set out in the Third Schedule.

13.2 The decision of an expert appointed under the Dispute Resolution Procedure shall be final and binding on all of the parties to the dispute.

14 RIGHT OF INSPECTION

The Owner shall upon reasonable notice (without prejudice to the District Council's statutory rights of entry) permit any person duly authorised by the District Council to enter that part of the Land that is being or has been developed pursuant to the Planning Application to ascertain whether there is or has been any breach of the obligations hereunder and any such person authorised by the District Council shall observe all reasonable site security access and health and safety arrangements PROVIDED THAT in the event of the District Council being concerned with regard to a possible breach it shall use its reasonable endeavours to notify the Owner as soon as reasonably practicable in order that the matter may be discussed with the Owner and any remedial action agreed if appropriate but FURTHER PROVIDED THAT nothing within this clause 14 shall prevent the District Council from exercising any statutory right of entry or inspection or from taking legal proceedings to enforce the obligations set out herein.

15 JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and Wales.

16 THIRD PARTY RIGHTS

A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

17 DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

IN WITNESS whereof this Deed has been duly executed as a deed by the parties on the day and year first before written

[redacted]

FIRST SCHEDULE

The Owner's Covenants

1. **Defined terms**

1.1 In this Schedule, the following words and expressions have the following meanings:

"Development Contribution" means the sum of £92,515.35 made up of the elements set out in the following table:

Contribution Type	Estimated Contribution and Method of Delivery
Primary Education	£68,467.84 (towards White Cliffs Primary School Expansion)
Community Learning	£1666.53 (towards Castle Community Centre)
Library Bookstock	£3121.03
Social Care	£3801.20 (towards Buckland Mill Social Care Project)
Open Space	£22,327 - £12,870 towards improvements to footpaths at Connaught Park, Dover and £9,457 towards fencing to tennis court/informal football pitch area at Connaught Park, Dover.
Habitats Regulations Assessment Mitigation	£2,558.75

2. **Payment of Development Contribution**

2.1 The Owner shall pay the Development Contribution to the District Council within 28 days of the Commencement of Development.

[redacted]

SECOND SCHEDULE

The District Council's Covenants

1. To co-operate insofar as is reasonable with the Owner in the performance of its obligations under this Deed
2. At the Owner's request to return any part of the sums aforesaid which shall not have been used for the purposes set out in the First Schedule within a period of 10 years from the date of the payment provided that the District Council shall not be obliged to return any part of any contribution which has been spent or contractually committed prior to the date of the request
3. At the written request of the Owner the District Council shall provide written confirmation of the discharge of the obligations contained in this Deed when the District Council is satisfied that such obligations have been performed

THIRD SCHEDULE

Dispute Resolution Procedure

1. In the event of any dispute or difference arising between the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.
2. In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to paragraph 1 of this Schedule or as to the appropriateness of the professional body then such question may be referred by either part to the President for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.
3. Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum

[redacted]

practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation.

4. The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten working days.

5. The provisions of this Schedule shall not affect the ability of either party to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.

EXECUTED as a deed by affixing the Common seal of **DOVER DISTRICT COUNCIL** in the presence of:

15,987

[redacted]

Authorised Chief Officer

SIGNED and **EXECUTED** as a DEED by **DOVER STREET PROPERTIES LIMITED** acting by its sole Director in the presence of:

[redacted]

.....

Signature of Director

[redacted]

Signed and Delivered as a deed for and on behalf of FBSE FINANCE LIMITED by a [redacted]
duly authorised Attorney in the presence of:-

Witness' Signature [redacted]

Name... [redacted]

Address. [redacted]

Occupation... FINANCIAL ACCOUNTANT.

Signed and Delivered as a deed for and on behalf of [redacted]
STERLING INVESTMENTS LLC-FZ by a duly authorize[redacted]
Attorney in the presence of:-

Witness' Signature [redacted]

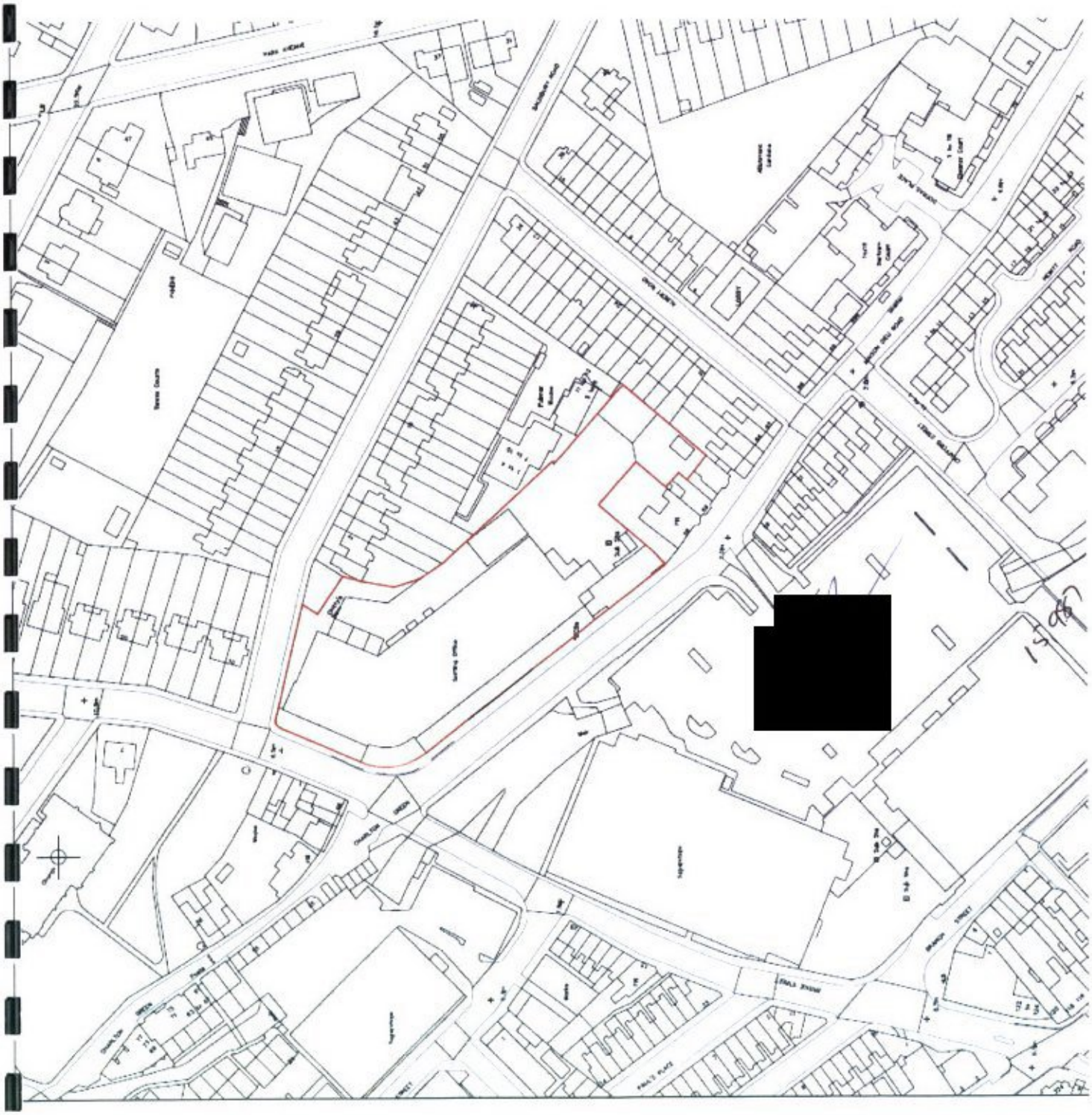
Name. [redacted]

Address [redacted]

Occupation Manager

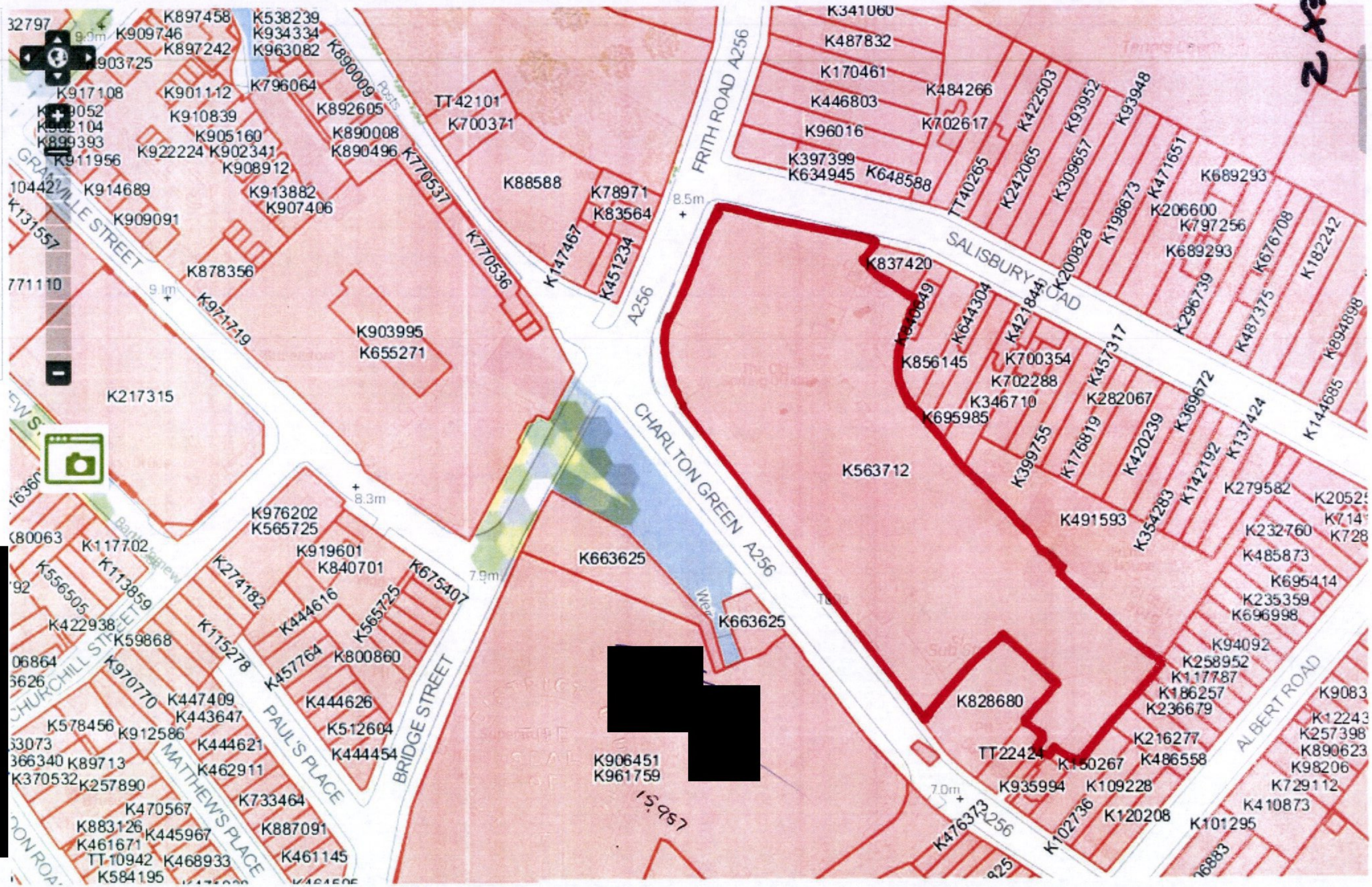
DUBAI - U.A.E.

Annex 1



[redacted]

[redacted]

indregistry.gov.uk/mapsearch/addressSearch

ANNEX 2