

DATED

12 OCTOBER 2016

MAIDSTONE BOROUGH COUNCIL

-and -

AARON PAUL STONE

-and-

NATIONAL WESTMINSTER BANK PLC

DEED OF AGREEMENT PURSUANT TO
SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990
RELATING TO THE DEVELOPMENT OF
LAND AT WIERTON PLACE WIERTON ROAD BOUGHTON MONCHELSEA
MAIDSTONE KENT ME17 4JW AND LAND ON THE EAST SIDE OF WIERTON PLACE
WEIRTON HILL BOUGHTON MONCHELSEA IN THE BOROUGH OF MAIDSTONE

Planning Application Ref No 11/0511

Listed Building Consent Application Ref No 11/0512

Head of Mid Kent Legal Services
Maidstone Borough Council
Maidstone House
King Street
Kent ME15 6JQ
Kent ME15 6JQ
Ref.: M008067



THIS DEED OF AGREEMENT is dated the 12TH day of OCTOBER 2016

BETWEEN

1) **MAIDSTONE BOROUGH COUNCIL** of Maidstone House King Street Maidstone Kent ME15 6JQ (the "**Council**") and

2) **AARON PAUL STONE** of 5 Parris Head Mews George Lane Rochester Kent ME1 1NP (the "**Owner**") and

3) **NATIONAL WESTMINSTER BANK PLC** (Company Registration No 00929027) whose registered office is at 135 Bishopsgate London EC2M 3UR (the "**Mortgagee**") and whose address for service is Credit Documentation Po Box 339, Manchester M60 2AH

RECITALS

- A. The Council is the local planning authority for the area within which the Land is situated
- B. An application (Ref No 11/0511) was made to the Council for the Development together with an application for listed building consent (Ref No 11/0512) to undertake works to the Grade II Listed Buildings and the Garden Building
- C. The Council by its Planning Committee at its meeting held on 28 April 2016 resolved to grant Planning Permission for the Development and listed building consent subject to conditions and the prior completion of this Deed (without which planning permission and listed building consent would have been refused) making provision for *inter alia* planning obligations
- D. The Owner is a person interested in the Land by virtue of being the registered proprietor with freehold title absolute of the Land as set out in Schedule 1
- E. The Mortgagee is a person interested in the Land by virtue of being the proprietor of a registered charge on the Land as set out in Schedule 1
- F. Access to the Land is gained via the Access Road which is not within the ownership of the Owner but over which the Owner may pass or repass with or without vehicles for the purposes of access only This Access Road is registered at the Land Registry under title number K535658 It is not the intention of this Deed to bind the proprietors (or the successors in title) of the Access Road nor is it the intention of the Council to

enforce the terms of this Deed against the proprietors (or their successors in title) of the Access Road

- G. The Grade II Listed Buildings (particularly the Glasshouses & Garden Wall) are in disrepair and are in need of restoration failing which these national assets may be lost. But for this state of affairs elements of the Development that would otherwise be considered harmful are considered acceptable because it would facilitate (or 'enable') the restoration of the Grade II Listed Buildings. The restoration works to the Grade II Listed Buildings will be carried out in a phased manner with Occupation being strictly controlled with priority being given to the restoration of the Glasshouses & Garden Wall being carried out in Phase 1 before Occupation of any of the new Dwellings within the Development with the balance of the restoration works to the remainder of the Grade II Listed Buildings being Practically Completed before Occupation of Phases 4 and 5.
- H. The restoration works are to be secured by the Bond or the deposit of monies which can be called on by the Council in the event of the Owner failing to deliver the restoration works to the Grade II Listed Buildings.
- I. In order to preserve the Grade II Listed Buildings following their restoration the Grade II Listed Buildings with thereafter be managed, monitored and maintained in accordance with a Council approved Management Plan in perpetuity.
- J. Whilst the Council accepts that there may be occupational tenancies in that part of the Development comprised in Phase 3 and accepts that these tenants may remain in occupation whilst works are being carried out on the Development, the Owner undertakes not to commence development works to Phase 3 unless and until the occupational tenancies comprised in Phase 3 have been determined.
- K. The Parties agree that the obligations contained in this Deed are necessary to make the Development acceptable in planning terms, directly relate to the development and fairly and reasonably relate in scale and kind to the Development in accordance with Regulation 122 of the Community Infrastructure Regulations 2010.
- L. The Owner and the Mortgagee have agreed to enter into this Deed to regulate the Development and to give effect to the terms of the resolution of the Council's Planning Committee hereinbefore recited which Deed may also secure other planning benefits.

- M. The Council is a Local Authority for the purposes of Section 111 of the Local Government Act 1972 and is satisfied that the arrangements made in this Deed will facilitate be conducive to and be incidental to the Council's functions
- N. This Deed is made pursuant to Section 106 of the 1990 Act and to the extent that any obligations contained in this Deed are not planning obligations for the purposes of the 1990 Act they are entered into by the Council pursuant to the powers contained in section 111 of the Local Government Act 1972 sections 12 and 93 of the Local Government Act 2003 section 1 of the Localism Act 2011 and all other powers so enabling

OPERATIVE PROVISIONS

IT IS AGREED as follows

1. DEFINITIONS

- 1.1 Unless the context otherwise requires where in this Deed the following defined terms and expressions are used they shall have the following respective meanings

"1990 Act" means the Town and Country Planning Act 1990 (as amended)

"Access Road" means that part of the Land hatched black on the Plan as more fully described under Land Registry title no K535658 and tinted pink and tinted blue on the title plan annexed hereto at Appendix 2 and entitled "Appendix 2: Access Road"

"Application" means the application for full planning permission submitted by Weirton Place Homes Ltd to the Council to carry out the Development at the Land and given the registered reference number 11/0511 together with the application for listed building consent under registered reference number 11/0512

"Bank Account" means a bank account that conforms to the requirements of Paragraph 1.2 of Schedule 2

- “Bond”** means a bond in a form approved by the Council in the sum of £614,069.00 from a reputable surety to guarantee the delivery and Completion of the Glasshouses & Garden Wall Works and the Main House Works by the Owner to the Council’s satisfaction substantially in the form of which is attached at Appendix 6
- “Commencement”** means the carrying out of a material operation as defined in section 56(4) of the 1990 Act which is not a Preparatory Operation and the words **“Commence”** and **“Commenced”** shall be construed accordingly
- “Communal Areas”** means those communal areas within the Grade II Listed Buildings as shown on the plan approved pursuant to Paragraph 1.3 of Schedule 3
- “Deed”** means this deed of agreement
- “Development”** means the “change of use of existing nightclub and apartments to 1 dwelling and 6 apartments, including extensions; conversion of the existing ball room to 2 dwellings, including extensions; demolition of existing garage block and erection of 4 terraced properties; conversion of existing glasshouses to 4 dwellings, including extensions; and the erection of 5 detached dwellings to the north and south of the access track, together with associated access and landscape works” on the Land as set out in the Application pursuant to the Planning Permission
- “Dwelling”** means a residential unit to be erected on the Land pursuant to the Planning Permission
- “Garden Building”** means the ‘garden building to the north-west of Wierton Place’ within the Development (and also referred to as the ‘Ice House’ or ‘Pantry Building’) and which is Grade

II Listed for its special architectural or historic interest and identified in the National Heritage List for England under list entry no. 1389638 (1415/0/10005 dated 10 January 2002) and shown for identification purposes only edged red within the area edged and hatched green on the Phasing Plan

“Grade II Listed Buildings”

means

1. the Glasshouses & Garden Wall
2. the Main House

within the Development

“Glasshouses & Garden Wall”

means the ‘greenhouses about 30 metres north of Wierton Place and attached garden wall’ within the Development and which are Grade II Listed for their special architectural or historic interest and identified in the National Heritage List for England under list entry no. 1373870 (1415/2/68 dated 25 March 1987) and shown for identification purposes only edged red within the area edged orange on the Phasing Plan

“Glasshouses & Garden Wall Method Statement”

means the method statement attached to this Deed as Appendix 4

“Glasshouses & Garden Wall Works”

means the restoration works to be carried out to the Glasshouses & Garden Wall as detailed in the Glasshouses & Garden Wall Method Statement

“Land”

means the land against which this Deed may be enforced as detailed in Schedule 1 and shown for identification purposes only edged red on the Plan **SAVE THAT** this Deed will not be enforced against that part of the Land comprising the Access Road

“Main House”

means ‘Wierton Place’ (also known as the ‘manor house and extension’) within the Development and which is Grade II Listed for its special architectural or

historic interest and identified in the National Heritage List for England under list entry no. 1389637 (1415/0/10004 dated 10 January 2002) and shown for identification purposes only edged red within the areas edged blue on the Phasing Plan

“Main House Method Statement”

means the method statement attached to this Deed as Appendix 5

“Main House Works”

means the restoration works to be carried out to the Main House as detailed in the Main House Method Statement

“Management Plan”

means a management plan submitted to and approved by the Council in accordance with Schedule 3 to secure the long-term preservation of the external fabric of and the Communal Areas within the Grade II Listed Buildings by setting up a scheme which will (1) ensure the long-term co-ordinated management of the Grade II Listed Buildings and (2) secure appropriate long term ongoing monitoring and maintenance of (and where necessary carry out such further restoration works as may be required to) the external fabric of and Communal Areas within the Grade II Listed Buildings

“Managing Agent”

means an insurance backed suitably qualified firm of independent chartered structural engineers and/or chartered quantity surveyors registered with the Royal Institute of Chartered Surveyors with knowledge and expertise in respect of the maintenance of historic assets as the managing agent of the Grade II Listed Buildings as duly appointed by the management company as its agent

“National Heritage List for England”

means the list compiled by the Secretary of State pursuant to section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990 maintained by

Historic England

“Occupy”

means taking beneficial occupation of any part of the Development for a purpose authorised by the Planning Permission **BUT** not including occupation by personnel engaged in construction fitting out finishing or decoration of that building nor occupation in relation to site and building security operations or marketing and **“Occupation”** or **“Occupied”** shall be construed accordingly

“Parties”

means the Owner the Mortgagee and the Council as the context so requires and **“Party”** means any one of them

“Phase”

means a phase of the Development as shown on the Phasing Plan comprising Phase 1 Phase 2 Phase 3 Phase 4 and/or Phase 5 (as the context so dictates)

“Phase 1”

the “Conservatory Conversion” edged orange on the Phasing Plan comprising

- the Glasshouses & Garden Wall Works
- the demolition of the existing outbuildings on the Land to the rear of the Glasshouses & Garden Wall (currently being used for workshops/industrial works) and the construction of four 4 bedroom terraced Dwellings within which the restored glasshouses pursuant to the Glasshouses and Garden Wall Works will be incorporated as conservatories/garden rooms identified as units 10-13 (inclusive) on the Phasing Plan

“Phase 2”

the “New Build” edged and hatched green on the Phasing Plan comprising the demolition of the existing bungalow and garage block on the Land and the replacement thereof with four 3 bedroom terraced Dwellings identified as units 16-19 (inclusive) on the

Phasing Plan and the retention of the existing Garden Building being incorporated into unit 16 on the Phasing Plan

“Phase 3”

the “Main House Conversion” edged blue on the Phasing Plan comprising

- the Main House Works
- the conversion and restoration of the existing nightclub within the Main House (incorporating the ground floor and basement) to its original Victorian layout to form a one x 5 bed Dwelling identified as unit 3 on the Phasing Plan
- the conversion of the existing 12 mixed one bed and studio flats within the three storey addition to the Main House to six 2 bed apartment Dwellings identified as units 4-9 (inclusive) on the Phasing Plan

“Phase 4”

The “Ball Room Conversion” edged green on the Phasing Plan comprising the conversion of the existing Victorian ballroom into two 3 bed semi-detached Dwellings identified as units 1 and 2 on the Phasing Plan

“Phase 5”

The “Enabling Development” edged and hatched blue on the Phasing Plan comprising the construction of five 4 bed detached Dwellings identified as units 20 – 24 (inclusive) on the Phasing Plan

“Phasing Plan”

means the plan attached to this Deed as Appendix 3 and entitled “Appendix 3 Phasing Plan” showing *inter alia* the final Development the location of the Grade II Listed Buildings and overall phasing of the Development

“Plan”

means the plan entitled “Appendix 1: Plan” annexed as

Appendix 1

“Planning Permission” means planning permission for the Development to be granted pursuant to the Application generally in the form of the draft Decision Notice annexed as Appendix 7

“Practical Completion” means

1. in the case of the Glasshouses & Garden Wall Works shall mean the issue of a certificate of completion by an insurance backed suitably qualified (i) independent chartered structural engineer or chartered quantity surveyor and (ii) an independent heritage adviser certifying that the Glasshouses & Garden Wall Works have been completed to their joint satisfaction in accordance with the Glasshouses & Garden Wall Method Statement
2. in the case of the Main House Works shall mean the issue of a certificate of completion by an insurance backed suitably qualified (i) independent chartered structural engineer or chartered quantity surveyor and (ii) an independent heritage adviser certifying that the Main House Works have been completed to their joint satisfaction in accordance with the Main House Method Statement
3. in all other cases means the issue of one or more certificate(s) of practical completion (save for snagging works) of any works carried out pursuant to this Deed or as the context may allow any part section or phase thereof by an independent architect chartered structural engineer or chartered quantity surveyor chartered surveyor or other certifying professional (as the case may be) and the terms **“Practically Complete”** and **“Practically Completed”** and **“Completion”** and cognate expressions shall be construed accordingly and

Occupation of any Dwelling (**SAVE FOR** the continued Occupation of the existing Dwellings in the Main House) in a Phase shall be determinative of Practical Completion even in the absence of a certificate

“Preparatory Operation” means an operation or item of work of or connected with or ancillary to

- a) archaeological investigation
- b) exploratory boreholes and trial pits
- c) site clearance (but excluding demolition of any building or structure)
- d) diversion decommissioning and/or laying of services for the supply or carriage of water sewerage gas electricity telecommunications or other media or utilities
- e) the erection of fences and hoardings around the Land and
- f) construction of temporary access and service roads

“Reserve Fund” means the monies held and used in accordance with paragraph 5.6 of Schedule 3

“Section 106 Monitoring Officer” means the Council's section 106 Monitoring Officer or such other officer as may be lawfully designated by the Council for the purposes of discharging such duties and functions

“Service Charge Account” means the bank account held pursuant to paragraph 5.4.4 of Schedule 3

“Statutory Undertakers” means any public gas transporter water or sewerage undertaker electricity supplier or public

telecommunications operator

“VAT” means Value Added Tax as referred to in the Value Added Tax Act 1994 (or any tax of a similar nature which may be substituted for or levied in addition to it)

“Working Day” means a day which is not a Saturday Sunday bank holiday in England (as defined in paragraph 1 of Schedule 1 to the Banking and Financial Dealings Act 1971) or other public holiday

2. INTERPRETATION

- 2.1 A reference to any Clause Plan Paragraph Schedule Appendix or Recital such reference is a reference to a Clause Plan Paragraph Schedule Appendix or Recital in (or in the case of plans attached to) this Deed
- 2.2 The headings in this Deed are for convenience only and shall not be deemed to be part of or taken into consideration in the interpretation of this Deed
- 2.3 Words importing the singular include the plural and vice versa
- 2.4 Words importing the masculine gender include the feminine and neuter genders and vice versa
- 2.5 Words denoting actual persons include companies corporations and firms and all such words shall be construed as interchangeable in that manner
- 2.6 Reference to any Party to this Deed shall include the successors in title to that Party and to any person deriving title through or under that Party and in the case of the Council shall include any successor to its statutory functions
- 2.7 Wherever there is more than one person named as a Party and where more than one Party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individual severally
- 2.8 Words denoting an obligation on a Party to do any act matter or thing include an obligation to procure that it be done and words placing a Party under a restriction include an obligation not to cause permit or suffer any infringement of the restriction

2.9 References in this Deed to statutes bye-laws regulations orders and delegated legislation shall include any statute bye-law regulation order delegated legislation plans regulations permissions and directions amending re-enacting consolidating replacing or made pursuant to the same as current and in force from time to time

2.10 In the event of any conflict between the terms conditions and provisions of this Deed and any document attached hereto or referred to herein the terms conditions and provisions of this Deed shall prevail

2.11 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

3. LEGAL BASIS

3.1 This Deed is made pursuant to section 106 of the 1990 Act section 111 of the Local Government Act 1972 sections 12 and 93 of the Local Government Act 2003 section 1 of the Localism Act 2011 and any other enabling powers

3.2 The covenants obligations restrictions and requirements imposed upon the Parties by this Deed

3.2.1 are entered into pursuant to the provisions of section 106 of the 1990 Act

3.2.2 are planning obligations for the purposes of section 106 of the 1990 Act

3.2.3 relate to the Land

3.2.4 are entered into with intent to bind the Owners and the Mortgagee's interest(s) in the Land as set out in Schedule 1 and each and every part thereof into whosoever hands the same may come

3.2.5 are enforceable by the Council as local planning authority

3.2.6 are executed by the respective Parties as a deed

3.3 To the extent that any obligations contained in this Deed are not planning obligations within the meaning of the 1990 Act they are entered into by the Council pursuant to the powers contained in section 111 of Local Government Act 1972 sections 12 and 93 of the Local Government Act 2003 Section 1 of the Localism Act 2011 and all

other powers so enabling

4. **CONDITIONALITY**

- 4.1 With the exception of this Clause 4 and Clauses 1 2 3 5.2 5.3 and 7 to 22 inclusive (which take effect immediately on the date of this Deed) this Deed is conditional on the grant and issue of the Planning Permission

5. **COVENANTS AND OBLIGATIONS OF THE OWNER**

- 5.1 The Owner covenants with the Council to perform the obligations and observe the relevant restrictions contained herein
- 5.2 The Owner shall permit the Council and its authorised employees and agents upon reasonable notice to enter the Land at all reasonable times for the purposes of verifying whether or not any obligations arising under this Deed have been performed or observed **SUBJECT TO** compliance by the Council and its authorised employees and agents at all times with the Owner's site regulations and requirements and health and safety law and good practice
- 5.3 The Owner covenants to pay before completion of this Deed the Council's legal and administrative costs and disbursements in connection with the negotiation preparation and execution of this Deed whether or not this Deed is delivered in accordance with Clause 22

6. **COVENANTS AND OBLIGATIONS OF THE COUNCIL**

- 6.1 The Council covenants with the Owner that subject to the Owner carrying out the Owner's obligations as set out herein it will perform the Council's covenants as set out herein

7. **MORTGAGEE'S CONSENT**

- 7.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Land shall be bound by the obligations contained in this Deed and that the security of its charge over the Land shall take effect subject to this Deed **PROVIDED THAT** the Mortgagee shall have no liability under this Deed unless it takes possession of the Land or any part of the Land in which case the Mortgagee will be bound by the provisions of this Deed as a person deriving title from the Owner

8. RELEASE AND EXCLUSIONS

8.1 Save for Clause 5.2 the obligations contained in this Deed shall not be binding upon nor enforceable against

8.1.1 any Statutory Undertaker with any existing interest in any part of the Land or acquires an interest in any part of the Land for the purpose of the supply of electricity gas water or sewerage drainage or public telecommunication services

8.1.2 the Owner and the Mortgagee (or any person deriving an interest in the Land from such Party) after they have disposed of their interest in the Land (or in the event of a disposal of part in relation to the part disposed of) but not so as to release the Owner and the Mortgagee from any antecedent breach non-performance or non-observance of their obligations or other provisions of this Deed arising prior to parting with such interest

9. DETERMINATION OF THE PLANNING PERMISSION

9.1 Save for Clause 5.3 this Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed revoked or otherwise withdrawn or expires prior to Commencement of Development without the consent of the Owner

9.2 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission or modification variation or amendment thereof) granted after the date of this Deed

10. DISPUTES AND EXPERT DETERMINATION

10.1 Without prejudice to the rights of the Council to take immediate alternative action any dispute arising under this Deed shall be referred at the instance of any Party for determination by a single expert whose decision shall (save in the case of manifest error or fraud) be final and binding on the parties

10.2 The following provisions and terms of appointment shall apply to such disputes

10.2.1 if the dispute relates to

10.2.1.1 transport or highway works engineering demolition or construction works a chartered civil engineer being a member of the Institution of Civil Engineers (having not less than 15 years' relevant experience in the public or private sector) agreed by the parties to the dispute but in default of agreement appointed at the request of any of the parties by or on behalf of the President from time to time of the Institution of Civil Engineers

10.2.1.2 any building within the Development or any similar matter a chartered surveyor (having not less than 15 years' relevant experience) agreed by the parties to the dispute but in default of agreement appointed at the request of either party by or on behalf of the President from time to time of the Royal Institution of Chartered Surveyors

10.2.1.3 financial matters or matters of accounting usually and properly within the knowledge of a chartered accountant a chartered accountant (having not less than 15 years' relevant experience) agreed by the parties to the dispute but in default of agreement appointed at the request of either party by or on behalf of the President from time to time of the Royal Institute of Chartered Accountants in England and Wales

10.2.1.4 any legal requirement or interpretation or other matter regarding this Deed the same shall be referred to Counsel of at least 15 years' experience in such matters who shall be appointed in default of agreement between the Owner and the Council by the President of the Bar Council for England and Wales or his deputy

in all other cases the expert shall be an independent and suitable person holding appropriate professional qualifications with least 15 years' post qualification experience in the subject matter of the dispute

10.2.2 The expert shall be an independent and suitable person holding appropriate professional qualifications with least 15 years' post qualification experience in the subject matter of the dispute

- 10.2.3 The expert shall be agreed between the parties or in the absence of such agreement appointed by the President (or equivalent person) for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and in the absence of agreement as to whom to appoint as the expert or as to the appropriate professional body within 10 Working Days after a written request by one party to the other to agree to the appointment of an expert then the question of the appropriate qualifications or professional body shall be referred to a solicitor to be appointed by the President for the time being of the Law Society of England and Wales on the application of either party and such solicitor shall act as an expert and his decision as to the expert or as to the appropriate professional body shall be final and binding on the parties to the dispute or difference 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 in equal shares
- 10.2.4 The expert shall be required to give notice of his appointment to each of the parties to the dispute
- 10.2.5 The persons calling for the determination shall make written submissions together with any supporting material to the expert and the other parties within 10 Working Days of the date of notification of the expert's appointment pursuant to Clause 10.2.4
- 10.2.6 The other parties shall have 10 Working Days from the receipt of such written submission to make counter written submissions together with any supporting material
- 10.2.7 If exceptionally a party feels that further submission should be taken into account the expert may accept such late submission provided before deciding whether exceptionally to accept further submissions the applying party shall provide and the expert will require
- 10.2.7.1 an explanation as to why it was not submitted as part of the originating submission or counter submission and
- 10.2.7.2 an explanation of how and why the material is relevant and

10.2.7.3 the opposing party's views on whether it should be accepted

AND the expert will refuse to accept further submissions unless fully satisfied that

10.2.7.4 it is not covered in the submissions already received and

10.2.7.5 it is directly relevant and necessary for his decision and

10.2.7.6 it would not have been possible for the party to have provided the submission with the originating submission or counter submission (as the case may be)

AND the expert will notify the parties of his decision within 5 Working Days of receipt of the late submission

AND where such further submission is permitted

10.2.7.7 the other parties shall be entitled to make written submission within 10 Working Days of the date of notification of the expert's decision to allow the late submission

10.2.7.8 the expert may take this into account when making any cost order

10.2.8 Allowing for the nature and complexity of the dispute if the expert is of the opinion that he is likely to need to test the submissions by questioning or to clarify matters arising out of the submissions the expert may call for the dispute to be heard in an informal round table discussion led by the expert who shall identify the issues for discussion based on the submissions received

10.2.9 Unless otherwise agreed between the parties to the dispute the expert shall disregard any representations made out of time

10.2.10 Any expert howsoever appointed shall be subject to the express requirement that a decision be reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 20 Working Days

10.2.10.1 after the conclusion of any hearing that takes place or

10.2.10.2 after the expert has received the representations under Clause 10.2.6 or 10.2.7.7 (as the case may be) or if none the expiry of the period referred to in Clause 10.2.6 or 10.2.7.7 (as the case may be)

10.2.11 The expert's decision shall be in writing and give reasons for his decision

10.2.12 The expert's fees 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

11. NOTICES

11.1 Without prejudice to any other notice required to be given pursuant to the terms of this Deed the Owner covenants that it shall

11.1.1 provide the Council with no less than 20 Working Days prior notice of the intended date of Commencement of Development and the Owner shall not Commence Development unless and until this notice has been provided to the Council

11.1.2 notify the Council promptly and in any event within 5 Working Days of the actual date of Commencement of Development

11.1.3 provide the Council with no less than 20 Working Days prior notice of the intended date of Occupation of the first Dwelling in each of the five Phases and the Owner shall not Occupy any Dwelling in each Phase unless and until this notice has been provided to the Council

11.1.4 provide the Council with no less than 20 Working Days prior notice of the intended date of Occupation of the 8th Dwelling and the Owner shall not Occupy the 8th or any subsequent Dwelling unless and until this notice has been provided to the Council

11.1.5 notify the Council promptly and in any event within 5 Working Days of the actual date of Occupation of

11.1.5.1 each and every Phase

11.1.5.2 the 8th Dwelling

11.1.6 provide a copy of the Certificate of Practical Completion of

11.1.6.1 the Glasshouses & Garden Wall Works

11.1.6.2 the Main House Works

11.1.6.3 each and every Phase

11.2 Any notice approval consent certificate direction authority agreement action expression of satisfaction or other similar communication to be given under this Deed must be in writing and shall be delivered by hand or sent by pre-paid first class post or other next Working Day delivery service marked for the attention of the person and copied to the person(s) (as the case may be) identified below **SAVE THAT** any of the Parties may by written notice notify the other Parties of an alternative address (which address must be based in England or Wales) for the service of subsequent notices or other written communications in which case those details shall be substituted for the details provided below

The Council Maidstone Borough Council

Address **THE HEAD OF PLANNING & DEVELOPMENT**
Maidstone Borough Council
Maidstone House
King Street
Maidstone
Kent
ME15 6JQ

Reference 11/0511 – Wierton Place, Wierton Road,
Boughton Monchelsea, Maidstone

With a copy to The Section 106 Monitoring Officer

The Owner **AARON PAUL STONE**

Address 5 Parrs Head Mews
George Lane
Rochester
Kent ME1 1NP

The Mortgagee **NATIONAL WESTMINSTER BANK PLC**

Address Credit Documentation
P O Box 339
Manchester
M60 2AH

11.3 Any such notice or other communication given in accordance with this Clause shall conclusively be deemed to have been received

11.3.1 if delivered by hand on signature of a delivery receipt provided that if delivery occurs before 09h00 on a Working Day the notice will be deemed to have been received at 09h00 on that day and if delivery occurs after 17h00 on a Working Day or on a day which is not a Working Day the notice will be deemed to have been received at 09h00 on the next Working Day or

11.3.2 if sent by pre-paid first class post or other next Working Day delivery service within the United Kingdom at 09h00 on the day 2 Working Days after the date of posting

11.4 Any notice or request by the Owner for approval consent certificate direction authority agreement action expression of satisfaction or other similar communication required pursuant to this Deed shall cite the Clause or Paragraph of the relevant Schedule to this Deed to which such notice or request relates

11.5 This Clause does not apply to the service of any proceedings or other documents in any legal action or where applicable any arbitration or other method of dispute resolution

12. LOCAL LAND CHARGE

12.1 This Deed is a local land charge and shall be registered by the Council as such

12.2 Where in the opinion of the Owner any of the provisions of this Deed have been satisfied the Owner shall be entitled to apply to the Council for confirmation to that effect and (subject to the payment of the Council's costs and charges in connection therewith) upon the Council being satisfied that the relevant obligation or covenant (as the case may be) has been satisfied the Council shall as soon as is reasonably practicable issue a written confirmation to such effect to the Owner

12.3 The Council shall upon the written request of the Owner (and subject to the payment of the Council's costs and charges in connection therewith) at any time after all the obligations of the Owner under this Deed have been performed or otherwise discharged and the Council being satisfied that this Deed no longer serves a useful purpose as soon as is reasonably practicable cancel all entries made in the local land charges register in respect of this Deed

13. SUCCESSORS IN TITLE

13.1 The Owner enters into the obligations set out in this Deed for itself and its successors in title for the benefit of the Council to the intent that the obligations in this Deed shall be enforceable not only against the Owner but also against the successors in title of the Owner and any person claiming through or under the Owner an interest or estate in the Land or any part thereof

14. POWERS OF THE COUNCIL

14.1 Nothing contained or implied in this Deed shall fetter prejudice restrict or affect the rights discretions powers duties responsibilities and obligations of the Council under all and any legislative instrument including statutes by-laws statutory instruments orders and regulations for the time being in force in the exercise of their functions as a local authority

15. SEVERABILITY

15.1 If any provision (or part thereof) of this Deed shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions (or such part of the provisions as is still enforceable) shall not in any way be deemed thereby to be affected impaired or called into question

16. RIGHTS OF THIRD PARTIES

16.1 The Parties intend that no terms of this Deed may be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to this Deed save for the successors in title to the Parties and in the case of the Council the successor to its statutory functions

17. CHANGE OF OWNERSHIP AND NEW INTEREST

17.1 The Owner warrants that

- 17.1.1 they have full authority to enter into this Deed
 - 17.1.2 no person other than the persons identified in Schedule 1 and the proprietors of the Access Land and the occupational tenancies referred to in Paragraph 2.4.1 of Schedule 2 has any legal or equitable interest in the Land
 - 17.1.3 they know of no impediment to the validity of this Deed
 - 17.1.4 there is no subsisting breach of the terms of any mortgage or legal charges secured on the Land and that (if applicable) all payments due to any mortgagee or chargee are paid as at the date of this Deed
 - 17.1.5 they shall make good ^{**}any loss to the Council as a result of a breach of this warranty within ten (10) Working Days of a request to do so
- 17.2 The Owner shall give the Council immediate written notice of any conveyance transfer lease assignment mortgage or other disposition entered into in respect of all or any part of the Land or 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
- 17.2.1 the name and address of the person to whom the disposition was made (and in the case of a company the full name and registered office address) and
 - 17.2.2 the nature and extent of the interest disposed of by reference to a plan

18. WAIVER

- 18.1 No waiver (whether expressed or implied) by the Council of any breach or default or delay in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or acting upon any subsequent breach or default and no single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy

19. VAT

- 21.1 Each amount stated to be payable by one Party to the other under or pursuant to this

Deed is exclusive of VAT

- 21.2 If any VAT is at any time chargeable on any supply made by any Party under or pursuant to this Deed the Party making the payment shall pay the other an amount equal to that VAT as additional consideration subject to receipt of a valid VAT invoice

20. AGREEMENTS AND DECLARATIONS

- 22.1 The Parties agree that

22.1.1 nothing in this Deed constitutes a planning permission or a listed building consent or an obligation to grant planning permission or listed building consent and

22.1.2 nothing in this Deed grants planning permission listed building consent or any other approval consent or permission required from the Council in the exercise of any other statutory function

21. JURISDICTION

- 23.1 This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England

- 23.2 It is hereby agreed that the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales

22. DELIVERY

- 22.1 This Deed is delivered on the date written at the start and the provisions of this Deed (other than this Clause and Clause 5.3 which shall be of immediate effect) shall be of no effect until this Deed has been dated

SCHEDULE 1: THE LAND

The land against which this Deed is enforceable comprises all that land and premises situate at Wierton Place Wierton Road Boughton Monchelsea Maidstone Kent ME17 4JW and the land on the east side of Wierton Place Weirton Hill Boughton Monchelsea Maidstone Kent and shown for the purposes of identification only edged red on the Plan and which is more

fully described in the title held at the Land Registry of which

1. The Owner is the registered proprietor with freehold title absolute of all the freehold land and premises situate at Wierton Place Wierton Road Boughton Monchelsea Maidstone Kent ME17 4JW and registered at the Land Registry under title number K346300
2. The Owner is the registered proprietor with freehold title absolute of all the freehold land and premises situate at the land on the east side of Wierton Place Weirton Hill Boughton Monchelsea Maidstone Kent and registered at the Land Registry under title number K542059
3. The Mortgagee is the proprietor of a registered charge dated 1 July 2009 on both
 - 3.1. title number K346300 of the land and premises situate at situate at Wierton Place Wierton Road Boughton Monchelsea Maidstone Kent ME17 4JW
 - 3.2. title number K542059 land and premises situate at the land on the east side of Wierton Place Weirton Hill Boughton Monchelsea Maidstone Kent

SCHEDULE 2: RESTORATION WORKS TO GRADE II LISTED BUILDINGS

1. Security

1.1. Prior to Commencement of Development the Owner shall either (at the Owner's election and cost)

1.1.1. deposit the sum of £614,069.00 in a Bank Account and provide the Council with the details thereof or

1.1.2. enter into and provided the Council with a certified copy of the Bond (the form of which shall first have been approved by the Council prior to completion of the Bond)

AND the Owner shall not Commence Development unless and until the Owner has complied with the requirements of this Paragraph

1.2. Where the Owner elects to deposit the sum of £614,069.00 into the Bank Account pursuant to Paragraph 1.1.1 of this Schedule then the said account shall operate as follows

1.2.1. the account shall be held at a clearing bank

1.2.2. the account shall be in the name of Maidstone Borough Council

1.2.3. the account shall be an interest-bearing account and interest earned therefrom shall be credited to the account

1.2.4. the Council shall be entitled to recover from the account such sums contemplated by Paragraph 3 of this Schedule

1.2.5. Subject to Paragraph 1.2.4 of this Schedule the Council shall release sums from the account in accordance with the terms of Paragraph 1.3 of this Schedule

1.2.6. the Council shall be entitled to recover from the account any expenses it incurs in administering the account

1.2.7. the Council will promptly comply with any reasonable requests made by or

on behalf of the Owner as to the current standing of the account

1.3. The Council shall release sums from the Bank Account as follows

1.3.1. £491,617.00 as soon as is reasonably practicable following receipt of the certificate of Practical Completion of the Glasshouses & Garden Wall Works

1.3.2. the balance (including any accrued interest) as soon as is reasonably practicable following receipt of the certificate of Practical Completion of the Main House Works

2. Phasing

2.1. The Owner covenants that it shall carry out the Development strictly in accordance with the Phasing Plan and the requirements of this Schedule

2.2. **FOR THE AVOIDANCE DOUBT** all Phases may be developed at the same time but Occupation of and the timing of Occupation of the Development shall occur strictly in accordance with the terms of this Schedule

2.3. The Owner covenants that

2.3.1. it shall carry out the Glasshouses & Garden Wall Works

2.3.2. it shall carry out the Glasshouse & Garden Wall Works in accordance with the Glasshouses & Garden Wall Method Statement prior to Occupation of any Dwelling

2.3.3. no Dwelling shall be Occupied unless and until

2.3.3.1. the Glasshouses & Garden Wall Works have been Practically Completed in accordance with the Glasshouses & Garden Wall Method Statement

2.3.3.2. a copy of the certificate of Practical Completion of the Glasshouses & Garden Wall Works has been submitted to the Council **SAVE THAT** the certificate of Practical Completion shall not be issued unless and until the Council has inspected the works and authorised the release of the certificate of

Practical Completion **AND FOR THE AVOIDANCE OF DOUBT** any authorisation by the Council shall not be construed as an approval of the works undertaken

2.4. The Owner covenants that

2.4.1. it shall not Commence Development of Phase 3 unless and until the occupational tenancies comprised in Phase 3 have been determined **AND FOR THE AVOIDANCE OF DOUBT** nothing in this Paragraph 3.6 shall prevent the continued occupation of the existing Dwellings in the Main House until the Commencement of Development of Phase 3

2.4.2. it shall carry out the Main House Works

2.4.3. it shall carry out the Main House Works in accordance with the Main House Method Statement prior to Occupation of Phase 3

2.4.4. no Dwelling in Phase 3 Phase 4 and/or Phase 5 shall be Occupied unless and until

2.4.4.1. the Main House Works have been Practically Completed in accordance with the Main House Method Statement and

2.4.4.2. a copy of the certificate of Practical Completion of the Main House Works has been submitted to the Council **SAVE THAT** the certificate of Practical Completion shall not be issued unless and until the Council has inspected the works and authorised the release of the certificate of Practical Completion **AND FOR THE AVOIDANCE OF DOUBT** any authorisation by the Council shall not be construed as an approval of the works undertaken

2.5. The Owner covenants that it shall

2.5.1. carry out the works comprised in Phase 5

2.5.2. not Occupy Phase 5 unless and until Phase 1 and Phase 2 and Phase 3 and Phase 4 have been Practically Completed and a copy of the certificate of Practical Completion in respect of each Phase 1 to 4 (inclusive) have been submitted to the Council

3. Step In Rights

3.1. In addition to Clause 5.2 and without prejudice to the Council's statutory powers and to any other means at its disposal to enforce this Deed at law in the event of the Owner failing to carry out and Practically Completed

3.1.1. the Glasshouses & Garden Wall Works to the Glasshouses & Garden Wall in accordance with the Glasshouses & Garden Wall Method Statement and in accordance with the true purport intent and meaning thereof pursuant to this Schedule within 18 months of Commencement of Development taking into account the urgency and importance of the restoration works and/or

3.1.2. the Main House Works to the Main House in accordance with the Main House Method Statement and in accordance with the true purport intent and meaning thereof pursuant to this Schedule within a reasonable period of time from Commencement of Development

the Council may

3.1.3. (and the Owner hereby grants authority for the Council and its authorised employees and agents) enter the Land with staff contractors plant and equipment and carry out such steps measures or operations on the Land as the Council considers to be necessary to (without prejudice to the generality of the provision) ensure compliance with this Schedule and/or to remedy such failure breach or non-compliance

3.1.4. recover the Council's costs and expenses (including any professional legal and/or administrative fees) incurred by the Council in remedying such failure breach or non-compliance from the Bank Account or pursuant to the Bond (as the case may be) and in the event of their being a shortfall between the actual cost and expense in remedying such failure and the amount recovered from the Bank Account or the Bond (as the case may be) the Owner shall pay the shortfall within 10 Working Days of the date of notification for payment from the Council and may be charged on the Owners interest in the Land)

PROVIDED THAT the Council shall (unless otherwise agreed by the Council) give

the Owner not less than 20 Working Days prior notice of its intention to remedy such failure breach or non-compliance to allow the Owner an opportunity to remedy the same themselves strictly in accordance within a timescale set by the Council and if the Owner fails to comply with that timescale the provisions the Council may step in and remedy the failure breach or non-compliance

SCHEDULE 3: MANAGEMENT PLAN

1. Submission

- 1.1. The Owner shall preserve and manage and monitor and maintain (and where necessary carry out such further restoration works as may be required to) the external fabric of and the Communal Areas within the Grade II Listed Buildings in accordance with the Management Plan (and any subsequent revision or amendment thereto as may be approved by the Council pursuant to this Deed) in perpetuity
- 1.2. **FOR THE AVOIDANCE OF DOUBT** should any works required pursuant to the Management Plan necessitate the obtaining of any planning permission listed building consent or other statutory permission approval or consent then it shall be for the Owner to obtain the same and nothing in this Deed shall be construed as or operate to require the Council to grant any such permission approval or consent or so as to fetter the Council's statutory discretion in any way
- 1.3. Prior to Commencement of Development the Owner shall submit to and have approved by the Council a plan identifying the communal areas within the Grade II Listed Buildings and that it shall not Commence Development unless and until this plan has been submitted to and approved by the Council
- 1.4. Prior to Occupation of any Dwelling the Owner covenants that it shall submit to and have approved by the Council the Management Plan and that it shall not Occupy any Dwelling unless and until the Management Plan has been submitted to and approved by the Council

2. Content of the Management Plan

- 2.1. The Management Plan shall (without limitation)
 - 2.1.1. provide a detailed description of the condition of the Grade II Listed Buildings and the Communal Areas following completion of the restoration works pursuant to Schedule 2 and the Planning Permission (which shall include photographs and (as appropriate) plans and illustrations where necessary)
 - 2.1.2. identify describe and evaluate all features and areas to be preserved monitored managed and maintained (in relation to and in conjunction with a plan)

- 2.1.3. identify any constraints that might influence the preservation management and maintenance of the external fabric of and the Communal Areas within the Grade II Listed Buildings and proposals to overcome these
- 2.1.4. identify and describe the long term preservation monitoring management and maintenance arrangements of the external fabric of and the Communal Areas within the Grade II Listed Buildings identified on the plan and how this is to be secured and achieved
- 2.1.5. provide a programme for the ongoing monitoring and maintenance of the areas identified on the plan of the condition of the Grade II Listed Buildings and Communal Areas which shall include
 - 2.1.5.1. a schedule of items to be periodically maintained with maintenance intervals
 - 2.1.5.2. a schedule of works to be carried out and a timetable for the carrying out of such works
- 2.1.6. set out arrangements as to how contingencies will be dealt with and/or remedial action and measures will be identified agreed and implemented
- 2.1.7. arrangements for the verification by the Council of performance pursuant to the plan
- 2.1.8. provide a verifiable indication as to the annual costs associated with the management monitoring and maintenance (allowing for contingencies and indexation) of the Grade II Listed Buildings as proposed by the Owner in accordance with the plan
- 2.1.9. (having regard to the provisions of this Schedule) provide details of the management company responsible for implementation of the Management Plan and associated works and include details of the legal and funding mechanism(s) (including detailed arrangements for the provision banking withdrawal and application of funds and for accounting for the same) by which the aftercare and long-term maintenance of the external fabric of and the Communal Areas within the Grade II Listed Buildings shall be secured and delivered by the Owner in a form that substantially accords with Appendix 8

AND such other matters as the Council may approve

3. Implementation

3.1. On approval of the Management Plan the Owner shall

3.1.1. implement and adhere to the Management Plan

3.1.2. keep a detailed maintenance log noting therein all scheduled works carried out to the Grade II Listed Buildings pursuant to the Management Plan and if following inspection no maintenance works are considered by the Owner to be required this fact shall be recorded in the maintenance log

3.1.3. the Owner shall on receipt of notice provide the Council with access to or a copy of the maintenance log either in electronic or paper format, which maintenance log shall be provided to the Council within 10 Working Days of receipt of the notice from the Council

3.1.4. the Owner shall pay the Council's costs associated with the discharge of its verification functions pursuant to the Management Plan (which shall be paid within 10 Working Days of the date of notification for payment from the Council and may be charged on the Owners interest in the Land)

4. Review

4.1. Following approval of the Management Plan

4.1.1. the Owner shall be entitled to submit a new or revised Management Plan to the Council for approval by the Council

4.1.2. on approval the Owner shall implement the new or revised Management as approved by the Council pursuant to this Schedule

4.1.3. the Owner shall pay the Council's costs and expenses (including any professional fees that may be incurred and any abortive costs and expenses in the event that any new or revised Management Plan is withdrawn by the Owner prior to approval by the Council) associated with assessing and approving the new or revised Management Plan submitted pursuant to this Sub-Paragraph (which shall be paid within 10 Working Days of the date of written notification for payment from the Council and

may be charged on the Owners interest in the Land)

4.2. Following approval of the Management Plan

4.2.1. Where the Council believes that the aims and objectives of the Management Plan are not being met the Council may serve a notice on the Owner specifying (in as much detail as is reasonably practicable) the Council's concerns ("**the Notice**")

4.2.2. If the Owner agrees with the Council (or the expert pursuant to Paragraph 4.2.3 agrees with the Notice (subject to any recommendations made)) the Owner shall within 20 Working Days of receipt of the Notice (or the experts determination) submit a new or revised Management Plan to the Council for approval on approval of which the Owner shall implement the new or revised Management in accordance with this Schedule

4.2.3. If the Owner does not agree with the Notice the Owner shall serve a notice on the Council specifying (in as much detail as is reasonably practicable) the Owners concerns within 20 Working Days of receipt of the Notice and the Owner and Council shall use their reasonable endeavours to secure the amicable resolution of any dispute or difference arising between them out of or in connection with this Sub-Paragraph in accordance with the following procedure

4.2.3.1. Each party shall nominate a representative who shall meet to try to resolve the matter

4.2.3.2. If the matter is not resolved within 10 Working Days of either party requesting such meeting (or such longer period as may be agreed between the parties) the matter may at either party's request be referred for discussion at a meeting to be attended by a senior executive from each party

4.2.3.3. If the meeting between the senior executive fails to result in a settlement within 10 Working Days of the date of the request for such a meeting (or if it is not possible to convene a meeting within this period or such longer period as may be agreed between the parties) then either party may refer the matter to dispute resolution

in accordance with Clause 10

4.2.4. If the Owner does not respond to the Notice within 20 Working Days (or within such extended time as the Council may agree)

4.2.4.1. a revised Management Plan will be provided by the Council to the Owner which the Owner shall from the date of the new or revised Management Plan implement in accordance with this Schedule until the Owner submits a new or revised Management Plan and the same is approved by the Council

4.2.4.2. the Council's costs and expenses associated with providing a new or revised Management Plan in accordance with this Paragraph 4.2.4 shall be paid by the Owner to the Council as notified to the Owner and will be paid within 10 Working Days of the date of notification by the Council and may be charged on the Owners interest in the Land

4.3. No proposed new or revised Management Plan submitted by the Owner to the Council for approval pursuant to this Schedule shall come into force unless and until it has been approved by the Council

5. Management

5.1. Prior to Occupation of any Dwelling within Phases 1, 2, 3 or 4 the Owner shall ensure that

5.1.1. the management arrangements identified in the Management Plan and this Schedule for the long term preservation management monitoring and maintenance of the external fabric of and the Communal Areas within the Grade II Listed Buildings pursuant the Management Plan have been submitted to and approved by the Council

5.1.2. a management company has been incorporated pursuant to the terms of paragraph 5.4 of this Schedule and a certified copy of the certificate of incorporation of the management company together with the memorandum and articles of association have been provided to the Council)

5.1.3. a Managing Agent has been appointed pursuant to the terms of this paragraph 5.4 of this Schedule as the managing agent of the Grade II Listed Buildings (evidence of which shall be provided to the Council and to the Council's satisfaction)

and the Owner shall not Occupy any Dwelling in Phases 1, 2, 3 or 4 unless and until the provisions of this Sub-Paragraph 5.1 have been complied with

5.2. Prior to Occupation of the 8th Dwelling the Owner shall

5.2.1. pay the sum of £45,000 into the Reserve Fund

5.2.2. provide evidence of this payment to the Council

and the Owner shall not Occupy the 8th or any subsequent Dwelling unless and until the requirements of this paragraph 5.2 have been complied with

5.3. Prior to Occupation of any Dwelling in Phase 5 the Owner shall

5.3.1. pay the sum of £45,000 in into the Reserve Fund

5.3.2. provide evidence of this payment to the Council

and the Owner shall not Occupy any Dwelling in Phase 5 unless and until the requirements of this paragraph 5.3 have been complied with

5.4. The Owner shall

5.4.1. establish as a management company limited by guarantee (where there shall be no distribution of profits) for the specific stated purpose of preserving monitoring managing and maintaining the external fabric of and the Communal Areas within the Grade II Listed Buildings in good repair for future generations

5.4.2. ensure that

5.4.2.1. each of the owners of the Dwellings within Phases 1, 2, 3 and 4 (and their successors in title) shall be a member of the management company whose liability shall be set at the equivalent of 1 year's annual service charge which shall be reflected in the articles of association of the management company and that on the future

transfer of any Dwelling within Phases 1, 2, 3 and 4

- 5.4.2.2. the transfer documentation shall include a requirements that on transfer the transferee shall be a member of the management company and the transferor shall transfer their share in the management company at the same time as the transfer of the land
- 5.4.3. appoint a Managing Agent to carry out the preservation monitoring management and maintenance of the external fabric of and the Communal Areas within the Grade II Listed Buildings in accordance with the terms of this Deed and the approved Management Plan
- 5.4.4. ensure that the management company is funded by means of annual service charges payable by all owners of the Dwellings within Phases 1, 2, 3 and 4 which monies shall
 - 5.4.4.1. be managed by the Managing Agent and it shall be operated as a dedicated client account in the name of the management company and shall be maintained and operated in accordance with the Royal Institution of Chartered Surveyors protocols in respect of client monies
 - 5.4.4.2. **FOR THE AVOIDANCE OF DOUBT** kept separate from and shall not be deposited into the Reserve Fund pursuant to paragraph 5.6 of this Schedule
- 5.4.5. shall ensure that the annual service charge shall be set (and subsequently maintained) at a level that allows the management company to pay for the preservation monitoring management and maintenance of the external fabric of and the Communal Areas within the Grade II Listed Buildings in accordance with this Deed and the Management Plan to be paid for through the annual service charge levied against each of the Dwellings within Phases 1, 2, 3 and 4
- 5.5. The Owner shall not exchange contracts for the sale of any Dwelling within Phases 1, 2, 3 and 4 unless and until there is included in the transfer deed of the freehold or the grant of a leasehold interest (as the case may be) in each of the Dwellings within Phases 1, 2, 3 and 4 a requirement that each transferee or grantee shall pay (as a minimum) an annual service charge to the management company for the ongoing

preservation monitoring maintenance and management of the external fabric of and Communal Areas within the Grade II Listed Buildings and the Owner shall ensure that for future transfers of the Dwellings the transfer documentation shall include a requirements that on transfer the transferee shall be required to pay a service charge pursuant to the terms of this paragraph

5.6. The Reserve Fund shall be operated strictly in accordance with the following terms and conditions

5.6.1. the sums of £45,000 payable pursuant to paragraphs 5.2 and 5.3 of this Schedule shall be deposited into a bank account of the Managing Agent held at a clearing bank

5.6.2. the account shall be an interest-bearing account and interest earned therefrom shall be credited to the account

5.6.3. the Reserve Fund shall be managed by the Managing Agent and it shall be operated as a dedicated client account in the name of the management company and shall be maintained and operated in accordance with the terms of this Schedule and the Royal Institution of Chartered Surveyors protocols in respect of client monies

5.6.4. the management company (or its Managing Agent) shall be entitled to withdraw funds from the Reserve Fund as required **PROVIDED THAT**

5.6.4.1. No funds shall be withdrawn from the Reserve Fund account unless and until prior approval is obtained from the Council

5.6.4.2. The Reserve Fund shall only be used for the carrying out of substantive works to the external fabric of and/or the Communal Areas within the Grade II Listed Buildings which works shall have received the prior approval of the Council and which works shall not (without limitation) include general works of maintenance and repair and/or painting and decorating

5.6.4.3. Unless otherwise agreed by the Council the Reserve Fund shall not be used to pay or reimburse (without limitation) professional and other fees and investigative works and studies incurred and/or undertaken by the management company or the Managing Agent

(or on their behalf)

5.6.4.4. Subject to the provisions of paragraph 6 of this Schedule (Enforcement) and there being funds within the Reserve Fund to satisfy in whole or in part any claim made by the Council in exercise of any rights pursuant to paragraph 6 of this Schedule the Managing Agent shall pay to the Council the costs and expenses contemplated by paragraph 6 of this Schedule (which shall be paid within 10 Working Days of the date of notification for payment from the Council) from the Reserve Fund

5.7. The management company (or the Managing Agent) shall within 10 Working Days of any requests made by or on behalf of the Council provide such details as the Council may request as to the current standing of the Reserve Fund or the Service Charge Account (including **FOR THE AVOIDANCE OF DOUBT** the provision of any statements of account relating to the Reserve Fund and/or Service Charge Account)

6 Enforcement

6.1 In addition to Clause 5.3 and without prejudice to the Council's statutory powers and to any other means at its disposal to enforce this Deed at law where there is any failure breach or non-compliance by the Owner with any term of the approved Management Plan for the time being in force or any of the obligations contained in this Schedule the Council may

6.1.1 (and the Owner hereby grants authority for the Council and its authorised employees and agents) enter the Land with staff contractors plant and equipment and carry out such steps measures or operations on the Land as the Council considers to be necessary to (without prejudice to the generality of the provision) ensure compliance with and/or to remedy any non-compliance with the approved Management Plan and/or

6.1.2 at the Council's election recover from the Owner the Reserve Fund and/or the Service Charge Account the costs and expenses (including legal and administrative costs and expenses and any professional and other fees and investigative works and studies) incurred by the Council in remedying such failure breach or non-compliance (which shall be paid within 10 Working Days of the date of notification for payment from the Council and

may be charged on the Owners interest in the Land)

PROVIDED THAT the Council shall (unless otherwise agreed by the Council) give the Owner not less than 20 Working Days prior notice of its intention to remedy such non-compliance to allow the Owner an opportunity to remedy the same themselves

7 General

- 7.1 The Owner shall have due regard to any requirements and/or recommendations made by the Council in relation to the drafting and operation of any Management Plan submitted pursuant to the terms of this Deed and/or any subsequent review or amendment thereto
- 7.2 Any Management Plan approved pursuant to this Schedule shall be deemed to be incorporated within this Deed and enforceable by the Council as part of this Deed