

## **Agenda Item 6b**

### **The Establishment of Garden Communities Local Delivery Vehicles and Funding Requirements**

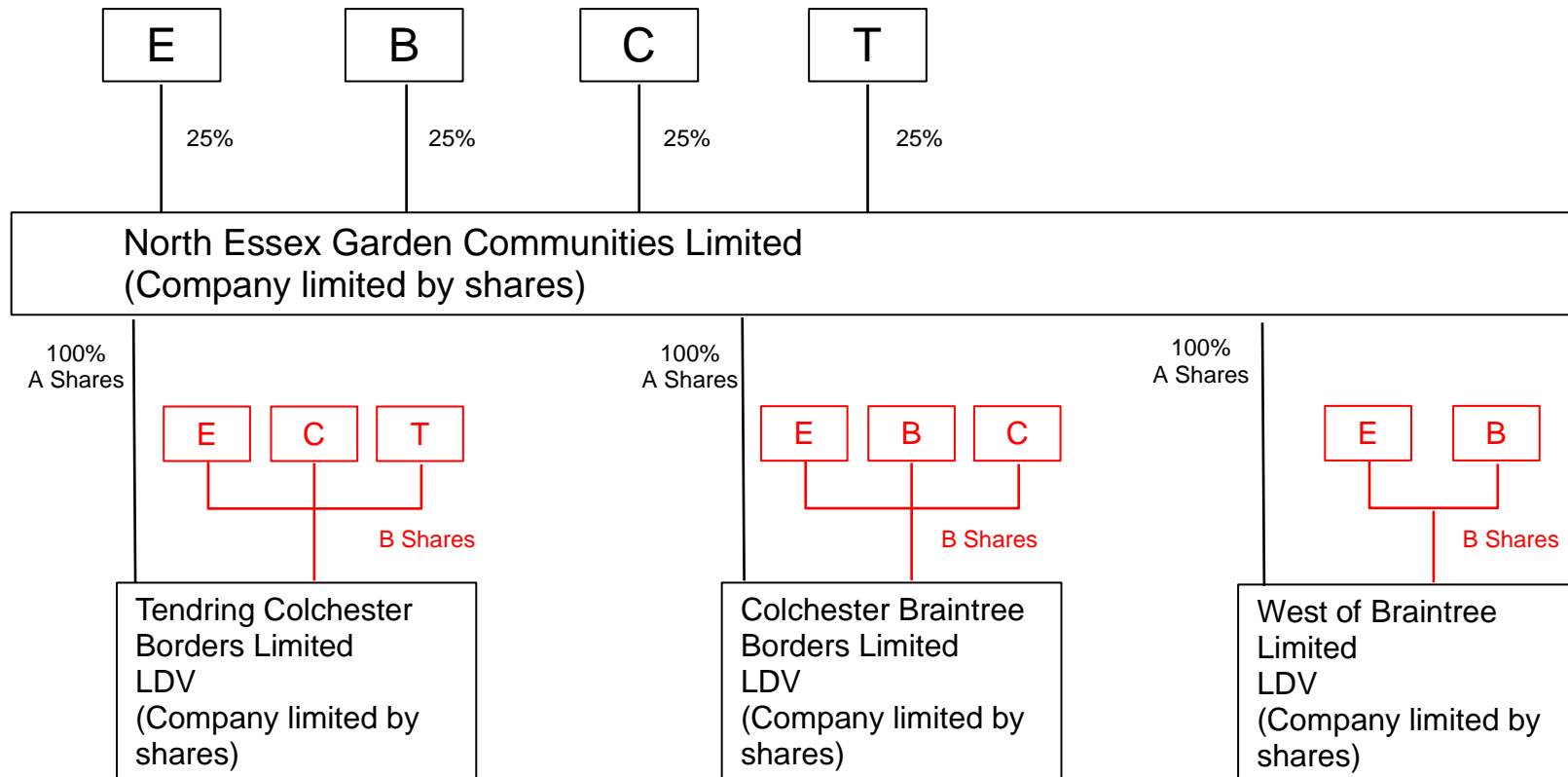
#### **Appendices**

##### **Summary of Appendices:**

1	Diagram showing Corporate Structure
2	Draft Term Sheet North Essex Garden Communities Limited
3	Shareholders Agreement North Essex Garden Communities Limited
4	Draft Term Sheet Colchester Braintree Borders Limited
5	Shareholders Agreement Colchester Braintree Borders Limited
6	Draft Term Sheet West of Braintree Limited
7	Shareholders Agreement West of Braintree Limited
8	Strategic Risk Assessment Profile

## Appendix 1:

### Diagram showing Corporate Structure:



A Shares - voting shares; no right to dividend

B Shares - non-voting shares; right to dividends; principal right to capital return

## Appendix 2

### DRAFT TERM SHEET

#### North Essex Garden Communities Limited

<b>1. Definitions</b>	<p><b>Articles</b> means the articles of association of the Company from time to time</p> <p><b>B Share</b> means a B share of nominal value £1 in the capital of an LDV</p> <p><b>B Shareholder</b> means a holder of B Shares</p> <p><b>Board</b> means the board of Directors</p> <p><b>Braintree</b> means Braintree District Council</p> <p><b>Budget</b> means a budget (including revenues, operating and capital expenditures, and cash flow) of the Company for a relevant financial period</p> <p><b>Colchester</b> means Colchester Borough Council</p> <p><b>Company</b> means North Essex Garden Communities Limited, a joint strategic private company entity which is owned equally by each Local Authority</p> <p><b>Director</b> means a director of the Company</p> <p><b>Director Letter</b> means an engagement letter to be entered into between the Company and each Director</p> <p><b>Essex</b> means Essex County Council</p> <p><b>Financial Procedure Rules</b> means the financial procedure rules adopted by the Company from time to time<sup>1</sup></p> <p><b>Funding Agreement</b> means any funding agreement entered into from time to time between (1) Essex, Braintree, Colchester or Tendring as lender, and (2) the Company as borrower<sup>2</sup></p> <p><b>Independent Director</b> means a director who is not a Nominated Director</p> <p><b>LDV</b> means each of:</p> <ul style="list-style-type: none"> <li>(i) Tendring Colchester Borders Limited</li> <li>(ii) Colchester Braintree Borders Limited; and</li> <li>(iii) West of Braintree Limited</li> </ul>
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<sup>1</sup> Set of financial procedures to be drafted.

<sup>2</sup> How will NEGC be funded?

	<p>each a private company limited by shares</p> <p><b>LDV Budget</b> means a budget (including revenues, operating and capital expenditures, and cashflow) of an LDV for a relevant financial period</p> <p><b>LDV Business Plan</b> means a 2 year business plan as adopted and amended by each LDV (with the approval of the Company) from time to time; such business plan covering delivery of the Project and such other matters as the board of directors of the LDV determines, and consistent with the aims and requirements of the Master Plan and the Long-term Business Plan.</p> <p><b>Local Authority</b> means each of Essex, Braintree, Colchester or Tendring</p> <p><b>Long-term Business Plan</b> means a business plan for the lifetime of the Project (with a higher level of detail for the next 5 years) as adopted by the Company from time to time; such business plan covering infrastructure requirements, finance, planning and such other matters as the Board determines, and consistent with the aims and requirements of the Master Plans</p> <p><b>Master Plan</b> means the planning policy document adopted in relation to each property which set out proposals for buildings, spaces, movement strategy and land use in three dimensions and matches these proposals to a delivery strategy and development programme</p> <p><b>Nominated Director</b> means a Director appointed by Essex, Braintree, Colchester or Tendring</p> <p><b>Project</b> means the development of the Properties as garden community in accordance with the Purpose</p> <p><b>Property</b> means each of the properties [<i>location descriptions</i>], each of which is approximately identified in the plan attached in Schedule 2</p> <p><b>Purpose</b> has the meaning given in paragraph 2 below</p> <p><b>Share</b> means an ordinary share of nominal value £1 in the capital of the Company</p> <p><b>Shareholder</b> means a holder of Shares</p> <p><b>Shareholders' Agreement</b> means the shareholders' agreement to be entered into in relation to the business and operation of the Company between Essex, Braintree, Colchester, Tendring and the Company</p> <p><b>Tendring</b> means Tendring District Council</p>
<b>2. Purpose</b>	<ul style="list-style-type: none"> <li>The purpose of the Company is (i) to hold shares in the LDVs, and (ii) to co-ordinate funding of the LDVs, and to oversee and hold to account the LDVs as set out in Schedule 1 (the <b>Purpose</b>)</li> <li>The Purpose (as set out in Schedule 1) will be included in the following</li> </ul>

	<p>documents:</p> <ul style="list-style-type: none"> <li>- the Shareholders' Agreement</li> <li>- the Articles (perhaps in an abbreviated form)</li> <li>- the Director Letters</li> </ul> <ul style="list-style-type: none"> <li>• The Purpose can only be changed with the prior consent of all of the Local Authorities</li> </ul>
<b>3. Shares</b>	<p><b>Initial Shareholders:</b> At closing each Local Authority will subscribe for 25 Shares at £1 each</p> <p><b>Voting:</b> The Articles should be drafted so that in relation to any decision of the Shareholders or Board specifically affecting one LDV only, the Local Authorities (or their Nominated Directors) who do not hold B Shares in that LDV shall not be entitled to vote on that decision</p>
<b>4. Directors</b>	<p><b>Appointment/Removal:</b> The directors shall be appointed as follows:</p> <ul style="list-style-type: none"> <li>• Each of Essex, Braintree, Colchester and Tendring have the right to appoint and remove a Director (each a <b>Nominated Director</b>)</li> <li>• The Board shall be entitled, if it feels it is appropriate to do so (e.g. in order to introduce any required skills, experience or expertise to the Board), to appoint up to a further three independent Directors (each an <b>Independent Director</b>)</li> <li>• Any Director other than a Nominated Director may be removed by notice sent by a majority of the Shareholders to the Company</li> <li>• On appointment, each Director and the Company will enter into a Director Letter</li> </ul> <p><b>Chair:</b> The Board will appoint a chair from amongst the Directors. Any such appointment will be for a maximum 2 year term. The Chair shall not have a casting vote.</p> <p><b>Operation:</b> The Directors will manage the business of the Company to achieve the Purpose and in accordance with the requirements of the Business Plans (other than the Short-term Business Plans).</p> <p><b>Board Meetings:</b> It is expected that Board meetings will be held four times a year, or more frequently as the Board may decide</p> <p><b>Notice:</b> There will be seven days' notice of any Board meeting (or shorter notice if agreed by a majority of the Directors)</p> <p><b>Quorum:</b> The quorum for Board meetings will be at least three Nominated Directors. If the quorum is not present at the appointed time for the meeting, an adjourned meeting will be called. At that adjourned meeting, at least two Nominated Directors need to be present for a quorum</p> <p><b>Voting:</b> On any Board decision a majority in favour is required including all</p>

	<p>Nominated Directors, save that where a decision relates to one LDV only, the Nominated Directors appointed by a Local Authority who does not hold B Shares in that LDV shall not be entitled to vote</p> <p><b>Conflicts:</b> In relation to a Director's conflict:</p> <ul style="list-style-type: none"> <li>• The Director is obliged to declare his or her conflict at the beginning of any Board meeting</li> <li>• If that declaration indicates a dispute or possible dispute, the Board may decide whether or not the conflicted Director should withdraw from all or part of that meeting</li> </ul> <p><b>Alternate Directors:</b> It is expected that each Director will make every effort to attend Board meetings, and will only miss Board meetings in exceptional circumstances. Each Director Letter will name an alternate to attend, speak and vote in Board meetings in the appointing Director's absence</p> <p><b>Indemnity:</b> The Articles will contain a standard permission to allow a Director to receive the benefit of an indemnity from the Company</p>
<b>5. Business Plan<sup>3</sup></b>	<p>The Company's business will be operated in accordance with, and to achieve the aims set out in, the Business Plans (other than the Short-term Business Plans). The initial Long-term Business Plan will be attached to the Shareholders' Agreement. The Board will be responsible for (i) preparing the Long-term Business Plan and Budget and (ii) monitoring progress against the Long-term Business Plan and Budget, and may suggest changes to the Long-term Business Plan and Budget from time to time. Any Long-term Business Plan or Budget, and any changes to either must be approved by all of the Local Authorities. In addition, any such changes need to be consistent with the Project Plan, the Master Plans and the Purpose. If there are any changes made to the Project Plan, the Master Plans or the Purpose, the Board will meet to discuss whether any changes are required to the Long-term Business Plan and Budget, subject to the Local Authorities' approval</p> <p>If the Company undertakes any business which is outside the remit of the Long-term Business Plan, Project Plan or Master Plans, or incurs any expenditure or liability that means the Company will breach the budget, or is likely to be in breach of the Budget, the Board will promptly notify the Local Authorities in writing</p>
<b>6. Reserved Matters</b>	<p>Schedule 3 contains a number of reserved matters. Subject to interpolated voting, before the Company undertakes any of the reserved matters in Schedule 3, it needs the prior written approval of each of the Local Authorities (save that where the matter relates to one LDV only, a Local Authority who does not hold B Shares in that LDV shall not be required to provide its prior written approval).</p>
<b>7. Share Transfers</b>	<p>No Shares may be transferred without the prior written consent of each of the Local Authorities, save that Shares may be transferred to successor bodies</p>

<sup>3</sup> The intention is to give NEGC, through flexible drafting of the Long-term Business Plan and the Budget (in the context of the Financial Procedures Rules), sufficient operational freedom.

	(including any new town development corporation)
<b>8. Termination</b>	<p>The Company shall continue until such time as:</p> <ul style="list-style-type: none"> <li>• The Purpose has been achieved; or</li> <li>• The Company is wound up pursuant to a statutory process</li> </ul> <p>On a termination, any assets of the Company may transfer to a successor (or other appropriate) body (including any new town development corporation)</p>
<b>9. Disputes</b>	<p>If there is any dispute in relation to the Company, either at Board or Shareholder level, any party may call a meeting of the CEOs/Leaders of each Local Authority to try to resolve that dispute. If the dispute is still unresolved 21 days after that meeting any party may refer the matter to mediation. If the dispute is still unresolved 42 days after that meeting, any party may refer the matter to arbitration</p>
<b>10. Documentation</b>	<p>Following the agreement of this term sheet, Dentons will prepare the following documentation:</p> <ul style="list-style-type: none"> <li>• Shareholders' Agreement – in addition to the provisions referred to above, that agreement will also contain provisions in relation to: <ul style="list-style-type: none"> <li>– set-up arrangements</li> <li>– business housekeeping (company books, insurance etc)</li> <li>– information provision to the Local Authorities</li> <li>– confidentiality and announcements</li> </ul> </li> <li>• Articles</li> <li>• Director Letters – in addition to the provisions referred to above, each letter will also contain the following details: <ul style="list-style-type: none"> <li>– the period of the appointment</li> <li>– name of alternate director</li> <li>– costs and expenses</li> <li>– indemnity</li> </ul> </li> </ul>

## Schedule 1 – Purpose

To co-ordinate the funding of the LDVs and to oversee and hold to account the LDVs in order to develop each of the Properties as garden communities, being self-sustaining communities which secures the future stewardship of public assets for community benefit, the design, development and delivery of which is underpinned by local public sector leadership, a strong vision, inclusive and long term planning and effective engagement.

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A garden community should:

- Be implemented using new models of delivery with the public and private sectors sharing risk and reward and ensuring that the cost of achieving the following is borne by those promoting development of the communities: (i) a high quality of place-making; (ii) timely delivery of both on-site and off-site infrastructure needed to address the impact of the new community; (iii) a mechanism for future stewardship, management, maintenance and renewal of community infrastructure and assets;
- Be planned and delivered in conjunction with a masterplan and other design guidance that have been developed through innovative community engagement;
- Be designed and executed to achieve the highest quality of place-making and design, structuring the new community to create an appropriate hierarchy of centres and walkable neighbourhoods that accommodate strong local cultural, recreational, leisure and retail facilities that underpin community life and relate to the wider urban context, as well as establishing environments that promote health, happiness and well-being;
- Have an appropriate mechanism and funding for community governance and empowerment as well as the long term stewardship of community assets;
- Provide beautifully and imaginatively designed homes with easy access to great green spaces, combining the very best of town and country living;
- Provide development that will contribute to building a balanced and inclusive community including a range of mixed-tenure homes and housing types that are affordable – including to rent – for local people including provision of self- and custom-build, co-ownership and affordable homes;
- Contribute to the creation of a resilient & self-sustaining local economy through offering access to a strong local jobs offer, including within the community itself, that provide a variety of employment opportunities within easy commuting distance of homes;
- Ensure provision of generous green space that builds on existing natural assets and is linked to the wider natural environment, with well-connected and biodiversity-rich public parks, a mix of public and private networks of well-managed, high quality gardens, allotments, tree-lined streets and open spaces;
- Provide in a timely fashion to meet the needs of the growing community, a range of great local schools & education facilities catering for all age groups, needs & skills development, health facilities and other services needed to underpin community life;
- Promote and deliver a step change in sustainable and integrated local transport with excellent walking, cycling and public transport systems fully integrated with land use at its heart, encouraging and incentivising more sustainable active travel patterns overall;
- Secure delivery of a smart and sustainable approach to the design and management of services, infrastructure and utilities to secure the highest standards of technology to reduce the impact of climate change, water efficiency with the aim of being water-neutral, energy efficiency and local energy generation, net gains in biodiversity, efficient management of utilities, excellent access to information technology networks and sustainable waste and mineral management.

## **Schedule 2 – Property Plan**

*To be included in the final Term Sheet.*

## **Schedule 3 – Reserved Matters**

- 1 Passing any resolution or presenting any petition for the Company's winding up (unless the Company is insolvent).
- 2 Issuing or allotting any share or other capital or reducing, converting, sub-dividing, cancelling or otherwise reorganising, or altering any rights attaching to, any Shares.
- 3 Registering any transfer or allotment of Shares.
- 4 Granting any share option or right to subscribe, acquire or convert into Shares or implementing or varying any incentive, bonus or commission arrangement.
- 5 Ceasing, or making any material change in the nature of, the Company's business, the Purpose or establishing any new business.
- 6 Altering the Company's Articles.
- 7 Changing the Company's auditors.
- 8 Changing the Company's accounting reference date or accounting policies.
- 9 Adopting or approving the Company's annual accounts.
- 10 Approving the Long-term Business Plan or Budget, or amending the Long-term Business Plan or Budget.
- 11 Approving or amending the Financial Procedure Rules.
- 12 Transferring the whole or any material part of the undertaking of the Company.
- 13 Save as set out in the Long-term Business Plan or Budget, and subject to the Financial Procedure Rules, acquiring or disposing of (whether by one or more transactions) any assets, entering into any commitment, or incurring any expenditure.
- 14 Save as set out in the Long term Business Plan or Budget, and subject to the Financial Procedure Rules, acquiring, disposing of, surrendering or assigning any freehold or leasehold property.
- 15 Save as set out in the Long term Business Plan or Budget, forming any subsidiary, acquiring or disposing of any interest in any business or company, participating in any partnership, joint venture or profit/revenue sharing arrangement or entering into any scheme of arrangement or merger.
- 16 Save as set out in the Long-term Business Plan or Budget, and subject to the Financial Procedure Rules, incurring any borrowings or creating any encumbrance upon or in respect of the whole or part of the business or the Company's assets.

- 17 Entering into any agreement not on bona fide arms' length terms, or (same as set out in the Long-term Business Plan or the Budget) any agreement with any director or with any Shareholder or with any associate of a Shareholder.
- 18 Other than as set out in the Long-term Business Plan, entering into, or varying, any agreement.
- 19 Save as set out in the Long-term Business Plan or Budget, making any loan or providing any surety or security arrangement in respect of any loan or third party obligation whatsoever.
- 20 Save as set out in the Long-term Business Plan or Budget, granting any service or consultancy agreement to any employee or varying or terminating any such agreement.
- 21 Paying any Directors' remuneration, fees or expenses other than pursuant to a Director Letter.
- 22 Save as set out in the Long-term Business Plan or Budget, initiating or settling any litigation or arbitration which will, or is likely to, have:
  - (i) a material impact on the reputation of the Local Authorities, the Company or any LDV, or
  - (ii) the ability of the Company to achieve the Purpose.
- 23 Opening any bank account or signing or varying any bank mandate, in each case other than in accordance with the Financial Procedure Rules.
- 24 Giving any approval for and on behalf of the Company required under Part A of Schedule 3 of each LDV term sheet.<sup>4</sup>

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<sup>4</sup> This will cover the NEGC consent matters set out in the list of reserved matters for each LDV. Is any more required? Will there be anything else in the LDV term sheet/shareholders' agreement/articles that required a reference here? In relation to each LDV what NEGC consents are expected, and which of these also need Local Authority consent?

## Appendix 3:



### Shareholders' agreement in relation to North Essex Garden Communities Limited

#### Dated

**Essex County Council**  
(Essex)

**Colchester Borough Council**  
(Colchester)

**Tendring District Council**  
(Tendring)

**Braintree District Council**  
(Braintree)

**North Essex Garden Communities Limited**  
(The Company)

Dentons UKMEA LLP  
One Fleet Place  
London EC4M 7WS  
United Kingdom  
DX 242

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### **List of Agreed Form Documents**

- Articles (Clause 3.2(a))
- Financial Procedure Rules
- Director's Letter (Clause 3.2(b))

# Shareholders' Agreement

## Dated

## Between

- (1) **Essex County Council (Essex)** of County Hall, Market Road, Chelmsford, CM1 1QH;
- (2) **Colchester Borough Council (Colchester)** of Rowan House, 33 Sheepen Road, Colchester, Essex, CO3 3WG;
- (3) **Tendring District Council (Tendring)** of Town Hall, Station Road, Clacton-On-Sea, Essex, CO15 1SE;
- (4) **Braintree District Council (Braintree)** of Causeway House, Bocking End, Braintree, Essex, CM7 9HB;  
and
- (5) **North Essex Garden Communities Limited (the Company)** a company incorporated in England and Wales with registered number 10319743 having its registered office at \*\* .

## Recitals

- A. The Company is a joint strategic entity which is equally owned by each Local Authority.
- B. The parties have agreed to incorporate the LDV's which will develop the Properties in accordance with the Purpose, through the Company and the LDVs.

## It is agreed

### 1 Definitions and Interpretation

#### 1.1 Definitions

In this Agreement the following definitions shall apply.

**Act** means the **Companies Act 2006**.

**Articles** means the articles of association of the Company in the agreed form and as subsequently amended time to time in accordance with this Agreement.

**Board** means the board of Directors.

**Borrowings** means [bank and other loans, and finance provided under hire purchase, factoring, leasing acceptance credits and similar arrangements.]

**Budget** means a budget (including revenues, operating and capital expenditures and cash flow) of the Company for a relevant financial period.

**Business Day** means a day (other than a Saturday or Sunday) on which banks are open for the transaction of general business.

**Chair** means the chair from time to time of the Board.

**Completion** means completion of the matters specified in Clause 3.

**Director** means a director of the Company from time to time.

**Director's Letter** means an engagement letter in the agreed form to be entered into between the Company and each Director.

**Encumbrance** means any mortgage, charge, pledge, hypothecation, lien, assignment by way of security, title retention, option, right to acquire, right of pre-emption, right of set-off, counterclaim, trust arrangement or other security, preferential right or agreement to confer security, or any equity or restriction (but excluding liens arising by operation of law) and **Encumber** shall be construed accordingly.

**Financial Procedure Rules** means the financial procedure rules in the agreed form adopted by the Board [with the approval of the Shareholders] (as amended from time to time).

**Funding Agreement** means any debt funding agreement entered into from time to time between a Local Authority (as lender) and the Company (as borrower).

**Independent Director** means a director who is not a Nominated Director, such director being appointed by the Board.

**Intellectual Property** means patents, trade marks, service marks, trade names, domain names, rights in designs, semiconductor topography rights, database rights of unfair extraction and reutilisation, copyrights (including rights in computer software), rights in know-how and other intellectual or industrial property rights (whether registered or unregistered and including applications for the registration of any of the foregoing) and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world.

**Joint Delivery Group** means a joint delivery group established by the Company to provide the Services

**LDV** means Tendring Colchester Borders Limited, Colchester Braintree Borders Limited and West of Braintree Limited.

**LCIA Rules** means the LCIA Arbitration Rules 2014.

**Local Authority** means Essex, Braintree, Colchester or Tendring.

**Long-term Business Plan** means a business plan for the lifetime of the Project (with a higher level of detail for the next 5 years in relation to the Company as adopted from time to time by the Company with the prior consent of Essex, Braintree, Colchester and Tendring; such business plan covering, infrastructure requirements, finance, planning and such other matters as the Company determines, and consistent with the aims and requirements of the Master Plan.

**Master Plan** means a document in relation to the Project as adopted by the relevant local planning authority that sets out proposals for land uses buildings, spaces, access and movement and other spatial components and sets the basis for planning applications.

**New Town Development Corporation** means a corporation established under section 1 of the New Towns Act 1981 or similar future legislation, as amended from time to time.

**Nominated Director** means a Director appointed by a Local Authority.

**Project** means the development of each of the Properties as a garden community in accordance with the Purpose.

**Property** means each of the properties which are approximately identified in the plans attached in Schedule 4.

**Purpose** has the meaning given in Clause 2.1 below.

**Senior Employee** means an employee whose total annual remuneration exceeds or is likely to exceed £75,000.

**Services** means management and technical support and such other support and services the LDVs may require, and the Company may provide, from time to time.

**Share** means an ordinary share of £1 each in the capital of the Company.

**Shareholder** means a holder of Shares.

## 1.2 Interpretation

In this Agreement, unless otherwise specified:

- (a) the index and headings are for ease of reference only and shall not be taken into account in construing this Agreement;
- (b) references to this Agreement or any other document shall be construed as references to this Agreement or that other document as amended, varied, novated, supplemented or replaced from time to time;
- (c) references to any recital, clause, paragraph or Schedule are to those contained in this Agreement, and all Schedules to this Agreement are an integral part of this Agreement;
- (d) the expression **this Clause** shall, unless followed by reference to a specific provision, be deemed to refer to the whole clause (not merely the sub-clause, paragraph or other provision) in which the expression occurs;
- (e) references to a **party** mean a party to this Agreement including that party's successors in title and assigns or transferees permitted in accordance with the terms of this Agreement provided that the relevant property, right or liability has been properly assigned or transferred to such person;
- (f) references to a **director** shall, where the context allows, include reference to the alternate of such director;
- (g) references to a **subsidiary** shall include reference to a subsidiary and a subsidiary undertaking, each as defined in the Act, but on the basis that a company is to be treated as a member of another company for the purposes of subsections 1159(1)(b) and (c) of the Act even if its shares in that other company are registered in the name of:
  - (i) its nominee or any other person acting on its behalf, or
  - (ii) another person by way of security over those shares;

- (h) a document is in the **agreed form** if it is in the form of a draft agreed between and initialled by or on behalf of the Shareholders on or before the date of this Agreement;
- (i) references to any gender shall include the others; and words in the singular include the plural and vice versa;
- (j) references to **legislation** include any statute, bye-law, regulation, rule, subordinate or delegated legislation or order; and reference to any **legislation** is to such legislation as amended, modified or consolidated from time to time and to any legislation replacing it or made under it;
- (k) references to a **person** (or to a word importing a person) shall be construed so as to include:
  - (i) an individual, firm, partnership, trust, joint venture, company, corporation, body corporate, unincorporated body, association, organisation, any government, or state or any agency of a government or state, or any local or municipal authority or other governmental body (whether or not in each case having separate legal personality); and
  - (ii) that person's successors in title and assigns or transferees permitted in accordance with the terms of this Agreement provided that the relevant property, right or liability has been properly assigned or transferred to such person;
- (l) the words and expressions defined in sections 250, 390, 391, 471, 540, and 1173 of the Act have the same meanings;
- (m) **in writing** includes any communication made by letter, e-mail or other forms of electronic communication;
- (n) the words **include**, **including** and **in particular** shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words; and
- (o) the words **other** and **otherwise** shall not be construed ejusdem generis with any foregoing words where a wider construction is possible.

## 2 Purpose of the Company

- 2.1 The parties hereby agree that the purpose of the Company is to hold shares in each of the LDVs, to coordinate funding of the LDVs and to oversee and hold to account the LDVs as set out in Schedule 1.
- 2.2 The Company will set up a Joint Delivery Group to provide services to the LDVs.
- 2.3 The Purpose can only be amended with the prior written consent of all of the Local Authorities.

## 3 Completion arrangements

### 3.1 Completion

Completion shall take place immediately following signature of this Agreement at [*insert relevant address*].

### **3.2 Completion Obligations**

At Completion:

- (a) the parties shall procure that:
  - (i) the Company is established, organised and financed as detailed in Schedule 3;
  - (ii) the Company adopts the Articles; and
  - (iii) **[others?]**.
- (b) the Company shall, and the Shareholders shall procure that the Company shall, enter into the following:
  - (i) Director's Letters;
  - (ii) [Any other contracts to be entered into at Completion];
- (c) Each [LDV/Local Authority] shall enter into the following agreements:
  - (i) [list]

### **3.3 No partial Completion**

No party shall be obliged to complete its obligations under Clause 3.2 unless all of the obligations listed in Clause 3.2 are completed with simultaneous effect.

## **4 The Board**

### **4.1 Decisions to be referred to the Board**

- 4.1.1 The Board will manage the business of the Company to achieve the Purpose and in accordance with the requirements of the Long-term Business Plan.
- 4.1.2 All policy and management decisions of the Company (including the matters set out in Clause 8) shall be referred to the Board before implementation.

### **4.2 Action by the Board**

The Board shall act by majority vote, except in relation to any matter listed out in Clause 8 in which case no decision or action shall be taken unless any prior written consent required under Clause 8 has been received by the Company and if such consent is so received each of the Directors shall, unless otherwise constrained by their fiduciary duties, vote in favour of such matter.

### **4.3 Nominated Directors**

Each Local Authority shall have the exclusive right to appoint, remove or replace a Nominated Director.

### **4.4 Independent Director**

The Board shall have the right to appoint up to three Independent Directors if it feels it is appropriate to do so.

#### **4.5 Alternate Directors**

It is expected that each Director will make every effort to attend Board meetings, and shall only miss Board meetings in exceptional circumstances. Each Director's Letter will contain details of an alternate to attend, speak and vote in Board meetings in the appointing Director's absence.

#### **4.6 Chair**

The Board will appoint a chair from amongst the Directors. Any such appointment will be for a maximum 2 year term.

#### **4.7 Board meetings**

Board meetings shall be held at such location as a quorum of the Directors agree at intervals of not more than three months. Save as otherwise agreed by a majority of the Directors:

- (a) Board meetings shall be convened by any Director by not less than 7 days' notice, or where the particular circumstances require a shorter period, such shorter period as the circumstances reasonably require, if agreed by a majority of Directors;
- (b) each notice shall be sent to each Director to the address, and/or e-mail address notified to the Company for these purposes, and if notice is required to be sent by e-mail a copy of such notice shall also be sent by post (and air mail if the address is overseas);
- (c) each notice of a Board meeting shall be accompanied by a full agenda and supporting papers;
- (d) each Board meeting shall only deal with the business set out in the agenda which accompanied the notice convening that Board meeting; and
- (e) minutes of each meeting of the Board shall be taken and kept by the company secretary in the books of the Company. Copies of the minutes of each such meeting shall be delivered to each member of the Board as soon as practicable. If a member has not been present at the meeting copies of all papers considered by the Board at the meeting shall be sent to him with the minutes.

#### **4.8 Quorum**

The quorum for a Board meeting shall be at least three Nominated Directors present in person or by his alternate (but so that not less than three individuals shall constitute the quorum). If within 30 minutes of the time appointed for a Board meeting there is no quorum, the Director(s) present shall adjourn the meeting to a place and time not less than five Business Days later provided that at such adjourned meeting the requirement that such Director(s) shall be present shall not apply, and two Nominated Directors present shall constitute a quorum and may conduct the business of the meeting.

#### **4.9 Voting at Board meetings**

4.9.1 At each Board meeting the Directors present shall be entitled to cast one vote on each issue put to a vote.

4.9.2 On any Board decision a majority (including all Nominated Directors) in favour is required for the vote to pass, save that:

- (a) where a decision relates to Tendring Colchester Borders Limited only, any Nominated Director appointed by Braintree shall not be entitled to vote, and shall not be required in the majority for the vote to pass;
- (b) where a decision relates to Colchester Braintree Borders Limited only, any Nominated Director appointed by Tendring shall not be entitled to vote, and shall not be required in the majority for the vote to pass;
- (c) where a decision relates to West of Braintree Limited only, any Nominated Director appointed by Colchester or Tendring shall not be entitled to vote, and shall not be required in the majority for the vote to pass; and
- (d) where a decision relates to Tendring Colchester Borders and West of Braintree Limited but not Colchester Braintree Borders Limited, any Nominated Director appointed by Tendring shall not be entitled to vote, and shall not be required in the majority for the vote to pass.

#### **4.10 Compliance with Agreement**

The Company shall procure that any person who is appointed a Director after the date of this Agreement shall immediately upon becoming a Director of the Company enter into a Director's Letter with the Company to comply with and implement the terms of this Agreement.

#### **4.11 Shareholders to procure Director's resignation**

If a Shareholder ceases to be a Shareholder, it shall procure that every Director appointed by it under this Clause 4 is removed.

#### **4.12 Indemnity**

Each Shareholder shall procure that any Director appointed by it who vacates his office as director (whether by virtue of being removed by that Shareholder or otherwise) shall do so without cost to the Company. That Shareholder shall indemnify the Company and any other Shareholder from and against all claims, demands and rights which any such Director may have against the Company in respect of removal, dismissal, redundancy or otherwise.

#### **4.13 Directors may pass information to their appointor**

A Director may from time to time disclose to the Party who appointed him and its representatives such information as he has regarding the Company.

#### **4.14 Removal of a director**

Any Independent Director may be removed by notice sent by a majority of the Shareholders to the Company.

## **5 Business Plans and Budget**

### **5.1 Interim business plans**

Until such time as a Long-term Business Plan is adopted in accordance with this Clause 5, the Company may operate under such business plan as the relevant Board shall determine.

### **5.2 Business plans**

5.2.1 Within three months of a full Board being appointed (being at least four Directors) the Company shall, subject to the approval of the Local Authorities, formally adopt an Long-term Business Plan.

5.2.2 The Board shall submit any draft Long-term Business Plan to the Local Authorities no later than two months before the end of the period to which the then current Long-term Business Plan relates. Such draft Long-term Business Plan shall not be adopted by the Company until such time as the Local Authorities' approval has been received.

5.2.3 Any amendments to a Long-term Business Plan or Budget must first be approved in writing by the Local Authorities. In order to obtain the Local Authorities' written approval, the Board shall submit to the Local Authorities in writing the Long-term Business Plan or Budget together with a proposal setting out the amendments, and an explanation for the amendments. Any such amendments need to be consistent with the Master Plan and the Purpose.

5.2.4 Subject always to the Local Authorities' approval, if there are any amendments made to the Master Plan or the Purpose, the Board will meet to discuss whether any amendments are required to the Long-term Business Plan and Budget.

5.2.5 If the Company undertakes any business which is outside the remit of the Long-term Business Plan or Master Plan, or incurs any expenditure or liability that means the Company will breach or exceed the Budget, or is likely to be in breach of the Budget, the Board will promptly notify the Local Authorities in writing. Such notification will provide:

- (a) detailed information in relation to such expenditure or liability, including an explanation of the circumstances; and
- (b) suggested remedial action.

### **5.3 Budget**

5.3.1 The Board shall submit any draft Budget to the Local Authorities no later than two months before the start of each financial period of the Company. Such Budget shall not be adopted by the Company until such time as the Local Authorities' approval has been received.

5.3.2 If, at the end of any financial period, the Budget for the next financial period has not been agreed, the Company should comply with the requirements of the Financial Procedure Rules until such time as the relevant Budget has been approved by the Local Authorities.

## **6 Financing the Company**

### **6.1 Financing**

The Company shall be financed through the moneys subscribed for issued shares and lent under any Funding Agreement, or otherwise as the Shareholders may agree.

## **6.2 Borrowing limit**

The parties shall procure that the Company does not exceed any borrowing limit contained in the Budget or Financial Procedure Rules.

## **6.3 No Shareholder obligations to fund**

No Shareholder shall be obliged to advance any loan to the Company except in accordance with a Funding Agreement.

# **7 Information and Operation of the Company**

## **7.1 Information**

The Company shall provide to each Shareholder and Director and where requested, to their representatives, the following:

- (a) a profit and loss account estimate for the Company within 10 Business Days of the end of each month;
- (b) unaudited management accounts for the Company within 20 Business Days from the end of each month including a profit and loss account for that month and for the financial year to date (in each case measured against the budget for the relevant period) and 12 month forecast cash flows;
- (c) audited statutory accounts for the Company within 60 Business Days from the end of the financial year;
- (d) access to the Company's books, records and auditors at such times as may reasonably be requested; and
- (e) such other information relating to the Company as any Shareholder may reasonably request from time to time,

and without prejudice to the foregoing, the Company shall keep the Shareholders fully and promptly informed of all material developments regarding the Company's financial and business affairs and all significant events (including any litigation or arbitration) which will or may affect the Company.

## **7.2 Operation of the Company**

The Company shall, and the Shareholders shall procure that the Company, shall:

- (a) carry on and conduct its business on a commercial basis in a proper lawful and efficient manner for its own benefit;
- (b) transact all business on arm's length terms;

- (c) ensure that all its business other than routine business is undertaken or supervised by the Directors;
- (d) obtain and maintain all necessary licences and approvals required in order to carry on the business; and
- (e) observe and perform its obligations under each contract referred to in Clause 3.2(b).

## **8 Reserved matters**

The Company agrees so far as it lawfully may, and the Shareholders agree to procure, so far as is within their powers as Shareholders, that before the Company undertakes any of the matters listed in Schedule 4 the prior written consent of each of the Local Authorities is required, save that where the matter relates to one LDV only, a Local Authority who does not hold B ordinary shares in the relevant LDV shall not be required to provide its prior written consent.

## **9 Transfer of Shares**

No Shareholder shall assign, transfer, exchange, encumber or otherwise dispose of any of the Shares held by it or any interest in them without the prior written consent of the other Shareholders. Save that Shares may be transferred to successor bodies (including any New Town Development Corporation).

## **10 Protection of Name: Intellectual Property**

### **10.1 Shareholders' rights to their intellectual property**

The Shareholders hereby acknowledge and agree that all Intellectual Property Rights used in the Business but owned or provided by a Shareholder or any associate of a Shareholder (not being the Company) shall unless specifically otherwise agreed in writing remain the property of that Shareholder, shall be deemed licensed to the Company on such terms as agreed by the Shareholder and the Company, or if there is no agreement on a non-exclusive royalty-free basis for so long as the party remains a Shareholder.

### **10.2 Company's rights to its intellectual property**

Any Intellectual Property Rights which arise in the course of the Company's activities and are developed by the Company, its Directors, employees or agents shall belong to the Company and shall be deemed licensed to each of the Shareholders on such terms as are agreed by the Company and the relevant Shareholder or if there is no agreement, on a non-exclusive royalty-free basis for so long as the relevant Shareholder remains a Shareholder.

## **11 Freedom of Information**

The parties acknowledge that the parties to this Agreement may be subject to the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 and may be required to disclose information in response to requests within the terms of that legislation. Where appropriate the relevant party shall rely on any applicable exemptions in that legislation to justify not disclosing such information. Each party agrees to consult with the other parties to this Agreement as soon as reasonably practicable after receiving any such request and before disclosing any information concerning the Company.

## **12 Announcements and Confidentiality**

### **12.1 No announcements without agreement**

Save as required by law or with the prior written consent of the other parties no statement or announcement of any nature relating to the subject matter of or the transaction referred to in this Agreement or the establishment or operations of the Company shall be made to the public, the press or otherwise unless in a form previously agreed between the Shareholders.

### **12.2 Shareholders' confidentiality obligations**

12.2.1 Subject to Clause 11 each Shareholder shall (and shall procure that their representatives shall) at all times keep confidential and shall not use (other than for the benefit of the Company) any confidential information which it or they may have or acquire in relation to the business, finances, assets or affairs of the Company or any other party, save for any information:

- (a) which is publicly available or becomes publicly available otherwise than as a result of a breach of this Clause12;
- (b) which is disclosed to that party by a third party which did not acquire the information under an obligation of confidentiality;
- (c) which is required to be disclosed by law or the rules of any recognised investment exchange (as that term is used in section 285 of the Financial Services and Markets Act 2000) to which that Shareholder.

12.2.2 No Shareholder shall use any confidential information acquired in relation to another Shareholder pursuant to the performance of this Agreement for any purpose without the prior consent in writing of that Shareholder.

### **12.3 Company's confidentiality obligations**

The Company shall observe a similar obligation of confidence to that set out in Clause 12.2.1 in favour of each Shareholder.

### **12.4 Duration of confidentiality obligations**

The obligations in this Clause 12 shall continue to apply after termination of this Agreement and after any party has ceased to be party to this Agreement without limit in time.

## **13 Relationship between Shareholders and the Company**

### **13.1 Shareholders' procurement obligation**

Each of the Shareholders agrees it shall exercise its rights hereunder and as a Shareholder in the Company in such manner as could reasonably be expected to prevent, and shall not exercise those rights in any manner which could reasonably be expected to result in, a breach by the Company of any of its obligations under this Agreement or any Funding Agreement or any restrictions imposed upon it under its Articles (whether or not enforceable against the Company itself).

### **13.2 No partnership**

Nothing in this Agreement, and no action taken under this Agreement, shall create a partnership or establish a relationship of principal and agent between any of the parties or (save as otherwise stated herein) otherwise authorise any party to bind any other party for any purpose.

## **14 Entire Agreement and Severance**

### **14.1 Entire agreement**

This Agreement together with the documents referred to in it sets out the entire agreement between the parties, and supersedes any previous agreement between them in relation to the subject matter of this Agreement and those documents.

### **14.2 Acknowledgment by parties**

Each party acknowledges that:

- (a) in entering into this Agreement and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any representation (whether negligent or otherwise) made to it by any person (whether a party to this Agreement or not) which is not expressly set out or referred to in this Agreement;
- (b) the only remedy available to it in respect of any representation or warranty expressly set out or referred to in this Agreement shall be for breach of contract in respect of that term of this Agreement; and
- (c) nothing in this Clause 14 shall operate to exclude or restrict any liability for fraudulent misrepresentation.

### **14.3 Conflict with the Articles**

The parties intend that the provisions of this Agreement shall prevail over the Articles in the event of conflict and, accordingly, the Shareholders shall, if necessary, exercise all voting and other rights and powers available to them as Shareholders or under this Agreement to procure any amendment to the Articles required to give effect to the provisions of this Agreement.

### **14.4 Severance**

If any provision of this Agreement or part thereof is rendered void, illegal or unenforceable in any respect (whether against all or only some of the parties), the validity, legality and enforceability of the remaining provisions (and such aforesaid provision against the other parties) shall not in any way be affected or impaired thereby.

## **15 Amendments**

This Agreement may not be amended, changed, altered, waived or, save as provided in Clause 20, terminated without the written consent of the parties.

## **16 No assignment**

No party may assign its rights under this Agreement without the prior written consent of all other parties.

## **17 Remedies and Waivers**

### **17.1 No waiver or discharge**

No default by any party in the performance of or compliance with any provision of this Agreement shall be waived or discharged except with the express written consent of all other parties.

### **17.2 Saving for future waivers**

No waiver by any party of any default by another party in the performance of or compliance with any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default whether of a like or different character.

### **17.3 Failure to exercise etc. not a waiver**

No failure to exercise, nor delay or omission by any party in exercising, any right, power or remedy conferred on it under this Agreement or provided by law:

- (a) affect that right, power or remedy; or
- (b) operate as a waiver of it.

No single or partial exercise by any party of any right, power or remedy shall prevent any further exercise of that right, power or remedy or the exercise of any other right, power or remedy.

### **17.4 Rights and remedies cumulative**

The rights, powers and remedies conferred on the parties by this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law or otherwise.

## **18 Third party rights**

The parties do not intend that any term of this Agreement shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement.

## **19 Costs**

Each party shall bear the costs and expenses incurred by it in connection with the preparation and implementation of this Agreement.

## **20 Termination**

### **20.1 The Company shall continue until such time as:**

- a) the Purpose has been achieved; or

b) the Company is wound-up pursuant to a statutory process.

20.2 If the Purpose is achieved a Board meeting shall be called to decide whether the Company should ask the Shareholders to liquidate the Company.

20.3 On termination of this Agreement, any assets of the Company may transfer to a successor (or other appropriate) body, including a New Town Development Corporation.

## **21 Duration**

The rights and obligations of each Shareholder shall continue and be enforceable by or against it only while it is a Shareholder of the Company save for rights and obligations in respect of antecedent breaches of this Agreement or the Articles.

## **22 Notices**

### **22.1 Service**

22.1.1 Any notice or other communication to be given under this Agreement shall be in writing and shall be delivered by hand, sent by prepaid first class, recorded delivery or registered post, and shall be addressed to the party to be served in the case of:

- (a) a company at its registered office for the time being;
- (b) Essex's address for service under this Clause 22 is [**address**, England]. Items served at this address must be marked for the personal attention of [**name** and **name**];
- (c) Colchester's address for service under this Clause 22 is [**address**, England]. Items served at this address must be marked for the personal attention of [**name** and **name**];
- (d) Braintree's address for service under this Clause 22 is [**address**, England]. Items served at this address must be marked for the personal attention of [**name** and **name**]; and
- (e) Tendring's address for service under this Clause 22 is [**address**, England]. Items served at this address must be marked for the personal attention of [**name** and **name**].

22.1.2 Any claim form, application notice, judgment, order, or other notice of legal process relating to this agreement may be served on a Local Authority by posting it first-class to the address for service specified above, or to such other address for service within England as the relevant party may notify to the other parties from time to time.

### **22.2 Receipt**

Any notice or other communication under this Agreement shall only be effective when received.

## **23 Disputes**

23.1 In the event of a dispute in relation to the Company, or arising out of or relating to this Agreement (including any question regarding its existence, validity or termination) either at the Board or between

the Shareholders, any party shall be entitled to call a meeting of the CEOs/Leaders of each Local Authority with the aim of resolving the dispute (**CEO Meeting**).<sup>1</sup>

- 23.2 If the dispute is not settled within 21 days of the CEO Meeting to resolve the dispute, any party may refer the matter to mediation in accordance with the LCIA Mediation Rules, which are deemed to be incorporated by reference into this Clause 23.
- 23.3 If the dispute is not settled by mediation within 42 days of the CEO Meeting or such further period as the parties to the dispute shall agree in writing, the dispute shall be referred to and finally resolved by arbitration under the LCIA Rules, which are deemed to be incorporated by reference into this Clause 23.
- 23.4 In any arbitration commenced pursuant to this Clause 23,
- (a) the number of arbitrators shall be one;
  - (b) the seat, or legal place, of arbitration shall be London, England; and
  - (c) the language to be used in the arbitral proceedings shall be English.

## **24 Governing Law and Jurisdiction**

### **24.1 Governing law**

This Agreement is governed by and is to be construed in accordance with English law.

### **24.2 Jurisdiction**

Subject to Clause 23 the parties agree to submit to the exclusive jurisdiction of the English courts as regards any claim or matter arising out of or in connection with this Agreement.

## **25 Execution of different copies**

The parties may execute this Agreement in any number of copies and on separate copies. Each executed copy counts as an original of this Agreement and all the executed copies form one instrument.

**Signed** on the date appearing at the beginning of this Deed.

## **Schedule 2 – The Purpose**

The purpose of the Company is to co-ordinate the funding of the LDVs and to oversee and hold to account the LDVs in order to develop each of the Properties as garden communities, being self-sustaining communities which secures the future stewardship of public assets for community benefit, the design, development and delivery of which is underpinned by local public sector leadership, a strong vision, inclusive and long term planning and effective engagement.

A garden community should:

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<sup>1</sup> RB: Should we include further provisions in respect of such meeting e.g. every LA must have a representative present, notice etc.

1. be implemented using new models of delivery with the public and private sectors sharing risk and reward and ensuring that the cost of achieving the following is borne by those promoting development of the communities: (i) a high quality of place-making; (ii) timely delivery of both on-site and off-site infrastructure needed to address the impact of the new community; (iii) a mechanism for future stewardship, management, maintenance and renewal of community infrastructure and assets;
2. be planned and delivered in conjunction with a masterplan and other design guidance that have been developed through innovative community engagement;
3. be designed and executed to achieve the highest quality of place-making and design, structuring the new community to create an appropriate hierarchy of centres and walkable neighbourhoods that accommodate strong local cultural, recreational, leisure and retail facilities that underpin community life and relate to the wider urban context, as well as establishing environments that promote health, happiness and well-being;
4. have an appropriate mechanism and funding for community governance and empowerment as well as the long term stewardship of community assets;
5. provide beautifully and imaginatively designed homes with easy access to great green spaces , combining the very best of town and country living;
6. provide development that will contribute to building a balanced and inclusive community including a range of mixed-tenure homes and housing types that are affordable – including to rent – for local people including provision of self- and custom-build, co-ownership and affordable homes;
7. contribute to the creation of a resilient & self-sustaining local economy through offering access to a strong local jobs offer, including within the community itself, that provide a variety of employment opportunities within easy commuting distance of homes;
8. ensure provision of generous green space that builds on existing natural assets and is linked to the wider natural environment, with well-connected and biodiversity-rich public parks, a mix of public and private networks of well-managed, high quality gardens, allotments, tree-lined streets and open spaces;
9. provide in a timely fashion to meet the needs of the growing community, a range of great local schools & education facilities catering for all age groups, needs & skills development, health facilities and other services needed to underpin community life;
10. promote and deliver a step change in sustainable and integrated local transport with excellent walking, cycling and public transport systems fully integrated with land use at its heart, encouraging and incentivising more sustainable active travel patterns overall; and
11. secure delivery of a smart and sustainable approach to the design and management of services, infrastructure and utilities to secure the highest standards of technology to reduce the impact of climate change, water efficiency with the aim of being water-neutral, energy efficiency and local energy generation, net gains in biodiversity, efficient management of utilities, excellent access to information technology networks and sustainable waste and mineral management.

## Schedule 3 - Particulars of the Company<sup>2</sup>

<b>Name:</b>	North Essex Garden Communities Limited			
<b>Registered Number:</b>	10319743			
<b>Registered office:</b>	**			
<b>Directors:</b>				
Nominated Directors:	**	**	**	**
Independent Director:	**	**	**	
<b>Company Secretary:</b>	**			
<b>Share Capital:</b>	25 Shares Essex			
	25 Shares Braintree			
	25 Shares Colchester			
	25 Shares Tendring			
No. and type of Shares subscribed:	100 Shares			
Total subscription price (including any premium)	£100			
<b>Auditors:</b>	**			
<b>Accounting Reference Date:</b>	**			
<b>Bankers:</b>	**		**	

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<sup>2</sup> All to be confirmed.

## Schedule 4 – Property Plans

*To be included in the final Shareholders' Agreement.*

## Schedule 5 – Reserved Matters

- 1 Passing any resolution or presenting any petition for the Company's winding up (unless the Company is insolvent).
- 2 Issuing or allotting any share or other capital or reducing, converting, sub-dividing, cancelling or otherwise reorganising, or altering any rights attaching to, any Shares.
- 3 Registering any transfer or allotment of Shares.
- 4 Granting any share option or right to subscribe, acquire or convert into Shares or implementing or varying any incentive, bonus or commission arrangement.
- 5 Ceasing, or making any material change in the nature of, the Company's business, the Purpose or establishing any new business.
- 6 Altering the Company's Articles.
- 7 Changing the Company's auditors.
- 8 Changing the Company's accounting reference date or accounting policies.
- 9 Adopting or approving the Company's annual accounts.
- 10 Approving the Long-term Business Plan or Budget, or amending the Long-term Business Plan or Budget.
- 11 Approving or amending the Financial Procedure Rules.
- 12 Transferring the whole or any material part of the undertaking of the Company.
- 13 Save as set out in the Long-term Business Plan or Budget, and subject to the Financial Procedure Rules, acquiring or disposing of (whether by one or more transactions) any assets, entering into any commitment, or incurring any expenditure.
- 14 Save as set out in the Long-term Business Plan or Budget, and subject to the Financial Procedure Rules, acquiring, disposing of, surrendering or assigning any freehold or leasehold property.
- 15 Save as set out in the Long-term Business Plan or Budget, forming any subsidiary, acquiring or disposing of any interest in any business or company, participating in any partnership, joint venture or profit/revenue sharing arrangement or entering into any scheme of arrangement or merger.
- 16 Save as set out in the Long-term Business Plan or Budget, and subject to the Financial Procedure Rules, incurring any Borrowings or creating any Encumbrance upon or in respect of the whole or part of the business or the Company's assets.

- 17 Entering into any agreement not on bona fide arms' length terms, or (same as set out in the Long-term Business Plan or the Budget) any agreement with any director or with any Shareholder or with any associate of a Shareholder.
- 18 Other than as set out in the Long-term Business Plan, entering into, or varying, any Agreement.
- 19 Save as set out in the Long-term Business Plan or Budget, making any loan or providing any surety or security arrangement in respect of any loan or third party obligation whatsoever.
- 20 Save as set out in the Long-term Business Plan or Budget, granting any service or consultancy agreement to any Senior Employee or varying or terminating any such agreement.
- 21 Paying any Directors' remuneration, fees or expenses other than pursuant to a Director's Letter.
- 22 Save as set out in the Long-term Business Plan or Budget, initiating or settling any litigation or arbitration which will, or is likely to, have:
  - (i) a material impact on the reputation of the Local Authorities, the Company or any LDV, or
  - (ii) the ability of the Company to achieve the Purpose.
- 23 Opening any bank account or signing or varying any bank mandate, in each case other than in accordance with the Financial Procedure Rules.
- 24 Giving any approval for or on behalf of the Company required under Part A Schedule 4 (Reserved Matters) of each LDVs shareholders' agreement.

**Signed by \*\*** authorised )  
for **ESSEX COUNTY COUNCIL** )

**Signed by \*\*** authorised )  
for **COLCHESTER** )  
**BOROUGH COUNCIL** )

**Signed by \*\*** authorised )  
for **TENDRING DISTRICT COUNCIL** )

**Signed by \*\*** authorised )  
for **BRAINTREE DISTRICT COUNCIL** )  
)

**Signed by \*\*** authorised )  
for **NORTH ESSEX** )  
**GARDEN COMMUNITIES LIMITED** )

## Appendix 4:

### DRAFT TERM SHEET

#### North Essex Garden Communities: LDV2

#### Colchester Braintree Borders Limited

<p><b>1. Definitions</b></p>	<p><b>A Share</b> means an A share of nominal value £1 in the capital of the Company.</p> <p><b>A Shareholder</b> means a holder of A Shares.</p> <p><b>Articles</b> means the articles of association of the Company from time to time.</p> <p><b>B Share</b> means a B share of nominal value £1 in the capital of the Company.</p> <p><b>B Shareholder</b> means a holder of B Shares.</p> <p><b>Board</b> means the board of Directors.</p> <p><b>Braintree</b> means Braintree District Council.</p> <p><b>Budget</b> means a budget (including revenues, operating and capital expenditures, and cash flow) of the Company for a relevant financial period.</p> <p><b>Chair</b> means Chair of the Board.</p> <p><b>Colchester</b> means Colchester Borough Council.</p> <p><b>Company</b> means Colchester Braintree Borders Limited, a private company limited by shares.</p> <p><b>Director</b> means a director of the Company.</p> <p><b>Director Letter</b> means an engagement letter to be entered into between the Company and each Director.</p> <p><b>Essex</b> means Essex County Council.</p> <p><b>Financial Procedure Rules</b> means the financial procedure rules adopted by the Company from time to time with the approval of NEGC.<sup>1</sup></p> <p><b>Funding Agreement</b> means any funding agreement entered into from time to time between (1) Essex, Braintree or Colchester as lender, and (2) the Company as borrower.</p> <p><b>Independent Director</b> means a director who is not a Nominated Director or a Landowner Director.</p>
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<sup>1</sup> Set of financial procedures to be drafted.

	<p><b>Landowner/Optionholder</b> means [ ] (for so long as [it/they] [has/have] any interest in the Property), and/or such other person as NEGC determines.</p> <p><b>Landowner Directors</b> means a person nominated by the Landowner/Optionholder and appointed as a Director.</p> <p><b>Local Authority</b> means Essex, Braintree, Colchester or Tendring.</p> <p><b>LDV Business Plan</b> means a 2 year business plan as adopted and amended by the Board (with the approval of the Shareholders) from time to time; such business plan covering delivery of the Project and such other matters as the Board may determine, and consistent with the aims and requirements of the Master Plan and the Long-term Business Plan.</p> <p><b>Long-term Business Plan</b> means a business plan for the lifetime of the Project (with a higher level of detail for the next 5 years) as adopted by NEGC from time to time; such business plan covering infrastructure requirements, finance, planning and such other matters as NEGC determines, and consistent with the aims and requirements of the Master Plan.</p> <p><b>Master Plan</b> means the planning policy document adopted by the relevant local planning authority in relation to the Property which set out proposals for buildings, spaces, movement strategy and land use in three dimensions and matches these proposals to a delivery strategy and development programme.</p> <p><b>NEGC</b> means North Essex Garden Communities Limited, a joint strategic entity which is owned equally by each Local Authority.</p> <p><b>Nominated Director</b> means a Director appointed by Essex, Braintree or Colchester.</p> <p><b>Project</b> means the development of the Property as a garden community in accordance with the Purpose.</p> <p><b>Property</b> means the property [<i>location description</i>] which is approximately identified in the plan attached in Schedule 2.</p> <p><b>Purpose</b> has the meaning given in paragraph 2 below.</p> <p><b>Senior Employee</b> means an employee whose total annual remuneration exceeds or is likely to exceed £75,000.</p> <p><b>Share</b> means an A Share or a B Share.</p> <p><b>Shareholder</b> means an A Shareholder or a B Shareholder.</p> <p><b>Shareholders' Agreement</b> means the shareholders' agreement to be entered into in relation to the business and operation of the Company between NEGC, Essex, Braintree or Colchester and the Company.</p> <p><b>Tendring</b> means Tendring District Council.</p>
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<b>2. Purpose</b>	<ul style="list-style-type: none"> <li>• The purpose of the Company is to secure the development of the Property in accordance with the Project Plan, the Master Plan and the principles set out in Schedule 1 (the <b>Purpose</b>)</li> <li>• The Purpose (as set out in Schedule 1) will be included in the following documents: <ul style="list-style-type: none"> <li>– the Shareholders' Agreement</li> <li>– the Articles (perhaps in an abbreviated form)</li> <li>– the Director Letters</li> </ul> </li> <li>• The Purpose can only be changed with the prior consent of all of the Local Authorities</li> </ul>
<b>3. Shares</b>	<p><b>Initial Shareholders:</b> At closing:</p> <ul style="list-style-type: none"> <li>• NEGC will subscribe for 100 A Shares at £1 each</li> <li>• Essex will subscribe for • B Shares at £• each</li> <li>• Colchester will subscribe for • B Shares at £• each</li> <li>• Braintree will subscribe for • B Shares at £• each</li> </ul> <p><b>A Share rights:</b> The A Shares shall have the following rights:</p> <ul style="list-style-type: none"> <li>• Each A Share will entitle the holder to one vote on any Shareholder resolution</li> <li>• The A Shares will carry no right to receive dividends</li> <li>• On a return of capital, the A Shares will entitle the holder to a return of nominal value, but no more</li> </ul> <p><b>B share rights<sup>2</sup>:</b> The B Shares shall have the following rights:</p> <ul style="list-style-type: none"> <li>• The B Shares will carry no right to vote save that each B share shall carry the right to 2 votes on any vote which: <ul style="list-style-type: none"> <li>– materially affects, or is likely to materially affect, the delivery of the Project, or the infrastructure for the Project, in accordance with the timetable set out in the Business Plans; or</li> <li>– materially affects, or is likely to materially affect, the Company's ability to repay any sums due under any Funding Agreement when due; or</li> <li>– is likely to result in a material breach of any Funding Agreement by the Company</li> </ul> </li> </ul>

<sup>2</sup> It may also be that B Shares are issued to an external funder

	<ul style="list-style-type: none"> <li>• The B Shares shall carry a right to receive dividends</li> <li>• The B Shares shall be entitled to receive (on a pro-rata basis) any capital return to Shareholders (subject to the A Share rights mentioned above)</li> </ul> <p><b>Interpolated voting:</b> The NEGC constitution should be drafted so that in relation to any decision of the NEGC shareholders or board specifically affecting the Company only, only Essex, Braintree and Colchester shall be entitled to vote on that decision.</p>
<b>4. Directors</b>	<p><b>Appointment/Removal:</b> The directors shall be appointed as follows:</p> <ul style="list-style-type: none"> <li>• Each of Essex, Braintree and Colchester have the right to appoint and remove a Director (each a <b>Nominated Director</b>)</li> <li>• The Landowner/Optionholder shall have a right to appoint up to 3 Directors; provided that any replacement Director must be approved by NEGC before they are appointed (each a <b>Landowner Director</b>). If a Landowner/Optionholder ceases to have any interest in the Property, the Landowner Director nominated by that Landowner/Optionholder shall (unless NEGC otherwise requires) immediately resign as a Director</li> <li>• NEGC shall be entitled to appoint a further 3 independent Directors (each an <b>Independent Director</b>)</li> <li>• Any Director other than a Nominated Director may be removed by notice sent by NEGC to the Company</li> <li>• On appointment, each Director and the Company will enter into a Director Letter</li> </ul> <p><b>Chair:</b> The Board will either (i) appoint an appropriate person as Chair (and Independent Director) or (ii) appoint a chair from amongst the Directors with the expectation that an Independent Director will be elected. If the proposed Chair is not an Independent Director the approval of all Nominee Directors will be needed for the appointment. Any such appointment will be for a maximum 2 year term. The Chair shall not have a casting vote.</p> <p><b>Operation:</b> The Directors will manage the business of the Company to achieve the Purpose and in accordance with the requirements of the LDV Business Plan and the Long-term Business Plan.</p> <p><b>Board Meetings:</b> It is expected that Board meetings will be held four times a year, or more frequently as the Board may decide.</p> <p><b>Notice:</b> There will be seven days' notice of any Board meeting (or shorter notice if agreed by a majority of the Directors).</p> <p><b>Quorum:</b> The quorum for Board meetings will be at least one Nominated Director, one Landowner Director, and one Independent Director. If the quorum is not present at the appointed time for the meeting, an adjourned meeting will be</p>

	<p>called. At that adjourned meeting, at least one Nominated Director needs to be present for a quorum.</p> <p><b>Conflicts:</b> In relation to a Director's conflict:</p> <ul style="list-style-type: none"> <li>• The Director is obliged to declare his or her conflict at the beginning of any Board meeting</li> <li>• If that declaration indicates a dispute or possible dispute, the Board may decide whether or not the conflicted Director should withdraw from all or part of that meeting</li> </ul> <p><b>Alternate Directors:</b> It is expected that each Director will make every effort to attend Board meetings, and will only miss Board meetings in exceptional circumstances. Each Director Letter will name an alternate to attend, speak and vote in Board meetings in the appointing Director's absence.</p> <p><b>Indemnity:</b> The Articles will contain a standard permission to allow a Director to receive the benefit of an indemnity from the Company.</p>
<b>5. Business Plan<sup>3</sup></b>	<p>The Company's business will be operated in accordance with, and to achieve the aims set out in, the Long-term Business Plan and the LDV Business Plan. The Board will be responsible for (i) preparing the LDV Business Plan and Budget and (ii) monitoring progress against the LDV Business Plan and Budget, and may suggest changes to the LDV Business Plan and Budget from time to time. Any LDV Business Plan or Budget, and any changes to either must be approved by NEGC. In addition, any such changes need to be consistent with the Long-term Business Plan, Master Plan and the Purpose. If there are any changes made to the Long-term Business Plan, Master Plan or the Purpose, the Board will meet to discuss whether any changes are required to the LDV Business Plan and Budget, subject to NEGC approval.</p> <p>If the Company undertakes any business which is outside the remit of the Long-term Business Plan or the LDV Business Plan, or incurs any expenditure or liability that means the Company will breach the Budget, or is likely to be in breach of the Budget, the Board will promptly notify NEGC in writing.</p>
<b>6. Reserved Matters</b>	<p>Schedule 3 contains a number of reserved matters. Before the Company undertakes any of the reserved matters in Part A of Schedule 3, it needs the prior written approval of Essex, Braintree and Colchester. Before the Company undertakes any of the reserved matters in Part B of Schedule 3, it needs the prior written approval of NEGC.</p>
<b>7. Share Transfers</b>	<p>No Shares may be transferred without the prior written consent of Essex, Braintree and Colchester, save that Shares may be transferred to successor bodies (including any new town development corporation).</p>
<b>8. Termination</b>	<p>The Company shall continue until such time as:</p>

<sup>3</sup> The intention is to give the LDV, through flexible drafting of the LDV Business Plan and the Budget (in the context of the Financial Procedure Rules), sufficient operational freedom.

	<ul style="list-style-type: none"> <li>• The Purpose has been achieved; or</li> <li>• The Company is wound up pursuant to a statutory process</li> </ul> <p>On a termination, any assets of the Company may transfer to a successor (or other appropriate) body (including any new town development corporation).</p>
<b>9. Disputes</b>	<p>If there is any dispute in relation to the Company, either at Board or Shareholder level, that dispute will be escalated to the NEGC board. If the dispute is still unresolved 21 days after the NEGC board has met to discuss, Essex, Braintree or Colchester may refer the matter to mediation. If the dispute is still unresolved 42 days after the NEGC board has met to discuss, Essex, Braintree or Colchester may refer the matter to arbitration.</p>
<b>10. Documentation</b>	<p>Following the agreement of this term sheet, Dentons will prepare the following documentation:</p> <ul style="list-style-type: none"> <li>• Shareholders' Agreement – in addition to the provisions referred to above, that agreement will also contain provisions in relation to: <ul style="list-style-type: none"> <li>– set-up arrangements</li> <li>– business housekeeping (company books, insurance etc)</li> <li>– information provision to NEGC, Essex, Braintree and Colchester</li> <li>– confidentiality and announcements</li> </ul> </li> <li>• Articles</li> <li>• Director Letters – in addition to the provisions referred to above, each letter will also contain the following details: <ul style="list-style-type: none"> <li>– the period of the appointment</li> <li>– name of alternate director</li> <li>– remuneration (if any)</li> <li>– costs and expenses</li> <li>– indemnity</li> </ul> </li> </ul>

## Schedule 1 – Purpose

To secure the development of the Property to create a garden community, being a self-sustaining community which secures the future stewardship of public assets for community benefit, the design, development and delivery of which is underpinned by local public sector leadership, a strong vision, inclusive and long term planning and effective engagement.

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A garden community should:

- Be implemented using new models of delivery with the public and private sectors sharing risk and reward and ensuring that the cost of achieving the following is borne by those promoting development of the communities: (i) a high quality of place-making; (ii) timely delivery of both

on-site and off-site infrastructure needed to address the impact of the new community; (iii) a mechanism for future stewardship, management, maintenance and renewal of community infrastructure and assets;

- Be planned and delivered in conjunction with a masterplan and other design guidance that have been developed through innovative community engagement;
- Be designed and executed to achieve the highest quality of place-making and design, structuring the new community to create an appropriate hierarchy of centres and walkable neighbourhoods that accommodate strong local cultural, recreational, leisure and retail facilities that underpin community life and relate to the wider urban context, as well as establishing environments that promote health, happiness and well-being;
- Have an appropriate mechanism and funding for community governance and empowerment as well as the long term stewardship of community assets;
- Provide beautifully and imaginatively designed homes with easy access to great green spaces, combining the very best of town and country living;
- Provide development that will contribute to building a balanced and inclusive community including a range of mixed-tenure homes and housing types that are affordable – including to rent – for local people including provision of self- and custom-build, co-ownership and affordable homes;
- Contribute to the creation of a resilient & self-sustaining local economy through offering access to a strong local jobs offer, including within the community itself, that provide a variety of employment opportunities within easy commuting distance of homes;
- Ensure provision of generous green space that builds on existing natural assets and is linked to the wider natural environment, with well-connected and biodiversity-rich public parks, a mix of public and private networks of well-managed, high quality gardens, allotments, tree-lined streets and open spaces;
- Provide in a timely fashion to meet the needs of the growing community, a range of great local schools & education facilities catering for all age groups, needs & skills development, health facilities and other services needed to underpin community life;
- Promote and deliver a step change in sustainable and integrated local transport with excellent walking, cycling and public transport systems fully integrated with land use at its heart, encouraging and incentivising more sustainable active travel patterns overall;
- Secure delivery of a smart and sustainable approach to the design and management of services, infrastructure and utilities to secure the highest standards of technology to reduce the impact of climate change, water efficiency with the aim of being water-neutral, energy efficiency and local energy generation, net gains in biodiversity, efficient management of utilities, excellent access to information technology networks and sustainable waste and mineral management.

## **Schedule 2 – Property Plan**

*To be included in the final Term Sheet.*

## Schedule 3 – Reserved Matters

### Part A

- 1 Passing any resolution or presenting any petition for the Company's winding up (unless the Company is insolvent).
- 2 Issuing or allotting any share or other capital or reducing, converting, sub-dividing, cancelling or otherwise reorganising, or altering any rights attaching to, any Shares.
- 3 Registering any transfer or allotment of Shares.
- 4 Granting any share option or right to subscribe, acquire or convert into Shares or implementing or varying any incentive, bonus or commission arrangement.
- 5 Ceasing, or making any material change in the nature of, the Company's business, the Purpose or establishing any new business.
- 6 Altering the Company's Articles.

### Part B

- 1 Changing the Company's auditors.
- 2 Changing the Company's accounting reference date or accounting policies.
- 3 Adopting or approving the Company's annual accounts.
- 4 Approving the LDV Business Plan or Budget, or amending the LDV Business Plan or Budget.
- 5 Approving or amending the Financial Procedures Rules.
- 6 Transferring the whole or any material part of the undertaking of the Company.
- 7 Save as set out in the LDV Business Plan or Budget, and subject to the Financial Procedure Rules, acquiring or disposing of (whether by one or more transactions) any assets, entering into any commitment, or incurring any expenditure.
- 8 Save as set out in the LDV Business Plan or Budget, and subject to the Financial Procedure Rules, acquiring, disposing of, surrendering or assigning any freehold or leasehold property.
- 9 Save as set out in the LDV Business Plan or Budget, forming any subsidiary, acquiring or disposing of any interest in any business or company, participating in any partnership, joint venture or profit/revenue sharing arrangement or entering into any scheme of arrangement or merger.
- 10 Save as set out in the LDV Business Plan or Budget, and subject to the Financial Procedure Rules, incurring any borrowings or creating any encumbrance upon or in respect of the whole or part of the business or the Company's assets.

- 11 Entering into any agreement not on bona fide arms' length terms, or (same as set out in the LDV Business Plan or the Budget) any agreement with any director or with any Shareholder or with any associate of a Shareholder.
- 12 Other than as set out in the LDV Business Plan, entering into, or varying, any Agreement.
- 13 Save as set out in the LDV Business Plan or Budget, making any loan or providing any surety or security arrangement in respect of any loan or third party obligation whatsoever.
- 14 Save as set out in the LDV Business Plan or Budget, granting any service or consultancy agreement to any Senior Employee or varying or terminating any such agreement.
- 15 Paying any Directors' remuneration, fees or expenses other than pursuant to a Director Letter.
- 16 Save as set out in the LDV Business Plan or Budget, initiating or settling any litigation or arbitration which will, or is likely to, have:
  - (i) a material impact on the reputation of the Local Authorities, NEGC or the Company, or
  - (ii) the ability of the Company to achieve the Purpose.
- 17 Opening any bank account or signing or varying any bank mandate, in each case other than in accordance with the Financial Procedure Rules.

### Shareholders' agreement in relation to Colchester Braintree Borders Limited

#### Dated

**North Essex Garden Communities Limited**  
(NEGC)

**Essex County Council**  
(Essex)

**Colchester Borough Council**  
(Colchester)

**Braintree District Council**  
(Braintree)

**Colchester Braintree Borders Limited**  
(The Company)

Dentons UKMEA LLP  
One Fleet Place  
London EC4M 7WS  
United Kingdom

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### **List of Agreed Form Documents**

- Articles (Clause 3.2(a))
- Financial Procedure Rules
- Director's Letter (Clause 3.2(b))
- Landowners' Agreement

# Shareholders' Agreement

## Dated

## Between

- (1) **North Essex Garden Communities Limited (NEGC)** a company incorporated in England and Wales with registered number 10319743 having its registered office at \*\* ;
- (2) **Essex County Council (Essex)** of County Hall, Market Road, Chelmsford, CM1 1QH ;
- (3) **Colchester Borough Council (Colchester)** of Rowan House, 33 Sheepen Road, Colchester, Essex, CO3 3WG;
- (4) **Braintree District Council (Braintree)** of Causeway House, Bocking End, Braintree, Essex, CM7 9HB; and
- (5) **Colchester Braintree Borders Limited (the Company)** a company incorporated in England and Wales with registered number 10320360 having its registered office at \*\* .

## Recitals

- A. NEGC is a joint strategic entity which is equally owned by each Local Authority.
- B. The parties have agreed to develop the Property in accordance with the Purpose through the Company.

## It is agreed

### 1 Definitions and Interpretation

#### 1.1 Definitions

In this Agreement the following definitions shall apply.

**A Share** means an ordinary share of £1 each in the capital of the Company.

**A Shareholder** means a holder of A Shares.

**Act** means the Companies Act 2006.

**Articles** means the articles of association of the Company in the agreed form and as subsequently amended from time to time in accordance with this Agreement.

**B Share** means a B ordinary share of £1 each in the capital of the Company.

**B Shareholder** means a holder of B Shares.

**Board** means the board of Directors.

**Borrowings** means [bank and other loans, and finance provided under hire purchase, factoring, leasing acceptance credits and similar arrangements.]

**Budget** means a budget (including revenues, operating and capital expenditures and cash flow) of the Company for a relevant financial period.

**Business Day** means a day (other than a Saturday or Sunday) on which banks are open for the transaction of general business.

**Chair** means the chair from time to time of the Board.

**Completion** means completion of the matters specified in Clause 3.

**Director** means a director of the Company from time to time.

**Director's Letter** means an engagement letter in the agreed form to be entered into between the Company and each Director.

**Encumbrance** means any mortgage, charge, pledge, hypothecation, lien, assignment by way of security, title retention, option, right to acquire, right of pre-emption, right of set-off, counterclaim, trust arrangement or other security, preferential right or agreement to confer security, or any equity or restriction (but excluding liens arising by operation of law) and **Encumber** shall be construed accordingly.

**Financial Procedure Rules** means the financial procedure rules in the agreed form adopted by the Company with the approval of NEGC (as amended from time to time).

**Funding Agreement** means any debt funding agreement entered into from time to time between a Local Authority and the Company.

**Independent Director** means a director who is not a Nominated Director or a Landowner Director, such director being appointed by NEGC.

**Initial Shareholders** means together NEGC, Essex, Colchester and Braintree.

**Intellectual Property** means patents, trade marks, service marks, trade names, domain names, rights in designs, semiconductor topography rights, database rights of unfair extraction and reutilisation, copyrights (including rights in computer software), rights in know-how and other intellectual or industrial property rights (whether registered or unregistered and including applications for the registration of any of the foregoing) and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world.

**Joint Delivery Group** means a joint delivery group established by NEGC to provide the Services.

**Landowner** means [each of ][\*\* ] (for so long as [it/they] [has/have] any interest in the Property), and/or such other person as NEGC may determine.<sup>1</sup>

**Landowners' Agreement** means an agreement [in the agreed form] entered into from time to time between each of the [Landowners] [Optionholders] and the Company.

**Landowner Director** means a person nominated by the [Landowner/Optionholder] and appointed as a Director.

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<sup>1</sup> TBD

**LCIA Rules** means the LCIA Arbitration Rules 2014.

**LDV Business Plan** means a 2 year business plan as adopted and amended by the Board (with the approval of NEGC) from time to time; such business plan covering delivery of the Project, a detailed short-term action plan and such other matters as the Board may determine, and consistent with the aims and requirements of the Master Plan and the Long-term Business Plan.

**Local Authority** means Essex, Braintree, Colchester or Tendring District Council,

**Long-term Business Plan** means a business plan for the lifetime of the Project (with a higher level of detail for the next 5 years) in relation to the Company as adopted from time to time by NEGC with the prior consent of Essex, Colchester and Braintree; such business plan covering, infrastructure requirements, finance, planning and such other matters as NEGC determines, and consistent with the aims and requirements of the Master Plan.

**Master Plan** means a document in relation to the Project as adopted by the relevant local planning authority that sets out proposals for land uses buildings, spaces, access and movement and other spatial components and sets the basis for planning applications.

**New Town Development Corporation** means a corporation established under section 1 of the New Towns Act 1981 or similar future legislation, as amended from time to time.

**Nominated Director** means a Director appointed by Essex, Colchester or Braintree.

**[Optionholder** means [each of ][\*\* ] (for so long as [it/they] [has/have] an option in respect of the Property), and/or such other person as NEGC may determine.]

**Project** means the development of the Property as a garden community in accordance with the Purpose.

**Property** means the property [*location description*] which is approximately identified in the plan attached in Schedule 4.

**Purpose** has the meaning given in Clause 2.1 below.

**Senior Employee** means an employee whose total annual remuneration exceeds or is likely to exceed £75,000.

**Services** means management and technical support and such other support and services the Company may require, and NEGC may provide, from time to time.

**Share** means an A Share or a B Share in the share capital of the Company.

**Shareholder** means an A Shareholder or a B Shareholder.

## 1.2 Interpretation

In this Agreement, unless otherwise specified:

- (a) the index and headings are for ease of reference only and shall not be taken into account in construing this Agreement;

- (b) references to this Agreement or any other document shall be construed as references to this Agreement or that other document as amended, varied, novated, supplemented or replaced from time to time;
- (c) references to any recital, clause, paragraph or Schedule are to those contained in this Agreement, and all Schedules to this Agreement are an integral part of this Agreement;
- (d) the expression **this Clause** shall, unless followed by reference to a specific provision, be deemed to refer to the whole clause (not merely the sub-clause, paragraph or other provision) in which the expression occurs;
- (e) references to a **party** mean a party to this Agreement including that party's successors in title and assigns or transferees permitted in accordance with the terms of this Agreement provided that the relevant property, right or liability has been properly assigned or transferred to such person;
- (f) references to a **director** shall, where the context allows, include reference to the alternate of such director;
- (g) references to a **subsidiary** shall include reference to a subsidiary and a subsidiary undertaking, each as defined in the Act, but on the basis that a company is to be treated as a member of another company for the purposes of subsections 1159(1)(b) and (c) of the Act even if its shares in that other company are registered in the name of:
  - (i) its nominee or any other person acting on its behalf, or
  - (ii) another person by way of security over those shares;
- (h) a document is in the **agreed form** if it is in the form of a draft agreed between and initialled by or on behalf of the Shareholders on or before the date of this Agreement;
- (i) references to any gender shall include the others; and words in the singular include the plural and vice versa;
- (j) references to **legislation** include any statute, bye-law, regulation, rule, subordinate or delegated legislation or order; and reference to any **legislation** is to such legislation as amended, modified or consolidated from time to time and to any legislation replacing it or made under it;
- (k) references to a **person** (or to a word importing a person) shall be construed so as to include:
  - (i) an individual, firm, partnership, trust, joint venture, company, corporation, body corporate, unincorporated body, association, organisation, any government, or state or any agency of a government or state, or any local or municipal authority or other governmental body (whether or not in each case having separate legal personality); and
  - (ii) that person's successors in title and assigns or transferees permitted in accordance with the terms of this Agreement provided that the relevant property, right or liability has been properly assigned or transferred to such person;

- (l) the words and expressions defined in sections 250, 390, 391, 471, 540, and 1173 of the Act have the same meanings;
- (m) **in writing** includes any communication made by letter, e-mail or other forms of electronic communication;
- (n) the words **include**, **including** and **in particular** shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words; and
- (o) the words **other** and **otherwise** shall not be construed ejusdem generis with any foregoing words where a wider construction is possible.

## **2 Purpose of the Company**

- 2.1 The parties hereby agree that the purpose of the Company is to secure the development of the Property in accordance with the Master Plan and the principles set out in Schedule 2.
- 2.2 The Purpose can only be amended with the prior written consent of all of the Local Authorities.

## **3 Completion arrangements**

### **3.1 Completion**

Completion shall take place immediately following signature of this Agreement at [*insert relevant address*].

### **3.2 Completion Obligations**

At Completion:

- (a) the parties shall procure that:
  - (i) the Company is established, organised and financed as detailed in Schedule 3;
  - (ii) the Company adopts the Articles; and
  - (iii) [*others?*].
- (b) the Company shall, and the Shareholders shall procure that the Company shall, enter into the following:
  - (i) Director's Letters;
  - (ii) [Any other contracts to be entered into at Completion];
- (c) NEGC shall enter into the following agreements:
  - (i) [list]
- (d) Each of Essex, Colchester and Braintree shall enter into the following agreements:

- (i) [list]

### **3.3 No partial Completion**

No party shall be obliged to complete its obligations under Clause 3.2 unless all of the obligations listed in Clause 3.2 are completed with simultaneous effect.

### **3.4 Shareholders' services**

Any Services reasonably required by the Company shall, at the discretion of the board of directors of NEGC, be delivered by the Joint Delivery Group at rates to be agreed between the parties.

## **4 The Board**

### **4.1 Decisions to be referred to the Board**

4.1.1 The Board will manage the business of the Company to achieve the Purpose and in accordance with the requirements of the Long-term Business Plan and the LDV Business Plan.

4.1.2 All policy and management decisions of the Company (including the matters set out in Clause 8) shall be referred to the Board before implementation.

### **4.2 Action by the Board**

The Board shall act by majority vote, except in relation to any matter listed out in Clause 8 in which case no decision or action shall be taken unless any prior written consent required under Clause 8 has been received by the Company and if such consent is so received each of the Directors shall, unless otherwise constrained by their fiduciary duties, vote in favour of such matter.

### **4.3 Nominated Directors**

4.3.1 Each of Essex, Colchester and Braintree shall have the exclusive right to appoint, remove or replace a Nominated Director.

4.3.2 The Directors at the date of Completion shall be as specified in Schedule 3.

### **4.4 Landowner Director<sup>2</sup>**

4.4.1 The [Landowner/Optionholder] shall have the right to appoint up to three Landowner Directors. If any of the initial Landowner Directors ceases to be a Director, any replacement Landowner Director can only be appointed following receipt by the Company of the prior written consent of NEGC.

4.4.2 In the event a [Landowner][Optionholder] ceases to have any interest in the Property, the Landowner Director shall, unless NEGC otherwise requires, immediately resign as a Director of the Company.

### **4.5 Independent Director**

NEGC shall have the exclusive right to appoint up to three Independent Directors.

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<sup>2</sup> We will need to reflect this in the Landowners' Agreement.

#### **4.6 Alternate Directors**

It is expected that each Director will make every effort to attend Board meetings, and shall only miss Board meetings in exceptional circumstances. Each Director's Letter will contain details of an alternate to attend, speak and vote in Board meetings in the appointing Director's absence.

#### **4.7 Chair**

4.7.1 The Board will either:

- (a) appoint an appropriate person as Chair (being an Independent Director); or
- (b) appoint a chair from amongst the Directors with the expectation that an Independent Director will be elected.

Any such appointment will be for a maximum 2 year term.

4.7.2 If the proposed Chair is not an Independent Director the approval of all Nominated Directors will be needed for the appointment. The Chair shall not have a second or casting vote.

#### **4.8 Board meetings**

Board meetings shall be held at such location as a quorum of the Directors agree at intervals of not more than three months. Save as otherwise agreed by a majority of the Directors:

- (a) Board meetings shall be convened by any Director by not less than 7 days' notice, or where the particular circumstances require a shorter period, such shorter period as the circumstances reasonably require, if agreed by a majority of Directors;
- (b) each notice shall be sent to each Director to the address, and/or e-mail address notified to the Company for these purposes, and if notice is required to be sent by e-mail a copy of such notice shall also be sent by post (and air mail if the address is overseas);
- (c) each notice of a Board meeting shall be accompanied by a full agenda and supporting papers;
- (d) each Board meeting shall only deal with the business set out in the agenda which accompanied the notice convening that Board meeting; and
- (e) minutes of each meeting of the Board shall be taken and kept by the company secretary in the books of the Company. Copies of the minutes of each such meeting shall be delivered to each member of the Board as soon as practicable. If a member has not been present at the meeting copies of all papers considered by the Board at the meeting shall be sent to him with the minutes.

#### **4.9 Quorum**

The quorum for a Board meeting shall be at least one Nominated Director, one Landowner Director (if any are appointed) and one Independent Director (if any are appointed) present in person or by his alternate (but so that not less than three individuals shall constitute the quorum). If within 30 minutes of the time appointed for a Board meeting there is no quorum,

the Director(s) present shall adjourn the meeting to a place and time not less than five Business Days later provided that at such adjourned meeting the requirement that such Director(s) shall be present shall not apply, and one Nominated Director present and shall constitute a quorum and may conduct the business of the meeting.

**4.10 Voting at Board meetings**

At each Board meeting the Directors present shall be entitled to cast one vote on each issue put to a vote.

**4.11 Compliance with Agreement**

The Company shall procure that any person who is appointed a Director after the date of this Agreement shall immediately upon becoming a Director of the Company enter into a Director's Letter with the Company to comply with and implement the terms of this Agreement.

**4.12 Shareholders to procure Director's resignation**

If a Shareholder ceases to be a Shareholder, it shall procure that every Director appointed by it under this Clause 4 is removed.

**4.13 Indemnity**

Each Shareholder shall procure that any Director appointed by it who vacates his office as director (whether by virtue of being removed by that Shareholder or otherwise) shall do so without cost to the Company. That Shareholder shall indemnify the Company and any other Shareholder from and against all claims, demands and rights which any such Director may have against the Company in respect of removal, dismissal, redundancy or otherwise.<sup>3</sup>

**4.14 Directors may pass information to their appointor**

A Director may from time to time disclose to the Party who appointed him and its representatives such information as he has regarding the Company.

**4.15 Removal of a director**

Any director may be removed by notice sent by NEGC to the Company.

**5 Business Plans and Budget**

**5.1 Interim business plans**

Until such time as an LDV Business Plan is adopted by the Company in accordance with this Agreement, the Company may operate under such business plan as the Board shall determine (provided that such business plan is not in conflict with any Long-term Business Plan adopted by NEGC at that time).

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<sup>3</sup> Do we need the Landowner to sign up to a similar provision in the Landowners' Agreement?

## **5.2 Business plans**

- 5.2.1 Within three months of a full Board being appointed (being three Nominated Directors and at least three other Directors) the Company shall, subject to NEGC approval, formally adopt an LDV Business Plan.
- 5.2.2 The Company's business will also be operated in accordance with, and to achieve the aims set out in, the Long-term Business Plan.
- 5.2.3 The Board shall be responsible for, amongst other things:
- (a) preparing the LDV Business Plan and Budget; and
  - (b) monitoring progress against the LDV Business Plan and Budget,
- and may suggest amendments to the LDV Business Plan and Budget from time to time.
- 5.2.4 In addition, the Board shall submit any draft LDV Business Plan to NEGC no later than two months before the end of the period to which the current LDV Business Plan relates. Such LDV Business Plan shall not be adopted by the Company until such time as NEGC approval has been received.
- 5.2.5 Any amendments to the LDV Business Plan or Budget must first be approved in writing by NEGC. In order to obtain NEGC written approval, the Board shall submit to NEGC in writing the LDV Business Plan or Budget together with a proposal setting out the amendments, and an explanation for the amendments. Any such amendments need to be consistent with the Long-term Business Plan, Master Plan and the Purpose.
- 5.2.6 If there are any amendments made to the Long-term Business Plan, Master Plan or the Purpose, the Board will meet to discuss whether any amendments are required to the LDV Business Plan and Budget, subject always to NEGC's approval.
- 5.2.7 If the Company undertakes any business which is outside the remit of the Long-term Business Plan or LDV Master Plan, or incurs any expenditure or liability that means the Company will breach or exceed the Budget, or is likely to be in breach of the Budget, the Board will promptly notify NEGC in writing. Such notification will provide:
- (i) detailed information in relation to such expenditure or liability, including an explanation of the circumstances; and
  - (ii) suggested remedial action.
- 5.2.8 Where there is any amendment to the Long-term Business Plan, Master Plan or the Purpose, the Board shall ensure that any corresponding amendments necessary to the remaining LDV Business Plan are also made.

## **5.3 Budget**

- 5.3.1 The Board shall submit any draft Budget to NEGC no later than two months before the start of each financial period of the Company. Such Budget shall not be adopted by the Company until such time as NEGC approval has been received.

- 5.3.2 If, at the end of any financial period, the Budget for the next financial period has not been agreed, the Company should comply with the requirements of the Financial Procedure Rules until such time as the relevant Budget has been approved by the NEGC.

## **6 Financing the Company**

### **6.1 Financing**

The Company shall be financed through the moneys subscribed for issued shares and lent under any Funding Agreement, or otherwise as the Shareholders may agree.

### **6.2 Borrowing limit**

The parties shall procure that the Company does not exceed any borrowing limit contained in the Budget or the Financial Procedure Rules.

### **6.3 No Shareholder obligations to fund**

No Shareholder shall be obliged to advance any loan to the Company except pursuant to any Funding Agreement.

## **7 Information and Operation of the Company**

### **7.1 Information**

The Company shall provide to each Shareholder and Director and where requested, to their representatives, the following:

- (a) a profit and loss account estimate for the Company within 10 Business Days of the end of each month;
- (b) unaudited management accounts for the Company within 20 Business Days from the end of each month including a profit and loss account for that month and for the financial year to date (in each case measured against the budget for the relevant period) and 12 month forecast cash flows;
- (c) audited statutory accounts for the Company within 60 Business Days from the end of the financial year;
- (d) access to the Company's books, records, Senior Employees and auditors at such times as may reasonably be requested; and
- (e) such other information relating to the Company as any Shareholder may reasonably request from time to time,

and without prejudice to the foregoing, the Company shall keep the Shareholders fully and promptly informed of all material developments regarding the Company's financial and business affairs and all significant events (including any litigation or arbitration) which will or may affect the Company.

## **7.2 Operation of the Company**

The Company shall, and the Shareholders shall procure that the Company, shall:

- (a) carry on and conduct its business on a commercial basis in a proper lawful and efficient manner for its own benefit;
- (b) transact all business on arm's length terms;
- (c) ensure that all its business other than routine business is undertaken or supervised by the Directors;
- (d) obtain and maintain all necessary licences and approvals required in order to carry on the business; and
- (e) observe and perform its obligations under each contract referred to in Clause 3.2(b).

## **8 Reserved matters**

The Company agrees, so far as it lawfully may, and the Shareholders agree to procure, so far as is within their powers as Shareholders, that the matters listed in:

- (a) Part A of Schedule 5 in relation to the Company shall require and shall only be implemented if the Company shall have received the prior written consent of Essex, Colchester and Braintree; and
- (b) Part B of Schedule 5 in relation to the Company shall require and shall only be implemented if the Company shall have received the prior written consent of NEGC.

## **9 Transfer of Shares**

No Shareholder shall assign, transfer, exchange, encumber or otherwise dispose of any of the Shares held by it or any interest in them without the prior written consent of the other Shareholders.

## **10 Protection of Name: Intellectual Property**

### **10.1 Shareholders' rights to their intellectual property**

The Shareholders hereby acknowledge and agree that all Intellectual Property Rights used in the Business but owned or provided by a Shareholder or any associate of a Shareholder (not being the Company) shall unless specifically otherwise agreed in writing remain the property of that Shareholder, shall be deemed licensed to the Company on such terms as agreed by the Shareholder and the Company, or if there is no agreement on a non-exclusive royalty-free basis for so long as the party remains a Shareholder.

### **10.2 Company's rights to its intellectual property**

Any Intellectual Property Rights which arise in the course of the Company's activities and are developed by the Company, its Directors, employees or agents shall belong to the Company and shall be deemed licensed to each of the Shareholders on such terms as are agreed by

the Company and the relevant Shareholder or if there is no agreement, on a non-exclusive royalty-free basis for so long as the relevant Shareholder remains a Shareholder.

## **11 Freedom of Information**

The parties acknowledge that the parties to this Agreement may be subject to the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 and may be required to disclose information in response to requests within the terms of that legislation. Where appropriate the relevant party shall rely on any applicable exemptions in that legislation to justify not disclosing such information. Each party agrees to consult with the other parties to this Agreement as soon as reasonably practicable after receiving any such request and before disclosing any information concerning the Company.

## **12 Announcements and Confidentiality**

### **12.1 No announcements without agreement**

Save as required by law or with the prior written consent of the other parties no statement or announcement of any nature relating to the subject matter of or the transaction referred to in this Agreement or the establishment or operations of the Company shall be made to the public, the press or otherwise unless in a form previously agreed between the Shareholders.

### **12.2 Shareholders' confidentiality obligations**

12.2.1 Subject to Clause 11 each Shareholder shall (and shall procure that their representatives shall) at all times keep confidential and shall not use (other than for the benefit of the Company) any confidential information which it or they may have or acquire in relation to the business, finances, assets or affairs of the Company or any other party, save for any information:

- (a) which is publicly available or becomes publicly available otherwise than as a result of a breach of this Clause12;
- (b) which is disclosed to that party by a third party which did not acquire the information under an obligation of confidentiality;
- (c) which is required to be disclosed by law or the rules of any recognised investment exchange (as that term is used in section 285 of the Financial Services and Markets Act 2000) to which that Shareholder.

12.2.2 No Shareholder shall use any confidential information acquired in relation to another Shareholder pursuant to the performance of this Agreement for any purpose without the prior consent in writing of that Shareholder.

### **12.3 Company's confidentiality obligations**

The Company shall observe a similar obligation of confidence to that set out in Clause 12.2.1 in favour of each Shareholder.

### **12.4 Duration of confidentiality obligations**

The obligations in this Clause 12 shall continue to apply after termination of this Agreement and after any party has ceased to be party to this Agreement without limit in time.

### **13 Relationship between Shareholders and the Company**

#### **13.1 Shareholders' procurement obligation**

Each of the Shareholders agrees it shall exercise its rights hereunder and as a Shareholder in the Company in such manner as could reasonably be expected to prevent, and shall not exercise those rights in any manner which could reasonably be expected to result in, a breach by the Company of any of its obligations under this Agreement or any Funding Agreement or any restrictions imposed upon it under its Articles (whether or not enforceable against the Company itself).

#### **13.2 No partnership**

Nothing in this Agreement, and no action taken under this Agreement, shall create a partnership or establish a relationship of principal and agent between any of the parties or (save as otherwise stated herein) otherwise authorise any party to bind any other party for any purpose.

### **14 Entire Agreement and Severance**

#### **14.1 Entire agreement**

This Agreement together with the documents referred to in it sets out the entire agreement between the parties, and supersedes any previous agreement between them in relation to the subject matter of this Agreement and those documents.

#### **14.2 Acknowledgment by parties**

Each party acknowledges that:

- (a) in entering into this Agreement and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any representation (whether negligent or otherwise) made to it by any person (whether a party to this Agreement or not) which is not expressly set out or referred to in this Agreement;
- (b) the only remedy available to it in respect of any representation or warranty expressly set out or referred to in this Agreement shall be for breach of contract in respect of that term of this Agreement; and
- (c) nothing in this Clause 14 shall operate to exclude or restrict any liability for fraudulent misrepresentation.

#### **14.3 Conflict with the Articles**

The parties intend that the provisions of this Agreement shall prevail over the Articles in the event of conflict and, accordingly, the Shareholders shall, if necessary, exercise all voting and other rights and powers available to them as Shareholders or under this Agreement to procure any amendment to the Articles required to give effect to the provisions of this Agreement.

#### **14.4 Severance**

If any provision of this Agreement or part thereof is rendered void, illegal or unenforceable in any respect (whether against all or only some of the parties), the validity, legality and enforceability of the remaining provisions (and such aforesaid provision against the other parties) shall not in any way be affected or impaired thereby.

#### **15 Amendments**

This Agreement may not be amended, changed, altered, waived or, save as provided in Clause 20, terminated without the written consent of the parties.

#### **16 No assignment**

No party may assign its rights under this Agreement without the prior written consent of all other parties.

#### **17 Remedies and Waivers**

##### **17.1 No waiver or discharge**

No default by any party in the performance of or compliance with any provision of this Agreement shall be waived or discharged except with the express written consent of all other parties.

##### **17.2 Saving for future waivers**

No waiver by any party of any default by another party in the performance of or compliance with any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default whether of a like or different character.

##### **17.3 Failure to exercise etc. not a waiver**

No failure to exercise, nor delay or omission by any party in exercising, any right, power or remedy conferred on it under this Agreement or provided by law:

- (a) affect that right, power or remedy; or
- (b) operate as a waiver of it.

No single or partial exercise by any party of any right, power or remedy shall prevent any further exercise of that right, power or remedy or the exercise of any other right, power or remedy.

##### **17.4 Rights and remedies cumulative**

The rights, powers and remedies conferred on the parties by this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law or otherwise.

## **18 Third party rights**

The parties do not intend that any term of this Agreement shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement.

## **19 Costs**

Each party shall bear the costs and expenses incurred by it in connection with the preparation and implementation of this Agreement.

## **20 Termination**

20.1 The Company shall continue until such time as:

- a) the Purpose has been achieved; or
- b) the Company is wound-up pursuant to a statutory process.

20.2 If the Purpose is achieved a Board meeting shall be called to decide whether the Company should ask the Shareholders to liquidate the Company.

20.3 On termination of this Agreement, any assets of the Company may transfer to a successor (or other appropriate) body, including a New Town Development Corporation.

## **21 Duration**

The rights and obligations of each Shareholder shall continue and be enforceable by or against it only while it is a Shareholder of the Company save for rights and obligations in respect of antecedent breaches of this Agreement or the Articles.

## **22 Notices**

### **22.1 Service**

22.1.1 Any notice or other communication to be given under this Agreement shall be in writing and shall be delivered by hand, sent by prepaid first class, recorded delivery or registered post, and shall be addressed to the party to be served in the case of:

- (a) a company at its registered office for the time being;
- (b) Essex's address for service under this Clause 22 is [**address**, England]. Items served at this address must be marked for the personal attention of [**name** and **name**];
- (c) Colchester's address for service under this Clause 22 is [**address**, England]. Items served at this address must be marked for the personal attention of [**name** and **name**]; and
- (d) Braintree's address for service under this Clause 22 is [**address**, England]. Items served at this address must be marked for the personal attention of [**name** and **name**].

22.1.2 Any claim form, application notice, judgment, order, or other notice of legal process relating to this agreement may be served on Essex, Colchester or Braintree by posting it first-class to the address for

service specified above, or to such other address for service within England as the relevant party may notify to the other parties from time to time.

## **22.2 Receipt**

Any notice or other communication under this Agreement shall only be effective when received.

## **23 Disputes**

- 23.1 In the event of a dispute in relation to the Company, or arising out of or relating to this Agreement (including any question regarding its existence, validity or termination) either at the Board or between the Shareholders, the dispute will be escalated to the NEGC board of directors to make a decision.
- 23.2 If the dispute is not settled within 21 days of the NEGC board of directors having met to resolve the dispute, Essex, Colchester or Braintree may refer the matter to mediation in accordance with the LCIA Mediation Rules, which are deemed to be incorporated by reference into this Clause 23.
- 23.3 If the dispute is not settled by mediation within 42 days of the NEGC board of directors' meeting referred to in Clause 23.1, or such further period as the parties to the dispute shall agree in writing, the dispute shall be referred to and finally resolved by arbitration under the LCIA Rules, which are deemed to be incorporated by reference into this Clause 23.
- 23.4 In any arbitration commenced pursuant to this Clause 23,
- (a) the number of arbitrators shall be one;
  - (b) the seat, or legal place, of arbitration shall be London, England; and
  - (c) the language to be used in the arbitral proceedings shall be English.

## **24 Governing Law and Jurisdiction**

### **24.1 Governing law**

This Agreement is governed by and is to be construed in accordance with English law.

### **24.2 Jurisdiction**

Subject to Clause 23 the parties agree to submit to the exclusive jurisdiction of the English courts as regards any claim or matter arising out of or in connection with this Agreement.

## **25 Execution of different copies**

The parties may execute this Agreement in any number of copies and on separate copies. Each executed copy counts as an original of this Agreement and all the executed copies form one instrument.

**Signed** on the date appearing at the beginning of this Deed.

## Schedule 1 – The Purpose

The purpose of the Company is to secure the development of the Property to create a garden community, being a self-sustaining community which secures the future stewardship of public assets for community benefit, the design, development and delivery of which is underpinned by local public sector leadership, a strong vision, inclusive and long term planning and effective engagement.

A garden community should:

1. be implemented using new models of delivery with the public and private sectors sharing risk and reward and ensuring that the cost of achieving the following is borne by those promoting development of the communities: (i) a high quality of place-making; (ii) timely delivery of both on-site and off-site infrastructure needed to address the impact of the new community; (iii) a mechanism for future stewardship, management, maintenance and renewal of community infrastructure and assets;
2. be planned and delivered in conjunction with a masterplan and other design guidance that have been developed through innovative community engagement;
3. be designed and executed to achieve the highest quality of place-making and design, structuring the new community to create an appropriate hierarchy of centres and walkable neighbourhoods that accommodate strong local cultural, recreational, leisure and retail facilities that underpin community life and relate to the wider urban context, as well as establishing environments that promote health, happiness and well-being;
4. have an appropriate mechanism and funding for community governance and empowerment as well as the long term stewardship of community assets;
5. provide beautifully and imaginatively designed homes with easy access to great green spaces, combining the very best of town and country living;
6. provide development that will contribute to building a balanced and inclusive community including a range of mixed-tenure homes and housing types that are affordable – including to rent – for local people including provision of self- and custom-build, co-ownership and affordable homes;
7. contribute to the creation of a resilient & self-sustaining local economy through offering access to a strong local jobs offer, including within the community itself, that provide a variety of employment opportunities within easy commuting distance of homes;
8. ensure provision of generous green space that builds on existing natural assets and is linked to the wider natural environment, with well-connected and biodiversity-rich public parks, a mix of public and private networks of well-managed, high quality gardens, allotments, tree-lined streets and open spaces;
9. provide in a timely fashion to meet the needs of the growing community, a range of great local schools & education facilities catering for all age groups, needs & skills development, health facilities and other services needed to underpin community life;
10. promote and deliver a step change in sustainable and integrated local transport with excellent walking, cycling and public transport systems fully integrated with land use at its heart, encouraging and incentivising more sustainable active travel patterns overall; and
11. secure delivery of a smart and sustainable approach to the design and management of services, infrastructure and utilities to secure the highest standards of technology to reduce the impact of climate change, water efficiency with the aim of being water-neutral, energy efficiency and local energy generation, net gains in biodiversity, efficient management of utilities, excellent access to information technology networks and sustainable waste and mineral management.

## Schedule 2 - Particulars of the Company<sup>4</sup>

<b>Name:</b>	Colchester Braintree Borders Limited	
<b>Registered Number:</b>	10320360	
<b>Registered office:</b>	**	
<b>Directors:</b>		
[Nominated Directors: ]	**	**
[Landowner Director: ]	**	
Independent Director:	**	
<b>Company Secretary:</b>	**	
<b>Share Capital:</b>	100 A Shares	[** ] B Shares
	<b>NEGC</b>	<b>Essex, Colchester, Braintree</b>
No. and type of Shares subscribed:	100 A Shares	[** ] B Shares
Total subscription price (including any premium)	£100	£**
<b>Auditors:</b>	**	
<b>Accounting Reference Date:</b>	**	
<b>Bankers:</b>	**	**

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<sup>4</sup> All to be confirmed.

## Schedule 3 – Property Plan

*To be included in the final Shareholders' Agreement.*

## Schedule 4 – Reserved Matters

### Part A

- 1 Passing any resolution or presenting any petition for the Company's winding up (unless the Company is insolvent).
- 2 Issuing or allotting any share or other capital or reducing, converting, sub-dividing, cancelling or otherwise reorganising, or altering any rights attaching to, any Shares.
- 3 Registering any transfer or allotment of Shares.
- 4 Granting any share option or right to subscribe, acquire or convert into Shares or implementing or varying any incentive, bonus or commission arrangement.
- 5 Ceasing, or making any material change in the nature of, the Company's business, the Purpose or establishing any new business.
- 6 Altering the Company's Articles.

### Part B

1. Changing the Company's auditors.
2. Changing the Company's accounting reference date or accounting policies.
3. Adopting or approving the Company's annual accounts.
4. Approving the LDV Business Plan or Budget, or amending the LDV Business Plan or Budget.
5. Approving or amending the Financial Procedure Rules.
6. Transferring the whole or any material part of the undertaking of the Company.
7. Save as set out in the LDV Business Plan or Budget, and subject to the Financial Procedure Rules, acquiring or disposing of (whether by one or more transactions) any assets, entering into any commitment, or incurring any expenditure.
8. Save as set out in the LDV Business Plan or Budget, and subject to the Financial Procedure Rules, acquiring, disposing of, surrendering or assigning any freehold or leasehold property.
9. Save as set out in the LDV Business Plan or Budget, forming any subsidiary, acquiring or disposing of any interest in any business or company, participating in any partnership, joint venture or profit/revenue sharing arrangement or entering into any scheme of arrangement or merger.

10. Save as set out in the LDV Business Plan or Budget, and subject to the Financial Procedure Rules, incurring any Borrowings or creating any Encumbrance upon or in respect of the whole or part of the business or the Company's assets.
11. Entering into any agreement not on bona fide arms' length terms, or (save as set out in the LDV Business Plan or the Budget) any agreement with any director or with any Shareholder or with any associate of a Shareholder.
12. Other than as set out in the LDV Business Plan, entering into, or varying, any Agreement.
13. Save as set out in the LDV Business Plan or Budget, making any loan or providing any surety or security arrangement in respect of any loan or third party obligation whatsoever.
14. Save as set out in the LDV Business Plan or Budget, granting any service or consultancy agreement to any Senior Employee or varying or terminating any such agreement.
15. Paying any Directors' remuneration, fees or expenses other than pursuant to a Director's Letter.
16. Save as set out in the LDV Business Plan or Budget, initiating or settling any litigation or arbitration which will, or is likely to, have:
  - (i) a material impact on the reputation of the Local Authorities, NEGC or the Company, or
  - (ii) the ability of the Company to achieve the Purpose.
17. Opening any bank account or signing or varying any bank mandate, in each case other than in accordance with the Financial Procedure Rules.

**Signed by \*\*** authorised )  
 for **NORTH ESSEX** )  
**GARDEN COMMUNITIES LIMITED** )

**Signed by \*\*** authorised )  
 for **ESSEX COUNTY COUNCIL** )

**Signed by \*\*** authorised )  
 for **COLCHESTER** )  
**BOROUGH COUNCIL** )

**Signed by \*\*** authorised )  
 for **BRAINTREE DISTRICT COUNCIL** )

**Signed by \*\*** authorised )  
 for **WEST OF COLCHESTER** )  
**LIMITED** )

## Appendix 6:

### DRAFT TERM SHEET

#### North Essex Garden Communities: LDV3

#### West of Braintree Limited

<b>1. Definitions</b>	<p><b>A Share</b> means an A share of nominal value £1 in the capital of the Company.</p> <p><b>A Shareholder</b> means a holder of A Shares.</p> <p><b>Articles</b> means the articles of association of the Company from time to time.</p> <p><b>B Share</b> means a B share of nominal value £1 in the capital of the Company.</p> <p><b>B Shareholder</b> means a holder of B Shares.</p> <p><b>Board</b> means the board of Directors.</p> <p><b>Braintree</b> means Braintree District Council.</p> <p><b>Budget</b> means a budget (including revenues, operating and capital expenditures, and cash flow) of the Company for a relevant financial period.</p> <p><b>Chair</b> means Chair of the Board.</p> <p><b>Colchester</b> means Colchester Borough Council.</p> <p><b>Company</b> means West of Braintree Limited, a private company limited by shares.</p> <p><b>Director</b> means a director of the Company.</p> <p><b>Director Letter</b> means an engagement letter to be entered into between the Company and each Director.</p> <p><b>Essex</b> means Essex County Council.</p> <p><b>Financial Procedure Rules</b> means the financial procedure rules adopted by the Company from time to time with the approval of NEGC.<sup>1</sup></p> <p><b>Funding Agreement</b> means any funding agreement entered into from time to time between (1) Essex or Braintree as lender, and (2) the Company as borrower.</p> <p><b>Independent Director</b> means a director who is not a Nominated Director or a</p>
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<sup>1</sup> Set of financial procedures to be drafted.

	<p>Landowner Director.</p> <p><b>Landowner/Optionholder</b> means [ ] (for so long as [it/they] [has/have] any interest in the Property), and/or such other person as NEGC determines.</p> <p><b>Landowner Directors</b> means a person nominated by the Landowner/Optionholder and appointed as a Director.</p> <p><b>LDV Business Plan</b> means a 2 year business plan as adopted and amended by the Board (with the approval of the Shareholders) from time to time; such business plan covering delivery of the Project and such other matters as the Board may determine, and consistent with the aims and requirements of the Master Plan and the Long-term Business Plan.</p> <p><b>Local Authority</b> means Essex, Braintree, Colchester or Tendring.</p> <p><b>Long-term Business Plan</b> means a business plan for the lifetime of the Project (with a higher level of detail for the next 5 years) as adopted by NEGC from time to time; such business plan covering infrastructure requirements, finance, planning and such other matters as NEGC determines, and consistent with the aims and requirements of the Master Plan.</p> <p><b>Master Plan</b> means the planning policy document adopted by the relevant local planning authority in relation to the Property which set out proposals for buildings, spaces, movement strategy and land use in three dimensions and matches these proposals to a delivery strategy and development programme.</p> <p><b>NEGC</b> means North Essex Garden Communities Limited, a joint strategic entity which is owned equally by each Local Authority.</p> <p><b>Nominated Director</b> means a Director appointed by Essex or Braintree.</p> <p><b>Project</b> means the development of the Property as a garden community in accordance with the Purpose.</p> <p><b>Property</b> means the property [<i>location description</i>] which is approximately identified in the plan attached in Schedule 2.</p> <p><b>Purpose</b> has the meaning given in paragraph 2 below.</p> <p><b>Senior Employee</b> means an employee whose total annual remuneration exceeds or is likely to exceed £75,000.</p> <p><b>Share</b> means an A Share or a B Share.</p> <p><b>Shareholder</b> means an A Shareholder or a B Shareholder.</p> <p><b>Shareholders' Agreement</b> means the shareholders' agreement to be entered into in relation to the business and operation of the Company between NEGC, Essex, Braintree and the Company.</p> <p><b>Tendring</b> means Tendring District Council.</p>
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<b>2. Purpose</b>	<ul style="list-style-type: none"> <li>• The purpose of the Company is to secure the development of the Property in accordance with the Project Plan, the Master Plan and the principles set out in Schedule 1 (the <b>Purpose</b>)</li> <li>• The Purpose (as set out in Schedule 1) will be included in the following documents: <ul style="list-style-type: none"> <li>– the Shareholders' Agreement</li> <li>– the Articles (perhaps in an abbreviated form)</li> <li>– the Director Letters</li> </ul> </li> <li>• The Purpose can only be changed with the prior consent of all of the Local Authorities</li> </ul>
<b>3. Shares</b>	<p><b>Initial Shareholders:</b> At closing:</p> <ul style="list-style-type: none"> <li>• NEGC will subscribe for 100 A Shares at £1 each</li> <li>• Essex will subscribe for • B Shares at £• each</li> <li>• Braintree will subscribe for • B Shares at £• each</li> </ul> <p><b>A Share rights:</b> The A Shares shall have the following rights:</p> <ul style="list-style-type: none"> <li>• Each A Share will entitle the holder to one vote on any Shareholder resolution</li> <li>• The A Shares will carry no right to receive dividends</li> <li>• On a return of capital, the A Shares will entitle the holder to a return of nominal value, but no more</li> </ul> <p><b>B share rights<sup>2</sup>:</b> The B Shares shall have the following rights:</p> <ul style="list-style-type: none"> <li>• The B Shares will carry no right to vote save that each B share shall carry the right to 2 votes on any vote which: <ul style="list-style-type: none"> <li>– materially affects, or is likely to materially affect, the delivery of the Project, or the infrastructure for the Project, in accordance with the timetable set out in the Business Plans; or</li> <li>– materially affects, or is likely to materially affect, the Company's ability to repay any sums due under any Funding Agreement when due; or</li> <li>– is likely to result in a material breach of any Funding Agreement by the Company</li> </ul> </li> <li>• The B Shares shall carry a right to receive dividends</li> <li>• The B Shares shall be entitled to receive (on a pro-rata basis) any capital return to Shareholders (subject to the A Share rights mentioned above)</li> </ul>

<sup>2</sup> It may also be that B Shares are issued to an external funder

	<p><b>Interpolated voting:</b> The NEGC constitution should be drafted so that in relation to any decision of the NEGC shareholders or board specifically affecting the Company only, only Essex and Braintree shall be entitled to vote on that decision.</p>
4. Directors	<p><b>Appointment/Removal:</b> The directors shall be appointed as follows:</p> <ul style="list-style-type: none"> <li>• Each of Essex and Braintree have the right to appoint and remove a Director (each a <b>Nominated Director</b>)</li> <li>• The Landowner/Optionholder shall have a right to appoint up to 2 Directors; provided that any replacement Director must be approved by NEGC before they are appointed (each a <b>Landowner Director</b>). If a Landowner/Optionholder ceases to have any interest in the Property, the Landowner Director nominated by that Landowner/Optionholder shall (unless NEGC otherwise requires) immediately resign as a Director</li> <li>• NEGC shall be entitled to appoint a further 2 independent Directors (each an <b>Independent Director</b>)</li> <li>• Any Director other than a Nominated Director may be removed by notice sent by NEGC to the Company</li> <li>• On appointment, each Director and the Company will enter into a Director Letter</li> </ul> <p><b>Chair:</b> The Board will either (i) appoint an appropriate person as Chair (and Independent Director) or (ii) appoint a chair from amongst the Directors with the expectation that an Independent Director will be elected. If the proposed Chair is not an Independent Director the approval of all Nominee Directors will be needed for the appointment. Any such appointment will be for a maximum 2 year term. The Chair shall not have a casting vote.</p> <p><b>Operation:</b> The Directors will manage the business of the Company to achieve the Purpose and in accordance with the requirements of the LDV Business Plan and the Long-term Business Plan.</p> <p><b>Board Meetings:</b> It is expected that Board meetings will be held four times a year, or more frequently as the Board may decide.</p> <p><b>Notice:</b> There will be seven days' notice of any Board meeting (or shorter notice if agreed by a majority of the Directors).</p> <p><b>Quorum:</b> The quorum for Board meetings will be at least one Nominated Director, one Landowner Director, and one Independent Director. If the quorum is not present at the appointed time for the meeting, an adjourned meeting will be called. At that adjourned meeting, at least one Nominated Director needs to be present for a quorum.</p> <p><b>Conflicts:</b> In relation to a Director's conflict:</p> <ul style="list-style-type: none"> <li>• The Director is obliged to declare his or her conflict at the beginning of</li> </ul>

	<p>any Board meeting</p> <ul style="list-style-type: none"> <li>• If that declaration indicates a dispute or possible dispute, the Board may decide whether or not the conflicted Director should withdraw from all or part of that meeting</li> </ul> <p><b>Alternate Directors:</b> It is expected that each Director will make every effort to attend Board meetings, and will only miss Board meetings in exceptional circumstances. Each Director Letter will name an alternate to attend, speak and vote in Board meetings in the appointing Director's absence.</p> <p><b>Indemnity:</b> The Articles will contain a standard permission to allow a Director to receive the benefit of an indemnity from the Company.</p>
<b>5. Business Plan<sup>3</sup></b>	<p>The Company's business will be operated in accordance with, and to achieve the aims set out in, the Long-term Business Plan and the LDV Business Plan. The Board will be responsible for (i) preparing the LDV Business Plan and Budget and (ii) monitoring progress against the Short-term Business Plan and Budget, and may suggest changes to the LDV Business Plan and Budget from time to time. Any LDV Business Plan or Budget, and any changes to either must be approved by NEGC. In addition, any such changes need to be consistent with the Long-term Business Plan, Master Plan and the Purpose. If there are any changes made to the Long-term Business Plan, Master Plan or the Purpose, the Board will meet to discuss whether any changes are required to the LDV Business Plan and Budget, subject to NEGC approval.</p> <p>If the Company undertakes any business which is outside the remit of the Long-term Business Plan or the LDV Business Plan, or incurs any expenditure or liability that means the Company will breach the Budget, or is likely to be in breach of the Budget, the Board will promptly notify NEGC in writing.</p>
<b>6. Reserved Matters</b>	<p>Schedule 3 contains a number of reserved matters. Before the Company undertakes any of the reserved matters in Part A of Schedule 3, it needs the prior written approval of Essex and Braintree. Before the Company undertakes any of the reserved matters in Part B of Schedule 3, it needs the prior written approval of NEGC.</p>
<b>7. Share Transfers</b>	<p>No Shares may be transferred without the prior written consent of Essex and Braintree, save that Shares may be transferred to successor bodies (including any new town development corporation).</p>
<b>8. Termination</b>	<p>The Company shall continue until such time as:</p> <ul style="list-style-type: none"> <li>• The Purpose has been achieved; or</li> <li>• The Company is wound up pursuant to a statutory process</li> </ul> <p>On a termination, any assets of the Company may transfer to a successor (or other appropriate) body (including any new town development corporation).</p>

<sup>3</sup> The intention is to give the LDV, through flexible drafting of the LDV Business Plan and the Budget (in the context of the Financial Procedure Rules), sufficient operational freedom.

<b>9. Disputes</b>	If there is any dispute in relation to the Company, either at Board or Shareholder level, that dispute will be escalated to the NEGC board. If the dispute is still unresolved 21 days after the NEGC board has met to discuss, Essex or Braintree may refer the matter to mediation. If the dispute is still unresolved 42 days after the NEGC board has met to discuss, Essex or Braintree may refer the matter to arbitration.
<b>10. Documentation</b>	<p>Following the agreement of this term sheet, Dentons will prepare the following documentation:</p> <ul style="list-style-type: none"> <li>• Shareholders' Agreement – in addition to the provisions referred to above, that agreement will also contain provisions in relation to: <ul style="list-style-type: none"> <li>– set-up arrangements</li> <li>– business housekeeping (company books, insurance etc)</li> <li>– information provision to NEGC, Essex and Braintree</li> <li>– confidentiality and announcements</li> </ul> </li> <li>• Articles</li> <li>• Director Letters – in addition to the provisions referred to above, each letter will also contain the following details: <ul style="list-style-type: none"> <li>– the period of the appointment</li> <li>– name of alternate director</li> <li>– remuneration (if any)</li> <li>– costs and expenses</li> <li>– indemnity</li> </ul> </li> </ul>

## Schedule 1 – Purpose

To secure the development of the Property to create a garden community, being a self-sustaining community which secures the future stewardship of public assets for community benefit, the design, development and delivery of which is underpinned by local public sector leadership, a strong vision, inclusive and long term planning and effective engagement.

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A garden community should:

- Be implemented using new models of delivery with the public and private sectors sharing risk and reward and ensuring that the cost of achieving the following is borne by those promoting development of the communities: (i) a high quality of place-making; (ii) timely delivery of both on-site and off-site infrastructure needed to address the impact of the new community; (iii) a mechanism for future stewardship, management, maintenance and renewal of community infrastructure and assets;
- Be planned and delivered in conjunction with a masterplan and other design guidance that have been developed through innovative community engagement;
- Be designed and executed to achieve the highest quality of place-making and design, structuring the new community to create an appropriate hierarchy of centres and walkable neighbourhoods that accommodate strong local cultural, recreational, leisure and retail

facilities that underpin community life and relate to the wider urban context, as well as establishing environments that promote health, happiness and well-being;

- Have an appropriate mechanism and funding for community governance and empowerment as well as the long term stewardship of community assets;
- Provide beautifully and imaginatively designed homes with easy access to great green spaces, combining the very best of town and country living;
- Provide development that will contribute to building a balanced and inclusive community including a range of mixed-tenure homes and housing types that are affordable – including to rent – for local people including provision of self- and custom-build, co-ownership and affordable homes;
- Contribute to the creation of a resilient & self-sustaining local economy through offering access to a strong local jobs offer, including within the community itself, that provide a variety of employment opportunities within easy commuting distance of homes;
- Ensure provision of generous green space that builds on existing natural assets and is linked to the wider natural environment, with well-connected and biodiversity-rich public parks, a mix of public and private networks of well-managed, high quality gardens, allotments, tree-lined streets and open spaces;
- Provide in a timely fashion to meet the needs of the growing community, a range of great local schools & education facilities catering for all age groups, needs & skills development, health facilities and other services needed to underpin community life;
- Promote and deliver a step change in sustainable and integrated local transport with excellent walking, cycling and public transport systems fully integrated with land use at its heart, encouraging and incentivising more sustainable active travel patterns overall;
- Secure delivery of a smart and sustainable approach to the design and management of services, infrastructure and utilities to secure the highest standards of technology to reduce the impact of climate change, water efficiency with the aim of being water-neutral, energy efficiency and local energy generation, net gains in biodiversity, efficient management of utilities, excellent access to information technology networks and sustainable waste and mineral management.

## **Schedule 2 – Property Plan**

*To be included in the final Term Sheet.*

## **Schedule 3 – Reserved Matters**

### Part A

- 1 Passing any resolution or presenting any petition for the Company's winding up (unless the Company is insolvent).
- 2 Issuing or allotting any share or other capital or reducing, converting, sub-dividing, cancelling or otherwise reorganising, or altering any rights attaching to, any Shares.
- 3 Registering any transfer or allotment of Shares.
- 4 Granting any share option or right to subscribe, acquire or convert into Shares or implementing or varying any incentive, bonus or commission arrangement.
- 5 Ceasing, or making any material change in the nature of, the Company's business, the Purpose or establishing any new business.
- 6 Altering the Company's Articles.

## Part B

- 1 Changing the Company's auditors.
- 2 Changing the Company's accounting reference date or accounting policies.
- 3 Adopting or approving the Company's annual accounts.
- 4 Approving the LDV Business Plan or Budget, or amending the LDV Business Plan or Budget.
- 5 Approving or amending the Financial Procedure Rules.
- 6 Transferring the whole or any material part of the undertaking of the Company.
- 7 Save as set out in the LDV Business Plan or Budget, and subject to the Financial Procedure Rules, acquiring or disposing of (whether by one or more transactions) any assets, entering into any commitment, or incurring any expenditure.
- 8 Save as set out in the LDV Business Plan or Budget, and subject to the Financial Procedure Rules, acquiring, disposing of, surrendering or assigning any freehold or leasehold property.
- 9 Save as set out in the LDV Business Plan or Budget, forming any subsidiary, acquiring or disposing of any interest in any business or company, participating in any partnership, joint venture or profit/revenue sharing arrangement or entering into any scheme of arrangement or merger.
- 10 Save as set out in the LDV Business Plan or Budget, and subject to the Financial Procedure Rules, incurring any borrowings or creating any encumbrance upon or in respect of the whole or part of the business or the Company's assets.
- 11 Entering into any agreement not on bona fide arms' length terms, or (same as set out in the LDV Business Plan or the Budget) any agreement with any director or with any Shareholder or with any associate of a Shareholder.
- 12 Other than as set out in the LDV Business Plan, entering into, or varying, any Agreement.
- 13 Save as set out in the LDV Business Plan or Budget, making any loan or providing any surety or security arrangement in respect of any loan or third party obligation whatsoever.
- 14 Save as set out in the LDV Business Plan or Budget, granting any service or consultancy agreement to any Senior Employee or varying or terminating any such agreement.
- 15 Paying any Directors' remuneration, fees or expenses other than pursuant to a Director Letter.
- 16 Save as set out in the LDV Business Plan or Budget, initiating or settling any litigation or arbitration which will, or is likely to, have:
  - (i) a material impact on the reputation of the Local Authorities, NEGC or the Company, or
  - (ii) the ability of the Company to achieve the Purpose.
- 17 Opening any bank account or signing or varying any bank mandate, in each case other than in accordance with the Financial Procedure Rules.

## Appendix 7:



### Shareholders' agreement in relation to West of Braintree Limited

#### Dated

**North Essex Garden Communities Limited**  
(NEGC)

**Essex County Council**  
(Essex)

**Braintree District Council**  
(Braintree)

**West of Braintree Limited**  
(The Company)

Dentons UKMEA LLP  
One Fleet Place  
London EC4M 7WS  
United Kingdom

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-	Financial Procedure Rules	
-	Director's Letter (Clause 3.2(b))	
-	Landowners' Agreement	

# Shareholders' Agreement

## Dated

## Between

- (1) **North Essex Garden Communities Limited (NEGC)** a company incorporated in England and Wales with registered number 10319743 having its registered office at \*\* ;
- (2) **Essex County Council (Essex)** of County Hall, Market Road, Chelmsford, CM1 1QH ;
- (3) **Braintree District Council (Braintree)** of Causeway House, Bocking End, Braintree, Essex, CM7 9HB; and
- (4) **West of Braintree Limited (the Company)** a company incorporated in England and Wales with registered number 10319844 having its registered office at \*\* .

## Recitals

- A. NEGC is a joint strategic entity which is equally owned by each Local Authority.
- B. The parties have agreed to develop the Property in accordance with the Purpose through the Company.

## It is agreed

### 1 Definitions and Interpretation

#### 1.1 Definitions

In this Agreement the following definitions shall apply.

**A Share** means an ordinary share of £1 each in the capital of the Company.

**A Shareholder** means a holder of A Shares.

**Act** means the Companies Act 2006.

**Articles** means the articles of association of the Company in the agreed form and as subsequently amended from time to time in accordance with this Agreement.

**B Share** means a B ordinary share of £1 each in the capital of the Company.

**B Shareholder** means a holder of B Shares.

**Board** means the board of Directors.

**Borrowings** means [bank and other loans, and finance provided under hire purchase, factoring, leasing acceptance credits and similar arrangements.]

**Budget** means a budget (including revenues, operating and capital expenditures and cash flow) of the Company for a relevant financial period.

**Business Day** means a day (other than a Saturday or Sunday) on which banks are open for the transaction of general business.

**Chair** means the chair from time to time of the Board.

**Completion** means completion of the matters specified in Clause 3.

**Director** means a director of the Company from time to time.

**Director's Letter** means an engagement letter in the agreed form to be entered into between the Company and each Director.

**Encumbrance** means any mortgage, charge, pledge, hypothecation, lien, assignment by way of security, title retention, option, right to acquire, right of pre-emption, right of set-off, counterclaim, trust arrangement or other security, preferential right or agreement to confer security, or any equity or restriction (but excluding liens arising by operation of law) and **Encumber** shall be construed accordingly.

**Financial Procedure Rules** means the financial procedure rules in the agreed form adopted by the Company with the approval of NEGC (as amended from time to time).

**Funding Agreement** means any debt funding agreement entered into from time to time between a Local Authority and the Company.

**Independent Director** means a director who is not a Nominated Director or a Landowner Director, such director being appointed by NEGC.

**Initial Shareholders** means together NEGC, Essex and Braintree.

**Intellectual Property** means patents, trade marks, service marks, trade names, domain names, rights in designs, semiconductor topography rights, database rights of unfair extraction and reutilisation, copyrights (including rights in computer software), rights in know-how and other intellectual or industrial property rights (whether registered or unregistered and including applications for the registration of any of the foregoing) and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world.

**Joint Delivery Group** means a joint delivery group established by NEGC to provide the Services.

**Landowner** means [each of ]<sup>\*\*</sup> ] (for so long as [it/they] [has/have] any interest in the Property), and/or such other person as NEGC may determine.<sup>1</sup>

**Landowners' Agreement** means an agreement [in the agreed form] entered into from time to time between each of the [Landowners] [Optionholders] and the Company.

**Landowner Director** means a person nominated by the [Landowner/Optionholder] and appointed as a Director.

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<sup>1</sup> TBD

**LCIA Rules** means the LCIA Arbitration Rules 2014.

**LDV Business Plan** means a 2 year business plan as adopted and amended by the Board (with the approval of NEGC) from time to time; such business plan covering delivery of the Project, a detailed short-term action plan and such other matters as the Board may determine, and consistent with the aims and requirements of the Master Plan and the Long-term Business Plan.

**Local Authority** means Essex, Braintree, Colchester Borough Council or Tendring District Council.

**Long-term Business Plan** means a business plan for the lifetime of the Project (with a higher level of detail for the next 5 years) in relation to the Company as adopted from time to time by NEGC with the prior consent of Essex and Braintree; such business plan covering, infrastructure requirements, finance, planning and such other matters as NEGC determines, and consistent with the aims and requirements of the Master Plan.

**Master Plan** means a document in relation to the Project as adopted by the relevant local planning authority that sets out proposals for land uses buildings, spaces, access and movement and other spatial components and sets the basis for planning applications.

**New Town Development Corporation** means a corporation established under section 1 of the New Towns Act 1981 or similar future legislation, as amended from time to time.

**Nominated Director** means a Director appointed by Essex or Braintree.

**[Optionholder** means [each of ][\*\* ] (for so long as [it/they] [has/have] an option in respect of the Property), and/or such other person as NEGC may determine.]

**Project** means the development of the Property as a garden community in accordance with the Purpose.

**Property** means the property [*location description*] which is approximately identified in the plan attached in Schedule 4.

**Purpose** has the meaning given in Clause 2.1 below.

**Senior Employee** means an employee whose total annual remuneration exceeds or is likely to exceed £75,000.

**Services** means management and technical support and such other support and services the Company may require, and NEGC may provide, from time to time.

**Share** means an A Share or a B Share in the share capital of the Company.

**Shareholder** means an A Shareholder or a B Shareholder.

## 1.2 Interpretation

In this Agreement, unless otherwise specified:

- (a) the index and headings are for ease of reference only and shall not be taken into account in construing this Agreement;

- (b) references to this Agreement or any other document shall be construed as references to this Agreement or that other document as amended, varied, novated, supplemented or replaced from time to time;
- (c) references to any recital, clause, paragraph or Schedule are to those contained in this Agreement, and all Schedules to this Agreement are an integral part of this Agreement;
- (d) the expression **this Clause** shall, unless followed by reference to a specific provision, be deemed to refer to the whole clause (not merely the sub-clause, paragraph or other provision) in which the expression occurs;
- (e) references to a **party** mean a party to this Agreement including that party's successors in title and assigns or transferees permitted in accordance with the terms of this Agreement provided that the relevant property, right or liability has been properly assigned or transferred to such person;
- (f) references to a **director** shall, where the context allows, include reference to the alternate of such director;
- (g) references to a **subsidiary** shall include reference to a subsidiary and a subsidiary undertaking, each as defined in the Act, but on the basis that a company is to be treated as a member of another company for the purposes of subsections 1159(1)(b) and (c) of the Act even if its shares in that other company are registered in the name of:
  - (i) its nominee or any other person acting on its behalf, or
  - (ii) another person by way of security over those shares;
- (h) a document is in the **agreed form** if it is in the form of a draft agreed between and initialled by or on behalf of the Shareholders on or before the date of this Agreement;
- (i) references to any gender shall include the others; and words in the singular include the plural and vice versa;
- (j) references to **legislation** include any statute, bye-law, regulation, rule, subordinate or delegated legislation or order; and reference to any **legislation** is to such legislation as amended, modified or consolidated from time to time and to any legislation replacing it or made under it;
- (k) references to a **person** (or to a word importing a person) shall be construed so as to include:
  - (i) an individual, firm, partnership, trust, joint venture, company, corporation, body corporate, unincorporated body, association, organisation, any government, or state or any agency of a government or state, or any local or municipal authority or other governmental body (whether or not in each case having separate legal personality); and
  - (ii) that person's successors in title and assigns or transferees permitted in accordance with the terms of this Agreement provided that the relevant property, right or liability has been properly assigned or transferred to such person;

- (l) the words and expressions defined in sections 250, 390, 391, 471, 540, and 1173 of the Act have the same meanings;
- (m) **in writing** includes any communication made by letter, e-mail or other forms of electronic communication;
- (n) the words **include**, **including** and **in particular** shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words; and
- (o) the words **other** and **otherwise** shall not be construed ejusdem generis with any foregoing words where a wider construction is possible.

## **2 Purpose of the Company**

- 2.1 The parties hereby agree that the purpose of the Company is to secure the development of the Property in accordance with the Master Plan and the principles set out in Schedule 2.
- 2.2 The Purpose can only be amended with the prior written consent of all of the Local Authorities.

## **3 Completion arrangements**

### **3.1 Completion**

Completion shall take place immediately following signature of this Agreement at [*insert relevant address*].

### **3.2 Completion Obligations**

At Completion:

- (a) the parties shall procure that:
  - (i) the Company is established, organised and financed as detailed in Schedule 3;
  - (ii) the Company adopts the Articles; and
  - (iii) [*others?*].
- (b) the Company shall, and the Shareholders shall procure that the Company shall, enter into the following:
  - (i) Director's Letters;
  - (ii) [Any other contracts to be entered into at Completion];
- (c) NEGC shall enter into the following agreements:
  - (i) [list]
- (d) Each of Essex and Braintree shall enter into the following agreements:
  - (i) [list]

### **3.3 No partial Completion**

No party shall be obliged to complete its obligations under Clause 3.2 unless all of the obligations listed in Clause 3.2 are completed with simultaneous effect.

### **3.4 Shareholders' services**

Any Services reasonably required by the Company shall, at the discretion of the board of directors of NEGC, be delivered by the Joint Delivery Group at rates to be agreed between the parties.

## **4 The Board**

### **4.1 Decisions to be referred to the Board**

- 4.1.1 The Board will manage the business of the Company to achieve the Purpose and in accordance with the requirements of the Long-term Business Plan and the LDV Business Plan.
- 4.1.2 All policy and management decisions of the Company (including the matters set out in Clause 8) shall be referred to the Board before implementation.

### **4.2 Action by the Board**

The Board shall act by majority vote, except in relation to any matter listed out in Clause 8 in which case no decision or action shall be taken unless any prior written consent required under Clause 8 has been received by the Company and if such consent is so received each of the Directors shall, unless otherwise constrained by their fiduciary duties, vote in favour of such matter.

### **4.3 Nominated Directors**

- 4.3.1 Each of Essex and Braintree shall have the exclusive right to appoint, remove or replace a Nominated Director.
- 4.3.2 The Directors at the date of Completion shall be as specified in Schedule 3.

### **4.4 Landowner Director<sup>2</sup>**

- 4.4.1 The [Landowner/Optionholder] shall have the right to appoint up to two Landowner Directors. If any of the initial Landowner Directors ceases to be a Director, any replacement Landowner Director can only be appointed following receipt by the Company of the prior written consent of NEGC.
- 4.4.2 In the event a [Landowner][Optionholder] ceases to have any interest in the Property, the Landowner Director shall, unless NEGC otherwise requires, immediately resign as a Director of the Company.

### **4.5 Independent Director**

NEGC shall have the exclusive right to appoint up to two Independent Directors.

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<sup>2</sup> We will need to reflect this in the Landowners' Agreement.

#### **4.6 Alternate Directors**

It is expected that each Director will make every effort to attend Board meetings, and shall only miss Board meetings in exceptional circumstances. Each Director's Letter will contain details of an alternate to attend, speak and vote in Board meetings in the appointing Director's absence.

#### **4.7 Chair**

4.7.1 The Board will either:

- (a) appoint an appropriate person as Chair (being an Independent Director); or
- (b) appoint a chair from amongst the Directors with the expectation that an Independent Director will be elected.

Any such appointment will be for a maximum 2 year term.

4.7.2 If the proposed Chair is not an Independent Director the approval of all Nominated Directors will be needed for the appointment. The Chair shall not have a second or casting vote.

#### **4.8 Board meetings**

Board meetings shall be held at such location as a quorum of the Directors agree at intervals of not more than three months. Save as otherwise agreed by a majority of the Directors:

- (a) Board meetings shall be convened by any Director by not less than 7 days' notice, or where the particular circumstances require a shorter period, such shorter period as the circumstances reasonably require, if agreed by a majority of Directors;
- (b) each notice shall be sent to each Director to the address, and/or e-mail address notified to the Company for these purposes, and if notice is required to be sent by e-mail a copy of such notice shall also be sent by post (and air mail if the address is overseas);
- (c) each notice of a Board meeting shall be accompanied by a full agenda and supporting papers;
- (d) each Board meeting shall only deal with the business set out in the agenda which accompanied the notice convening that Board meeting; and
- (e) minutes of each meeting of the Board shall be taken and kept by the company secretary in the books of the Company. Copies of the minutes of each such meeting shall be delivered to each member of the Board as soon as practicable. If a member has not been present at the meeting copies of all papers considered by the Board at the meeting shall be sent to him with the minutes.

#### **4.9 Quorum**

The quorum for a Board meeting shall be at least one Nominated Director, one Landowner Director (if any are appointed) and one Independent Director (if any are appointed) present in person or by his alternate (but so that not less than three individuals shall constitute the quorum). If within 30 minutes of the time appointed for a Board meeting there is no quorum,

the Director(s) present shall adjourn the meeting to a place and time not less than five Business Days later provided that at such adjourned meeting the requirement that such Director(s) shall be present shall not apply, and one Nominated Director present and shall constitute a quorum and may conduct the business of the meeting.

**4.10 Voting at Board meetings**

At each Board meeting the Directors present shall be entitled to cast one vote on each issue put to a vote.

**4.11 Compliance with Agreement**

The Company shall procure that any person who is appointed a Director after the date of this Agreement shall immediately upon becoming a Director of the Company enter into a Director's Letter with the Company to comply with and implement the terms of this Agreement.

**4.12 Shareholders to procure Director's resignation**

If a Shareholder ceases to be a Shareholder, it shall procure that every Director appointed by it under this Clause 4 is removed.

**4.13 Indemnity**

Each Shareholder shall procure that any Director appointed by it who vacates his office as director (whether by virtue of being removed by that Shareholder or otherwise) shall do so without cost to the Company. That Shareholder shall indemnify the Company and any other Shareholder from and against all claims, demands and rights which any such Director may have against the Company in respect of removal, dismissal, redundancy or otherwise.<sup>3</sup>

**4.14 Directors may pass information to their appointor**

A Director may from time to time disclose to the Party who appointed him and its representatives such information as he has regarding the Company.

**4.15 Removal of a director**

Any director may be removed by notice sent by NEGC to the Company.

**5 Business Plans and Budget**

**5.1 Interim business plans**

Until such time as an LDV Business Plan is adopted by the Company in accordance with this Agreement, the Company may operate under such business plan as the Board shall determine (provided that such business plan is not in conflict with any Long-term Business Plan adopted by NEGC at that time).

**5.2 Business plans**

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<sup>3</sup> Do we need the Landowner to sign up to a similar provision in the Landowners' Agreement?

- 5.2.1 Within three months of a full Board being appointed (being three Nominated Directors and at least three other Directors) the Company shall, subject to NEGC approval, formally adopt an LDV Business Plan.
- 5.2.2 The Company's business will also be operated in accordance with, and to achieve the aims set out in, the Long-term Business Plan.
- 5.2.3 The Board shall be responsible for, amongst other things:
- (a) preparing the LDV Business Plan and Budget; and
  - (b) monitoring progress against the LDV Business Plan and Budget,
- and may suggest amendments to the LDV Business Plan and Budget from time to time.
- 5.2.4 In addition, the Board shall submit any draft LDV Business Plan to NEGC no later than two months before the end of the period to which the current LDV Business Plan relates. Such LDV Business Plan shall not be adopted by the Company until such time as NEGC approval has been received.
- 5.2.5 Any amendments to the LDV Business Plan or Budget must first be approved in writing by NEGC. In order to obtain NEGC written approval, the Board shall submit to NEGC in writing the LDV Business Plan or Budget together with a proposal setting out the amendments, and an explanation for the amendments. Any such amendments need to be consistent with the Long-term Business Plan, Master Plan and the Purpose.
- 5.2.6 If there are any amendments made to the Long-term Business Plan, Master Plan or the Purpose, the Board will meet to discuss whether any amendments are required to the LDV Business Plan and Budget, subject always to NEGC's approval.
- 5.2.7 If the Company undertakes any business which is outside the remit of the Long-term Business Plan or LDV Master Plan, or incurs any expenditure or liability that means the Company will breach or exceed the Budget, or is likely to be in breach of the Budget, the Board will promptly notify NEGC in writing. Such notification will provide:
- (i) detailed information in relation to such expenditure or liability, including an explanation of the circumstances; and
  - (ii) suggested remedial action.
- 5.2.8 Where there is any amendment to the Long-term Business Plan, Master Plan or the Purpose, the Board shall ensure that any corresponding amendments necessary to the remaining LDV Business Plan are also made.
- 5.3 **Budget**
- 5.3.1 The Board shall submit any draft Budget to NEGC no later than two months before the start of each financial period of the Company. Such Budget shall not be adopted by the Company until such time as NEGC approval has been received.
- 5.3.2 If, at the end of any financial period, the Budget for the next financial period has not been agreed, the Company should comply with the requirements of the Financial Procedure Rules until such time as the relevant Budget has been approved by the NEGC.

## **6 Financing the Company**

### **6.1 Financing**

The Company shall be financed through the moneys subscribed for issued shares and lent under any Funding Agreement, or otherwise as the Shareholders may agree.

### **6.2 Borrowing limit**

The parties shall procure that the Company does not exceed any borrowing limit contained in the Budget or the Financial Procedure Rules.

### **6.3 No Shareholder obligations to fund**

No Shareholder shall be obliged to advance any loan to the Company except pursuant to any Funding Agreement.

## **7 Information and Operation of the Company**

### **7.1 Information**

The Company shall provide to each Shareholder and Director and where requested, to their representatives, the following:

- (a) a profit and loss account estimate for the Company within 10 Business Days of the end of each month;
- (b) unaudited management accounts for the Company within 20 Business Days from the end of each month including a profit and loss account for that month and for the financial year to date (in each case measured against the budget for the relevant period) and 12 month forecast cash flows;
- (c) audited statutory accounts for the Company within 60 Business Days from the end of the financial year;
- (d) access to the Company's books, records, Senior Employees and auditors at such times as may reasonably be requested; and
- (e) such other information relating to the Company as any Shareholder may reasonably request from time to time,

and without prejudice to the foregoing, the Company shall keep the Shareholders fully and promptly informed of all material developments regarding the Company's financial and business affairs and all significant events (including any litigation or arbitration) which will or may affect the Company.

### **7.2 Operation of the Company**

The Company shall, and the Shareholders shall procure that the Company, shall:

- (a) carry on and conduct its business on a commercial basis in a proper lawful and efficient manner for its own benefit;

- (b) transact all business on arm's length terms;
- (c) ensure that all its business other than routine business is undertaken or supervised by the Directors;
- (d) obtain and maintain all necessary licences and approvals required in order to carry on the business; and
- (e) observe and perform its obligations under each contract referred to in Clause 3.2(b).

## **8 Reserved matters**

The Company agrees, so far as it lawfully may, and the Shareholders agree to procure, so far as is within their powers as Shareholders, that the matters listed in:

- (a) Part A of Schedule 5 in relation to the Company shall require and shall only be implemented if the Company shall have received the prior written consent of Essex and Braintree; and
- (b) Part B of Schedule 5 in relation to the Company shall require and shall only be implemented if the Company shall have received the prior written consent of NEGC.

## **9 Transfer of Shares**

No Shareholder shall assign, transfer, exchange, encumber or otherwise dispose of any of the Shares held by it or any interest in them without the prior written consent of the other Shareholders.

## **10 Protection of Name: Intellectual Property**

### **10.1 Shareholders' rights to their intellectual property**

The Shareholders hereby acknowledge and agree that all Intellectual Property Rights used in the Business but owned or provided by a Shareholder or any associate of a Shareholder (not being the Company) shall unless specifically otherwise agreed in writing remain the property of that Shareholder, shall be deemed licensed to the Company on such terms as agreed by the Shareholder and the Company, or if there is no agreement on a non-exclusive royalty-free basis for so long as the party remains a Shareholder.

### **10.2 Company's rights to its intellectual property**

Any Intellectual Property Rights which arise in the course of the Company's activities and are developed by the Company, its Directors, employees or agents shall belong to the Company and shall be deemed licensed to each of the Shareholders on such terms as are agreed by the Company and the relevant Shareholder or if there is no agreement, on a non-exclusive royalty-free basis for so long as the relevant Shareholder remains a Shareholder.

## **11 Freedom of Information**

The parties acknowledge that the parties to this Agreement may be subject to the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 and may be required to disclose information in response to requests within the terms of that legislation. Where appropriate the relevant party shall rely on any applicable exemptions in that

legislation to justify not disclosing such information. Each party agrees to consult with the other parties to this Agreement as soon as reasonably practicable after receiving any such request and before disclosing any information concerning the Company.

## **12 Announcements and Confidentiality**

### **12.1 No announcements without agreement**

Save as required by law or with the prior written consent of the other parties no statement or announcement of any nature relating to the subject matter of or the transaction referred to in this Agreement or the establishment or operations of the Company shall be made to the public, the press or otherwise unless in a form previously agreed between the Shareholders.

### **12.2 Shareholders' confidentiality obligations**

12.2.1 Subject to Clause 11 each Shareholder shall (and shall procure that their representatives shall) at all times keep confidential and shall not use (other than for the benefit of the Company) any confidential information which it or they may have or acquire in relation to the business, finances, assets or affairs of the Company or any other party, save for any information:

- (a) which is publicly available or becomes publicly available otherwise than as a result of a breach of this Clause<sup>12</sup>;
- (b) which is disclosed to that party by a third party which did not acquire the information under an obligation of confidentiality;
- (c) which is required to be disclosed by law or the rules of any recognised investment exchange (as that term is used in section 285 of the Financial Services and Markets Act 2000) to which that Shareholder.

12.2.2 No Shareholder shall use any confidential information acquired in relation to another Shareholder pursuant to the performance of this Agreement for any purpose without the prior consent in writing of that Shareholder.

### **12.3 Company's confidentiality obligations**

The Company shall observe a similar obligation of confidence to that set out in Clause 12.2.1 in favour of each Shareholder.

### **12.4 Duration of confidentiality obligations**

The obligations in this Clause 12 shall continue to apply after termination of this Agreement and after any party has ceased to be party to this Agreement without limit in time.

## **13 Relationship between Shareholders and the Company**

### **13.1 Shareholders' procurement obligation**

Each of the Shareholders agrees it shall exercise its rights hereunder and as a Shareholder in the Company in such manner as could reasonably be expected to prevent, and shall not exercise those rights in any manner which could reasonably be expected to result in, a breach by the Company of any of its obligations under this Agreement or any Funding Agreement or

any restrictions imposed upon it under its Articles (whether or not enforceable against the Company itself).

### **13.2 No partnership**

Nothing in this Agreement, and no action taken under this Agreement, shall create a partnership or establish a relationship of principal and agent between any of the parties or (save as otherwise stated herein) otherwise authorise any party to bind any other party for any purpose.

## **14 Entire Agreement and Severance**

### **14.1 Entire agreement**

This Agreement together with the documents referred to in it sets out the entire agreement between the parties, and supersedes any previous agreement between them in relation to the subject matter of this Agreement and those documents.

### **14.2 Acknowledgment by parties**

Each party acknowledges that:

- (a) in entering into this Agreement and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any representation (whether negligent or otherwise) made to it by any person (whether a party to this Agreement or not) which is not expressly set out or referred to in this Agreement;
- (b) the only remedy available to it in respect of any representation or warranty expressly set out or referred to in this Agreement shall be for breach of contract in respect of that term of this Agreement; and
- (c) nothing in this Clause 14 shall operate to exclude or restrict any liability for fraudulent misrepresentation.

### **14.3 Conflict with the Articles**

The parties intend that the provisions of this Agreement shall prevail over the Articles in the event of conflict and, accordingly, the Shareholders shall, if necessary, exercise all voting and other rights and powers available to them as Shareholders or under this Agreement to procure any amendment to the Articles required to give effect to the provisions of this Agreement.

### **14.4 Severance**

If any provision of this Agreement or part thereof is rendered void, illegal or unenforceable in any respect (whether against all or only some of the parties), the validity, legality and enforceability of the remaining provisions (and such aforesaid provision against the other parties) shall not in any way be affected or impaired thereby.

## **15 Amendments**

This Agreement may not be amended, changed, altered, waived or, save as provided in Clause 20, terminated without the written consent of the parties.

## **16 No assignment**

No party may assign its rights under this Agreement without the prior written consent of all other parties.

## **17 Remedies and Waivers**

### **17.1 No waiver or discharge**

No default by any party in the performance of or compliance with any provision of this Agreement shall be waived or discharged except with the express written consent of all other parties.

### **17.2 Saving for future waivers**

No waiver by any party of any default by another party in the performance of or compliance with any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default whether of a like or different character.

### **17.3 Failure to exercise etc. not a waiver**

No failure to exercise, nor delay or omission by any party in exercising, any right, power or remedy conferred on it under this Agreement or provided by law:

- (a) affect that right, power or remedy; or
- (b) operate as a waiver of it.

No single or partial exercise by any party of any right, power or remedy shall prevent any further exercise of that right, power or remedy or the exercise of any other right, power or remedy.

### **17.4 Rights and remedies cumulative**

The rights, powers and remedies conferred on the parties by this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law or otherwise.

## **18 Third party rights**

The parties do not intend that any term of this Agreement shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement.

## **19 Costs**

Each party shall bear the costs and expenses incurred by it in connection with the preparation and implementation of this Agreement.

## **20 Termination**

### **20.1 The Company shall continue until such time as:**

- a) the Purpose has been achieved; or

b) the Company is wound-up pursuant to a statutory process.

20.2 If the Purpose is achieved a Board meeting shall be called to decide whether the Company should ask the Shareholders to liquidate the Company.

20.3 On termination of this Agreement, any assets of the Company may transfer to a successor (or other appropriate) body, including a New Town Development Corporation.

## **21 Duration**

The rights and obligations of each Shareholder shall continue and be enforceable by or against it only while it is a Shareholder of the Company save for rights and obligations in respect of antecedent breaches of this Agreement or the Articles.

## **22 Notices**

### **22.1 Service**

22.1.1 Any notice or other communication to be given under this Agreement shall be in writing and shall be delivered by hand, sent by prepaid first class, recorded delivery or registered post, and shall be addressed to the party to be served in the case of:

- (a) a company at its registered office for the time being;
- (b) Essex's address for service under this Clause 22 is [**address**, England]. Items served at this address must be marked for the personal attention of [**name** and **name**];and
- (c) Braintree's address for service under this Clause 22 is [**address**, England]. Items served at this address must be marked for the personal attention of [**name** and **name**].

22.1.2 Any claim form, application notice, judgment, order, or other notice of legal process relating to this agreement may be served on Essex or Braintree by posting it first-class to the address for service specified above, or to such other address for service within England as the relevant party may notify to the other parties from time to time.

### **22.2 Receipt**

Any notice or other communication under this Agreement shall only be effective when received.

## **23 Disputes**

23.1 In the event of a dispute in relation to the Company, or arising out of or relating to this Agreement (including any question regarding its existence, validity or termination) either at the Board or between the Shareholders, the dispute will be escalated to the NEGC board of directors to make a decision.

23.2 If the dispute is not settled within 21 days of the NEGC board of directors having met to resolve the dispute, Essex or Braintree may refer the matter to mediation in accordance with the LCIA Mediation Rules, which are deemed to be incorporated by reference into this Clause 23.

- 23.3 If the dispute is not settled by mediation within 42 days of the NEGC board of directors' meeting referred to in Clause 23.1, or such further period as the parties to the dispute shall agree in writing, the dispute shall be referred to and finally resolved by arbitration under the LCIA Rules, which are deemed to be incorporated by reference into this Clause 23.
- 23.4 In any arbitration commenced pursuant to this Clause 23,
- (a) the number of arbitrators shall be one;
  - (b) the seat, or legal place, of arbitration shall be London, England; and
  - (c) the language to be used in the arbitral proceedings shall be English.

## **24 Governing Law and Jurisdiction**

### **24.1 Governing law**

This Agreement is governed by and is to be construed in accordance with English law.

### **24.2 Jurisdiction**

Subject to Clause 23 the parties agree to submit to the exclusive jurisdiction of the English courts as regards any claim or matter arising out of or in connection with this Agreement.

## **25 Execution of different copies**

The parties may execute this Agreement in any number of copies and on separate copies. Each executed copy counts as an original of this Agreement and all the executed copies form one instrument.

**Signed** on the date appearing at the beginning of this Deed.

## **Schedule 1 – The Purpose**

The purpose of the Company is to secure the development of the Property to create a garden community, being a self-sustaining community which secures the future stewardship of public assets for community benefit, the design, development and delivery of which is underpinned by local public sector leadership, a strong vision, inclusive and long term planning and effective engagement.

A garden community should:

1. be implemented using new models of delivery with the public and private sectors sharing risk and reward and ensuring that the cost of achieving the following is borne by those promoting development of the communities: (i) a high quality of place-making; (ii) timely delivery of both on-site and off-site infrastructure needed to address the impact of the new community; (iii) a mechanism for future stewardship, management, maintenance and renewal of community infrastructure and assets;
2. be planned and delivered in conjunction with a masterplan and other design guidance that have been developed through innovative community engagement;
3. be designed and executed to achieve the highest quality of place-making and design, structuring the new community to create an appropriate hierarchy of centres and walkable neighbourhoods that

accommodate strong local cultural, recreational, leisure and retail facilities that underpin community life and relate to the wider urban context, as well as establishing environments that promote health, happiness and well-being;

4. have an appropriate mechanism and funding for community governance and empowerment as well as the long term stewardship of community assets;
5. provide beautifully and imaginatively designed homes with easy access to great green spaces , combining the very best of town and country living;
6. provide development that will contribute to building a balanced and inclusive community including a range of mixed-tenure homes and housing types that are affordable – including to rent – for local people including provision of self- and custom-build, co-ownership and affordable homes;
7. contribute to the creation of a resilient & self-sustaining local economy through offering access to a strong local jobs offer, including within the community itself, that provide a variety of employment opportunities within easy commuting distance of homes;
8. ensure provision of generous green space that builds on existing natural assets and is linked to the wider natural environment, with well-connected and biodiversity-rich public parks, a mix of public and private networks of well-managed, high quality gardens, allotments, tree-lined streets and open spaces;
9. provide in a timely fashion to meet the needs of the growing community, a range of great local schools & education facilities catering for all age groups, needs & skills development, health facilities and other services needed to underpin community life;
10. promote and deliver a step change in sustainable and integrated local transport with excellent walking, cycling and public transport systems fully integrated with land use at its heart, encouraging and incentivising more sustainable active travel patterns overall; and
11. secure delivery of a smart and sustainable approach to the design and management of services, infrastructure and utilities to secure the highest standards of technology to reduce the impact of climate change, water efficiency with the aim of being water-neutral, energy efficiency and local energy generation, net gains in biodiversity, efficient management of utilities, excellent access to information technology networks and sustainable waste and mineral management.

## Schedule 2 – Particulars of the Company<sup>4</sup>

<b>Name:</b>	West of Braintree Limited		
<b>Registered Number:</b>	10319844		
<b>Registered office:</b>	**		
<b>Directors:</b>			
[Nominated Directors: ]	**		**
[Landowner Director: ]	**		
Independent Director:	**		
<b>Company Secretary:</b>	**		
<b>Share Capital:</b>	100 A Shares	[**	] B Shares
	<b>NEGC</b>	<b>Essex, Braintree</b>	
No. and type of Shares subscribed:	100 A Shares	[**	] B Shares
Total subscription price (including any premium)	£100	£**	
<b>Auditors:</b>	**		
<b>Accounting Reference Date:</b>	**		
<b>Bankers:</b>	**		**

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<sup>4</sup> All to be confirmed.

## Schedule 3 – Property Plan

*To be included in final Shareholders' Agreement.*

## Schedule 4 – Reserved Matters

### Part A

- 1 Passing any resolution or presenting any petition for the Company's winding up (unless the Company is insolvent).
- 2 Issuing or allotting any share or other capital or reducing, converting, sub-dividing, cancelling or otherwise reorganising, or altering any rights attaching to, any Shares.
- 3 Registering any transfer or allotment of Shares.
- 4 Granting any share option or right to subscribe, acquire or convert into Shares or implementing or varying any incentive, bonus or commission arrangement.
- 5 Ceasing, or making any material change in the nature of, the Company's business, the Purpose or establishing any new business.
- 6 Altering the Company's Articles.

### Part B

1. Changing the Company's auditors.
2. Changing the Company's accounting reference date or accounting policies.
3. Adopting or approving the Company's annual accounts.
4. Approving the LDV Business Plan or Budget, or amending the LDV Business Plan or Budget.
5. Approving or amending the Financial Procedure Rules.
6. Transferring the whole or any material part of the undertaking of the Company.
7. Save as set out in the LDV Business Plan or Budget, and subject to the Financial Procedure Rules, acquiring or disposing of (whether by one or more transactions) any assets, entering into any commitment, or incurring any expenditure.
8. Save as set out in the LDV Business Plan or Budget, and subject to the Financial Procedure Rules, acquiring, disposing of, surrendering or assigning any freehold or leasehold property.
9. Save as set out in the LDV Business Plan or Budget, forming any subsidiary, acquiring or disposing of any interest in any business or company, participating in any partnership, joint venture or profit/revenue sharing arrangement or entering into any scheme of arrangement or merger.

10. Save as set out in the LDV Business Plan or Budget, and subject to the Financial Procedure Rules, incurring any Borrowings or creating any Encumbrance upon or in respect of the whole or part of the business or the Company's assets.
11. Entering into any agreement not on bona fide arms' length terms, or (save as set out in the LDV Business Plan or the Budget) any agreement with any director or with any Shareholder or with any associate of a Shareholder.
12. Other than as set out in the LDV Business Plan, entering into, or varying, any Agreement.
13. Save as set out in the LDV Business Plan or Budget, making any loan or providing any surety or security arrangement in respect of any loan or third party obligation whatsoever.
14. Save as set out in the LDV Business Plan or Budget, granting any service or consultancy agreement to any Senior Employee or varying or terminating any such agreement.
15. Paying any Directors' remuneration, fees or expenses other than pursuant to a Director's Letter.
16. Save as set out in the LDV Business Plan or Budget, initiating or settling any litigation or arbitration which will, or is likely to, have:
  - (i) a material impact on the reputation of the Local Authorities, NEGC or the Company, or
  - (ii) the ability of the Company to achieve the Purpose.
17. Opening any bank account or signing or varying any bank mandate, in each case other than in accordance with the Financial Procedure Rules.

**Signed by \*\*** authorised )  
 for **NORTH ESSEX** )  
**GARDEN COMMUNITIES LIMITED** )

**Signed by \*\*** authorised )  
 for **ESSEX COUNTY COUNCIL** )

**Signed by \*\*** authorised )  
 for **BRAINTREE DISTRICT COUNCIL** )

**Signed by \*\*** authorised )  
 for **WEST OF BRAINTREE** )  
**LIMITED** )

## Strategic Risk Assessment Profile

Risk Description	Score			RAG Rating / Consequence	Mitigation	Owner
	P	I	O			
1. PLANNING						
1.1 A scheme is not included in the Pre-Submission Draft Local Plan on the basis of appropriate planning policy determination.	1	4	4	<b>GREEN</b>  It would not be possible for the LDV to pursue any development and accordingly it would be wound up.	Dentons engaged to provide planning policy advice. M&IWG will actively work to ensure the planning viability of all 3 Garden Communities.	M&IWG Dentons
1.2 Part 1 not considered robust enough and is not approved by PINS.	2	4	8	<b>AMBER</b>  Part 1 doesn't provide a sufficiently robust policy justification for the Garden Communities.	Dentons engaged to provide planning policy advice. M&IWG will monitor and ensure appropriate evidence-based research is commissioned as part of fortnightly meetings.	M&IWG
1.3 Action groups / Parish Councils successfully lobby Members and/or MPs requesting for the programme to be halted.	3	4	12	<b>AMBER</b>  This could cause a delay to the timescales for the Pre-Submission Draft Local Plan and Examination in Public. Confidence in programme could be reduced.	The Marketing & Comms Plan includes specific reference to proactively engaging with Action Groups and Parish Councils. Consideration is being given to "Community Enablers" to positively assist Parish Councils as part of this process.	M&IWG / PR & Marketing Manager
1.4 The "infrastructure first" principle of the NEGC ambition is not able to be sufficiently achieved in order to support the early sustainability of the communities.	3	4	12	<b>AMBER</b>  This would impact on the sustainability and connectivity of the communities as well as undermine confidence in the programme.	All workstreams of the programme will actively work with relevant stakeholders to ensure the timely delivery of the infrastructure required by the communities.	M&IWG / TWG / FWG
2. LANDOWNER AGREEMENT / ENGAGEMENT						
2.1 Landowner agreements are not reached before the Pre-Submission Draft Local Plan is approved by Councils.	3	4	12	<b>AMBER</b>  This would represent a key change to the relationship between the landowners and the Councils / LDV; the underlying assumptions in the agreements would then need to be reconsidered.	Dentons will support the LWG in the positive negotiation and implementation of the landowner agreements in order to meet the programme timescales.	LWG / Dentons
3. DELIVERY VEHICLE EVOLUTION						
3.1 NEGC Ltd / LDV Board breakdown and being unable to take decisions and/or reach agreement.	2	3	6	<b>AMBER</b>  This could affect the successful delivery of the objectives as set out in the respective business plans for the Garden Communities.	Comprehensive governance processes will be set out in the Articles of Association and Shareholders Agreement.	LWG / Dentons

Risk Description	Score			RAG Rating / Consequence	Mitigation	Owner
	P	I	O			
4. FINANCIAL						
4.1 Commercial imperatives override wider vision.	2	4	8	<b>AMBER</b> May not deliver on broader ambition. May cede too much control / safeguards to satisfy landowner expectations.	Ensure vision and objectives underpin all workstreams.	SDB & SG
4.2 Sharing of rewards offer poor value for money to Councils.	3	3	9	<b>AMBER</b> Reward to Councils does not reflect extent of risk – balance too far in landowner favour.	Legal negotiations to be fully cognisant of financial positions and reflect risk exposure.	SDB, SG, LWG & FWG
4.3 Inaccurate financial modelling.	3	4	12	<b>AMBER</b> Scheme could be unviable leading to loss of investment, no/lower capital repayment or longer pay-back period.	Ongoing analysis of all assumptions and further evolution of modelling approach.	FWG
4.4 Projects unviable.	2	5	10	<b>AMBER</b> Loss of investment, no/lower capital repayment.	Ensure further design & planning work achieves viable schemes.	FWG & MIWG
4.5 Unable to raise sufficient finance.	2	3	6	<b>AMBER</b> Limits scope for funding options, may restrict to Council funding only.	Ensure approach is sufficiently attractive to the wide market through derisking and clear Council backing.	LWG & FWG
4.6 Impact on Council revenue budgets.	3	3	9	<b>AMBER</b> Impact on monies available for other Council services or need to raise further monies locally.	Ensure prudent approach. Consult auditors. Consider scope for capitalisation.	FWG
5. PROGRAMME						
5.1 The development of the NEGC Ltd Business Case leads to the conclusion that the programme is commercially unviable or involves a high level of uncontrollable risks.	2	5	10	<b>AMBER</b> The partner Councils will have the option to terminate the programme at this juncture.	Effective programme management and the active involvement of all key stakeholders will endeavour to ensure that the viability of this programme is maximised as much as possible.	SDB
5.2 The programme is not sufficiently resourced, both in terms of the necessary skills or capacity, and does not have a comprehensive contingency strategy in place in the event of the unexpected absence/ departure of key project officers and/or internal/external partners.	5	3	15	<b>AMBER</b> The lack of a sufficiently resourced team will significantly impact upon the function and timely support, co-ordination and delivery of the programme and LDVs.	The delivery team will undertake a comprehensive analysis of the resourcing and contingency required for achieving delivery of the programme's objectives. Sufficient budget will be made available to recruit to any vacant positions and the workforce needs of the programme will be regularly reviewed to respond to any changes in these requirements.	Delivery Team / Steering Group

Risk Description	Score			RAG Rating / Consequence	Mitigation	Owner
	P	I	O			
6. EXTERNAL FACTORS						
6.1 Changes to Central Government policy (e.g. Housing Bill).	3	3	12	AMBER  Could impact on Central Government support for the programme and/or ability to attract additional funding.	All workstreams will monitor the legislation applicable to their specialisms and will provide proactive support to the governance arrangements should changes to the programme approach be required to respond to the new environment.	LWG / FWG / M&IWG / TWG

## Explanatory Key

A risk is something that **could** happen in the future and have an impact on the completion or outcome of the Programme.

All programmes have an element of risk; all new risks will be recorded as soon as they are identified and all risks will be updated when a change (positive or negative) occurs. This is to ensure that the programme can demonstrate how it will deal with potential problems or varying severity in a controlled manner.

Risk is calculated according to the probability (P) of it happening and the impact (I) of this occurrence, based on a scale of 1 (very low) and 5 (very high) for each element of the calculation. A RAG rating is then assigned to the total score (i.e. the outcome, which is calculated by multiplying the probability score and the impact score:  $P \times I = O$ ).

## Definition of Scores

	1 (Very Low)	2 (Low)	3 (Medium)	4 (High)	5 (Very High)
<b>Probability</b>	Unlikely 0-10%	Low 11-30%	Possible 31-50%	Probable 51-80%	Definite 81-100%
<b>Impact</b>	Minimal (no interruption to programme delivery)	Minor (temporary interruption to programme delivery)	Significant (lasting interruption to programme delivery)	Severe (complete interruption to programme delivery)	Catastrophic (programme will fail unless risk urgently mitigated/resolved)

RAG Status	Score	Definition	Action
<b>Green (Low)</b>	1-4	The programme is meeting expectations.	No action required.
<b>Amber (Medium)</b>	5-15	The programme is not meeting expectations. There are mitigating circumstances in most cases and improvement is likely but risks need to be flagged to the programme team.	The programme team should be notified at the earliest opportunity; mitigation action will be explored at the appropriate governance level and implemented, as appropriate.
<b>Red (High)</b>	16-25	There are significant problems with the programme and it is not meeting expectations to date. Corrective action is required to meet business objectives. The problem cannot be handled solely by the programme team.	The matter should be escalated to the programme team immediately for consideration/resolution at the appropriate governance level.