

SCHEDULE 31
Rentcharge Deed

DATED

20[]

[MANAGER]

and

[OWNER]

ESTATE RENTCHARGE DEED

[Plot No.]

Anthony Collins Solicitors LLP

134 Edmund Street

Birmingham

B3 2ES

Reference : JMT.20232.0003

Anthony Collins
solicitors

DATE:

20[]

PARTIES:

- (1) "The Manager": [NAME] [(company number [NUMBER])] [of] [whose registered office is at] [ADDRESS];
- (2) "The Owner": [NAME] [ADDRESS];

1. Definitions

1.1. In this deed the following terms shall have the meanings specified:

- "Base Figure" means [the RPI for the month immediately preceding the start of the First Service Charge Year].
- "Certificate" means the certificate referred to in clause 5.2.
- "Community Buildings" means all those buildings that are provided on the Estate for the benefit of the owners and occupiers of the Estate including without limitation any buildings in which the Manager has a freehold or leasehold interest including the buildings transferred to the Manager under the terms of an agreement dated [] pursuant to Section 106 of the Town and Country Planning Act 1990 between (1) [] and (2) [] or such agreement as may be varied from time to time
- "Estate" means the land edged green on the Plan now and formerly comprised in title numbers (*numbers*) known as (*name*) at (*address*).
- "Estate Rentcharge" means a perpetual yearly estate rentcharge of a sum computed annually to the end of each Service Charge Year equal to the amounts payable pursuant to clause 3.2 for the purposes of securing payment of the Service Charge.
- "Estate Services" means all the services which are specified in Part 1 of Schedule 1.
- "Excess Service Charge" means any sum payable from time to time pursuant to clause 3.2.4.
- "Expenditure" means the aggregate of all costs, charges, expenses and outgoings whatsoever incurred by the Manager specified in or in relation to the matters specified in Schedule 1.
- "Fixed Rentcharge" means a perpetual yearly estate rentcharge of £1 forever charged on and issuing out of the Property.
- "Increase" means the amount, if any, by which [the Index for the month immediately preceding the start of the relevant Service Charge Year exceeds the Base Figure].
- "Index" means the monthly index of retail price inflation in the United Kingdom (May 2005 = 100) maintained by the Office for National Statistics of the United Kingdom (or by any government department or other body upon which duties in connection with the retail prices index shall have devolved) subject to clause 6.3.
- "Interest" means interest at the rate of four per cent above the base rate from time to time of Royal Bank of Scotland (compounded with quarterly rests on the usual quarter days) during the period from the date on which the expenditure is incurred or from which the interest is expressed to run to the date of payment (before and after any judgement) and if such base rate shall for any reason cease to be used or published then interest calculated by reference to such other comparable commercial rate as may be determined by the Manager acting reasonably or in the event of dispute as may be determined by an independent person

- (acting as an expert and not as an arbitrator) to be nominated in the absence of agreement by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors on the application of either the Manager or the Owner.
- "Interim Charge"** means such sum as shall be payable from time to time on account of the Service Charge in respect of each Service Charge Year as the Manager shall specify to be a fair and reasonable interim payment and if no sum shall be so specified there shall be paid on account a sum equal to such sum last specified by the Manager provided that the Interim Charge shall not exceed the Service Charge Cap.
- "Management Areas"** means [all parts of the Estate (other than a Plot) provided or intended for the common use and/or benefit of the owners or occupiers of the Estate or any of them including without limitation all parts of the Estate the subject of the [Estate Services].
- "Plan"** means the plan annexed to this deed [and if numbered plans are annexed any reference to a numbered plan is to the annexed plan so numbered].
- "Plot"** means [land now or formerly forming part of the Estate which has been or shall be the subject of a deed in equivalent terms (mutatis mutandis) to this deed].
- "Property"** means [Plot number (*number*) [and garage plot number (*number*)]/[Block number (*number*)] as shown edged red on the Plan.
- "Rentcharges"** means the Fixed Rentcharge and the Estate Rentcharge.
- "Rentcharge Payment Dates"** means 1 April 1 July 1 October and 1 January in each year or such other date as the Manager shall determine and "Rentcharge Payment Date" shall be interpreted accordingly.
- "Reserve Fund"** means the aggregate of the sums of money referred to in paragraph [5] of Part 2 of Schedule 1.
- "Service Charge"** means (subject to clause 5.5) a fair and proper proportion from time to time attributable to the Property of the Expenditure in respect of each and every Service Charge Year and (in respect of the Service Charge Year current at the date of this deed) such part thereof as is attributable to the period from the date of this deed up to and including March 31 next Provided that such fair and proper proportion shall be determined according to the relative gross internal floor area of each Plot on the Estate or such other basis as the Manager may reasonably propose from time to time).
- "Service Charge Cap"** means
- (a) for the Service Charge Year current at the date of this deed (the "First Service Charge Year") the sum of £[] (the "Initial Service Charge Cap"); and
 - (b) during each Service Charge Year thereafter [the Initial Service Charge Cap plus a sum that bears the same proportion to the Initial Service Charge Cap as the Increase bears to the Base Figure;
- and in each year shall be inclusive of VAT.
- "Service Charge Year"** means the period commencing on April 1 in every year and ending on the following March 31 or such other annual period as the Manager may in its reasonable discretion from time to time determine as being the period in respect of which the accounts of the Manager either generally or relating to the Estate shall be made up.

- 1.2. Words importing one gender shall be construed as importing any other gender.
- 1.3. Words importing the singular shall be construed as importing the plural and vice versa.
- 1.4. Words importing persons shall be construed as importing a corporate body and/or a partnership and vice versa.
- 1.5. Where any party comprises more than one person the obligations and liabilities of that party under this deed shall be joint and several obligations and liabilities of those persons.
- 1.6. Any provision by the Owner not to do any act or thing shall be deemed to include an obligation not to agree to or suffer or permit such act or thing to be done.
- 1.7. References to "Owner" shall include those deriving title to the Property through or under the Owner and references to "Manager" shall include the owner or owners for the time being of the Rentcharges or any part of them.
- 1.8. The clause and schedule headings do not form part of this deed and shall not be taken into account in its construction or interpretation.
- 1.9. Any reference to a clause is to one so numbered in this deed unless otherwise stated.
- 1.10. References to a statute shall include any statutory extension or modification or re-enactment of such statute or any regulations or orders made under the statute.
- 1.11. References to VAT be construed as a reference to value added tax or any tax of a similar nature which may be substituted for value added tax or levied in addition to value added tax and wherever there is an obligation imposed on the Owner to make a payment then there shall be implied an additional obligation to pay all VAT due on that payment.

2. Rentcharges

- 2.1. The Owner grants out of the Property for the benefit of the Manager in fee simple the Fixed Rentcharge and the Estate Rentcharge to be forever charged on and issuing out of the Property and to be paid without deduction (except for credit being given for any prior payments on account) in accordance with this deed.
- 2.2. The Manager shall have all of the powers and remedies conferred by the Law of Property Act 1925 or otherwise to enable it to recover and compel the payment of the Fixed Rentcharge and the Estate Rentcharge. In addition:
 - 2.2.1. If the Fixed Rentcharge or the Estate Rentcharge (or any part of it) is unpaid in whole or in part 3 months after the date that payment has been demanded (having become due);
or
 - 2.2.2. If the Owner shall fail to observe any covenant on the part of the Owner contained in this deed

then notwithstanding the waiver of any previous default the Manager may enter on the Property (but without affecting any right of action or remedy in respect of any earlier breach of any of the Owner's covenants) and at the Manager's discretion either:

2.2.3. do anything which is necessary or prudent to make good any default and remain in possession of the Property or the rents and profits from it until all money due and the costs incurred by the exercise of this power are fully discharged; or

2.2.4. hold possess and enjoy the Property in fee simple free from incumbrances except for matters subsisting prior to the date of this deed

PROVIDED THAT before any such right to enter the Property is exercised the Manager shall give notice of its intention to do so to any mortgagee of the Property whose interest has been notified to the Manager in writing and shall not exercise the right concerned until 28 days have elapsed since the notice was sent to the relevant mortgagee and then only to the extent that the breach has not been remedied by that date.

3. **Owner's Covenants**

3.1. The Owner covenants with the Manager to pay the Fixed Rentcharge to the Manager in advance on the Rentcharge Payment Dates.

3.2. The Owner covenants with the Manager:

3.2.1. To pay the Estate Rentcharge to the Manager in accordance with this clause 3.2 by way of the Interim Charge and the Excess Service Charge.

3.2.2. The Interim Charge shall be paid to the Manager (in the absolute discretion of the Manager) either:

3.2.2.1. by equal quarterly instalments in advance on the Rentcharge Payment Dates (and the first such payment (on account of the Service Charge for the period from and including the date of this deed to and including the day immediately preceding the Rent Payment Date next thereafter) shall be made on the date of this deed); or

3.2.2.2. by annual payments in advance on the first Rentcharge Payment Date in each Service Charge Year (and the first such payment (on account of the Service Charge for the First Service Charge Year) shall be made on the date of this deed);

and for the avoidance of doubt the Manager may vary the basis of payment of the Interim Charge from time to time throughout the period of this deed from quarterly to annual payments in its absolute discretion subject to not less than [six] months prior notice in writing having been provided to the Owner.

3.2.3. If the Interim Charge paid by the Owner in respect of any Service Charge Year exceeds the Service Charge for that Service Charge Year the surplus of the Interim Charge so paid over and above the Service Charge shall be carried forward by the Manager and credited to the account of the Owner in computing the Interim Charge in succeeding Service Charge Years.

3.2.4. If the Service Charge in respect of any Service Charge Year exceeds the Interim Charge paid by the Owner in respect of that Service Charge Year together with any surplus from previous years carried forward as aforesaid then the Owner shall pay a sum equal to the amount of the excess to the Manager within 14 days of the service of the Certificate on the Owner or such longer period as the Manager shall specify.

3.2.5. In this clause 3.2.5 any surplus carried forward from previous years shall not include any sums set aside for the purpose of the Reserve Fund.

3.2.6. If and whenever the Owner shall fail to pay the Interim Charge and/or the Excess Service Charge on the due dates the Owner shall pay to the Manager Interest on the amount of the unpaid Interim Charge and/or the unpaid Excess Service Charge (as the case may be).

3.3. The Owner covenants with the Manager not to dispose of the Property (other than by way of an assured shorthold tenancy for a term of five years or less or a mortgage) unless the disponee enters into and delivers a direct covenant with the Manager in the form of the deed set out at Schedule 2. The costs payable to The Manager pursuant to clause 2 of the said form of deed shall not exceed £175 per deed increased by the percentage (if any) by which the Index for the month immediately preceding the date of the deed exceeds the Base Figure.

4. **Manager's Covenants**

The Manager covenants with the Owner subject to the payment of the Estate Rentcharge to use all reasonable endeavours to supply the Estate Services provided that:

4.1. The Manager may suspend any of the Estate Services for such period as may be reasonably necessary for repair replacement modernisation or otherwise.

4.2. The Manager shall be under no liability in respect of any failure to perform or observe any such obligation unless it is attributable to the wilful default of the Manager.

4.3. The Manager shall be under no liability in respect of any failure to perform or observe any such obligation until it has been notified of the failure concerned in writing and has then failed to remedy it within a reasonable period and any liability which nonetheless arises shall be limited to the period after written notification was received by the Manager:

4.4. The Manager may but shall not be obliged to supply the Estate Services in respect of any part of the Estate in which the Manager does not hold a freehold or leasehold interest or the Manager does not benefit from a licence to enter on reasonable terms that enable it to carry out the relevant Estate Services.

5. **Calculation of Service Charge**

5.1. Before the commencement of each Service Charge Year or as soon as possible thereafter, the Manager or its managing agent shall provide the Owner with an estimate of the Expenditure anticipated to be incurred in that Service Charge Year and the amount of the Interim Charge for that Service Charge Year.

5.2. As soon as reasonably practicable after the expiration of each Service Charge Year the Manager shall provide the Owner with a certificate containing the following information:

5.2.1. The amount of the Expenditure for that Service Charge Year; and

5.2.2. The amount of the Interim Charge paid by the Owner in respect of that Service Charge Year together with any surplus carried forward from the previous Service Charge Year; and

5.2.3. The amount of the Service Charge in respect of that Service Charge Year and of any excess or deficiency of the Service Charge over the Interim Charge and any accrued surplus; and

5.2.4. The amount of the Reserve Fund at the commencement of the Service Charge Year the expenditure from it during the Service Charge Year and the contributions to it during the Service Charge Year.

5.3. The Certificate shall be conclusive and binding on the Manager and the Owner as to matters of fact but the Owner shall be entitled at any time within three months after service of the Certificate at the discretion of the Manager either to inspect the receipts and vouchers relating to payment of the Expenditure or to receive a copy of the audited accounts of the Manager in relation to such Expenditure.

5.4. Any omission by the Manager to include in the Certificate for any Service Charge Year a sum expended or a liability incurred in that Service Charge Year shall not preclude the Manager from including such sum or the amount of such liability in the Certificate for any subsequent Service Charge Year.

5.5. The Service Charge in respect of any Service Charge Year shall not exceed the Service Charge Cap for the relevant Service Charge Year.

5.6. The Manager shall hold the Reserve Fund and all interest accrued thereon in a separate designated deposit account on trust to expend the same in subsequent years and subject to that on trust for the residents of the Estate absolutely.

6. **Agreements and declarations**

It is agreed and declared as follows:

6.1. If at any time the Manager considers that it would be in the general interest of the owners of the properties on the Estate receiving a service from the Manager to do so, the Manager may discontinue that service, provided that in deciding whether or not to discontinue any service the Manager is to give proper consideration to the views and wishes of the majority of the owners of such properties.

6.2. The Manager (acting reasonably) may make and at any time on prior notice to the Owner vary or waive any regulations relating to the Estate as it thinks fit in the general interest of the owners of the properties on the Estate.

6.3. The Manager may at any time and from time to time in its reasonable discretion determine that any land or facility then forming part of the Management Areas shall cease to be part of the Management Areas and/or that any land or facility not then being included in the Management Areas shall become part of the Management Areas.

6.4. In the event of:

6.4.1. any material change after the date of this deed in the reference base used to compile the Index, the figure taken to be shown is the figure which would have been shown in the Index if the reference base current at the date of this deed had been retained; or

6.4.2. it becoming impossible to utilise the Index by reason of any change after the date of this deed in the method used to compile the Index or the Index being abolished or for any other reason then the Manager may refer the matter to an independent expert who shall be a member of the Royal Institution of Chartered Surveyors (or any person acting on his behalf) whose costs shall form part of the Expenditure and who shall have full power;

6.4.2.1. to determine what would have been the movement in the Index had it continued; and

6.4.2.2. to select the nearest equivalent index to Index to apply for the remainder of the term of this deed.

6.5. If any provision of this deed is found or held to be illegal invalid or unenforceable the legality validity and/or enforceability of the remaining provisions of this deed shall be unaffected.

7. Land Registry application

7.1. The parties apply to the Registrar for entry of a restriction on the register of the title to the Property in standard form L in Schedule 4 of the Land Registration Rules 2003, namely:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before entry of this restriction, is to be registered without a certificate signed by (*name of Manager*) of (*address*) or their conveyancer that the provisions of clause [] of a deed dated (*date*) and made between (*name of Manager*) (1) and (*name of Owner*) (2) have been complied with or that they do not apply to the disposition".

7.2. The Owner consents to an Agreed Notice [on Land Registry Form AN1] being entered in the Charges register of the title to the Property at the Land Registry in relation to the Rentcharges and the provisions of this deed.

SCHEDULE 1 Expenditure

Part 1

1. Maintenance management repair and renewal or replacement of the public realm within the Estate including but not limited to the verges to roads and pathways and street furniture
2. Maintenance and management repair and renewal or replacement of sustainable urban drainage features
3. Maintenance and management repair and renewal or replacement of sport facilities play spaces and other recreational areas managed farmland woodland and ecology areas within the Estate
4. Maintenance repair and renewal or replacement of allotments within the Estate (not including the plots which are let or held under licence by individual allotment holders)
5. Maintenance management repair and renewal or replacement of the Community Buildings

Part 2

1. The costs incurred in the running of the Community Buildings including without limitation staff costs utility costs rates and other outgoings

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2. All other costs associated with the provision of the Estate Services including without limitation staffing and equipment costs and such proportion of the internal overhead costs of the Manager properly attributable to the provision of the Estate Services
3. All rates taxes and other outgoings chargeable in respect of the Management Areas
4. The fees payable to any managing agents in connection with the provision of the Estate Services or other matters referred to in this deed and the fees of any accountant or surveyor employed to determine the Expenditure and/or to prepare the Certificate
5. Such sums of money as the Manager reasonably requires to be set aside to meet such future costs as the Manager shall reasonably expect to incur in connection with the Estate Services and other matters referred to in this deed
6. The costs of enforcing the provisions of rentcharges relating to the Property or other Plots against any persons who fail to observe and perform their terms and provisions (but only to the extent that those costs are not recovered from the person defaulting on their obligations)
7. Without limiting the foregoing all other expenses reasonably incurred by the Manager in or incidental to or for the purpose of providing or maintaining services facilities or amenities of or to the Estate in keeping with the principles of good estate management including reasonable interest and fees on monies borrowed to finance the provision of the Estate Services and other matters referred to in this deed

**SCHEDULE 2
Deed of Covenant**

THIS DEED OF COVENANT is made on *(date)*
PARTIES

(name of new owner) of *(address)* (**'the New Owner'**); and

(name of Manager) [Company Registration no...] the registered office of which is situate at *(address)* (**'the Manager'**).

Background

This Deed is supplemental to a deed dated *(date)* made between (1) the Manager and (2) *(the Owner)* (the **'Estate Rentcharge Deed'**) in respect of *(insert details)* formerly plot *(insert details)* *(development name)* ('the Property').

THIS DEED WITNESSES:

1. The New Owner covenants with the Manager to observe and perform the covenants on the part of the New Owner in the Estate Rentcharge Deed as if the New Owner were a party to the Estate Rentcharge Deed.
2. The New Owner shall pay the reasonable costs of the Manager in connection with this Deed.
3. Where any party comprises more than one person the obligations and liabilities of that party under this Deed shall be joint and several obligations and liabilities of those persons.

[Executed as a Deed by the New Owner on the day and date above written.]

EXECUTED AS A DEED by
[MANAGER]
acting by []

SIGNED AS A DEED by
Name [OWNER]
Signature

[and

Name [OWNER]
Signature

In the presence of:
Witness signature:
Name:
Address:
Occupation: