

Rentcharge Deed

DATED

20[]

**CHILMINGTON MANAGEMENT ORGANISATION
and**

[OWNER]

ESTATE COVENANTS AND SUPPLEMENTAL RENTCHARGE DEED

[Plot No.]

[Property Address if known]

(Rentcharge Deed 2)

Anthony Collins Solicitors LLP

134 Edmund Street

Birmingham

B3 2ES

Reference : JMT.20232.0003

Anthony Collins
solicitors

DATE:

20[]

PARTIES:

- (1) **"The Manager"**: CHILMINGTON MANAGEMENT ORGANISATION (company number 12134646) whose registered office is C/O McCabe Ford William Orbital Park, Suite 1, Invicta Business Park, Ashford, Kent, England, TN24 0HB;
- (2) **"The Owner"**: [NAME] of [ADDRESS];

1. **Definitions**

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

- "Additional Payment"** means a sum of up to 20% of the Service Charge payable by the Owner pursuant to Rentcharge Deed 1 for the Service Charge Year ending 31st March 2030 and thereafter the then increased Service Charge every tenth anniversary of that year.
- "Base Figure"** means the Index figure for the month that is three months immediately preceding the start of the First Service Charge Year.
- "Estate Covenants"** means the covenants listed in Schedule 2.
- "Estate Rentcharge"** means a perpetual yearly estate rentcharge of a sum up to the Additional Payment (the amount to be decided by a resolution of the members of the Manager) in respect of the Expenditure in excess of the rentcharges payable by the Owner pursuant to Rentcharge Deed 1 to take effect in respect of the Service Charge Year commencing 1st April 2030 and increased every tenth anniversary of that year and in any event a peppercorn.
- "Rentcharge Deed 1"** means the Rentcharge Deed 1 of even date made between the parties to this deed by which the Manager agreed to provide the Estate Services to the Property and the Owner agreed to pay for them.
- "Fixed Rentcharge"** means a perpetual yearly estate rentcharge of £1 forever charged on and issuing out of the Property.
- "Index"** means the monthly all items index of retail price inflation in the United Kingdom (January 1987 = 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 all items index shall have devolved) subject to clause 6.1

- “Interest”** means interest at the rate of four percentage points 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.
- “Plan 2”** means the plan of the Property annexed to Rentcharge Deed 1 numbered 2.
- “Property”** means [Plot number (*number*) [and garage plot number (*number*)]/[Block number (*number*)] as shown edged red on Plan 2.
- “Rentcharges”** means the Fixed Rentcharge and the Estate Rentcharge.
- “Rentcharge Payment Dates”** means 1 April in each year or such other date as the Manager shall determine and “Rentcharge Payment Date” shall be interpreted accordingly.

- 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 requiring 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 shall be construed as references 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.
- 1.12. Where words are defined in this deed unless the contrary admits the definitions in the Rentcharge Deed 1 shall apply.

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 provided that the Manager covenants with the Owner
 - 2.2.1. not to enforce its powers under section 121 of the Law of Property Act 1925 nor enforce its rights by way of any express enforcement rights enabling forfeiture, the grant of a lease over or repossession of the Property; and
 - 2.2.2. not to exercise any rights of enforcement pursuant to the Rentcharges unless the Manager has served two months' prior notice to remedy a breach of the Owner's covenants in this Deed on the Owner and his/her mortgagee(s) if written notice of the same has been given to the Manager and such breach shall not have been remedied within two months of notice being served on the Owner and such mortgagee(s) and if any enforcement action is then taken the Manager shall notify such mortgagee(s) of such action.

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 Date in each Service Charge Year.
- 3.2. The Owner covenants with the Manager:
 - 3.2.1. To pay the Estate Rentcharge to the Manager on 1 month's written notice by the Manager to the Owner.
 - 3.2.2. If and whenever the Owner shall fail to pay the Estate Rentcharge on the due date the Owner shall pay to the Manager Interest on the amount of the unpaid Estate Rentcharge.
- 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 to the Manager a direct covenant with the Manager in the form of the deed set out at Schedule 1. The costs payable to the Manager pursuant to clause 2 of the said form of deed shall not exceed £[]¹ per deed increased by the percentage (if any) by which the Index figure for the month that is three months immediately preceding the date of the deed exceeds the Base Figure.
- 3.4. The Owner covenants with the Manager to: -
 - 3.4.1. comply with the Estate Covenants;
 - 3.4.2. (in the event the Manager acting reasonably believes the Owner is in breach of the Estate Covenants) pay on demand the costs and expenses of the Manager (including any solicitors', surveyors' or other professionals' fees, costs and expenses and any VAT on them) assessed on a full indemnity basis in connection with or in contemplation of the enforcement of any of the Estate Covenants.
- 3.5. The Manager covenants with the Owner to provide a certificate for enabling the registration of a disposal at HM Land Registry as referred to in the restriction contained in clause 7.1 within 10 Business Days of receipt of the direct covenant referred to in clause 3.3 properly executed by the person to whom the disposal is being made provided that there are then no breaches of the Rentcharges (including no outstanding sums due from the Owner) and the costs referred to in that clause have been paid.

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:

¹ If this Rentcharge Deed is completed before 1 April 2020, insert here the figure of £25.00. If this Rentcharge Deed is completed after 31 March 2020, insert here the figure of £25.00 indexed in line with the Index from the Index figure for January 2019 (namely 283.0) to the Base Figure.

- 4.1. The Manager may suspend or vary any of the Estate Services for such period as may be reasonably necessary for repair replacement modernisation or otherwise at its reasonable discretion.
- 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 an agreed licence to enter on reasonable terms that enable it to carry out the relevant Estate Services.
- 4.5. The Manager covenants with the Owner not to transfer or assign the benefit of (inter alia) the Rentcharges unless the transfer or assignment contains a covenant by the transferee or assignee for the benefit of the owners for the time being of Plots which are then subject to rentcharge deeds of similar form to this deed (including the Owner) in the terms as set out in clauses 2.2.1 and 2.2.2 above

5. **Enforcement of Estate Covenants against other residents on the Estate**

- 5.1. At the written request of the Owner to enforce or assist the Owner in enforcing the Estate Covenants against other residents on the Estate provided that:
 - 5.1.1. before taking any enforcement steps (if the Manager so requires) the Owner obtains (or the Manager may obtain at the Owner's expense) a legal opinion from counsel of at least ten years' standing that such proceedings are likely to be successful;
 - 5.1.2. the Owner shall indemnify the Manager in writing against all costs and expenses of such enforcement (including any solicitors', surveyors' or other professionals' costs and expenses, and any VAT on them, assessed on a full indemnity basis);
 - 5.1.3. the Manager shall not be required to take any action or incur any costs under this clause until the Owner has given to the Manager such security as the Manager shall in its reasonable discretion require; and
 - 5.1.4. the Owner shall join in any action or proceedings if so requested by the Manager.

6. **Agreements and declarations**

It is agreed and declared as follows:

- 6.1. In the event of 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 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;

- to determine what would have been the movement in the Index had it continued; and
- to select the nearest equivalent index to the Index to apply for the remainder of the term of this deed.

6.2. 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 Chief Land 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 Chilmington Management Organisation C/O McCabe Ford William Orbital Park, Suite 1, Invicta Business Park, Ashford, Kent, England, TN24 0HB or their conveyancer that the provisions of clause 3.3 of a deed entitled Rentcharge Deed 2 dated *(date)* and made between Chilmington Management Organisation (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.

8. Notices

8.1. Any notice or other communication given to a party under or in connection with this deed shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service to the Property if given to the Owner and to its registered office if given to the Manager

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

8.2.1. if delivered by hand, on signature of a delivery receipt or at the time the notice is left during working hours on a Business Day at the proper address; and

8.2.2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded on a Business Day by the delivery service.

8.3. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

8.4. A notice given under this deed is not valid if sent by email.

SCHEDULE 1
Deed of Covenant

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

PARTIES

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

Chilmington Management Organisation [Company Registration no...] the registered office of which is situate at [](**'the Manager'**).

Background

This Deed is supplemental to a deed dated *(date)* made between (1) the Manager and (2) *(the Owner)* (the '**Rentcharge Deed 2'**') 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 Owner in the Rentcharge Deed 2 as if the New Owner were a party to the Rentcharge Deed 2.
2. The New Owner shall pay the reasonable costs of the Manager in connection with this Deed.
3. The Manager covenants with the New Owner to observe and perform the covenants on the part of the Manager contained in Rentcharge Deed 2 as if the New Owner were a party to the Rentcharge Deed 2.
4. 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 parties on the day and date above written.]

SCHEDULE 2 Estate Covenants

1 USE

a) Not to change the use of the Property other than as a residential dwelling and not to occupy the Property other than as a single household without the previous written approval of the Manager.

b) Not to use any building on the Property for the purpose of any manufacture trade or business of any description or for any purpose without the previous written approval of the Manager which may at the discretion of the Manager be given for the use of one room within the building for the purposes of an office for business or professional purposes provided that such use shall not affect the characteristic of the property as a dwelling house, nor cause a nuisance nor result in significant additional traffic to the Property (provided that such restriction will not prohibit the use of a room within a property as a study or for occasional home office work).

2 NUISANCE

Not to do or suffer to be done any act or thing in or about the Property which causes or may cause or may grow to cause annoyance (including through unreasonable levels of noise), nuisance, damage or disturbance of the Manager or the occupier of any part of the remainder of the Estate.

3 MAINTENANCE

To keep the exterior of any building on the Property or any part of it in good and substantial repair and condition and not to let any building become derelict.

4 FENCING

To keep in good and substantial repair and condition any walls fences hedges or other features forming boundaries around the Property.

5 REFUSE

Not to place or keep dustbins or refuse bags or the like in front of any building within the Property except on such days as are recognised as refuse collection days and to take such steps as may from time to time be required by the relevant authorities or the Manager to facilitate collection of rubbish on the said recognised refuse collection days.

6 ESTATE RULES AND REGULATIONS

To comply with the reasonable rules and regulations as may be published by the Manager from time to time.

7 PARKING

a) Not to park any vehicles on any roads or any designated communal visitors' parking spaces within the Estate except at times and in areas designated by the Manager and in accordance with regulations made from time to time by the Manager and not to interfere with the movement of traffic on the roads or with pedestrians and other users on the pavements.

b) Not to park any vehicle caravan trailer or boat of any kind on any part of the Property except that:

- (i) a private motorcar, or a small van (having a gross vehicle weight of no more than 3.5 tonnes) and motorcycles all of which are currently taxed and roadworthy may be parked on the driveway or such other part of the Property (if any) as is specifically constructed and designated for that purpose);
- (ii) any vehicle caravan trailer or boat may be parked in a garage;
- (iii) commercial vehicles may only be parked on the Property if delivering or collecting goods or temporarily attending the Property as part of a bona fide service or maintenance operation; and
- (iv) no vehicle may be parked on or otherwise obstruct any shared accessway serving the Property and adjacent or nearby properties.

- c) Not to carry out or permit to be carried out any repairs to any motor vehicle for the time being parked on any part of the Property other than minor repairs carried out without causing any noise or nuisance.
- d) Not to allow any occupier of or visitor to the part of the Property to infringe these covenants relating to parking.

8 GARDENS

- a) Where any part of the Property is laid out as private garden to any building, to keep such garden in a neat and tidy condition and not to convert any such space from residential garden or open space into parking space unless planning permission is obtained for such change of use.
- b) Not to plant within any rear gardens forming part of the Property any trees shrubs or other vegetation exceeding 5m in height or likely to grow to a size exceeding 5m in height and which would interfere with the enjoyment of light to and outlook from neighbouring property
- c) Not to erect any fence or wall in any location that extends to more than 3m above the general level of the surrounding land.
- d) Not to erect or relocate any fences hedges walls or other similar features on the Property so as to enclose any lawned or landscaped area adjoining any estate road or pathway or public open space.
- e) Not to permit or allow any obstruction to exceed 600mm in height within any part of that area as comprises in whole or in part a vision splay/sight line which would be required by the local highway authority in conjunction with an adopted highway.
- f) Where the Property includes any parking space or spaces (and unless maintenance is carried out through the rentcharge payable under Rentcharge Deed 1 or any other collective arrangement to which the Owner makes a contribution) to maintain that parking space or spaces in a neat tidy and usable condition.

EXECUTED AS A DEED by
CHILMINGTON
MANAGEMENT ORGANISATION
acting by []

SIGNED AS A DEED by
Name [OWNER]
Signature

[and

Name [OWNER]
Signature]

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