

DATED

8 September

2018

(1) SHEPWAY DISTRICT COUNCIL

- and -

(2) COZUMEL ESTATES LIMITED

- and -

(3) INVESTORS IN PRIVATE CAPITAL LIMITED

INITIAL COLLABORATION AGREEMENT

**In respect of land to the south of Junction 11,
M20 known as Otterpool Park**

CONTENTS

	Page
1	3
2	8
3	8
4	9
5	10
6	11
7	12
8	13
9	14
10	14
11	15
12	18
13	18
14	18
15	18
16	19
17	19
18	19
19	20
20	20
21	21
22	22
23	22
24	22
25	22
26	24
27	24
28	25

29	LAW	25
30	EXECUTION AND DELIVERY	25
	SCHEDULE 1 - SHARED COSTS	28
	Schedule 2 PROPERTY	27
	PART 1	27
	PART 2	27
	SCHEDULE 3 - THE GUIDING PRINCIPLES	28
	SCHEDULE 4 - PROJECT PROGRAMME	29
	APPENDIX 1 - PLANS	30
	APPENDIX 2	31

THIS AGREEMENT is made as a deed on

8 September

2016

BETWEEN

- (1) **SHEPWAY DISTRICT COUNCIL** of Civic Centre, Castle Hill
CT20 2QT (the "Council")
- (2) **COZUMEL ESTATES LIMITED** a company incorporated and registered in the British Virgin Islands under company registration number 498120, whose registered office is Patton, Moreno & Aevat (BVI) Limited, 2nd Floor, O'Neal Marketing Associates Building, PO Box 3174, Wickham's Cay II, Road Town, Tortola, VG1110, British Virgin Islands ("Cozumel")
- (3) **INVESTORS IN PRIVATE CAPITAL LIMITED** a company registered in England under company registration number 5204672, whose registered office is at 73 Cornhill, London EC3V 7QQ (the "Guarantor")

BACKGROUND

A The Parties hold the freehold in the Council's Land and Cozumel's Land respectively which, together with other land, form the Site.

The Parties wish to:

- B Follow a collaborative approach to achieve the Objectives;
- C Negotiate suitable agreements with the owners of the Additional Interests;
- D Appoint a masterplanner to work up a masterplan for the Development;
- E Appoint a professional team of consultants to advise in connection with the Development;
- F Secure an outline planning permission for the Development;
- G Share costs in the Agreed Proportions; and
- H Enter into a detailed collaboration and equalisation agreement as soon as reasonably practicable.

IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement (unless the context otherwise requires), the following words and phrases shall have the following meanings:

"Additional Interests" means such part of the Site that does not include the Council's Land or Cozumel's Land or the land subject to the Hurley Option;

"Agreed Proportions" means:

- | | | |
|-----|-------------|-----|
| (a) | The Council | 50% |
| (b) | Cozumel | 50% |

"Appointment" means the appointment of a Professional Team member;

"Arena" means Arena Racing Company at Millbank Tower, 21-24 Millbank, London, SW1P 4QP;

"Board" means the collaboration board to be set up and run in accordance with clause 5;

"Council's Land" means the land particularised in Part 2 of Schedule 2;

"Cozumel's Land" means the land particularised in Part 1 of Schedule 2;

"Default Interest Rate" means 3% over Royal Bank of Scotland plc base rate from time to time;

"Development" means the proposed development of the Site on a basis that is acceptable to the Parties to create a sustainable urban development comprising up to 12,000 private and affordable homes, employment land/commercial uses, local/district centres and mixed Class A uses and other facilities;

"Disposition" means one or more of the following in respect of the Property whether by the registered proprietor of the Property or by the registered proprietor of any Security:

(a) the transfer or assent of the whole or any part of Property, whether or not for valuable consideration;

the grant of a lease over the whole or any part of the Property; or

the grant of Security over the whole or any part of the Property;

"EIR" means the Environmental Information Regulations 2004, and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;

"EIR Exception" means any applicable exemption to EIR;

"Event of Default" has the meaning given to it in clause 12.4;

"Exempted Information" means any information that is designated as falling or potentially falling within the FOIA Exemptions or the EIR Exceptions;

"FOIA" means the Freedom of Information Act 2000, and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;

"FOIA Exemption" means any applicable exemption to FOIA;

"Funder" means an organisation that is regulated by the Financial Conduct Authority or such other organisation as is approved by the Council and who (in either case) is providing funding to Cozumel in connection with the Development and whose identity has been notified to the Council;

"Further Collaboration Agreement" means an agreement to be entered into by the Council, Cozumel and the Guarantor which shall give certainty and further legal effect to the matters referred to in clause 4.2;

"Guiding Principles" means the guiding principles set out at Schedule 3 as the same may be updated or varied from time to time in accordance with clause 5.3.2;

"Independent Expert" means the independent expert appointed in accordance with clause 11;

"Information" means in relation to:

- (a) FOIA, the meaning given under section 84 of the FOIA and which is held by the Council at the time of receipt of an RFI; or
- (b) EIR, has the meaning given under the definition of "environmental information" in section 2 of EIR and which is held by the Council at the time of receipt of an RFI;

"Insolvency Event" has the meaning given to it in clause 12.5;

"Local Planning Authority" has the meaning given to it by the Planning Act;

"Longstop Date" means nine months from the date of this Agreement or such longer period as the Parties shall agree (at their discretion);

"Objectives" means the objectives set out in clause 2;

"Onerous Condition" means a condition which is attached to a Planning Permission or is required to be included in a Planning Agreement and which is in the reasonable opinion of the Parties onerous or is likely to make the Development uneconomic;

"Panel" means the technical framework panels maintained by the Homes and Communities Agency including the multi disciplinary panel, the property panel and the delivery partner panel 2;

"Parties" means the Council and Cozumel (but not the Guarantor) and **"Party"** shall refer to either one of them (as appropriate);

"Permitted Disposal" means:

- (a) the grant of a lease, licence or other agreement in respect of part or all of the Property on terms which enable the Property owner to secure vacant possession of the land disposed of in accordance with the Project Programme; or
- (b) any renewal of any existing lease, licence or other agreement where the relevant tenant or counterparty is entitled to renew the same as a matter of statute or contract; or
- (c) such other Disposition as is previously approved by the other Party;

"Plan" means a plan at Appendix 1 and numbered accordingly;

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

"Planning Agreement" means any agreement with or obligation or undertaking to any competent authority entered into under a statutory provision in order to facilitate the Development (including a Section 106 Agreement and any agreement under section 111 of the Local Government Act 1972, section 33 of the Local Government (Miscellaneous Provisions) Act 1982, section 38 or 278 of the Highways Act 1980 and section 104 of the Water Industry Act 1991);

"Planning Application(s)" means:

- (a) the planning application(s) to be made by or on behalf of the Parties in respect of the Development;
- (b) any further applications or re-application relating to the Development; and/or
- (c) any applications for approval of any matter pursuant to the planning application(s);

"Planning Consultant" means Arcadia Consulting (UK) Limited, (number 2212959) of Arcadia House, 34 York Way, London N1 9AB or such other suitably qualified and experienced planning consultant as the Parties agree to appoint;

"Planning Permission" means planning permission for the Development;

"Professional Team" means the Project Co-ordinator, the Planning Consultant and such other consultants as the Parties agree to appoint in connection with the Development;

"Project Budget" means a budget for the Shared Costs (to be initially set at £2 million and contributed by the Parties in the Agreed Proportions) as the same may be reviewed, updated and further detailed in accordance with clause 5.3.6

"Project Co-Ordinator" means Arcadia Consulting (UK) Limited, (number 2212959) of Arcadia House, 34 York Way, London N1 9AB or such other suitably qualified and experienced project co-ordinator as the Parties agree to appoint;

"Project Programme" means a programme for the various steps to be taken in connection with the Site and the Development, as the same may be reviewed and updated in accordance with clause 5.3.1, the outline of which is at Schedule 4;

"Property" means the Council's Land or Cozumel's Land as appropriate;

"Request for Information/RFI" shall have the meaning set out in FOIA or any request for information under EIR which may relate to the Site/the Development, this Agreement, or any activities or business of the Council;

"Satisfactory Planning Permission" means outline planning permission and, if appropriate, any necessary Planning Agreement for the Development (or part of the Development), in either case free from any Onerous Condition capable of implementation and development by the Parties or their successors in title and which may include detailed planning permission for one or more phases of Development;

"Section 106 Agreement" means an agreement to be entered into pursuant to Section 106 of the Planning Act in order to obtain a Satisfactory Planning Permission and includes a unilateral undertaking;

"Security" means any legal charge, debenture, mortgage, lien or other form of security granting any legal or equitable charge over the whole or any part of the Property whether fixed or floating;

"Senior Officers" means the respective Chief Executives of each Party (or such other appropriate senior officer from within the Party as the relevant Chief Executive may designate from time to time save that it is agreed in the case of Cozumel that this may be the Chief Executive or another appropriate senior officer of Arena;

"Shared Costs" means the costs set out in Schedule 1 as are anticipated in the Project Budget and/or approved by the Board;

"Site" means the land shown edged red on Plan 3 subject to clause 3.5.3;

"Working Day" means any day from Monday to Friday inclusive which is not Christmas Day Good Friday or a statutory bank or public holiday and **"Working Days:"** shall be construed accordingly.

1.2 In this Agreement (unless the context otherwise requires):

- 1.2.1 the words "including" and "include" and words of similar effect shall be construed as illustrative and without limitation to the generality of the related words;
- 1.2.2 reference to "all reasonable endeavours" or "all reasonable steps" shall be construed as an obligation to use all reasonable but commercially prudent endeavours or take all reasonable but commercially prudent steps and will not require a Party to act contrary to its commercial interests;
- 1.2.3 any obligation on a Party to do any act includes an obligation to use all reasonable endeavours to procure that it is done;
- 1.2.4 where a Party is placed under a restriction in this Agreement, the restriction includes an obligation on the Party not to knowingly permit the infringement of the restriction by any person;
- 1.2.5 where anything is to be decided, required, designated, considered, or determined by, or done at the election or option of, one or both of the Parties under this Agreement (or any party on behalf of them such as their agents or surveyors), they shall do so fairly and reasonably and in such a way to give a fair and reasonable result having regard to the nature of what is to be done (unless this Agreement specifies that either is to have absolute discretion as to the result);
- 1.2.6 where a Party has a right of approval, right to require or a right to consent under this Agreement, that means a prior written approval, requirement or consent, which is not to be unreasonably withheld or delayed, except where this Agreement specifies that the relevant Party is to have absolute discretion;
- 1.2.7 reference to any agreement contract documents or deed shall be construed as a reference to it as varied supplemented or novated;
- 1.2.8 words importing persons shall include firms companies and bodies corporate and vice versa;
- 1.2.9 words importing the singular shall include the plural and vice versa;
- 1.2.10 words importing any one gender shall include the other gender;
- 1.2.11 construction of this Agreement shall ignore the headings contents list and front sheet (all of which are for reference only);
- 1.2.12 references to a numbered clause paragraph schedule or appendix are references to the clause paragraph schedule or appendix of or to this Agreement so numbered unless otherwise specified;
- 1.2.13 any reference to any legislative provision shall be deemed to include any subsequent re-enactment or amending provision.

2 OBJECTIVES

The primary objectives of the Parties are to:

- 2.1 **Secure the commercially viable comprehensive development of the Site having due regard to the Guiding Principles;**
- 2.2 **Achieve the project milestones in accordance with (and as set out in) the Project Programme;**
- 2.3 **Achieve an acceptable commercial return from the Development; and**
- 2.4 **Deliver an appropriate long term stewardship strategy for the Development.**

3. MUTUAL RESPONSIBILITY OF THE PARTIES

The Parties will:

- 3.1 **Generally consult and co-operate fully with each other in relation to the subject matter of this Agreement and will carry out all reasonable acts and things which may be conducive or desirable to maximise the value of the Site by obtaining a Satisfactory Planning Permission and will respond promptly to requests made by the other Party for approvals, information and assistance;**
- 3.2 **Act in good faith to each other in all matters arising from this Agreement and will not do anything that could materially prejudice the other Party's interests in the Site or the Development but this clause shall not preclude either Party from exercising any contractual rights or remedies it may have;**
- 3.3 **Subject to clause 8.3, provide the other Party with such information about their respective interests in the Site as is reasonably required including deducing title, disclosing all incumbrances of which they are aware and disclosing any site investigation or other reports, and the Parties agree that this is an ongoing obligation and will keep each other informed and provide all relevant information in relation to their respective interests in the Site;**
- 3.4 **Agree an application strategy and planning application boundary/boundaries for the submission of Planning Application(s) for the intended Development and Site;**
- 3.5 **Agree and implement strategies for:**
 - 3.5.1 **promoting the allocation of the Site for the Development through the local plan process (and for the avoidance of doubt in relation to this obligation clauses 19 and 23 shall apply in relation to the Council's functions as a Local Planning Authority);**
 - 3.5.2 **(subject to the agreement set out in clause 3.6) agreements with third party land owners, to acquire the Additional Interests including how the negotiations are to be conducted, who will acquire the relevant land, how consideration will be agreed/signed off by the Parties;**
 - 3.5.3 **revising the Site boundary, depending on the nature and outcome of the discussions referred to in clause 3.6.2;**
 - 3.5.4 **promoting the Site;**
 - 3.5.5 **development phasing including infrastructure; and**

- 3.5.6 long term stewardship of the Development (as referred to in clause 2.4) including how the common parts, communal areas and open space within the Development will be managed, funded and owned in the long term.
- 3.6 Contemplate whether they wish to collaborate further to provide infrastructure for the Development and/or to procure a developer (or developers) to undertake the Development;
- 3.7 Make available sufficient internal resource (having due regard to the level of external resource available to each Party) as required from time to time to facilitate the delivery of the Development, achieve the Objectives and comply with the terms of this Agreement; and
- 3.8 Take into account the Council's obligations and duties as a public / contracting authority in relation to matters including the procurement regulations and State aid in relation to the strategies and structures to be worked up and agreed between the Parties.
- 3.9 For the purposes of clause 3.5.2 above, the Parties have agreed that:

3.9.4 they will keep each other fully informed and updated as to their progress in respect of any agreements contemplated by clauses 3.9.1, 3.9.2 and 3.9.3 and will not do anything that would prejudice or undermine the other's efforts to secure the same.

4. FURTHER COLLABORATION AGREEMENT

- 4.1 The Parties will negotiate in good faith and use reasonable endeavours to agree the detailed terms of the Further Collaboration Agreement as soon as reasonably practicable after the date of this Agreement, but in any event before the Longstop Date.
- 4.2 The Further Collaboration Agreement will:
- 4.2.1 document and further develop the strategies referred to in clause 3.5;
 - 4.2.2 record the detailed terms of the Parties' agreement to share the Development value based on the proportion of the gross area of the Parties' respective land interests in the area subject to the Satisfactory Planning Permission and any provision for the adjustment of such shares;
 - 4.2.3 contain the detailed terms of the exit and termination arrangements to apply between the Parties;
 - 4.2.4 include detailed provisions regarding the Planning Application(s) including how any non-determination, extensions of time, refusal, grant, appeal, call-in or judicial review are dealt with, and detailed Onerous Conditions for each Party;
 - 4.2.5 document the detail of any infrastructure works and developer procurement agreed to be undertaken pursuant to clause 3.6;

- 4.2.6 contain such provisions as are reasonably required in relation to covenants and easements over the Council's Land and Cozumel's Land to give effect to the Objectives;
- 4.2.7 be for a term of not less than 8 years, subject to extension for events including force majeure, market failure and judicial review.
- 4.3 The Parties agree that no Planning Application(s) will be submitted until such time Further Collaboration Agreement has been entered into.
5. **COLLABORATION BOARD**
- 5.1 The Parties will each appoint three representatives with suitable experience and knowledge of the Development to the Board. The Initial representatives are:
- For the Council:
- 5.1.1 Jeremy Chambers;
- 5.1.2 Julia Wallace; and
- 5.1.3 Pat Main.
- For Cozumel:
- 5.1.4 Stephen Higgins of Arena;
- 5.1.5 Patrick O'Driscoll of Motcomb Estates Limited at Millbank Tower 21-24 Millbank London SW1P 4QP; and
- 5.1.6 Liz Whitaker of Arena.
- 5.2 A Party may change one or more of its representatives from time to time by notice in writing to the other Party. Representatives shall not receive any additional remuneration or expenses for their involvement with the Board.
- 5.3 The Board will have strategic oversight of the Development and delivery of the Objectives and will meet once a month (or at such other frequencies as the Board determines) to discuss the following matters:
- 5.3.1 review progress against, and if necessary update, the Project Programme;
- 5.3.2 review, and if necessary revise, the Guiding Principles;
- 5.3.3 review progress against, and if necessary update, the strategies referred to in clause 3.5;
- 5.3.4 consider any Shared Costs that have been or will be incurred and approve the amount of Shared Costs to be reimbursed that month;
- 5.3.5 review progress against, and if necessary update and further detail, the Project Budget;
- 5.3.6 consider the viability of the Development; and
- 5.3.7 such other matters as are appropriate and relevant from time to time in connection with the Development.

- 5.4 Decisions of the Board will be taken by simple majority, with each representative in attendance having one vote (save as agreed in clause 5.6). Representatives may attend a meeting by telephone or in person. A representative may appoint a temporary substitute to attend a meeting on his or her behalf if that representative cannot attend a particular meeting. The Board may agree (or one Party may propose and the other Party approve) to invite other persons to attend Board meetings, but any such attendees will not have any voting rights.
- 5.5 The Parties will take it in turns to chair the Board meeting. The chair person will not have a casting vote. The Parties acknowledge that Board decisions will need to be ratified by the Parties. The quorum for a Board meeting will be a minimum of two representatives from the Council and two representatives from Cozumel (a total of four representatives).
- 5.6 The Parties agree that if a meeting is quorate but only two of the representatives for a Party are in attendance, either (but not both) of those representatives will be entitled to cast the vote of the one representative of that Party who is not in attendance.
- 6.7 If the Board cannot make a decision because there is no majority, the following sequence of events will take place:
- 5.7.1 within 2 weeks or such other reasonable, specified period, either Party may give the other notice of the disputed issue and the Board representatives will use all reasonable endeavours to resolve the issue;
- 5.7.2 if the issue is not resolved within the relevant period, it will be referred to the Senior Officers. If the Senior Officers agree on how the issue is to be dealt with then the Board must abide by such decision, but if the Senior Officers cannot agree how the issue is to be resolved within 2 weeks or such other reasonable, specified period, then clauses 5.7.3 or 5.7.4 (as appropriate) will apply;
- 5.7.3 if that matter is capable of determination by an expert and both Parties agree to expert determination, the issue will be referred to an Independent Expert for determination in accordance with clause 11;
- 5.7.4 if the Parties fail to resolve the disputed issue and it is not one which by its nature is suitable for decision by an expert or the Parties are unable to reach agreement as to whether the issue is reasonably capable of resolution by the Independent Expert, then either Party may terminate this Agreement by serving 3 months' notice (or, if shorter, notice equivalent to the remainder of the term of this Agreement up to the Longstop Date) on the other and the provisions of clause 13 shall apply.

6. PROFESSIONAL TEAM APPOINTMENTS

- 6.1 The Parties agree to appoint from the Panel:
- 6.1.1 a Project Co-Ordinator to co-ordinate the Parties in the promotion of the Site up to, but not beyond, the obtaining of a Satisfactory Planning Permission;
- 6.1.2 a Planning Consultant to advise on planning policy and the Planning Application(s); and
- 6.1.3 such other consultants as are required from time to time in connection with the Development.
- 6.2 For each Appointment, the Council will enter into the Appointment and will procure a collateral warranty from the Professional Team member in favour of Cozumel. The terms of

the Appointment and related warranty will be pre-approved by Cozumel (subject to any pre-agreed terms as part of the Professional Team member's appointment to the Panel).

- 6.3 The Council will obtain Cozumel's approval to the terms of any mini-tender brief to procure a Professional Team member.
- 6.4 The Council will:
- 6.4.1 provide a certified copy of each Appointment to Cozumel within 10 Working Days of the Appointment;
 - 6.4.2 procure that a duly executed warranty is delivered to Cozumel as soon as reasonably practicable after the Appointment (together with a certified copy of the professional indemnity insurance certificate for the relevant consultant); and
 - 6.4.3 use all reasonable endeavours to enforce the terms of the Appointment.

7. PLANNING

- 7.1 The Parties agree subject to clause 4.3 to co-operate with each other and the Project Co-Ordinator and Planning Consultant in:
- 7.1.1 promoting the allocation of the Site for the Development through the local plan process (and for the avoidance of doubt in relation to this obligation clauses 19 and 23 shall apply in relation to the Council's functions as a Local Planning Authority);
 - 7.1.2 taking all action reasonably required to procure the grant of the Satisfactory Planning Permission at the earliest possible date;
 - 7.1.3 engaging in pre-application discussions on the Planning Application(s) prior to submission to the Local Planning Authority and carrying out pre-application community engagements;
 - 7.1.4 negotiating and entering into any relation to the Development. In
- 7.2 The Parties will subject to clause 4.3:
- 7.2.1 agree a strategy (the "Planning Application Strategy") for the submission of Planning Application(s) including the timing of the application(s), identity of the applicant, number of applications and application boundaries in respect of the Development and the Site;
 - 7.2.2 agree the detail of any Planning Application(s) to be submitted in Development and the Site;
 - 7.2.3 make any Planning Application(s) necessary to promote the Development in accordance with the agreed Planning Application Strategy;
 - 7.2.4 use all reasonable endeavours to obtain a Satisfactory Planning Permission as soon as reasonably practicable;
 - 7.2.5 not submit any other planning application relating to the Site, other than the agreed Planning Application(s) referred to in this clause 7.2.

- 7.3 The Parties will subject to clause 4.3 co-operate with each other and use all reasonable endeavours to assist each other to secure a Satisfactory Planning Permission and in so doing they shall:
- 7.3.1 not object to or procure or support an objection to be made in respect of a Planning Application(s); and
 - 7.3.2 where necessary, submit representations and take such reasonable action as appears necessary in order to promote the Site for development in preference to other sites which may be put forward as potential locations for residential or other development.
- 7.4 The Parties will, if it is necessary to do so to procure the grant of the Satisfactory Planning Permission (and if it is legally possible for the Council to do so) but subject to clause 4.3 enter into any relevant Planning Agreement, but only on the following terms:
- 7.4.1 that the Planning Agreement stipulates that the substantive obligations in it are to become operative only if the Development is begun, and that each Party is in any event to be relieved from all liability (both future and, where possible, past) under it after it has parted with all of its interest in the Site; and
 - 7.4.2 that are reasonably acceptable to the Parties, having regard to the Objectives.

8. TITLE AND OTHER ISSUES

- 8.1 The Council warrants to Cozumel that it owns the freehold in the Council's Land.
- 8.2 Cozumel warrants to the Council that it owns the freehold in Cozumel's Land.
- 8.3 Each Party shall on request deduce title to the other Party to the Council's Land and Cozumel's Land (respectively) and shall (subject to the terms of any option or other agreement) use all reasonable endeavours to answer any questions raised in relation to title or otherwise relating to the Site and where appropriate shall use all reasonable endeavours to procure that all of their respective land interests in the Site are registered at the Land Registry.
- 8.4 Upon completing an option or other agreement, or the purchase of any Additional Interests, the acquiring party shall:
- 8.4.1 give written notice to the other Party of such purchase identifying the parcel of land then acquired;
 - 8.4.2 provide a certified copy of all relevant documents; and
 - 8.4.3 apply for and use all reasonable endeavours to complete the registration at the Land Registry of any such document.
- 8.5 Cozumel acknowledges that the Council owns the land shown edged and hatched red on Plan 4 and accepts that this land does not form part of the Site and will be developed separately by the Council as a holiday village. The Council acknowledges that the proposed development must not prejudice the Development and agrees to keep Cozumel properly informed of its proposals for such development and to consult with it on a regular basis.

9. DISPOSALS

9.1 The Parties agree that they will:

- 9.1.1** within 10 Working Days of this Agreement apply to the Land Registrar on form RX1 for a restriction to be entered onto the proprietorship register of the title number(s) of their respective Property in the form of the restriction set out in clause 9.2 or 9.3 (as appropriate);
- 9.1.2** procure that any person with the benefit of any Security consents to the registration of the restriction referred to in clause 9.1.1;
- 9.1.3** save as referred to in clause 13.2 not make any application to the Land Registry to remove or vary the restriction on title referred to in clause 9.1.1;
- 9.1.4** not make any Disposition other than a Permitted Disposal;
- 9.1.5** not grant any rights or easements over the Property or enter into any restrictive covenants binding the Property which would or may reduce the open market value of the Property or prevent its development for the Development.

9.2 Restriction for Council's Land: "No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge is to be registered without a certificate signed by Cozumel Estates Limited of c/o Arena Racing Company, 3rd Floor Millbank Tower, 21-24 Millbank, London, SW1P 4QP or its conveyancers that the provisions of an Initial Collaboration Agreement dated [] 2016 and made between (1) Shepway District Council (2) Cozumel Estates Limited and (3) Investors In Private Capital Limited have been complied with or that they do not apply to the disposition."

9.3 Restriction for Cozumel's Land: "No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge is to be registered without a certificate signed by Shepway District Council of Civic Centre, Castle Hill Avenue, Folkestone Kent CT20 2QT or its conveyancers that the provisions of an Initial Collaboration Agreement dated [] 2016 and made between (1) Shepway District Council (2) Cozumel Estates Limited and (3) Investors In Private Capital Limited have been complied with or that they do not apply to the disposition."

9.4 The Parties will at their own cost provide each other with all assistance reasonably and properly required to provide the certificates required by the restrictions referred to in clauses 9.2 and 9.3 in order to ensure that any registration application made in connection with any Permitted Disposal is successful and to remove the restrictions in the event that this Agreement is terminated pursuant to clauses 6.7.4 and/or 12.

10. SHARED COSTS

10.1 The Parties shall keep full and accurate records of all Shared Costs that they incur including all relevant invoices, receipts, terms and conditions and other costs information, and shall provide copies of (or permit the other Party to inspect at a mutually convenient time and location) such Shared Costs information on reasonable request.

10.2 The Parties will keep each other updated at regular intervals as to the amount of Shared Costs that they incur, principally through the Board meetings referred to in clause 5.

10.3 The Parties shall contribute in the Agreed Proportions towards the Shared Costs, in accordance with the following mechanism:

- 10.3.1 the Party who has incurred the Shared Cost (the "Paying Party") shall provide to the other Party (the "Reimbursing Party") appropriate evidence of the Shared Cost that the Paying Party has incurred, for example the invoice that has been raised by the Professional Team member, and notice of the amount that the Paying Party is reclaiming from the Reimbursing Party;
 - 10.3.2 If required in accordance with the relevant tax legislation and HMRC guidance, the Paying Party will provide to the Reimbursing Party a VAT invoice in respect of the amounts being claimed from the Reimbursing Party pursuant to clause 10.3.1;
 - 10.3.3 the Reimbursing Party shall pay to the Paying Party the amounts demanded pursuant to clauses 10.3.1 and 10.3.2 above within 10 Working Days, or such other reasonable period of demand.
- 10.4 Where the Reimbursing Party fails to contribute towards the Shared Costs in accordance with clause 10.3, the unpaid amounts shall bear interest from the date of demand to the date of repayment in full thereof at the Default Interest Rate, and the Paying Party shall be entitled to set off the un-reimbursed Shared Cost and interest accruing on it against any sums due from the Paying Party to the Reimbursing Party.

11. DISPUTES

- 11.1 Subject to clause 5.7, any dispute or difference arising between the Parties as to their respective rights, duties or obligations or as to any other matter or thing in any way arising out of or connected with the subject matter of this Agreement shall (unless otherwise agreed by the Parties or expressly provided for otherwise within this Agreement) be referred to the Independent Expert.
- 11.2 Where any issue is required to be dealt with or submitted for the determination of the Independent Expert it shall be referred for determination as follows:
 - 11.2.1 any disputes as to the sums payable under this Agreement or as to areas or values of land shall be referred for determination by a chartered surveyor (of not less than 15 years' standing) experienced in the relevant matter to be agreed between the parties or in default nominated on the application of either Party by the President (or other available officer able to make such appointment) of the Royal Institution of Chartered Surveyors;
 - 11.2.2 any dispute as to a planning matter in connection with the Planning Application(s) shall be referred for determination by a town and country planner (of not less than 15 years' standing) experienced in the relevant matter to be agreed between the Parties or in default nominated on the application of either Party by the President (or other available officer able to make such appointment) of the Institution of Town and Country Planners;
 - 11.2.3 any dispute or any matter not referred to in clause 11.2.1 or 11.2.2 above including interpretation of this Agreement or the wording of any document required to be entered into pursuant to this Agreement shall be referred for determination by a solicitor (of not less than 15 years' standing) experienced in the relevant matter to be agreed between the Parties or in default nominated on the application of either Party by the President (or other available officer able to make such appointment) of the Law Society;
 - 11.2.4 the expert so appointed shall afford the Parties the opportunity to make representations to him and also an opportunity to make written counter representations on any representations made to him by the other but will not be in any way limited or fettered by such representations and counter representations and will be entitled to rely on his own judgement and opinion and copies of all such

representations and counter representations shall be sent by the Party making the same to the other Party;

11.2.5 If the expert dies or refuses to act or becomes incapable of acting or if he fails to publish his determination within two months of the date upon which he accepted his appointment the Parties may agree to discharge him and appoint another in his place in accordance with the above provisions of this clause.

11.3 The fees and expenses of the Independent Expert including the cost of his nomination shall be borne equally by the Parties (unless the Independent Expert otherwise determines).

12. TERM AND TERMINATION

12.1 This Agreement and the provisions contained within it shall endure until termination in accordance with clauses 6.7.4, 12.2 or 12.3 or until the Further Collaboration Agreement has been entered into.

12.2 If the Parties have not entered into a Further Collaboration Agreement by the Longstop Date, either Party may terminate this Agreement at any time thereafter on written notice to the other and the provisions of clause 13 shall apply.

12.3 If an Event of Default occurs, then subject to clause 12.6 the non-defaulting Party may terminate this Agreement at any time thereafter on written notice to the other and the provisions of clause 13 will apply.

12.4 An Event of Default occurs if one of the Parties or the Guarantor:

12.4.1 suffers an insolvency Event;

12.4.2 being a company (incorporated outside England and Wales) suffers proceedings or events analogous to an insolvency Event or are instituted or occurring in the country of its incorporation or elsewhere;

12.4.3 enters into any arrangement or composition for the benefit of the affected Party's/Guarantor's creditors save where connected with any reconstruction or amalgamation not involving a reduction in capital;

12.4.4 fails to pay any monies due to the other Party within 20 Working Days of demand;

12.4.5 commits any material breach of its obligations in this Agreement and either:

(a) that breach is incapable of remedy; or

(b) that breach is capable of remedy and has not been remedied within 20 Working Days (or such other longer reasonable period specified by the non-defaulting Party) of receipt by the defaulting Party/Guarantor of a written notice specifying the breach from the non-defaulting Party;

12.4.6 repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement; or

12.4.7 breaches any of clauses 8.1, 8.2 or 21.

12.6 An Insolvency Event occurs if one of the Parties or the Guarantor suffers any of the following:

- 12.5.1 the making of an order or the passing of a resolution for the winding-up of the affected Party/Guarantor;
 - 12.5.2 the appointment of a provisional liquidator;
 - 12.5.3 being unable to pay or having no reasonable prospect of being able to pay its debts within the meaning given to the expression by section 123 of the Insolvency Act 1986 as amended by the Enterprise Act 2002 ("1986 Act");
 - 12.5.4 the calling of a meeting of creditors or any of them under part 1 of the 1986 Act or the proposal of any voluntary arrangement pursuant to section 1 of the 1986 Act;
 - 12.5.5 an order being made for the appointment of an administrator to manage the affairs business and property of the affected Party/Guarantor or documents are filed with a court of competent jurisdiction for the appointment of an administrator or notice of intention to appoint an administrator being given;
 - 12.5.6 the appointment of a receiver (including an administrative receiver);
 - 12.5.7 being struck off the Register of Companies or being dissolved or ceasing for any reason to retain its corporate existence; or
 - 12.5.8 otherwise ceasing for any reason to remain liable under its covenants contained in this Agreement.
- 12.6 If the Council intends to exercise its right to terminate this Agreement pursuant to clause 12.3 it shall first give notice in writing of such intention (a "Default Notice") to any Funder and shall take no further action in respect of such right until the expiry of 20 Working Days after the date of service of the Default Notice ("Cure Period") and:
- 12.6.1 If the Council has served a Default Notice then a Funder (or any nominee of a Funder approved by the Council in accordance with clause 12.8) may within the Cure Period enter into a new agreement ("New Agreement") with the Council (and the Council agrees to enter into the New Agreement but at the cost of the Funder or its nominee) on the following terms:
 - (a) the New Agreement shall be in the same form as this Agreement with such amendments as may be reasonably necessary in the circumstances but subject to the prior written approval of the Council;
 - (b) (as appropriate) the Funder (or the Funder's nominee) shall be substituted for Cozumel as if the Funder (or the Funder's nominee) had been an original contracting party in place of Cozumel;
 - (c) If the Funder is to enter into the New Agreement, the New Agreement shall provide that the Funder may novate the New Agreement to any entity approved by the Council;
- 12.7 Upon exchange of a New Agreement this Agreement shall end but without prejudice to any claims or rights of action which have arisen prior to the date thereof.
- 12.8 The Council will not unreasonably withhold or delay its approval of any nominee of the Funder under clause 12.6.1, but it will be reasonable for the Council to withhold its approval if in the Council's opinion:
- 12.8.1 the proposed nominee when considered with any proposed guarantor is of lower financial standing than Cozumel and the Guarantor;

12.8.2 the proposed nominee is materially less able than Cozumel to comply with Cozumel's obligations in this Agreement; or

12.8.3 the proposed nominee is not able to give the confirmations set out in clauses 8.2 and 21.

13. EFFECT OF TERMINATION

If this Agreement comes to an end:

13.1 It will not prejudice the rights of the Parties in respect of any breach of this Agreement outstanding at the date this Agreement ends and will be without prejudice to ongoing nature of the obligations contained in clause 13.2;

13.2 The Parties will as soon as reasonably practicable procure the cancellation of any notice registered at the Land Registry in respect of this Agreement and provide written evidence to the other Party both of the application for cancellation and any acknowledgement of the cancellation and will provide the other with all assistance reasonably and properly required to ensure the removal of the restrictions referred to in clause 9; and

13.3 Neither Party will be under any further liability to the other under this Agreement.

14. VALUE ADDED TAX

Any payment due from one Party pursuant to this Agreement shall (where applicable) be paid together with the appropriate value added tax upon production of a proper tax invoice addressed to the payee and (where applicable) a copy of the appropriate notice of election and evidence of its receipt by HM Revenue and Customs.

15. CONFIDENTIALITY

15.1 The Parties and the Guarantor are not, without the prior written consent of the other Party knowingly to disclose or publish or permit or cause to be disclosed or published any details of this Agreement or any information provided by any of them to either of the other parties in connection with the negotiation of this Agreement or the performance of their respective obligations under it or any application for approval made under it save only:

15.1.1 to the extent necessary in order to comply with the requirements of the Stock Exchange;

15.1.2 to HM Revenue and Customs or the rating authority;

15.1.3 to the extent necessary to comply with any statutory obligations;

15.1.4 to the extent necessary for audit purposes;

15.1.5 to the extent necessary to obtain professional advice (including in relation to the determination of any dispute);

15.1.6 to the extent ordered to do so by the court or any other competent authority;

15.1.7 to the extent necessary for any financing or investment arrangements;

15.1.8 to the extent that it is already in the public domain (other than as the result of a breach by that party of this clause);

15.1.9 to the extent envisaged by clause 20; or

15.1.10 to the extent necessary for the proper performance of their respective obligations under this Agreement.

15.2 The Parties shall not make any external announcement or press communication to any third party concerning this Agreement or any matter referred to in it other than as agreed between the Parties, save as set out above and in clause 22.

15.3 The Parties and the Guarantor will procure that their professional advisers and agents are fully instructed and required to comply with these restrictions on disclosure.

16. DEALINGS

16.1 The Council is not permitted to assign the benefit of this Agreement, other than to an entity to whom some or all of its functions are transferred whether by way of a statutory transfer or otherwise, or to an entity whose primary function is to deliver the Development in circumstances where such entity is reasonably required or recommended by Government or any other public sector body providing funding in connection with the Development. The Council agrees to give Cozumel as much advance notice as is reasonably practicable of any proposed or actual transfer and such information regarding the impact of the transfer on this Agreement and the Development as Cozumel may reasonably require.

16.2 Cozumel is not permitted to assign the benefit of this Agreement other than (i) to a Funder; or (ii) to a group undertaking (as that term is defined in Section 1161 of the Companies Act 2008) and (in either case) subject always to having complied with clauses 16.3 and 16.4.

16.3 Where requested by the Council (acting reasonably) the Guarantor (or an alternative guarantor approved by the Council) must be a party to any such assignment and agree to be bound by the obligations contained in clause 25 and (where applicable) clause 24.

16.4 Cozumel must notify the Council of any assignment pursuant to clause 16.2.

16.5 It shall be a condition of any assignment pursuant to this clause 16 that the assignee entity covenants directly with the relevant non-assigning Party to observe and perform the obligations on the part of the assigning Party contained in this Agreement such covenant to be in a form first approved by the non-assigning Party.

17. VARIATIONS

No variation of this Agreement shall be valid unless it is in writing and evidenced by deed signed by or on behalf of all of the parties to this Agreement, including the Guarantor.

18. PARTNERSHIP AND AGENCY

Nothing in this Agreement is intended to create between the Parties (and/or the Guarantor) a partnership or joint venture or legal relationship of any kind that would impose liability upon one party for the act or failure to act of any other party or any of them or to authorise any party to act as agent for any other. Save where expressly stated in this Agreement no party shall have authority to make representations act in the name of or on behalf of or otherwise to bind any other.

- 19. NO FETTER**
- 19.1 Subject to clause 19.2, but notwithstanding any other provision in this Agreement, nothing in this Agreement will fetter, limit or restrict the Council's functions as a Local Planning Authority and/or a public body and the Council will not be liable for any damage, cost, injury or loss arising from the performance of its functions in these capacities.
- 19.2 The Council will comply with its obligations in this Agreement as a land owner, to the fullest extent possible, as long as (and only to the extent that) compliance does not conflict with the principle set out in clause 19.1.
- 20. FREEDOM OF INFORMATION**
- 20.1 Cozumel acknowledges that the Council is subject to legal duties which may require the release of information under FOIA and/or EIR and that the Council may be under an obligation to provide information subject to a Request for Information.
- 20.2 The Council shall be responsible for determining in its absolute discretion whether:
- 20.2.1 any information is Exempted Information or remains Exempted Information; or
- 20.2.2 any information is to be disclosed in response to a Request for Information;
- and in no event shall Cozumel respond directly to a Request for Information to which the Council is required to respond to, except to confirm receipt of the Request for Information and that the Request for Information has been passed to the Council.
- 20.3 Subject to clause 20.4 below, Cozumel acknowledges that the Council may be obliged under FOIA or EIR to disclose information:
- 20.3.1 without consulting Cozumel; or
- 20.3.2 following consultation with Cozumel and having taken (or not taken, as the case may be) its views into account.
- 20.4 Without in any way limiting clauses 20.1 and 20.3, in the event that the Council receives a Request for Information which relates to the Site, the Development and/or this Agreement, the Council will, (unless prohibited from doing so under the FOIA and/or EIR) use reasonable endeavours, (as soon as reasonably practicable and subject to time constraints imposed on the Council under the FOIA and/or EIR), to notify and consult with Cozumel and have due regard to any reasonable representations made by or on behalf of Cozumel before making any disclosure of information that has any bearing on Cozumel, the Guarantor, this Agreement, the Site and/or the Development.
- 20.5 Cozumel will to the extent reasonably required (but without being obliged to incur any third party costs) assist and co-operate with the Council as requested by the Council to enable the Council to comply with its obligations to disclose information under FOIA and EIR within the prescribed periods for compliance and in particular without limitation will (and shall procure that its agents and sub-contractors will):
- 20.5.1 transfer any Request for Information received by Cozumel to the Council as soon as practicable after receipt and in any event within two Working Days of receiving a request for information;
- 20.5.2 provide all such assistance as may be reasonably required (but without being obliged to incur any third party costs) from time to time by the Council to enable the Council to comply with its obligations to disclose information.

20.6 Nothing in this Agreement will prevent the Council from complying with any valid order, decision, enforcement or practice recommendation notice issued to it by the Information Commissioner under FOIA and / or EIR in relation to any Exempted Information.

21. ANTI-BRIBERY

21.1 Cozumel confirms that it has not offered and agrees that it will not offer to give any person any gift or consideration or any reward or inducement for the purposes of securing the execution of this Agreement.

21.2 Cozumel shall:

21.2.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including the Public Bodies Corrupt Practices Act 1989 and/or the Prevention of Corruption Act 1916 and the Bribery Act 2010 (and/or Section 117 of the Local Government Act 1972 and/or any other relevant laws relating to the prevention of corruption in the discharge of public functions) ("Requirements");

21.2.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

21.2.3 comply with the Council's Anti-bribery and Anti-corruption Policies, in each case as the Council or the relevant industry body may update from time to time provided that such policies and any updates have been disclosed to Cozumel on a timely basis ("Relevant Policies").

21.2.4 have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to the extent necessary to comply with the Requirements, the Relevant Policies and clause 21.2.2, and will enforce them where appropriate;

21.2.5 immediately report to the Council's Corporate Director of Strategic Operations any request or demand for any undue financial or other advantage of any kind received by Cozumel in connection with the performance of this Agreement;

21.2.6 If required by the Council, produce a written certificate to it signed by an officer of Cozumel, confirming compliance with this clause 21 by Cozumel and all persons associated with it under clause 21.3. Cozumel shall provide such supporting evidence of compliance as the Council may reasonably request.

21.3 Cozumel shall ensure that any person associated with Cozumel who is performing services or providing goods in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on Cozumel in this clause 21 ("Relevant Terms"). Cozumel shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Council for any breach by such persons of any of the Relevant Terms.

21.4 For the purposes of this clause 21, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(6) and 6(8) of that Act and section 8 of that Act respectively. For the purposes of this clause 21 a person associated with Cozumel includes any subcontractor of Cozumel.

22. PRESS RELEASES AND PUBLIC RELATIONS

22.1 The Council as landowner will:

22.1.1 not issue any press release or any other public communication relating to or potentially impacting on the Development without first providing details of the proposed press release or public communication to Cozumel and obtaining its approval; and

22.1.2 have due and proper regard to its obligations under clause 3.2 in the context of any proposed or actual press release or other public communication.

22.2 Cozumel agrees to respond promptly in relation to any proposed press release or public communication provided to it by the Council pursuant to clause 22.1.1.

23. SEPARATION OF STATUTORY FUNCTIONS

The Council has adopted the officer governance structure set out at Appendix 4 in order to ensure the proper separation of its statutory functions and in order to avoid any possible challenge in respect of the Council's planning functions and decision making powers.

24. OPINION LETTER

24.1 On or before the date of this Agreement, Cozumel will provide to the Council (at Cozumel's cost) an opinion letter in a form previously approved by the Council, from a reputable and suitably sized law firm approved by the Council based in and qualified to opine upon laws in the British Virgin Islands.

24.2 Cozumel will provide a further opinion letter on the same basis as in clause 24.1 for any further deeds and documents it enters into with the Council, including the Further Collaboration Agreement.

25. GUARANTEE

25.1 In consideration of the Council entering into this Agreement the Guarantor irrevocably and unconditionally covenants with the Council that:

25.1.1 Cozumel perform and observe Cozumel's obligations in this Agreement; and

25.1.2 as a separate and independent obligation, the Guarantor will pay to the Council immediately on demand all claims demands losses damages liabilities costs fees and expenses whatsoever sustained by the Council by reason of or arising in any way directly or indirectly out of any default by Cozumel in the performance and observance of Cozumel's obligations in this Agreement provided that it is agreed that notwithstanding the above the liability of the Guarantor under this clause 25 will be limited to and will not exceed the extent of Cozumel's liability for any breach under this Agreement.

25.2 The obligations of the Guarantor hereunder are primary obligations.

25.3 The Guarantor is jointly and severally liable with Cozumel for the performance and observance of Cozumel's obligations in this Agreement.

25.4 The Guarantor is not to claim any rights of subrogation in respect of the obligations guaranteed by the Guarantor and is not entitled to participate in any security held by the

Council in respect of those obligations unless and until performed or discharged in full.

- 25.5 The Guarantor is not to claim in competition with the Council in the insolvency of Cozumel and is not to take any security, indemnity or guarantee from that person in respect of those obligations.
- 25.6 If any payment made to the Council is set aside or avoided under the laws relating to insolvency, the Council may claim under this guarantee and indemnity in respect of that payment and any settlement, release or discharge of the obligations guaranteed by the Guarantor is to take effect subject to this condition.
- 25.7 Notwithstanding any legal limitation disability or incapacity on or of Cozumel or any other fact or circumstance whether known to the Council or not the Council may proceed against and recover from the Guarantor as if the Guarantor was named as Cozumel in this Agreement, but only if Cozumel is in breach of its obligations in this Agreement.
- 25.8 None of the following nor any combination thereof shall release determine discharge or in any way lessen or affect the liability of the Guarantor hereunder or otherwise prejudice or affect the right of the Council to recover from the Guarantor to the full extent of its obligations hereunder:
- 25.8.1 any neglect delay or forbearance of the Council in endeavouring to obtain payment of any amounts payable under this Agreement by Cozumel or in enforcing the performance or observance of any of the obligations of Cozumel under this Agreement;
 - 25.8.2 any refusal by the Council to accept payments tendered by or on behalf of Cozumel;
 - 25.8.3 any extension of time or any waiver or consent given by the Council to Cozumel;
 - 25.8.4 any variation of the terms of this Agreement (provided such variation complies with the terms of clause 17);
 - 25.8.5 the release of any person for the time being jointly or severally liable for Cozumel's obligations or liable as Guarantor for Cozumel's obligations;
 - 25.8.6 any change in the constitution structure or powers of any of Cozumel the Guarantor or the Council or the liquidation administration or bankruptcy (as the case may be) of any of Cozumel the Guarantor or the Council;
 - 25.8.7 any legal limitation or any immunity disability or incapacity of Cozumel (whether or not known to the Council) or the fact that any dealings with the Council or Cozumel are outside or in excess of the powers of Cozumel or the Guarantor;
 - 25.8.8 the taking variation compromise renewal release or refusal or neglect to perfect or enforce any rights remedies or securities against Cozumel or any other person;
 - 25.8.9 any other act omission matter or thing whatsoever whereby but for this provision the Guarantor would be exonerated or released either wholly or in part (other than a written release given by the Council).
- 25.9 The Guarantor will pay interest at the Default Interest Rate (calculated from the due date until the date of payment) on all sums properly payable by it to the Council hereunder that are not paid within 10 Working Days of receipt of the Council's written demand for such payment.

25.10 All payments to be made by the Guarantor hereunder will be made in full without any deduction for any set-off or counterclaim the Guarantor may have against the Council.

25.11 No delay or omission by the Council in exercising any right power or privilege hereunder shall impair such right power or privilege or be construed as a waiver of such right power or privilege.

26. NOTICES AND NOTIFICATIONS

26.1 All notices requests demands and other communications shall be in writing and shall be deemed to have been duly given if delivered or sent by pre-paid special delivery insured mail to a Party or the Guarantor at its address set out above or at such other address as such Party may specify from time to time by written notice to the other party.

26.2 Any notice or demand served on the Council shall be:

26.2.1 sent to Shepway District Council, Civic Centre, Castle Hill Avenue, Folkestone Kent CT20 2QT, for the attention of Jeremy Chambers, Corporate Director, Strategic Operations; and

26.2.2 copied to Pinsent Masons LLP at 3 Hardman Street, Manchester M3 3AU (Ref: HR08/864468.07000).

26.3 Any notice or demand served on Cozumel shall be:

26.3.1 sent to Arena Racing Company, 3rd Floor Millbank Tower, 21-24 Millbank, London, SW1P 4QP, for the attention of Stephen Higgins, Group Racing & Property Director (or such other officer of Arena Racing Company as is notified to the Council in writing from time to time) and Cozumel appoints Arena Racing Company as its agent for the service of any notices or proceedings relating to this Agreement; and

26.3.2 copied to Macfarlane LLP at 20 Curator Street, London EC4A 1LT (ref: DFC/SXXM/652634).

26.4 Any notice or demand served on the Guarantor shall be:

26.4.1 sent to Arena Racing Company 3rd Floor Millbank Tower, 21-24 Millbank, London, SW1P 4QP, for the attention of Stephen Higgins, Group Racing & Property Director (or such other officer of Arena Racing Company as is notified to the Council in writing from time to time) and the Guarantor appoints Arena Racing Company as its agent for the service of any notices or proceedings relating to this Agreement; and

26.4.2 copied to Macfarlane LLP at 20 Curator Street, London EC4A 1LT (ref: DFC/SXXM/652634).

26.5 It shall not be valid service under this Agreement if notices are sent by email.

27. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

A person who is not party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the Act.

28. DISCLAIMER

28.1 Both Parties acknowledge and agree that in entering into this Agreement they do not rely upon and shall have no remedy in respect of any statement, representation warranty or understanding (whether negligently or innocently made) other than as expressly set out in this Agreement as a warranty or contained in written communication between the Parties through their legal advisers. The only remedy available to a Party in respect of any such statement, representation warranty or understanding shall be for breach of contract under the terms of this Agreement.

28.2 Nothing in this clause 28 shall operate to exclude any liability for fraud.

29. LAW

Without prejudice to the dispute resolution provisions contained in clause 11 this Agreement shall be governed by and interpreted in accordance with the laws of England and Wales and the Parties and the Guarantor irrevocably submit to the jurisdiction of the English Courts. This clause operates, inter alia, for the benefit of the Council who retains the right to sue Cozumel and the Guarantor and enforce any judgment against Cozumel and/or the Guarantor in the courts of any competent jurisdiction.

30. EXECUTION AND DELIVERY

This Agreement is executed by the Parties and the Guarantor as a deed and is delivered on the date shown on page 1 of this Agreement and this Agreement may be executed in any number of originals counterparts or duplicates all of which taken together shall constitute one and the same deed and any party may enter into this Agreement by executing the same.

SCHEDULE 1

SHARED COSTS

- 1. Shared Costs shall include:**
 - 1.1 Costs paid in accordance with the terms of the Appointments;**
 - 1.2 Costs incurred in the procurement of any member of the Professional Team where agreed by the Board;**
 - 1.3 The cost of entry into and complying with obligations under any Planning Agreement and under any other agreement relating to obtaining a Satisfactory Planning Permission including Community Infrastructure Levy.**
 - 1.4 Charges and costs incurred for site survey soil contamination and other such reports.**
 - 1.5 (Where agreed by the Parties) the costs of acquiring the Additional Interests envisaged in clause 3.9.3.**
- 2. Shared Costs shall exclude:**
 - 2.1 any costs incurred prior to the date of this Agreement;**
 - 2.2 costs that do not relate directly to the Site and/or the Development;**
 - 2.3 costs that are not proper and reasonable;**
 - 2.4 'in-house' costs incurred by any Party (such as any salaries or wages paid to employees or the cost of management time or overhead expenses);**
 - 2.5 project assurance, procurement process management, internal finance and human resource departmental function costs;**
 - 2.6 legal and financial advice to the Parties in relation to their respective interests in the Site including as to equalisation and the negotiation of the Further Collaboration Agreement; and**
 - 2.7 costs not expressly anticipated in the Project Budget and/or approved by the Board;**

SCHEDULE 2

PROPERTY

PART 1

Cozumel's Land

Cozumel's Land comprises the whole of the land contained in the following title numbers. The land is shown for identification only edged blue on Plan 2

Property description	Title Number
Folkestone Racecourse, Westenhanger, Folkestone CT21 4HX	K881982
Land at Folkestone Racecourse, Folkestone	K874438
Farm Cottage, Folkestone Race Course, Westenhanger, Hythe CT21 4HY	K823733
Killymoon, Ashford Road, Newingreen, Hythe CT21 4JD	K104285

PART 2

The Council's Land

The Council's Land comprises the land contained in the following title numbers. The land is shown for identification only edged red on Plan 1

Property description	Title Number
Land on the west side of Otterpool Lane, Sellindge, Ashford	TT44831
Land on the east and west sides of Otterpool Lane, Sellindge, Ashford – but EXCLUDING the land shown edged and hatched red on Plan 4	TT44832 (part only)

SCHEDULE 3
THE GUIDING PRINCIPLES

Economic

- Maximise opportunities for new strategic employment space**
- Provide an ultra fast IT enabled community**
- Maximise investment in and use of existing infrastructure assets**
- Create local neighbourhood centres within walkable distances**
- Create an attractive town centre as the heart of the settlement**

Social

- Provide much needed new homes through a phased approach**
- Maximise the visibility and enjoyment of local heritage assets**
- Deliver distinctive high quality townscapes with an appropriate mix of housing types and tenures**
- Take advantage of economies of scale and capturing land value**
- Provide opportunities for self and custom build**
- Provide spaces for local food growing**
- Establish a suitable legal entity for long term management**

Environmental

- Landscape led masterplanning retaining and enhancing green and blue assets**
- Embrace and enhance the natural landscape character with a diverse range of green spaces**
- Make best use of technologies in energy generation and conservation**
- Prioritise walking, cycling and sustainable transport**
- Promote healthy and sustainable environments**

SCHEDULE 4
PROJECT PROGRAMME

- **Submission of Planning Application - Q2 2018.**
- **Planning Permission - end of Q4 2018.**
- **Start on site - 2020.**

APPENDIX 1

PLANS

Plan 1 – plan showing Council's Land.

Plan 2 – plan showing Cozumel's Land.

Plan 3 – plan showing the Site.

Plan 4 – plan showing excluded Council land.

Plan 5 – plan showing

APPENDIX 2
GOVERNANCE STRUCTURE

IN WITNESS whereof the Parties and the Guarantor have executed this Agreement as a deed the day and year first above written

Executed as a deed, but not delivered until the date specified on page 1 of this Agreement by affixing the common seal of SHEPWAY DISTRICT COUNCIL in the presence of:

Signature

Authorized Signatory

Name (block capitals)

Executed as a deed, but not delivered until the date specified on page 1 of this Agreement, on behalf of COZUMEL ESTATES LIMITED Incorporated in the British Virgin Islands by [] being [a] person[s] who in accordance with the laws of that territory is/are acting under the authority of the company:

Signature

Name (block capitals)

ALEXANDER BONNAEV
DIRECTOR

Signature

Name (block capitals)

Executed as a deed, but not delivered the date specified on page 1 of this Agreement by INVESTORS IN PRIVATE CAPITAL LIMITED acting by a director in the presence of.

Signature

Director

Name (block capitals)

PATRICK DELSOL

Witness signature

Witness name

GILBERT STYMER

Address

.....
.....
.....

Occupation

ACCOUNTANT