

506410/13

In accordance with
Sections 859A and
859J of the Companies
Act 2006

MR01

Particulars of a charge



Companies House

A fee is payable with this form
Please see 'How to pay' on the
last page

You can use the WebFiling
Please go to www.companieshouse.gov.uk

☒ **What this form is for**
You may use this form to register
a charge created or evidenced by
an instrument

☒ **What this form is NOT for**
You may not use this form to
register a charge where the
instrument Use form MR08



A19 24/07/2014 #81
COMPANIES HOUSE

This form must be delivered to the Registrar for registration within
21 days beginning with the day after the date of creation of the charge. If
delivered outside of the 21 days it will be rejected unless it is accompanied by a
court order extending the time for delivery

☒ You must enclose a certified copy of the instrument with this form. This will be
scanned and placed on the public record. **Do not send the original**

1 Company details

Company number ☒ 0 3 6 1 5 4 2 2

Company name in full ☒ THE MERLIN VENTURE LIMITED

For official use

→ **Filing in this form**
Please complete in typescript or in
bold black capitals

All fields are mandatory unless
specified or indicated by *

2 Charge creation date

Charge creation date ☒ 2 2 0 7 2 0 1 4

3 Names of persons, security agents or trustees entitled to the charge

Please show the names of each of the persons, security agents or trustees
entitled to the charge

Name ☒ BIRMINGHAM CITY COUNCIL

Name

Name

Name

If there are more than four names, please supply any four of these names then
tick the statement below

☐ I confirm that there are more than four persons, security agents or
trustees entitled to the charge

MR01

Particulars of a charge

4

Brief description

Please give a short description of any land, ship, aircraft or intellectual property registered or required to be registered in the UK subject to a charge (which is not a floating charge) or fixed security included in the instrument

Brief description

The Chivenor Tiggywinkles Neighbourhood Nursery at Chivenor House Drem Croft Castle Vale Birmingham

Please submit only a short description. If there are a number of plots of land, aircraft and/or ships, you should simply describe some of them in the text field and add a statement along the lines of, "for more details please refer to the instrument"

Please limit the description to the available space

5

Other charge or fixed security

Does the instrument include a charge (which is not a floating charge) or fixed security over any tangible or intangible or (in Scotland) corporeal or incorporeal property not described above? Please tick the appropriate box

☐ Yes

☒ No

6

Floating charge

Is the instrument expressed to contain a floating charge? Please tick the appropriate box

☐ Yes Continue

☒ No Go to **Section 7**

Is the floating charge expressed to cover all the property and undertaking of the company?

☐ Yes

7

Negative Pledge

Do any of the terms of the charge prohibit or restrict the company from creating further security that will rank equally with or ahead of the charge? Please tick the appropriate box

☐ Yes

☒ No

8

Trustee statement ^①

You may tick the box if the company named in Section 1 is acting as trustee of the property or undertaking which is the subject of the charge

☐

^① This statement may be filed after the registration of the charge (use form MR06)

9

Signature

Please sign the form here

Signature

Signature

X

H Ullalsi
for and on behalf of
Birmingham City Council

X

This form must be signed by a person with an interest in the charge

MRO1

Particulars of a charge



Presenter information

You do not have to give any contact information, but if you do, it will help Companies House if there is a query on the form. The contact information you give will be visible to searchers of the public record.

Contact name Legal & Democratic Services

Company name Birmingham City Council

Address The Council House

Victoria Square

Birmingham

Post town B1 1BB

County/Region West Midlands

Postcode B 1 1 B B

Country England

DX DX 13053 Birmingham 1

Telephone



Certificate

We will send your certificate to the presenter's address if given above or to the company's Registered Office if you have left the presenter's information blank.



Checklist

We may return forms completed incorrectly or with information missing.

Please make sure you have remembered the following

- ☐ The company name and number match the information held on the public Register
- ☐ You have included a certified copy of the instrument with this form
- ☐ You have entered the date on which the charge was created
- ☐ You have shown the names of persons entitled to the charge
- ☐ You have ticked any appropriate boxes in Sections 3, 5, 6, 7 & 8
- ☐ You have given a description in Section 4, if appropriate
- ☐ You have signed the form
- ☐ You have enclosed the correct fee
- ☐ Please do not send the original instrument, it must be a certified copy



Important information

Please note that all information on this form will appear on the public record.



How to pay

A fee of £13 is payable to Companies House in respect of each mortgage or charge filed on paper.

Make cheques or postal orders payable to 'Companies House'.



Where to send

You may return this form to any Companies House address. However, for expediency, we advise you to return it to the appropriate address below.

For companies registered in England and Wales
The Registrar of Companies, Companies House,
Crown Way, Cardiff, Wales, CF14 3UZ
DX 33050 Cardiff

For companies registered in Scotland
The Registrar of Companies, Companies House,
Fourth floor, Edinburgh Quay 2,
139 Fountainbridge, Edinburgh, Scotland, EH3 9FF
DX ED235 Edinburgh 1
or LP - 4 Edinburgh 2 (Legal Post)

For companies registered in Northern Ireland
The Registrar of Companies, Companies House,
Second Floor, The Linenhall, 32-38 Linenhall Street,
Belfast, Northern Ireland, BT2 8BG
DX 481 N R Belfast 1



Further information

For further information, please see the guidance notes on the website at www.companieshouse.gov.uk or email enquiries@companieshouse.gov.uk

This form is available in an alternative format. Please visit the forms page on the website at www.companieshouse.gov.uk



FILE COPY

CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 3615422

Charge code: 0361 5422 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 22nd July 2014 and created by THE MERLIN VENTURE LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 24th July 2014

DX

Given at Companies House, Cardiff on 31st July 2014



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

I HEREBY CERTIFY THAT THIS
COPY DOCUMENT IS A TRUE
COPY OF THE ORIGINAL

THIS LEGAL CHARGE made the
2014

11/11/14, for and on behalf of
22nd day of July Birmingham City Council

BETWEEN

- (1) THE MERLIN VENTURE LIMITED (company registration number 3615422)
whose registered office is Unit 19 Erdington Industrial Park Chester Road
Birmingham B24 0RD (hereinafter called "the Chargor") and
- (2) BIRMINGHAM CITY COUNCIL of The Council House Victoria Square
Birmingham B1 1BB (hereinafter called "the Council")

WITNESSETH as follows -

Definitions

- 1 For the purposes of this Deed
- 1 1 "the Property" shall mean all the property comprised in two leases being firstly
a lease ("the Main Lease") dated the 17th day of December 2012 made
between (1) Castle Vale Community Housing Association Limited and (2) the
Grantee comprising part of the Basement of Chivenor House Drem Croft
Castle Vale Birmingham B35 7HY being for a term of 15 years commencing
from the 1st day of April 2011 and expiring on 31st March 2026 and secondly
a lease ("the Supplemental Lease") dated 10 June 2014 made between (1)
the Council and (2) the Chargor comprising part of the School Hall at
Chivenor Junior and Infant School Castle Vale Birmingham being for a co-
terminus term of years to the Main Lease
- 1 2 "the Grant Sum" shall mean the sum of ONE HUNDRED AND FIFTY
THOUSAND POUNDS (£150,000 00)
- 1 3 "the Relevant Amount" shall mean the amount received from the Council by
the Chargor by way of Grant Monies under the terms of the Grant Agreement
- 1 4 "the Grant Agreement" means the Agreement made between the Chargor
and the Council dated 10 June 2014 for payment of the Grant Sum a copy of
the agreed form of which is annexed hereto

The Charge

- 2 The Chargor as [Registered] Proprietor of the Property and with full title guarantee HEREBY CHARGES the Property by way of Legal Mortgage until the expiry of the Restriction Period as defined in the Grant Agreement ("Relevant Date") with the repayment to the Council in the event of any Disposal or any Event of Default as defined in the Grant Agreement ("Relevant Occurrence") of the Relevant Amount and of such other sum or sums as shall be charged upon the Property hereunder

The Chargor Covenants

- 3 The Chargor hereby covenants with the Council as follows
- 3 1 to repay on demand to the Council the Relevant Amount provided that no such demand shall be made unless provided for in the terms of the Grant Agreement
- 3 2 following completion of the Project until the Relevant Date to keep the premises in good and substantial repair and condition provided always that if the Chargor shall neglect to do so the Council may at its discretion enter upon the premises from time to time and repair the same without becoming liable as mortgagees in possession and the costs and expenses properly incurred by the Council in so doing shall be repaid by the Chargor to the Council and until so repaid shall under the provisions of this Charge be charged upon the Property
- 3 3 until the Relevant Date to observe and perform the covenants and conditions relating to the Property as contained in the Main Lease and the Supplemental Lease
- 3 4 until the Relevant Date to permit the Council its surveyor or agent or employee to enter upon the Property at any reasonable time to examine the state and condition thereof and for any other reasonable purpose

- 3 5 until the Relevant Date to observe and comply with the requirements of any statutory provision regulation rule or order any byelaw in force and any rule of law for the time being affecting the Property and to keep the Council fully and effectually indemnified against any action proceeding cost claim or demand arising out of or in connection with any contravention of or failure to comply with any such requirement
- 3 6 until the Relevant Date to keep the Property insured against loss or damage by fire or otherwise to the full insurable value thereof and duly and promptly to pay all premiums and other costs necessary for effecting and continuing in effect such insurance and if required by the Council to do so to deliver to the Council the policy or policies of such insurance and receipts for the payment of all such premiums and costs provided always that in the event of the Chargor failing to comply with its obligations hereunder the Council shall be entitled to pay any such premium or other cost as shall be necessary for effecting or continuing in effect such insurance and any premium cost or expense incurred by the Council in so doing shall be repaid by the Chargor to the Council and until so repaid shall under the provision of this charge be charged upon the Property
- 3 7 until the Relevant Date to comply with the obligations imposed on it under the Grant Agreement provided that in any case where any such obligation conflicts or is inconsistent with any other covenant or condition herein contained such other covenant or condition shall prevail

Release

- 4 The Chargor shall with effect from the Relevant Date (and provided that any monies liable hereunder to be paid or repaid by the Chargor to the Council have been so paid or repaid) be released from all liability for the payment or repayment to the Council of any monies hereby secured and also from all its obligations contained in this Deed

Interpretation

5 In this deed -

5 1 the masculine shall include the feminine and vice versa

5 2 the singular shall include the plural and vice versa

5 3 the expression "the Chargor" includes all persons so described herein and all the covenants agreements and obligations herein contained no the part of the Chargor shall be made jointly and severally by all such persons with the council so that the said covenants agreements and obligations may be enforced by the Council against such persons jointly or severally and in such order or manner as the Council may in its absolute discretion think fit

Consolidation

6 Section 93 of the Law of Property Act 1925 shall not apply to the charge herein contained

Representations by the Chargor

7 The Chargor represents and warrants to the Council -

7 1 he is fully aware of and understands the terms of the Grant Agreement

7 2 he has fully and truthfully disclosed to the Council all financial interest existing in the Property together with such other information concerning the Property as the Council has reasonably required to be disclosed prior to the date hereof

7 3 before executing this Charge he has received independent legal advice and with the benefit of such legal advice has agreed to the execution of this Charge

7.4 that he is entitled to charge the leasehold interest granted by the Lease and where the consent of the landlord thereunder is required that such has previously been obtained and remains current at the date hereof

Service of Notices

8 Any written notice required to be served under this Agreement shall be served as regards notice to be served upon the Council by sending it by pre-paid recorded postal delivery to the Director of Legal & Democratic Services at Birmingham City Council PO Box 15992 Birmingham B2 2UQ (or such other address as notified to the Tenant from time to time) quoting the reference on the cover of this Legal Charge and in the case of notice to be served upon the Chargor by sending it to the Company Secretary of the Chargor at the Chargor's registered office and any such written notice shall be deemed to have been served and received on the second business day following the day of posting

Performance

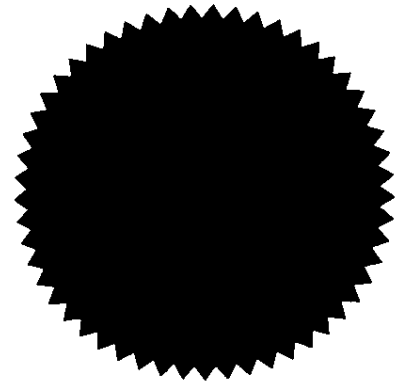
9 The failure of the Council at any time or times to require performance by the Chargor of any covenant or other provision herein contained or contained in the Grant Agreement shall in no way affect the right of the Council to require performance of that or any other provision and any waiver by the Council of any breach of any such covenant or provision shall not be construed as a waiver of any continuing or succeeding breach of such covenant or provision nor as a waiver of the covenant or provision nor as a waiver of any other right or obligation hereunder

Clause Headings

10 The headings to the clauses of this deed shall be deemed not to form any part thereof and shall in no way affect the interpretation thereof

IN WITNESS whereof the Chargor and the Council have executed this document as
a deed the day and year first before written

THE COMMON SEAL of THE MERLIN VENTURE)
LIMITED was hereunto affixed in the presence of -)



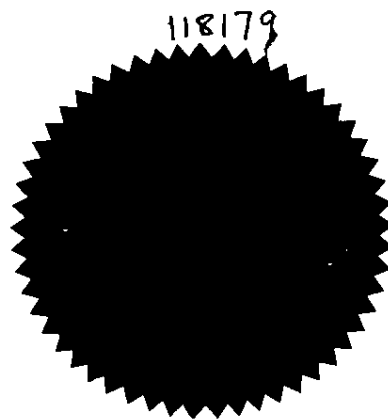
X

Director

X

Director/Secretary]

THE COMMON SEAL of BIRMINGHAM)
CITY COUNCIL)
was hereunto affixed)
in the presence of -)



Authorised Signatory

DATED 2014

BIRMINGHAM CITY COUNCIL

- and -

THE MERLIN VENTURE LIMITED

NEIGHBOURHOOD NURSERIES ERDF
GRANT AGREEMENT

- relating to -

THE CHIVENOR TIGGYWINKLES
NEIGHBOURHOOD NURSERY at
Chivenor House Drem Croft Castle Vale
Birmingham

Legal Services
Birmingham City Council
PO Box 15992
Birmingham
B2 2UQ

BIRMINGHAM CITY COUNCIL ("the Council") of The Council House Victoria Square Birmingham B1 1BB in exercise of its statutory powers under Section 2 of the Local Government Act 2000 agrees to make the Grant Sum available for the purpose of financially assisting "the Project" on the following terms and conditions and THE MERLIN VENTURE LIMITED (company registration number 3615422) whose registered office is Unit 19 Erdington Industrial Park Chester Road Birmingham B24 0RD ("the Grantee") accepts the grant on the following terms and conditions this

day of 2014

1 In this Agreement

- 1 1 "the Activities" means the activities described in the Schedule hereto or as varied pursuant to any written consent given by the Council for which the Grantee has obtained such statutory or other permissions consents or agreements as are or may be required,
- 1 2 "Appropriate Percentage" means 55% being a percentage equivalent to the Grant Sum expressed as a percentage of the Eligible Expenditure,
- 1 3 "Clawback" means the requirement for repayment of the Grant Monies pursuant to clause 7 3 2 hereof
- 1 4 "Disposal" means any disposal by the Grantee by way of transfer lease assignment or otherwise of any interest in the Property or part of it
- 1 5 "Eligible Expenditure" means TWO HUNDRED AND SEVENTY THOUSAND POUNDS (£270,000 00) being the estimated cost of the Project (excluding value added tax) for which the grant is payable

- 1 6 "Event of Default" means one or more of the events as set out in clause 5 hereof
- 1 7 "Grant Sum" means the sum of One Hundred and Fifty thousand pounds (£150,000 00) being comprised of European Regional Development Funding (ERDF) and Neighbourhood Renewal Funding (NRF) in such amounts as are shown in the Second Schedule hereto or such other sum determined in accordance with clause 2 of this Agreement,
- 1 8 "Instalment Period" means in any year quarterly in arrears each such instalment being equal to the Appropriate Percentage of the Relevant Value for such period
- 1 9 "the Project" means the building and construction works the details of which have been approved by the Big Lottery and the European Regional Development Fund and endorsed by the Council comprised in carrying out the Activities,
- 1 10 "the Property" means the property comprised in two leases being firstly a lease ("the Main Lease") dated the 17th day of December 2012 made between (1) Castle Vale Community Housing Association Limited and (2) the Grantee comprising part of the Basement of Chivenor House Drem Croft Castle Vale Birmingham B35 7HY being for a term of 15 years from the 1st day April of 2011 and secondly a lease ("the Supplemental Lease") of even date herewith made between (1) the Council and (2) the Grantee comprising part of the School Hall at

Chivenor Junior and Infant School Castle Vale Birmingham being for a co-terminus term of years to the Main Lease

- 1 11 "a Receiver" means a receiver or manager of the Property of the Grantee and includes a receiver of part only of that Property and a receiver only of the income arising from the Property or from part of it and an administrative receiver as defined by Section 29(2) of the Insolvency Act 1986,
- 1 12 "Relevant Value" shall mean in relation to any instalment of the Grant Sum the value of such of the Project (excluding value added tax) as has been certified in writing by [the Grantee's Project Quantity Surveyor] and if the Council so require by the Council's City Building Finance Officer or other nominated officer as having been carried out upon the Property during the Instalment Period to which the claim relates,
- 1 13 "the Repayment Requirement" means the obligation to repay to the Council an amount of the Grant Sum in accordance with the provisions of clauses 6 1 and 6 2 hereof /
- 1 14 "the Restriction Period" means the period of 20 years starting on the day after the payment of the Grant Sum or the final instalment of the Grant Sum (as applicable) being the 29th day of March 2004 and ending on the twentieth anniversary of such payment
- 1 15 "with due expedition" means at sufficient speed to carry out the Activities by a date six months after starting on the Property

2 The Council shall pay the Grant Sum

either

- 2 1 (a) in instalments, each instalment to be paid within 28 days of receipt of a claim for an instalment of the Grant Sum submitted in accordance with this Agreement

or

- (b) After the practical completion of the Project in accordance with this Agreement

2 2 PROVIDED THAT

- 2 2 1 no Event of Default as defined in clause 5 of this Agreement has occurred and subject to the provisions of Clause 7, and

either

- 2 3 a claim by the Grantee for an instalment of grant shall -

- (a) be submitted in the form and manner required by the Council,
- (b) relate to an Instalment Period and to such of the Qualifying Expenditure in relation to which the Grantee has not submitted any other claim,
- (c) include to the satisfaction of the Council evidence that the expenditure to which the claim relates has been incurred by the Grantee,
- (d) be submitted within three months of the end of the Instalment Period in which the expenditure was incurred

or

- 2 3 the claim by the Grantee for the payment to it of the Grant Sum shall

- (a) be submitted with such evidence as the Council shall require that the Project has been completed and the Eligible Expenditure has been incurred,
- (b) be submitted with completed City Completion and Payment Application Forms or in such other reasonable form and manner as the Council shall specify

2 4 PROVIDED FURTHER THAT

In the event that the expenditure incurred in completion of the Project is less than the Eligible Expenditure then the Council shall pay such sum as shall be calculated as follows

$$\frac{\text{expenditure actually incurred}}{\text{Eligible Expenditure}} \times \text{Grant Sum}$$

3 The Grantee represents and warrants to the Council -

- 3 1 that the execution on behalf of the Grantee of this Agreement has been validly authorised and the obligations expressed as being assumed by the Grantee under this Agreement constitute valid legal and binding obligations of the Grantee enforceable against the Grantee in accordance with their terms,
- 3 2 neither the execution of this Agreement by the Grantee nor the performance or observation of any of its obligations under it will -
 - 3 2 1 conflict with or result in any breach of any law or enactment or any deed agreement or other instrument obligation or duty to which the Grantee is bound, or

- 3 2 2 cause any limitation on any of the powers whatsoever of the Grantee or on the right or ability of the Directors of the Grantee to exercise such powers to be exceeded,
- 3 3 the Grantee is not in default under any law or enactment or under any deed agreement or other instrument or obligation by which it is bound,
- 3 4 no litigation or administrative or arbitration proceeding before any court tribunal Government authority or arbitrator is presently taking place pending or (to the knowledge information and belief of the Grantee) threatened against or against any of the assets of the Grantee which might have a material adverse effect on its business assets condition or operations or might adversely affect its ability to perform its obligations under this Agreement,
- 3 5 it has obtained full permission under the Town and Country Planning Act 1990 or any other relevant statute for the development of the Property comprised in the Project together with all necessary Building Regulation consents and all other necessary consents and permissions,
- 3 6 that it agrees to carry out the Project and thereafter provide the Activities at the Property,
- 3 7 all company documents and accounts of the Grantee submitted to the Council for its appraisal of the Project for the purposes of this Agreement are true and accurate,
- 3 8 that it is at the date of this Agreement registered with Ofsted and will use all reasonable endeavours to maintain such registration during the currency of this Agreement

4 The Grantee agrees that -

- 4 1 Subject to 4 2 hereof it shall should the same not already have commenced procure the starting of the Project within three months of the date of this Agreement and shall carry out the Project with due expedition,
- 4 2 following the satisfactory completion of the Project to forthwith commence and diligently proceed with the Activities,
- 4 3 it will (where practicable) give notice in writing to the Council no later than 28 days in advance of any Event of Default or intended Disposal,
- 4 4 it shall not without prior written consent of the Council depart in any material respect from the Project and/or the Activities,
- 4 5 it shall not charge assign or transfer this Agreement and no payment of the Grant Sum shall be made to any person other than the Grantee or as agreed in writing by the Council,
- 4 6 it shall give notice to the Council forthwith in writing of the receipt by it of any other public sector financial assistance or guarantees or the offer of same in respect of the Project or any variations in the Activities permitted under paragraph 4 4 above,
- 4 7 without prejudice to the generality of paragraph 4 6 above it shall not enter into a contract in respect of the execution of the Project its disposal or its subsequent use with a public sector institution or authority or publicly owned body without the prior written consent of the Council which consent may be given or refused at the discretion of Council for reasons not limited to those arising out of this Agreement

- 4 8 it shall in undertaking the Project create 9 jobs / training positions for local people provide 36 full day full year childcare places provide 205 m2 of community premises show a 15% reduction in energy costs target fee income of £100,800 00 in 2005 £144,310 00 in 2006 and £191,115 00 in 2007
- 4 9 it shall provide the Council with such information as the Council may require in connection with the Project and the Activities or any permitted variations of the same during the Restriction Period,
- 4 10 it shall permit the Council or persons authorised by it to inspect the Property and to inspect and take copies of all reports books accounting records and vouchers which the Council considers relevant,
- 4 11 it shall display on public view on the Property a commemorative plaque with agreed wording recording that the European Union has providing financial assistance in respect of the Project,
- 4 12 it shall repay on demand to the Council any sum paid by the Council to the Grantee under this Agreement provided that no such demand shall be made unless an Event of Default or a Disposal occurs,
- 4 13 The Grantee shall during the Restriction Period
- 4 13 1 Pay promptly all rents and sums due under the Lease
 - 4 13 2 Pay promptly all rates due to the Council
 - 4 13 3 Agree and implement an equal opportunity employment policy to the reasonable satisfaction of the Council including recruitment open to all Birmingham residents
 - 4 13 4 Observe the Codes of Practice of the Equal Opportunities Commission [and] Commission for Racial Equality [and

Manpower Services Commission] in relation to equal opportunities for women ethnic minorities and people with disabilities

- 4 13 5 Follow the ACAS Code of Practice and allow employees to join trade unions and have access to trade union officials
- 4 13 6 Pay at least minimum wage rates for its industry or follow relevant local or national agreements
- 4 13 7 Undertake to draw up and implement a training plan to follow the practice of the relevant Industrial Training Board and make fullest use of training and educational facilities in the City according to a training plan to be agreed with the Council
- 4 13 8 Observe and comply with all Health and Safety legislation requirements
- 4 13 9 Insure all its assets and undertakings with a reputable insurance company according to best commercial practices
- 4 13 10 Not disclose the details of the Council's financial assistance to anyone other than its professional advisors or a bank or other provider of finance except with the prior written consent of the Council
- 4 13 11 Before making any press release concerning this financial assistance agree the text with the Council
- 4 13 12 Register with the Local Authority if an employer of homeworkers or outworkers as required by the Factories Act 1961 and agree and implement a 'good employer policy' for

any homeworkers or outworkers employed, to the satisfaction of the Council

- 4 14 Allow the Council to use the Grantee's name and details for publicity purposes
- 4 15 Provide the Council with receipted invoices and Bank Statements as evidence of expenditure
- 4 16 To complete and return details on employment levels as requested by the Council
- 4 17 To follow the procedures required by the Council's Urban Design Department concerning the Project
- 4 18 Will if required by the Council enter into a legal charge secured on the Property in support of this Agreement in favour of the Council
- 4 19 To comply with the provisions of the Conditions of Grant Aid document annexed hereto provided that where there is conflict between the provisions thereof and of this Agreement this Agreement shall have priority
- 4 20 Not without the specific prior written consent of the Council which consent is to be at the sole discretion of the Council and on such terms and conditions as it shall in its absolute discretion require and subject to the provisions of clauses 9 3 to 9 6 below in the name or in any logo of the Childrens Nursery to be operated by the Grantee or in any advertisement promotion or endorsement thereof incorporate or refer either in whole or part to the name or logo ("the School Name") of the Chivenor Primary School or otherwise use in any manner the whole or part of the School Name

5 An Event of Default occurs where -

- 5 1 the Grantee fails to perform and observe any of its obligations under this Agreement,
- 5 2 any representation or warranty made by the Grantee pursuant to this Agreement or in any statement delivered or made pursuant to it is incorrect when made,
- 5 3 a Receiver or Administrative Receiver is appointed in respect of the whole or any material part of the assets of the Grantee or any action is taken for or with a view to winding up of the Grantee or the Grantee becomes insolvent or continues trading contrary to Section 214 of the Insolvency Act 1986 or is unable to pay its creditors or enters into dealings with any of its creditors with a view to avoiding payment or in the expectation of insolvency,
- 5 4 the Council gives written notice to the Grantee that there are exceptional circumstances (which are to be at the sole discretion and determination of the council) which require there to be clawback

6 Disposal of the Property

- 6 1 If there is a Disposal of the Property or part of the Property by the Grantee within the first year of the Restriction Period then the Grantee shall pay on demand to the Council one hundred and ten percent of the Grant Sum to reimburse the costs of processing and paying the Grant Sum
- 6 2 Without prejudice to 6 1 above if there is a Disposal of the Property or part of the Property by the Grantee during the Restriction Period then

the Grantee shall pay on demand to the Council the Grant Sum abated by the percentage of 5% multiplied by the number of complete years which have expired after the payment of the Grant Sum (or the last instalment of the Grant Sum) and ended on the date of the disposal of the Property (or part thereof)

6 3 If the Grantee wishes to Dispose of the whole or any part of the Property during the Restriction Period then prior to the exchange of a binding commitment by the Grantee for such Disposal the Grantee may make application to the Council for a waiver of the Repayment Requirement

6 3 1 The Grantee will supply to the Council such information as the Council may require which shall include (without prejudice to the generality of the forgoing words) the name current trading address and legal status of the proposed purchaser or lessee together with the last year's audited trading accounts numbers of employees and all other information of the type required from the Grantee when the Grantee made the application for grant assistance which has resulted in the present Agreement

6 3 2 If the Council is satisfied that the proposed purchaser or lessee would have qualified at the date of the application for waiver for grant assistance of the type received by the Grantee the Council will (subject to payment of its costs and disbursements) invite the proposed purchaser or lessee to enter into a deed of novation of this Agreement together with

a supporting legal charge secured on the Property or the part thereof intended to come into its control on the same conditions as the existing legal charge save as varied by the written agreement of the parties

6 3 3 On the date set for the completion of the legal formalities of the Disposal of the Property or the relevant part thereof upon receipt from the Grantee of the deed of novation the supporting legal charge costs and a certified copy of the transfer document (or lease) and the due compliance with all other conditions required by the Council the Council will (by deed if required prepared at the expense of the Grantee) release the Grantee from his obligations herein contained

6 3 4 For the avoidance of doubt no application for waiver of the Repayment Requirement may be made after the Grantee has entered into a legally binding commitment to Dispose of the Property or any part thereof and such will remain payable even if the Council has expressed a willingness to waive the same in the absence of the completion of the necessary legal documentation

6 3 5 There may be as many applications for waiver of the Repayment Requirement during the Restriction Period as circumstances require

7 Termination Provisions

Without any prejudice to any right or action accruing or accrued under this Agreement on the happening of an Event of Default the Council may at its sole discretion -

- 7 1 suspend this Agreement in which case it shall be under no obligation to make any payment of the Grant Sum during the suspension,
- 7 2 vary this Agreement in which case it shall make payment of the Grant Sum (or the relevant proportion as appropriate in the circumstances) in respect of the Eligible Expenditure (in accordance with the provisions of clause 2) incurred before the variation and thereafter in accordance with the variation,
- 7 3 terminate this Agreement whereupon it may
 - 7 3 1 make payment of the Grant Sum in respect of the Eligible Expenditure incurred before the termination (in accordance with the provision of clause 2) whereupon it shall be relieved of all further liability to make any payment of the Grant Sum whatsoever under this Agreement, or
 - 7 3 2 require the Grantee to repay the whole or part of the Grant Sum given to it pursuant to this Agreement and the Grantee agrees that upon receipt of notice requiring such repayment it shall repay such sum required thereby

8 Notices

Any written notice required to be served under this Agreement shall be served as regards notice to be served upon the Council by sending it by pre-paid recorded postal delivery to the Director of Legal & Democratic Services at Birmingham City Council PO Box 15992 Birmingham B2 2UQ (or such other

address as notified to the Tenant from time to time) quoting the reference on the cover of this Agreement and in the case of notice to be served upon the Grantee by sending it to its registered office in the same manner any such written notice shall be deemed to have been served and received on the second business day following the day of posting

9 Agreements and Declarations

9 1 In the event of there being a repayment of the Grant Sum or part of the Grant Sum to the Council in accordance with the provisions of this Agreement then unless otherwise specified in writing by the Council such repaid amount shall be considered to be comprised of a repayment of each of the types of grant funding specified in the Second Schedule hereto being in the same proportions as the sums set out in the Second Schedule bear to one another

9 2 The parties agree that this Agreement confers no permission consent or approval other than for the purposes of Section 2 of the Local Government Act 2000

9 3 Any entitlement of the Grantee granted under clause 4 20 hereof for use by the Grantee of either the whole or part of the School Name shall be personal to the Grantee and shall not be capable of being assigned or transferred to any other person or legal entity

9 4 In the event that the Council has given written consent under clause 4 20 hereof for use by the Grantee of either the whole or part of the School Name whether subject to terms and conditions or not the Council retains full and unrestricted entitlement to the use of the School Name and any such entitlement of the Grantee shall not in any way

prevent restrict or curtail the exercise by the Council of it's entitlement in any such manner as it shall consider appropriate

9 5 Any entitlement of the Grantee under clause 4 20 above for use by the Grantee of either the whole or part of the School Name shall absolutely cease and determine when the Grantee no longer operates the Childrens Nursery at Chivenor House Provided However that where by virtue of the Council's consent granted under clause 4 20 above the Grantee being a registered company has within it's registered name either the whole or part of the School Name then this provision shall not prevent the company from continuing to be known by such name

9 6 Any entitlement of the Grantee granted under clause 4 20 hereof for use by the Grantee of either the whole or part of the School Name shall only be in connection with the Childrens Nursery operated at Chivenor Tower and no benefit or entitlement shall exist for any undertaking or facility operated at any location otherwise than at Chivenor Tower

10 No Third Party Rights

It is hereby agreed and declared that no person who is not a party to this Agreement shall be entitled in his own right to enforce any term of this Agreement under the Contracts (Rights of Third Parties) Act 1999

The First Schedule

The operation of a Neighbourhood Nursery registered with Ofsted with a minimum of 36 childcare places for children between the ages of 0-5 years providing full day care for a minimum of 48 weeks in each year and also providing facilities for the provision of training and education for local people and parents

The Second Schedule

The Project Funding Elements

	£
European Regional Development Fund	75,000 00
Neighbourhood Renewal Fund	75,000 00

IN WITNESS whereof the Grantee and the Council have executed this document as a deed the day and year first before written

THE COMMON SEAL of)
BIRMINGHAM CITY COUNCIL)
was hereby affixed)
In the presence of)

Authorised Signatory

THE COMMON SEAL of THE MERLIN VENTURE)
LIMITED was hereunto affixed in the)
presence of -)

Director

Director/Secretary

DATED 22nd July 2014

THE MERLIN VENTURE LIMITED

- and -

BIRMINGHAM CITY COUNCIL

NEIGHBOURHOOD NURSERIES ERDF
LEGAL CHARGE

- relating to -

The Chivenor Tiggywinkles
Neighbourhood Nursery at
Chivenor House Drem Croft
Castle Vale Birmingham

Legal Services
Birmingham City Council
PO Box 15992
Birmingham B2 2UQ