



dated *29 May* 2018

**RWH Travel Limited**

and

**Taylor Wimpey UK Limited**

and

**Welwyn Hatfield Borough Council**

and

**Hertfordshire County Council**

**Planning Obligation by Deed of Agreement pursuant to  
Section 106 of the Town and Country Planning Act 1990**

in relation to a planning application for 51 Bridge East Welwyn Garden City  
AL7 1JR

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## Agreement

dated 29 May 2018

### Parties

- (1) **RWH Travel Limited** (Co Regn No.527266) whose Registered Office is situate at Lemsford Mill, Lemsford Village, Welwyn Garden City, Herts, AL8 7TR (the **Owner**);
- (2) **Taylor Wimpey UK Limited** (Co Regn No. 1392762) whose registered office is situate at Gate House, Turnpike Road, High Wycombe, Buckinghamshire, HP12 3NR (the **Developer**);
- (3) **Welwyn Hatfield Borough Council** of Council Offices, The Campus, Welwyn Garden City, Hertfordshire (the **Council**); and
- (4) **Hertfordshire County Council** of County Hall, Pegs Lane, Hertford, Hertfordshire (the **County**).

### Introduction

- (A) The Council and County are the local planning authorities for the purposes of the Act for the area within which the Application Site is situated and as such are the local planning authorities entitled to enforce the terms of this Agreement.
- (B) The County is the Education Authority the Library Authority and the Social Services Authority for the area within which the Application Site is situated.
- (C) The Owner is the freehold owner of the whole of the Application Site.
- (D) The Developer has the benefit of a conditional contract to purchase the Owner's freehold interest in the Application Site and intends to develop the Site in accordance with the Planning Permission.
- (E) The Developer has made the Application to the Council for planning permission for the Development on the Application Site and is a party to this Deed to give the covenant for payment of costs pursuant to Clause 5.2.
- (F) The Council resolved to grant Planning Permission subject amongst other things to the prior completion of this Agreement.
- (G) The Council and County consider it expedient should planning permission be granted pursuant to such planning application that provision should be made for regulating or facilitating the development or use of the Application Site in the manner hereinafter appearing and the Council and County considers that entering into this Agreement will be of benefit to the public.

## Agreed terms

### 1 Definitions and interpretation

#### 1.1 Definitions

For the purposes of this Agreement (including the Recitals) the following expressions shall have the following meanings in addition to the definitions set out in the Schedules hereto:

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

**Application** means the application for full planning permission submitted to the Council dated 19 September 2017 for the Development and allocated reference number 6/2017/2104/MAJ;

**Application Site** means the land known as 51 Bridge Road East, Welwyn Garden City, AL7 1JR being land registered at the Land Registry under title number HD204616 as shown edged red on the Plan;

**Commencement Date** means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out **other than (for the purposes of this Agreement and for no other purpose)** operations consisting of site survey site clearance archaeological investigations, piling, investigations for the purpose of assessing ground conditions, demolition works, preparation work remedial or remediation work in respect of any contamination or other adverse ground conditions, diversion and laying or removal of services including the existing ditch, conduits and drains, erection of any temporary means of enclosure including fences and hoardings the temporary display of site notices or advertisements and **Commencement** and **Commence** and **Commences** and **Commenced** shall mutatis mutandis be construed accordingly;

**Council's Contributions** means together the Public Open Space Contribution, Play Facilities Contribution and the Waste Recycling Contribution (each defined in Schedules 3 and 4);

**County's Contributions** means together the Library Contribution and the Youth Contribution (each defined in Schedule 2);

**Development** means redevelopment comprising of 13 x 1-bedroom and 32 x 2-bedroom flats, 6 x 1-bedroom and 3 x 2-bedroom flats (C3) with associated access, car parking, amenity space and landscaping, following demolition of existing office building (Class B1) as set out in the Application;

**Dwelling** means any dwelling (including a house flat or maisonette) to be constructed pursuant to the Planning Permission and **Dwellings** shall be construed accordingly;

**Head of Planning** means Head of Planning of the Council and shall include their duly authorised agents and representatives or any successor;

**Interest** means interest at 4 per cent above the base lending rate of Barclays Bank Plc from time to time;

**Monitoring Fee** means the payment of one thousand nine hundred and twenty seven pounds and seventeen pence (£1,928.55) (inclusive of Retail Price Index) towards the Council's reasonable and proper administrative costs of monitoring compliance with the provisions of this Agreement;

**Notice of Commencement** means the written notice the form of which is contained at Appendix 1 of this Agreement advising of the proposed Commencement Date;

**Occupation** means occupation of the land or buildings for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and **Occupied** and **Occupy** shall be construed accordingly;

**Parties** means the parties to this Agreement;

**Plan** means the plan attached to this Agreement at Appendix 2;

**Planning Permission** means the planning permission to be granted by the Council pursuant to the Application;

**Practical Completion** means issue of a certificate of practical completion of the Development by the Owner's architect or in the event that the Development is constructed by a party other than the Owner the issue of a certificate of practical completion by that other party's architect that the Development has been constructed and is available for Occupation;

**PUBSEC Index** means the PUBSEC Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation or equivalent replacement index;

**Retail Price Index** means the measure of change in the prices charged for goods and services brought for consumption in the UK produced by the Office for National Statistics;

**Schedules** means Schedules 1 to 4 contained in this Agreement;

**Working Days** means any day from Monday to Friday (inclusive) which is not Christmas Day Good Friday or a statutory Bank Holiday and **Working Day** shall be construed accordingly.

## 1.2 Interpretation

1.2.1 Where in this Agreement reference is made to any clause paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph or schedule or recital in this Agreement.

1.2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

1.2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.

- 1.2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 1.2.5 Any reference to an Act of Parliament shall include any modification extension or re-enactment of that Act for the time being in force and shall include all instruments orders plans regulations permissions and directions for the time being made issued or given under that Act or deriving validity from it.
- 1.2.6 References to any party to this Agreement shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council and the County the successors to their respective statutory functions.
- 1.2.7 The headings and contents list are for reference only and shall not affect construction.
- 1.2.8 The words **including** and **include** shall be deemed to be followed by the words **without limitation**.
- 1.2.9 References in this Agreement to **development** shall have the meaning given to it by Section 55 of the Act.

## 2 **Legal basis**

- 2.1 This Agreement is made by deed pursuant to Section 106 of the Act and to the extent that they fall within the terms of Section 106 of the Act, the obligations contained in this Agreement are planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council and the County against the Owner and each of its successors in title and assigns to each and every part of the Application Site and any person deriving title to each and every part of the Application Site through or under the Owner.
- 2.2 To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the Act they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972 Section 1 of the Localism Act 2011 and all other enabling powers.
- 2.3 The Owner enter into the obligations (for itself and its successors in title and persons deriving title from the Owner) with the Council and the County with the intent that the obligations contained in this Agreement shall be enforceable not only against the Owner but also against the successors in title of the Owner any person claiming through or under the Owner an interest or estate in the Application Site or any part thereof.

## 3 **Conditionality**

This Agreement shall come into immediate effect save for the obligations in the Schedules which are conditional upon the grant of the Planning Permission and Commencement of the Development.

4        **Miscellaneous**

- 4.1        The Owner hereby warrants that it is the owner of the freehold of the Application Site and that no other party has a material legal and/or equitable interest in the Application Site, other than the Parties to this Agreement.
- 4.2        No provisions of this Agreement shall be enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999 nor does it confer or purport to confer any right to enforce any of the terms and provisions of this Agreement to any person who is not a party or successor in title or statutory successor to a party hereto.
- 4.3        This Agreement shall be registrable as a Local Land Charge by the Council and County.
- 4.4        Any notice to the parties hereto under this Agreement shall be deemed to be sufficiently served if delivered personally or by recorded delivery service to the following officials/persons at the respective addresses hereinafter specified:

**In respect of the Owner at:**

RWH Travel Limited Company Secretary  
12 Longcroft House,  
Fretherne Road,  
Welwyn Garden City,  
Herts AL8 6PQ

**In respect of Taylor Wimpey North Thames:**

Taylor Wimpey North Thames

Company Secretary  
Gate House,  
Turnpike Road,  
High Wycombe,  
Buckinghamshire, HP12 3NR

**In respect of the Council at:**

The Head of Planning  
Welwyn Hatfield Borough Council  
Council Offices  
The Campus  
Welwyn Garden City  
Herts AL8 6AE  
Ref: 6/2017/2104/MAJ

**In respect of the County at:**

The Chief Legal Officer  
Hertfordshire County Council County Hall  
Pegs Lane  
Hertford  
Herts SG13 8DE

Save that notices pursuant to paragraph 4 of Schedule 2 (Fire Hydrants) shall be sent to the person mentioned in paragraph 4.1.6 of Schedule 2.

- 4.5 Insofar as any clause or clauses of this Agreement are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement.
- 4.6 This Agreement shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed revoked or otherwise withdrawn or expires prior to the Commencement Date.
- 4.7 No person will be liable for any breach of the terms of this Agreement occurring after the date on which they part with their entire interest in the Application Site save that they will remain liable for any breaches of this Agreement occurring before that date.
- 4.8 Any agreement obligation covenant or undertaking contained herein by the Owner, the County or the Council which comprise more than one person or entity shall be joint and several. Where any agreement obligation covenant or undertaking is made with or undertaken towards any of the Parties to this Agreement which comprise more than one person it shall be construed as having been made with or undertaken towards each such person separately.
- 4.9 No compensation shall be payable by the Council or the County to any party to this Agreement or their successors in title and assigns arising from the terms of this Agreement and unless specified otherwise in this Agreement all works and activities to be executed hereunder (including such as are of a preparatory ancillary or maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the successors in title to the Owner at no cost to the Council or the County.
- 4.10 Without prejudice to the Council and County's statutory rights the Owner grant an irrevocable licence to the Council and the County and/or any person duly authorised or instructed by them to enter upon any part of the Application Site at any reasonable time subject to providing written notice to the Owner (and immediately in the event of an emergency) to ascertain whether the terms of this Agreement and/or of the Planning Permission are or have been complied with subject to complying with all health and safety requirements required by the Owner.
- 4.11 Nothing in this Agreement shall be construed as imposing a contractual obligation upon the Council as to the issue of the Planning Permission or as restricting the exercise by the Council or the County of any statutory powers exercisable by them respectively under the Act or under any other act or authority.
- 4.12 Nothing in this Agreement shall prejudice or affect the rights powers duties and obligations of the Council and the County in the exercise of their functions in any capacity and the rights powers duties and obligations of the Council and the County under private public or subordinate legislation may be effectively exercised as if neither were a party to this Agreement (and in particular neither shall be precluded from entering into any agreement under the Act and/or under any other act or authority with any other party and shall not be deemed to be in breach of this Agreement by so doing).



4.13 Save for the restrictions on Occupation and use set out herein, this Agreement shall not be enforceable by the Council against any individual purchaser/owner or occupier of the Dwellings or their mortgagee(s) or chargee(s) (or their successors in title) nor against any statutory undertaker following the transfer of any land and/or apparatus associated with its statutory function AND for the avoidance of any doubt the provisions of this clause shall not apply to any of the obligations and/or payments given to or due to the County under the terms of this Agreement.

4.14 The Developer acknowledges and declares that this Agreement has been entered into with its consent and that the Application Site shall be bound by the obligations contained in this Agreement and covenants with the Council to perform the obligations on its part PROVIDED THAT the Developer shall have no liability under this Agreement (save in relation to clauses 5.2 and 16) unless it takes a legal interest in the Application Site in which case it shall be bound by the obligations as a successor in title to the Owner.

## 5 Obligations of the Owner and the Developer

5.1 The Owner so as to bind the Application Site covenant with the Council and the County:

5.1.1 to comply with their obligations set out in this Agreement and the Schedules to this Agreement;

5.1.2 to provide the Notice of Commencement to the Council and the County no later than twenty (20) Working Days prior to the Commencement Date using the pro-forma set out in Appendix 1 hereto;

5.1.3 to give the County and the Council no less than five (5) Working Days' notice of the payment of the County's Contributions and/or the Council's Contributions such notice to be in writing using the pro-forma set out in Appendix 1 hereto;

5.1.4 to give the Council and the County no less than five (5) Working Days' notice of the Practical Completion of the Development such notice to be in writing using the pro-forma set out in Appendix 1 hereto;

5.1.5 to give the County and the Council no less than five (5) Working Days' notice of the first Occupation of the Development such notice to be in writing using the pro-forma set out in Appendix 1 hereto; and

5.2 The Developer covenants with the Council and the County:

5.2.1 to pay to the Council the Monitoring Fee on completion of this Agreement;

5.2.2 to pay to the Council and County Council on completion of this Agreement their respective reasonable legal costs and disbursements of and incidental to the negotiation preparation and execution of this Agreement.

5.2.3 that it consents to the giving of the obligations on the part of the Owner and acknowledges that the Application Site is bound by the restrictions and obligations contained in this Agreement; and

6 Covenants by the Council  
5.2.4 that it agrees that this Agreement will be binding on it and its successors in title and agrees to be bound by the obligations in this Agreement in the event that it becomes an Owner but that its liability will cease after it has parted with all of its interest in the Site (without prejudice to its liability for any subsisting breach of covenant prior to parting with such interest)

6.1 The Council covenants with the Owner:  
6.1.1 to provide written confirmation, at the written request of the Owner, of the discharge of the obligations contained in this Agreement when satisfied that such obligations have been performed;

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- 6.1.2 to act reasonably, properly and diligently in exercising their discretion and discharging their functions under this Agreement. In particular, where any notice, consent, approval, authorisation, agreement or other similar affirmation is required under the terms of the Agreement, the Council (or the County as the case may be) will not unreasonably withhold or delay such notice, consent, approval, authorisation, agreement or other similar affirmation;
- 6.1.3 to use all sums received from the Owner under the terms of this Agreement for the purpose(s) specified in this Agreement for which they are paid;
- 6.1.4 upon written request to repay to the person who paid it any sums received pursuant to the Schedules to this Agreement which have not been expended or contractually committed in accordance with the provisions of this Agreement within ten (10) years of the date of receipt **provided that** such written request shall only be made within one (1) year commencing from the date of the expiry of the aforementioned ten (10) year period and in the event of no written request being made within such period any unexpended sum together with accrued interest shall be released to the Council and County without limitation and free from any liability and obligations on the part of the Council and County.

## **7 Covenants by the County**

### **7.1 The County covenants with the Owner:**

- 7.1.1 following receipt of a written request from the Owner, to provide written confirmation of the discharge of the obligations contained in this Agreement when satisfied that such obligations have been performed AND to provide (at the Owner's cost) such reasonable assistance as may be required by the Owner to remove any associated title and/or Land Charge entries;
- 7.1.2 Where the approval, consent, expression of satisfaction, agreement, confirmation or certification of the County or any officer of County is required for any purpose under or in connection with the terms of this Agreement such approval, consent, expression of satisfaction, agreement, confirmation, or certification shall not be unreasonably withheld or delayed;
- 7.1.3 The County covenants with the Owner to use all sums received from the under the terms of this Agreement for the purposes specified in this Agreement for which they are to be paid;
- 7.1.4 The County further covenants with the Owner that it will repay to the person who paid it a sum equal to the amount of any payment to the County under this Agreement which has not been expended or allocated for expenditure in accordance with the provisions of this Agreement within ten (10) years of the date of receipt by the County of the notice of the Practical Completion of the Development in accordance with clause 5.1.4 hereof.

## **8 Waiver**

No waiver (whether expressed or implied) by the Council (or the County) of any breach or default in performing or observing any of the covenants terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the

Council (or the County) from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

**9 Change in ownership**

Otherwise than in relation to transfers to utility companies the Owner shall give to the Council and the County within one (1) month of the Owner disposing of any part of the Application Site written notice of the name and address of the person to whom the Application Site or any part has been transferred.

**10 Interest**

If any payment by the Owner due under this Agreement is paid late Interest will be payable from the date payment is due to the date of payment.

**11 Indexation – Contributions payable to the County**

11.1 The County's Contributions shall each be index-linked by reference to any increase in the PUBSEC Index figure of 175 to the finalised figure applicable to the quarter in which each contribution is paid.

11.2 Where any sum is required to be index- linked by reference to the PUBSEC Index that sum payable shall be increased in accordance with any increase in the PUBSEC Index by the application of the formula  $A = B \times (C \div D)$  where:

A is the total amount to be paid;

B is the principal sum stated in this Agreement;

C is the PUBSEC Index for the date upon which the payment is actually paid;

D is the figure of 175; and

$C \div D$  is equal to or greater than 1.

11.3 Where any sum to be paid to the County under the terms of this Agreement is required to be indexed then an interim payment shall initially be made based on the latest available forecast figure (or figures as the case may be) at the date of payment and any payment or payments by way of adjustment shall be made within ten (10) Working Days of written demand by the County once the relevant indices have been finalised.

**12 Indexation – Contributions payable to the Council**

12.1 The Council's Contributions shall be index linked to increases in the PUBSEC Index by the application of the formula  $A = B \times (C \div D)$  where:

A is the total amount to be paid;

B is the principal sum stated in this Agreement;

C is the PUBSEC Index for the date upon which the payment is actually paid;

D is the figure of 178; and

$C \div D$  is equal to or greater than 1.

**13 Value Added Tax**

All contributions paid in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable.

**14 Dispute provisions**

14.1 One party may by serving notice on all the other parties (the **Notice**) require a dispute to be referred to an expert for determination.

14.2 The Notice must specify:

14.2.1 the nature, basis and brief description of the dispute;

14.2.2 the clause or paragraph of a schedule or appendix pursuant to which the dispute has arisen; and

14.2.3 the proposed expert.

14.3 The expert may be agreed upon by the parties and in the absence of such agreement within one (1) month of the date that the notice is issued pursuant to clause 14.1 either party may request that the following nominate the expert at their joint expense:

14.3.1 if such dispute relates to matters concerning the construction, interpretation and/or the application of this Agreement, the Chairman of the Bar Council to nominate the expert;

14.3.2 if such dispute relates to matters requiring a specialist chartered surveyor, the President of the Royal Institution of Chartered Surveyors to nominate the expert;

14.3.3 if such dispute relates to matters requiring a specialist chartered civil engineer or specialist transport advice, the President of the Institution of Civil Engineers to nominate the expert;

14.3.4 if such dispute relates to matters requiring a specialist chartered accountant, the President of the Institute of Chartered Accountants in England and Wales to nominate the expert;

14.3.5 if such dispute relates to Affordable Housing the expert shall be nominated by the President of the Royal Town Planning Institute; and

14.3.6 in all other cases, the President of the Law Society to nominate the expert provided that if a dispute relates to a matter falling within two or more of sub-clauses 14.3.1 to 14.3.5 the President of the Law Society may nominate such person or persons falling within the description of sub-clauses 14.3.1 to 14.3.5 as he thinks appropriate including joint experts.

14.4 If an expert nominated or appointed pursuant to clause 14.3 shall die or decline to act another expert may be appointed in his place in accordance with the provisions of clause 14.3.

- 14.5 The expert will be appointed subject to an express requirement that he reaches his decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty (20) Working Days from the date of the notice of his appointment which is served on the parties pursuant to clause 14.3.
- 14.6 Notice in writing of the appointment of an expert pursuant to this clause 14.3 shall be given by the expert to the parties and he shall invite each of the parties to submit to him within ten Working Days written submissions and supporting material and will afford to each of the said parties an opportunity to make counter submissions within a further five Working Days in respect of any such submission and material.
- 14.7 The expert shall act as an expert and not as an arbitrator. He shall consider any written representation submitted to him within the period specified in clause 14.6 and shall not be in any way limited or fettered thereby and shall determine the dispute in accordance with his own judgement.
- 14.8 The expert shall give notice of his decision in writing and his decision will (in the absence of manifest error) be final and binding on the parties hereto.
- 14.9 If for any reason the expert fails to make a decision and give notice thereof in accordance with this clause 14.5 the party or parties may apply to the President of the Law Society for a substitute to be appointed in his place (which procedure may be repeated as many times as necessary).
- 14.10 The expert's costs shall be in the expert's award or in the event that he makes no determination, such costs will be borne by the parties to the Dispute in equal shares.
- 14.11 Nothing in this clause 14 shall be taken to fetter the parties' ability to seek legal redress in the Courts (or otherwise) for any breach of the obligations in this Agreement.
- 14.12 For the avoidance of doubt references to 'party' or 'parties' in clauses 14.1-14.11 shall exclude the County and the County shall not be required to submit to or be bound by the provisions of the said clause.

**15 Planning consents granted pursuant to Section 73 of the Act**

- 15.1 In the event that any new planning permission(s) are granted by the Council pursuant to Section 73 of the Act and unless otherwise agreed between the Parties, with effect from the date that any new planning permission is granted pursuant to Section 73 of the Act:
- 15.1.1 the obligations in this Agreement shall (in addition to continuing to bind the Application Site in respect of the Planning Permission) relate to and bind all subsequent planning permission(s) in respect of the Application Site granted pursuant to Section 73 of the Act and the Application Site itself without the automatic need to enter into any subsequent deed of variation or new agreement pursuant to Section 106 of the Act;
- 15.1.2 the definitions of Application, Development and Planning Permission in this Agreement shall be construed to include references to any applications under Section 73 of the Act, the planning permission(s) granted thereunder and the development permitted by such subsequent planning permission(s); and

15.1.3 this Agreement shall be endorsed with the following words in respect of any future Section 73 application:

“The obligations in this Agreement relate to and bind the Application Site in respect of which a new planning permission referenced [ ] has been granted pursuant to Section 73 of the Town and Country Planning Act 1990 (as amended)”,

**provided that** nothing in this clause shall fetter the discretion of the Council in determining any application(s) under Section 73 of the Act or the appropriate nature and/or quantum of Section 106 obligations in so far as they are materially different to those contained in this Agreement and required pursuant to a determination under Section 73 of the Act whether by way of a new deed or supplemental deed pursuant to Section 106 of the Act.

16 **Indemnity**

The Developer shall indemnify the party who is the Owner as at the date of this Deed against all financial contributions payable under this Deed SAVE that this indemnity shall not apply to any financial contributions which become payable as the result of any action or omission by or on behalf of the Owner AND that it shall only apply as long as the conditional contract (referred to in recital D above) has not been terminated

17 **Jurisdiction**

This Agreement is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

18 **Delivery**

The provisions of this Agreement (other than this clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated.

**In witness whereof** the Parties hereto have executed this Agreement as a Deed on the day and year first before written

## Schedule 1

### Affordable Housing

1 In this Schedule 1, the following expressions shall have the following meanings:

**Affordable Housing** means Social Rented Housing and Shared Ownership Housing which is available to persons who have Local Housing Need;

**Affordable Housing Scheme** means a scheme which specifies in relation to the whole of the Application Site:

- (a) the Agreed Mix;
- (b) the location and distribution of the Affordable Housing within the Application Site;
- (c) details of how the proposed design of the Affordable Housing will ensure that the Affordable Housing is materially indistinguishable (in terms of outward design and appearance) from the market housing of similar size within the Development;
- (d) the form of Shared Ownership Lease to be used for any Disposals of the Shared Ownership Housing,

and which may be amended from time to time with the written approval of the Housing Manager;

**Affordable Housing Units** means the Dwellings identified pursuant to the Affordable Housing Scheme to be constructed on the Application Site pursuant to the Planning Permission in accordance with the Affordable Housing Scheme approved by the Council;

**Agreed Mix** means subject to and in accordance with paragraphs 2.3 and 2.4 of this Schedule 1, the number size tenure and mix of Affordable Housing Units approved by the Council in writing and which shall be determined having regard to the identified housing needs within the Council's administrative area unless otherwise agreed in writing with the Council;

**Completed** means constructed and fitted out ready for Occupation;

**Disposal** means sale, transfer, option, gift exchange, declaration of trust, assignment, lease and including a contract for any such disposal and **Disposals Dispose** and **Disposed of** shall be construed accordingly;

**Eligible Household(s)** means a person or persons who are in Local Housing Need and who are nominated by the Council from its Housing Needs Register in accordance with the Council's Allocation Policy through its Choice Based Lettings (**CBL**);

**Homes England** means the non-departmental public body responsible for creating thriving communities and affordable homes in England and which is the regulator of social housing within the meaning of Section 81 of the Housing and Regeneration Act 2008 or any successor to either function



**Household** means any person or persons living together as a single household;

**Housing Needs Register** means the register maintained by the Council or its nominee for Eligible Households;

**Housing Manager** means the Council's strategic housing manager for the time being or their successor post or any other officer to whom they delegate some or all of their functions;

**Local Housing Need** means (i) Households who are in need of residential accommodation suitable for their needs as their sole or principal home otherwise unable to obtain such suitable accommodation within the administrative area of the Council by reason of a lack of financial resources and whom it is reasonable to live in the locality or persons for the time being registered on the Council's maintained housing register and/or other housing register maintained for the purpose of identifying Local Housing Need in accordance with the policy of the Council and (ii) in the event that there shall be no such persons ready willing and able to occupy an Affordable Housing Unit at the material time then a Household who is assessed by an RPSH or the Council to be in genuine and urgent housing need;

**Market Dwelling** means a Dwelling that is not Affordable Housing Unit and **Market Dwellings** shall be construed accordingly;

**Market Rent** means the estimated amount for which the relevant Dwelling should lease (let) on the date of valuation between a willing lessor and willing lessee on appropriate lease terms in an arm's length transaction after proper marketing wherein the parties had acted knowledgeably, prudently and without compulsion;

**Market Value** means the price at which the whole interest in the Affordable Housing Unit would be expected to command if sold by a willing seller to a willing purchaser for residential purposes free of the restrictions and obligations contained in this Agreement;

**Nominations Agreement** means an agreement in the form appended at Appendix 3 with such amendments as may be reasonably required by the Council;

**Registered Provider of Social Housing** and **RPSH** both mean a registered provider of social housing within the meaning of Section 80(2) of Part 2 of the Housing and Regeneration Act 2008 (including any statutory replacement or amendment) as registered with Homes England and as approved by the Council (or deemed approved under paragraph 5 of Schedule 1) or other competent authority pursuant to the Housing and Regeneration Act 2008 (including for the avoidance of doubt the Council) or any other body who may lawfully provide or fund Affordable Housing from time to time and as approved by the Council;

**Retained Equity** means the proportion of the Market Value in a Shared-Ownership Dwelling represented by such share of unsold equity;

**Serviced Condition** means in relation to the land to be used for Affordable Housing the remediation of the land to a standard fit for its end use and the provision of roads, sewers, gas, wheelchair, electricity and telecommunications to the boundary of the said land in accordance with a scheme that the Owner and/or the Developer shall submit to the Council for its approval;



**Shared Ownership Housing** means a form of tenure granted by lease by the RPSH to be disposed pursuant to shared ownership arrangements within the meaning of Section 70(4) of the Housing and Regeneration Act 2008 whereby a purchaser is able to purchase a share of the equity in an Affordable Housing Dwelling at a minimum of 25% and a maximum of 50% initially (at the option of the buyer) and pay an annual rent of up to 2.75% on the Retained Equity with no limitation in the aggregate equity that can be subsequently acquired by the lessee and **Shared Ownership Housing Units** and **Shared Ownership Lease** shall be interpreted accordingly;

**Social Rented Housing** means Affordable Housing which is managed by an RPSH and where the rent is no higher than Target Rent and **Social Rented Housing Units** and **Social Rent** shall be construed accordingly;

**Staircasing** means the purchase by the Owner of additional equity in a Shared Ownership Unit;

**Target Rent** means target rents for affordable rented housing (or its equivalent) as published from time to time by Homes England (or such other body as may replace Homes England, having responsibility for setting target rents for social housing); **Transfer** means the transfer of the freehold or grant of a lease for a term of at least 125 years unless otherwise agreed in writing with the Council and **Transferred** shall be construed accordingly.

## 2 **Affordable Housing provisions**

Subject always to paragraph 10 of this Schedule the Owner covenants with the Council as follows:

- 2.1 the Affordable Housing Units shall not be used or Occupied or Disposed of other than as Affordable Housing in perpetuity and in accordance with the approved Affordable Housing Scheme and the requirements of this Schedule;
- 2.2 Seventeen (17) of the Dwellings permitted by the Planning Permission shall be constructed on the Application Site and retained as Affordable Housing Units;
- 2.3 the Affordable Housing Units shall comprise:
  - 2.3.1 nine (9) Social Rented Housing Units;
  - 2.3.2 eight (8) Shared Ownership Housing Units.
- 2.4 The Affordable Housing Units shall comprise of:
  - 2.4.1 1x1 bed and 7 x 2 bed flats in respect of the Shared Ownership Housing Units;
  - 2.4.2 6 x 1 bed and 3 x 2 bed flats in respect of the Social Rented Housing Units.
- 2.5 the Owner and/or the Developer shall submit the Affordable Housing Scheme to the Council for approval prior to Commencement of Development and provided further that no Development shall Commence until the Affordable Housing Scheme has been submitted to and approved by the Council, and thereafter the Owner and/or the Developer shall ensure that the Affordable Housing Units are retained and Occupied in accordance with the approved Affordable Housing Scheme in perpetuity.

### **3 Timing of Occupation of Affordable Housing and Market Housing**

The Owner covenants with the Council that not more than 50% of the Market Dwellings shall be Occupied until:

- 3.1 all the Affordable Housing Units have been Completed in accordance with the Planning Permission, this schedule and the Affordable Housing Scheme and made ready for beneficial Occupation and use; and
- 3.2 all of the Shared Ownership Housing Units and Social Rented Housing Units have been Transferred to a Registered Provider of Social Housing in accordance with the Affordable Housing Scheme and paragraphs 4, 5 and 6 of this Schedule.

### **4 Disposal of Affordable Housing to RPSH**

The Owner covenants with the Council that prior to Occupation of 50% or more of the Market Dwellings, the Affordable Housing Units shall be Transferred to the RPSH in accordance with this Agreement.

#### **Disposal mechanism for Affordable Housing Units Being Transferred to an RPSH**

- 5 The Owner covenants with the Council that not less than twelve (12) months prior to the anticipated Completion of the Development to commence negotiation for the Transfer of the Affordable Housing Units to a RPSHs the identity of whom has been approved in writing by the Council and to give the Council notice of such commencement of negotiation AND where the Council has received for its approval the details of the identity of a proposed RPSH but has failed to approve or refuse (giving reasons) the relevant RPSH within twenty (20) Working Days from the date of receipt then the identity of the RPSH shall be deemed to be approved forthwith and not to Commence Development without first having commenced the said negotiations.

### **6 Design and Construction of the Affordable Housing**

The Owner covenants with the Council that the Affordable Housing Units shall be constructed and Completed in accordance with Building Regulations 2010 (as amended)

### **7 Condition of the Affordable Housing**

The Owner covenants that any land Transferred to a RPSH pursuant to paragraph 5 shall be provided to the said RPSH in a Serviced Condition.

### **8 Terms of Affordable Housing transfer**

- 8.1 The Owner covenants that where any Affordable Housing Units are Transferred to a RPSH, it shall be:
  - 8.1.1 with vacant possession;
  - 8.1.2 on such terms as may be agreed between the Owner and the RPSH concerned;

8.1.3 shall contain provisions that the grant of rights of access and passage of services and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Units; and

8.1.4 in a Serviced Condition.

8.2 The terms of any Transfer of the Affordable Housing Units to an RPSH shall (unless the RPSH is the Council) impose a requirement on the RPSH to enter into the Nominations Agreement in respect of the said Affordable Housing Units that are the subject of the Transfer unless otherwise agreed in writing by the Council.

## **9 Occupation of the Affordable Housing**

9.1 Subject to paragraph 10 below the Owner (being the RPSH) shall not permit or otherwise allow any of the Affordable Housing Units to be Occupied otherwise than:

9.1.1 as the sole private residence of the Occupier;

9.1.2 by an Eligible Households at the time of the commencement of Occupation of the Affordable Dwelling; and

9.1.3 in accordance with the Council's Nominations Agreement.

9.2 Subject always to paragraph 10 of this Schedule the Affordable Housing Units shall not be let or occupied other than in accordance with the Affordable Housing Scheme in perpetuity.

9.3 The Social Rented Housing Units shall not be let other than at a Social Rent.

9.4 The initial Disposal of each Dwelling allocated for Shared Ownership Housing to a person who is proposed to become an Occupier shall include the following terms:

9.4.1 the Disposal shall not involve the sale of an equity stake of less than 25% or more than 50%; and

9.4.2 the rent payable under the Shared Ownership Lease shall not amount to more than 2.75% of the Market Value of the unsold equity of the relevant Shared Ownership Housing Unit.

9.5 Notwithstanding paragraph 9.4.1, but subject to paragraph 9.4.2, on the first Disposal of each Shared Ownership Housing Unit to a person who is proposed to become an Occupier, the Owner shall use reasonable endeavours to Dispose of an equity Share of 50% to that proposed Occupier.

## **10 RPSH Mortgagee Disposal**

10.1 In accordance with paragraph 2 of this Schedule the Affordable Housing Units shall not be used or Occupied other than as Affordable Housing provided that this covenant shall not be binding on or enforceable against any mortgagee or chargee of a RPSH or any administrator, fixed charge receiver (including an administrative receiver appointed pursuant to the Law of Property Act 1925), administrative receiver or any other person appointed under any security documentation to enable such mortgagee or chargee of the RPSH to realise its security or their successors in title or persons deriving title therefrom

exercising a power of sale in respect of the Affordable Housing Units (collectively defined as the 'RPSH Mortgagee') provided that the RPSH Mortgagee:

- 10.1.1 has given the Council at least three (3) months' written notice of its intention to exercise such power of sale; and
- 10.1.2 if the said RPSH Mortgagee has used its reasonable endeavours to first dispose of the Affordable Housing Units to a RPSH, and provided written evidence of such reasonable endeavours and secured the Council's written approval thereof, and, for the avoidance of doubt, such RPSH Mortgagee, shall not be under any obligation to dispose of the Affordable Housing Units for a sum less than the monies outstanding pursuant to the legal charge or mortgage plus any interest and costs; and
- 10.1.3 if the said RPSH Mortgagee shall not have disposed of the said Affordable Housing Units or any part thereof in accordance with paragraph 10.1.2 above, within the said three (3) month period, the said RPSH Mortgagee or the receiver may (but without imposing any obligation on the said RPSH Mortgagee) dispose of the Affordable Housing Units which have not by that time been disposed of to such RPSH on the open market to a willing buyer, and such buyer shall take free of the restrictions imposed herein in relation to the relevant Affordable Housing Units.

10.2 The provisions of this Schedule shall:

- 10.2.1 cease to apply to any part or parts of the Application Site in respect of the Affordable Housing Units secured under this Agreement which are disposed of in accordance with paragraph 10.1.3;
- 10.2.2 cease to apply to any completed Affordable Housing Units where an RPSH shall be required to dispose of the same pursuant to a right to buy under Part V of the Housing Act 1985 as amended by the Housing (Preservation of Right to Buy) Regulations 1993 or pursuant to a right to acquire under Section 180 of the Housing and Regeneration Act 2008 or any similar or substitute right applicable;
- 10.2.3 cease to apply to any completed Affordable Housing Units where a RPSH sells to a tenant through Social Homebuy funded pursuant to Section 19(3) of the Housing and Regeneration Act 2008 or any amendment or replacement thereof; and
- 10.2.4 cease to apply to any Shared Ownership Housing Unit where the tenant has Staircased up to 100% in accordance with the terms of such Shared Ownership Housing Lease.

11 **Proceeds of Sale Arising from Sale of Affordable Housing**

11.1 The RPSH shall use reasonable endeavours to utilise any monies which arise from the sale of any Affordable Housing Unit following the exercise of:

- 11.1.1 a tenant's right to buy;

- 11.1.2 a tenant's right to acquire; or
  - 11.1.3 upon the sale of a share in each Shared Ownership Housing Dwelling following the exercise of Staircasing rights.
- 11.2 For other Affordable Housing projects within the Council's administrative area PROVIDED THAT the RPSH's primary obligation in relation to the use of any such funds shall be to satisfy its obligations to any RPSH Mortgagee of the Affordable Housing Unit which shall always take priority.

## Schedule 2

### Financial Contributions to the County

- 1 In this Schedule unless the context requires otherwise the following words and expressions shall have the following meanings:

**Fire and Rescue Service** means that part of the County known as the Hertfordshire Fire and Rescue Service;

**Library Contribution** means the sum calculated in accordance with Table 1 of this Schedule 2 (index linked as hereinafter provided) towards the cost of the development of a 'CreatorSpace' at Welwyn Garden City Library (1<sup>st</sup> floor);

**Water Scheme** means either the proposal prepared by or approved by the water undertaker for the area pursuant to the Water Industry Act 1991 to provide mains water services for the Development whether by means of new mains or extension to or diversion of existing services or apparatus OR where existing water services are to be used it shall mean the details of the residential dwellings and the water supply to them;

**Youth Contribution** means the sum calculated in accordance with Table 1 of this Schedule 2 (index linked as hereinafter provided) towards the cost of IT equipment at Monks Walk Youth Centre.

**Table 1: Hertfordshire County Council Services planning obligations contributions table**

Bedrooms*	1	2	3	4	5+	1	2	3
	<b>HOUSES Market &amp; other</b>					<b>FLATS Market &amp; other</b>		
Youth facilities	£6	£16	£50	£82	£105	£3	£13	£41
Library facilities	£98	£147	£198	£241	£265	£77	£129	£164
	<b>HOUSES Social Rent</b>					<b>FLATS Social Rent</b>		
Youth facilities	£2	£8	£31	£51	£55	£1	£6	£21
Library facilities	£48	£91	£130	£156	£155	£38	£82	£107

\*uses an assumed relationship between bedrooms and habitable rooms

All figures are subject to indexation and will be indexed using the PUBSEC index base figure 175

- 2 The Owner and the Developer hereby covenant with the County:
- 2.1 to pay the County's Contributions to the County prior to the Commencement Date; and
- 2.2 not to Commence nor permit Commencement until the County's Contributions have been paid in accordance with paragraph 2.1 of this Schedule.
- 3 If prior to the receipt of any of the County's Contributions the County incurs any expenditure in providing additional library or youth facilities as the case may be the need for which arises from or in anticipation of the Development then the County may immediately following receipt of such contribution deduct from it such expenditure incurred.

#### 4 **Fire Hydrants**

##### 4.1 With regard to the water supply to the Development:

- 4.1.1 to ensure that the Water Scheme incorporates fire hydrants in accordance with BS 750 (2006) as reasonably and properly required by the Fire and Rescue Service;
- 4.1.2 to prepare and submit the Water Scheme to the Fire and Rescue Service for its written approval prior to Commencement;
- 4.1.3 to construct and provide at no cost to the Fire and Rescue Service or the County the fire hydrants reasonably and properly indicated in the Water Scheme and to advise the Fire and Rescue Service in writing of the date upon which each and every fire hydrant becomes operational and ready to be used for the purpose of fire-fighting by the Fire and Rescue Service;
- 4.1.4 once operational to maintain the fire hydrants in good condition and repair such that they are suitable at all times for use by the Fire and Rescue Service until they are adopted by the Fire and Rescue Service which adoption shall take effect from the date of issue of written acceptance by the County's Chief Legal Officer the issue of which shall not be unreasonably delayed;
- 4.1.5 not to Occupy nor cause nor permit Occupation of any Dwelling until such time as it is served by a fire hydrant which is operational and ready to be used for the purpose of fire-fighting by the Fire and Rescue Service;
- 4.1.6 to address any notice to be given to the Fire and Rescue Service to the Water Services Officer Fire and Rescue Service Old London Road Hertford SG 13 7LD Telephone 01992 507521.

### Schedule 3

#### Waste and Recycling Provision

**Waste and Recycling Contribution** means a contribution for the provision of a household waste bin, compost bin and recycling bin to each household of seven thousand one hundred and forty pounds (£7,140) (index linked as provided in clause 12 of this Agreement).

- 1 The Owner hereby covenants with the Council:
  - 1.1 to pay to the Council the Waste and Recycling Contribution prior to the Commencement Date;
  - 1.2 not to Commence or permit the Commencement until the Waste and Recycling Contribution has been paid to the Council in accordance with paragraph 1.1 of this Schedule.
- 2 If prior to the receipt of any of the Waste and Recycling Contribution the Council incurs any expenditure in providing additional waste and recycling provision the need for which arises from or in anticipation of the Development then the Council may immediately following receipt of the Waste and Recycling Contribution apply it to refund such expenditure already incurred.



## Schedule 4

### Public Open Space and Play Facilities

**Public Open Space Contribution** means the sum of five thousand five hundred and twenty seven pounds and eighty two pence (£5,527.82) (index linked as provided for in clause 12 of this Agreement) towards ornamental planting, a new communal gardening area to include vegetable growing and new seating with paving under at the Shortlands Green pocket park in Welwyn Garden City; and

**Play Facilities Contribution** means the sum of fourteen thousand four hundred and forty nine pounds and twenty pence (£14,449.20) (index linked as provided for in clause 12 of this Agreement) towards the upgrade of play equipment at the Nursery Hill play area in Welwyn Garden City.

- 1 The Owner and the Council hereby covenant with the Council:
  - 1.1 to pay the Public Open Space Contribution and Play Facilities Contribution prior to the Commencement Date;
  - 1.2 not to Commence nor permit Commencement until the Public Open Space Contribution and Play Facilities Contribution have been paid to the Council in accordance with paragraph 1.1 of this Schedule.
- 2 If prior to the receipt of any of the Public Open Space Contribution and Play Facilities Contribution the Council incurs any expenditure in providing additional public open space provision or play facilities provision the need for which arises from or in anticipation of the Development then the Council may immediately following receipt of the Public Open Space Contribution and Play Facilities Contribution apply them to refund such expenditure already incurred.

Executed as a deed by )  
**RWH TRAVEL LIMITED** )  
acting by its )

Director

Director/Secretary

SIGNED as a DEED by  
**TAYLOR WIMPEY UK LIMITED**

acting by its Attorneys

David Clark  
Attorney

**Emily Crowe**  
**Attorney**

(Names) ..... and .....

Attorney signature

Attorney signature:

In the presence of:

Signature of Witness:

Name:

Address:

Elysia Watts  
Paralegal  
Taylor Wimpey UK Limited  
Castle House  
Kempson Way  
Bury St Edmunds  
IP32 7AR

Executed under the Common Seal of )

**Hertfordshire County Council** )

in the presence of:

**Mary Cormack**

~~Chief Legal Officer~~/ Assistant Chief Legal Officer



251606



The Common Seal of )

**Welwyn Hatfield Borough Council** )

was hereto affixed in the presence of: )

Mayor/Deputy Mayor

Duty Authorised Officer

**Appendix 1 (Form of Notice)**

**Proforma Event Notification and Payment**

**Pursuant to Section 106 Agreement/Unilateral Undertaking**

DATED .....

MADE BETWEEN .....

PLANNING PERMISSION REFERENCES:

WHBC REFERENCE 6/2017/2104/MAJ

HCC DU REFERENCE 6/2017/2104/MAJ

SITE ADDRESS .....

SITE OWNER DETAILS:

Name: .....

Contact Name: .....

Address: .....

Telephone No: ..... Mobile: .....

Email: .....

EVENTS BEING NOTIFIED

Commencement Date – date:

Completion of Development – date:

First Occupation of Development– date:

**Compliance with Obligation(s)**

**Schedule** ..... **Paragraph** .....

**Details of obligation and compliance** .....

**Payment of S106 Contributions**

Payment Type	Amount	Interim Indexation	Final Indexation	Total	Payable to
Example	X	Y	Z	Y + Z	Herts County Council
Education (primary)	£	£	£	£	

Payment of S106 contributions can be made by BACS, CHAPS or cheque. In any event the form should be completed to ensure the payment is identified correctly and forward to:

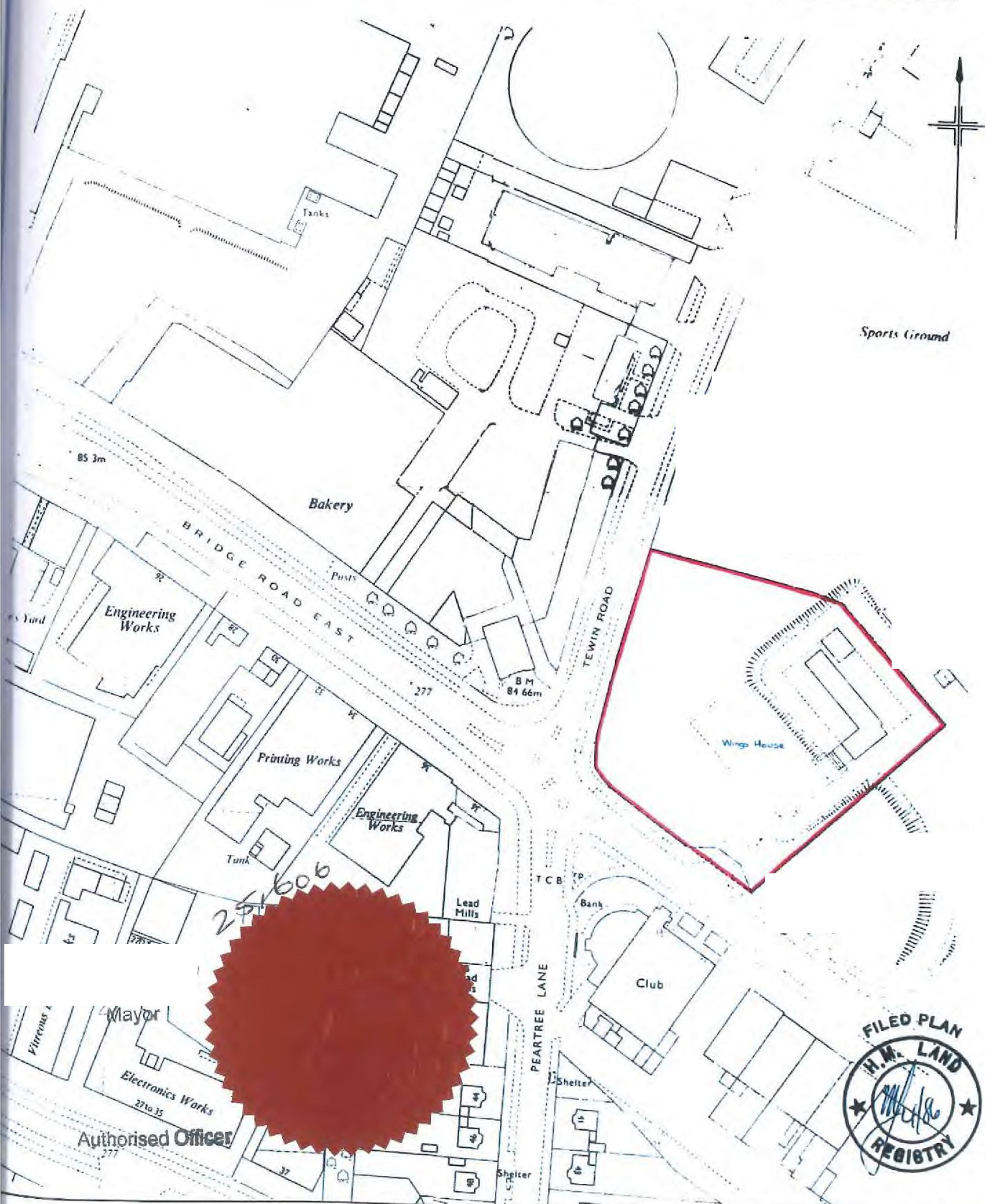
- a)       The Chief Legal Officer  
Hertfordshire County Council  
County Hall,  
Pegs Lane  
Hertford Hertfordshire  
SG13 8DE  
Ref: 6/2017/2104/MAJ
  
- b)       The Head of Planning  
Welwyn Hatfield Borough Council  
Council Offices  
The Campus  
Welwyn Garden City  
Herts AL8 6AE  
Ref: 6/2017/2104/MAJ

## **Appendix 2**

### **The Plan**



H.M. LAND REGISTRY		TITLE NUMBER	
		HD204616	
ORDNANCE SURVEY PLAN REFERENCE	TL2412 NE TL2412 NW TL2413 SE TL2413 SW		Scale 1/1250
COUNTY	HERTFORDSHIRE	DISTRICT	WELWYN HATFIELD
			© Crown copyright 19



**Appendix 3**  
**Nominations Agreement**



(xxxxxx RP NAME )

TO

WELWYN HATFIELD BOROUGH  
COUNCIL

GENERAL NEEDS SOCIAL RENT  
NOMINATION AGREEMENT

relating to Affordable Housing on the  
Land at ( xxxxxx Site Location and  
address), Hertfordshire

Margaret Martinus,  
Solicitor  
Legal Services Manager  
Welwyn Hatfield Borough Council  
Council Offices  
The Campus  
Welwyn Garden City  
Hertfordshire AL8 6AE  
Tel: 01707 357000

This Agreement is made the                  day of    201        BETWEEN xxxxxx  
xxxxxxxxxxxxxxRP NAME (Industrial and Provident Society No XXXXXX) whose  
registered office is situate at xxxxxxxxxxxxxx RP Address and WELWYN HATFIELD  
BOROUGH COUNCIL of Council Offices The Campus Welwyn Garden City  
Hertfordshire AL8 6AE ("the Council")

NOW IT IS HEREBY AGREED AS FOLLOWS:-

1. In this Agreement the following expressions shall have the following meanings:-

**“Social Rent”** Social rented housing is owned by local authorities and private registered providers (as defined in section 80 of the Housing and Regeneration Act 2008), for which guideline target rents are determined through the national rent regime. It may also be owned by other persons and provided under equivalent rental arrangements to the above, as agreed with the local authority or with the Homes and Communities Agency.

**"the Development"** means the new residential development comprising xx units to be constructed in accordance with planning permission reference xxxxxxxx dated xxxxxxxx by or on behalf of the RP at the Land

**“the Land”** means that freehold land known as xxxxxx ( site location and address) registered with the title number HD xxxxxx and shown edged red on the attached plan (Appendix 1)

**"a Nominee"** means a person nominated to occupy a Property pursuant to the covenants contained in this Agreement

**"Nomination Rights"** mean rights for the nomination of persons to occupy the Properties as provided herein

**"the Perpetuity Period"** means the period of 125 years from the date hereof which shall be the perpetuity period applicable to this Agreement

**"the Properties"** means xxxxxxxxx (insert unit type and mix) forming part of the Development for affordable rent in accordance with Clause 2 below and "Property" means any one of such properties

**“the RP”** means xxxxxxxxxx ( insert RP name) or another registered provider of social housing as defined within the provisions of the Housing and Regeneration Act 2008

**"A Void"** means a vacancy created as a result of the death of a tenant or where the tenant secures alternative accommodation for themselves and vacates the Property.

2. The Social Rented Housing shall only be occupied on a tenancy agreement as determined by the RP's tenancy policy at a rent set at a level complying with the guidance issued from time to time by the Homes and Communities Agency under Section 80 of the Housing and Regeneration Act 2008 or at a lower level agreed between the RP and the Council (both acting reasonably)  
PROVIDED ALWAYS AND IT IS HEREBY AGREED as follows:-
  - 2.1 Following practical completion of the works comprising the Development and during the Perpetuity Period the RP will let the Properties in accordance with the RPs letting policy and rules provided that such rents will be adjusted in accordance as necessary with the Homes and Communities Agency's Rent Restructuring Regime from practical completion of the Properties
3. When any Property becomes available for occupation the RP will let the Property to a person within the letting policy rules of the RP and subject to the Nomination Rights contained in clauses 4 to 10
4. On completion of the Development the Council will be entitled to Nomination Rights in respect of 100% of the initial vacancies and 75% of Void Properties thereafter. (In addition, if an RP tenancy becomes empty as a result of the tenant accepting a property from the Council's Housing Needs Register, then the Council will have the absolute right to exercise Nomination Rights in respect to the subsequent letting of that Property even though nomination will exceed the level of Nomination rights specified in this Clause 4.)
5. Every nomination made in accordance with these terms and conditions shall comply with Welwyn Hatfield Council approved allocations scheme at the time of nomination
6. The RP will notify Welwyn Hatfield Council by email using the standard Nomination Request Form (Appendix 2) 14 days before advertising when a Property in respect of which the Council is entitled to exercise Nomination

Rights becomes available to let and the following details should always be provided:-

- 6.1 the full postal address of the Property
- 6.2 the estimated rent and service charge
- 6.3 the anticipated tenancy commencement date
- 6.4 the type of Property (e.g. house flat bungalow)
- 6.5 the floor level
- 6.6 any special requirements (e.g. is the Property adapted for a wheelchair user)
- 6.7 if the nomination needs or should preferably be made in respect of a specific type of nominee
7. Welwyn Hatfield Council will notify the RP within seven working days of receipt of the email notification from the RP referred to in condition 6 of its Nominee and notification from the Council will be made in writing using the agreed standard Nomination Details Form (Appendix 3)
8. If the Nominee fails to accept the offer of accommodation within four working days of receipt of the offer or the RP refuses to accept the nomination on reasonable grounds the RP must notify Welwyn Hatfield Council as soon as possible and Welwyn Hatfield Council can then exercise further Nomination Rights in respect of the Property within the time period as set out in clause 7 until a letting to a Nominee is achieved
9. The RP shall notify Welwyn Hatfield Council by email of the outcome of the nomination within five working days and if the Nominee accepts the RP must within five working days notify Welwyn Hatfield Council by email of the date of letting the name of tenant and the address of the Property let using the standard Outcome of Nomination Form (Appendix 4)
10. The RP may allocate a tenancy of a Property in accordance with their own letting policy in any one of the following circumstances:-
  - 10.1 Welwyn Hatfield Council fails without reasonable cause to exercise a Nomination Right within seven working days of receiving the notification referred to in clause 6

- 10.2 Welwyn Hatfield Council has given written notice following the seven working days period referred to in clause 7 that it does not wish to exercise its Nomination Right on that particular occasion
- 10.3 That the third party nominee put forward by Welwyn Hatfield Council pursuant to its Nomination Rights has either failed to accept the offer or is rejected by the RP pursuant to Clause 8.
11. The RP shall supply to Welwyn Hatfield Council full details of its letting policy rules and its letting activity at intervals not exceeding[six months using the agreed Lettings Return Form (Appendix 5)
12. The terms of this Agreement are personal to the parties hereto and are not binding on:
- 12.1 a mortgagee of the Property (including a security trustee or other charge);
- 12.2 a receiver appointed by such mortgagee in exercising a power of sale;
- 12.3 anyone deriving title through such a mortgagee or receiver;
- 12.4 a tenant of the RP who has acquired a dwelling under a statutory right to acquire and his successors in title;
- 13.0 Unless otherwise stated this Agreement does not, and the parties do not intend to confer any right or benefit which is enforceable by virtue of the Contracts (Right of Third Parties) Act 1999 upon any person who is not a party to this Agreement

IN WITNESS whereof the parties have executed this Agreement as a Deed the day and year first before written



## Appendix 1 Site Location Map





## APPENDIX 2

### NOMINATION REQUEST FORM

<b>PARTNER LA:</b>	
<b>LANDLORD:</b>	
<b>PROPERTY CODE:</b>	
<b>CONTACT PERSON DETAILS</b>	
<b>NAME:</b>	
<b>TEL NO:</b>	
<b>EMAIL TO:</b>	<a href="mailto:housingoptions@welhat.gov.uk">housingoptions@welhat.gov.uk</a>
<b>EMAIL FROM:</b>	
<b>FAX:</b>	
<b>DATE OF REQUEST:</b>	
<b>REASON FOR VOID:</b>	
<b>ENERGY PERFORMANCE LEVEL/PROVISIONAL EPL:</b>	

### REQUEST

<b>ADDRESS:</b>				
<b>POSTCODE:</b>				
<b>NO. BEDROOM:</b>				
<b>SEPARATE DINING</b>	YES <input type="checkbox"/> NO <input type="checkbox"/>			
<b>BED SPACE (occupancy)</b>	<b>MINIMUM</b>		<b>MAXIMUM</b>	
<b>SHELTERED ACCOMMODATION</b>	YES <input type="checkbox"/> NO <input type="checkbox"/>			
<b>IF YES</b>	<b>RESIDENT WARDEN</b> <input type="checkbox"/> <b>WARDEN ON CALL</b> <input type="checkbox"/>			

<b>MINIMUM AGE (where applicable)</b>	
<b>PROPERTY TYPE</b>	

<b>HOW MANY STEPS ARE THERE UP TO YOUR PROPERTY?</b>	
<b>LIFT</b>	<b>YES <input type="checkbox"/> NO <input type="checkbox"/></b>
<b>FLOOR LEVEL</b>	
<b>HEATING TYPE:</b>	
<b>ADAPTATIONS IN PROPERTY (PLEASE TICK ALL THAT APPLY)</b>	<input type="checkbox"/> <b>Doorways Widened</b> <input type="checkbox"/> <b>Powerpoints raised</b> <input type="checkbox"/> <b>Shower installed</b> <b>Shower Type:</b> <input type="checkbox"/> <b>Over bath</b> <input type="checkbox"/> <b>Level entry</b> <input type="checkbox"/> <b>Level access</b> <input type="checkbox"/> <b>Taps fitted</b> <input type="checkbox"/> <b>Raised toilet (on a plinth)</b> <b>Lift installed:</b> <input type="checkbox"/> <b>Through floor lift</b> <input type="checkbox"/> <b>Facility for stair lift</b> <input type="checkbox"/> <b>Ceiling track for hoist Ramps (front) installed</b> <input type="checkbox"/> <b>Ramps (rear) installed</b> <input type="checkbox"/> <b>Extension built</b> <input type="checkbox"/> <b>Hardstanding (for vehicle)</b> <input type="checkbox"/> <b>Storage for mobility scooter</b> <input type="checkbox"/> <b>Level Threshold</b> <input type="checkbox"/> <b>Visual Doorbell</b> <input type="checkbox"/> <b>Lighting modified</b> <input type="checkbox"/> <b>Downstairs WC installed</b> <input type="checkbox"/> <b>Lower Kitchen Unit</b>
<b>GARDEN (exclusive/shared/none)</b>	
<b>GARAGE?</b>	<b>YES <input type="checkbox"/> NO <input type="checkbox"/></b>
<b>COUNCIL TAX BAND?</b>	
<b>SUITABLE FOR PETS?</b>	<b>YES <input type="checkbox"/> NO <input type="checkbox"/></b>

<b>TYPE OF TENANCY (i.e. Shared Ownership, Key workers, Assured Tenancy etc.)</b>	
<b>DOES A LOCAL LETTINGS POLICY APPLY?</b>	YES <input type="checkbox"/> NO <input type="checkbox"/>
<b>If yes – Please give details</b>	
<b>RENT (weekly/monthly)</b>	
<b>SERVICE CHARGE:</b>	
<b>SUPPORT CHARGE:</b>	
<b>EXPECTED TENANCY START DATE:</b>	
<b>FEATURES:</b>	

**PLEASE ATTACH PHOTO WHERE POSSIBLE**



## APPENDIX 3

### NOMINATION DETAILS FORM

<b>Date</b>	
<b>Name and Address of Housing Assoc.</b>	
<b>Contact</b>	Welwyn Hatfield Council
<b>Phone number:</b>	01707 357613
<b>e-mail address:</b>	<a href="mailto:housingoptions@welhat.gov.uk">housingoptions@welhat.gov.uk</a>
<b>Fax number:</b>	01707 357630

ADDRESS OF PROPERTY NOMINATED FOR:

<b>Property type and size:</b>	

NOMINEE DETAILS:

<b>Applicant name</b>		<b>D.O.B</b>	
<b>Address</b>			
<b>Postcode</b>			
<b>Phone (home)</b>			
<b>Phone (work)</b>			
<b>Phone (mobile)</b>			
<b>e-mail address</b>			
<b>Joint applicant</b>		<b>D.O.B</b>	
<b>Address:(if different from above)</b>			
<b>Postcode</b>			

<b>Application Number</b>		<b>Band &amp; Date</b>	
---------------------------	--	------------------------	--

DETAILS OF OTHER HOUSEHOLD MEMBERS:

Surname	First name	D.O.B.	Relationship

**CORE INFORMATION:**

<b>Question 12 (current accommodation)</b>	
<b>Question 14 (homeless status)</b>	

## APPLICATION TYPE:

<b>Homeless</b>	
<b>Waiting list</b>	
<b>RSL tenant transfer</b>	
<b>WHC tenant transfer</b>	
<b>Other</b>	

BRIEF SUMMARY OF CURRENT CIRCUMSTANCES, AND ADDITIONAL INFORMATION/COMMENTS:

<b>To discuss this case:</b>
<b>Contact:</b>
<b>Telephone number:</b>

IF STAFF SHOULD BE ACCOMPANIED AT VIEWING PLEASE GIVE DETAILS:

--

WILL NOMINEE REQUIRE ACCESS TO TRANSLATION SERVICES OR ASSISTANCE WITH READING PAPERWORK? IF SO, PLEASE GIVE DETAILS:

Has any member of the above household been the subject of any anti-social behaviour action by their current landlord – including the issue of a Notice of Seeking Possession, Acceptable Behaviour Contract or an Anti-Social Behaviour Order?

YES ☐ NO ☐

If “YES”, then please provide details, including a copy of any Notice/Order/Contract and also a report on any behaviour issues which have occurred since the Notice/Order/Contract was issued.

**Does any member of the above household:**

Have difficulty climbing stairs? YES ☐ NO ☐

Use a wheelchair? YES ☐ NO ☐

Have a medical condition? YES ☐ NO ☐

Have a support worker? YES ☐ NO ☐

Have any special needs? YES ☐ NO ☐

Require specialist housing? YES ☐ NO ☐

Need support in addition to the usual YES ☐ NO ☐

Housing/Estate Officer support?

Need (or is likely to need within 6 months)

Adaptations to a standard property? YES ☐ NO ☐

If “YES” please provide full details, including contact details for any support worker.

**Are there any rent arrears outstanding with their current landlord?**

Yes ☐ No ☐ Not aware ☐

If “YES” please provide full details of the arrear, any agreement the tenant has made to clear the outstanding amount and a record showing whether the agreements has been adhered to.





## APPENDIX 4

### OUTCOME OF NOMINATION FORM

<b>Application number</b>		<b>Void Code:</b>
<b>Receiving Association</b>		
<b>Original nomination date</b>		

**NOMINEE DETAILS:**

<b>Nominee's name</b>	
<b>Address</b>	

<b>Property nominated for:</b>	
--------------------------------	--

☐ **Tenancy accepted**

<b>Commencement of tenancy date</b>	
-------------------------------------	--

☐ **Tenancy refused**

**Reason nominee has refused**

Rent too high	
Does not want an assured tenancy	
Wants Right to Buy	
Wants different area	
Wants lower floor	
Wants different property type	
No longer interested in moving	
Wants larger property	
Does not want sheltered accommodation	
Wants sheltered accommodation	
Too far from amenities	
Too many stairs	
Unsuitable due to disability	
Risk of racial/sexual harassment	
Other (please specify	

**OR - reason housing association has refused**

Nominee's income is over Association's income limit	
Pets are not allowed at the property	
Nominee has history of ASB and not making efforts to overcome problem	
Nominee currently has RSL arrears with no agreement to clear	
Other – please specify:	

<b>Housing Association Contact Officer</b>	
<b>Date</b>	



## Appendix 5

### LETTINGS RETURN

NAME OF HOUSING ASSOCIATION: \_\_\_\_\_

NAME OF CONTACT OFFICER: \_\_\_\_\_ TELEPHONE: \_\_\_\_\_

RETURN FOR 6 MONTH PERIOD ENDING: \_\_\_\_\_

Date	Address including Postcode	Property Type (Inc. no of bedrooms)	General needs/ Sheltered/Specially Adapted	Reason for Vacancy	Date Let	Name of New Tenant	Previous Address	Source of Nomination	Ethnic Origin

Date	Address including Postcode	Property Type (Inc. no of bedrooms)	General needs/ Sheltered/Specially Adapted	Reason for Vacancy	Date Let	Name of New Tenant	Previous Address	Source of Nomination	Ethnic Origin

EXECUTED AS A DEED by affixing )  
THE COMMON SEAL of )  
RP NAMEXXXXXXXXXXXXXXXXXXXXX )  
XXXXXXXXXXXXXXXXXXXXX )  
hereunto in the presence of: )

Authorised Signatory

Authorised Signatory

THE COMMON SEAL of WELWYN )  
HATFIELD BOROUGH COUNCIL )  
was hereunto affixed in )  
the presence of )

Mayor

Duly Authorised Officer

DATED \_\_\_\_\_ 201

(xxxxxx RP NAME)

TO

WELWYN HATFIELD BOROUGH COUNCIL

SHARED OWNERSHIP NOMINATION  
AGREEMENT

Relating to Affordable Housing on the Land  
at ( xxxxx Site Location and Address

Hertfordshire )

Margaret Martinus,  
Solicitor  
Legal Services Manager  
Welwyn Hatfield Borough Council  
Council Offices  
The Campus  
Welwyn Garden City  
Hertfordshire AL8 6AE  
Tel: 01707 357000

An agreement made the      day of                      201   BETWEEN (xxxxxxx RP NAME) (Industrial and Provident Society No. xxxxxx) whose registered office is at (xxxxxxx RP Address).      of the one part and WELWYN HATFIELD BOROUGH COUNCIL of the Council Offices. The Campus, Welwyn Garden City, Hertfordshire, AL8 6AE ("the Council") of the other part.

As part of the partnership and enabling role between the Council and the Association, both parties to this Agreement are bound by the following terms and conditions.

1. In the Agreement the following expressions shall have the following meanings:

**"The Criteria"** means the criteria for selection of Nominees to enter into a Shared Ownership Lease of a Property namely:-

- (1) that the Nominees income and savings should be appropriate to purchase an initial xx% Equity Share in the Property offered by the RP
- (2) that the Property should be of a size suitable for the Nominees household in accordance with Welwyn Hatfield Community Housing Trust's Housing Allocation Policy
- (3) that the Nominee has a local connection

**"The Development"** means the new residential development comprising xx xx units to be constructed in accordance with planning permission reference xxxxxxxxxxxx dated xxxxxxxx by or on behalf of the RP at the Land

**"Equity Share"** means a percentage share in the equity of the Property available to the Nominee

**"Fully Staircased"** means that the leaseholder under a Shared Ownership Lease has acquired 100% of the Equity Shares in a Property

**"Help to Buy Agent"** (or its successor service) means the organisation appointed by the Homes and Communities Agency to assess applications for home ownership, refer nominations to Registered Providers and provide housing options advice.

**"the Land"** means that freehold land known as xxxxxxxxxxxx (site location and address) registered with the title number HDxxxxxx and shown edged red on the attached plan ( Appendix 1)

**"Local connection"** defines the link to the local area required to qualify for nomination detailed in Appendix 2

**“the Local Priorities”** defines the individual circumstances required to qualify for nomination as detailed in Appendix 2

**“Nominee”** means a person referred by the Help to Buy Agent

**“Nomination Rights”** means the right to nominate the leaseholder of a Shared Ownership Lease for a Property or an assignee there from

**“the Properties”** means the xxxxxxxxx (insert unit type and mix) to be erected on the Land and “Property” means any one of such Properties

**“the RP”** means a registered provider of social housing as defined within the provisions of the Housing and Regeneration Act 2008 and includes its successors in title to the freehold title of the Land

**“Shared Ownership”** means a property available for letting under a Shared Ownership Lease

**“Shared Ownership Lease”** means the Homes & Communities Agency model lease for shared ownership housing or such other shared ownership lease as shall have been approved by the Council (not to be unreasonably withheld or delayed)

**“Void”** means a Property which is available to the RP for the purposes of nominating a new leaseholder under a Shared Ownership Lease

**Words** importing one (1) gender shall be construed as importing another gender

Words importing the singular shall be construed as importing the plural and vice versa

- 2 The RP agrees to grant to the Council the Nomination Rights contained in this Agreement
- 2.1 On completion of the Development the Council will be entitled to Nomination Rights in respect of 100% of the initial vacancies and 75% of void properties thereafter
3. Whenever any Property becomes Void the RP will grant or procure the assignment of a Shared Ownership Lease of the Property to a person within the Criteria and subject to the terms of this Agreement, provided that the RP



shall not be under an such an obligation in respect of a Property where the Shared Ownership Lease shall have been Fully Staircased.

4. Every Nomination made in accordance with this Agreement shall comply with Council's approved criteria for selection at the time of a nomination
5. The RP will notify the Help to Buy Agent when a Void arises to advertise the Property.
  - 5.1 The notice should include the following details:
  - 5.2 The estimated rent and service charges including any increases that are imminent
  - 5.3 The minimum share and estimated minimum cost of the Equity Share that is available for purchase
  - 5.4 Any special requirements such as minimum or maximum income levels
  - 5.5 The Help to Buy Agent contact details for notification are by email [www.helptobuyeastandsoutheast.uk.com](http://www.helptobuyeastandsoutheast.uk.com) The Help to Buy Agent (or its successor service) will refer candidates in line with the Service Standards defined in the service level agreement with the RP.
- 6.1 The RP shall:
  - market the Properties in accordance with the Local Priorities
  - comply with the procedures for identifying the purchasers or the Properties as set out in Appendix 2 which procedures may be changed from time to time by agreement in writing between the parties hereto.
  - Seek nominations from the Help to Buy Agent in addition to seeking purchasers through its own marketing.
7. The RP shall not be obliged to offer an Equity Share in a Property to a Nominee unless and until the RP has assessed such Nominee as being a suitable person financially able to meet the obligations of a leaseholder under a Shared

Ownership Lease according to the usual criteria and status considerations adopted by the RP for assessment of a prospective shared ownership leaseholder under the Association's control ("the Qualifying Criteria" – a copy of which has been given to the Council) and the assessment of the RP (acting reasonably) shall be final and binding

8. The RP will notify the Council as soon as possible after the Shared Ownership Lease has been completed
9. The procedures set out in Clauses 6 to 9 inclusive shall be carried out in respect of each Property
10. The RP will, on request, notify the Council in writing of the letting activities for the Properties annually each April using the Lettings Return form (Appendix 3)
11. The terms of this Agreement are personal to the parties hereto and are not binding on:
  - 11.1 a mortgagee of the Property (including a security trustee or other charge);
  - 11.2 a receiver appointed by such mortgagee in exercising a power of sale;
  - 11.3 anyone deriving title through such a mortgagee or receiver;
  - 11.4 a tenant of the RP who has acquired a dwelling under a statutory right to acquire and his successors in title;
  - 11.5 a tenant of the RP who has Fully Staircased its Shared Ownership Lease of the Property and his successors in title;
12. The Council and the RP are committed to equal opportunities in access to housing regardless of race colour nationality ethnic origin or because of religion sex disability marital or employment status
13. The ethnic origin of nominated households will be monitored by the RP
  - 13.1 Where monitoring reveals that there could be discrimination the RP and Council will work together to take positive action to remedy this
14. This Agreement may be varied at any time by written agreement of both parties
  - 15.1 As soon as either party becomes aware of any matter adversely affecting or threatening to affect the RP's performance of its obligations under this Agreement or they shall give notice to the other party. The parties shall meet

within (5) working days from the date of such notification to discuss the problem unless the parties agree an alternative course of action.

- 15.2 The parties will endeavour to resolve any difference or dispute by direct negotiation in good faith between senior representatives of each party in the sequence below or their successors:

	Stage 1	Stage 2
Council	Head of Housing and Community Services	Director of (Strategy and Development)
RP	Contracts Manager	Managing Director

- 15.3 Any dispute which cannot be resolved in accordance with clause 15 may be referred by either party to an expert agreed between the parties or failing agreement appointed by the president for the time being of the Chartered Institute of Arbitrators. The expert shall act as an expert and not as an arbitrator. The costs of the expert shall be met in accordance with the expert's determination.
- 15.4 Both parties shall on request promptly supply to the expert all such assistance documents and information as the expert may require for the purpose of determination of the dispute
- 15.5 No party may commence any court proceedings in relation to any dispute in relation to this Agreement until they have followed the steps in clause 15.2 to 15.3 above save that nothing in this Clause 15 shall prevent either party from applying to the court at any time for injunctive or interim relief
- 16 Unless otherwise stated this Agreement does not, and the parties do not intend to confer any right or benefit which is enforceable by virtue of the Contracts (Right of Third Parties) Act 1999 upon any person who is not a party to this Agreement

WITH THE JOINT INTENTION that this Agreement be entered into as a Deed the Council and the RP have signed this Agreement on the date it was entered into



## **Appendix 1 Site Location Map**



## **Appendix 2**

### **Local Priorities**

1. First time buyers with a local connection in the Borough and who would be eligible to be placed on the Council's Housing Needs Register
2. Existing shared owners with a local connection to the Borough who need to move and cannot afford to buy a suitable property on the open market and who would be eligible to be placed on the Council's Housing Needs Register
3. Existing owners with a local connection to the Borough who need to move, but cannot afford to buy a suitable property on the open market, for example due to change in household or income details or relationship breakdown and who would be eligible to be placed on the Council's Housing Needs Register

### **Local Connection**

- Permanently resident for five years or more.
- Close relative (to include parent, sibling and/or adult child) who has lived in the Borough for more than ten years.
- Permanent employment in the Borough for at least 12 months and a minimum of 16 hours a week.
- A special reason (to be agreed for each case).
- Has no local connection anywhere.

In general, priority will be given to people in housing need whose family size broadly fits the size of home they wish to buy.





**SHARED OWNERSHIP LETTINGS RETURN****APPENDIX 3****NAME OF HOUSING ASSOCIATION:** \_\_\_\_\_**NAME OF CONTACT OFFICER:** \_\_\_\_\_ **TELEPHONE:** \_\_\_\_\_**RETURN FOR 12 MONTH PERIOD ENDING:** \_\_\_\_\_

Date	Address including Postcode	Property Type ( Inc. no of bedrooms)	Shared Ownership % Purchased	Reason for Vacancy	Date Let	Name of New Tenant	Previous Address	Source of Nomination	Ethnic Origin

Date	Address including Postcode	Property Type ( Inc. no of bedrooms)	Shared Ownership % Purchased	Reason for Vacancy	Date Let	Name of New Tenant	Previous Address	Source of Nomination	Ethnic Origin

EXECUTED AS A DEED by affixing  
THE COMMON SEAL of  
WELWYN GARDEN CITY HOUSING  
ASSOCIATION LIMITED  
In the presence of:-

Authorised Signatory

Authorised Signatory

THE COMMON SEAL of WELWYN  
HATFIELD BOROUGH COUNCIL  
was hereunto affixed in the  
presence of:

Mayor

Duly Authorised Officer