

dated *29 September* 2021

**(1) Hightown Housing Association Limited**

and

**(2) Welwyn Hatfield Borough Council**

and

**(3) 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 in respect of land at 29 Broadwater  
Road, Welwyn Garden City AL7 3BQ

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# Agreement

dated *29 September* 2021

## Parties

- (1) **Hightown Housing Association Limited** (mutuals society public registration number 18077R) of Hightown House, Maylands Avenue, Hemel Hempstead, Hertfordshire HP2 4XH (the **Owner**);
- (2) **Welwyn Hatfield Borough Council** of Council Offices, The Campus, Welwyn Garden City, Hertfordshire (the **Council**); and
- (3) **Hertfordshire County Council** of County Hall, Pegs Lane, Hertford, Hertfordshire (the **County**).

## Introduction

- (A) The Council is the local planning authority for the purposes of the Act for the area within which the Application Site is situated.
- (B) The County is also a local planning authority and the highway authority and the library authority and the education authority and the fire and rescue authority and the social services authority for the area within which the Application Site is situated and as such is entitled to enforce the terms of this Agreement.
- (C) The Owner is the freehold owner of the whole of the Application Site.
- (D) The Application has been made to the Council for planning permission for the Development on the Application Site.
- (E) On 16 July 2020 the Council resolved to grant Planning Permission subject amongst other things the prior completion of this Agreement.
- (F) 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 29 November 2019 and validated on 18 December 2019 for the Development and allocated reference number 6/2019/3024/MAJ;

**Application Site** means the land known as 29 Broadwater Road, Welwyn Garden City, Hertfordshire AL7 3BQ shown for identification purposes on the Plan being the land registered at the Land Registry under title number HD327341;

**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 for the purpose of assessing ground conditions preparation work remedial or remediation work in respect of any contamination or other adverse ground conditions diversion and laying or removal of services 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;

**Development** means the demolition of office building and erection of 128 flats with associated car parking, landscaping, amenity space, bin and cycle storage, with alterations to existing and formation of new access on Broadwater Road and alterations to the existing access on Broad Court as set out in the Application;

**Director of Environment** means the County's Director of Environment and Infrastructure and his officers and agents;

**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 five thousand pounds (£5,000) 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 Tender Price Index of the Public Sector Non Housing All-in Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors (or any successor organisation) and specifically the series entitled "Extension of Public Sector Tender Price Index of Public Sector Building Non Housing" (or equivalent replacement index);

**RPI** means the Retail Prices Index;

**Schedules** means Schedules 1 to 3 contained in this Agreement;

**SPONS Index** means the index linked by reference to the price adjustment formula for construction contracts in the monthly bulletin of indices published by Her Majesty's Stationery Office as collated into a single index known as the SPONS Construction Civil Engineering Cost Index; and

**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 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 in respect of the Application Site.
- 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 enters 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 and 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 interest in the Application Site.
- 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.
- 4.4 Any notice to the parties hereto under this Deed 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:**

Head of Projects (Alison Laing)  
Hightown House  
Maylands Avenue  
Hemel Hempstead  
Herts HP2 4XH

**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: 6/2019/3024/MAJ

**In respect of the County at:**

The Chief Legal Officer  
Hertfordshire County Council  
County Hall  
Pegs Lane  
Hertford  
Herts SG13 8DE  
Ref: 15056

- 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 Owner or its successors in title and at no cost to the Council or the County.

- 4.10 The Owner grants an irrevocable licence to the Council and/or 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 and the provisions within Schedule 1 of this Agreement (subject as therein mentioned), this Agreement shall not be enforceable against an individual owner occupier of the Development or their mortgagee or chargee.

**5 Obligations of the Owner**

- 5.1 The Owner so as to bind the Application Site covenants with the Council and the County:
  - 5.1.1 to comply with its obligations set out in this Agreement and the Schedules to this Agreement;
  - 5.1.2 to pay to the Council the Monitoring Fee on completion of this Agreement;
  - 5.1.3 to pay to the Council and County on completion of this Agreement their respective reasonable legal costs and disbursements of and incidental to the negotiation preparation and execution of this Agreement;
  - 5.1.4 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;
  - 5.1.5 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
  - 5.1.6 to give the County and the Council 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.



**6 Covenants by the Council and the County**

**6.1 The County covenants with the Owner:**

- 6.1.1 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;
- 6.1.2 where the approval, consent, expression of satisfaction, agreement, confirmation or certification of the County or any officer of the 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;
- 6.1.3 to use all sums received from the Owner under the terms of this Agreement for the purposes specified in this Agreement for which they are to be paid; and
- 6.1.4 at any time prior to the expiry of the expenditure period for any contribution pursuant to paragraph 6.2 below the Owner shall be entitled to request from the County and the County shall provide such evidence as may reasonably be required to account for the County's expenditure and use of the relevant contribution as at the date of the Owner's written request and in each instance such evidence shall be disclosed to the Owner within twenty (20) Working Days.

6.2 Following receipt of any payments or financial contributions from the Owner pursuant to any obligations contained in this Agreement the County covenants and undertakes, to apply such payments or financial contributions only for the purposes specified in this Agreement provided that the County will be entitled to treat any accrued interest as if it were part of the principal sum paid by the Owner and for the avoidance of doubt the County may apply all or any part of such payments to costs already incurred at the date of payment in pursuit of the purposes specified in this Agreement and that it shall refund any portion of the Bus Stop Contribution, Library Contribution, the Primary Education Contribution, the Secondary Education Contribution, the Sustainable Transport Contribution and the Youth Services Contribution 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 5.1.6 hereof together with any interest accrued.

**6.3 The Council covenants with the Owner:**

- 6.3.1 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;
- 6.3.2 where the approval, consent, expression of satisfaction, agreement, confirmation or certification of the Council or any officer of Council 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;

6.3.3 to use all sums received from the Owner under the terms of this Agreement for the purposes specified in this Agreement for which they are to be paid; and

6.3.4 at any time prior to the expiry of the expenditure period for any contribution pursuant to paragraph 6.4 below the Owner shall be entitled to request from the Council and the Council shall provide such evidence as may reasonably be required to account for the Council's expenditure and use of the relevant contribution as at the date of the Owner's request and in each instance such evidence shall be disclosed to the Owner within twenty (20) Working Days.

6.4 Following receipt of any payments or financial contributions from the Owner pursuant to any obligations contained in this Agreement the Council covenants and undertakes, to apply such payments or financial contributions only for the purposes specified in this Agreement provided that the Council will be entitled to treat any accrued interest as if it were part of the principal sum paid by the Owner and for the avoidance of doubt the Council may apply all or any part of such payments to costs already incurred at the date of payment in pursuit of the purposes specified in this Agreement and that it shall refund any portion of the General Medical Services Contribution, Play Facilities Contribution, Public Open Space Contribution, the Indoor Sports Facilities Contribution and/or the Outdoor Sports Facilities Contribution 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 Council of the notice of the Practical Completion of the Development in accordance with clause 5.1.6 hereof together with any interest accrued.

## 7 **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.

## 8 **Change in ownership**

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

## 9 **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.

## 10 **Indexation**

10.1 The Library Contribution, the Primary Education Contribution, the Secondary Education Contribution and the Youth Services Contribution shall each 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 due;

D is the figure of 175; and

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

10.2 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 or the payer of the interim payment (as the case may be) once the relevant indices have been finalised.

10.3 The Bus Stop Contribution shall each be index-linked to increases in the RPI from 1 March 2020 to the date on which the contribution is paid.

10.4 The Play Facilities Contribution and the Public Open Space Contribution 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 due and;

D is the figure of 178

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

10.5 The Indoor Sports Facilities Contribution and the Outdoor Sports Facilities Contribution 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 due and;

D is the PUBSEC Index figure at Q3 2019

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

10.6 The General Medical Services Contribution 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 and;

D is the PUBSEC Index figure at Q4 2019

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

10.7 Indexing of those contributions referred to in clauses 10.4 to 10.5 (inclusive) shall be calculated using the latest firm published (not provisional or forecast) value available for the relevant index at the date of calculation.

10.8 The Travel Plan Evaluation and Support Contribution shall be index linked by increases in the RPI from 1 May 2014 to the date on which the Travel Plan Evaluation and Support Contribution is paid

10.9 The Sustainable Transport Contribution shall be index linked by increases in the SPONS Index from 1 March 2020 to the date on which the Sustainable Transport Contribution is paid.

## 11 **Value Added Tax**

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

## 12 **Dispute provisions**

12.1 Subject to clauses 12.11 and 12.12 one party may by serving notice on all the other parties (the **Notice**) require a dispute to be referred to an expert for determination.

12.2 The Notice must specify:

12.2.1 The nature, basis and brief description of the dispute;

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

12.2.3 The proposed expert.

12.3 The expert may be agreed upon by the Parties and in the absence of such agreement within one month of the date that the notice is issued pursuant to clause 12.1 either Party may request that the following nominate the expert at their joint expense:

12.3.1 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;

12.3.2 If such dispute relates to matters requiring a specialist chartered surveyor, the President of the Royal Institute of Chartered Surveyors to nominate the expert;

12.3.3 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;

12.3.4 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;

- 12.3.5 If such dispute relates to Affordable Housing the expert shall be nominated by the President of the Royal Town Planning Institute; and
- 12.3.6 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 12.3.1 to 12.3.5 the President of the Law Society may nominate such person or persons falling within the description of sub-clauses 12.3.1 to 12.3.5 as he thinks appropriate including joint experts.
- 12.4 If an expert nominated or appointed pursuant to clause 12.3 shall die or decline to act another expert may be appointed in his place in accordance with the provisions of clause 12.3.
- 12.5 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 20 Working Days from the date of the notice of his appointment which is served on the parties pursuant to clause 12.3
- 12.6 Notice in writing of the appointment of an expert pursuant to this clause 12.3 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.
- 12.7 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 12.6 and shall not be in any way limited or fettered thereby and shall determine the dispute in accordance with his own judgement.
- 12.8 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.
- 12.9 If for any reason the expert fails to make a decision and give notice thereof in accordance with this clause 12.5 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).
- 12.10 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.
- 12.11 Nothing in this clause 12 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.
- 12.12 Nothing in this clause 12 shall be binding on the County.
- 13 Planning consents granted pursuant to S73 of the Act**
- 13.1 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 the any new planning permission is granted pursuant to Section 73 of the Act:

- 13.1.1 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;
- 13.1.2 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
- 13.1.3 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 S106 of the Act.

#### 14 **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.

#### 15 **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 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, ensuring that the Affordable Housing is pepper-potted throughout the Application Site and not segregated from the Market Housing;
- (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; and
- (d) the form of Shared Ownership Lease to be used for any Disposals of the Shared Ownership Housing (if applicable);

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

**"Affordable Housing Units"** means the thirty eight (38) Dwellings to be constructed on the Application Site pursuant to the Planning Permission in accordance with the Affordable Housing Scheme to be approved by the Council pursuant to paragraph 2.4 of this Schedule;

**"Agreed Mix"** means subject to and in accordance with Paragraph 2.3 of this Schedule, 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;

**"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;

**"Homes England"** means Homes England or any bodies undertaking the existing functions of Homes England within the meaning of Part 2 of the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Act) or any successor organisation;

**"Household(s)"** means any person or persons who are living together as a single household;

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

**"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 a Registered Provider of Social Housing 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"** and **"Market Housing"** shall be construed accordingly;

**"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 the agreements in the form appended at Appendix 3 with such amendments as may be reasonably agreed between the Council and the relevant RPSH;

**"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 the Regulator and as approved by the Council 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;

**"Regulator"** means Homes England or the Regulator of Social Housing established pursuant to Part 2 of the Housing and Regeneration Act 2008 or any similar future authority (including any statutory successor) carrying on substantially the same regulatory or supervisory functions;

**"Retained Equity"** means the proportion of the Market Value in a Shared Ownership Housing Unit 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 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 Unit at a minimum of 25% and a maximum of 75% 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 Unit(s)"** and **"Shared Ownership Lease"** shall be interpreted accordingly;

**"Social Rented Housing"** means Affordable Housing which is managed by local authorities and 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 Social Rented Housing (or its equivalent) as determined through the National Rent Regime and published from time to time by the Regulator (or such other body as may replace the Regulator, having responsibility for setting target rents for social housing); and

**"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**

The Owner covenants 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 Thirty eight (38) (equating to 30%) of the Dwellings permitted by the Planning Permission shall be constructed and retained as Affordable Housing Units in accordance with the approved Affordable Housing Scheme.
- 2.3 The Affordable Housing Units shall comprise:
  - 2.3.1 8 x 1 bedroom Shared Ownership Housing Units;
  - 2.3.2 11 x 2 bedroom Shared Ownership Housing Units;
  - 2.3.3 8 x 1 bedroom Social Rented Housing Units; and
  - 2.3.4 11 x 2 bedroom Social Rented Housing Units.
- 2.4 To 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 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**

The Owner covenants 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 the terms set out in this Schedule.

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

The Owner covenants that prior to Occupation of the Development, the Affordable Housing Units shall be Transferred to the RPSH in accordance with this Agreement and on terms that accord with the Homes England funding requirements current at the date of the construction of the Affordable Housing Units.

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

The Owner covenants that not less than 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 forthwith and not to Commence Development without first having commenced the said negotiations.

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

The Owner covenants that the Affordable Housing Units shall be constructed and Completed in accordance with Building Regulations 2010 (as amended) and any requirements by Homes England or the Regulator from time to time.

#### 7 **Terms of Affordable Housing transfer**

- 7.1 The Owner covenants that where any Affordable Housing Units are Transferred to a RPSH, it shall be:
  - 7.1.1 with vacant possession;
  - 7.1.2 on such terms as may be agreed between the Owner and the RPSH concerned;
  - 7.1.3 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;
  - 7.1.4 in a Serviced Condition.
- 7.2 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.

## 8 Occupation of the Affordable Housing

8.1 Subject to paragraph 9.2 below the Owner shall not permit or otherwise allow any of the Affordable Housing Units to be Occupied otherwise than:

8.1.1 as the sole private residence of the Occupier;

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

8.1.3 unless the RPSH is the Council, in accordance with the Council's Nominations Agreement to be entered into by the Council and the RPSH.

8.2 The Affordable Housing Units shall not be let or occupied other than in accordance with the Affordable Housing Scheme in perpetuity.

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

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

8.4.1 The Disposal shall not involve the sale of an equity stake of less than 25% or more than 75%; and

8.4.2 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 RPSH Mortgagee Disposal

9.1 The affordable housing provisions in Schedule 1 of this Agreement shall not be binding on a mortgagee or chargee or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a **Receiver**) of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

9.1.1 such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of three (3) months from the date of the written notice to complete a disposal of the Affordable Housing Units to another RPSH or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and

9.1.2 if such disposal has not completed within the three (3) month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Units free from the affordable housing provisions in this Agreement which provisions shall determine absolutely.

9.2 The provisions of this Schedule shall:

- 9.2.1 cease to apply to any part or parts of the property which are disposed of in accordance with paragraph 9.1.2;
- 9.2.2 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;
- 9.2.3 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;
- 9.2.4 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.

## 10 **Proceeds of Sale Arising from Sale of Affordable Housing**

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

- 10.1.1 a tenant's right to buy; or
- 10.1.2 a tenant's right to acquire (including any share of their Affordable Housing Unit);  
or
- 10.1.3 upon the sale of a share in each Affordable Housing Unit allocated for Shared Ownership Housing following the exercise of Staircasing rights;

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 mortgagee or chargee of the Affordable Housing Unit which shall always take priority.

## Schedule 2

### Obligations to the County

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

**"Bus Stop Contribution"** means the sum of twenty thousand pounds (£20,000) (index linked as provided for in clause 10.1 of this Agreement) towards the provision of real time display boards at existing bus stops in the vicinity of the Development;

**"County Contributions"** means the Bus Stop Contribution, the Library Contribution, the Primary Education Contribution, the Secondary Education Contribution, the Sustainable Transport Contribution, the Travel Plan Evaluation and Support Contribution and the Youth Services Contribution;

**"Highway Works"** means a scheme of works for the creation of a new vehicular access off Broadwater Road, Welwyn Garden City, Hertfordshire pursuant to an agreement with the County under section 278 of the Highways Act 1980;

**"Housing Tenure Mix"** means as set out in the table below:

<b>Beds</b>	<b>Tenure</b>	<b>Number</b>
1 Bed	Social Rented Flats	8
	Shared Ownership Flats	8
	Market Housing Flats	35
2 Beds	Social Rented Flats	11
	Shared Ownership Flats	11
	Market Housing Flats	55
Total		<b>128</b>

**"Library Contribution"** means the sum of thirteen thousand and thirty one pounds (£13,031) however, should the size type tenure and/or total number of dwellings differ from the Housing Tenure Mix any contribution due will be calculated in accordance with the table at paragraph 4 of this Second Schedule (in either case index linked as provided for in clause 10.1 of this Agreement) towards enhancement and improvement of Welwyn Garden City Library;

**"Primary Education Contribution"** means the sum of seventy one thousand and forty four pounds (£71,044) however, should the size type tenure and/or total number of dwellings differ from the Housing Tenure Mix any contribution due will be calculated in accordance with the table at paragraph 4 of this Second Schedule (in either case index linked as provided for in clause 10.1 of this Agreement) towards the expansion of Watchlytes Primary School;

**"Secondary Education Contribution"** means the sum of thirty four thousand three hundred and eight pounds (£34,308) however, should the size type tenure and/or total number of dwellings differ from the Housing Tenure Mix any contribution due will be calculated in accordance with the table at paragraph 4 of this Second Schedule (in either case index linked as provided for in clause 10.1 of this Agreement) towards the expansion of Ridgeway Academy;

**"Sustainable Transport Contribution"** means the sum of sixty-eight thousand pounds (£68,000) (index linked as provided for in clause 10.9 of this Agreement) as a contribution towards the improvement of the junction of Bridgewater Road and Broadwater Road and the promotion of sustainable travel including walking, cycling provisions within the vicinity of the Development;

**"Travel Plan"** means a written plan (submitted to and approved in writing by the County pursuant to paragraph 7.1.1 of this Schedule setting out a scheme to encourage and regulate and promote sustainable travel measures for owners occupiers and visitors to the Development and which may from time to time be varied with the written consent of the County or any amendments or improvements to the Travel Plan notified by the County to the Owner pursuant to paragraph 7.3.4 of this Schedule;

**"Travel Plan Annual Review"** means an annual study reviewing and monitoring the provisions of the Travel Plan (as more fully set out therein) such annual study to be carried out by the Owner and submitted to the County twelve (12) calendar months from the date following the first Occupation and then to be carried out annually on the corresponding calendar month for a period of five (5) years;

**"Travel Plan Champion"** means the person appointed by the Owner and approved by the County who shall be responsible for managing on behalf of the Owner the implementation monitoring progression reporting and review of the Travel Plan in order to achieve its objectives and targets;

**"Travel Plan Evaluation and Support Contribution"** means the sum of six thousand pounds £6,000 (index linked as provided for in Clause 10.8) to be paid to the County towards the marketing and administration of the Travel Plan;

**"Travel Plan Guidance"** means the County's published guidance entitled 'Travel Plan Guidance for Business and Residential Development' or such version current as at the date of submission of the Travel Plan;

**"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 "Water Scheme" shall mean the details of the Dwellings and the water supply to them; and

**"Youth Services Contribution"** means the sum of one thousand and sixty one pounds (£1,061) however, should the size type tenure and/or total number of dwellings differ from the Housing Tenure Mix any contribution due will be calculated in accordance with the table at paragraph 4 of this Second Schedule (in either case index linked as provided for in clause 10.1 of this Agreement) towards increasing the capacity at Welwyn Garden City Young Peoples Centre.

## 2 Financial Contributions

2.1 The Owner hereby covenants with the County:

2.1.1 to pay the County Contributions to the County prior to the Commencement Date; and

2.1.2 not to Commence nor permit Commencement until the County Contributions have been paid in accordance with paragraph 2.1.1 of this Schedule.

## 3 Expenditure in Advance

If prior to the receipt of any of the County Contributions the County incurs any expenditure in providing additional sustainable transport, bus stops, travel plan evaluation and support, library primary education secondary education and/or youth facilities 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 Obligations Table

Bedrooms*	1	2	3	4	5+	1	2	3
	<b>HOUSES Market &amp; other</b>					<b>FLATS Market &amp; other</b>		
Primary education	£231	£1,036	£2,469	£3,721	£4,692	£93	£816	£1,392
Secondary education	£263	£802	£2,561	£4,423	£5,662	£47	£444	£1,677
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>		
Primary education	£247	£2,391	£3,860	£5,048	£5,673	£44	£1,167	£2,524
Secondary education	£62	£450	£1,676	£2,669	£2,405	£14	£261	£1,084
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

## 5 Fire Hydrant Provisions

The Owners hereby covenant with the County:

5.1 to ensure that the Water Scheme provided by the Owners for the Development incorporates fire hydrants in accordance with BS 750 (2012) as reasonably and properly required by the Fire and Rescue Service;

5.2 to prepare and submit the Water Scheme to the Fire and Rescue Service for its written approval prior to Commencement of the construction of any Dwelling to be constructed as part of the Development and not to Commence or permit Commencement of the

Development until the Water Scheme has been submitted to and approved in writing by the Fire and Rescue Service.

- 5.3 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 purposes of fire-fighting by the Fire and Rescue Service;
- 5.4 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 place upon the issue of a certificate of satisfaction by the Chief Fire Officer of the Fire and Rescue Service the issue of which shall not be unreasonably delayed provided that such certificate shall not be issued prior to the issue by the Director of Environment and Infrastructure of the certificate of maintenance for the highways in which the fire hydrants are located;
- 5.5 to ensure that each Dwelling can be 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 prior to Occupation of the Dwelling.
- 5.6 not to Occupy nor cause nor permit Occupation of any building forming part of the Development including any Dwelling until such time as it is served by a fire hydrant that is operational and ready to be used for the purposes of fire-fighting by the Fire and Rescue Service; and
- 5.7 to address any notice to be given to the Fire and Rescue Service to the Water Services Officer, Fire and Rescue Service, 9 Merchant Drive, Mead Lane, Hertford SG13 7BH Telephone 01992 507638.

## 6. **Highway Works**

The Owner hereby covenants with the County:

- 6.1 to complete the Highway Works prior to first Occupation; and
- 6.2 not to Occupy nor permit Occupation of the Development until the Highway Works have been completed in accordance with paragraph 6.1 above.

## 7 **Travel Plan**

The Owner covenants:

- 7.1 prior to Occupation of the Development:
  - 7.1.1 to submit a draft Travel Plan for written approval to the County and obtain such approval and for the avoidance of doubt the Travel Plan shall be based on and accord with the Travel Plan Guidance and shall further contain as many of the provisions of the Travel Plan Guidance as in the opinion of the County are appropriate to the nature of the Development;
  - 7.1.2 to nominate a Travel Plan Champion for written approval of the County and obtain such approval and such nomination shall include contact details full particulars and curriculum



vitae of the proposed Travel Plan Champion and the nature of their relationship to the Owner; and

- 7.1.3 to appoint and retain the Travel Plan Champion at its own expense which retention shall endure throughout the duration of the Travel Plan.
- 7.2 not to Occupy nor cause nor permit Occupation of the Development until the Travel Plan has been submitted to and approved in writing by the County.
- 7.3 at all times during Occupation of the Development to:
  - 7.3.1 comply with the terms of the approved Travel Plan including but not limited to implementing any actions by any dates specified in the Travel Plan;
  - 7.3.2 promote and publicise the approved Travel Plan to owners occupiers and visitors to the Development;
  - 7.3.3 implement the Travel Plan by the dates or within the time limits set out in the Travel Plan;
  - 7.3.4 carry out the Travel Plan Annual Review and submit a written report setting out the findings of such review to the County within three (3) calendar months from the dates of each Travel Plan Annual Review such report shall include (but shall not be limited to) recommendations for amendments or improvements to the approved Travel Plan and whether or not the objective of the Travel Plan have been achieved;
  - 7.3.5 comply with any variations or amendments to the Travel Plan permitted by this Agreement which shall in addition include any amendments or improvements reasonably required by the County following review of the report submitted pursuant to paragraph 7.3.4 above and notified in writing to the Owner;
  - 7.3.6 to ensure that they will include in any transfer tenant's lease or occupier's licence of any part or parts of the Application Site a covenant that the purchaser tenant or occupier will implement the approved Travel Plan for such part or parts of the Application Site and further that they will use all reasonable endeavours to enforce such obligation against any such purchaser tenant or occupier;
  - 7.3.7 within twenty (20) Working Days of the transfer or letting of the Application Site or any part or parts thereof they will procure the delivery to the County of a notice giving the following details:
    - (a) the name and address of the purchaser and/or tenant;
    - (b) a description of the premises transferred or demised;
    - (c) the length of the term; and
    - (d) a sufficient extract of the transfer or lease setting out the terms of the covenant expressed in favour of the County in relation to the approved Travel Plan.

### Schedule 3

#### Council Financial Contributions

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

**General Medical Services Contribution** means the sum of ninety thousand five hundred and ninety eight pounds and eighty one pence (£90,598.81) (index linked as provided for in clause 10.6 of this Agreement) towards the cost of extending and reconfiguring the existing Lister House, Wrafton House and Burvill House surgeries to enable increasing patient capacity;

**Indoor Sports Facilities Contribution** means the sum of eighty nine thousand nine hundred and three pounds (£89,903) (index linked as provided for in clause 10.5 of this Agreement) towards the cost of:

- (a) building a new indoor bowls facility at the King George V in Welwyn Garden City or other appropriate site within the borough (in the sum of five thousand and seventy nine pounds (£5,079));
- (b) either improving and/or renovating the indoor sports halls at Stanborough School in Welwyn Garden City including new equipment, flooring, changing facilities and redecorating (in the sum of forty one thousand seven hundred and sixty four pounds (£41,764)); and
- (c) either improving and/or renovating the main changing village area (including new changing cubicles, wall tiling and false ceiling heights) at the Hatfield Swim Centre (in the sum of forty three thousand and sixty pounds (£43,060));

**Outdoor Sports Facilities Contribution** means the sum of eight thousand two hundred and sixteen pounds (£8,216) (index linked as provided for in clause 10.5 of this Agreement) towards the enhancement and improvement of 3G Artificial Grass pitch at the Welwyn Garden City Football Club;

**Play Facilities Contribution** means the sum of thirty three thousand nine hundred and twenty nine pounds and sixty pence (£33,929.60) (index linked as provided for in clause 10.4 of this Agreement) towards the towards improvement and or enhancement of the play area and equipment at the King George V Playing Fields in Welwyn Garden City;

**Public Open Space Contribution** means twelve thousand nine hundred and thirty five pounds and sixty-six pence (£12,935.66) (index linked as provided for in clause 10.4 of this Agreement) towards enhancing biodiversity by machine planting bulbs and wildflowers into the amenity grass areas at the Woodhall Community Centre in Welwyn Garden City; and

**Waste and Recycling Strategy** means a strategy for securing the procurement and use of waste and recycling bins which are compatible with the Council's waste disposal vehicles.

## 2 **Contributions**

The Owner covenants with the Council:

- 2.1 to pay to the Council the General Medical Services Contribution, the Indoor Sports Facilities Contribution, the Outdoor Sports Facilities Contribution, the Play Facilities Contribution and the Public Open Space Contribution prior to the Commencement Date; and
- 2.2 not to Commence or cause or permit Commencement of Development until the General Medical Services Contribution, the Indoor Sports Facilities Contribution, the Outdoor Sports Facilities Contribution, the Play Facilities Contribution and the Public Open Space Contribution have been paid to the Council.

## 3 **Expenditure in Advance**

- 3.1 If prior to the receipt of any of the contributions referred to in paragraphs 2.1 of this Schedule (the **Contribution(s)**) the Council, any other relevant statutory authority and/or any body which is allocated money pursuant to clause 6.3.3 of this Agreement incurs any expenditure in providing or enhancing facilities or services pursuant to any Contributions the need for which arises from or in anticipation of the Development then the recipient of the Contribution may immediately following receipt deduct from it such expenditure incurred.

## 4 **Waste and Recycling**

- 4.1 Prior to Occupation to submit a Waste and Recycling Strategy to the Council for its written approval and not to Occupy or use or permit Occupation or use of the Development until the Waste and Recycling Strategy has been approved by the Council in writing.
- 4.2 For the lifetime of the Development, not to permit Occupation of the Development other than in accordance with the Waste and Recycling Strategy approved by the Council pursuant to paragraph 4.1 above as may be varied from time to time with the Council's written approval.

EXECUTED (but not delivered until the date hereof) AS A DEED by affixing THE COMMON SEAL of  
**HERTFORDSHIRE COUNTY COUNCIL**

in the presence of



Head of  
Commercial Law

26/39/2021



EXECUTED (but not delivered until the date hereof) AS A DEED by affixing THE COMMON SEAL of  
**WELWYN HATFIELD BOROUGH COUNCIL**

in the presence of



Legal Services Manager

Authorised Officer

29.4.20



EXECUTED (but not delivered until the date hereof) AS A DEED by affixing THE COMMON SEAL of  
**HIGHTOWN HOUSING ASSOCIATION LIMITED**

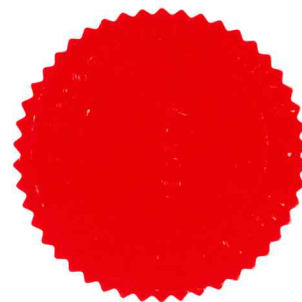
in the presence of:



Authorised Signatory



Authorised Signatory *SECRETARY*



**Appendix 1 (Form of Notice)**

**Proforma Event Notification and Payment**

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

DATED .....

MADE BETWEEN .....

PLANNING PERMISSION REFERENCE: 6/2019/3024/MAJ

HCC DU REFERENCE: 15056

SITE ADDRESS .....

SITE OWNER DETAILS:

Name: .....

Contact Name: .....

Address: .....

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

Email: .....

EVENTS BEING NOTIFIED

Commencement Date – date:

Occupation of Development (Number if relevant) – date:

Completion 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 Library Contribution	X £	Y £	Z £	Y + Z £	Herts County Council

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: **15056**
  
- b) The Head of Planning  
Welwyn Hatfield Borough Council  
Council Offices  
The Campus  
Welwyn Garden City  
Herts AL8 6AE  
Ref: 6/2019/3024/MAJ

## Appendix 2

### The Plan



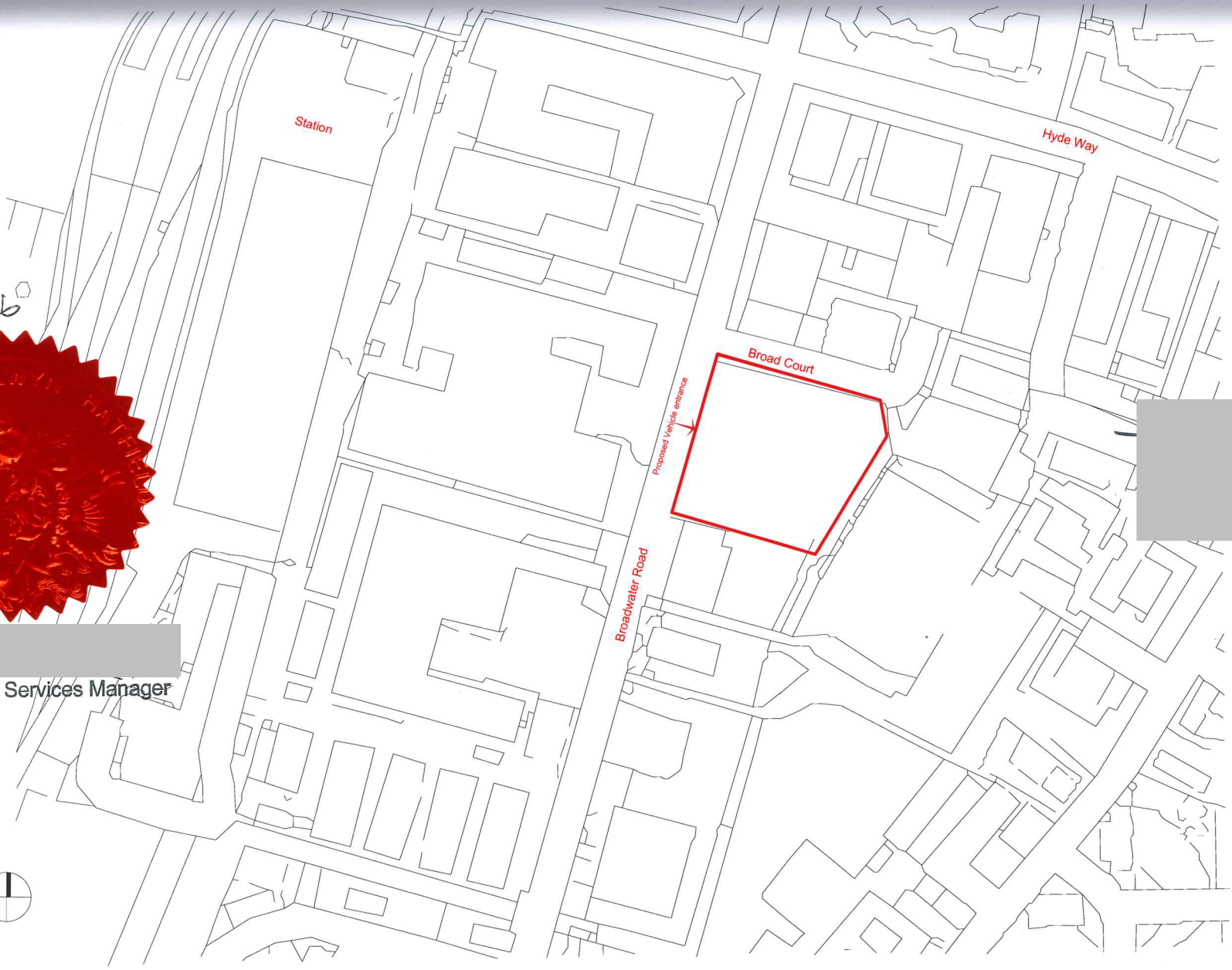
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Legal Services Manager



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Issue for Planning 04.12.19

JP	JD	JD
60193	SEPT 19	1 : 1000 @ A1

**McBains**

McBains Ltd  
5th Fl. 26 Finsbury Square London EC2A 1DS  
+44 (0)20 7785 7900 mcbains.co.uk

Client  
Hightown Housing Association

Project  
29 Broadwater Road  
Welwyn Garden City

Drawing Title  
Site Location Plan

**ARCHITECTURE**

BRW01 - MCB - ZZ - ZZ - DR - A - 0201 DS - P1

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

DATED \_\_\_\_\_ 202

(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



**“Target Rent”** means target rents for Social Rent as determined through the National Rent Regime and published from time to time by Homes England (or such other body as shall replace it, having responsibility for setting target rents for social housing);

**"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 Properties shall only be occupied on a tenancy agreement as determined by the RP's tenancy policy at a rent which is no higher than the Target Rent 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 as necessary in accordance with Homes England'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 a Property 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 the nomination will otherwise 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 the Council approved allocations scheme at the time of nomination.
6. The RP will notify the Council by using the standard Nomination Request Form (Appendix 2) submitted the Council's computerised system 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. The Council will notify the RP within seven working days of receipt of the email notification from the RP referred to in clause 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:
  - a) the Nominee refuses or fails to accept the offer of accommodation within **four** working days of receipt of the offer;
  - b) the Nominee refuses or fails to sign a tenancy agreement within **ten** working days of receipt of the tenancy agreement; or
  - c) the RP refuses to accept the nomination on reasonable grounds the RP must notify the Council as soon as possible and the Council can then exercise further Nomination Rights in respect of the Property within the time period as set out in clause 7;

then the provisions of clauses 7 and 8 will be repeated as often as necessary until a letting to a Nominee is achieved (subject to the provisions of clause 10).

9. The RP shall notify the Council by email of the outcome of the nomination within five working days and if the Nominee accepts the offer of a tenancy agreement the RP must within five working days notify the 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 the Council fails without reasonable cause to exercise a Nomination Right within ten working days of receiving the notification referred to in clause 6 or clause 8; or
  - 10.2 The Council has given written notice within the seven working days period referred to in clause 7 that it does not wish to exercise its Nomination Right on that particular occasion; or
  - 10.3 The RP having complied with its obligations in clauses 6, 7 and 8, a Nominee has not entered into a tenancy agreement of the Property within 20 working days following the RP's notification of the vacancy pursuant to clause 6.
11. The RP shall on request from the Council made not more often than once a year supply to the Council full details of its letting policy rules and its letting activity using the agreed Lettings Return Form (Appendix 5).
  12. The terms of this Agreement are not binding on:
    - 12.1 a mortgagee of the Land or any part of it or a Property (including a security trustee or other chargee);
    - 12.2 a receiver appointed by such mortgagee in exercising a power of sale or a housing administrator;
    - 12.3 anyone deriving title through such a mortgagee or receiver or administrator;
    - 12.4 a tenant of the RP who has acquired a Property under a statutory right to acquire or right to buy or his mortgagees and chargees and their respective 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>	<b>YES</b> <input type="checkbox"/> <b>NO</b> <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</b> <input type="checkbox"/> <b>NO</b> <input type="checkbox"/>
<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</b> <input type="checkbox"/> <b>NO</b> <input type="checkbox"/>
<b>COUNCIL TAX BAND?</b>	
<b>SUITABLE FOR PETS?</b>	<b>YES</b> <input type="checkbox"/> <b>NO</b> <input type="checkbox"/>
<b>TYPE OF TENANCY (i.e. Shared Ownership, Key workers, Assured Tenancy etc.)</b>	
<b>DOES A LOCAL LETTINGS POLICY APPLY?</b>	<b>YES</b> <input type="checkbox"/> <b>NO</b> <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**

### APPENDIX 3

### NOMINATION DETAILS FORM

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

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:

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

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 Addresses	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 Addresses	Source of Nomination	Ethnic Origin




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

Authorised Signatory

Authorised Signatory

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

Authorised Officer

DATED \_\_\_\_\_ 202

(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 \_\_\_\_\_ 202[ ] BETWEEN (xxxxxxx RP NAME) (Registered Society No. xxxxxx) whose registered office is at (xxxxxxxxx RP Address) (the RP) 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 Nominee's income and savings should be appropriate to purchase an the initial 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 for purchase by 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"** means the organisation appointed from time to time by Homes England (or its successor) 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 xxxxxxxx (insert unit type and mix) to be erected on the Land and “Property” means any one of such Properties.

**“the RP”** means [person named as RP at the beginning of this agreement] being a registered provider of social housing as defined within the provisions of the Housing and Regeneration Act 2008 and includes its successors in title.

**“Shared Ownership”** means a Property available for sale under a Shared Ownership Lease.

**“Shared Ownership Lease”** means the Homes England 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.

**“Welwyn Hatfield Housing Allocation Policy”** means advertising properties (with details of eligibility) giving applicants the ability to choose where they want to live. Shortlisting is based on the applicant’s age, household size and make up, the applicant’s priority banding on the Housing Needs Register and the date the applicant was awarded a priority banding.

**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.
3. Whenever any Property becomes Void the RP shall ensure that persons who meet the Criteria (if any) are prioritised and offered first refusal of the assignment of a Shared Ownership Lease of the Property, 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 Property is available for sale and 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 entered into by the Help to Buy Agent with the RP (if any).
- 6.1 The RP shall:
  - market the Properties for a period of 3 months in accordance with the Local Priorities;

- during such 3 month period comply with the procedures for identifying purchasers of 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 for a period of 3 months.
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 the leaseholder under the 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 RP'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 8 inclusive shall be carried out in respect of each Property.
  10. The parties agree that in the event of any conflict between the provisions of this agreement and the provisions of the relevant Shared Ownership Lease relating to a tenant of the RP, the provisions of the Shared Ownership Lease shall prevail.
  11. 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).
  12. The terms of this Agreement are not binding on:
    - 112.1 a mortgagee of the Land or any part of it or a Property (including a security trustee or other chargee);
    - 12.2 a receiver appointed by such mortgagee or chargee in exercising a power of sale or a housing administrator;
    - 12.3 anyone deriving title through such a mortgagee chargee or receiver or administrator;

- 12.4 a tenant of the RP who has acquired a dwelling under a statutory right to acquire and his successors in title;
- 12.5 a tenant of the RP who has Fully Staircased under a Shared Ownership Lease of the Property and his mortgagees and chargees and their respective successors in title.
- 13 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.
14. The ethnic origin of nominated households will be monitored by the RP.
- 14.1 Where monitoring reveals that there could be discrimination the RP and Council will work together to take positive action to remedy this.
15. This Agreement may be varied at any time by written agreement of both parties.
- 16.1 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.
- 16.2 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 Community and Housing Strategy	Housing Allocations Manager
RP	Sales Manager	Director of Development

- 16.3 Any dispute which cannot be resolved in accordance with clause 16.2 may be referred by either party to an expert agreed between the parties or failing agreement appointed on the application of either party 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.



- 16.4 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.
- 16.5 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 16.2 to 16.3 above save that nothing in this Clause 16 shall prevent either party from applying to the court at any time for injunctive or interim relief.
- 17 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 and sealed 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 have a recognised need to move in accordance with the Welwyn Hatfield Housing Allocation Policy; or
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 have a recognised need to move in accordance with the Welwyn Hatfield Housing Allocation Policy.

### **Local Connection**

A person who meets one of the following criteria:

- (a) permanently resident in the Borough for five years or more;
- (b) close relative (to include parent, sibling and/or adult child) who has lived in the Borough for more than ten years;
- (c) permanent employment in the Borough for at least 5 years and a minimum of 16 hours a week;
- (d) an exceptional reason (to be agreed for each case); or
- (e) Persons who are serving in the regular forces or have done so in the five years preceding their application do not have to fulfil our usual local connection criteria;

and 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  
(Registered Provider name)  
In the presence of:-

Authorised Signatory

Authorised Signatory

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

Authorised Officer