

*The Sixth day of August*

2021

(1) THE COUNCIL OF THE BOROUGH OF BROXBOURNE

and

(2) STONEBOND PROPERTIES (CHELMSFORD) LIMITED

and

(3) STEPHEN JOHN LAMBE AND JOHN JOSEPH RAFFERTY AND DAVID SYNNOTT

SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

PLANNING OBLIGATION BY DEED OF AGREEMENT

relating to

Land At The Junction Of Newgatestreet Road & St James Road Goffs Oak

PLANNING APPLICATION NUMBER 07/20/1220/F

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THIS AGREEMENT is dated *The Sixth day of August* 2021

**BETWEEN**

- (1) **THE COUNCIL OF THE BOROUGH OF BROXBOURNE** of Bishops College Churchgate Cheshunt Hertfordshire EN8 9XJ (the "Council");
- (2) **STONEBOND PROPERTIES (CHELMSFORD) LIMITED** incorporated and registered in England and Wales with company number 05410293 whose registered office is at Stonebond House, 132 - 136 New London Road, Chelmsford, Essex, CM2 0RG (the "Applicant"); and
- (3) **STEPHEN JOHN LAMBE** of Stonehaven, Ballymadrough, Donabate, County Dublin, Ireland and **JOHN JOSEPH RAFFERTY** of 1 Reed Place, Bloomfield Road, Harpenden AL5 4DE and **DAVID SYNNOTT** of 7 Eastmoor Court, Eastmoor Park, Harpenden AL5 1BS (the "Owners")

**BACKGROUND**

- (A) The Council is the local planning authority and local highway authority and the housing authority for the purposes of the 1990 Act and the Highways Act 1980 for the area within which the Site is situated.
- (B) The Owners are the registered proprietor of the Site under title number HD579561.
- (C) The Applicant entered into a sale and purchase agreement dated 28th August 2019 with the Owners to purchase the Site and accordingly the Applicant has an interest in the Site.
- (D) The Applicant applied to the Council to develop the Site in accordance with the Application and the Owners are willing to enter into this Agreement pursuant to the provisions of section 106 of the 1990 Act in order to facilitate the Development.
- (E) The Council has resolved to grant the Permission subject to completion of this Agreement.

**TERMS AGREED**

**1. Definitions and interpretation**

1.1 In this Agreement the following expressions shall unless the context otherwise requires have the following meanings:

**"1990 Act"** the Town and Country Planning Act 1990 as amended;

**"Acceptance Notice"** the duplicate of an Offer Notice signed and dated by the Council (or its Nominated Operator).

<b>"Affordable Housing"</b>	means housing provided to eligible households whose needs are not met by the market in accordance with the definition of Affordable Housing in Annex 2 of the National Planning Policy Framework (as revised in February 2019 or any successor policy or legislation in respect of affordable housing) and is to comprise of Affordable Rented Housing and Shared Ownership Housing
<b>"Affordable Housing Land"</b>	means the land to be provided for the Affordable Housing Units
<b>"Affordable Housing Units"</b>	means not less than 40% of the total housing to be managed or owned by a Registered Provider and/or the Council which are to be constructed as Affordable Housing and to comprise the Affordable Rented Units and the Shared Ownership Units.
<b>"Affordable Rented Housing"</b>	not less than seven Affordable Housing Units (to be comprised of: at least five two bedroom flats; and at least two one bedroom maisonette flats) including the Housing Units shown edged and hatched orange on Plan 3 which are to be let to households considered by the Registered Provider and/or the Council to be in housing need and at rents which including service charge do not exceed the higher of the maximum local housing allowance (or whatever similar allowance or housing benefit scheme that may replace it from time to time) for the area or 80 per cent of local market rents and <b>Affordable Rented Housing Units</b> shall be construed accordingly
<b>"Application"</b>	the detailed planning application submitted by the Applicant to the Council to carry out the Development upon the Site and allocated the reference number 07/20/1220/F by the Council;
<b>"Certificate of Final Completion"</b>	a certificate issued by the Owners' architect or engineer (as appropriate) following the end of the Maintenance Period to the effect that the Managed Areas are complete and all defects which have become manifest since the issue of a Certificate of Practical Completion have been made good
<b>"Certificate of Practical Completion"</b>	a certificate of practical completion issued by the Owners' architect or engineer (as appropriate) to the effect that the relevant works to lay out the Managed Areas have been completed in all respects

**"Chargee"**

any mortgagee or chargee of the Registered Provider of the whole or any part of the Affordable Housing Units or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed by such mortgagee or chargee and any other person appointed by such mortgagee or chargee under any security documentation to enable any such mortgagee or chargee to realise its security and any administrator (howsoever appointed) including a housing administrator

**"Commencement of the Development"**

means the date on which any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development beings to be carried out other than (for the purposes of this Agreement and no other purposes) operations consisting of site clearance, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements, highway access and the expressions 'commence', 'commences', 'Commencement' and 'commenced' shall be construed accordingly

**"Commutated Sum"**

a payment by the Owner in the sum of £24,000.00 (twenty four thousand pounds) Index Linked equivalent to the costs of maintaining and repairing of the Open Space Area for a period of ten (10) years

**"Contributions"**

the Education Contribution, the Health Service Contribution, the Highway Improvement Contribution, the Library Contribution, the Sustainable Transport Contribution, the Youth Service Contribution and/or the Recreational and Sporting Community Contribution (or any of them)

**"Development"**

means the construction of 38 dwellings, creation of public open space, formation of access, hard and soft landscaping, car parking and associated works in accordance with the Permission or subject to clause 6.16 any Section 73 Permission

**"Educational  
Contribution"**

a financial contribution for the sum of £ 663,190.00 (six hundred and sixty three thousand one hundred and ninety pounds) Index Linked which is payable in respect of educational facilities for the benefit of residents of Goffs Oak and West Cheshunt as herein after provided towards the cost of educational facilities serving the locality of the Development

**"Estate Management  
Scheme"**

a scheme setting out the detailed arrangements for the management and maintenance in perpetuity of the Managed Areas to the satisfaction of the Council which scheme shall include details of:

- (a) the responsibilities of the Management Company and its management structure;
- (b) in the case of the Management Company copies of its memorandum and articles of association;
- (c) the proposals for the long term funding of the Management Company including the setting and collection of the service charges and any sinking/reserve fund and evidence of the covenants on occupiers of the Development to pay service charge in respect of the Managed Areas to the Management Company;
- (d) full details of the maintenance specification for the Managed Areas and the management programme (including frequency) and standards of maintenance for implementing those specifications to be managed by the Management Company provided that the details submitted may be amended or varied by the written agreement of the Council; and
- (e) full details of the proposed maintenance regime of those parts of the Land which will remain outside of the private curtilage of the Housing Units but which may not fall within the management of the Management Company including but not limited to any pumping station(s) and parking courts and or spaces and car parks

**"Fire and Rescue Service"**

means any part of Hertfordshire County Council known as the Hertfordshire Fire and Rescue Service

**"Health Service Contribution"**

a financial contribution in the sum of £23,523.00 (twenty thousand three hundred and twenty three pounds) Index Linked to be paid to and expended by the Council toward health improvements that would benefit the residents of Goffs Oak and West Cheshunt

**"Highway Improvements Contribution"**

a financial contribution in the sum of £ 65,595.00 (sixty five thousand five hundred and ninety five pounds) Index Linked to be paid to and expended by the Council toward highway improvements that would benefit the residents of Goffs Oak and West Cheshunt;

**"Housing Unit"**

any residential dwelling to be erected on the Site pursuant to the Permission including the Affordable Housing Units and the Open Market Units and "Housing Units" shall be construed accordingly;

**"Index"**

the Retail Price Index (RPI) as published by the office of National statistics or such other index or indices as identified by the Council if the RPI index ceases;

**"Index Linked"**

means adjusted in line with movements in the Index between the date of this Deed and the date that the particular payment falls due;

**"Interest"**

interest at 3 per cent over the base rate for the time being of the Co-operative Bank from the date payment became due

**"Library Contribution"**

a financial contribution in the sum of £6,216.00 (six thousand two hundred and sixteen pounds) Index Linked to be paid to and expended by the Council toward the improvements to Goffs Oak Library

**"Maintenance Period"**

a period of 12 months starting from the date of the issue of the Certificate of Practical Completion or the Open Space Certificate of Practical Completion (as appropriate)

**“Managed Areas”**

all those areas located on the Site that are intended to remain in the ownership of the Owners or their appointed Management Company and which are intended to be used in common by the owners and occupiers of the Development and as identified as part of the Estate Management Scheme and which are shown hatched green and cross hatched in purple on Plan 2 and being:

- (a) open space other than the Open Space Area;
- (b) all attenuation/detention basins/SUDS so far as they are not adopted and maintained at the public expense;
- (c) LEAP/LAP;
- (d) unadopted highways;
- (e) planting; and
- (f) any other areas outside of private curtilage

but excluding:

- (a) any apartment blocks including the communal areas within or exclusively serving the apartment blocks; and
- (b) any shared accessways which are to be transferred to and maintained by the owners of the Housing Units

**“Management Company”**

a fully constituted residents’ management company incorporated and appointed to manage and maintain the Managed Areas in accordance with the Estate Management Scheme in perpetuity and which is a private limited company to be established by the Owners or an existing company (registered at Companies House) and which for the avoidance of doubt can be the Owners;

**“Nominations Agreement”**

an agreement made between the Registered Provider and the Council ~~materially~~ in the form specified and contained in appendix 4 ~~or in such other form as required by the Council and/or the Registered Provider and/or the Owner (acting reasonably and without delay)~~

**“Nominated Operator”**

any corporate entity or other organisation nominated by the Council in accordance with the Open Space Management Scheme to accept the transfer of the Open Space Area in accordance with paragraph 2 of Schedule 1

*with such revisions as may be required by a Registered Provider and which approved by the Council (acting reasonably in all the circumstances)*



**"Occupation"**

beneficial occupation of the Development for the purposes authorised by the Permission (as evidenced by Council Tax records) other than occupation for the purposes of construction display fitting out security marketing or repair and "Occupy" and "Occupied" shall be construed accordingly;

**"Offer Notice"**

a notice from the Owners to the Council containing the information required under paragraph 2 of Schedule 1, including but not limited to:

- (a) the form of proposed transfer deed; and
- (b) the Owners' solicitor's contact details.

**"Open Market Units"**

means all those Housing Units forming part of the Development which are not Affordable Housing Units

**"Open Space Area"**

the open space area on the Site to be constructed as a part of the Development and being the area shown edged blue on Plan 2.

**"Open Space Completion Certificate"**

means a certificate or certificates in writing relating to the Open Space Area issued by the Council that confirms that the Open Space Area has been laid out in accordance with the approved Open Space Scheme

**"Open Space Final Completion Certificate"**

means a certificate or certificates served in writing by the Council pursuant to paragraph 2.4 of Schedule 1 that confirms that the Open Space Area has been maintained during the Maintenance Period in accordance with the Open Space Management Plan

**"Open Space Management Plan"**

means the plan for the management and maintenance of: the Open Space Area including for the avoidance of doubt (i) any proposed rules and regulations for use of the Open Space Area including a commitment for securing unrestricted Open Space Use (ii) provisions for the rectification of any material defects in any area of the Open Space Area until the completion of the relevant transfer of the Open Space to the Council or the Nominated Operator or the Management Company;

**"Open Space Scheme"**

a scheme to be submitted to the Council for approval dealing with the provision of the Open Space Area and which scheme shall comprise details such as decontamination (if necessary), design, layout including any planting and profiling, open space furniture and lighting;

**"Open Space Use"**

use as an open piece of land, with no buildings, which is open to the public and unrestricted in times of use;

**"Permission"**

the planning permission for the Development pursuant to the Application;

**"Plan 1"**

the plan as shown at appendix 1;

**"Plan 2"**

the plan as shown at appendix 2;

**"Plan 3"**

the plan as shown at appendix 3;

**"Prescribed Period"**

20 Working Days of service of the Offer Notice.

**"Protected Tenant"**

means any tenant who:

- i. has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit; or
- ii. has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit; or
- iii. has exercised his or her right to staircase up to 100% of the equity in any Shared Ownership Unit.

**"Recreational Sporting and Community Contribution"**

a financial contribution in the sum of £108,571.00 (one hundred and eight thousand five hundred and seventy one pounds) Index Linked to be paid to and expended by the Council towards recreational sporting and community facilities for the benefit of residents of Goffs Oak and West Cheshunt

**"Registered Provider"**

means a registered social landlord within the meaning of Part 1 of the Housing Act 1986 (or any statutory modification re-enactment thereof) and registered with Homes England as regulator of social housing pursuant to section 1 of that Act and the the Housing and Regeneration Act 2008 as nominated by the Council or any other such provider of social housing approved by the Council

**"Section 73 Permission"**

a planning permission granted by the Council pursuant to section 73 of the 1990 Act which modifies deletes replaces or otherwise discharges any condition attached to the Permission;

**"Site"**

land against which this Agreement may be enforced being all that piece or parcel of land with buildings thereon known as land at Land at The Junction Of Newgatestreet Road & St James Road Goffs Oak registered at H M Land Registry with title number HD579561 and shown edged red on Plan 1.

**"Shared Ownership Housing"**

Not less than eight Affordable Housing Units (to be comprised of: at least five two bedroom flats, and at least three three bedroom houses) including the Housing Units shown edged and hatched in blue on Plan 3 to be provided by a Registered Provider by way of a Shared Ownership Lease granted to eligible households whose needs are not met by the market, where the percentage equity share to be marketed is initially between 25% and 75% and the percentage rent payable on the retained equity is not more than 2.75% per annum of the value of the unsold equity and who will make the unsold equity available for sale to the occupant at market value if requested by the occupant and **Shared Ownership Housing Unit** shall be construed accordingly

**"Shared Ownership Lease"**

a lease to be granted for each Shared Ownership Unit for a term of not less than 125 years which shall accord with the requirements of and be consistent with any model shared ownership lease of Homes England (or any statutory successor) relevant at the time of the marketing of the relevant unit

**"Slab Level"**

means top level of concrete slab from which the vertical levels of the building are set out and for the avoidance of doubt any screed; raised floor or floor finishes would be above this level

**"Statutory Undertakers"**

means any gas transporter water or sewerage undertaker electricity supplier or telecommunications operator or similar providing utility services to the Site

**"Sustainable Transport Contribution"**

a financial contribution in the sum of £65,595.00 (sixty five thousand five hundred and ninety five pounds) Index Linked to be paid to and expended by the Council towards sustainable transport measures set out within the Broxboume Transport Strategy and the Broxboume Walking Cycling Strategy for the benefit of residents of Goffs Oak and/or West Cheshunt

**"Unexpended"**

means not spent or committed or allocated to be spent in accordance with the relevant purpose for which the Contribution was paid

**"VAT"**

value added tax payable by virtue of the Value Added Tax Act 1994 or any similar tax levied in addition to or by way of replacement for such value added tax;

**"Water Scheme"**

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

**"Working Day"**

any day which is not a Saturday, Sunday, Christmas Day, Good Friday or a statutory bank holiday;

**"Youth Services Contribution"**

a financial contribution in the sum of £1,565.00 (one thousand five hundred and sixty five pounds) Index Linked to be paid to and expended by the Council towards facilities or services that would benefit the youth residents of Goffs Oak and/or West Cheshunt

- 1.2 The clause headings do not form part of this Agreement and shall not be taken into account in its construction or interpretation and save where otherwise stated any reference to a numbered clause or schedule means the clause or schedule in this Agreement which is so numbered
- 1.3 Any obligations in this Agreement which are or may be deemed to be obligations of one or more persons shall be joint and several obligations on the part of those persons unless the context otherwise requires.
- 1.4 References in this Agreement to statutes bylaws regulations orders and delegated legislation shall include any statute bylaw regulation order or delegated legislation amending re-enacting or made pursuant to the same.

1.5 In this Agreement the expression "the Council" in its capacity as local planning authority and/or housing authority shall include its respective statutory successors or successors in title as the case may be.

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

1.7 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 interchangeably in that matter.

1.8 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.

## 2. Statutory provisions

2.1 This Agreement is made in pursuance of section 106 of the 1990 Act section 111 of the Local Government Act 1972 section 2 of the Local Government Act 2000 and section 1 of the Localism Act 2011 and all other powers and enactments so enabling;

2.2 The covenants restrictions and requirements imposed upon the Owners under this Agreement create planning obligations binding on the Site pursuant to section 106 of the 1990 Act that are enforceable by the Council as the Local Planning Authority.

## 3. Enforcement

3.1 The covenants restrictions and requirements imposed upon the Owners in this Agreement are enforceable not only against the Owners but also (subject to clause 6.9) against their successors in title (and any person corporate or otherwise deriving through or under them) to an interest or legal estate in any part of the Site as if that person had also been an original covenanting party to this Agreement to bind such interest or legal estate

3.2 The Applicant enters into this Agreement solely to consent to the part of the Site that the Applicant has an interest in being bound by this Agreement but the Applicant (subject to clause 4.2) shall have no liability under this Agreement unless or until it becomes successor in title in respect of the Site

## 4. Owners' covenants

4.1 The Owners covenant with the Council to observe and perform their obligations set out in Schedule 1 to this Agreement as planning obligations for the purposes of the 1990 Act.

4.2 The Applicant covenants with the Council that it shall pay to the Council its legal costs incurred in the negotiation, preparation and execution of this Agreement.

**5. Council's covenants**

The Council covenants with the Owners:

- 5.1 That any agreement consent permission expression of satisfaction or other approval to be given by the Council under any provision of this Agreement shall not be unreasonably withheld or delayed.
- 5.2 To use each of the Contributions paid to the Council for the purposes specified in this Agreement for which it is or they are to be paid.
- 5.3 In response to a reasonable written request to do so (by the party that paid the monies) to provide them with evidence to confirm the expenditure of the relevant Contribution.
- 5.4 In response to a written request to do so by the person who paid the monies or their nominee to pay (with Interest for the time the funds are held by the Council) to that person or nominee such amount of the Contributions which remain Unexpended within ten years of their date of receipt by the Council
- 5.5 To comply with paragraph 2 of Schedule 1 in so far as these obligations relate to the Council.

**6. Agreements and declarations**

- 6.1 Nothing in this Agreement confers any rights on any person under the Contract (Rights of Third Parties) Act 1999.
- 6.2 No person shall be liable for a breach of the covenants restrictions or obligations in this Agreement occurring after they have parted irrevocably with all their interest (which in this clause excludes any easement or equitable interest) in the Site but without prejudice to liability for any breach occurring prior to or in connection with the parting of such interest
- 6.3 Save where a Section 73 Permission has been granted and is still extant if the Permission is quashed or revoked in its entirety or expires before the Implementation of the Permission the obligations in this Agreement shall (save for clause 4.2 of this Agreement) cease to have effect
- 6.4 If any provision in this Agreement shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions shall not in any way be deemed by virtue of that fact to be affected or impaired.
- 6.5 Subject to clauses 3, 6.4, 6.9 and 6.10 the covenants and stipulations contained in this Agreement are intended to run with the Site and each and every part, of it and to bind the owners and occupiers of it from time to time and this Agreement shall accordingly be registerable as a local land charge by the Council.
- 6.6 The Council (at the reasonable written request of the Owners at any time after the Owners have complied with an obligation contained in this Agreement or has fully discharged their obligations in this Agreement) is to issue within 10 Working Days of

receipt of such written request written confirmation of compliance or (where appropriate) discharge and (where the context admits) as soon as reasonably practicable cancel the relevant entries made in the register of local land charges in respect of this Agreement.

- 6.7 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Permission or a Section 73 Permission) granted (whether or not on appeal) after the date of this Agreement.
- 6.8 Nothing in this agreement shall be construed as imposing any obligation on any Statutory Undertaker who owns or acquires (and continues to enjoy as such) an interest in the Site solely for the purpose of undertaking their statutory functions.
- 6.9 ~~No obligations, undertakings or liabilities under this Agreement shall be enforceable against an individual purchaser or lessee of a Housing Unit or their mortgagees, chargees or receivers (or their respective successors in title) except for restrictions on the Occupation of the Housing Units or any of them set out in Schedule 1 where on the date of first Occupation of a Housing Unit the linked obligation has fallen due and has not been complied with in full.~~ *MS*
- 6.10 To the extent a Registered Provider (and/or their successors in title) owns all or part of the Affordable Housing Land such Registered Provider shall not be liable as a successor in title to the Owners for any of the obligations herein that are not contained in paragraphs 1.3, 1.5-1.6 of Schedule 2 of this Agreement BUT for the avoidance of doubt this provision shall not apply in respect of any of the planning obligations herein affecting any other part of the Site owned by a Registered Provider which is not the Affordable Housing Land SAVE THAT the provisions of this Agreement shall not bind any Chargee provided that the said mortgagee (or Chargee as the case may be) complies with the provisions set out in paragraph 1.6.1 of Schedule 2 of this Agreement.
- 6.11 IT IS HEREBY AGREED AND DECLARED THAT when the obligations set out in Schedule 1 have been fully complied with the said restrictions on Occupation linked to those obligations shall cease to apply in relation to all the Housing Units
- 6.12 IT IS HEREBY AGREED AND DECLARED THAT save for the obligation at paragraph 1.5 of Schedule 2 an individual purchaser or lessee of an individual Housing Unit or their mortgagee, chargees or receivers shall not be liable to perform any of the covenants and obligations of the Owner in this Agreement and as such it is hereby confirmed that they will have no liability (neither in part nor full) to provide or carry out or pay any of the following: to provide any road or access; nor carry out any works to the highway; nor to pay any sum of money to the Council in connection with this Agreement.

## **6.13 Terms regarding Contributions**

### **6.13.1 Late Payments**

In the event of delay in the payment of any sum under this Agreement interest shall be payable thereon at the annual rate of Interest from the date the sum fell due until the date of actual payment

### **6.13.2 Application of Payments**

6.13.2.1 If prior to the receipt of any of the Contributions herein the Council incurs expenditure in relation to matters of the type or description (and location) to be funded from such contribution the need for which has arisen from or in anticipation of the Development then the Council may following receipt of the relevant contribution deduct that expenditure from the relevant contribution;

6.13.2.2 The Contributions received by the Council shall be deemed to be spent if they have been allocated and/or committed to be spent.

### **6.13.3 Indexation**

6.13.3.1 The Contributions shall be increased by an amount equivalent to the increase in the Index from the date herof until the date on which sum is payable

## **6.14 Change in ownership**

6.14.1 The Owners agree with the Council to give the Council written notice in accordance with Clause 7.1 following any change in ownership of any of its interests in the Site occurring before all the obligations under this Agreement have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan provided that this shall not apply to a change of ownership by way of a disposal of the Site to any Housing Units to individual purchasers or disposals to Statutory Undertakers.

## **6.15 Warranty**

6.15.1 The Owners hereby warrant that the title details cited herein are full and accurate and save as referred to in the title registers relating to Title Number HD579561 and save for the disposal of the Site to the Applicant or any Housing Units to individual purchasers or disposals to Statutory Undertakers no other party (including mortgagees) has a material interest in the Site

## **6.16 Section 73 Permission**

If the Council agrees pursuant to an application under section 73 of the 1990 Act to any variation or release of any condition contained in the Permission or if any such condition



is varied or released following an appeal under section 78 of the 1990 Act the covenants or provisions of this Agreement shall be deemed to bind the Permission (as varied) and to apply in equal terms to the relevant Section 73 Permission PROVIDED THAT the Council shall reserve the right to protect the planning obligations and to require a deed of variation in respect of any such application to be entered into before such Section 73 Permission is issued

6.17 This agreement may be executed in any number of Counter parts, each of which shall constitute an original, but all the Counter parts shall together constitute one agreement.

7. Notices and notification

7.1 Within 5 Working Days (or before) of the occurrence of any of the events listed below the Owners shall notify the Council in writing:

- Commencement of the Development
- Practical Completion of the Development
- The occurrence of Clause 6.14
- The 1<sup>st</sup> Housing Unit reaching Slab Level
- Completion of the Open Space Works
- Occupation of the 1<sup>st</sup> Housing Unit
- Occupation of the 18<sup>th</sup> Housing Unit
- Occupation of 70% of the Housing Units
- Occupation of 90% of the Housing Units
- Occupation of the 37<sup>th</sup> Housing Unit
- Occupation of the 38<sup>th</sup> Housing Unit

7.2 Any notice or other written communication required or authorised to be given under this Agreement shall be deemed to have been validly served or given if delivered by hand or sent by recorded delivery post to the party upon whom it is being served or to whom it is to be given or as otherwise notified for the purpose by notice in writing. To prove such service it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice, consent or approval was properly addressed and delivered into custody of the postal authority in a prepaid first class recorded delivery envelope.

7.3 The notice or other written communication is marked as follows for each recipient:

7.3.1 for the Council it shall be marked for the attention of the Head of Planning and Development reference 07/20/1220/F, or other proper officer as defined within the Local Government Act 1972 as amended for the time being at the address at the head of this Agreement;

7.3.2 for the Owners it shall be addressed to c/o 7 Eastmoor Court, Eastmoor Park, Harpenden, Hertfordshire AL5 1BS at the address shown herein

reference 07/20/1220/F or such other person as may be nominated in writing from time to time by the Owners or its successors in title; and

7.3.3 for the Applicant it shall be addressed to at the address shown herein and marked for the Company Secretary reference 07/20/1220/F or such other person as may be nominated in writing from time to time by the Applicant or its successors in title

## 8. **Jurisdiction**

This Agreement is governed by English law and any dispute connected with this Agreement is subject to the exclusive jurisdiction of the English courts.

## 9. **Delivery**

The provisions of this Agreement (other than this clause and clauses 1, 2, 4.2, 7.1 and 10) shall be of no effect until the:

9.1 grant of the Permission; and

9.2 Commencement of the Development.

## 10. **Dispute provisions**

10.1 In the event of any dispute or difference arising between the parties to this Agreement in respect of any matter contained in this Agreement such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

10.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to clause 10.1 or as to the appropriateness of the professional body then such question may be referred by either party to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.

10.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant 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 after the conclusion of any hearing that takes place or 20 Working Days after he has received any file or written representation.

## SCHEDULE 1

### Covenants and other obligations

#### 1. Contributions

The Owners covenant with the Council as follows:

- 1.1 Prior to the Occupation of the 1<sup>st</sup> Housing Unit the Owners shall pay 50% of the Contributions to the Council
- 1.2 The Owners shall not allow Occupation of any Housing Unit until such time as the payment in paragraph 1.1 above has been made to the Council
- 1.3 Prior to the Occupation of the 19<sup>th</sup> Housing Unit the Owners shall pay the remaining balance of the Contributions to the Council.
- 1.4 The Owners shall not allow Occupation of more than 18 Housing Units until such time as the payment in paragraph 1.3 above has been made to the Council.

#### 2. Open Space

The Owners covenant with the Council as follows:

- 2.1 To submit the Open Space Scheme and the Open Space Management Plan to the Council for approval prior to the Commencement of the Development and not to permit Commencement of the Development until the Open Space Scheme and the Open Space Management Plan have been approved by the Council in writing
- 2.2 The Owners shall complete the laying out of the Open Space Area (as evidenced by the issue of the the Open Space Practical Completion Certificate) prior to the Occupation of more than thirty seven (37) Housing Units or within three (3) months of Occupation of more than 90% of the Housing Units whichever is the earlier and the Owners shall not allow Occupation of more than thirty-seven (37) Housing Units until the Council has issued the Open Space Practical Completion Certificate (or as otherwise reasonably agreed between the Owner and the Council).
- 2.3 Following the provision of the Open Space Area the Owners shall invite the Council in writing to inspect the Open Space Area and the Council shall carry out such inspections within 20 Working Days of the said invite and:
  - 2.3.1 provided that the Open Space Area has been delivered to the Council's reasonable satisfaction; the Council shall issue the Open Space Practical Completion Certificate within 20 Working Days of such inspection.
  - 2.3.2 in the event that the Council identifies any material remedial works reasonably required to be carried out to the Open Space Area during the inspection referred to in paragraph 2.3 above ("**Remedial Works**");

10.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within 10 Working Days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further 10 Working Days.

10.5 The provisions of this clause shall not affect the ability of the Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Agreement and consequential and interim orders and relief.

11. **Mortgagee**

11.1 Any future mortgagee or chargee of the Owners shall have no liability under this Agreement unless it takes possession of all or part of the Site as a mortgagee in possession in which case it too will be bound by the obligations as if it were a person deriving title from the Owners.

In witness whereof this Agreement has been executed by the parties hereto as a Deed and delivered on the day and year first before written.

- 2.3.2.1 the Council shall notify the Owners of Remedial Works within 10 Working Days of the said inspection ("**Remedial Works Notice Period**");
- 2.3.2.2 the Owners shall within three (3) months of receipt of any list of remedial works required to be carried out to the Open Space Area or within the next planting season where this is later;
- 2.3.2.3 the Owners shall invite the Council in writing to re-inspect the Open Space Area;
- 2.3.2.4 the Council shall carry out such inspections within 10 Working Days of the said invite; and
- 2.3.2.5 provided that there are no outstanding Remedial Works to be carried out the Council shall issue the Open Space Practical Completion Certificate within 20 Working Days of such re-inspection,

For the avoidance of doubt; the process at paragraph 2.3.2 shall be repeated as often as is necessary until such time that Open Space Practical Completion Certificate is issued and where the Council fail to notify the Owners within Remedial Works Notice Period, the parties agree that there are no Remedial Works and the Council shall comply with its obligations in paragraph 2.3.1 of Schedule 1.

- 2.4 The Owners hereby covenant with the Council that following the issue of the Open Space Practical Completion Certificate they shall maintain and manage the Open Space Area in accordance with the Open Space Management Plan for the Maintenance Period and at the end of the Maintenance Period the Owners shall invite the Council in writing to inspect the Open Space Area, who will carry out such inspection within 20 Working Days of the said invite and provided that the Open Space Area has been maintained in accordance with the Open Space Management Plan (or as otherwise reasonably agreed between the Owners and the Council) the Council shall issue the Open Space Final Completion Certificate within 20 Working Days of such inspection.
- 2.5 Following the issue of the Open Space Final Completion Certificate the Owners shall within 20 Working Days of the issue of such Certificate serve an Offer Notice on the Council.
- 2.6 The Offer Notice shall be capable of acceptance by the Council (or its Nominated Operator) during the Prescribed Period.
- 2.7 The Council (or its Nominated Operator) may accept the Offer Notice by serving an Acceptance Notice on the Owners at any time within the Prescribed Period and on service of the Acceptance Notice a legally binding contract shall exist for the sale and purchase of the Open Space Area.
- 2.8 In the event that the Council (or its Nominated Operator) serves the Acceptance Notice:

- 2.8.1 the contractual completion date for the transfer of the Open Space Area shall be 20 Working Days after service of the Acceptance Notice;
- 2.8.2 the Owners shall maintain the Open Space Area in accordance with the Open Space Management Plan until such time as the freehold interest in the Open Space Area has been transferred either to the Council or the Nominated Operator
- 2.8.3 the Owners shall pay the Commuted Sum on the actual completion of the transfer of the Open Space Area to the Council (or its Nominated Operator) pursuant to this Schedule
- 2.8.4 the Owners and the Council hereby agree that in the event that the Open Space Area is transferred to the Nominated Operator then the Council shall pass on the Commuted Sum to the said Nominated Operator for use solely towards the management and maintenance of the Open Space Area.
- 2.8.5 the Standard Commercial Property Conditions (Third Edition - 2018 Revision) shall apply for the sale and purchase of the Open Space Area except as otherwise provided.
- 2.8.6 the terms of the transfer deed of the Open Space Area to the Council (or its Nominated Operator) shall include:
- 2.8.6.1 a provision that the Owners shall transfer the Open Space Area with full title guarantee free from encumbrances (other than those required by this Agreement) and with vacant possession
  - 2.8.6.2 a provision that the Owners shall transfer the Open Space Area for nil consideration
  - 2.8.6.3 a covenant by the Council (or its Nominated Operator) to abide by and observe any covenants set out in the title registers maintained by HM Land Registry, so far as the same may affect the Open Space Area, and to abide by and observe any covenants placed on the Council (or its Nominated Operator) in the transfer and to indemnify the Owners and the Management Company against any subsequent breach thereof
  - 2.8.6.4 a grant in favour of the Council (or its Nominated Operator) and its successors in title for the benefit of the Open Space Area and each and every part of it, of any necessary rights of way and entry that are reasonably required;
  - 2.8.6.5 a covenant by the Council (or its Nominated Operator) in favour of the Owners and the Management Company that the Council will not obstruct any roads or entranceways serving the Development;

- 2.8.6.6 a covenant by the Council (or its Nominated Operator) in favour of the Owners and the Management Company to not use the Open Space Area for any use, save for the Open Space Use;
  - 2.8.6.7 a covenant by the Council (or its Nominated Operator) in favour of the Owners and the Management Company that the Council will maintain the Open Space Area in accordance with the Open Space Management Plan;
  - 2.8.6.8 a grant in favour of the the Owners and Management Company and its successors in title for the benefit of the Open Space Area and each and every part of it, of any necessary rights of way and entry that are reasonably required (including a right to enter on to the Open Space Area to undertake any works necessary to rectify a breach by the Council (or its Nominated Operator) where the Council (or its Nominated Operator) have failed to maintain the Open Space Area in accordance with the Open Space Management Plan, provided that such right can only be exercised if the Council (or its Nominated Operator) have failed to rectify the said breach within a reasonable amount of time of receiving a notice of the said breach from the Owners and/or the Management Company); and
  - 2.8.6.9 such other rights, covenants and/or declarations and agreements as are reasonably required by each party act reasonably and in good faith
- 2.9 In the event that the Council (or its Nominated Operator) does not serve an Acceptance Notice within the Prescribed Period:
- 2.9.1 the right of the Council (or its Nominated Operator) to have the Open Space Area transferred to it shall cease and the obligaitons on the Owner to transfer the Open Space Area contained in pagraphs 2.1 to 2.8 (inclusive) of Schedule 1 shall determine absolutely;
  - 2.9.2 the Owners shall maintain the Open Space Area in accordance with the Open Space Management Plan in perpetuity or until such time as it is transferred to the Management Company; and
  - 2.9.3 the Owners shall transfer the Open Space Area to the Management Company and such transfer shall include covenants by the Management Company to (i) manage and maintain the Open Space Area in perpetuity in accordance with the Open Space Management Plan and (ii) to not use or allow the use of the Open Space Area for any use, save for the Open Space Use which shall for the avoidance of doubt be unrestricted in times of use.

### 3. Estate Management Scheme

The Owners covenant with the Council as follows:

- 3.1 Not to Occupy or allow Occupation of any Housing Unit comprised in the Development unless and until the Estate Management Scheme has been approved in writing by the Council and the Management Company is operational
- 3.2 To complete the laying out of the Managed Areas in accordance with Plan 2 and the details approved pursuant to condition of the Planning Permission prior to the Occupation of more than 90% of the Housing Units
- 3.3 Following the completion of the laying out of the Managed Areas:
  - 3.3.1 to serve upon the Council a Certificate of Practical Completion confirming that the Managed Areas have been completed in accordance with Plan 2 and the details approved pursuant to condition of the Planning Permission; and
  - 3.3.2 to maintain the Managed Areas in accordance with the approved Estate Management Scheme to the reasonable satisfaction of the Council throughout the Maintenance Period
- 3.4 On the expiration of the Maintenance Period to serve upon the Council a Certificate of Final Completion in respect of the Managed Areas
- 3.5 Following the issue of the Certificate of Final Completion for the Managed Areas to transfer the land comprising the Managed Areas to the Management Company
- 3.6 To manage or procure the maintenance of the Managed Areas in accordance with the approved Estate Management Scheme in perpetuity

#### 4. **Fire Hydrants**

The Owners covenant with the Council with regard to the water supply to the Development:

- 4.1 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
- 4.2 to prepare and submit the Water Scheme to the Fire and Rescue Service for its written approval prior to the construction of the 1<sup>st</sup> Housing Unit reaching Slab Level
- 4.3 to construct and provide at no cost to the Fire and Rescue Service 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
- 4.4 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 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 at Hertfordshire County Council of any certificate of maintenance for the highways in which the fire hydrants are located

- 4.5 to ensure that each Housing Unit 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 Housing Unit
- 4.6 not to Occupy or cause or permit Occupation of any building forming part of the Development including any Housing Unit until such time as it is served by a fire hydrant that is operational and ready to be used for the purpose of fire-fighting by the Fire and Resue Service
- 4.7 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

## Schedule 2

### Affordable Housing

#### 1. Covenants

- 1.1 The Owners shall construct the Affordable Housing Units in accordance with the current Homes England Design and Quality Standards as published by Homes England (or such other successor body's standards)
- 1.2 Not to Occupy or allow the Occupation of more than 70% of the Open Market Units until all Affordable Housing Units have been:
  - 1.2.1 Practically Completed and made available for Occupation; and
  - 1.2.2 transferred to a Registered Provider at such sum that accords with relevant Homes England/Housing Corporation funding requirements current at the date of construction of the Affordable Housing Units such transfer to be free from private rights of way and other encumbrances save for those specifically referred to in paragraph 1.4 of this Schedule and for the purposes of this Schedule only the expression "transfer" or "transferred" shall mean a transfer of the freehold or leasehold of the Affordable Housing Units or an agreement for sale agreed with the Registered Provider that has been unconditionally released for completion by the Owners
- 1.3 If requested to do so by the Council, the Owners will enter into a Nominations Agreement in respect of 7 Affordable Rented Housing and 8 Shared Ownership Housing Units.
- 1.4 The transfer referred to in paragraph 1.2 shall in each case grant:
  - 1.4.1 full and free rights of access both pedestrian and vehicular from the public highway to the Affordable Housing Units; and
  - 1.4.2 full and free rights to the passage of water soil electricity gas and other services through the pipes drains channels wires cables and the conduits which shall be in the adjoining land up to and abutting the boundary of each Affordable Housing Unit all such services to be connected to the mains.
- 1.5 The Owners (subject to paragraph 1.6 of this Schedule) shall ensure and procure that the Affordable Housing Units shall only be used for Affordable Housing.
- 1.6 The covenants in this Schedule:
  - 1.6.1 shall not bind a Protected Tenant or any Chargee or otherwise by a party who has provided loan facilities to a Registered Provider of the whole or any part of

the Affordable Housing Units or any persons or bodies deriving title through such Chargee PROVIDED that:

- 1.6.1.1 the Chargee shall first give prior 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 months from the date of the written notice to complete a disposal of the Affordable Housing Units to another Registered Provider 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 principal monies, interest and costs and expenses; and
- 1.6.1.2 if such disposal has not been completed within a period of three months in accordance with paragraph 1.6.1.1 above then the Chargee shall be entitled to dispose of the Affordable Housing Unit(s) on the open market as if they were Open Market Dwellings free from the obligations contained in this Schedule 3 which provisions shall determine absolutely;
- 1.6.2 shall cease to apply to any part of the Affordable Housing where the Registered Provider is or shall be required to dispose of such part pursuant to a right under Part IV of the Housing Act 1985 or Section 16 of the 1996 Act or any similar or substitute right applicable or is or shall be required to sell to a tenant with the benefit of a voluntary purchase grant provided under Sections 20 and 21 of the 1996 Act (or any similar provision in any subsequent legislation); and
- 1.6.3 shall cease to apply to any Shared Ownership Unit where the shared owner has exercised his right to staircase up to 100% of the equity in such Shared Ownership Unit.

SIGNATURE PAGE

The COMMON SEAL of THE BOROUGH OF BROXBOURNE

was hereunto )

Affixed in the presence of:- )

Authorised Signatory *M. Keating*



**EXECUTED** (but not delivered  
until the date hereof)  
as a **DEED** by  
**STONEBOND PROPERTIES**  
**(CHELMSFORD) LIMITED**  
Acting by a director  
in the presence of:-

.....  
Director

Signature of witness .....

Name (in BLOCK CAPITALS) .....

Address.....  
.....  
.....

**Signed** (but not delivered until the date hereof) as a **DEED** by **STEPHEN JOHN LAMBE**

.....

, in the presence of:

**WITNESS**

Signature: .....

Name: .....

Address: .....

.....

.....

Occupation: .....

**Signed** (but not delivered until the date hereof) as a **DEED** by **JOHN JOSEPH RAFFERTY**

.....

, in the presence of:

**WITNESS**

Signature: .....

Name: .....

Address: .....

.....

.....

Occupation: .....

**Signed** (but not delivered until the date hereof) as a **DEED** by **DAVID SYNNOTT**

in the presence of: .....

**WITNESS**

Signature: .....

Name: .....

Address: .....

.....

.....

Occupation: .....



**APPENDIX 1**

**Plan 1**



- KEY:
- \* Affordable Units
  - \* Feature Units

- EXISTING TREES
- EXISTING HEDGES
- PROPOSED NEW TREES & PLANTING
- AFFORDABLE UNITS
- FEATURE UNITS
- SITE BOUNDARY

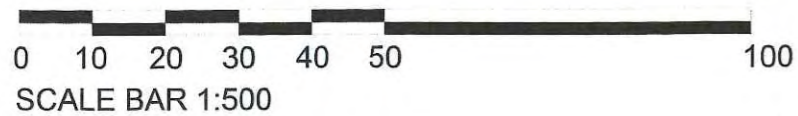
Rev	Date	Amendment	Initials
AD	10-02-21	Site layout amended in response to Planning Department's comments.	AL & SF
AC	18-12-20	HT 03/04AFF & 03/04S updated to reflect latest HT client submission.	AL
AB	16-12-20	Footpath added to south-east corner of the site. OS map data position reset.	AL
AA	02-12-20	Site layout amendments as per WO & SY comments	AL
Z	23-11-20	Plot 18 amended to suit WO, SM & SY comments	AL
Y	24-11-20	Site layout amendments as per WO comments	AL
X	24-11-20	Site layout amendments as per SY comments	AL
W	23-11-20	Site layout amendments for Planning App.	AL
V	15-11-20	Site layout amendments for Planning App.	SF
U	06-11-20	Layout amendments following pre-app comments and client input.	SF
T	06-10-20	Plots 4-10 re-arranged (Planning Comments) & additional parking space for plot 14.	AL
S	28-09-20	Plots 1-3 moved slightly (WO comments)	AL
R	28-09-20	Site layout amendments (WO&SM comments)	AL
Q	24-09-20	Site layout amendments (WO comments)	AL
P	23-08-20	Site layout amendments for Planning App.	AL
N	31-07-20	Minor revisions following client comments.	SF
M	30-07-20	Layout updated with minor amendments and further detail for policy compliance.	SF
L	14-07-20	Affordable units rebalanced.	SF
K	14-07-20	Plots 19&20 swapped with plot 18.	SF
J	13-07-20	Revised Site Layout following client mark-ups	SF
H	19-06-20	Revised Site Layout following client mark-ups	SF
G	18-06-20	Revised Site Layout following client mark-ups	SF
F	17-06-20	Revised Site Layout following client mark-ups	SF
E	04-06-20	Apartment blocks amended	SF
D	03-06-20	Layout amended as per client's comments	SF
C	24-03-20	Layout design revised to incorporate central open space	GB
B	23-12-19	Plot 27&28 swap into 3bed affordable houses	YC
A	13-11-19	Plot 14-16 & 28-29 position adjusted, carports added to plot 15,16,24,27 as instructed by Client.	YC

Project:  
NEWGATESTREET ROAD  
GOFFS OAK  
Client:  
STONEBOND PROPERTIES  
Drawing:  
PROPOSED SITE LAYOUT

Drawing no: 1313.100 Rev: AD  
Scale@A1: 1:500 Date: MAY 2019 Drawn: YC Checked: SF

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*M. Beate*  
AUTHORISED SIGNATORY

FOR PLANNING

**APPENDIX 2**

**Plan 2**

HA - LANDSCAPING LEGEND

- Lot Boundary
- Soft Landscaping Area - Management Company
- Open Space Area - Management Company
- Drain Road Area - Management Company



*M. Beatty*  
 AUTHORISED SIGNATORY

rev	date	by	description

McLEAN ARCHITECTURAL

Unit 8  
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 Garsins Lane  
 Farnham  
 Surrey  
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 www.mcleanarchitectural.co.uk

STONEBOND PROPERTIES

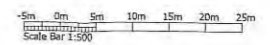
project: Newgatestreet Road,  
 Goff's Oak, Waltham Cross,  
 EN7 5RJ

drawing title: Conveyance Plan  
 Housing Association Layout  
 Landscaping Areas

scale: 1:500 drawn by: CJ

date: May 2021 checked:

drawing no: 1560/CP/HA-02v2 revisions:



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**APPENDIX 3**

**Plan 3**



 AFFORDABLE RENT

 SHARED OWNERSHIP

*M. Soakley*  
**AUTHORISED SIGNATORY**

Rev	Date	Amendment	Initials
E	19-02-21	Shared Ownership & Affordable Rent shown.	SF
D	11-02-21	Layout updated to latest site layout	AL
C	18-12-20	Aff. Housing plan updated to latest site layout	AL
B	28-09-20	Site layout amendments (WO comments)	AL
A	25-09-20	Site layout amendments for Planning App.	AL

Project:  
**NEWGATE STREET  
GOFFS OAK**

Client:  
STONEBOND PROPERTIES

Drawing:  
PARAMETER PLANS  
AFFORDABLE HOUSING PLAN

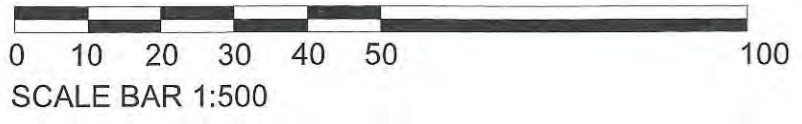
Drawing no: 1313.203 Rev: E

Scale@A1: 1:500 Date: JUNE'19 Drawn: AB Checked: YC



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PLANNING

Dated

201@

**BETWEEN**

**@ HOUSING ASSOCIATION LIMITED**

**and**

**THE COUNCIL OF THE BOROUGH OF BROXBOURNE**

**NOMINATION DEED**

**PURSUANT TO THE HOUSING ACTS 1985 AND 1996 AND THE HOUSING AND  
REGENERATION ACT 2008 AND THE LOCAL GOVERNMENT (MISCELLANEOUS  
PROVISIONS) ACT 1982**

**Re: @ Hertfordshire**

The Council of the Borough  
of Broxbourne  
Borough Offices  
Bishops' College  
Churchgate  
Cheshunt  
Hertfordshire  
EN8 9XQ

Ref:

***[NOTE: Ensure that the Nomination Form is attached at the end of the Second Schedule]***

**APPENDIX 4**  
**Nominations Agreement**





[the @ no. @ bedroomed houses and @ no. @ bedroomed flats constructed on the Property]  
[\*The rented units specified in the First Schedule hereto and such further rented units  
within the Borough of Broxbourne as may be agreed between the Council and the  
Registered Provider] [and shown edged blue on the plan appended hereto]

[1.6 **"Housing Need"**

means a person in housing need if **EITHER** they are homeless or the dwelling which they occupy is overcrowded or unfit for human habitation **AND** their financial circumstances are such that they cannot house themselves in accommodation available on the open market which is not overcrowded or unfit for human habitation within the area of the Borough of Broxbourne whether because of advance rental payment requirements or otherwise and "homeless" "overcrowded" and "unfit for human habitation" shall be interpreted in accordance with the Housing Acts 1985 and 1996 or any statutory modification or re-enactment thereof] **OR** in the opinion of the Council given in writing that they are otherwise in housing need

[1.7 **"Local Connection"**

a person has a local connection if they or their spouse or the person with whom they live as a spouse are ordinarily resident within the area of the Borough of Broxbourne and have been for six months in the 12 months or 3 years in the 5 years immediately prior to their occupation of the Dwelling or have a parent or child or sibling such sibling being over 18 years of age so resident or have permanent employment in the said area **AND** are on the Council's housing register maintained in compliance with its approved allocations scheme or in the opinion of the Council given in writing otherwise have a local connection]

1.8 **"Nomination Notice"**

a written notice given by the Council to the Registered Provider

1.9 ***"Nomination Rights"***

the right to nominate tenants to all first lettings of the Dwellings and to 75% of all subsequent lettings for the period of 70 years from the date on which the Council is served with the first Vacancy Notice referred to in clause 1.1 of the SLA ("the Notice Date") for the Council to nominate tenants to the Dwellings

1.10 ***"Nominee"***

a person named in a nomination notice

1.11 ***["Property"***

the land situate at and known as @ Hertfordshire all of which land is shown edged red on the plan attached [hereto] [to the Transfer] [to the Section 106 Agreement]]

1.12 ***"Registered Provider"***

means a registered social landlord within the meaning of Part I of the Housing Act 1996 (or any statutory modification re-enactment thereof) and registered with the Homes and Communities Agency as regulator of Social Housing pursuant to Section 1 of that Act and the Housing and Regeneration Act 2008

1.13 ***["Section 106 Agreement"***

the agreement made between the Council (1) @ (2) @ (3) and @ Housing Association Limited (4) and dated @]

1.14 ***"SLA"***

the Service Level Agreement in the form specified and contained in the [Second] Schedule hereto or such other Service Level Agreement as may from time to time be agreed by the parties

1.15 ***["Transfer"***

the transfer of the Property of even date herewith and made between [the parties hereto]]

1.16 *"Vacancy Notice"*

a written notice given by the Registered Provider to the Council in a form to be provided by the Council to the Registered Provider

1.17 *"Working Day"*

Monday to Friday inclusive each week excluding any statutory bank or public holidays

1.18 The parties hereto expressed as "the Council" and "the Registered Provider" shall include their respective successors in title

1.19 Words of the masculine gender shall incorporate the feminine gender and words of the singular shall include the plural and vice versa

1.20 The reference herein to any statute or section of a statute includes any statutory re-enactment or modification thereof

1.21 Any reference to a clause or a schedule is unless the context otherwise requires a reference to a clause or a schedule of this Deed and any reference to a sub clause is a reference to a sub clause of the clause in which the reference appears

**2. WHEREAS: -**

2.1 The Council is a Housing Authority for the purposes of the Housing Act 1985

2.2 The Registered Provider is a social landlord and has agreed to enter into this Deed to grant to the Council Nomination Rights over the Dwellings

**3. NOW THIS DEED WITNESSETH as follows: -**

3.1 The Registered Provider hereby grants to the Council the Nomination Rights over the Dwellings

3.2 The Registered Provider covenants with the Council pursuant to Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 that the it and its successors in title shall observe and perform the covenants and restrictions referred to in this Deed

3.3 The Council and the Registered Provider hereby agree that each will act in accordance with the SLA

- 3.4 The Council and the Registered Provider further hereby agree that **PROVIDED THAT** the Registered Provider participates in the Common Housing Register scheme the Council will not exercise the Nomination Rights
- 3.5 The Registered Provider agrees that the Dwellings shall only be let on an Assured Tenancy basis **SAVE** where the Council and the Registered Provider agree in writing that the Registered Provider may issue starter tenancies where it has a starter tenancy scheme notified to the Homes and Communities Agency that would apply to the Dwellings
- 3.6 The Registered Provider shall where no nomination in respect of a Dwelling is forthcoming from the Council in accordance with the Nomination Rights **AND** with the consent in writing of the Council (such consent not to be unreasonably withheld) be free to let the Dwelling and/or Dwellings to a person of its choice who complies with the Criteria
- 3.7 The Registered Provider shall in respect of all first lettings of the Dwellings referred to in the definition of Nomination Rights use its reasonable endeavours to ensure that each letting shall be to a person nominated by the Council and thereafter during the said period of seventy years and in each period commencing on 1 April in each year the Registered Provider shall do likewise but in respect of 75% of the said lettings only
- 3.8 The Registered Provider shall not be obliged to let a Dwelling to anyone unless satisfied that that person falls within the category of persons permitted to occupy the Dwelling in accordance with the Criteria
- 3.9 The Registered Provider shall be entitled to sell the Dwelling(s) where the Tenant thereof exercises either its preserved right to buy in accordance with Section 171A of Part V of the Housing Act 1985 or the right to acquire in accordance with Section 180 of the Housing and Regeneration Act 2008 (as the case may be) or any similar statutory entitlement whether in whole or part shares **PROVIDED THAT** the Registered Provider shall (subject to applicable regulatory requirements) use its best endeavours to forthwith apply the proceeds

- of any sale of the whole or part share of (as the case may be) of the Dwelling(s) in acquiring alternative housing accommodation within the Borough of Broxbourne and shall:-
- 3.9.1 notify the Council of a sale of the whole or part share of the Dwelling(s) within 14 days of completion thereof;
  - 3.9.2 notify the Council of the address of such alternative housing accommodation within 14 days of the said acquisition of the share; and
  - 3.9.3 enter into a nomination deed on the same terms as this Deed in respect of such alternative housing for the residue of the term of this Deed
- 3.10 The Registered Provider may not assign this Deed or its obligations hereunder without the written consent of the Council which shall not be withheld or delayed upon the Registered Provider procuring the entering into by any assignee of a nomination deed in respect of the Dwellings in a form substantially in the same form as this Deed and provided that written notice of assignment has been given to the Council within twenty one days of such assignment the Registered Provider shall have no further liability to the Council hereunder with effect from the date of such assignment
- 3.11 The provisions of this Deed shall become binding upon the parties hereto upon the execution hereof and it is hereby agreed that a person who is not a party to this Deed may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999
- 3.12 Any notice required to be served hereunder shall be sufficiently served on the parties if sent by fax email or pre-paid first class post to the address of the parties indicated above or other address notified by one party to the other and any notice shall have been deemed to have been served two working days after posting
- 3.13 In the case of dispute or difference on any matter under this Deed or as to the construction of this Deed any such dispute or difference shall be referred to a single arbitrator to be agreed between the parties or in default of agreement to be nominated by the President for the time being of the Chartered Institute of Housing in accordance with and subject to the

provisions of the Arbitration Acts 1996 or any statutory re-enactment or modification for the time being in force

- 3.14 The provisions of this Deed shall not bind any mortgagee chargee receiver or manager including an administrative receiver of [either the Registered Provider or\*] the owner of any of the Dwellings acquired pursuant to Section 180 of the Housing and Regeneration Act 2008 or any statutory modification or re-enactment thereof

**EXECUTED and DELIVERED** as a Deed on the date of this document

**[THE FIRST SCHEDULE**

**hereinbefore referred to]**

*(rented units)*

*\* Note: if these words are included then the Registered Provider's successor on a power of sale will not be subject to the Council's nomination rights expressed in this Deed which will then be lost. Historically, RP's were very insistent that borrowing was/is extremely difficult for them if a lender is subject to the provisions of this Deed when endeavouring to dispose upon a power of sale.*

**THE [SECOND] SCHEDULE (hereinbefore referred to)**

**SERVICE LEVEL AGREEMENT FOR NOMINATIONS BETWEEN  
BOROUGH OF BROXBOURNE (LA) AND REGISTERED PROVIDER (RP)**

This Agreement sets out the standards expected for the prompt letting by the RP of properties to which the LA has nomination rights, outlining the expectations placed upon both the RP and LA.

The Council operates a Common Housing Register (CHR) and Housing Allocations Policy (HAP), and it is a condition of compliance with this agreement and/or schedule that the individual RP signs up to the CHR and HAP or successor policies.

Under the CHR the RP is required to provide 100% of all voids in Broxbourne Borough to the LA to be let through the CHR. The LA will then ensure that 25% of all lettings are ring fenced for RP preferred partner tenants.

In the event that the Council ceases to operate a CHR the Council would require 100% of nominations to the first letting, and 75% of all subsequent nominations.

**1. NOMINATIONS**

- 1.1 The RP will request the nomination(s) as soon as it is notified of an impending vacant property(s). For new build schemes this will be no more than six weeks and no less than four weeks in advance of the estimated handover date.
- 1.2 Nominations will be requested on a completed standard form (attached) with the estimated lettings date included where known. Requests to be made by fax/e-mail.
- 1.3 Under the Choice Based Lettings (CBL) system, the Local Authority will aim to provide 100% of nominations within 18 working days from the receipt of the request. If the RP can provide the data by the appropriate day of the CBL cycle, the LA will provide nominations within 10 working days. Where a property is allocated through a direct offer, the LA will aim to provide 100% of nominations within 7 working days from the receipt of the request. If there is not a suitable nomination, the LA will advise within 3 working days of the CBL shortlist closing.
- 1.4 Once a vacancy notice in the RPs' standard form is received, if all parties agree the LA may provide a number of reserve nominations.

**2. ACCEPTANCES AND REFUSALS**

- 2.1 If the RP considers that the nomination is unsuitable, they will notify the LA within 2 working days, stating the exact reason(s). Examples of this may be:
  - If a nominee's housing status has changed since their application to the LA.
  - It is found that fraudulent or otherwise inaccurate information has been given to obtain housing.

Where the RP proposes to reject a nomination it is expected that the RP will discuss their reasons with the Council prior to sending formal notification. When nominations are



requested by RPs, all relevant information should be stated. Any approaches for refusal not stated in the original nominations form will not normally be accepted.

Where the Council does not accept the reasons for rejection as being consistent with the CHR, the RP will be formally notified.

- 2.2 If the nominee does not respond to contact from the RP the LA will be notified within 7 working days from the date the RP contacted the nominee.
- 2.3 If the nomination is unsuitable or if the nominee has not responded to contact from the RP, the LA will provide a new nomination within 2 working days from the date they are notified by the RP.
- 2.4 The prospective tenant should view the actual property or a similar show property prior to formally accepting it. If the nominee fails to give confirmation, within 2 working days of viewing the property, that they wish to accept it, a further nomination shall be sought.
- 2.5 In the case of homeless applicants, if the nominee appeals to the LA that the offer is unsuitable then the LA will provide a further nomination within 3 working days. However, in exceptional circumstances, e.g. if the property offered is particularly suited to the nominee and a further property of its kind is not likely to be available after the appeal, the LA may request that the RP keep the property available on the understanding that the void costs will be met by the LA (plus associated costs, for example- vandalism).
- 2.6 In all cases, if the offer is refused, the RP will provide the reasons given by the nominee for the refusal
- 2.7 LA and RP will discuss an action plan if there have been three or more refusals of the same unit. This will occur within 2 working days of the third refusal.
- 2.8 The RP will notify the LA of successful nomination(s) within 5 working days of the nominee signing the tenancy agreement.
- 2.9 In the event that the RP does not offer a Tenancy Agreement within one month of serving a vacancy notice, as a result of a delay in a dwelling becoming available, the RP shall confirm via fax or e-mail that the LA wishes its original nomination to proceed.

### **3. PROVISION FOR TENANTS**

- 3.1 The LA will accept RP tenants who reside within the borough onto their transfer list as part of the CHR. The applicant's housing need will be assessed in line with the LA's transfer scheme policy following completion of a transfer application form by the tenant. For the purpose of the CHR, tenants of all participating RP's are prioritized according to the published points scheme.
- 3.2 If the RP has a tenant whom they wish to move on management grounds (this includes incidents of harassment) the LA will assess the situation in line with its own policies in dealing with management moves as set out in the CHP and HAP. Management moves (whether agreed by the Council or not) will be considered as a transfer, and not a council nomination, and shall be re-worked to form part of the 25% of lettings ring fenced for RP tenants under the CHR.

**4. MISCELLANEOUS**

**4.1** For new lets the RP will offer a joint visit with the LA Housing Needs Section and Affordable Housing Development Section to the site before requesting the nomination.

**4.2.1** The RP is responsible for identifying all properties which are suitable for wheelchair access or otherwise adapted for the use of disabled tenants.

**4.2.2** Where an RP does not seek a nomination from the Council for a void property, but lets it by some other route outside of the CHR it will inform the Council, giving its reasons. Where this occurs, the letting shall be reworked to form part of the 25% of lettings ring fenced for RP tenants under the CHR.

**4.3.1** The RP will provide monthly lettings returns of the previous months lettings of all lettings in the borough. In circumstances where the level of annual lettings is less than 15 the LA will accept lettings returns on a quarterly basis of all letting agreements.

**4.3.2** The Council will provide quarterly reports on lettings data indicating the breakdown of lettings to RP tenants, and others, and by property size and type.

**4.3.3** Information held by the Council and RPs about applicants will be shared in accordance with an agreed protocol.

**EXECUTED** as a Deed by affixing the Common Seal of  
**@ HOUSING ASSOCIATION LIMITED**  
in the presence of:

..... Board Member .....

.....  
Print Name .....

..... Secretary .....

.....  
Print Name .....

**EXECUTED** as a Deed  
by affixing the Common Seal of  
**THE COUNCIL OF THE**  
**BOROUGH OF BROXBOURNE**  
in presence of:

Authorised Signatory .....

Print Name .....