

## ANNEX

## FORM OF NOMINATION AGREEMENT

**THIS AGREEMENT** is made the \_\_\_\_\_ day of \_\_\_\_\_ \*

## BETWEEN

**(1) WOKINGHAM BOROUGH COUNCIL** of Shute End, Wokingham, Berkshire  
RG40 1BN (“the Council”) and

**(2)** \*[name of Association] whose registered office is at \*[address] (“the Association”)

## 1. DEFINITIONS AND INTERPRETATION

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

“Approved Tenancy” a weekly or monthly periodic assured tenancy, or an assured shorthold tenancy used solely to serve the purpose of a probationary or introductory tenancy in accordance with clause 2.1.1 below;

“Association” a body registered with the Regulator of Social Housing pursuant to Section 80 of the Housing and Regeneration Act 2008;

“Initial Nomination Notice” means a written notice given by the Council to the Association giving the name and address and if available the telephone number of a Nominee during the Initial Nomination Period;

“Initial Nomination Period” means the period commencing on the date on which any unit shall first become available for letting or sale under Shared Ownership Leases and expiring on the date on which all of

|                          |                                                                                                                                                                                                                                                                                                                                                                                                     |
|--------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                          | the units shall have been let for the first time or sold by way of initial grant of Shared Ownership Leases;                                                                                                                                                                                                                                                                                        |
| “Initial Vacancy Notice” | means written notice given by the Association to the Council informing the Council that a Unit is or Units are available for occupation;                                                                                                                                                                                                                                                            |
| “Lender”                 | means any financial institution or institutions or other person or persons company or body corporate lending monies to the Association or its successors in title as proprietor of the whole or part or parts of the Property upon the security of the whole or part or parts of the Property and the expression the “Lender” shall include persons deriving title by through or under such person; |
| “Nomination Period”      | shall mean a period 80 (eighty) years from the date of physical completion of the first unit;                                                                                                                                                                                                                                                                                                       |
| “Nomination Rights”      | means the rights granted by clauses 6 and 7 hereof;                                                                                                                                                                                                                                                                                                                                                 |
| “Nominee”                | a person nominated by the Council as a prospective tenant of a Social Rented Unit Affordable Rented Unit or a prospective lessee or assignee of a Shared Ownership Unit;                                                                                                                                                                                                                            |
| “Perpetuity Period”      | the period of One Hundred and Twenty Five (125) years from the date of the Section 106 Agreement;                                                                                                                                                                                                                                                                                                   |
| “Planning Permission”    | means the planning consent granted under reference number *[number] dated *[date];                                                                                                                                                                                                                                                                                                                  |
| “Release Notice”         | means written notice given by the Association to the Council informing the Council that a Unit is or Units are available for sale;                                                                                                                                                                                                                                                                  |

|                                |                                                                                                                                                                                                                                                                    |
|--------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| “Resale Notice”                | means a written notice given by the Association to the Council giving the address of the relevant Unit and date it will be available for sale;                                                                                                                     |
| “Section 106 Agreement”        | an agreement dated *[date] and made pursuant to Section 106 of the Town and Country Planning Act 1990 between the Council *[other parties to section 106 followed by provider] for the provision of (inter alia) affordable housing on land at *[address of site]; |
| “Shared Ownership Lease”       | means the Association’s model lease for shared ownership housing or such other shared ownership leases as have been approved in writing by the Council (such approval not to be unreasonably withheld or delayed);                                                 |
| “Site”                         | means land at *[address of Site] shown edged red on the attached plan;                                                                                                                                                                                             |
| “Subsequent Nomination Notice” | means a written notice served by the Council on the Association during the Subsequent Nomination Period containing name, address and if available the telephone number of a Nominee;                                                                               |
| “Subsequent Nomination Period” | means the remainder of the Nomination Period after expiry of the Initial Nomination Period;                                                                                                                                                                        |
| “Subsequent Vacancy Notice”    | means a written notice given by the Association to the Council giving the address of the relevant Unit and date it will be available for letting;                                                                                                                  |
| “Units”                        | Units comprising *[quantity] houses and *[flats] to be built on the Site being units numbered *[unit numbers] on the attached plan                                                                                                                                 |

\*[drawing number] approved as part of the Planning Permission; and

(a) the “Social Rented Units” and/or “Affordable Rented Units” shall mean the units numbered \*[number]; and

(b) the “Shared Ownership Units” shall mean the units numbered\*[number];

“Void” means a Unit which having already been let for the first time is vacant;

“Working Days” means Monday to Fridays excluding public holidays.

- 1.2 Words of one gender shall be construed as importing any other gender.
- 1.3 Words importing the singular shall be construed as importing the plural and vice versa.
- 1.4 The clause headings do not form any part of this Agreement and shall not be taken into account in its construction or interpretation.
- 1.5 Where there is a conflict between any of the provisions of this Agreement and the provisions of the Section 106 Agreement, the provisions of the Section 106 Agreement shall be taken to prevail for all purposes.
- 1.6 References to “rent” shall means:-
  - 1.6.1 In the case of a Social Rented Unit or Affordable Rented Unit, the rent payable under an Approved Tenancy;
  - 1.6.2 In the case of a Shared Ownership Unit, the gross rent payable under the Approved Lease (a proportion of which is payable, equivalent to the proportion of the equity retained by the Provider, as defined in the Shared Ownership Lease of that Unit).
- 1.7 If at any time any of the provisions of this Agreement shall become illegal invalid or unenforceable in any respect under any law, regulation or jurisdiction, either the legality, validity or enforceability of the remaining provisions of this Agreement shall in any way be affected or impaired as a result.

## **2. PROVISION OF AFFORDABLE HOUSING**

2.1 The Association has agreed for the duration of the Perpetuity Period to make the Units available for occupation by Nominees as follows:-

2.1.1 The Social Rented Units and Affordable Rented Units are to be let on Approved Tenancies;

2.1.1.1 An Assured Tenancy shall be granted unless otherwise agreed by the Council in writing, when an assured shorthold tenancy shall be granted for a period of twelve (12) months to serve as a probationary tenancy.

2.1.1.2 At the expiry of the twelve month period, an assured tenancy shall be granted to the tenant unless he or a member of his household has breached the terms of the assured shorthold tenancy, or unless otherwise agreed between the Provider and the Council. This shall apply both on initial lettings of the Units and on subsequent re-lets.

2.1.2 The Shared Ownership Units are to be occupied under Shared Ownership Leases. The initial market value, being the basis for the premium chargeable by the Provider for each Shared Ownership Lease shall be as set out in the First Schedule hereto.

2.2 The Association will procure completion of the construction of the Units in conformity with the Planning Permission and the Section 106 Agreement or any amended or revised consent that may be obtained.

2.3 In furtherance of the better performance of the Council's obligations under Parts II Housing Act 1985 and Parts VI and VII Housing Act 1996 the Council and the Association agree to enter into a programme for the nomination of Nominee's to occupy the Units as hereinafter appearing.

## **3. RECITALS**

3.1 The Association is the estate owner in fee simple in possession or holds the leasehold estate in the Unit(s).

3.2 It has been agreed between the parties that the Association will grant to the Council the 100% Nomination Rights for the initial tenancy or lease of the Units and thereafter Nomination Rights of 75% for all subsequent tenancies or leases of the Units for the remainder of the Nomination Period.

## **4. COVENANT**

The terms of this Agreement shall not for the avoidance of doubt apply to a Lender or successor in title of a Lender or any receiver appointed by a Lender of any shared ownership purchaser of a Unit or any successor in title to a

Lender of such purchaser or any person acquiring a reversionary interest in such Unit pursuant to the terms of a Shared Ownership Lease or any successor in title or Lender of such person.

## **5. THE ASSOCIATION'S UNDERTAKING**

The Association undertakes to provide \*[number] low cost housing accommodation to persons nominated to the Association by the Council pursuant to this Agreement.

## **6. NOMINATION RIGHTS – SOCIAL RENTED UNITS AND AFFORDABLE RENTED UNITS**

- 6.1 The Association grants to the Council the right to nominate tenants to the Units as follows:

### **During the Initial Nomination Period**

- 6.1.1 One hundred percent (100%) nominations of the Units let for the first time

### **During the Subsequent Nomination Period**

- 6.1.2 seventy five percent (75%) (3 out of every 4) nominations of Units let for all subsequent.

- 6.2 The Association agrees with the Council that the Association will let each of the Units on an Approved Tenancy Agreement to a Nominee for whom the Unit is suitable pursuant to the conditions of clause 6.7 herein.

### **6.3 During the Initial Nomination Period:**

- 6.3.1 The Association shall not less than six (6) weeks prior to the anticipated date of a Unit or Units becoming available for letting for the first time serve on the Council an Initial Vacancy Notice and the Council shall have the right to nominate Nominees to occupy such available Unit or Units on the terms specified by the Association.
- 6.3.2 Within seven (7) Working Days of receipt of an Initial Vacancy Notice the Council shall give to the Association an Initial Nomination Notice and the Council shall confirm details of the Nominee or Nominees and on receipt of the Initial Nomination Notice the Association shall so soon as reasonably practicable thereafter offer the available Unit or Units to such Nominee or Nominees. The Association will confirm receipt of the Council's nomination to the Nominee within ten (10) Working Days, followed by an offer of the dwelling to the Nominee in writing, or by phone, text or e-mails, and the confirm in writing whether they have accepted or rejected the offer within 48 hours of

viewing the property. Formal offers will be made in writing. The Association will copy the Council's Allocations Team into all offers sent to the Nominee.

- 6.3.3 In the event of a Nominee referred to in the Initial Nomination Notice either rejecting the Association's offer of an Approved Tenancy Agreement or failing to accept the same in writing within five (5) Working Days after receipt of the Association's offer or in the event of the Association rejecting such Nominee in accordance with clause 6.7 then the process contained in clause 6.3 shall be repeated until a Nominee accepts the Unit.
- 6.3.4 In the event of a third Nominee rejecting the Unit the Association will be free to offer the Unit to any applicant who works or lives within the Wokingham Borough and is in social housing need without having reference to the Council.
- 6.3.5 Where the association has made a refusal on financial / affordability grounds, a copy of the financial assessment should be provided to the Council for review and for the Council to provide any relevant advice to the nominated applicant.
- 6.3.6. If the Association refuses to rehouse a nominee, the Association will inform the Council of the reasons for the refusal. Where a nominee has been refused by the Association, or excluded from the Association's stock, the applicant shall be advised in writing by the Association and be given the right to request a review of the decision within five (5) Working Days of the refusal - a copy of this letter shall be forwarded to the Council within five (5) Working Days of the refusal. The Association will look at each case on its own merits and in accordance with the Association's Allocations Policy. The Council has the right to challenge what may be seen as an unreasonable refusal or application of that policy. This shall be done within five (5) Working Days of receiving a copy of the refusal letter to avoid delays in re-letting the property.

#### **6.4 During the Subsequent Nomination Period:**

- 6.4.1 The Association shall on receipt of notice of a Void give a Subsequent Vacancy Notice to the Council giving at least fourteen (14) days advance notice of the Void, who shall then have the right to nominate a Nominee or Nominees to occupy such available Unit or Units on the terms specified by the Association.
- 6.4.2 Within ten (10) days of receipt of the Subsequent Vacancy Notice the Council shall give to the Association a Subsequent Nomination Notice and the Council shall confirm details of the Nominee or Nominees.
- 6.4.3 In the event of a Nominee referred to in the Subsequent Nomination Notice either rejecting the Association's offer of an Approved Tenancy Agreement or failing to accept the same in writing within five (5) Working Days of receipt of the Association's offer or in the event of the Association rejecting such a Nominee in accordance with clause

6.7 then the process contained in clause 6.4 shall be repeated until a Nominee accepts the Unit.

- 6.4.4 In the event of a third Nominee rejecting the Unit the Association will be free to offer the Unit to any applicant who works or lives within the Wokingham Borough and is in social housing need without having reference to the Council.
- 6.4.5 Where the association has made a refusal on financial / affordability grounds, a copy of the financial assessment should be provided to the Council for review and for the Council to provide any relevant advice to the nominated applicant.
- 6.4.6 If the Association refuses to rehouse a nominee, the Association will inform the Council of the reasons for the refusal. Where a nominee has been refused by the Association, or excluded from the Association's stock, the applicant shall be advised in writing by the Association and given the right to request a review of the decision within 5 Working Days of the refusal - a copy of this letter shall be forwarded to the Council. The Association will look at each case on its own merits and in accordance with the Association's Allocations Policy. The Council has the right to challenge what may be seen as an unreasonable refusal or application of that policy. This shall be done within 5 Working Days of receiving the copy of the refusal letter to avoid delays in re-letting the property.

#### **6.5 Continuation of the Council's Nomination Rights**

- 6.5.1 The Association undertakes to make provision in accordance with this Agreement so that the Council shall continue to have Nomination Rights in respect of the lettings of each Void in accordance with clause 6 hereof.
- 6.5.2 The Association shall monitor the number of Voids during each twelve (12) month period commencing on the last day of the Initial Nomination Period in order to ensure that it complies with clause 6.1.2 and shall advise the Council at quarterly intervals of its findings.
- 6.5.3 Upon receiving notice of a Void, the Association shall determine whether an Approved Tenancy Agreement of the relevant Unit should be offered to a Nominee having regard to the Association's obligations under clause 6.5.1.

#### **6.6 Information the Association shall supply to the Council in writing**

- 6.6.1 Full details of any offer of an Approved Tenancy Agreement made by the Association to a Nominee.
- 6.6.2 If the Association makes no offer of an Approved Tenancy Agreement to a Nominee specified in either an Initial Nomination Period or the Subsequent Nomination Notice served by the Council full details of the reason for not making any offer; and

- 6.6.3 Full details of whether and when any such offer has been accepted or rejected by a Nominee and if the offer is rejected the reason given by the Nominee for rejection.
- 6.6.4 Full details of the new tenants start date to be sent to the Allocations Team within ten (10) Working Days of the Tenancy Agreement being signed.

## **6.7 Assessment of prospective tenants**

- 6.7.1 The Association shall not be obliged to offer an Approved Tenancy Agreement to a Nominee unless it is reasonably satisfied that the Nominee is a person whom the Association would normally house under its lettings and allocations policy in force from time to time.
- 6.7.2 The Association shall supply to the Council full details of its lettings and allocations policy at least one month prior to service of the Initial Vacancy Notice and shall notify the Council of any changes in such lettings and allocations policy from time to time.
- 6.7.3 The Association shall at all times use reasonable endeavours to ensure that the rents of the Units are set in accordance with the Association's rent policy.
- 6.7.4 In the event that any or all of the Units are rendered unfit for occupation and use by a risk not covered by an insurance policy maintained by the Association or in the event of repair rebuilding or reinstatement of any or all of the Units being frustrated by any reason beyond the control of the Association the Association may serve notice upon the Council suspending the effect of this Agreement insofar as it applies to the Units which have been rendered unfit for occupation and use until such Units are rendered fit for occupation and use PROVIDED ALWAYS that the Association shall use all reasonable endeavours to promptly render fit for occupation and use all such Units.

## **7. NOMINATION RIGHTS – SHARED OWNERSHIP UNITS**

- 7.1 The Association grants to the Council the right to nominate tenants to the Units as follows:

### **During the Initial Nomination Period**

- 7.1.1 One hundred percent (100%) nominations of the Units sold for the first time

### **During the Subsequent Nomination Period**

- 7.1.2 seventy-five percent (75%) (3 out of 4) nominations of the Units sold for all subsequent sales.

- 7.2 The Association grants to the Council during both the Initial Nomination Period and the Subsequent Nomination Period the Nomination Rights and agrees with the Council that the Association will (subject to clauses 7.3 through to 7.9 hereof) either grant a Shared Ownership Lease of each of the Units or, as appropriate, consent to the assignment of the Units in respect of which Shared Ownership Leases shall already have been granted on each occasion to a Nominee for whom the Unit is suitable.
- 7.3 For initial disposals, at least six weeks before practical completion the Association issue the Council notice setting out details of the Units, including its proposed sale price, equity share, rent on unsold equity and service charge.
- 7.4 The Association will seek referrals from their own shared ownership list. This list will be anonymised using the Prioritising for Shared Ownership Form (Annex A) providing the relevant information to assess local connection whilst adhering to the general Data Protection Regulations.
- 7.5 Within fourteen (14) days of receipt of a Release Notice or Resale Notice the Council will check the list of nominees using the Councils shared ownership criteria and return the list of nominees to the registered provider in order of priority.
- 7.6 Within twenty one days (21) of the Council providing the Association with names and addresses of Nominees pursuant to clause 7.5 above, the Association shall interview the Nominees and notify the Nominee and the Council of their decision within seven (7) days of the interview.
- 7.7 If after the Initial Nominations, there remain unsold Units, the Association will send further nominations from their Shared Ownership List to the Council's Allocations Team. The Council will send a priority list to the Registered Provider within a further seven (7) days from receipt of the notification to put forward the names and addresses of further Nominees.
- 7.8 If, after point 7.7, there still remain unsold Units, after an eight (8) week period and after appropriate marketing, advertising and promotion has been undertaken, the Association will be free to offer the Unit to any applicant who works or lives within the Wokingham Borough and is in social housing need without having reference to the Council.
- 7.9 For Subsequent Sales of Shared Ownership Units, the Association will issue a Resale Notice to the Council as soon as is reasonably practicable and points 7.3 to 7.8 will apply.

## **8. Disposal**

- 8.1 Subject to clause 8.2 the Association shall not:
  - 8.1.1 sell or otherwise dispose of the Unit or any part thereof except by way of legal charge or mortgage provided always that the grant of leases wayleaves other rights to statutory undertakers or companies for the provision of services and the dedication of the roads and sewers in connection with the construction and completion of the Units shall not constitute breaches of these conditions; or

- 8.1.2 materially limit its ability to perform its obligations under this Agreement by dealing except by way of legal charge or mortgage with the Unit (other than by letting the Units to individual tenants under Approved Tenancy Agreements or by granting Shared Ownership Leases).
- 8.2 If the Association shall dispose of all or any part or parts of the Units to a social landlord registered with the Housing Corporation under Section 80 of the Housing and Regeneration Act 2008 or any other statutory provision amending or replacing the same the Council shall have no objection thereto subject to such social landlord prior to such disposition entering into an agreement with the Council mutatis mutandis and pro tanto to the part or parts so disposed of in the form of this Agreement PROVIDED ALWAYS that the terms of this clause 8 shall not for the avoidance of doubt apply to a Lender who shall be free to dispose of the Unit free from the effect of this Agreement.
9. Any notice required to be served hereunder shall be sufficiently served on the parties if sent by pre paid first class post to the address of the parties indicated above or such other address notified by one party to the other and any notice shall have been deemed to have served two (2) Working Days after posting.
10. In the case of dispute or difference on any matter under this Agreement or as to the construction of this Agreement 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 Act 1996 or any statutory re-enactment modification for the time being in force.
11. It is hereby agreed and declared that the obligations contained in this Agreement are personal to the Association and shall not be binding upon any Lender.
12. For the avoidance of doubt, in case of conflict between the Association's obligations in this Agreement and the general regulatory requirements to which the Association is from time to time bound, the latter shall take precedence, so that the Association shall not be liable to the Council for failure to comply with any of its obligations in this Agreement if compliance would be in breach of any such regulatory requirements.
13. The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.
14. The Association shall from time to time supply to the Council such information as the Council shall reasonably require to satisfy itself that the

obligations in this Agreement on the part of the Association have been performed and observed.

- 15.** The scheme is subject to the Section 106 Agreement and all nominations and occupation of the Units shall comply with the provisions of the Section 106 Agreement including any deeds of variations to the Section 106 Agreement entered into before or after the date of this Deed.

## ANNEX A

### WBC Prioritising for S/O scheme

|                        |             |
|------------------------|-------------|
| Full Address of Scheme | RP Details: |
|------------------------|-------------|

| Applicant # | Date/Time applied | MOD? | Current tenure | Live in area? | Work in area? | Housing makeup | Additional information? | WBC priority |
|-------------|-------------------|------|----------------|---------------|---------------|----------------|-------------------------|--------------|
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Private: Information that contains a small amount of sensitive data which is essential to communicate with an individual but doesn't require to be sent via secure methods.