

AN AGREEMENT dated 9<sup>th</sup> January

2013<sup>4</sup> made BETWEEN

(1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BARNET** of the North London Business Park Oakleigh Road South London N11 1NP ("the Council")

(2) **LOWDALE PROPERTIES LIMITED** (company registration number 2219587) whose registered office is situate at New Burlington House, 1075 Finchley Road, London NW11 0PU ("the Owner")

(3) **ORIGIN HOUSING DEVELOPMENTS LIMITED** (company registration number 07643985) whose registered office is situate at St Richards House 110 Eversholt Street London NW1 1BS ("the Developer")

**WHEREAS: -**

- A. The Owner has the freehold interest in the Land which forms part of the land registered at H.M. Land Registry under Title No AGL75325
- B. The Developer has the benefit of a unilateral notice affecting the Land
- C. The Council is the Local Planning Authority for the purposes of the Town and Country Planning Act 1990 (as amended) and the Highway Authority for the purposes of the Highways Act 1980 for the area within which the Land is situated
- D. On 14 June 2013 the Developer through its agents applied to the Council for planning permission under reference No. B/02366/13 to develop the Land by a development comprising the erection of a five storey building and basement

level to facilitate 15 no. self-contained residential units, 15 no. car parking spaces and cycle store at basement level. Provision of solar panels at roof level. Hard and soft landscaping

- E. The Council is a Local Authority for the purposes of Section 111 of the Local Government Act 1972 and is satisfied that the arrangements made in this Agreement will facilitate be conducive to and be incidental to the Council's functions
- F. The Council considers it expedient and in the interests of the proper planning of its area that provision should be made for regulating development in the manner hereinafter appearing and the parties hereto have accordingly agreed to enter into this Agreement
- G. The parties to this Deed have given due consideration to the requirements of regulation 122 of the Community Infrastructure Levy Regulations 2010 (SI2010048) and agree that the planning obligations it contains are:
1. Necessary to make the Development acceptable in planning terms;
  2. Directly related to the Development; and
  3. Fairly and reasonably related in scale and kind to the Development.

NOW IT IS AGREED as follows:

1. **Interpretation**

1.1 In this Agreement unless the context otherwise requires:

'1990 Act'

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

'Affordable Housing'

means housing that is to be erected and made permanently available for rent and shared ownership to meet the needs of eligible households in Housing Need nominated by the London Borough of Barnet whose incomes are not sufficient to allow them to access decent and appropriate housing on the open market subject to the exclusions in clause 5.

'Affordable Housing Scheme'

means a scheme for the supply of the Affordable Housing Units and as more particularly described in the Second Schedule

'Affordable Housing Units'

means the Affordable Rented Units and the Shared Ownership Units within the Development which are to be transferred to the Council or to a Registered Provider at a cost that allows the units to be accessible and affordable to households whose needs are not met by the market.

'Affordable Rent'

means rent charged that is subject to the Homes and Communities Agency's rent

controls and is required to be offered to eligible households at a rent level (including service charges) that must be affordable and accessible for households on welfare and or housing benefits including those subject to the Universal Benefit Cap and which does not exceed 80% of the local market rent.

'Affordable Rented Units'

means 10 units let at Affordable Rent comprising:

2 x one bedroom (two person) units

1 x two bedroom (three person) units

5 x two bedroom (four person) units;

and

2 x three bedroom (four person) units

'Application'

means the application for planning permission registered by the Council on 14 June 2013 and bearing reference number B/02366/13

'Contributions'

means the Parks and Open Spaces Contribution and the Monitoring Contribution

'Development'

means that development permitted by the Permission

'Housing Need'

A person has a housing need if he is homeless or the dwelling he occupies is overcrowded or under occupied or in need of renovation or unfit for human habitation or for whatever reason the Council deem it unreasonable for them to continue to occupy.

'Homes and Communities Agency'

means the housing and regeneration agency for England or any successor body that takes over these powers. The statutory objectives of the Homes and Communities Agency are defined by the Housing and Regeneration Act 2008 and amended under the Localism Act 2011.

"Implementation"

means the implementation of the Permission by the carrying out of any of the material operations as defined by section 56 of the 1990 Act but, for the avoidance of doubt, the planning permission is deemed not to be implemented for the purposes of this definition by any temporary or

archaeological works, works of excavation, demolition, services diversions, site clearance, spoil investigations, the carrying out of any decontamination or land fill works and/or the erection of hoardings and fences, noise attenuation works, the construction of any landfill, gas works or highway works pursuant to the Highways Act 1980, construction of service or access roads, and Implement and Implementing are to be construed accordingly;

'Index'

means the "all items" Retail Prices Index published by the Office for National Statistics or any successor ministry department or organisation or (if such Index is at the relevant time no longer published) such other comparable Index or basis for indexation as the parties may agree

'Index Linked'

means the product (if any) of the amount of contributions payable under this Agreement multiplied by A and divided by B where "A" is the most recently published figure for the Index prior to the date of the payment and

"B" is the most recently published figure for the Index at the date of the Agreement

'Land' means the land edged red on the Site Plan and described in The First Schedule

'London Housing Design Guide' means the latest version of the guide approved and published by the Mayor of London or any subsequent standards that supersede these

'Monitoring Contribution' means the sum of five hundred and fifty pounds (£550.00) Index Linked towards the Council's costs in monitoring the obligations under this Agreement

'Notting Hill Construction Training Initiative' means a programme which secures training and work experience for homeless people seeking to pursue a career in construction further details of which are included in the Council's Supplementary Planning Document for Affordable Housing

'Old Section 106 Agreements' means the following agreements:

Agreement dated 15/1/01 made between (1)  
The Mayor and Burgesses of the London  
Borough of Barnet (2) Abbotquest Limited  
and (3) Finance and Credit Corporation

Agreement dated 5/9/01 made between (1)  
The Mayor and Burgesses of the London  
Borough of Barnet and (2) Balcraft Properties  
Limited

Agreement dated 30/6/03 made between (1)  
The Mayor and Burgesses of the London  
Borough of Barnet and (2) Balcraft Properties  
Limited

Agreement dated 9/9/02 made between (1)  
The Mayor and Burgesses of the London  
Borough of Barnet and (2) Lovell  
Partnerships Limited

Agreement dated 7/10/98 made between (1)  
London Borough of Barnet of the Town Hall  
and (2) Fairview New Homes Limited

Agreement dated 2/4/02 made between (1)  
The Mayor and Burgesses of the London  
Borough of Barnet and (2) Lovell  
Partnerships Limited



'Parks and

Open Spaces Contribution'

means the sum of eleven thousand pounds (£11,000.00) Index Linked towards the provision of open space improvements to Victoria Recreation Ground which shall provide for improvements to the ball courts comprising the re-surfacing of the tennis and multi-sports courts

'Practical Completion'

means the date on which the Owners notify the Council that the Development is substantially completed

'Permission'

means the planning permission granted pursuant to the Application together with any modification made thereto with the consent of the parties to this Agreement

'Registered Provider'

means a Registered Provider of Social Housing within the meaning of the Housing and Regeneration Act 2008 and registered with the Homes and Communities Agency

'Shared Ownership'

means the granting of a lease of a Shared Ownership Unit for a term of not less than 125 years and granting an equity share in the

Shared Ownership Unit to a shared ownership lessee of not less than 25% and not exceeding 75% and allowing the shared ownership lessee to purchase further shares in the Shared Ownership Unit such shared ownership lease to be drafted in accordance with the terms recommended by the Homes and Communities Agency.

'Shared Ownership Units' means 5 units to be provided on a Shared Ownership basis comprising:

3 x one bedroom (two person) units and

2 x two bedroom (four person) units

'Site Plan' means the plan annexed to this Agreement

'Universal Benefits Cap' has the same meaning as defined by the Welfare Reform Act 2012 and the Universal Credit Regulations 2013

1.2 Where the context so requires:

- (a) the singular includes the plural;
- (b) references to any party shall include the successors in title of that party;
- (c) where a party includes more than one person any obligations of that party shall be joint and several;

- (d) references to clauses and schedules are references to clauses in and schedules to this Agreement; and
- (e) save as otherwise provided in this Agreement any approval in writing or consent to be given by the Council under this Agreement shall not be unreasonably withheld or delayed

## **2. Legal Effect**

- 2.1 This Agreement is made pursuant to Section 106 of the 1990 Act and Section 111 of the Local Government Act 1972 to the intent that it shall bind the Owner and his successors in title to each and every part of the Land and his assigns as provided in those sections and for the avoidance of doubt, references in this Agreement to the Owner are references to the owner of the freehold interest in the Land from time to time.
- 2.2 The covenants hereinafter contained are planning obligations for the purposes of Section 106 of the 1990 Act
- 2.3 This Agreement is also entered into by the Council pursuant to Section 2 of the Local Government Act 2000 as being expedient for the purposes of improving the economic social or environmental wellbeing of the area
- 2.4 The Council is the local planning authority by whom the obligations are enforceable
- 2.5 No person or company shall be liable for any breach of this Agreement or obligation which arises under this Agreement after it shall have parted with its entire interest in the Land or the part of the Land in respect of which such breach occurs or obligation arises but without prejudice to liability for any breach or obligation prior to parting with such interest.

- 2.6 Except for the covenants in clauses 2.9 and 3.1 (which take effect from the date of this Agreement) the other covenants in this Agreement shall take effect when the Permission has been granted issued and Implemented.
- 2.7 If the Permission expires within the meaning of Section 91 of the 1990 Act or is revoked or otherwise withdrawn or modified by any statutory procedure without the consent of the Owner or its successors in title this Agreement shall cease to have effect
- 2.8 Nothing in this Agreement shall be construed as prohibiting or limiting any right to develop any part of the Land in accordance with a planning permission granted by the Council or by the Secretary of State on appeal or reference to him after the date of this Agreement
- 2.9 The Developer shall pay the Council's reasonable legal costs and professional fees for the preparation and completion of this Agreement
- 2.10 The Council confirms that the Old S106 Agreements do not relate to the Land.
- 3. Covenants**
- 3.1 The Owners and the Developer covenants with the Council to give not less than 14 days prior written notification to the Council's Director of Planning and Environmental Protection (or such other officer as may be advised to the Owner) at North London Business Park Ground Floor Building 4 Oakleigh Road South London N11 1NP of the intended date of Implementation of the Permission
- 3.2 The Owners and the Developer covenant with the Council to pay the Parks and Open Spaces Contributions and the Monitoring Contribution in their entirety to the Council (Index Linked as above) within 28 days of Implementation of the Permission

- 3.3 If the Owner or Developer shall fail to pay the Contributions due under this Agreement or any part of them is not paid on the due date the Owner Developer shall pay the Council interest at the rate of 4% above the base lending rate of the Co-operative Bank plc or such other bank as the Council may designate on any unpaid amounts of the Contributions from the date when they were due to the date on which they are paid to the Council
- 3.4 Nothing in the preceding clause shall entitle the Owner or Developer to withhold or delay any payment of the Contributions due under this Agreement after the date upon which they fall due or in any way prejudice affect or derogate from the rights of the Council in relation to non-payment
- 3.5 The Owner and Developer covenant with the Council that no occupation of the Affordable Housing Units shall take place until the Council or a Registered Provider (as applicable, and which, in the first instance shall be Origin Housing Limited) is transferred the freehold or granted a 125 year leasehold interest in each (either individually or collectively) of the Affordable Housing Units in accordance with the Affordable Housing Scheme (subject to Clause 5) and the Affordable Housing Units have been constructed and have reached practical completion upon the terms and conditions contained in the Second Schedule hereto
- 3.6 The Developer covenants to include the Affordable Housing Scheme in the Notting Hill Construction Training Initiative or a similar scheme to be agreed between the Council and the Developer acting reasonably
- 3.7 The Council covenants with the Owner and Developer to use the Contributions and any interest accrued thereon for the purposes set out in the interpretation clause of this agreement and that if such Contributions have not been committed by the Council within 10 years of the date of payment of such

Contributions then the Council shall return any unspent Contributions together with Interest to the party which paid the sum

#### **4     Indemnity**

- 4.1     The Developer hereby covenants with Lowdale Properties Limited (being the Owner named in this Deed) to indemnify and keep indemnified Lowdale Properties Limited in respect of and in connection with any liabilities actions demand proceedings costs and expenses of Lowdale Properties Limited arising directly or indirectly as a result of having entered into this Agreement

#### **5     Exclusions Clause**

- 5.1     The provisions of this Agreement shall:
- 5.2     Not bind any mortgagee or chargee of a Registered Provider or any administrator, fixed charge receiver including any receiver appointed under the Law of Property Act 1925, administrative receiver or any other person appointed under any security documentation to enable such mortgagee to realise its security.
- 5.3     Cease to apply to any part or parts of the property which are transferred or leased by any party referred to in paragraph 5.2 above.
- 5.4     Cease to apply to any completed residential units where a Registered Provider shall be required to dispose of the same pursuant to a right to buy under Part V of the Housing Act 1985 as amended by the Housing (Preservation of Right to Buy) Regulations 1993 or pursuant to a right to acquire under Section 180 of the Housing and Regeneration Act 2008 or any similar or substitute right applicable

- 5.5 Cease to apply to any completed residential units where a Registered Provider sells to a tenant through Social Homebuy funded pursuant to Section 19(3) of the Housing and Regeneration Act 2008 or any amendment or replacement thereof
- 5.6 Not bind any shared ownership leaseholder nor any other purchaser, tenant or occupier of completed residential units nor any successor in title to such person.
- 5.7 Not bind any mortgagee of any such shared ownership leaseholder or any purchaser, tenant or occupier referred to in paragraph 5.6 above nor any administrator, administrative receiver, fixed charge receiver including any receiver appointed under the Law of Property Act 1925 or any other person appointed under any security documentation by such mortgagee or any person deriving title through such persons.
- 5.8 Cease to apply (including, for the avoidance of doubt, the second schedule) to any completed residential units referred to in paragraphs 5.5 and 5.6 above in respect of which a shared ownership lease has been granted and where a Registered Provider shall have disposed of 100% of the equity in such units under the terms of such lease.

## **6 Change in Ownership**

The Owner and Developer covenant with the Council to give the Council immediate written notice of any change in ownership of any of their respective interests in the Land 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 Land or unit of occupation which is the subject of the disposal by reference to a plan

## **7 Dispute Resolution**

- 7.1 Any dispute or difference arising between the parties with regard to their respective rights and obligations as to any matter or thing in any way arising out of or connected with this Agreement shall be referred to the decision of an expert to be agreed by the parties or failing agreement between them to be nominated by the President for the time being of the Royal Institution of Chartered Surveyors as the case may be.
- 7.2 The expert may be agreed upon by the parties and in the absence of such agreement either party may request that the following nominate the expert at their joint expense:
- a. If such dispute relates to matters concerning the construction, interpretation and/or the application of this Deed the Chairman of the Bar Council is to nominate the expert;
  - b. If such dispute relates to matters requiring specialist chartered surveyor, the President of the Royal Institute of Chartered Surveyors is to nominate the expert;
  - c. If such dispute relates to affordable housing, the expert shall be nominated by the President of the Royal Town Planning Institute; and
  - d. In all other cases, the President of the Law Society to nominate the expert provided that if a dispute relates to matters falling within two or more of the sub-categories above, the President of the Law Society may

nominate such person or persons as he thinks appropriate, including joint experts.

**9      Third Parties**

For the purposes of the Contracts (Rights of Third Parties) Act 1999 this Agreement is not intended to and does not give any person who is not a party to it any right to enforce any of its provisions.

**IN WITNESS** of which the parties have signed and sealed this Agreement as a Deed on the date first written above



## **FIRST SCHEDULE**

(The Land)

that the part of the land known as 11-13 Approach Road, Barnet, Hertfordshire EN4 8FG ( registered under title number AGL75325) which is shown edged red on the Site Plan

<b>H, M, LAND REGISTRY</b>			TITLE NUMBER <b>AGL 75325</b>	
LMT ORDNANCE SURVEY PLAN REFERENCE	COUNTY GREATER LONDON	SHEET	NATIONAL GRID TQ 2696	SECTION K
Sole 71250			0 Crown Copyright 1114	



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## **SECOND SCHEDULE**


### **Proposed Affordable Housing Scheme**

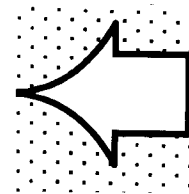
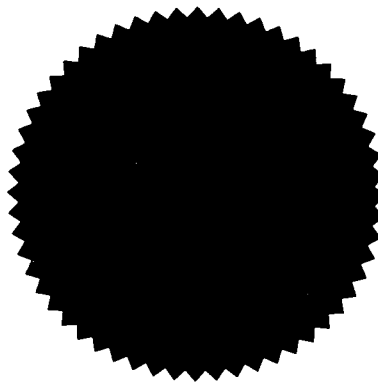
1. The Owner shall transfer to the Council or to a Registered Provider a freehold or a leasehold interest(s) for a term of no less than 125 years in each of the Affordable Housing Units in accordance with the Affordable Housing Scheme (subject to Clause 5) of this Agreement free from all financial charges for the Affordable Housing Scheme upon the following basis:
  - 1.1. The Owner and Developer shall procure that the Affordable Housing Units shall be built to the standards laid down in the London Housing Design Guide unless otherwise agreed between the Registered Provider and the Greater London Authority
  - 1.2. The price to be paid by the Council or the Registered Provider shall be at a level that allows the Affordable Rented Units to be paid for through the rents to be charged as Affordable Rent,
  - 1.3. The Shared Ownership Units to be sold to households with income levels consistent with the London Plan at a level that allows at least one third of the Shared Ownership Units to be sold for Shared Ownership to suitable occupiers at an initial 25% of the market value PROVIDED ALWAYS THAT if the Registered Provider is unable to sell the Shared Ownership Unit at 25% of the market value after marketing the said unit(s) for three months (such marketing may commence prior to Practical Completion for the purposes of this clause provided that the values are set at the point marketing commences) then the Registered Provider may agree with the Council (acting reasonably) a higher percentage to offer the said unit(s) for sale; and

- 1.4. The Affordable Housing Units shall be occupied only by persons who are in Housing Need subject to paragraph 1.7 below
- 1.5. The Owner shall subject to paragraph 1.7 below grant to the Council the right to nominate suitable households in Housing Need to 100% of the Affordable Housing Units
- 1.6. Prior to Practical Completion of the Affordable Housing Units the Owner and the Developer must ensure:
- 1.6.1. all public highways (if any) and public sewerage and drainage serving the Affordable Housing Units are in place and meet all statutory requirements in force at the time
- 1.6.2. all private roads footways and footpaths (if any) serving the Affordable Housing Units are in place and constructed and completed to the satisfaction of the Council's Director of Place
- 1.6.3. all private sewage and drainage pipes channels and gutters and all mains water gas and electricity pipes and cables are in place and constructed laid and completed to the Affordable Housing Units to the satisfaction of the Council's Director of Environment and Transport
- 1.7. The Owner shall make it a condition of the completion of the transfer or grant referred to at clause 3.5, that the Registered Provider shall abide by Clause 1.5 above and grant to the Council the right to nominate suitable households in Housing Need to 100% of the Affordable Housing Units PROVIDED THAT the grant of such rights will not require the Registered Provider to breach the terms of any shared ownership lease granted or to be granted by it and will not prevent the Registered Provider nominating its own occupants if the Council fails to nominate suitable occupants within a reasonable period.

2. The Owner and Developer shall give the Council not less than one calendar month's prior written notice of the date of practical completion to the Council's Affordable Housing Liaison Officer (or such other Officer as may be advised to the Owner and Developer) at Barnet House 1255 High Road Whetstone N20
3. The Council or the Registered Provider (as appropriate) shall take reasonable steps and use its reasonable endeavours to ensure that the Affordable Housing Units for Shared Ownership are sold in accordance with this agreement however should there be insufficient persons who are in Housing Need to purchase such Affordable Housing Units within three months of the Affordable Housing Units being ready for occupation may sell units within three months of the Affordable Housing Units being ready for occupation in accordance with their own sales policy giving priority to people residing in the North London Sub Region

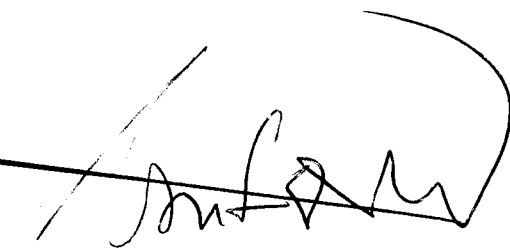
THE COMMON SEAL OF THE MAYOR )  
AND BURGESSES OF THE LONDON )  
BOROUGH OF BARNET was hereunto )  
affixed in the presence of:- )

  
Assurance Director.



  
Head of Governance

**ATTESTATION FOR OWNER**



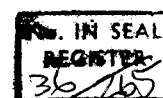
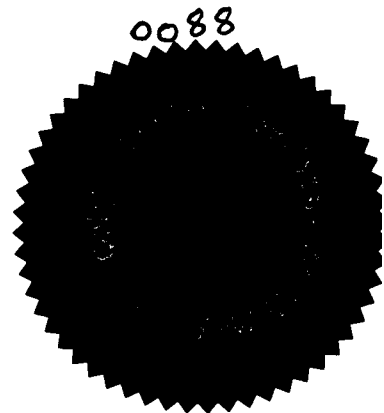
THE COMMON SEAL OF )  
ORIGIN HOUSING DEVELOPMENTS )  
LIMITED was hereunto affixed in the presence of)

Authorised Signatory  
Print Name: GARETH  
JONES



Authorised Signatory  
Print Name: CAROLINE WATERER





EXECUTED as a deed by **LOWDALE PROPERTIES LIMITED**  
acting by a director and its secretary or  
two directors

.....(Director)

.....(Secretary/Director)