

**DATED** 17th October **2006**

**THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF LEWISHAM**

**and**

**LONDON AND QUADRANT HOUSING TRUST**

**and**

**TOWER HOMES LIMITED**

---

**GRANT AGREEMENT FOR SECTION 106 MONIES**

**Relating to Community Facilities at Phase 3B Silwood Estate**

---

**THIS AGREEMENT** is made the *17th* day of *October* 2006  
**BETWEEN:**

- 1 **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF LEWISHAM** of Town Hall Catford London SE6 4RU (the 'Council') and
- 2 **LONDON AND QUADRANT HOUSING TRUST** whose registered office is at Osborn House Osborn Terrace London SE3 9DR and **TOWER HOMES LIMITED** whose registered office is at Osborn House Osborn Terrace London SE3 9DR (the 'Associations')

## **BACKGROUND**

- 1 The Associations are charitable Industrial and Provident Societies (registered numbers: 20943R and 23731R respectively) and social landlords registered with the Housing Corporation under the Housing Act 1996 (registered numbers: LH0115 and SL3364 respectively)
- 2 The Council and the Associations have entered into the **Development Agreement** and the **Community Facility Agreement** on even date herewith.
- 3 The Council has agreed to contribute towards the costs incurred by the Associations in carrying out the **Development** by payment of the **Capital Grant** which is being funded by Section 106 monies
- 4 This Agreement sets out the terms and conditions under which the Capital Grant shall be made available to the Associations.

**IT IS AGREED** as follows:

### **1 DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

In this Agreement:

- 1.1.1 **'Balance of the Capital Grant'** means the sum of £982,364 (nine hundred and eighty two thousand three hundred and sixty four pounds);
- 1.1.2 **'Building Contract'** has the same meaning as in the Development Agreement;
- 1.1.3 **'Building Contractor'** has the same meaning as is given the expression 'RSL's Building Contractor' in the Development Agreement;
- 1.1.4 **'Capital Grant'** means the sum of £1,964,728 (one million nine hundred and sixty four thousand seven hundred and twenty eight pounds);
- 1.1.5 **'Community Facility'** means the Community Facility to be provided by the Associations on the Land as part of the agreed development to be carried out by the Associations under the terms of the Development Agreement
- 1.1.6 **'Community Facility Agreement'** means the agreement of even date with this Agreement made between the parties, as may be amended from time to time by the Parties in writing, setting out the Associations' obligations in respect of the future running and management of the Community Facility and their obligation to provide an agreed revenue stream for that purpose
- 1.1.7 **'Completion of Certified Works Notice'** means a notice stating that the Associations have spent the sum of £1,964,728 (one million nine hundred and sixty four thousand seven hundred and twenty eight pounds) on certified works under the Building Contract and attaching a copy of the relevant certificates of payment under the Building Contract;
- 1.1.8 **'Development'** means the construction of the Community Facility in accordance with the Planning Permission (insofar as it relates to the Community Facility) and the Development Agreement;
- 1.1.9 **'Development Agreement'** means the development agreement of even date with this Agreement made between the Parties, as may be amended from time to time by the Parties in writing;
- 1.1.10 **'Estate'** has the same meaning as in the Development Agreement;
- 1.1.11 **'First Instalment of the Capital Grant'** means the sum of £982,364 (nine hundred and eighty two thousand three hundred and sixty four pounds);

- 1.1.12 **'Grant'** means the Capital Grant and all interest accruing to the Grant Account from time to time;
- 1.1.13 **'Land'** has the same meaning as "Property" in the Development Agreement and includes all buildings from time to time erected thereon;
- 1.1.14 **'Parties'** means the parties to this Agreement and their successors and assigns;
- 1.1.15 **'Quarter'** means each successive period of three months, starting on 1 January, 1 April, 1 July and 1 October each year;
- 1.1.16 **'Registered Social Landlord'** means a person registered with the Housing Corporation as a social landlord under the Housing Act 1996;
- 1.1.17 **'Start on Site'** means the date on which the Building Contractor has taken possession of all or part of the Land under and in accordance with the Building Contract
- 1.1.18 **'Start on Site Notice'** means a notice served on the Council by the Associations setting out the date on which the Building Contractor has taken possession of all or part of the Land under and in accordance with the Building Contract;
- 1.1.19 **"Unconditional"** has the same meaning as in the Development Agreement
- 1.1.20 **'Working Day'** means any day Monday to Friday excluding bank and public holidays.

## 1.2 **Interpretation**

- 1.2.1 References to any statute or statutory provision in this Agreement includes a reference to that statute or those provisions as replaced, amended, extended, re-enacted or consolidated from time to time whether by statute or by directive or regulation (which is, in the case of a directive or regulation, intended to have direct application within the United Kingdom and has been adopted by the Council of the European Community) and all statutory instruments or orders made pursuant to it.
- 1.2.2 Words importing one gender include all others and words importing the singular include the plural and vice versa.

- 1.2.3 Unless the context otherwise requires references to clauses, sub-clauses, or annexes are to clauses, sub-clauses or annexes (as the case may be) of this Agreement.
- 1.2.4 The headings to the clauses are for convenience only and shall not affect the construction or interpretation of this Agreement.
- 1.2.5 Nothing in this Agreement shall create a partnership between the Council and the Associations.
- 1.2.6 This Agreement constitutes the entire agreement between the Parties as regards the subject matter of this Agreement.

## **2 PAYMENT OF GRANT**

- 2.1 On the date of this Agreement, the Council shall pay the First Instalment of the Capital Grant to the Associations.
- 2.2 The Council shall pay the Balance of the Capital Grant to the Associations no later than the date which is 20 Working Days after the Associations have served on the Council the Completion of Certified Works Notice.
- 2.3 For the avoidance of doubt, the Council shall be entitled to pay the Balance of the Capital Grant to the Associations in instalments, provided that, after payment of the First Instalment of the Capital Grant, an amount equal in the aggregate to the Balance of the Capital Grant shall have been paid to the Associations on or before the date calculated in accordance with clause 2.2.

**Provided** that the Associations shall not be so entitled to receive the payments of Capital Grant set out in clauses 2.1 and 2.2 and the Council shall be under no obligation to make them:

- 2.3.1 if and for so long as they are or either of them is in material breach of any of their obligations under this Agreement or the Development Agreement; and
- 2.3.2 if any of the representations set out in clause 6 would be incorrect in any material respect if it was then to be repeated by reference to the circumstances then pertaining;

**3 PURPOSE**

- 3.1 The Associations shall apply the Grant solely in or towards the costs incurred by the Associations in carrying out the Development.

**4 CHANGES TO THE DEVELOPMENT**

If at any time the Parties agree to changes to the Development under the Development Agreement, and as a result agree to adjust the amount of Capital Grant payable in respect of the Development, any references to the Capital Grant in this Agreement will mean such amount as may be adjusted from time to time.

**5 RECORDS AND ACCOUNTS, AND EXCESS GRANT**

**Records and Accounts**

- 5.1 The Associations shall keep written records and accounts of the income received (including the Grant and any other payments by way of grant received in respect of the Development, including payments in kind) and the expenditure incurred in respect of the Development.
- 5.2 The accounts shall be kept in accordance with good accountancy practice and shall be audited by qualified auditors at least once a year.
- 5.3 The records and accounts shall be kept by the Associations for not less than 6 years after draw down of the Balance of the Grant.
- 5.4 The Associations shall provide copies of such records and accounts to the Council on reasonable written notice and shall permit the Council or its auditors, or any other person authorised by the Council from time to time (including GOL or its auditors), to inspect and take copies of such accounts at any reasonable time on reasonable prior notice.
- 5.5 Without prejudice to the above, the Associations shall provide the Council:
- 5.5.1 within 10 Working Days of the end of each Quarter, an account setting out details of the income and expenditure relating to the Development, including details of all Grant drawn down from the Grant Account during the Quarter in question, in such form as the Council may reasonably require; and

5.5.2 within 20 Working Days of the issue of the certificate of practical completion of the Development under the Building Contract, a final, audited account (the 'Final Account') setting out all income and expenditure relating to the Development together with a certificate from the most senior finance officer of the Associations that the Grant has been applied solely in or towards the costs incurred by the Associations in carrying out the Development.

## **6 REPRESENTATIONS**

- 6.1 The Associations represent that on the date of this Agreement, the representations set out below are true and accurate in all material respects and not materially misleading.
- 6.2 The representations shall be deemed to be repeated at six monthly intervals starting from the date of this Agreement.
- 6.3 If the Associations are unable to make the representations at any time, the Associations shall inform the Council at the earliest opportunity.
- 6.4 The representations referred to in clause 7.1 are as follows:

### **6.4.1 Status**

The Associations are and are likely to remain registered with the Housing Corporation as social landlords and with the Financial Services Authority as charitable industrial and provident societies;

### **6.4.2 Due execution and validity of documents**

The Associations are validly existing, have power to execute and deliver this Agreement and to perform all of their obligations under it, their execution and performance has been validly authorised, and those obligations will, when such documents are executed and delivered by it, be valid, legal and binding on them.

### **6.4.3 No contravention of laws, agreements etc.**

Neither the execution of this Agreement nor the performance by it of its obligations under either of them will (a) conflict with or result in any breach of any law or enactment or any deed, agreement or other instrument,

obligation or duty binding on it or any of its assets, or (b) cause any limitation on any of their powers, or on the right or ability of the members of its board of management or other duly appointed representatives to exercise such powers, to be exceeded.

#### 6.4.4 **Successful Completion**

The Associations are not aware, after due enquiry, of anything which materially threatens the successful completion of the Development or makes it unlikely that it will be successfully completed.

#### 6.4.5 **Information**

6.4.5.1 All information, including financial information, provided by or on behalf of the Associations to the Council or the Council's advisers in connection with this Agreement, was true and accurate and not misleading when it was provided and nothing has occurred since then to make it untrue, inaccurate or misleading in any material respect.

6.4.5.2 The Associations have disclosed to the Council all information which would or might reasonably be thought to influence the Council in the awarding of Grant to the Associations or the amount thereof.

### 7 **DISPOSAL OF THE LAND**

The Associations shall not dispose (by sale, lease, charge or otherwise) of any interest in the whole or any part of the Community Facility or following completion of the Development change the use of the Community Facility from that permitted under the Planning Permission to any other use defined in the Town and Country Planning (Use Classes) Order 1987 (as amended) except with the prior written consent of the Council, which shall not be unreasonably withheld or delayed

### 8 **REPAYMENT OF THE GRANT**

8.1 If:

8.1.1 the Development Agreement is terminated; or



- 8.1.2 the Associations have committed a material breach of this Agreement or the Community Facility Agreement and either, such breach is not capable of remedy or if it is capable of remedy, the Associations have failed to remedy any such breach within such reasonable timescale as the Council may have notified it in writing; or
- 8.1.3 without prejudice to the generality of clause 8.1.2 the Associations dispose (by sale, lease, charge or otherwise) of any interest in the whole or any part of the Community Facility other than in the circumstances set out in clauses 8.2.1 or 8.2.2 OR following completion of the Development change the use of the Community Facility from that permitted under the Planning Permission to any other use defined in the Town and Country Planning (Use Classes) Order 1987 (as amended) in each case and for the avoidance of doubt whether with or without the Council's prior written consent in accordance with clause 7

then the Council may serve on the Associations a Repayment Notice.

8.2 The provisions of clause 8.1.3 shall not apply to either of the following disposals which take place with the prior written consent of the Council:

8.2.1 the disposal is a charge by way of legal mortgage to a person providing private finance in respect of the costs of the Development and the Associations and such person agrees to enter into a Deed of Priority with the Council; or

8.2.2 the disposal is the grant of a lease of the Community Facility in accordance with the provisions of clause 3.2 of the Community Facility Agreement

8.3 On service of a Repayment Notice, the Associations' entitlement to the Balance of the Capital Grant, if not already paid by the Council shall immediately cease and be of no further effect.

8.4 Within 10 Working Days of service of a Repayment Notice the Associations shall subject to the provisions of clause 8.5 repay to the Council the Grant.

8.5 For the purposes of clause 8.4. the Grant shall be required to be repaid as follows:

- 8.5.1 where a Repayment Notice is served prior to the date of service of the Completion of Certified Works Notice or in the first year after the date of service of the Completion of Certified Works Notice – 100% of the Grant
- 8.5.2 where a Repayment Notice is served in the second year after the date of service of the Completion of Certified Works Notice – 93.33% of the Grant
- 8.5.3 where a Repayment Notice is served in the third year after the date of service of the Completion of Certified Works Notice – 86.66% of the Grant
- 8.5.4 where a Repayment Notice is served in the fourth year after the date of service of the Completion of Certified Works Notice – 79.99% of the Grant
- 8.5.5 where a Repayment Notice is served in the fifth year after the date of service of the Completion of Certified Works Notice – 73.32% of the Grant
- 8.5.6 where a Repayment Notice is served in the sixth year after the date of service of the Completion of Certified Works Notice – 66.65% of the Grant
- 8.5.7 where a Repayment Notice is served in the seventh year after the date of service of the Completion of Certified Works Notice – 59.98% of the Grant
- 8.5.8 where a Repayment Notice is served in the eighth year after the date of service of the Completion of Certified Works Notice – 53.31% of the Grant
- 8.5.9 where a Repayment Notice is served in the ninth year after the date of service of the Completion of Certified Works Notice – 46.64% of the Grant
- 8.5.10 where a Repayment Notice is served in the tenth year after the date of service of the Completion of Certified Works Notice – 39.97% of the Grant
- 8.5.11 where a Repayment Notice is served in the eleventh year after the date of service of the Completion of Certified Works Notice – 33.3% of the Grant
- 8.5.12 where a Repayment Notice is served in the twelfth year after the date of service of the Completion of Certified Works Notice – 26.63% of the Grant
- 8.5.13 where a Repayment Notice is served in the thirteenth year after the date of service of the Completion of Certified Works Notice – 19.96% of the Grant
- 8.5.14 where a Repayment Notice is served in the fourteenth year after the date of service of the Completion of Certified Works Notice – 13.29% of the Grant

8.5.15 where a Repayment Notice is served in the fifteenth year after the date of service of the Completion of Certified Works Notice – 6.62% of the Grant

8.6 In this clause 8:

**‘Repayment Notice’** means a written notice from the Council under which the Council requires repayment of the Grant as set out in clause 8.4.

**‘Deed of Priority’** means a deed of priority in such form as the Council shall reasonably require, under which the Council agrees that the Charge shall rank second in priority to any charge created in favour of a lender, as set out in clause 8.2.1;

## 9 **TERMINATION OF THE AGREEMENT**

9.1 This Agreement shall terminate:

9.1.1 if a Repayment Notice has been served, on repayment of the Grant and payment of all other monies due under clause 8.4; or

9.1.2 on the expiry of the end of the fifteenth year after the date of service of the Completion of Certified Works Notice PROVIDED THAT at that date there are no monies due to the Council under clause 8.4 (in which case for the avoidance of doubt the provisions of clause 9.1.1 will apply)

whichever happens first.

## 10 **NOTICES**

10.1 Any notice to be served under this Agreement shall be in writing and may be served by recorded delivery post, personal delivery, or fax.

10.2 Subject to clause 11.3, a notice shall be deemed to be sufficiently well served if:

10.2.1 sent by recorded delivery post, 48 hours after the time of posting;

10.2.2 delivered personally, on the day of delivery;

10.2.3 sent by fax, on the day of transmission.

10.3 Notwithstanding clause 11.2, if by applying its provisions the date of service is not a working day or if the notice is delivered after 4.30pm, then the date of service shall be the next immediately following working day.

10.4 Any notice served on the Council shall be addressed to the Executive Director for Regeneration at the address set out at the head of this Agreement (or such other address as may be notified to the Associations from time to time) or on such fax number as may have been notified to the Associations from time to time.

10.5 Any notice served on the Associations shall be addressed to the Secretary at the address set out at the head of this Agreement (or such other address as may be notified to the Council from time to time) or on such fax number as may have been notified to the Council from time to time.

## **11 INDEMNITY**

The Associations shall indemnify and keep indemnified the Council from and against all losses, damages, costs, expenses, actions, liability and claims which may be incurred or sustained by the Council arising out of any breach of their obligations by the Associations under this Agreement.

## **12 ASSIGNMENT**

12.1 The Associations shall not be entitled to assign any of their rights under this Agreement.

12.2 The Council shall be entitled to transfer its rights and/or obligations under this Agreement only to any person succeeding to the Council's statutory functions.

## **13 DISPUTES**

13.1 Other than as expressly set out in this Agreement, the provisions as to disputes under the Development Agreement shall apply to any disputes between the Parties which arise under or in connection with this Agreement.

13.2 Any proceedings as to a dispute under this Agreement which relate to the same subject matter as a dispute then in progress under the Development Agreement shall be consolidated with any such proceedings taking place under the Development Agreement.

## **14 STATUTORY POWERS**

Nothing in this Agreement shall in any way operate so as to fetter, waive, diminish or affect any existing or future powers or duties of the Council in the exercise of its functions as a local authority.

**15 LAW**

The formation, construction, performance, validity and all aspects whatsoever of this Agreement shall be governed by English law and the parties agree to submit to the exclusive jurisdiction of the English courts.

**16 WAIVER**

Failure or delay by a party in exercising any right under this Agreement shall not constitute a waiver of that right and shall not affect the validity of this Agreement nor any part thereof or the right of the parties to enforce its terms.

**17 SEVERANCE**

If any provision of this Agreement shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way such declaration shall in no way impair or affect any other provision all of which shall remain in full force and effect.

**18 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

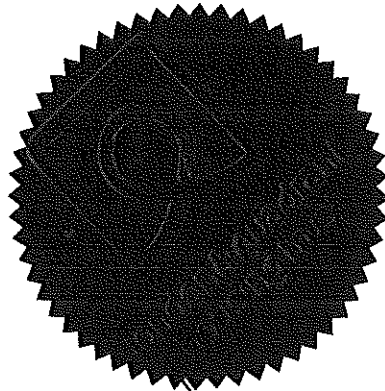
It is agreed that this Agreement shall not and the parties to this Agreement do not intend to confer any benefit upon any third party which is enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise.

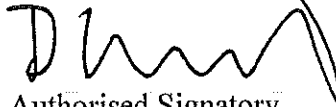
**IN WITNESS** whereof the Parties have caused this Agreement to be executed as a deed but not delivered until the day and year first before appearing

The **COMMON SEAL** of  
**The Mayor and Burgesses of the London Borough of Lewisham**  
was hereunto affixed in the presence of:

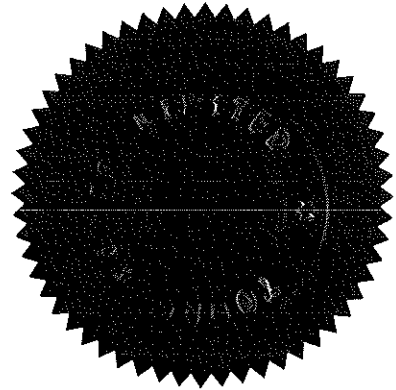
for Head of Law

The **COMMON SEAL** of  
**London and Quadrant  
Housing Trust**  
was hereunto affixed in the presence of:

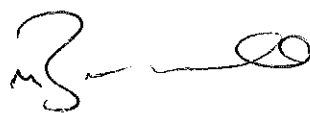


  
Authorised Signatory

  
Authorised Signatory



The **COMMON SEAL** of  
**Tower Homes Limited**  
was hereunto affixed in the presence of:

Authorised Signatory 

Authorised Signatory 