

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

Relating to Phase 3B Silwood Estate

THIS AGREEMENT is made the *17th* day of *October* 200 *6*

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 number: LH0115 and SL3364 respectively)
- 2 The Council and the Associations have entered into the **Development Agreement**.
- 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 the London Development Agency and in respect of which funds the Council is the accountable body to the London Development Agency.
- 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 £1,120,000 (one million one hundred and twenty thousand 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 £2,240,000 (two million two hundred and forty thousand pounds);
- 1.1.5 **'Completion of Certified Works Notice'** means a notice stating that the Association has spent the sum of £2,240,000 (Two Million Two Hundred and Forty Thousand Pounds) on certified works under the Building Contract and attaching a copy of the relevant certificates of payment under the Building Contract;
- 1.1.6 **'Development'** means the construction of 25 residential units for intermediate rent being part of the works to be carried out by the Associations under the Development Agreement;
- 1.1.7 **'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;
- 1.1.8 **'Estate'** has the same meaning as in the Development Agreement;
- 1.1.9 **'First Instalment of the Capital Grant'** means the sum of £1,120,000 (one million one hundred and twenty thousand pounds);
- 1.1.10 **'Grant'** means the Capital Grant and all interest accruing to the Grant Account from time to time;
- 1.1.11 **'LDA'** means the London Development Agency or any statutory body succeeding to its functions;
- 1.1.12 **'LDA Grant Conditions'** means any conditions attached to the LDA Grant from time to time and as shall be notified to the Association;

- 1.1.13 **'Parties'** means the parties to this Agreement and their successors and assigns;
- 1.1.14 "Property" means the land and/or airspace on which the Development is built and includes all buildings from time to time erected thereon and the expression "Property" includes any part of the Property
- 1.1.15 "Property Abatement" means the sum of £1,350,000 (One Million Three Hundred and Fifty Thousand Pounds)
- 1.1.16 **'Quarter'** means each successive period of three months, starting on 1 January, 1 April, 1 July and 1 October each year;
- 1.1.17 **'Registered Social Landlord'** means a person registered with the Housing Corporation as a social landlord under the Housing Act 1996;
- 1.1.18 **'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
- 1.1.19 **'Start on Site Notice'** means a notice served on the Council by the Association 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;
- 1.1.20 **"Unconditional"** has the same meaning as in the Development Agreement
- 1.1.21 **'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 Association.
- 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 Association has 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 referred to at clauses 2.1 and 2.2 and the Council shall be under no obligation to make such payments:

- 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 and shall otherwise comply with the LDA Grant Conditions in relation to the Grant.
- 3.2 Without prejudice to clause 3.1, if the Council notifies the Associations of any LDA Grant Conditions after the date of this Agreement which the Associations, acting reasonably, considers to be unreasonable, then the Council agrees that it will use all reasonable endeavours to obtain the removal or amendment of any such Conditions, (which in the case of any amendment shall be such amendment as would result in Conditions which are acceptable to the Associations, acting reasonably).

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 Association 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, the LDA or their respective 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 Association that the Grant has been applied solely in or towards the costs incurred by the Associations in carrying out the Development; and
 - 5.5.3 within 20 Working Days of the issue of the certificate of practical completion of the Development under the Building Contract, the Associations' calculation of the Council's Proportion (as defined at clause 8.8) for agreement by the Council.

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 6.1 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 them, 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 them of their 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 them or any of their assets, or (b) cause any limitation on any of their powers, or on the right or ability of the members of their respective boards 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

7.1 Subject to the provisions of clauses 7.2, 7.3 and 7.4, the Associations shall not dispose (by sale, lease, charge or otherwise) of any interest in the whole or any part of the

Property or following completion of the Development change the use of any residential unit comprising the Development from use for intermediate rent except with the prior written consent of the Council

7.2 For the purposes of clause 7.1, the Council's consent shall not be unreasonably withheld or delayed where 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

7.3 For the purposes of clause 7.1, the Council's consent shall not be unreasonably withheld or delayed where the consent is sought after the expiry of 15 years from the date of this Agreement

7.4 For the purposes of clause 7.1 the consent of the Council shall not be required to:

7.4.1 the disposal of any residential unit comprising the Development for Affordable Housing by way of a periodic secure assured or, assured shorthold tenancy agreement, which in any such case conforms to the requirements of the Housing Corporation; or

7.4.2 the disposal of any residential unit comprising the Development under the right to acquire under the Housing Act 1996 or under any other statutory provision entitling the occupiers of any such unit to acquire a freehold or long leasehold interest in the unit concerned Provided that the Associations shall pay to the Council an amount calculated in accordance with clause 8.5 within 10 Working Days of the disposal taking place;

7.4.3 the necessary disposal of any part of the Property to a statutory undertaker in pursuance of its statutory duties.

7.5 In this clause 7:

7.5.1 **'Affordable Housing'** means social housing let at a rent which conforms to the Housing Corporation's rent influencing regime; and/or housing let on a shared ownership lease which conforms to the Housing Corporation's requirements from time to time; and/or housing let at a rent which is above social housing rents but below market rents and affordable by Key Workers (as defined by the Office of the Deputy Prime Minister from time to time);

7.5.2 '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 7.2;

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 (including but not limited to a disposal or change of use of the Property in breach of the provisions of clause 7) 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 the Associations have requested the Council's consent to dispose (by sale, lease, charge or otherwise) of any interest in the whole or any part of the Property or following completion of the Development to change the use of any residential unit comprising the Development from use for intermediate rent

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

8.2 On service of a Repayment Notice pursuant to clauses 8.1.1 or 8.1.2, 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.

8.3 Within 10 Working Days of service of a Repayment Notice pursuant to clauses 8.1.1 or 8.1.2 (other than in respect of a material breach under clause 8.1.2 constituting a disposal or change of use in breach of the provisions at clause 7 where the provisions of clause 8.4 shall apply) the Associations shall:

8.3.1 repay to the Council the amount of the Grant previously paid to the Associations; and

8.3.2 repay to the Council an amount equal to the Property Abatement

8.4 Within 10 Working Days of service of a Repayment Notice served pursuant to clause 8.1.2 in respect of a material breach under clause 8.1.2 constituting a disposal or change of use of the Property in breach of the provisions at clause 7 the Associations shall pay to the Council an amount calculated in accordance with clause 8.5.

8.5 Within 10 Working Days of the completion of a disposal or a change of use of the Property pursuant to a consent of the Council obtained by the Associations under clause 7 the Associations shall repay to the Council either:

8.5.1 the amount of the Grant previously paid to the Associations together with an amount equal to the Property Abatement; or

8.5.2 the Council's Proportion of the sale proceeds from the disposal (after deducting the Associations' reasonable costs in connection with the disposal) or in the case of a change of use of the Property the Council's Proportion of the open market value of the Property immediately following that change of use

which ever amount is greater

8.6 In the event of a disposal or a change of use of part only of the Property, the amount to be repaid by the Associations pursuant to clause 8.5 shall be apportioned accordingly. So that, by way of example only, if one residential unit is sold for private sale, the amount to be repaid is either 1/25 of the Grant previously paid to the Associations together with 1/25 of the Property Abatement OR the Council's Proportion of the sale proceeds for that residential unit, whichever is greater

8.7 In the event of a disposal constituting a shared ownership lease, then as well as the amount payable to the Council in accordance with clause 8.5 at the time of the initial disposal, the Council shall be entitled to receive the Council's Proportion of the sale proceeds (after deducting the Associations' reasonable costs in connection with the disposal) resulting from the sale of any future additional shares in the residential unit in question

8.8 In this clause 8:

'Repayment Notice' means a written notice from the Council under which the Council requires repayment of the Grant and other monies, as set out in clauses 8.3 and 8.4.

'Council's Proportion' means the proportion that the Capital Grant and the Property Abatement bear to the final actual costs of the Development such proportion to be agreed by the parties in accordance with clause 5.5.3. So that if, by way of example only, the Capital Grant and the Property Abatement represent 50% of the final actual costs of the Development the Council's Proportion will be 50%.

9 TERMINATION OF THE AGREEMENT

- 9.1 If a Repayment Notice has been served pursuant to clauses 8.1.1 or 8.1.2 (other than in respect of a material breach under clause 8.1.2 constituting a disposal or change of use in breach of the provisions at clause 7), this Agreement shall terminate on repayment of the Grant and the Property Abatement in accordance with clause 8.3.
- 9.2 If a Repayment Notice has been served pursuant to clauses 8.4 or 8.5 in the case of a disposal or a change of use of the whole of the Property, this Agreement shall terminate on payment of all monies due to the Council in accordance with clause 8.5

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 Head of Law 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 LDA or 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.

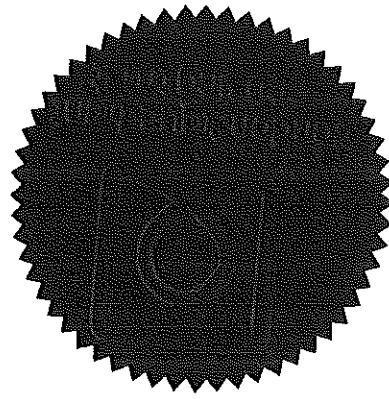
IN WITNESS whereof the Parties have caused this Agreement to be executed as a deed but not delivered until the day and year first before appearing

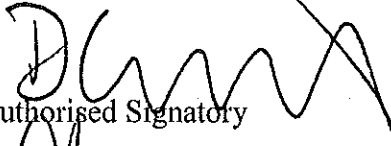
The **COMMON SEAL** of
The Mayor and Burgesses of the
London Borough of Lewisham
was hereunto affixed in the presence of:


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 