

THIS AGREEMENT is made the day of Two thousand and
Twenty BETWEEN **WIRRAL BOROUGH COUNCIL** of Town Hall Brighton Street Wallasey
Merseyside CH44 8ED (“the Council “) (1) and [] whose registered office
is [] being a non-profit private registered provider of social housing
registered under number [] (“the Owner”) (2)

IT IS AGREED as follows:

1. **DEFINITIONS**

In this Agreement the following words and phrases shall have the following meanings:

- 1.1 “Allocations and Nominations Policy and Procedure” means the policy and process adopted by the Council from time to time for the assessment of the eligibility of persons applying to become residents at the Property, for the maintenance and review of a waiting list and for the allocation of Units of Accommodation at the Property being an establishment providing accommodation to persons in need of support to maintain a degree of independent living (current Policy is annexed to this Agreement)
- 1.2 “Owner” means the party of the second part together with its successors in title to the Property
- 1.3 “Approved Nominees” means those Nominees who are allocated housing at one of the Units of Accommodation by the Council
- 1.4 “Care” means the care to be provided to the Approved Nominees who are Nominees falling within class (i) of the definition of Nominees occupying a Unit of Accommodation in accordance with the level of needs assessed by the Council from time to time and secondly the level of care relevant to other Approved Nominees as assessed by the Council from time to time
- 1.5 “Common Areas” means the dining room, residents’ lounge and associated toilets assisted bathing areas, laundry areas circulation areas entrances lobbies and

corridors which do not form part of the Units of Accommodation and all other areas intended for the communal use of residents of the Property or for some of them

- 1.6 "Council" shall mean the "Wirral Borough Council" and any statutory authority which may succeed to, or replace the Council in the exercise of its statutory functions
- 1.7 "Data Protection Legislation" means the General Data Protection Regulation(EU 2016/679) and all other legislation relating to the protection of personal data in force during the Period
- 1.8 "EIR" means the Environmental Information Regulations 2004 and any subordinate legislation made under these provisions from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to the same or any associated legislation;
- 1.9 "FOIA" means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation
- 1.10 "Information Commissioner" has the meaning set out in Section 6 of the Data Protection Act 1998
- 1.11 "Insolvency of the Owner" means either the commencement of any proceedings for the winding-up or the presentation of a petition for the making of an administration order in respect of the Owner (other than where proceedings are vexatiously or improperly commenced or a petition is vexatiously presented and is discharged or dismissed within ten (10) Working Days) or the passing of any resolution for the voluntary winding-up of the Owner (save for the purposes of reconstruction insolvency upon terms approved by the Council) or the appointment of any receiver over the whole or any part of the Owner's undertaking or assets
- 1.12 "Nominees" means persons who have been assessed by the Council as having a need for housing and are within one of the following categories
- (i) persons whose care needs have been assessed by the Council in accordance with its duties under the Care Act 2014 (and any statutory

modification or re-enactment thereof and all legislation statutory instruments and orders made under it or them or having effect under them) and which assessment indicates to the Council that care can be appropriately met by the provision of care in the Property given its layout equipment and design and such other criteria as the Council acting reasonably considers it appropriate to take into account from time to time in its assessment

- (ii) Disabled and/or frail persons requiring personal care and support utilising facilities within the Property
- (iii) Persons fulfilling the Council's criteria from time to time on the housing register it maintains to fulfil its statutory functions

- 1.13 "Nomination Rights" means the right of the Council acting by its Director for Adult Care & Health or their nominated representative to nominate the Nominees (in line with clause 5.1 of this agreement) who from time to time throughout this Agreement shall occupy the Units of Accommodation in accordance with the terms of this Agreement
- 1.14 "Period" means the period of ten years commencing on and including the date on which all Units of Accommodation are fit for occupation by Approved Nominees subject to earlier determination under the provisions of this Agreement
- 1.15 "Plan " means the plan annexed so marked;
- 1.16 "Property" means the property described in the Schedule
- 1.17 "Request for Information/RFI" shall have the meaning set out in FOIA or any request for information under EIR which may relate to the Agreement or any business or activities of the Council
- 1.18 "Units of Accommodation" means the 27 residential units at the Property consisting of 27 one-bedroomed flats available for rent ("**Rented Units**") for the occupation of the Nominees and "Unit of Accommodation" shall be construed accordingly
- 1.19 Words importing one gender shall be construed as importing any other gender

- 1.20 Words importing the singular shall be construed as importing the plural and vice versa
- 1.21 Where any party comprises more than one person the obligations and liabilities of that party under the Agreement shall be joint and several obligations and liabilities of those persons
- 1.22 The clause and paragraph headings in the body of this Agreement and in the Schedules do not form part of the Agreement and shall not be taken into account in its construction or interpretation
- 1.23 Reference to a clause a schedule or a paragraph in the body of this Agreement and in the Schedules shall be a reference to a clause schedule or paragraph in this Agreement unless provided otherwise

2. TERM OF AGREEMENT

This Agreement shall remain in full force and effect for the Period subject to early determination as provided in this Agreement

3. COUNCIL'S OBLIGATIONS

The Council shall:

- 3.1 insofar as it shall be practicable to do so, ensure that there are sufficient applications for requests to be housed at the Property to ensure that there are no Units of Accommodation vacant for an unreasonable period of time

4. OWNER'S OBLIGATIONS

The Owner shall:

- 4.1 attend meetings of any panel that may meet to determine applications for housing at the Property if the Owner is so required to do by the Council
- 4.2 procure that all tenant suppliers visitors agents and contractors shall use the Common Areas and the equipment machinery appliances and furniture in them in a reasonable and proper manner and shall take reasonable care thereof
- 4.3 comply with the Allocations and Nominations Policy and Procedure

- 4.4 maintain the Property in a clean and tidy condition and in a state of repair and condition commensurate with the Owner's status as a registered provider of social housing and in particular but without prejudice to the generality of the foregoing shall carry out all works of repair and decoration to the Units of Accommodation so as to ensure that the Units of Accommodation are accessible and available for occupation by an Approved Nominee without undue delay
- 4.5 allocate leases or tenancy agreements to the Approved Nominees for the Units of Accommodation in accordance with the provisions of this Agreement and the Allocations and Nominations Policy and Procedure
- 4.6 maintain the equipment machinery appliances and furniture in the Common Areas in good repair and working order
- 4.7 maintain the decoration of the Common Areas to a good standard

5. NOMINATION RIGHTS

The Owner hereby permits the Council to exercise the Nomination Rights and such rights shall last for the Period of this Agreement upon the following basis:

5.1 Rented Units

- 5.1.1 At the time of the first lettings on assured tenancies the exclusive right to nominate Nominees to be housed within the Units of Accommodation 3 months prior to the Units being available for first letting and for 3 months after the Units are available for first letting
- 5.1.2 At all times after that exclusive rights to nominate Nominees to be housed within the Units of Accommodation when each Unit becomes vacant for a period of 28 working days
- 5.1.3 In relation to the Units of Accommodation that are let ("the Rented Units") the Owner and the Council agree as follows:
 - 5.1.3.1 Such lettings shall be upon assured tenancies within the meaning of Part 1 of the Housing Act 1988 (or any statutory modification or re-enactment thereof) or such other form of tenancy in order to comply with best practice as may be required or

permitted by the Regulator of Social Housing and/or the body regulating social housing from time to time and at rents that have been discussed, evidenced and agreed with the Council's Housing Benefits section.

5.1.3.2 In selecting Nominees on the basis of their care needs the Council will have regard to the desirability of offering tenancies to individuals within a range of care needs

5.2 Rented Units

The Nomination Rights for the Rented Units shall be exercised by the Council in the following manner:

5.2.1 No later than three months prior to the anticipated date for practical completion of the Units of Accommodation the Owner will supply to the Council written particulars of the proposed rents in respect of the Units and such other particulars as the Council shall reasonably require together with the anticipated date of their practical completion and will request the Director to initiate the process of nominating the Nominees

5.2.2 The Owner shall as soon as possible (but in any event no later than five (5) working days) after each Unit of Accommodation becomes available for re-letting give notice to the Director or nominated representative in writing stipulating the location and type of Unit so available.

5.2.3 The Council shall nominate Approved Nominees (and if more than one in order of priority) for a tenancy of a Rented Unit within twenty (28) working days of receipt from the Owner of the particulars referred to in either clause 5.2.1 or 5.2.2 being persons drawn primarily from the Council's Extra Care Housing List who have undergone a housing and social care assessment

5.2.4 The Owner shall within fourteen (14) days of receipt of any nominations under clause 5.2.3 notify the Council of the names of the Approved Nominee to whom the Owner intends to make an offer of a tenancy

5.2.5 IF the Nominee notified under 5.2..4 fails to take up the tenancy the process set out above shall be repeated until such time as a nominee of the Council does take up a tenancy, taking into account the Council's nomination rights under clause 5.1

6. DISPUTES

Disputes shall be resolved in the following way:

- 6.1 Both parties shall use their reasonable endeavours to resolve by agreement any dispute between them with respect to any matter relating to this Agreement
- 6.2 Disputes will in the first instance be referred to referred to senior staff (who shall be an executive director or equivalent level) from each party to resolve
- 6.3 If senior staff (who shall be an executive director or equivalent level) from each party are unable to resolve the dispute within a period of one (1) month from the date the dispute was notified to the other party then either party may require that the matter shall be referred to the arbitration pursuant to the Arbitration Act 1996 (as amended) of a person to be agreed between the parties or (if the parties fail to agree an arbitrator within one (1) calendar month of their party serving on the other party a written notice to concur in the appointment of an arbitrator) a person to be appointed on the application of either party to the president of the Chartered Institute of Arbitration bearing in mind that neither party can be bound on matters contrary to statute policy or regulatory advice.

7. TERMINATION

- 7.1 In this clause the following words and phrases shall have the following meanings:

- 7.1.1 "Fundamental Breach" means either of the following:

- 7.1.1.1 The failure of either party to perform and observe any of its obligations under this Agreement provided that:

- 7.1.1.1.1 in case of a breach capable of remedy the innocent party shall first give written notice under this Agreement to the party in breach specifying the breach and requiring it to be remedied within such reasonable time as may be specified in

the notice and if the party in breach shall have complied with that notice then such breach shall cease to be a fundamental breach

7.1.1.1.2 in the case of a breach which is not capable of remedy then if the innocent party (in its absolute discretion) shall think it appropriate the breach shall for the purposes of this Agreement be treated as having been remedied if the situation is restored substantially to what it would have been had there been no breach and if the party in breach shall bring about such restoration within such reasonable time as may be specified by the innocent party then such breach shall cease to be a fundamental breach

7.1.1.2 The Insolvency of the Owner

7.1.1.3 any gift or consideration whatsoever offered by the Owner or any member of its staff its agents or contractors to any employee or member of the Council for doing or forbearing to do any action in relation to this Agreement or any other Agreement with the Council save where the act was taken without the knowledge or authority of the Owner and the Owner has on discovering its occurrence taken action to end its relationship with the person who took it.

7.2 In the event of a Fundamental Breach the innocent party to this Agreement may terminate the same upon giving further written notice to the party in breach specifying the breach and that it has not been remedied in accordance with a previous notice or either that it is not capable of remedy and the party in breach has not restored the situation substantially to what it would have been had there been no breach in accordance with a previous notice or that it is not capable of remedy and the innocent party (in its absolute discretion does not think it appropriate that the fundamental breach is deemed to have been remedied in accordance with clause

7.1.1.1.2 whereupon this Agreement shall terminate forthwith but without prejudice to any prior rights or remedies which may have accrued to either party

7.3 In the event that the requirements of the community at large shall change substantially so as to have a material effect upon the services required and provided at the Property then if the parties to this Agreement shall agree then this Agreement may be terminated or (if appropriate) varied accordingly

7.4 The Council may determine this Agreement at any time in the Period by serving not less than 12 months written notice upon the Owner and upon the expiry of such notice this Agreement shall determine but without prejudice to any antecedent breach of it by either party or any claim that has already accrued by either party against the other

8 FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS

8.1 Subject to its duties under Data Protection Act 1998, the Owner will assist and co-operate as requested by the Council to enable the Council to comply with its disclosure requirements under FOIA and EIR within the prescribed periods for compliance and in particular without limitation will (and shall procure that its agents and sub-contractors will), at their own cost:

8.1.1 transfer any RFI received to the Council as soon as practicable after receipt and in any event within two Working Days of receiving a request for information;

8.1.2 provide all such assistance as may be required from time to time by the Council and supply such data or information as may be requested by it;

8.1.3 provide the Council with any data or information in its possession or power in the form that the Council acting reasonably requires within five Working Days (or such other longer period as the Council may specify);

8.1.4 permit the Council to inspect any records as requested from time to time.

- 8.2 Nothing in this Agreement will prevent the Council from complying with any valid order, decision, enforcement or practice recommendation notice issued to it by the Information Commissioner under FOIA and/or EIR

9. **RENEWAL OF THIS AGREEMENT**

The parties to this Agreement hereby acknowledge that the facilities to be provided at the Property are to be provided by mutual co-operation between the Owner the Council and others and agree to use their reasonable endeavours to reach Agreement upon the terms of a renewal or replacement of this Agreement at the end of the Period

10. **INSURANCE**

The Owner shall effect and maintain throughout the Period all insurances which a prudent owner or occupier of a property would effect in respect of owner's or occupier's liability

11. **NOTICES**

- 11.1 Any notice to be served upon the Owner by the Council pursuant to this Agreement shall be in writing duly signed by an authorised representative of the Council and served upon the Owner at its registered office
- 11.2 Any notice to be served upon the Council by the Owner pursuant to this Agreement shall be in writing and served upon the Head of Legal Services Wirral Borough Council Town Hall Brighton Street Wallasey Merseyside CH44 8ED

12 **DATA PROTECTION**

- 12.1 Both parties shall comply with their obligations under the Data Protection Legislation
- 12.2 For the purposes of the Data Protection Legislation, the Council is the data controller and the Owner is the data processor in respect of personal data relating to the Council's performance of its duties under the Care Act 2014
- 12.3 The Owner shall process personal data within the scope of Clause 12.2 only on the written instructions of the Council as determined on the date this Agreement comes into effect.

12.4 The Owner shall;

- (a) ensure that it has in place appropriate technical and organisational measures to prevent unauthorised or unlawful processing of personal data and accidental loss of, or destruction or destruction to personal data;
- (b) notify the Council immediately if it receives a request from a data subject to have access to that person's personal data or a request to rectify, block or erase any personal data or receives a complaint relating to its obligations under the Data Protection Legislation;
- (c) assist the Council in responding to any request from a data subject and in ensuring compliance with the Council's obligations under the Data Protection Legislation;
- (d) notify the Council within 24 hours of its becoming aware of a personal data breach;
- (e) at the written direction of the Council delete or return personal data to the Council at the end of this Agreement;
- (f) maintain complete and accurate records and information to show compliance with this clause and shall allow the Council or its designated auditor to audit those records and information to review compliance by the Owner with its obligations under the Data Protection Legislation and this Agreement;
- (g) indemnify the Council against any liability loss, damage cost or expense suffered by the Council as a consequence of the Owner's non-compliance with its obligations under this clause or the Data Protection Legislation;
- (h) not engage a sub-contractor to process any personal data within the scope of Clause 12.2 without the prior written consent of the Council which may be on such terms as the Council may reasonably require.

SCHEDULE

Property

ENTER PROPER DETAILS HERE – ADDRESS AND MAP

This Agreement was made on the date stated at the beginning of it

SIGNED on behalf of
WIRRAL BOROUGH COUNCIL
by

.....

Authorised Officer

Signed on behalf of []
Acting by

.....

Director

.....

Director

