

Dated

2018

(1) The Royal Borough of Windsor & Maidenhead

and

(2) Bracknell Forest Homes Limited

FUNDING AGREEMENT
In relation to an admission agreement to participate in the
Local Government Pension Scheme

THIS AGREEMENT is made on the day of 2018

BETWEEN

- (1) The Royal Borough of Windsor & Maidenhead of Town Hall, St Ives Road, Maidenhead, Berkshire SL6 1RF (the "**Administering Authority**"); and
- (2) Bracknell Forest Homes Limited whose registered office is at Berkshire Court, Western Road, Bracknell RG12 1RE (the "**Scheme Employer**")

BACKGROUND

- (A) The Administering Authority is an administering authority within the meaning of the Regulations and administers the Scheme and maintains the Fund in accordance with the Regulations.
- (B) The Scheme Employer is a scheme employer within a meaning set out in Schedule 2 of the Regulations and participates in the Scheme pursuant to an admission agreement dated 11 February 2008 (the "**Admission Agreement**").

IT IS AGREED as follows:

1. DEFINITIONS and INTERPRETATION

- 1.1 In this Agreement unless the context otherwise requires the following terms shall have the meanings given to them below:

"Commencement Date"

The date of this Funding Agreement

"First Exit Date"

The date upon which the Scheme Employer ceases to have any active members contributing to the Fund

"Fund"

Royal County of Berkshire Pension Fund

"Funding Strategy Statement"

The written statement setting out the funding strategy which the Administering Authority has in place from time to time in accordance with Regulation 58 of the Regulations

"Ongoing Valuation Basis"

The Fund's ongoing valuation basis as applies where a scheme employer continues to have active members in the Fund as recommended from time to

time by the Fund's actuary based on the policies set out in the Funding Strategy Statement

“Regulations”

The Local Government Pension Scheme Regulations 2013 (as amended)

“Scheme”

The Local Government Pension Scheme established pursuant to the Regulations made by the Secretary of State under sections 7 and 12 of the Superannuation Act 1972

“Second Exit Date”

The date of termination specified in the notice served under Clause 6.1

1.2 In this Agreement

1.2.1 expressions have the same meaning as in the Regulations except where the context otherwise requires;

1.2.2 the singular includes the plural and vice versa;

1.2.3 words preceding 'include' includes 'including' and 'included' shall be construed without limitation by the words which follow these words;

1.2.4 headings in this Agreement are for convenience of reference only and shall not be taken into account in its construction or interpretation;

1.2.5 save where stated to the contrary any reference to this Agreement or to any other document shall include any permitted variation amendment or supplement to this Agreement or to such document; and

1.2.6 any reference to any enactment order regulation or other similar instrument shall be construed as a reference to the enactment order regulation or instrument as amended replaced consolidated or re-enacted.

2. AGREEMENT

2.1 This Agreement has effect on and from the Commencement Date.

2.2 The Administering Authority and the Scheme Employer agree that the Scheme Employer's continued participation in the Scheme from the Commencement Date until the date the Scheme Employer ceases to have any active members will be in accordance with the terms of the Admission Agreement and the Regulations. The Scheme Employer will pay contributions to the Fund in accordance with the rates and adjustments certificates that are in force from time to time as calculated in accordance with the Ongoing Valuation Basis.

2.3 This Agreement envisages that at some point the Scheme Employer may cease to employ any active members in the Fund. For the avoidance of doubt, the mere fact

that the Scheme Employer ceases to employ any active members will not result in an automatic termination of this Agreement which will continue unless otherwise terminated as provided for by the terms of this Agreement.

3. REGISTERED PROVIDER CEASING TO HAVE ACTIVE MEMBERS

3.1 If at any time the Scheme Employer ceases to have an active member contributing to the Fund, the Scheme Employer will become an "exiting employer" for the purposes of Regulation 64(1) of the Regulations. In accordance with Regulation 64(2) of the Regulations, the Administering Authority shall obtain:-

3.1.1 an actuarial valuation as at the First Exit Date of the liabilities of the Fund in respect of benefits in respect of the Scheme Employer's current and former employees; and

3.1.2 a revised rates and adjustments certificate showing the exit payment due from the Scheme Employer in respect of those benefits.

3.2 In consideration of the Scheme Employer's covenant set out in Clause 4.1 below, the Administering Authority agrees that any revised rates and adjustments certificate issued pursuant to clause 3.1.2 will state the "exit payment" to be such amounts as are from time to time payable by the Scheme Employer in accordance with the provisions of this Agreement.

4. REGISTERED PROVIDER COVENANT

4.1 In consideration of the Administering Authority's agreement above, the Scheme Employer covenants that it will **continue to pay contributions in accordance with the rates and adjustment certificate in force from time to time calculated in accordance with the Ongoing Valuation Basis as if it were an admission body in the Fund** until such time as there is a Termination Event as referred to in Clause 6.

5. RISKEVENTS

5.1 The parties agree that the following events will be treated as a "**Risk Event**":-

5.1.1 The Scheme Employer ceasing to be a registered provider of social housing registered with, and subject to regulation by, the Regulator of Social Housing (or any successor body);

5.1.2 The Scheme Employer being assessed by the Regulator of Social Housing (or any successor body) as non-compliant for financial viability (or similar), currently a V3 or a V4 rating; or

5.1.3 The Scheme Employer failing to make a payment to the Administering Authority in accordance with Clause 4.1 in full on the required date.

5.2 Subject to Clause 5.5 below, if a Risk Event is triggered then the Administering Authority shall first approach the Scheme Employer to request further information about the event and ask the Scheme Employer to demonstrate its continued financial strength in light of the Risk Event occurring. The Administering Authority shall have the right to commission a covenant assessment of the Scheme Employer by an

independent assessor if not satisfied with the information provided by the Scheme Employer.

- 5.3 Subject to Clause 5.4, if the Administering Authority, acting reasonably and after following the actions in Clause 5.2 above, is not satisfied that the Scheme Employer's covenant position is adequate to cover its deficit, the Administering Authority shall be entitled to serve notice on the Scheme Employer terminating this Agreement.
- 5.4 Notice may only be given under Clause 5.3 where the Administering Authority has first informed the Scheme Employer that it is not satisfied with the covenant position and the Scheme Employer has not raised a written challenge as to the reasonableness of the Administering Authority's position within 7 days thereafter. If the Scheme Employer raises such a challenge, then notice to terminate this Agreement may not be given until the dispute has been heard and determined by the Pension Panel of the Fund, and only then if the outcome is in favour of the Administering Authority's position.
- 5.5 Without prejudice to Clauses 5.2 and 5.3 above, if a Risk Event is triggered and (a) the Administering Authority acting reasonably considers that it would be to the material financial detriment of the Fund to proceed in accordance with Clause 5.2, and (b) the Administering Authority, acting reasonably, considers it to be reasonable and necessary in order to protect the Fund, then the Administering Authority **shall be entitled to serve notice on the Scheme Employer terminating this Agreement.**

6. TERMINATION OF THE FUNDING AGREEMENT

- 6.1 In the event that notice terminating this Agreement is served by the Scheme Employer for any reason, or the Administering Authority under Clause 5.3 or 5.4, then with effect from the date specified in the notice (which must be no less than 14 days after the date of the notice itself) there will be a "**Termination Event**".
- 6.2 Upon a Termination Event, the Administering Authority will undertake an actuarial valuation as at the Second Exit Date, of the liabilities of the Fund in respect of benefits in respect of the Scheme Employer's current and former employees. This valuation will be undertaken on the basis that would normally be applied as at the Second Exit Date for an exiting employer based on market conditions as at the Second Exit Date and will take account of the payments made by the Scheme Employer under Clause 4.1.
- 6.3 The Administering Authority will issue a revised rates and adjustments certificate showing the amount of exit payment due from the Scheme Employer in accordance with Clause 6.2 (the "Final Exit Payment").
- 6.4 The Scheme Employer covenants to pay the Final Exit Payment within the time period notified by the Administering Authority to the Scheme Employer which will be not less than 90 days from the date of receipt by it of the revised rates and adjustment certificate. On payment in full of the Final Exit Payment, the liability of the Scheme Employer to the Fund generally, and without limitation in relation to the exit payment referred to at Clause 3.1 and the Final Exit Payment, will be treated as having been fully discharged.

7. COSTS

The Scheme Employer will bear the Administering Authority's reasonable costs and expenses incurred in connection with the implementation of this Agreement.

8. GENERAL TERMS

- 8.1 Unless otherwise defined herein, terms and expressions defined in the Admission Agreement and the Regulations shall bear the same meaning in this Agreement.
- 8.2 No term in this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not party to this Agreement.
- 8.3 This Agreement and the Admission Agreement constitute the entire understanding between the Scheme Employer and the Administering Authority in relation to the subject matter of the agreement and supersede all prior contracts, undertakings, representations and negotiations whether oral or written except that nothing in this condition shall exclude or restrict liability for fraudulent or fundamental misrepresentations.
- 8.4 This Agreement shall be governed by and interpreted in accordance with English law and shall be subject to the jurisdiction of the courts of England and Wales.

IN WITNESS whereof the parties have executed and delivered this Agreement as a Deed on the day and year first before written.

**THE COMMON SEAL OF THE ROYAL
BOROUGH OF WINDSOR &
MAIDENHEAD**

was affixed to this deed in
the presence of:

Authorised Officer

**THE COMMON SEAL OF
BRACKNELL FOREST HOMES
LIMITED** was affixed to this deed in the
presence of:

Director

Director/Secretary