

Appendix C – Lease heads of terms for land at Swinburne Avenue, Hitchin

LEASE HEADS OF TERMS

Subject to Contract. Without Prejudice

Landlord: North Hertfordshire District Council (“NHDC”), Council Offices, Gernon Road, Letchworth Garden City, Hertfordshire SG6 3JF

Tenant: settle Group, Blackhorse Road, Letchworth Garden City SG6 1HA [To include successors in title].

Property: Part of Land West of Swinburne Avenue, Hitchin, Hertfordshire forming part of Title Number HD1991. Indicated by area edged red on Plan 1.

Rent: Peppercorn.

Contractual Term: 20 years.

Premium: Refer to Schedule B of this Lease.

Permitted Use: Children’s public play and recreation area only. Tenant shall comply with all matters identified in Title Register HD1991. Tenant shall not cause, permit or suffer any nuisance or annoyance to the owners or occupiers of any nearby property.

Plan 1: Plan entitled “*Plan 1 - Land West of Swinburne Avenue, Hitchin, Hertfordshire*” which is annexed to this Lease. Plan 1 indicates the following:

- Property & Lease demise - area edged red.
- Landlord’s adjacent property – area edged blue.
- Proposed new pathway from Swinburne Avenue – area shaded yellow.

Outgoings: Tenant shall pay all rates, taxes and outgoings in respect of the Property and its use.

Security of Tenure: Lease contracted-out of security of tenure provisions of Landlord and Tenant Act 1954, Part 2.

Repairs: Tenant shall keep the Property and any buildings, structures, equipment, fixtures and chattels installed or constructed at the Property in good, serviceable, neat, tidy, safe and healthy condition. This obligation extends to all play apparatus and equipment, kerbing,

landscaping, matting or other surfacing installed or constructed at the Property. Tenant shall keep all grass, plants and trees on the Property properly cut and maintained. Tenant shall not lop or remove any trees without the prior written consent of Landlord and shall promptly notify the Landlord of any dangerous, diseased or defective trees.

Tenant shall keep pathway from Swinburne Avenue to the Property indicated by the yellow shading on Plan 1 in serviceable and hazard-free condition, to include removing any hazardous surface defects, ice, dirt or obstructions.

Inspection: Tenant shall inspect the Property and pathway indicated by the yellow shading on Plan 1 at least once every calendar month and instigate a programme of management and maintenance to ensure the terms of the Lease are adhered to. Such programme to include removal of all graffiti at the Property.

Signs: Tenant shall erect such signs and take such steps as necessary to advertise to the public that the Land may not be used as of right and is for use only with the express permission of Tenant. Tenant shall maintain the aforementioned signs in good condition and shall replace them if they are removed or damaged.

Charging, Sub-Letting & Assignment: Tenant shall not charge, sub-let, assign or part with or share possession of this Lease or the Property other than as permitted by this Lease.

Alterations: Tenant shall not install or construct at the Property any buildings, structures, equipment, fixtures and chattels without the prior written consent of Landlord. This obligation extends to all play apparatus and equipment, kerbing, landscaping, matting or other surfacing. All alterations shall be carried out and completed to the Landlord's reasonable satisfaction.

The Tenant is permitted to carry out those Works listed in Schedule A to this Lease, subject to Tenant obtaining all other necessary consents and permissions. The Works listed in Schedule A shall be carried out and completed to the Landlord's reasonable satisfaction.

Insurance: Tenant shall keep Property and all items installed and constructed at the Property fully insured.

Public Liability Insurance: Tenant shall obtain and keep in force in respect of the Property an insurance policy covering public liability for injury to persons or property as requested by Landlord and for a minimum sum at date of this Lease of £10,000,000 (Ten Million Pounds).

Indemnity: Tenant to indemnify the Landlord from and against liability in respect of all loss, damage, actions, proceedings, claims, costs and expenses arising from any breach of any Tenant covenants in this Lease, or any act or omission of Tenant, any licensee or any other person on the Property with the authority of any of them. Such indemnity to include all loss, damage, actions, proceedings, claims, costs and expenses relating to matters identified in Title Register HD1991.

Yield Up: Before determination of the Contractual Term (howsoever determined), Tenant shall remove from the Property and suitably dispose of all buildings, structures, equipment, fixtures and chattels, including all play apparatus and equipment, kerbing, landscaping, matting and other surfacing installed or constructed at the Property, together with any other items at the Property that the Landlord requests be removed. Before determination of the Contractual Term (howsoever determined), Tenant shall re-instate any damage caused to the Property and return the Property to grass, to the Landlord's reasonable satisfaction. Tenant shall yield up the Property with vacant possession and in accordance with the Tenant's covenants in this Lease. Tenant is encouraged to consider re-using or recycling as many materials as possible following their removal from the Property.

Determination of Lease: Landlord may determine this Lease by forfeiture at any time without prior notice if Tenant:

- (a) in the reasonable opinion of the Landlord, fails to use the Property for the Permitted Use; or
- (b) in the reasonable opinion of the Landlord, fails to comply with its other obligations in this Lease.

Determination in this manner does not prejudice the Landlord's right to payment of the Premium or any other right under or in connection with this Lease.

Rights Excepted and Reserved from Lease to Landlord for the benefit of the land edged blue in Plan 1 and for the benefit of any neighbouring or adjoining property in which Landlord owns or acquires an interest during the term:

Include:

- (a) rights of light, air, support and protection to the extent those rights are capable of being enjoyed at any time during the Contractual Term.
- (b) the right to use and to connect into Service Media at, but not forming part of, the Property which are in existence at the date of this Lease or which are installed or constructed during the Contractual Term.
- (c) the right to install and construct Service Media at the Property to serve any part of the area outlined blue in Plan 1 (whether or not such Service Media also serve the Property), and the right to re-route any Service Media mentioned in this clause.
- (d) at any time during the term, the full and free right to develop or maintain any part of the land outlined blue in Plan 1 (other than the Property) and any neighbouring or adjoining property in which the Landlord owns or acquires an interest during the term as the Landlord may think fit.
- (e) the right to erect scaffolding at the Property or on the land outlined blue in Plan 1 and attach it to any structure on the Property in connection with any of the Reservations.
- (f) the right to build on or into any boundary enclosure of the Property in connection with any of the Reservations.

- (g) the right to re-route any means of access to or egress from the Property to change the areas over which the Rights mentioned in clauses (a), (b) and (c) of "Rights Granted by Landlord to Tenant for the benefit of the Property" are exercised.
- (h) the right to re-route and replace any Service Media over which the Right mentioned in clause (d) of "Rights Granted by Landlord to Tenant for the benefit of the Property" is exercised.
- (i) the right to enter the Property:
 - to repair, maintain, install, construct, re-route or replace any Service Media or structure relating to any of the Reservations;
 - to inspect the state and condition of the Property; and
 - for any other purpose mentioned in or connected with this Lease, the Reservations and the Landlord's interest in the Property or the land edged blue on Plan 1.

Rights Granted by Landlord to Tenant for the benefit of the Property:

- (a) right to install and construct a pathway from Swinburne Avenue to the Property following the route indicated by the yellow shading on Plan 1.
- (b) right, in conjunction with the public, to use the pathway described in (a) for the purposes of pedestrian access to and egress from the Property.
- (c) right to lay underground electrical cabling under pathway described in (a) for the sole purpose of providing power supply to single infra-red CCTV camera to be installed at the Property.
- (d) right to use any Service Media with the area edged blue on Plan 1 that belong to the Landlord and serve (but do not form part of) the Property which are in existence at the date of this Lease or are installed or constructed during the Contractual Term.
- (e) right to enter the area edged blue on Plan 1 so far as is reasonably necessary to carry out any works to the Property required or permitted by this Lease.

Registration of Lease: Tenant shall register this Lease with HM Land Registry.

Landlord Costs: Tenant shall pay to the Landlord the following Landlord costs in cleared funds prior to signing the Lease:

- Cost of drawing up Lease: Estimated at £1,000.
- Cost of placing a public notice in local newspaper for two consecutive weeks informing public of proposed Lease disposal of open space: £233.20.

SCHEDULE A

Tenant Works

The Landlord consents to the Tenant installing and constructing the following items at the Property, subject to Tenant obtaining all other necessary consents and permissions. The works shall be carried out and completed to the Landlord's reasonable satisfaction.

- Placing and erecting children's play apparatus to a maximum height of 4 metres, comprising:
 - Multiplay with slide;
 - Cradle and chair two-person swing;
 - Mini basket swing;
 - Four-way springer;
 - Spica;
 - Standing seesaw;
 - Carousel swing;
 - Roundabout;
 - Cableway;
 - Balancing mushrooms;
 - Stilts course;
 - Balancing beam with rope;
 - Play panels; and
 - Musical orb.

- Placing and installing bonded rubber mulch safety surfacing or matting underneath aforementioned children's play apparatus.

- Ground excavation for aforementioned children's play apparatus to a maximum depth of 900 millimetres.

- Installation of single infra-red CCTV camera supported on 5 metre high pole overlooking play area only.

- Construction of 1 metre high galvanised steel boundary fencing.

The Landlord consents to the Tenant installing and constructing a pathway from Swinburne Avenue to the Property following the route indicated by the yellow shading on Plan 1. This consent is granted subject to Tenant obtaining all other necessary consents and permissions. The pathway shall be completed to the Landlord's reasonable satisfaction. Tenant shall make good any damage caused by the installation and construction of the pathway as soon as reasonably practicable.

SCHEDULE B
Premium and Indexing

Definitions

1.1

“Base Figure”:

Means the Index figure for the month which is two months preceding the date the Lease is signed.

1.2

“Base Premium”:

£133,200 (One Hundred and Thirty Three Thousand, Two Hundred Pounds).

1.3

“The Condition”:

Following the Tenant’s application for planning approval (reference: 19/01416/HYA), that was granted planning permission on 23rd January 2020, the Tenant shall Deliver 129 (One Hundred and Twenty-Nine) brand new residential affordable housing units in accordance with the planning permission.

1.4

“Default Interest Rate”:

4% above the Bank of England Base Rate applicable at the Trigger Date. If the Bank of England ceases publication of the Base Rate, then an equivalent interest rate to the Base Rate will be substituted by the Landlord acting reasonably.

1.5

“Deliver”:

Means the Tenant of this Lease (or successors in Title) hands over the affordable housing units to the Landlord of this Lease by the Trigger Date in accordance with the Condition.

1.6

“The Increase”:

Means the amount, if any, by which the Index for the month which is two months preceding the Trigger Date exceeds the Base Figure.

1.7

“The Index”:

Means the “All Items” index figure of the Index of Retail Prices published by the Office for National Statistics or any successor authority or office or any such replacement index.

1.8

“Premium”:

The Base Premium plus the amount that bears the same proportion to the Base Premium as the Increase bears to the Base Figure. The Premium shall not at any time be lower than the Base Premium.

If the Condition is not discharged in full by the Tenant (or successors in Title) by the Trigger Date to the Landlord’s reasonable satisfaction, the Premium shall become payable on the Trigger Date and shall be paid to the Landlord in full and in cleared funds within 21 working days following the Trigger Date. If the Payment is not received by the Landlord in full and cleared funds within this time, the outstanding Premium becomes payable by the Tenant to the Landlord as a debt due to the Landlord from the Tenant. Compound interest will be payable on a daily basis at the Default Interest Rate for the period commencing 21 working days following the Trigger Date until payment of the Premium is received in full and cleared funds by the Landlord.

1.9

“Trigger Date”:

Means either:

- (a) The date coinciding with the tenth anniversary of the date of the Lease; or
- (b) If earlier than the date in (a), the date on which the Lease is terminated by either party to the Lease (Landlord or Tenant) for whatever reason,

but the Trigger Date shall only be effective if the Condition has not been previously discharged in full by the Tenant to the Landlord’s reasonable satisfaction.

Determination of Disputes

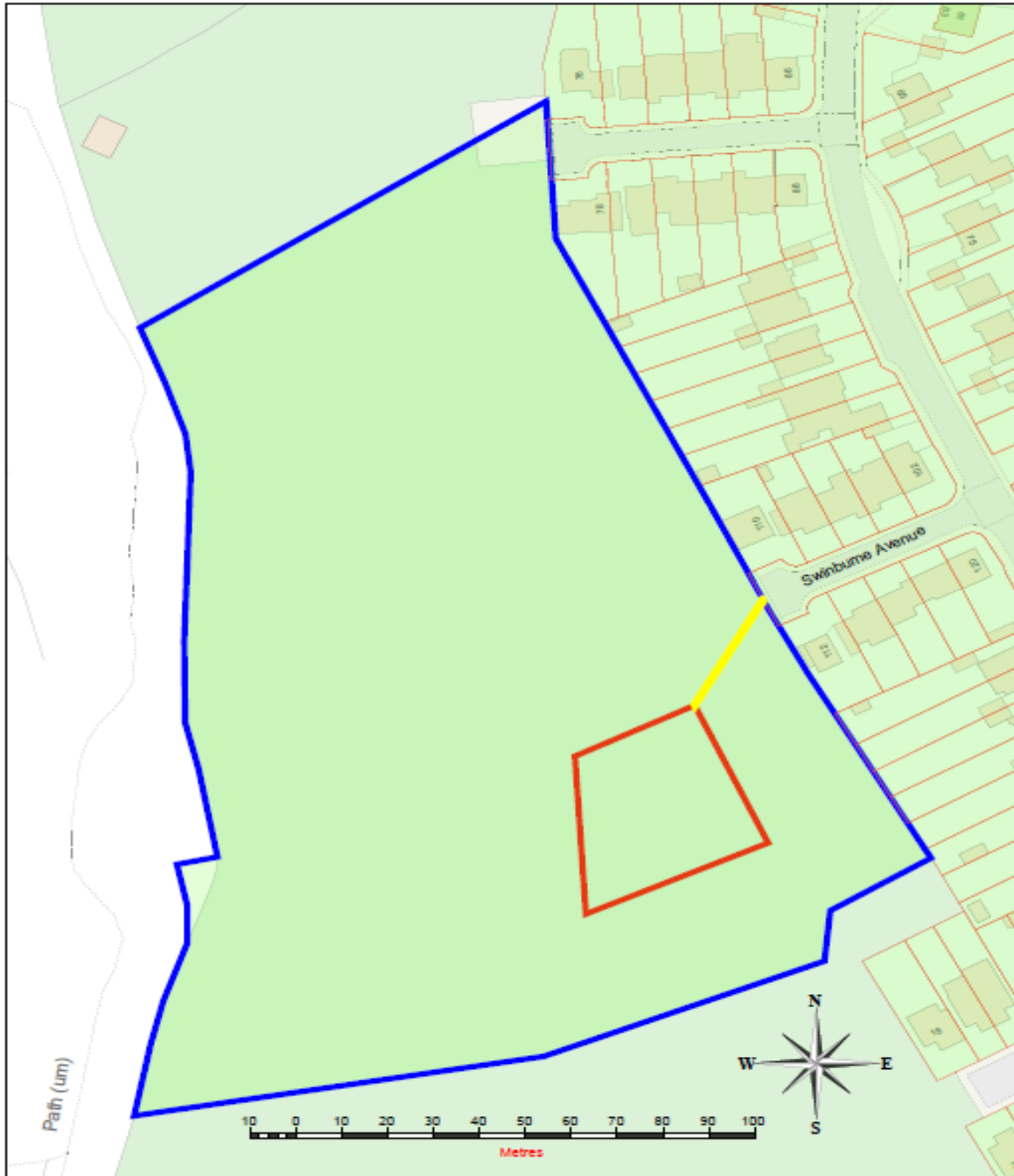
Any dispute arising out of or in connection with this Lease, including any question regarding its existence, validity or termination, or the legal relationships established by this Lease, shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration, which Rules are deemed to be incorporated by reference into this clause. The arbitrator will award the costs of arbitration according to his or her discretion.

Plan 1 – Land West of Swinburne Avenue, Hitchin, Hertfordshire

NORTH HERTFORDSHIRE DISTRICT COUNCIL



Plan 1 - Land West of Swinburne Avenue, Hitchin, Hertfordshire



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