

# **SECTION 106 MASTER – AFFORDABLE HOUSING AND HIGHWAYS CONTRIBUTIONS**

**WITHOUT PREJUDICE and SUBJECT TO CONTRACT**

**In providing this precedent form of agreement the Council makes no representation as to the grant or refusal of any planning application or to the terms of any agreement which may be required by grant of a planning permission. Such decision shall only be in accordance with the Council's constitution by the Council's proper committee or by Council officers' proper exercise of delegated powers. The contents herein are subject to amendment without notice.**

## DEED OF AGREEMENT

DATE

2006

### 1. **PARTIES**

- 1.1 ***[insert name] [(co reg no)] [whose registered office is at] or [of]*** ("The Applicant")
- 1.2 **Spelthorne Borough Council** of Council Offices Knowle Green Staines Middlesex TW18 1XB ("The Council")
- 1.3 ***[insert name] [(co reg no)] [whose registered office is at] or [of]*** ("The Freeholder")
- 1.4 ***[insert name] [(co reg no)] [whose registered office is at] or [of]*** ("The Mortgagee")
- 1.5 **Surrey County Council** of County Hall Penryhn Road Kingston-upon-Thames KT1 2DN ("The County Council")

### 2. **DEFINITIONS AND INTERPRETATIONS**

In this Agreement the following words and expressions shall unless the context otherwise requires have the following meanings:-

- 2.1 **The Act** means the Town & Country Planning Act 1990 and any Statutory amendment or re-enactment for the time being in force
- 2.2 **Affordable Housing** means housing which is accessible to people whose income does not enable them to afford to buy or rent housing appropriate to their needs in the open market
- 2.3 **Affordable Housing Units** means the Affordable Rented and Affordable Shared Ownership Units collectively
- 2.4 **Affordable Rented Units** means the ***[insert number]*** residential units to be constructed as Affordable Housing as part of the Development for subsidised rented accommodation

- 2.5 **Affordable Shared Ownership Units** means the *[insert number]* residential units to be constructed as Affordable Housing as part of the Development for shared equity ownership
- 2.6 **Affordable Housing Standard** means the Housing Corporation building standard applicable at the date of the commencement of the construction of the Affordable Housing Units
- 2.7 **Application** means an application dated *[insert date]* and identified in the Council's records by reference number *[insert council planning reference]* to carry out the Development
- 2.8 **Commencement of the Development** means the carrying out of a material operation as defined by section 56(4) of the Act PROVIDED THAT the expression "material operation" shall not for this purpose include operations in connection with archaeological or site investigations, soil surveys, demolition, site clearance; access and/or highway works, landscaping works, the construction of any land fill gas works or the display of advertisements including the erection of advertisement hoardings
- 2.9 **Development** means development of the Property as defined by Section 55 of the Act namely:-  
*[Insert details as per application/committee report]*
- 2.10 **Highways Contribution** means the sum of *[insert amount]* as a contribution towards the Highways Works
- 2.11 **Highways Works** means the works detailed in Schedule 2
- 2.12 **Index** means the Output Price Index for new construction work - all new construction as detailed in the DTI "Construction Statistics Manual" or (if such index is at the relevant time no longer published) such other comparable index or basis for indexation as the parties may agree, such Index to apply to all sums in this Agreement] or [means the Retail Prices Index or (if such index is at the relevant time no longer published) such other comparable index or basis for indexation as the parties may agree, such index to apply to all sums in this Agreement]

- 2.13 **Index Linked** means linked to movements in the Index between the date the Planning Permission is actually granted and the date of actual payment so that the payment is adjusted in accordance with the following formula:

$$\text{Amount Payable} = \frac{[\text{Highways Contribution}] \text{ or } [\text{other contribution}]}{(A/B)} \times$$

Where:

"A" is the figure for the Index which applied when the Index was last published prior to the date that the **[Highway Contribution] or [other contribution]** is actually paid; and

"B" is the figure for the Index which applied when the Index was last published prior to the date the Planning Permission was actually granted.

- 2.14 **Mortgage** means a Deed of Mortgage of the Property dated **[insert date of charge]** made between the **[Freeholder] or [Applicant]** and the Mortgagee
- 2.15 **Occupation** means when any of the Affordable Housing Units or the Residential Units as appropriate are occupied by purchasers for residential purposes which for the avoidance of doubt shall not include occupation for purposes of fitting out the Development or for marketing purposes
- 2.16 **Permission** means the detailed planning permission to be granted by the Council pursuant to the Application
- 2.17 **Plan** means the plan annexed to this Agreement
- 2.18 **Prescribed Rate** means the rate of interest which is from time to time 4% above the base rate for lending of the Co-Operative Bank for the time being in force or such other bank being a member of the London Clearing Banks (or any body replacing it) as the Council may nominate
- 2.19 **Property** means all that property known as **[Insert address]** as shown edged red on the Plan

- 2.20 **Registered Social Landlord** means a body registered as a social landlord pursuant to the Housing Act 1996 or any other similar body approved by the Council from time to time
- 2.21 **Residential Units** means those units of housing constructed as part of the Development which are not Affordable Housing Units
- 2.22 In this Agreement unless the context otherwise requires:
- 2.22.1 Words importing any gender include every gender
  - 2.22.2 Words importing the singular number only include the plural number and vice versa
  - 2.22.3 words importing persons include firms companies and corporations and vice versa
  - 2.22.4 references to numbered clauses and schedules are to the relevant numbered clause in this Agreement or the schedule to this Agreement
  - 2.22.5 the index to this Agreement and the headings to the clauses and schedules shall not affect the interpretation
  - 2.22.6 reference to any Act of Parliament shall include any statutory modification or re-enactment thereof for the time being in force and any order other instrument plan regulation permission or direction made or issued thereunder or deriving validity therefrom

### 3. **RECITALS**

- 3.1 The ***[Applicant] or [Freeholder]*** is the freehold owner of the Property ***subject only to a charge in favour of the Mortgagee created by the Mortgage*** and is interested in the Property within the meaning of Section 106(1) of the Act to the intent that the covenants and undertakings and agreements on the part of the Applicant contained herein shall apply to the Property
- 3.2 The Applicant has submitted the Application for the Development and is interested in the in the Property within the meaning of Section 106(1) of the Act ***to the intent that the covenants and undertakings and agreements on the part of the Applicant contained herein shall apply to the Property***

3.3 The Council is the Planning Authority for the purpose of the Act for the area in which the Property is located and is the Local Planning Authority entitled to enforce the obligations on the part of the Applicant herein for the purposes of Section 106(9) of the Act

3.4 ***The County Council is the Highways Authority for the County within which the Property is located***

3.5 The Covenants on the part of the Applicant contained herein are planning obligations on the part of the Applicant for the purposes of Section 106(9) of the Act

3.5 The parties have agreed that in the interests of proper planning and having regard to the provisions of the Surrey Structure Plan 2004 and the Spelthorne Borough Local Plan 2001 for the purposes of securing the proper planning of the area to enter into this Agreement with the intention that the Covenants contained herein be enforced by the Council against any person or persons deriving title from the Applicant

#### **4 LEGAL EFFECT**

4.1 This Agreement is made pursuant to the provisions of Section 111 of the Local Government Act 1972 and to Section 106 of the Act and all other acts enabling and is a planning obligation for the purposes of Section 106 of the Act.

4.2 This Agreement shall not constitute notice of the Permission and the Permission shall not come into force until formal notice of the Permission is issued

4.3 Unless and until the Permission is implemented by the Commencement of Development nothing in this Agreement shall obligate any party to comply with the covenants contained in Clause 5 of this Agreement.

4.4 No person shall be liable for breach of a covenant contained in this Agreement after he shall have parted with all interest in the Property or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of contract prior to parting with such interest.

***4.5 The Mortgagee for itself and its successors in title HEREBY CONSENTS to this Agreement being entered into as evidenced by its execution hereof with the intent that notwithstanding Section 104 of the Law of Property Act 1925 its interest in the Property shall be bound by the Agreement***

***4.6 The Freeholder for itself and its successors in title HEREBY CONSENTS to this Agreement being entered into as evidenced by its execution hereof***

4.7 The Applicant shall on or before the date hereof pay the reasonable costs of the Council incurred in the negotiation, preparation and completion of this Agreement and in addition a monitoring fee of £350.00 to cover the expenses of the Council in ensuring that this Agreement is complied with and that when this is done the fact is recorded on the Local Land Charges Register

4.8 This Agreement shall be registered as a local land charge

4.9 The Applicant acknowledges that nothing contained or implied in this Agreement shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions as a Local Authority and a Local Planning Authority and its rights powers duties and obligations under all private statutes statutes byelaws and regulations may be as fully exercised as if the Council were not a party to this Agreement

4.10 If any provision in this Agreement shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired

4.11 No waiver (express or implied) by the Council of any breach or default by the Applicant in performing or observing any of the terms or conditions of this Agreement shall constitute waiver and no such waiver shall prevent the Council from enforcing any of the said terms and conditions or from acting upon any subsequent breach in respect thereof by the Applicant

## **5 COVENANTS**

5.1 In consideration of the Council granting the Permission for the Development the Applicant covenants with the Council to observe and perform the covenants contained in the Schedule 1 hereto

## **6 THIRD PARTIES**

6.1 The parties hereto agree that the provisions of this Agreement shall not be enforceable by any third party other than the parties hereto pursuant to the Contracts (Rights of Third Parties) Act 1999

## **7. INTEREST ON LATE PAYMENTS**

1.1 *Where under this Agreement any sum due from the Applicant to the **[Council]** or **[County Council]** is not paid within 21 days of the date due for payment then interest shall be payable at the Prescribed Rate from the due date for payment up to the date of payment*

IN WITNESS whereof this Agreement has been duly executed as a Deed the day and year first before written



## **SCHEDULE 1**

### **AFFORDABLE HOUSING PROVISIONS**

1. No more than **50%** of the Residential Units shall be sold (which in this context shall mean legal completion of a sale) until:
  - 1.1 the Affordable Housing Units have been constructed to the Affordable Housing Standard and are ready for occupation and
  - 1.2 the leasehold or freehold interest of those Affordable Housing Units has been transferred to a Registered Social Landlord such term to be not less than 99 years
2. It is hereby agreed and declared that subject to the provisions of Clause 3 hereunder the Affordable Housing Units shall be remain and be retained in perpetuity as Affordable Housing
3. The provisions of clauses 2 to this schedule shall not be binding nor enforceable against
  - 3.1 any mortgagee or receiver appointed by such mortgagee of the Affordable Housing Units (or any part or parts thereof) who shall exercise power of sale pursuant to statutory powers or the provisions of any mortgage or charge save that this paragraph shall only apply following transfer of the Affordable Housing Units by the Applicant **or the Freeholder** to a Registered Social Landlord
  - 3.2 any occupier of any Affordable Rented Unit who shall exercise any statutory entitlement to buy or acquire the relevant Affordable Rented Unit so occupied and
  - 3.3 any shared ownership lessee exercising the right to staircase to 100% equity share of any Affordable Shared Ownership Unit and
  - 3.4 any successor in title either directly or indirectly from any of the persons mentioned in sub clauses 3.1-3.3 above

### **HIGHWAY WORKS PROVISIONS**

4. *Prior to the first Occupation of any of the Affordable Housing Units or the Residential Units to pay to the **[Council]** or the **[County Council]** the Highways Contribution Index Linked*

## **SCHEDULE 2**

### *DESCRIPTION OF HIGHWAYS WORKS*

***[Insert details of works]***

The COMMON SEAL of       )  
PARTY was hereunto       )  
affixed in the presence of:- )

Director

Secretary

The COMMON SEAL       )  
of PARTY was hereunto       )  
affixed in the presence of       )

Director

Secretary

The COMMON SEAL of       )  
[INSERT NAME OF       )  
ANY MORTGAGEE       )  
was hereunto       )  
affixed in the presence of       )

Director

Secretary

The COMMON SEAL OF SPELTHORNE       )  
BOROUGH COUNCIL was hereunto       )  
affixed in the presence of;-       )

Head of Corporate Governance/Strategic Director (Support)

Between

(1)

and

(2)

and

(3)

and

(4)

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AGREEMENT under Section 106 of the Town and  
Country Planning Act 1990 relating to  
[name of Property]

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File No. T12.

Agreement No:

Min. Ref.