

Dated:

2021

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**(1) SPELTHORNE BOROUGH COUNCIL**

and

**(2) ELMSLEIGH STREET LTD**

and

**(3) SURREY COUNTY COUNCIL**

And

**(4) INLAND LIMITED**

Planning Appeal Ref - **APP/Z3635/W/21/3280090**

**AGREEMENT PURSUANT TO SECTION 106 OF  
THE TOWN AND COUNTRY PLANNING ACT 1990**

Relating to Land known as

The Old Telephone Exchange, Masonic Hall and Adjoining Land, Elmsleigh Road, Staines

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**THIS AGREEMENT** is made the      day of                          2021  
**BETWEEN:-**

- (1) **SPELTHORNE BOROUGH COUNCIL** of Knowle Green, Staines-upon-Thames, TW18 1XB (the “**Borough Council**”);
- (2) **ELMSLEIGH STREET LIMITED** (Co Regn No 12700302) whose registered office is at 19-21 Catherine Place London SW1E 6DX (the “**Owner**”);
- (3) **SURREY COUNTY COUNCIL** of 11 Woodhatch Road, Cockshot Hill, Reigate, RH2 8EF ("the **County Council**")
- (4) **INLAND LIMITED** (Co Regn No 05482989) whose registered office is at Burnham Yard, London End, Beaconsfield, England, HP9 2JH (“**the Mortgagee**”)

## INTRODUCTION

- 1 The Borough Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site is situated and is entitled to enforce the obligations in this Agreement and the County Council is a local planning authority and the local highway authority for the area in which the Site is situated
- 2 The Owner is the freehold owner of the Site registered under title numbers SY736392 and SY464080 which is free from encumbrances that would prevent the Owner from entering into this Agreement and the Mortgagee has applied to register a charge against the Site and consents to the Owner entering into this Agreement and the Site being bound by the obligations contained herein.
- 3 Insofar as any of the covenants in this Agreement are not planning obligations within the meaning of section 106 of the Act, they are entered into in pursuance Section 111 of the Local Government Act 1972 and any other enabling provisions in connection with the performance of the Borough Council's or County Council functions as the case may be.

## 1 INTERPRETATION

1.1 In this Agreement the following expressions must have the meanings set out below:

<b>“Act”</b>	the Town and Country Planning Act 1990 (as amended)
<b>“Affordable Housing Contribution”</b>	means such sum as is equal to the amount of additional Affordable Housing Units that could be provided as may be determined by a Viability Appraisal
<b>“Affordable Housing Plan”</b>	the plan attached and marked Affordable Housing Plan
<b>“Affordable Housing Units”</b>	thirty four percent (34%) of the total number of Dwellings to be constructed in accordance with the Planning Permission and used for the purposes of Affordable Housing as an Affordable Rent Unit or an Intermediate Housing Unit (as the case may be) and “Affordable Housing Unit” shall be construed accordingly
<b>“Affordable Housing”</b>	has the meaning given to it in Annex 2 of the National Planning Policy Framework July 2021 or such other definition as may be provided in any updated National Planning Policy Framework after that date)
<b>“Affordable Rent”</b>	the sum of the rent element and the Service Charge payable from the date of first occupation in respect of the relevant Affordable Rent Unit which shall not exceed the lower of eighty percent (80%) of the Market Rent or the Local Housing Allowance Levels

<b>“Affordable Rent Unit”</b>	those Affordable Housing Units let to applicants for Affordable Housing Units at Affordable Rent
<b>“Agreement”</b>	the Planning Obligations made pursuant to Section 106 of the Act
<b>“Application”</b>	the application for planning permission submitted to the Borough Council for the Development and allocated under reference number 20/01199/FUL
<b>“Application Site”</b>	means the land that is subject to the Application and the Appeal as shown edged in red on the Application Site Plan and which includes the Site
<b>“Application Site Plan”</b>	means the plan attached to this Deed at Appendix 5
<b>“Appeal”</b>	the appeal lodged against the refusal of the Application given reference <b>APP/Z3635/W/21/3280090</b>
<b>“Car Club”</b>	means a scheme to provide at least two vehicles for communal use by residents of the Development and the general public based on a pre-booking system
<b>“Car Club Spaces”</b>	means parking spaces within the Development for use by the Car Club
<b>“Car Park Management Strategy”</b>	means a strategy showing how the car park within the Development shall be managed which shall be in accordance with the principles set out in Appendix 4
<b>“Charge”</b>	means a mortgage, charge or other security or loan documentation granting a

security interest in the Affordable Housing Units (or any number of them) in favour of the Chargee;

**“Chargee”**

means any mortgagee or chargee of the Registered Provider of the Affordable Housing Units (or any number of them) and any receiver (including an administrative receiver) and manager appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator;

**“Clawback Period”**

means the time period defined as the “clawback period” in relation to social housing relief as set out in Regulation 2(1) the CIL Regulations as may be amended from time to time;

**“Commencement Date”**

means the date on which the Development commences by the carrying out on the Application Site pursuant to the Planning Permission of a material operation as specified in Section 56(2) and (4) (a) to (d) of the Act and **“Commence”** and **“Commenced”** and cognate expressions will be interpreted in accordance with this definition but material operation for these purposes shall exclude operations consisting of site clearance, demolition work, noise attenuation works, construction of temporary highways accesses,

decontamination and remediation or other ground works, below ground works, piling works, site survey works use or occupation of the site for marketing purposes, archaeological investigations, ground investigations, laying and diversion of services, erection of boundary fencing or hoarding and/or the display of site notices or advertisements

**“Completion Certificate”**

a certificate issued by the County Council to confirm that the Highway Works have been completed to its satisfaction

**“Borough Council”**

the party of the first part hereto which shall include its successors and assigns from time to time

**“Date of Deemed Service”**

means, in each instance where a Chargee has served a Default Notice under paragraph 5.2.1 of Schedule 2:

(a) in the case of service by delivery by hand of the Default Notice to the Borough Council's offices during office hours, the date on which the Default Notice is so delivered; or

(b) in the case of service by using first class registered post to the Borough Council's offices the second Working Day after the date on which the Default Notice is posted (by being placed in a post box or being collected by or delivered to Royal Mail) PROVIDED THAT the Chargee is able to evidence that the Default Notice was actually delivered to the Borough Council (by Royal Mail proof of delivery or otherwise);

**“Default Notice”**

means a notice in writing served on the Borough Council by the Chargee under paragraph 5.2.1 of Schedule 2 of the Chargee's intention to enforce its security over the relevant Affordable Housing Units;

**“Decision Letter”**

the letter issued by the Inspector determining the outcome of the Appeal

**“Default Notice”**

means a notice in writing served on the Borough Council by the Chargee under paragraph 5.2.1 of Schedule Two of the Chargee's intention to enforce its security over the relevant Affordable Housing Units;

**“Development”**

means demolition of the former Masonic Hall and redevelopment of the Application Site to provide 206 dwellings together with car and cycle parking, hard and soft landscaping and other associated works

**“Development Control Manager”**

Means the Borough Council's Development Control Manager or such other relevant Officer of the Borough Council as the Borough Council may identify from time to time.

**“Dwelling”**

means a residential unit (including a house flat or maisonette) constructed or to be constructed as part of the Development and Dwellings shall be construed accordingly



<b>“Golden Brick Stage”</b>	means the point at which a building within the Development has been constructed to the level of complete construction beyond foundation where the first reinforced concrete walls or columns are poured above the first section of ground floor reinforced concrete slab
<b>“Highway Agreement”</b>	means an agreement made pursuant to sections 38 and or 228 and or 278 of the Highway Act 1980
<b>“Highway &amp; Public Realm Phasing Plan”</b>	means a phasing plan showing the delivery timetable for the Highway and Public Realm Works
<b>“Highway and Public Realm Works”</b>	the works shown on drawing number 04550-TR-0032-P2 comprising the reconfiguration of the junction of Elmsleigh road and Thames Street (or any revision thereof approved in writing by the County Council) attached to this Deed as Appendix 1
<b>“Inspector”</b>	means the Planning Inspector appointed by the Secretary of State for Housing, Communities and Local Government to determine the Appeal
<b>“Interest”</b>	interest at 2 per cent above the base lending rate of Barclays Bank plc from time to time
<b>“Intermediate Housing Unit”</b>	means those Affordable Housing Units to be offered for Affordable Housing which meet the definition set out in paragraph (d) of the term Affordable Housing in Annex 2: Glossary of the NPPF (but not

equity loans) or a subsequent or replacement tenure

**“Moratorium Period”**

means, in each instance where a Chargee has served a Default Notice under Paragraph 5.2 of Schedule 2 the period from (and including) the Date of Deemed Service on the Borough Council of the Default Notice to (and including) the date falling three months after such Date of Deemed Service (or such longer period as may be agreed between the Chargee and the Borough Council);

**“Option”**

means the option to be granted to the Borough Council (and/or its nominated substitute Registered Provider) in accordance with Paragraph 5.4 of Schedule 2 for the purchase of the relevant Affordable Housing Units;

**“Occupied”**

means occupation for any of the purposes permitted by the Planning Permission but not including occupation solely by personnel engaged in construction, fitting out or decoration or occupation solely for marketing or display or occupation solely in relation to security operations and **“Occupation”** and cognate expressions will be interpreted in accordance with this definition

**“Open Market Units”**

means the Dwellings that are general market housing for sale on the open market and which are not Affordable Housing Units

**“Parties”**

means the Borough Council the County Council and the Owner and which shall include their respective successors and assigns from time to time and “Party” shall mean any one of them

**“Planning Permission”**

means the planning permission granted by the Inspector on appeal pursuant to the Application

**“Play Area Contribution”**

means the sum of £70,000 towards the upgrading of the existing children’s play area at Lamma Park

**“Protected Tenant”**

means any tenant who:

- (a) has exercised the right to acquire pursuant to the Housing Act 1996 (or any equivalent contractual right) in respect of a particular Affordable Housing Unit or Affordable Housing provided pursuant to paragraph 6 of schedule 2;
- (b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit or Affordable Housing provided pursuant to paragraph 6 of schedule 2; or
- (c) has been granted a shared ownership lease by a Registered Provider (or similar arrangement where a share of the Affordable

Housing Unit or Affordable Housing provided pursuant to paragraph 6 of schedule 2 is owned by the tenant and a share is owned by the Registered Provider) and the tenant has subsequently purchased from the Registered Provider all the remaining shares so that the tenant owns the entire Affordable Housing Unit or Affordable Housing provided pursuant to paragraph 6 of schedule 2

**“Public Highway Dedication Plan”**

means drawing number 04550-TR-0021-P4 annexed to this Deed as Appendix 2

**“Registered Provider”**

means a registered provider of Affordable Housing as defined in the Housing and Regeneration Act 2008 (as amended) and registered with the Regulator of Social Housing (or successor authority)

**“Site”**

land known as The Old Telephone Exchange, Masonic Hall and Adjoining Land, Elmsleigh Road, Staines upon Thames TW18 4PH shown edged red on the Site Plan

**“Site Plan”**

the plan attached to this Agreement at **Schedule 1**

**“Sums Due”**

means all sums due to a Chargee of the Affordable Housing Units pursuant to the terms of its Charge including (without

limitation) all interest and reasonable legal and administrative fees costs and expenses.

**“Traffic Regulation Order Contribution”** the sum of £5000 (FIVE THOUSAND POUNDS)

**“Travel Plan Auditing Fee”** the sum of £6,150 (SIX THOUSAND ONE HUNDRED AND FIFTY POUNDS Index Linked

**“Travel Plan”** means a travel plan setting out measures that will be delivered to inform residents of their travel options and encourage sustainable patterns of travel which shall include a timetable for monitoring of not more than five years starting on the Occupation of the Development

**“Viability Appraisal”** means a viability appraisal to be completed at the expense of the Owner to assess the viability of the Development in accordance with the Planning Permission such Viability Appraisal shall be carried out on the same terms as the viability appraisal submitted in support of the Planning Appeal subject only to changes that where actual costs have been incurred that data shall be used in place of projected costs.

- 1.2 Any covenant by the Owner not to do any act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person where knowledge of the actions of the other person is reasonably to be inferred.

- 1.3 Any references to any particular statute include any statutory extension, modification, amendment or re-enactment of such statute and also include any subordinate instruments, regulations or orders made in pursuance of it.
- 1.4 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 1.5 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 1.6 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually, unless there is an express provision otherwise.
- 1.7 Where under this Agreement any notice, approval, consent, certificate, direction, authority, agreement, action, expression of satisfaction is required to be given or reached or taken by any party or any response is requested any such notice, approval, consent, certificate, direction, authority, agreement action, expression of satisfaction or response shall not be unreasonable or unreasonably withheld or delayed.
- 1.8 The headings appearing in this Agreement are for ease of reference only and shall not affect the construction of this Agreement.
- 1.9 Where reference is made to a Clause, Part, Plan, Paragraph, Recital or Schedule such reference (unless the context requires otherwise) is a reference to a clause, part, plan, paragraph, recital or schedule of or to (or in the case of Plan attached to) this Agreement.
- 1.10 References to any Party to this Agreement must include:
- (a) the Party's successors in title and to any deriving title through or under that party; and

- (b) in the case of the Borough Council and the County Council, the successors to their respective statutory functions.

## **2 LEGAL EFFECT OF AGREEMENT**

2.1 This Agreement is made under the Act and the obligations and are:

- (a) planning obligations for the purposes of section 106 of the Act; and
- (b) relate to the Site; and
- (c) are enforceable by the Borough Council as local planning authority and by the County Council as local planning authority and the highway authority.

2.2 The obligations shall be enforceable without limit of time not only against the Owner but also against its agents servants successors in title and assigns and those deriving title under it, provided that neither the Owner nor its agents servants successor in title and assigns shall be liable for any breach of any covenant contained in this Agreement after it has parted with all its interest in the Site except in relation to any antecedent breach prior to parting with such interest and provided further that the obligations in this Agreement shall not be enforceable against:

- (a) the buyers or occupiers of any Dwellings erected on the Site and their successors in title and mortgagees (or any receiver appointed by any such mortgagee) and any person who is a successor in title or derives title through or under any such mortgagee (or such receiver);
- (b) a statutory undertaker after the transfer by the Owner to the statutory undertaker of the statutory apparatus and any land upon or in which the statutory apparatus is situated;
- (c) a tenant or other provider of photovoltaic panels; or
- (d) a person company or authority which acquires rights over or becomes proprietor of any land on the Site for the purposes of providing services or

facilities in connection with the Development as such and their successors in title.

- 2.4 The Owner's obligations in this Deed are conditional on the grant of the Planning Permission and the Commencement of Development and the determination of the Inspector pursuant to clause 18 of this Agreement.

### **3 COMMENCEMENT**

- 3.1 This Agreement is conditional upon:

- (a) the grant of the Planning Permission; and
- (b) the Commencement of Development,

except for the provisions of **clause 4.1(c), Clause 15 Clause 17 and Clause 18** which shall come into effect immediately upon completion of this Agreement

### **4 OWNER'S COVENANTS**

- 4.1 The Owner hereby covenants with the Borough Council subject to **Clause 18**:
- (a) to observe and perform and cause to be observed and performed the covenants contained in **Schedule 3** of this Agreement;
  - (b) to pay the proper and reasonable legal and other professional costs incurred by the Borough Council and the County Council in preparation of this Agreement;
  - (c) other than in relation to disposals of any Dwelling or disposals envisaged by **Clause 2.2**, to give the Borough Council and the County Council written notice within 5 working days of any change in ownership of any of its interests in the Site occurring before all the obligations under this Agreement have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with a plan showing the area of the Site purchased; and



## **5. BOROUGH COUNCIL AND COUNTY COUNCIL COVENANTS**

- 5.1 The Borough Council hereby covenants with the Owner to observe and perform the relevant covenants contained on its behalf in Schedule 5 this Agreement.
- 5.2 The County Council hereby covenants with the Owner to observe and perform the relevant covenants contained on its behalf in Schedule 5 this Agreement.

## **6. GENERAL PROVISIONS**

IT IS HEREBY AGREED AND DECLARED that:

- 6.1 The covenants on behalf of the parties to be observed and performed under this Agreement shall be treated as Local Land Charges and registered at the Local Land Charges Registry for the purposes of the Local Land Charges Act 1975; and
- 6.2 Nothing in this Agreement shall prejudice or affect the rights powers duties and obligations of the Borough Council or the County Council in the exercise by it or them of its or their statutory functions and the rights powers duties and obligations of the Borough Council or County Council under private or public statutes bye-laws orders and regulations may be as fully and effectively exercised as if it were not a party to this Agreement.
- 6.3 The Borough Council will on written request from the Owner certify whether or not an obligation to it under this Agreement has been satisfied.
- 6.4 The County Council will on written request from the Owner certify whether or not an obligation to it under this Agreement has been satisfied.
- 6.5 Following the performance and satisfaction of all the obligations contained in this Agreement the Borough Council shall cancel all entries made in the Register of Local Land Charges in respect of this Agreement.

## **7 WAIVER**

- 7.1 No waiver (whether express or implied) by the Borough Council or County Council of any breach or default by the Owner in performing or observing any of the covenants undertakings obligations or restrictions contained in this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Borough Council or County Council from enforcing any of the said covenants undertakings obligations or restrictions or from acting upon any subsequent breach or default by the Owner.

## **8 INTEREST**

- 8.1 Without prejudice to any right remedy or power available to the Borough Council or County Council, if any payment of any sum referred to shall have become due but shall remain unpaid for a period exceeding twenty one days, the Owner shall pay on demand to the Borough Council or the County Council as the case may be Interest thereon from the date when it becomes due until payment.

## **9 SEVERABILITY**

- 9.1 Each Clause Sub-clause Schedule or paragraph shall be separate distinct and severable from each other, to the extent only that if any of these becomes or is invalid or shall be held by the Courts to be void but would be valid if severed or any wording was deleted or any time period reduced or scope of activities or area covered diminished, then any modifications necessary to ensure such Clause Sub-clause Schedule or paragraph be valid shall apply without prejudice to any other Clause Sub-clause Schedule or paragraph contained in this Agreement. The Schedules to this Agreement are incorporated and form part of this Agreement.

## **10 VERIFICATION AND ENFORCEMENT**

- 10.1 The Owner shall permit the Borough Council and the County Council and its or their authorised employees and agents upon reasonable prior written notice to enter the Site but not on the site of any Dwelling at all reasonable times subject to compliance with any reasonable

regulations of the Owner after receipt of a request in writing for the purpose of verifying whether any obligation arising under this Agreement has been performed or observed.

- 10.2 Before the Borough Council or County Council exercises its rights under **Clause 10.1** above it shall give not less than 21 working days' notice (or such other longer period as is reasonable in all the circumstances) to the Owner to remedy any breach of this Agreement.

## **11 MODIFICATIONS TO AGREEMENT**

- 11.1 In the event of the planning obligations contained in this Agreement being modified, a note or memorandum shall be endorsed on this Agreement.

## **12 RESOLUTION OF DISPUTES**

- 12.1 Wherever in this Agreement the consent agreement or approval of any Party is required, it shall not be unreasonably withheld or delayed.
- 12.2 In the event of any dispute between the Parties including any dispute as to reasonableness, any Party may invite any other Party to resolve the dispute by mediation in such manner as the Parties may agree.
- 12.3 In the event of a dispute between the Parties, the Parties agree that the matter in dispute will on the application of either of them be referred to a Surveyor acting as an expert (hereinafter referred to as the "Expert") (being a member of the Planning Division of the RICS with not less than ten years recent experience in the field of town and country planning and development) whose identity will be agreed between the Parties or in default of agreement within 10 working days appointed by or on behalf of the President for the time being of the RICS on the application of any Party and it is further agreed that:-

12.3.1 the determination of the Expert will be final and binding on the Parties save in the case of manifest error; and

12.3.2 the Parties will be entitled to make representations and counter-representations in accordance with such timetable as the Expert shall direct; and

12.3.3 the Expert's costs will be borne in such proportions as he may direct failing which each Party will bear its own costs of the reference and determination and one-half each of the Expert's costs.

### **13 NOTICES**

13.1 The Owner shall give written notice to the Borough Council and the County upon the Commencement of the Development.

### **14 REVOCATION**

14.1 In the event that the Planning Permission is quashed lapses or is revoked or otherwise withdrawn this Agreement will cease to have any further force or effect unless otherwise agreed in writing with the Borough Council and County Council.

### **15 CONTRACTS (RIGHTS OF THIRD PARTIES ACT) 1999**

15.1 It is hereby agreed between the Parties that the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no one other than the Parties to this Agreement (and any of its servants successors in title assigns or successor bodies) shall have any rights under or be able to enforce the provisions of this Agreement.

### **16 JURISDICTION**

16.1 This Agreement is governed by and the parties submit to the exclusive jurisdiction of the Courts of England and Wales interpreted in accordance with the law of England and Wales.

### **17 DELIVERY**

17.1 The provisions of this Agreement (other than this **Clause** which shall be of immediate effect) shall be of no effect until this Agreement has been dated.

### **18 INSPECTOR'S DETERMINATION**

- 18.1 Any planning obligation contained in this Agreement shall cease to have effect in the event that it is determined by the Inspector in his Decision Letter that such a planning obligation either: -
- 18.1.1 does not meet the requirements of regulations 122 and or 123 of the Community Infrastructure Levy Regulations 2010; or
- 18.1.2 is not necessary in order to mitigate the impact of the Development
- 18.2 In the event that any planning obligation is determined by the Inspector to fall within clause 18.1 above then that planning obligation shall cease to have effect, but for the avoidance of doubt all other planning obligations contained in the Agreement shall continue in full force and effect.
- 18.3 Paragraph 7 of Schedule 2 shall take effect only in the event that the Inspector determines unequivocally and appearing in clear terms in the decision letter of the Inspector that it is necessary for the financial viability of the Development to be reassessed and that the provisions of paragraph 7 should apply.

## **19 MORTGAGEES**

- 19.1 Any legal charge entered into in respect of the Site or any part of the Site after this Agreement has been completed shall take effect subject to this Agreement PROVIDED THAT the mortgagee under such a legal charge shall not be liable for any breach of the obligations in this Agreement unless committed or continuing at a time when the mortgagee has taken and is in possession of all or any part of the Site.

19.2 The Mortgagee consents to the completion of this deed and declares that its interest in the Site shall be bound by the terms of this deed as if it had been executed and registered as a land charge prior to the creation of the Mortgagee's interest in the Site

19.3 The Mortgagee shall not be personally liable for any breach of the obligations in this deed unless committed or continuing at a time when the Mortgagee is in possession of all or any part of the Site

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**Schedule 1**

**Site Plan**

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## Schedule 2

### Affordable Housing

Subject to clauses 18.3 the Owner covenants to the Borough Council as follows:-

#### **1 Amount, tenure type, size and location of Affordable Housing**

- 1.1 to construct or procure the construction of the Affordable Housing Units on the Site in accordance with paragraphs 1.2, 1.3 and 1.4 of this Schedule.
- 1.2 The Affordable Housing Units shall unless altered by paragraph 7 of this Schedule be 34:% of the Dwellings and shall comprise
- 1.2.1 65% (sixty five percent) Affordable Rent Units;
- 1.2.2 35% (thirty five percent) Intermediate Housing Units.
- 1.3 The Affordable Housing Units shall comprise the following mix of sizes and tenures

Type of Accommodation	
<u>Affordable Rent</u>	
24 x 1 bedroom units 22 x 2 bedroom units	
<u>Intermediate Units</u>	
<u>12 x 1 bedroom units</u> <u>12 x 2 bedroom units</u>	

- 1.4 The exact location of the Affordable Housing Units shall be as shown on the Affordable Housing Plan unless it is otherwise agreed in writing with the Borough Council.
- 1.5 The location of the Affordable Housing Units shall be as detailed on the Affordable Housing Plan.
- 1.6 An agreement to transfer the Affordable Housing units to a Registered Provider shall be entered into prior to the carrying out of any above ground works comprised in the Development and the Owner shall not carry out any above ground works comprised in the Development unless an agreement for the transfer of the Affordable Housing Units has been completed.
- 1.7 No Occupation of any Affordable Housing Units or additional Affordable Housing pursuant to paragraph 6 below shall take place until the relevant Registered Provider has entered into a nominations agreement with the Borough Council in the Borough Council's approved form from time to time.



## **2. Delivery of Affordable Housing**

2.1. Not to Occupy nor permit the Occupation of more than 50% (fifty percent) of the Open Market Units until:

2.1.1 100% of the Affordable Housing Units have been constructed; and

2.1.2 the Affordable Housing Units have been transferred to a Registered Provider.

2.2. Each transfer to a Registered Provider shall include:

2.2.1 a grant of full and free rights of access both pedestrian and vehicular from the public highway or roads intended to become public highway to the Affordable Housing Units;

2.2.2 a grant of full and free rights to the passage of Services through Service Media on the Development up to and abutting the boundary to the Affordable Housing Land all such services to be connected to the mains; and

2.2.3 as far as reasonably possible the benefit of the same rights covenants obligations and other provisions as shall apply to the Open Market Units.

## **3. Intermediate Housing Units**

3.1. Not to use the Intermediate Housing Units for any purpose other than for the provision of Intermediate Housing unless otherwise agreed in writing with the Borough Council.

## **4. Affordable Rent Units**

4.1. Not to use the Affordable Rent Units for any other purpose other than for the provision of Affordable Rent Units.

4.2. Not to let or otherwise permit the letting of any Affordable Rent Unit to any person other than in accordance with the following:

4.2.1 at an Affordable Rent in respect of each Affordable Rent Unit

4.2.2 that the rent at each re-letting is calculated prior to the grant of any new tenancy to ensure that it is an Affordable Rent.

## **5. Release of affordable housing provisions**

5.1. The restrictions set out in this Schedule 2 shall not apply to the following:

5.1.1 any individual occupier owner or tenant of an individual Open Market Unit or their successors in title or their mortgagee or charge and respective successors in title

5.1.2 any Protected Tenant or any successor in title to a Protected Tenant

- 5.1.3 any mortgagee or chargee of a Protected Tenant or other party who has provided loan facilities to the Protected Tenant or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or otherwise
- 5.1.4 any purchaser from any of the parties named in paragraphs 5.1.1 and 5.1.2 above of an individual Affordable Housing Unit or Affordable Housing provided pursuant to paragraph 6 of schedule 2;
- 5.2 In order to benefit from the protection granted by paragraph 5.6 below a Chargee must:
- 5.2.1 serve a Default Notice on the Borough Council by delivery by hand to the Borough Council's offices during office hours or using first class registered post to the Borough Council's offices in either case addressed to the Development Control Manager prior to seeking to dispose of the relevant Affordable Housing Units or Affordable Housing provided pursuant to paragraph 6 of schedule 2;
- 5.2.2 when serving the Default Notice, provide to the Borough Council official copies of the title registers for the relevant Affordable Housing Units or Affordable Housing provided pursuant to paragraph 6 of schedule 2; and
- 5.2.3 subject to paragraph 5.6 below, not exercise its power of sale over or otherwise dispose of the relevant Affordable Housing Units or Affordable Housing provided pursuant to paragraph 6 of schedule 2 before the expiry of the Moratorium Period except in accordance with paragraph 5.4 below.
- 5.3 From the first day of the Moratorium Period to (but excluding) the date falling one calendar month later, the Borough Council may serve a notice ("**Intention Notice**") on the Chargee.
- 5.4 Not later than 15 Working Days after service of the Intention Notice (or such later date during the Moratorium Period as may be agreed in writing between the Borough Council and the Chargee), the Chargee will grant the Borough Council (and/or the Borough Council's nominated substitute Registered Provider) an exclusive option to purchase the relevant Affordable Housing Units or Affordable Housing provided pursuant to paragraph 6 of schedule 2 which shall contain the following terms ("**the Option**"):

- 5.4.1 the sale and purchase will be governed by the Standard Commercial Property Conditions (Third Edition – 2018 Revision) (with any variations that may be agreed between the parties to the Option (acting reasonably));
- 5.4.2 the price for the sale and purchase will be agreed in accordance with paragraph 5.5.2 below or determined in accordance with paragraph 5.5.3 below;
- 5.4.3 provided that the purchase price has been agreed in accordance with paragraph 5.5.2 below or determined in accordance with paragraph 5.5.3 below, but subject to paragraph 5.4.4 below, the Borough Council (or its nominated substitute Registered Provider) may (but is not obliged to) exercise the Option and complete the purchase of the relevant Affordable Housing Units or Affordable Housing provided pursuant to paragraph 6 of schedule 2 at any time prior to the expiry of the Moratorium Period;
- 5.4.4 the Option will expire upon the earlier of (A) notification in writing by the Borough Council (or its nominated substitute Registered Provider) that it no longer intends to exercise the Option and (B) the expiry of the Moratorium Period; and
- 5.4.5 any other terms agreed between the parties to the Option (acting reasonably).
- 5.5 Following the service of the Intention Notice:
  - 5.5.1 the Chargee shall use reasonable endeavours to reply to enquiries raised by the Borough Council (or its nominated substitute Registered Provider) in relation to the Affordable Housing Units or Affordable Housing provided pursuant to paragraph 6 of schedule 2 as expeditiously as possible having regard to the length of the Moratorium Period; and
  - 5.5.2 the Borough Council (or its nominated substitute Registered Provider) and the Chargee shall use reasonable endeavours to agree the purchase price for the relevant Affordable Housing Units or Affordable Housing provided pursuant to paragraph 6 of schedule 2 which shall be the higher of:
    - 5.5.2.1 the price reasonably obtainable in the circumstances having regard to the restrictions as to the use of the relevant Affordable Housing Units or Affordable Housing provided pursuant to paragraph 6 of schedule 2 contained in this Schedule; and
    - 5.5.2.2 (unless otherwise agreed in writing between the Borough Council (or its nominated substitute Registered Provider) and the Chargee) the Sums Due.
  - 5.5.3 On the date falling 10 Working Days after service of the Intention Notice, if the Borough Council (or its nominated substitute Registered Provider) and the Chargee have not agreed the price pursuant to paragraph 5.5 above the Borough Council (or its nominated substitute Registered Provider) and the Chargee shall use reasonable endeavours to agree the identity of an independent surveyor having at least 10 years' experience in the valuation of affordable/social housing within the Borough Council's area to determine the dispute and, if the identity is agreed, shall appoint such independent surveyor to determine the dispute;
  - 5.5.4 if, on the date falling 15 Working Days after service of the Intention Notice, the Borough Council (or its nominated substitute Registered Provider) and the Chargee have not been able to agree the identity of an independent surveyor, either party may apply to the President for the time being of the Royal Institution of Chartered Surveyors or his deputy to appoint an independent

surveyor having at least 10 years' experience in the valuation of affordable/social housing within the Borough Council's area to determine the dispute;

- 5.5.5 the independent surveyor shall determine the price reasonably obtainable referred to at paragraph 5.5.2 above, due regard being had to all the restrictions imposed upon the relevant Affordable Housing Units or Affordable Housing provided pursuant to paragraph 6 of schedule 2 by this Deed;
- 5.5.6 the independent surveyor shall act as an expert and not as an arbitrator;
- 5.5.7 the fees and expenses of the independent surveyor are to be borne equally by (1) the Chargee and (2) the Borough Council or the Borough Council's nominated substitute Registered Provider if any);
- 5.5.8 the independent surveyor shall make his/her decision and notify the Borough Council, the Borough Council's nominated substitute Registered Provider (if any) and the Chargee of that decision no later than 14 days after his/her appointment and in any event within the Moratorium Period; and
- 5.5.9 the independent surveyor's decision will be final and binding (save in the case of manifest error or fraud).
- 5.6 The Chargee may dispose of the relevant Affordable Housing Units or Affordable Housing provided pursuant to paragraph 6 of schedule 2 as the case may be free from the obligations and restrictions contained in Schedule 2 which shall determine absolutely in respect of those Affordable Housing Units (but subject to any existing tenancies) if:
  - 5.6.1 the Borough Council has not served an Intention Notice before the date falling one calendar month after the first day of the Moratorium Period;
  - 5.6.2 the Borough Council (or its nominated substitute Registered Provider) has not exercised the Option and completed the purchase of the relevant Affordable Housing Units Housing Units or Affordable Housing provided pursuant to paragraph 6 of schedule 2 on or before the date on which the Moratorium Period expires; or
  - 5.6.3 the Borough Council (or its nominated substitute Registered Provider) has notified the Chargee in writing pursuant to the Option that it no longer intends to exercise the Option.
- 5.7 The Borough Council (and its nominated substitute Registered Provider, if any) and the Chargee shall act reasonably in fulfilling their respective obligations under paragraph 5.2 to 5.6 above (inclusive).

## **6 Additional Affordable Housing**

- 6.1 The Owner may from time to time after the grant of Planning Permission and in its absolute discretion serve notice on the Borough Council that it intends to provide further Dwellings as Affordable Housing in addition to the Affordable Housing Units.
- 6.2 The notice served under paragraph 6.1 of this Schedule must be accompanied by details of the type, bed size and tenure mix of the further

Dwellings to be provided as Affordable Housing, together with a plan showing the location of such further Dwellings within the Development.

- 6.3 Following service of the notice on, and provision of details to, the Borough Council pursuant to paragraphs 6.1 and 6.2 this Schedule, such further Dwellings to be provided as Affordable Housing shall:
  - 6.3.1 be provided in accordance with those details ; and
  - 6.3.2 following their provision as Affordable Housing, remain as Affordable Housing for a minimum of the Clawback Period (for the avoidance of doubt, following such Clawback Period such further Dwellings may at the absolute discretion of the Owner be provided as market housing instead of Affordable Housing),

## **7 Viability Assessment**

- 7.1 In the event that the Development has not reached Golden Brick Stage within eighteen months of the date on which the Planning Permission is granted the Owner shall undertake a Viability Appraisal for the Development.
- 7.2 Where paragraph 7.1 applies, to submit the Viability Appraisal to the Borough Council within twenty Working Days of the expiration of that eighteen months period.
- 7.3 If the Viability Appraisal demonstrates that the amount of Affordable Housing that can be provided is greater than 34% the Owner shall confirm to the Borough Council in writing that it shall either -
  - 7.3.1 pay the Affordable Housing Contribution to the Borough Council in accordance with paragraph 7.5 below; or
  - 7.3.2 submit revised details of the Affordable Housing to include additional Dwellings so that the total amount of Affordable Housing shall be equal to the amount that the Viability Appraisal demonstrates can be provided and the provision of paragraph 7.6 and 7.7 below shall apply.
- 7.4 It is agreed between the Owner and the Borough Council that the total amount of Affordable Housing that may be required pursuant to paragraph 7.3 shall not in any event exceed 50% of the Dwellings.
- 7.5 If the Affordable Housing Contribution becomes payable in accordance with paragraph 7.3.1 of this Schedule 2 the Owner shall not cause or allow the Occupation of more than 50% of the Dwellings until the Affordable Housing Contribution has been paid to the Borough Council.
- 7.6 In the event that the provisions of paragraph 7.3.2 apply then the Affordable Housing Plan attached as Appendix 3 shall cease to apply and the Owner shall submit a replacement plan and shall submit details to replace those contained in paragraphs 1.2 and 1.3 of this Schedule that are proportionately equal to those contained in those paragraphs.

- 7.7 The Owner shall provide the Affordable Housing Units as set out in the details required pursuant to paragraph 7.6 and the provisions of paragraphs 1-5 of this Schedule shall apply to the provision of those Affordable Housing Units.

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### **Schedule 3**

#### **Highways and Transport**

The Owner covenants with the County Council as set out below

- 1 To pay the Traffic Regulation Order Contribution in full to the County Council prior to the first Occupation of any Dwelling.
2. Not to cause or allow the Occupation of any Dwelling unless and until it has paid the Traffic Regulation Order Contribution in full to the County Council.
- 3 Not to Commence any part of the Development above ground level unless and until the Highway and Public Realm Phasing Plan has been submitted to and approved in writing by the County Council for the Highway Public Realm Works.
4. To carry out the Highway and Public Realm Works in accordance with the Public Realm Phasing Plan approved pursuant to paragraph 3 above.
5. Not to Commence the Development until a Highway Agreement has been entered into to secure the dedication as public highway of such land as is identified on the Public Highway Dedication Plan.
- 6.
6. To procure the provision of the Car Club for a minimum of five years from the first Occupation of any Dwelling and to use reasonable endeavours to provide and keep available for use the Car Club Spaces during the operation of the Car Club7. To provide the first Occupier of every Dwelling with a one year free membership to the Car Club and credit for 25 miles use or such other incentives as may be agreed with the County Council in writing
8. To submit a revised Travel Plan , incorporating a Car Park Management Strategy to the County Council for its approval in writing prior to the first Occupation of the Development.
- 9 To implement the measures detailed in the approved Travel Plan and Car Park Management Strategy from first Occupation of the Development in accordance with the timetable agreed as part of the Travel Plan.
- 10 To pay to the County Council the Travel Plan Auditing Fee to be used towards the auditing of the Travel Plan incorporating the Car Park Management Strategy.
- 11 To monitor the implementation of the measures in the Travel Plan in accordance with the timetable comprised within it, and in the event that it is called for by the County Council to pay to the County Council the sum of £10,000 (TEN THOUSAND POUNDS) to be used towards the design and implementation of a residents permit parking scheme in the vicinity of the Development.

## **Schedule 4**

### **Open Space**

#### **The Owner covenants with the Borough Council as follows**

- 1 To pay the Play Area Contribution in full to the Borough Council prior to Commencement of the Development.
2. Not to cause or allow Commencement of the Development unless and until it has paid the Play Area Contribution in full to the Borough Council.

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## **Schedule 5**

### **Borough Council and County Council obligations**

#### **1 Expenditure of contributions**

- 1.1 The Borough Council and the County Council covenant to use any financial contributions paid to them pursuant to this Agreement for the purposes specified in this Agreement and for no other purpose
  - 1.2 The Borough Council covenants to return upon request any sums paid to it pursuant to this Agreement and not committed to expenditure or spent within 5 (five) years from the date of receipt of such sums to Elmsleigh Street Ltd or as Elmsleigh Street Ltd shall direct by irrevocable notice to the Borough Council in writing.
  - 1.3 The County Council covenants to return upon request any sums paid to it pursuant to this Agreement and not committed to expenditure or spent within 2 (two) years from the date of the issue of the completion certificate by the County Council in relation to the Highway and Public Realm Works to Elmsleigh Street Ltd or as Elmsleigh Street Ltd shall direct by irrevocable notice to the County Council in writing.
- 2 The County Council covenants to use its reasonable endeavours to facilitate the provision of the Car Club and the provision of the Car Club Spaces by the Owner

**IN WITNESS** whereof the parties hereto have executed this Agreement as a deed on the day and year first before written.

**EXECUTED AND DELIVERED** as a deed by affixing  
The Common Seal of  
**SPELTHORNE BOROUGH COUNCIL**  
was hereunto affixed to this document in the presence of:

Authorised signatory

**EXECUTED AND DELIVERED** as a deed by affixing  
The Common Seal of  
**SURREY COUNTY COUNCIL**  
In the present of and attested by

Director of Legal Democratic and Council  
Services/Authorised Signatory

EXECUTED AS A DEED by )  
**ELMSLEIGH STREET LIMITED**

**Acting by a Director** )  
In the presence of: )  
Witness Signature: )  
Witness Name: )  
Witness Address: )  
Witness Occupation: )

EXECUTED AS A DEED by )  
**INLAND LIMITED**

**Acting by a Director** )  
In the presence of: )  
Witness Signature: )  
Witness Name: )  
Witness Address: )

Witness Occupation:

)

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## APPENDIX 1

### Highway & Public Realm Works Plan

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## APPENDIX 2

### Public Highway Dedication Drawing

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## APPENDIX 3

### Affordable Housing Plan

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## APPENDIX 4

### Car Park Management Strategy Principles

The Car Park Management Strategy shall be based on the following principles, and subject to the agreement of the County Council:

- The car park spaces shall be leased to residents of the development by the Management Company.
- Leases shall be for a minimum period of three months
- Leases shall be renewable on a rolling basis such that they may be terminated by either side, with the following notice periods:
  - Residents - One month
  - Management Company - Three months
- The Management Company shall normally only terminate the lease if the space is not being used on a regular basis by the leaseholder.
- In the event that all of the spaces are leased, a waiting list of prospective leaseholders shall be drawn up and spaces shall be offered on a first-come, first-served basis.
- The disabled spaces shall be reserved for residents with a registered disability.
- Spaces shall be allocated to the Affordable Housing Units and Open Market Units pro-rata, as adjusted by the ratio of car parking standards for Affordable and General Needs Housing set out in the Spelthorne Borough Council Parking Standards Supplementary Planning Guidance.
- The cost of the lease for residents of the Open Market Units shall be set by the Management Company based the cost of alternative off-street parking in Staines town centre and taking into account with the convenience of the on-site location.
- The cost of the lease for the Affordable Housing Units shall be set by agreement with the Registered Provider.

## APPENDIX 5

### Application Site Plan

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