



Elmbridge
Borough Council
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Section 106 Agreement

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**Agreement pursuant to Section 106 of the Town and Country
Planning Act 1990 relating to land at**

1 Annett Road, Walton on Thames, Surrey KT12 2JR

and

**Land on the north east side of Terrace Road, Walton on Thames,
Surrey KT12 2JR**

And

**Land at rear of 41 Terrace Road, Walton on Thames, Surrey KT12
2SR**

Dated

**Landowner
EAST STREET HOMES (SOUTH EAST) LIMITED**

and

The Council

Elmbridge Borough Council

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This Agreement is

Dated and

Made between:

(1) **East Homes (South East) Limited**, of 100 Dudley Road East, Oldbury B69 3DY, a company registered in England with company registration number 09740563 whose registered office is 4 Birchley Estate, Birchfield Lane, Oldbury, England, B69 1DT, (the Landowner)

and

(2) **Elmbridge Borough Council**, the Council, of Civic Centre, High Street, Esher, Surrey, KT10 9SD, (the Council)

Recitals

- A The Council is the local planning authority for the purposes of Section 106 of the Act for the area within which the Application Site is situated.
- B The Landowner is registered as the freehold owner of the Application Site with title absolute at HM Land Registry under title numbers SY203831, SY710040 and SY302024.
- C The Application for Planning Permission has been made by the Landowner to the Council to develop the Application Site.
- D The Parties have agreed to enter into this Agreement in order to secure the Planning Obligations contained in this Agreement.
- E The Parties have agreed that the provision herein contained should have effect in order to secure Late Stage Contribution that is triggered when 75 per cent of the Development have been Disposed.
- F The Landowner has submitted a financial appraisal review dated 27 July 2020, (the "Original Appraisal") and it has been reviewed by Bespoke Property Consultants on September 2020. The provision of the on-site Affordable Housing has been reduced from 3 (three) Affordable Dwellings to 0 (nil). The Landowner and the Council have therefore agreed that this Agreement is to include a requirement for a Late Stage Contribution to be made if appropriate as hereinafter provided.
- G The Parties have agreed that the provisions herein contained should have effect in order to secure an on-site affordable housing contribution and/or a financial contribution towards the provision of affordable housing off site in accordance with the Council's Development Contributions Supplementary Planning Document 2020.

It is agreed:

1 Definitions

In this Deed the following expressions shall apply:

Act means the Town and Country Planning Act 1990 (as amended).

Affordable Dwellings means on-site Affordable Housing on the Application Site and the words “**Affordable Dwelling**” shall mean any one of them.

Affordable Housing means housing for sale or rent, for those whose needs are not met by the market (including housing that provides a subsidised route to home ownership and/or is for essential local workers); that conforms with related policies and guidance in the Local Plan and complies with one or more of the following definitions:

a) Affordable housing for rent: meets all of the following conditions: (a) the rent is set in accordance with the Government’s rent policy¹ for Social Rent or Affordable Rent, or is at least 20% below local market rents (including service charges where applicable); (b) the landlord is a registered provider, except where it is included as part of a Build to Rent scheme (in which case the landlord need not be a registered provider); and (c) it includes provisions to remain at an affordable price for future eligible households, or for the subsidy to be recycled for alternative affordable housing provision. For Build to Rent schemes affordable housing for rent is expected to be the normal form of affordable housing provision (and, in this context, is known as Affordable Private Rent).

b) Starter homes: is as specified in Sections 2 and 3 of the Housing and Planning Act 2016 and any secondary legislation made under these sections. The definition of a starter home should reflect the meaning set out in statute and any such secondary legislation at the time of plan-preparation or decision-making. Where secondary legislation has the effect of limiting a household’s eligibility to purchase a starter home to those with a particular maximum level of household income, those restrictions should be used.

c) Discounted market sales housing: is that sold at a discount of at least 20% below local market value. Eligibility is determined with regard to local incomes and local house prices. Provisions should be in place to ensure housing remains at a discount for future eligible households.

d) Other affordable routes to home ownership: is housing provided for sale that provides a route to ownership for those who could not achieve home ownership through the market. It includes shared ownership, relevant equity loans, other low cost homes for sale (at a price equivalent to at least 20% below local market value) and rent to buy (which includes a period of intermediate rent). Where public grant funding is provided, there should be provisions for the homes to

¹ At the time when this template was produced, the Government’s Rent Policy on Social Housing (published February 2019) was in force

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/781746/Policy_Statement.pdf

remain at an affordable price for future eligible households, or for any receipts to be recycled for alternative affordable housing provision, or refunded to Government or the relevant authority specified in the funding agreement

Affordable Housing Contribution means Affordable Dwellings, and/or a Financial Contribution to the Council towards the provision of affordable housing in the Council's district calculated in accordance with requirements of Policy CS21 of the Elmbridge Core Strategy (2011) and the Development Contributions SPD (2020).

Application for Planning Permission means the application submitted by the Landowner to the Local Planning Authority received on 31 July 2020. and allocated the reference number: 2020/1882 seeking permission for development as described in Schedule 3 on the Application Site.

Application Site means the parcel of land which is the subject of the Application for Planning Permission and more specifically described in Schedule 1 of this Deed.

Build Costs means the build costs comprising construction of the Development supported by evidence of these costs reasonably incurred and to the Council's reasonable satisfaction including but not limited to:

- (a) details of payments made or agreed to be paid in the relevant building contract;
- (b) receipted invoices;
- (c) Affordable Housing Contribution, SAMM and CIL paid to date;
- (d) professional, finance, legal and marketing costs
- (e) costs, including construction costs, certified by the Landowner's quantity surveyor, costs consultant or agent but, **for the avoidance of doubt**, Build Costs exclude any costs arising from Fraudulent Transactions

Cap means the value of 3 (three) Affordable Dwellings that equals to Affordable Housing Contribution.

Certificate of Practical Completion means in respect of any Dwelling the "Buildmark" certificate to be issued by National House-Building Council (or equivalent certificate from an alternative third-party warranty provider) to the effect that the Dwelling is complete for practical purposes.

CIL means the Community Infrastructure Levy payable under the Community Infrastructure Levy Regulations 2010 as amended.

Commencement Date means the date of Commencement of Development.

Commencement of Development means the carrying out of a Material Operation in respect of the Development and the words "**Commence Development**" and "**Development Commences**" shall be construed accordingly.

Completion means the date of issue of the Certificate of Practical Completion and the expressions "**Complete**" and "**Completed**" shall be construed accordingly.

Component means a part of the Development including but not limited to:

- (a) Market Housing;
- (b) Affordable Dwellings;
- (c) Additional Affordable Dwellings;
- (d) commercial units;
- (e) any other floorspace;
- (f) property; and
- (g) land.

Decision Notice Date means the date when the Planning Permission for the Application for Planning Permission, being implemented, is granted by the Local Planning Authority or on appeal.

Deed means this document when it is duly executed, dated and delivered.

Developer Profit means a level of profit defined as a percentage of Gross Development Value agreed through the Original Appraisal at the Application for Planning Permission stage. This is agreed at 17.5%.

Development means the development the subject of the Application for Planning Permission.

Disposal means:

- (a) the Sale of a Component(s) of the Development, (including the grant of a lease of a term of at least 125 years);
- (b) the grant of a lease of a term of less than 125 years of a Component of the Development; or
- (c) the grant of an assured shorthold tenancy agreement or a short term let in respect of a Component of the Development

Prior to payment of any Late Stage Contribution due under this deed all transfers within the Development must be by way of Disposal and the Disposal must always be at Market Value and furthermore there shall be no Fraudulent Transactions and Disposals at Non- Open Market Value and the expressions "**Dispose**" and "**Disposals**" and "**Disposed**" shall be construed accordingly.

Dwellings mean the residential units to be constructed on the Application Site pursuant to the Planning Permission and the word "**Dwelling**" shall mean any one of them.

Eligible Household mean households living or working within the Borough of Elmbridge or any other household approved by Elmbridge Council's Housing Services with a recognised housing need and whose incomes are not sufficient to allow them to afford decent and appropriate housing on the market.

External Consultant means the external consultant(s) appointed by the Council to assess a Financial Viability Appraisal.

Financial Contribution means a contribution to the Council towards the provision of off-site Affordable Housing in the Council's district area in line with the Elmbridge Development Contributions SPD 2020.

Financial Viability Appraisal (FVA) means a financial appraisal submitted by the

Landowner to demonstrate the viability position of the Development. This includes the Original Appraisal, and the calculation of the Late Stage Contribution. The FVA includes all necessary information to carry out the viability review, as set out in the Development Contributions Supplementary Planning Document 2020 issued by the Council.

Formula 1 means the formula identified as "Formula 1" within the Annex to Schedule 5.

Fraudulent Transaction means:

- (a) a transaction the purpose or effect of which is to artificially reduce the Late Stage Review Contribution, including any inputs in the Financial Viability Appraisal; or
- (b) a Disposal that is not an arm's length third party bona fide transaction.

Gross Development Value (GDV) means the aggregate market value of the Development, assessed on the special assumption that the development is complete as at the date of valuation in the market conditions prevailing on that date.

Late Stage Contribution means a Financial Contribution, the precise value of which shall be calculated in accordance with Formula 1 set out in Annex to Schedule 5 to a maximum value as defined by the Cap.

Late Stage Contribution Calculation Date means the date on which 75 per cent of the Development have been Disposed as notified to the Council pursuant to paragraph 1 of Schedule 5.

Late Stage Contribution Calculation means a calculation carried out on an Open Book Basis that is identical to the Original Appraisal but with the following changes:

- (a) Replacement of the forecast sales values for Dwellings set out in the Original Appraisal with:
 - i) actual sales values for Dwellings that have been sold as at the date of the Late Stage Contribution Calculation;
 - ii) estimated sales values for Dwellings that have not been sold as at the date of the Late Stage Contribution Calculation and accompanied by a third-party valuation of the unsold Dwellings evidencing the forecast sales values attributed with reference to comparable values.
 - iii) Increased land value since the Decision Notice Date
- (b) Replacement of the forecast construction costs set out in the Original Appraisal with:
 - i) Build Costs incurred for Dwellings and the Development that have been sold as at the date of the Late Stage Contribution Calculation;
 - ii) estimated additional Build Costs associated with the Dwellings and the Development that have not been sold as at the date of the Late Stage Contribution Calculation comparable with Build Costs incurred in (b)(i).

Material Operation means a material operation pursuant to the Planning Permission on the Application Site the subject of this Deed pursuant to Section 56(4)(a)-(e) of the Act provided that for the avoidance of doubt a Material Operation shall be deemed not to have taken place for the purposes of this Deed

by any surveying, ground investigation, archaeological investigations, structural or advanced planting, site clearance, demolition and decontamination works, site preparation including earth moving, laying of sewers and services, the erection of fences and hoardings and the creation of a site compound. The undertaking of a Material Operation is considered to be the Commencement of Development pursuant to the Planning Permission.

Market Housing means Dwellings to be constructed on the Development which are not to be provided as Affordable Housing.

Market Rent means an estimate of its market rent inclusive of all service charges at the time the tenancy is granted that is based on a valuation in accordance with a method recognised by the Royal Institution of Chartered Surveyors.

Market Value means the price at which the sale of the relevant property interest would have been completed unconditionally for cash consideration on the date of Disposal based on detailed comparable market evidence, including evidence of rental values achieved for any Component of the Development which has been Disposed but not Sold, to be assessed by the Council and assuming:

- (a) a willing seller and a willing buyer;
- (b) that, prior to the date of valuation, there has been a reasonable period of not less than six months for the proper marketing of the interest (having regard to the nature of the property and the state of the market) for the agreement of the price and terms and for the completion of the sale;
- (c) that no account is taken of any additional bid by a prospective purchaser with a special interest; and
- (d) that both parties to the transaction have acted knowledgeably, prudently and without compulsion.

AND FOR THE AVOIDANCE OF DOUBT the following are not considered to be at Market Value where the transfer artificially reduces the Disposal value of a Dwelling or another component of the Development, examples of these include but are not confined to:

- (i) the Landowner and subsidiary companies of the Landowner
- (ii) transactions between the Landowner and their employees
- (iii) transactions involving loans from the Landowner
- (iv) other forms of deferred consideration
- (v) finance deals
- (vi) transactions involving other property not comprised in the Development.
- (vii) any transfer designed to reduce the revenue received from the Disposal of the Market Housing Units
- (viii) account is taken of any additional bid by a prospective purchaser with a special interest.

Non-Open Market Value means a disposal to a purchaser who is connected in any way to the vendor grantor transferor or lessor including (but not confined to) the definition in section 839 of the Income and Corporation Taxes Act 1988;

- (a) which is not an arm's length true value purchase on the usual terms as between a willing vendor grantor transferor or lessor and a willing purchaser; and/or

- (b) where the transfer artificially reduces the Disposal value of a Dwelling or another Component of the Development, examples include, but are not confined to:
- (i) the Landowner and subsidiary companies of the Landowner
 - (ii) transactions between the Landowner and its employees
 - (iii) transactions involving loans from the Landowner
 - (iv) other forms of deferred consideration
 - (v) finance deals
 - (vi) transactions involving other property not comprised in the Development
 - (vii) any transfer designed to reduce the revenue received from the Disposal of the Dwelling
 - (viii) account is taken of any additional bid by a prospective purchaser with a special interest.

Non-Working Day means Saturday, Sunday and any bank or public holiday.

Occupation and Occupied means occupation for the purposes permitted by the Planning Permission but not including occupation by the personnel engaged in any construction, fitting out or marketing facility.

Open Book Basis means documentary evidence (to include all journals, ledgers, contracts, receipts and audited accounts) of Development expenditure projected and incurred and Development revenue received, appropriate Red Book (RICS Valuation Global Standards 2017 or any subsequent replacement edition) where assets have not yet been sold, and any further details which may be requested by the Council (acting reasonably) if necessary, to demonstrate actual and projected Development income and Development expenditure.

Original Appraisal means a Financial Viability Appraisal reviewed by an External Consultant as part of the Application for Planning Permission.

Parties means Landowner and the Council the word “**Party**” shall mean either one of them.

Plan means the plan annexed at Schedule 2.

Planning Permission means a planning permission for the Development granted pursuant to the Application for Planning Permission and shall apply to any planning permission granted on appeal against refusal of the Application for Planning Permission and to any planning permission subsequently granted (“Subsequent Permission”) under section 73 or 73A of the Act which permits non-compliance with any of the conditions attached to the Planning Permission and the Planning Permission shall be construed to include the Development as stated in the Subsequent Permission PROVIDED THAT with regard to the Subsequent Permission no new material planning considerations have arisen since the granting of the Planning Permission that, in the view of the local planning authority, requires a Deed of Variation to be executed in respect of the Planning Obligation(s) or a new Unilateral Undertaking/ Planning Agreement under Section 106 of the Act to be executed.

Public Subsidy means funding from the Council together with any additional

public subsidy secured by the Landowner to support the delivery of the Development

Sale means:

- (a) the sale of the freehold of a Component; or
- (b) the grant of a lease of a Component with a term of 125 years or more and subject to nominal rent and "**Sold**" shall be construed accordingly

Surplus means any positive sum calculated pursuant the Formulae 1 as set out in Annex to Schedule 5 respectively.

Working Day means any day except Saturday, Sunday and any bank or public holiday.

2 Statutory Authorities

- 2.1 The obligations contained in Clause 4 and Schedules 4 and 5 of this Deed are planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council.
- 2.2 The obligations contained in Clause 4 and Schedules 4 and 5 of this Deed are entered into by the Landowner with the intention that these provisions should bind their interests in the freehold of the Application Site as provided by Section 106 of the Act.
- 2.3 Save where and to the extent otherwise indicated and where possible pursuant to the relevant statutory provision the covenants in this Deed shall be binding on the Landowner and its successors in title to the Application Site .
- 2.4 Nothing contained or implied in this Deed shall prejudice or affect the rights, powers, duties and obligations of the Council in the exercise of its functions as local planning authority or under any public or private statute bylaw or regulation.

3 Conditionality

- 3.1 The obligations contained in Clause 4 and Schedules 4 and 5 of this Deed will not have effect unless the Planning Permission has been granted:
- 3.2 If the Planning Permission shall expire prior to the carrying out of a Material Operation or shall at any time be revoked or modified without agreement this Deed shall forthwith determine and cease to have effect;
- 3.3 If the Planning Permission is quashed before the carrying out of a Material Operation, then this Deed shall absolutely determine and become null and void but without prejudice to the rights of any Party against the other.

4 Planning Obligations

- 4.1 The obligations contained in this Deed are made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all enabling powers and are enforceable by the Council against the Landowner and successors in title and those deriving title from the Landowner.
- 4.2 The Landowner accepts the restrictions and requirements in this Clause and:
- 4.2.1 will comply with the planning obligations set out herein and in Schedules 4 and 5 of this Deed; and
 - 4.2.2 will serve a notice upon the Council not less than twenty-one (21) days in advance of the first Material Operation taking place; and
 - 4.2.3 confirm that no person other than the Landowner holds an interest of ownership in the Application Site.

5 Interest and Statements of Account

Without prejudice to any other right remedy or power herein contained or otherwise available to the Council if any payment of any sum referred to herein shall have become due but shall remain unpaid for a period exceeding thirty (30) days the Landowner shall pay on demand to the Council interest thereon at the interest rate of four per centum (4%) per centum per annum above the base rate from time to time of Lloyds Bank Plc from the date when the same became due until payment thereof.

6 Obligations after Disposal of Whole or Part

- 6.1 The Landowner shall cease to have any obligation or liability under the terms of this Deed in relation to the Application Site or any part thereof once it shall have parted with all its interest in the Application Site or that part thereof respectively but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest .
- 6.2 Notwithstanding the foregoing sub-clause, the obligations under this Deed shall not be enforceable against any statutory undertaker or public authority which acquires any part of the Application Site or any interest in it for the purposes of its statutory undertaking or functions.
- 6.3 No obligations contained in this Deed shall be binding on any freehold or leasehold owners or occupiers of individual Dwellings constructed pursuant to the Planning Permission (or their respective mortgagees) or land held by any of the statutory utilities for their operational purposes.

7 Change in Ownership

The Landowner agrees to give the Council written notice as soon as reasonably practicable after the same occurs of any change in ownership of any of its interest in the Application Site (other than the a Disposal to a party referred to in clause 6.2) occurring before all the obligations under this Deed 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 the area of the Application Site or Component purchased by reference to a Plan.

8 Notices

- 8.1 Any notice to be given hereunder shall be in writing and shall either be delivered personally or sent by first class pre-paid post. The addresses for service on the Landowner, and the Council shall be those stated in this Deed or such other address in England for service as the Party to be served may have previously notified in writing.
- 8.2 Each notice served in accordance with sub-clause 8.1 hereof shall be deemed to have been given or made and delivered if by delivery when left at the relevant address or if by letter forty-eight (48) hours after posting.

9 VAT

- 9.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any VAT properly payable.
- 9.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Deed, then to the extent that VAT has not been charged in respect of that supply the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly.

10 General

- 10.1 The headings appearing in this Deed are for ease of reference only and shall not affect the construction of this Deed.
- 10.2 For the avoidance of doubt the provisions of this Deed (other than those contained in this sub-clause) shall not have any effect until this document has been signed and dated.
- 10.3 Any covenant in this Deed by which the relevant Party is not to do an act shall be construed as if it were a covenant not to do or permit or suffer to be done such act.
- 10.4 [repeats 10.3].
- 10.5 References to statutes by-laws regulations orders and delegated legislation shall include any statute by-law regulation order or delegated legislation re-enacting or made pursuant to the same.
- 10.6 References to the Landowner include references to its successors in title as owners of the Application Site or any part thereof and subject to the provisions of clause 7 above this Deed shall bind such successors in title of the Application Site or any part thereof.

11 Local Land Charges

This Deed is a Local Land Charge and shall be registered as such by the Council in the Local Land Charges Register provided that if the Planning Permission expires unimplemented, or is revoked, or if all obligations under this Deed have been discharged then the registered charge shall be treated as having ceased to have effect under rule 8 of the Local Land Charges Rules 1977 or any statutory re-enactment thereof and the registration shall be cancelled.

12 Contracts (Rights of Third Parties) Act 1999

The Parties do not intend that the provisions of this Deed shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not party to this Deed.

13 Costs

The Landowner shall pay the Council's reasonable legal costs properly incurred in the preparation negotiation and completion of this Deed.

15 Jurisdiction

This Deed is governed by and interpreted in accordance with the law of England.

16 Dispute Resolution

16.1 In the event of a disagreement, without prejudice to the Parties' rights to seek redress through the courts, all disputes or differences arising out of this Deed or as to the rights or obligations of the Parties under it or in connection with its construction shall be referred to a person acting as an Expert (hereinafter referred to as the "**Expert**" being a person with the relevant experience of the matter in dispute whose identity will be agreed between the Landowner and the Council or, failing agreement, by an Expert to be appointed at the request of either Party by the President of The Royal Institution of Chartered Surveyors who shall have due regard to any representations made to him as to the appropriate qualifications of such Expert).

16.2 It is further agreed that: -

16.2.1 the determination of the Expert will be final and binding on the Landowner and the Council save in the case of manifest error;

16.2.2 the Landowner and the Council will be entitled to make representations and counter representations in accordance with such timetable as the Expert shall direct; and

16.2.3 the Expert's costs will be borne in such proportions as he/she may direct failing which each Party will bear its own costs of the reference and determination and an equal proportion each of the Expert's costs.

Schedule 1 – The Application Site

All that piece or parcel of land comprising Land at

1 Annett Road, Walton on Thames, Surrey KT12 2JR registered at HM Land Registry with title number SY302024

and

Land on the north east side of Terrace Road, Walton on Thames, Surrey KT12 2JR registered at HM Land Registry with title number SY710040

And

Land at rear of 41 Terrace Road, Walton on Thames, Surrey KT12 2SR registered at HM Land Registry with title number SY203831

(Known collectively as Annetts Yard, 1-3 Annett Road, Walton on Thames KT12 2JR)

As shown edged red on the Plan being land on which the Application for Planning Permission is made.

Schedule 2 – The Plan

Schedule 3 – The Application for Planning Permission

The planning application is that submitted by the Landowner applying for planning permission or approval for:

Development comprising 10 flats with associated bin stores, parking and landscaping following demolition of existing buildings.

Schedule 4 – Planning Obligation

The Landowner covenants with the Council as follows, where applicable:

- 4.1 to bind the Application Site to pay the Late Stage Contribution pursuant to Schedule 5 and the Annex to Schedule 5.

Schedule 5 – Late Stage Contribution Calculation

1 Late Stage Viability Review Notification

- 1.1 The Landowner shall notify the Council in writing of the anticipated Late Stage Contribution Calculation Date not less than 20 Working Days in advance of that date.

2 Submission of Late Stage Viability Appraisal and other information

- 2.1 No later than 20 Working Days after the notification to the Council pursuant to paragraph 1.1 of this Schedule 5, the Landowner shall submit a Late Stage Contribution Calculation on the basis that the Council will make such information publicly available in accordance with the Development Contributions SPD 2020.
- 2.2 The Landowner covenants with the Council not to Dispose nor permit Disposal of more than 75 per cent of the Development, i.e.7 of Dwellings until:
- 2.2.1 the Late Stage Contribution Calculation has been submitted to the Council in accordance with paragraph 2.1 of this Schedule 5;
 - 2.2.2 the Late Stage Contribution Calculation has been approved pursuant to paragraph 3.5 of this Schedule 5; and
 - 2.2.3 the Late Stage Contribution (if any) has been paid to the Council pursuant to paragraph 3.7 of this Schedule 5.

3 Assessment of Late Stage Viability Appraisal

- 3.1 The Council shall assess the Late Stage Contribution Calculation submitted pursuant to paragraph 2.1 of this Schedule 5. The Council may appoint an External Consultant to assess this information. The Council is entitled to rely on its own evidence in determining inputs into Formula 1 subject to such evidence also being provided to the Landowner.
- 3.2 The Landowner shall pay the Council's proper and reasonable costs which are reasonably and properly incurred in assessing the information submitted pursuant to this Schedule 5 including those of the External Consultant within 10 Working Days of receipt of a written request for payment.
- 3.3 In the event that the Council and/or an External Consultant requires further Late Stage Contribution Calculation documentation or supporting evidence of the same, this shall be requested from the Landowner within 10 Working Days of the date the Late Stage Viability Appraisal was submitted to the Council. Then the Landowner shall provide any reasonably required information to the Council or the External Consultant (as applicable and with copies to the other parties) on an Open Book Basis within 10 Working Days of receiving the relevant request and this process may be repeated until the Council and/or the External Consultant (as applicable) has all the information it reasonably requires to assess whether in

its view any Late Stage Contribution is due in accordance with Formula 1.

- 3.4 Following a completion of the assessment of the information submitted pursuant to paragraph 2.1 and 3.3 of this Schedule 5, the Council shall notify the Landowner in writing of its decision as to whether the conclusions of the Late Stage Contribution Calculation are accepted or disputed and if disputed setting out the grounds of dispute, and whether any Late Stage Contribution is required and, if so, the level of the Late Stage Contribution due.
- 3.5 If the Council notifies the Landowner pursuant to paragraph 3.4 of this Schedule 5 that a Late Stage Contribution is required, the Landowner shall pay the Late Stage Contribution to the Council within 10 Working Days of the date on which such notice is served.
- 3.6 The Council shall respond in writing within 30 Working Days of receipt of the Late Stage Contribution Calculation, or in the event that further information or supporting evidence is required pursuant to paragraph 3.3. above, within 30 Working Days of receipt of a satisfactory response to the request. PROVIDED THAT if the Landowner fails to receive a response within 35 Working Days then the Late Stage Viability Appraisal shall be deemed to have been approved by the Council (and the provisions set out at clause 8 of the Agreement in respect of deemed service and receipt shall have effect for this purpose).
- 3.7 In the event that the Council confirms that the conclusions of the Late Stage Contribution Calculation are disputed then the matters in dispute shall be referred to an Expert in accordance with clause 16 of this Deed and the Expert's determination shall be deemed final for the purposes of this Deed, and the Late Stage Contribution determined by the Expert, if any, shall be paid to the Council within 10 Working days of the Expert's determination.

4 PUBLIC SUBSIDY

Nothing in this Agreement shall prejudice any contractual obligation on the Landowner to repay or reimburse any Public Subsidy using any surplus profit that is to be retained by the Landowner.

ANNEX TO SCHEDULE 5 - FORMULA 1

X = Late Stage Review Contribution

$$X = ((A + B) - C) - ((D + E) - F) - P \times 0.6$$

X = Financial Contribution towards off-site affordable housing

A = GDV achieved on sale/ lease of 75 per cent of residential units and GDV from other parts of the development sold / let and other income receipts (£)

B = Estimated GDV for parts of the development that are yet to be sold/ let and other income sources (£)

C = GDV determined as part of the assessment of viability at the time planning permission was granted (or as determined in previous review (£4,617,000 provided that such sum shall be adjusted for the purpose of this calculation in proportion with the increase or decrease in the UK House Price Index as published by the Office for National Statistics between the date of this Agreement and the Late Stage Contribution Calculation Date))

D = Build costs incurred at the time of review (£)

E = Estimated build costs for remainder of the development (£)

F = Total build costs determined as part of the assessment of viability at the time planning permission was granted (or as determined in previous review) (£2,449,069 provided that such sum shall be adjusted for the purpose of this calculation in proportion with the increase or decrease in the All Construction Output Price Index as published by the Office for National Statistics between the date of this Agreement and the Late Stage Contribution Calculation Date)

$$P = (A + B - C) * Y$$

Developer Profit on change in GDV (£)

Y = Developer Profit as a percentage of GDV agreed through the Original Appraisal (17.5%)

Notes:

(A + B) - C = The change in GDV from the grant of planning permission (or previous review) to the late stage review (£)

(D + E) - F = The change in build costs from the grant of planning permission (or previous review) to the late stage review (£)

P = Developer Profit on change in GDV (£)

0.6 = Any surplus profit, after deducting the developer profit (P), will be shared between the LPA and the developer with 60 per cent used for additional affordable housing

IN WITNESS whereof this Deed has been executed the day and year first before written

THE COMMON SEAL of)
ELMBRIDGE BOROUGH COUNCIL)
)

was hereunto affixed in the presence of

(Signature)

(Print Name)

Legal Services

LANDOWNER

Executed as a deed by)
EAST STREET HOMES (SOUTH EAST))
LIMITED on being signed by:)
.....) Director
in the presence of:)

Name of witness:

Signature:

Address:

.....

Occupation: