CW 13.4.21

(1) woking borough council

(2) goldev woking limited

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PLANNING DEVELOPMENT AGREEMENT

relating to

LAND AT WOKING FOOTBALL CLUB AND LAND ADJACENT TO EGLEY ROAD, WOKING

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**THIS AGREEMENT** is made on the            day of                               2021

**BETWEEN:**

1. **WOKING BOROUGH COUNCIL** ofCivic Offices, Gloucester Square, WokingGU21 6YL("**Council**");

and

1. **GOLDEV WOKING LIMITED** of 73 Cornhill, London EC3V 3QQ (“**Developer**”)

**WHEREAS**:

1. On 30 January 2019, the Developer and the Council entered into (i) the Agreement for Lease and (ii) the Implementation Agreement.
2. Paragraph 2 of Schedule 3 to the Agreement for Lease provides for agreements to be entered into between the Developer and the Council in respect of the matters specified in that Schedule. This Agreement is one of those agreements.

**Definitions**

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| --- | --- |
| “1990 Act” | means the Town and Country and Planning Act 1990 (as amended); |
| “Active Electric Vehicle Charging Ability” | means provision of an electricity supply which is ready for use for the charging of electric vehicles; |
| “Active Electric Vehicle Charging Upgrade Scheme” | means a scheme for upgrading the Passive Electric Vehicle Charging Ability in respect of any Kingfield Road Residential Car Parking Space allocated to the relevant Kingfield Road Residential Block to Active Electric Vehicle Charging Ability, if requested by any First Residential Occupier, such scheme to include technical details of the Active Electric Vehicle Charging Ability and a timescale for provision of the Active Electric Vehicle Charging Ability following request by any First Residential Occupier; |
| “Affordable Housing” | means housing made available through (i) a Registered Provider; (ii) the local authority; or (iii) Thameswey Housing Limited (company registration number **05437166**) which is available for and meets the needs of people on low and middle incomes who cannot otherwise afford to rent or buy dwellings or houses generally on the open market within the Borough of Woking at a cost low enough for them to afford (having regard to local income and local house prices) and as defined in the National Planning Policy Framework at Annex 2; |
| “Affordable Housing Units” | means the Affordable Rental Units and the Shared Ownership Units (and “Affordable Housing Unit” shall be construed accordingly); |
| “Affordable Rent” | means a rent (inclusive of service charge) that does not exceed the lower of:   1. an amount not exceeding 80% of the local open market rent; and 2. an amount not exceeding the Local Housing Allowance   both for an equivalent dwelling of the same size and location as the relevant Affordable Rental Unit; |
| “Affordable Rental Housing” | means Affordable Housing let (i) by a Registered Provider; (ii) the local authority; or (iii) Thameswey Housing Limited (company registration number **05437166**) to a person (or persons) who is (or are) members of an Eligible Household at a weekly or monthly Affordable Rent; |
| “Affordable Rental Units” | means:  1. the Kingfield Road Affordable Rental Units; and  2. the Egley Road Residential Units  (totalling 313 units) constructed or to be constructed on the Kingfield Road Residential Land in accordance with the Kingfield Road Planning Permission and the Egley Road Site in accordance with the Egley Road Planning Permission and shown on Plan 5 and Plan 6 respectively (and “**Affordable Rental Unit**” shall be construed accordingly); |
| “Agreement for Lease” | means the agreement for lease dated 30 January 2019 relating to Woking Football Club and other land in Woking between (i) the Developer and (ii) the Council; |
| “Ancillary Stadium Development” | means the retail units, the flexible commercial units and the medical centre to be provided in connection with the proposed new stadium; |
| “Block 1” | means the block of Residential Units on the Kingfield Road Residential Land as shown labelled Block 1 for illustrative purposes on Plan 8; |
| “Block 2” | means the block of Residential Units on the Kingfield Road Residential Land as shown labelled Block 2 for illustrative purposes on Plan 8; |
| “Block 3” | means the block of Residential Units on the Kingfield Road Residential Land as shown labelled Block 3 for illustrative purposes on Plan 8; |
| “Block 4” | means the block of Residential Units on the Kingfield Road Residential Land as shown labelled Block 4 for illustrative purposes on Plan 8; |
| “Block 5” | means the block of Residential Units on the Kingfield Road Residential Land as shown labelled Block 5 for illustrative purposes on Plan 8; |
| “Bus Services” | means the following bus services (or as may be reviewed from time to time by agreement between the parties) to be provided by the County Highways Authority:   1. to serve the Kingfield Road Residential Land a service operating between the Kingfield Road Site and Woking town centre and Guildford as follows:    1. Mondays to Saturdays (inclusive) at a frequency of no less than one bus every 20 minutes , with no fewer than 3 buses per hour operating in each direction, between the hours of 6am – 7pm, , with a reduced level of service after 7pm; and    2. on Sundays at a frequency of no less than 2 buses per hour operating in each direction between the hours of 7am-7pm; and 2. to serve the Stadium Land, on matchdays, a service operating between the Kingfield Road Site and Woking town centre and Guildford, with 3 buses per hour operating in each direction from no less than 90 minutes prior to a match and no less than 60 minutes following a match; |
| “Bus Services Contribution” | means the contribution of £1,400,000 Index Linked to be applied by the local planning authority to provide the Bus Services; |
| “Car Club” | means a car club established and operated by a Car Club Operator under which residents of the Kingfield Road Residential Units shall be entitled (upon becoming members of the car club) to hire (on a self-drive basis) motor vehicles; |
| “Car Club Operator” | means the operator of the Car Club to be approved by the local planning authority; |
| “Car Club Parking Spaces” | means 15 car parking spaces to be provided at the Kingfield Road Site and made available for the sole use of the Car Club; |
| “Car Pool Database” | means a database to which residents of the Kingfield Road Residential Units can sign up in order to facilitate and coordinate the sharing of car journeys to and from the Kingfield Road Site; |
| “Commencement” | means for the purposes of this Agreement only (and for the avoidance of doubt not for the purposes of the Kingfield Road Planning Permission or the Egley Road Planning Permission) the date on which a Material Operation is begun in respect of the Kingfield Road Development or the Egley Road Development respectively (or, where otherwise specified in this Agreement, a specific part of either of the Kingfield Road Development or the Egley Road Development) provided always that the following operations shall not be treated as Material Operations for the purposes of this Agreement:   1. site survey works; 2. works of demolition and site clearance; 3. ground investigations (including for archaeological investigation) and the drilling of exploratory boreholes; 4. works of site remediation or decontamination; 5. the erection of fences and hoardings; 6. site preparation and establishment preparatory to the commencement of construction; 7. the construction of temporary accesses; and 8. any operations permitted by the Town and Country Planning (General Permitted Development) Order 1995 (as amended)   (and “Commence” shall be construed accordingly); |
| “County Highways Authority” | means Surrey County Council, County Hall, Penrhyn Road, Kingston upon Thames, Surrey KT1 2DN; |
| “Egley Road Development” | means the development of the Egley Road Site in accordance with the Egley Road Planning Permission; |
| “Egley Road Planning Application” | means the planning application with reference number PLAN/2019/1177 submitted to the local planning authority for planning permission for development of the Egley Road Site; |
| “Egley Road Planning Permission” | means any planning permission granted in respect of the Egley Road Planning Application; |
| “Egley Road Site” | means the land adjacent to Egley Road, as shown on Plan 2; |
| “Egley Road Site Covenants” | means those covenants relating to the Egley Road Site set out in Schedule 4 to this Agreement; |
| “Egley Road Residential Units” | means individual dwelling units for residential use and to be provided as Affordable Housing in accordance with the Egley Road Planning Permission on the Egley Road Site, as shown for illustrative purposes on Plan 6 (and “Egley Road Residential Unit” shall be construed accordingly); |
| “Egley Road Health Club Travel Plan” | means a travel plan in respect of the Health Club in accordance with the aims and objectives of the County Highway Authority’s Travel Plan Good Practice Guide July 2010 and, in particular, to promote non-car modes of travel, as approved by the local planning authority; |
| “Egley Road SAMM Contribution” | means the sum of £35,531 Index Linked to be paid to the local planning authority and to be applied for the purposes of SAMM; |
| “Eligible Household” | means a household:   1. a member of which has lived in the local authority’s administrative area for at least 2 years or been in permanent employment in the local authority’s administrative area for a minimum of 35 hours per week (unless unable to do so on grounds of disability) and in each case has lived or been employed (as the case may be) for a continuous period of at least 2 years immediately prior to an offer of Affordable Housing being made; 2. which has no ownership (or part ownership) in another residential property in the United Kingdom; 3. which is in need of Affordable Housing; 4. which in the case of Shared Ownership Housing has a household income which shall not exceed £80,000 per annum (or such higher figure agreed by the local authority having regard to average local household incomes); and 5. which in the case of Affordable Rental Housing has (at the point of first letting) a household income which does not exceed £50,000 per annum and savings and other assets (excluding pension pots) which (in aggregate) do not exceed £16,000 and additionally meets the criteria set out in the Woking Borough Council Allocations Scheme (Hometrak) published February 2018 unless otherwise agreed by the local authority; |
| “Expert” | means an independent and suitable person holding appropriate professional qualifications in a field relevant to the dispute in question to be agreed upon by the parties to the dispute and in default of agreement to be appointed on the application of any party to the dispute by the President for the time being of the Royal Institution of Chartered Surveyors; |
| “First Residential Occupier” | means the first person to Occupy a Kingfield Road Residential Unit; |
| “Fold-Up Bike” | means a bicycle designed to fold into a compact form; |
| “Health Club” | means the health club to be provided on the Egley Road Site in accordance with the Egley Road Planning Permission; |
| “Index Linked” | means increased in line with any increase between the date of this Agreement and payment of the sum concerned in the All Items Group of the Retail Prices Index published by H M Government Office for National Statistics or (if such index shall cease to exist) the index which replaces the same or (in the absence of any such replacement index) the nearest equivalent index thereto which shall be determined by the local planning authority (acting reasonably) other than for the Bus Services Contribution, the Stadium TRO Contribution, the Westfield Avenue TRO Contribution and the sums payable to the local planning authority for the purpose of the local planning authority monitoring and auditing the Kingfield Road Residential Travel Plan, the Stadium Travel Plan and the Egley Road Health Club Travel Plan which shall be increased in line with any increase between the date of this Agreement and payment of the sum concerned in the Retail Prices Index Excluding Mortgage Interest Payments (RPIX) published by the H M Government Office for National Statistics every month or (if such index shall cease to exist) the index which replaces the same or (in the absence of any such replacement index) the nearest equivalent index thereto which shall be determined by the local planning authority (acting reasonably); |
| “Implementation Agreement” | means the Implementation Agreement dated 30 January 2019 relating to Woking Football Club and other land in Woking between (i) the Developer and (ii) the Council; |
| "Interest Rate" | means 3% above Lloyds Bank Base Rate from time to time; |
| “Kingfield Road Affordable Housing Units” | means the Shared Ownership Units and the Kingfield Road Affordable Rental Units; |
| “Kingfield Road Affordable Rental Units” | means the 277 Residential Units within Block 2 to be provided as Affordable Rental Housing, as shown for illustrative purposes on Plan 5; |
| “Kingfield Road Development” | means the development of the Kingfield Road Site in accordance with the Kingfield Road Planning Permission; |
| “Kingfield Road Leasehold Interest” | means the lease dated 19 August 2013 made between Kingfield Community Sports Limited and Woking Football Club in respect of the existing stadium on the Kingfield Road Site; |
| “Kingfield Road Mobility Hub” | means a community hub including a café, workspace, microconsolidation centre, a cycle hub, community concierge service and personalised travel planning service on the Kingfield Road Site in accordance with an operational and layout plan approved by the local planning authority and in the location shown for illustrative purposes on Plan 9; |
| "Kingfield Road Planning Application" | means the planning application with reference number PLAN/2019/1176 submitted to the local planning authority for planning permission for development of the Kingfield Road Site; |
| "Kingfield Road Planning Permission" | means any planning permission granted in respect of the Kingfield Road Planning Application; |
| “Kingfield Road Residential Blocks” | means the residential blocks on the Kingfield Road Residential Land, namely Block 1, Block 2, Block 3, Block 4 and Block 5, housing the Kingfield Road Residential Units as shown for illustrative purposes on Plan 8 annexed to this Agreement (and “Kingfield Road Residential Block” shall be construed accordingly); |
| “Kingfield Road Residential Land” | means the land forming part of the Kingfield Road Site to be used for residential purposes, and including the Kingfield Road Residential Blocks, as shown on Plan 4; |
| “Kingfield Road Residential Land Covenants” | means those covenants relating to the Kingfield Road Residential Land set out in Schedule 2 to this Agreement; |
| “Kingfield Road Residential Car Parking Spaces” | means the residential car parking spaces to be provided on the Kingfield Road Residential Land (and “Kingfield Road Residential Parking Space” shall be construed accordingly); |
| “Kingfield Road Residential Travel Plan” | means a travel plan in respect of the Kingfield Road Residential Land in accordance with the aims and objectives of the County Highway Authority’s Travel Plan Good Practice Guide July 2010, as approved by the local planning authority; |
| “Kingfield Road Residential Unit” | means an individual dwelling unit for residential use on the Kingfield Road Residential Land (and “Kingfield Road Residential Units” shall be construed accordingly); |
| “Kingfield Road SAMM Contribution” | means the sum of £655,779 Index Linked to be paid to the local planning authority in instalments and to be applied for the purposes of SAMM; |
| “Kingfield Road Site” | means the land at Woking Football Club and located on Kingfield Road, as shown on Plan 1; |
| “Kingfield Road Site Covenants” | means those covenants relating to the Kingfield Road Site set out in Schedule 1 to this Agreement; |
| “Local Housing Allowance” | means the local housing allowance in respect of a relevant Affordable Rental Unit determined by reference to the schedule of local housing rates published by the Valuation Office Agency; |
| “Material Operation” | has the meaning set out in section 56(4) of the 1990 Act; |
| “Nominations Agreement” | means a nominations agreement to be entered into between the local authority and the Registered Provider in respect of the Affordable Rental Units in a form reasonably specified by the local authority; |
| “Occupy” | means beneficially occupy for any purpose permitted by the Kingfield Road Planning Permission or the Egley Road Planning Permission respectively (or, where otherwise specified in this Agreement, a specific part of either of the Kingfield Road Development or the Egley Road Development) but excluding occupation by persons engaged in construction, fitting out or decoration, or occupation as a showroom or sales office, for advertising marketing or display purposes, or occupation in relation to site security and management of the Site (and “Occupation” shall be construed accordingly); |
| “Passive Electric Vehicle Charging Ability” | means provision of an electricity supply ready for future installation of an electric vehicle charging point; |
| “Plan 1” | means the plan annexed to this Agreement entitled the Kingfield Road Site (dwg. no. [ ]); |
| “Plan 2” | means the plan annexed to this Agreement entitled the Egley Road Site (dwg. no. [ ]); |
| “Plan 3” | means the plan annexed to this Agreement entitled the Stadium Land (dwg. no. [ ]); |
| “Plan 4” | means the plan annexed to this Agreement entitled the Kingfield Road Residential Land (dwg. no. [ ]); |
| “Plan 5” | means the plans annexed to this Agreement entitled the Kingfield Road Affordable Rental Units (dwg. nos. [ ]); |
| “Plan 6” | means the plan annexed to this Agreement entitled the Egley Road Residential Units (dwg. no. [ ]); |
| “Plan 7” | means the plans annexed to this Agreement entitled the Shared Ownership Units (dwg. nos. [ ]); |
| “Plan 8” | means the plan annexed to this Agreement entitled The Kingfield Road Residential Blocks (dwg. no. [ ]); |
| “Plan 9” | means the plan annexed to this Agreement entitled the Kingfield Road Mobility Hub (dwg. no. [ ]); |
| “Plan 10” | means the plan annexed to this Agreement entitled the Woking Gymnastics Club (dwg. no. [ ]); |
| “Practical Completion” | means completion in all material respects and the issue of a certificate of practical completion by the Developer’s architect, contractor, agent, administrator or a building inspector or in the event that the works are constructed by a party other than the Developer, the issue of a certificate of practical completion by that other party’s architect, contractor, agent, administrator or a building inspector (and “Practically Complete” shall be construed accordingly); |
| “Public Art” | means permanent public artwork which is integral to the Kingfield Road Development and permanently affixed to the Kingfield Road Development to be provided in accordance with the Public Art Strategy up to a maximum cost of £1,000.00 Index Linked; |
| “Public Art Strategy” | means a strategy which provides for the participation in the process and selection of Public Art in connection with the Kingfield Road Development, such strategy to include a timetable for the provision of such Public Art; |
| “Ready for Occupation” | means Practically Complete and capable of being used for its intended purpose including the provision of utilities and services but not including fitout, furniture, floor coverings, fittings and other decorative accessories; |
| “Registered Provider” | means a provider or providers of social housing registered with the Homes and Communities Agency under the Housing and Regeneration Act 2008 or such other provider of Affordable Housing as approved by the local planning authority; |
| “Relevant League” | means The Football Conference Limited (or any successor body) or The Football League Limited (or any successor body) as relevant to the league in which the Tenant is currently in or will be promoted or demoted to prior to completion of the new stadium; |
| “Replacement Gymnastics Club” | means a gymnastics club to replace the Woking Gymnastics Club in accordance with planning permission granted by the Council on 28 September 2018 with planning application reference PLAN/2017/1063 or any other replacement facility as may be agreed between the local planning authority and the Developer; |
| “Residential Unit” | means an individual dwelling unit on the Kingfield Road Residential Land or the Egley Road Site forming part of the Kingfield Road Development or the Egley Road Development respectively; |
| “SAMM” | means strategic access management and monitoring measures (as determined by the local planning authority) to mitigate the effects of the Kingfield Road Development and the Egley Road Development respectively on the Thames Basin Heaths Special Protection Area; |
| “Shared Ownership Housing” | means Affordable Housing leased by a Registered Provider to a person (or persons) who is (or are) members of an Eligible Household:   1. for a term of not less than 125 years; 2. in consideration of a premium equal to the percentage of the open market value of the Shared Ownership Unit being acquired (being initially not more than 35%) and which entitles the lessee to purchase further and additional tranches of equity in the Shared Ownership Unit up to 100% of the open market value in the Shared Ownership Unit; 3. requiring the payment of rent on the value of that percentage of the Shared Ownership Unit which on the grant of the lease shall not have been purchased by the lessee adjusted on each occasion on which the lessee purchases further and additional tranches of equity in the Shared Ownership Unit and which rent shall not exceed 2.75% of the value of the apportioned open market value of the part of the Shared Ownership Unit not purchased by the lessee; 4. grants to the lessee all rights of access and passage of services and other rights reasonably necessary for the beneficial enjoyment of the Shared Ownership Unit; and 5. otherwise contains such usual terms and conditions as are contained in a residential lease of shared ownership housing granted by a Registered Provider to a lessee; |
| “Shared Ownership Units” | means 191 Residential Units constructed or to be constructed within Block 1 on the Kingfield Road Residential Land in accordance with the Kingfield Road Planning Permission and shown for illustrative purposes on Plan 7 (and “Shared Ownership Unit” shall be construed accordingly); |
| “Stadium TRO Contribution” | means the sum of £1,500 Index Linked towards the cost of carrying out the Stadium TRO Review and implementing any additional double and/or single yellow lines (and any associated TROs) in the vicinity of the Stadium Development which are identified by the Stadium TRO Review as being reasonably necessary as a result of the Stadium Development; |
| “Stadium TRO Review” | means surveys, studies and consultations undertaken by the local authority in order to establish whether any additional double and/or single yellow lines (and any associated TROs) are reasonably required in the vicinity of the Stadium Development as a result of the Stadium Development; |
| “Stadium Development” | means the proposed new football stadium and the Ancillary Stadium Development, (but not including the Kingfield Road Residential Units) to be provided on the Stadium Land in accordance with the Kingfield Road Planning Permission; |
| “Stadium Development Completion” | means the date on which the Stadium Development is completed in accordance with the Kingfield Road Planning Permission such that Woking Football Club is permitted to play football at the new stadium so far as the Relevant League will permit and, for the avoidance of doubt, in respect of the Ancillary Stadium Development, shall mean completion to shell and core level and shall not include fit-out by or on behalf of any prospective tenant; |
| “Stadium Land” | means the land forming part of the Kingfield Road Site to be used for the provision of the Stadium Development, as shown for illustrative purposes on Plan 3 annexed to this Agreement; |
| “Stadium Land Covenants” | means those covenants relating to the Stadium Land set out in Schedule 3 to this Agreement; |
| “Stadium Travel Plan” | means a travel plan in respect of the Stadium Development in accordance with the aims and objectives of the County Highway Authority’s Travel Plan Good Practice Guide July 2010, as approved by the local planning authority; |
| “TRO” | means a traffic regulation order made pursuant to the Road Traffic Regulation Act 1984; |
| “Woking Gymnastics Club” | means the existing gymnastics club building knowns as ‘Woking Gymnastics Club’ at the Kingfield Road Site, as shown for illustrative purposes on Plan 10; |
| “Westfield Avenue TRO Contribution” | means the sum of £1,650 Index Linked towards the cost of carrying out the Westfield Avenue TRO Review and implementing any delivery bay (and any associated TROs) on Westfield Avenue which is identified by the Westfield Avenue TRO Review as being reasonably necessary as a result of the Kingfield Road Development; |
| “Westfield Avenue TRO Review” | means surveys, studies and consultations undertaken by the Council in order to establish whether a delivery bay (and any associated TROs) on Westfield Avenue is reasonably required as a result of the Kingfield Road Development; |
| “Working Day” | means Mondays to Fridays (inclusive) but excluding Christmas Day, Good Friday and other statutory bank holidays. |

* 1. Reference to the masculine feminine and neuter genders shall include other genders.
  2. Reference to the singular includes the plural and vice versa.
  3. Reference to natural persons includes corporations and vice versa.
  4. Reference to any party shall include that party’s personal representatives, successors or permitted assigns .
  5. Headings in this Agreement are for reference purposes only and shall not be taken into account in its construction or interpretation.
  6. Reference to a clause paragraph or schedule is to a clause paragraph or schedule in or to this Agreement.
  7. Where in this Agreement a party includes two or more persons the obligations of those persons shall be joint and several.
  8. Any reference to a statute or statutory instrument shall include any statute or statutory instrument amending consolidating or replacing the same.

**OPERATIVE PROVISIONS**

1. PRINCIPAL PLANNING PROVISIONS
   1. This Agreement (other than the Schedules) shall have effect on the grant of the Kingfield Road Planning Permission in respect of the Kingfield Road Development and on the grant of the Egley Road Planning Permission in respect of the Egley Road Development.
   2. The covenants given by the Developer to the Council in:
      1. Schedules 1, 2 and 3 to this Agreement shall have effect upon the Commencement of the Kingfield Road Development; and
      2. Schedule 4 to this Agreement shall have effect upon the Commencement of the Egley Road Development.
   3. If the Kingfield Road Planning Permission shall be quashed as a result of any legal proceedings, is revoked or otherwise withdrawn, or expires without any Material Operation occurring then the provisions of this Agreement relating to the Kingfield Road Development shall absolutely determine and become null and void.
   4. If the Egley Road Planning Permission shall be quashed as a result of any legal proceedings, is revoked or otherwise withdrawn, or expires without any Material Operation occurring then the provisions of this Agreement relating to the Egley Road Development shall absolutely determine and become null and void.
   5. Subject to clause 1.2, the Developer covenants with the Council to:
      1. perform the Kingfield Road Site Covenants;
      2. perform the Kingfield Road Residential Land Covenants;
      3. perform the Stadium Land Covenants; and
      4. perform the Egley Road Site Covenants.
   6. The Council covenants with the Developer to perform the covenants contained in Schedule 5 to this Agreement.

1.7 The provisions contained in this Agreement bind the Developer and its successors in title and assigns.

1. **DISPUTE RESOLUTION**
   1. Where there is a difference or dispute in relation to the subject matter of this Agreement the parties to such dispute shall use reasonable endeavours to resolve the same and if the different or dispute remains unresolved after 10 Working Days any party to the dispute may refer the same for determination to the Expert.
   2. The Expert shall be required to produce evidence of sufficient professional indemnity insurance prior to his appointment.
   3. The terms of reference for the Expert shall include the following:
      1. the Expert shall call for representations from the parties to the dispute within 10 Working Days of his appointment and require the parties to the dispute to exchange representations with each other within this period;
      2. the Expert shall allow the parties to the dispute a further 10 Working Days from the expiry of the period referred to in clause 2.3.1 to make counter-representations;
      3. any representations or counter-representations received out of time may be disregarded by the Expert;
      4. the Expert shall provide the parties to the dispute with a written decision within 10 Working Days of the last date for the receipt of counter-representations.
   4. The Expert may be required by either party to the dispute to give reasons for his decision and such reasons shall be conveyed to all parties to the dispute.
   5. The determination of the Expert (including any determination as to the responsibility for payment of his own costs and those of the parties to the dispute) shall be final and binding upon the parties to the dispute save in the case of fraud or manifest error.
   6. Nothing in this clause 2 shall apply to the recovery of a liquidated sum or prevent the parties from commencing or continuing proceedings in the courts.
2. **INTEREST ON LATE PAYMENT**
   1. In the event of late payment by the Developer of any contribution fee or other sum of money due to the local planning authority under the provisions of this Agreement the Developer shall pay interest on the same at the Interest Rate from time to time prevailing such interest to be payable for the period from the date the contribution fee or other sum of money fell due for payment until the date the same are received by the local planning authority.
3. NOTICES
   1. Any notice, approval, consent, expression of satisfaction, certificate or other communication given by a party under this Agreement (each a “Notice”) shall be in writing and signed by or on behalf of the party giving it.
   2. Any Notice to be given or delivered under this Agreement may be given by delivering it personally or sending it by pre-paid first class post recorded delivery or royal mail special delivery addressed to the relevant party (and marked for the attention of an identified individual) in the manner referred to below.
   3. Any Notice given to the Council shall be addressed to Woking Borough Council at its address aforesaid and marked for the attention of the Director of Legal and Democratic Services or such other address for service (and identified individual) as shall have been previously notified by the Council to the Developer.
   4. Any Notice to be given to the Developer shall be addressed to Goldev Woking Limited at its address aforesaid and marked for the attention of Mr Wayne Gold or such other address for service (and identified individual) as shall have been previously notified by the Developer to the Council.
   5. Any such Notice if so addressed shall be deemed to have been received as follows:
      1. if delivered personally at the time of delivery provided that where such Notice is delivered after 4pm such Notice shall be deemed to be received at 9am on the next following Working Day;
      2. if sent by first class post at 9am on the second Working Day after the date of posting; and
      3. if sent by recorded delivery or royal mail special delivery at the time of proof of delivery provided that where such Notice is delivered after 4pm such Notice shall be deemed to be received at 9am the next Working Day.
4. no fetter
   1. 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 local authority for the area in which the Egley Road Site and the Kingfield Road Site are located (including without limitation its rights, powers, duties and obligations as local planning authority) and its rights, powers, duties and obligations under all public and private statutes regulations and byelaws may be as fully and effectually exercised as if the Council were not a party to or beneficiary under this Agreement.
5. invalidity and severance
   1. If any provision in this Agreement shall be held to be invalid, illegal or unenforceable (and severance of such provision is possible) the validity, legality and enforceability of the remaining provisions of this Agreement shall be unaffected.
6. **WAIVER**
   1. No waiver (whether express or implied) by any party to this Agreement of any breach or default by any other party to this Agreement in performing or observing any of the obligations covenants and other terms and conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent any party to this Agreement from enforcing any of the said terms or conditions herein or from acting upon any subsequent breach or default in respect thereof against any other party to this Agreement.
7. **SATISFACTION APPROVAL CONSENT OR CERTIFICATE** 
   1. Where under this Agreement any satisfaction, approval, consent or certificate is required to be obtained from or given by the Council (each “Satisfaction”), it is given by the Council in its capacity as owner/ultimate owner of the Egley Road Site and Kingfield Road Site and such Satisfaction shall be at the discretion of the Council and shall be given within a period of 15 Working Days from the date of submission or request for such Satisfaction .

8.2 Where in the reasonable opinion of the Developer any obligation or covenant in this Agreement has been satisfied complied with performed or otherwise discharged (each “Satisfied”) the Developer may apply to the Council for a certificate to that effect and upon the Council (acting reasonably) being satisfied that such obligation or covenant has been Satisfied the Council shall forthwith issue a certificate to that effect. and if such certificate is not issued within a period of 15 Working Days from the date of the application for such certificate, then the matter may be referred to the Expert for determination pursuant to clause 2.

1. **VAT**
   1. All consideration given in accordance with the terms of this Agreement shall be exclusive of any VAT properly payable in respect thereof.
   2. If at any time VAT are or becomes chargeable in respect of any supply made in accordance with the terms of this Agreement then to the extent that VAT had not previously been charged in respect of the supply the person making the supply shall have the right to issue an invoice to the person to whom the supply was made and VAT shall be paid accordingly.
2. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**
   1. No person other than a party to this Agreement and their respective successors and permitted assigns shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
3. **AMENDMENT PROCEDURE**
   1. The parties to this Agreement agree that any amendments to the obligations contained within the Schedules to this Agreement must be approved by the Council as local planning authority before any amendments to such obligations are made to this Agreement.
4. **GOVERNING LAW**
   1. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England.

**SCHEDULE 1**

**KINGFIELD ROAD SITE COVENANTS**

1. **BUS SERVICES CONTRIBUTION**
   1. The Developer covenants with the Council to pay the Bus Services Contribution to the local planning authority in the following instalments:
      1. The sum of £140,000 prior to the Occupation of 50 Kingfield Road Residential Units; and
      2. Thereafter, on each anniversary of the date of payment of the instalment at paragraph 1.1.1 above, the sum of £140,000, until and including the seventh anniversary of the date of Occupation of 838 Kingfield Road Residential Units (PROVIDED THAT no more than 9 such further instalments shall be payable and the total amount of the Bus Services Contribution shall not exceed £1,400,000 Index Linked accordingly).
   2. Not to Occupy (or permit to be Occupied) more than 50 Kingfield Road Residential Units until the first instalment of the Bus Services Contribution has been paid to the Council pursuant to paragraph 1.1 of this Schedule 1.
2. **COMPLETION OF THE STADIUM DEVELOMPENT** 
   1. The Developer covenants with the Council not to Occupy (or permit to be Occupied) more than 606 Kingfield Road Residential Units (which must include the units comprised in Blocks 1 and 2) until such time as Stadium Development Completion has occurred.

2.2 The Developer covenants with the Council that Stadium Development Completion shall take place within 2 years of Woking Football Club having vacated the Kingfield Road Site and full vacant possession of the existing stadium on the Kingfield Road Site having been obtained by the Developer.

**3 WOKING GYMNASTICS CLUB**

3.1 The Developer covenants with the Council that the Woking Gymnastics Club shall not be demolished until such time as a Replacement Gymnastics Club has been constructed and is Ready for Occupation, unless alternative temporary facilities are provided as agreed in writing with the local planning authority.

**4 TRAFFIC REGULATION ORDERS**

4.1 The Developer covenants with the Council as follows:

4.1.1 Within 28 days of receipt of a written request from the Council to pay the Westfield Avenue TRO Contribution to the local planning authority for the purposes of carrying out the Westfield Avenue TRO Review PROVIDED THAT such written request may not be served prior to Commencement of the Kingfield Road Development.

4.1.2 Within 28 days of receipt of a written request from the Council, to pay the Stadium TRO Contribution to the local planning authority for the purposes of carrying out the Stadium TRO Review PROVIDED THAT such written request may not be served prior to Commencement of the Kingfield Road Development.

**SCHEDULE 2**

**KINGFIELD ROAD RESIDENTIAL LAND COVENANTS**

1. **KINGFIELD ROAD SAMM CONTRIBUTION** 
   1. The Developer covenants with the Council as follows:
      1. To pay the Kingfield Road SAMM Contribution to the local planning authority in the following instalments:
         1. 50% prior to the Occupation of 606 Kingfield Road Residential Units; and
         2. 50% prior to the Occupation of 856 Kingfield Road Residential Units.
      2. Not to Occupy (or permit to be Occupied):
         1. More than 606 Kingfield Road Residential Units until the first instalment of the Kingfield Road SAMM Contribution has been paid to the local planning authority pursuant to clause 1.1.1.1 above; and
         2. More than 856 Kingfield Road Residential Units until the second instalment of the Kingfield Road SAMM Contribution has been paid to the local planning authority pursuant to clause 1.1.1.2 above.
2. **KINGFIELD ROAD MOBILITY HUB** 
   1. The Developer covenants with the Council as follows:
      1. Not to Occupy (or permit to be Occupied) more than 468 Kingfield Road Residential Units until:
         1. A layout and operational plan for the Kingfield Road Mobility Hub forming part of the Kingfield Road Development has been submitted to and approved by the local planning authority; and
         2. The Kingfield Road Mobility Hub forming part of the Kingfield Road Development has been Practically Completed and is Ready for Occupation.
      2. Once operational, to maintain the Kingfield Road Mobility Hub and the services provided from the Kingfield Road Mobility Hub for the lifetime of the Kingfield Road Development on the Kingfield Road Residential Land to the reasonable satisfaction of the local planning authority.
3. **KINGFIELD ROAD RESIDENTIAL TRAVEL PLAN** 
   1. The Developer covenants with the Council as follows:
      1. Prior to the Occupation of any Kingfield Road Residential Unit to:
         1. Submit for the written approval of the local planning authority a Kingfield Road Residential Travel Plan; and
         2. Pay the sum of £6,150 to the local planning authority for the purpose of the local planning authority monitoring and auditing the Kingfield Road Residential Travel Plan.
      2. Not to Occupy (or permit to be Occupied) any Kingfield Road Residential Unit unless and until the Kingfield Road Residential Travel Plan has been approved by the local planning authority; and
      3. From the date of Occupation of any Kingfield Road Residential Unit, to implement or procure the implementation of the Kingfield Road Residential Travel Plan to the reasonable satisfaction of the local planning authority for a period of 7 years from such date subject to any variations agreed from time to time by the local planning authority.
4. **PROVISION OF PUBLIC ART** 
   1. The Developer covenants with the Council to:
      1. Submit a Public Art Strategy in respect of the Kingfield Road Residential Land to the local planning authority for approval prior to Occupation of any Kingfield Road Residential Unit; and
      2. Provide the Public Art on the Kingfield Road Residential Land in accordance with the Public Art Strategy approved by the local planning authority.
5. **KINGFIELD ROAD AFFORDABLE HOUSING** 
   1. The Developer covenants with the Council as follows:
      1. To construct or procure the construction of the Kingfield Road Affordable Housing Units in accordance with the Kingfield Road Planning Permission.
      2. To provide the Kingfield Road Affordable Housing Units in accordance with the mix and tenure set out in the table below:

|  |  |  |
| --- | --- | --- |
| **Block** | **No of dwellings** | **Tenure** |
| Block 1 | 191  (54 x 1 bedroom apartments and 137 x 2 bedroom apartments) | Shared Ownership Housing |
| Block 2 | 277  (58 x studio apartments, 88 x 1 bedroom apartments, 58 x 2 bedroom apartments, 20 x 1 bedroom town house/duplex, 24 x 2 bedroom town house, 24 x 2 bedroom duplex and 5 x 3 bedroom town house) | Affordable Rental Housing |

5.1.3 Not to Occupy (or permit to be Occupied) any of the Kingfield Road Residential Units within Block 3, Block 4 or Block 5 until the Kingfield Road Affordable Housing Units have been Practically Completed and are Ready for Occupation.

* + 1. To procure that a Registered Provider shall enter into a Nomination Agreement with the local authority to secure nomination rights for the local authority in respect of the Kingfield Road Affordable Rental Units.
    2. To procure that the Kingfield Road Affordable Housing Units shall not be used for any purpose other than as Affordable Housing and for the tenure permitted pursuant to clause 5.1.2 provided that this restriction shall not apply to:
       1. any mortgagee or chargee of a Registered Provider or any receiver (including an administrative receiver) 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 (each a “Receiver”) or any person deriving title through such mortgagee or chargee or Receiver;
       2. any part or parts of the Kingfield Road Residential Land which are transferred to or leased by any person referred to in 5.1.5.1 above;
       3. any completed Kingfield Road Affordable Housing Units where a Registered Provider shall be required to dispose of the same pursuant to a right to buy under Part V of the Housing Act 1985 as amended by the Housing (Preservation or Right to Buy) Regulations 1993 or pursuant to a right to acquire under section 180 of the Housing and Regeneration Act 2008 or any similar or substitute right applicable;
       4. any completed Kingfield Road Residential Units where a Registered Provider sells to a tenant through Social Homebuy funded pursuant to section 19(3) of the Housing and Regeneration Act 2008 or any amendment or replacement thereof;
       5. any Shared Ownership Unit in respect of which a shared ownership lease has been granted and where a Registered Provider shall have disposed of 100% of the equity in such unit under the terms of such lease; and
       6. any mortgagee or chargee of a tenant under a lease of a Shared Ownership Unit or any receiver appointed by such mortgagee or chargee or any person deriving title through any such persons.
    3. Subject to the exceptions set out in paragraph 5.1.5 above, not to:
    4. Permit the Kingfield Road Affordable Rental Units to be used or Occupied other than for Affordable Rental Housing; and
    5. Permit the Shared Ownership Units to be used or Occupied other than for Shared Ownership Housing.

1. **CAR CLUB**
   1. The Developer covenants with the Council as follows:
      1. To provide the Car Club Parking Spaces in accordance with the following timescales, unless requested otherwise by the Developer and/or the Car Club Operator and agreed in writing by the local planning authority:
      2. A minimum of 9 of the Car Club Parking Spaces prior to the Occupation of the 606thKingfield Road Residential Unit;
      3. A further 3 of the Car Club Parking Spaces prior to the Occupation of the penultimate Kingfield Road Residential Block to be Occupied; and
      4. The remaining 3 Car Club Parking Spaces prior to the Occupation of the final Kingfield Road Residential Block to be Occupied.
      5. To use reasonable endeavours to procure a Car Club Operator for the Kingfield Road Site and, subject to having procured a Car Club Operator, to obtain the local planning authority’s written approval of the proposed Car Club Operator.
      6. Subject to approval by the local planning authority of the proposed Car Club Operator:
         1. To use reasonable endeavours to procure entry into a legally binding agreement with such approved Car Club Operator prior to the Occupation of the 606th Kingfield Road Residential Unit for the operation of a Car Club on the Kingfield Road Site upon terms which are reasonably obtainable in the market (including the provision of a car for each Car Club Parking Space); and
         2. To secure the operation of the Car Club to the reasonable satisfaction of the local planning authority for a minimum of 2 years following the Occupation of the 606th Kingfield Road Residential Unit.
   2. To make available membership of the Car Club to all First Residential Occupiers without access to a residential parking space within the Kingfield Road Site and to provide membership free to all such First Residential Occupiers that confirm they want to become Car Club members PROVIDED THAT the Developer shall only be required to provide free membership to the same for a period of 1 year from the date of Occupation of any such First Residential Occupier that so confirms.
   3. To advertise the existence of the Car Club to all residents of the Kingfield Road Residential Units (and, for First Residential Occupiers, the availability of the period of free membership) to include posting notices within common parts of the Kingfield Road Residential Blocks and providing a leaflet to residents with details of the Car Club.
   4. During the operation of the Car Club, to provide and maintain the Car Club Parking Spaces for the sole use of the Car Club and to procure the continued operation of the Car Club in accordance with paragraphs 6.2 and 6.3 above to the reasonable satisfaction of the local planning authority, subject to the following:
      1. If the Car Club Operator confirms in writing that it no longer requires a Car Club Parking Space, then subject to the Developer providing satisfactory written evidence to the local planning authority and the local planning authority confirming its agreement in writing that there is no demand for the Car Club Parking Space from another Car Club operator, the Developer shall no longer be required to maintain the relevant Car Club Parking Space for use by the Car Club; and
      2. If the Car Club Operator ceases to exist, or ceases (otherwise than following termination of any agreement with the Car Club Operator by the Developer) to operate the Car Club on the Kingfield Road Site then, subject to the Developer providing satisfactory written evidence to the local planning authority and the local planning authority confirming its agreement in writing that there is no demand from another Car Club Operator to operate a Car Club from the Kingfield Road Site, or that there is demand only for a reduced Car Club, the Developer shall no longer be required to procure the operation of a Car Club from the Kingfield Road Site or shall only be required to procure a reduced operation as relevant.
2. **CAR POOL DATABASE** 
   1. The Developer covenants with the Council as follows:
      1. To establish a Car Pool Database prior to the Occupation of the 606th Kingfield Road Residential Unit.
      2. To advertise the existence of the Car Pool Database to all residents of the Kingfield Road Residential Units to include posting notices within common parts of the Kingfield Road Residential Blocks and providing a leaflet to residents with details of the Car Pool Database.
      3. Once established, to maintain the Car Pool Database for the lifetime of the Kingfield Road Development on the Kingfield Road Residential Land to the reasonable satisfaction of the local planning authority.
3. **FOLD UP BIKES** 
   1. The Developer covenants with the Council as follows:
      1. To provide the First Residential Occupier of each Kingfield Road Residential Unit with a Fold-Up Bike on Occupation.
4. **ELECTRIC VEHICLE CHARGING POINTS** 
   1. The Developer covenants with the Council as follows:
      1. To provide each Kingfield Road Residential Car Parking Space with Passive Electric Vehicle Charging Ability prior to Occupation of each Kingfield Road Residential Block to which the relevant Kingfield Road Residential Car Parking Spaces are allocated;
      2. Not to Occupy (or permit to be Occupied) any Kingfield Road Residential Block prior to each Kingfield Road Residential Car Parking Space allocated to such Kingfield Road Residential Block having been provided with Passive Electric Vehicle Charging Ability.
      3. To submit for approval by the local planning authority prior to Occupation of each Kingfield Road Residential Block the Active Electric Vehicle Charging Upgrade Scheme.
      4. Not to Occupy (or permit to be Occupied) any Kingfield Road Residential Block prior to the submission of, and approval by, the local planning authority of the Active Electric Vehicle Charging Upgrade Scheme for such Kingfield Road Residential Block.
      5. Once installed, to maintain the approved Active Electric Vehicle Charging Ability (or any such replacement Active Electric Vehicle Charging Ability having more advanced technology and serving the same objective) for the lifetime of the Kingfield Road Residential Blocks in accordance with the relevant Active Electric Vehicle Charging Upgrade Scheme.

**SCHEDULE 3**

**STADIUM LAND COVENANTS**

1. **STADIUM TRAVEL PLAN** 
   1. The Developer covenants with the Council as follows:
      1. Prior to Occupation of the Stadium Development to:
         1. Submit for the written approval of the local planning authority a Stadium Travel Plan (subject to having first consulted with Woking Football Club); and
         2. Pay the sum of £6,150 to the local planning authority for the purpose of the local planning authority monitoring and auditing the Stadium Travel Plan.
      2. Not to Occupy the Stadium Development unless and until the Stadium Travel Plan has been approved by the local planning authority.

**SCHEDULE 4**

**EGLEY ROAD SITE COVENANTS**

1. **EGLEY ROAD SAMM CONTRIBUTION** 
   1. The Developer covenants with the Council as follows:
      1. To pay the Egley Road SAMM Contribution to the local planning authority on Practical Completion of the final Egley Road Residential Unit.
      2. Not to Occupy (or permit to be Occupied) the final Egley Road Residential Unit to be Practically Completed until the Egley Road SAMM Contribution has been paid to the local planning authority pursuant to clause 1.1.1 above.
2. **EGLEY ROAD AFFORDABLE HOUSING** 
   1. The Developer covenants with the Council as follows:
      1. To construct or procure the construction of the Egley Road Residential Units in accordance with the Egley Road Planning Permission.
      2. To provide the Egley Road Residential Units in accordance with the mix and tenure set out in the table below:

|  |  |
| --- | --- |
| **No of dwellings** | **Tenure** |
| 36  (5x 2/3 bedroom-house, 13 x 3-bedroom house, 16 x 4-bedroom house and 2 x 5-bedroom houses) | Affordable Rental Housing |

* + 1. To procure that a Registered Provider shall enter into a Nomination Agreement with the local authority to secure nomination rights for the local authority in respect of the Egley Road Residential Units.
    2. To procure that the Egley Road Residential Units shall not be used for any purpose other than as Affordable Housing and for the tenure permitted pursuant to paragraph 2.1.2 above provided that to this does not apply to:
       1. any mortgagee or chargee of a Registered Provider or any receiver (including an administrative receiver) 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 (each a “Receiver”) or any person deriving title through such mortgagee chargee or Receiver;
       2. any part or parts of the Egley Road Site which are transferred to or leased by any person referred to in paragraph 2.1.4.1 above;
       3. any completed Egley Road Residential Units where a Registered Provider shall be required to dispose of the same pursuant to a right to buy under Part V of the Housing Act 1985 as amended by the Housing (Preservation or Right to Buy) Regulations 1993 or pursuant to a right to acquire under section 180 of the Housing and Regeneration Act 2008 or any similar or substitute right applicable; and
       4. any completed Egley Road Residential Units where a Registered Provider sells to a tenant through Social Homebuy funded pursuant to section 19(3) of the Housing and Regeneration Act 2008 or any amendment or replacement thereof.
    3. Subject to the exceptions set out in paragraph 2.1.4 above, not to permit the Egley Road Residential Units to be used or Occupied other than for Affordable Rental Housing.

1. **EGLEY ROAD HEALTH CLUB TRAVEL PLAN** 
   1. The Developer covenants with the Council as follows:
      1. Prior to the Occupation of Development on the Egley Road Site to:
         1. Submit for the written approval of the local planning authority an Egley Road Health Club Travel Plan; and
         2. Pay the sum of £6,150 to the local planning authority for the purpose of the local planning authority monitoring and auditing the Egley Road Health Club Travel Plan.
      2. Not to Occupy (or permit to be Occupied) the Health Club unless and until the Egley Road Health Club Travel Plan has been approved by the local planning authority.
      3. From the date of Occupation of the Health Club, to implement or procure the implementation of the Egley Road Health Club Travel Plan to the reasonable satisfaction of the local planning authority for a period of 7 years from the date of Occupation subject to any variations agreed from time to time by the local planning authority.

**SCHEDULE 5**

**COUNCIL’S COVENANTS**

* 1. The Council covenants with the Developer as follows:
  2. To procure that the Developer is given vacant possession of the Woking Gymnastics Club prior to 1 May 2022.
  3. To apply any financial contribution or any other sum or part thereof paid to it pursuant to this Agreement to the purposes specified in this Agreement and for which they have been paid in accordance with the terms of this Agreement.
  4. On reasonable notice from the Developer, to provide details of how the sums paid to it pursuant to this Agreement have been spent.

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

**THE COMMON SEAL** of )

**WOKING BOROUGH COUNCIL** )

was affixed in the presence of: )

Authorised Signatory

**EXECUTED AS A DEED** by )

**GOLDEV WOKING LIMITED** by a )

single Director in the presence of: )

Director Name

Witness Signature

Witness Name

Witness Address

Witness Occupation