

Dated 11th March 2022

UNILATERAL UNDERTAKING GIVEN BY DEED

BY

(1) SPELTHORNE BOROUGH COUNCIL (IN ITS CAPACITY AS LANDOWNER)

AND

(2) KNOWLE GREEN ESTATES LIMITED

TO

(3) SPELTHORNE BOROUGH COUNCIL

(IN ITS CAPACITY AS LOCAL PLANNING AUTHORITY)

UNILATERAL DEED OF UNDERTAKING

pursuant to Section 111 of the Local Government Act 1972 and Section 106 of the Town and Country Planning Act 1990 and all other powers enabling in relation to Land at Ashford Hospital, London Road, Ashford, Staines-Upon-Thames, Surrey TW15 3AA a.k.a. Victory Place

THIS UNILATERAL UNDERTAKING is given on 11th March 2022 2022

BY:-

- (1) **SPELTHORNE BOROUGH COUNCIL** of Council Offices, Knowle Green, Staines-upon-Thames, TW18 1XB (**Owner**); and
- (2) **KNOWLE GREEN ESTATES LIMITED** (Company Registration Number 10170860) whose registered office is at Council Offices, Knowle Green, Staines-Upon-Thames, Surrey TW18 1XB (**Developer**);

IN FAVOUR OF:

- (3) **SPELTHORNE BOROUGH COUNCIL** of Council Offices, Knowle Green, Staines-upon-Thames, TW18 1XB (**Council**)

WHEREAS:-

- (A) The Owner is the registered proprietor of the freehold interest in the Development Site which forms part of the Application Site under title number SY860951.
- (B) The Developer has a conditional contractual interest in the Development Site pursuant to the Conditional Agreement.
- (C) The Council is the local planning authority for the area in which the Application Site is situated.
- (D) The Planning Application was submitted to the Council for planning permission to carry out the Development on the Application Site. On 10 November 2020 the Council resolved to grant the Planning Permission subject to (inter alia) the completion of this Deed.
- (E) The Owner recognises that as a matter of law, as both landowner and local planning authority, it may not be able to secure the obligations set out in this Deed by way of bilateral agreement concluded with itself. The Developer has an interest in the Development Site sufficient to enable it to enter into a planning obligation but its conditional contractual interest is not sufficient to securely bind the entirety of the legal interest in the Development Site and notwithstanding the terms of the Conditional Agreement whereby it is intended it will acquire the freehold interest, such acquisition is conditional. To overcome these obstacles, the Owner unilaterally undertakes herein pursuant to section 111 of the Local Government Act 1972 and section 106 of the Town and Country Planning Act 1990 to abide by the terms of and perform the Owner's obligations in this Deed and not to allow or permit Occupation of the Development unless and until a party other than Spelthorne Borough Council acquires an unconditional legal interest in the Development Site and enters into a Confirmatory Deed (as herein defined) binding such interest and Spelthorne Borough Council shall not grant any lease nor transfer the freehold interest in the Development Site to any lessee or transferee without requiring the lessee or transferee to enter into a Confirmatory Deed.
- (F) To the extent that obligations incorporated into this Deed fall within the scope of section 106(1) of the 1990 Act the Owner and Developer intend that they create planning obligations for the purposes of section 106 of the 1990 Act binding itself and themselves and it or their interests in the Development Site and the Owner and Developer intend that they will be enforceable against any successors in title to the Owner's or Developer's interests in the Development Site or any part of it under section 106(3) of the 1990 Act in accordance with the provisions of this Deed.

- (G) The Owner recognises that the Council as local planning authority may not be able to enforce the obligations secured by this Deed against itself as landowner. However, once any of the Council's interests within the Development Site or any part thereof are Disposed of to a third party then:
- a. clause 5.1.3 of this Deed requires that the Donee be obliged to enter into a Confirmatory Deed in respect of the Disposed Land; and
 - b. until such time as the Donee has entered into a Confirmatory Deed in respect of the Disposed Land, the obligations contained in this Deed will be capable of being enforced by the Council as local planning authority against such Donee and the Owner intends that the obligations in this Deed will following such Disposal automatically crystallise in respect of the Disposed Land as planning obligations under Section 106 of the 1990 Act and will be enforceable in accordance with the terms of this Deed until such time as the Donee has entered into a Confirmatory Deed.

OPERATIVE PROVISIONS:-

1. DEFINITIONS AND INTERPRETATION

1.1 In this Deed the following expressions shall have the following meanings:-

"1990 Act"	means the Town and Country Planning Act 1990
"Application Site"	means the land to which the application for planning permission relates shown edged blue on the plan attached to this Deed marked "Plan 1"
"Commencement of Development"	means the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990 but disregarding for the purposes of this deed and for no other purpose, the following operations: demolition works; site clearance; ground investigations; site survey works; temporary access construction works; archaeological investigation; and erection of any fences and hoardings around the Application Site
	Commence and Commences shall be construed accordingly
"Conditional Agreement"	means a conditional agreement for sale and purchase of the Development Site made between the Owner and the Developer dated 3 March 2022
"Confirmatory Deed"	means the draft deed pursuant to Section 106 of the 1990 Act securing planning obligations in the form at Schedule 2
"Development"	means the development authorised by the Planning Permission.
"Development Site"	Means the part of the Application Site edged red on the plan attached to this Deed marked "Plan 1"
"Disposed Land"	means any part of the Development Site which is the subject of a Disposal

- "Disponee"** means in relation to the Development Site (or any part thereof):
- (a) a person or body being the successor in title to the Council as freeholder or leaseholder; or
- (b) a person or body deriving title under the Council
- in either case following a Disposal thereof
- "Disposal"** means:
- (a) a sale by way of the transfer of the freehold or assignment of the leasehold;
- (b) the grant of a leasehold interest that is capable of registration at HM Land Registry; or
- in either case in respect of the whole or a part of the Site and **"Dispose"** and **"Disposes"** and **"Disposed"** shall be construed accordingly
- "Occupy"** when any part of the Development is occupied by tenants or purchasers for residential purpose which for the avoidance of doubt shall not include occupation for purposes for fitting out or decorating or for marketing or security purposes and **Occupation** shall be construed accordingly
- "Planning Application"** means the application for full planning permission registered by the Council under reference number 20/00802/FUL for demolition of existing buildings and redevelopment of surplus hospital car park for 127 residential units comprising 123 flats and 4 terraced houses, in buildings ranging from 2 to 5 storeys in height, with associated access, parking, services, facilities and amenity space.
- "Planning Permission"** means the planning permission to be granted by the Council in respect of the Planning Application
- "Working Day"** means any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

2. CONSTRUCTION OF THIS DEED

- 2.1 Any covenant by the Owner not to do any act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person where knowledge of the actions of the other person is reasonably to be inferred.
- 2.2 Any references to any particular statute includes any statutory extension, modification, amendment or re-enactment of such statute and also include any subordinate instruments, regulations or orders made in pursuance of it.
- 2.3 Where under this Deed any notice, approval, consent, certificate, direction, authority, agreement, action, expression of satisfaction is required to be given or reached or taken by any party or any response is requested any such notice, approval, consent, certificate, direction, authority, agreement, action, expression of satisfaction or response shall not be

unreasonable or unreasonably withheld or delayed (save where the contrary intention is indicated).

- 2.4 The headings appearing in this Deed are for ease of reference only and shall not affect the construction of this Deed.
- 2.5 Where reference is made to a Clause, Part, Plan, Paragraph, Recital or Schedule such reference (unless the context requires otherwise) is a reference to a clause, part, paragraph, recital or schedule of (or in the case of plan attached to) this Deed.
- 2.6 In this Deed the singular includes the plural and vice versa and the masculine includes the feminine and vice versa.
- 2.7 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.
- 2.8 References to the Owner shall include its successors in title.

3. OPERATION OF THIS UNILATERAL UNDERTAKING

- 3.1 This unilateral undertaking is given by Deed entered into pursuant to Section 111 of the Local Government Act 1972 and Section 106 of the 1990 Act and all other powers so enabling.
- 3.2 To the extent that the obligations, covenants, undertakings, restrictions and agreements undertaken by the Owner and Developer pursuant to clause 5 of this Deed constitute planning obligations for the purposes of section 106 of the 1990 Act, the Owner and Developer undertake that they shall bind the Owner's interest in the Development Site and the Developer's contingent contractual interest in the Development Site and shall be enforceable by the Council as local planning authority under Section 106(3) of the 1990 Act against any freehold or leasehold successors in title to or assigns of the Owner and/or Developer and/or any person claiming a freehold or leasehold interest through or under the Owner or Developer.

4. CONDITIONALITY AND TERMINATION

- 4.1 The provisions of this Deed shall have immediate effect on its completion.
- 4.2 This Deed shall forthwith determine and cease to have any further effect if the Council decides not to grant Planning Permission or if the Planning Permission shall expire before Commencement of Development OR is quashed OR is revoked in its entirety.
- 4.3 In the event of a modification or partial revocation of the Planning Permission this Deed shall remain capable of having full force and effect except if any of the obligations herein are incompatible with such modification or partial revocation in which event such obligation(s) shall only be affected to the extent of such incompatibility and where the context so admits the relevant provision(s) shall be interpreted on a pro rata basis.

5. COVENANTS BY THE OWNER AND DEVELOPER

- 5.1 From the date hereof, the Owner and Developer undertake in favour of the Council as follows:
- 5.1.1 to observe and perform the terms, obligations, covenants, undertakings, restrictions and agreements on the part of the Owner and Developer contained in Schedule 1 with the intention of binding its interest in the Development Site with

those terms, obligations, covenants, undertakings, restrictions and agreements and PROVIDED THAT where the Owner has complied with clause 5.1.3 the Owner shall not be responsible for any breaches of the terms of this Deed after the date on which it Disposes of its interest in the Development Site or the part of the Development Site in respect of which such breach occurs;

- 5.1.2 not to obstruct or prevent its successors in title to the Development Site (including persons deriving title under it) from complying with the terms, obligations, covenants, undertakings, restrictions and agreements on the part of the Owner and Developer contained in this Deed;
- 5.1.3 not to Dispose of any interest in the Development Site (subject to Clause 5.2) without first imposing a legally enforceable obligation on the Disponee to enter into the Confirmatory Deed with the Council on the date of (but immediately after) the completion of the Disposal so as to render the interest Disposed of subject to the terms of this Deed;
- 5.1.4 on completion of this Deed to register a notice of this Deed on the Charges Register of title number SY860951 and to apply to the Chief Land Registrar for the following restriction to be entered in the Register of the title number SY860951:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate is to be registered without a certificate signed by the proprietor for the time being of the estate registered under title number ~~XXXX~~ and ~~XXXX~~ or their conveyancer that the provisions of Clause 5.1.3 of a Deed dated [] 20[] between (1) Spelthorne Borough Council in its capacity as landowner (2) Knowle Green Estates Limited and (3) Spelthorne Borough Council in its capacity as Local Planning Authority have been complied with".

and to provide the Council with evidence of such registrations within 20 Working Days thereof.

- 5.2 The obligation in Clause 5.1.3 above shall not apply if the interest in the Development Site which is being Disposed of has already been bound by the obligations in a Confirmatory Deed.

6. **NO FETTER OF DISCRETION**

Nothing (contained or implied) in this deed shall fetter or restrict the Council's statutory rights, powers, discretions and responsibilities.

7. **NO WAIVER**

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

8. **SEVERABILITY**

Each Clause, Schedule or paragraph shall be separate, distinct and severable from each other to the extent only that if any Clause, Schedule or paragraph becomes or is invalid because of a change of circumstances or any other unforeseen reasons or if any one or

more of such Clause, Schedule or paragraph shall be held by the Courts to be void for any reason whatsoever but would be valid if severed or any wording was deleted or any time period reduced or scope of activities or area covered diminished then any modifications necessary to ensure such Clause, Schedule or paragraph be valid shall apply without prejudice to any other Clause, Schedule or paragraph contained herein.

9. SERVICE OF NOTICES

9.1 Any notice to be given under this deed must be in writing and must be:

- (a) delivered by hand; or
- (b) sent by pre-paid first class post or other next working day delivery service.

9.2 Any notice to be given under this deed must be sent to the relevant party as follows:

- (a) to the Owner at Council Offices, Knowle Green, Staines-upon-Thames, TW18 1XB marked for the attention of The Group Head of Corporate Governance;
- (b) to the Developer at Council Offices, Knowle Green, Staines-upon-Thames, TW18 marked for the attention of the Company Secretary;
- (c) to the Council at Council Offices, Knowle Green, Staines-upon-Thames, TW18 1XB marked for the attention of Esme Spinks, Planning Development Manager;

or as otherwise specified by the relevant party by notice in writing to each other party.

9.3 Any notice given in accordance with this clause will be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day; or
- (b) if sent by pre-paid first class post or other next working day delivery service, at 10.00 am on the second Working Day after posting.

9.4 A notice given under this deed shall not be validly given if sent by e-mail.

9.5 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

10. THIRD PARTIES

Save in respect of the Council, no person who is not a party to this deed may enforce any terms hereof pursuant to the Contracts (Rights of Third Parties) Act 1999.

11. MORTGAGEES

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

12. LOCAL LAND CHARGE

This Deed is a local land charge and is intended to be registered as such.

IN WITNESS whereof the Owner and Developer have executed this Deed the day and year first before written.

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

Authorised signatory

Victoria Statham 12495
VICTORIA STATHAM

EXECUTED AS A DEED by)
KNOWLE GREEN ESTATES LIMITED)
Acting by a Director)
In the presence of:



Witness Signature:

Witness Name:

Witness Address:

T Collier
TERRY COLLIER

Witness Occupation:

by affixing the Common
Seal of Knowle Green Estates Ltd
in the presence of
director

Schedule 1

OWNERS AND DEVELOPER'S COVENANTS

INTERPRETATION

The following definitions apply in this Schedule:

Affordable Housing: housing:

- a) constructed to Affordable Housing Standards;
- b) owned and managed by the Council's Nominated Entity or owned and managed in partnership with a Registered Provider;
- c) to be occupied by persons nominated by the Council pursuant to the Nomination Agreement or in the absence of the Council making such a nomination by persons selected by the Council's Nominated Entity or Registered Provider (as applicable) only; and
- d) let at an affordable rent being a rent which including service charge does not exceed the Affordable Rent.

Affordable Housing Plan: the plan attached hereto marked "Plan 2"

Affordable Housing Standard: the Homes England building standards applicable at the date of the commencement of the construction of the Affordable Housing Units unless varied by the Planning Permission

Affordable Housing Units: the Affordable Rented Units

Affordable Rent the sum of the rent element and the service charge payable from the date of first occupation in respect of the relevant Affordable Rent Unit which shall not exceed the lower of eighty percent (80%) of the Market Rent or the Local Housing Allowance Levels

Affordable Rented Units: the 17 no 2 bedroom x 3 person, 4 no 2 bedroom x 4 person and 1 no 1 bedroom x 2 person to be constructed as Affordable Housing on the Development Site for occupation as Affordable Housing and shown on the Affordable Housing Plan

Charge: a mortgage, charge or other security or loan documentation granting a security interest in the Affordable Housing Units (or any number of them) in favour of the Chargee;

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

Council's Nominated Entity: Knowle Green Estates Limited or such other entity as the Council may from time to time nominate

Date of Deemed Service:, in each instance where a Chargee has served a Default Notice:

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

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

Default Notice: a notice in writing served on the Council by the Chargee under this Schedule of the Chargee's intention to enforce its security over the relevant Affordable Housing Units;

Market Rent: the market rent for an Affordable Housing Unit assessed in accordance with the Guidance Rent Standard April 2020 Updated November 2021 or any replacement thereof

Moratorium Period: in each instance where a Chargee has served a Default Notice under this Schedule the period from (and including) the Date of Deemed Service on the Council of the Default Notice to (and including) the date falling three months after such Date of Deemed Service (or such longer period as may be agreed between the Chargee and the Council)

New Lettings: the letting of any of the Affordable Rented Units being the first letting of any of the Affordable Rented Units following their construction

Other Units: the part of the Development which does not comprise Affordable Housing Units

Option: the option to be granted to the Council (and/or its nominated substitute Registered Provider) in accordance with this Schedule for the purchase of the relevant Affordable Housing Units;

Nomination Agreement: an agreement to be entered into between the Registered Provider or the Council's Nominated Entity as the case may be and the Council to provide for nominations by the Council of tenants for the Affordable Rented Units in the Council's approved form from time to time

Nominated Persons: those persons who may be nominated by the Council from time to time in accordance with the policies of the Council

Protected Tenant: any tenant who:

- a) Has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force in respect of a particular Affordable Rented Unit; or
- b) Has exercised any statutory right to buy in respect of a particular Affordable Rented Unit; or

Registered Provider: the term defined in Section 80 of the Housing and Regeneration Act 2008 being a body registered as a social landlord pursuant to Chapter 1 of the Housing Act 1996 or if the regime imposed by Chapter 1 of the Housing Act 1996 ceases to be in force a body which at the relevant time is carrying on the function now carried on by the body which is registered under Chapter 1 of the Housing Act 1996 including a Charitable Trust or such other similar organisation or body approved in writing by the Council from time to time such approval not to be unreasonably withheld or delayed

Sums Due: all sums due to a Chargee of the Affordable Housing Units pursuant to the terms of its Charge including (without limitation) all interest and reasonable legal and administrative fees costs and expenses.

Subsequent Lettings: the letting of any Voids not being a New Letting

Void: Affordable Rented Units that are vacant following a New Letting or become vacant after a Subsequent Letting howsoever occurring whether by a tenant of an Affordable Rented Units ceasing to occupy or otherwise except where an Affordable Rented Unit becomes vacant by reason of an existing tenant of the Development transferring to another property of the Registered Provider or the Council's Nominated Entity elsewhere as a tenant of the same

LEGAL COSTS

- 1 On the date hereof pay the proper and reasonable legal and other professional costs incurred by the Council in preparation of this Deed.

NOTICES

- 2 To give the Council written notice within 5 Working Days of any change in ownership of any of it or their interests in the Development Site 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 a plan showing the area of the Development Site sold or let; and to give the Council written notice within 5 Working Days of the date of Occupation of any part of the Development.

FINANCIAL CONTRIBUTIONS

- 3 On the date hereof to pay to the Council the sum of £45,000 (forty five thousand pounds) towards the costs of providing, expanding or improving off-site open space within the Council's area and the sum of £2,844 (two thousand eight hundred and forty four pounds) towards the cost of providing Affordable Housing within the Council's area.

AFFORDABLE HOUSING PROVISIONS**4. Amount, tenure type, size and location of Affordable Housing**

- 4.1 To construct or procure the construction of the Affordable Housing Units on the Development Site in accordance with this Schedule.

- 4.2 The Affordable Housing Units shall unless altered by paragraph 4.4 of this Schedule comprise 22 No. Affordable Rent Units;

- 4.3 The Affordable Housing Units shall comprise the following mix of sizes and tenures

Type of Accommodation

Affordable Rent

1 x 1 bedroom 2 persons unit

17 x 2 bedroom 3 person units

4 x 2 bedroom 4 person units

- 4.4 The exact location of the Affordable Housing Units shall be as shown on the Affordable Housing Plan unless it is otherwise agreed in writing with the Council.

- 4.5 No Occupation of any Affordable Housing Units shall take place until the relevant Registered Provider or Council's Nominated Entity has entered into a Nominations Agreement with the Council.

5. Delivery of Affordable Housing

- 5.1. Not to Occupy nor permit the Occupation of more than 50% (fifty percent) of the Other Units until:

- 5.1.1 100% of the Affordable Housing Units have been constructed; and

- 5.1.2 the Affordable Housing Units have been transferred or leased for a term of not less than 125 years to a Registered Provider or the Council's Nominated Entity but PROVIDED ALWAYS THAT if the Affordable Housing Units are not transferred to a Registered Provider then the Other Units may only

be Occupied as "Build to Rent" (as defined in Annex 2 to the NPPF 2021) and not sold off on the open market as private residential units.

- 5.2. Each transfer to a Registered Provider or the Council's Nominated Entity shall include:
- 5.2.1 a grant of full and free rights of access both pedestrian and vehicular from the public highway or roads intended to become public highway to the Affordable Housing Units;
- 5.2.2 a grant of full and free rights to the passage of services through service media on the Development up to and abutting the boundary to the Affordable Housing Units all such services to be connected to the mains; and
- 5.2.3 as far as reasonably possible the benefit of the same rights covenants obligations and other provisions as shall apply to the Other Units.

6. **Affordable Rented Units**

- 6.1. Not to use the Affordable Rented Units for any other purpose other than for the provision of Affordable Rent Units.
- 6.2. Not to let or otherwise permit the letting of any Affordable Rented Unit to any person other than in accordance with the following:
- 6.2.1 at an Affordable Rent in respect of each Affordable Rented Unit;
- 6.2.2 that the rent at each re-letting is calculated prior to the grant of any new tenancy to ensure that it is an Affordable Rent.

7 **Nominations**

The Nomination Agreement to be entered into with the Council pursuant to this Schedule shall inter alia provide for the Council to nominate Nominated Persons as tenants of the Affordable Rented Units for a period of 80 years from the date of this Agreement in the case of the Affordable Rented Units of all New Lettings of any of the Affordable Rented Units and 100% of Subsequent Lettings of any of the Affordable Rented Units

8. **Release of affordable housing provisions**

- 8.1. The restrictions set out in this Schedule shall not apply to the following:
- 8.1.1 any individual occupier owner or tenant of an individual Other Unit or their successors in title or their mortgagee or charge and respective successors in title
- 8.1.2 any Protected Tenant or any successor in title to a Protected Tenant
- 8.1.3 any mortgagee or chargee of a Protected Tenant or other party who has provided loan facilities to the Protected Tenant or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or otherwise
- 8.1.4 any purchaser from any of the parties named in paragraphs 8.1.1 and 8.1.2 above of an individual Affordable Housing Unit;
- 8.2. In order to benefit from the protection granted by paragraph 8.6 below a Chargee must:
- 8.2.1 serve a Default Notice on the Council prior to seeking to dispose of the relevant Affordable Housing Units;
- 8.2.2 when serving the Default Notice, provide to the Council official copies of the title registers for the relevant Affordable Housing Units; and

- 8.2.3 subject to paragraph 8.6 below, not exercise its power of sale over or otherwise dispose of the relevant Affordable Housing Units before the expiry of the Moratorium Period except in accordance with paragraph 8.4 below.
- 8.3 From the first day of the Moratorium Period to (but excluding) the date falling one calendar month later, the Council may serve a notice ("**Intention Notice**") on the Chargee.
- 8.4 Not later than 15 Working Days after service of the Intention Notice (or such later date during the Moratorium Period as may be agreed in writing between the Council and the Chargee), the Chargee will grant the Council (and/or the Council's nominated substitute Registered Provider) an exclusive option to purchase the relevant Affordable Housing Units which shall contain the following terms ("**the Option**"):
 - 8.4.1 the sale and purchase will be governed by the Standard Commercial Property Conditions (Third Edition – 2018 Revision) (with any variations that may be agreed between the parties to the Option (acting reasonably));
 - 8.4.2 the price for the sale and purchase will be agreed in accordance with paragraph 8.5.2 below or determined in accordance with paragraph 8.5.3 below;
 - 8.4.3 provided that the purchase price has been agreed in accordance with paragraph 8.5.2 below or determined in accordance with paragraph 8.5.3 below, but subject to paragraph 8.4.4 below, the Council (or its nominated substitute Registered Provider) may (but is not obliged to) exercise the Option and complete the purchase of the relevant Affordable Housing Units at any time prior to the expiry of the Moratorium Period;
 - 8.4.4 the Option will expire upon the earlier of (A) notification in writing by the Council (or its nominated substitute Registered Provider) that it no longer intends to exercise the Option and (B) the expiry of the Moratorium Period; and
 - 8.4.5 any other terms agreed between the parties to the Option (acting reasonably).
- 8.5 Following the service of the Intention Notice:
 - 8.5.1 the Chargee shall use reasonable endeavours to reply to enquiries raised by the Council (or its nominated substitute Registered Provider) in relation to the Affordable Housing Units as expeditiously as possible having regard to the length of the Moratorium Period; and
 - 8.5.2 the Council (or its nominated substitute Registered Provider) and the Chargee shall use reasonable endeavours to agree the purchase price for the relevant Affordable Housing Units which shall be the higher of:
 - 8.5.2.1 the price reasonably obtainable in the circumstances having regard to the restrictions as to the use of the relevant Affordable Housing Units; and
 - 8.5.2.2 (unless otherwise agreed in writing between the Council (or its nominated substitute Registered Provider) and the Chargee) the Sums Due.
 - 8.5.3 On the date falling 10 Working Days after service of the Intention Notice, if the Council (or its nominated substitute Registered Provider) and the Chargee have not agreed the price pursuant to paragraph 8.5 above the Council (or its nominated substitute Registered Provider) and the Chargee shall use reasonable endeavours to agree the identity of an independent surveyor having at least 10 years' experience in the valuation of affordable/social housing within the Council's area to determine the dispute and, if the identity is agreed, shall appoint such independent surveyor to determine the dispute;
 - 8.5.4 if, on the date falling 15 Working Days after service of the Intention Notice, the Council (or its nominated substitute Registered Provider) and the Chargee have not been able to agree the identity of an independent surveyor, either party may apply to the President for the time being of the Royal Institution of Chartered Surveyors or his deputy to appoint an independent surveyor having at least

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

- 8.5.5 the independent surveyor shall determine the price reasonably obtainable referred to at paragraph 8.5.2 above, due regard being had to all the restrictions imposed upon the relevant Affordable Housing Units by this Deed;
- 8.5.6 the independent surveyor shall act as an expert and not as an arbitrator;
- 8.5.7 the fees and expenses of the independent surveyor are to be borne equally by (1) the Chargee and (2) the Council or the Council's nominated substitute Registered Provider if any);
- 8.5.8 the independent surveyor shall make his/her decision and notify the Council, the Council's nominated substitute Registered Provider (if any) and the Chargee of that decision no later than 14 days after his/her appointment and in any event within the Moratorium Period; and
- 8.5.9 the independent surveyor's decision will be final and binding (save in the case of manifest error or fraud).
- 8.6 The Chargee may dispose of the relevant Affordable Housing Units as the case may be free from the obligations and restrictions contained in this Schedule which shall determine absolutely in respect of those Affordable Housing Units (but subject to any existing tenancies) if:
 - 8.6.1 the Council has not served an Intention Notice before the date falling one calendar month after the first day of the Moratorium Period;
 - 8.6.2 the Council (or its nominated substitute Registered Provider) has not exercised the Option and completed the purchase of the relevant Affordable Housing Units Housing Units on or before the date on which the Moratorium Period expires; or
 - 8.6.3 the Council (or its nominated substitute Registered Provider) has notified the Chargee in writing pursuant to the Option that it no longer intends to exercise the Option.

Schedule 2

AGREED FORM CONFIRMATORY DEED

DATED

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UNILATERAL UNDERTAKING GIVEN BY DEED

BY

(1) [] (IN ITS CAPACITY AS LANDOWNER)

AND

(2) [] [mortgagor, if any]

TO

(3) SPELTHORNE BOROUGH COUNCIL

(IN ITS CAPACITY AS LOCAL PLANNING AUTHORITY)

SECTION 106 AGREEMENT

CONFIRMATORY DEED

made pursuant to the Agreement made under section 106 of the Town and Country Planning Act 1990 and other enabling powers in relation to Land at Ashford Hospital, London Road, Ashford Staines-Upon-Thames Surrey TW15 3AA aka Victory Place

THIS CONFIRMATORY DEED is made on

202

BY:

- (1) [](Company Registration Number []) of [](**Covenantor**); and
- (2) [] **LIMITED** (Company Registration Number []) whose registered office is at [](**Mortgagor [if any]**);

IN FAVOUR OF:

- (3) **SPELTHORNE BOROUGH COUNCIL** of Council Offices, Knowle Green, Staines-upon-Thames, TW18 1XB (**Council**)

BACKGROUND

- (A) This Confirmatory Deed relates to the Covenantor's land and interests (of which the details are set out in the Schedule to this Confirmatory Deed) and which is shown edged red on the plan annexed to this Confirmatory Deed (the "**Covenantor's Land**").
- (B) The Council is the local planning authority for the area within which the Covenantor's Land is located and the obligations covenants agreements and other provisions contained in the Initial Planning Obligation are intended to be made enforceable by the Council against the Covenantor and to be binding in respect of the Covenantor's Land in accordance with the terms of this Confirmatory Deed and the Initial Planning Obligation.
- (C) This Deed is required pursuant to clause 5.1.3 of the Initial Planning Obligation to enable the Development to be carried out on the Development Site of which the Covenantor's Land forms a part.
- (D) In accordance with clause 5.1.3 of the Initial Planning Obligation the Covenantor intends in this Confirmatory Deed to covenant to observe perform and comply with (and that the Covenantor's Land shall henceforth be subject to and bound by) the obligations covenants agreements and other provisions contained in the Initial Planning Obligation (insofar as relevant and applicable to the Covenantor's Land and the carrying out of the Development in accordance with the terms of the Initial Planning Obligation) insofar as they remain to be compiled with and relate to the Covenantor's Land.
- (E) The Covenantor's Land lies within the site on which the Development is to be delivered and the Covenantor will accordingly be binding itself to the obligations covenants agreements and other provisions relating to or binding the Owner in accordance with the Initial Planning Obligation.
- (F) [The Covenantor has granted a Legal Charge over *inter alia* that part of the Covenantor's Land shown [] on the plan annexed to this Confirmatory Deed (the "**Charged Part**") in favour of the Mortgagee and accordingly the Mortgagee by its execution agrees in relation

to its interest in the Charged Part to be bound by the terms of Clause 2 of this Confirmatory Deed and consents to its registration at the Land Registry in accordance with Clause 3.]

1. OPERATIVE PROVISIONS

Operation of this Confirmatory Deed

- 1.1 For the purposes of this Confirmatory Deed the following provisions shall have the following meanings

"Initial Planning Obligation" means the UNILATERAL UNDERTAKING GIVEN BY DEED dated [] 2022 and made by (1) Spelthorne Borough Council (in its capacity as landowner) (2) Knowle Green Estates Limited to (3) Spelthorne Borough Council (in its capacity as Local Planning Authority)

- 1.2 This Confirmatory Deed and the obligations contained in it are:

- (a) made pursuant to section 106 of the Town and Country Planning Act 1990 and the other provisions referred to in the Initial Planning Obligation;
- (b) executed by the Covenantor so as to bind and subject its estate or interest in the Covenantor's Land (as detailed in the Schedule) to the obligations covenants agreements and other provisions contained in the Initial Planning Obligation (insofar as relevant and applicable to the Covenantor's Land and the carrying out of Development in accordance with the Initial Planning Obligation);
- (c) enforceable in accordance with this Confirmatory Deed and the Initial Planning Obligation against the Covenantor and its successors in title to the Covenantor's Land by the Council acting as the local planning authority.

2. THE COVENANTOR'S OBLIGATIONS

- 2.1 The Covenantor hereby covenants agrees and undertakes (for itself and its successors in title to the Covenantor's Land) that its respective estates or interests in the Covenantor's Land shall henceforth be bound by the obligations covenants agreements and other provisions contained in the Initial Planning Obligation and expressed as being obligations of (or covenants or agreements made by) the "Owner" (as applicable) as if the Covenantor's Land was bound by the Initial Planning Obligation and insofar as the terms and obligations covenants agreements and other provisions remain to be complied with in accordance with the Initial Planning Obligation which are expressed to bind the whole or any part of the land which includes the Covenantor's Land.

- 2.2 Any references in the Initial Planning Obligation to the "Owner" shall be read to the extent required in accordance with this Confirmatory Deed as including references to the Covenantor.

3. MISCELLANEOUS PROVISIONS

- 3.1 All words and phrases in this Confirmatory Deed shall bear the same meaning as defined in the Initial Planning Obligation except where defined otherwise in this Confirmatory Deed.
- 3.2 This Confirmatory Deed shall be registrable as a local land charge by the Council.
- 3.3 The Covenantor shall pay to the Council on completion of this Confirmatory Deed their reasonable legal costs incurred in the negotiation preparation and execution of this Confirmatory Deed.
- 3.4 No provision of this Confirmatory Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 3.5 Any invalidity illegality or unenforceability of any clause or paragraph in the Initial Planning Obligation or this Confirmatory Deed shall not affect the validity or enforceability of the remaining provisions in this Confirmatory Deed.
- 3.6 This Confirmatory Deed shall immediately cease to have effect if and to the extent that the Initial Planning Obligation ceases to have effect and in any such circumstance all reference to this deed shall be removed from the local land charges register.

4. LAND REGISTRY

This Confirmatory Deed shall be registered against the Covenantor's interest in the Covenantor's Land by the Covenantor within 28 days of the date of this Confirmatory Deed.

IN WITNESS whereof this document has been duly executed as a deed and is intended to be and is delivered on the date first above written.

THE SCHEDULE

Details of the Land and interests to which this Confirmatory Deed relates

The Covenantor's interest in the [lease/freehold] []

DRAFT

DELIVERED as a DEED on the date of this document

EXECUTED as a **DEED** by)
[] acting by a single director)
in the presence of:)

Signature of Director:

Signature of Witness:

Name of Witness (in BLOCK CAPITALS):

Address of Witness:

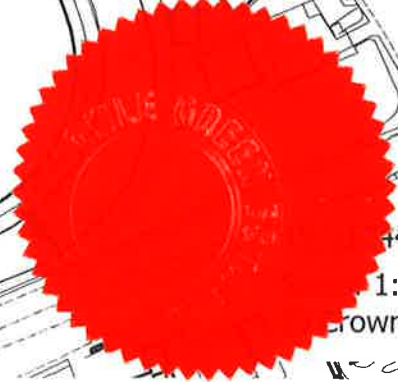
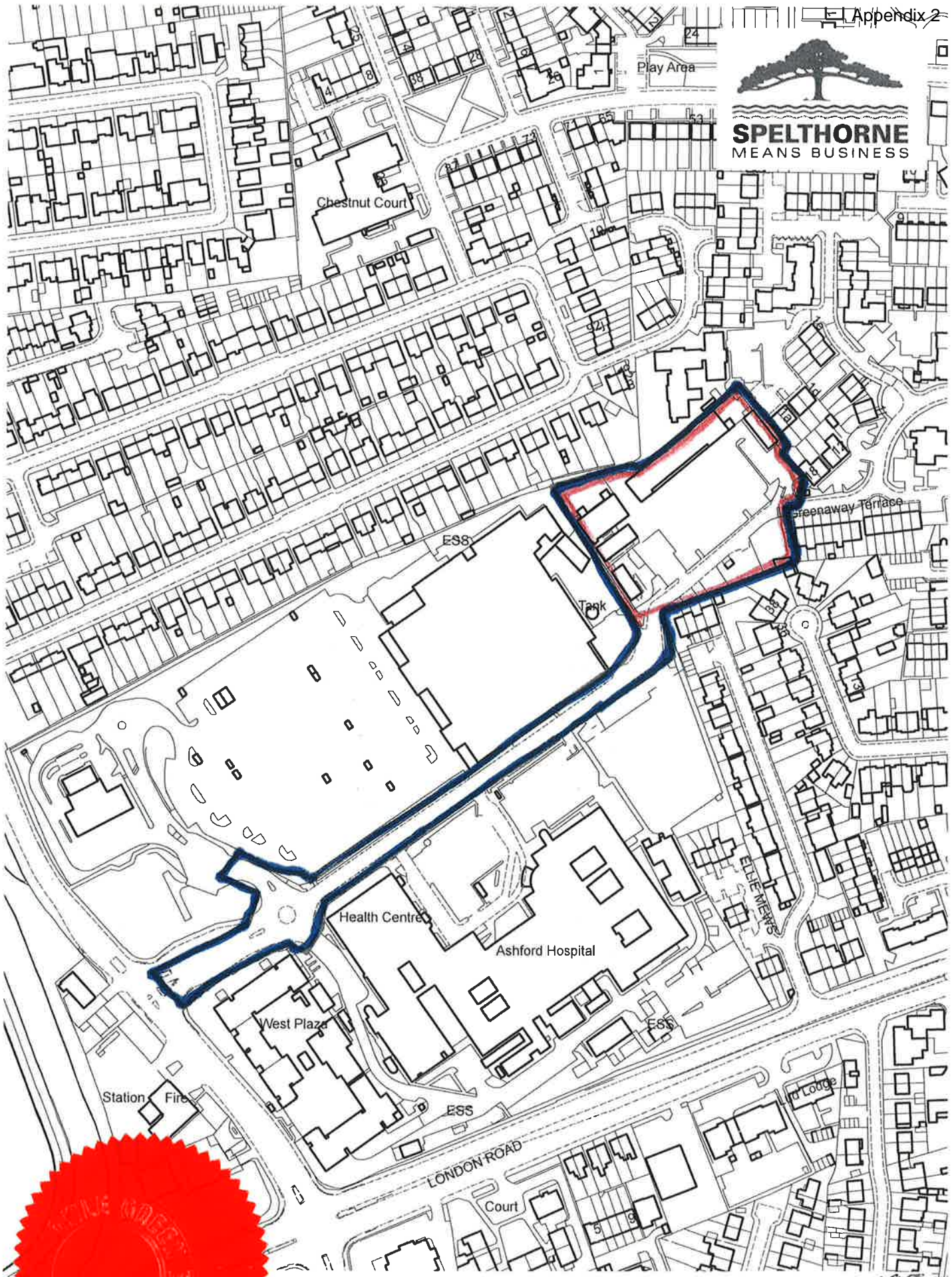
EXECUTED as a **DEED** by)
[])
acting by a single member)
in the presence of:)

Signature of Member:

Signature of Witness:

Name of Witness (in BLOCK CAPITALS):

Address of Witness:



4/FUL Car Park to rear of Tesco, Ashford Hospital, London Road, Ashford.

1:2,500

PLAN 1

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Signature

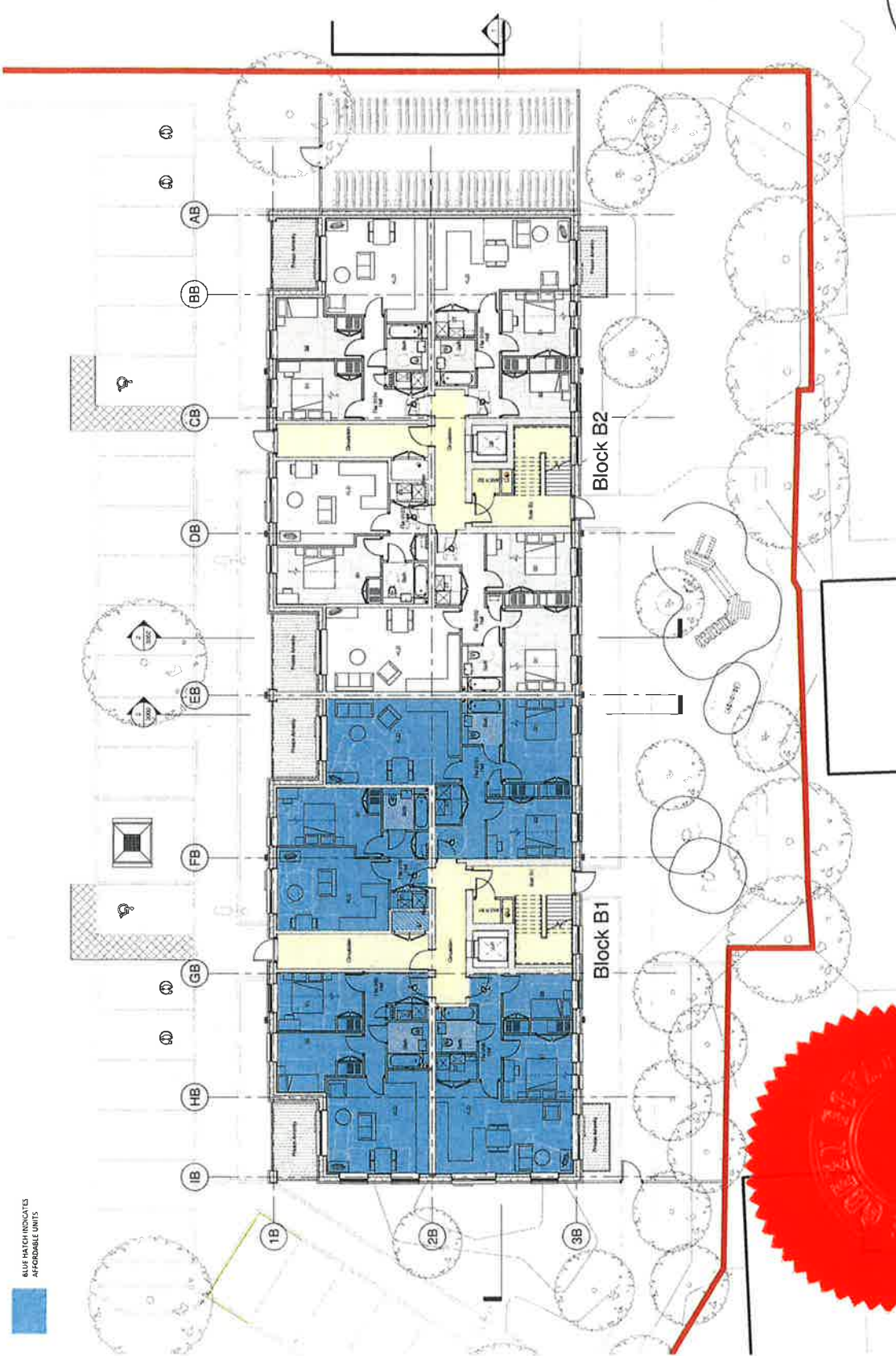
TC



GENERAL NOTES
 1. ALL DIMENSIONS SHALL NOT BE EXCEEDED.
 2. ALL DIMENSIONS SHALL BE CHECKED ON SITE PRIOR TO COMMENCING THE WORKS AND DIMENSIONS TO BE CORRECTED TO THE CURRENT EDITION OF ALL RELEVANT STANDARDS AND REGULATIONS.
 3. THE RELEVANT STANDARDS AND REGULATIONS SHALL COMPLY WITH THE RELEVANT BRITISH STANDARDS SPECIFICATIONS AND CODES.
 4. ALL MATERIALS AND WORKMANSHIP SHALL COMPLY WITH THE RELEVANT BRITISH STANDARDS SPECIFICATIONS AND CODES.
 5. ALL DIMENSIONS ARE TO UNLESS OTHERWISE STATED.
 6. THESE DRAWINGS ARE TO BE READ IN CONJUNCTION WITH THE RELEVANT BRITISH STANDARDS SPECIFICATIONS AND ALL OTHER RELEVANT CONSULTANT DRAWINGS.
 7. ALL PRODUCTS SPECIFIC TO THE DRAWING MUST BE THE MANUFACTURER'S PRODUCTS, RELEVANT BRITISH AND EUROPEAN STANDARDS CODES OF PRACTICE AND RELEVANT REGULATIONS.
FIXTURES STATEMENT
 1. The images and specifications prepared for the tender form part of the contract documents and shall be read in conjunction with the Contract's input. The Contractor is to follow all necessary specifications and standards for the fixtures and fittings.
 2. If there are any discrepancies between drawings, specifications and other documents issued by the architect, the contractor shall refer to the architect for clarification.
AS BUILT / SUBSEQUENT CONSTRUCTION STATEMENT
 1. The contractor shall verify the specification of materials and/or components or the equivalent etc. from those indicated on the drawings and provide a list of the materials and/or components used. This list shall be submitted to the architect for approval.

Client: Spelthorne Borough Council
Project: Victory Place-Ashford
Site: Victory Place, Ashford, Middlesex TW20 7EY
Scale: 1:100
Date: 23/06/2021
Drawn by: [Name]
Checked by: [Name]
Approved by: [Name]

Appendix 2
 1345 - DNA - B1 - GF - DR - A - 2011
 1345 - DNA - B1 - GF - DR - A - 2011
 1345 - DNA - B1 - GF - DR - A - 2011
 1345 - DNA - B1 - GF - DR - A - 2011



BLUE HATCH INDICATES AFFORDABLE UNITS



PLAN 2 1/5



GENERAL NOTES:
 1. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AUTHORITIES.
 2. ALL DIMENSIONS SHALL BE CHECKED ON SITE PRIOR TO COMMENCING THE WORKS AND TOLERANCES TO BE AS STATED.
 3. THE WORKS SHALL CONFORM TO THE CURRENT EDITION OF THE BUILDING REGULATIONS AND OTHER STATUTE.
 4. ALL MATERIALS AND WORKMANSHIP SHALL CONFORM WITH THE RELEVANT BUILDING STANDARDS SPECIFICATION AND CODES OF PRACTICE.
 5. THE RELEVANT BUILDING STANDARDS SPECIFICATION AND CODES OF PRACTICE ARE IN THEIR UNLESS OTHERWISE STATED.
 6. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AUTHORITIES.
 7. ALL PRODUCTS SPECIFIED ON THE DRAWINGS MUST BE INSTALLED IN ACCORDANCE WITH THE RELEVANT PERMITS AND LEGISLATION.
 8. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AUTHORITIES.

INFORMATION:
 1. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AUTHORITIES.
 2. ALL DIMENSIONS SHALL BE CHECKED ON SITE PRIOR TO COMMENCING THE WORKS AND TOLERANCES TO BE AS STATED.
 3. THE WORKS SHALL CONFORM TO THE CURRENT EDITION OF THE BUILDING REGULATIONS AND OTHER STATUTE.
 4. ALL MATERIALS AND WORKMANSHIP SHALL CONFORM WITH THE RELEVANT BUILDING STANDARDS SPECIFICATION AND CODES OF PRACTICE.
 5. THE RELEVANT BUILDING STANDARDS SPECIFICATION AND CODES OF PRACTICE ARE IN THEIR UNLESS OTHERWISE STATED.
 6. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AUTHORITIES.
 7. ALL PRODUCTS SPECIFIED ON THE DRAWINGS MUST BE INSTALLED IN ACCORDANCE WITH THE RELEVANT PERMITS AND LEGISLATION.
 8. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AUTHORITIES.



BLUE HATCH INDICATES AFFORDABLE UNITS



PURAN 2 3/5

12495

Spelthorne Borough Council
 Project: [Signature]
 Block B (1&2) - SECOND FLOOR LEVEL

DATE	SCALE	ISSUED FOR
21/02/2022	1:1000	AS BUILT

INFORMATION

1345 - DVA - B1 - 02 - DR - A - 008 - 11

Appendix



GENERAL NOTES

1. THESE DRAWINGS SHALL NOT BE SCALE.

2. ANY CHANGES TO THE WORKS AND PROGRAM AND DIMENSIONS TO BE REPORTED TO THE ARCHITECT.

3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AUTHORITY AND THE RELEVANT BODIES AND AGENCIES.

4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AUTHORITY AND THE RELEVANT BODIES AND AGENCIES.

5. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AUTHORITY AND THE RELEVANT BODIES AND AGENCIES.

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9. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AUTHORITY AND THE RELEVANT BODIES AND AGENCIES.

10. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AUTHORITY AND THE RELEVANT BODIES AND AGENCIES.



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12495
PLAN 2 6/15
Redwood



TC



GENERAL NOTES
 THE DRAWINGS SHALL BE READ IN CONJUNCTION WITH THE WORKS AND DETAILS AND DIVISIONS TO BE REPORTED TO THE ARCHITECT. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AUTHORITY.
 THE DRAWINGS ARE TO BE READ IN CONJUNCTION WITH THE EUROPEAN STANDARDS CODES OF PRACTICE AND RELEVANT BBA CERTIFICATES.

TERMS & CONDITIONS
 1. The design and specifications prepared for tender form part of the contract. The Contractor shall be responsible for ensuring that the design and specifications are fully understood and implemented. The Contractor is to allow for all necessary allowances for construction tolerances and other factors.
 2. There are no connections between drawings unless specifically stated otherwise. The Contractor shall be responsible for ensuring that the design and specifications are fully understood and implemented.

CLIENT
 Spelthorne Borough Council
PROJECT
 Victory Place-Ashted
 945-947, 949-951, 953-955, 957-959, 961-963, 965-967, 969-971, 973-975, 977-979, 981-983, 985-987, 989-991, 993-995, 997-999, 1001-1003, 1005-1007, 1009-1011, 1013-1015, 1017-1019, 1021-1023, 1025-1027, 1029-1031, 1033-1035, 1037-1039, 1041-1043, 1045-1047, 1049-1051, 1053-1055, 1057-1059, 1061-1063, 1065-1067, 1069-1071, 1073-1075, 1077-1079, 1081-1083, 1085-1087, 1089-1091, 1093-1095, 1097-1099, 1101-1103, 1105-1107, 1109-1111, 1113-1115, 1117-1119, 1121-1123, 1125-1127, 1129-1131, 1133-1135, 1137-1139, 1141-1143, 1145-1147, 1149-1151, 1153-1155, 1157-1159, 1161-1163, 1165-1167, 1169-1171, 1173-1175, 1177-1179, 1181-1183, 1185-1187, 1189-1191, 1193-1195, 1197-1199, 1201-1203, 1205-1207, 1209-1211, 1213-1215, 1217-1219, 1221-1223, 1225-1227, 1229-1231, 1233-1235, 1237-1239, 1241-1243, 1245-1247, 1249-1251, 1253-1255, 1257-1259, 1261-1263, 1265-1267, 1269-1271, 1273-1275, 1277-1279, 1281-1283, 1285-1287, 1289-1291, 1293-1295, 1297-1299, 1301-1303, 1305-1307, 1309-1311, 1313-1315, 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