

DATED 13 June **2024**

IMLA PROPERTIES LTD
(the Owner) (1)

and

READING BOROUGH COUNCIL
(the Council) (2)

AGREEMENT

**Constituting Planning Obligations relating to
land at 67 Southcote Lane, Reading, RG30 3AQ**

(Appl. No. 220734)

Michael Graham LLB (Hons);
MBA
Assistant Director of Legal and
Democratic Services
Reading Borough Council
Civic Offices Bridge Street
Reading RG1 2LU
IKEN NO. 021902

THIS AGREEMENT is made the 13 day of June 2024

BETWEEN:

- (1) **IMLA PROPERTIES LTD** (Co. Regn. 13753605) of 4 Willow Gardens, Tilehurst, Reading RG31 6ZZ (hereinafter referred to as "**the Owner**"); and
- (2) **READING BOROUGH COUNCIL** of Civic Offices Bridge Street Reading RG1 2LU ("**the Council**")

RECITALS

A. Planning Obligation

This Agreement constitutes a planning obligation within the meaning of Section 106 of the 1990 Act.

B. The Land

The Council is the local planning authority for the purposes of the 1990 Act for the borough of Reading in which the Application Land is situated.

C. Land Ownership

The Owner are the registered proprietors of the freehold interest in the Application Land under HM Land Registry title number BK51619 and has an interest in the Application Land within the meaning of section 106(9)(b) of the 1990 Act.

D. Planning Application

An application (given reference 220734 by the Council) has been submitted to the Council for the development of the Application Land.

E. Planning Permission

The Council and the Owner having regard to the Council's statutory development plan and to all other material considerations consider that Planning Permission should be granted for the Development pursuant to the Application subject to the prior completion of this Agreement.

F. Community Infrastructure Regulations 2010 (as amended)

The Parties are satisfied that the planning obligations contained in this Agreement are:

- (i) necessary to make the Development acceptable in planning terms;
- (ii) directly related to the Development; and
- (iii) fairly and reasonably related in scale and kind to the Development.

It is agreed as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 The following expressions shall have the following meanings which for the avoidance of doubt shall apply to all parts of this Agreement:

1990 Act means the Town and Country Planning Act 1990 as amended;

Affordable Housing means housing accommodation to be provided with some degree of financial subsidy enabling it to be delivered for sale or rent at a price or on rent terms which are lower than the prevailing open market for similar housing within Reading and to be managed and or owned by a registered provider or housing association for the benefit of eligible persons (being such persons nominated by the Council from its housing needs register in accordance with its allocation policy);

Affordable Housing Contribution means the sum of TWENTY FOUR THOUSAND, THREE HUNDRED AND SEVENTY FIVE POUNDS (£24,375.00) (Index Linked) to be used by the Council towards the provision of Affordable Housing in the Borough;

Agreement means this planning obligation by agreement pursuant to Section 106 of the 1990 Act;

Application means the application for planning permission submitted to the Council and given reference number 220734;

Application Land means the land described in the First Schedule;

Development means the erection of a single detached dwelling to be permitted by the Planning Permission;

Effective Date means the date of this Agreement;

Implementation means the carrying out of a material operation as defined in Section 56(4) of the 1990 Act;

Index means the All Items Index of Retail Prices issued by the Office for National Statistics;

Index Linked means that the amount of each contribution or sum payable under this Agreement and any other sum referred to in this Agreement shall be increased by an amount equivalent to the increase in the Index from the Effective Date until the date such sum falls due under this Agreement;

Monitoring Officer means the Council's Infrastructure and Monitoring Officer (within the Council's Directorate of Economic Growth and Neighbourhood Services) as designated by the Council to monitor the obligations set out in this Agreement;

Occupation means (as the context permits) beneficial occupation for the purposes permitted by the Planning Permission of any Residential Unit constructed on the Application Land within the Development PROVIDED THAT, for the avoidance of any doubt, occupation for the purposes of construction, fitting out and marketing shall not constitute Occupation (and **Occupy** and **Occupied** shall be construed accordingly);

Occupation Notice means the notice to be served by the Owner upon the Council's Monitoring Officer confirming the date the Residential Unit will be brought into use and Occupied;

Party means each party to this Agreement and its respective successors and those deriving title under it (and **Parties** shall be construed accordingly);

Planning Permission means planning permission granted by the Council pursuant to the Application substantially in the form of the draft set out in Appendix 2 to this Agreement;

Residential Unit means any residential dwelling in the Development (and **Residential Units** shall be construed accordingly).

Interpretation

1.2 Clause headings shall not affect the interpretation of this Agreement.

1.3 A person includes a natural person corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a company shall include any company, corporation or other body corporate wherever and however incorporated or established.

1.5 Unless the context otherwise requires words in the singular shall include the plural and in the plural shall include the singular.

- 1.6 Unless the context otherwise requires a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any Party shall include that Party's successors in title and assigns and personal representatives.
- 1.8 References in this Agreement to the Council shall include any successor to its functions as the local planning authority in relation to the Application Land and any body to which all or part of its functions may lawfully have been transferred.
- 1.9 An obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done and an obligation on a person to do something includes an obligation to procure that thing to be done.
- 1.10 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.
- 1.11 Any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.12 Save as specified to the contrary any reference to Act of Parliament whether general or specific shall include any modification or re-enactment thereof for the time being in force and shall also include all instruments, orders, plans, regulations, by-laws and directions for the time being made issued or given thereunder or deriving validity therefrom.
- 1.13 A reference to writing or written does not include faxes or e-mail.
- 1.14 References to Clauses, Plans, Schedules, Paragraphs and Appendices are to the Clauses, Plans, Schedules, Paragraphs and Appendices of this Agreement.

2. CONDITIONALITY

- 2.1 Subject to Clause 2.2 below this Agreement shall have immediate effect.
- 2.2 The covenants by the Owner in the Second Schedule are conditional upon the granting of the Planning Permission and Implementation of the Development.

3. LEGAL EFFECT

- 3.1 This Agreement is made pursuant to:

- (a) section 106 of the 1990 Act;
- (b) section 1 of the Localism Act 2011;
- (c) section 111 of the Local Government Act 1972; and
- (d) all other enabling powers,

with an intent to bind (jointly and severally) the Owner's interest in the Application Land (and each and every part of it) subject to the provisions of Clause 2 (conditionality), 4 (the Owner's obligations), 9 (lapse) and 5 (release).

3.2 This Agreement is a planning obligation within the meaning of section 106 of the 1990 Act and the obligations contained within it shall, subject to the provisions of the Agreement, be enforceable by the Council against the Owner (including its successors in title and those deriving title from the Owner).

3.3 This Agreement is without prejudice to and shall not be construed as derogating from any of the rights, powers and duties of the Council pursuant to any of its statutory functions nor in any other capacity.

4. THE OWNER'S OBLIGATIONS

4.1 The Owner covenants with the Council, so as to bind the entirety of its interest in the Application Land, to comply with the restrictions, covenants and requirements set out in Second Schedule of this Agreement.

4.2 The Owner covenants with the Council not to encumber nor deal with the Application Land (or any part of it) in any manner pursuant to which the Owner may be prevented from carrying out its covenants and obligations contained in this Agreement.

5. RELEASE

5.1 The Owner shall upon parting:

- (a) with their interest in any part of the Application Land be released from all obligations and duties under the terms of this Agreement insofar as they relate to, or are binding on, that part of the Application Land; and
- (b) with their entirety of its interest in the Application Land be released from all liabilities whatsoever under the terms of this Agreement.

5.2 The releases provided for in this Clause 5 shall not apply to any prior or existing breach of this Agreement as at the date of disposal.

6. NO WAIVER

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

7. RIGHTS OF THIRD PARTIES

- 7.1 It is not intended that any of the provisions of this Agreement be enforceable under the Contracts (Rights of Third Parties) Act 1999 by anyone other than the Parties to this Agreement.

8. LOCAL LAND CHARGE

- 8.1 This Agreement is and shall be registered as a Local Land Charge by the Council.

9. LAPSE

- 9.1 The obligations in this Agreement shall cease to have effect (insofar only as they have not already been complied with) if the Planning Permission is quashed, revoked or modified (without the consent of the Owner) or is withdrawn or expires prior to Implementation of the Development.

10. INDEXATION

- 10.1 The Affordable Housing Contribution payable under this Agreement shall be increased by an amount equivalent to the increase in the Index from the Effective Date until the date on which the Affordable Housing Contribution is paid.

11. INTEREST ON UNPAID MONIES

- 11.1 If the Affordable Housing Contribution due under this Agreement is paid late then the Owner shall pay to the Council interest at the rate of four percent (4%) per annum above the base rate of the Bank of England for the time being in force on the Affordable Housing Contribution or sum due or (as the case may be) on any amount of that Contribution or sum which may be outstanding from the date on which the Affordable Housing Contribution or sum (or the relevant part of it, as the case may be) is due to be paid in accordance with the terms of this Agreement up to the date of actual payment of

the Affordable Housing Contribution or sum (or the relevant part of it, as the case may be).

- 11.2 Any interest paid or payable pursuant to Clause 11.1 above shall be deemed to be part of the Affordable Housing Contribution or sum due to which such interest relates.

12. LEGAL FEES

- 12.1 The Owner shall pay the Council's legal costs and expenses incurred in the preparation, negotiation and completion of this Agreement in the sum of ONE THOUSAND, SEVEN HUNDRED AND SIXTY POUNDS (£1760.00) such sum to be paid to the Council on the Effective Date.

13. MONITORING FEE

- 13.1 The Owner agrees to pay the Council's costs and expenses incurred or to be to be incurred by the Council in the administration and monitoring of the provisions of his Agreement in the sum of FOUR HUNDRED POUNDS (£400.00) such sum to be paid to the Council on the Effective Date

14. PAYMENTS TO THE COUNCIL

- 14.1 Any payments due to the Council under the terms of this Agreement shall be paid to the Council by means of telegraphic transfer to the Council as follows:

Reading Borough Council
Sort Code: 30-91-31
Account Number: 00271502
Lloyds Bank plc 24 Broad Street Reading RG1 2BT

quoting reference: (S106/021902/220734) or such other reference quoted in relevant S106 Demand Notice issued in respect of the obligation.

- 14.2 No Affordable Housing Contribution or other sum required under this Agreement (or part of it) shall be paid to the Council earlier than eight (8) weeks before the date that contribution or sum falls due.

15. FUTURE SECTION 73 PERMISSION

- 15.1 In the event that any new planning permission(s) in respect of the Development is or are granted by the Council pursuant to section 73 of the 1990 Act (Future S73

Permissions) and unless otherwise agreed between the parties with effect from the date that the new planning permission is granted pursuant to section 73 of the 1990 Act:

- (a) the obligations in this Agreement shall (in addition to continuing to bind the Application Land in respect of the Planning Permission) relate to and bind the Application Land in respect of development pursuant to that Future S73 Permission(s); and
- (b) the definitions of Application, Development and Planning Permission shall be construed to include reference to any application for that Future S73 Permission(s), the Future S73 Permission(s) granted pursuant to that application and the development permitted by that Future S73 Permission(s); and
- (c) this Agreement shall be endorsed with the following words in respect of that Future S73 Permission(s) (with the blank spaces completed with the reference number and date of issue of the relevant Future S73 Permission(s)):

'The obligations in this Agreement relate to and bind the Application Land in respect of development pursuant to a new planning permission reference granted on 20 pursuant to section 73 of the Town and Country Planning Act 1990 (as amended).'

PROVIDED THAT nothing in this Clause shall fetter the general discretion of the Council in determining any application(s) under section 73 of the 1990 Act including a requirement for a new deed or a supplemental deed to be entered into pursuant to section 106 and/or section 106A of the 1990 Act before that application is determined by the Council.

16. RIGHT OF ACCESS

- 16.1 Without prejudice to the Council's statutory rights of entry the Owner shall permit the Council and its authorised employees and agents upon reasonable written notice to enter the Application Land at all reasonable times for the purpose of verifying whether or not any obligation or restriction arising under this Agreement has been performed or observed.

17. NO FETTER ON DISCRETION

- 17.1 Nothing in this Agreement shall fetter or prejudice the Council's statutory rights, powers, discretions and responsibilities under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

18. SEVERANCE

- 18.1 Each clause, sub-clause, schedule or paragraph shall be separate, distinct and several from each other to the extent only that if any clause, sub-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, sub-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, sub-clause, schedule or paragraph be valid shall apply without prejudice to any other clause, sub-clause, schedule or paragraph contained in this Agreement.

19. JURISDICTION

- 19.1 This Agreement is governed by and interpreted in accordance with the law of England.

In witness whereof the Parties have executed this Agreement as a deed the day and year first above written.

THE FIRST SCHEDULE

(The Land)

All that land at 67 Southcote Lane, Reading, RG30 3AQ, the subject of the Application and which comprises the land registered at the Land Registry under Title Number BK51619 shown edged red on the Plan at Appendix 1 to this Agreement.

THE SECOND SCHEDULE

1 Affordable Housing Contribution

- 1.1 To serve an Occupation Notice no less than 5 Working Days prior to Occupation of the Residential Unit.
- 1.2 Not to Occupy or permit the Occupation of the Residential Unit unless and until the Occupation Notice has been served upon the Council.
- 1.3 To pay to the Council the Affordable Housing Contribution prior to Occupation of the Residential Unit.
- 1.4 Not to Occupy or permit to be Occupied the Residential Unit unless and until the Affordable Housing Contribution has been paid to the Council in full.

Appendix 1

(the Plan)

Appendix 2
(The Draft Planning Permission)