

DATED _____ 2022

**THE MAYOR AND BURGESSES OF
THE LONDON BOROUGH OF LAMBETH**

and

KEYSLAND DIRECTORS PENSION SCHEME LTD

Deed of agreement pursuant to Section 106 of the Town and Country Planning Act 1990
and other powers in relation to land at Unit 2, Nettlefold Place London SE27 0JW

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THIS DEED is made the

day of

2022

BETWEEN:-

1. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF LAMBETH** of Lambeth Town Hall, Brixton Hill, London SW2 1RW of the first part (hereinafter referred to as the "**Council**"); and
2. **Keysland directors Pension Scheme Ltd** (Co. Regn. No. TGL58989) of Old Forge Cottage, Ewhurst Green, Robertsbridge, East Sussex TN32 5TD of the second part (herein after referred to as the "**Owner**");

jointly referred to as 'the Parties'.

RECITALS:-

- A. The Owner wishes to carry out the Development pursuant to the Prior Approval upon the Site.
- B. The Owner is the freeholder owner of the Site registered with freehold title absolute under Title Number TGL58989 at the Land Registry.
- C. The obligations contained in this Deed are planning obligations for the purposes of Section 106 of the 1990 Act and covenants and Undertakings under the Acts.
- D. The Council is the local planning authority by whom the planning obligations and the covenants in this Deed are enforceable.
- E. The Parties to this Deed are satisfied that the planning obligations secured by this Deed are necessary to make the Development acceptable in planning terms, are directly related to the Development and are fairly and reasonably related in scale and kind to the Development and thus satisfy the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010.

NOW THIS DEED WITNESSETH

1. **Definitions and interpretation**

1.1 The following words and phrases shall unless the context otherwise requires bear the following meanings: -

“1990 Act”	means the Town and Country Planning Act 1990 and any statutory amendment, variation, substitution or re-enactment thereof
"Acts"	means section 111 of the Local Government Act 1972, section 16 of the Greater London Council (General Powers) Act 1974 and section 1 of the Localism Act 2011 and in each case any statutory amendment, variation, substitution or re-enactment thereof together with all other statutory powers and acts pursuant to which the Parties hereto shall be empowered to enter into this Deed
"Application"	means the application that has been allocated reference number XXXXXX for prior approval pursuant to condition C.2 of Class MA, Part 3 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2020 (Amended).
“Business Parking Bay”	means a parking place designated by the London Borough of Lambeth by an order under the Road Traffic Regulation Act 1984 or other relevant legislation for use by a business in the locality in which the Development is situated or any other parking place where a business vehicle may be parked
“Car Club”	means a scheme which gives members access to a pool of cars or other light vehicles for flexible periods of time on a pay-as-you-drive or similar basis
“Car Club Membership”	means a free membership of a Car Club for a minimum period of XXXX years commencing from the date of first Occupation
“Car Club Operator”	means an operator of a Car Club approved in writing by the Council and selected by the Owner and which has a Car Club operating within proximity to the Site
“Council”	means the party of the first part hereto which shall include successors and assigns of its functions from time to time
“CPZ”	means a controlled parking zone being a parking scheme established and operated by a local authority under the Road Traffic Regulation Act 1984 in which on street parking in a respective area designated as a controlled parking zone is

	restricted to vehicles with parking permits issued by the London Borough of Lambeth
“Development”	means change of use from Office (Use Class E(g)) to 1 residential units (Use Class C3), together with the provision of refuse and cycle stores
“Disabled Person’s Parking Bay”	means a parking place designated by the London Borough of Lambeth for use by the holder of a disabled person’s badge issued pursuant to Section 21 of the Chronically Sick and Disabled Persons Act 1970
“Head of Planning”	means the Council’s Director of Planning, Transport and Sustainability or any other officer properly exercising the authority of that person for the time being
"Implementation"	means implementation of the Prior Approval by the carrying out of any material operation within the meaning of Section 56(2) and (4) of the 1990 Act and “Implement”, “Implemented” and other cognate expressions shall be construed accordingly
“Monitoring Fee”	means the payment by the Owner to the Council of XXXXX to cover the costs of monitoring and implementing this Deed
“Occupation”	means occupation for the purposes permitted by the Prior Approval but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and “Occupy”, “Occupying” and “Occupier” and other cognate expressions shall be construed accordingly
“Owner”	means the party of the second part which shall include its successors and assigns from time to time
“Prior Approval”	means approval granted pursuant to the Application in the form of the draft annexed hereto as Schedule 1
"Residential Unit"	means a unit of residential accommodation provided by the Development
"Resident’s Parking Bay"	means a parking place designated by the London Borough of Lambeth by an order under the Road Traffic Regulation Act 1984 or other relevant legislation for use by residents of the locality in which the Development is situated
“RICS”	means the Royal Institution of Chartered Surveyors
"Site"	means all the land shown edged red on the plan attached to this Deed at Schedule 2 as against which this Deed may be enforced

“Undertaking”	means an undertaking pursuant to section 16 of the Greater London Council (General Powers) Act 1974 and “Undertakes” shall be construed accordingly
"Working Day"	means any day except Saturday, Sunday and any bank or public holiday in England

2. Construction of this Deed

- 2.1. Any covenant by the Owner or the Council 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 reference 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 or 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. Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Prior Approval) granted (whether or not on appeal) after the date of this Deed.

3. Planning obligations and covenants

- 3.1. The obligations contained in this Deed are planning obligations for the purposes of Section 106 of the 1990 Act and covenants and Undertakings under the Acts.
- 3.2. The planning obligations in this Deed are entered into by the Owner on the basis that, subject to Clauses 3.3 and 3.4, they shall be enforceable by the Council against the Owner and also against its successors in title and assigns and any person corporate or otherwise claiming through or under the Owner an interest or estate created hereafter in the Site or any part or parts thereof as if that person had also been an original covenanting party in respect of the planning obligations which relate to the interest or estate for the time being held by that person PROVIDED THAT for the avoidance of doubt and only to the extent (if any) that the obligations in Schedule 3 are not enforceable under the 1990 Act, the covenants in Schedule 3 are Undertakings.
- 3.3. No person shall be liable for any breach of any of the planning obligations or other provision of this Deed after it shall have parted with its entire interest in the part of the Site in respect of which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 3.4. The obligations in this Deed shall not be enforceable against owner-occupiers or tenants of individual Residential Units constructed pursuant to the Prior Approval nor against those deriving title from them including their mortgagee or chargee EXCEPT FOR the restrictions on parking permits set out in Schedule 3.

4. Conditionality

- 4.1. Subject to Clause 4.2 below this Deed shall come into effect upon Implementation.
- 4.2. Clause 14 will come into effect on delivery hereof.

5. No encumbrance

- 5.1 The Owner HEREBY COVENANTS with the Council that it will not enter into any covenant or agreement relating to any part of the Site whose effect would be to preclude the carrying out of the planning obligations and covenants contained in this Deed PROVIDED THAT for the avoidance of doubt this Clause will not prevent any

disposal or dealing by grant of lease or otherwise with the Owner's interest in any part of the Site.

6. General provisions

6.1. IT IS HEREBY AGREED AND DECLARED that:

6.1.1. the Council shall arrange to register this Deed as a local land charge for the purposes of the Local Land Charges Act 1975; and

6.1.2. nothing in this Deed shall prejudice or affect the rights powers duties and obligations of the Council in the exercise by it of its statutory functions and the rights powers duties and obligations of the Council under private or public statutes bye-laws orders and regulations may be as fully and effectively exercised as if it were not a party to this Deed.

7. Covenants by the Owner

7.1 The Owner will observe and perform the covenants contained in Schedules 3 to 4 as planning obligations for the purposes of Section 106 of the 1990 Act and as covenants and Undertakings made under the Acts.

8. Implementation

8.1. The Owner hereby covenants to give not less than five Working Days' written notice to the Council of the date of proposed Implementation.

9. No waiver

9.1. No waiver (whether express or implied) by the Council of any breach or default by the Owner 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.

10. Severability

10.1. Each Clause, sub-Clause, Schedule or Paragraph shall be separate, distinct and severable 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 herein.

11. Interest

11.1. Without prejudice to any other right remedy or power herein contained or otherwise available to the Council if any payment of any sum referred to herein shall have become due but shall remain unpaid for a period exceeding seven days the Owner shall pay on demand to the Council interest thereon at the interest rate of three per cent (3%) per annum above the base lending rate of the National Westminster Bank plc from the date when the same became due until payment thereof.

12. Verification, indemnity and enforcement

12.1. The Owner shall permit the Council and its authorised employees and agents upon reasonable notice which shall be a minimum of 48 hours to enter the Site at all reasonable times for the purpose of verifying whether or not any obligation arising hereunder has been performed or observed.

12.2. Without prejudice to the terms of any other provision herein the Owner shall pay the reasonable and proper legal and surveyor's fees and disbursements properly incurred by the Council for the purpose of or incidental to the successful enforcement of any right or power of the Council or of any obligation of the Owner arising hereunder and (subject always to the provisions of Clause 3.3 hereof) shall indemnify the Council and keep it indemnified against all claims and demands, actions, costs or expenses for which the Council may become liable arising out of any failure by the Owner to perform any of the obligations under this Deed.

12.3. Before the Council exercises its powers under Clause 12.2 hereof it shall give not less

than twenty-one (21) Working Days' written notice of its intention to do so to the Owner together with written details of any alleged breach of the terms of this Deed and shall afford the Owner the opportunity in that time to remedy any alleged breach.

13. Resolution of disputes

13.1. In the event of any dispute between the Parties either party may invite the other party to resolve the dispute by mediation in such manner as the Parties may agree.

13.2. In the event of a dispute between the Parties (other than a dispute relating to a matter of law or in relation to the interpretation of this Deed) the Parties agree that the matter in dispute will on the application of either of them be referred to a Surveyor acting as an expert (hereinafter referred to as the "Expert") (being a member of the Planning Division of the RICS) with not less than ten years recent experience in the field of town and country planning and development whose identity will be agreed between the Parties or in default of agreement appointed by or on behalf of the President for the time being of the RICS on the application of any party and it is further agreed that:

13.2.1. the determination of the Expert will be final and binding on the relevant parties save in the case of manifest error;

13.2.2. the participating parties will be entitled to make representations and counter-representations in accordance with such timetable as the Expert shall direct; and

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

14. Owner's actions on completion

14.1. The Owner will prior to completion of this Deed:

14.1.1. pay the Council's reasonable legal costs incurred in connection with the preparation and completion of this Deed being the sum of £XXXXX; and

14.1.2. pay to the Council the Monitoring Fee.

14.2. The Owner will within 20 Working Days of the date of this Deed apply to the Chief Land Registrar to have the terms of this Deed noted against any Title Number(s) referred to

in Recital B and will inform the Council's solicitors in writing of the outcome of such application as soon as it is received.

15. The Council's actions on completion

15.1. The Council hereby covenants with the Owner that the Monitoring Fee shall not be spent otherwise than upon the Council's costs of monitoring and implementing this Deed in order to ensure that any obligations herein are duly performed and observed.

16. Service of notices

16.1. All notices requests and demands or other written communications to or upon the respective Parties hereto pursuant to this Deed shall be deemed to have been properly given or made if dispatched by first class letter or facsimile transmission to the party to which such notice request demand or other written communication is to be given or made under this Deed and addressed as follows:

16.1.1. if to the Council:
London Borough of Lambeth
Planning Division
PO Box 734
Winchester SO23 5DG
Fax 020 7926 1171
Attention Head of Planning; and

16.1.2. if to the Owner:
Keysland Directors Pension Scheme Ltd
Old Forge Cottage
Ewhurst Green
Robertsbridge
East Sussex
TN32 5TD

17. Third parties

17.1. Without prejudice to the definitions of "the Council" and "Owner" given in Clause 1.1

hereof it is not intended that this Deed should give rights hereunder to a third party arising solely by virtue of the Contracts (Rights of Third Parties) Act 1999.

18. Notifications

18.1. The Owner shall notify the Head of Planning in writing of the following matters forthwith upon the occurrence of each:

- 18.1.1. The date of Implementation;
- 18.1.2. The date of Occupation of the Development;
- 18.1.3. Any street or building naming or numbering assigned to the Development by the Council; and
- 18.1.4. Any internal numbering or naming given to any parts of the Development including numbers or names given to any units of accommodation of any type within the Development.

19. Jurisdiction

19.1. The construction, validity and performance of this Deed shall be governed by English law without reference to any other country's system of laws and the Parties agree irrevocably to submit to the exclusive jurisdiction of the English courts.

SCHEDULE 1

The Prior Approval

The draft prior approval attached hereto

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SCHEDULE 2

Plan of the Site

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SCHEDULE 3

Restrictions on Parking Permits

Residential Parking Permits

1. The Owner covenants with the Council as follows:
 - 1.1. To ensure that prior to Occupying the Residential Unit the new Occupier thereof is informed by the Owner of the Council's policy that they shall not be entitled (unless they are the holder of a disabled person's badge issued pursuant to Section 21 of the Chronically Sick and Disabled Persons Act 1970) to:
 - 1.1.1. be granted a resident's parking permit to park a vehicle in a Resident's Parking Bay in the CPZ where the Site is located; or
 - 1.1.2. buy a contractual permit to park within any car park owned, controlled or licensed by the Council in the CPZ where the Site is located.
 - 1.2. Not to Occupy or use (or permit the Occupation or use of) any Residential Unit at any time during which the Occupier thereof holds a resident's parking permit to park a vehicle in a Resident's Parking Bay in the CPZ where the Site is located or a contractual permit to park a vehicle in any car park owned, controlled or licensed by the Council in the CPZ where the Site is located (unless the Occupier is the holder of a disabled person's badge issued pursuant to Section 21 of the Chronically Sick and Disabled Persons Act 1970).
 - 1.3. In the event of a subsequent change of use to non-residential use of the Development (or any part of it) in circumstances where planning permission or the grant of prior approval is not required for that change of use, not to occupy or use (or permit the occupation or use of) the Development (or any part of it) at any time during which the occupier holds a business parking permit to park a vehicle in a **Business Parking Bay** in the CPZ where the Site is located or a contractual permit to park a vehicle in any car park owned, controlled or licensed by the Council in the CPZ where the Site is located (unless the occupier is the holder of a disabled person's badge issued pursuant to Section 21 of the Chronically Sick and Disabled Persons Act 1970) and to ensure that any such occupier is made aware of the terms of this restriction.
 - 1.4. In disposing of or letting any Residential Unit to procure that:
 - 1.4.1. all prospective purchasers, lessees or tenants of any Residential Unit are informed of the restrictions relating to car parking permits under this Deed; and
 - 1.4.2. covenants dealing with the matters referred to in paragraph 1 of this Schedule are included in all transfers, tenancies and leases of any such Residential Unit.

2. The Owner for itself and its successors in title to the Site hereby acknowledges that the provisions in paragraph 1 in this Schedule shall continue to have effect for the lifetime of the Development.

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SCHEDULE 4

Car Club Membership

1. Prior to Occupation the Owner shall:
 - 1.1. enter into a contract with a Car Club Operator to provide the Car Club Membership; and
 - 1.2. supply to the Council a copy of the contract or other satisfactory evidence of a binding agreement having been entered into by the Owner with the chosen Car Club Operator as required by paragraph 1.1 of this Schedule.
2. There shall be no Occupation unless and until a copy of the contract or other satisfactory evidence of a binding agreement having been entered into by the Owner with the chosen Car Club Operator has been supplied to the Council as required by paragraph 1 of this Schedule.
3. Where an Occupier of a Residential Unit is eligible for membership under the rules of the applicable Car Club, the Owner shall provide one free Car Club Membership (not including the provision of any running costs such as fuel and maintenance) to the Residential Unit upon the Occupation of that Residential Unit by an Occupier of the Residential Unit. Nothing shall prevent the Owner from selling or letting a Residential Unit to an Occupier who is not eligible for membership under the rules of the applicable Car Club.
4. The Owner shall ensure that:
 - 4.1. all materials published by the Owner or its agents for the purpose of selling or letting a Residential Unit notifies potential purchasers or other occupants of the Car Club Membership arrangements; and
 - 4.2. estate agents and lettings agents are instructed in relation to the marketing of the Residential Units to draw the Car Club Membership arrangements to the attention of all Occupiers or prospective Occupiers.
5. In the event that a contract with a Car Club Operator is entered into pursuant to paragraph 1 above but the relevant Car Club Operator subsequently ceases to operate the Owner shall use reasonable endeavours to secure an alternative Car Club Operator to provide the Car Club Membership for the balance of the originally contracted term and paragraphs 2 to 4 inclusive above shall apply to the appointment of such alternative Car Club Operator *mutatis mutandis* PROVIDED THAT this paragraph 5 shall cease to apply and have no effect where there is six months or less left to run of any three year period within which Occupiers are entitled to Car Club Membership.

IN WITNESS whereof this Deed has been executed by the Parties hereto and is intended to be and is hereby delivered on the date first above written

Executed as a deed by affixing THE)
COMMON SEAL of THE MAYOR)
AND BURGESSES OF THE LONDON)
BOROUGH OF LAMBETH)
in the presence of)

Authorised Officer

Executed as a deed by XXX)
acting by a director in the)
presence of)

Director

Witness

Witness Name

Witness Address

Witness Occupation