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Dated 13th May 2020

(1) **HORSHAM DISTRICT COUNCIL**

(2) **WEST SUSSEX COUNTY COUNCIL**

(3) **GABRIELE ELIZABETH FRANCIS**

(4) **MARK ALAN LAWTON POCKETT**

(5) **WELBECK STRATEGIC LAND II LLP**

AGREEMENT

under Section 106 of the Town and Country Planning Act 1990 in respect of Land North of Downsview Avenue, Storrington, RH20 4LH West Sussex

Legal Ref LS/000875
Planning Committee South 21 January 2020
Planning Application Ref: DC/19/2015

Sharon Evans
Head of Legal and Democratic Services
Horsham District Council
Parkside
Chart Way
Horsham
West Sussex
RH12 1RL

This Agreement is made as a Deed and dated 13th May 2020

Between

(1) **HORSHAM DISTRICT COUNCIL** of Parkside, Chart Way, Horsham, West Sussex RH12 1RL ('the Council')

(2) **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street, Chichester, West Sussex PO19 1RQ ('the County Council')

(3) **GABRIELLE ELIZABETH FRANCIS** of Greyfriars Farm~~house~~ EF, Greyfriars Lane, Storrington, Pulborough, RH20 4~~AB~~ HE, West Sussex and

(4) **MARK ALAN LAWTON POCKETT** of High Chantry Chantry Lane Storrington Pulborough RH20 4AB EF ('together referred to as the Owner')

(5) **WELBECK STRATEGIC LAND II LLP** of Woodstock studios, 13 Woodstock Street, London, W1C 2AG ('the Promoter ')

1. **Background**

1.1 The Owner is the registered proprietor with Title Absolute of land registered at HM Land Registry under Title Number WSX345872

1.2 The Promoter has a legal charge dated 11 January 2017 over the Site which is registered at no.2 of the charges register of the Land Registry title on 20 January 2017

1.3 The County Council is the Highways Authority as defined in the Highways Act 1980 for the area of the Site and is of the opinion that the Highway Works are necessary to address the highways, transportation impacts of the Development

1.4 The Council is the Local Planning Authority as defined in the Act for the area within which the Site is situated for the purposes of this Agreement and for the purposes of Section 106 of the Act

1.5 The Council and the County Council are satisfied that this agreement is for the benefit of the public

1.6 The Council at a meeting of the Planning Committee South on 20 January 2020 resolved to authorise the Head of Development to grant Planning Permission subject to the conditions of the Planning Permission and the prior completion of this Agreement which includes provision for:

(a) 35% of the Dwellings within the Development to be Affordable Housing to be secured with the agreed Housing Tenure Mix;

(b) the provision and maintenance of the Open Amenity Space, Landscaping and the LAP, including their management and maintenance, and

1.7 This Agreement by Deed is intended to create planning obligations for the purposes of Section 106 of the Act

1.8 The Owner is willing to enter into and be bound by obligations and be subject to the restrictions in this Deed on the terms set out herein.

NOW THIS DEED WITNESSES as follows:-

2. **INTERPRETATION**

In this Agreement:

2.1 Words importing the masculine include the feminine and vice versa

2.2 Words importing the singular include the plural and vice versa

2.3 Words importing persons include companies and corporations and vice versa

2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually

2.5 Any reference to a clause or schedule or plan is to a clause schedule or plan in to or attached to this Agreement

2.6 Any reference to a colour or letter is to a colour or letter on the plan attached to this Agreement

2.7 In the absence of contrary provision any reference to a statute includes any statutory modification or re-enactment of it and every statutory instrument,

direction, specification made or issued under the statute or deriving validity from it

2.8 References to any party to this Agreement shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successors to their functions as local planning authority and local housing authority.

2.9 The headings are for reference only and shall not affect construction

3. DEFINITIONS

It is hereby agreed between the parties set out in this Agreement that the following expressions have the following meanings:

"Act"	means the Town and Country Planning Act 1990 as amended;
"Affordable Housing"	means affordable housing comprising Affordable Rented Housing Units and or Shared Ownership Units (or such other forms of intermediate tenure as are defined as affordable housing under the National Planning Policy Framework as that definition may be amended from time to time) provided to eligible households whose needs are not met by the market and which should meet the needs of eligible households, including availability at a cost low enough for them to afford, determined with regard to local incomes and local house prices and shall include provision for the home to remain at an affordable price for future eligible households or if these restrictions are lifted for the subsidy to be recycled for alternative affordable housing provision;
"Affordable Housing Tenure Mix"	means 70% Affordable Rented Housing Units and 30% Shared Ownership Units in such a mix as shall be approved as part of the Affordable Housing Scheme and Timetable or such other mix as shall have been approved in writing by the Council (such approval not to be unreasonably withheld or delayed);

"Affordable Rented Housing Units"	means rented housing let by the Registered Provider to eligible households at rent which is no more than 80% (including service charges) of the local gross market rent;
"All Requisite Consents"	means all requisite consents orders agreements authorisations licences and permissions required to implement the Highways Works Scheme;
"Application"	means the application number DC/19/2015 for outline planning permission with all matters reserved except for access for the erection of up to 62 residential units and the creation of a new vehicular access;
"Affordable Housing Scheme and Timetable"	means a scheme to be submitted by the Owner and approved by the Council which will include the timing and level of provision of Affordable Housing at 35% of the total number of Dwellings within the Development to be provided in accordance with the Tenure and Mix of Dwellings;
"BCIS Index"	means the All-In Tender Price Index published by the Building Cost Information Service Index of the Royal Institution of Chartered Surveyors or (if such index is at the relevant time no longer published) such other comparable index or basis for indexation as the County Council may specify;
"Certificate of Practical Completion"	means a certificate of practical completion issued by the Council confirming that all works to which the certificate relates are practically complete in accordance with the relevant specification as required;
"Commencement of Development"	means the carrying out of a material operation as defined in Section 56(4) of the Act in respect of the Proposed Development but excluding (for the purposes of this Agreement and for no other purpose) any operation relating to works of investigations in respect of land contamination or remedial action in respect thereof enabling works, demolition, site clearance, works, earthworks, archaeological investigations and digs, exploratory boreholes operations permitted by the Town and Country Planning (General Permitted Development) Order 2015, the erection of hoardings and fencing, temporary diversion of services and signage (including the formation of temporary construction accesses) and "Commence Development" shall be construed accordingly;
"Commencement Date"	means the date on which the Commencement of the Development occurs;
"Commencement Notice"	means the written notice confirming the Commencement Date referred to in Clause 7.1.1 and served in accordance with Clause 7.3;

"Completed"	means (1) In relation to the transfer of the Site or parts of the Site by the Owner the completion of the registration of the name of the successor in title as the registered proprietor of the land at the land registry (2) in relation to a Housing Unit: practically complete save for minor snagging items such that it is reasonably fit for occupation or use (and Completion shall not be achieved unless all the services to and from the Housing Unit are connected and operating and it is accessible by both vehicles and pedestrians and they are ready for occupation) and the words "**Completion**" and "**Complete**" shall be construed accordingly;
"Development"	means the development of the Site pursuant to the Planning Permission
"District"	means the administrative area of the Council;
"Dwelling"	means a residential dwelling forming part of the Development and "Dwellings" shall be construed accordingly;
"Help to Buy Agent"	means the organisation appointed by Homes England to administer low cost home ownership products in each region of England and for the purposes of this Agreement means Bpha Limited Head Office Bedford Heights Manton Lane Bedford MK41 or any other agent from time to time appointed under the Help to Buy Agent Initiative;
"Help to Buy Scheme"	means a scheme under which a Help to Buy Agent (or any third party to be determined from time to time by Homes England) retains the nomination rights for the Shared Ownership Units;
"Help to Buy Agent Initiative"	means the organisations appointed by Homes England to assume administrative responsibilities for all low cost home ownership products in England;
"Highways Act"	means the Highways Act 1980;
"Highways Agreement"	means an agreement pursuant to Section 38 and/or Section 278 of the Highways Act or any other provision of law deemed appropriate providing for the carrying out of the Highway Works;

"Highway Works"	means the provision of new pedestrian dropped kerb tactile paving points at Bannister Gardens, Denshire Drive, Kingsland Close and Kingsfield and across Fryern Road (south of junction with Wantley Lane) which will enable pedestrians to cross Fryern Road and then either travel north or south as shown on Plan 2 and to be provided in accordance with the Highway Works Scheme
"Highway Works Scheme"	means a scheme in respect of the Highway Works delivered in accordance with Schedule 4 of this Agreement;
"Housing Register and Nominations Policy"	means the Council's Housing Register and Nominations Policy https://beta.horsham.gov.uk/__data/assets/pdf_file/0005/58586/L19_HB01-Nominations-Policy-May-2019.pdf or other document which may replace it;
"Housing Unit"	means a Residential Unit;
"Index Linked"	means as set out in clause 8;
"Interest"	means interest at the rate of 4% above the Bank of England base rate applicable at the Specified Date which shall be calculated on a day to day basis;
"LAP"	means the local area (s) of play within the Development to be approved by the Council pursuant to the Reserved Matter Approvals;
"Landscaping"	means the areas of landscaping indicated on Plan 3, details of which will be submitted pursuant to the Reserved Matters Approvals
Management Company	means a limited company or company limited by guarantee (or companies) established by the Owner to carry out the long term management and maintenance of the Managed Land (but excluding any areas which have been or are to be adopted by the relevant highways or drainage authorities pursuant to an adoption agreement) to be managed by it in accordance with the provisions of this Deed and the Management Plan and (a) whose objectives shall include (i) setting the level of charges for funding the running of the Management Company and collecting such charges (ii) ensuring that the level of any charges levied against any Affordable Rent Housing Units or Shared Ownership Units shall not materially affect the

	ability of these Housing Units to remain as Affordable Housing but this will not prevent charges being levied at all, nor a full charge being levied if the Affordable Rent Housing Units or Shared Ownership Units cease to be Affordable Housing Units (iii) ensuring accountability to Occupiers of the Housing Units or Commercial and Community and Employment Units (b) whose constitution will facilitate (i) the Owner retaining control of the Management Company until such time it relinquishes that control to the shareholders and (ii) and this includes any/all subsequent body/bodies that take on this responsibility;
"Management Company Structure Scheme"	means a scheme that addresses the following in relation to the Management Company (a) details of the proposed constitution of the Management Company which shall be a private company limited by shares or guarantee (b) proposed banking arrangements for the Management Company (c) details of and arrangements for maintenance of such insurances as shall be appropriate in respect of the use of any Managed Land managed by the Management Company and against damage by those comprehensive risks as are reasonable to insure against in the circumstances then prevailing (d) details of the mechanism together with suitable documentation to enable the transfer of ownership and responsibility for the Managed Land from the Management Company to the Council or its Nominee if the circumstances require on terms to be agreed (including details

	of how and when such transfer and step-in mechanism shall be triggered, settlement of outstanding management costs prior to transfer and liability for legal costs/expenses associated with the transfer);
"Managed Land"	means the LAP, and Open Amenity Space and Other Managed Land which is provided for the Development and which will be managed by the Management Company in accordance with Schedules 7 and 8 to this deed and the Management Plans (but excluding any areas which have been or are to be adopted by the relevant highway or drainage authorities pursuant to an adoption agreement);
"Management Plan"	means a detailed written scheme prepared by the Owner for the on-going maintenance of the Managed Land which shall include the following: (a) a plan showing the boundaries of the Managed Land (such plan may be amended from time to time as the boundaries of the Managed Land change) (b) demonstrate full integration of landscape, biodiversity and arboriculture considerations (c) confirmation of the approximate location and details of any apparatus to be vested in or adopted by statutory undertakers or the drainage or highway authorities (d) frequency of maintenance (e) measures to replace any trees shrubs or turf which may die or become diseased following implementation of the Residential Management Plan (f) standard of maintenance and repair to be achieved and maintained (g) how the costs of the maintenance shall be funded and this shall include a mechanism for recovery of maintenance costs of the Managed Land (h) details of the proposed Management Company (i) the person who shall be the point of contact for anyone wishing to raise issues regarding the management or maintenance of the Managed Land

	(j) the mechanisms which shall be put in place to ensure that the details of the point of contact are publicised to residents of the Residential Units, Occupiers of the Flexible Commercial and Community Units and the Employment Units and members of the public entering the Managed Land and in the event of any change in the point of contact to notify the Council in writing within 7 days of the date of such change;
"Monitoring Fee"	means the fee which the Council charges by virtue of its powers under S111 of the Local Government Act 1972 and S1 of the Localism Act 2011;
"Nominations Agreement"	means the Council's nomination agreement in the form (or substantially in the form) attached at Schedule 3 to be entered into between the Council and the Affordable Housing Provider to provide the Council with nomination rights in respect of the Affordable Rented for the life of the Development in perpetuity;
"Occupation"	means occupation for any purpose for which the Planning Permission has been granted by the Council other than occupation for the purposes of construction or fitting out or occupation for security, marketing or display and "Occupy" and "Occupied" shall be construed accordingly;
"Occupation Date"	means the date on which the first Dwelling is Occupied;
"Occupation Notice"	means the written notice confirming the Occupation Date referred to in Clause 7.1.2 and served in accordance with Clause 7.3;
"Open Market Unit"	means all those Dwellings to be constructed on the Site and "Open Market Units" shall be construed accordingly;
Open Amenity Space	means existing and proposed areas of green space, retained trees and public shared space shown on Plan 3 to be provided or maintained as part of the Development as determined by the Reserved Matters Approvals
"Other Managed Land"	means land including Estate Roads including lighting, chattels and other street furniture which is provided for the Development and which will be managed by the Management Company in accordance with Schedules 7 and 8 to this deed and the Management Plans (but excluding any areas which have been or are to be adopted by the relevant highway or drainage authorities pursuant to an adoption agreement);

"Phase"	means a phase of the Development detailed in the phasing Plan and the term "Phases" is to be construed accordingly to mean one or more phases as the context may require;
"Phasing Plan"	means a plan showing the phasing of the Development to be submitted and approved by the Council to include the details and timetable of each phase or such variation as approved by the Council;
"Planning Permission"	means the planning permission to be granted by the Council pursuant to the Application;
"Plans"	means Plans 1, 2 and 3 attached to this Deed at Schedule 1
"Plan 1"	means the Site plan attached to this Agreement;
"Plan 2"	means the plan attached this Agreement showing the Highway Works
"Plan 3 "	means the plan attached to this Agreement showing the Landscaping, Open Amenity Space and LAP
"Registered Provider"	means a registered provider as defined by the Housing and Regeneration Act 2008 and/or registered by Homes England and/or a non-profit making body which is registered with Homes England and/or any other body which is authorised by Homes England to own and manage Affordable Housing;
"Reserved Matters Applications"	means the application/s for Reserved Matters Approval made to the District Council in respect of each of the Reserved Matters pursuant to the Planning Permission;
"Reserved Matters Approvals"	means a reserved matters approval granted by the Council pursuant to a Reserved Matters Application (s) pursuant to the Planning Permission;
"Residential Units"	means the Affordable Housing Units and the Open Market Units;
"Section 73 Consent"	means a planning permission granted pursuant to Section 73 of the Act which varies and /or removes any condition subject to which the Planning Permission and/or such planning permission pursuant to Section 73 of the Act was granted;
"Shared Ownership Unit"	means an Affordable Housing Unit in respect of which a lease is granted at a premium representing a percentage of the Open Market Value of that Dwelling and subject to a rent payable in respect of the retained equity percentage and whether or not the lessee has the right to pay a further premium in respect of a further percentage of purchase price and/or to

	acquire a leasehold or freehold reversion to the lease and complying with Homes England guidelines;
"Site"	means the land shown for identification purposes only edged red on Plan 1;
"Specified Date"	means the date upon which an obligation arising under this Agreement is due to be performed;
"Unit"	means a unit of Residential Occupation;

4. **ENABLING PROVISIONS**

This Agreement is made pursuant to section 106 of the Act, section 111 of the Local Government Act 1972, and Section 1 of the Localism Act 2011 and all other enabling powers

5. **CONDITIONS PRECEDENT**

5.1 This Agreement shall come into effect upon the date hereof but the provisions in the Schedules shall only take effect upon:

5.1.1 the granting of Planning Permission; and

5.1.2 the Commencement of Development

6. **COVENANTS**

6.1 The Owner covenants with the Council and the County Council to fully comply with and to perform the obligations contained herein and in the Schedules of this Agreement in accordance with the requirements and timescales contained therein.

6.2 The Owner covenants with the Council and the County Council that the Development and use of the Site shall be in strict accordance with this Agreement

7. **NOTICES**

7.1 The Owner covenants with the Council and the County Council as follows:

7.1.1 to give the Commencement Notice to the Council and the County Council not less than 14 days before the anticipated Commencement Date

7.1.2 to give the Occupation Notice to the Council and the County Council not less than 14 days before the anticipated Occupation Date

7.2 The parties to this Agreement agree that if the Owner fails to give the notice required by Clause 7.1.1 and Clause 7.1.2 above then the Council and the County Council shall be entitled in its absolute discretion to determine the Commencement Date and shall give notice to the Owner of the Council and the County Council's determination

7.3 Any notice certificate or other communication required or permitted to be given hereunder shall be given in writing to the relevant party at the relevant address referred to above or such other address as may be notified in writing to the other party and must be served personally or by registered or recorded delivery post and

7.3.1 in the case of the Council the Owner shall address any notice to the Head of Legal and Democratic Services of the Council

7.3.2 in the case of the County Council the Owner shall address any notice to the Monitoring and Records Team, Strategic Planning Division, County Hall, West Street, Chichester, West Sussex, PO19 1RQ quoting the planning application number

7.4 Any notice certificate or other communication sent by post shall be deemed (in the absence of evidence of receipt) to have been delivered two days after despatch and in proving the fact of despatch it shall be sufficient to show that the envelope was properly addressed and posted

7.5 Any notice certificate or other communication delivered personally shall be deemed to have been delivered on the day of its despatch if despatched during or prior to normal business hours but otherwise on the next business day thereafter

8. **INTEREST**

The Owner undertakes to the Council and the County Council to pay the Interest on sums due to the Council and the County Council under this Agreement but not paid on the Specified Date from the Specified Date until actual payment

9. **COSTS**

The Owner undertakes to the Council

9.1 to pay to the Council on or before the date hereof:

9.1.1 the Council's reasonable legal costs incurred in preparing and entering into this Agreement of **£3000.00**

9.1.2 the Planning Officer Costs of **£2500.00**

The Owner undertakes to the County Council

9.2 to pay to the County Council on or before the date hereof the County Council's reasonable legal costs incurred in negotiating and entering into this Agreement

10. **Monitoring Fee**

10.1 The Owner undertakes with the Council to pay on completion of this Agreement the Monitoring Fee of £1200.

11. **GENERAL**

The parties undertake that:

11.1 to the extent that they fall within the terms of s106 of the Act the obligations contained in Clause 6 and the Schedules hereof are planning obligations for the purposes of s106 of the Act

11.2 this Agreement constitutes a Deed

11.3 this Agreement is enforceable by the Council and the County Council

11.4 nothing in this Agreement confers or is intended to confer a benefit on a third party under the Contracts (Rights of Third Parties) Act 1999

11.5 It is hereby agreed by the Owner that failure by the Council and/or County Council at any time to enforce the provisions of this Agreement or to require performance strictly or otherwise by the Owner of any of the conditions covenants agreements or obligations of this Agreement or any failure or delay by the Council and/or County Council to exercise any act right or remedy shall not be construed as a waiver of or as creating an estoppel in connection with any such condition covenant Agreement or obligation and shall not affect the validity of this Agreement or any part thereof or the right of the Council and the County Council to enforce any provision and any variation of this Agreement shall not vitiate the remainder of the Agreement which shall remain in full force and effect subject to such amendment or amendments

11.6 The Owner hereby undertakes that

(a) this Agreement supersedes and replaces all previous negotiations whether oral or written and

(b) the Owner has not relied on any express or implied statement warranty representation or undertaking given by or on behalf of the other

(c) nothing herein contained excludes the liability of any of the Owner in relation to fraud

11.7 The Owner hereby consents to the registration of this Agreement as a Local Land Charge

11.8 The Owner hereby gives consent for the Plan to be reproduced by the Council

11.9 If any provision in this Agreement shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired

11.10 Reference to any statute or statutory provisions includes a reference to:-

11.10.1 that statute or statutory provision as from time to time amended extended re-enacted consolidated or replaced; and

11.10.2 all statutory instruments or orders made pursuant to it whether before or after the date of this Agreement.

11.11 This Agreement shall be governed by and interpreted in accordance with Laws of England and the Owner submits to the exclusive jurisdiction of the Courts of England

11.12 The obligations in this Agreement (with the exception of Clause 10) shall cease to have effect (insofar only as it has not already been complied with) if before the Commencement of Development the Planning Permission:

(a) expires;

(b) is varied or revoked other than at the request of the Owner; or

(c) is quashed following a successful legal challenge

but will remain in full force and effect so far as any subsisting Section 73 Consent is concerned

11.13 The obligations in this Agreement (with the exception of Clause 10) shall cease to have effect (insofar only as it has not already been complied with) in so far only as the relevant Section 73 Consent is concerned if before the Commencement of Development the relevant Section 73 Consent:

(a) expires;

(b) is varied or revoked other than at the request of the Owner or

(c) is quashed following a successful legal challenge

but will remain in full force and effect so far as the Planning Permission and any other subsisting Section 73 Consent is concerned

11.14 the Owner (or any person deriving title to the Site from them) shall not be liable for any breach of the restrictions and obligations set out in this Agreement where such breach arises after the Owner has parted with its entire interest in the Site or such part of the Site to which such breach relates save in respect of liability for antecedent breach of this Agreement

11.15 The obligations in this Agreement shall not be enforceable:

(a) against individual lessees or purchasers and their successors in title occupying or entitled to occupy dwellings within the development; or their mortgagees or chargees or

(b) against any statutory undertaker whose apparatus may be situated within the Site or

(c) against any mortgagee or chargee (or any receiver or manager (including an administrative receiver or any other administrator howsoever appointed) including a housing administrator 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)

11.16 Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 applies to the covenants in this agreement

11.17 references to the Site include any part of it

11.18 "including" means "including without limitation"

11.19 any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing

11.20 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with any planning permission (other than the Planning Permission or any modification variation or amendment thereof) granted after the date of the Planning Permission

11.21 Subject to the proviso to this Clause if any Section 73 Consent is granted after the date of this Agreement:

(a) the obligations in this Agreement shall relate to and bind such Section73 Consent; and

(b) the definitions of Application, Development and Planning Permission (other than for the purposes of Clause1) shall be construed to include reference to (respectively) the planning application for the Section 73 Consent the development permitted by the Section 73 Consent and the Section 73 Consent itself

PROVIDED THAT:

(a) nothing in this Clause shall fetter the discretion of the Council in determining any planning application for a Section 73 Consent and the appropriate planning obligations required in connection with the determination of the same;

(b) to the extent that any of the obligations in this Agreement have already been discharged at the date that a Section 73 Consent is granted they shall remain discharged for the purposes of the Section 73 Consent;

12. **DISPUTE RESOLUTION**

12.1 Should a dispute or difference arise between the Owner and the Council and the County Council concerning anything herein then the provisions of this Clause 13 shall apply

12.2 All differences and disputes which may arise between the parties hereto concerning this Agreement shall:

(a) where the difference or dispute relates to the construction or interpretation of this Agreement be referred to the determination (as an expert and not as an arbitrator) of an independent leading conveyancing/planning counsel agreed upon by the parties in dispute but in default of such agreement appointed by the President of the Law Society of England and Wales on the application of any of the parties in dispute;

(b) where the difference or dispute relates to the carrying out of works or construction be referred to the determination (as expert and not as an arbitrator) of an independent Chartered Surveyor or Civil Engineer as appropriate being a partner or director practising in a leading firm of surveyors or civil engineers based in the South East of England or London and experienced in the matter in dispute agreed upon by the parties in dispute but in default of that agreement appointed by the President of the Royal Institution of Chartered Surveyors or the Institution of Civil Engineers as appropriate on the application of any of the parties in dispute PROVIDED that where a contract for the relevant works has

been let and provides that the dispute or difference under it shall be referred to arbitration or the court any such dispute or difference which may arise between the parties in connection with those works shall be determined likewise

12.3 If the parties in dispute shall fail to agree on the nature of the difference or dispute between them then any of them may apply to the President of the Law Society to appoint an independent solicitor being a partner in a leading firm of solicitors practising in the South East of England or London to decide (as expert and not as arbitrator) in relation to any such matter which of Clauses 12.2(a) or 12.2(b) hereto is applicable

12.4 Except as aforesaid any expert appointed pursuant to Clauses 12.2(a) or 12.2(b) or any other person shall:

(a) on his appointment serve written notice thereof on the parties in dispute;

(b) consider any written representations by or on behalf of those parties which are received by him within twenty working days of such service and immediately forward a copy of the written representation of one party to the other party;

(f) allow both parties to the dispute an opportunity of commenting in writing on the other party's representations within twenty working days of receipt by the other party thereof;

(g) have an unfettered discretion to determine the reference to him;

(h) serve notice of his determination as soon as he has made it;

(i) give full and clear reasons for his decision;

(j) be paid his proper fee and expenses in connection with such reference by the parties in dispute in equal shares or in such shares as he may determine and his determination shall be final and binding on the parties in dispute (save in the case of manifest error) PROVIDED THAT if any such expert shall die become insolvent or of unsound mind or if either of the parties in dispute shall serve on him written notice in their opinion he has unreasonably delayed making his determination he shall be ipso facto discharged and be entitled only to his reasonable expenses prior to such discharge and another person shall be appointed in his place as such expert

12.5 The provisions of this clause shall not affect the ability of the Council and the County Council to apply for and be granted any of the following: declaratory relief, injunction, and specific performance, payment of any sum, damages, and any other means of enforcing this Agreement and consequential and interim orders and relief.

13 CHANGE IN OWNERSHIP

The Owner undertakes to the Council and the County Council to give the Council and the County Council immediate written notice of any change in Ownership of any of its interests in the Site occurring before all the obligations under this Agreement have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan

Schedule 1

PLANS

A1
ORIGINAL
PLOT SIZE

Bannister Gardens

Denshire Drive

Kingsland Close

[redacted]

[redacted]

Kingsfield

Fryern Road

ESS

St Nicholas

Southdown

Cottage

Woodspean

The Croft

Nilgirs

Woodmyst

Warren Oaks

Summer Wood

Woodlands

The Knoll

Sprays Hill

The Hollies

1 to 4

INDICATIVE

RECEIVED
26/02/2020

[redacted]

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NOTES:
1.

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OX4 6LB
01865 910 237
www.tpa.uk.com

CLIENT:
WELBECK STRATEGIC LAND II LLP

PROJECT:
LAND NORTH OF DOWNSVIEW AVENUE, STORRINGTON

TITLE:
DOWNSVIEW AVENUE POSSIBLE PEDESTRAIN ROUTE IMPROVEMENTS

STATUS:
FOR S106

SCALE:	DATE:	DRAWN:	CHECKED:	APPROVED:
NTS / 1:100	14/02/20	TW	DEF	DEF

JOB NO:	DRAWING NO:	REVISION:
1710-94	SK09	

[redacted]

Existing Public Footpath (PRoW) no.2448

Native Species Tree

Native Mixed Species Shrub Planting to the Northern boundary hedgerow would increase connectivity across the site and provide further habitat for the Dormouse species, as well as other small mammals using the site

Native Mixed Species Hedge and Shrub Planting to the Proposed Pumping Station would include berry producing plants to enhance habitat oportunity for Dormouse

Open Space to include Play Area with equipment; Communal Garden Orchard; Gravel Garden with Swales and Wildflower Meadow with Mown Paths

Fruit Trees Orchard Planting

Native Mixed Species buffer planting to Badger Sett Exclusion Zone to include thorny and berry producing shrubs with woodland wildflower seeded grassland. The planting would also enhance habitat potential for Dormice population

Evergreen Hedge Planting to the Frontages would offer planting structure and visual interest

Pumping Station

Open Space

Permeable Block Paving to Vehicular Areas to be Textured Concrete Blocks: Colours: Light Grey (Proposed Raised Tables and Car Park Bays) and Grey (Access Roads)

Native Mixed Species Shrub supplementary planting with stock fence to existing western boundary

Raised Table to be Permeable Block Paving

Ornamental Tree Planting would enhance the Streetscape and provide seasonal interest

Existing Trees to be retained and protected in accordance with *BS 5837; 2012; 'Trees in Relation to Design, Demolition, and Construction - Recommendations'.*

Existing Woodland Belt to be retained and protected in accordance with *BS 5837; 2012; 'Trees in Relation to Design, Demolition, and Construction - Recommendations'.*

Grass Verge to either side of access road

Raised Table to be Permeable Block Paving

Native Tree Line with Wildflower Grass Strip to the Public Footpath (PRoW) would provide visual interest and filter the views toward the proposed development

Ornamental Planting to Frontages would provide visual interest, enhance biodiversity and habitat potential

Raised Table to be Permeable Block Paving

Ornamental Planting to the House Frontages

Natural Hoggin Surface Treatment with Timber Edging to the Public Footpath (PRoW)

Permeable Block Paving to visitor's parking bays

Bird, Bat and Dormouse boxes are to be established on trees under direction of an ecologist

Feature Paving to dwelling unit entrance

Feature Native Tree Planting to the Site Entrance

Pedestrian and Vehicular access

DOWNSVIEW AVENUE

Native Tree Line with Native Mixed Species Understory Shrub and shade tolerant meadow grassland strip would improve ecological connectivity and enhanced habitat for Dormouse and other mammals

Existing TPO Trees to be retained and protected in accordance with *BS 5837; 2012; 'Trees in Relation to Design, Demolition, and Construction - Recommendations'.*

PULLA HILL DRIVE

RPA Min. 9.5m

RPA Min. 10.5m

Legend

Existing Trees
Existing trees to be retained and protected on site in accordance with BS 5837:2012 - 'Trees in Relation to Design, Demolition and Construction - Recommendations'.

Native Species Tree Planting
Native Species Tree Planting to be 14-16cm girth size; 4.0-4.5m height; Extra Heavy Standard Nursery Stock.

Ornamental Species Tree Planting
Ornamental Species Tree Planting to be 14-16cm girth size; 4.0-4.5m height; Extra Heavy Standard Nursery Stock.

Ornamental Fruit Tree Planting
Ornamental Fruit Tree Planting to be 14-16cm girth size; 4.0-4.5m height; Extra Heavy Standard Nursery Stock.

Native Mixed Species Hedge Planting
Native Mixed Species Hedge Planting to be bare-root stock; 20-30cm and 90-120cm height.

Evergreen Species Hedge Planting
Evergreen Species Hedge Planting to be bare-root stock; 60-80cm height.

Native Understory Shrub Planting
Native Mixed-species Understory Shrub Planting to be bare-root stock; 60-80cm height and provide a variety of food sources for Dormice and other mammals and birds throughout the year.

Feature Planting Areas
Feature planting areas of flowering shrub, accent planting and groundcover.

Amenity Grass Areas
Amenity Grass Areas to be Turfed with Shade Tolerant Hard Wearing Turf.

Native Wildflower Grassland Areas
Native Wildflower Grassland Areas to be seeded with *Emorsgate EW1-Woodland Mixture.*

Hoggin Surface Treatment .
Hoggin Surface Treatment to Public Footpath (PRoW) to be edged with Timber Edging Boards.

Grass Verge.
Grass Verge on either side of access road.

Feature Paving to Dwelling Unit Entrance.
Feature paving to be Textured Flag Paving; Colour; Buff.

Permeable Block Paving roads.
Permeable block paving to be Textured concrete blocks; Colours: Light Grey (Proposed Raised Tables) and Grey (Access Roads).

Permeable Block Paving to Visitor's Parking Bays.
Permeable block paving to be Textured concrete blocks; Colour: Buff.

1.8m Height Timber Fencing to Private Gardens
Timber Fencing to be 1.8m height Closeboard Fencing or equal and approved.

Refer to:
- *LLD1167-LAN-REP-001 - Landscape Design Strategy*
- *LLD1167-LPL-REP-002 - Landscape and Visual Impact Assessment;*
- *LLD1167-ARB-DWG-001 - Tree Constraints Plan;*
- *LLD1167-ARB-SCH-001 - Existing Tree Schedule and Schedule of Tree Works;*
- *LLD1167-ARB-DWG-002 - Tree Retention and Protection Plan; Vegetation Clearance;*
- *LLD1167-ARB-DWG-003 - Tree Retention and Protection Plan; Construction Phase;*
- *LLD1167-ARB-REP-001 - Arboricultural Impact Assessment and Method Statement.*

[redacted]

Rev	Description	Date	Drawn
06	Planning Issue	22.11.19	TT

LIZARD
Landscape Design and Ecology
The Old Bank, 64 North Street, Lewes, Sussex, BN7 2PE
T: 01273 814044 E: hello@lizard-landscapes.co.uk W: lizard-landscapes.co.uk

Project Title
Land at Downsview Avenue
Storrington, Horsham, West Sussex

Drawing Title
Landscape Masterplan

Scale	Drawn	Approved	Date
1:250@A0	ML	TT	07/2019

Drawing No. LLD1167-LAN-DWG-010-LM
Revision 06

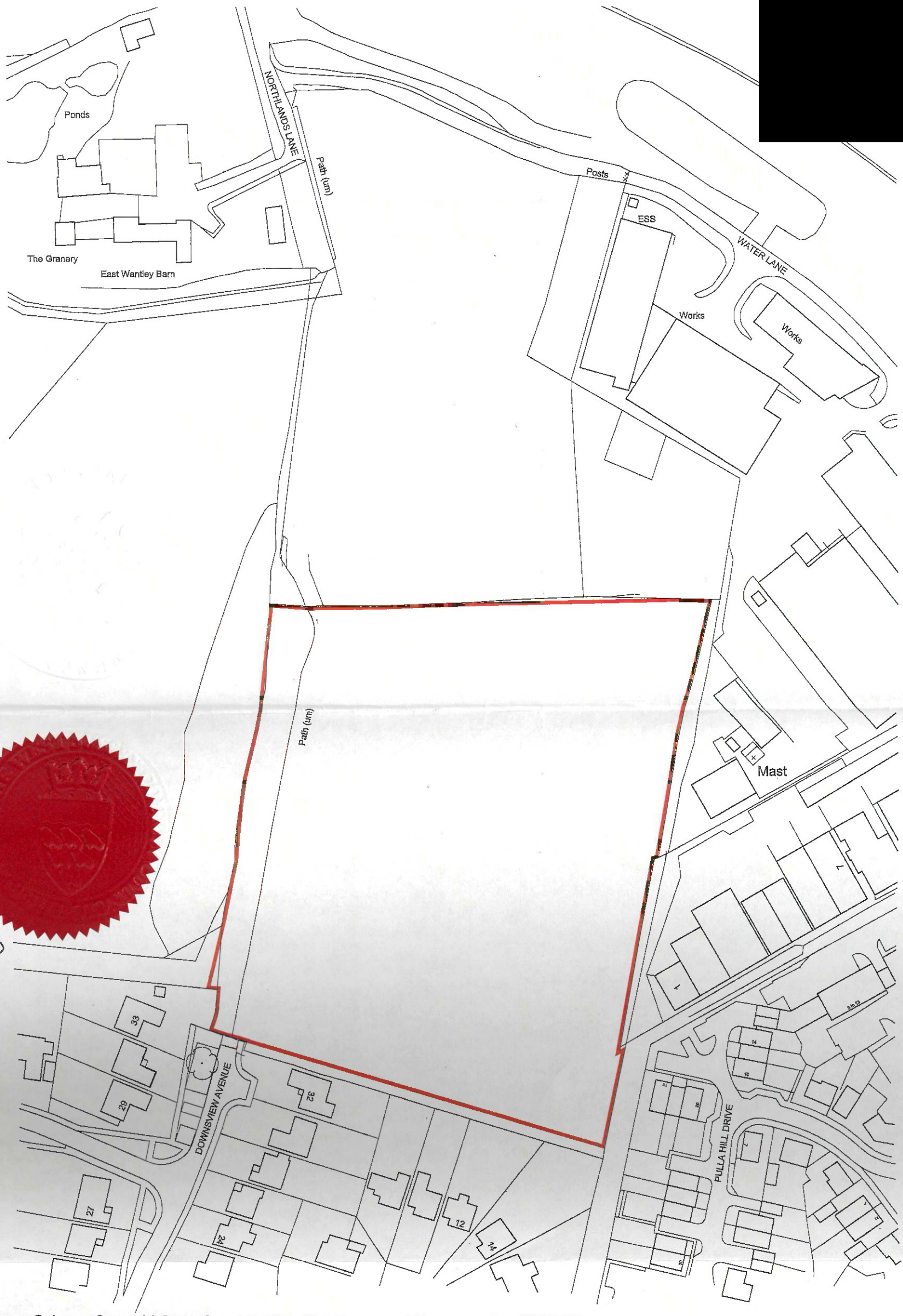
26/2/2020

Land at Downsview Avenue, Storrington, Horsham, West Sussex — Landscape Masterplan

CDM 2015 Health & Safety Information:

This information relates only to 'Significant Hazards' identified on this drawing and is to be read in conjunction with the Designer's Risk Assessment Register.

[redacted]



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Client's Name: Welbeck Strategic Land II LLP	Drawing Title: Location Plan	Drawn: KE / Checked: AK / Date: 24.04.19	
Job Title: Land to the North of Downsview Avenue, Storrington	Scale: 1:1250 @ A3 (metres 10 20 30 40 50)	Job No: 6494 / Drawing No: 02 / Rev: A	Status: INFORMATION

A 24.04.19 Red Line updated to match title deed KE AK

Rev Date Revision Details Dr Ch

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CAD Plot date: 27/05/2019 - 11:41:55 6494-sits.dwg

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Schedule 2

AFFORDABLE HOUSING

The Owner hereby covenants and agrees with the Council:

1. not to Commence Development unless and until, with the first Reserved Matters Application for approval of details of the layout of part or all of the Residential Units, including any phases of the Development, the Owner has submitted and the Council has approved in writing the Affordable Housing Scheme and Timetable which shall include provision that
   1.1 the total number of Affordable Housing Units to be constructed on the Site shall comprise up to 35% of the total Residential Units including 70% Affordable Rented and 30% Shared Ownership Units
   1.2 that all the Affordable Housing Units provided shall comply with the Affordable Housing size mix and the remaining Affordable Housing Units shall comply with the Affordable Housing Tenure Mix as shall be approved by the Council (or such other similar size or tenure mix as may be approved by the Council) and
   1.3 the Council has approved such Scheme and any accompanying plans and details in writing.
2. that the Development shall be carried out in accordance with the Affordable Housing Scheme and Timetable subject to any amendments approved in writing by the Council from time to time
3. not to Occupy more than 25% of the Open Market Units on any Phase of the Development unless and until EITHER the land upon which the Affordable Housing Units are to be constructed is the subject of a binding contract that provides for its disposal in that phase from the Owner to a Registered Provider together with a contract for the construction of the Affordable Housing Units OR the Affordable Housing Units are the subject of a binding contract for transfer from the Owner to a Registered Provider in a clean condition and fully serviced unless otherwise agreed in writing by the Council.
4. to provide within the Development the Affordable Housing Units in accordance with the approved Affordable Housing Tenure Mix designed and constructed in accordance with appropriate sustainable development policies or design and quality standards and are applied by Homes England in respect of the relevant type and tenure of Affordable Housing Units at the time of Commencement of Development of the Residential Units

5. to provide a vehicular and pedestrian access and connections to adequate foul and surface water sewers and water gas electricity and telecommunication service systems to the Affordable Housing Units linking in each case to the estate roads sewers and service systems to be constructed and laid as part of the remainder of the Development and connected to highways and sewers maintainable at the public expense

6. to use reasonable endeavours to reach an agreement with a Registered Provider or providers regarding the Disposal of the Affordable Housing Units in a Phase (and in the case of those that are houses any related Affordable Housing land they are situated upon including any relevant garden land) prior to the Commencement of Development of the Residential Units in a Phase and to notify the Council of any such agreement entered into or the failure to reach agreement and the reasons for this

7. if no agreement has been reached at the expiration of such period of 6 (six) months from the date the Owner first approaches the Registered Provider pursuant to paragraph 3 to serve notice upon the Council confirming that no agreement has been entered into and the reasons for this and the Council shall be entitled to nominate a Registered Provider or providers for the purpose within three months of the receipt of notification under paragraph 3 .

8. upon reaching agreement with any Registered Provider or providers (whether pursuant to paragraph 3 or paragraph 7) above to use reasonable endeavours to transfer the relevant Affordable Housing Units and any relevant Affordable Housing land ready for Occupation to said Registered Provider or providers as soon as reasonably practicable and substantially in the form of the terms of the said agreement

9. not to Occupy or cause or allow the Occupation of more than 75 per cent of Open Market Units erected or to be erected on the Site as part of the Development before the construction Completion and transfer of the Affordable Housing Units ready for Occupation to a Registered Provider shall have been completed in accordance with this paragraph 9 and written evidence of such completion delivered to the Council

10. within any transfer of any Affordable Housing Units to the Registered Provider or other body agreed or determined in accordance with paragraph 3 and 7

10.1 in respect of the Affordable Rented Units to require or procure the execution by the Registered Provider and delivery to the Council of a deed of nomination substantially (but subject to such amendments as may be agreed between the Registered Provider and the Council) in the form set out in Schedule 3

10.2 in respect of the Shared Ownership Units or any alternative form of shared equity units

10.3 where a Help to Buy Scheme is in place within 14 days of such transfer to procure that the Registered Provider gives notice in writing to the Help to Buy Agent of such transfer

11. to take all reasonable and prudent steps to avert the repossession of any Affordable Housing Unit by any chargee or mortgagee or the exercise by any chargee or mortgagee of a power of sale and for these purposes in the event of default under the charge or security or likely default to co-operate fully with the Council and Homes England to attempt to arrange a transfer of the Affordable Housing Unit with sitting tenants to another Registered Provider or (at the Council's option) to the Council and in particular shall inform the Council immediately in the event of the receipt of notification from such chargee or mortgagee of any breach or alleged breach of any of the obligations under the security

12. that in the event of a default under any security referred to in paragraph 11 or in other circumstances warranting the intervention of Homes England (whether or not under the Housing and Regeneration Act 2008) nothing in this schedule shall prevent the disposal of any Affordable Housing Unit to another Registered Provider

13. the Affordable Housing provisions in this Schedule 2 shall not be binding on a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver) of the whole

of any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

(a) such mortgage or chargee or Receiver shall first give written notice to the Council of its intention to D

(b) dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Units to another registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and

(c) if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Units free from the Affordable Housing obligations in this Agreement which provisions shall determine absolutely.

14 without prejudice to the provisions of paragraphs 1 - 13 to notify the Council immediately in the event of service of any notice order or direction served made or given under s144, s220, s266 of the Housing and Regeneration Act 2008

15 in the event that the Registered Provider or other body agreed or determined in accordance with Paragraph 3 and 4 fails to complete the transfer of the Affordable Housing Units by no later than the first occupation of the first Open Market Unit to be Occupied or if the Council fails to nominate a Registered Provider before the first Occupation of the first Open Market Unit to be Occupied the Owner shall be entitled to dispose of the Affordable Housing Units to a Registered Provider or providers of their choosing subject to the written approval of the Council(not to be unreasonably withheld or delayed) and the provisions of Paragraphs 7 to 17 inclusive shall apply to such Disposal

16 Not to dispose of or cause or allow the disposal of any Affordable Housing Unit other than:

(a) by way of an assured tenancy complying with the guidance given by Homes England (for the relevant type of rented unit) or by way of shared ownership lease or pursuant to such shared ownership, shared equity or newbuild homebuy arrangements as shall apply to the relevant Affordable Housing Unit or such other

form of occupancy agreement approved for use by a Registered Provider by Homes England; or

(b) by way of any statutory or contractual right to buy or the preserved right to buy/acquire under the Housing Associations Act 1985, the Housing Act 1996 or the Housing and Regeneration Act 2008 or otherwise by way of any statutory or contractual right to buy/acquire to the preserved right to buy/acquire under the Housing Association Act 1985, the Housing Act 1996 or the Housing and Regeneration Act 2008 or otherwise or any right to "staircase" to full freehold or leasehold ownership by the acquisition of additional equity in the Affordable Housing Unit;

(c) by way of Shared Ownership lease or under the Governments Home Buy Scheme (or under similar arrangements to the Government's Home Buy Scheme) or under discounted purchase arrangements approved by Homes England;

AND

(d) in the case of an Affordable Housing Unit to an individual residential purchaser tenant or occupant who (unless the Council shall acting reasonably otherwise agree in writing) satisfies the qualifications set out below namely that the person(s):

(i) is an individual or are individuals;

(ii) is considered in their reasonable opinion by the Council the Registered Provider in accordance with its rules or its allocations and lettings policies to be in need of the accommodation provided by the Affordable Housing Unit and in accordance with the Nomination Agreements referred to in paragraph 7 of this Schedule;

(iii) is not able easily to compete in the open market for equivalent housing accommodation in the administrative area of the Council;

(iv) before taking up occupation of the Affordable Housing Unit has not owned a freehold or a lease for a term exceeding 3 years within the previous 12 months (save that the condition shall not apply where the Council or the Registered Provider is satisfied that the circumstances of that person are such as to

put him in need of housing) and intends to occupy and subsequently occupies the Affordable Housing Unit as his/her only or principal home;

(v) Is an individual who meets the criteria in the Council's Housing Register and Nominations Policy

17 Subject to paragraph 13 above not to use or allow the Affordable Housing Units to be used for any purpose other than for Affordable Housing PROVIDED THAT this obligation shall cease to apply to and shall not be enforceable against any lessee or purchaser of an Affordable Housing Unit or their successors in title or their Mortgagee or its receiver/administrator where the lessee or purchaser acquires the relevant Affordable Housing Unit pursuant to any statutory right to buy or acquire or where the tenant of any Shared Ownership Unit (or their mortgagee) has staircased to 100% equity in the relevant Dwelling.

Schedule 3

FORM OF DEED OF NOMINATION

DATED 2020

[ ]

and

HORSHAM DISTRICT COUNCIL

DEED OF NOMINATION

for

[ ] Affordable Rent and Shared Ownership Units

at

West Sussex

Authority: Signed and Dated S106

Sharon Evans
Head of Legal and Democratic Services
Horsham Council
Parkside
Chart Way
Horsham
West Sussex
RH12 1RL
DX 57609 HORSHAM 6

Ref:

THIS DEED OF NOMINATION RIGHTS is made the day of 2020

BETWEEN:

(1) ("the REGISTERED PROVIDER") and

(2) **HORSHAM DISTRICT COUNCIL** of Parkside, Chart Way, Horsham West Sussex RH12 1RL ("the Council")

1. Definitions

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

1.1 **"Exempted Void"** means a Void which has occurred as a result of the Council transferring the previous tenant to more suitable accommodation to meet that tenant's needs

1.2 **"Homes England"** Means Homes England, an executive non-departmental public body, sponsored by the Ministry of Housing, Communities & Local Government or any bodies undertaking the existing functions of Homes England within the meaning of Part 1 of the Housing and Regeneration Act 2008 (or redefined by any amendment replacement or re-enactment of such Act

1.3 **"Homebuy Zone Agent"** means the organisation appointed by Homes England to administer low cost home ownership products in each region of England and for the purposes of this Undertaking means BPHA Limited, Bedford Heights, Manton Lane, Bedford, MK41 7BJ or any other agent from time to time appointed under Homes England Help to Buy Zone Agent Initiative

1.4 **"HomeBuy Zone Scheme"** means a scheme under which a Homebuy Zone Agent (or any third party to be determined from time to time by Homes England retains the nomination rights for the SO Units

1.5 **"Housing Register and Nominations Policy"** means the Council's Housing Register and NominationsPolicy:
https://beta.horsham.gov.uk/__data/assets/pdf_file/0005/58586/L19_HB01-Nominations-Policy-May-2019.pdf or other document which may replace it

1.6 **"Initial Let"** means the first tenancy or lease of a newly constructed and previously unoccupied Unit

1.7 **Nominee"** means a person who may be nominated by the Council to the Rented Units or the Shared Ownership Units SAVE THAT in respect of the Rented Unit the Nominee must be a Nominee as set out in 1) of the definition of Nominee and in respect of a Shared Ownership Unit as set out in 2) of the definition of Nominee and **"Nominees"** shall be construed accordingly

1.8 "Nominee" means:

(1) In respect of the Rented Units means a person who is in need of Affordable Housing who is not easily able to compete in the local housing market and

(i) is an individual or are individuals;

(ii) is considered in their reasonable opinion by the Council or the Registered Provider in accordance with its rules or its allocations and lettings policies to be in need of the accommodation provided by the Rented Unit;

(iii) is not able easily to compete in the open market for equivalent housing accommodation in the administrative area of the Council;

(iv) before taking up occupation of the Rented Unit has not owned a freehold or a lease for a term exceeding 3 years within the previous 12 months (save that the condition shall not apply where the Council or the Registered Provider is satisfied that the circumstances of that person are such as to put him in need of housing) and intends to occupy and subsequently occupies the Rented Unit as his/her only or principal home;

(v) is an individual who meets the criteria of the Council's Housing Register and Nominations Policy

(2) In respect of the Shared Ownership Units means a person who is in need of Affordable Housing and shall include eligible applicants of the Government's

Homebuy waiting list with a local connection to Horsham by either; permanent residency, employment or family living in the area

1.9 **"Planning Permission"** means the permission issued by the Council as local planning authority under reference: DC/19/2015

1.10 **"Registered Provider"** as defined in the Housing & Regeneration Act 2008

11 **"Rented Units"** means ( ) constructed upon the Site each of which is to be offered under a Tenancy Agreement

1.12 **"S106 Agreement"** means the agreement relating to the Site and dated ( ) and made between (1) (2) Horsham District Council and any subsequent supplemental agreements varying it thereafter

1.13 **"Shared Ownership Units"** means all those residential Units for shared ownership constructed or to be constructed at the Site for shared ownership as shown in Schedule 1

1.14 **"Site"** means the land upon which the Rented Units and the Shared Ownership Units are constructed ( ) shown edged red on the attached plan

1.15 **"Subsequent Nominee"** means a Nominee to be offered a Tenancy Agreement or Assignment pursuant to Clause 3.9

1.16 **"Tenancy Agreement"** means an assured Tenancy Agreement in a form prepared by the Registered Provider and containing terms which accord with the form of Tenancy Agreement being used by the Registered Provider from time to time for its general lettings or such other form of tenancy as the Registered Provider specifies (acting reasonably)

1.17 **"Units"** means any of the Rented Units and "Unit" will be construed accordingly

1.18 **"Vacancy Notice"** means a written notice given by the Registered Provider to the Council (in a form to be agreed between the Registered Provider and the Council within five weeks

from the date of this Deed) the function of such notice being the notification to the Council by the Registered Provider that the construction and fitting out of the Unit is completed

1.19 **"Void"** means a Rented Unit which is vacant as a result of the tenant vacating the Rented Unit

1.20 **"Void Notice"** means a written notice given by the Registered Provider to the Council (in a form to be agreed between the Registered Provider and the Council within four weeks from the date of this Deed) the function of such a notice being the notification to the Council of a Void

2. Enabling Provisions

This Agreement is made pursuant to s111 of the Local Government Act 1972 s33 of the Local Government (Miscellaneous Provisions) Act 1982 and all other enabling powers

3. Procedure for Rented Units

The parties agree that the following nomination procedure shall apply to the nomination of persons in respect of the Units

Initial Lets

3.1 The Registered Provider shall give the Council written notice of the date when the Initial Let Units will be ready for occupation

3.2 The Registered Provider shall serve on the Council a Vacancy Notice in respect of the Unit prior to such newly constructed and previously unoccupied Unit becoming available for occupation

3.3 The Council shall within ten working days of receipt of a Vacancy Notice serve upon the Registered Provider details of a Nominee

3.4 Details of a Nominee served by the Council shall:

3.4.1 specify the appropriate category of Unit to which it relates and

3.4.2 The Registered Provider shall within 10 working days of the date of receipt of the Nominee shall use its reasonable endeavours to arrange viewing of the relevant Affordable Rented Unit and offer a Tenancy Agreement to such selected Nominee

3.5 The Registered Provider shall have the right to let/grant the Initial Let in respect of the Units to persons of its own choosing (subject to provisions within the Section 106 Agreement) in the event of the Council's failure to serve details of the Nominees within the period of ten working days of receipt of the Vacancy Notice

3.6 The Registered Provider shall on the first occasion within ten working days of the date of receipt of the details of the Nominee use its reasonable endeavours to arrange viewing of the Unit and offer a Tenancy Agreement to the Nominee

3.7 If the Nominee fails to enter into a Tenancy Agreement within ten working days of receipt of the Registered Provider's offer of a Tenancy Agreement that Nominee shall be deemed to have rejected the Registered Provider's offer and the Registered Provider shall select another Nominee whereupon the procedure set out in Clause 3.3 to 3.6 shall be repeated on the second occasion but for the purposes of this Clause 3.7 the ten day period referred to in those Clauses 3.3 to 3.6 shall be reduced to five days

3.8 If the Registered Provider offer of a Tenancy Agreement on the second occasion is deemed to have been rejected the procedure set out in clause 3.3 to 3.7 shall be repeated but for the purposes of this Clause the ten day period referred to in Clauses 3.3 to 3.6 shall be reduced to five working days

3.9 In the event a second Nominee fails to accept the Registered Provider's offer of a Tenancy Agreement within the time prescribed by Clause 3.7 then the Registered Provider shall offer a Tenancy Agreement on the third occasion to a third and subsequent Nominee; and the procedure set out in Clause 3.3 to 3.7 shall apply but for the purposes of this clause the ten day period referred to in those Clauses 3.3 to 3.7 shall be reduced to five working days.

3.10 After the third occasion, the Registered Provider shall have the right to let the Initial Let in respect of the Unit to persons of its own choosing (subject to the provisions within the S106 Agreement) after the third Nominee fails to accept a tenancy or in the event of the Council's failure to serve details of the Nominees within the period of ten working days of receipt of the Vacancy Notice and if the Units have been offered to Nominees in accordance with the clauses above.

Voids

3.11 Should a Rented Unit become a Void after the Initial Let or the Registered Provider has reasonable cause to believe it will become a Void then and in each case

3.11.1 the Registered Provider shall serve a Void Notice in respect of the relevant vacant Unit upon the Council and

3.11.2 within five working days of receipt of the said notice the Council shall serve upon the Registered Provider details of a Nominee

3.12 The Registered Provider shall have the right to let the relevant vacant Unit to a person of its own choosing (subject to the provisions within the S106 Agreement) in the event of the Council's failure to serve details of a Nominee referred to in Clause 3.11 within five working days of receipt of the Void Notice

3.13 Upon receipt of the details of a Nominee referred to in Clause 3.11 the Registered Provider shall follow the procedure set out in Clauses 3.5 to 3.10 PROVIDING THAT except where the Void is an Exempted Void on each and every occasion that 75% of the Voids (which for the avoidance of doubt means 75% of the total number of Units) have been let the Registered Provider shall not be required to follow the procedure set down in Clauses 3.11 -3.13 and the Registered Provider shall then be entitled to let the remaining 25% of the Voids (which for the avoidance of doubt means 25% of the total number of Units) to a person of its own choosing (subject to the provisions within the S106 Agreement)

3.14 Where the Void is an Exempted Void the Registered Provider shall follow the procedure set out in Clauses 3.6 to 3.9 notwithstanding that 75% of the total number of Rented Units have been let

Provision of information

3.15 The Registered Provider shall give notification to the Council of the occurrence of the following events within five working days of their occurrence:

3.15.1 a Nominee or Subsequent Nominee failing to view a Unit within 10 working days of an offer being made

3.15.2 a Nominee or Subsequent Nominee failing to accept the offer of a Tenancy Agreement within the time limit prescribed by this Agreement

3.15.3 a Nominee or Subsequent Nominee accepting an offer of a Tenancy Agreement

3.15.4 a person accepting an offer of a tenancy from the Registered Provider

3.15.5 the Registered Provider rejecting a Nominee or Subsequent Nominee in accordance with Clause 3.20

3.16 Within five working days of the Council receiving notice served in accordance with Clause 3.15 above save for notice under 3.15.4 the Council shall serve upon the Registered Provider the name and address of a Nominee or Subsequent Nominee to include the information set out in Clause 3.4

3.17 If the Council shall within the period mentioned in Clause 3.16 notify the Registered Provider that the Council then has no suitable Nominee or Subsequent Nominee the Council shall advise the Registered Provider of a suitable replacement Nominee or Subsequent Nominee as soon as reasonably practicable

3.18 The Registered Provider shall have the right to let a Unit to a person of its choosing (subject to the provisions within the S106 Agreement) if the Council's failure to provide a Nominee or Subsequent Nominee creates a Void in respect of that Unit

3.19 The Registered Provider shall have the right to interview and make enquiries of each Nominee or Subsequent Nominee and by serving written notice upon the Council to that effect to reject any Nominee or Subsequent Nominee if in the opinion of the Registered Provider the grant of a Tenancy Agreement to such Nominee would be in contravention of the Registered Provider's registered rules or its letting criteria

3.20 When calculating percentage for the purposes of this Deed percentage in excess of 0.5 shall be rounded up and percentages equal to or less than 0.5 shall be rounded down

3.21 The Council and the Registered Provider agree that the nomination rights contained in this Deed may be varied from time to time but only by agreement in writing by the parties

4. Procedure for Shared Ownership Units

Allocation by HomeBuy Zone Agent

4.1 Where the Registered Provider and the Council agree that a Shared Ownership Unit either initially or on resale shall be allocated by the HomeBuy Zone Agent such allocation shall be to a Nominee save that if no suitable qualifying Nominees are available to be put forward the Registered Provider may with the Council's consent dispose of that Shared Ownership Unit in accordance with paragraph 4.2 below

4.2 Where the initial sale or resale of a Shared Ownership Unit is referred back to the original HomeBuy Zone Agent and the Registered Provider satisfies the Head of Housing and Community Services that there are no Nominees for that Shared Ownership Unit, the Registered Provider may on condition that it first obtains the consent in writing of the Head of Housing and Community Services to the proposed applicant (such consent not to be unreasonably withheld) allocate that Shared Ownership Unit otherwise than in accordance with paragraph 4.1

5. Notices

Any notice required to be served hereunder shall be sufficiently served on the parties at the address indicated above or such other address notified by one party to the other and any notice shall have been deemed to have been served two working days after posting

6. **Transfers to other Registered Providers**

The Registered Provider shall ensure that any Registered Provider to which the Site and Units erected thereon are transferred otherwise than by direction of the Homes England under its statutory powers shall enter into a similar agreement mutatis mutandis with the Council

7. **Disputes**

Where any matters fail to be agreed between the parties or any dispute or difference occurs the question shall be referred on the application of either party for the determination of a single expert to be agreed between the parties or in default of agreement to be nominated by the President for the time being of the Chartered Institute of Housing

8. **Costs**

The Registered Provider agrees with the Council to pay the legal costs of £ 1250 which the Council incurs in preparing and entering into this Deed

9. **Agreements and declarations**

The parties agree:

9.1 nothing in this Deed fetters or restricts the exercise by the Council of any of its powers

9.2 the obligations contained in this Deed are covenants for the purpose of s33 of the Local Government (Miscellaneous Provisions) Act 1982

10. **Restrictions on Nominations**

10.1 The restrictions to be taken into account when serving upon the Registered Provider details of Nominees as set out in the S106 Agreement include the following:

10.1.1 Not to dispose of or cause or allow the disposal of any Rented Unit other than to an individual residential purchaser tenant or occupant who (unless the Council shall acting reasonably otherwise agrees in writing) satisfies the qualifications set out below namely that the person(s):

(i) is an individual or are individuals;

(ii) is considered in their reasonable opinion by the Council or the Registered Provider in accordance with its rules or its allocations and lettings policies to be in need of the accommodation provided by the Rented Unit;

(iii) is not able easily to compete in the open market for equivalent housing accommodation in the administrative area of the Council;

(iv) before taking up occupation of the Rented Unit has not owned a freehold or a lease for a term exceeding 3 years within the previous 12 months (save that the condition shall not apply where the Council or the Registered Provider is satisfied that the circumstances of that person are such as to put him in need of housing) and intends to occupy and subsequently occupies the Rented Unit as his/her only or principal home;

(v) is an individual who meets the criteria of the Council's Housing Register and Nominations Policy

10.2 Where there is any discrepancy between this Deed and the s106 Agreement the S106 Agreement shall take priority

11. Exclusion Clause

The provisions of this Deed shall not be binding nor enforceable against any of the following:-

11.1 Any person who shall exercise a statutory right to buy or acquire any Unit and their mortgagee or charge.

11.2 Any mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator of a Registered Provider provided that such party so appointed shall have first complied with the procedure in clause [xx] Schedule [xx] of the S106 Agreement.

11.3 Any and all successors in title from the persons specified in clauses 10.1 – 10.2 above"

Schedule 1

Schedule of Tenure

Number of Units	Number of Bedrooms	Type of Unit	Tenure

Executed as a Deed

by affixing the Common Seal of

[ ]

in the presence of:-

Authorised Signatory

Authorised Signatory

SEALED WITH THE COMMON SEAL OF

HORSHAM DISTRICT COUNCIL

in the presence of

Authorised Signatory

Schedule 4

Highway Works Scheme

The Owner covenants with the County Council

1. To undertake a Stage 2 and Stage 3 Safety Audit in respect of the Highway Works.

2. Not to Commence the Development until a Highway Works Scheme has been submitted to and approved in writing by the County Council provided that where a Highway Works Scheme is submitted to the County Council which is not approved a revised Highway Works Scheme shall, within 14 days of receipt of notice in writing from the County Council that the previous Highway Works Scheme is not approved, be submitted to the County Council for approval.

3. Once the County Council has approved a Highway Works Scheme (the **"Approved Highway Works Scheme"**) to obtain All Requisite Consents including without limitation entering into a Section 278 and/or Section 38 Agreement with the County Council.

4. After All Requisite Consents have been obtained to carry out in full the Approved Highway Works Scheme and to complete the Highway Works to the satisfaction of the County Council.

5. Not without the consent of the Council to allow Occupation of any Dwelling until such Highway Works have been completed to the satisfaction of the County Council

Schedule 5

Payment Notice

Payment of monies due under a Section 106 Agreement

Please answer all the questions

1. Payment made by/on behalf of .....

2. Land at : .....

.....

Planning Reference: .....

3. Agreement dated .....

4. Obligation in Agreement

(a) Clause No.

(b) Contribution towards :

(c) Amount of contribution due: £

(d) Date upon which contribution is due

(e) Amount of contribution enclosed .....

Schedule 6

Managed Land

The Owner covenants to the Council

Part 1 Open Amenity Space and LAP

1. Not to Commence the Development until the Owner has submitted to the Council pursuant to the Reserved Matters Applications for its written approval the plans details specifications maintenance schedule and timetable for the provision of the Open Amenity Space and LAP including the approval of boundaries of any areas of parcels of land to be transferred to the Management Company and the details of the layout Landscaping and planting and any earth works excavations construction drainage fencing materials installation of equipment such as play equipment surfacing and signage and a management plan for the long term future maintenance and management and the arrangements for securing the availability of the Open Amenity Space for use by the general public

   PROVIDED ALWAYS that the matters referred to in paragraph 1 are shown in relation to the Phasing Plan and approved by the Council before the Commencement of Development within that Phase

2. Not to Occupy or cause or allow the Occupation of 90% of the Open Market Units until the Owner has:

2.1 obtained confirmation of the completion of any approved works to be undertaken in relation to the provision of the Open Amenity Space and LAP and immediately thereafter has offered in writing to transfer the Open Amenity Space LAP and LEAP to the Management Company for £1 upon the contractual terms set out in paragraph 6 of this Schedule and notifying the Head of Development of the Council in writing that such an offer has been made and

2.2. has entered into a binding contract for the transfer for the sum of £1 the Open Amenity Space and LAP with the Management Company, which the Management Company will be required as a successor in title to the Owner to maintain the Open Amenity Space and LAP PROVIDED ALWAYS that notice of the entering into a contract shall be given to the Council

within seven days of entering a contract and a copy of the binding contract shall be sent with such notice to the Council

3. The Owner shall use its reasonable endeavours to carry out all the works within the timescales referred to in Paragraph 1 above and upon completion of the works notify the Head of Development of the Council. If in the reasonable opinion of the Head of Development of the Council there are defects in any of the works the Owner covenants to make good any defects in the works prior to the transfer to the Management Company

4. The Owner shall at its expense continue to maintain and insure the Open Amenity Space and LAP, including any equipment such as play equipment keeping all trees and vegetation at all times clean cultivated and in good heart fed and watered and shall replace any damaged or dying grass turf trees shrubs and other plants both for the respective applicable maintenance period and for the period until all the Open Amenity Space and LAP are transferred to the Management Company

5. Not to Occupy or cause or allow the Occupation of more than 50%of the Open Market Units within the Development until the Owner has paid to the Management Company a commuted sum the amount of which is to be agreed by the Council as part of the Reserved Matters Approvals as a contribution towards the future costs of the proper maintenance of the Open Amenity Space and LAP within the relevant Phase subject to budgets and costings being made available to the Council to verify the maintenance costs

6. Not to transfer any parcel of land comprising or comprised Open Amenity Space and LAP within the relevant Phase, except upon the following terms and conditions unless otherwise agreed between the parties:

   (i) title shall be deduced in accordance with the Land Registration Act 2002

   (ii) the parcels of land comprising or comprised Open Amenity Space, LAP and LEAP will be transferred free of any financial charges together with the rights and easements but subject only to the exceptions reservations rights easements and other matters contained and referred to in the epitome of title to the Site

   (iii) vacant possession of the parcel of land comprising the Open Amenity Space and LAP shall be given on the date of the transfer in accordance with the provisions of this Agreement

(iv) completion shall take place on the date falling 40 working days after the works required under the Reserved Matters Approvals have been unless otherwise agreed in a contract for the transfer/conveyance made between the Owner and the Management Company

(v) the transfer of the land to the Management Company shall be subject to a covenant to comply with the following :

(a) That the Open Amenity Space and LAP shall be made available for the use of the general public and shall only be used for the purposes of public open space and Local Areas of Play as defined in this Agreement and shall not be used for any trade or business and that no development requiring planning permission shall be carried out thereon unless it is for the purpose of providing children's play facilities or for the maintenance of the Open Amenity Space or is required to be carried out by a statutory undertaker

(b) The Owner and the Council agree that if the Open Amenity Space and LAP are transferred to the Management Company the Owner shall be entitled to include in the transfer of the title a requirement that the Management Company shall enter into a direct covenant with the Owner to restrict the use of the land in accordance with the restrictions set out in this agreement

7. That the Open Amenity Space and LAP shall be maintained at all times to the reasonable satisfaction of the Council in a clean and safe condition with all grass regularly mown and trees hedges and shrubs kept in good order with any necessary trimming or lopping or replanting in accordance with the management plan approved under Paragraph 1 of this Schedule 6 together with any amendments or details subsequently approved in writing by the Council

Part 2 Other Managed Land

8. Prior to Commencement of Development the Owners shall will notify the Council in writing of the details of Other Managed Land (including indicative plans) it intends will be transferred to a Management Company in accordance with Schedule 8 to this deed.

SCHEDULE 7

Management Company

1 The Owner shall not occupy or permit the first occupation of any Open Market Unit until it has :

1.1 set up the Management Company in accordance with the provisions set out in paragraph 1.5 of this Schedule;

1.2 make provision to include in the transfer of each Dwelling a covenant by the purchaser to pay an annual charge as determined by the Management Company for the maintenance of such parts of the Open Amenity Space and LAP which have been or are to be transferred to the Management Company

1.3 not to dispose of any Dwelling without imposing a covenant on the purchaser of such Dwelling to pay an annual charge as determined by the Management Company towards the costs incurred in maintaining the parcels of land referred to in Paragraph 1.2 above or parts thereof

1.4 upon the sale of the first Open Market Unit to forthwith provide the Council with copies of the Articles and Memorandum of Association of the Management Company and a copy of the transfer relating to the Private Dwelling including the covenants referred to in Paragraph 1.2 of this Schedule 8

1.5 Where any Managed Land is to be managed and maintained by the Management Company in accordance with the terms of this Schedule the Owners will comply with the provisions contained in paragraphs 1.6 and 1.7 of this Schedule

1.6 prior to the first Occupation of any Unit on the Development submit for approval to the Council and gain approval from the Council to the Management Company Structure Scheme;

1.7 on approval of the Management Company Structure Scheme the Owners will establish the Management Company in accordance with the approved

Management Company Structure Scheme and such Management Company shall be established prior to the date of issue of the first Certificate of Practical Completion in respect of any Managed Land.

IN WITNESS whereof this Deed has been duly executed the day and year first hereinbefore mentioned

17131 x5

SEALED WITH THE COMMON SEAL OF
HORSHAM COUNCIL
in the presence of

[redacted]



Authorised

SEALED WITH THE COMMON SEAL OF
WEST SUSSEX COUNCIL
in the presence of

[redacted]

Authorise



EXECUTED as a **DEED** by
GABRIELLE ELIZABETH FRANCIS
In the presence of

[redacted]

Witness [redacted]

Name MICHAEL F. CHEESEMAN

Address 24 THE SPINNEY, PULBOROUGH, WEST SUSSEX, RH20 2AP

EXECUTED as a **DEED** by
MARK ALAN LAWTON POCKETT
In the presence of

[redacted]

Witness [redacted]

Name MICHAEL F. CHEESEMAN

Address 24 THE SPINNEY, PULBOROUGH, WEST SUSSEX, RH20 2AP

Signed as a DEED by)
WELBECK STRATEGIC LAND II LLP)
Acting by WELBECK COGITO LIMITED .....

) Director of Welbeck Cogito Limited

In the presence of:)

.....

) Signature

) .....

) Witness name

) Address

) Old Toll Gate

) Hund Green. RG27 8LQ.

Occupation

) .....