(1) **MICHAEL KARL REMANE DYER AND LAURA JANE PRICE AMADOR**

(2) **WEST SUSSEX COUNTY COUNCIL**

(3) **HORSHAM DISTRICT COUNCIL**

(4) **GLADMAN DEVELOPMENTS LIMITED**

# AGREEMENT

Pursuant to section 106 of the Town and Country Planning Act 1990 in respect of

**Land North of Shermanbury Road, Partridge Green, West Sussex RH13 8EU**

Lauren Kelly – Head of Legal and Democratic Services
Horsham District Council
Albery House
Springfield Road
Horsham
West Sussex
RH12 2GB

Planning Ref: DC/24/0428
Legal Ref: DSM/12129

**THIS AGREEMENT** is made as a deed and dated **2025**

Between:

**(1)** **MICHAEL KARL REMANE DYER** of Kreston Reeves LLP 37 St, Margarets Street, Canterbury CT1 2TU and **LAURA JANE PRICE AMADOR** of Bairro Cerro do Moinho No 9 Budens 8650-051, Vila do Bispo, Algarve, Portugal **("the Owners");**

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

**(3)** **HORSHAM DISTRICT COUNCIL** of Albery House, Springfield Road, Horsham, West Sussex RH12 2GB (**"the Council"**).

**(4)** **GLADMAN DEVELOPMENTS LIMITED** (Company Registration No. 3341567) whose registered office is at Gladman House, Alexandria Way, Congleton Business Park, Congleton CW12 1LB ("**the Promoter**")

together "the Parties"

## 1. BACKGROUND & RECITALS

Whereas

1.1 The Council is the local planning authority as defined in the Act for the area within which the Application Site is situated for the purposes of this Agreement and for the purposes of section 106 of the Act and as such is entitled to enforce the planning obligations contained herein.

1.2 The Owners are the executors as named in the Grant of Probate of the late Keith Barry Price dated 5th July 2024 of the Application Site with title absolute of land registered at HM Land Registry under title number WSX178559.

1.3 The County Council is the local highway authority for the area within which the Application Site is situated for the purposes of this Agreement.

1.4 The Application was received and validated by the Council on 19th March 2024 and it has resolved to grant planning permission for the Development subject to satisfactory completion of this Agreement.

1.5 The Owners are willing to enter into and be bound by the obligations and be subject to the restrictions in this Agreement on the terms set out herein.

1.6 The Parties are satisfied that the provisions of this Agreement comply with the requirements of regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and, accordingly, that the planning obligations contained in this Agreement are necessary to make the Development acceptable in planning terms, are directly related to the Development and fairly and reasonably relate in scale and kind to the Development

1.7 The Promoter has submitted the Planning Application to the Council. The Promoter enters into this Agreement to acknowledge and declare that it will pay the Council's and the County Council's costs pursuant to clause 8 but otherwise will have no liability under this Agreement.

**NOW THIS AGREEMENT WITNESSES** as follows:

## 2. INTERPRETATION

In this Agreement:

2.1 Words importing the one gender include reference to all the genders.

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 Any words following the terms including**,** include**,** in particular**,** for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those.

2.5 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.

2.6 Any reference to a clause, schedule, paragraph or plan is to a clause, schedule, paragraph or plan in, to or attached to this Agreement, unless expressly stated otherwise.

2.7 Any reference to a colour or letter is to a colour or letter on the plans attached to this Agreement.

2.8 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.

2.9 A reference to writing or written excludes fax and email.

2.10 An obligation on a party not to do something includes an obligation not to allow that thing to be done.

2.11 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.

2.12 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:

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| **"2015 Order"** | the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). |
| **"Act"** | the Town and Country Planning Act 1990 (as amended); |
| **"Application"** | the planning application for: "Outline planning application for the erection of up to 120 dwellings with public open space, landscaping, and sustainable drainage system (SuDS) with vehicular access point with all matters to be reserved except access" ascribed reference number DC/24/0428 by the Council. |
| **"Application Site"** | land north of Shermanbury Road, Partridge Green RH13 8EU to which the Application relates, and which will accommodate the Development which is shown for identification purposes on the Application Site Plan. |
| **"Application Site Plan"** | the plan entitled "Location Plan" Plan Number: 7476-L-01 Rev C and dated 22nd January 2024 comprising Schedule 1 of this Agreement, showing the location of the Application Site edged in red. |
| **"BCIS Index"** | means the All-in Tender Price Index published by the Building Costs Information Service 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. |
| **"Biodiversity Metric"** | the statutory biodiversity accounting tool published by DEFRA or Natural England from time to time which can be used to measure the biodiversity value or relative biodiversity |

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| | value of habitats or habitat enhancement for the purposes of biodiversity net gain. |
| **"Biodiversity Baseline"** | the baseline Biodiversity Units of 37.49 habitat units and 19.86 hedgerow units on the Application Site at the date of the Application identified within the report by FPCR 'Appendix B - Biodiversity Net Gain Report' (October 2024) |
| **"Biodiversity Net Gain (BNG)"** | a net increase of 10% (ten percent) in Biodiversity Units above the Biodiversity Baseline resulting from implementing the Biodiversity Gain Plan (as measured using the Biodiversity Metric) that are to be allocated to the Development to fulfil its requirement to create or enhance biodiversity pursuant to Schedule 7A of the 1990 Act. |
| **"Biodiversity Units"** | means the quantum of biodiversity as measured by the Biodiversity Metric; |
| **"BNG Monitoring Contribution"** | the sum of **£4,176.87** (four thousand one hundred and seventy six pounds and eighty seven pence) to be used to pay the Council's costs of monitoring compliance with the Biodiversity Gain Plan and Habitat Management and Maintenance Plan as approved by the Council to be paid by the Owners to the Council pursuant to Schedule 4 of this Agreement. |
| **"Biodiversity Gain Plan"** | the plan in the form (or substantially in the form) published by DEFRA attached at Schedule 6 of this Agreement, as may be updated from time to time, to demonstrate:<br>(a) how the Biodiversity Net Gain is to be achieved in relation to the Development (which may include in part the On-Site Habitat Creation and Enhancement Works);<br>(b) how the balance of the Biodiversity Net Gain is to be provided in relation to the Development;<br>(c) any registered offsite biodiversity gain proposed to be allocated to the Development and the biodiversity value of that gain in relation to the Development<br>(d) any biodiversity credits proposed to be purchased and allocated to the Development<br><br>to be completed and submitted to the Council for approval in writing in accordance with Schedule 4 of this Agreement |
| **"BNG Breach Notice"** | a notice which may be served by the Council on the Owners pursuant to paragraph 3 of Schedule 5 of this Agreement setting out:<br>a) details of the alleged non-compliance with the HMMP (**"the BNG Breach"**); and<br>b) details of the measures to be taken to remediate the BNG Breach; and<br>c) the timescales within which the measures to remediate the BNG Breach are to be carried out, following the 20 (twenty) Working Day period allowed for service of a BNG Breach Response Notice pursuant to paragraph 4 of Schedule 4. |

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| **"BNG Certificate of Completion"** | a written certificate confirming the date on which the On-Site Habitat Creation and Enhancement Works were completed to the reasonable satisfaction of the Council in accordance with the approved HMMP under paragraph 3.2 of Schedule 4. |
| "**BNG Completion Date**" | the date specified in the BNG Certificate of Completion as the date the On-Site Habitat Creation and Enhancement Works were completed. |
| **"BNG Completion Date Notice"** | written notice from the Owners to the Council of the proposed BNG Completion Date of the On-Site Habitat Creation and Enhancement Works served in accordance with paragraph 3.4 of Schedule 4. |
| **"BNG Land (On Site)"** | means those parts of the Application Site upon which the On-Site Habitat Creation and Enhancement Works (if any) are to be carried out in accordance with the approved Habitat Management and Monitoring Plan and which FOR THE AVOIDANCE OF DOUBT may include the Public Open Space; |
| **"Commencement Date"** | the date on which Commencement of Development occurs. |
| **"Commencement Notice"** | the written notice confirming the Proposed Commencement Date referred to in clause 7.1.1 and served in accordance with Clause 7.3. |
| **"Commencement of Development"** | the carrying out of a material operation as defined in section 56(4) of the Act in respect of the Development pursuant to the Planning Permission 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 2015 Order, the erection of hoardings and fencing, diversion or laying of services and signage (including the formation of temporary construction accesses) and "Commence Development" shall be construed accordingly. |
| **"County Council Contributions"** | the Travel Plan Monitoring Contribution. |
| **"DEFRA"** | the Department for the Environment, Food and Rural Affairs or any successor body which carries out its functions. |
| **"Development** | the development of the Application Site pursuant to the Planning Permission. |
| **"First Occupation"** | the first time any part of the Development is Occupied. |
| **"Habitat Management and Monitoring Plan (HMMP)"** | the document titled 'Habitat Management and Monitoring Plan' for the creation and/or enhancement of habitat on the BNG Land (On Site), and subsequent management and maintenance thereof, to be prepared in accordance with the approved Biodiversity Gain Plan, to include:<br>a) a non-technical summary;<br>b) details of the roles and responsibilities of the people or organisation(s) delivering the HMMP;<br>c) details of the planned habitat creation and/or enhancement works to create and/or enhance |

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| | habitat in accordance with the approved Biodiversity Gain Plan;<br>d) the management measures to be put in place to maintain the BNG Land (On-Site) in accordance with the approved Biodiversity Gain Plan for a period of 30 years from Practical Completion; and<br>e) the monitoring methodology and frequency in respect of the created or enhanced habitat on the BNG Land (On-Site),<br>to be completed and submitted to the Council for approval in writing in accordance with Schedule 4 of this Agreement. |
| **"Head of Development and Building Control"** | the Head of Development and Building Control at the Council or any successor or such other officer as may be designated by the Council for the purposes of discharging their duties and functions from time to time. |
| **"Index Linked"** | (a) in relation to the County Council Contributions payable by the Owners under this Deed shall be increased by the application of the following formula:<br>A = B x C is equal to or greater than 1<br>D<br>Where:<br>A is the sum actually payable on the date of payment<br>B is the original sum mentioned in this Deed<br>C is the BCIS Index for the quarter preceding the date of payment<br>D is the BCIS Index for the quarter preceding the date of consultation 4th December 2024<br>and **Indexation** shall be construed accordingly. |
| **"Management Company"** | a limited company set up amongst other things for the purposes of securing the future management and finance of the Managed Land through adherence to the Management Plan and HMMP; |
| **"Management Company Structure Scheme"** | means a scheme that addresses the following in relation to the Management Company;<br>a) details of the proposed constitution of the Management Company which shall be a private company limited by shares or guarantee;<br>b) proposed banking arrangements for the Management Company;<br>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;<br>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 another Management |

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| | Company or third party (including details of how and when such transfer and step in mechanism shall be triggered and settlement of outstanding management costs prior to transfer and liability for legal costs/expenses associated with the transfer); |
| **"Managed Land"** | means the Public Open Space and BNG Land (On Site) which is provided for in the Development and which will be managed by the Management Company in accordance with Schedule 9 of this Deed and the Management Plan and HMMP (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"** | the plan setting out the detailed arrangements for the ongoing management and maintenance of the Public Open Space to the reasonable satisfaction of the Council and which shall include but not be limited to the following:<br>• arrangements for securing the availability of the Public Open Space for use by the general public;<br>• approximate location and details of any apparatus to be vested in or adopted by statutory undertakers, drainage or highways authorities;<br>• frequency and standard of maintenance and repair of Public Open Space, including unadopted SUDS infrastructure and any fencing;<br>• measures to replace and trees, shrubs or turf which may die or become diseased<br>• how the costs of maintenance shall be funded, including a mechanism for the recovery of costs and evidence of structures and arrangements in place to ensure that ongoing maintenance is funded at no cost the Council;<br>• details of the proposed Management Company;<br>• point of contact and details of complaints procedure for raising issues with management and maintenance mechanism;<br>• process to be followed where the Management Company is found to be in breach of its obligations under this Deed; |
| **"Monitoring Fee"** | means the sum of £800 (eight hundred pounds) payable to the Council for monitoring the obligations in this Agreement and which is payable on completion of this Agreement; |
| **"Monitoring Report"** | the monitoring reports to be issued to the Council as specified in the HMMP and to be submitted at 1 (one), 2 (two), 5 (five), 10 (ten), 15 (fifteen), 20 (twenty), 25 (twenty five) and 30 (thirty) years following First Occupation of the Development. |
| **"Occupation"** | occupation of the Development for any purpose for which the Planning Permission is granted other than occupation for the |

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| | purposes of construction decoration or fitting out, or occupation for security, marketing or display purposes and "Occupy" and "Occupied" shall be construed accordingly. |
| **"Occupation Date"** | the anticipated date on which First Occupation occurs; |
| **"Occupation Notice"** | the written notice confirming the Occupation Date referred to in Clause 7.1.2 and served in accordance with Clause 7.3. |
| **"On-Site Habitat Creation and Enhancement Works"** | the habitat creation and/or enhancement works set out in the Habitat Management and Monitoring Plan (excluding any management or monitoring activities specified in the Habitat Management and Monitoring Plan) to be provided on BNG Land (On Site). |
| **"Natural England"** | the public body known as Natural England which acts as the government's advisor for the natural environment in England or any successor body appointed to carry out its functions. |
| **"Planning Permission"** | the planning permission to be granted for the Development by the Council pursuant to the Application. |
| **"Practical Completion"** | in relation to the Development, practically complete save for minor snagging items such that it is reasonably fit for Occupation or use and the words "Practical Completion" and "Practically Complete" shall be construed accordingly. |
| **"Proposed Commencement Date"** | the date on which the Owners intend to Commence Development ; |
| **"Public Open Space"** | the open spaces to be provided in perpetuity and managed by the Management Company with the final details and location of which are to be agreed in writing between the Owners and the Council pursuant to the Reserved Matters Approvals for the Development; |
| **"Reserved Matters Application"** | a reserved matters application submitted for the Development pursuant to the Planning Permission; |
| **Reserved Matters Approval"** | an approval of reserved matters for the Development pursuant to a Reserved Matters Application; |
| **"Section 73 Consent"** | any 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. |
| **"SUDS"** | includes, but not limited to, the sustainable urban drainage features proposed which include permeable paving, detention basins and swales; |
| **"Travel Plan"** | means a plan setting out measures and initiatives to encourage more sustainable alternatives to travelling alone by car; showing initiatives to reduce car use and to increase the use of more sustainable modes of travel by staff, residents and visitors to the Development. |
| **"Travel Plan Co-ordinator"** | means the person appointed by the Owners responsible for securing the implementation of the Travel Plan. |
| **"Travel Plan Monitoring Contribution"** | the sum of £3950.00 (three thousand nine hundred and fifty pounds) to be Index Linked and used to pay the County Council's costs of monitoring of the Travel Plan, to be paid to the County Council in accordance with Schedule 10 of this Agreement. |

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| **"Working Day"** | Monday to Friday inclusive but excluding any day that is a bank holiday, public holiday or statutory holiday in England. |

**4. ENABLING PROVISIONS**

4.1 This Agreement is made pursuant to section 106 of the Act, section 111 of the Local Government Act 1972, 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 of Schedules 2 to 11 inclusive, with the exception of paragraph 1.1 of Schedule 4, shall only take effect upon the grant of the Planning Permission and the Commencement of the Development save for the provisions of Clause 8 (Costs) Clause 11 (Dispute Resolution).

**6. COVENANTS**

6.1 Subject to clause 5.1:

6.1.1 The Owners covenant with the Council and the County Council to comply fully with and to perform the obligations contained herein and in Schedules 2, 4, 7- 10 of this Agreement in accordance with the requirements and timescales set out;

6.1.2 The Owners covenant with the Council that the Development and use of the Application shall be in strict accordance with this Agreement.

6.1.3 The Council covenants with the Owners to comply fully with and to perform the obligations contained herein and in Schedule 5 of this Agreement in accordance with the requirements and timescales set out.

6.1.4 The County Council covenants with the Owners to comply fully with and to perform the obligation contained herein and in Schedule 11 of this Agreement in accordance with the requirements and timescales set out.

**7. NOTICES**

7.1 The Owners covenant with the Council as follows:

7.1.1 to give the Proposed Commencement Notice to the Council not less than 10 (ten) Working Days before the anticipated Commencement Date; and

7.1.2 to give the Occupation Notice to the Council not less than 10 (ten) Working Days before the anticipated Occupation Date.

7.2 The Parties to this Agreement agree that if the Owners fail to give the notice required by clause 7.1.1 and clause 7.1.2 above then the Council shall be entitled in its reasonable discretion to determine the Commencement Date and Occupation Date and shall give notice to the Owners of the Council's determination.

7.3 Any notice, certificate or other communication required or permitted to be given under this Agreement shall be given in writing to the relevant Party at the relevant address referred to at the start of this Agreement or such other address as may be notified in writing to the other Party and must be served personally or by first class registered or first class recorded delivery post and, in the case of the Council, the relevant Party shall address any notice to the Head of Development and Building Control of the Council.

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 2 (two) Working 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 at the time it is received provided it is received between 0900hrs and 1700hrs on a Working Day but otherwise it shall be deemed to have been received on the next Working Day.

**8. COSTS**

8.1 The Promoter has undertaken to pay on or before the date hereof the Council's reasonable and proper legal costs incurred in preparing and entering into this Agreement.

8.2 The Promoter has undertaken to pay on or before the date hereof the County Council's reasonable and proper legal costs incurred in preparing and entering into this Agreement.

**9. MORTGAGEE'S/ CHARGEE'S LIABILITY**

9.1 Any future chargee or mortgagee shall not be liable for any breach of the obligations in this Agreement unless committed or continuing at a time when it is in possession of all or any part of the Application Site in which case it will be bound by the obligations in this Agreement as if it were a person deriving title from the Owners.

**10. GENERAL**

The Parties undertake that:

10.1 this Agreement constitutes a planning obligation for the purposes of section 106 of the Act, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.

10.2 this Agreement constitutes a deed.

10.3 this Agreement is enforceable by the Council in accordance with section 106 of the Act.

10.4 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.

10.5 It is hereby agreed by the Owners that failure by the Council at any time to enforce the provisions of this Agreement or to require performance strictly or otherwise by the Owners of any of the conditions, covenants, agreements or obligations of this Agreement or any failure or delay by the Council to exercise any act, right or remedy shall not be construed as a 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 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.

10.6 The Owners hereby undertake that:

10.6.1 this Agreement supersedes and replaces all previous negotiations whether oral or written;

10.6.2 the Owners have not relied on any express or implied statement warranty representation or undertaking given by or on behalf of the Council; and

10.6.3 nothing herein contained excludes the liability of any party in relation to fraud.

10.7 The Owners acknowledge that this Agreement will be registered as a local land charge.

10.8 The Owners hereby give consent for the Application Site Plan to be reproduced by the Council.

10.9 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.

10.10 This Agreement shall be governed by and interpreted in accordance with laws of England and the Parties submit to the exclusive jurisdiction of the courts of England.

10.11 The obligations in this Agreement (with the exception of clause 8 (Costs)) shall cease to have effect (insofar only as it has not already been complied with) if, before the Commencement of Development, the Planning Permission:

10.11.1 expires;

10.11.2 is varied or revoked other than at the request of the Owners; or

10.11.3 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 in which case the provisions of this clause shall apply to the Section 73 Consent.

10.12 The Owners (or any person deriving title to the Application Site from the Owners) shall not be liable for any breach of the restrictions and obligations set out in this Agreement where such breach arises after the Owners or such person deriving title has parted with their interest in the Application Site or part thereof to which such breach relates save in respect of liability for antecedent breach of this Agreement.

10.13 Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 applies to the covenants in this Agreement.

10.14 References to the Application Site include any part of it.

10.15 Any covenant by the Owners not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.

10.16 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Application 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.

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

10.17.1 the obligations in this Agreement shall relate to and bind such Section 73 Consent;

10.17.2 the definitions of the Application, Development, Planning Permission (other than for the purposes of clause 1) 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; and

10.17.3 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;

PROVIDED THAT:

10.17.4 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; and

10.17.5 the Council reserves the right to insist upon the completion of a separate planning obligation by deed of agreement in connection with any Section 73 Consent if the Council (acting reasonably) considers it desirable to do so.

10.18 Except for the planning obligations contained in paragraphs 1.3 and 1.4 of Schedule 2 of this Agreement, no obligations contained in this Agreement shall be binding on any freehold or leasehold owners or occupiers of individual dwellings constructed pursuant to the Planning Permission (or their respective mortgagees) or land held by any of the statutory utilities for their operational purposes.

## 11. DISPUTE RESOLUTION

11.1 Should a dispute or difference arise between the Owners and the Council and/or the County Council concerning anything herein then the provisions of this clause 11 shall apply.

11.2 All differences and disputes which may arise between the Parties concerning this Agreement shall be referred to the determination (as an expert and not as an arbitrator) of an independent leading counsel agreed upon by the Parties 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.

11.3 All differences and disputes which may arise between the Parties concerning matters that are the subject of a Breach Notice served in accordance with paragraph 3.1 of Schedule 5 of this Agreement shall be referred to the determination (as an expert and not as an arbitrator) of an independent Member/ Fellow of the Chartered Institute of Ecology and Environmental Management or equivalent agreed upon by the Parties but in default of such agreement appointed by Chartered Institute of Ecology and Environmental Management.

11.4 Any expert appointed pursuant to clause 11.2 or 11.3 shall:

11.4.1 on his appointment serve written notice thereof on the parties in dispute;

11.4.2 consider any written representations by or on behalf of those parties which are received by him within 20 (twenty) Working Days of such service and immediately forward a copy of the written representation of one party to the other party;

11.4.3 allow the parties to the dispute an opportunity of commenting in writing on the other party's representations within 20 (twenty) Working Days of receipt by the other party thereof;

11.4.4 have an unfettered discretion to determine the reference to him;

11.4.5 serve notice of his determination as soon as he has made it;

11.4.6 give full and clear reasons for his decision; and

11.4.7 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 any 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.

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

**12. OWNERSHIP**

12.1 The Owners warrant that no person other than the Owners have any legal or equitable interest in that part of the Application Site.

12.2 The Owners undertake to the Council to give the Council written notice within 7 days of any change in the ownership of any of their respective interests in the Application 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 Application Site purchased by reference to a plan provided that this obligation shall not apply to the transfer of individual Housing Units

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

**EXECUTED** as a **DEED** by

**MICHAEL KARL REMANE DYER**

…… Signature

In the presence of:

W …… Signature

I …… Print name

T …… Address 1

N …… Address 2

E …… Address 3

S …… Post code

S …… Occupation

**EXECUTED** as a **DEED** by

**LAURA JANE PRICE AMADOR**

…… Signature

In the presence of:

W …… Signature

I …… Print name

T …… Address 1

N …… Address 2

E …… Address 3

S …… Post code

S …… Occupation

**EXECUTED** as a deed by
**GLADMAN DEVELOPMENTS LIMITED**
Acting by a power of attorney dated [ ]:

**Attorney**

_____
*(signature)*

_____
*(print name)*

_____
*(position)*

In the presence of:
Signature of witness _____

Name (IN BLOCK CAPITALS) _____

Address _____

_____

Occupation _____

**Attorney**

_____
*(signature)*

_____
*(print name)*

_____
*(position)*

In the presence of:
Signature of witness _____

Name (IN BLOCK CAPITALS) _____

Address _____

_____

Occupation _____

**SEALED WITH THE COMMON SEAL** of
**WEST SUSSEX COUNTY COUNCIL**
in the presence of:

Authorised Officer

**SEALED WITH THE COMMON SEAL** of
**HORSHAM DISTRICT COUNCIL**
in the presence of:

Authorised Officer

## Schedule 1

**Plan**

**1 Application Site Plan**

## Schedule 2

## AFFORDABLE HOUSING

**DEFINITIONS**

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

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| **"Affordable Housing"** | affordable housing comprising Affordable Rented Units / Social Rented Housing Units and/or Shared Ownership Units (or such other forms of intermediate tenure as defined in the National Planning Policy Framework) provided to meet the needs of eligible households which are not met by the market, including availability at sufficiently low cost determined with regard to local incomes and local house prices and 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 Land"** | those parts of the Application Site on which the Affordable Housing Units shall be constructed together with the associated curtilage of each such building and amenity space where relevant, and provided in accordance with the obligations set out in this Agreement. |
| **"Affordable Housing Scheme"** | a scheme for the provision of the Affordable Housing Units to be provided by the Owners which shall provide:<br>a) the type and size of Housing Units to be provided as the Affordable Housing Units;<br>b) a plan showing the location of the Affordable Housing Land and the Affordable Housing Units, appropriately distributed throughout the Development so that, where practical, it is not segregated from the Open Market Units, to ensure inclusive and mixed communities **AND**<br>c) such other matters as the Council may require in connection with the Affordable Housing (acting reasonably). |
| **"Affordable Housing Provider"** | either one or a combination of:<br>a) a Registered Provider of social housing within the meaning of the Housing and Regeneration Act 2008 (including its successors and assigns from time to time) from the Council's approved list (as may be amended from time to time) or another Registered Provider of social housing as may be approved by the Council;<br>OR<br>b) an unregistered provider of social housing approved by the Council, or such other body or organisation approved by the Council whose main object is the provision of Affordable Housing; |
| **"Affordable Housing Tenure Mix"** | a tenure mix of 70% Affordable Rented Units / Social Rented Housing Units and 30% Shared Ownership Units or such other mix of Affordable Housing Units as shall be approved in writing by the Council (such approval not to be unreasonably withheld or delayed). |
| **"Affordable Housing Units"** | **45%** (forty five percent) of the Housing Units of which:<br>a) **70%**) shall be provided as Affordable Rented Units / Social Rented Housing Units<br>AND<br>b) **30%** shall be provided as Shared Ownership Units |

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| | and which are to be transferred to an Affordable Housing Provider as housing for persons in Housing Need in accordance with the provisions of this Agreement unless an alternative tenure mix is approved pursuant to the requirements of paragraph 2.8 of Schedule 2. |
| **"Affordable Rent"** | chargeable rent that is subject to the Homes England's Rent Standard (April 2020) as expanded on by the Rent Standard and Guidance (1 April 2013 – 31 March 2024) and any such document and/or associated guidance may be amended updated or replaced from time to time and is required to be offered to eligible householders in Housing Need at an open market rental level which does not exceed 80% of gross local market rent (inclusive of service charges) for an equivalent property of that size and location or the applicable Local Housing Allowance rate for the Council (whichever is the lower); |
| **"Affordable Rented Units"** | rented housing let by the Affordable Housing Provider at an Affordable Rent |
| **"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 Council may specify. |
| **"Certificate of Practical Completion"** | a certificate issued by the Council confirming that all works to which the certificate relates are practically complete in accordance with the relevant specification as required. |
| **"Deed of Nomination Rights"** | the Council's nomination agreement in the draft 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 Unit / Social Rented Housing Units for the life of the Development. |
| **"Disposal"** | a disposal of the Affordable Housing Units to an Affordable Housing Provider whether by transfer of the freehold or the grant of a long lease for a term of at least 125 years and **"Dispose"** shall be construed accordingly. |
| **"First Occupation"** | the date on which each Housing Unit is Occupied for the first time. |
| **"Head of Development and Building Control"** | the Head of Development and Building Control at the Council or any successor or such other officer as may be designated by the Council for the purposes of discharging their duties and functions from time to time. |
| **"Head of Housing and Communities"** | the Council's Head of Housing and Communities or such other officer as may be lawfully designated by the Council for the purposes of discharging his duties and functions. |
| **"Homes England"** | the executive non-departmental public body known as Homes England (or any successor body to its functions within the meaning of Part I of the Housing and Regeneration Act 2008 that funds new affordable homes and regulates Registered Providers in England); |
| **"Housing Register and Nominations Policy"** | the Council's published scheme of allocations presently contained in its "Housing Register and Nominations Policy (April 2023)" or any amendment, update, variation, or subsequent replacement thereof. |
| **"Housing Need"** | a) in relation to the Affordable Rented Unit / Social Rented Housing Units the requirement by a person for social housing allocation in accordance with the Housing Register and Nominations Policy; and |

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| | b) in relation to the Shared Ownership Units the requirement for a person's income to be insufficient to enable them to rent or buy housing available locally on the open market determined with regard to local incomes and local house prices; |
| **"Housing Unit"** | a unit for residential Occupation to be constructed as part of the Development |
| **"Interest"** | interest at the rate of 4% above the Bank of England base rate applicable at the Specified Date calculated on a day-to-day basis; |
| **"Local Housing Allowance"** | the flat rate rental allowance providing financial assistance towards the housing costs of low-income households for different rental market areas and property types set out and reviewed by the Valuation Office Agency under a framework introduced by the Department of Works and Pensions or such similar framework that may replace it. |
| **"Neighbouring Councils"** | councils who share the same housing market within the Council's Strategic Housing Market Assessment; |
| **"Open Market Units"** | all those Housing Units to be constructed on the Application Site which are not Affordable Housing Units. |
| **"Practical Completion"** | in relation to a Housing Unit: practically complete save for minor snagging items such that it is reasonably fit for occupation or use (and Practical 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 and **"Practically Complete"** shall be construed accordingly. |
| **"Registered Provider"** | 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. |
| **"Right to Acquire"** | the right of a secure tenant to purchase their dwellinghouse as set out in Part V of the Housing Act 1996 (as amended) and Housing (Right to Acquire) Regulations 1997. |
| **"Right to Buy"** | the right of a secure tenant to purchase their dwellinghouse as set out in Part V of the Housing Act 1985 (as amended) |
| **"Shared Ownership Lease"** | a lease which accords with Homes England's model form of shared ownership lease issued from time to time. |
| **"Shared Ownership Unit"** | the Affordable Housing Units to be occupied by persons who are in Housing Need whereby a person granted a Shared Ownership Lease can purchase an initial equity share in a Shared Ownership Unit of not less than 10% and not more than 75% and pay rent on the unsold equity with flexibility for such a person to purchase further equity shares in the Shared Ownership Unit up to 100% or such other equity sharing or retention terms from time to time approved by the Council. |
| **"Social Rent"** | A rent in accordance with the Homes England's Rent Standard (April 2020) as expanded on by the Rent Standard and Guidance (1 April 2013 – 31 March 2024) as may be amended updated or replaced from time to time for social rented housing at a rent not higher than the national rent regime amount. |
| **"Social Rented Housing Units"** | Affordable Housing Units that will be let to persons in Housing Need at a Social Rent and "Social Rented Housing Unit" shall mean any one of them. |

The Owners hereby covenant with the Council as follows:

**1. GENERAL PROVISIONS**

1.1 Prior to Commencement of Development to submit to the Council for its approval the Affordable Housing Scheme and not to Commence Development unless and until the Council has approved the Affordable Housing Scheme in writing.

1.2 Subject to paragraph 4.1 of this Schedule (and the sub-paragraphs thereof), to construct, Practically Complete and deliver the Affordable Housing Units on the Affordable Housing Land in accordance with the Affordable Housing Scheme and the other provisions of this Schedule subject to any amendments agreed in writing by the Council from time to time.

1.3 Not to Occupy or use the Affordable Housing Units for any other purpose other than as Affordable Housing in accordance with the Affordable Housing Scheme and the other provisions of this Schedule.

1.4 The Owners further covenant that:

1.4.1 the Affordable Rented Unit / Social Rented Housing Units shall not be Occupied other than by persons who are in Housing Need on Affordable Rent/ Social Rent terms, by way of an assured tenancy complying with the guidance given by Homes England;

1.4.2 the Shared Ownership Units shall not be Occupied other than by persons who are in Housing Need.

**2. PRACTICAL COMPLETION AND TRANSFER OF AFFORDABLE HOUSING UNITS**

2.1 Prior to Occupation of 60% (sixty percent) of the Open Market Units, to make reasonable endeavours to enter into a binding contract for:

2.1.1 the disposal of the Affordable Housing Land to an Affordable Housing Provider together with a contract requiring the construction of the Affordable Housing Units in accordance with the Planning Permission and the Affordable Housing Scheme; OR

2.1.2 the transfer to an Affordable Housing Provider of the Affordable Housing Units, fully serviced and in clean condition and the Affordable Housing Land.

2.2 In the event of a transfer taking place pursuant to paragraph 2.1.2, prior to Occupation of **80%** (eighty percent) of the Open Market Units to:

2.2.1 construct and Practically Complete all the Affordable Housing Units in accordance with the Planning Permission and the Affordable Housing Scheme.

2.2.2 transfer either the freehold title, or a lease for at least 125 years on a full repairing and insuring basis, for the Affordable Housing Units to the Affordable Housing Provider, free from all encumbrances (other than those on the title of the Affordable Housing Land at the date of this Deed) and financial charges.

2.2.3 provide the New Homes Build Warranty for each of the Affordable Housing Units to the Affordable Housing Provider.

2.3 Not to Occupy or allow Occupation of more than **60%** (sixty percent) of the Open Market Units unless and until the provisions of paragraph 2.1 of this Schedule (including its sub-paragraphs) have been complied with.

2.4 Not to Occupy or allow Occupation of more than **80%** (eighty percent) of the Open Market Units unless and until the provisions of paragraph 2.2 of this Schedule (including its sub-paragraphs) have been complied with.

2.5 Within any transfer and/or lease of the Affordable Rented Units and Social Rented Units (or any of them) to the Affordable Housing Provider:

2.5.1 to require or procure the execution by the Affordable Housing Provider and delivery to the Council of a Deed of Nomination Rights substantially (but subject to such amendments as may be agreed between the Affordable Housing Provider and the Council) in the form set out in Schedule 3 with the Council's costs to be paid by the Affordable Housing Provider;

2.6 To provide evidence of the transfer of the freehold interest or grant of the leasehold interest of the Affordable Housing Units referred to in Paragraph 2.2.2 of this Schedule to the Head of Housing and Communities within 5 (five) Working Days of completion of the transfer or grant.

2.7 In the event that no agreement for the transfer of the Affordable Housing Land or Affordable Housing Units (as required by paragraph 2.1) has been reached at the expiration period of 6 (six) months from the date of first approach to an Affordable Housing Provider pursuant to paragraph 2.1 above, the Owners shall:

2.7.1 serve notice upon the Council confirming that no agreement has been entered into; and2.7.2 submit evidence to the Head of Development and Building Control demonstrating the steps taken and explaining why such an agreement could not be entered into with any Affordable Housing Provider.

2.8 To allow a further period of 3 (three) months from the date of service of the notice referred to in paragraph 2.7.1 of this Schedule to find an Affordable Housing Provider(s) (as required by paragraph 2.1) with the assistance of the Council.

If at the end of the 3 month period no Affordable Housing Provider(s) has been found, an alternative tenure mix by amendment of the Affordable Housing Scheme may be submitted by the Owners for approval in writing by the Council.

2.9 A minimum 10% and a maximum 75% share in each Shared Ownership Unit may be sold to eligible applicants initially and the rent (excluding service charge) to be charged on the remaining percentage share in the Shared Ownership Units shall not be more than 3% of the capital value of the unsold equity in that particular individual Shared Ownership Unit.

2.10 Unless otherwise agreed by the Council or directed by Homes England any proceeds derived from the sale of a Shared Ownership Unit or the proceeds from a Right to Buy or Right to Acquire transaction of an Affordable Rented Units / Social Rented Housing Unit shall be used by the Affordable Housing Provider to re-invest in Affordable Housing within (in order of priority):

2.10.1 the local authority district of Horsham; then

2.10.2 Neighbouring Councils; then

2.10.3 the County of West Sussex; then

2.10.4 the HE's East and South East Operating Area (but excluding the County of Kent)

with priority given to the provision of new dwellings for Affordable Rent or Social Rent.

3 **Miscellaneous Provisions**

3.1 Prior to Occupation of the Affordable Housing Units:

3.1.1 all public highways (if any) and public sewerage and drainage serving the Affordable Housing Units shall be in place and shall meet all statutory requirements for such public sewerage and drainage including any build over consents or agreements that might be required;

3.1.2 all private roads, footways and footpaths (if any) serving the Affordable Housing Units shall be in place and constructed to an adoptable standard;

3.1.3 all private sewage and drainage pipes, channels and gutters, all mains water and gas pipes and electricity cables (as applicable) serving the Affordable Housing Units shall be constructed, laid, connected, operational and serviceable.

**4 Exclusions**

4.1 The obligations contained in this Schedule shall neither be binding upon nor enforceable against:

4.1.1 any mortgagee or chargee or any receiver (including an administrative receiver) or manager appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security ("Appointee") or any administrator (howsoever appointed) ("Administrator") including a housing administrator (each a "Receiver") of an Affordable Housing Provider of the Affordable Housing Land and/or Affordable Housing Provider of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or receiver PROVIDED ALWAYS THAT

4.1.1.1.any power of sale available to any such Appointee Administrator or Receiver shall only be exercised in the event of there being a default of any obligation under the security documentation;

4.1.1.2 such Appointee Administrator or Receiver shall first have notified the Council and the Housing Delivery Manager that it wishes to exercise its statutory power of sale;

4.1.13 for a period of 3 (three) clear calendar months from the date of such notification, the Appointee Administrator or Receiver shall use reasonable endeavours to complete a disposal of the relevant Affordable Housing Land and/or Affordable Unit(s) to another Affordable Housing Provider (who shall take subject to the provisions of this Deed) 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

> PROVIDED THAT and for the avoidance of doubt if such disposal has not been completed within such 3-month period then the Appointee, Administrator or Receiver shall be entitled to dispose of the relevant Affordable Housing Units free from the obligations contained in this Schedule which provisions shall determine absolutely

4.2 a tenant who has exercised a Right to Acquire;

4.3 A tenant who has exercised a Right to Buy;

4.4 a Shared Ownership leaseholder who has acquired 100% of the shares in the Shared Ownership Unit; and

4.5 any successor in title of any persons detailed in Sub-Paragraphs 4.1.2, 4.1.3 and 4.1.4 (above) or their mortgagee or chargee.

**Schedule 3**

**DEED OF NOMINATION RIGHTS**

[**REGISTERED PROVIDER**]

and

**HORSHAM DISTRICT COUNCIL**

**DEED OF NOMINATION**

for

[ ] Affordable Rented Units

at

[ ] West Sussex

Authority: Signed and Dated S106 [ ]

Lauren Kelly
Head of Legal and Democratic Services
Horsham Council
Albery House
Springfield Road
Horsham
West Sussex
RH12 2GB

Ref:

**THIS DEED OF NOMINATION RIGHTS** is made the day of 202X

BETWEEN:

(1) [ ] ("the Registered Provider"); and

(2) **HORSHAM DISTRICT COUNCIL** of Alberry House, Springfield Road, Horsham West Sussex RH12 2GB L ("the Council")

**1. DEFINITIONS**

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

1.1. "**Affordable Housing"** means subsidised housing comprising Rented Units and 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;

1.2. **"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;

1.3. **"Homes England"** means Homes England, an executive non-departmental public body, sponsored by the Department for Levelling Up, Housing and Communities 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;

1.4. **"Housing Register and Nominations Policy"** means the Council's Housing Register and Nominations Policy dated April 2023 (and which may be updated from time to time):

https://www.horsham.gov.uk/__data/assets/pdf_file/0009/128727/Housing-Register-Nominations-Policy-S-23.pdf

or other document which may replace it;

1.5. **"Initial Let"** means the first tenancy or lease of a newly constructed and previously unoccupied Rented Unit;

1.6. **"Insufficient Persons"** means that in the reasonable opinion of the Council there are fewer Nominees with a Local Connection to the parish of X, than the total number of Rented Units available for occupation in accordance with the written notice served by the Registered Provider in accordance with Clause 4.1 or 4.10;

1.7. **"Local Connection"** means in relation to an individual, that such individual:

1.7.1. immediately before taking up occupation of a Rented Unit had his only or principal home in the parish of West Grinstead for a continuous period of not less than two years; or

1.7.2. a member of his household has a parent, child, adult child, brother or sister whose only or principal home is and has been for a continuous period of not less than two years in the parish of West Grinstead and he wishes to be near that relative; or

1.7.3. is and has been permanently employed in the parish of West Grinstead for a continuous period of not less than two years

provided that where no person or Insufficient Persons can be identified as having a connection with the parish of West Grinstead as outlined above then the District of Horsham shall be substituted for the parish of West Grinstead;

1.8. "**Nominee"** means a person who may be nominated by the Council to the Rented Units and who is in need of Affordable Housing, who is not easily able to compete in the local housing market and who meets the following criteria:

1.8.1. is an individual or are individuals;

1.8.2. 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;

1.8.3. is not able easily to compete in the open market for equivalent housing accommodation in the administrative area of the Council;

1.8.4. 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;

1.8.5. is an individual who meets the criteria of the Council's Housing Register and Nominations Policy;

1.8.6. has a Local Connection.

and **"Nominee"** and **"Nominees"** shall be construed accordingly;

1.9. **"Registered Provider"** has the same definition as set out in the Housing & Regeneration Act 2008;

1.10. **"Rented Units"** means housing made available by a Registered Provider as low-cost rented accommodation (as defined by the Housing and Regeneration Act 2008 section 69) with a rent charged at a level up to 80% of the equivalent market rent inclusive of any service charges applicable, as detailed in Schedule [xxx] of the S106 Agreement and Schedule 2 of this Deed and which have been constructed or are to be constructed upon the Application Site and each of which is to be offered under a Tenancy Agreement;

1.11. "**S106 Agreement"** means the agreement relating to the Application Site and dated [….] and made between (1) [ ] and (2) [ ] and any subsequent supplemental agreements varying it thereafter;

1.12. **"Application Site"** means the land upon which the Rented Units are constructed [address of property] shown edged red on the plan at Schedule 1 of this Deed;

1.13. **"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);

1.14. **"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 5 (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 Rented Unit is completed;

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

1.16. **"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 8 (eight) weeks from the date of this Deed) the function of such a notice being the notification to the Council that a Void is now available for re-letting;

1.17. **"Void Notification"** means the notification to the Council by the Registered Provider that a Rented Unit is to become a Void with such notification to include the anticipated period that the Rented Unit will remain as a Void; and

1.18. **"Working Day"** means any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

## 2. INTERPRETATION

2.1. Clause headings shall not affect the interpretation of this Deed.

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

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

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

2.5. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

2.6. A reference to any party shall include that party's personal representatives, successors and permitted assigns and in the case of the Council the successors to its respective statutory functions.

2.7. Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

2.8. Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.

2.9. A reference to writing or written excludes faxes and e-mail.

2.10. A reference to this Deed or to any other deed or document referred to in this Deed is a reference to this Deed or such other deed or document as varied or novated from time to time.

2.11. References to clauses are to the clauses of this Deed.

2.12. Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## 3. ENABLING PROVISIONS

3.1. 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.

## 4. PROCEDURE FOR RENTED UNITS

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

Initial Lets

4.2. The Registered Provider shall give the Council not less than 10 (ten) weeks' written notice of the date when the Initial Lets will be ready for occupation.

4.3. The Registered Provider shall serve on the Council a Vacancy Notice in respect of the Rented Unit not less than 2 (two) weeks prior to such newly constructed and previously unoccupied Rented Unit becoming available for occupation.

4.4. The Council shall within 10 (ten) Working Days of receipt of a Vacancy Notice or written notice served in accordance with clauses 4.14.1, 4.14.2 or 4.14.3 as appropriate, serve upon the Registered Provider details of a Nominee.

4.5. Details of a Nominee served by the Council shall:

4.5.1. specify the type of Rented Unit which the Nominee requires and sufficient details of the Nominee's requirements and circumstances to justify their nomination to the particular Rented Unit or type of Rented Unit; and

4.5.2. include any other details that the Registered Provider may reasonably require from time to time.

4.6. The Registered Provider shall have the right to let/grant the Initial Let in respect of the Rented Units to persons of its own choosing (subject to provisions within the S106 Agreement) in the event of the Council's failure to serve details of the Nominees within

the period of 10 (ten) Working Days of receipt of the Vacancy Notice or written notice served in accordance clause 4.14.1-4.14.3 subject to the provisions of Clause 4.16.

4.7. Within 10 (ten) Working Days of the receipt of the details of a Nominee, the Registered Provider shall, use its reasonable endeavours to arrange viewing of the Rented Unit and offer a Tenancy Agreement to the Nominee.

4.8. If the Nominee fails to enter into a Tenancy Agreement within 10 (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. Upon receipt of written notice served in accordance with clause 4.14.1, 4.14.2 or 4.14.3, the Council shall serve details of a further Nominee upon the Registered Provider and the parties will follow the procedure set out in Clause 4.3 to 4.6 for a second time, but for the purposes of this Clause 4.7 the 10 (ten) Working Day period referred to in those Clauses 4.3 to 4.6 shall be reduced to 5 (five) Working Days.

4.9. If the Registered Provider's offer of a Tenancy Agreement on the second occasion is deemed to have been rejected the procedure set out in Clauses 4.3 to 4.6 shall be repeated for a third time but for the purposes of this Clause 4.8 the 10 (ten) Working Day period referred to in Clauses 4.3 to 4.6 shall be reduced to 5 (five) Working Days.

4.10. In the event a third Nominee fails to accept the Registered Provider's offer of a Tenancy Agreement within the time prescribed by clause 4.8 then the Registered Provider shall have the right to let the Initial Let in respect of the Rented Unit to persons of its own choosing (subject to the provisions within the S106 Agreement) or in the event of the Council's failure to serve details of the Nominees within the period of 10 (ten) Working Days of receipt of the Vacancy Notice (subject to the provisions of Clause 4.16).

<u>Voids</u>

4.11. 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:

4.11.1. the Registered Provider shall serve a Void Notification in respect of the relevant vacant Rented Unit within 5 (five) Working Days of the Rented Unit becoming a Void;

4.11.2. the Registered Provider shall serve a Void Notice in respect of the relevant vacant Rented Unit upon the Council as soon as the Rented Unit is available for re-letting; and

4.11.3. within 10 (ten) Working Days of receipt of the said notice the Council shall serve upon the Registered Provider details of a Nominee.

4.12. The Registered Provider shall have the right to let the relevant vacant Rented 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 4.10 within 10 (ten) Working Days of receipt of the Void Notice (subject to the provisions of Clause 4.16).

4.13. Upon receipt of the details of a Nominee referred to in Clause 4.10 the Registered Provider shall follow the procedure set out in Clauses 4.6 to 4.9 SAVE THAT where the Void is an Exempted Void and on each and every occasion that 75% of the Voids (which for the avoidance of doubt means 75% of the total number of Rented Units) have been let, the Registered Provider shall not be required to follow the procedure set down in Clauses 4.10 -4.12 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 Rented Units) to a person of its own choosing (subject to the provisions within the S106 Agreement).

4.14. Where the Void is an Exempted Void the Registered Provider shall follow the procedure set out in Clauses 4.6 to 4.9 in the event that fewer than 75% of the total number of Rented Units have been let.

<u>Provision of information</u>

4.15. The Registered Provider shall give written notice to the Council of the occurrence of the following events within 5 (five) Working Days of their occurrence:

4.15.1. a Nominee failing to view a Unit within 10 (ten) or 5 (five) (as appropriate) Working Days of an offer being made;

4.15.2. a Nominee failing to accept the offer of a Tenancy Agreement within the time limit prescribed by this Agreement;

4.15.3. the Registered Provider rejecting a Nominee in accordance with Clause 4.17 such written notice to explain the reasons for rejecting the Nominee;

4.15.4. a Nominee accepting an offer of a Tenancy Agreement from the Registered Provider.

4.16. Within 10 (ten) Working Days of the Council receiving notice served in accordance with Clause 4.14 above save for notice under 4.14.4 the Council shall serve upon the Registered Provider the names and addresses of a Nominee to include the information set out in Clause 4.4.

4.17. If the Council shall, within the period mentioned in Clause 4.15 notify the Registered Provider that the Council then has no suitable Nominee, the Council shall advise the Registered Provider of a Nominee as soon as reasonably practicable but this period shall not be any longer than a total of 20 (twenty) Working Days from the date the Council received the notice served in accordance with Clause 4.14.

4.18. The Registered Provider shall have the right to interview and make enquiries of each Nominee and to reject any 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 and if a Registered Provider rejects a Nominee in accordance with this clause, the Registered Provider must serve written notice upon the Council in accordance with Clause 4.14.3.

4.19. Where the Registered Provider intends to reject a Nominee in accordance with clause 4.17 and it serves notice of this upon the Council in accordance with Clause 4.14.3, the Council shall:

4.19.1. within 5 (five) Working Days of receipt of the said notice be entitled to send the Registered Provider written representations setting out the reason(s) why the Nominee does meet the Registered Provider's registered rules or its lettings criteria; and

4.19.2. within 5 (five) Wording Days of receipt of the Council's written representations, the Registered Provider shall consider the written representations and will notify the Council in writing that the Nominee has been accepted or that they have not and the reasons for their decision.

4.20. 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.

4.21. 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.

**5. NOTICES**

5.1. Any notice to be given under this Deed must be in writing and must be:

5.1.1. delivered by hand; or

5.1.2. sent by pre-paid first class post or other next working day delivery service.

5.2. Any notice to be given under this Deed must be sent to the relevant party at the address indicated above or such other address notified by one party to the other and addressed, in the case of the Council to Head of Housing & Community Services and, in the case of the Registered Provider [xxx].

5.3. Any notice given in accordance with clause 5 will be deemed to have been received:

5.3.1. if delivered by hand, on signature of a delivery receipt or at the time the notice or document is left at the address provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day; or

5.3.2. if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Working Day after posting.

**6. TRANSFERS TO OTHER REGISTERED PROVIDERS**

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

**7. DISPUTES**

7.1. 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**

8.1. The Registered Provider agrees with the Council to pay the reasonable and proper legal costs of £ [ ] 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. DISCREPANCIES AND PRIORITY**

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

**11. EXCLUSION CLAUSE**

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

11.1.1. Any person who shall exercise a statutory right to buy (including the preserved right to buy) or right to acquire any Rented Unit and their successor in title or chargee;

11.1.2. 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.; and

11.1.3. Any and all successors in title from the persons specified in clauses 11.1 – 11.2 above.

Execution clause for the

Registered Provider

The common seal of

**HORSHAM DISTRICT COUNCIL**

was affixed in the presence of:

Authorised signatory

**SCHEDULE XX**

**DEED OF NOMINATION RIGHTS**

**The Plan**

**SCHEDULE XX**

**DEED OF NOMINATION RIGHTS**

**Rented Unit Details**

[Details to depend upon the scheme but will typically include address/plot number, type of property (flat/house), no. bedrooms, no. persons property will accommodate, type of tenure (usually affordable rent), location (ground, first floor etc), any other relevant details such as accessibility details, wet rooms etc]

**SCHEDULE XX**

**DEED OF NOMINATION RIGHTS**

**Schedule of Tenure**

The Rented Units

| Plot | Tenure | Beds | Address | Type | Floor Level |
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**SCHEDULE XX**

**DEED OF NOMINATION RIGHTS**

**Schedule of Tenure**

The Shared Ownership Units

| Plot | Tenure | Beds | Address | Type | Floor Level |
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**SCHEDULE XX**

**DEED OF NOMINATION RIGHTS**

**Specimen Tenancy Agreement**

**[*To be provided by the Affordable Provider]***

## Schedule 4

### Biodiversity Net Gain

**The Owners' Covenants to the Council in relation to the Application Site**

With the intention of binding the Application Site, and for the purpose of allowing the Development to be delivered, the Owners covenant with the Council as follows:

**1. Monitoring Contributions**

1.1 To pay the Monitoring Fee in full to the Council on completion of this agreement.

1.2 To pay the BNG Monitoring Contribution in full to the Council within 10 (ten) Working Days of the Commencement Date.

**2. Biodiversity Gain Plan**

2.1 To submit the Biodiversity Gain Plan to the Council for its approval in writing prior to the Commencement of Development;

2.2 Not to Commence Development until the Biodiversity Gain Plan has been approved in writing by the Council;

2.3 Following the Commencement of the Development to implement and comply with the approved Biodiversity Gain Plan in accordance with the timescales set out in the approved Biodiversity Gain Plan.

**On- Site Habitat Creation and Enhancement Works**

3 In the event that the approved Biodiversity Gain Plan includes On-Site Habitat Creation and Enhancement Works the following provisions shall apply:

3.1 To submit the HMMP to the Council for its approval in writing prior to the Commencement of Development;

3.2 Not to Commence Development until the HMMP has been approved in writing by the Council;

3.3 To complete the On-Site Habitat Creation and Enhancement Works in accordance with the timescales set out in the approved HMMP;

3.4 To issue the BNG Completion Date Notice to the Council within 10 (ten) Working Days of the anticipated date of completion of the On-Site Habitat Creation and Enhancement Works;

3.5 To rectify promptly any defects in the On-Site Habitat Creation and Enhancement Works identified by the Council following receipt of the BNG Completion Date Notice and issue a subsequent BNG Completion Date Notice and thereafter to continue to rectify any defects and issue BNG Completion Date Notices until the Council issues a BNG Certificate of Completion;

3.6 To ensure that the On-Site Habitat Creation and Enhancement Works set out in the HMMP are retained and maintained in accordance with the approved HMMP from the BNG Completion Date until the 30th anniversary of the date of issue of the BNG Certificate of Completion or Practical Completion of the Development whichever occurs later;

3.7 To provide a Monitoring Report to the Council within 20 (twenty) Working Days of each Monitoring Report date specified in the HMMP;

3.8 To notify the Council of any requested amendment to the HMMP, such notice to be accompanied by:

3.8.1 the proposed amended HMMP;

3.8.2 a statement of reasons for such amendment; and

3.8.3 confirmation (with reasons) that the amendment would not prejudice:

3.8.4 the use or management of the BNG Land (On Site) in a manner consistent with its function to deliver Biodiversity Net Gain; and

3.8.5 the continued functioning of the BNG Land (On site) for BNG

4.1 From the Commencement Date and without charge, to allow the Council, its agents, and/or contractors, with or without workmen and/ or equipment to:

4.1.1 enter onto the part of the BNG Land (On Site) necessary for monitoring compliance with:

4.1.1.1 the obligations in this Agreement;

4.1.1.2 any Breach Notice; and

4.1.2 pass and repass across any land in the Owners' control necessary for gaining access to the BNG Land (On Site) in accordance with paragraph 4.1.1,

subject to the Council providing the Owners with a minimum of 5 (five) Working Days' notice of its desire to enter onto the BNG Land (On Site), and the Council and its agents and/or contractors and/or workmen complying with the reasonable health and safety requirements of the Owners and/or their appointed contractors.

5.1 To notify the Council within 20 (twenty) Working Days of service of a BNG Breach Notice whether the Owners accept the BNG Breach Notice or disputes the BNG Breach Notice in whole or in part (" BNG **Breach Response Notice**").

5.2 Where a BNG Breach Notice is disputed:

5.2.1 to include a reasoned response in the BNG Breach Response Notice; and

5.2.2 to make reasonable endeavours to resolve the measures in dispute with the Council; and

5.2.3 where resolution of the measures in dispute cannot be resolved in accordance with subparagraph 5.2.2 (above) within 20 (twenty) Working Days of the date of service of the BNG Breach Response Notice, to refer the purported non-compliance with this Agreement (set out in the BNG Breach Notice), and any remedial action needed (if any) for determination by an expert appointed in accordance with clause 11.3 of this Agreement within a further 10 (ten) Working Days.

5.2 Where a BNG Breach Notice is accepted (or an Expert has determined that the purported breach of this Agreement has occurred, and the Breach Notice is therefore valid):

5.2.1 to comply with the requirements of the BNG Breach Notice within the time limits specified (or other extended timeframe as agreed with the Council in writing).

5.3 To comply with any requirements imposed in connection with a BNG Breach Notice by an Expert pursuant to paragraph 5.2.3 within the time limits specified in the Expert's determination.

5.4 Where the Owners has/have failed to comply with a time limit of the BNG Breach Notice or Expert's determination in respect of a BNG Breach Notice, to allow the Council, its agents, and contractors with or without workmen and/ or equipment to enter:

5.4.1 any part of the BNG Land (On Site) that is necessary for the carrying out the steps set out in the BNG Breach Notice; and

any other land in the Owners' control necessary to access the BNG Land (On Site),

PROVIDED THAT that the notice and health and safety requirements specified in paragraph 3 are complied with.

5.5 To pay the Council a sum equivalent to its reasonably and properly incurred costs in exercising its step in rights and carrying out the relevant works pursuant to paragraph 5.4 (including its sub paragraphs) within 20 (twenty) Working Days of the date of a notice requesting payment (such notice to include a breakdown of such costs).

5.6 In default of payment of a sum falling due to the Council in whole or in part pursuant to paragraph 5.4 of this Schedule, the Council shall be entitled to recoup its costs from the Owners or their successors in title of the BNG Land (On Site) and may secure the same by registering a charge or restriction on the title of the BNG Land (On Site) at HM Land Registry.

## Schedule 5

### The Council's Covenants

The Council covenants with Owners as follows:

**1 BNG Monitoring Contribution and Monitoring Fee**

1.1 To use the BNG Monitoring Contribution and Monitoring Fee for the purposes set out in this agreement and not for any other purpose.

**2 Right of Access**

2.1 To give not less than 5 (five) Working Days' notice to the Owners of its intention to access the parts of the BNG Land (On Site) necessary for the purposes of inspection pursuant to paragraph 4 of Schedule 4 of this Agreement to ascertain the Owners' compliance with its covenants under this Agreement or a BNG Breach Notice.

**3 Breach Notice and Step-in Rights**

3.1 Where it considers that the Owners are not complying with its obligations under Schedule 4 of this Agreement, and the Council intends to take steps to remedy the BNG Breach, to serve a BNG Breach Notice.

3.2 Where it serves a BNG Breach Notice which is accepted by the Owners (or an Expert determines that the Owners should take any steps within a BNG Breach Notice within a specified time limit), it may notify the Owners of any extension of time specified in the BNG Breach Notice or Expert's determination, as it considers appropriate (at its absolute discretion).

3.3 Where the Owners do not comply with the time limits specified in the BNG Breach Notice or the Expert's determination (or as otherwise agreed), undertake the requirements imposed on the Owners as set out in the Breach Notice or Expert's determination provided that the Council:

3.3.1 provides a minimum of 5 (five) Working Days' notice that it, its agents, and contractors with or without workmen and equipment will enter the BNG Land (On Site) and/or land in the Owners' control to access the BNG Land (On Site);

3.3.2 complies with the reasonable health and safety requirements of the Owners and/ or its appointed contractors;

3.3.3 ensures minimal damage and inconvenience to the Owners and owners/occupiers of the Development;

3.3.4 promptly repairs any damage caused by exercising the step-in rights under this paragraph; and

3.3.5 issues to the Owners a full breakdown of the time spent and costs incurred in exercising its step-in rights under this paragraph

3.3.6 uses reasonable endeavours to minimise the costs of the undertaking the remedial works.

## Schedule 6

DEFRA Biodiversity Gain Plan template

## Schedule 7

### Management Company

The Owners covenant with the Council as follows:

1. The Owners shall not Occupy or permit the Occupation of the Housing Units until it has:

1.1 set up the Management Company and submitted details of that Management Company and the Management Company Structure Scheme to the Council for its approval;

1.2 made provision to include in the transfer of the freehold or leasehold sale of each Housing Unit a covenant by the purchaser to pay an annual charge as determined by the Management Company for the maintenance of the Managed Land which have been or are to be transferred to the Management Company;

1.3 agreed not to sell or otherwise deal with any Housing Unit without imposing a covenant on the purchaser of such Housing Unit to pay an annual charge as determined by the Management Company towards the costs incurred in maintaining the Managed Land; and

1.4 provided the Council with copies of the Articles and Memorandum of Association of the Management Company and a copy of the transfer relating to one of the Housing Units including the covenants referred to in paragraph 1.2 of this Schedule 7 above.

2. Where any Managed Land is to be managed and maintained by the Management Company in accordance with the terms of Schedule 9 and this Schedule 7, the Owners will:

2.1 prior to the First Occupation of any Housing Unit on the Development submit for approval to the Council, and gain approval from the Council to, the Management Company Structure Scheme; and

2.2 on approval of the Management Company Structure Scheme 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.

## Schedule 8

### Public Open Space

The Owners covenant with the Council as follows:

**Public Open Space**

1. Not to Commence Development until the Management Plan has been submitted to the Head of Development and Building Control at the Council for their written approval and such written approval has been provided by the Council;

2. Unless otherwise agreed in writing with the Council, not to Occupy or cause or allow the Occupation of more than 90% of the Housing Units within the Development until the Public Open Space is ready for use in accordance with the approved Management Plan and the approved Management Plan has been submitted to the Head of Development and Building Control at the Council together with a post installation report prepared by the Royal Society for the Prevention of Accidents within 5 (five) working days of the date of completion and obtained written confirmation by the Head of Development and Building Control at the Council to confirm that any approved works undertaken in relation to the provision of the Public Open Space have been completed;

3. Upon completion of the Public Open Space works as set out in paragraph 2 of this Schedule 8 if in the reasonable opinion of the Head of Development and Building Control at the Council there are defects in any of the works the Owners covenant to make good any defects in the works.

4. Upon receipt of the Council's written confirmation of completion of the approved works under paragraph 2 of this Schedule 8 and in the event that the Owners intend to transfer the Public Open Space:

   4.1.1 Any transfer of the Public Open Space (or part thereof) to the Management Company shall be subject to a covenant to comply with the following that the Public Open Space (or part thereof) shall be made available for the use of the general public and shall only be used for the purposes of public open space as defined in this Deed 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 Public Open Space (or part thereof) or is required to be carried out by a statutory undertaker.

## Schedule 9

### Managed Land

The Owners covenant with the Council as follows:

1. In the event that the Owners intend to transfer the Managed Land:

   1.4.1. to offer in writing to transfer the Managed Land (or such part thereof as may be the case from time to time) to the Management Company and notify the Head of Development and Building Control of the Council in writing that such an offer has been made;

   1.4.2. in the event that the Management Company agrees to the transfer of the Managed Land to enter into a binding contract for the transfer of the Managed Land (or part thereof) for the sum of £1 (if requested) to be paid to the Owners. The Management Company will be required as a successor in title to the Owners to maintain the Managed Land (or part thereof) in perpetuity in accordance with the approved Management Plan and HMMP

   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;

5. At its expense continue to maintain and insure the Managed Land, in accordance with the approved Management Plan and HMMP for the period until all the Managed Land has been transferred to a Management Company;

6. That the Managed Land shall be maintained at all times to the reasonable satisfaction of the Council in accordance with the Management Plan approved under paragraph 1 of Schedule 8 and the approved HMMP together with any amendments or details subsequently approved in writing by the Council.

7. The Owners and the Council agree that if the Managed Land (or part thereof) is transferred to the Management Company the Owners 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 Owners to restrict the use of the land in accordance with the restrictions set out in this Deed.

## Schedule 10

### Travel Plan

1. To submit the Travel Plan to the County Council for approval prior to First Occupation of the Development.
2. Not to cause or allow First Occupation of the Development unless a Travel Plan has been submitted and approved by the County Council.
3. Not to cause or allow Occupation of the Development unless a Travel Plan Co-ordinator has been appointed. The Owners shall notify the County Council in writing of the name, address, email address and telephone number of the person appointed.
4. To implement the approved Travel Plan (or such amended version as may be agreed with the County Council in writing from time to time) in accordance with the timescales set out in the approved Travel Plan.
5. To pay the Travel Plan Monitoring Contribution to the County Council prior to Commencement of Development and not to Commence Development until the Travel Plan Monitoring Contribution has been paid to the County Council in full.

## Schedule 11

### The County Council's 's Covenants

**1. Travel Plan Monitoring Contribution and Travel Plan**

1.1. To apply the Travel Plan Monitoring Contribution to the monitoring of the Travel Plan for the lifetime of the Development

1.2. Within 20 Working Days of receipt of a Travel Plan, to reply to the Owners to:

1.2.1. approve the Travel Plan; or

1.2.2. provide suggested amendments to the Travel Plan.

1.3. Not to unreasonably refuse or delay any approval of any Travel Plan.