(1) **HIGH BAR LANE LIMITED**

(2) **HORSHAM DISTRICT COUNCIL**

AGREEMENT

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

Land north of High Bar Lane, Thakeham, West Sussex RH20 3EH

Planning Ref: DC/23/2152
Legal Ref: CB/12172

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

THIS AGREEMENT is made as a deed and dated 1st May 2025

Between:

(1) **HIGH BAR LANE LIMITED** (Company Regn No. 13620950) whose registered office is at Old Vicarage Cottage, Crowlink Lane, Friston, Eastbourne BN20 0AU **("the Owner")**;

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

together "the Parties"

1. BACKGROUND & RECITALS

Whereas

1.1 The Owner is the proprietor with Title Absolute of all the freehold land comprising the Application Site, registered at HM Land Registry under title numbers: WSX 400587 being Land lying to the north of Stream House, High Bar Lane, Thakeham, Pulborough (RH20 3EH), WSX 263407 being bridleway to the south of Chesswood Nurseries, Storrington Road, Thakeham, Pulborough, and WSX223120 being land on the north west side of Stream House, High Bar Lane, Thakeham (RH20 3EH).

1.2 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 is entitled to enforce the planning obligations it contains.

1.3 The Application was received and validated by the Council on 27 November 2023 and at a meeting of its Planning Committee held on 12 February 2025, the Council resolved to grant the Planning Permission subject *inter alia* to completion of this Agreement.

1.4 The Parties have agreed to enter into this Agreement to secure the necessary planning obligations it contains for the purposes of section 106 of the Act.

1.5 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.

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:

"Act"	the Town and Country Planning Act 1990 (as amended).
"Air Quality Offset Contribution"	the amount of **£3,327 (three thousand three hundred and twenty-seven pounds)** to offset source of emissions from the Development from construction vehicles and dust and traffic during the operational phase to be paid in accordance with Schedule 5 of this Agreement.
"Application"	the application for full planning permission ascribed reference number DC/22/1815 and described as: "Erection of 28 dwellings and associated engineering operations and works including an onsite borehole water supply".
"Application Site"	all that land comprising Land north of High Bar Lane, Thakeham, West Sussex RH20 3EH shown for identification purposes edged red on the Application Site Plan and to which the Application relates.
"Application Site Plan"	the plan of the Application Site entitled "Site Location Plan" Job No. 30005 Page SK LP01 Rev 1 dated 18/11/24 at Schedule 1 of this Agreement.
"Commencement of Development"	the carrying out of a material operation as defined in section 56(4) of the Act in respect of the Development but excluding (for the purposes of this Agreement and for no other purpose) any operation relating to works of investigations in respect of land contamination or remedial action in respect thereof, enabling works demolition, site clearance works, earthworks, archaeological investigations and digs, exploratory boreholes, operations permitted by the Town and Country Planning (General Permitted Development) Order 2015, the erection of hoardings and fencing, temporary diversion of services and signage (including the formation of temporary construction accesses) and "**Commence Development**" shall be construed accordingly.
"Commencement Date"	the date on which the Commencement of the Development occurs.
"Commencement Notice"	the written notice confirming the Commencement Date referred to in clause 7.1.1 and served in accordance with Clause 7.3.
"Development	the development of the Application Site pursuant to the Planning Permission.
"District"	the administrative area of the Council.

"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.
"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;
"Monitoring Fee"	the fee of **£1,200 (one thousand two hundred pounds)** for monitoring obligations in the Agreement payable to the Council on or before completion of this Agreement.
"Occupation"	occupation for any purpose for which the Planning Permission has been granted by the Council other than occupation for the purposes of construction or fitting out or occupation for security, marketing or display and "**Occupy**" and "**Occupied**" shall be construed accordingly.
"Occupation Date"	the date on which the first Housing Unit is Occupied.
"Occupation Notice"	the written notice confirming the Occupation Date referred to in clause 7.1.2 to be served in accordance with clause 7.3 of this Agreement.
"Open Market Units"	All those Housing Units to be constructed on the Application Site which are not Affordable Housing Units
"Planning Permission"	the planning permission to be granted by the Council pursuant to the Application.
"Section 73 Consent"	any planning permission granted pursuant to section 73 of the Act to vary and/ or remove any planning condition(s) subject to which the Planning Permission was granted and/ or subsequent planning permission granted pursuant to section 73 of the Act.
"Specified Date"	the date upon which an obligation arising under this Agreement is due to be performed.
"Working Day"	means 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 it is dated but the provisions in the Schedules shall only take effect upon the Commencement of Development unless explicitly stated otherwise.

6. COVENANTS

6.1 Subject to clause 5.1:

6.1.1 The Owner covenants with the Council to fully comply with and to perform the obligations contained herein and in the Schedules of this Agreement in accordance with the requirements and timescales set out;

6.1.2 The Owner covenants with the Council that the Development and use of the Application Site shall be in strict accordance with this Agreement;

7. NOTICES

7.1 The Owner covenants with the Council as follows:

7.1.1 to give the 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 Owner fails to give the notice required by clause 7.1.1 and clause 7.1.2 above then the Council shall be entitled in its absolute discretion to determine the Commencement Date and Occupation Date and shall give notice to the Owner 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.

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 Owner undertakes to pay on or before the date hereof the Council's reasonable legal costs incurred in preparing and entering into this Agreement and the Monitoring Fee.

9. INTEREST

9.1 The Owner undertakes to pay Interest on monies due to the Council under this Agreement where payment is not made on the Specified Date from that Specified Date until payment is made in full.

10. ENFORCEABILITY AND MORTGAGEE'S CONSENT/ LIABILITY

10.1 Any future 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 Owner.

10.2 This Agreement shall not be enforceable against:

10.2.1 the owner or occupier of any Open Market Unit or their mortgagee or chargee save in respect for the provision of Schedule 4, paragraph 4 – Disposals;

10.2.2 the occupier of any individual Affordable Rented Unit save in respect of the provisions of Schedule 2;

10.2.3 the owner or occupier of any individual Shared Ownership Unit save in respect of the provisions of Schedule 2;

10.2.4 A Registered Provider or its chargee save for the provisions of Schedule 2;

10.2.5 Any statutory undertaker or other person who acquires part of the Application Site or an interest in it for the purposes of the supply of utility services;

10.2.6 Any successors in title to the persons specified in 10.2.1 to 20.2.5 inclusive.

11. GENERAL

The Parties undertake that:

11.1 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.

11.2 this Agreement constitutes a deed.

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

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

11.5 It is hereby agreed by the Owner that failure by the Council at any time to enforce the provisions of this Agreement or to require performance strictly or otherwise by the Owner of any of the conditions, covenants, agreements or obligations of this Agreement or any failure or delay by the Council 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.

11.6 The Owner hereby undertakes that:

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

11.6.2 the Owner has not relied on any express or implied statement warranty representation or undertaking given by or on behalf of the Council; and

11.6.3 nothing herein contained excludes the liability of any Party in relation to fraud.

11.7 The Owner acknowledges that this Agreement will be registered as a local land charge.

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

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

11.10 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.

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

11.11.1 expires; or

11.11.2 is varied or revoked other than at the request of the Owner; or

11.11.3 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.

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

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

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

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

11.16 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.

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

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

11.17.2 the definitions of Application, Development and 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.

11.17.3 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:

11.17.4 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

11.17.5 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.

12. DISPUTE RESOLUTION

12.1 Should a dispute or difference arise between the Owner and the Council concerning anything herein then the provisions of this clause 12 shall apply.

12.2 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 conveyancing/ planning 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.

12.3 Any expert appointed pursuant to clause 12.2 shall:

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

12.3.2 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;

12.3.3 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;

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

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

12.3.6 give full and clear reasons for his decision; and

12.3.7 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.

12.4 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.

13. OWNERSHIP

13.1 The Owner warrants that no person other than the Owner has any legal or equitable interest in the ownership of the Application Site other than as set out in this Agreement.

13.2 The Owner undertakes to the Council to give the Council immediate written notice of any change in the ownership 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.

14. GENERAL

14.1 Except for the planning obligations contained in this deed specifically regulating the use of land or buildings after construction pursuant to the provisions of this deed or the Planning Permission, no obligations contained in this deed 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.

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

EXECUTED as a **DEED** by
HIGH BAR LANE LIMITED
acting by one Director

..... [redacted] ..... Director

In the presence of:

W .. [redacted] .... Signature of Witness
I ..... LESLEY NAYLOR ..... Print name
T ..... ~~ERO~~ MEADOW HILL ..... Address 1
N ..... CROWLINK LANE ..... Address 2
E ..... EASTBOURNE ..... Address 3
S ..... BN20 0AU ..... Post code
S ..... TEACHER ..... Occupation

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

[redacted]

Authorised Officer

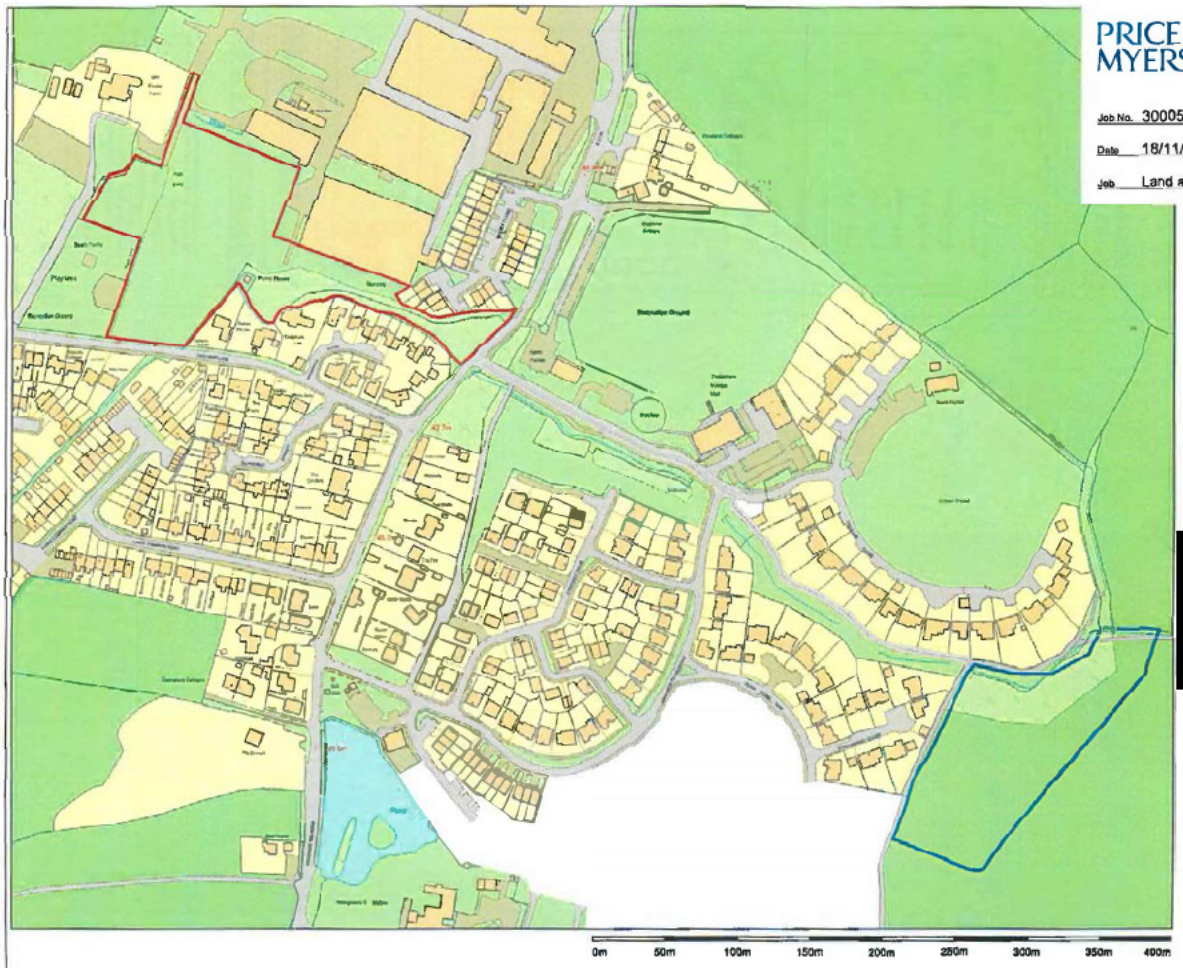
18032 x2



SCHEDULE 1

Plans

1. **The Application Site Plan**
2. **Managed Land Plan**



PRICE & MYERS

Job No. 30005 Page SK LP01 Rev 1

Date 18/11/2024 Eng DLin Chd

Job Land at High Bar Lane, Thakeham, West Sussex

KEY:

Site Boundary

Other Land Owned by the Applicant

[redacted]

1 **Site Location Plan**

Scale: 1:2500



NOTES

1. This drawing is to be read in conjunction with all relevant Architects, Engineers and specialists' drawings and specifications.
2. Do not scale from this drawing in either paper or digital form. Use written dimensions only. To check that this drawing has been printed to the intended scale this bar should be 50mm long @ A1 or 25mm long @ A3.
3. Health & Safety : All specific drawing notes are to be read in conjunction with the project "Information Pack" and "Risk Notes".

BOUNDARY KEY

Site Boundary

KEY

1 Plot No's

AF Affordable

Existing Trees / Planting

Proposed Trees

Proposed Planting

Permeable Paving

Attenuation tank below road surface

Impermeable surface: Materials will be submitted to discharge planning condition

Impermeable surface: Materials will be submitted to discharge planning condition

UNITS

2 No. 1 Bed Flat

6 No. 2 Bed House (Inc. 4 Flat)

13 No. 3 Bed House

7 No. 4 Bed House

Total 28 Units

AF 13 Affordable [redacted]

Unit 13 (3 Bed)

Unit 14 (3 Bed)

Unit 15 (3 Bed)

Unit 16 (3 Bed)

Unit 23 (3 Bed)

Unit 24 (2 Bed)

Unit 25 (2 Bed)

Unit 26 (2 Bed)

Unit 27 (1 Bed)

Unit 28 (1 Bed)

Rev	Date	Drawn	Chkd	Dsgn	Engr	Amendment
P01				DLA	DJH	Issued for Information

LAND AT HIGH BAR LANE
THAKEHAM, WEST SUSSEX

MANAGED LAND PLAN

Status
FOR INFORMATION
NOT FOR CONSTRUCTION

Drawn	CLA	Engr	DJH
Scales	1:500 at A1		1:1000 at A3
Drawing No.	30005/SKSP02	Rev	P01

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SCHEDULE 2

Affordable Housing

The Owner hereby covenants with the Council as follows:

1. DEFINITIONS

It is hereby agreed that the following expressions have the following meanings:

"Affordable Housing" affordable housing comprising Rented Units and/ or Shared Ownership Units (or such other forms of intermediate tenure as defined in the National Planning Policy Framework from time to time) 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 Owner which shall (as a minimum) provide:

a) The type and size of Housing Units to be provided as Affordable Housing Units;

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 identifying which (if any) of the Affordable Housing Units shall be fully wheelchair accessible, their type, size and location within the Development AND such other matters as the Council may require (acting reasonably); **AND**

c) such other matters as the Council may require (acting reasonably).

"Affordable Housing Provider" either one or a combination of:

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) as nominated by the Council from the Council's approved list (as may be amended from time to time) OR another registered provider of social housing as may be proposed by the Head of Housing and Communities and approved by the Council; **OR**

b) an unregistered provider of affordable 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 Units" **10** (**ten**) of the Housing Units which shall be provided as follows:

	Shared Ownership	**Affordable Rent**
1 Bedroom	0	2
2 Bedrooms	0	4
3 Bedrooms	3	1
Total	**3**	**7**

	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 required to fulfil the requirements of paragraph 3.8 of this Schedule.
"Affordable Rent"	chargeable rent that is subject to the HE'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) calculated using the Royal Institute of Chartered Surveyors approved valuation methods.
"Affordable Rented Units"	rented housing let by the Affordable Housing Provider to eligible households at Affordable Rent and **"Affordable Rented Unit"** shall be construed as meaning any one of them.
"Deed of Nomination Rights"	the Council's nomination agreement in the form (or substantially in the form) comprising Schedule 3 of this Agreement 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 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 990 years and **"Dispose"** shall be construed accordingly.
"First Occupation"	the date on which a Housing Unit is Occupied for the first 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 of social housing 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 Rented Units the requirement by a person for social housing allocation in accordance with the Housing Register and Nominations Policy; and b) in relation to the Shared Ownership Units the requirement for a person's income to be insufficient to enable them 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.
"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 Work 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, complete save for minor snagging items such that it is reasonably fit for occupation or use with all utilities/ services connected and in full operation and accessible by both vehicles and pedestrians, 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.
"Rented Units"	Housing Units to be made available by an Affordable Housing Provider as low cost rented accommodation (as defined by s.69 Housing and Regeneration Act 2008), which includes (but is not limited to) Affordable Rented Units and Social Rented Units.
"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 HE's model form of lease issued from time to time.
"Shared Ownership Unit"	the Affordable Housing Units to made available by an Affordable Housing Provider 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"	rent set in accordance with the Regulator for Social Housing's Tenancy Standard (April 2012) as may be amended updated or replaced from time to time at a rent not higher than the national rent regime amount.
"Social Rented Units"	Affordable Housing Units that will be let to persons in housing need at a Social Rent and "**Social Rented Unit**" shall be construed as meaning any one of them.

2. GENERAL PROVISIONS

2.1 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.

2.2 Subject to paragraph 5.1 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.

2.3 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.

2.4 The Owner further covenants that:

2.4.1 the Rented Units shall not be Occupied other than by persons who are in Housing Need on Affordable Rent or Social Rent terms or any other form of low cost rented accommodation (as defined by s.69 of the Housing and Regeneration Act 2008, by way of an assured tenancy complying with the guidance given by HE;

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

3. PRACTICAL COMPLETION AND TRANSFER OF AFFORDABLE HOUSING UNITS

3.1 Prior to Occupation of **5 (five)** (c.25%) of the Open Market Units, to make reasonable endeavours to enter into a binding contract for:

3.1.1 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

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

3.2 In the event of a transfer taking place pursuant to paragraph 3.1.2, prior to Occupation of **9 (nine)** (50%) of the Open Market Units to:

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

3.2.2 transfer either the freehold title, or a lease for at least 990 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.

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

3.3 Not to Occupy or allow Occupation of more than **5 (five)** (c.25%) of the Open Market Units unless and until the provisions of paragraph 3.1 of this Schedule (including its sub-paragraphs) have been complied with.

3.4 Not to Occupy or allow Occupation of more than **9 (nine)** (50%) of the Open Market Units unless and until the provisions of paragraph 3.2 of this Schedule (including its sub-paragraphs) have been complied with.

3.5 Within any transfer and/ or lease of any/ all of the Affordable Housing Units to the Affordable Housing Provider, to require or procure the execution by the Affordable Housing Provider and delivery to the Council of a Deed of Nomination Rights in respect of the Rented Units, 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;

3.6 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 3.2.2 of this Schedule to the Head of Housing and Communities within 5 (five) Working Days of completion of the transfer or grant.

3.7 In the event that no agreement for the transfer the Affordable Housing Land and/ or Affordable Housing Units (as required by paragraph 3.1) 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 3.1 above, to:

3.7.1 serve notice on the Council confirming that no agreement has been entered into;

3.7.2 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.

3.8 To allow a further period of 3 (three) months from the date of service of the notice referred to in paragraph 3.7.1 of this Schedule EITHER to find an Affordable Housing Provider(s) (as required by paragraph 3.1) with the assistance of the Council AND/ OR to agree an alternative tenure mix by amendment of the Affordable Housing Scheme.

3.9 That a minimum 10% and a maximum 75% share in each Shared Ownership Unit may be sold to eligible applicants initially and that 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 Shared Ownership Unit.

3.10 Unless otherwise agreed by the Council or directed by HE 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 a Rented Unit shall be used by the Affordable Housing Provider to re-invest in Affordable Housing within (in order of priority):

3.10.1 the local authority district of Horsham; then

3.10.2 Neighbouring Councils; then

3.10.3 the County of West Sussex; then

3.10.4 the Homes England'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.

4. MISCELLANEOUS PROVISIONS

4.1 Prior to Occupation of the Affordable Housing Units:

4.1.1 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;

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

4.1.3 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.

5. EXCLUSIONS

5.1 The obligations contained in this Schedule shall neither be binding on nor enforceable against:

5.1.1 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

5.1.1.1 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;

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

5.1.1.3 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 Housing Units 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

5.1.2 a tenant of an Affordable Rented Unit who has exercised a Right to Acquire;

5.1.3 A tenant of an Affordable Rented Unit who has exercised a Right to Buy;

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

5.1.5 any successor in title of any person detailed in Sub-Paragraphs 5.1.2, 5.1.3 and 5.1.4 (above) or their mortgagee or chargee.

SCHEDULE 3

Deed Of Nomination Rights

[**AFFORDABLE HOUSING PROVIDER**]

and

HORSHAM DISTRICT COUNCIL

DEED OF NOMINATION RIGHTS

for

Affordable Housing – Rented Units

at

Land north of High Bar Lane, Thakeham, West Sussex RH20 3EH

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 Affordable Housing Provider"); and

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

1. DEFINITIONS

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

"Affordable Housing"	subsidised housing 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. and for the purposes of this deed comprises the Rented Units;
"Affordable Housing Land"	the land upon which the Rented Units are constructed [address of property] shown edged red on the plan at Schedule 1 of this Deed;
"Affordable Housing Provider"	either one or a combination of: 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) as nominated by the Council from the Council's approved list (as may be amended from time to time) OR another registered provider of social housing as may be proposed by the Head of Housing and Communities and approved by the Council; OR 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;
"Exempted Void	a Void occurring when the Council transfers a tenant to more suitable accommodation to meet the tenant's needs;
"Homes England"	the executive non-departmental public body called Homes England, 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;
"Housing Register and Nominations Policy"	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;
"Initial Let"	the first tenancy or lease of a newly constructed and previously unoccupied Rented Unit and **"Initial Let"** shall mean any one of them;
"Local Connection"	in relation to an individual, that such individual: a) immediately before taking up occupation of a Rented Unit had his only or principal home in the parish of [XXX] for a continuous period of not less than two years; or b) 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 2 (two) years in the parish of [XXX] and he wishes to be near that relative; or c) is and has been permanently employed in the parish of [XXX] for a continuous period of not less than 2 (two) years provided that where no person or insufficient persons can be identified as having a connection with the parish of XXX as outlined above then the District of Horsham shall be substituted for the parish of [XXX.];
"**Nominee**"	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: a) is an individual or are individuals; b) is considered in their reasonable opinion by the Council or the Affordable Housing Provider in accordance with its rules or its allocations and lettings policies to be in need of the accommodation provided by the Affordable Housing Unit; c) is not able easily to compete in the open market for equivalent housing accommodation in the administrative area of the Council; d) before taking up occupation of the Affordable Housing Unit has not owned a freehold or a lease for a term exceeding 3 years within the previous 12 months (save that the condition shall not apply where the Council or the Affordable Housing Provider is satisfied that the circumstances of that person are such as to put him in need of housing) and intends to occupy and subsequently occupies the Affordable Housing Unit as his/her only or principal home; e) is an individual who meets the criteria of the Council's Housing Register and Nominations Policy; f) has a Local Connection. and **"Nominee"** and **"Nominees"** shall be construed accordingly;
"Rented Units"	the housing units constructed or to be constructed on the Affordable Housing Land to be made available by an Affordable Housing Provider as low cost rented accommodation (as defined by s.69 Housing and Regeneration Act 2008) subject to a Tenancy Agreement.
"**S106 Agreement"**	the agreement relating to the Application Site and dated [....] and made between (1) [ ] and (2) Horsham District Council and any subsequent supplemental agreements varying it thereafter;
"Social Rent"	rent in accordance in accordance with the Regulator for Social Housing's Tenancy Standard (April 2012) as may be amended updated or replaced from time to time at a rent not higher than the national rent regime amount.
"Social Rented Units"	Affordable Housing Units that will be let to persons in housing need at a Social Rent and **"Social Rented Unit"** shall mean any one of them.
"Tenancy Agreement"	an assured tenancy agreement in a form prepared by the Affordable Housing Provider and containing terms which accord with the form of tenancy agreement being used by the Affordable Housing Provider from time to time for its general lettings or such other form of tenancy as the Affordable Housing Provider specifies (acting reasonably;
"Vacancy Notice"	a written notice, the form of which is to be agreed between the Affordable Housing Provider and the Council within 5 (five) weeks of this Deed, to be given by the Affordable Housing Provider to the Council in respect of any Affordable Housing Unit on the Affordable Housing Land to notify the Council that the construction and fitting out of that Affordable Housing Unit is complete;

"Void"	an Affordable Housing Unit which is vacant because the tenant has vacated it;
"Void Notice"	a written notice, the form of which is to be agreed between the Affordable Housing Provider and the Council within 8 (eight) weeks of the date of this Deed, to be given by the Affordable Housing Provider to the Council to notify it that a Void is now available for re-letting;
"Void Notification"	the notification to the Council by the Affordable Housing Provider that an Affordable Housing Unit is to become a Void with such notification to include the anticipated period that the Affordable Housing Unit will remain as a Void;
"Working Day"	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.

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

3. ENABLING PROVISIONS

3.1. This Agreement is made pursuant to s.111 of the Local Government Act 1972, s.33 of the Local Government (Miscellaneous Provisions) Act 1982 and all other enabling powers.

4. NOMINATION PROCEDURE FOR RENTED UNITS

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

Initial Lets

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

4.3. The Affordable Housing Provider shall serve a Vacancy Notice on the Council in respect of an Initial Let not less than 2 (two) weeks prior to it becoming available for occupation.

Nomination procedures

4.4. The Council shall within 10 (ten) Working Days of receipt of a Vacancy Notice, Void Notice or written notice served in accordance with clauses 4.7.1, 4.7.2 or 4.7.3, serve on the Affordable Housing Provider details of a Nominee, which shall:

4.4.1. 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

4.4.2. include any other details that the Affordable Housing Provider may reasonably require from time to time.

4.5. Within 10 (ten) Working Days of the receipt of the details of a Nominee, the Affordable Housing Provider shall use its reasonable endeavours to arrange a viewing of the Affordable Housing Unit and make an offer of a Tenancy Agreement to the Nominee ("an Offer").

Failure to let

4.6. If the Nominee fails to enter into a Tenancy Agreement within 10 (ten) Working Days of receipt of the Affordable Housing Provider's Offer, that Nominee shall be deemed to have rejected the Affordable Housing Provider's Offer.

Notices

4.7. The Affordable Housing Provider shall give notice in writing to the Council within 5 (five) Working Days of the occurrence of a Nominee:

4.7.1. failing to view an Affordable Housing Unit within 10 (ten) Working Days of an Offer being made;

4.7.2. failing to accept an Offer within 10 (ten) Working Days of it being made;

4.7.3. being rejected by Affordable Housing Provider in accordance with clause 4.13 and in such cases, the notice shall explain the reasons for the rejection;

4.7.4. accepting an Offer from the Affordable Housing Provider.

4.8. On receipt of a written notice served in accordance with clause 4.7.1, 4.7.2 or 4.7.3, the Council shall serve details of a further Nominee on the Affordable Housing Provider and the parties shall repeat the procedures set out in clauses 4.4 – 4.7 except that:

4.8.1. the 10 (ten) Working Day period referred to in clauses 4.4 – 4 7 shall be reduced to 5 (five) Working Days.

4.8.2. the procedures set out in clauses 4.4 – 4.7 shall only be repeated twice.

4.9. In the event that:

4.9.1. a third Nominee fails to enter into a Tenancy Agreement within 10 (ten) Working Days of receipt of an Offer; or

4.9.2. the Council fails to serve details of a Nominee within 10 (ten) Working Days of receipt of a Vacancy Notice or written notice served in accordance with clauses 4.7.1, 4.7.2 or 4.7.3. then, unless clause 4.10 applies

the Affordable Housing Provider shall have the right to make the Initial Let in respect of the Rented Unit to person of its own choosing (subject to the provisions within the S106 Agreement and clause 4.13).

4.10. If the Council fails to serve details of a Nominee on the Affordable Housing Provider in accordance with clause 4.4 because it does not have suitable Nominee, it shall inform the Affordable Housing Provider within 10 (ten) Working Days and serve details of a

suitable Nominee as soon as reasonably practicable thereafter and in any event within 20 (twenty) Working Days of the date of receipt of the notice.

Voids and reletting

4.11. If a Rented Unit becomes a Void after the Initial Let or the Affordable Housing Provider has reasonable cause to believe it will become a Void:

4.11.1. the Affordable Housing Provider shall serve a Void Notification in respect of that Rented Unit within 5 (five) Working Days of it becoming a Void;

4.11.2. the Affordable Housing Provider shall serve a Void Notice on the Council in respect of that Rented Unit as soon as it is available for re-letting;

4.11.3. the parties shall follow the nomination procedures set out in clauses 4.4 to 4.7. and clauses 4.8 and 4.9 shall apply

unless the Void is an Exempted Void, in which case clause 4.12 shall apply.

Exempted Voids

4.12. Where the Void is an Exempted Void:

4.12.1. if fewer than 75% of the total number of Rented Units have been let, the parties shall follow the procedures set out in clauses 4.4 – 4.7. and clauses 4.8 and 4.9 shall apply;

4.12.2. if 75% of the Voids (which for the avoidance of doubt means 75% of the total number of Affordable Housing Units) have been let, the Affordable Housing Provider shall not be required to follow the procedures set down in clauses 4.4 – 4.7 and the Affordable Housing 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 Affordable Housing Units) to persons of its own choosing (subject to the provisions within the S106 Agreement).

Rejecting Nominees

4.13. The Affordable Housing Provider shall have the right to interview and make enquiries about each Nominee and to reject any Nominee if in the opinion of the Affordable Housing Provider the grant of a Tenancy Agreement to such Nominee would be in contravention of the Affordable Housing Provider's registered rules or its letting criteria and if an Affordable Housing Provider rejects a Nominee in accordance with this clause, the Affordable Housing Provider must serve written notice on the Council in accordance with clause 4.7.3.

4.14. Where the Affordable Housing Provider intends to reject a Nominee in accordance with clause 4.13 and it serves notice of this on the Council in accordance with clause 4.7.3, the Council shall:

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

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

4.15. The Council and the Affordable Housing 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 served in accordance with this Deed must be in writing and:

5.1.1. delivered by hand; or

5.1.2. sent by pre-paid first class post or 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 and Communities and, in the case of the Affordable Housing 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 9.00am on a Working Day, the notice will be deemed to have been received at 9.00am on that day, and if delivery occurs after 5.00pm 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 next working day delivery service, at 9.00am on the second Working Day after posting.

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

6. TRANSFERS TO OTHER AFFORDABLE HOUSING PROVIDERS

6.1. The Affordable Housing Provider shall ensure that any Affordable Housing Provider to which the Affordable Housing Land 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 Affordable Housing 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 an Affordable Housing 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

Affordable Housing Provider

The common seal of

HORSHAM DISTRICT COUNCIL

was affixed in the presence of:

Authorised signatory

Nomination Agreement – Schedule 1

The Plan

Nomination Agreement – Schedule 2

Rented Unit Details

[Details to depend on 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]

Nomination Agreement – Schedule 3

Schedule of Tenure

The Rented Units

Plot	Tenure	Beds	Address	Type	Floor Level

Nomination Agreement – Schedule 4

Schedule of Tenure

The Shared Ownership Units

Plot	Tenure	Beds	Address	Type	Floor Level

Nomination Agreement – Schedule 5

Specimen Tenancy Agreement

[*To be provided by the Affordable Provider]*

SCHEDULE 4

Managed Land

The Owner hereby covenants with the Council as follows

1. DEFINITIONS

1.1 In this Schedule the following expressions have the following meanings:

"Managed Land" the Open Amenity Space and Other Managed Land which is provided for the Development and which will be managed by the Management Company in accordance with this Schedule 4 and the Management Plan (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 Company" a limited company (or companies) or company limited by guarantee established by the Owner to carry out the long-term management and maintenance of the Managed Land (but excluding any areas which have been or are to be adopted by the relevant highways or drainage authorities pursuant to an adoption agreement) to be managed by it in accordance with the provisions of this Agreement and the Management Plan and

a) whose objectives shall include:

i) setting the level of charges for funding the running of the Management Company and collecting such charges;

ii) ensuring that the level of any charges levied against any Affordable Rent Housing Units or Shared Ownership Units shall not materially affect the ability of these Housing Units to remain as Affordable Housing, but this will not prevent charges being levied at all, nor a full charge being levied if the Affordable Rent Housing Units or Shared Ownership Units cease to be Affordable Housing Units;

iii) ensuring accountability to Occupiers of the Housing Units

AND

b) whose constitution will facilitate the Owner retaining control of the Management Company until such time it relinquishes that control to the shareholders (unless the Management Company is to be incorporated as a company limited by guarantee)

and this includes any/all subsequent body/bodies that take on this responsibility.

"Management Company Structure Scheme" a scheme that addresses the following in relation to the Management Company:

a) details of the proposed constitution of the Management Company which shall be a private company limited by shares or guarantee;

b) proposed banking arrangements for the Management Company;

c) details of and arrangements for maintenance of such insurances as shall be appropriate in respect of the use of any Managed Land managed by the Management Company and against damage by those comprehensive risks as are reasonable to insure against in the circumstances then prevailing;

d) details of the mechanism together with suitable documentation to enable the transfer of ownership and responsibility for the Managed Land from the Management Company to the Council

or its Nominee if the circumstances require on terms to be agreed (including details of how and when such transfer and step-in mechanism shall be triggered, settlement of outstanding management costs prior to transfer and liability for legal costs/expenses associated with the transfer).

"Management Plan" a detailed written scheme prepared by the Owner for the ongoing maintenance of the Managed Land which shall include the following:

a) a plan showing the boundaries of the Managed Land;

b) demonstrate full integration of landscape, biodiversity and arboriculture considerations;

c) confirmation of the approximate location and details of any apparatus to be vested in or adopted by statutory undertakers or the drainage or highway authorities;

d) the timescales for the delivery of the Managed Land and the frequency of maintenance;

e) measures to replace any trees shrubs or turf which may die or become diseased following implementation of the Residential Management Plan;

f) standard of maintenance and repair to be achieved and maintained;

g) how the costs of the maintenance shall be funded and this shall include a mechanism for recovery of maintenance costs of the Managed Land;

h) details of the proposed Management Company

i) the person who shall be the point of contact for anyone wishing to raise issues regarding the management or maintenance of the Managed Land;

j) the mechanisms which shall be put in place to ensure that the details of the point of contact are publicised to residents of the Housing Units and members of the public entering the Managed Land and in the event of any change in the point of contact to notify the Council in writing within 5 Working Days of the date of such change; and

k) that the Open Amenity Space will comply with the Horsham District Council's Open Space Sport and Recreation Review (2021).

"Managed Land Plan" the plan of the Managed Land showing the location of the Open Amenity Space and the Other Managed Land entitled "Managed Land Plan" drawing No. 30005/SKSP02 Rev P01 at Schedule 1 of this Agreement.

"Open Amenity Space" existing and proposed areas of green space, retained trees and public shared space including *inter alia* paths, signage and equipped play provision as shown on the Managed Land Plan, to be provided or maintained as part of the Development

"Other Managed Land" land including estate roads and footways, including lighting, other associated infrastructure and street furniture to be provided as part of the Development as shown on the Managed Land Plan and which will be managed by the Management Company in accordance with this Schedule 4 and the Management Plan (but excluding any areas which have been or are to be adopted by the relevant highway or drainage authorities pursuant to an adoption agreement).

2. MANAGED LAND

2.1. To submit to the Council for its written approval the Management Plan together with:

2.1.1. details of the layout, landscaping and planting and any earth works excavations, construction, drainage, fencing, materials, installation of equipment including for the equipped play provision within the Open Amenity Space, surfacing and signage; and

2.1.2. a management plan for the long-term future maintenance and management of the Managed Land and the arrangements for securing availability, access and use by the general public.

2.2. Not to Occupy or to cause or allow the Occupation of more than **13 (thirteen)** of the Open Market Housing Units until:

2.2.1. any approved works to be undertaken in relation to the provision of the Managed Land is complete;

2.2.2. a binding contract has been entered into between the Owner and the Management Company for the transfer of the Managed Land for the sum of £1 (if requested) on the terms set out in paragraph 2.4 (including all its sub paragraphs) of this Schedule in which the Management Company will be required as a successor in title to the Owner to maintain the Managed Land PROVIDED ALWAYS that the Head of Development and Building Control shall be notified and be sent a copy of the completed contract within 5 (five) Working Days of entering the contract.

2.3. At their own expense, continue to maintain the Open Amenity Space until all the Managed Land is transferred to the Management Company

2.4. Not to transfer any parcel of land comprising or comprised in the Managed Land, except upon the following terms and conditions unless otherwise agreed between the Parties:

2.4.1. title shall be deduced in accordance with the Land Registration Act 2002

2.4.2. the parcels of land comprising or comprised the Managed Land, will be transferred free of any financial charges together with the rights and easements but subject only to the exceptions reservations rights easements and other matters contained and referred to in the title to the Application Site

2.4.3. vacant possession of the parcel of land comprising the Open Amenity Space shall be given on the date of the transfer in accordance with the provisions of this Agreement

2.4.4. in the case of a transfer to the Management Company, completion shall take place on the date falling 40 Working Days after the works required under the Reserved Matters Approvals have been completed unless otherwise agreed in a contract for the transfer/conveyance made between the Owner and the Management Company

2.4.5. the transfer of the land to the Management Company shall be subject to a covenant to comply with the following:

2.4.5.1. That the Open Amenity Space 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 Agreement and shall not be used for any trade or business and that no development requiring planning permission shall be carried out thereon unless it is for the purpose of providing children's play facilities or for the maintenance of the Open Amenity Space or is required to be carried out by a statutory undertaker

2.4.5.2. The Owner and the Council agree that if the Open Amenity Space is transferred to the Management Company the Owner shall be entitled to include in the transfer of the title a requirement that the Management Company shall enter into a direct covenant with the

Owner to restrict the use of the land in accordance with the restrictions set out in this agreement.

2.4.5.3. That on completion of the transfer of the Open Amenity Space to any Management Company that Management Company shall at the same time enter into a deed of covenant with Thakeham Parish Council that:

2.4.5.3.1. the Open Amenity Space shall be made available for the use of the general public and shall only be used for the purposes of public open space and an equipped play provision as defined in this Agreement and shall not be used for any trade or business and that no development requiring planning permission shall be carried out thereon unless it is for the purpose of [providing children's play facilities or for] the maintenance of the Open Amenity Space or is required to be carried out by a statutory undertaker; and

2.4.5.3.2. That on any freehold transfer or grant of a lease of the Open Amenity Space the transferee or tenant will execute and deliver to Thakeham Parish Council a covenant on the same terms as this sub-paragraph (1.3.5.4.2); and

2.4.5.3.3. That a Land Registry restriction will be placed on the title to the Open Amenity Space in the following form

"No freehold transfer or lease of that part of the registered estate shown [ ] on the filed plan, by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by a conveyancer that the provisions of clause [cross reference clause referring to above deed of covenant requirement] of a Transfer dated 20[ ] between (1) [ ] and (2) [ ] have been complied with or that they do not apply to the disposition"

3. MANAGEMENT COMPANY

3.1. Prior to First Occupation of any Open Market Unit to provide to the Council for approval a copy of the Memorandum and Articles of Association of the Management Company and the Management Company Structure Scheme and not to Occupy or permit Occupation of any Open Market Unit until the Council have approved in writing the Memorandum and Articles of Association of the Management Company and the Management Company Structure Scheme, such approval not to be unreasonably withheld.

3.2. Prior to First Occupation of any Open Market Unit to incorporate and establish the Management Company with the Memorandum and Articles of Association and the Management Company Structure Scheme approved by the Council in accordance with paragraph 3.1 of this Schedule and not to Occupy or permit Occupation of any Open Market Unit until the Management Company has been incorporated and established.

4. DISPOSALS

4.1. Include in the transfer for the disposal of the freehold or leasehold of each and every Housing Unit a covenant by the purchaser to pay an annual charge determined by the Management Company for the maintenance of such parts of the Managed Land that have been or are to be transferred to the Management Company.

SCHEDULE 5

Air Quality Management Plan

With the intention of binding the Application Site, the Owner covenants with the Council to:

1. Pay the Air Quality Offset Contribution to the Council prior to Commencement.
2. Prior to Commencement submit an updated Air Quality Management Plan for approval by the Council and not to Commence Development until this is approved in writing by the Council.
3. Prior to First Occupation of the Development to implement the measures set out in the Air Quality Management Plan approved in accordance with paragraph 1 of this Schedule 5.