(1) **HAGLANDS LIMITED**

(2) **HORSHAM DISTRICT COUNCIL**

DRAFT

AGREEMENT

Section 106 of the Town and Country Planning Act 1990 in respect of
Land west of Smock Alley, South of Little Haglands, West Chiltington.

Horsham District Council
Parkside
Chart Way
Horsham
West Sussex
RH12 1RL

Legal Ref: [ ]

This Agreement is made as a deed and dated 2024

Between:

(1) **HAGLANDS LIMITED** (co reg no 00752512) of Kingfisher House Hurstwood Grange, Hurstwood Lane, Haywards Heath, West Sussex, RH17 7QX **(the "Owner")**

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

together "the Parties"

1. BACKGROUND & RECITALS

Whereas

1.1 The Owner is the registered proprietor with Title Absolute of the land shown edged in red on the Application Site Plan, being part of the land registered at HM Land Registry under title number WSX238724.

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.

1.3 The Application for the Development was submitted to the Council on 11 October 2024.

1.4 The Council is minded to grant planning permission for the Development subject to this Agreement in order to secure the necessary planning obligations.

1.5 The Owner is 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.

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"	means the Town and Country Planning Act 1990 as amended;
"Application"	means the application with reference number DC/24/1619 for the erection of 14 no. 2, 3 and 4 bedroom dwellings, including 4 bungalows with access from Smock Alley, vehicle parking, public open space, landscaping and a borehole;
"Application Site"	means all that land at Haglands Road, West Chiltington and shown for identification purposes edged red on the Application Site Plan and to which the Application relates
"Application Site Plan"	means the plan entitled S101B attached to this Agreement at Schedule 1;
"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;
"Biodiversity Gain Plan"	means the plan in the form (or substantially in the template form) published by DEFRA attached at Schedule 6 of this Agreement, as may be updated from time to time, to be completed and submitted to the Council for approval in writing in accordance with Schedule 4 of this Agreement;
"BNG Monitoring Contribution"	Means the sum of £4,176.87 (four thousand one hundred and seventy-six pounds and eighty seven pence) (Index Linked) 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 Owner to the Council pursuant to Schedule 4 of this Agreement;
"Breach Notice"	means a notice which may be served by the Council on the Owner pursuant to paragraph 3 of Schedule 5 of this Deed;
"Certificate of Completion"	means a written certificate of completion issued by the Council confirming that the Habitat Creation and Enhancement Works have been completed to the reasonable satisfaction of the Council on the Completion Date
"Certificate of Practical Completion"	means a certificate(s) of practical completion relating to any works carried out pursuant to the Planning Permission and/or this Agreement or as the context may allow any part section or phase thereof issued by an independent architect, civil engineer, chartered surveyor or other certifying professional;
"Commencement of Development"	means 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"	means the date on which the Commencement of the Development occurs;
"Commencement Notice"	means the written notice confirming the Commencement Date referred to in clause 7.1.1 and served in accordance with Clause 7.3;

"Completion Date"	means the date specified in the Certificate of Completion as the date the Habitat Creation and Enhancement Works were completed;
"Completion Date Notice"	means the written notice served by the Owner on the Council confirming that the Habitat Creation and Enhancement Works have been completed;
"Development	means the development of the Application Site pursuant to the Planning Permission;
"Habitat Creation and Enhancement Works"	means the habitat creation and 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) comprising: a) retention and enhancement of 0.27ha of modified grassland to other neutral grassland in good condition (2.38 units) b) retention and enhancement of 0.14ha of bramble scrub to mixed scrub in moderate condition (1.16 units) c) Retention of 0.03 ha of bracken stand (0.076 units) d) Creation of 0.15ha of other neutral grassland in moderate condition (1.11 units) e) Creation of 0.3ha of mixed scrub in moderate condition (2.23 units) f) Retention of 0.27km of species-rich native hedgerows with trees and 0.13km of species-rich native hedgerow, all in good condition (7.38 units)
"Habitat Creation and Enhancement Works Land"	Means the land upon which the Habitat Creation and Enhancement Works are to be carried out in accordance with the Habitat Management and Monitoring Plan (HMMP)
"Habitat Management and Monitoring Plan (HMMP)"	means a habitat and management monitoring plan prepared by a suitably qualified person and substantially in the form set out in the Natural England Habitat Management and Monitoring Plan Template Version 1.0 November 2023 or its successor or replacement document, prepared in accordance with the approved Biodiversity Gain Plan and including: a) a non-technical summary; b) the roles and responsibilities of the people or organisation(s) delivering the HMMP; c) the planned habitat creation and enhancement works to create or improve habitat to achieve the biodiversity net gain in accordance with the approved Biodiversity Gain Plan d) the management measures to maintain habitat in accordance with the approved Biodiversity Gain Plan for a period of 30 years from Practical Completion of the Development (which

for the avoidance of doubt includes the Practical Completion of the Habitat Creation and Enhancement Works; and

e) the monitoring methodology and frequency in respect of the created or enhanced habitat to be submitted to the local planning authority;

"Index" means the BCIS Index;

"Index Linked" means such upwards increase only to any of the BNG Monitoring Contribution or Monitoring Fee, payable under this Deed on an annual or pro rata per diem from the date of this Deed to the date of payment of the relevant contribution or fee;

"Management Company" means a limited company or company limited by guarantee (or companies) established or appointed by the Owner to carry out the long term management and maintenance of the [BNG] Land and to be managed by it in accordance with the provisions of this Agreement and:

1. whose objectives shall include:

1.1. setting the level of charges for funding the running of the Management Company or its obligations under this Agreement in connection with the [BNG] Land and collecting such charges:

1.2. ensuring accountability to occupiers of the Dwelling Units:

2. whose constitution will facilitate (where the Management Company is to be established by the Owner):

2.1. the Owner retaining control of the Management Company until such time it relinquishes that control to the shareholders; and

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

"Monitoring Fee" means the fee of £800 (Index Linked) payable to the Council for monitoring obligations in the Agreement and which is payable on or before completion of this Agreement under the provisions of regulation 122 of the Community Infrastructure Regulations 2010, section 111 of the Local Government Act 1972 and section of the Localism Act 2011;

"Monitoring Report" means the monitoring reports to be submitted to and approved by the Council in writing, substantially in the form set out by Natural England Habitat Management and Monitoring Plan Template Version 1.0 November 2023 or its successor or replacement document, providing an assessment of the performance and efficacy of the HMMP in the twelve month period preceding the relevant Monitoring Report Date and such report to include but not be limited to assessment of the condition of the Habitat Creation and Enhancement Works using the Statutory Biodiversity Metric Condition Assessment sheets July 2024 (v1.0.2) or its successor or replacement document, and to be submitted at a minimum of 1 (one), 2 (two), 5 (five), 10 (ten), 15 (fifteen), 20 (twenty), 25 (twenty five) and 30 (thirty) years following Practical Completion of the

	Development (which for the avoidance of doubt including the Practical Completion of the Habitat Creation and Enhancement Works;
"Monitoring Report Date"	means the first, second, fifth, tenth, fifteenth, twentieth, twenty fifth and thirtieth anniversaries of the Certificate of Completion of the Habitat Creation and Enhancement Works;
"Occupation"	means occupation for any purpose for which the Planning Permission has been granted by the Council other than occupation for the purposes of construction or fitting out or occupation for security, marketing or display and "**Occupy**" and "**Occupied**" shall be construed accordingly;
"Occupation Date"	means the date on which the Occupation of the Development occurs;
"Occupation Notice"	means the written notice confirming the Occupation Date referred to in Clause 7.1.2 and served in accordance with Clause 7.3;
"Planning Permission"	means the planning permission to be granted by the Council pursuant to the Application;
"Practical Completion"	means the proper issue of one or more Certificate(s) of Practical Completion and the term "**Practically Complete**" shall be construed accordingly;
"Retail Price Index"	means the Retail Price Index (All-Items) (RPI) being a price index calculated and published by the UK's Office of National Statistics which measures the change in the prices charged for goods and services bought for consumption in the UK or such other index which replaces it;
"Section 73 Consent"	means a planning permission granted pursuant to section 73 of the Act which varies and/or removes any condition subject to which the Planning Permission and/or such planning permission pursuant to section 73 of the Act was granted;
"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 hereof but otherwise this Agreement is conditional on the grant and issue of the Planning Permission and the provisions in Schedule 3 and Schedule 4 shall only take effect upon the Commencement of Development, save for any pre commencement obligations.

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 Schedules 3 and 4 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 notices 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 Legal and Democratic Services 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 09:00hrs and 17:00hrs 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 has undertaken 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. GENERAL

The Parties undertake that:

9.1 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.

9.2 this Agreement constitutes a deed.

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

9.4 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.

9.5 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.

9.6 The Owner hereby undertakes that:

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

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

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

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

9.8 The Owner hereby give consent for the Application Site Plan to be reproduced by the Council.

9.9 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.

9.10 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.

9.11 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:

9.11.1 expires;

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

9.11.3 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.

9.12 The Owner (or any person deriving title to the Application Site from them) shall not be liable for any breach of the restrictions and obligations undertaken by the Owner as set out in this Agreement where such breach arises after the Owner has parted with its interests 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.

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

9.14 References to the Application Site include any part or parts of it as the context so admits.

9.15 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.

9.16 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.

9.17 Any future mortgagee or chargee agrees that the security of the charge over the Site shall take effect subject to this Deed PROVIDED THAT the future mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

9.18 Where by this agreement, any action approval consent direction authority agreement is required to be taken given or reached by the Council any such action approval consent direction authority agreement shall not be unreasonably withheld or delayed.

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

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

9.19.2 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;

9.19.3 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:

9.19.4 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

9.19.5 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 DISPUTE RESOLUTION

10.1 Should a dispute or difference arise between the Owner and the Council concerning anything herein then the provisions of this clause 10 shall apply.

10.2 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 with at least 10 years post qualification experience (the "**Expert**") whose identity and terms of appointment (including fees) shall be 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.

10.3 The Expert appointed pursuant to clause 10.2 shall:

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

10.3.2 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 or parties;

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

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

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

10.3.6 give full and clear reasons for his decision; and

10.3.7 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.

10.4 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.

11 OWNERSHIP

11.1 The Owner warrants that no person other than the Owner has any legal or equitable interest in the Application Site or any part of the Application Site apart from as set out in recital 1.1.

11.2 The Owner undertakes to the Council to give the Council immediate written notice 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.

12 GENERAL

12.1 Except for the planning obligations contained in Schedule 3 of this Agreement specifically regulating the use of land or buildings after construction pursuant to the provisions 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 on any of the statutory utilities in respect of any land within the Application Site.

13 INDEXATION

13.1 The BNG Monitoring Contribution and the Monitoring Fee shall be Index Linked (upwards only) in accordance with the relevant Index from the date of this Deed to the date of payment of the relevant contribution or fee.

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

SIGNED as a **DEED** by
HAGLANDS LIMITED
Acting by one Director }

…… Signature of Director

…… Print name

In the presence of:

…… Signature

…… Print name

…… Address

……

……

……

…… Occupation

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

Authorised Officer

Schedule 1

PLANS

The Application Site Plan

Schedule 2

Monitoring Fee

The Owner covenants with the Council as follows:

1. To pay the Monitoring Fee to the Council on or prior to completion of this Agreement;

2. Not to Commence the Development unless and until the Monitoring Fee has been paid to the Council.

Schedule 3

Affordable Housing

1. DEFINITIONS

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

"Affordable Housing"	means the 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) 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"	means 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"	means 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 the 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** c) such other matters as the Council may require (acting reasonably).
"Affordable Housing Provider"	means 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"	means five (5) of the Housing Units of which: a) four (4) shall be provided as Rented Units AND b) one (1) shall be provided as 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); 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 2.8 of Schedule 3.
"Affordable Rent"	means 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"	means a 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"	means the Council's nomination agreement in the form (or substantially in the form) attached at Appendix 1 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"	means 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.
"Head of Development and Building Control"	means 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"	means 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"	means 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"	means 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"	means: 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 to rent or buy housing available locally on the open market determined with regard to local incomes and local house prices;
"Housing Unit"	means a unit for residential Occupation to be constructed as part of the Development.
"Local Housing Allowance"	means 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"	means councils who share the same housing market within the Council's Strategic Housing Market Assessment;
"Open Market Units"	means all those Housing Units to be constructed on the Application Site which are not Affordable Housing Units.
"Practical Completion"	means 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.
"Rented Units"	means the 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).

"Right to Acquire"	means 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"	means 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"	means a lease which accords with HE's model form of lease issued from time to time.
"Shared Ownership Unit"	means 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"	means the 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"	means the 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.

The Owners hereby covenant with the Council as follows:

2. 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 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;

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 three (3) 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 six (6) 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 three (3) 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 six (6) 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 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 Appendix 1 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 and/ 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, to:

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

2.7.2 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 EITHER to find an Affordable Housing Provider(s) (as required by paragraph 2.1) with the assistance of the Council AND/ OR to agree an alternative tenure mix by amendment of the Affordable Housing Scheme.

2.9 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.

2.10 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):

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 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.

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 on 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 Head of Housing and Communities that it wishes to exercise its statutory power of sale;

4.1.1.3 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

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

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

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

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

5.4

Schedule 4

On-site biodiversity net gain

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

1. Monitoring Contributions

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

2. Biodiversity Gain Plan and HMMP

2.1. To submit the Biodiversity Gain Plan and the HMMP 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 and the HMMP have been approved in writing by the Council;

2.3. Not to Occupy the Development until the Habitat Creation and Enhancement Works as set out within the approved HMMP have been carried out and completed in full and the Council has issued a Certificate of Completion;

2.4. To issue the Completion Date Notice to the Council within 10 (ten) Working Days of the completion date of the Habitat Creation and Enhancement Works;

2.5. To rectify promptly any defects in the Habitat Creation and Enhancement Works identified by the Council and issue a subsequent Completion Date Notice and thereafter to continue to rectify any defects and issue Completion Date Notices until the Council issues a Certificate of Completion;

2.6. To ensure that the Habitat Creation and Enhancement Works set out in the HMMP are retained and maintained from the Completion Date until the 30th anniversary of the date of issue of the Certificate of Completion or Practical Completion of the Development whichever occurs later;

2.7. To provide a Monitoring Report to the Council within 20 (twenty) Working Days of each Monitoring Report Date;

2.8. To notify the Council of any requested amendment to the Habitat Management and Monitoring Plan, such notice to include:

2.8.1. the proposed amended HMMP;

2.8.2. a statement of reasons for such amendment; and

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

2.8.3.1. the use or management of the Application Site in a manner consistent with its function to deliver biodiversity net gain in accordance with the approved HMMP; and

2.8.3.2. the continued functioning of the Application Site for biodiversity net gain in accordance with the approved HMMP.

3. Access for Inspection

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

3.1.1. enter onto the part of the Application Site necessary for monitoring compliance with:

3.1.1.1. the obligations in this Deed;

3.1.1.2. any Breach Notice; and

3.1.2. pass and repass across any land in the Owner's control necessary for gaining access to the Application Site in accordance with paragraph 3.1.1.

4. Breach Notice and Step-In Rights

4.1. To notify the Council within 20 Working Days of service of a Breach Notice whether the Owner accepts or disputes the notice;

4.2. Where a Breach Notice is disputed, (or remedial steps are not agreed in accordance with sub-paragraph 4.3):

4.2.1. to include a reasoned response in the notice under paragraph 4.1 and

4.2.2. to request, within 10 Working Days of any time limit in the Breach Notice (or other extended timeframe as agreed with the Council in writing), that the matter be referred for determination by the Expert;

4.3. Where a Breach Notice is accepted (or the Expert has determined that it is valid):

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

4.3.2. to use reasonable endeavours to agree the following with the Council within 20 Working Days of notifying the Council that it accepts the Breach Notice:

4.3.2.1. the steps required to remedy the breach; and

4.3.2.2. any remedial works (if applicable);

4.3.2.3. to remedy the breach within the time period specified in the Breach Notice (or such other period as may be agreed with the Council in accordance with the details agreed under sub-paragraphs 4.3.2.1 and 4.3.2.2.

4.4. To comply with any requirements imposed in connection with a Breach Notice by the Expert within the time limits specified in the Expert's determination.

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

4.5.1. any part of the Application Site that is necessary for the carrying out the steps set out in the Breach Notice; and

4.5.2. any other land in the Owner's control necessary to access the Application Site,

PROVIDED THAT reasonable advance notice is given in accordance with paragraph 3 of this Schedule to carry out works reasonably necessary to comply with the requirement of the Breach Notice or the Expert's determination, as applicable.

4.6. 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 4.5 (including its sub paragraphs) within 20 Working Days of the date of a notice requesting payment (such notice to include a breakdown of such costs).

4.7. In default of payment of a sum falling due to the Council in whole or in part pursuant to paragraph 4.6 of this Schedule, the Council shall be entitled to recoup its costs from the Owner or its successors in title and may secure the same by registering a charge or restriction on the title of the Application Site at HM Land Registry.

5. Transfer to Management Company

Prior to First Occupation of any Dwelling the Owner shall:

5.1 offer in writing to transfer the Habitat Creation and Enhancement Works Land to the Management Company for £1; and

5.2 enter into a binding contract for the transfer of the Habitat Creation and Enhancement Works Land for the sum of £1 to the Management Company, which the Management Company will be required as a successor in title to the Owners to maintain such Habitat Creation and Enhancement Works Land 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.

6. Management Company

The Owner shall not occupy or permit the First Occupation of any Dwelling Unit until they have:

6.1 set up or appointed the Management Company;

6.2 made provision to include in the transfer of the freehold or leasehold sale of each Dwelling Unit a covenant by the purchaser to pay an annual charge as determined by the Management Company for the maintenance of the Habitat Creation and Enhancement Works Land which have been or are to be transferred to the Management Company;

6.3 agreed not to sell, or otherwise deal with any Dwelling Unit without imposing a covenant on the purchaser of such Dwelling Unit to pay an annual charge as determined by the Management Company towards the costs incurred in maintaining the Habitat Creation and Enhancement Works Land;

6.4 immediately upon the sale of the first Dwelling Unit to provide the Council with copies of the Articles and Memorandum of Association of the Management Company and a copy of the transfer relating to the Dwelling Unit;

Schedule 5

The Council's Covenants

The Council covenants with Owner as follows:

1. Habitat Management and Monitoring Contribution

1.1. To use the BNG Monitoring Contribution for its intended purpose and not for any other purpose.

2. Right of Access

2.1. To give not less than 5 (five) Working Days' notice to the Owner of its intention to access the Application Site necessary for the purposes of inspection pursuant to paragraph 3 of Schedule 4 of this Deed to ascertain the Owner's compliance with its covenants under this Deed or a Breach Notice.

3. Breach Notice and Step-in Rights

3.1. Where it considers that the Owner is not complying with its obligations under this Deed, and intends to take steps to remedy the breach, to first notify the Owner:

3.1.1. the reasons for alleging non-compliance;

3.1.2. the steps it proposes the Owner should take to remedy any breach or non-compliance, and

3.1.3. the reasonable time limits for the Owner to take these steps.

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

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

3.3.1. provides reasonable notice that it, its agents, and contractors with or without workmen and equipment will enter the Application Site and/ or land in the Owner's control to access the Application Site;

3.3.2. ensures minimal damage and inconvenience to the Owner;

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

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

Schedule 6

DEFRA Biodiversity Gain Plan template

Appendix 1

Deed of Nomination

[**AFFORDABLE HOUSING PROVIDER**]

and

HORSHAM DISTRICT COUNCIL

DEED OF NOMINATION RIGHTS

for

[ ] Affordable Housing – Rented Units

at

[ ] West Sussex

Authority: Signed and Dated S106 [ ]

Lauren Kelly

Head of Legal and Democratic Services

Horsham Council

Parkside

Chart Way

Horsham

West Sussex

RH12 1RL

Ref:

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

BETWEEN:

(1) [ ] ("the Affordable Housing Provider"); and

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

1. DEFINITIONS

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

"**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]*