(1) **STAR BUILD LIMITED**

(2) **HORSHAM DISTRICT COUNCIL**

(3) **WEST SUSSEX COUNTY COUNCIL**

AGREEMENT

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

The Copse, Worthing Road, Southwater, Horsham, West Sussex RH13 9AT

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

Planning Ref: DC/24/0622
Legal Ref: CB/11980

THIS AGREEMENT is made as a deed and dated 24th March **2025**

Between:

(1) **STAR BUILD LIMITED** (Company Regn No. 09108524) whose registered office is at Beechover House, Springfield Lane, Colgate, Horsham, West Sussex RH12 4TA (**"the Owner"**);

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

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

together **"the Parties"**

1. BACKGROUND & RECITALS

Whereas

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

1.2 The County Council is the highway authority for the area within which the Application Site and BNG Site is situated for the purposes of this Agreement and for the purposes of section 106 of the Act.

1.3 The Owner is the registered proprietor of the Application Site and BNG Site with title absolute of land registered at HM Land Registry under title number WSX333162.

1.4 The Application was received by the Council on 22 April 2024 and validated on 08 July 2024.

1.5 On 05 November 2024 the Council's Planning Committee (North) resolved to grant the Planning Permission subject to the completion of this Agreement to secure the planning obligations herein.

1.6 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.

1.7 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 or the County 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:

"2015 Order"	the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended);
"Act"	the Town and Country Planning Act 1990 (as amended);
"Application"	the planning application for: '*Erection of a 70-bed care home, access, landscaping and associated infrastructure*' ascribed reference number DC/24/0622 by the Council;
"Application Site"	land at The Copse, Worthing Road, Southwater, Horsham, West Sussex RH13 9AT to which the Application relates and shown edged red on the Application Plan of which the proposed BNG Site will be a part;
"Application Plan"	the plan entitled '*Site Location Plan' Drg No. FL24-2145-050 Revision B* and dated February 2024 showing the location of the Application Site of which the BNG Site is a part comprising Schedule 1 of this Agreement;
"Biodiversity Metric"	the statutory biodiversity accounting tool published by DEFRA or Natural England from time to time which can be used to measure the biodiversity value or relative biodiversity value of habitats or habitat enhancement for the purposes of BNG;
"Biodiversity Net Gain" / "BNG"	an increase in biodiversity units resulting from implementing the HMMP (as measured using the Biodiversity Metric) that can be allocated to the Development to fulfil its requirement to create or enhance biodiversity pursuant to Schedule 7A of the Act (as inserted by the Environment Act 2021);
"BNG Monitoring Contribution"	the sum of **£4,176.87 (FOUR THOUSAND ONE HUNDRED AND SEVENTY-SIX POUNDS AND EIGHTY-SEVEN PENCE)** (Indexed) to be used to pay the Council's costs of monitoring compliance with the Biodiversity Net Gain Plan and Habitat Management and Maintenance Plan over the

	entire 30-year period as approved by the Council to be paid by the Owner to the Council pursuant to Schedule 2 of this Agreement;
"Biodiversity Gain Plan"	the plan in the form (or substantially in the form) published by DEFRA attached at Schedule 5 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 2 of this Agreement to satisfy the development's biodiversity net gain requirements pursuant to Schedule 7A of the Act;
"BNG Security"	the form of financial security which for the avoidance of doubt may be by surety, bond, guarantee or such other acceptable security mechanism or mix of mechanisms and approved by the Council and required to be in place in order to secure compliance with the HMMP approved pursuant to the statutory Biodiversity Gain Plan condition imposed by Schedule 7A of the Act and this Agreement;
"BNG Site"	that part of the Application Site achieving the statutory BNG objective through the Biodiversity Gain Plan approved as a statutory condition.
"BNG Sum"	the sum secured by the BNG Security and which has been calculated on the basis of the approved Biodiversity Gain Plan which achieves a ten percent (10%) Biodiversity Net Gain to mitigate the Development;
"Breach Notice"	a notice which may be served by the Council on the Owner pursuant to paragraph 4 of Schedule 2 of this Agreement;
"Bus Stop Upgrade Contribution"	the sum of **£14,996.00 (FOURTEEN THOUSAND NINE HUNDRED AND NINETY-SIX POUNDS)** (Index Linked) to be used for the provision and installation of a "Realtime" travel information system at the north and south bound Warnham Gate bus stops on the Worthing Road (nearest to the Application and BNG Site) and the purchase of a 4 year extended warranty for each system, to be paid by the Owner to the County Council in accordance with Schedule 3 of this Agreement;
"Certificate of Completion"	a written certificate of completion confirming that the Habitat Creation and Enhancement Works have been completed to the reasonable satisfaction of the Council on the Completion Date issued (or deemed to have been issued) by the Council under paragraph 2.6 of Schedule 2;
"Commencement Date"	the date on which Commencement of the Development occurs;
"Commencement Notice"	the written notice confirming the anticipated Commencement Date referred to in clause 7.1.1 and served in accordance with Clause 7.3;
"Commencement of Development"	the carrying out of a material operation as defined in section 56(4) of the Act in respect of the Development but excluding (for the purposes of this Agreement and for no other purpose) any operation relating to works of investigations in respect of land contamination or remedial action in respect thereof, enabling works, demolition, site clearance works, earthworks, archaeological investigations and digs, exploratory boreholes, operations permitted by the 2015 Order, the erection of hoardings and fencing, temporary diversion of services and signage (including the formation

	of temporary construction accesses) and "**Commence Development**" shall be construed accordingly;
"Completion Date"	the date specified in the Certificate of Completion as the date the Habitat Creation and Enhancement Works were completed;
"Completion Date Notice"	written notice from the Owner to the Council of the proposed Completion Date of the Habitat Creation and Enhancement Works served in accordance with paragraph 2.4 of Schedule 2;
"County Council Monitoring Fee"	means the total sum of £780 (Seven Hundred and Eighty Pounds) payable to the County Council for monitoring the delivery and performance of the obligations contained in Schedule 3 of this Agreement over the lifetime of the Development;
"DEFRA"	the Department of the Environment Food and Rural Affairs or any successor body which carries out its functions;
"Development"	the development described in the Application and pursuant to the Planning Permission;
"Habitat Creation and Enhancement Works"	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);
"Habitat Management and Monitoring Plan (HMMP)"	the document titled *'Habitat Management and Monitoring Plan'* to create or improve habitat to achieve the Biodiversity Net Gain in accordance with the Biodiversity Gain Plan to be prepared and approved through discharge of the statutory condition and which shall include: 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; and e) the monitoring methodology and frequency in respect of the created or enhanced habitat to be submitted to the Council; and f) the quantum of the BNG Sum.
"Indexed"	the quantum of an index linked sum shall increase by an amount equal to the proportionate increase in the All in Tender Price Index published annually by the Building Costs Information Service of the Royal Institute of Chartered Surveyors over the same time period;
"Index Linked"	means increased in accordance with the following formula: Amount payable: A = B x (C / D) (where C/D is equal to or greater than 1) and where:

	• A is the sum actually payable on the date the payment is due • B is the original sum mentioned in this Agreement • C is the BCIS Index that applied immediately preceding the date the payment is due • D is the figure for the BCIS Index that applied when the index was last published prior to this Agreement except for the Bus Stop Upgrade Contribution and the Travel Plan Monitoring Contribution where the figure for the BCIS Index will be applied from the date of the County Council's consultation 13th September 2024;
"Monitoring Report"	the monitoring reports to be issued to the Council as specified in the Habitat Management and Monitoring Plan 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 the Completion Date;
"Occupation"	occupation of the Development for any purpose for which the Planning Permission is granted 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 Notice"	the written notice confirming the Occupation Date referred to in Clause 7.1.2 and served in accordance with Clause 7.3;
"Natural England"	the public body known as Natural England which acts as the government's advisor for the natural environment in England or any successor body appointed to carry out its functions;
"Planning Permission"	the planning permission to be granted by the Council pursuant to the Application;
"Practical Completion"	in relation to the Development practically complete save for minor snagging items such that it is reasonably fit for occupation or use and the words **"Practical Completion"** and **"Practically Complete"** shall be construed accordingly;
"Practical Completion Certificate"	a written certificate of completion confirming that the Development has been completed issued by the Building Control department of the Council or other Building Control Inspector registered with Building Safety Regulator (or successor body appointed to fulfil its functions from time to time) to be submitted by the Owner to the Planning Department of the Council in accordance with clause 7.1.3 of this Agreement;
"Section 73 Consent"	any planning permission granted pursuant to section 73 of the Act which varies and/or removes any condition subject to which the Planning Permission and/or such planning permission pursuant to section 73 of the Act was granted;
"Travel Plan"	means the travel plan by GTA Civils and Transport dated July 2024 and submitted to the Council with the Application;
"Travel Plan Co-ordinator"	means a person appointed by the Owner and responsible for securing the implementation of the Travel Plan;
"Travel Plan Monitoring Contribution"	the sum of **£3,815 (THREE THOUSAND EIGHT HUNDRED AND FIFTEEN POUNDS)** (Index Linked) to be used to pay the County Council for the monitoring of the Travel Plan to

	be paid to the County Council in accordance with Schedule 3 of this Agreement;
"Working Day"	Monday to Friday inclusive but excluding any day that is a bank holiday, public holiday or statutory holiday in England;

4. ENABLING PROVISIONS

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

5. CONDITIONS PRECEDENT

5.1 This Agreement shall come into effect upon the date hereof, but the provisions of Schedule 2 and Schedule 3 of this Agreement shall only take effect upon the Commencement of the Planning Permission, save in respect of any obligations expressly requiring compliance prior to Commencement of the Development which shall come into effect immediately upon on the grant of Planning Permission.

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 Schedule 2 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 and BNG Site shall be in strict accordance with this Agreement;

6.1.3 The Owner covenants with the County Council to fully comply with and perform the obligations contained herein and in Schedule 3 of this Agreement in accordance with the requirements and timescales set out.

7. NOTICES

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

7.1.1 to give the Commencement Notice to the Council 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.

7.1.3 to give the Practical Completion Certificate to the Council not less than 5 (five) Working Days after its issue.

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

8.2 The Owner has undertaken to pay on or before the date hereof the County Council's reasonable legal costs in relation to this Agreement.

8.3 The Owner covenants to pay the County Council Monitoring Fee to the County Council on or before completion of this Agreement.

9. MORTGAGEE'S LIABILITY

9.1 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 and/or the BNG 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. GENERAL

The Parties undertake that:

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

10.2 this Agreement constitutes a deed.

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

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

10.5 It is hereby agreed by the Owner that failure by the Council or County Council at any time to enforce the provisions of this Agreement or to require performance strictly or otherwise by the Owner of any of the conditions, covenants, agreements or obligations of this Agreement or any failure or delay by the Council or County 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 or County Council to enforce any provision and any variation of this Agreement shall not vitiate the remainder of the Agreement which shall remain in full force and effect subject to such amendment or amendments.

10.6 The Owner hereby undertakes that:

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

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

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

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

10.8 The Owner hereby gives consent for the Application Plan to be reproduced by the Council or County Council.

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

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

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

10.11.1 expires;

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

10.11.3 is quashed following a successful legal challenge.

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

10.12 The Owner (or any person deriving title to the Application Site and the BNG 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 or such person deriving title has parted with their interest in the Application Site and/or the BNG Site or part thereof to which such breach relates save in respect of liability for antecedent breach of this Agreement.

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

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

10.15 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.

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

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

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

10.17.2 the definitions of the Application, Development, Planning Permission (other than for the purposes of clause 1) shall be construed to include reference to (respectively) the planning application for the Section 73 Consent, the development permitted by the Section 73 Consent and the Section 73 Consent itself; and

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

PROVIDED THAT:

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

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

10.18 The obligations contained in this Agreement shall be enforceable against any statutory undertaker or other person who acquires any part of the Application Site or interest therein for the purpose of the supply of electricity gas water drainage

telecommunication services or public transport services or the provision of other infrastructure as may be required to fulfil their statutory functions.

10.19 Except for the planning obligations contained in this Agreement specifically regulating the use of land or buildings after construction pursuant to the provisions of this Agreement or the Planning Permission pursuant to the Application or the planning obligations that relate to the Application, 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 and chargees).

10.20 Where the agreement, approval, consent or expression of satisfaction is to be given by any party or any person on behalf of any party hereto under this Agreement such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction may only be given in writing and may be validly obtained only prior to the act or event to which it applies and the party giving such agreement, approval, consent or expression of satisfaction shall at all times act reasonably

11. DISPUTE RESOLUTION

11.1 Should a dispute or difference arise between any of the Parties concerning anything herein then the provisions of this clause 11 shall apply.

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

11.3 All differences and disputes which may arise between the Parties concerning matters that are the subject of a Breach Notice served in accordance with paragraph 3 of Schedule 3 of this Agreement shall be referred to the determination (as an expert and not as an arbitrator) of an independent Member/ Fellow of the Chartered Institute of Ecology and Environmental Management or equivalent agreed upon by the Parties but in default of such agreement appointed by Chartered Institute of Ecology and Environmental Management (**"Expert"**).

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

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

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

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

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

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

11.4.6 give full and clear reasons for his decision; and

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

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

12. OWNERSHIP

12.1 The Owner warrants that no person other than the Owner has any legal or equitable interest in that part of the Application Site.

12.2 The Owner undertakes to the Council and the County Council to give the Council immediate written notice of any change in the ownership of any of their respective interests in the Application Site and/or the BNG 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 and/ or BNG Site (as the case may be) purchased by reference to a plan.

13. INDEXATION

13.1 All financial contributions payable to the Council and County Council shall be Indexed or Index Linked (as the case may be) where specified.

13.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this Agreement) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council or County Council (as appropriate) shall advise the Owner in writing.

14 INTEREST AND LATE PAYMENT

14.1 If any sum or amount has not been paid to the Council or County Council by the date it is due the Owner shall pay the Council or County Council as appropriate Interest on that amount (both before and after any judgment). Such interest shall accrue on a daily basis for the period from the due date to and including the date of payment.

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

SIGNED as a **DEED** by)
STAR BUILD LIMITED)
acting by a Director)

[redacted]

in the presence of:

Director TESSA STANMER.

[redacted]

Witness Signature: .....

Witness Name: CHRIS BOLAND

Address: 13 Warren Ave, Brighton

Occupation: M.D.

SEALED WITH THE COMMON SEAL of

HORSHAM DISTRICT COUNCIL

in the presence of:

[redacted]

Authorised Officer



THE COMMON SEAL of)

WEST SUSSEX COUNTY COUNCIL)

was hereunto affixed in the)

presence of:)

[redacted]

Authorised signatory

SALLY BATCHELOR



Schedule 1

Application Plan



Notes:

Revisions:

Description:	Date:
A Scale changed from 1:1000 to 1:1250	24/04/24
B Red line amendment	16/07/24

Site Boundary Line

Site Under Same Ownership

[redacted]

[redacted]

fluid LONDON

THE COPSE

WORTHING ROAD
SOUTHWATER

STARBUILD

Drg No	FL24-2145-050
Title	Site Location Plan
Revision	B
Scale at A1	1:1250
Status	PLANNING
Date	February 2024

RIBA Chartered Practice

THE ACADEMY OF URBANISM

Schedule 2

The Owner's Covenants to the Council in relation to the Application and BNG Site

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

1. Payment of Contributions

1.1. To pay the BNG Monitoring Contribution in full to the Council prior to 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 the Development;

2.2. Not to Commence the Development until the Biodiversity Gain Plan and the HMMP have been approved in writing by the Council;

2.3. 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;

2.4. To rectify promptly any defects in the Habitat Creation and Enhancement Works identified by the Council following receipt of the Completion Date Notice and to 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;

2.5. Not to Occupy the Development until the Habitat Creation and Enhancement Works set out within the HMMP have been completed in full and the Council has issued a Certificate of Completion (such issue not to be unreasonably withheld or delayed);

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 Practical Completion of the Development;

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

2.8. To notify the Council of any requested amendment to the HMMP, 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 BNG Site in a manner consistent with its function to deliver biodiversity net gain; and

2.8.3.2. the continued functioning of the BNG Site for Biodiversity Net Gain.

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 BNG Site at all reasonable times (following not less than 5 (five) Working Days' notice) for monitoring compliance with:

3.1.1.1. the obligations in this Agreement;

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 BNG 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 in whole or in part ("the **Breach Response Notice**";

4.2. Where a Breach Notice is disputed, (or remedial steps, or the timeframe for carrying out those steps are not agreed):

4.2.1. to include a reasoned response in the Breach Response Notice; and

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

4.2.3. where resolution of the measures in dispute cannot be resolved in accordance with subparagraph 4.2.2 (above) within 20 Working Days of the date of service of the Breach Response Notice, to refer the purported non-compliance with this Agreement (set out in the Breach Notice), and any remedial action needed (if any) for determination by an Expert appointed in accordance with clause 11.3 of this Agreement within a further 10 Working Days.

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

4.4. 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 and/or the BNG 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 reasonably necessary to access the Application Site and/or the BNG 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.

5. BNG Security

5.1. Prior to Commencement of the Development the Owner covenants with the Council to procure the BNG Security of the BNG Sum so that the Council may call on the BNG Security in accordance with paragraph 5.3 below.

5.2. Not to Commence the Development unless and until the BNG Security for the BNG Sum has been secured and appropriate evidence of securing the BNG Security has been provided to and approved in writing by the Council (such approval not to be unreasonably withheld).

5.3. Where any of the events of paragraph 4.5 of this Schedule occur in relation to the BNG Site the Council shall be entitled to call on the BNG Security in order to secure compliance with the approved Biodiversity Gain Plan and recover all costs incurred or expected to be incurred in exercising its step-in rights as contained in paragraph 4.5.

6. Alternative BNG Mitigation

6.1. For the avoidance of doubt nothing in this Schedule fetters the Owner's ability to achieve BNG mitigation for the Development to be achieved through the allocation of off-site BNG units to mitigate the Development SUBJECT ALWAYS TO such mechanism being achieved through the approval of a relevant Biodiversity Gain Plan and in accordance with Schedule 7A of the Act.

Schedule 3

The Owner's Covenants to the County Council in relation to the Application Site

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

1. Payment of Contributions

1.1. To pay the Travel Plan Monitoring Contribution to the County Council prior to Commencement of the Development and not to Commence Development until the Travel Plan Monitoring Contribution has been paid to the County Council in full.

1.2. To pay the Bus Stop Upgrade Contribution to the County Council prior to Commencement of the Development and not to Commence the Development until the Bus Stop Upgrade Contribution has been paid to the County Council in full.

2. Travel Plan

2.1. To submit the Travel Plan for approval prior to the Commencement Date.

2.2. Not to Occupy the Development unless a Travel Plan Co-ordinator has been appointed and the Owner has notified the County Council in writing of the name, address, email address and telephone number of the person appointed.

2.3. Upon the first Occupation of the Development the Owner shall fully implement the approved Travel Plan or amendments (as may be agreed with the County Council in writing) and not to allow first Occupation of the Development other than in accordance with the Travel Plan.

Schedule 4

The Council's Covenants

The Council covenants with the 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 parts of the Application Site and BNG Site necessary for the purposes of inspection pursuant to paragraphs 3.1 or 4.5 of Schedule 2 of this Agreement to ascertain the Owner's compliance with its covenants under this Agreement 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 Agreement, 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 in accordance with clause 11 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 in accordance with clause 11, undertake the requirements imposed on the Owner as set out in the Breach Notice or Expert's determination in accordance with clause 11 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 and BNG Site and/or land in the Owner's control to access the Application and BNG 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 5

DEFRA Biodiversity Gain Plan template

Department
for Environment
Food & Rural Affairs

Biodiversity gain plan

Submit a biodiversity gain plan to show how your development will achieve biodiversity net gain.

When to use this form

A biodiversity gain plan shows how a development will achieve 10% biodiversity net gain (BNG). Submit this form to your local planning authority after they approve your planning application.

Unless your development is exempt, you cannot start the development until the LPA approves your biodiversity gain plan and biodiversity metric calculation tool.

1. Submission details

1.1 Date
For example, 3/11/2023

1.2 Planning application reference number

1.3 Local planning authority (LPA)

1.4 Development site address
If the site does not have an address, enter the OS grid reference.

1.5 Describe the development
Tell us about the proposed development and any changes of use (250 words).

2. Developer details

2.1 Applicant name

2.2 Company name

2.3 Address

2.4 Email address

2.5 Telephone number

2.6 Declaration

By signing this declaration, you confirm that the information you give is complete and correct. Any opinions are your genuine opinions.

2.7 Signature

2.8 Date

3. Responsible person details

Tell us about who is responsible for completing the biodiversity gain plan. For example, a consultancy ecologist or planning agent.

3.1 Name

3.2 Company name

3.3 Address

3.4 Email address

3.5 Telephone number

3.6 Declaration
By signing this declaration, you confirm that the information you give is complete and correct. Any opinions are your genuine opinions.

3.7 Signature

3.8 Date

4. Biodiversity net gain strategy

4.1 Is the relevant date for the pre-development biodiversity value the same date as the planning application?
☐ Yes
☐ No

4.2 If no, what earlier date did you agree with the LPA?

4.3 How have you met the guidance on 'what counts towards your BNG'?
Find out what you can count towards a development's BNG

4.4 How will you avoid or minimise impacts to habitats?
Tell us about the steps you've taken on site, including to avoid or minimise the impact on irreplaceable habitats.

4.5 Did you use your local nature recovery strategy to inform the strategic significance of habitats?
This includes other specified strategies if you do not have a local nature recovery strategy.
☐ Yes
☐ No

4.6 How will you achieve the target net gain percentage?
☐ On-site
☐ Off-site
☐ Both

4.7 Are any of your on-site enhancements considered 'significant'?
Find out what counts as a significant on-site enhancement.
☐ Yes
☐ No

4.8 If yes, tell us about the significant on-site enhancements
Include the appropriate planning condition or how you've secured the habitat.

4.9 How many off-site biodiversity units do you need to meet 10% net gain?

4.10 Explain why you're using off-site biodiversity units
Only answer this question if you're planning to use off-site biodiversity units (250 words).

4.11 Explain why you're planning to use statutory biodiversity credits
Only answer this question if you're planning to use statutory biodiversity credits (250 words).

4.12 Do you have a habitat management and monitoring plan?
☐ Yes
☐ No

4.13 Have you used the statutory biodiversity metric tool?
☐ Yes
☐ No

4.14 Biodiversity metric calculation
Send your biodiversity metric calculation to the LPA and enter the file name.

4.15 Condition assessments
Send your condition assessments to the LPA and enter the file name.

4.16 Pre-development habitat survey report and map
Send your baseline habitat survey report and map to the LPA. Enter the file name.

4.17 Post-development habitat map or landscape plan

Send your post-development habitat survey report and map to the LPA. Enter the file name.

4.18 Have you included an approved habitat degradation in the baseline?

If yes, include the relevant consenting body and reference number.

☐ Yes
☐ No

Consenting body

Reference number

5. Irreplaceable habitats

5.1 Does the development impact any irreplaceable habitats?

If yes, tell us if you've submitted an approved compensation plan.

☐ Yes
☐ No

5.2 Have you submitted an approved compensation plan?

☐ Yes
☐ No

6. On-site habitat enhancements

Answer this section if your development includes on-site habitat enhancements.

6.1 Survey date

For example, 3/11/2023

6.2 Survey constraints

For example, access issues, weather, or seasonal constraints.

6.3 Total pre-development biodiversity value
Enter the number from the headline results in your statutory biodiversity metric calculation.

Number of area habitat biodiversity units

Number of hedgerow biodiversity units

Number of watercourse biodiversity units

6.4 Total post-development biodiversity value
Enter the number from the headline results in your statutory biodiversity metric calculation.

Number of area habitat biodiversity units

Number of hedgerow biodiversity units

Number of watercourse biodiversity units

6.5 Total net change in biodiversity units
Enter the number from the headline results in your statutory biodiversity metric calculation.

Area habitat biodiversity units

Area habitat biodiversity units % change

Hedgerow biodiversity units

Hedgerow biodiversity units % change

Watercourse biodiversity units

Watercourse biodiversity units % change

6.6 Will you register and allocate any biodiversity units from your site to other developments?

If yes or provisionally, give details.

☐ Yes
☐ No

6.7 Give details

Tell us about the amount of biodiversity units and the development location (250 words).

7. Off-site habitat enhancements

Answer this section if your development includes off-site habitat enhancements.

7.1 Tell us about the off-site habitat enhancements

Include whether you're delivering the off-site enhancements or buying biodiversity units.

7.2 Biodiversity gain site register reference number

7.3 How have you secured the off-site habitat enhancements?

Tell us about any responsible bodies and whether you've used an S106 or conservation covenant.

7.4 Total baseline biodiversity value

Enter the number from the headline results in your statutory biodiversity metric calculation.

Number of area habitat biodiversity units

Number of hedgerow biodiversity units

Number of watercourse biodiversity units

7.5 Total biodiversity value post-intervention

Enter the number from the headline results in your statutory biodiversity metric calculation.

Number of area habitat biodiversity units

Number of hedgerow biodiversity units

Number of watercourse biodiversity units

7.6 Total net change in biodiversity units

Enter the number from the headline results in your statutory biodiversity metric calculation.

Area habitat biodiversity units

Area habitat biodiversity units % change

Hedgerow biodiversity units

Hedgerow biodiversity units % change

Watercourse biodiversity units

Watercourse biodiversity units % change

8. Statutory biodiversity credits

Answer this section if you need to use statutory biodiversity credits.

8.1 Do you need to use statutory biodiversity credits?

☐ Yes
☐ No

8.2 How many statutory biodiversity credits do you need?

Tell us the unit shortfall by tier, including the spatial risk multiplier. Enter the number from the headline results in your statutory biodiversity metric calculation.

A1

A2

A3

A4

A5

H

W

8.3 What evidence is there that no units are available through the market?

Send a message from at least 3 habitat providers, or a search result from online registers.

8.4 Proof of purchase

Send proof of purchase and enter the reference number.

9. Trading summary

9.1 Distinctiveness group

Tell us if you met the BNG trading rules on habitat compensation for each distinctiveness group. If you did not meet the trading rules, tell us if you agreed bespoke habitat compensation.

Check the rules on habitat compensation in the statutory biodiversity metric user guide.

Very high

High

Medium

Low

10. Sharing data (optional)

10.1 Can we share your ecological survey data with the Local Environmental Records Centre or other bodies?

☐ Yes
☐ No

Schedule 6

The County Council's Covenants To The Owner

1. The County Council covenants with the Owner:

2. Not to use or apply any sums paid under this Agreement other than for the respective purposes for which those sums are paid as set out and specified in this Agreement;

3. To hold the sums paid in a separately identified interest bearing section of the County Council's combined accounts and apply the same together with any interest accruing for the respective purposes for which the sums have been paid;

4. Following reasonable written request by the payee of any sums paid to provide the payee a breakdown of expenditure from the sums paid that have been committed or expended together with details of remaining sums held by the County Council and interest accrued thereon;

5. Any sums paid to the County Council which have not been committed or expended on the day 10 (ten) years after the day on which the relevant sum was received the County Council shall repay any unspent sums to the party that made the payment of the relevant sum together with any interest accrued from the date of payment to the date of repayment.