(1) **SHC CLEMSFOLD GROUP LIMITED**

(2) **SHIRAZ NOORMOHAMED BOGHANI**

(also known as SHIRAZALI NOORMOHAMED BOGHANI)

(3) **WEST SUSSEX COUNTY COUNCIL**

(4) **HORSHAM DISTRICT COUNCIL**

AGREEMENT

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

Kingsmead Care Centre, Crawley Road, Horsham, West Sussex RH12 4RX

and Land on the East side of Crawley Road, Horsham

Lauren Kelly – Head of Legal and Democratic Services
Horsham District Council
Parkside
Chart Way
Horsham
West Sussex
RH12 1RL

Planning Ref: DC/24/1010
Legal Ref: CB/11981

THIS AGREEMENT is made as a deed and dated 7th April **2025**

Between:

(1) **SHC CLEMSFOLD GROUP LIMITED** (Incorporated in Jersey and Registered with the Jersey Financial Services Commission with Registration Number 112882) whose registered office is at 2nd Floor, Lime Grove House, Green Street, St Helier, Jersey JE2 4UB and also of Tylden House, Dorking Road, Warnham, Horsham RH12 3RZ (**"the Owner"**);

(2) **SHIRAZ NOORMOHAMED BOGHANI (also known as SHIRAZALI NOORMOHAMED BOGHANI)** of 37 Astons Road, Northwood, Middlesex HA6 2LB (**"the Chargee"**);

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

(4) **HORSHAM DISTRICT COUNCIL** of Parkside, Chart Way, Horsham, West Sussex RH12 1RL (**"the 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 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 Owner is the registered proprietor of the Application and BNG Site with title absolute of land registered at HM Land Registry under title numbers WSX128858 and WSX128292.

1.3 The Chargee has the benefit of 2 charges both dated 30 April 2020, the first being registered at HM Land Registry against title number WSX128292 at paragraphs 3 and 4 of the Proprietorship Register and paragraphs 3 and 4 of the Charges Register, the second being registered at HM Land Registry against title number WSX128858 at paragraphs 3 and 4 of the Proprietorship Register and paragraphs 7 and 8 of the Charges Register (Charge Reference: WSX78871 – both charges).

1.4 WSCC is the local highway authority for the area within which the Application and BNG Site is situated for the purposes of this Agreement.

1.5 The Application was received and validated by the Council on 03 July 2024 and it is minded to grant planning permission subject to satisfactory completion of this Agreement.

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, 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);
"All Requisite Consents"	all requisite consents orders agreements authorisations licences and permissions required to implement the Highway works, including without limitation entering into a minor works agreement under section 278 of the Highways Act 1980, and if necessary, section 38 of the Highways Act 1980, with WSCC;
"Application"	the planning application for: "Demolition of the existing buildings and erection of an 80-bedroom specialist dementia care home (Use Class C2) together with a retained access from Crawley Road and associated car and cycle parking and landscaping" ascribed reference number DC/24/1010 by the Council;
"Application and BNG Site"	land at Kingmead Care Centre, Crawley Road, Horsham, West Sussex RH12 4RX (WSX128858), and Land on the East side of Crawley Road, Horsham, West Sussex (WSX128292), to which the Application relates, and which will accommodate the Development including Development's biodiversity net gain requirements which is shown for identification purposes on the Application and BNG Site Plan;
"Application and BNG Site Plan"	the plan entitled "Site Location Plan" Project 1031 num. 04 rev. B and dated 12/02/24 comprising Schedule 1 of this Agreement, showing the location of the Application and BNG Site edged in red;
"BCIS Index"	the All-in Tender Price Index published by the Building Costs Information Service of the Royal Institution of Chartered Surveyors or

	(if such index is at the relevant time no longer published) such other comparable index or basis for indexation as WSCC may specify;
"Biodiversity Gain Plan"	the plan in the form (or substantially in the form) published by DEFRA attached at Schedule 4 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;
"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 1990 Act;
"BNG Monitoring Contribution"	the sum of **£4,176.87 (FOUR THOUSAND ONE HUNDRED AND SEVENTY SIX POUNDS AND EIGHTY SEVEN PENCE)** to be used to pay the Council's costs of monitoring compliance with the Biodiversity Gain Plan and Habitat Management and Maintenance Plan as approved by the Council to be paid by the Owner to the Council pursuant to Schedule 2 of this Agreement;
"Breach Notice"	a notice which may be served by the Council on the Owner pursuant to paragraph 3 of Schedule 3 of this Agreement setting out: a) details of the alleged non-compliance with the HMMP (the **"Breach"**); and b) details of the measures to be taken to remediate the Breach; and c) the timescales within which the measures to remediate the Breach are to be carried out, following the 20 Working Day period allowed for service of a Breach Response Notice pursuant to paragraph 4 of Schedule 2;
"Certificate of Completion"	a written certificate confirming the date on which the Habitat Creation and Enhancement Works were completed to the reasonable satisfaction of the Council;
"Commencement Date"	the date on which Commencement of Development occurs;
"Commencement Notice"	the written notice confirming the Proposed Commencement Date referred to in clause 7.1.1 and served in accordance with clause 7.3;
"Commencement of Development"	the carrying out of a material operation as defined in section 56(4) of the Act in respect of the Development 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 2.3 of Schedule 2;

"DEFRA"	the Department for the Environment, Food and Rural Affairs or any successor body which carries out its functions;
"Development	the development of the Application and BNG Site pursuant to the Planning Permission;
"First Occupation"	the first time any part of the Development is Occupied;
"Habitat Creation and Enhancement Works"	the habitat creation and/ or enhancement works set out in the Habitat Management and Monitoring Plan (excluding any management or monitoring activities specified in the Habitat Management and Monitoring Plan);
"Habitat Management and Monitoring Plan (HMMP)"	the document titled 'Habitat Management and Monitoring Plan' for the creation and/ or enhancement of habitat to achieve the Biodiversity Net Gain, and subsequent management and maintenance thereof, to be prepared in accordance with the approved Biodiversity Gain Plan, to include: a) a non-technical summary; b) details of the roles and responsibilities of the people or organisation(s) delivering the HMMP; c) details of the planned habitat creation and/ or enhancement works to create and/ or enhance habitat to achieve the Biodiversity Net Gain in accordance with the approved Biodiversity Gain Plan; d) the management measures to be put in place to maintain the 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 completed and submitted to the Council for approval in writing in accordance with Schedule 2 of this Agreement;
"Head of Development and Building Control"	the Head of Development and Building Control at the Council or any successor or such other officer as may be designated by the Council for the purposes of discharging their duties and functions from time to time;
"Highway Works"	the off-site works to the existing highway consisting of the provision of dropped kerbs and tactile paving outside the Norfolk Arms public house car park access as shown on drawing "Proposed Uncontrolled Crossing nr Norfolk Arms PH" referenced "FIGURE_3 Rev A" (**"Highway Works Plan"** annexed to this Agreement, and to be provided in accordance with paragraph 6 of Schedule 2;
"Index Linked"	the Travel Plan Contribution payable by the Owner to WSCC under this Agreement shall be increased by the application of the following formula: $A = B \times \frac{C}{D}$ is equal to or greater than 1 Where: A is the sum actually payable on the date of payment B is the original sum mentioned in this Agreement C is the BCIS Index for the quarter preceding the date of payment

	D is the BCIS Index for the quarter preceding the date of consultation 4th December 2024 and **Indexation** shall be construed accordingly;
"Monitoring Contributions"	the BNG Monitoring Contribution, the Travel Plan Monitoring Contribution and the WSCC S106 Monitoring Fee;
"Monitoring Report"	the monitoring reports to be issued to the Council as specified in the HMMP 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 First Occupation of the Development;
"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;
"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 purposes and **"Occupy"** and **"Occupied"** shall be construed accordingly;
"Occupation Date"	the anticipated date on which First Occupation occurs;
"Occupation Notice"	the written notice confirming the Occupation Date referred to in clause 7.1.2 and served in accordance with clause 7.3;
"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;
"Proposed Commencement Date"	the date on which the Developer intends to Commence Development;
"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"	a plan setting out measures and initiatives to encourage more sustainable alternatives to travelling alone by car; showing initiatives to reduce car use and to increase the use of more sustainable modes of travel by staff, residents and visitors to the Development;
"Travel Plan Co-ordinator"	the person appointed by the Owner responsible for securing the implementation of the Travel Plan;
"Travel Plan Monitoring Contribution"	the sum of **£3,815.00 (THREE THOUSAND EIGHT HUNDRED AND FIFTEEN POUNDS)** to be Index Linked and used to pay WSCC's costs of monitoring of the Travel Plan prepared by Transport, Planning and Highways Ltd, Project Number: 2405-01 Report Number: 2405-01/TP/01A dated August 2024 and submitted to the Council with the Application, to be paid to WSCC in accordance with Schedule 2 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;

"WSCC S106 Monitoring Fee"	the sum of **£1,560.00 (ONE THOUSAND FIVE HUNDRED AND SIXTY POUNDS)** for WSCC's cost of monitoring the obligations to WSCC in this Agreement.

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, with the exception of paragraph 1 and its sub-paragraphs regarding payment of Monitoring Contributions, and Schedule 3 shall only take effect upon the date on which Planning Permission is granted.

6. COVENANTS

6.1 Subject to clause 5.1:

6.1.1 The Owner covenants with the Council and WSCC to comply fully 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 and BNG Site shall be in strict accordance with this Agreement;

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

6.1.4 WSCC covenants with the Owner to comply fully with and to perform the obligation contained herein and in Schedule 5 of this Agreement in accordance with the requirements and timescales set out.

7. NOTICES

7.1 The Owner covenants with the Council as follows:

7.1.1 to give the Proposed Commencement Notice to the Council not less than 14 (fourteen) days before the anticipated Commencement Date; and

7.1.2 to give the Occupation Notice to the Council not less than 14 (fourteen) days before the anticipated Occupation Date.

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

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

8.2 The Owner has undertaken to pay on or before the date hereof WSCC's reasonable and proper legal costs incurred in preparing and entering into this Agreement up to a maximum of £2,000.00 (two thousand pounds).

9. MORTGAGEE'S/ CHARGEE'S LIABILITY

9.1 The Chargee consents to the completion of this Agreement and declares that their interest in the Application and BNG Site shall be bound by the terms of this Agreement as if it had been executed and registered as a land charge prior to the creation of the Chargee's interest in the Application and BNG Site.

9.2 The Chargee shall not be personally liable for any breach of the obligations in this Agreement unless committed or continuing at a time when they are in possession of all or any part of the Application and BNG Site.

9.3 Any future chargee or mortgagee shall not be liable for any breach of the obligations in this Agreement unless committed or continuing at a time when it is in possession of all or any part of the Application and 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

10.1 The Parties undertake that:

10.1.1 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.

10.1.2 this Agreement constitutes a deed.

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

10.1.4 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.

10.2 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 creating an estoppel in connection with any such condition, covenant, agreement or obligation and shall not affect the validity of this Agreement or any part thereof or the right of the Council to enforce any provision and any variation of this Agreement shall not vitiate the remainder of the Agreement which shall remain in full force and effect subject to such amendment or amendments.

10.3 The Owner hereby undertakes that:

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

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

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

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

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

10.6 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.

10.7 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.

10.8 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:

10.8.1 expires;

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

10.8.3 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.

10.9 The Owner (or any person deriving title to the Application and 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 and BNG Site or part thereof to which such breach relates save in respect of liability for antecedent breach of this Agreement.

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

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

10.12 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.

10.13 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.

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

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

10.14.2 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

10.14.3 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:

10.14.4 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

10.14.5 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.

10.15 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) or land held by any of the statutory utilities for their operational purposes.

11. DISPUTE RESOLUTION

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

11.2 Subject to clause 11.3, all differences and disputes which may arise between the Parties concerning this Agreement shall be referred to the determination (as an expert and not as an arbitrator) of an independent leading counsel agreed upon by the Parties but in default of such agreement appointed by the President of the Law Society of England and Wales on the application of any of the Parties.

11.3 All differences and disputes which may arise between the Parties concerning matters that are the subject of a Breach Notice served in accordance with paragraph 3 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 or Expert appointed pursuant to clause 11.2 or 11.3 shall:

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

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

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

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

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

11.4.6 give full and clear reasons for his decision; and

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

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

12. OWNERSHIP

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

12.2 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 and 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 and BNG Site purchased by reference to a plan.

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

EXECUTED as a **DEED** by

SHC CLEMSFOLD GROUP LIMITED

acting by one Director in the presence of a witness

[redacted] ..... Signature

Shiraz Noormohamed Boghani Name

In the presence of:

W [redacted] ..... Signature

I [redacted] ..... Print name

T 31, Church Road ..... Address 1

N Harefield, ... Address 2

E middlesex ..... Address 3

S UB9 6DW ..... Post code

S PA to Chairman & Exec Vice Chairman ..... Occupation

EXECUTED as a **DEED** by

SHIRAZ NOORMOHAMED BOGHANI

[redacted] ..... Signature

In the presence of:

W [redacted] ..... Signature

I [redacted] ..... Print name

T 31, Church Road ..... Address 1

N Harefield ..... Address 2

E Middlesex ..... Address 3

S UB9 6DW ..... Post code

S P.A to Chairman & Exec Vice Chairman ..... Occupation

SEALED WITH THE COMMON SEAL of

WEST SUSSEX COUNTY COUNCIL

in the presence of:

[redacted]

Authorised Officer

[redacted]

33476/7/8/9/2025

SEALED WITH THE COMMON SEAL of

HORSHAM DISTRICT COUNCIL

in the presence of:

[redacted]

Authorised Officer

18011 x4

Schedule 1

Plans

1. **Application and BNG Site Plan;**
2. **Highway Works Plan.**



Ordnance Survey, (c) Crown Copyright 2022. All rights reserved. Licence number 100022432

SITE AREA / APPLICATION BOUNDARY
0.95 Ha / 2.35 acres

[redacted]

[redacted]

[redacted]

[redacted]

33476/7/8/9/2625

Rev.	Description	Chkd	Initial	Date
B	ISSUED FOR PLANNING	PK	MD	10/06/2024
A	ISSUED FOR PLANNING	MM	MD	28/03/2024

CARLESS + ADAMS
01628 665131 enquiries@carless-adams.co.uk
carless-adams.co.uk

Design the best, to live the best

PLANNING

Client: SPLENDID HEALTHCARE

Project: KINGSMEAD CARE CENTRE
HORSHAM

Title: SITE LOCATION PLAN

CAP no. A

scale	author	chk'd	date	size
1 : 1250	MD	MM	12/02/24	A3

project.	org.	zone.	level.	type.	role.	class.	num.	status.	rev.
1031							04	PL	B

For construction purposes dimensions shall not be scaled & figured dimensions must be verified on site before work commences. This drawing is Copyright ©

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11/06/2024 15:24:09

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132

Norfo
Arms
(PH)

Footway re-graded to suit

New 400mm² Buff Tactile Paving

Dropped and Transition Kerbs as required

Uncontrolled Crossing

Dropped and Transition Kerbs as required

New 400mm² Buff Tactile Paving

Footway re-graded to suit

[redacted]

[redacted]

[redacted]

33476/7/8/9/2021

0 10 Millimetres 100

Rev	Description	By	Date	Chkd	Auth

TRANSPORT, PLANNING & HIGHWAYS

Client: SHC CLEMSFORD LTD

Project: KINGSMEAD CARE CENTRE

Title: Proposed Uncontrolled Crossing nr Norfolk Arms PH

File Name:

Original Scale	Page Size	Drawn	Checked	Authorised	Status
1:100	A1	AT 11/24	Date	Date	

Drawing Number: FIGURE_3

Rev: A

Schedule 2

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

With the intention of binding the Application and BNG Site, and for the purpose of allowing the Development to be delivered, the Owner covenants with the Council and WSCC 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.

1.2. To pay the Travel Plan Monitoring Contribution Index Linked to WSCC prior to Commencement of Development and not to Commence Development until the Travel Plan Monitoring Contribution has been paid to WSCC in full.

1.3. To pay the WSCC S106 Monitoring Fee to WSCC on or before completion of this Agreement.

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. To issue the Completion Date Notice to the Council within 10 (ten) Working Days of the anticipated date of completion 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 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;

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 specified in the HMMP;

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

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 and BNG Site in a manner consistent with its function to deliver Biodiversity Net Gain; and

2.8.3.2. the continued functioning of the Application and BNG Site for BNG or any existing Allocation.

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 and BNG Site necessary 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 Application and BNG Site in accordance with paragraph 3.1.1,

subject to the Council providing the Owner with a minimum of 5 Working Days' notice of its desire to enter onto the Application and BNG Site, and the Council and its agents and/or contractors and/or workmen complying with the reasonable health and safety requirements of the Owner and/or its appointed contractors.

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 the Breach Notice or disputes the Breach Notice in whole or in part (**"Breach Response Notice"**).

4.2. Where a Breach Notice is disputed:

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 an Expert has determined that the purported breach of this Agreement has occurred, and the Breach Notice is therefore 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 an Expert pursuant to paragraph 4.2.3 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 and 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 necessary to access the Application and BNG Site,

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

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 and BNG Site at HM Land Registry.

5. Restriction on alienation of any part of the Application and BNG Site

5.1. Not to sell, lease, assign, underlet, transfer or otherwise part with its interest in the Application and BNG Site, or any part of it, without first providing a surety, performance bond or similar (to be agreed with the Council) to guarantee the cost of carrying out the BNG obligations secured by this Schedule 2 of this Agreement to include any legal or administration costs associated with the carrying out of those obligations pursuant to a Breach Notice by or on behalf of the Council.

5.2. To consent to the entering of the following restriction on the transferee's title to the Application and BNG Site at HM Land Registry following the registration of the transfer and shall provide the transferor with all necessary assistance and/or documentation to permit entry of the restriction:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by the proprietor for the time being of the estate registered under titled number [ ] or their conveyancer that the provisions of clause XX of [Details of the Transfer] have been complied with".

6. Highway obligations

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

6.2. Not to Commence Development until details of the Highway Works have been submitted to and approved in writing by WSCC provided that where details of the Highway Works that have been submitted to WSCC have not been approved, revised details of the Highway Works shall, within 14 days of receipt of notice in writing from WSCC that the previous Highway Works details were not approved, be submitted to WSCC for approval.

6.3. To obtain All Requisite Consents required for the Highway Works.

6.4. After All Requisite Consents have been obtained to carry out in full the Highway Works and to complete the Highway Works to the satisfaction of the WSCC.

6.5. Not without the consent of the WSCC to allow First Occupation until such Highway Works have been completed to the satisfaction of the WSCC.

7. Travel Plan

7.1. To submit the Travel Plan (which includes any revision of the Travel Plan in accordance with Schedule 5) to WSCC for approval prior to First Occupation of the Development.

7.2. Not to cause or allow Occupation of the Development unless a Travel Plan has been submitted in accordance with Schedule 5 and approved by the WSCC.

7.3. Not to cause or allow Occupation of the Development unless a Travel Plan Co-ordinator has been appointed. The Owner shall notify WSCC in writing of the name, address, email address and telephone number of the person appointed.

7.4. To implement the approved Travel Plan (or such amended version as may be agreed with WSCC in writing from time to time).

Schedule 3

The Council's Covenants

The Council covenants with Owner as follows:

1. Habitat Management and Monitoring Contribution and Certificate of Completion

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

1.2. Not to unreasonably withhold or delay issue of a Certificate of Completion following receipt of a Completion Date Notice pursuant to paragraph 2.3 or 2.4 of Schedule 2 and completion of any remedial works reasonably required.

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 and BNG Site necessary for the purposes of inspection pursuant to paragraph 3 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 Schedule 2 of this Agreement, and the Council intends to take steps to remedy the Breach, to serve a Breach Notice.

3.2. Where it serves a Breach Notice which is accepted by the Owner (or an Expert determines that the Owner should take any steps within a Breach Notice 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 the Expert's determination (or as otherwise agreed), 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 a minimum of 5 Working Days' 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. complies with the reasonable health and safety requirements of the Owner and/or its appointed contractors;

3.3.3. ensures minimal damage and inconvenience to the Owner;

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

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

Schedule 4

DEFRA Biodiversity Gain Plan template

Biodiversity Gain Plan template

A. Details of submission	
1. Date of submission	DD/MM/YYYY
2. Planning application reference number	
3. Local Planning Authority	
4. Development site address or site description	
5. Description of development to which the Biodiversity Gain Plan relates	

B. Applicant responsible for submission of the biodiversity gain plan	
6. Name	
7. Organisation	
8. Address	
9. Email address	
10.Telephone number	
11. Declaration I/we hereby submit our biodiversity gain plan as described in this form. I/we confirm that, to the best of my/our knowledge, any facts stated are true and accurate and any opinions given are the genuine opinions of the person(s) giving them. Signed: Date:	

C. Person responsible for completion of the biodiversity gain plan	
12. Name	
13. Organisation	
14. Address	
15. Email address	
16. Telephone number	

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17. Declaration I/we hereby submit our biodiversity gain plan as described in this form. I/we confirm that, to the best of my/our knowledge, any facts stated are true and accurate and any opinions given are the genuine opinions of the person(s) giving them. Signed: Date:	
D. Biodiversity Net Gain strategy	
18. Please explain how you have met the 'what counts towards your BNG' guidance	Guidance link
19. Set out the steps taken on-site to avoid impacts to habitats and/or minimise impacts to habitats including irreplaceable habitats where on site	
20. How are you delivering the target net gain percentage?	Only onsite ☐ Only offsite ☐ Both ☐
21. Are any of your on-site enhancements considered "significant"?	Yes ☐ No ☐
22. If yes, provide details of the significant enhancement and appropriate planning condition or obligation to secure its long-term management.	
23. How many Biodiversity Units are needed off-site to meet the required net gain percentage?	
24. Rationale for proposed off-site delivery (if applicable)	
25. Rationale for proposed use of Statutory biodiversity credits (if applicable).	

26. Do you have a habitat management and monitoring plan in place?	Yes ☐ No ☐	
27. Have you used the statutory biodiversity metric?	Yes ☐ No ☐	
28. Completed biodiversity metric tool	File name and web link if available	
29. Condition assessments	File name and web link if available	
30. Pre-development habitat survey report and map	File name and web link if available	
31. Post-development habitat map or landscape plan	File name and web link if available	
32. Has any approved habitat degradation been included in the baseline? If yes, include any relevant consenting body and reference number.	Yes ☐ No ☐	Consenting body: Reference number:

E. Are any of the below being impacted as part of the development – if so, have you submitted a compensation plan to meet other existing biodiversity obligations to the Local Planning Authority?

33. Irreplaceable habitats	Yes ☐ No ☐	I have submitted an approved compensation plan ☐ I have not submitted an approved compensation plan ☐

F. On-site habitat enhancements (if required)

34. Survey date(s)	
35. Survey constraints	

36. Total pre-development biodiversity value (in BU)		37. Total post-development biodiversity value (in BU)	
Number of area habitat Biodiversity Units	Insert units	Number of area habitat Biodiversity Units	Insert units
Number of hedgerow Biodiversity Units		Number of hedgerow Biodiversity Units	
Number of watercourse Biodiversity Units		Number of watercourse Biodiversity Units	

38. Total net change in Biodiversity Units

Area habitat Biodiversity Units	Inserts units	Insert %
Hedgerow Biodiversity Units		
Watercourse Biodiversity Units		
39. Will Biodiversity Units being delivered on any part of your site be registered and allocated to other developments? If yes or provisionally, please provide details	Yes ☐ Please provide details here Provisionally, not yet confirmed ☐ No ☐	
G. Off-site habitat enhancements (if required)		
40. Please give details of the off-site habitat enhancement being proposed		
41. Biodiversity Gain Site Register reference number(s)		
42. How have off-site habitat enhancement proposals been secured?	S106 ☐ Conservation Covenant ☐ Provide details of responsible body:	

43. Total pre-development biodiversity value (in BU)		44. Total post-development biodiversity value (in BU)	
Number of area habitat Biodiversity Units	Insert units	Number of area habitat Biodiversity Units	Insert units
Number of hedgerow Biodiversity Units		Number of hedgerow Biodiversity Units	
Number of watercourse Biodiversity Units		Number of watercourse Biodiversity Units	

45. Total net change in Biodiversity Units		
Area habitat Biodiversity Units	Inserts units	Insert %
Hedgerow Biodiversity Units		
Watercourse Biodiversity Units		
H. Statutory biodiversity credits		
46. Are Statutory biodiversity credits required? If yes, please complete section 47 - 49	Yes ☐ No ☐	
47. How many Statutory biodiversity credits are required?	Tier	Unit shortfall by tier (spatial risk multiplier included)
	A1	
	A2	

	A3	
	A4	
	A5	
	H	
	W	
48. What evidence is there that no units are available through the market?		
49. Proof of purchase	Provide link and reference number	

I. Trading summary		
50. Distinctiveness group	Trading satisfied?	If no, has bespoke compensation been agreed?
Very high	Yes ☐ No ☐	Yes ☐ No ☐
High	Yes ☐ No ☐	Yes ☐ No ☐
Medium	Yes ☐ No ☐	Yes ☐ No ☐
Low	Yes ☐ No ☐	Yes ☐ No ☐

J. TBC Sharing data (not mandatory)	
51. Will you share relevant ecological survey data with the appropriate Local Environmental Records Centre (LERC) or any other bodies?	

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Schedule 5

WSCC's Covenants

1. Travel Plan Monitoring Fee and Travel Plan

2.1 To apply the Travel Plan Monitoring Fee to the monitoring of the Travel Plan for the lifetime of the Development.

2.2 Within 20 Working Days of receipt of a Travel Plan, to reply to the Developer to:

2.2.1 approve the Travel Plan; or

2.2.2 provide suggested amendments to the Travel Plan.

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

2. Highway Works

2.1 Upon receipt of details for the Highway Works reply to the Developer to:

2.1.1 approve the details of the Highway Works; or

2.1.1 request the Owner submit fresh details of the Highway Works.