(1) DEVINE HOMES PLC

(2) WEST SUSSEX COUNTY COUNCIL

(3) HORSHAM DISTRICT COUNCIL

AGREEMENT

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

Land North of East Street, Rusper, Horsham, West Sussex

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

Legal ref: DSM/12500
Planning ref: DC/25/0523

THIS AGREEMENT is made as a deed and dated 3 February 2026

Between:

(1) **DEVINE HOMES PLC** (Company Registration Number: 01881778) whose registered office is 133 Church Hill Road, Sutton, Surrey SM3 8NE **("the Owner")**;

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

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

together "the Parties"

1. BACKGROUND & RECITALS

Whereas

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

1.2 The Owner is the registered proprietor with Freehold Title Absolute of the Application Site registered at HM Land Registry under title number WSX386832.

1.3 The County Council is the Highway Authority for the land in which the Application Site is situated and is entitled to enforce those obligations contained in this Agreement given to the County Council.

1.4 The Council received the Application on 28th March 2025 which was validated on the same day. The Council is minded to grant planning permission for the Development subject to this Agreement in order to secure the necessary planning obligations.

1.5 The Parties have agreed to enter into this Agreement to secure the necessary planning obligations contained in this Agreement.

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

NOW THIS AGREEMENT WITNESSES as follows:

2. INTERPRETATION

In this Agreement:

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

2.2 Words importing the singular include the plural and vice versa.

2.3 Words importing persons include companies and corporations and vice versa.

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

2.5 Wherever there is more than one person named as a party and where more than one party undertakes an obligation, all their obligations can be enforced against all of them jointly and against each individually.

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

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

2.8 In the absence of contrary provision, any reference to a statute includes any statutory modification or re-enactment of it and every statutory instrument, direction, specification made or issued under the statute or deriving validity from it.

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

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

2.11 References to any party to this Agreement shall include the successors in title to that party and to any person deriving title through or under that party and, in the case of the Council, the successors to their functions as local planning authority.

2.12 The headings are for reference only and shall not affect construction.

3. DEFINITIONS

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

"Act"	the Town and Country Planning Act 1990 (as amended).
"Application"	the application ascribed reference number DC/25/0523 and described as: "Erection of 18no. 2, 3 and 4 bedroom dwellings, (including 6no. affordable housing units), together with access from East Street, vehicle and cycle parking, landscaping and open space, and sustainable drainage."
"Application Site"	all that land comprising land on the east side of 10 East Street, Rusper, Horsham RH12 4RB shown for identification purposes edged red on the Application Site Plan and to which the Application relates.
"Application Site Plan"	the plan of the Application Site entitled "Site Location Plan" with drawing number PL-01 Rev A dated 26.11.24 at Schedule 1 of this Agreement.
"Commencement of Development"	the carrying out of a material operation as defined in section 56(4) of the Act in respect of the Development but excluding (for the purposes of this Agreement and for no other purpose) any operation relating to works of investigations in respect of land contamination or remedial action in respect thereof, enabling works demolition, site clearance works, earthworks, archaeological investigations and digs, exploratory boreholes, operations permitted by the Town and Country Planning (General Permitted Development) Order 2015, the erection of hoardings and fencing, temporary diversion of services and signage (including the formation of temporary construction accesses) and "**Commence Development**" shall be construed accordingly;
"Commencement Date"	the date on which the Commencement of the Development occurs;
"Commencement Notice"	the written notice confirming the Commencement Date referred to in clause 7.1.1 and served in accordance with Clause 7.3.
"County Council's Monitoring Fees"	means the sum of £1,620 (one thousand six hundred and twenty pounds) for the County Council's cost of monitoring the obligations to be paid to the County Council in accordance with Clause 8 of this Agreement.
"Development"	the development of the Application Site pursuant to the Planning Permission.
"Dwelling"	a residential dwelling constructed on the Application Site and forming part of the Development.

"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.
"Indexed"	the quantum by which a contribution payable under this shall increase to be calculated 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 and in the case of the TRO Contribution between the quarter preceding the date of this Agreement and the quarter preceding the date of payment of the TRO Contribution to the County Council.
"Interest"	means interest at the rate of 4% above the Bank of England base rate applicable at the relevant payment date which shall be calculated on a day to day basis
"Monitoring Fees"	Fees totalling £400 (four hundred pounds) for monitoring obligations in the Agreement to be paid to the Council in accordance with clause 8 of this Agreement.
"Occupation"	occupation for any purpose for which the Planning Permission has been granted by the Council other than occupation for the purposes of construction or fitting out or occupation for security, marketing or display and "**Occupy**" and "**Occupied**" shall be construed accordingly.
"Occupation Date"	the date on which the Development is first Occupied.
"Occupation Notice"	the written notice confirming the Occupation Date referred to in clause 7.1.2 to be served in accordance with clause 7.3 of this Agreement.
"Planning Permission"	the planning permission to be granted by the Council pursuant to the Application.
"Section 73 Consent"	any planning permission granted pursuant to section 73 of the Act to vary and/ or remove any planning condition(s) subject to which the Planning Permission was granted and/ or subsequent planning permission was granted pursuant to section 73 of the Act.
"Working Day"	means Monday to Friday inclusive but excluding any day that is a bank holiday, public holiday or statutory holiday in England.

4. ENABLING PROVISIONS

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

5. CONDITIONS PRECEDENT

5.1 This Agreement shall come into effect upon the date it is dated but the provisions in Schedules 2 to 5 (except for paragraph 2.1 and 2.2 of Schedule 2, paragraph 3.1 of Schedule 4 and paragraph 2.5 of Schedule 5) shall only take effect upon the Commencement of Development unless explicitly stated otherwise.

6. COVENANTS

6.1 Subject to clause 5.1:

6.1.1 The Owner covenants with the Council and the County Council to comply fully with and to perform the obligations contained herein and in Schedules 2 to 5 of this Agreement in accordance with the requirements and timescales set out;

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

7. NOTICES

7.1 The Owner covenants with the Council as follows:

7.1.1 to give the Commencement Notice to the Council and the County Council not less than 5 (five) Working Days before the anticipated Commencement Date; and

7.1.2 to give the Occupation Notice to the Council and the County Council not less than 5 (five) Working Days before the anticipated Occupation Date.

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

7.3 Any notice, certificate or other communication required or permitted to be given under this Agreement shall be given in writing to

7.3.1 In the case of the Owner to St Michael's House 111 Bell Street Reigate RH2 7LF; and;

7.3.2 in every other case 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 09:00hrs and 17:00hrs on a Working Day but otherwise it shall be deemed to have been received on the next Working Day.

8. COSTS

8.1 The Owner has undertaken to pay on or before the date hereof the Council's reasonable legal costs incurred in preparing and entering into this Agreement and the Monitoring Fees for monitoring the planning obligations contained herein.

8.2 The Owner has undertaken to pay on or before the date hereof the County Council's reasonable legal costs incurred in preparing and entering into this Agreement and the County Council's Monitoring Fees for monitoring the planning obligations set out in Schedule 5.

9. CHARGEE'S/ MORGAGEE'S CONSENT/ LIABILITY

9.1 Any future chargee or mortgagee shall not be liable for any breach of the obligations in this Agreement unless committed or continuing at a time when it is in possession of all or any part of the Application Site in which case it will be bound by the obligations in this Agreement as if it were a person deriving title from the 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 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 at any time to enforce the provisions of this Agreement or to require performance strictly or otherwise by the Owner of any of the conditions, covenants, agreements or obligations of this Agreement or any failure or delay by the Council to exercise any act, right or remedy shall not be construed as a creating an estoppel in connection with any such condition, covenant, agreement or obligation and shall not affect the validity of this Agreement or any part thereof or the right of the Council to enforce any provision and any variation of this Agreement shall not vitiate the remainder of the Agreement which shall remain in full force and effect subject to such amendment or amendments.

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 Site Plan to be reproduced by the Council.

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

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

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

10.11.1 expires; or

10.11.2 is varied or revoked other than at the request of the Owners and/ or the Developer; 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 Application Site from the Owners) shall not be liable for any breach of the restrictions and obligations set out in this Agreement where such breach arises after the Owners have parted with their interest in the Application Site or part of Application Site to which such breach relates save in respect of liability for antecedent breach of this Agreement.

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 Offsetting Site(s) include any part of it/ them.

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; and

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

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 provisions of this Agreement shall not bind the following:

10.18.1 Purchasers tenants occupiers (or their respective mortgagees and chargees) of any individual Dwelling save for the obligations in Schedule 2 and 3 which shall apply to the Affordable Housing Units;

10.18.2 Any statutory undertakers in respect of land held for their operational purposes and as a consequence of the release given in this clause this Agreement may be modified varied or released without the consent or approval of any such person without them being a party to any document or deed required to effect such a modification variation or release but such document or deed shall take effect as if they had been a party to such document or deed.

10.19 The Council and the County Council each separately undertake that where they are required to given any agreement, consent, approval or expression of satisfaction, then such agreement, consent, approval or expression of satisfaction shall not be unreasonably withheld or delayed.

11. DISPUTE RESOLUTION

11.1 Save for matters of construction (which shall be matters for the Court), should a dispute or difference arise between the Parties or any of them 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 5 of Schedule 4 of this Agreement shall be referred to the determination (as an expert and

not as an arbitrator) of an independent Member/ Fellow of the Chartered Institute of Ecology and Environmental Management or equivalent agreed upon by the Parties but in default of such agreement appointed by Chartered Institute of Ecology and Environmental Management.

11.4 Any expert appointed pursuant to clause 11.2 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 has any legal or equitable interest in the Application Site other than as set out in this Agreement.

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 Site, as the case may be, occurring before all the obligations under this Agreement have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Application Site purchased by reference to a plan.

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

EXECUTED as a **DEED** by
DEVINE HOMES PLC
acting by two directors or one director and the company secretary

[redacted]

.. Signed (Director)

[redacted] ..... Signed (Director/ ~~Company Secretary~~)

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

[redacted]

Authorised Officer



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

[redacted]

Authorised Officer



SCHEDULE 1

Plans

1. Application Site Plan entitled "Site Location Plan" with drawing number PL-01 Rev A dated 26.11.24
2. BNG Land Plan entitled "BNG Area Diagram" with drawing number 7522 PL10 and dated 10.12.25

CDM 2015 Health & Safety Information.

This information relates only to Significant Hazards identified on this drawing and is to be read in conjunction with the Designer's Hazard Register.



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Key:

Site boundary

Devine Homes

Site Location Plan

GP | PA | 26.11.24

7522 | PL-01 | A

East Street, Rusper

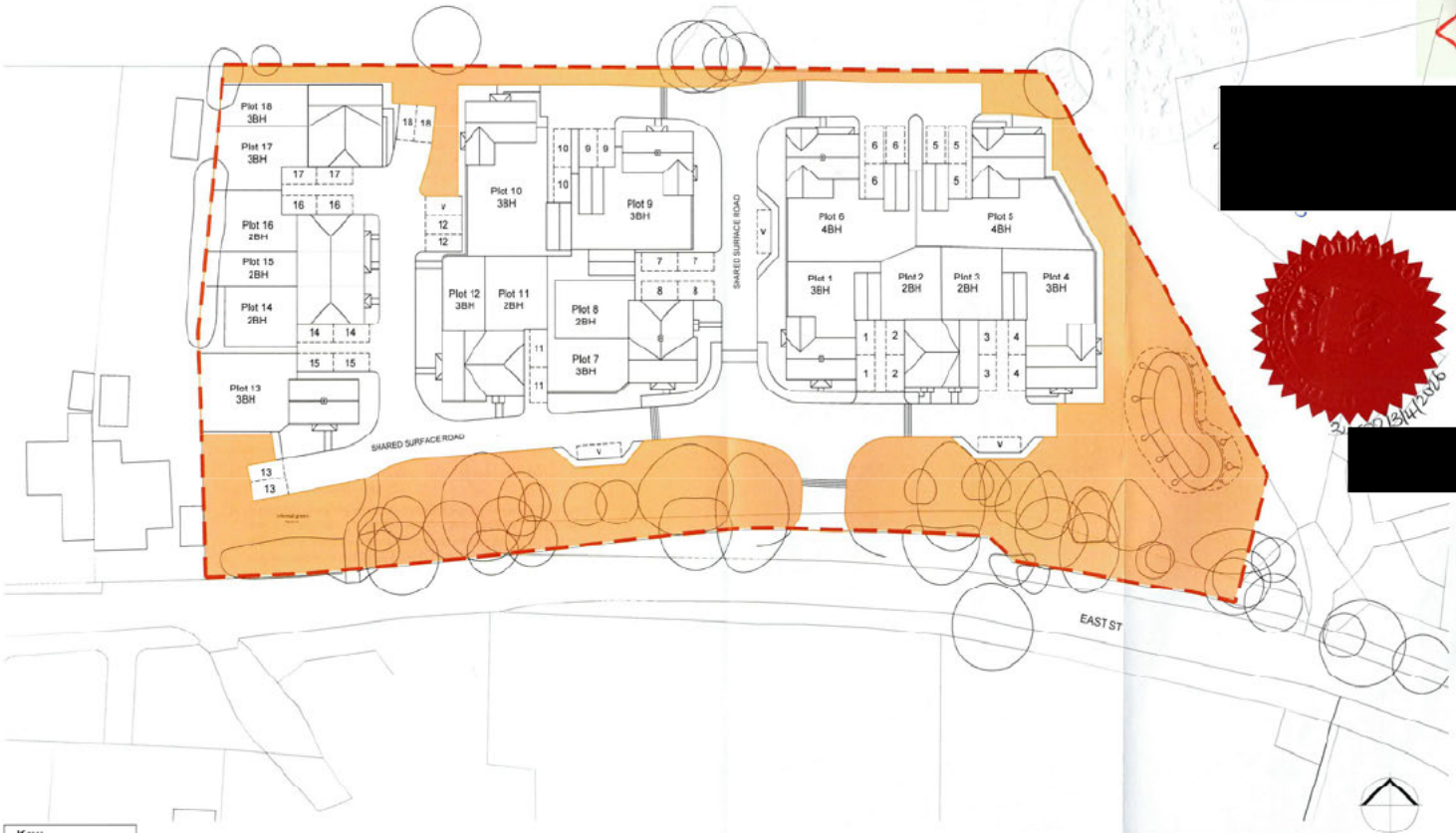
1:1250 @ A3

APPROVAL

A 30.01.25 Planning Submission GP PA

ECE Architecture

© ECE Architecture Limited. No dimensions to be scaled from drawing except for the purposes of Planning Applications. The contractor should check all dimensions on site. It is the contractors responsibility to ensure compliance with Building Regulations.



CDM 2015 Health & Safety Information:
The information relates only to Significant Hazards identified on this drawing and is to be read in conjunction with the Designers Hazard Register.

[redacted]

[redacted]

Key:
BNG Area

Client's Name: Devine Homes	Drawing Title: BNG Area Diagram	Drawn: CHP	Checked: MA	Date: 10.12.20
Job Title: East Street, Rusper	Scale: 1:500 @ A3	Job No: 7522	Drawing No: PL-10	Rev: -
		Status: APPROVAL		

ECE Architecture

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SCHEDULE 2

Affordable Housing

1. DEFINITIONS

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

"Affordable Housing"	affordable housing comprising Rented Units and/ or Shared Ownership Units (or such other forms of intermediate tenure as defined in the National Planning Policy Framework) provided to meet the needs of eligible households which are not met by the market, including availability at sufficiently low cost determined with regard to local incomes and local house prices and provision for the home to remain at an affordable price for future eligible households or if these restrictions are lifted for the subsidy to be recycled for alternative affordable housing provision.
"Affordable Housing Contribution"	a financial contribution in the sum of **£23,358 (twenty three thousand, three hundred and fifty eight pound)** Indexed in lieu of provision of a 0.3 of an Affordable Housing Units to be paid to the Council in accordance with this Schedule 2.
"Affordable Housing Land"	those parts of the Application Site on which the Affordable Housing Units shall be constructed together with the associated curtilage of each such building and amenity space where relevant and provided in accordance with the obligations set out in this Agreement.
"Affordable Housing Scheme"	a scheme for the provision of the Affordable Housing Units to be provided by the Owners which shall (as a minimum) provide: a) the type and size of Housing Units to be provided as the Affordable Housing Units; b) a plan showing the location of the Affordable Housing Land and the Affordable Housing Units, appropriately distributed throughout the Development so that, where practical, it is not segregated from the Open Market Units, to ensure inclusive and mixed communities AND identifying which (if any) of the Affordable Housing Units shall be fully wheelchair accessible, their type, size and location within the Development AND such other matters as the Council may require (acting reasonably); c) such other matters as the Council may require (acting reasonably).
"Affordable Housing Provider"	either one or a combination of: a) a registered provider of social housing within the meaning of the Housing and Regeneration Act 2008 (including its successors and assigns from time to time) who is on the Council's approved list (as may be amended from time to time) OR another registered provider of social housing as may be proposed by the Owners and approved by the Council; OR b) an unregistered provider of affordable housing approved by the Council, or such other body or organisation approved by the Council whose main object is the provision of Affordable Housing;
"Affordable Housing Tenure Mix"	a tenure mix of 4 (four) x Rented Units and 2 (two) x Shared Ownership Units , or such other mix of Affordable Housing Units as

	shall be approved in writing by the Council (such approval not to be unreasonably withheld or delayed).
"Affordable Housing Units"	a minimum of 6 (six) of the total Housing Units to be provided as part of the Development of which the Affordable Rented Units and the Shared Ownership Units are to be transferred to an Affordable Housing Provider as housing for persons in Housing Need in accordance with the provisions of this Agreement unless an alternative tenure mix is required to fulfil the requirements of paragraph 3.8 of this Schedule 2.
"Affordable Rent"	in relation to first lets only, chargeable rent that is subject to the HE's Rent Standard (April 2020) as expanded on by the Rent Standard and Guidance (1 April 2013 – 31 March 2024) and any such document and/or associated guidance that may be amended updated or replaced from time to time and is required to be offered to eligible householders in Housing Need at an open market rental level which does not exceed 80% of gross local market rent (inclusive of service charges) for an equivalent property of that size and location calculated using the Royal Institute of Chartered Surveyors approved valuation methods OR the applicable Local Housing Allowance rate for the Council, whichever is the lower.
"Affordable Rented Units"	rented housing let by the Affordable Housing Provider to eligible households at Affordable Rent and **"Affordable Rented Unit"** shall be construed as meaning any one of them.
"BCIS Index"	means the All-In Tender Price Index published by the Building Cost Information Service Index of the Royal Institution of Chartered Surveyors or (if such index is at the relevant time no longer published) such other comparable index or basis for indexation as the Council may specify.
"Deed of Nomination Rights"	the Council's nomination agreement in the form (or substantially in the form) attached at Schedule 3 to be entered into between the Council and the Affordable Housing Provider to provide the Council with nomination rights in respect of the Affordable Rented Units for the life of the Development.
"Disposal"	a disposal of the Affordable Housing Units to an Affordable Housing Provider whether by transfer of the freehold or the grant of a long lease for a term of at least 990 (nine hundred and ninety years and **"Dispose"** shall be construed accordingly.
"First Occupation"	the date on which each Housing Unit is Occupied for the first time.
"Fully Serviced"	where provision of Housing Units is made with access from the highway surfaced to adoptable standard and all utility connections, including electricity, mains water, sewerage and wiring for connection to high-speed broadband are installed and fully functional.
"Head of Development and Building Control"	the Head of Development and Building Control at the Council or any successor or such other officer as may be designated by the Council for the purposes of discharging their duties and functions from time to time.
"Head of Housing and Community Services"	the Council's Head of Housing and Community Services or such other officer as may be lawfully designated by the Council for the purposes of discharging his duties and functions.
"Homes England"	the executive non-departmental public body known as Homes England (or any successor body to its functions within the meaning of Part I of the Housing and Regeneration Act 2008 that funds new

	affordable homes and regulates registered providers of social housing in England);
"Housing Register and Nominations Policy"	the Council's published scheme of allocations presently contained in its "Housing Register and Nominations Policy (April 2025)" or any amendment, update, variation, or subsequent replacement thereof.
"Housing Need"	a) in relation to any Rented Units the requirement by a person for social housing allocation in accordance with the Housing Register and Nominations Policy; and b) in relation to the Shared Ownership Units the requirement for a person's income to be insufficient to enable them rent or buy housing available locally on the open market determined with regard to local incomes and local house prices;
"Housing Unit"	a unit for residential Occupation to be constructed as part of the Development.
"Local Housing Allowance"	the flat rate rental allowance providing financial assistance towards the housing costs of low-income households for different rental market areas and property types set out and reviewed by the Valuation Office Agency under a framework introduced by the Department of Work and Pensions or such similar framework that may replace it.
"Neighbouring Councils"	councils who share the same housing market within the Council's Strategic Housing Market Assessment;
"Open Market Units"	all those Housing Units to be constructed on the Application Site which are not Affordable Housing Units.
"Practical Completion"	in relation to a Housing Unit, complete save for minor snagging items such that it is reasonably fit for occupation or use with all utilities/ services connected and in full operation and accessible by both vehicles and pedestrians, and the words and **"Practically Complete"** shall be construed accordingly.
"Rented Units"	Housing Units to be made available by an Affordable Housing Provider as low cost rented accommodation (as defined by s.69 Housing and Regeneration Act 2008), which includes (but is not limited to) Affordable Rented Units and Social Rented Units.
"Right to Acquire"	the right of a secure tenant to purchase their dwellinghouse as set out in Part V of the Housing Act 1996 (as amended) and Housing (Right to Acquire) Regulations 1997.
"Right to Buy"	the right of a secure tenant to purchase their dwellinghouse as set out in Part V of the Housing Act 1985 (as amended)
"Shared Ownership Lease"	a lease which accords with HE's model form of lease issued from time to time.
"Shared Ownership Unit"	the Affordable Housing Units to made available by an Affordable Housing Provider whereby a person granted a Shared Ownership Lease can purchase an initial equity share in a Shared Ownership Unit of not less than 10% and not more than 75% and pay rent on the unsold equity with flexibility for such a person to purchase further equity shares in the Shared Ownership Unit up to 100% or such other equity sharing or retention terms from time to time approved by the Council.
"Social Rent"	rent set in accordance with the Regulator for Social Housing's Tenancy Standard (April 2012) as may be amended updated or replaced from time to time at a rent not higher than the national rent regime amount.

"Social Rented Units"	Affordable Housing Units that will be let to persons in housing need at a Social Rent and "**Social Rented Unit**" shall be construed as meaning any one of them.

The Owners hereby covenants with the Council as follows:

2. GENERAL PROVISIONS

2.1 Prior to Commencement of Development to pay the Affordable Housing Contribution to the Council and not to Commence the Development unless and until the Affordable Housing Contribution has been paid in full to the Council.

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

2.3 Subject to paragraph 5.1 of this Schedule (and the sub-paragraphs thereof), to construct, Practically Complete and deliver the Affordable Housing Units on the Affordable Housing Land in accordance with the Affordable Housing Scheme and the other provisions of this Schedule subject to any amendments agreed in writing by the Council from time to time.

2.4 Subject to paragraph 5 not to Occupy or use the Affordable Housing Units for any other purpose other than as Affordable Housing in accordance with the Affordable Housing Scheme and the other provisions of this Schedule.

2.5 The Owners further covenant that subject to paragraph 5:

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

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

3. PRACTICAL COMPLETION AND TRANSFER OF AFFORDABLE HOUSING UNITS

3.1 Prior to Occupation of the 4th Open Market Unit, to make reasonable endeavours to enter into a binding contract for:

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

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

3.2 In the event of a transfer taking place pursuant to paragraph 3.1.2, prior to Occupation of the 9th Open Market Unit to:

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

3.2.2 transfer either the freehold title, or a lease for at least 990 (nine hundred and ninety) years on a full repairing and insuring basis, for the Affordable Housing Units to the Affordable Housing Provider, free from all encumbrances (other than those on the title of the Affordable Housing Land at the date of this Deed) and financial charges.

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

3.3 not to Occupy or allow Occupation of more than 3 of the Open Market Units unless and until the provisions of paragraph 3.1 of this Schedule (including its sub-paragraphs) have been complied with.

3.4 Not to Occupy or allow Occupation of more than 8 of the Open Market Units unless and until the provisions of paragraph 3.2 of this Schedule (including its sub-paragraphs) have been complied with.

3.5 Within any transfer and/ or lease of any/ all of the Affordable Housing Units to the Affordable Housing Provider, to require or procure the execution by the Affordable Housing Provider and delivery to the Council of a Deed of Nomination Rights in respect of the Rented Units, substantially (but subject to such amendments as may be agreed between the Affordable Housing Provider and the Council) in the form set out in Schedule 3 with the Council's costs to be paid by the Affordable Housing Provider;

3.6 To provide evidence of the transfer of the freehold interest or grant of the leasehold interest of the Affordable Housing Units referred to in Paragraph 3.2.2 of this Schedule to the Head of Housing and Community Services within 5 (five) Working Days of completion of the transfer or grant.

3.7 In the event that no agreement for the transfer the Affordable Housing Land and/ or Affordable Housing Units (as required by paragraph 3.1) has been reached at the expiration period of 6 (six) months from the date of first approach to an Affordable Housing Provider pursuant to paragraph 3.1 above, to:

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

3.7.2 submit evidence to the Head of Development and Building Control demonstrating the steps taken and explaining why such an agreement could not be entered into with any Affordable Housing Provider.

3.8 To allow a further period of 3 (three) months from the date of service of the notice referred to in paragraph 3.7.1 of this Schedule EITHER to find an Affordable Housing Provider(s) (as required by paragraph 3.1) with the assistance of the Council AND/ OR to agree an alternative tenure mix by amendment of the Affordable Housing Scheme and in the event that the latter applies and the Council agrees a revised Affordable Housing Scheme the Owners shall continue to use reasonable endeavours to enter into contract with an Affordable Housing Provider or Affordable Housing Providers in accordance with paragraph 2.1 .as soon as reasonably practicable but for the avoidance of doubt the restriction on occupation of Open Market Units in paragraph 3.3 shall no longer apply.

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

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

3.10.1 the local authority district of Horsham; then

3.10.2 Neighbouring Councils; then

3.10.3 the County of West Sussex; then

3.10.4 the Homes England's East and South-East Operating Area (but excluding the County of Kent)

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

4. MISCELLANEOUS PROVISIONS

4.1 Prior to Occupation of the Affordable Housing Units:

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

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

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

5. EXCLUSIONS

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

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

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

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

5.1.1.3 for a period of 3 (three) clear calendar months from the date of such notification, the Appointee Administrator or Receiver shall use reasonable endeavours to complete a disposal of the relevant Affordable Housing Land and/ or Affordable Housing Units to another Affordable Housing Provider (who shall take subject to the provisions of this Deed) for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies interest and costs and expenses

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

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

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

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

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

SCHEDULE 3

Specimen Deed of Nomination Rights

[AFFORDABLE HOUSING PROVIDER]

and

HORSHAM DISTRICT COUNCIL

DEED OF NOMINATION RIGHTS

for

[ ] Affordable Housing – Rented Units

at

[ ] West Sussex

Authority: Signed and Dated S106 [ ]

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

Ref:

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

BETWEEN:

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

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

1. DEFINITIONS

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

"Affordable Housing"	subsidised housing provided to eligible households whose needs are not met by the market and which should meet the needs of eligible households, including availability at a cost low enough for them to afford, determined with regard to local incomes and local house prices and shall include provision for the home to remain at an affordable price for future eligible households or if these restrictions are lifted for the subsidy to be recycled for alternative affordable housing provision. and for the purposes of this deed comprises the Rented Units;
"Affordable Housing Land"	the land upon which the Rented Units are constructed [address of property] shown edged red on the plan at Schedule 1 of this Deed;
"Affordable Housing Provider"	either one or a combination of: a) a registered provider of social housing within the meaning of the Housing and Regeneration Act 2008 (including its successors and assigns from time to time) as nominated by the Council from the Council's approved list (as may be amended from time to time) OR another registered provider of social housing as may be proposed by the Head of Housing and Community Services and approved by the Council; OR b) an unregistered provider of social housing approved by the Council, or such other body or organisation approved by the Council whose main object is the provision of Affordable Housing;
"Exempted Void	a Void occurring when the Council transfers a tenant to more suitable accommodation to meet the tenant's needs;
"Homes England"	the executive non-departmental public body called Homes England, sponsored by the Department for Levelling Up, Housing and Communities or any bodies undertaking the existing functions of Homes England within the meaning of Part 1 of the Housing and Regeneration Act 2008 (or redefined by any amendment replacement or re-enactment of such Act;
"Housing Register and Nominations Policy"	the Council's Housing Register and Nominations Policy dated April 2025 (and which may be updated from time to time): https://www.horsham.gov.uk/ data/assets/pdf file/0007/146779/Housing-Register-Nominations-Policy.pdf or other document which may replace it;
"Initial Let"	the first tenancy or lease of a newly constructed and previously unoccupied Rented Unit and "Initial Let" shall mean any one of them;
"Local Connection"	in relation to an individual, that such individual: a) immediately before taking up occupation of a Rented Unit had his only or principal home in the parish of [XXX] for a continuous period of not less than two years; or b) a member of his household has a parent, child, adult child, brother or sister whose only or principal home is and has been for a continuous period of not less than 2 (two) years in the parish of [XXX] and he wishes to be near that relative; or

	c) is and has been permanently employed in the parish of [XXX] for a continuous period of not less than 2 (two) years provided that where no person or insufficient persons can be identified as having a connection with the parish of XXX as outlined above then the District of Horsham shall be substituted for the parish of [XXX.];
"**Nominee**"	a person who may be nominated by the Council to the Rented Units and who is in need of Affordable Housing, who is not easily able to compete in the local housing market and who meets the following criteria: a) is an individual or are individuals; b) is considered in their reasonable opinion by the Council or the Affordable Housing Provider in accordance with its rules or its allocations and lettings policies to be in need of the accommodation provided by the Affordable Housing Unit; c) is not able easily to compete in the open market for equivalent housing accommodation in the administrative area of the Council; d) before taking up occupation of the Affordable Housing Unit has not owned a freehold or a lease for a term exceeding 3 years within the previous 12 months (save that the condition shall not apply where the Council or the Affordable Housing Provider is satisfied that the circumstances of that person are such as to put him in need of housing) and intends to occupy and subsequently occupies the Affordable Housing Unit as his/her only or principal home; e) is an individual who meets the criteria of the Council's Housing Register and Nominations Policy; f) has a Local Connection. and **"Nominee"** and **"Nominees"** shall be construed accordingly;
"Rented Units"	the housing units constructed or to be constructed on the Affordable Housing Land to be made available by an Affordable Housing Provider as low cost rented accommodation (as defined by s.69 Housing and Regeneration Act 2008) subject to a Tenancy Agreement.
"S106 Agreement"	the agreement relating to the Application Site and dated [....] and made between (1) [ ] and (2) Horsham District Council and any subsequent supplemental agreements varying it thereafter;
"Social Rent"	rent in accordance in accordance with the Regulator for Social Housing's Tenancy Standard (April 2012) as may be amended updated or replaced from time to time at a rent not higher than the national rent regime amount.
"Social Rented Units"	Affordable Housing Units that will be let to persons in housing need at a Social Rent and **"Social Rented Unit"** shall mean any one of them.
"Tenancy Agreement"	an assured tenancy agreement in a form prepared by the Affordable Housing Provider and containing terms which accord with the form of tenancy agreement being used by the Affordable Housing Provider from time to time for its general lettings or such other form of tenancy as the Affordable Housing Provider specifies (acting reasonably;
"Vacancy Notice"	a written notice, the form of which is to be agreed between the Affordable Housing Provider and the Council within 5 (five) weeks of this Deed, to be given by the Affordable Housing Provider to the Council in respect of any Affordable Housing Unit on the Affordable Housing Land to notify the Council that the construction and fitting out of that Affordable Housing Unit is complete;
"Void"	an Affordable Housing Unit which is vacant because the tenant has vacated it;

"Void Notice"	a written notice, the form of which is to be agreed between the Affordable Housing Provider and the Council within 8 (eight) weeks of the date of this Deed, to be given by the Affordable Housing Provider to the Council to notify it that a Void is now available for re-letting;
"Void Notification"	the notification to the Council by the Affordable Housing Provider that an Affordable Housing Unit is to become a Void with such notification to include the anticipated period that the Affordable Housing Unit will remain as a Void;
"Working Day"	any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

2. INTERPRETATION

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

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

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

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

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

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

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

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

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

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

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

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

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

3. ENABLING PROVISIONS

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

4. NOMINATION PROCEDURE FOR RENTED UNITS

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

Initial Lets

4.2. The Affordable Housing Provider shall give the Council not less than 8 (eight) weeks' written notice of the date when an Initial Let will be ready for occupation.

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

Nomination procedures

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

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

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

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

Failure to let

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

Notices

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

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

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

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

4.7.4. accepting an Offer from the Affordable Housing Provider.

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

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

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

4.9. In the event that:

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

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

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

4.10. If the Council fails to serve details of a Nominee on the Affordable Housing Provider in accordance with clause 4.4 because it does not have suitable Nominee, it shall inform the Affordable Housing Provider within 10 (ten) Working Days and serve details of a suitable Nominee as soon as reasonably practicable thereafter and in any event within 20 (twenty) Working Days of the date of receipt of the notice.

Voids and reletting

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

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

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

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

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

Exempted Voids

4.12. Where the Void is an Exempted Void:

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

4.12.2. if 75% of the Voids (which for the avoidance of doubt means 75% of the total number of Affordable Housing Units) have been let, the Affordable Housing Provider shall not be required to follow the procedures set down in clauses 4.4 – 4.7 and the Affordable Housing Provider shall then be entitled to let the remaining 25% of the Voids (which for the avoidance of doubt means 25% of the total number of Affordable Housing Units) to persons of its own choosing (subject to the provisions within the S106 Agreement).

Rejecting Nominees

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

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

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

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

4.15. The Council and the Affordable Housing Provider agree that the nomination rights contained in this Deed may be varied from time to time but only by agreement in writing by the parties.

5. NOTICES

5.1. Any notice served in accordance with this Deed must be in writing and:

5.1.1. delivered by hand; or

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

5.2. Any notice to be given under this Deed must be sent to the relevant party at the address indicated above or such other address notified by one party to the other and addressed,

in the case of the Council to Head of Housing and Community Services and, in the case of the Affordable Housing Provider [xxx].

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

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

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

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

6. TRANSFERS TO OTHER AFFORDABLE HOUSING PROVIDERS

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

7. DISPUTES

7.1. Where any matters fail to be agreed between the parties or any dispute or difference occurs the question shall be referred on the application of either party for the determination of a single expert to be agreed between the parties or in default of agreement to be nominated by the President for the time being of the Chartered Institute of Housing.

8. COSTS

8.1. The Affordable Housing Provider agrees with the Council to pay the reasonable and proper legal costs which the Council incurs in preparing and entering into this Deed.

9. AGREEMENTS AND DECLARATIONS

The parties agree:

9.1. nothing in this Deed fetters or restricts the exercise by the Council of any of its powers;

9.2. the obligations contained in this Deed are covenants for the purpose of s.33 of the Local Government (Miscellaneous Provisions) Act 1982.

10. DISCREPANCIES AND PRIORITY

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

11. EXCLUSION CLAUSE

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

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

11.1.2. Any mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator of an Affordable Housing Provider provided

that such party so appointed shall have first complied with the procedure in clause [xx] Schedule [xx] of the S106 Agreement; and

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

Execution clause for the

Affordable Housing Provider

The common seal of

HORSHAM DISTRICT COUNCIL

was affixed in the presence of:

Authorised signatory

Schedule 1

Plan

Schedule 2

Rented Unit Details

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

Schedule 3

Schedule of Tenure – The Rented Units

Plot	Tenure	Beds	Address	Type	Floor Level

Schedule 4

Specimen Tenancy Agreement

[To be provided by the Affordable Provider]

SCHEDULE 4

Biodiversity Net Gain

The Owner's Covenants to the Council in relation to the BNG Land

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

1. Interpretation of this Schedule

Unless the context otherwise requires where in this Schedule the following defined terms and expressions are used they shall have the following respective meanings:

"Biodiversity Gain Plan"	the plan substantially in the form published by DEFRA, as may be updated from time to time, to be completed and submitted to the Council for approval in writing in accordance with this Schedule 4 such approval not to be unreasonably delayed or withheld;
"BNG Land"	the land shown shaded orange on the BNG Land Plan
"BNG Land Plan"	the plan entitled BNG Area Diagram with drawing reference 7522 PL-10
"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 this Schedule 4;
"Breach Notice"	a notice which may be served by the Council on the Owner pursuant to paragraph 5.1 of this Schedule 4 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 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 5.2 of this Schedule 4;
"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 (such confirmation not to be unreasonably delayed or withheld);
"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 this Schedule 4 of this Agreement;
"Habitat Creation and Enhancement Works"	Means the Habitat Creation and Enhancement Works set out in the HMMP
"HMMP"	Means the habitat management and Maintenance plan submitted to and approved by the Council in respect of the Development
"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;

2. BNG Monitoring Contributions

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

3. Biodiversity Gain Plan and HMMP

3.1. To submit the Biodiversity Gain Plan and the HMMP to the Council for its approval in writing prior to the Commencement of Development;

3.2. Not to Commence Development until the Biodiversity Gain Plan and the HMMP have been approved in writing by the Council (such approval not to be unreasonably delayed or withheld);

3.3. 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;

3.4. 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;

3.5. Not to Occupy more than 50% of 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;

3.6. 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;

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

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

3.8.1. the proposed amended HMMP;

3.8.2. a statement of reasons for such amendment; and

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

3.8.3.1. the use or management of the BNG Land in a manner consistent with its function to deliver Biodiversity Net Gain; and

3.8.3.2. the continued functioning of the BNG Land for BNG or any existing Allocation.

4. Access for Inspection

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

4.1.1. enter onto the part of the BNG Land necessary for monitoring compliance with:

4.1.1.1. the obligations in this Agreement;

4.1.1.2. any Breach Notice; and

4.1.2. pass and repass across any land in the Owner's control reasonably necessary for gaining access to the BNG Land

subject to the Council providing the Owner with a minimum of 5 (five) Working Days' notice of its desire to enter onto the BNG Land, 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 their appointed contractors.

5. Breach Notice and Step-In Rights

5.1. Where the Council believes that the HMMP has not been complied with, it may serve a Breach Notice on the Owner.

5.2. To notify the Council within 20 (twenty) 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**").

5.3. Where a Breach Notice is disputed:

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

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

5.3.3. where resolution of the measures in dispute cannot be resolved in accordance with subparagraph 5.3.2 (above) within 20 (twenty) 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 (ten) Working Days.

5.4. 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).

5.5. To comply with any requirements imposed in connection with a Breach Notice by an Expert pursuant to paragraph 5.3.3 within the time limits specified in the Expert's determination.

5.6. 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:

5.6.1. any part of the BNG Land that is necessary for the carrying out the steps set out in the Breach Notice; and

5.6.2. any other land in the Owner's control necessary to access the BNG Land,

PROVIDED THAT that the notice and health and safety requirements specified in paragraph 4 are complied with.

5.7. To pay the Council a sum equivalent to its reasonably and properly incurred costs in exercising its step in rights and carrying out the relevant works pursuant to paragraph 5.6 (including its sub paragraphs) within 20 (twenty) Working Days of the date of a notice requesting payment (such notice to include a breakdown of such costs).

5.8. In default of payment of a sum falling due to the Council in whole or in part pursuant to paragraph 5.7 of this Schedule, the Council shall be entitled to recoup its costs from the Owner of the BNG Land or its successors in title and may secure the same by registering a charge or restriction on the title of the BNG Land at HM Land Registry.

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

6.1. Not to sell, lease, assign, underlet, transfer or otherwise part with its interest in the BNG Land, or any part of it, otherwise than to a Management Company 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 4 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.

6.2. To consent to the entering of the following restriction on the transferee's title to the 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 title number WSX386832 **(or any title created out of that title)** or their conveyancer that the provisions of paragraph 6 of Schedule 4 of an Agreement made pursuant to section 106 of the Town and Country Planning Act 1990 between 1) Devine Homes PLC; 2) West Sussex County Council; and 3) Horsham District Council dated [XX] have been complied with".

3 February 2026

[redacted]

SCHEDULE 5

Highway Works

1. DEFINITIONS

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

"All Requisite Consents"	means all requisite consents orders agreements authorisations licences and permissions required to implement a scheme.
"Highway Works"	the provision of the following in the vicinity of the Development: a) creation of a site access to the Development from East Street and associated works as shown on drawing ITB200340-GA-002 Rev F; and b) creation of a pedestrian access and associated works west of the vehicular access linking to the footway on the southern side of East Street as shown on drawing ITB200340-GA-008 Rev C to be provided in accordance with the Highway Works Scheme as set out at Schedule 5 of this Agreement and appended herein.
"Highway Works Scheme"	means a scheme in respect of the Highway Works delivered in accordance with Paragraph 2 of Schedule 5 of this Agreement
"Millfield's Development	Means the development of the site at Millfields Farm, Horsham Road, Rusper RH12 4PR subject to planning application reference DC/24/0699 which has been submitted to the Council
"TRO Contribution"	means the sum of £10,205 (ten thousand two hundred and five pounds) payable to the County Council for the promotion and advertisement of a potential Traffic Regulation Order for the TRO Works and payable in accordance with paragraph 1 of Schedule 5 of this Agreement PROVIDED THAT should annually revised costs be available, which must be justifiable, then the contribution will be adjusted accordingly and the revised contribution will be payable to the County Council.
"Traffic Regulation Order"	means a traffic regulation order pursuant to the Road Traffic Regulation Act 1984 to provide the TRO Works
"TRO Works"	means the provision of a potential Traffic Regulation Order for a speed limit change and a gateway feature east from the Development to the dwellings known as 'Red Fox Barn' and 'Norman's' SHOULD a Traffic Regulation Order application for the same provisions have not already been applied for by the owners and/ or applicants of the Millfield's Development in accordance with the TRO Works Scheme subject to the Traffic Regulation Order being approved by the County Council pursuant to the requirements of the Road Traffic Regulation Act 1984.
"TRO Works Scheme"	means a scheme in respect of the TRO Works delivered in accordance with Paragraph 1 of Schedule 5 of this Agreement.

The Owner's Covenants to the Council as follows:

2. TRO CONTRIBUTION AND TRO WORKS SCHEME

2.1. To pay to the County Council the TRO Contribution on or before Commencement of Development or upon the date on which the application for the Traffic Regulation Order is submitted to the County Council in writing, whichever is the earliest.

2.2. Not to cause or allow Commencement of Development or to submit a written application to the County Council for a Traffic Regulation Order before the TRO Contribution shall have been paid to the County Council.

2.3. If the TRO Contribution is not paid to the County Council on or before the relevant payment date to pay to the County Council in addition Interest from the relevant payment date until the actual date of payment and any such Interest shall be treated as part of the TRO Contribution.

2.4. The TRO Contribution shall be Indexed only if the sum has not been recalculated using annually revised costs.

2.5. Prior to Commencement of Development to submit an application to the County Council for the Traffic Regulation Order.

2.6. If the Traffic Regulation Order is approved by the County Council the Owner shall carry out the TRO Works at the Owner's expense in accordance with the following:

2.6.1. To submit a TRO Works Scheme, within 14 days of the Traffic Regulation Order being approved to the County Council for approval provided that where a TRO Works Scheme is submitted to the County Council which is not approved a revised TRO Works Scheme shall, within 14 days of receipt of notice in writing from the County Council that the previous TRO Works Scheme is not approved, be submitted to the County Council for approval.

2.6.2. Once the County Council has approved a TRO Works Scheme (the "Approved TRO Works Scheme") to obtain All Requisite Consents.

2.6.3. After All Requisite Consents have been obtained and the Traffic Regulation Order has been made by the County Council pursuant to the Road Traffic Regulation Act 1984 to carry out in full the Approved TRO Works Scheme and to complete the TRO Works to the satisfaction of the County Council.

2.7. If the Traffic Regulation Order is approved and subsequently made by the County Council not without the consent of the County Council to allow First Occupation of the Dwellings until the TRO Works in accordance with the TRO Works Scheme have been completed to the satisfaction of the County Council and the County Council's consent of first Occupation of the Dwellings shall not be unreasonably withheld if the reason that the works have not been completed is because the Traffic Regulation Order, has not been approved by the County Council and/ or made pursuant to the Road Traffic Regulation Act 1984.

2.8. In the event that an application for the TRO Works has already been made by or on behalf of the owner or developer of the Millfield's Development prior to the Commencement of Development then the obligations in paragraph 2.1 to 2.5 of this Schedule shall no longer be of effect.

2.9. In the event that the TRO Works have been completed by or on behalf of the owner or developer of the Millfield's Development prior to first Occupation of the Dwellings, then the obligations in paragraphs 2.6 to 2.7 (inclusive) of this Schedule shall no longer be of effect.

3. HIGHWAY WORKS

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

3.2. Not to Commence the Development until a Highway Works Scheme has been submitted to and approved in writing by the County Council provided that where a Highway Works Scheme is submitted to the County Council which is not approved a revised Highway Works Scheme shall, within 14 days of receipt of notice in writing from the County Council that the previous Highway Works Scheme is not approved, be submitted to the County Council for approval.

3.3. Once the County Council has approved a Highway Works Scheme (the "**Approved Highway Works Scheme**") to obtain All Requisite Consents including without limitation entering into a Section 278 and/or Section 38 Agreement with the County Council.

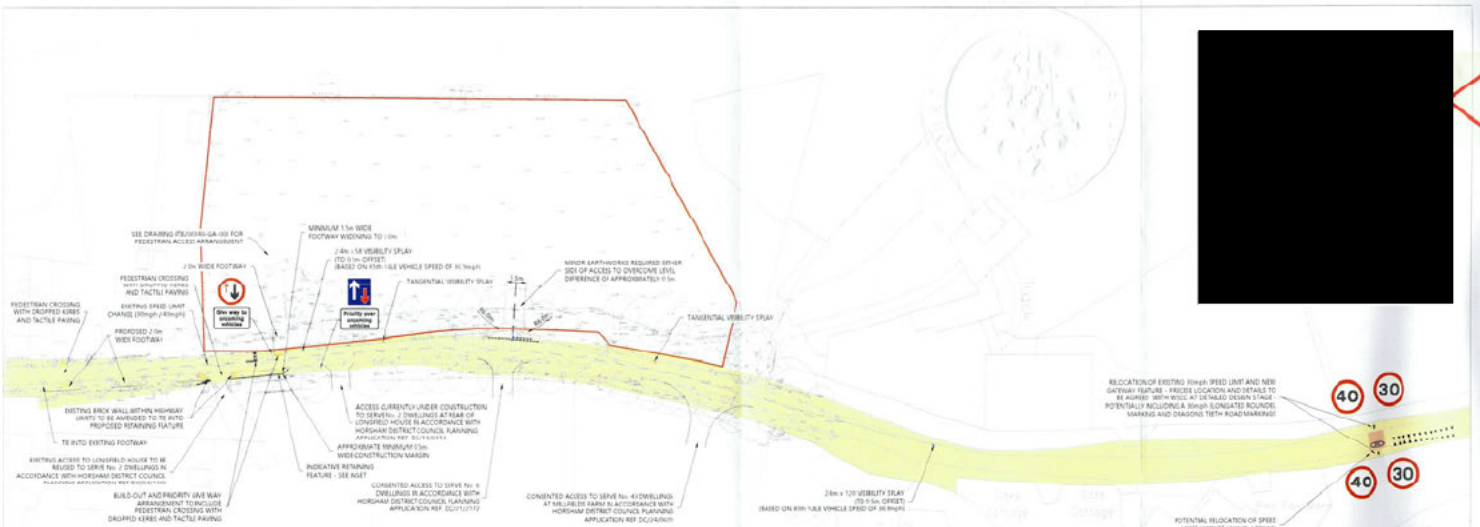
3.4. After All Requisite Consents have been obtained to carry out in full the Approved Highway Works Scheme and to complete the Highway Works to the satisfaction of the County Council.

3.5. Not without the consent of the County Council to allow first Occupation of any Dwelling until such Highway Works have been completed to the satisfaction of the County Council.

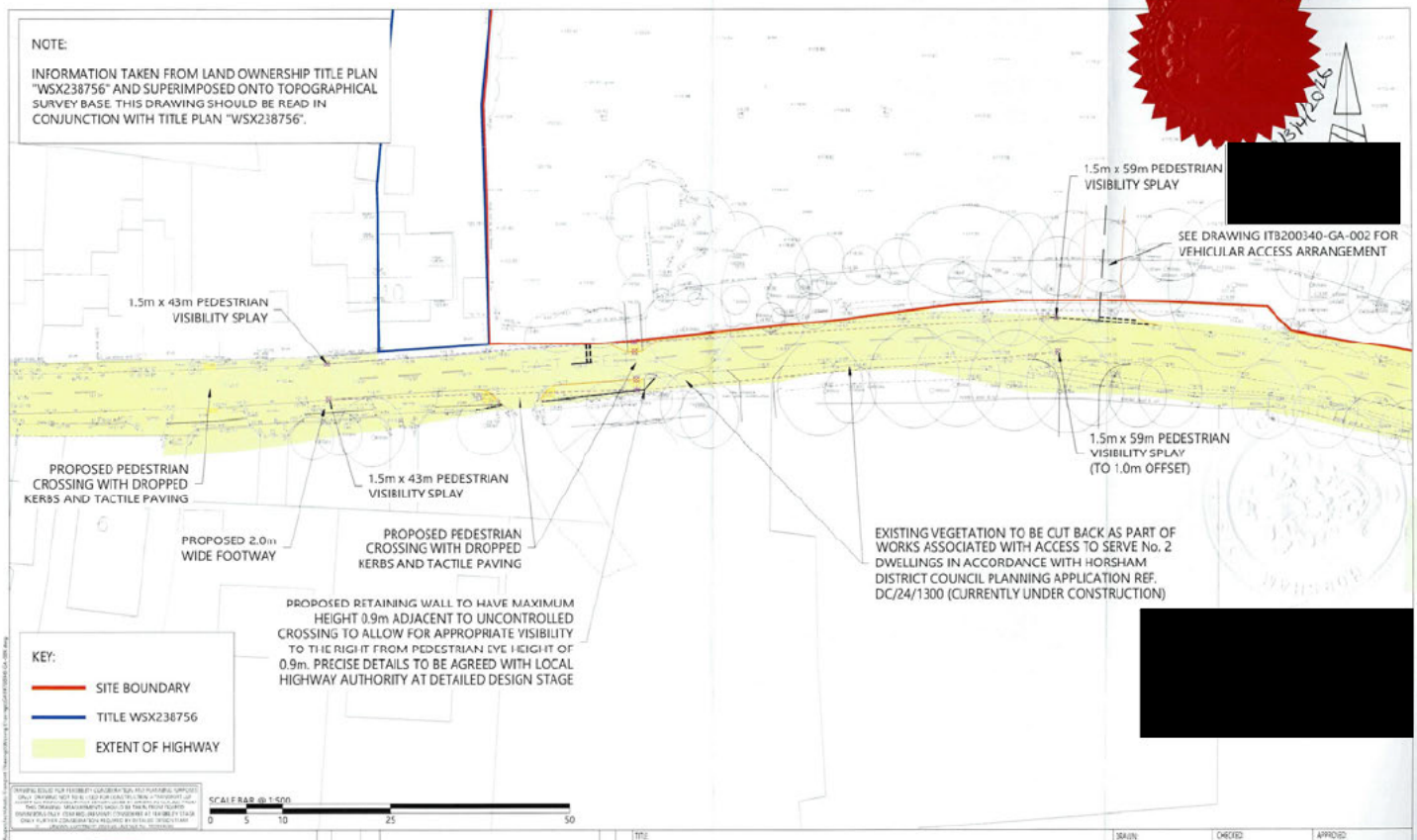
3.6. Where the County Council is the responsible authority for giving any Requisite Consents, the County Council shall deal expeditiously with any application for a Requisite Consent and shall not unreasonably withhold or delay the giving of such Requisite Consent including without limitation being party to a Section 278 and/or Section 38 Agreement.

Appendix 1

Highways Works: Drawing Number ITB200340-GA-002 Rev F


SEE DRAWING ITB/00340-GA-001 FOR PEDESTRIAN ACCESS ARRANGEMENT
MINIMUM 1.5m WIDE FOOTWAY WIDENING TO
2.4m x 58 VISIBILITY SPLAY (TD 9.5m OFFSET) (BASED ON 85th %ILE VEHICLE SPEED OF
2.0m WIDE FOOTWAY
PEDESTRIAN CROSSING WITH DROPPED KERBS AND TACTILE PAVING
Give way to oncoming vehicles
Priority over oncoming vehicles
TANGENTIAL VISIBILITY SPLAY
MINOR EARTHWORKS REQUIRED EITHER SIDE OF ACCESS TO OVERCOME LEVEL DIFFERENCE OF APPROXIMATELY 0.5m
PEDESTRIAN CROSSING WITH DROPPED KERBS AND TACTILE PAVING
EXISTING SPEED LIMIT CHANGE (30mph / 40mph)
PROPOSED 2.0m WIDE FOOTWAY
TANGENTIAL VISIBILITY SPLAY
EXISTING BRICK WALL WITHIN HIGHWAY LIMITS TO BE AMENDED TO TIE INTO PROPOSED RETAINING FEATURE
TIE IN TO EXISTING FOOTWAY
EXISTING ACCESS TO LONGFIELD HOUSE TO BE REUSED TO SERVE No. 2 DWELLINGS IN ACCORDANCE WITH HORSHAM DISTRICT COUNCIL
BUILD-OUT AND PRIORITY GIVE WAY ARRANGEMENT TO INCLUDE PEDESTRIAN CROSSING WITH DROPPED KERBS AND TACTILE PAVING
ACCESS CURRENTLY UNDER CONSTRUCTION TO SERVE No. 2 DWELLINGS AT REAR OF LONGFIELD HOUSE IN ACCORDANCE WITH HORSHAM DISTRICT COUNCIL PLANNING
APPROXIMATE MINIMUM 0.5m WIDE CONSTRUCTION MARGIN
INDICATIVE RETAINING FEATURE - SEE INSET
CONSENTED ACCESS TO SERVE No. 6 DWELLINGS IN ACCORDANCE WITH HORSHAM DISTRICT COUNCIL PLANNING APPLICATION REF DC/17/1172
CONSENTED ACCESS TO SERVE No. 43 DWELLINGS AT MILLPOND FARM IN ACCORDANCE WITH HORSHAM DISTRICT COUNCIL PLANNING APPLICATION REF DC/20/0619
2.4m x 120 VISIBILITY SPLAY (TD 0.5m OFFSET) (BASED ON 85th %ILE VEHICLE SPEED OF 38.9mph)
RELOCATION OF EXISTING 30mph SPEED LIMIT AND NEW GATEWAY FEATURE - PRECISE LOCATION AND DETAILS TO BE AGREED WITH WSCC AT DETAILED DESIGN STAGE - POTENTIALLY INCLUDING A 30mph ELONGATED ROUNDEL MARKING AND DRAGONS TEETH ROAD MARKING)
40
30
40
30
POTENTIAL RELOCATION OF SPEED LIMIT CHANGE (30mph / 40mph)
[redacted]
INSET - SCALE 1:25
EXISTING BANK
TO BE AGREED AT DETAILED D
EXISTI
40mm THICK BINDER COURSE
CARRIAGEWAY
100mm THICK SUBBASE
INDICATIVE FOOTWAY ROUTE STANDARD DETAIL
KEY
SITE BOUNDARY
EXTENT OF HIGHWAY
i-Transport
PROPOSED SITE ACCESS ARRANGEMENT
FOR INFORMATION
NORTH OF EAST STREET, RUSPER
DEVINE HOMES
ITB/00340-GA-002

Highways Works: Drawing Number ITB200340-GA-008 Rev C



i-Transport

The Square, Basing View, Basingstoke, Hampshire, RG21 4EB

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REV	DATE	BY	DESCRIPTION	CHK	APD
C	11.03.25	JD	ARRANGEMENT UPDATED	BT	BT
B	20.02.25	JD	ARRANGEMENT UPDATED	BT	BT
A	20.01.25	JD	KEY UPDATED / ANNOTATIONS UPDATED	BT	BT

STATUS: FOR INFORMATION

TITLE: PROPOSED PEDESTRIAN ACCESS - POTENTIAL KERB BUILD OUT ARRANGEMENT

PROJECT: NORTH OF EAST STREET, RUSPER

CLIENT: DEVINE HOMES

DRAWN:	CHECKED:	APPROVED:
JD	BT	BT
PROJECT No: ITB200340	SCALE @ A1: 1:500	DATE: 10.01.25
DRAWING No: ITB200340-GA-008		REV: C