DATED _____

(1) IMPERIUM TRUST COMPANY LIMITED

(2) FAIRFAX ASPIRE LIMITED

(3) EPSOM AND EWELL BOROUGH COUNCIL

(4) SURREY COUNTY COUNCIL

AGREEMENT PURSUANT TO SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990

relating to Farm View, Langley Vale Road, Epsom, Surrey

Pinsent Masons

CONTENTS

		Page
1.	DEFINITIONS AND INTERPRETATION	1
2.	OPERATIVE PROVISIONS	4
3.	CONDITIONALITY	4
4.	OWNER'S COVENANTS	4
5.	THE BOROUGH COUNCIL'S AND THE COUNTY COUNCIL'S COVENANTS	5
6.	MISCELLANEOUS	5
7.	NOTIFICATION	6
8.	THIRD PARTIES	6
9.	WAIVER	6
10.	LEGAL COSTS AND MONITORING FEES	7
11.	OWNERSHIP	7
12.	INTEREST	7
13.	VAT	7
14.	DISPUTE PROVISIONS	7
15.	JURISDICTION	8
16.	DELIVERY	8
SCHEDULE 1 AFFORDABLE HOUSING		9
SCHEDULE 2 BIODIVERSITY NET GAIN		14
SCHEDULE 3 TRAVEL PLAN AND TRANSPORT		15
SCHEDULE 4 POLICE CONTRIBUTION		18
SCHEDULE 5 OPEN SPACE, PLAY AREA AND LANDSCAPING		19
SCHEDULE 6 BOROUGH COUNCIL'S AND COUNTY COUNCIL'S COVENANTS		21

THIS DEED IS MADE on 2026

BETWEEN:-

(1) **IMPERIUM TRUST COMPANY LIMITED** (incorporated in Guernsey) (OE ID: OE000040) of Second Floor, St. Peter's House, Le Bordage, St. Peter Port, Guernsey, GY1 1BR Trustee of the Imperium Retirement Plan QNUPS re Saint (the "**Owner**");

(2) **FAIRFAX ASPIRE LIMITED** (Companies House Registration No 10168982) of Buncton Barn, Buncton Lane, Bolney, Haywards Heath RH17 5RE (the "**Applicant**");

(3) **EPSOM AND EWELL BOROUGH COUNCIL** of Town Hall, the Parade, Epsom, KT18 5BY (the "**Borough Council**"); and

(4) **SURREY COUNTY COUNCIL** of Woodhatch Place, 11 Cockshot Hill, Reigate, Surrey, RH2 8EF (the "**County Council**").

WHEREAS:-

(A) By virtue of the 1990 Act the Borough Council is the local planning authority for the purposes of this Deed for the area in which the Land is situated and is the local planning authority by whom the planning obligations hereby created are enforceable.

(B) The County Council is the local highway authority for the area in which the Land is situated.

(C) The Owner is the registered freehold proprietor with absolute title of all that land registered at HM Land Registry under Title Number SY672685.

(D) The Applicant has a restriction over the Owner's land registered against Title Number SY672685 in respect of a promotion agreement dated 30 June 2023, as subsequently amended/varied.

(E) The Applicant submitted the Application to the Borough Council on 18 July 2025.

(F) The Applicant lodged the Planning Appeal (start letter dated 29 April 2026) following the Borough Council's refusal of the Application on 2 March 2026.

(G) The Owner and Applicant by entering into this Deed do so to create planning obligations in respect of the Land and each part of it in favour of the Councils pursuant to section 106 of the 1990 Act and to be bound by and observe and perform the covenants, agreements, conditions and stipulations hereinafter contained.

IT IS AGREED as follows:-

1. **DEFINITIONS AND INTERPRETATION**

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

"**1990 Act**"	means the Town and Country Planning Act 1990 (as amended)
"**Application**"	means the outline planning application (reference number 25/00846/OUT) validated by the Borough Council on 18 July 2025 for outline application for up to 110 dwellings including affordable homes (all matters reserved except access from Langley Vale Road)
"Borough Monitoring Fee"	£20,000 (twenty thousand pounds) towards the Borough Council's costs of monitoring the implementation and compliance with the obligations in this Deed

Commented [PM1]: Note to BC - can you please confirm how this has been calculated? This is quite a significant sum.

"**CIL Regulations**"	means the Community Infrastructure Levy Regulations 2010 (as may be amended from time to time)
"**Commencement of Development**"	means the date upon which the Development shall commence by the carrying out on the Land pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act SAVE THAT the term "material operation" shall not include operations in connection with any work of or associated with demolition, site clearance, remediation works, environmental investigation, site and soil surveys, erection of a contractor's work compound, erection of a site office and erection of fencing to the site boundary and "**Commence Development**" shall be construed accordingly
"**Completion**"	the date on which the Owner confirms to the Borough Council and County Council that the Development has been completed
"Councils"	together being the Borough Council and County Council
"County Monitoring Fee"	means the sum of £4,530 (four thousand five hundred and thirty pounds) towards the County Council's reasonable and proper administrative costs of monitoring compliance with the provision of this Deed
"**Decision Letter**"	means a decision letter by the Secretary of State (or the Planning Inspector) in respect of the Planning Appeal
"**Deed**"	means this Deed made under section 106 of the 1990 Act and all other enabling powers
"**Development**"	means the development of the Land in accordance with the Planning Permission
"**Dwelling**"	means a residential dwelling to be constructed on the Land pursuant to the Planning Permission and "**Dwellings**" shall be construed accordingly
"Index"	means the "All Items" Index of Retail Prices (item Reference CHMK) ("**RPI**") or such other item reference as may from time to time replace the item reference published by the Office for National Statistics or any successor ministry or department of government or any such alternative index or comparable measure of price inflation as may be agreed in writing by the Owner and the Borough Council or the County Council
"Index Linked"	means adjusted from the date of this Deed in accordance with the Index by multiplying in each case the relevant sum by a fraction whose denominator shall be the last published Index monthly figure published before the date of this Deed and whose numerator shall be the last published Index monthly figure available before the date on which payment is due but which for the avoidance of doubt shall not fall below the original figure for the relevant sum
"**Interest**"	means interest at four per cent (4%) above the base lending rate of the Bank of England from time to time
"**Land**"	means all that land against which this Deed may be enforced and shown edged red on Plan 1

"**Occupation**"	means beneficial occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "**Occupier**" and "**Occupied**" shall be construed accordingly
"**Plan 1**"	means the plan of the Land at Appendix 1
"**Planning Appeal**"	means the appeal made under section 78 of the 1990 Act in respect of the Borough Council's refusal of the Application which has been allocated PINS reference 6006971
"**Planning Inspector**"	means the Inspector appointed by the Secretary of State to determine the Planning Appeal
"**Planning Permission**"	means the outline planning permission to be granted pursuant to the Planning Appeal
"**Reserved**"	means to keep it free of any development which renders it impossible, impracticable or materially more costly to use the land subsequently for the purpose intended and/or which prevents use or development of the relevant land for the relevant purposes (as applicable) and "**Reserve**" shall be construed accordingly
"Reserved Matters Application"	means an application made by the Owner to the Borough Council for Reserved Matters Approval
"Reserved Matters Approval"	means the approval of reserved matters reserved under the Planning Permission approved by the Borough Council and Reserved Matters and Reserved Matters Approvals shall be construed accordingly
"**Secretary of State**"	means the Secretary of State for Housing, Communities and Local Government
"**Working Day**"	means a day other than a Saturday or Sunday or public holiday in England

1.2 Where the context so requires:-

1.2.1 the singular includes the plural and vice versa and words importing the masculine gender only include the feminine and neuter genders and extend to include a corporation sole or aggregate;

1.2.2 references to any party or body in this Deed shall include the successors in title and assigns of that party and in the case of the Councils shall include any successor local planning authority or local highway authority or education authority (as the case may be) exercising planning powers under the 1990 Act;

1.2.3 wherever there is more than one person named as a party and where more than one party undertakes a covenant all their covenants can be enforced against all of them jointly and against each individually unless there is an express provision otherwise;

1.2.4 any covenant by a party not to do any act or thing shall be deemed to include a covenant not to cause, permit, procure or suffer the doing of that act or thing;

1.2.5 any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it;

1.2.6 references to Clauses, paragraphs, and Schedules are references to clauses, paragraphs, and schedules to this Deed and are for reference only and shall not affect the construction of this Deed; and

1.2.7 the headings and contents list are for reference only and shall not affect construction.

2. **OPERATIVE PROVISIONS**

2.1 This Deed is a deed made pursuant to Section 106 of the 1990 Act.

2.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the 1990 Act and are enforceable by the Borough Council as local planning authority and the County Council as local highways authority and education authority against the Owner.

2.3 To the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of the 1990 Act they are entered into pursuant to powers contained in Section 111 of the Local Government Act 1972 and Sections 1 to 8 of the Localism Act 2011 and all other enabling powers.

3. **CONDITIONALITY**

3.1 With the exception of this Clause 3 and Clauses 1, 2, 6, 7, 8, 9, 10, 11, **Error! Reference source not found.**, 14, **Error! Reference source not found.** and 15 which take effect immediately, this Deed is conditional upon:-

3.1.1 the grant of the Planning Permission;

3.1.2 the Commencement of Development (save for any obligations that are to be complied with prior to Commencement of Development as expressly specified herein);

3.1.3 the Secretary of State or their Planning Inspector (as applicable) in determining the Planning Appeal expressly stating in their Decision Letter that the obligations set out in this Deed are material planning considerations and are compliant with the statutory tests set out in Regulation 122 of the CIL Regulations provided that where the Planning Inspector or the Secretary of State (as applicable) expressly states in the Decision Letter that any one or more of the obligations set out in the Deed are not material planning considerations or do not comply with the statutory tests in Regulation 122 then the obligations so specified shall cease to have effect and the Owner shall be released from its obligation to comply with them but the remainder of this Deed and the remaining obligations herein shall continue to have effect; and

3.1.4 any limitations or directions placed on the obligations as to the amount or otherwise specified by the Secretary of State or their Planning Inspector (as applicable) in the Decision Letter.

4. **OWNER'S COVENANTS**

4.1 The Owner covenants with the Borough Council and the County Council:

4.1.1 to observe and perform or cause to be observed and performed the obligations and covenants contained in Schedule 1 to Schedule 5;

4.1.2 to give the Councils no less than 5 (five) Working Days' prior written notice of the Commencement and not to Commence the Development until the notice has been provided to the Councils;

4.1.3 to give the Councils no less than 5 (five) Working Days' prior written notice of the first Occupation of the Development and not to Occupy the Development until the notice has been provided to the Councils;

4.1.4 to give the Councils no less than 5 (five) Working Days' prior written notice of Occupation of 25% of the Dwellings within the Development and not to Occupy more than 25% of the Dwellings until the notice has been provided to the Councils;

4.1.5 to give the Councils no less than 5 (five) Working Days' prior written notice of Occupation of 50% of the Dwellings within the Development and not to Occupy more than 50% of the Dwellings until the notice has been provided to the Councils;

4.1.6 to give the Councils no less than 5 (five) Working Days' prior written notice of Occupation of 75% of the Dwellings within the Development and not to Occupy more than 75% of the Dwellings until the notice has been provided to the Councils; and

4.1.7 to give the Councils no less than 5 (five) Working Days' prior written notice of Completion of the Development.

5. **THE BOROUGH COUNCIL'S AND THE COUNTY COUNCIL'S COVENANTS**

5.1 The Borough Council and County Council covenant with the Owner to observe and perform the covenants, restrictions and obligations contained in Schedule 6.

6. **MISCELLANEOUS**

6.1 No party shall be bound by the terms of this Deed or be liable for the breach of any covenants restrictions or obligations contained in this Deed:-

6.1.1 occurring after he or it has parted with his or its interest in the Land or the part in respect of which such breach occurs (but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest); or

6.1.2 if it is a statutory undertaker which has an interest in any part of the Land for the purposes of its undertaking.

6.2 No individual owners lessees or occupiers of individual Dwellings including their mortgagee or chargee and any successors in title shall be bound by the terms of this Deed or be liable for the breach of any covenants restrictions or obligations contained in this Deed SAVE THAT in respect of the Affordable Housing Units the Affordable Housing obligations in paragraph 3 of Schedule 1 shall remain binding unless and until they cease to have effect pursuant to paragraph 4.1 of Schedule 1.

6.3 The obligations hereby created may be registered by the Borough Council as a Local Land Charge.

6.4 Following the performance and satisfaction of all the obligations on the part of the Owner contained in this Deed the Borough Council may effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed upon the written request of the Owner.

6.5 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development and the Borough Council may remove the entry relating to this Deed from the Register of Local Land Charges upon the written request of the Owner.

6.6 In the event that a condition or conditions to the Planning Permission is or are varied pursuant to section 96A of the 1990 Act this Deed shall continue in full force in respect of the Planning Permission with the relevant condition or conditions as so varied.

6.7 Unless otherwise required by the Borough Council and/or County Council (at their absolute discretion) in the event that an application is made pursuant to section 73 of the 1990 Act for an amendment to the Planning Permission and planning permission is granted in respect of the application, references to Planning Permission in this Deed shall include the new planning permission granted pursuant to section 73 of the 1990 Act and this Deed shall apply to and remain in full force in respect of both the original planning permission and the new planning permission without the need for a further agreement to be entered into pursuant to section 106 of the 1990 Act.

6.8 Insofar as any Clause or Clauses of this Deed are found (for whatever reason) to be invalid, illegal or unenforceable then such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of the remaining provisions of this Deed.

6.9 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than one relating to the Development as specified in the Application) granted after the date of this Deed.

6.10 Nothing in this Deed shall be construed as restricting the exercise by the Councils of any power or discretion exercisable by it under the 1990 Act or under any other Act of Parliament nor prejudicing or affecting the Councils' rights, powers, duties and obligations in any capacity as a local or public authority.

6.11 Any future mortgagee or chargee shall not be personally liable for any breach of the obligations in this Deed unless committed or continuing at a time when the mortgagee or chargee is in possession of all or any part of the Land PROVIDED THAT a mortgagee or chargee shall only remain liable for the part of the Land for which it has an interest.

7. **NOTIFICATION**

7.1 All notices, requests and demands or other written communications to or upon the parties pursuant to this Deed shall be deemed to have been properly given or made if delivered personally or sent by recorded delivery service to the following officials/persons at the respective addresses hereinafter specified:-

7.1.1 to the Borough Council at the address shown on page 1 of this Deed quoting the Application reference number 25/00846/OUT;

7.1.2 to the County Council at the address shown on page 1 of this Deed quoting the Application reference number 25/00846/OUT;

7.1.3 to the Owner at its address shown on page 1 of this Deed or such other address as notified in writing to the Councils from time to time; and

7.1.4 to the Applicant at its address shown on page 1 of this Deed or such other address as notified in writing to the Councils from time to time.

7.2 Any notice or other written communication will conclusively be deemed to have been received on the day 2 (two) Working Days after the date of posting.

7.3 If a notice, demand or any other communication is served after 4:00pm on a Working Day, or on a day that is not a Working Day, it is to be treated as having been served on the next Working Day.

7.4 Where proceedings have been issued in the Courts of England the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings.

7.5 Any notice or other written communication to be given by either of the Councils will be deemed valid and effectual if on its face it is signed on behalf of the Councils by an officer or duly authorised signatory.

8. **THIRD PARTIES**

No person who is not a party to this Deed may enforce any terms hereof pursuant to the Contracts (Rights of Third Parties) Act 1999 PROVIDED THAT this Clause shall not affect any right of action of any person to whom this Deed has been lawfully assigned or becomes vested in law.

9. **WAIVER**

No waiver (whether expressed or implied) by the Councils or the Owner of any breach or default in performing or observing any of the covenants, terms or conditions of this Deed shall constitute a

continuing waiver and no such waiver shall prevent the Councils or the Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

10. **LEGAL COSTS AND MONITORING FEES**

10.1 The Applicant shall pay to the Councils their reasonable legal fees in the preparation of this Deed prior to completion of this Deed.

10.2 The Applicant shall pay to the Borough Council the Borough Monitoring Fee prior to Commencement of Development and shall not Commence or permit Commencement of Development until the Borough Monitoring Fee has been paid.

10.3 The Applicant shall pay to the County Council the County Monitoring Fee prior to Commencement of Development and shall not Commence or permit Commencement of Development until the County Monitoring Fee has been paid.

Commented [PM2]: Note to BC and CC - appreciate this is normally upon completion of the Deed but given this is an appeal, we trust that this change of trigger can be agreed.

11. **OWNERSHIP**

The Owner covenants to the Councils to give the Councils written notice of any change in ownership of any of their interests in the Land occurring before all the obligations under this Deed have been discharged as soon as reasonably practicable after the completion of any such change in ownership, 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 Land or unit of occupation purchased by reference to a plan.

12. **INTEREST**

If any payment due under this Deed is paid late, Interest shall be payable from the date payment is due until the actual date of payment.

13. **VAT**

All consideration given in accordance with the terms of this Deed shall be exclusive of any Value Added Tax properly payable.

14. **DISPUTE PROVISIONS**

14.1 Subject to Clause 14.7, if any dispute arises relating to or arising out of the terms of this Deed, either party may give to the other written notice requiring the dispute to be determined under this Clause 14. The notice is to propose an appropriate specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.

14.2 For the purposes of this Clause 14 a "**Specialist**" is a person qualified to act as an expert in relation to the dispute having not less than ten years' professional experience in relation to developments in the nature of the Development and property in the same locality as the Land.

14.3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of either party to the President or next most senior available officer of the Law Society who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under clause 14.4.

14.4 Any dispute over the identity of the Specialist is to be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists, or the parties cannot agree the identity of the organisation, then the Specialist is to be nominated by the President or next most senior available officer of the Law Society.

14.5 The Specialist is to act as an independent expert and:

14.5.1 each party may make written representations within ten Working Days of his appointment and will copy the written representations to the other party;

14.5.2 each party is to have a further ten Working Days to make written comments on the other's representations and will copy the written comments to the other party;

14.5.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;

14.5.4 the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross examine each other;

14.5.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and

14.5.6 the Specialist is to use all reasonable endeavours to publish his decision within 30 Working Days of his appointment.

14.6 Responsibility for the costs of referring a dispute to a Specialist under this Clause 14, including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist.

14.7 This Clause 14 does not apply to disputes in relation to matters of law or the construction or interpretation of this Deed which will be subject to the jurisdiction of the courts.

15. **JURISDICTION**

This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

16. **DELIVERY**

The provisions of this Deed (other than this Clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

EXECUTED AS A DEED by the parties on the date which first appears in this Deed.

SCHEDULE 1

AFFORDABLE HOUSING

In this Schedule the words below shall mean as follows:-

"**Affordable Housing**"	means housing that is affordable to those people who cannot afford to rent or buy housing generally available on the open market in accordance with the definition of affordable housing in Annex 2 of the National Planning Policy Framework dated December 2024 or any subsequent revision or replacement document
"**Affordable Housing Land**'"	means the area(s) of Land upon which the Affordable Housing Units are to be constructed
"**Affordable Housing Scheme**"	means the scheme submitted in accordance with the Planning Permission which shall include details of:- (a) the numbers, type, size, Tenure Mix and location of the Affordable Housing Units on the Land (b) the approach to clustering of Affordable Housing Units (c) the proposed arrangements for the transfer of the Affordable Housing to a Registered Provider and (d) the identity of the proposed Registered Provider(s) and shall include any further variations/amendments as agreed in writing with the Borough Council
"**Affordable Housing Units**"	means that part of the Development comprising 50% of the Dwellings which shall be constructed for Affordable Housing in accordance with the approved Affordable Housing Scheme to be erected on the Land pursuant to the Planning Permission and the term "**Affordable Housing Unit**" shall be construed accordingly
"Allocations Scheme"	means the Borough Council's allocation policy from time to time which determines the Borough Council's priorities and procedures when allocating accommodation in accordance with the requirements of Section 166A of the Housing Act 1996 (and any amendment, re-enactment or successor provision);
"Affordable Rented Housing"	means rented housing provided by the Registered Provider to households who are eligible for Social Rented Housing and the rents will be no more than 80% of local market rent (including service charge)
"Affordable Rented Housing Unit"	means those Affordable Housing Units to be provided as Affordable Rented Housing
"**Chargee**"	means a mortgage, charge or other security or loan documentation granting a security interest in the Affordable Housing Units (or any number of them) in favour of the Chargee of a Registered Provider
"**Development Standard**"	means a standard to fully comply with the following:- (a) "Technical housing standards – nationally described space standards" published by the Department for Communities and Local Government in March 2015

Commented [PM3]: Note to BC - is there an Allocations Scheme?

(b) all national construction standards and planning policy relating to design which may be published by the Secretary of State or by the Borough Council from time to time

(c) Part 2 of Secured by Design standards published by Police Crime Prevention Initiatives Limited

"**Homes England**" means the successor body to the Homes and Communities Agency created pursuant to the Housing and Regeneration Act 2008 exercising the functions in relation to the funding of affordable housing and being the regulator of social housing providers in England and includes any successor body exercising similar functions

"**Intermediate Housing**" means Affordable Housing for sale as described in paragraph (d) to the definition of "Affordable Housing" in Annex 2: Glossary to the National Planning Policy Framework December 2024 (as may be amended from time to time)

"**Intermediate Housing Units**" means (unless agreed otherwise in writing by the Borough Council) Shared Ownership Units to be provided as Intermediate Housing in accordance with the terms of this Deed and "**Intermediate Housing Unit**" shall be construed accordingly

"**Market Units**" means Dwellings which are not designated as Affordable Housing Units and "**Market Unit**" shall be construed accordingly

"**Nomination Agreement**" an agreement which shall be entered into between the Borough Council and the Registered Provider, in relation to the Affordable Housing Units securing 100% nomination rights for the Borough Council and which shall guide in conjunction with the Allocations Scheme those persons eligible to be nominated to the Affordable Housing Units

"**Protected Tenant**" means any tenant or leaseholder or owner of an Affordable Housing Unit who:-

(a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit; or

(b) has been granted a lease of a Shared Ownership Unit by a Registered Provider in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the Registered Provider all the remaining shares so that the tenant owns the entire interest in the Shared Ownership Unit

"**Registered Provider**" means a registered provider of social housing within the meaning of Section 80(2) of the Housing and Regeneration Act 2008 (including any statutory replacement or amendment) as registered with Homes England and which has not been removed from the register

"**Shared Ownership Unit**" means an Intermediate Housing Unit where:-

(a) the lessee enters into a lease and may purchase up to 100% of the equity in the Shared Ownership Unit (subject to the initial equity share of a Shared Ownership Unit being restricted to between 25% and 75% of the equity in that Shared Ownership Unit)

(b) the lessee pays a rent to the Registered Provider in respect of the remaining equity share in the property

(c) the form of lease will follow the Homes England model lease with the rent payable calculated at no more than 2.75% of the value of the unsold equity in the Shared Ownership Unit and

(d) the lessee has the option to Staircase so as to increase their equity share in the Shared Ownership Unit up to 100% and to acquire the freehold or long leasehold interest (as appropriate)

and "**Shared Ownership Units**" shall be construed accordingly

"**Social Rented Housing**" means rented housing provided by the Registered Provider to households who are eligible for Social Rented Housing and for which guideline target rents are determined through the Regulator of Social Housing's Rent Standard (April 2023) (in accordance with the Government's Policy Statement on Rent for Social Housing) ("**Social Rent**") which may be amended, updated or replaced from time to time by the Government

"**Social Rented Housing Unit**" means the housing owned by local authorities or a Registered Provider for which a Social Rent is charged and "**Social Rented Units**" shall be construed accordingly

"**Staircase**" means the acquisition of an additional share or shares of the equity of a Shared Ownership Unit by an owner occupier up to 100% after which the rent payable on the part retained by the Registered Provider shall be reduced proportionately

"**Tenure Mix**" means the mix of Affordable Housing Units to be provided on the Affordable Housing Land to be agreed with the Borough Council in the Affordable Housing Scheme but shall include the following types of tenure:-

(a) 70% Affordable Rented Housing Units; and

(b) 30% Intermediate Housing Units,

(rounded to the nearest whole unit number) or any other tenure approved in writing by the Borough Council as part of the Affordable Housing Scheme or any agreed variations thereto

The Owner covenants to the Borough Council as follows:-

1. **AFFORDABLE HOUSING SCHEME**

1.1 The Owner shall not Commence Development until it has submitted the Affordable Housing Scheme for approval in writing by the Borough Council and complied with the following approval procedure:-

1.1.1 where, within 40 (forty) Working Days of receipt of the Affordable Housing Scheme, the Borough Council confirms it accepts the Affordable Housing paragraph 1.3 shall apply; and

1.1.2 where, within 40 (forty) Working Days of receipt of the Affordable Housing Scheme, the Borough Council confirms it deems necessary any further information the Owner shall provide such information within 40 (forty) Working Days of receipt of the request.

1.2 In the event that further information is requested by the Borough Council in accordance with paragraph 1.1.2 then the provisions of paragraphs 1.1.1 and 1.1.2 shall continue to apply until the

Affordable Housing Scheme is approved by the Borough Council or deemed approved in accordance with paragraph 1.2 SAVE FOR in the event that the Borough Council does not provide a response within 40 (forty) Working Days from receipt of the Affordable Housing Scheme in accordance with paragraphs 1.1.1 or 1.1.2 then the Affordable Housing Scheme shall be deemed to be the approved as submitted and paragraph 1.3 shall apply.

1.3 The Owner shall lay out the Affordable Housing in full compliance with the approved Affordable Housing Scheme in accordance with the timescales set out within paragraph 2.

1.4 The Affordable Housing shall not be visually distinguishable from the Market Units and the internal specification shall not by reason of their being Affordable Housing be inferior to the internal specification of the equivalent Market Units.

2. **DELIVERY AND TRANSFER OF THE AFFORDABLE HOUSING UNITS**

2.1 To provide that at least 50% of the Dwellings shall be delivered as Affordable Housing.

2.2 No more than 50% of the Market Units shall be Occupied until 75% of the Affordable Housing Units have been constructed in accordance with the Planning Permission and made ready for Occupation and thereafter the Owner covenants to use reasonable endeavours to transfer the Affordable Housing Units to the Registered Provider on the terms set out at paragraphs 2.3.1 – 2.3.6 of this Schedule 1.

2.3 No more than 75% of the Market Units shall be Occupied until 100% of the Affordable Housing Units have been made ready for Occupation and transferred to the Registered Provider, such transfer to include the following:-

2.3.1 full and free rights of access both pedestrian and vehicular from the public highway to the Affordable Housing Land;

2.3.2 full and free rights to the passage of water, soil, electricity, gas and other services through the pipes, drains, channels, wires, cables and conduits in the adjoining land up to and abutting the boundary to the Affordable Housing Land, all such services to be connected to the mains;

2.3.3 a reservation of all rights of access and passage of services and rights of entry necessary for the purposes of the Development;

2.3.4 a covenant by the Registered Provider not to permit the Occupation of the Affordable Housing Units otherwise than in accordance with the approved Affordable Housing Scheme;

2.3.5 a requirement that the Affordable Housing Units are let/sold to persons in need of Affordable Housing; and

2.3.6 a requirement that in relation to the Affordable Rented Housing Units the Registered Provider enters into a Nomination Agreement with the Borough Council.

3. **USE AS AFFORDABLE HOUSING**

3.1 The Affordable Housing Units shall not be used other than for Affordable Housing in accordance with the approved Affordable Housing Scheme save that this obligation shall not be binding on:-

3.1.1 any Protected Tenant, any mortgagee or chargee of a Protected Tenant or any person deriving title from a Protected Tenant or any successor in title to a Protected Tenant and their respective mortgagees and chargees; or

3.1.2 any Chargee subject to compliance with the requirements of paragraph 4.1 of this Schedule.

4. **CHARGEE OF A REGISTERED PROVIDER**

4.1 The provisions of Schedule 1 of this Deed shall not be binding on a Chargee to enable such Chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a "**Receiver**") of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee PROVIDED THAT:-

4.1.1 such Chargee or Receiver shall first give not less than three months' written notice to the Borough Council of its intention to dispose of the Affordable Housing Units;

4.1.2 the Borough Council shall then have three months from receipt of the notice given pursuant to paragraph 4.1.1 above within which to respond indicating that arrangements for the transfer of the relevant Affordable Housing Units can be made in such a way as to safeguard the affordable housing character of any Affordable Housing Units;

4.1.3 if within the three months referred to in paragraph 4.1.2 above the Borough Council does not serve its response to the notice served under paragraph 4.1.1 above then the Chargee or Receiver shall be entitled to exercise its power of sale in respect of the relevant Affordable Housing Units free of the restrictions set out in this Deed;

4.1.4 if within three months of the date of receipt of the notice served under paragraph 4.1.1 above the Borough Council serves its response indicating that arrangements can be made in accordance with paragraph 4.1.2 above then Chargee or Receiver shall co-operate with such arrangements and use its reasonable endeavours to secure such transfer; and

4.1.5 if the Borough Council or any other person cannot within three months of the date of service of its response under paragraph 4.1.4 above secure such transfer then the Chargee or Receiver shall be entitled to exercise its power of sale in respect of the relevant Affordable Housing Units free of the restrictions set out in this Deed.

SCHEDULE 2

BIODIVERSITY NET GAIN

Commented [PM4]: Note to BC - there is ref in the committee report to the Habitat Creation and Management Plan. We consider that this should be dealt with by condition instead given this is how BNG more generally will be addressed.

In this Schedule the words below shall mean as follows:-

"Biodiversity Enhancements"	means the habitat creation and enhancement works to be carried out on the Land and set out in the Biodiversity Gain Plan and HMMP to secure an increase in Biodiversity Units on the Land
"Biodiversity Gain Plan"	means the plan to be submitted to and approved by the Borough Council in accordance with Paragraph 14 of Schedule 7A of the 1990 Act and pursuant to condition 8 of the Planning Permission
"BNG Monitoring Fee"	means the sum of £6,900 (six thousand, nine hundred pounds) to be paid to the Borough Council for the purpose of monitoring the Biodiversity Enhancements pursuant to the approved Biodiversity Gain Plan and HMMP
"HMMP"	means the Habitat Management and Monitoring Plan to be submitted to and approved by the Borough Council pursuant to Condition [8] of the Planning Permission

The Owner covenants to the Borough Council as follows:-

1. **BNG MONITORING FEE**

1.1 To pay to the Borough Council the BNG Monitoring Fee prior to Commencement of Development.

1.2 Not to Commence the Development until the BNG Monitoring Fee has been paid to the Borough Council.

SCHEDULE 3

TRAVEL PLAN AND TRANSPORT

In this Schedule the words below shall mean as follows:-

"Bus Service Contribution"	means the sum of £1,000,000 (one million pounds) to be paid in instalments of £200,000 (two hundred thousand pounds) annually for 5 (five) years by the Owner to the County Council in accordance with paragraph 5 of this Schedule for the purpose of enhancing bus service provision to the Development either through DDRT (Digital Demand Response Transport) or securing or improving the existing bus service to Langley Vale
"Car Club"	means a club operated and managed by the Car Club Provider in which members can book a Car Club Vehicle and use it for the period of the booking and park it in one of the Car Club Parking Spaces
"Car Club Membership Offer"	means an offer for free membership of the Car Club (including £50 (fifty pounds) worth of driving time credit) for a period of 3 (three) years commencing on the date on which the offer is accepted PROVIDED THAT it is accepted within 3 (three) months of the date on which the offer is made
"Car Club Parking Spaces"	means the 2 (two) car parking spaces with a fast charge electric vehicle charging point that are located on the Land and are specifically reserved for the Car Club Vehicles
"Car Club Provider"	means an organisation accredited in the United Kingdom to provide cars for use by members of a Car Club in consideration of payment thereof and which is a preferred provider of the County Council including 'Enterprise Car Club' (a group company of 'Enterprise Holdings Inc') shall be deemed a preferred provider of the County Council
"Car Club Scheme"	means a scheme prepared by or on behalf of the Owner in accordance with paragraph 3 of this Schedule and substantially in accordance with the Transport Assessment prepared by i-Transport and submitted as part of the Application subject to any changes agreed between the Owner and the County Council
"Car Club Vehicles"	means the 2 (two) ultra low emission vehicles which emit less than 75kg of CO_2 per km and are EURO 6 compliant owned or provided by the Car Club Provider for the Car Club
"Cycle Travel Voucher"	means a voucher incentive tangible or web hosted for the value of £150 (one hundred and fifty pounds) per Dwelling of the Development (Index Linked as hereinafter provided) to incentivise the uptake of cycling to the Development
"**Travel Plan**"	means the residential travel plan to be submitted by the Owner pursuant to Condition [21] attached to the Planning Permission
"Travel Plan Audit Contribution"	means the sum of £5,000 (five thousand pounds) Index Linked to be paid by the Owner to the County Council in accordance with paragraph 1 of this Schedule for the purpose of auditing compliance with the Travel Plan

The Owner covenants to County Council as follows:-

1. **TRAVEL PLAN AUDIT CONTRIBUTION**

1.1 The Owner shall pay the County Council the Travel Plan Audit Contribution prior to Occupation of Development.

1.2 Not cause or permit or allow the Occupation of the Development until the Travel Plan Audit Contribution has been paid to the County Council.

2. **CYCLE TRAVEL VOUCHER**

2.1 To provide a Cycle Travel Voucher to the first Occupier of each Dwelling forming part of the Development within one (1) month of the first Occupation of each Dwelling.

3. **CAR CLUB AND CAR CLUB MEMBERSHIP OFFER**

3.1 To submit to and obtain the written approval of the County Council of the Car Club Scheme prior to Commencement of Development (or such timescale as may otherwise be agreed in writing by the County Council).

3.2 Not Commence Development unless and until submitted to and obtained the written approval of the County Council of the Car Club Scheme (or such timescale as may otherwise be agreed in writing by the County Council).

3.3 To submit to and obtain the written approval of the County Council of the details of the proposed Car Club Provider prior to Occupation of Development.

3.4 Not Occupy or permit Occupation of the Development unless and until submitted to and obtained the written approval of the County Council of the details of the proposed Car Club Provider.

3.5 Implement the approved Car Club Scheme prior to Occupation of Development and not Occupy or permit Occupation of the Development unless and until the approved Car Club Scheme has been implemented and is operational.

3.6 Within fourteen (14) days of first Occupation of a Dwelling to provide details to each first Occupier of the availability of the Car Club and the Car Club Membership Offer.

3.7 To ensure that the Car Club of the approved Car Club Provider is provided for use by first Occupiers of the Development in accordance with the approved Car Club Scheme for a continuous period of three (3) years from 50% of Occupation of the Development.

4. **CAR CLUB PARKING SPACES**

4.1 To submit to and obtain the written approval of the County Council of the details of the proposed location of the Car Club Parking Spaces prior to Commencement of Development (or such timescale as may otherwise be agreed in writing by the County Council).

4.2 Not Occupy or permit Occupation of the Development unless the Car Club Parking Spaces details and location have been approved and the approved Car Club Parking Spaces and Car Club Vehicles been provided for use by Occupiers of the Development and residents of the wider community.

4.3 To ensure that the Car Club Parking Spaces and Car Club Vehicles are provided for use by Occupiers of the Development for a continuous period of three (3) years from 50% of Occupation of the Development.

5. **BUS SERVICE CONTRIBUTION**

5.1 The Owner shall pay the County Council the Bus Service Contribution as follows:

5.1.1 Prior to Occupation of the first Dwelling within the Development to pay the first instalment of the Bus Service Contribution of £200,000 (two hundred thousand pounds).

5.1.2 Prior to the first anniversary of payment of the first instalment of the Bus Service Contribution pursuant to paragraph 5.1.1, to pay the second instalment of the Bus Service Contribution of £200,000 (two hundred thousand pounds).

5.1.3 Prior to the second anniversary of payment of the first instalment of the Bus Service Contribution pursuant to paragraph 5.1.1, to pay the third instalment of the Bus Service Contribution of £200,000 (two hundred thousand pounds).

5.1.4 Prior to the third anniversary of payment of the first instalment of the Bus Service Contribution pursuant to paragraph 5.1.1, to pay the fourth instalment of the Bus Service Contribution of £200,000 (two hundred thousand pounds).

5.1.5 Prior to the fourth anniversary of payment of the first instalment of the Bus Service Contribution pursuant to paragraph 5.1.1, to pay the fifth instalment of the Bus Service Contribution of £200,000 (two hundred thousand pounds).

5.2 Not to cause or permit or allow the Occupation of the first Dwelling within the Development until the first instalment of the Bus Service Contribution of £200,000 (two hundred thousand pounds) has been paid to the County Council.

SCHEDULE 4

POLICE CONTRIBUTION

In this Schedule the words below shall mean as follows:-

"**Police Contribution**"	means the sum of £28,930.97 (twenty-eight thousand, nine hundred and thirty pounds and ninety-seven pence) payable to the Borough Council to be used towards police infrastructure including the recruitment, training, equipment, premises and fleet for Surrey Police

The Owner covenants to the Borough Council as follows:-

1. **POLICE CONTRIBUTION**

1.1 The Owner shall pay the Police Contribution to the Borough Council prior to Occupation of the Development; and

1.2 The Owner shall not Occupy nor permit Occupation of the Development until the Police Contribution has been paid to the Borough Council.

SCHEDULE 5
OPEN SPACE, PLAY AREA AND LANDSCAPING

In this Schedule the words below shall mean as follows:-

"LEAP"	means a local equipped area of play for children under 8 years of age, to be provided by the Owner as part of the Development and in locations to be determined by Condition [X] of the Planning Permission
"**Open Space**"	means the areas of open greenspace and landscaping forming part of the Development to be delivered in accordance with Condition [X] of the Planning Permission comprising no more than 1.6ha
"**Open Space Management and Maintenance Strategy"**	means the plan setting out the management and maintenance strategy of the Open Space (including landscaping) within the Land to be submitted to the Borough Council for approval in accordance with paragraph 1 of this Schedule
"Permitted Closures"	means temporary closure of any area of Open Space (or part thereof) or Play Areas (or part thereof) in the following circumstances:- (a) temporary closure in the case of emergency where such closure is necessary in the interests of public safety or otherwise for reasons of public safety (b) temporary closure where such temporary closure is required for the purposes of carrying out maintenance, repair, cleansing, renewal or resurfacing works of the area of the Open Space or Play Area in question, any cables, wires, pipes, sewers, drains or ducts over, along or beneath them or any other area or services in the vicinity of the Open Space or Play Area (c) where such temporary closure is required for the purposes of carrying out, inspecting, maintaining, repairing, renewing, rebuilding, demolishing or developing any buildings now or hereafter on the Land or any part thereof (including the erection of scaffolding) (d) closure for a maximum of 1 (one) day per year to assert rights of proprietorship preventing public rights from coming into being by means of prescription or other process of law; and (e) any other closure not covered by the above in relation to which the Council's prior approval has been obtained PROVIDED THAT save in the case of an emergency or as otherwise agreed with the Borough Council and the Owner will be required to provide notice where reasonably practicable to the public of any Permitted Closure of not less than 3 (three) days prior to the date such Permitted Closure is to commence
"Play Areas"	means the areas of natural play space forming part of the Development to be delivered in accordance with Condition [X] of the Planning Permission comprising no more than 0.06ha and include one (1) LEAP
"**Play Areas Management and Maintenance Strategy"**	means the plan setting out the management and maintenance strategy of the Play Areas within the Land to be submitted to the Borough Council for approval in accordance with paragraph 2 of this Schedule

The Owner covenants to the Borough Council as follows:-

1. **OPEN SPACE MANAGEMENT AND MAINTENANCE STRATEGY**

1.1 To submit the Open Space Management and Maintenance Strategy to the Borough Council for its approval prior to Occupation of the Development, such approval not to be unreasonably withheld or delayed.

1.2 Not to Occupy the Development until the Open Space Management and Maintenance Strategy has been approved by the Borough Council, such approval not to be unreasonably withheld or delayed.

1.3 To thereafter manage and maintain the Open Space in accordance with the Open Space Management and Maintenance Strategy and the Open Space shall be made available to the general public at all times free of charge subject to any Permitted Closures.

2. **PLAY AREAS MANAGEMENT AND MAINTENANCE STRATEGY**

2.1 To submit the Play Areas Management and Maintenance Strategy to the Borough Council for its approval prior to Occupation of the Development, such approval not to be unreasonably withheld or delayed.

2.2 Not to Occupy the Development until the Play Areas Management and Maintenance Strategy has been approved by the Borough Council, such approval not to be unreasonably withheld or delayed.

2.3 To thereafter manage and maintain the Play Areas in accordance with the Play Areas Management and Maintenance Strategy and the Play Areas shall be made available to the general public at all times free of charge subject to any Permitted Closures.

SCHEDULE 6

BOROUGH COUNCIL'S AND COUNTY COUNCIL'S COVENANTS

1. **CONTRIBUTIONS**

The Borough Council and County Council covenant with the Owner:

1.1 To use all sums received under the terms of this Deed for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the Borough Council or County Council (as appropriate) shall agree.

1.2 Where any sum paid by any of the parties in accordance with this Deed has not been used by the Borough Council or County Council or is not the subject of a binding contract within 10 (ten) years after the date of receipt of the final instalment of the relevant contribution, it will be repaid to the paying party within 30 (thirty) Working Days of a written demand together with any interest actually accrued from the date of payment to the date of refund.

1.3 The Borough Council and County Council shall provide to the Owner such evidence as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner (or other paying party) under this Deed.

1.4 At the written request of the Owner the Borough Council or as appropriate the County Council shall provide written confirmation of the discharge of relevant obligations contained in this Deed when satisfied that such obligations have been performed.

EXECUTED as a Deed)
(but not delivered until dated) by)
IMPERIUM TRUST COMPANY LIMITED)
)

Director

……
Witness signature

……
Witness name

……

……
Witness address

……
Witness occupation

EXECUTED as a Deed)
(but not delivered until dated) by)
FAIRFAX ASPIRE LIMITED)
)

Director

……
Witness signature

……
Witness name

……

……
Witness address

……
Witness occupation

The common seal of)
)
EPSOM AND EWELL BOROUGH COUNCIL)
)
was hereunto affixed in the)
presence of :)

Authorised signatory

Authorised signatory

The common seal of)
)
SURREY COUNTY COUNCIL)
)
was hereunto affixed in the)
presence of :)

Authorised signatory

APPENDIX 1

PLANS