

DATED

2026

MID SUSSEX DISTRICT COUNCIL (1)

AND

WEST SUSSEX COUNTY COUNCIL (2)

AND

NICHOLAS CHARLES ASH AND KATHERINE JANE ASH (3)

AND

EQ CARE EAST GRINSTEAD LIMITED (4)

AND

IGLOO CARE LTD (5)

PLANNING OBLIGATION

BY WAY OF AGREEMENT

pursuant to Section 106 of the

Town and Country Planning Act 1990 (as amended)

relating to land at Highfields, West Hill, East Grinstead, West Sussex RH19 4EW

DM/24/3051

Mid Sussex District Council
'Oaklands' Oaklands Road
Haywards Heath
West Sussex
RH16 1SS

IKEN 8400

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BETWEEN

- (1) **MID SUSSEX DISTRICT COUNCIL** of Oaklands, Oaklands Road, Haywards Heath, West Sussex, RH16 1SS (“**the District Council**”)
- (2) **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street, Chichester, West Sussex, PO19 1RQ (“**the County Council**”)
- (3) **NICHOLAS CHARLES ASH and KATHERINE JANE ASH** of Highfields, West Hill, East Grinstead, West Sussex RH19 4EW (“**the Owner**”)
- (4) **EQ CARE EAST GRINSTEAD LIMITED** (Company number 15967195) whose registered office is at 46 Curzon Street, London, England, W1J 7UH (“**the First Developer**”)
- (5) **IGLOO CARE LTD** (Company number 13750321) whose registered office is at 5 Godalming Business Centre, Woolsack Way, Godalming, Surrey, GU7 1XW (“**the Second Developer**”)

BACKGROUND

- (A) The Owner is the freehold owner of the Land with title absolute.
- (B) The District Council is the local planning authority for the purposes of the Act for the area in which the Land is situated.
- (C) The County Council is the local authority responsible for education, library and highways infrastructure in the area in which the Land is situated.
- (D) The First Developer and the Second Developer made the Application to carry out the Development.
- (E) The District Council, having regard to the provisions of the District Plan including Policy DP20 (Securing Infrastructure), the Supplementary Planning Document, Schedule 7A of the Act and all other material considerations, has resolved that Planning Permission should be granted for the Development subject to the prior completion of this Deed and to the conditions to which the Planning Permission is expressed to be subject.
- (H) The District Council and the County Council having regard to the Supplementary Planning Document determine the obligations contained in this Deed are necessitated by virtue of this Application.
- (I) The Owner, First Developer and Second Developer have agreed to enter into this Deed to give the following obligations in the manner hereinafter appearing and agree that the tests

set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) are met.

- (J) The District Council and the County Council having regard to the Supplementary Planning Document, determine the obligations contained in this Deed are necessitated by virtue of the Application.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1. INTERPRETATION AND DEFINITIONS

1.1. In this Deed the following expressions shall unless the context otherwise requires have the following meanings:

Act	means the Town and Country Planning Act 1990 (as amended);
Additional Care Building	means the building to be erected on the Land pursuant to the Planning Permission and falling within Use Class C2 of the Use Class Order;
Additional Care Unit	means an individual unit of accommodation forming part of the Additional Care Building used for the provision of residential care within Use Class C2 of the Use Class Order and “ Additional Care Units ” shall be construed accordingly;
All Requisite Consents	means all requisite consents orders agreements authorisations licences and permissions required to implement a scheme/the Scheme;
Application	means the application for full planning permission for the Development which was validated by the District Council on 6 January 2025 and allocated reference DM/24/3051;
Basic Care Package	means a package of care services to the Primary Residents of the Additional Care Units which shall include:

- a) a minimum of 4 hours of Personal Care a week to Primary Residents;
- b) 24 hour monitored emergency call system within each Additional Care Unit;
- c) security measures, including controlled access to common areas and private areas through the use of lock systems and/or entry phones or other similar measures, CCTV cameras to the main entrance and communal areas;
- d) regular cleaning and management of the communal areas; and
- e) periodic review of the Care Assessment.

Biodiversity Net

Gain

means a 10% net gain in biodiversity at the time when the Development on the Land is completed, as evidenced and calculated by the BNG Metric;

BCIS Index

means the All-in Tender Price Index published by the Building Costs Information Service of the Royal Institution of Chartered Surveyors or (if such index is at the relevant time no longer published) such other comparable index or basis for indexation as the County Council may specify;

BNG Certificate of Compliance

means the certificate of compliance to be issued (or deemed to be issued) by the District Council confirming that the habitat enhancements set out in the BNG Plan and the HMMP on the On Site Biodiversity Areas have been completed to the District Council's reasonable satisfaction;

BNG Metric

means the statutory metric published by Department for Environment, Food & Rural Affairs from time to time for measuring the biodiversity value or relative biodiversity value of habitat or habitat enhancement

BNG Monitoring Fee

means the sum of Thirteen Thousand Pounds (£13,000) to be paid to the District Council towards the costs of monitoring the BNG Plan and HMMP;

BNG Plan	means a plan to be submitted to and approved by the District Council pursuant to condition of the Planning Permission to satisfy the Development's Biodiversity Net Gain requirements pursuant to Schedule 7A of the Act which sets out the detail of how the Biodiversity Net Gain will be delivered, managed, maintained and monitored;
Care Agency	means a domiciliary care agency registered with the Care Quality Commission;
Care Assessment	means: <ul style="list-style-type: none"> a) a needs assessment in accordance with section 9 of the Care Act 2014 to be undertaken by an appropriately qualified assessor; or b) a needs assessment carried out by a Care Agency; to determine the level and type of Personal Care and support needed by each Primary Resident taking into account the individual's medical history, which shall include a review of any current medication/treatment and/or recommendations/advice from an individual's GP or consultant; <p>means the care home to be erected on the Land pursuant to the Planning Permission and falling within Use Class C2 of the Use Class Order;</p>
Care Home	means the document prepared from time to time following a Care Assessment identifying the level and type of Personal Care needed by a Primary Resident
Care Plan	means the independent regulator of health and social care in England or such other successor body to its functions;
Care Quality Commission	means the independent regulator of health and social care in England or such other successor body to its functions;

Care Unit	means an individual unit of accommodation forming part of the Care Home used for the provision of residential care within Use Class C2 of the Use Class Order and “ Care Units ” shall be construed accordingly;
Commencement Date	means the date on which the Commencement of the Development begins;
Communal Facilities	means the community facilities to be provided within the Care Home as part of the Development (and made available to the occupiers of the Additional Care Units at their expense), including a salon, shop, activities rooms and gym which shall be subject in all cases to any conditions and/or restrictions that may be imposed or levied by the Owner or otherwise from time to time in relation to such facilities which may include hours of operation;
Commencement of the Development	means the carrying out of a material operation pursuant to the Application as defined in section 56(4) of the Act and all references to Commence , Commenced and Commencement shall be construed accordingly;
Commencement Notice	means the written notice confirming the Commencement Date referred to in clauses 4.1 and 5.1 and served in accordance with clause 18;
County Council Contributions	means the Library Contribution and the Total Access Demand Contribution;
County Council Monitoring Fee	means the total sum of £810 payable to the County Council for monitoring the delivery and performance of a Qualifying Trigger contained in this Deed over the lifetime of the Development;
Deed	means this Deed;

Development	means the development of the Land by the <i>demolition of an existing dwelling and the erection of a care home (Class C2) and a separate building with additional care units (Class C2)</i> as set out in the Application and authorised by the Planning Permission;
District Plan	means the Mid Sussex District Plan 2014-2031 adopted by the District Council on 28 th March 2018;
First Occupation Date	means the date on which the Occupation of the Development begins;
First Occupation Notice	means a written notice served on the District Council and the County Council in accordance with clauses 4.2 and 5.2 confirming the First Occupation Date;
HMMP	means a habitat management and monitoring plan to be submitted to and approved by the District Council pursuant to condition of the Planning Permission setting out details of how the BNG Plan will be delivered, managed, maintained and monitored for at least a 30 year period;
Index Linked	<p>means in relation to the County Council Contributions, that the County Council Contributions payable by the Owner under this Deed shall be increased by the application of the following formula:</p> $A = B \times \frac{C}{D} \text{ where } C/D \text{ is equal to or greater than } 1$ <p>where A is the sum actually payable on the date of payment B is the original sum mentioned in this Deed C is the BCIS Index for the quarter preceding the date of payment D is the BCIS Index preceding the date of consultation [] and Indexation shall be construed accordingly;</p>

Land	means the land against which this Deed may be enforced known as land at Highfields, West Hill, East Grinstead, West Sussex RH19 4EW which is registered at HM Land Registry under title number WSX256746 and is shown for identification purposes only edged red on the Plan but which shall exclude the land which is registered at HM Land Registry under title number WSX276343;
Library Contribution	means the financial contribution of Fifteen Thousand and Eight Hundred and Eighty Two pounds (£15,882) subject to adjustment in accordance with the provision of paragraph 2.1 of the THIRD SCHEDULE and which is calculated using current occupancy rates from census statistics published by the Office for National Statistics and payable in accordance with this Deed being a financial contribution towards the costs of providing the additional library infrastructure required to accommodate the extra demands for library services that would be generated by the Development and to be used towards additional facilities at East Grinstead Library PROVIDED THAT should Commencement of the Development take place after 31st March 2026, the sum shall be re-calculated using the latest published census statistics published by the Office for National Statistics;
Occupation	means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out, decoration or occupation for marketing or display or occupation in relation to security operations and Occupied and Occupy shall be construed accordingly;
On Site Biodiversity Areas	means the areas within the Land to be laid out to provide habitat enhancements for the purposes of achieving the Biodiversity Net Gain in accordance with the BNG Plan and subsequently managed, maintained and monitored in accordance with the BNG Plan;

Payment Notice

means a payment notice in the form attached at APPENDIX 3;

Personal Care

means the provision of care and support to a Primary Resident occupying an Additional Care Unit which will include but not be limited to the following services:

- a) assistance with personal hygiene including washing, shaving, toileting;
- b) assistance with dressing and undressing;
- c) assistance with getting in or out of bed;
- d) assistance with the planning and preparation of meals in order to support residents with cognitive impairment, impaired sight, and/or specific dietary requirements due to medical needs;
- e) assistance with feeding and drinking;
- f) assistance with the management and taking of prescribed medication;
- g) assistance with technology to facilitate internet shopping for home delivery and payment of bills, for residents with impaired mobility and/or impaired sight, and/or cognitive impairment;
- h) assistance with impaired sight or cognitive impairment with organising GP/hospital/consultancy visits for medical appointments including where appropriate accompanying such residents to such visits and the provision of emotional and psychological support and physical care following any hospital discharge;
- i) assistance with impaired mobility or impaired sight or cognitive impairment; to enable them to access all facilities within the Development; and
- j) assistance with general household chores including assistance with cleaning and laundry for residents with impaired mobility or impaired sight or cognitive ability;

means the plan annexed to this Deed at

Plan

APPENDIX 2;

Planning Permission means the planning permission granted by the District Council pursuant to the Application substantially in the draft form annexed at APPENDIX 1;

Primary Resident means a person who is assessed as being in need of and receives a least 4 hours of Personal Care a week and who is

aged 55 years or older on the date of first Occupation of an Additional Care Unit;

Qualifying Trigger means any trigger contained within this Deed;

Scheme means the A22 improvement scheme and/or traffic calming measures in the vicinity of West Hill, East Grinstead;

Supplementary Planning Document means the document entitled Development Infrastructure and Contributions Supplementary Planning Document adopted by the District Council on the 25th July 2018;

Total Access Demand Contribution means the financial contribution of Ninety Six Thousand Nine Hundred and Twenty Nine pounds (£96,929) subject to adjustment in accordance with the provision of paragraph 1.1 of the THIRD SCHEDULE and which is calculated which is calculated in accordance with the Total Access Demand Methodology and to be used towards the Scheme and is calculated using current occupancy rates from census statistics published by the Office for National Statistics and payable in accordance with this Deed being a financial contribution towards the costs of providing the additional transport infrastructure required to accommodate the extra demands for transport services that would be generated by the Development and to be used towards the Scheme PROVIDED THAT should Commencement of the Development take place after 31st March 2026, the sum shall be re-calculated using the latest published census statistics published by the Office for National Statistics;

Total Access Demand Methodology means the methodology developed by the County Council and adopted by the District Council which requires contribution towards the cost of infrastructure and other measures that are necessary to mitigate the impact of development;

Use Class Order means the Town and Country Planning (Use Classes) Order 1987 (as amended);

Working Day means any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

- 1.2. Clause and schedule headings shall not affect the interpretation of this Deed.
- 1.3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4. A reference to a company shall include any company, corporation or other body corporate, whether and however incorporated or established.
- 1.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7. 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.
- 1.8. References to clauses and Schedules are the clauses and Schedules of this Deed.
- 1.9. Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.
- 1.10. References to the District Council, the County Council, the First Developer, the Second Developer and the Owner shall include the successors in title and assigns of each party including any local authority successor.
- 1.11. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

2. LEGAL BASIS

- 2.1. This Deed is made pursuant to section 106 of the Act, section 1 of the Localism Act 2011, section 111 of the Local Government Act 1972 and all other enabling powers.
- 2.2. The obligations contained in this Deed are planning obligations for the purposes of section 106 of the Act and are entered into by the Owner, the First Developer and the Second Developer with the intention that they bind the interests held by those persons in the Land and their respective successors and assigns.
- 2.3. The obligations contained in this Deed are enforceable by the District Council and the County Council in accordance with section 106 of the Act.

3. CONDITIONALITY

This Deed shall come into effect immediately upon completion of this Deed save for the provisions of clauses 4 *Covenants to the District Council*, 5 *Covenants to the County*

Council, 6 Covenants by the District Council, 7 Covenants by the County Council and 13 Interest on late payment which are conditional upon the grant of Planning Permission.

4. COVENANTS TO THE DISTRICT COUNCIL

The Owner covenants with the District Council:

- 4.1. to give the Commencement Notice to the District Council not less than 10 Working Days before the Commencement Date; and
- 4.2. to give the First Occupation Notice to the District Council not less than 10 Working Days before the First Occupation Date; and
- 4.3. to observe and perform the covenants, restrictions and obligations contained in this Deed including the Schedules hereto.

5. COVENANTS TO THE COUNTY COUNCIL

The Owner covenants with the County Council:

- 5.1. to give the Commencement Notice to the County Council not less than 10 Working Days before the Commencement Date; and
- 5.2. to give the First Occupation Notice to the County Council not less than 10 Working Days before the First Occupation Date; and
- 5.3. to observe and perform the covenants, restrictions and obligations contained in this Deed including the Schedules hereto.

6. COVENANTS BY THE DISTRICT COUNCIL

The District Council covenants with the Owner to observe and perform the covenants, restrictions and obligations contained in the FOURTH SCHEDULE.

7. COVENANTS BY THE COUNTY COUNCIL

The County Council covenants with the Owner to observe and perform the covenants, restrictions and obligations contained in the FIFTH SCHEDULE.

8. DEVELOPER'S CONSENT

Save for clauses 12.1 and 12.3, the First Developer and Second Developer shall not be personally liable for any breach of the obligations in this Deed unless committed or continuing at a time when the First Developer or the Second Developer is in possession of all or any part of the Land in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

9. FUTURE MORTGAGEES

The obligations in this Deed shall not be binding on or enforceable against a future mortgagee or chargee (including any receiver appointed by such mortgagee or chargee) or any successors in title or any person deriving title through such mortgagee or chargee unless and until such mortgagee or chargee (or successor in title or any person deriving title through such mortgagee or chargee) shall have taken possession of the Land or part thereof. Any future mortgagee or of the Land (or part thereof) shall in no circumstances be liable for any pre-existing breach and any future mortgagee or chargee of the Land (or part thereof) and shall have no liability after they have discharged the security or disposed of the Land which is subject to their security, whether by sale or otherwise.

10. RELEASE

- 10.1 No person shall be liable for any breach of any of this Deed after parting with all of its interest in the Land, except in respect of any breach subsisting prior to parting with such interest.
- 10.2. No person or company shall be liable for a breach of this Deed if their interest in the Land is restricted to being an individual owner, tenant and/or occupier of any individual care home unit or additional care unit comprised in the Development.

11. LOCAL LAND CHARGE

This Deed is a local land charge and shall be registered as such by the District Council.

12. THE DISTRICT COUNCIL AND COUNTY COUNCIL'S COSTS

- 12.1. The First Developer shall pay to the District Council on or before the date of this Deed the District Council's reasonable legal costs together with all disbursements incurred in connection with the preparation, negotiation and completion of this Deed.
- 12.2. The Owner shall pay to the District Council the sum of £150 prior to the Commencement Date as a contribution towards the District Council's costs of monitoring the implementation of this Deed.
- 12.3. The First Developer shall pay to the County Council on or before the date of this Deed the County Council's reasonable legal costs together with all disbursements incurred in connection with the preparation, negotiation and completion of this Deed.
- 12.4. The First Developer shall pay to the County Council the County Council Monitoring Fee on the completion of this Deed.

13. INTEREST ON LATE PAYMENT

If any sum or amount has not been paid to the District Council and / or County Council by the date it is due, the Owner shall pay the District Council and / or County Council interest on that amount at the Default Interest Rate (both before and after any judgment). Such

interest shall accrue on a daily basis for the period from the due date to and including the date of payment.

14. OWNERSHIP

- 14.1. The Owner warrants that no person other than the Owner, the First Developer and the Second Developer has any legal or equitable interest in the Land.
- 14.2. The Owner agrees to give the District Council and the County Council written notice within ten (10) Working Days of any change in the freehold ownership of any of its interests in the Land occurring before all the obligations under this Deed 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 Land or unit of occupation purchased by reference to a plan.

15. NO FETTER OF DISCRETION

Nothing (contained or implied) in this Deed shall fetter or restrict the District Council or the County Council's statutory rights, powers, discretions and responsibilities.

16. WAIVER

No failure or delay by the District Council or the County Council to exercise any right or remedy provided under this Deed or by law shall constitute a waiver of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

17. AGREEMENTS AND DECLARATIONS

The parties agree that:

- 17.1. nothing in this Deed constitutes a planning permission or an obligation to grant planning permission;
- 17.2. insofar as any clause or clauses of this Deed are held (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed;
- 17.3. this Deed shall cease to have effect (insofar only as it has not already been complied with:
 - 17.3.1 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 the Development;
- 17.4. 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 the Planning Permission) granted (whether or not on appeal) after the date of this Deed;

- 17.5. if the Owner fails to give the notice required by clauses 4.1,[4.2] and 5.1 and [5.2]above then the District Council shall be entitled in its absolute discretion to determine the Commencement Date and shall give notice to the Owner of the District Council's determination;
- 17.6. Subject to the proviso to this clause, in the event that any new planning permission(s) are granted by the District Council after the date of this Deed in relation to an application to remove and/or vary condition(s) attached to the Planning Permission pursuant to Section 73 of the Act ("Section 73 Consent"):
- 17.6.1 the obligations in this Deed (including the Schedule(s) hereto) shall relate to and bind any subsequent Section 73 Consent and the Land without the need to enter into any subsequent deed of variation/supplemental deed to this Deed or new obligation pursuant to Section 106 of the Act; and
- 17.6.2 the definitions of Application, Planning Permission and Development (other than for the purposes of the Background) in this Deed shall be construed to include reference to (respectively) any application(s) under Section 73 of the Act, any Section 73 Consent granted thereunder and any development permitted by such subsequent Section 73 Consent; and
- 17.6.3 any Section 73 Consent shall include a condition/informative substantially in the following form:
"The obligations under the planning obligation by way of Agreement dated [] pursuant to the previous application [] will be equally applied to and satisfy the requirements necessitated under this application []".
- 17.6.4 it is hereby agreed and declared by the parties hereto that nothing in this clause shall fetter the discretion of the District Council in determining any applications under Section 73 of the Act and the appropriate planning obligations required in connection with the determination of the same and the District Council reserves the right to insist upon the completion of any subsequent deed of variation / supplemental deed to this Deed or new obligation pursuant to Section 106 of the Act in connection with any Section 73 applications if the District Council considers it desirable to do so.
- 17.7. All financial contributions due under the terms of this Deed shall be accompanied by a fully completed Payment Notice.
- 17.8. The obligations contained in this Deed shall not be binding on any statutory undertaker which has acquired part of the Land for purposes connected to their statutory functions

necessary for the Development provided always that such statutory undertaker shall not themselves carry out any part of the Development.

- 17.9. The obligations in this Deed shall not be binding upon any person whose interest in the Land is restricted to being an individual purchaser, tenant or occupier (or their chargees or mortgagees) of the Care Units or the Additional Care Units and their successors in title or their mortgagee provided always that such individual purchaser, including their successors in title or their mortgagee, shall not themselves carry out any part of the Development.
- 17.10. Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the District Council and/or the County Council under the terms of this Deed such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed.

18. NOTICES

- 18.1 Any notice required by this Deed shall be in writing and addressed to the Section 106 Monitoring Team of the District Council at the address of the District Council given herein and to the Planning Services Monitoring and Records Team of the County Council at the address of the County Council given herein.
- 18.2 Any notice may be given by one of the following means and shall be deemed to be served as described unless the actual time of receipt is proved:
- (a) by first class post deemed served two Working Days after posting;
 - (b) by hand deemed served on signature of a delivery receipt 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 9.00am on the next Working Day;
 - (c) through a document exchange deemed served on the first Working Day after the day on which it would normally be available for collection by the addressee.

19. THIRD PARTY RIGHTS

It is agreed that nothing in this Deed shall be construed as expressly providing a right for any third party within the meaning of the Contract (Rights of Third Parties) Act 1999 and nothing in this Deed is intended to confer on any third party (whether referred to herein by name class description or otherwise) any benefit or any right to enforce any provision of this Deed.

20. DISPUTES

- 20.1 If in connection with this Deed there shall arise a claim or dispute or difference (including unreasonable delay in providing approval, authority, consent or direction or some other decision or payment required by this Deed) the relevant parties shall first attempt to negotiate a solution.
- 20.2 If matters remain unsolved (as evidenced by the service of a written notice by one party on the other(s)) the parties shall refer the matter as follows:
- 20.2.1 where the difference or dispute relates to the construction or interpretation of this Deed, 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 in dispute 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 in dispute (“an Expert”);
- 20.2.2 where the difference or dispute relates to the carrying out of works or construction be referred to the determination (as expert and not as an arbitrator) of an independent Chartered Surveyor or Civil Engineer as appropriate being a partner or director practising in a leading firm of surveyors or civil engineers based in the South East of England or London and experienced in the matter in dispute agreed upon by the parties in dispute but in default of that agreement appointed by the President of the Royal Institution of Chartered Surveyors or the Institution of Civil Engineers as appropriate on the application of any of the parties in dispute (“an Expert”) PROVIDED that where a contract for the relevant works has been let and provides that the dispute or difference under it shall be referred to arbitration or the court any such dispute or difference which may arise between the parties in connection with those works shall be determined likewise.
- 20.3 If the parties in dispute shall fail to agree on the nature of the difference or dispute between them then any of them may apply to the President of the Law Society to appoint an independent solicitor being a partner in a leading firm of solicitors practising in the South East of England or London to decide (as expert and not as arbitrator) in relation to any such matter which of Clauses 20.2.1 or 20.2.2 hereto is applicable.
- 20.4 Except as aforesaid any expert appointed pursuant to Clauses 20.2.1 or 20.2.2 or any other person shall:
- (a) on their appointment serve written notice thereof on the parties in dispute;

- (b) consider any written representations by or on behalf of those parties which are received by them within twenty working days of such service and immediately forward a copy of the written representation of one party to the other party;
- (c) allow both parties to the dispute an opportunity of commenting in writing on the other party's representations within twenty working days of receipt by the other party thereof;
- (d) have an unfettered discretion to determine the reference to them;
- (e) serve notice of their determination as soon as they have made it;
- (f) give full and clear reasons for their decision;
- (g) be paid their proper fee and expenses in connection with such reference by the parties in dispute in equal shares or in such shares as they may determine and their 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 either of the parties in dispute shall serve on them written notice in their opinion they have unreasonably delayed making their determination they shall be ipso facto discharged and be entitled only to their reasonable expenses prior to such discharge and another person shall be appointed in their place as such expert.

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

21. 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.

22. GOVERNING LAW

This Deed shall be governed by and interpreted in accordance with the law of England and Wales.

IN WITNESS whereof the parties hereto have duly executed this Deed on the day and year first before written.

FIRST SCHEDULE

BIODIVERSITY NET GAIN COVENANTS BY THE OWNER TO THE DISTRICT COUNCIL

Part 1 - Biodiversity Net Gain (On site)

- 1 The Owner covenants with the District Council that (subject to approval of the BNG Plan and the HMMP pursuant to condition of the Planning Permission) the BNG Plan and the HMMP in respect of the On Site Biodiversity Areas shall be implemented in full in accordance with the requirements of the approved details or any variation agreed in writing between the Owner and the District Council from time to time.

- 2 The Owner shall maintain, manage and monitor the On Site Biodiversity Areas in accordance with the approved BNG Plan and the HMMP for a period of 30 years commencing from the date on which the BNG Certificate of Compliance has been issued or deemed to be issued in accordance with paragraphs 3, 4 and 5 of this Schedule (the **“Covenant Start Date”**)

- 3 Following the implementation and completion of the habitat enhancements set out in the BNG Plan for the On Site Biodiversity Areas, the Owner shall serve written notice on the District Council inviting it to inspect the On Site Biodiversity Areas and if reasonably satisfied the District Council shall issue the BNG Certificate of Compliance confirming that the On Site Biodiversity Areas have been completed to its reasonable satisfaction.

- 4 If the District Council chooses to inspect the On Site Biodiversity Areas and identifies necessary remedial works in order to reasonably and properly implement those elements of the BNG Plan and HMMP:
 - (a) the Owner shall complete such remedial works to the reasonable satisfaction of the District Council; and
 - (b) upon completion of any remedial works, the Owner shall serve written notice on the District Council inviting it to inspect the remedial works identified pursuant to this paragraph 4 and the District Council shall issue a BNG Certificate of Compliance if reasonably satisfied with the remedial works.

- 5 If the District Council fails to:

- (i) inspect the On Site Biodiversity Areas within 20 (twenty) Working Days of receipt of the notice of invitation from the Owner pursuant to paragraph 3 above; or
- (ii) issue a BNG Certificate of Compliance within 20 (twenty) Working Days of the District Council's inspection where no remedial works have been identified pursuant to paragraph 4 above; or
- (iii) re-inspect the On Site Biodiversity Areas within 10 (ten) Working Days of the receipt of the written notice from the Owner confirming that the remedial works identified pursuant to paragraph 4(b) have been completed;

then the BNG Certificate of Compliance shall be deemed to have been issued at the end of those specified periods PROVIDED FURTHER THAT the inspection procedure identified in paragraphs 3 and 4 shall be repeated until such time as the Council issues a BNG Certificate of Compliance or a BNG Certificate of Compliance is deemed to have been issued in relation to the On Site Biodiversity Areas and PROVIDED FURTHER THAT in the event of any dispute between the parties the Expert shall determine the dispute (including but not limited to whether a BNG Certificate of Compliance is deemed to have been issued).

6 The Owner shall serve written notice on the District Council inviting it to inspect the On Site Biodiversity Areas before submitting to the District Council a report on the outcomes of the monitoring undertaken pursuant to paragraph 2 above at the following intervals:

- (a) two year anniversary of the Covenant Start Date;
- (b) five year anniversary of the Covenant Start Date;
- (c) ten year anniversary of the Covenant Start Date;
- (d) fifteen year anniversary of the Covenant Start Date
- (e) twenty year anniversary of the Covenant Start Date;
- (f) twenty five year anniversary of the Covenant Start Date;
- (g) thirty year anniversary of the Covenant Start Date

7 If any monitoring report submitted pursuant to paragraph 6 above identifies that remedial and/or corrective measures are required to any of the On Site Biodiversity Areas in order to ensure that they meet the standards set out in the approved BNG Plan then such measures shall be undertaken by the Owner in accordance with timescales agreed with the District Council (such agreement not to be unreasonably withheld or delayed) PROVIDED THAT the District Council shall be deemed to have agreed the timescales proposed by the monitoring report and/or Owner where the District Council has not refused agreement within 20 (twenty) Working Days after the date when the proposed dates were received by the District Council.

- 8** The Owner may from time to time submit an updated BNG Plan and HMMP to the District Council for approval, which approval shall not be unreasonably withheld or delayed, and the District Council shall be deemed to have approved an updated BNG Plan or HMMP where it has not refused or approved the updated BNG Plan within 20 (twenty) Working Days after the date when it was received by the District Council.

- 9** To pay the District Council the BNG Monitoring Fee prior to the Commencement of the Development.

SECOND SCHEDULE
CARE HOME AND ADDITIONAL CARE UNIT COVENANTS BY THE OWNER TO THE
DISTRICT COUNCIL

The Owner covenants with the Council:

- 1 For the lifetime of the Development, the Care Home and the Additional Care Units shall not be used or Occupied other than for residential care purposes within Use Class C2 of the Use Classes Order.

Additional Care Units

- 2 Not to cause or allow an Additional Care Unit to be Occupied other than by a Primary Resident and a spouse or partner of that Primary Resident, irrespective of the age of such spouse or partner and/or whether or not such spouse or partner is in need of care. For the avoidance of doubt, in the event that a Primary Resident in Occupation of an Additional Care Unit dies or vacates such a unit, only the spouse or partner of that Primary Resident may remain within the Additional Care Unit.
- 3 Prior to the first Occupation of any Additional Care Unit, the Owner shall construct or procure the construction of the Communal Facilities in order to permit the Primary Residents (including spouses or partners of a those Primary Residents) and their guests, at the Primary Resident's expense, access to and use of the Communal Facilities throughout their Occupation of the Development subject in all cases to the Primary Resident paying to use the Communal Facilities and to any conditions and/or restrictions that may be imposed or levied by the Owner or otherwise from time to time in relation to the Communal Facilities which may include hours of operation.
- 4 Prior to the Occupation of an Additional Care Unit, a Care Assessment shall be undertaken for each Primary Resident in order to identify and agree to provide the level and type of Personal Care and other support or assistance they require to establish whether they meet the requisite need for Personal Care
- 5 Not to cause or allow an Additional Care Unit to be Occupied by a Primary Care Resident before a Care Plan has been agreed between the Owner and the Primary Resident.
- 6 The Owner shall keep a record of the Care Assessment and Care Plan for each Primary Resident, and such Care Assessment and Care Plan shall be reviewed and updated no less than on an annual basis, or if appropriate in the Owner reasonable opinion, more

frequently having regard to the health of the Primary Resident in order to determine the level and type of Personal Care and other support and assistance for each Primary Resident.

- 7** The Owner shall make available to the District Council for inspection on an annual basis anonymised records confirming:
 - a) the number of Primary Residents in Occupation; and
 - b) the date of the Care Assessment and Care Plan and any review thereof

- 8** The Owner shall procure that the Basic Care Package, informed by the Care Assessment and Care Plan (as reviewed) is purchased by each Primary Resident on an annual basis for the period of their Occupation of their Additional Care Unit.

THIRD SCHEDULE
COVENANTS BY THE OWNER TO THE COUNTY COUNCIL

1. Total Access Demand Contribution

- 1.1. To pay to the County Council prior to the First Occupation Date the Total Access Demand Contribution Index Linked to be used towards the Scheme
- 1.2. Not to cause or allow the First Occupation Date to occur until the Total Access Demand Contribution has been paid to the County Council.

2. Library Contribution

- 2.1. To pay to the County Council prior to the First Occupation Date the Library Contribution Index Linked such sum to be used towards additional facilities at East Grinstead Library.
- 2.2. Not to cause or allow the First Occupation Date to occur until the Library Contribution has been paid to the County Council.

FOURTH SCHEDULE
COVENANTS BY THE DISTRICT COUNCIL

1 Inspection of the On Site Biodiversity Areas

- 1.1 To inspect the On Site Biodiversity Areas within 20 (twenty) Working Days of receipt of the notice from the Owner pursuant to Paragraph 3 of the First Schedule;
- 1.2 To issue a BNG Certificate of Compliance to the Owner within 20 (twenty) Days of the inspection under Paragraph 1.1 of this Schedule if the On Site Biodiversity Areas have been completed to the reasonable satisfaction of the District Council; or
- 1.3 If the District Council identifies any necessary remedial works that are reasonably and properly required to the On Site Biodiversity Areas to implement those elements of the BNG Plan and HMMP, then the Council shall notify the Owner in writing within 20 (twenty) Working Days setting out those remedial works;
- 1.4 Where paragraph 1.3 of this Schedule applies, to re-inspect the On Site Biodiversity Areas on receipt of the notice from the Owner pursuant to Paragraph 4(b) of the First Schedule and to issue the BNG Certificate of Compliance to the Owner within 10 (ten) working days of the inspection of the On Site Biodiversity Areas.

2 BNG Plan

Not to unreasonably withhold or delay giving its written approval to any revised or replacement BNG Plan or HMMP submitted by the Owner to the District Council (and in any event to refuse or approve such revised or replacement BNG Plan or HMMP within 20 (twenty) Working Days of receipt of the revised or replacement BNG Plan) under paragraph 7 of the First Schedule of this Deed.

3 BNG Monitoring Fee

To use the BNG Monitoring Fee towards the costs of monitoring the BNG Plan and HMMP and not for any other purpose.

4 Right of Access

To give not less than 10 Working Days written notice to the Owner of its intention to access the On Site Biodiversity Areas for the purposes of inspection under the First Schedule of this Deed.

FIFTH SCHEDULE
COVENANTS BY THE COUNTY COUNCIL

1. Total Access Demand Contribution

- 1.1. To expend the Total Access Demand Contribution together with any interest accruing thereon only on the Scheme and it is hereby acknowledged for the avoidance of doubt and without prejudice to the above that the County Council is authorised (at its discretion) to apply the Total Access Demand Contribution (or any part thereof) to compensate the County Council for all work done by the County Council's employees servants agents or contractors (in all cases at fair and proper rates) to include without limitation the processing and obtaining of All Requisite Consents and the supervision and design of the implementation of the Scheme and any necessary advertisements.

2. Library Contribution

To expend the Library Contribution together with any interest accruing thereon only on additional facilities at East Grinstead Library and it is hereby acknowledged for the avoidance of doubt and without prejudice to the above that the County Council is authorised (at its discretion) to apply the Library Contribution (or any part thereof) to compensate the County Council for all work done by the County Council's employees servants agents or contractors (in all cases at fair and proper rates) to include without limitation the processing and obtaining of All Requisite Consents and the supervision and design of the implementation of a scheme and any necessary advertisements.

3. Expenditure

- 3.1. If or to the extent the Total Access Demand Contribution and/or the Library Contribution shall not have been spent within 10 (ten) years of receipt of the respective contributions the County Council shall upon written request on such date refund to the party that paid the contributions any unexpended sum together with interest thereon from the date of receipt of the relevant contribution to the date of repayment at the base rate of the Bank of England applicable from time to time calculated on a day to day basis PROVIDED THAT such written request shall only be made within one (1) year commencing from the date of expiry of the aforementioned ten (10) year period and in the event of no written request being made within such period any unexpended sum together with accrued interest shall be released free of any liability and obligations to the County Council PROVIDED THAT the County Council shall apply any unexpended sum only to a suitable provision serving the Development and in full compliance with Regulation 122 of the CIL Regulations 2010.

- 3.2. If at the date referred to in paragraph 3.1 the County Council shall have entered into a contract or other legally binding obligation to expend the Total Access Demand Contribution and/or the Library Contribution or part thereof for the purposes specified in paragraphs 1.1, 2.1, of this FIFTH SCHEDULE then the County Council shall not be required to refund any part of the Total Access Demand Contribution and/or the Library Contribution required for that purpose but shall as soon as possible following the completion of the said contract or other legally binding commitment refund any unexpended part of the said contribution in the manner set out in paragraph 3.1 hereof.

APPENDIX 1
DRAFT PLANNING PERMISSION

APPENDIX 2
THE PLAN



Existing Block Plan
scale 1:500



HIGHFIELD, WEST HILL, EAST GRINSTEAD, WEST SJSSEX, RH19 4DL

UPRN: 200002898088

HMLR Title No: WSX256746



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Scale: 1:1250

OS Map
scale 1:1250



Revision:	Date:	Description:	By:
Client: Igloo Care Ltd. & EQ Care East Grinstead			 Chartered Architect & Chartered Architectural Technologists
Project: Proposed Care Home Development at West Hill, East Grinstead RH19 4DL			
Drawing: Existing Block Plan and OS map			   
Date: 04.12.24	Drawn By: RP		E-Innovation Centre, Priorslee, Telford, Shropshire, TF2 9FT www.ap-architecture.co.uk mail@ap-architecture.co.uk
Drawing No: AP24022- D00	Revision: -	Scale: as shown	Tel : 01952 288 290 Birmingham - 0121 369 0290 Fax : 01952 288 291 Walshampton - 01602 518 290

**APPENDIX 3
PAYMENT NOTICE**

Payment of monies due under a Section 106 Planning Obligation

Payment to be made by/on behalf of:

Development at:

.....

Agreement dated:

Planning application reference number:

Obligation in Agreement (Please continue on a separate sheet if necessary):

(a) Description of Contribution(s) and clause no(s):	
(b) Amount of Contribution(s) due:	
(c) Amount of interest due on Contribution(s) :	
(d) If applicable, the amount of interest due on Contribution(s):	
(e) Date upon which the Contribution(s) became due:	
(f) Method of Payment:	

Executed as a Deed by
affixing the Common Seal of
MID SUSSEX DISTRICT COUNCIL

in the presence of:-

Authorised Officer

Executed as a Deed by
affixing the Common Seal of
WEST SUSSEX COUNTY COUNCIL

in the presence of:-

Authorised Officer

Executed as a Deed by
KATHERINE JANE NASH

in the presence of:-

Signature of witness

Name (in BLOCK CAPITALS)

Address

.....

Occupation

Executed as a Deed by
NICHOLAS CHARLES ASH
in the presence of:-

Signature of witness
Name (in BLOCK CAPITALS)
Address
.....
Occupation

Executed as a Deed by
EQ CARE EAST GRINSTEAD LIMITED
acting by
DIRECTOR

a director in the presence of:

Signature of witness
Name (in BLOCK CAPITALS)
Address
.....
Occupation

Executed as a Deed by

IGLOO CARE LTD

acting by

.....

DIRECTOR

a director in the presence of:

Signature of witness

.....

Name (in BLOCK CAPITALS)

.....

Address

.....

.....

Occupation

.....