

DATED

21<sup>st</sup> May

2021

We hereby certify this to be a  
true copy of the original  
Dated this 4<sup>th</sup> day of May 2021

CANTON LIMITED

and

~~Trowers & Hamlins LLP~~  
TROWERS & HAMLINS LLP

MAUREEN ELSIE LESLEY FRANKLIN-SMITH

and

EILEEN KAY LAWRENCE

and

RAYMOND KENNETH FRANKLIN

to

ST ALBANS CITY AND DISTRICT COUNCIL

and

WELWYN HATFIELD BOROUGH COUNCIL

and

HERTFORDSHIRE COUNTY COUNCIL

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PLANNING OBLIGATION BY DEED OF AGREEMENT PURSUANT TO SECTION 106 OF  
THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED) IN RELATION TO THE  
DEVELOPMENT OF LAND OFF BULLENS GREEN LANE, COLNEY HEATH, AL4 0QQ

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Appeal refs: APP/C1950/W/20/3265926 and APP/B1930/W/20/3265925  
(Planning Application refs: 5/2020/1992 and 6/2020/2248/OUTLINE)

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THIS DEED is made on 21<sup>st</sup> day of May 2021

## PARTIES

- (1) **CANTON LIMITED** incorporated and registered in the Isle of Man with company number 006389V whose registered office is at PO BOX 145, Level 6, 10A Prospect Hill, Douglas, Isle of Man, IM99 1FY (the "**Developer**")
- (2) **MAUREEN ELSIE LESLEY FRANKLIN-SMITH** of Little Orchard, Roestock Lane, Colney Heath, St. Albans, AL4 0PP and **EILEEN KAY LAWRENCE** of 22 Greyfriars Close, Bognor Regis, PO21 5RH and **RAYMOND KENNETH FRANKLIN** of 32 Poppy Field, Biggleswade, SG18 8TU (collectively the "**Owner**")
- (3) **WELWYN HATFIELD BOROUGH COUNCIL** of Council Offices, The Campus, Welwyn Garden City, Hertfordshire, AL8 6AE (the "**Borough Council**")
- (4) **ST ALBANS CITY AND DISTRICT COUNCIL** of Civic Centre, St Peters Street, St Albans, Hertfordshire, AL1 3JE (the "**District Council**")
- (5) **HERTFORDSHIRE COUNTY COUNCIL** of County Hall, Pegs Lane, Hertford, Hertfordshire, SG13 8DE (the "**County Council**")

## RECITALS

- (A) The Borough Council is the local planning authority for the purposes of (inter alia) section 106 of the 1990 Act for that part of the Site shaded green on Plan 2.
- (B) The District Council is the local planning authority for the purposes of (inter alia) section 106 of the 1990 Act for that part of the Site shaded blue on Plan 2.
- (C) The County Council is also a local planning authority for the purposes of (inter alia) section 106 of the 1990 Act and the highway authority, the education authority, the library authority the social services authority for Hertfordshire.
- (D) The Owner is the registered proprietor of the Site registered at HM Land Registry under Title Number HD566986.
- (E) The Developer has an interest in the Site by virtue of an Option to Purchase Agreement dated 16 November 2007 which was novated to the Developer by a Deed of Novation dated 8 January 2014.
- (F) The Developer submitted the Applications to the District Council on 28 August 2020 and to the Borough Council on 2 September 2020.
- (G) The Developer has appealed against the Borough Council's refusal (by way of a decision notice dated 2 December 2020) and the District Council's non-determination of the Planning Applications.
- (H) The Parties acknowledge and agree that the Parties are entering into this Deed without prejudice to any submissions as part of the Appeal.

- (I) The obligations contained in this Deed are planning obligations for the purposes of section 106 of the 1990 Act.
- (J) The Developer and the Owner have agreed to enter in this Deed as hereinafter set out in order to secure the planning obligations it creates in favour of the Borough Council, District Council and County Council pursuant to Section 106 of the 1990 Act in the event that Planning Permission for the Development is granted pursuant to the Appeal and agree to comply with the obligations, covenants and restrictions contained in this Deed.

## AGREED TERMS

### 1. Definitions and Interpretation

The following definitions and rules of interpretation apply in this Deed:

#### 1.1 Definitions:

**"1990 Act"** means the Town and Country Planning Act 1990 (as amended).

**"Applications"** means the applications for outline planning permission for the Development bearing the District Council's reference number 5/2020/1992 and the Borough Council's reference number 6/2020/2248/OUTLINE.

**"Affordable Housing"** means the Social Rented Housing and/or Intermediate Housing and/or Affordable Rented Housing which is available to persons who are in Local Housing Need.

**"Affordable Housing Scheme"** means a scheme to be approved by the District Council and the Borough Council which specifies in relation to the Site:

- (a) The quantum, location and distribution and relevant tenures of the Affordable Housing within the Site, ensuring:
  - (i) That not less than 35% or more than 55% of the Dwellings falling within the administrative area of the Borough Council shall be Affordable Housing Units and not less than 35% or more than 55% of the Dwellings falling within the administrative area of the District Council shall be Affordable Housing Units;
  - (ii) An overall Site wide provision of Affordable Housing Units of not less than 45% of the Dwellings permitted by the Planning Permission;
  - (iii) The size of Affordable Housing Units approved by the Borough Council and District Council in writing and which shall be determined having regard to the identified housing needs within the Borough Council's and District Council's respective administrative areas;
  - (iv) Within that part of the Site which falls within the administrative area of the Borough Council an Affordable Housing tenure mix of 40% Social Rented Housing Units and 60% Intermediate Housing and/or Affordable Rented Housing (or such other tenure mix as may be agreed in writing with the Borough Council);

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- (v) Within that part of the Site which falls within the administrative area of the District Council a ratio of 2:1 Affordable Rented Housing to Shared Ownership Housing (or such other tenure mix as may be agreed in writing with the District Council);
- (b) The details of how the proposed design of the Affordable Housing will ensure that the Affordable Housing is materially indistinguishable (in terms of outward design and appearance) from the market housing of a similar size within the Development; and
- (c) The form of Shared Ownership Lease to be used for any Disposals of the Shared Ownership Housing (if applicable).

and which may be amended from time to time with the written approval of the Borough Council and the District Council (such approval not to be unreasonably withheld or delayed).

**"Affordable Housing Units"** means that part of the Development comprising 45% of the Dwellings which shall be constructed for Affordable Housing in accordance with the Planning Permission, this Deed and the approved Affordable Housing Scheme.

**"Affordable Rented Housing"** means affordable housing to be made available by the RPSH to Households with a Local Connection and who are in Local Housing Need at rents of up to 80% of the local Market Rent (including service charges where applicable) and **"Affordable Rented Housing Units"** and **"Affordable Rent"** shall be construed accordingly.

**"Appeal"** means the appeals against the refusal of the Applications with references APP/C1950/W/20/3265926 and APP/B1930/W/20/3265925.

**"BCIS Index"** means the Building Cost Information Service All-In Tender Price Index published from time to time.

**"Biodiversity Metric"** means the metric published by Natural England from time to time to measure and account for biodiversity losses and gains resulting from development or land management change (or in the absence of any metric published by Natural England, such other metric as may be agreed by the Owner and the Borough Council and the District Council).

**"Biodiversity Offsetting Contribution"** means the sum (exclusive of VAT if applicable) to be calculated in accordance with the formula set out at Schedule 8 of this Deed and agreed by the Borough Council and District Council as part of the Biodiversity Offsetting Scheme approved pursuant to this Deed to offset the loss of habitats on the Site in the event that the Biodiversity Post-Development Site Value is less than the Biodiversity Pre-Development Site Value and to be used by the Borough Council and District Council or Nominees towards the creation of new habitats in accordance with the Biodiversity Offsetting Scheme.

**"Biodiversity Offsetting Scheme"** means a scheme to be approved by the Borough Council and the District Council which shall include the following details:

- (a) the final calculation of the Biodiversity Offsetting Contribution;

- (b) whether the Biodiversity Offsetting Contribution is proposed to be paid to the Borough Council and District Council or its Nominees and details of the Nominees in the event that it is proposed to be paid to the Nominees which FOR THE AVOIDANCE OF DOUBT will be at the discretion of the Borough Council and District Council;
- (c) The identity of an appropriate receptor site(s) at which the Biodiversity Offsetting Contribution is to be expended; and
- (d) details of the provision of contractual terms to secure the offsetting measures in the event that the Biodiversity Offsetting Contribution is to be paid to a Nominee(s).

**"Biodiversity Onsite Compensation"** means biodiversity measures to be implemented within the Site as part of the Development in accordance with the Biodiversity Onsite Compensation Scheme approved by the Borough Council and District Council in accordance with this Deed.

**"Biodiversity Onsite Compensation Certificate"** means a certificate or certificates in writing relating to the Biodiversity Onsite Compensation provided by a suitably qualified and experienced ecologist (the identity of whom has been approved by the Borough Council and District Council in writing) that confirms that the Biodiversity Onsite Compensation has been laid out in accordance with the approved Biodiversity Onsite Compensation Scheme.

**"Biodiversity Onsite Compensation Scheme"** means a scheme to be approved by the Borough Council and the District Council detailing Biodiversity Onsite Compensation and which shall include (but shall not be limited to) the following:

- (a) the Biodiversity Post-Development Site Value;
- (b) the programme for the delivery of the Biodiversity Onsite Compensation; and
- (c) details of all measures to maintain the Biodiversity Onsite Compensation.

**"Biodiversity Pre-Development Site Value"** means 10.48 Biodiversity Units, being the biodiversity value of the Site prior to the Development and calculated as part of the Applications in accordance the Biodiversity Metric.

**"Biodiversity Post-Development Site Value"** means the number of Biodiversity Units that shall be achieved through the Biodiversity Onsite Compensation to be delivered as part of the Biodiversity Onsite Compensation Scheme approved in accordance with this Deed (calculated in accordance with the Biodiversity Metric) such score to be approved by the Borough Council and District Council as part of the Biodiversity Onsite Compensation Scheme.

**"Biodiversity Units"** means the measure of biodiversity resource to be quantified and assessed in accordance with the Biodiversity Metric.

**"Borough Council Contributions"** means the Community Healthcare Contribution, the General Medical Services Contribution, the Green Space Contribution, the Indoor Sports

Facilities Contribution, the Mental Health Contribution, the Outdoor Sports Facilities Contribution and the Waste and Recycling Contribution.

**"Borough Council and District Council Contributions Report"** a report to be submitted for approval for each Reserved Matters calculating the amount of the Borough Council Contributions and the District Council Contributions in accordance with the requirements of this Deed.

**"Borough Council Monitoring Fee"** means 5% of the total sum of the Borough Council Contributions towards the Borough Council's reasonable and proper administrative costs of monitoring compliance with the provisions of this Deed SAVE THAT the monitoring fee shall not exceed £5,000.

**"Bus Stop Contribution"** means the sum of £16,000 (sixteen thousand pounds) to be index linked as provided in clause 9.6 of this Deed.

**"Chargee"** means any mortgagee or chargee of the Owner or RPSH or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925.

**"Chartered Landscape Architect"** means a chartered member of the Landscape Institute appointed by the Owner;

**"Commencement Date"** means the date on which any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and no other purpose) operations consisting of site clearance, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and the expressions **"Commence"**, **"Commences"**, **"Commencement"** and **"Commenced"** shall be construed accordingly.

**"Completed"** means the completed construction of the Development and fitted out ready for Occupation.

**"Community Healthcare Contribution"** means the sum to be calculated at £182.03 per Dwelling (index linked as provided for in clause 10.3 of this Deed which shall be applied in favour of the Hertfordshire Community Trust towards the costs of refurbishing and reconfiguring the existing Queensway Health Centre in Hatfield to support the provision of enhanced services and for no other purpose.

**"County Council Contributions"** means the Library Contribution, the Primary Education Contribution, the Secondary Education Contribution, the Travel Plan Evaluation and Support Contribution, the Youth Contribution, and the Bus Stop Contribution.

**"County Council Contributions Report"** means a report to be submitted for approval for each Reserved Matters calculating the amount of the County Council Contributions in accordance with the requirements of this Deed.

"DEFRA" means the HM Government Department for Environment, Food and Rural Affairs (or any successor Government Department from time to time).

"Development" means the erection of up to 100 dwellings, including 45% affordable and 10% self or custom build, together with all ancillary works with all matters reserved except access pursuant to the Planning Permission.

"Disposal" means sale, transfer, option, gift exchange, declaration of trust, assignment lease and including a contract for any such disposal and "Disposals" "Dispose" and "Disposed of" shall be construed accordingly.

"District Community Facilities Contribution" means the sum to be calculated in accordance with the applicable table at Appendix 5 of this Deed based on the number of Dwellings and mix to be provided pursuant to the Planning Permission and any Reserved Matters within the District Council's administrative area (index linked as provided for in clause 10.1 of this Deed payable to the District Council for use towards improvements to the Roestock Park Scout Hut and for no other purpose.

"Dwelling" means a residential dwelling (including a house flat or maisonette) to be constructed on the Site as part of the Development pursuant to the Planning Permission (including on any Self-Build and Custom Housebuilding Plots) and including all Market Dwellings and Affordable Housing Units .

"Dwelling Mix" means the presumed size type tenure and total number of Dwellings set out at Schedule 7 of this Deed used by the County Council in the absence of a dwelling mix submitted by the Developer to estimate the amount of the Primary Education Contribution and the Secondary Education Contribution.

"Eligible Household(s)" means a person or persons who are in Local Housing Need and who are nominated by the Borough Council or the District Council from its Housing Needs Registers in accordance with the Housing Allocations Policy.

"Environment Bank" means the independent business established in 2006 specialising in biodiversity accounting, use of metrics, offset brokerage and establishing habitat banks who work with public and private sector clients to delivery net gain solutions for biodiversity in the planning system.

"General Medical Services Contribution" means the sum to be calculated at £1,290 per Dwelling (index linked as provided for in clause 10.3 of this Deed) towards the expansion and/or improvement of general medical services and/or surgeries in the area and for no other purpose.

*and/or Burrill House Surgery, Hatfield and for no other purpose. relocation of Natldown Road Surgery, Hatf.*

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"Green Space Contribution" means the sum to be calculated in accordance with the applicable table at Appendix 4 of this Deed based on the number of Dwellings and mix to be provided pursuant to the Planning Permission and any Reserved Matters within the Borough Council's administrative area (index linked as provided for in clause 10.1 of this Deed which shall be paid to the Borough Council and applied towards a project to create a wildflower meadow also with spring bulb planting at Angerland public open space off of Bishops Rise, South Hatfield and for no other purpose.

"Head of Housing" means the Borough Council and/or District Council's 's Head of Housing for the time being and his/her agents.



**"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.

**"Household"** means any person or persons who are living together as a single household.

**"Housing Needs Register"** means the registers maintained by the Borough Council and the District Council (as applicable) or its nominee for Eligible Households.

**"Housing Allocations Policy"** means the register maintained by the Borough Council (or its nominee) or the District Council (or its nominee) (as applicable) for Eligible Households.

**"Indoor Sports Facilities Contribution"** mean the sum to be calculated using the Sports Facility Calculator based on the population of the Development (index lined as provided for in clause 10.2 of this Deed) towards sports facilities at the University of Hertfordshire and/or Hatfield Swimming Pools and for no other purpose.

**"Interest"** means interest at four percent above the base lending rate of Barclays Bank Plc from time to time.

**"Intermediate Housing"** means Shared Ownership Housing and/or other intermediate forms of Affordable Housing which accord with the NPPF and are agreed in writing with the Borough Council and District Council and **"Intermediate Housing Units"** shall be construed accordingly.

**"Library Contribution"** means the sum calculated in accordance with the table set out in Schedule 6 of this Deed by reference to the type size tenure and number of Dwellings and by reference to the rows prefaced "Library facilities" (such sum to be index linked as provided in clause 9.1 of this Deed).

**"Local Connection"** shall have the meaning given to it by the Housing Allocations Policy.

**"Local Housing Need"** means (i) Households who are in need of residential accommodation suitable for their needs as their sole or principal home otherwise unable to obtain such suitable accommodation within the administrative areas of the Borough Council and the District Council (as applicable) by reason of lack of financial resources and whom it is reasonable to live in the locality or persons for the time being registered on the Borough Council and/or District Council's (as applicable) maintained housing register and/or other housing register maintained for the purpose of identifying Local Housing Need in accordance with the policy of the Borough Council or the District Council (as applicable) and (ii) in the event that there shall be no such person ready willing and able to occupy an Affordable Housing Unit at the material time then a Household who is assessed by a RPSH or the Borough Council or the District Council (as applicable) to be in genuine and urgent housing need.

**"Market Dwelling"** means a Dwelling that is not an Affordable Housing Unit or designated to be constructed on the Self-Build and Custom Housebuilding Plots and the expression **"Market Dwellings"** and **"Market Housing"** shall be construed accordingly.

**"Market Rent"** means the estimated amount for which the relevant Dwelling should be let on the date of valuation between a willing lessor and willing lessee on appropriate lease terms in an arms length transaction after proper marketing wherein the parties had acted knowledgeably, prudently and without compulsion.

**"Market Value"** means the price at which the whole interest in the Affordable Housing Unit or Self-Build and Custom Housebuilding (as applicable) would be expected to command if sold by a willing seller to a willing purchaser for residential purposes free of the restrictions and obligations contained in this Deed.

**"Mental Health Contribution"** means the sum of £201.38 per Dwelling (index linked as provided for in clause 10.3 of this Deed towards the Hertfordshire Partnership Foundation Trust to support the costs of refurbishing and reconfiguring the existing Queensway Health Centre in Hatfield and Roseanne House in Welwyn Garden City to enable increased services capacity and for no other purposes.

**"New Primary School"** a proposed new two form entry (2fe) primary school at site HS11 located to the south of South Way (A1001) and to the east of Hatfield Cemetery Hatfield as set out in the emerging Welwyn Hatfield Borough Council Local Plan.

**"New Secondary School"** a proposed new eight form entry (8fe) secondary school at site HAT1 located on the North Western edge of Hatfield (adjacent to Hatfield Garden Village as set out in the emerging Welwyn Hatfield Borough Council Local Plan.

**"Nomination Agreement"** means the agreements substantially in the form appended at Appendix 6 of this Deed with such amendments as may reasonably be agreed between the Borough Council and District Council (as applicable) and the RPSH.

**"Nominee"** means the Environment Bank or other body approved by the Borough Council and the District Council who is capable of delivering the Biodiversity Offsetting Scheme.

**"NPPF"** means the National Planning Policy Framework 2019 and any replacement national planning policy document.

**"Occupy"** means occupation for the purposes of the Planning Permission but not including occupation by personnel engaged in the construction fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and the expressions **"Occupation"** and **"Occupied"** shall be construed accordingly.

**"Open Space"** means informal public open space and amenity areas to be provided within the Site pursuant to any Reserved Matters including any grass and/or play area(s) and/or landscaped and/or hardstanding and/or parking areas and/or estate roads excluding such areas that are or are to be publicly maintainable highway or within the curtilage of Dwellings.

**"Open Space Certificate"** means a certificate or certificates in writing relating to the Open Space Land issued by a Chartered Landscape Architect and in relation to the equipped play area(s) issued by an inspector registered on the Register of Play Inspectors International that confirms that the Open Space Land have been laid out in accordance with the approved Open Space Scheme.

**"Open Space Land"** means the land identified as Open Space in the Open Space Scheme.

**"Open Space Management Company"** means a private limited company established or appointed for inter alia the purpose of managing the Open Space Land in accordance with the approved Open Space Management Scheme.

**"Open Space Management Scheme"** means a written scheme prepared by the Owner to be submitted to the Borough Council and the District Council for approval for the ongoing long term management and maintenance of the Open Space (as may be amended from time to time with the written approval of the Borough Council and the District Council) including for the avoidance of doubt details of the Management Company and its obligations and funding.

**"Open Space Programme"** means a programme setting out the timetable for the provision of Open Space at the Development.

**"Open Space Scheme"** means a written scheme prepared by the Owner to be submitted to the Borough Council and the District Council for approval for the provision of Open Space to include details of the Open Space Works and details of how from the practical completion of the Open Space Works public access 24 hours per day 365 days a year shall be permitted and secured (save for a Permitted Closure and it being agreed between the Parties that there is no intention to create any public rights of way over the Open Space Land in addition to those parts of the Open Space Land which already benefit from public rights of way at the date of this Deed), which shall be enforceable by the Borough Council and District Council.

**"Open Space Works"** means the specification and works required for the provision of the Open Space in accordance with the Open Space Scheme.

**"Outdoor Sports Facilities Contribution"** mean the sum to be calculated using the Sports Facility Calculator based on the population of the Development (index lined as provided for in clause 10.2 of this Deed) towards improving drainage Welham Green Recreation Ground grass pitches and/or towards repairs to the bowls ground at the Welham Green Recreation Ground and for no other purpose.

**"Parties"** means the parties to this Deed and the term Party shall be construed accordingly.

**"Permitted Closure"** means that the Owner may from time to time temporarily restrict or prevent access to the Open Space Land (save for those parts of the Open Space Land which benefit from public rights of way at the date of this Deed) or any part thereof (as applicable) by giving reasonable prior notice to the Borough Council and the District Council in writing (EXCEPT in cases of emergency or danger to the public where such closure is necessary in the interests of public safety or otherwise for reasons of public safety or at the request of the emergency services when no prior notice or consent shall be required) but only for so long as is reasonably necessary for the following purposes:

- (a) for a maximum of one day per year to assert rights of proprietorship preventing any additional public rights from coming into being by means of prescription or any process of law PROVIDED THAT: (i) there shall be no such closure if the entire Open Space Land has been closed for an entire day or more for any of

the other purposes specified in this definition during the preceding year; and (ii) there shall be no closure of those parts of the Open Space Land which benefit from public rights of way at the date of this Agreement for this purpose;

- (b) in the interests of public safety generally or for the purposes of maintenance, repair, cleansing, renewal or resurfacing of the Open Space Land;
- (c) the laying cleaning maintenance and repair of any cables wires pipes drains or ducts over along or beneath the Open Space Land;
- (d) The inspection maintenance repair renewal rebuilding or demolition or development of any building or buildings on land adjoining the Open Space Land (including the erection of scaffolding);
- (e) the inspection maintenance repair renewal rebuilding or demolition or development of any building or buildings on land adjoining the Open Space Land (including the erection of scaffolding);
- (f) with the prior written approval of the Borough Council and District Council for any reasonable and proper purpose.

PROVIDED THAT the Owner shall (i) take reasonable steps to minimise the duration and extent of any such closures and (ii) re-open the Open Space as soon as is reasonably practicable.

**"Plan 1"** means the Site Boundary Plan appended to this Deed at appendix 3.

**"Plan 2"** means the District Boundary Plan appended to this Deed at Appendix 3.

**"Planning Inspector"** means the Planning Inspector appointed on behalf of the Secretary of State to determine the Appeal.

**"Planning Permission"** means any planning permission for the Development that may be granted pursuant to the Appeal.

**"Primary Education Contribution"** means either:

- (i) the sum of £1,384,290 (one million three hundred and eighty four thousand two hundred and ninety pounds) calculated by reference to the Scorecards taking account of the Dwelling Mix such Dwelling Mix currently assessed as equivalent to 15% of the capacity of the New Primary School which sum further includes equivalent 15% of the land value in respect of the New Primary School (such sum to be index linked as provided in clause 9.2 of this Deed); or
- (ii) if the actual dwelling mix differs from the Dwelling Mix a sum calculated by reference to the Scorecards taking account of such actual dwelling mix and by ascertaining the percentage of the capacity of the New Primary School represented by such actual dwelling mix together with the equivalent percentage of the land value of the New Primary School represented by the said actual dwelling mix (such sum to be index linked as provided in clause 9.2 of this Deed)

"**PUBSEC Index**" means the Tender Price Index of Public Sector Non-Housing Smoothed All-In Index and specifically the series called "Extension of Public Sector Tender Price Index of Public Sector Building Non-Housing" as published by the Building Cost Information Service of the Royal Institute of Chartered Surveyors or any successor organisation or equivalent replacement index.

"**Qualifying Self Build and Custom Housebuilding Developer**" means an individual or association of individuals (including bodies corporate that exercise functions on behalf of associations of individuals who satisfy all of the following criteria:

- of section 4(3) of the Self-build and Custom Housebuilding Regulations 2016.*
- (a) ~~Aged 18 or older;~~
  - (b) ~~A British citizen, a national of an EEA State other than the United Kingdom or a national of Switzerland; and~~
  - (c) ~~Seeking (either alone or with others) to acquire a serviced plot of land in the Borough Council or District Council's area to commission or build a house to occupy as that individual's sole or main residence.~~
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"**RPSH**" 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 as approved by the Borough Council or District Council (as applicable) or other competent authority pursuant to the Housing and Regeneration Act 2008 or any other body who may lawfully provide or fund Affordable Housing from time to time and as approved by the Borough Council or District Council (as applicable).

"**Regulator**" means Homes England or the Regulator of Social Housing established pursuant to Part 2 of the Housing and Regeneration Act 2008 or any similar future authority (including any statutory successor) carrying on substantially the same regulatory or supervisory functions.

"**Retained Equity**" means the proportion of the Market Value in a Shared Ownership Housing Unit represented by such share of unsold equity.

"**Reserved Matter(s)**" means an application for reserved matter submitted pursuant to the Planning Permission (as may be amended).

"**Reserved Matter(s) Approval**" means approval by the Borough Council and the District Council of an application for Reserved Matter(s).

"**RPI**" means the measure of change in the prices charged for goods and services bought for consumption in the UK produced by the Office for National Statistics.

"**Scorecards**" means the Department for Education's national average costs for new build schools published in its "Local Authority School Places Scorecards 2019" or as published from time to time.

"**Secondary Education Contribution**" means either:

- (i) the sum of £1,494,006 (one million four hundred and ninety four thousand and six pounds) calculated by reference to the Scorecards taking account of the Dwelling Mix such Dwelling Mix currently assessed as equivalent to 3.75% of the

capacity of the New Secondary School which sum further includes equivalent 3.75% of the land value in respect of the New Secondary School (such sum to be index linked as provided in clause 9.2 of this Deed); or

- (ii) if the actual dwelling mix differs from the Dwelling Mix a sum calculated by reference to the Scorecards taking account of such actual dwelling mix and by ascertaining the percentage of the capacity of the New Secondary School represented by such actual dwelling Mix together with the equivalent percentage of the land value of the New Secondary School represented by the said actual dwelling mix (such sum to be index linked as provided in clause 9.2 of this Deed).

**"Section 278 Agreement"** means a valid agreement executed as a deed and to be entered into with the County Council pursuant, inter alia, to Section 278 of the Highways Act 1980.

**"Section 278 Works Specification"** means a detailed design specification of the Works to be carried out to facilitate the Development to be submitted by the Owner to the County Council for approval and which includes plans and drawings, samples of materials to be used, estimated costs and phasing of delivery.

**"Self-Build and Custom Housebuilding"** means a Dwelling which meets the definition in the Self Build and Custom Housebuilding Act 2015 (as amended) and constructed on a Self-Build and Custom Housebuilding Plot.

**"Self-Build and Custom Housebuilding Plots"** means those parts of the Site to be provided pursuant to the provisions in Schedule 1 paragraph 5 of this Deed to enable construction of 10% (or such other percentage or number as is agreed in writing between the Owner and the Borough Council and District Council) of the Dwellings as Self-Build and Custom Housebuilding and "Self-Build and Custom Housebuilding Plot" shall be construed accordingly.

**"Self-Build and Custom Housebuilding Scheme"** means a scheme to be prepared by the Owner for the provision of Self-Build and Custom Housebuilding on the Self-Build and Custom Plots to include:

- (a) The indicative location of the individual Self-Build and Custom Housebuilding Plots which shall (unless otherwise agreed with the Borough Council and District Council) secure that at least 10% of the Dwellings falling within the administrative area of the Borough Council shall be Self-Build and Custom Housebuilding Plots and at least 10% of the Dwellings falling within the administrative area of the District Council shall be Self-Build and Custom Housebuilding Plots;
- (b) Details of the servicing arrangements for the Self-Build and Custom Housebuilding and how they shall be provided in a Serviced Condition;
- (c) Details of how the Self-Build and Custom Housebuilding Plots shall be marketed and made available to those on the Self-Build and Custom Housebuilding Register and which FOR THE AVOIDANCE OF DOUBT shall include the length of that marketing period and provisions which allow the Self-Build and Custom Housebuilding Plots to be sold as open Market Dwellings in the event that the Self-Build and Custom Housebuilding Plots are not disposed of those on the

Self-Build and Custom Housebuilding Register following twenty four (24) months of marketing (or such other marketing period as may be agreed between the Owner and the Borough Council and District Council).

**"Self-Build and Custom Housebuilding Register"** means the Borough Council and the District Council's custom build registers maintained pursuant to section 1 of the Self-Build and Custom Housebuilding Act 2015 (as amended).

**"Serviced Condition"** means in relation to the land to be used for Affordable Housing or Self-Build and Custom Housebuilding (as the case may be) the remediation of the land to a standard fit for its end use and the provision of roads, sewers, gas, electricity and telecommunications to the boundary of the Site in accordance with a scheme that the Owner shall submit to the Borough Council and the District Council for approval (such approval not to be unreasonably withheld or delayed).

**"Shared Ownership Housing"** means a form of tenure granted by lease by the RPSH to be disposed pursuant to shared ownership arrangements within the meaning of Section 70(4) of the Housing and Regeneration Act 2008 whereby a purchaser is able to purchase a share of the equity in an Affordable Housing Unit at a minimum of 25% and a maximum of 75% initially (at the option of the buyer) and pay an annual rent of up to 2.75% on the Retained Equity with no limitation on the aggregate equity that can be subsequently acquired by the purchaser (or such other rent or form of lease as may be approved in writing by the Borough Council and District Council) and **"Shared Ownership Lease"** shall be interpreted accordingly.

**"Shared Ownership Unit"** means a unit of Affordable Housing to be made available by a RPSH under a Shared Ownership Lease.

**"Site"** means the land off Bullens Green Lane, Colney Heath, AL4 0QQ all of which land is shown for identification purposes only edged red on Plan 1.

**"Social Rented Housing"** means Affordable Housing which is managed by local authorities or the RPSH and where the rent is no higher than the Target Rent and **"Social Rented Housing Units"** and **"Social Rent"** shall be construed accordingly.

**"SPONS Index"** means the index linked by reference to the price adjustment formula for construction contracts in the monthly bulleting of indices published by the Building Cost Information Service (BCIS) as collated into a single index known as the Price Adjustment Formulae Indices (Civil Engineering) Series 2.

**"Sports England"** means the executive non-departmental public body responsible for growing and developing grassroots sport and getting more people active in England and includes any successor body exercising similar functions.

**"Sports Facility Calculator"** means the sports facility calculator published by Sports England or such other calculator approved by the District Council and the Borough Council in writing.

**"Staircasing"** means the purchase by the owner of additional equity in a Shared Ownership Unit and "Staircased" shall be construed accordingly.

**"Target Rent"** means target rents for Social Rented Housing (or its equivalent) as determined through the national rent regime and published from time to time by the Regulator or such other body as may replace the Regulator, having responsibility for setting target rents for social housing.

**"Traffic Regulation Order"** means an order pursuant inter alia to the Road Traffic Regulation Act 1984 to regulate the speed limit along Bullens Green Lane Road in order to facilitate use of the proposed new access to the Site.

**"Transfer"** means the transfer of the freehold or grant of a lease for a term of at least 125 years unless otherwise agreed in writing with the Borough Council and District Council and "Transferred" shall be construed accordingly.

**"Travel Plan"** means a written plan setting out a scheme to encourage regulate and promote sustainable travel measures for owners, occupiers, and visitors to the Development.

**"Travel Plan Annual Review"** means an annual study reviewing and monitoring the provisions of the Travel Plan (as more fully set out therein).

**"Travel Plan Co-ordinator"** means a person appointed by the Owner and approved by the County Council who shall be responsible for managing on behalf of the Owner the implementation, monitoring, reporting, and review of the Travel Plan and the day to day management of the steps identified in the Travel Plan in order to achieve its objectives and targets.

**"Travel Plan Evaluation and Support Contribution"** means the sum of £6,000 (six thousand pounds) (index linked as provided for in clause 9.5 of this Deed).

**"Travel Plan Guidance"** means the County Council's published guidance dated March 2020 which is appended to this Deed at Appendix 2 or such version as at the date of submission of the Travel Plan.

**"Waste and Recycling Contribution"** means a sum to be calculated in accordance with the applicable table at Appendix 4 of this Deed based on the number of Dwellings and mix to be provided pursuant to the Planning Permission and any Reserved Matters within the Borough Council's administrative area (index linked as provided for in clause 10.1 of this Deed) towards the provision of household waste bin and mini recycling centre and for no other purpose.

**"Water Scheme"** means either (i) the proposal prepared by or approved by the water undertaker for the area pursuant to the Water Industry Act 1991 to provide mains water services for the Development whether by means of new mains or extension to or diversion of existing services or (ii) where existing water services are to be used the details of the Dwellings and the water supply to them.

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



**"Works"** means:

- (i) the highway works shown in principle only on drawing numbered 18770-FELL-5-500 Rev B annexed to Appendix 3 of this Deed which works shall for the avoidance of doubt include site access and associated works;
- (ii) the construction of a new footway/pedestrian link to Fellowes Lane from the site, along the southern boundary of Fellowes Lane to the existing network at Admirals Close as shown in principle only on drawing numbered 18770-fell-5-501A annexed to Appendix 3 of this Deed;
- (iii) together with such ancillary works as may be required by the County Council's Director of Environment & Infrastructure to facilitate the Development which ancillary works may without prejudice to the generality of the foregoing include the provision of street lighting traffic signs carriageway markings footways cycleways street furniture and drainage and any necessary alterations to statutory undertakers' equipment.

**"Youth Contribution"** means the sum calculated in accordance with the table set out in Schedule 6 by reference to the type size tenure and number of Dwellings and by reference to the rows preface **"Youth facilities"** such sum to be index linked as provided in clause 9.1.

- 1.2 Clause headings shall not affect the interpretation of this Deed.
- 1.3 Words importing one gender shall include all other genders and words of the singular shall include the plural and vice versa.
- 1.4 The reference to any statute or section of a statute includes 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.
- 1.5 Any reference to a clause, a paragraph or a schedule is unless the context otherwise requires a reference to a clause, a paragraph or a schedule of this Deed and any reference to a sub clause is a reference to a sub clause of the clause in which the reference appears.
- 1.6 Reference to the Site includes any part of it.
- 1.7 Where two or more people form a party to this Deed the obligations they undertake may be enforced against them all jointly or against each of them individually.
- 1.8 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Borough Council, the District Council and the County Council the successors to their respective functions.
- 1.9 Any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing and words denoting an obligation on the Owner to do any act matter or thing include an obligation to procure that it be done.

## **2. Effect of this Deed**

- 2.1 This Deed is made pursuant to section 106 of the 1990 Act.
- 2.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed are planning obligations for the purposes of section 106 of the 1990 Act and are enforceable by the Borough Council, the District Council and / or the County Council (as the case may be) as local planning authorities against the Owner of the Site.
- 2.3 To the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of the Act they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972 Section 1 of the Localism Act 2011 and all other enabling powers.
- 2.4 The Parties are satisfied that the planning obligations secured by this Deed are:
- (a) necessary to make the Development acceptable in planning terms; and
  - (b) directly related to the Development; and
  - (c) fairly and reasonably related in scale and kind to the Development; and
  - (d) compliant in all other aspects with Regulation 122 of the Community Infrastructure Levy Regulations 2010.
- 2.5 The Owner enters into the obligations (for themselves and their successors in title and persons deriving title from the Owner) with the Borough Council and the District Council and the County Council with the intent that the obligations contained in this Deed shall be enforceable not only against the Owner but also against the successors in title of the Owner and any person claiming through or under the Owner an interest or estate in the Site or any part thereof.
- 2.6 For the avoidance of doubt:
- (a) where any obligations in this Deed are expressed to require the approval, consent or agreement of the Borough Council and District Council:
    - (i) the Borough Council shall be responsible for issuing any approval, consent or agreement in accordance with its planning policies relating to obligations affecting those parts of the Site within its administrative area; and
    - (ii) the District Council shall be responsible for issuing any approval, consent or agreement in accordance with its planning policies relating to obligations affecting those parts of the Site within its administrative area.
  - (b) where any obligations, covenants, undertakings or restrictions in this Deed are expressed to be given to the Borough Council and/or District Council:
    - (i) the Borough Council shall be the enforcing authority for any obligations, covenants, undertakings or restrictions affecting those parts of the Site within its administrative area; and

- (ii) the District Council shall be the enforcing authority for any obligations, covenants, undertakings or restrictions affecting those parts of the Site within its administrative area.

### **3. Conditionality**

3.1 Subject to clauses 3.1 to 3.4 of this Deed, the provisions of this Deed shall come into effect immediately upon completion of this Deed PROVIDED THAT clause 4.1 of this Deed and the obligations in the Schedules to this Deed shall not have effect unless and until:

- (a) the Planning Inspector has issued the Planning Permission; and
- (b) Commencement of Development has occurred save for those obligations required to be complied with prior to Commencement.

3.2 The planning obligations contained within this Deed are conditional upon the Planning Inspector finding that such planning obligations are:

- (a) necessary to make the Development acceptable in planning terms; and
- (b) directly related to the Development; and
- (c) fairly and reasonably related in scale and kind to the Development.

3.3 If the Planning Inspector concludes that any planning obligation contained within this Deed is incompatible with one or more of the tests for planning obligations set out at Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and/or the NPPF and accordingly attaches no weight to the obligation in determining the Appeal then the relevant obligation shall, from the date of the Planning Inspector's decision letter, cease to have effect and the Developer and the Owner shall be under no obligation to comply with the obligation but such cancellation shall not affect the validity or enforceability of the remaining provisions of this Deed which shall remain in full force and effect.

3.4 For the avoidance of doubt, none of the planning obligations in this Deed will be binding if:

- (a) the Planning Inspector dismisses the Appeal such that the Planning Permission is not granted; or
- (b) the Planning Inspector finds that none of the planning obligations contained within this Deed satisfy the tests for planning obligations set out at Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended), or that the obligations are otherwise not required, and accordingly attaches no weight to the obligations in determining the Appeal.

### **4. Owner and Developer Covenants**

4.1 The Owner covenants with the Borough Council, the District Council and the County Council:-

S&P  
S&P  
C&T  
C&T  
LW  
SS  
SS

- (a) to observe and perform the covenants restrictions stipulations and obligations contained in ~~0~~ hereto; <sup>schedule 1</sup>
- (b) to observe and perform the covenants restrictions stipulations and obligations contained in ~~0~~ hereto; <sup>schedule 1</sup>
- (c) to observe and perform the covenants restrictions stipulations and obligations contained in schedule 3 hereto; <sup>schedule 2 RW</sup>
- (d) to observe and perform the covenants restrictions stipulations and obligations contained in schedule 4 hereto;

4.2 The Developer acknowledges and agrees:

- (a) that this Deed has been entered into by the Owner at its request and with its consent;
- (b) that the Site shall be bound by the obligations contained in this Deed;
- (c) that on acquiring an interest in the Site it shall be bound by the Owner's covenants restrictions stipulations and obligations contained within this Deed as a successor in title to the Owner;
- (d) to pay the Borough Council's Monitoring Fee to the Borough Council forthwith in the event that the Appeal is allowed;
- (e) prior to or upon completion of this Deed, to pay the reasonable legal costs of the Borough Council, the District Council and the County Council in connection with the preparation negotiation and completion of this Deed.

**5. Notices**

5.1 The Owner covenants with the Borough Council, the District Council and the County Council:-

- (a) to give the Borough Council, the District Council and the County Council no less than twenty (20) Working Days' notice of the Commencement Date such notice to be given prior to the Commencement Date in writing using the proforma set out in Schedule 5 hereto;
- (b) to give the Borough Council, the District Council and the County Council no less than five (5) Working Days' notice of the Occupation of the Development such notice to be given prior to Occupation in writing using the proforma set out in Schedule 5 hereto; and
- (c) to give the Borough Council, the District Council and the County Council no less than five (5) Working Days' notice of the Practical Completion of the Development such notice to be in writing using the pro-forma set out in schedule 5 hereto.

## **6. Covenants by the Borough Council and the District Council**

6.1 The Borough Council and the District Council separately covenant with the Owner:

- (a) to provide written confirmation at the written request of the Owner, of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed;
- (b) to act reasonably, properly and diligently in exercising their discretion and discharging their functions under this Deed. In particular, where any notice, consent, approval, authorisation, agreement, or other similar affirmation is required under the terms of the Deed, the Borough Council and the District Council will not unreasonably withhold or delay such notice, consent, approval, authorisation, agreement or other similar affirmation;
- (c) to use all sums received from the Owner under the terms of this Deed for the purpose(s) specified in this Deed for which they are paid;
- (d) at any time prior to the expiry of the expenditure period for any contribution pursuant to paragraph 6.1(e) below, the Owner shall be entitled to request from the Borough Council and the District Council (as applicable) and the Borough Council and the District Council (as applicable) shall provide such evidence as may reasonably be required to account for the Borough Council and the District Council's expenditure (as applicable) and use of the relevant contribution as at the date of the Owner's request and in each instance such evidence shall be disclosed to the Owner within 20 (twenty) Working Days;
- (e) upon written request to repay to the person who paid it any sums received from the Owner pursuant to this Deed which have not been expended or contractually committed in accordance with the provisions of this Deed within five (5) years of the date of the receipt PROVIDED THAT such written request shall only be made within one (1) year commencing from the date of expiry of the aforementioned five (5) 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 to the Borough Council and the District Council (as applicable) without limitation and free from any liability and obligations on the part of the Borough Council and the District Council (as applicable); and
- (f) the Borough Council and District Council shall act in good faith and shall co-operate with each other to facilitate the discharge and performance of all obligations contained herein.

## **7. Covenants by the County Council**

7.1 The County Council covenants with the Owner:

- (a) to provide written confirmation at the written request of the Owner, of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed and following receipt by the County Council of its reasonable costs of providing such written confirmation;

- (b) where the approval, consent, expression of satisfaction, agreement, confirmation or certification of the County Council is reasonably required in connection with the terms of this Deed such approval, consent, expression of satisfaction, agreement, confirmation, or certification shall not be unreasonably withheld or delayed;
- (c) to use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are paid;
- (d) upon written request to repay to the person who paid it any sums received by the County Council pursuant to this Deed which have not been expended or committed to be spent for the purposes set out in this Deed ten (10) years of the date of the receipt by the County Council of the notice of Practical Completion of the Development in accordance with clause 5.1 (c ) above of this Deed;

## **8. Reserved Matters**

- 8.1 When submitting any Reserved Matters the Owner shall:
- (a) submit to the County Council the County Council Contributions Report for its written approval;
  - (b) submit to the Borough Council and District Council the Borough Council and District Council Contributions Report for the written approval of the Borough Council and District Council.
- 8.2 Not to Commence or cause or permit Commencement in respect of any Development authorised by Reserved Matters unless and until the County Council, Borough Council and District Council have approved the County Council Contributions Report and the Borough Council and District Council Contributions Report (as applicable) in relation to that Reserved Matters.

## **9. Indexation - County Council Contributions**

- 9.1 The Library Contribution and the Youth Contribution shall each be index linked by reference to any increase from the PUBSEC Index figure of 175 to the finalised figure applicable to the quarter in which the Library Contribution and the Youth Contribution are paid.
- 9.2 The Primary Education Contribution and the Secondary Education Contribution shall each be index linked by reference to any increase from the finalised BCIS Index figure applicable to the first quarter of 2020 to the finalised figure applicable to the quarter in which the Primary Education Contribution and the Secondary Education Contribution are paid.
- 9.3 Where any County Council Contribution is required to be index linked by reference to the PUBSEC Index the sum payable shall be increased in accordance with increases in the PUBSEC Index by the application of the formula  $A = B \times (C \div D)$  where:
- A is the total amount to be paid;
  - B is the principal sum stated in this Deed;