

**THIS DEED is dated**

**2023**

- (1) HERTFORDSHIRE COUNTY COUNCIL** of County Hall Hertford Hertfordshire SG13 8DE (**“the County Council”**)
- (2) ST ALBANS CITY AND DISTRICT COUNCIL** of Civic Centre St Peters Street, St Albans, Hertfordshire, AL1 3JE (**“the Council”**)
- (3) XXXXXX and XXXXXX** of xxxxxxxx (**together “the Owner”**)
- (4) XXXX BANK PLC** incorporated and registered in England and Wales with company number 929027 whose registered office is at xxxx (**“the Mortgagee”**)
- (5) VISTRY HOMES LIMITED** (Company Number: 00397634) and whose registered office is 11 Tower View, Kings Hill, West Malling, ME19 4UY (**“the Developer”**)

**Whereas**

- 1 The County Council and the Council are local planning authorities for the purposes of the 1990 Act for the area in which the Site is situate and as such are the local planning authorities entitled to enforce the planning obligations hereinafter recited
- 2 The County Council is the Highway Authority the Education Authority the Library Authority the Social Services Authority the Waste Disposal Authority and the Fire and Rescue Authority for Hertfordshire
- 3 The Owner is the freehold owner of the whole of the Site registered at land registry with title numbers HD266436 and HD111757
- 4 The Mortgagee has the benefit of the charge referred to in the charges registered recital C3 of the title register HD111757 and the Developer has the benefit referred to in recital 5 of the title register of HD266436
- 5 The Council refused the grant of the Planning Permission
- 6 The Owner has appealed the refusal to the Secretary of State and the Appeal is to be determined by an Inspector appointed by the Secretary of State
- 7 This Deed is entered into to make provision for regulating the Development and securing the matters hereinafter referred to which are required in order to enable the Development to go ahead

**NOW THIS DEED WITNESSETH** as follows:

**Operative Part**

**1 Definitions and Interpretation**

- 1.1 The following definitions and rules of interpretation apply in this deed:

**Definitions:**

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

**2015 Act:** means the Self Build and Custom Housebuilding Act 2015 (as amended)

**Additional First Homes Contribution:** means in circumstances where a sale of a First Home other than as a First Home has taken place in accordance with paragraphs 6.8, 6.9 or 8 of Part 2 of Schedule 2, the lower of the following two amounts:

- (a) 30% of the proceeds of sale; and
- (b) the proceeds of sale less the amount due and outstanding to any First Homes Mortgagee of the relevant First Home under relevant security documentation which for this purpose shall include all accrued principal monies, interest and reasonable costs and expenses that are payable by the First Homes Owner to the First Homes Mortgagee under the terms of any mortgage but for the avoidance of doubt shall not include other costs or expenses incurred by the First Homes Owner in connection with the sale of the First Home

and which for the avoidance of doubt shall in each case be paid following the deduction of any SDLT payable by the First Homes Owner as a result of the disposal of the First Home other than as a First Home.

**Affordable Housing:** means 40% of the Dwellings which are to be managed or owned by an AHP and which are to be provided for people who cannot afford to rent or purchase housing appropriate to their needs on the private market within the same area and “Affordable Housing Units” shall be construed accordingly

**Affordable Housing Mix:** means the following mix:

- (a) 25% First Homes;
- (b) 67% Affordable Rent Units; and
- (c) 8% Shared Ownership Units

Or such other mix as may be agreed by the Council in writing (such agreement not to be unreasonably withheld or withdrawn).

**Affordable Housing Scheme:** means a scheme identifying the size, tenure, types, location, and phasing proposal of all Affordable Housing Units,

**Affordable Rent:** means a unit of Affordable Housing let by a local authority or private registered provider of social housing to households who are eligible for social rented housing in accordance with the definition of affordable rented housing contained in Annex 2 to the NPPF (or any subsequent replacement or modification thereof) but for the avoidance of doubt must be at an affordable rent which is subject to rent controls that require a rent of no more than 80%

of the equivalent local Market Rent (including service charges, where applicable) and “Affordable Rent Units” shall be construed accordingly

**AHP:** means an organisation that is involved in the delivery and management and ownership of Affordable Housing which is registered or eligible for registration under chapter 3 part 2 of the Housing and Regeneration Act 2008 as shall be approved in writing by the Council which is capable of managing Affordable Housing and receiving grant from the Homes England

**AT:** means an Assured Tenancy or an Assured Shorthold Tenancy within the meaning of the Housing Act 1988

**Appeal:** means appeal reference number APP/B1930/W/23/3323099 submitted to the Secretary of State and given a start date of 12 June 2023

**Armed Services Member:** means a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force or a former member who was a member within the five (5) years prior to the purchase of the First Home, a divorced or separated spouse or civil partner of a member or a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service

**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 Council)

**Biodiversity Offsetting Scheme:** means a scheme to be approved by the Council which shall offset the loss of habitats on the Site and provide a net gain of 10% on the Biodiversity Pre-Development Site Value and which for the avoidance of doubt may include offsite measures and which shall include the following details:

- (a) The identity of an appropriate receptor site(s) at which the Biodiversity Offsetting Scheme is to be implemented if a 10% net gain on the Biodiversity Pre-Development Site Value cannot be delivered onsite;
- (b) a description and evaluation of habitat parcels to be managed, cross referenced to individual lines in the Biodiversity Metric;
- (c) Maps of all habitat parcels, cross-referenced to corresponding lines in the Biodiversity Metric.
- (d) Appropriate management options for achieving target condition for habitats as described in the approved Biodiversity Metric;

- (e) Preparation of an annual work schedule for each habitat parcel (to be applied as a 30 year work plan capable of being rolled forward in perpetuity);
- (f) Details of the body or organisation responsible for implementation of the plan;
- (g) Ongoing monitoring plan and remedial measures to ensure habitat condition targets are met;
- (h) Reporting plan and schedule for informing LPA of condition of habitat parcels for 30 years; and
- (i) If the Biodiversity Offsetting Scheme involves a financial contribution to a third party, this shall be in accordance with any applicable guidance from DEFRA and/or Natural England (or any other successor organisation responsible for monitoring and publishing guidance on biodiversity losses and gains resulting from development or land management change) at the date of the Biodiversity Offsetting Scheme as agreed by the Owner and the Council.

**Biodiversity Post-Development Site Value:** means the number of Biodiversity Units that shall be achieved as part of the Development (calculated in accordance with the Biodiversity Metric) such score to be approved by the Council as part of the Biodiversity Offsetting Scheme

**Biodiversity Pre-Development Site Value:** means 39.47 Habitat Units and 19.27 Hedgerow Units, being the biodiversity value of the Site prior to the Development and calculated as part of the Planning Application in accordance the Biodiversity Metric

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

**Charge:** means the mortgage dated 24th October 2016 and made between the Owner (1) and the Mortgagee (2)

**Chargee:** means any mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator) of the whole or any part of the Affordable Housing Units (excluding any First Homes)

**Childcare Contribution:** means the sum of £1,619 (one thousand six hundred and nineteen pounds) calculated in accordance with Development Mix or should the Development Mix change to be recalculated using the table at Schedule 9 (indexed linked as hereinafter provided) as a contribution towards increasing the capacity of 5-11 year old childcare facilities at Colney Heath school and/or provision serving the Development

**Cluster:** shall mean a group of Affordable Housing Units which does not have contiguous boundaries with another group of Affordable Housing Units

**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, demolition work, 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", "Commencement of Development" and "Commenced" shall be construed accordingly

**Compliance Certificate:** means the certificate issued by the Council confirming that a Dwelling is being disposed of as a First Home to a purchaser meeting the Eligibility Criteria (National) and unless paragraph 6.2 of Part 2 of Schedule 2 applies the Eligibility Criteria (Local)

**Completion:** means when a certificate of practical completion has been issued by the appointed architect, engineer or project manager or other suitably qualified party to the Owner confirming that the Development or the relevant part of the Development is complete to be put into use

**Construction:** the construction of any building forming part of the Development including footings or foundations and "Construct" and "Constructed" shall be construed accordingly

**County Council Contributions:** means the Childcare Contribution the Library Contribution the Primary Education Contribution the Secondary Education Contribution the Special Educational Needs and Disabilities Contribution the Sustainable Transport Contribution the Youth Contribution the Waste Service Recycling Contribution and the Waste Service Transfer Station Contribution

**CPT Index** means the Confederation of Passenger Transport Index published by the Confederation of Public Transport

**Decision Letter:** means the decision letter issued by the Secretary of State confirming whether or not the Appeal is allowed

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

**Development:** means the development of the Site with the demolition of existing house and stables and the construction of up to 150 dwellings including affordable and self-build and custom-housebuilding dwellings together with all ancillary works as permitted by the Planning Permission

**Development Mix:** means the following illustrative mix submitted with the Planning Application:

Size	Market*		Affordable homes to buy*		Affordable homes to rent**		Total
	%	Number	%	Number	%	Number	
1 bed	5%	5	25%	5	30%	10	20
2 bed	20%	19	40%	7	35%	12	38
3 bed	45%	44	25%	5	25%	9	58
4+ bed	30%	29	10%	2	10%	3	34
<b>Total</b>	-	97	-	19	-	34	150

The tenure terms set out in the table above reflect the terminology used with the submitted Application. Should alternative definitions/types of tenure of units be applicable in the future (e.g. at such time that Reserved Matters applications are submitted and/or as reflected in updated Hertfordshire County Council guidance) then they should be characterised and included as follows:

\* Tenure characteristics similar to open market dwellings and dwellings provided for sale that offers a route to ownership for those who could not achieve home ownership through the market (or other tenures which display these types of characteristics)

\*\* Tenure characteristics of 100% rented, reflecting needs assessed dwellings for which the rent is set below local market rents (or other tenures which display these types of characteristics)

**Development Standard:** means a standard to fully comply with the following:-

- (a) "Technical housing standards – nationally described space standards" published by the Department for Communities and Local Government in March 2015
- (b) all national construction standards and planning policy relating to design which may be published by the Secretary of State or by the Council from time to time
- (c) Part 2 of Secured by Design standards published by Police Crime Prevention Initiatives Limited
- (d) Optional requirement M4(2) of Building Regulations 2010 (Part M) (Accessible and Adaptable Dwellings)
- (e) and the same may be amended by written agreement of the parties in accordance with paragraph 5.1 of Part 2 of Schedule 2

**Discount Market Price:** means a sum which is the Market Value discounted by at least 30%

**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 and in the case of First Homes means a transfer of the

freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in a First Home other than:

- a letting or sub-letting in accordance with paragraph 7 of Part 2 of Schedule 2
- a transfer of the freehold interest in a First Home or land on which a First Home is to be provided before that First Home is made available for occupation except where the transfer is to a First Homes Owner
- an Exempt Disposal

and “Disposed” and “Disposing” shall be construed accordingly

**Dwelling:** means a dwelling (including a house flat or maisonette) to be constructed pursuant to the Planning Permission

**East of England Ambulance Service Trust Contribution:** means the sum calculated in accordance with the following formula:

$$A = B \times C \times D$$

Where A = EEAST Contribution

Where B = Population yield of the Development, calculated assuming 2.4 persons per Dwelling.

Where C = Rate of 0.19 (calculated using per head of population in Hertfordshire and West Essex 2020 of 1.5m and emergency activity volume in 2021/22 (288,262)).

Where D = Ambulance callout cost of £675 (calculated using EEAST 2021 data).

(indexed linked as hereinafter provided) as a contribution towards the creation of additional ambulance services to support the population arising from the Development

**Eligibility Criteria (National):** means criteria which are met in respect of a purchase of a First Home if:

- (a) the purchaser is a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer); and
- (b) the purchaser’s annual gross income (or in the case of a joint purchase, the joint purchasers’ joint annual gross income) does not exceed the Income Cap (National).

**Eligibility Criteria (Local):** means criteria (if any) published by the Council at the date of the relevant disposal of a First Home which are met in respect of a disposal of a First Home if:

- (a) the purchaser’s annual gross income (or in the case of a joint purchase, the joint purchasers’ joint annual gross income) does not exceed the Income Cap (Local) (if any); and

- (b) any or all of criteria (i) (ii) and (iii) below are met:
  - (i) the purchaser meets the Local Connection Criteria (or in the case of a joint purchase at least one of the joint purchasers meets the Local Connection Criteria); and/or
  - (ii) The purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) an Armed Services Member and/or
  - (iii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) a Key Worker

it being acknowledged that at the date of this agreement the Council has not prescribed any Eligibility Criteria (Local) in respect of the disposal of a First Home.

**Exempt Disposal:** means the Disposal of a First Home in one of the following circumstances:

- (a) a Disposal to a spouse or civil partner upon the death of the First Homes Owner
- (b) a Disposal to a named beneficiary under the terms of a will or under the rules of intestacy following the death of the First Homes Owner
- (c) Disposal to a former spouse or former civil partner of a First Homes Owner in accordance with the terms of a court order, divorce settlement or other legal agreement or order upon divorce, annulment or dissolution of the marriage or civil partnership or the making of a nullity, separation or presumption of death order
- (d) Disposal to a trustee in bankruptcy prior to sale of the relevant Dwelling (and for the avoidance of doubt paragraph 8 of Part 2 of Schedule 2 shall apply to such sale)

Provided that in each case other than (d) the person to whom the disposal is made complies with the terms of paragraph 7 of Part 2 of Schedule 2

**First Home:** means a Dwelling which may be disposed of as a freehold or (in the case of flats only) as a leasehold property to a First Time Buyer at the Discount Market Price and which on its first Disposal does not exceed the Price Cap.

**First Homes Mortgagee:** means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire a First Home including all such regulated entities which provide Shari'ah compliant finance for the purpose of acquiring a First Home

**First Homes Owner:** means the person or persons having the freehold or leasehold interest (as applicable) in a First Home other than:



- (a) the Owner; or
- (b) another developer or other entity to which the freehold interest or leasehold interest in a First Home or in the land on which a First Home is to be provided has been transferred before that First Home is made available and is disposed of for occupation as a First Home; or
- (c) the freehold a tenant or sub-tenant of a permitted letting under paragraph 7 of Part 2 of Schedule 2

**First Time Buyer:** means a first-time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003

**Head of Housing:** means the Council's Head of Housing for the time being and his agents

**Housing Allocations Policy:** means the housing allocation policy choice-based lettings of St Albans District City & District Council dated December 2021 or any housing allocations policy or scheme as shall supersede the aforementioned policy after the date of this Deed

**General Medical Services and General Practitioner Services Contribution:** means a contribution of £1,292 per Dwelling (indexed linked as hereinafter provided) to be used towards the expansion, reconfiguration, refurbishment, relocation, digitisation, or offsite storage of patient records of Burvill House Surgery and Northdown Road Surgery

**Income Cap (Local):** means a local income cap as may be published from time to time by the Council and is in force at the time of the relevant disposal of the First Home it being acknowledged that at the date of this agreement the Council has not set an Income Cap (Local)

**Income Cap (National):** means eighty thousand pounds (£80,000) or such other sum as may be published for this purpose from time to time by the Secretary of State and is in force at the time of the relevant disposal of the First Home

**Interest:** means interest at two percent above the base lending rate of HSBC Bank Plc from time to time

**Key Worker:** means such categories of employment as may be designated and published by the Council from time to time as the "First Homes Key Worker criteria" and is in operation at the time of the relevant disposal of the First Home and for the avoidance of doubt any such replacement criteria in operation at the time of the relevant disposal of the First Home shall be the "Key Worker" criteria which shall apply to that disposal it being acknowledged that at the date of this agreement the Council has not designated any categories of employment as Key Worker

**Leisure Contribution:** means the sum calculated in accordance with the following formula:

$$(A \times B) / 1,000 = C \times \text{Occupancy} = D$$

Where A = Local Standard of Provision – 82.58sqm per 1,000 population. This figure is based on the Councils Sport & Recreation Facilities Strategy (page 133, section 9, point 9.25).

Where B = Cost per sqm – £3,908. This figure is based on the re-development of Westminster Lodge Leisure Centre in 2012. The centre is 4862sqm in size and cost £19million to build under a tender process.

Where C = Contribution per person – £322.72.

Where D = Total contribution.

Occupancy – The Council will base its calculations for the net increase in on-site population on the following occupancy rates, which are taken from the latest available information from Hertfordshire County Council:

- 1 bed – 1.5 people
- 2 bed – 1.7 people
- 3 bed – 2.3 people
- 4 bed – 3 people
- 5+ bed – 4 people

(indexed linked as hereinafter provided) towards Roestock Scout Hut Improvements

**Library Contribution:** means the sum of £32,687 (thirty-two thousand six hundred and eighty-seven pounds) calculated in accordance with Development Mix or should the Development Mix change to be recalculated using the table at Schedule 9 (index linked as hereinafter provided) as a contribution towards increasing the capacity of Marshalswick Library and/or provision serving the Development

**Local Connection:** shall have the meaning given to it by the Housing Allocations Policy and in the case of First Homes means such local connection criteria as may be designated and published by the Council from time to time as its “First Homes Local Connection Criteria” and which is in operation at the time of the relevant disposal of the First Home and for the avoidance of doubt any such criteria or replacement criteria in operation at the time of the relevant disposal of the First Home shall be the “**Local Connection Criteria**” which shall apply to that disposal it being acknowledged that at the date of this agreement the Council has not designated any criteria as Local Connection Criteria and “Local Connection Criteria” 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 arm's length transaction after proper marketing wherein the parties had acted knowledgeably, prudently and without compulsion

**Market Value:** means the open market value as assessed by a Valuer of Dwelling as confirmed to the Council by the First Homes Owner and assessed in accordance with the RICS Valuation

Standards (January 2014 or any such replacement guidance issued by RICS) and for the avoidance of doubt shall not take into account the 30% discount in the valuation

**Marketing Period:** means a period of at least 12 months commencing on the date on which marketing commences in accordance with the Self-Build and Custom Housebuilding Scheme

**Monitoring Contribution** means the sum of six hundred and eighty pounds (£680) (index-linked) as hereinafter provided

**Natural England**" means the executive non-departmental public body sponsored by DEFRA (including any successor organisation)

**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 Market Units:** means Dwellings which are not Affordable Housing Units

**Open Space:** means a minimum of 1.84ha of public open space and which for the avoidance of doubt shall include a minimum of 270m<sup>2</sup> of formal children's play space

**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 any equipped play area(s) issued by an inspector registered on the Register of Play Inspectors International that confirms that the Open Space Land has been laid out in accordance with the approved Open Space Scheme

**Open Space Land:** means that part of the Site which is to be provided as Open Space

**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 the scheme for the long-term management and maintenance of the Open Space by a Open Space Management Company to be approved by the Council pursuant to paragraph 1.3 of Schedule 7 or such variation thereof as may be agreed by the Owner and the Council

**Open Space Programme:** means a programme for the provision of Open Space at the Development

**Open Space Scheme:** means the scheme for the laying out, landscaping, construction, installation and maintenance of the Open Space Land as Open Space to be approved by the Council pursuant to paragraph 1.1 of Schedule 7 or such variation thereof as may be agreed by the Owner and the Council

**Permitted Closure:** means the closure of the Open Space Land by the Management Company for the purposes of public safety, land management, special events or activities, maintenance and repair or such other closures as agreed in writing by the Council

**Plan:** means the plan annexed to this Deed

**Planning Application:** means the application for outline planning permission validated by the Council on 23 August 2022 and bearing the Council's reference number 5/2022/1988

**Planning Permission:** means the permission to be granted by way of approval of the Planning Application whether on appeal or otherwise or from any reserved matters submissions or resulting from any other planning application covering all or part of the Site for any of the uses comprised in the Planning Application whether granted by variation PROVIDED THAT if any form of development within the Site which individually or in combination with any other permission for development would lead to levels of development exceeding those set out in the Planning Application that development may be subject to additional planning obligations

**Practical Completion:** means the stage reached when the construction of a First Home is sufficiently complete that, where necessary, a certificate of practical completion can be issued and it can be Occupied

**Price Cap:** means the amount for which the First Home is sold after the application of the Discount Market Price which on its first Disposal shall not exceed Two Hundred and Fifty Thousand Pounds (£250,000) or such other amount as may be published from time to time by the Secretary of State

**Primary Education Contribution:** means the sum £1,157,013 (one million one hundred and fifty-seven thousand and thirteen pounds) calculated in accordance with Development Mix or should the Development Mix change to be recalculated using the table at Schedule 9 (index linked as hereinafter provided) as a contribution towards the expansion of Colney Heath Primary School and/or provision serving the Development

**Qualifying Person:** means a person or household in need of Affordable Housing identified in accordance with the provisions below:

- in the case of an Affordable Rented Unit a person accepted on to the St Albans Housing Register (from time to time) in accordance with the Housing Allocations Policy;
- in the case of a Shared Ownership Unit, a person who meets the eligibility criteria for shared ownership housing set by the Government from time to time and who is approved by the relevant Help to Buy Agency appointed by the Homes England for the area in which the Shared Ownership Unit is located

**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:

- 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 Council's area to commission or build a house to occupy as that individual's sole or main residence

**Reserved Matters Approvals:** means the approval of reserved matters pursuant to the Planning Permission

**RPI:** means the Retail Price Index being a price index calculated and published by the UK's Office of National Statistics which measures the change in the prices charged for goods and services bought for consumption in the UK

**SDLT:** means Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect

**Secondary Education Contribution:** means the sum of £1,266,848 (one million two hundred and sixty-six thousand eight hundred and forty eight pounds) calculated in accordance with Development Mix or should the Development Mix change to be recalculated using the table at Schedule 9 (index linked as hereinafter provided) as a contribution towards the expansion of Samuel Ryder Academy and/or provision serving the Development

**Secretary of State:** means the Secretary of State for Levelling Up, Housing and Communities from time to time appointed and includes any successor in function

**Self-Build and Custom Housebuilding:** means a Dwelling which meets the definition in the 2015 Act (as amended by the 2016 Housing and Planning Act) 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 of Schedule 6 of this Deed to enable construction of up to 10% (or such other percentage or number as is agreed in writing between the Owner and the Council) of the Open Market Units as Self-Build and/or Custom Housebuilding and "Self-Build and Custom Housebuilding Plot" shall be construed accordingly

**Self-Build and Custom Housebuilding Register:** means the Council's self-build and custom-build register maintained pursuant to section 1 of the 2015 Act

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

- (i) The indicative location of the individual Self-Build and/or Custom Housebuilding Plots which shall, subject to paragraph 1.5 of Schedule 6 of this Deed, secure that up to 10% of the Open Market Units shall be Self-Build and/or Custom Housebuilding Plots, (unless otherwise agreed with the Council);
- (ii) Details of the servicing arrangements for the Self-Build and/or Custom Housebuilding and how they shall be provided in a Serviced Condition;
- (iii) Details of how the Self-Build and/or Custom Housebuilding Plots shall be marketed and made available to those on the Self-Build and/or Custom Housebuilding Register

and which FOR THE AVOIDANCE OF DOUBT shall include provisions which allow the Self-Build and/or Custom Housebuilding Plots to be sold as Open Market Units in the event that the Self-Build and/or Custom Housebuilding Plots are not disposed of to those on the Self-Build and/or Custom Housebuilding Register within the Marketing Period

**Serviced Condition:** means having access from the relevant Self-Build and Custom-Housebuilding Plot to public highway or private accessway to an adoptable standard is provided along with utilities/services connection (including electricity, water and waste water) to the relevant Self-Build and Custom-Housebuilding Plot boundary

**Shared Ownership Lease:** means a lease in the form of the Homes England's model shared ownership lease and on terms that permit part purchase of the open market value of the equity in a unit together with rent payable for the open market rack rental value of the un-purchased percentage of the equity in the unit (or such other rent or form of lease approved in writing by the Council)

**Shared Ownership Unit:** means a unit of Affordable Housing to be made available by an AHP under a Shared Ownership Lease

**Site:** means the freehold property to the rear of 42 to 100 Tollgate Road Hertfordshire registered at the Land Registry with Title Absolute under the Title Numbers HD111757 and HD266436 all of which land is shown for identification purposes only edged red on the Plan

**Special Educational Needs and Disabilities Contribution:** means the sum of £158,171 (one hundred and fifty eight thousand one hundred and seventy one pounds) calculated in accordance with Development Mix or should the Development Mix change to be recalculated using the table at Schedule 9 (index linked as hereinafter provided) as a contribution towards providing additional Severe Learning Difficulty school places (West) through the relocation and expansion of Breakspeare School and/or provision serving the Development

**Sustainable Transport Contribution:** means the sum of £1,299,000 (one million two hundred and ninety nine thousand pounds) which shall be used towards public transport service improvements over a period of three years by 2 Peak Vehicle Requirement and Sunday Service

by supporting the existing service 305 and which shall include frequency enhancements) (indexed linked as hereinafter provided)

**Valuer:** means a Member or Fellow of the Royal Institution of Chartered Surveyors being a Registered Valuer appointed by the First Homes Owner and acting in an independent capacity

**Waste Service Recycling Centre Contribution:** means the sum of £46,062 (forty-six thousand and sixty two pounds) calculated in accordance with Development Mix or should the development mix change to be recalculated using the table at Schedule 9 (index linked as hereinafter provided) as a contribution towards increasing the capacity of the Recycling Centre at Potters Bar and/or provision serving the Development

**Waste Service Transfer Station Contribution:** means the sum of £8,829 (eight thousand eight hundred and twenty-nine pounds) (index linked as hereinafter provided) as a contribution towards increasing the capacity of Waterdale Transfer Station and/or provision serving the Development

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

**Youth Contribution:** means the sum of £40,927 (forty thousand nine hundred and twenty-seven pounds) calculated in accordance with Development Mix or should the Development Mix change to be recalculated using the table at Schedule 9 (index linked as hereinafter provided) as a contribution towards the re-provision of the St Albans Young People's Centre in a new facility and/or provision serving the Development

- 1.2 Clause headings shall not affect the interpretation of this deed.
- 1.3 Words of the masculine gender shall incorporate the feminine and neuter 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 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 entered into pursuant to Section 106 of the 1990 Act. To the extent that they fall within the terms of Section 106 of the 1990 Act the obligations contained in this Deed are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable by the Council and the County Council.

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

- 2.3 The Owner enters into the obligations for itself and its successors in title with the Council and the County Council to the intent that the obligations hereunder 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.

## **3 Conditionality**

- 3.1 This Deed is conditional upon:-

3.1.1 the Secretary of State (through his Inspector or otherwise) granting the Planning Permission; and

3.1.2 the Commencement of Development

save for the provisions of Clauses 4.3.5 (Costs), 9.2 (Local Land Charge) and 9.11 (Change of Ownership) which shall come into effect immediately upon completion of this Deed

- 3.2 If the Secretary of State or his Inspector expressly states in the Decision Letter that a particular obligation contained in this Agreement does not satisfy the tests of Regulation 122 of the Community Infrastructure Levy Regulations 2010 then such obligation shall not be enforceable by the Council or the County Council but for the avoidance of doubt all other obligations shall remain enforceable by the Council and County Council as applicable.

## **4 Owners covenants**

- 4.1 The Owner covenants with the County Council to observe and perform the covenants restrictions stipulations and obligations contained in Schedules 1 and 4 hereto:-

- 4.2 The Owner covenants with the Council to observe and perform the covenants restrictions stipulations and obligations contained in Schedule 2, 3, 5 and 6 hereto

- 4.3 The Owner covenants with the Council and the County Council:



- 4.3.1 to give the County Council and the Council no less than five (5) 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 8 hereto
- 4.3.2 to give the County Council and the Council no less than five (5) Working Days notice of the Occupation of the Development such notice to be in writing using the proforma set out in Schedule 8 hereto
- 4.3.3 to give the County Council and the Council no less than five (5) Working Days notice of the Occupation of 50% of the Development or of the 75<sup>th</sup> Dwelling, whichever is sooner, such notice to be in writing using the proforma set out in Schedule 8 hereto
- 4.3.4 to give the County Council and the Council no less than five (5) Working Days notice of Completion such notice to be in writing using the proforma set out in Schedule 8 hereto
- 4.3.5 upon completion of this Deed pay to the Council and the County Council their costs in connection with the preparation negotiation and completion of this Deed.

## **5 County Council Covenants**

- 5.1 The County Council hereby covenants with the Owner to use the County Council Contributions for the purpose(s) specified in this Deed.
- 5.2 The County Council further covenants that it will pay to the party who paid the County Council Contributions a sum equal to the amount of any payment made to the County Council under this Deed which has not been expended allocated and/or approved in accordance with the provisions of this Deed within ten years of the date of receipt by the County Council of notice of Completion pursuant to clause 4.3.4

## **6 Council covenants**

- 6.1 The Council hereby covenants with the Owner to use the Leisure Contribution, East of England Ambulance Services Trust Contribution and General Medical Services and General Practitioner Services Contribution for the purpose(s) specified in this Deed.
- 6.2 The Council further covenants with the Owner that it will pay to the party who paid the Leisure Contribution, East of England Ambulance Services Trust Contribution and General Medical Services and General Practitioner Services Contribution a sum equal to the amount of the Leisure Contribution, East of England Ambulance Services Trust Contribution and General Medical Services and General Practitioner Services Contribution which has not been expended in accordance with the provisions of this Deed within ten (10) years of the date of receipt by the Council of such payment together with Interest on such unexpended sum from the date of receipt to the date of payment.
- 6.3 The Council covenants with the Owner that within 20 Working Days of receipt of the East of England Ambulance Service Trust Contribution from the Owner the Council shall seek a binding

commitment from the East of England Ambulance Service (or an equivalent body) to use the East of England Ambulance Service Trust Contribution for the purposes set out in this Deed and upon receipt of such binding commitment the Council shall pay the East of England Ambulance Service Trust Contribution to the East of England Ambulance Service (or an equivalent body) that have provided such binding commitment as the Council in its discretion determines suitable and for the avoidance of doubt if any or all of the East of England Ambulance Service Trust Contribution is not paid to the East of England Ambulance Service (or an equivalent body) referred to above it shall be returned to the payer of the East of England Ambulance Service Trust Contribution

- 6.4 The Council covenants with the Owner that within 20 Working Days of receipt of the General Medical Services and General Practitioner Services Contribution from the Owner the Council shall seek a binding commitment from NHS Hertfordshire and West Essex ICB (or an equivalent body) to use the General Medical Services and General Practitioner Services Contribution for the purposes set out in this Deed and upon receipt of such binding commitment the Council shall pay the General Medical Services and General Practitioner Services Contribution to the NHS Hertfordshire and West Essex ICB (or an equivalent body) that have provided such binding commitment as the Council in its discretion determines suitable and for the avoidance of doubt if any or all of the General Medical Services and General Practitioner Services Contribution is not paid to the NHS Hertfordshire and West Essex ICB (or an equivalent body) referred to above it shall be returned to the payer of the General Medical Services and General Practitioner Services Contribution

## **7 Expenditure in advance of receipt of contributions**

- 7.1 If prior to the receipt of any of the County Council Contributions the County Council incurs any expenditure in providing additional childcare education libraries youth highways and waste facilities as the case may be the need for which arises from or in anticipation of the Development then the County Council as the case may be may immediately following receipt of relevant contribution deduct from that contribution such expenditure incurred.

## **8 Indexation**

- 8.1 The Leisure Contribution, the East of England Ambulance Service Trust Contribution and General Medical Services and General Practitioner Services Contribution and the County Council Contributions save for the Waste Service Transfer Station Contribution and Sustainable Transport Contribution shall each be index linked by reference to the BCIS Index figure for the first quarter of 2022 to the figure applicable to the quarter in which the contribution is paid.
- 8.2 The County Council Contributions save for the Waste Service Transfer Station Contribution and Sustainable Transport Contribution shall be increased in accordance with any change in the BCIS 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;

C is the BCIS Index for the date upon which the interim payment described below is actually paid and;

D D is the BCIS figure specified in clause 8.1

Where  $C \div D$  is equal to or greater than 1

8.3 The Waste Service Transfer Station Contribution shall be increased in accordance with any change in the BCIS 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;

C is the BCIS Index for the date upon which the interim payment described below is actually paid and;

D D is the BCIS figure for the third quarter of 2022

Where  $C \div D$  is equal to or greater than 1

8.4 The Sustainable Transport Contribution shall be index-linked to increases in the CPT Index from April 2023 to the date on which the Sustainable Transport Contribution is paid.

8.5 The Travel Plan Evaluation and Support Contribution and Sustainable Travel Voucher shall be index-linked to increases in the RPI Index from May 2014 to the date on which the Travel Plan Evaluation and Support Contribution is paid.

8.6 The Monitoring Contribution shall be index-linked by reference to any increase in the RPI Index from the RPI Index figure of July 2021 to the finalised figure applicable to the month in which the Monitoring Contribution is paid

8.7 Where any sum to be paid to the Council or the County Council under the terms of this Deed is required to be indexed then an interim payment shall initially be made based on the latest available forecast figure (or figures as the case may be) at the date of payment and any payment or payments by way of adjustment shall be made within ten (10) Working Days of written demand by the Council or County Council or the payer of the interim payment (as the case may be) once the relevant indices have been finalised.

8.8 Any money payable to the County Council under this Deed shall be paid in full without deduction or set-off and if not paid on the date due shall in every case bear Interest on so much thereof as shall from time to time be due and owing from the date the payment was due to the date of actual payment.

## **9 Miscellaneous**

9.1 The Owner hereby warrants that it is the owner of the freehold of the Site and that no other party has an interest in the legal title to the Site save as disclosed at the Land Registry or in

writing to the Council and the Chief Legal Officer of the County Council prior to completion of this Deed.

- 9.2 This Deed shall be registered as a local land charge by the Council.
- 9.3 Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 nothing in this Deed confers or purports to confer any right to enforce any of the terms and provisions herein on any person who is not a party hereto or a successor in title or a member of a group company or a statutory successor to a party hereto.
- 9.4 Any notice to the parties hereto under this Deed shall be deemed to be sufficiently served if delivered personally or sent by recorded delivery service to the following officials/persons at the respective addresses hereinafter specified:

In respect of the Owner:	In respect of the Council:	In respect of the County Council:	In respect of the Developer:	In respect of the Mortgagee:
xxxxxxx	Strategic Director: Community and Place Delivery, St Albans City and District Council, The Council Offices, Civic Centre, St Peter's Street, St Albans, Hertfordshire, AL1 3JE (5/2022/1988)	The Chief Legal Officer, Hertfordshire County Council, County Hall, Pegs Lane, Hertford (ref: 020668)	Vistry Homes Limited, 11 Tower View, Kings Hill, West Malling, ME19 4UY	xxxxx

- 9.5 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provision of this Deed.
- 9.6 Nothing in this Deed shall be construed as imposing a contractual obligation upon the Council as to the issue of the Planning Permission or as restricting the exercise by the Council or the County Council of any powers exercisable by them respectively under the 1990 Act or under any other Act or authority.
- 9.7 No waiver whether express or implied by the County Council or Council of any breach or default by the Owner in performing or observing any of the obligations contained herein shall constitute a continuing waiver and no such waiver shall prevent the County Council or the Council from enforcing the relevant obligations or from acting upon any subsequent breach or default.

- 9.8 This Deed shall cease to have any effect (insofar only as it has not been complied with) if the Planning Permission shall be quashed revoked or otherwise withdrawn or if the Commencement Date has not occurred in accordance with section 56 of the 1990 Act before the expiration of the period specified in the Planning Permission.
- 9.9 Where the approval, consent, expression of satisfaction, agreement, confirmation or certification of the Council or County Council or any officer of the Council or County Council is required for any purpose under or 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.
- 9.10 Without prejudice to the Council's and the County Council's statutory rights the Owner hereby grants until such time as all of the obligations contained here have been complied with the Council and/or the County Council or any person duly authorised or instructed by it an irrevocable licence at all reasonable times to enter the such parts of the Site to inspect any of the works to be carried out for the purposes of the Development and any materials to be used in carrying out those works for any purpose directly or indirectly connected with or contemplated by this Deed PROVIDED THAT the Council and the County Council and any person duly authorised or instructed by them shall comply with all on-site health and safety requirements at all times
- 9.11 Save for disposals of individual Dwellings the Owner shall give the Council written notice within 15 Working Days of such disposal of any change of interests in the Site occurring before all of 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 Site purchased by reference to a plan.
- 9.12 The obligations in this Deed (other than those set out in Schedules 1 and 4 which shall remain enforceable until fully complied with) will not be enforceable against owners or occupiers of individual Dwellings nor against those deriving title from them nor their mortgagees or charges save for where there are restrictions on the Occupation of the Dwellings then such restrictions on Occupation shall bind the owners occupiers or tenants of the Dwellings who shall not Occupy any Dwelling in breach of such restrictions
- 9.13 No planning obligations contained in this Deed shall be binding on any part of the Site held by any statutory utilities for their operational purposes
- 9.14 Any future mortgagee or chargee agrees that the security of the charge over the Site shall take effect subject to this Deed PROVIDED THAT the mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.
- 9.15 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission or any approval of reserved matters pursuant to the Planning Permission) granted (whether or not on appeal) after the date of this Deed

## **10 Mortgagee's Consent**

The Mortgagee hereby consents to the Owner entering into this Deed and agrees that the security of the Charge over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

## **11 Developer Consent**

The Developer hereby consents to the execution of this DEED by the Owner and agrees that the Site shall be bound by the restrictions and obligations contained in this Deed and the Developer agrees to observe and perform the restrictions and obligations contained in this Deed provided that the Developer shall have no liability under this Agreement unless it becomes an Owner of the Site.

## **12 Release**

No person shall be liable for any breach of a covenant, restriction or obligation contained in this deed after parting with all of its interest in the Site, except in respect of any breach subsisting before parting with that interest.

## **13 Determination of Disputes**

In the event of there being a dispute arising out of this Deed or the subject matter thereof the following provisions may apply:

- 13.1 The parties shall use their reasonable endeavours to resolve the dispute by agreement
- 13.2 If agreement cannot be reached the matter in dispute may be referred to and settled by some independent and fit person holding appropriate professional qualifications to be appointed (in the absence of agreement) by the president of the Royal Institution of Chartered Surveyors (or equivalent person) for the time being of the professional body chiefly relevant in England to such qualifications and such person shall act as an expert on the application of either party after giving notice in writing to the other party to this Deed
- 13.3 The person to be appointed pursuant to clause 13.2 shall be a person having ten years or more post qualification experience of projects comprising works of the scale and nature of the Development
- 13.4 Reference to the expert shall be on terms that determination shall take place within 28 working days of the expert accepting his instructions
- 13.5 The expert shall have the power to award costs of the determination in favour of either party to the dispute at the expense of the other party and failing such determination such costs shall be borne by the parties in equal shares

- 13.6 The expert shall be limited in his findings to the matter in dispute referred to him and shall provide written reasons for his decision
- 13.7 The findings of the expert shall (other than in the case of a manifest material error) be final and binding on the parties to the dispute
- 13.8 For the avoidance of doubt references to 'party' or 'parties' in this clause 13 exclude the County Council and the County Council shall not be required to submit to or be bound by the provisions of Clauses 13.1 – 13.7

#### **14 Planning Consents Granted Pursuant to Section 73 of the 1990 Act**

- 14.1 In the event that any new planning permission(s) are granted by the Council pursuant to Section 73 of the 1990 Act (as amended) and unless otherwise agreed between the Council and the County Council, with effect from the date that any new planning permission is granted pursuant to Section 73 of the 1990 Act (as amended):
- 14.2 The obligations in this Agreement shall (in addition to continuing to bind the Site in respect of the Planning Permission) relate to and bind all subsequent planning permission(s) in respect of the Site granted pursuant to Section 73 of the 1990 Act and the Site itself without the automatic need to enter into any subsequent deed of variation or new agreement pursuant to Section 106 of the 1990 Act;
- 14.3 The definitions of Planning Application, Development and Planning Permission in this Agreement shall be construed to include references to any applications under Section 73 of the 1990 Act, the planning permission(s) granted thereunder and the development permitted by such subsequent planning permission(s); and
- 14.4 This Agreement shall be endorsed with the following words in respect of any future Section 73 application:

*"The obligations in this Agreement relate to and bind the Site in respect of which a new planning permission referenced [ ] has been granted pursuant to Section 73 of the Town and Country Planning Act 1990 (as amended)"*

**provided that** nothing in this clause shall fetter the discretion of the Council in determining any application(s) under Section 73 of the 1990 Act or of the Council or the County the appropriate nature and/or quantum of Section 106 obligations in so far as they are materially different to those contained in this Agreement and required pursuant to a determination under Section 73 of the 1990 Act whether by way of a new deed or supplemental deed pursuant to Section 106A of the 1990 Act

#### **15 Value Added Tax**

- 15.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any valued added tax properly payable.

**16 Jurisdiction**

This Deed is governed by and interpreted in accordance with the law of England

IN WITNESS whereof the parties hereto have executed this Deed by the same remains undelivered until the day and year first before written



## Schedule 1

### County Council Contributions

The Owner covenants with the County Council as follows:

#### **1 Childcare contribution**

- 1.1 To pay the Childcare Contribution to the County Council prior to the Commencement Date.
- 1.2 Not to Commence the Development until the Childcare Contribution has been paid in accordance with paragraph 1.1 of this Schedule.

#### **2 Library Contribution**

- 2.1 To pay the Library Contribution to the County Council prior to the Commencement Date.
- 2.2 Not to Commence the Development until the Library Contribution has been paid in accordance with paragraph 2.1 of this Schedule.

#### **3 Monitoring Contribution**

- 3.1 To pay the Monitoring Contribution to the County Council prior to the Commencement Date as a contribution to be allocated to and spent by the County Council towards the costs of monitoring and administering any obligations required pursuant to the Planning Permission
- 3.2 Not to Commence nor cause nor permit Commencement until the Monitoring Contribution has been paid to the County Council in accordance with paragraph 3.1 of this Schedule

#### **4 Primary Education Contribution**

- 4.1 To pay 50% of the Primary Education Contribution to the County Council prior to the Commencement Date
- 4.2 Not to Commence the Development until 50% of the Primary Education Contribution has been paid in accordance with paragraph 4.1 of this Schedule.
- 4.3 To pay the remaining 50% of the Primary Education Contribution to the County Council prior to the Occupation of 50% the Dwellings.
- 4.4 Not to Occupy more than 50% of the Dwellings until the Primary Education Contribution has been paid in accordance with paragraph 4.3 of this Schedule.

#### **5 Secondary Education Contribution**

- 5.1 To pay 50% of the Secondary Education Contribution to the County Council prior to the Commencement Date
- 5.2 Not to Commence the Development until 50% of the Secondary Education Contribution has been paid in accordance with paragraph 5.1 of this Schedule.

5.3 To pay the remaining 50% of the Secondary Education Contribution to the County Council prior to the Occupation of more than 50% of the Dwellings

5.4 Not to Occupy more than 50% of the Dwellings until the Secondary Education Contribution has been paid in accordance with paragraph 5.3 of this Schedule

## **6 Special Educational Needs and Disabilities Contribution**

6.1 To pay the Special Educational Needs and Disabilities Contribution to the County Council prior to the Commencement Date.

6.2 Not to Commence the Development until the Special Educational Needs and Disabilities Contribution has been paid in accordance with paragraph 6.1 of this Schedule.

## **7 Sustainable Transport Contribution**

7.1 To pay 50% of the Sustainable Transport Contribution to the County Council prior to the Commencement Date

7.2 Not to Commence Development until 50% of the Sustainable Transport Contribution has been paid in accordance with paragraph 7.1 of this Schedule.

7.3 To pay 50% of the Sustainable Transport Contribution to the County Council prior to Occupation

7.4 Not to Occupy until the Sustainable Transport Contribution has been paid in accordance with paragraph 7.3 of this Schedule.

## **8 Waste Service Recycling Centre Contribution**

8.1 To pay the Waste Service Recycling Centre Contribution to the County Council prior to the Commencement Date

8.2 Not to Commence nor cause nor permit Commencement until the Waste Service Recycling Centre Contribution has been paid to the County Council in accordance with paragraph 8.1 of this Schedule

## **9 Waste Service Transfer Station Contribution**

9.1 To pay the Waste Service Transfer Station Contribution to the County Council prior to the Commencement Date

9.2 Not to Commence nor cause nor permit Commencement until the Waste Service Transfer Station Contribution has been paid to the County Council in accordance with paragraph 9.1 of this Schedule

## **10 Youth Contribution**

10.1 To pay the Youth Contribution to the Council prior to the Commencement Date.

10.2 Not to Commence the Development until the Youth Contribution has been paid in accordance with paragraph 10.1 of this Schedule.

## Schedule 2 - Affordable Housing

### Part 1

The Owner covenants with the Council as follows:

#### **1 Affordable Housing Scheme**

- 1.1 To submit an Affordable Housing Scheme to the Council for approval prior to the Commencement Date and not to Commence Development until the Affordable Housing Scheme has been approved by the Council in writing such approval not to be unreasonably withheld or delayed and PROVIDED THAT in the event that the Council does not approve the Affordable Housing Scheme within 20 Working Days of receipt the Affordable Housing Scheme shall be deemed approved

#### **2 Construction**

- 2.1 To construct the Affordable Housing Units in accordance with the approved Affordable Housing Scheme and Affordable Housing Mix and to meet the standards contained in the Technical Housing Standards -Nationally Described Space Standard.
- 2.2 To keep the Council informed of all key stages in the construction of the Affordable Housing and in particular shall forthwith provide the Council with written confirmation of the practical completion of the Affordable Housing.

#### **3 Occupation**

- 3.1 No more than 50% of the Open Market Units shall be Occupied until:
- 3.1.1 all of the Affordable Housing Units have been constructed in accordance with the Planning Permission and made ready for Occupation and written notification of such has been received by the Council; and
- 3.1.2 those Affordable Housing Units (save for the First Home) have been transferred to an AHP.
- 3.2 Subject to paragraph 4 below the Owner shall not Occupy or permit each Shared Ownership Unit to be Occupied unless and until in respect of that Shared Ownership Unit the AHP referred to in paragraph 3.1.2 above has entered into a Shared Ownership Lease to a Qualifying Person with a Local Connection.
- 3.3 Subject to paragraph 4 below the Affordable Rent Units shall not be Occupied otherwise than using an AT (or other approved tenancy agreement as agreed in writing by the Council)
- 3.4 the Owner agrees with the Council to use reasonable endeavours to ensure that within 12 weeks of practical completion of any Affordable Rent Unit or within 12 weeks of any Affordable Rent Unit becoming vacant (whatever the reason for the vacancy) ATs (or other approved

tenancies) are completed with either existing tenants or persons that have been approved by the AHP or nominated by the Head of Housing

- 3.5 if there are more applicants than Affordable Rent Units available, the available Affordable Rent Units will be allocated in accordance with the Housing Allocation Policy.

#### **4 Chargee provision**

- 4.1 The Affordable Housing (save for First Homes) shall not be used for any purpose other than for Affordable Housing PROVIDED ALWAYS THAT the provisions in this Schedule 2:

4.1.1 shall not bind any Chargee or any persons or bodies deriving title through such Chargee PROVIDED THAT:

- (a) such Chargee shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Units to another registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
- (b) if such disposal has not completed within the three month period, the Chargee shall be entitled to dispose of the Affordable Housing Units free from the Affordable Housing obligations in this Schedule 2 which shall determine absolutely

4.1.2 shall cease to bind an Affordable Housing Unit where any person acquires the freehold or leasehold interest in respect of that Affordable Housing Unit pursuant to a right to buy or right to acquire or equivalent right; or

4.1.3 shall cease to bind an Affordable Housing Unit where any person acquires 100% of the equity in that Affordable Housing Unit

and for the avoidance of doubt, this paragraph shall extend to include the mortgagees, chargees and successors in title to those set out in paragraphs 4.1.1 to 4.1.3 above.

### **Part 2 – First Homes**

#### **1 Obligations**

1.1 Unless otherwise agreed in writing by the Council, the Owner for and on behalf of itself and its successors in title to the Site with the intention that the following provisions shall bind the Site and every part of it into whosoever's hands it may come covenants with the Council as below save that

1.2 paragraphs 2, 3, 4 and 5 of this Part 2 shall not apply to a First Homes Owner;

1.3 paragraphs 6 and 7 of this Part 2 apply as set out therein but and for the avoidance of doubt where a First Home is owned by a First Homes Owner they shall apply to that First Homes Owner only in respect of the First Home owned by that First Homes Owner; and

1.4 Paragraph 8 of this Part 2 applies as set out therein

## **2 Quantum of First Homes**

2.1 25% of the Affordable Housing Units on the Site (rounded up or down to the nearest whole Dwelling) shall be identified reserved and set aside as First Homes in accordance with the approved Affordable Housing Scheme and shall be provided and retained as First Homes in perpetuity subject to the terms of this Schedule.

2.2 Unless otherwise agreed in writing by the Council 25% of the total number of the Affordable Housing Units in each residential phase (rounded up or down to the nearest whole Dwelling) shall be identified reserved and set aside as First Homes and shall be provided and retained as First Homes in perpetuity subject to the terms of this Part 2 of this Schedule in accordance with the approved Affordable Housing Scheme relevant to that residential phase.

## **3 Clustering**

3.1 The First Homes shall not be visually distinguishable from the Open Market Units based upon their external appearance;

3.2 The internal specification of the First Homes shall not by reason of their being First Homes be inferior to the internal specification of the equivalent Open Market Units but, subject to that requirement, variations to the internal specifications of the First Homes shall be permitted

3.3 Clusters of houses shall not exceed 15 Affordable Housing Units;

3.4 Clusters of flats in blocks shall not exceed 15 Affordable Housing Units;

## **4 Type and Distribution**

The mix of First Homes provided within the Site shall be in accordance with

4.1 the Affordable Housing Mix; and

4.2 the distribution in the Affordable Housing Scheme

## **5 Development Standard**

All First Homes shall be constructed to:-

5.1 the Development Standard current at the time of the relevant Reserved Matters Approval; and

5.2 no less than the standard applied to the Open Market Units.

## 6 Delivery Mechanism

- 6.1 The First Homes shall be marketed for sale and shall only be sold (whether on a first or any subsequent sale) as First Homes to a person or person(s) meeting:
- 6.1.1 the Eligibility Criteria (National); and
  - 6.1.2 the Eligibility Criteria (Local) (if any).
- 6.2 If after a First Home has been actively marketed for 3 months (such period to expire no earlier than three (3) months prior to Practical Completion) it has not been possible to find a willing purchaser who meets the Eligibility Criteria (Local) (if any), paragraph 6.1.2 above shall cease to apply.
- 6.3 Subject to paragraphs 6.6 to 6.10 below, no First Home shall be Disposed of (whether on a first or any subsequent sale) unless not less than 50% of the purchase price is funded by a first mortgage or other home purchase plan with a First Homes Mortgagee
- 6.4 No First Home shall be Disposed of (whether on a first or any subsequent sale) unless and until:
- 6.4.1 The Council has been provided with evidence that:
    - 6.4.1.1 the intended purchaser meets the Eligibility Criteria (National) and unless paragraph 6.2 applies meets the Eligibility Criteria (Local) (if any)
    - 6.4.1.2 the Dwelling is being Disposed of as a First Home at the Discount Market Price and
    - 6.4.1.3 the transfer of the First Home includes:
      - (a) a definition of the "Council" which shall be
      - (b) a definition of "First Homes Provisions" in the following terms:

"means the provisions set out in Part 2 of Schedule 2 of the S106 Agreement a copy of which is attached hereto as the Annexure."
      - (c) A definition of "S106 Agreement" means the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated [ ] made between (1) Hertfordshire County Council (2) the Council (3) Xxxxxx and Xxxxxx (4) Xxxx Bank PLC and (5) Vistry Homes Limited
      - (d) a provision that the Property is sold subject to and with the benefit of the First Homes Provisions and the Transferee acknowledges that it may not transfer or otherwise Dispose of the Property or any part of it other than in accordance with the First Homes Provisions

(e) a copy of the First Homes Provisions in an Annexure

6.4.2 The Council has issued the Compliance Certificate and the Council hereby covenants that it shall issue the Compliance Certificate within twenty eight (28) days of being provided with evidence sufficient to satisfy it that the requirements of paragraphs 6.3 and 6.4.1 have been met

6.5 On the first Disposal of each and every First Home to apply to the Chief Land Registrar pursuant to Rule 91 of and Schedule 4 to the Land Registration Rules 2003 for the entry on the register of the title of that First Home of the following restriction:

*"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by [Local Authority] of [address] or their conveyancer that the provisions of clause XX (the First Homes provision) of the Transfer dated [Date] referred to in the Charges Register have been complied with or that they do not apply to the disposition"*

6.6 The owner of a First Home (which for the purposes of this clause shall include the Developer and any First Homes Owner) may apply to the Council to Dispose of it other than as a First Home on the grounds that either:

6.6.1 the Dwelling has been actively marketed as a First Home for six (6) months in accordance with Clauses 6.1 and 6.2 above (and in the case of a first Disposal the six (6) months shall be calculated from a date no earlier than six (6) months prior to Practical Completion) and all reasonable endeavours have been made to Dispose of the Dwelling as a First Home but it has not been possible to Dispose of that Dwelling as a First Home in accordance with paragraphs 6.3 and 6.4.1 above; or

6.6.2 requiring the First Homes Owner to undertake active marketing for the period specified in paragraph 6.6.1 before being able to Dispose of the Dwelling other than as a First Home would be likely to cause the First Homes Owner undue hardship

6.7 Upon receipt of an application served in accordance with paragraph 6.6 the Council shall have the right (but shall not be required) to direct that the relevant Dwelling is disposed of to it at the Discount Market Price

6.8 If the Council is satisfied that either of the grounds in paragraph 6.6 above have been made out it shall confirm in writing within twenty eight (28) days of receipt of the written request made in accordance with paragraph 6.6 that the relevant Dwelling may be Disposed of:

6.8.1 to the Council at the Discount Market Price; or

6.8.2 (if the Council confirms that it does not wish to acquire the relevant Dwelling) other than as a First Home



and on the issue of that written confirmation the obligations in this Deed which apply to First Homes shall cease to bind and shall no longer affect that Dwelling apart from paragraph 6.10 which shall cease to apply on receipt of payment by the Council where the relevant Dwelling is disposed of other than as a First Home

- 6.9 If the Council does not wish to acquire the relevant Dwelling itself and is not satisfied that either of the grounds in paragraph 6.6 above have been made out then it shall within twenty eight (28) days of receipt of the written request made in accordance with paragraph 6.6 serve notice on the owner setting out the further steps it requires the owner to take to secure the Disposal of a Dwelling as a First Home and the timescale (which shall be no longer than six (6) months). If at the end of that period the owner has been unable to Dispose of the Dwelling as a First Home he may serve notice on the Council in accordance with paragraph 6.6 following which the Council must within 28 days issue confirmation in writing that the Dwelling may be Disposed of other than as a First Home
- 6.10 Where a Dwelling is Disposed of other than as a First Home or to the Council at the Discount Market Price in accordance with paragraphs 6.8 or 6.9 above the Owner of the First Home shall pay to the Council forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution
- 6.11 Upon receipt of the Additional First Homes Contribution the Council shall:
- 6.11.1 within twenty (20) Working Days of such receipt, provide a completed application to enable the removal of the restriction on the title set out in paragraph 6.5 where such restriction has previously been registered against the relevant title
- 6.11.2 apply all monies received towards the provision of Affordable Housing
- 6.12 Any person who purchases a First Home free of the restrictions in this Schedule 2 of this Deed pursuant to the provisions in paragraphs 6.9 and 6.10 shall not be liable to pay the Additional First Homes Contribution to the Council.

## **7 Use**

Each First Home shall be used only as the main residence of the First Homes Owner and shall not be let, sub-let or otherwise Disposed of other than in accordance with the terms of this Deed PROVIDED THAT letting or sub-letting shall be permitted in accordance with paragraphs 7.1 – 7.4 below.

- 7.1 A First Homes Owner may let or sub-let their First Home for a fixed term of no more than two (2) years, provided that the First Homes Owner notifies the Council in writing before the First Home is Occupied by the prospective tenant or sub-tenant. A First Homes Owner may let or sub-let their First Home pursuant to this paragraph more than once during that First Homes Owner's period of ownership, but the aggregate of such lettings or sub-lettings during a First Homes Owner's period of ownership may not exceed two (2) years.

7.2 A First Homes Owner may let or sub-let their First Home for any period provided that the First Homes Owner notifies the Council and the Council consents in writing to the proposed letting or sub-letting. The Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of circumstances (a) – (f) below:

- (a) the First Homes Owner is required to live in accommodation other than their First Home for the duration of the letting or sub-letting for the purposes of employment;
- (b) the First Homes Owner is an active Armed Services Member and is to be deployed elsewhere for the duration of the letting or sub-letting;
- (c) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;
- (d) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;
- (e) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and
- (f) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person.

7.3 A letting or sub-letting permitted pursuant to paragraph 7.1 or 7.2 must be by way of a written lease or sub-lease (as the case may be) of the whole of the First Home on terms which expressly prohibit any further sub-letting.

7.4 Nothing in this paragraph 7 prevents a First Homes Owner from renting a room within their First Home or from renting their First Home as temporary sleeping accommodation provided that the First Home remains at all times the First Home Owner's main residence

## **8 First Homes Mortgagee Exclusion**

The obligations in paragraphs 1-7 of this Part 2 of Schedule 2 in relation to First Homes shall not apply to any First Homes Mortgagee or any receiver (including an administrative receiver appointed by such First Homes Mortgagee or any other person appointed under any security documentation to enable such First Homes Mortgagee to realise its security or any administrator (howsoever appointed (each a Receiver)) of any individual First Home or any persons or bodies deriving title through such First Homes Mortgagee or Receiver PROVIDED THAT:

8.1 Such First Homes Mortgagee or Receiver shall first give written notice to the Council of its intention to Dispose of the relevant First Home; and

8.2 once notice of intention to Dispose of the relevant First Home has been given by the First Homes Mortgagee or Receiver to the Council the First Homes Mortgagee or Receiver shall be free to sell that First Home at its full Market Value and subject only to paragraph 8.3

- 8.3 following the Disposal of the relevant First Home the First Homes Mortgagee or Receiver shall following the deduction of the amount due and outstanding under the relevant security documentation including all accrued principal monies, interest and reasonable costs and expenses pay to the Council the Additional First Homes Contribution.
- 8.4 following receipt of notification of the Disposal of the relevant First Home the Council shall:
- 8.4.1 forthwith issue a completed application to the purchaser of that Dwelling to enable the removal of the restriction on the title set out in paragraph 6.5; and
- 8.4.2 apply all such monies received towards the provision of Affordable Housing

### **Schedule 3– Council Contributions**

The Owner covenants with the Council as follows:

#### **1 Leisure Contribution**

- 1.1 To pay the Leisure Contribution to the Council prior to the Commencement Date.
- 1.2 Not to Commence the Development until the Leisure Contribution has been paid in accordance with paragraph 1.1 of this Schedule.

#### **2 East of England Ambulance Service Trust Contribution and General Medical Services and General Practitioner Services Contribution**

- 2.1 To pay the East of England Ambulance Service Trust Contribution and General Medical Services and General Practitioner Services Contribution to the Council prior to the Commencement Date
- 2.2 Not to Commence the Development until the East of England Ambulance Service Trust Contribution and General Medical Services and General Practitioner Services Contribution have been paid to the Council in accordance with paragraph 2.1 of this Schedule

## Schedule 4 – Travel Plan

In this Schedule the following definitions shall have the following meanings:

**“Baseline Survey Collection Date”** means the date on which baseline surveys are collected pursuant to paragraph 2.3

**“Resident Travel Pack”** means a welcome pack for occupants of the Dwellings containing all of the details of sustainable travel options in the local area;

**“Sustainable Travel Voucher”** means a voucher incentive tangible or web hosted for the value of fifty pounds (£50) per flat unit or one hundred pounds (£100) per house unit forming part of the Development (index linked as hereinafter provided) to incentivise the uptake of public transport cycling or walking as appropriate to the Development;

**“Travel Plan”** means the travel plan to be submitted by the Owner pursuant to paragraph 2.1.1 of this Schedule and approved by the County Council;

**“Travel Plan Annual Review”** means a data collection study reviewing and monitoring the provisions of the Travel Plan (as more fully set out therein) carried out annually in accordance with the provisions of paragraph 2.9.4. All monitoring that forms part of the Travel Plan Annual Review to be carried out in accordance with the provisions of the County Council’s Travel Plan Guidance (such version current as at the date of commencement of the development);

**“Travel Plan Coordinator”** means the person appointed by the Owners and approved by the County Council who shall be responsible for managing on behalf of the Owners the implementation monitoring progression reporting and review of the Travel Plan in order to achieve its objectives and targets;

**“Travel Plan Evaluation and Support Contribution”** means the sum of £10,200 (ten thousand and two hundred pounds) (index-linked) as hereinafter provided to be paid to the County Council for evaluating administering and monitoring the objectives of the Travel Plan

**“Travel Plan Guidance”** means the County Council’s document entitled ‘Travel Plan Guidance’ (as current at the time of application) which can be found at <https://www.hertfordshire.gov.uk/travelplans>;

**“Travel Plan Remedial Measures Notice”** means a notice in writing served on the Owner via the Travel Plan Co-ordinator by the County Council where the Owner has failed to meet one or more of the targets identified in the Travel Plan specifying the remedial measures and/or actions required to be taken by the Owner to remedy the failed implementation towards the agreed targets with a reasonable time provision.

## **1 Travel Plan Evaluation and Support Contribution**

- 1.1 To pay the Travel Plan Evaluation and Support Contribution to the County Council prior to the Commencement Date as a contribution to be allocated to and spent by the local highway authority for Hertfordshire towards the costs of monitoring and administering any travel plan required pursuant to the Planning Permission
- 1.2 Not to Commence nor cause nor permit Commencement until the Travel Plan Evaluation and Support Contribution has been paid to the County Council in accordance with paragraph 1.1 of this Schedule

## **2 Travel Plan**

- 2.1 Prior to first Occupation of the Development:
  - 2.1.1 To submit a draft Travel Plan for written approval to the County Council and obtain such approval such approval not to be unreasonably withheld or delayed by the County Council; and
  - 2.1.2 To nominate a Travel Plan Coordinator for written approval of the County Council and obtain such approval such approval not to be unreasonably withheld or delayed by the County Council and such nomination shall include contact details for the proposed Travel Plan Coordinator and the nature of their relationship to the Owners
- 2.2 Not to Occupy nor cause nor permit Occupation of the Development until the Travel Plan has been submitted to and approved by the County Council such approval not to be unreasonably withheld or delayed
- 2.3 To carry out baseline surveys and submit an updated Travel Plan to the County Council to be approved, including amended targets where relevant, within 3 months of first Occupation of the Development
- 2.4 To carry out baseline surveys upon the Occupation of the 75th Dwelling and submit an updated Travel Plan to be approved by the County Council, including amended targets where relevant, within 3 months of Occupation of the 75th Dwelling
- 2.5 To submit a draft Resident Travel Pack and the Sustainable Travel Voucher to the County Council for written approval by the County Council no less than three months prior to first Occupation
- 2.6 not to Occupy or permit or allow Occupation of any Dwelling until the draft Resident Travel Pack and Sustainable Travel Voucher have been approved in writing by the County Council such approval not to be unreasonably withheld or delayed by the County Council
- 2.7 to provide a Resident Travel Pack to each Dwelling forming part of the Development within one (1) month of the first Occupation of each Dwelling and of the first subsequent Occupation of each Dwelling AND FOR THE AVOIDANCE of doubt the Owner shall not be required to provide more than two Resident Travel Packs in respect of each Dwelling

- 2.8 to provide a Sustainable Travel Voucher to each Dwelling forming part of the Development within one (1) month of the first Occupation of each Dwelling AND FOR THE AVOIDANCE OF doubt the Owner shall not be required to provide more than one Sustainable Travel Voucher in respect of each Dwelling
- 2.9 To at all times during Occupation of the Development
- 2.9.1 comply with the terms of the Travel Plan including but not limited to implementing any actions by the specified dates in the Travel Plan.
- 2.9.2 promote and publicise the agreed Travel Plan to all owners occupiers and visitors to the Development
- 2.9.3 implement the Travel Plan by the dates or within the time limits set out in the Action Plan section of the Travel Plan
- 2.9.4 carry out the Travel Plan Annual Review annually on the corresponding calendar month from first Occupation to final Occupation and then or a period of 5 years from Occupation of the final Dwelling and submit a written report setting out the findings of such review to the County Council within three (3) calendar months from the date of each Travel Plan Annual Review such report shall include (but shall not be limited to) recommendations for amendments or improvements to the approved Travel Plan whether or not the objectives of the Travel Plan have been achieved.
- 2.9.5 comply with any variations or amendments to the Travel Plan permitted by this Deed which shall in addition include any reasonable amendments or improvements required by the County Council following review of the report submitted in sub paragraph (d) above and notified in writing to the Owners within three (3) calendar months from the date of receipt of such report.
- 2.9.6 that it will in relation to the Site include in any tenant's lease or occupier's licence of any part or parts of the Site a covenant that the purchaser tenant or occupier will comply with the approved Travel Plan for such part or parts of the Site once it has been approved by the County Council and further that it will use all reasonable endeavours to enforce such obligation against any such purchaser tenant or occupier
- 2.9.7 Within twenty (20) Working Days of the letting of the Site or any part or parts thereof it will procure the delivery to the County Council of a notice giving the following details:
- (i) the name and address of the purchaser and/or tenant;
  - (ii) a description of the premises demised;
  - (iii) the length of the term; and
  - (iv) a sufficient extract of the lease setting out the terms of the covenant expressed in favour of the County Council in relation to the Travel Plan

### **3 Travel Plan Remedial Notice**

- 3.1 If a Travel Plan Remedial Measures Notice is served upon the Owner by the County Council the Owner shall carry out the measures and actions specified in the Travel Plan Remedial Measures Notice in accordance with the timescales set out within it
  
- 3.2 If in the reasonable opinion of the County Council the Owner has failed to comply with the Travel Plan Remedial Measures Notice within the timescales specified therein the Owner acknowledges that they will be in breach of this Agreement and that the County Council may take such further action in respect of that breach or breaches as it considers appropriate without further recourse to the Owner



## **Schedule 5 – Biodiversity Offsetting**

The Owner covenants with the Council:

- 1.1 Prior to Commencement of Development to submit a Biodiversity Offsetting Scheme to the Council for approval.
- 1.2 Not to undertake any Development above damp-proof course until the Biodiversity Offsetting Scheme has been approved in writing by the Council such approval not to be unreasonably withheld or delayed
- 1.3 To fully implement the approved Biodiversity Offsetting Scheme prior to Occupation of the Development and thereafter to comply with the approved Biodiversity Offsetting Scheme (or any variations thereto agreed in writing between the Owner and the Council from time to time)
- 1.4 To pay the Council's reasonable and proper costs incurred in evaluating and approving the Biodiversity Offsetting Scheme within 10 Working Days of receipt by the Owner of a written invoice in respect thereof from the Council

## Schedule 6 - Self-Build and Custom-Building Plots

The Owner covenants with the Council as follows:

- 1.1 Not to Commence the Development or permit Commencement until the Self-Build and Custom Housebuilding Scheme has been submitted to and approved by the Council such approval not to be unreasonably withheld or delayed
- 1.2 Unless otherwise agreed with the Council in writing not to permit more than 50% of the Open Market Units to be Occupied until the Self-Build and Custom Housebuilding Plots are made available in accordance with the approved Self-Build and Custom Housebuilding Scheme and have been provided in a Serviced Condition
- 1.3 Unless otherwise agreed with the Council in writing (as part of the Self-Build and Custom Housebuilding Scheme or otherwise) the Self-Build and Custom Housebuilding Plots shall only be provided and transferred for the provision of Self-Build and Custom Housebuilding to either:
  - (a) Those on the Self-Build and Custom Housebuilding Register;
  - (b) A Qualifying Self-Build and Custom Housebuilder Developer; or
  - (c) Such other person or persons approved in writing by the Council (such approval not to be unreasonably delayed or withheld) prior to any disposal of the Self-Build and Custom Housebuilding Plot in question
- 1.4 To give notice to the Council of the date of commencement of the date of marketing of each individual Self-Build and Custom Housebuilding Plot not later than 14 Working Days after that date
- 1.5 If after 12 months from the date of the commencement of marketing of the Self-Build and Custom Housebuilding Plots transfers of any of the Self-Build and Custom Housebuilding Plots have not completed then:
  - (a) the restrictions and obligations in this Schedule shall be released in relation to the relevant Self-Build and Custom Housebuilding Plot(s) and shall no longer apply to those Self Build and Custom Housebuilding Plot(s); and
  - (b) a dwelling may be built on the relevant Self- Build and Custom Housebuilding Plot(s), which may be sold on the open market free from the provision of this Schedule

## Schedule 7 – Open Space

The Owner covenants with the Council:

1. Prior to Commencement of Development, the Owner shall submit to the Council for approval (such approval not to be unreasonably withheld or delayed):
  - 1.1 The Open Space Scheme;
  - 1.2 The Open Space Programme; and
  - 1.3 The Open Space Management Scheme
2. The Owner shall not Commence Development until it has submitted to and obtained the Council's written approval (such approval not to be unreasonably withheld or delayed) of:
  - 2.1 The Open Space Scheme;
  - 2.2 The Open Space Programme; and
  - 2.3 The Open Space Management Scheme
3. The Owner shall implement and fully comply with the approved Open Space Scheme, and the approved Open Space Programme
4. The Owner shall not Occupy or permit the Occupation of more than 75% of the Dwellings until the Open Space has been provided in accordance with the approved Open Space Scheme and the Council have received the appropriate Open Space Certificates
5. The Owner further covenants with the Council to maintain the Open Space Land in accordance with the approved Open Space Management Scheme until the date upon which the transfer described in paragraph 6 has been completed and until the relevant transfer has been completed if any tree or shrub or other planting seeding or turfing dies or becomes diseased or for any reason fails to become established during that period to reinstate or replace it as necessary with a tree or shrub or other plant or turfing of same size and species
6. The Owner further covenants with the Council that prior to the Occupation of 90% of the Dwellings it shall transfer the Open Space Land to the Open Space Management Company
7. The Owner shall not Occupy or permit the Occupation of more than 90% of the Dwellings until the Open Space Land has been transferred to the Open Space Management Company
8. The Owner further covenants with the Council to include in the transfers of the Open Space Land as appropriate to the Open Space Management Company;
  - 8.1 a covenant by the Open Space Management Company only to permit Open Space Land to be utilised as grassed areas and/or play areas and/or parking areas and/or roads and/or open areas for recreation in accordance with this Deed
  - 8.2 a covenant by the Open Space Management Company to maintain the Open Space Land in perpetuity in accordance with the approved Open Space Management Scheme and to allow public access to the Open Space 24 hours a day for 365 days a year save for any 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;

- 8.3 a covenant by the Open Space Management Company not to transfer the Open Space Land into the individual ownership of the owners of the Dwellings; and
  - 8.4 an obligation on the Open Space Management Company that should the Council so require the Open Space Management Company to enter into a direct covenant with the Council to perform the obligations set out in paragraphs 7.1 to 7.2 of this Schedule
9. The Owner shall furnish to the Council a copy of the completed transfer of the Open Space Land and shall inform the Council in writing of the contract details of the Open Space Management Company
10. The Owner shall;
- 10.1 include in each transfer or lease of a Dwelling an obligation to contribute an annual amount to the Open Space Management Company which together with fair contributions from other purchasers or lessees of the Dwellings shall be sufficient to enable the Open Space Management Company to discharge its obligations under this Deed in relation to the Open Space Land; and
  - 10.2 procure that the buyer or lessee of each Dwelling upon any subsequent sale or letting of such Dwelling they will procure that the incoming buyer or lessee shall enter into direct covenants with the Open Space Management Company in the form of paragraph 10.1 and 10.2 of this Schedule

**Schedule 8 -Proforma**

PURSUANT TO SECTION 106 AGREEMENT/UNILATERAL UNDERTAKING

DATED

MADE BETWEEN

PLANNING PERMISSION REFERENCE

HCC DU REFERENCE

SITE ADDRESS

SITE OWNER DETAILS

Name

Contact name

Address

Telephone nos

Main

Mobile

E-mail

**EVENTS BEING NOTIFIED**

Commencement Date – date:

Occupation of Development (Number if relevant) – date:

Completion of Development – date:

**COMPLIANCE WITH OBLIGATION(S)**

Schedule

Paragraph

Details of obligation and compliance

PAYMENT OF S106 CONTRIBUTIONS

Payment Type	Amount	Interim Indexation	Final Indexation	Total	Payable to
Example Education (primary)	X £	Y £	Z £	X + Y £	Herts County Council

Payment of S106 contributions can be made by BACS, CHAPS or cheque. In any event the form should be completed to ensure the payment is identified correctly and forward to:

The Chief Legal Officer  
Hertfordshire County Council  
County Hall  
Pegs Lane  
Hertford  
Hertfordshire  
SG13 8DE  
(Ref: 020668)

To Strategic Director: Community and Place Delivery  
St Albans City and District Council  
Civic Centre  
St Peter's Street  
St Albans  
Hertfordshire  
AL1 3JE (Ref: 5/2022/1988)

### **Schedule 9 – HCC planning obligations contributions table**

- 1 if the Development mix approved pursuant to the Reserved Matters Approval varies to the Development Mix set out in this Deed the County Council Contributions are to be recalculated in accordance with the following table
- 2 For the avoidance of doubt the Waste Service Transfer Station contribution is not included in the table and is not to be recalculated.

Figures are subject to indexation and are to be indexed using the BCIS Index from 1Q2022.

Service	Type	Tenure	Number of Bedrooms			
			1	2	3	≥ 4
Childcare Contribution	Flat	Affordable Rent**	£0	£5	£16	£17
Childcare Contribution	House	Affordable Rent**	£0	£7	£29	£44
Childcare Contribution	Flat	Open Market, First Homes or Shared Ownership*	£1	£3	£7	£10
Childcare Contribution	House	Open Market, First Homes or Shared Ownership*	£1	£3	£11	£18
Libraries Contribution	Flat	Affordable Rent**	£110	£198	£257	£274
Libraries Contribution	House	Affordable Rent**	£118	£204	£268	£362
Libraries Contribution	Flat	Open Market, First Homes or Shared Ownership*	£126	£167	£221	£301
Libraries Contribution	House	Open Market, First Homes or Shared Ownership*	£141	£173	£229	£284
Primary Education Contribution	Flat	Affordable Rent**	£1,540	£9,852	£9,290	£10,307
Primary Education Contribution	House	Affordable Rent**	£812	£11,250	£15,690	£18,590
Primary Education Contribution	Flat	Open Market, First Homes or Shared Ownership*	£1,621	£3,649	£3,440	£3,972
Primary Education Contribution	House	Open Market, First Homes or Shared Ownership*	£2,530	£4,995	£8,034	£9,849
Secondary Education Contribution	Flat	Affordable Rent**	£1,645	£10,686	£9,627	£10,698
Secondary Education Contribution	House	Affordable Rent**	£976	£12,756	£17,345	£19,367
Secondary Education Contribution	Flat	Open Market, First Homes or Shared Ownership*	£1,752	£3,823	£3,531	£4,265
Secondary Education Contribution	House	Open Market, First Homes or Shared Ownership*	£2,870	£5,495	£8,867	£10,804
Special Educational Needs and Disabilities Contribution	Flat	NA	£194	£194	£194	£194
Special Educational Needs and Disabilities Contribution	House	NA	£654	£654	£654	£654
Special Educational Needs and Disabilities Contribution	Flat	NA	£66	£66	£66	£66
Special Educational Needs and Disabilities Contribution	House	NA	£752	£752	£752	£752
Youth Contribution	Flat	Affordable Rent**	£29	£167	£499	£592
Youth Contribution	House	Affordable Rent**	£28	£249	£586	£1,015
Youth Contribution	Flat	Open Market, First Homes or Shared Ownership*	£23	£70	£213	£317
Youth Contribution	House	Open Market, First Homes or Shared Ownership*	£52	£81	£259	£488
Waste Service Recycling Centre Contribution	Flat	Affordable Rent**	£156	£278	£362	£386
Waste Service Recycling Centre Contribution	House	Affordable Rent**	£166	£287	£378	£510
Waste Service Recycling Centre Contribution	Flat	Open Market, First Homes or Shared Ownership*	£178	£235	£311	£424
Waste Service Recycling Centre Contribution	House	Open Market, First Homes or Shared Ownership*	£199	£244	£323	£400

*The tenure terms set out in the tables reflect the terminology used with the submitted Application. Should alternative definitions/types of tenure of units be applicable in the future (e.g. at such time that Reserved Matters applications are submitted and/or as reflected in updated Hertfordshire County Council guidance) then they should be characterised and included as follows:*

*\* Tenure characteristics similar to open market dwellings and dwellings provided for sale that offers a route to ownership for those who could not achieve home ownership through the market (or other tenures which display these types of characteristics)*

*\*\* Tenure characteristics of 100% rented, reflecting needs assessed dwellings for which the rent is set below local market rents (or other tenures which display these types of characteristics)*



**EXECUTED and DELIVERED** as a **DEED** on the date of this document

**EXECUTED** under the Common Seal of  
**ST ALBANS CITY AND DISTRICT COUNCIL**  
in the presence of:

Duly Authorised Officer

**EXECUTED** under the Common Seal of  
**HERTFORDSHIRE COUNTY COUNCIL**  
in the presence of:

Authorised Signatory

**EXECUTED AS A DEED** by )  
**XXXXXX** )  
in the presence of )

Witness  
Signature  
Address

**EXECUTED AS A DEED** by )  
**XXXXXX** )  
in the presence of )

Witness  
Signature  
Address

**EXECUTED** under the Common Seal of

**XXXX BANK PLC**  
in the presence of:

Director

Secretary

**EXECUTED AS A DEED** by **VISTRY HOMES LIMITED**  
Acting by [ ]  
and [ ]  
as Attorneys for and on behalf of **VISTRY HOMES LIMITED** under a  
Power of Attorney dated 30 June 2023  
in the presence of:

[Signature of Witness]  
Name:  
Address:  
Occupation:

[Signature of Attorney]  
Name:

[Signature of Witness]  
Name:  
Address:  
Occupation:

[Signature of Attorney]  
Name:



Date 2023

ST ALBANS CITY and DISTRICT COUNCIL

- and -

HERTFORDSHIRE COUNTY COUNCIL

-  
- and -

XXXXXX and XXXXXX

-  
- and -

XXXX BANK PLC

-  
- and -

VISTRY HOMES LIMITED

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Deed of Agreement pursuant to S.106 Town and  
Country Planning Act 1990 (as amended) in relation to  
Land To The Rear Of 42-100 Tollgate Road & 42  
Tollgate Road Colney Heath St Albans

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Legal Services

St Albans City and District Council

Civic Centre St Peter's Street St Albans Hertfordshire  
AL1 3JE REF: 5 / 2 0 2 2 / 1 9 8 8