

DATED 8 July 2022

DANESCROFT (FROOF V WILLINGDON) LLP (1)

-and-

VISTRY HOMES LIMITED (2)

-to-

WEALDEN DISTRICT COUNCIL

**PLANNING OBLIGATION BY
UNILATERAL UNDERTAKING**
pursuant to Section 106 of
the Town and Country Planning Act 1990
as amended
relating to the development of
Land at Hindsland, Eastbourne Road,
Lower Willingdon, East Sussex, BN20 9NU
Planning Ref: WD/2021/0594/MEA
PINS Ref: APP/C1435/W/22/3293970



Legal Services Manager
Wealden and Rother Shared Legal Service
Wealden District Council
Council Offices
Vicarage Lane, Hailsham
East Sussex
BN27 2AX

Certified to be a true and complete copy of the original seen by me

Signature

Date:

Name:

Occupation:

Cripps

Number 22, Mount Ephraim, Tunbridge Wells, Kent, TN4 8AS
Tel: 01892 515121

LEGAL REF MHM037

PLANNING OBLIGATION BY UNILATERAL UNDERTAKING

THIS DEED BY UNILATERAL UNDERTAKING is dated the 8th day of July 2022

FROM:

- (1) **DANESCROFT (FROOF V WILLINGDON) LLP** (Company Registration Number OC433201) whose registered office is at Third Floor Queensberry House, 3 Old Burlington Street, London, W1S 3AE ("the Owner"); and
- (2) **VISTRY HOMES LIMITED** (Company Registration Number 00321982) whose registered office is at 11 Tower View, Kings Hill, West Malling, ME19 4UY ("the Developer")

TO:

- (3) **WEALDEN DISTRICT COUNCIL** of the Council Offices, Vicarage Lane, Hailsham East Sussex, BN27 2AX ("the Council")

RECITALS:

- (A) The Owner has the freehold interest in the S106 Site (being part of the Property) which forms part of land registered at the Land Registry under Title Number ESX409080.
- (B) The Developer has entered into a contract dated 15 March 2022 for the purchase of the Vistry Land which forms part of the Property.
- (C) For the purposes of the 1990 Act the Council is the local planning authority for the area in which the Property is situated.
- (D) The Owner made the Application to the Council. The Owner submitted the Appeal to the Secretary of State.
- (E) The Owner, the Developer and the Council have agreed to enter into this Deed to secure the planning obligations set out herein.
- (F) The Owner and the Developer are agreeable as hereinafter provided for their interests in the S106 Site to be bound by the provisions of this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1 DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

"1990 Act" means the Town & Country Planning Act 1990.

"1980 Act" means the Highways Act 1980.

"Affordable Housing" means housing for Social Rent, Affordable Rent and Intermediate Housing, provided to eligible households whose needs are not met by the market. Affordable Housing should:-

- (a) meet the needs of eligible households including availability at a cost low enough for them to afford determined with regard to local incomes and local house prices; and
- (b) include provision for the home to remain at an affordable price for future eligible households or, if these restrictions are lifted, for any Subsidy to be recycled for alternative affordable housing provision subject to any such recycling of the Subsidy being in accordance with the requirements of Homes England.

"Affordable Housing Land" means that part or parts of the Property upon which the Affordable Housing Units are to be constructed together with any ancillary or associated land.

"Affordable Housing Scheme" means a scheme (including plans, details and specifications) to be submitted to and approved by the Council which specifies in relation to the whole of the Development or Phase:

- (a) the number, type (including no. of bedrooms), tenure and location on the Development or Phase of the Affordable Housing Units and Affordable Housing Land which shall be determined having regard to the identified housing needs within Wealden District and the Affordable Housing Tenure Mix;

- (b) the timing of the delivery and construction of the Affordable Housing Units within the Development or Phase and their Phasing in relation to the Occupation of the Private Dwelling Units; and
- (c) details of the proposed Registered Provider and timings of the transfer of the Affordable Housing Units and associated Affordable Housing Land.

“Affordable Housing Tenure Mix” means the total number of Affordable Housing Units comprising an overall mix of 80% Affordable Rented Units (rounded to the nearest whole number) and/or Social Rented Units and 20% Intermediate Housing Units (rounded to the nearest whole number) which shall be constructed within the Development and Phase (subject to the Phase having Reserved Matters Approval for the provision of Dwellings).

“Affordable Housing Units” shall mean thirty-five per cent (35%) of the total number of Dwellings in the Development (and if that does not result in a whole number then the number shall be rounded down if it is under point five (.5) of a whole number or rounded up to the nearest whole number if it is over point five (.5) of a whole number) which shall be for use as Affordable Housing and which shall all be built in compliance with the Standards and in accordance with the approved Affordable Housing Scheme and “Affordable Housing Unit” shall be construed accordingly.

“Affordable Rented Units” means all those Affordable Housing Units to be let to Qualifying Persons by the Registered Provider at an Affordable Rent the exact number and location of which to be approved by the Council pursuant to the Affordable Housing Scheme and “Affordable Rented Unit” shall be construed accordingly.

“Affordable Rent” means a rent which is subject to rent controls that require a rent of no more than 80% of local market rent (including all service charges for properties of similar size and location in the locality).

“agreed” or “approved” means agreed or approved in writing and given for the purpose of this Deed.

“Appeal” means planning appeal submitted by the Owner to the Secretary of State under reference number APP/C1435/W/22/3293970 against the Council's non-determination of the Application.

“Application” means the application for planning permission for the Development bearing reference number WD/2021/0594/MEA.

“Assured Tenancy” means an assured tenancy agreement granted pursuant to the Housing Act 1988 and the Housing Act 1996 (or such other form of tenancy as may be prescribed from time to time by Homes England as offering to residential tenants of Registered Providers a similar measure of security and approved by the Head of Housing).

“Bus Service Contribution” means the sum of SIX HUNDRED POUNDS (£600) per Dwelling as a contribution towards improvements to bus service frequencies along the A2270 Eastbourne Road serving the Development, to enhance services on weekday evenings and weekends.

“Car Club” means a scheme for sharing private electric car facilities to be made available to residents of the Development operated and managed by an accredited Car Club Provider in which members can book an electric car owned by the accredited Car Club Provider and park in the specifically reserved Car Club Parking Space and use it for the period of booking and **“Car Clubs”** shall be construed accordingly.

“Car Club Parking Space” means the parking space reserved for the sole use of parking a Car Club Vehicle on the Property for the life of the Development in the location to be approved by the Council and with electric vehicle charging point, such specification to be approved by the County Council.

“Car Club Vehicle” means a car to be provided by the Car Club Provider for use by members of the Car Club and to be first approved by the Council.

“Car Club Provider” means the accredited operator of the Car Club at the Development (appointed by the Owner) who will be responsible for the operation of the Car Club including bookings and charges.

“Car Club Membership” means offering the first household of each Dwelling access to the Car Club for a period of two years with 50 miles drivetime credit.

"Charge" means a mortgage, charge or other security or loan documentation granting a security interest in the Affordable Housing Land and/or the Affordable Housing Unit(s) (or any one or more of them) in favour of the Chargee.

"Chargee" means any mortgagee or chargee of the Registered Provider of the Affordable Housing Land and/or the Affordable Housing Units (or any one or more of them) 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.

"Clean Condition" means free from any contamination which would in the reasonable opinion of the Head of Planning and Environmental Services prejudice the use of the Affordable Housing Units and/or the Affordable Housing Land for the purposes of Affordable Housing.

"Commencement of Development" 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 for no other purpose, save in respect of Schedule 11) the carrying out of any works of demolition, works of site clearance, ground investigation and site survey works, construction of boundary fencing or hoardings, construction of temporary accesses, archaeological investigation, ecological investigation, site decontamination or remediation works, landscaping works, laying of sewers surface water drainage and other services creation of site compounds and noise attenuation works shall not be deemed to be the carrying out of a material operation and **"Commence Development"** and **"Commence the Development"** shall be construed accordingly.

"Contributions" means the Bus Service Contribution Playing Pitch and Youth and Adult Play Contribution.

"County Council" means East Sussex County Council of County Hall, St Anne's Crescent, Lewes BN7 1UE.

"Default Notice" means a notice in writing served on the Council by the Chargee under Clause 8.3 of the Chargee's intention to enforce its security over the relevant Affordable Housing Unit(s) and/or applicable Affordable Housing Land.

"Development" means the development of the Property for outline planning with all matters reserved except for access (excluding internal estate roads beyond the access to serve the medical centre plot) for demolition of existing vacant dwelling and erection of up to 180 dwellings and medical centre together with all parking servicing and on-site open space pursuant to the Planning Permission and any development in respect of which details have been submitted to and approved by the Council pursuant to the Planning Permission.

"Director" means the Director of Communities, Economy and Transport for the time being of the County Council and shall include his duly authorised agents and representatives and any successor of his.

"Disposal" means the freehold sale.

"Dwelling(s)" means any unit(s) of self-contained residential accommodation within the meaning of Use Class C3 of the Town and Country Planning (Use Classes) Order 1987, including any flat, apartment, maisonette or house including as constructed on the Self-Build and Custom-Build Plots comprised in the Development.

"Due Date" means the date specified or the occurrence of an event triggering the making of a payment or the undertaking of an act or the cessation of an activity under the terms of this Deed.

"Fully Serviced" means (in relation to the Affordable Housing Units) serviced by the Owner, with roads provided without intervention to the boundary of the relevant parcel of Affordable Housing Land such roads to be:

- (a) adopted; or
- (b) completed to an adoptable standard and maintenance arrangements have been agreed with the Council

and (in all cases) to afford proper access to the main highway network together with all mains services of electricity, gas, telephone, potable water foul and surface water drainage as reasonably required to a conveniently located point or points abutting without intervention the boundary of the relevant parcel of Affordable Housing Land.

"Green Infrastructure" means the Playing Space and Passive Green Infrastructure provided in accordance with the Green Infrastructure Scheme

"Green Infrastructure Scheme" means the scheme or schemes approved by the Council pursuant to a Reserved Matters Approval for the provision, implementation, long term management and maintenance of the Green Infrastructure in the locations as approved by a Reserved Matters Approval and the calculation of the Youth and Adult Play Contribution.

"Head of Housing" means the Head of Housing and Property Services for the time being of the Council and shall include his duly authorised agents and representatives and any successor of his.

"Head of Planning and Environmental Services" means the Head of Planning and Environmental Services for the time being of the Council and shall include his duly authorised agents and representatives and any successor of his.

"Highway Works" means the highway works referred to in Part 2 of Schedule 9.

"Homes England" means the body known as Homes England and shall include any replacement or successor organisation to Homes England and for the purposes of this Deed references to Homes England shall include the Social Housing Regulator where appropriate.

"Independent Assessment" means a specialist independent assessment of the Owner's evidence of its compliance with the Marketing Strategy for the Marketing Period (or any extensions thereto) submitted pursuant to Paragraph 9 of Schedule 11, provided at the cost of the Owner

"Indexation" means that when a sum is payable under this Deed is required to reflect changing costs the sum shall be increased or reduced in accordance with the provisions of Clause 11 of the Deed and **"Index Linked"** shall be construed accordingly.

"Inflation Index" means the "all items" index figure of the Retail Prices Index published by the Office for National Statistics or such other index as the Council may

reasonably nominate in the event that the Retail Prices Index shall no longer be published or its name or methodology be materially altered.

"Intermediate Housing" means Shared Ownership and/or Shared Equity.

"Intermediate Housing Units" means all those Affordable Housing Units to be provided by the Registered Provider as Intermediate Housing for Qualifying Persons the exact number and location of which to be approved by the Council pursuant to the Affordable Housing Scheme.

"Local Market Values" means similar property values in adjoining parishes within Wealden District calculated by reference to the Red Book or as otherwise agreed between the parties.

"Long Lease" means the appropriate form of model lease for a Shared Ownership flat or house published by Homes England (as may be amended from time to time) and which lease provides for a term of 125 years or more from the date of grant and with no unusual or otherwise unduly burdensome covenants on the lessee.

"Managed Land" means the SUDS and the Green Infrastructure (but excluding any areas which have been or are to be adopted by the relevant highways or drainage authorities pursuant to an adoption agreement) to which the public shall have access.

"Management Company Structure Scheme" means a scheme that addresses the following in relation to the Management Company:

- (a) details of the proposed constitution of the Management Company which shall be a private company limited by shares or guarantee;
- (b) details of and arrangements for maintenance of such insurances as shall be appropriate in respect of the use of the SUDS managed by the Management Company in circumstances where the Management Company is in breach of its obligations under this Deed (including step in rights for the Council (if it so elects) or its nominee, how that mechanism may be exercised and details of settlement and transfer of estate charges and payments to the Council/its nominee).

“Management Company” means a body established by the Owner to carry out the long term management and maintenance of the Managed Land in a Phase to be managed by it in accordance with the provisions of this Deed and whose objectives shall include:

- (a) managing the maintenance of the Managed Land in a Phase;
- (b) setting the level of charges for funding the running of the Management Company and collecting such charges;
- (c) ensuring that the level of any charges levied against any Affordable Housing Units in a Phase containing Affordable Housing shall not materially affect the ability of those Dwellings to remain Affordable Housing but this will not prevent charges being levied at all, nor a full charge being levied if those Dwellings cease to be Affordable Housing Units; and
- (d) ensuring accountability to occupiers of the Dwellings in a Phase containing Dwellings

and this includes any/all subsequent body/bodies that take on this responsibility and for the avoidance of doubt the body established by the Owner to carry out the long term management and maintenance of the Managed Land may be the same body for each Phase.

“Marketing Period” means the period of not less than 12 months from the date within the Marketing Strategy as approved by the Council.

“Marketing Strategy” means the strategy to be followed during the Marketing Period for the purposes of marketing the Self-Build and Custom-Build Plots for Disposal to prospective purchasers and which may include but is not limited to:

- (a) preparing detailed particulars of the Self-Build and Custom-Build Plots to be advertised locally and regionally;
- (b) placing adverts online and in local/regional newspapers;
- (c) details of the pricing mechanism and such information required to satisfy the Council the proposed Disposal price is reasonable and achievable;
- (d) appointing appropriate local estate agents; and

- (e) including the Self-Build and Custom-Build Plots in marketing and advertising for the sale of the Private Dwelling Units.

"Medical Centre Disposal" means the lease on an open market commercial basis at market rent or a freehold disposal on an open market commercial basis of the Medical Centre Site and **"Medical Centre Disposed"** shall be construed accordingly.

"Medical Centre Marketing Strategy" means the written strategy for the extensive marketing, advertising and promotion of the Medical Centre Site to potential Medical Centre Occupiers for Medical Centre Disposal and which shall at least include:

- (a) the period of time that the Medical Centre Marketing Strategy shall be implemented for (being the Medical Centre Marketing Period);
- (b) detailed particulars of the Medical Centre Site to be circulated to a regional range of medical practitioners;
- (c) details of the sale price;
- (d) how, where and when the Medical Centre Site is to be offered to the open market to attract a Medical Centre Occupier, including use of placing appropriate advertisements and appointing specialist marketing agents.

"Medical Centre Marketing Period" means the earlier of (a) a period of 10 (ten) years from the date of the approval of the Medical Centre Marketing Strategy by the Council or (b) until such time as a Medical Centre Disposal takes place.

"Medical Centre Occupier" a provider or providers of general practitioner medical services who is or could be an occupier or owner of the Medical Centre Site from time to time with an interest in utilising the Medical Centre Site for medical purposes, a primary care trust, any other organisation involved with the delivery of primary and ancillary care to the population of the surrounding area and the Development or a developer who intends to provide a medical centre on the Medical Centre Site.

"Medical Centre Site" means a site of sufficient size to accommodate a new medical centre of no less than 5,951sqm for the purpose of providing a doctors' general practitioners surgery such services to be provided to the population of the surrounding

area and the Development, details to be approved by a Reserved Matters Approval and shown for indicative purposes only edged in blue on Plan 3.

“Medical Centre Terms” means

- (a) in a clean condition, clear of any debris, rubble and other waste or materials
- (b) with Medical Centre Site Services to be provided prior to Occupation of any Dwelling; and
- (c) subject to a restrictive covenant that the Medical Centre Site may not be used otherwise than as a doctors’ general practitioners surgery which may include an ancillary pharmacy and ancillary facilities for treatments provided by general practitioners, nurses and other healthcare professionals, such services and treatments to be provided to the population of the surrounding area and the Development.

“Medical Centre Site Services” means the provision of vehicular and pedestrian access from the edge of the Medical Centre Site to the public highway or private accessway to an adoptable standard is provided and services to the Medical Centre Site boundary (including all necessary relevant pipes, conduits, cables and other conducting media for water, gas, sewerage, drainage, electricity of sufficient capacity to serve the Medical Centre Site).

“Nomination Agreement” means the form of agreement substantially in the form set out in Schedule 3 subject to any amendments or modifications as may be agreed between the parties to it.

“Occupation” means beneficial occupation for any use for which the building was designed other than occupation for the purpose of construction fitting out security marketing or repair and **“Occupy”** and **“Occupied”** shall be construed accordingly.

“Passive Green Infrastructure” means that part of the Development used for any or all of the following: natural and semi natural open space, green corridors, woodlands, landscaped buffers and recreational paths to be approved by a Reserved Matters Approval and to be provided in the locations as approved by a Reserved Matters Approval.

“Payment Notice” means a notice in the form set out in Appendix 1.

"Phase" means each phase of the Development shown on the Phasing Plan and each phase to be approved pursuant to the Planning Permission and any subsequent amendment thereof. Each and every part of the Property shall be comprised in a Phase and "Phases" and "Phasing" shall be construed accordingly

"Phasing Plan" means the plan detailing the phases of Development within the Property to be submitted to and approved by the Council in accordance with Paragraph 1 of Part 1 of Schedule 1 (or any subsequent amendment thereof).

"Playing Space" means the casual and informal children's playing space and equipped children's playing space to be provided as part of the Development as approved by the Council in the Green Infrastructure Scheme and which shall not be less than the requirements set out in the Playing Space Formula

"Playing Space Formula" means the total sizes of the Dwellings approved by Reserved Matters Approval multiplied by the open space requirements set out in the table below:

<u>Size of Dwelling as approved by Reserved Matters</u>	<u>Total Playing Space requirement (sqm)</u>	<u>Casual and informal children's playspace (sqm)</u>	<u>Equipped children's playspace (sqm)</u>
1 bedroom	7	4.5	2.5
2 bedroom	14	9	5
3 bedroom	21	13.5	7.5
4 bedroom	28	18	10
5 bedroom	35	22.5	12.5

"Plan 1" means the plan numbered 20089-LP01 attached to this Deed at Appendix 2, identifying the Property.

"Plan 2" means the plan numbered 20089-S106 attached to this Deed at Appendix 3, identifying the S106 Site.

"Plan 3" means the plan numbered 20089-S107 attached to this Deed at Appendix 4, identifying the Medical Centre Site for indicative purposes only.

"Planning Permission" means the planning permission(s) to be granted pursuant to the Appeal and any application submitted in amendment to the Planning Permission and for the avoidance of doubt shall include any permission granted pursuant to an

application to amend or vary the Planning Permission pursuant to Section 73 of the 1990 Act unless the Council decides that a new agreement under section 106 of the 1990 Act is required.

(for Danescroft) *BGT*
(for Vistry Homes Limited) *SM*
"Playing Pitch Contribution" means the sum of ONE HUNDRED AND EIGHTY FIVE THOUSAND ^{EIGHT} ~~SEVEN~~ HUNDRED AND ^{THIRTY} ~~EIGHTY~~ POUNDS (£185,780) to be used towards new pitches and ancillary facilities at Mornings Mill Farm / Brodericksland or to other priority sites accessible to the Property as identified in the Wealden Playing Pitch Strategy (2018) or any updated version of that strategy.

"Private Dwelling Unit(s)" means any Dwelling(s) which is not an Affordable Housing Unit and includes the Self-Build and Custom-Build Plots.

"Property" means the land known as Hindsland, Eastbourne Road, Lower Willingdon, East Sussex, BN20 9NU shown edged in red on Plan 1.

"Protected Occupier" means in respect of an Affordable Housing Unit a person who:

- (a) has exercised the right to acquire so far as legally permissible pursuant to section 180 of the Housing and Regeneration Act 2008 and governed by the Housing Act 1985 and modified by the Housing (Right to Acquire) Regulations 1997 or any equivalent statutory provision for the time being in force in respect of a particular Affordable Rented Unit or Social Rented Unit;
- (b) has exercised any statutory right to buy or statutory preserved right to buy pursuant to the Housing Act 1985 or any equivalent statutory provision for the time being in force in respect of a particular Affordable Rented Unit or Social Rented;
- (c) is the owner of a Shared Equity Unit where the equity loan has been repaid in full and no further equity loan subsists against the said Shared Equity Unit; or
- (d) has been granted a lease of a Shared Ownership Unit by a Registered Provider and has subsequently purchased from the Registered Provider 100% of the equity from the Registered Provider and owns the entire Shared Ownership Unit.

"Qualifying Person" means a person or persons and their dependants:-

- (a) nominated by the Council from its housing needs register; or
- (b) nominated by the Registered Provider.

"Red Book" means the RICS Valuation- Professional Standards UK January 2014 (revised April 2015) or such other document amending, consolidating or replacing it.

"Registered Provider" means any registered provider which is registered with Homes England pursuant to Section 80 of the Housing and Regeneration Act 2008 and has not been removed from the register and is approved in writing by the Council or any other provider approved in writing by the Council.

"Reserved Matters" means any matter reserved for later approval by virtue of a condition imposed in the Planning Permission, as defined in Article 2 of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

"Reserved Matters Application" means an application under the 1990 Act for approval of reserved matters reserved under the Planning Permission for subsequent approval.

"Reserved Matters Approval" means an approval to Reserved Matters pursuant to a Reserved Matters Application.

"Secretary of State" means the Secretary of State for Levelling Up, Housing and Communities or other minister or other authority for the time being having or entitled to exercise the powers conferred on the Secretary of State for Levelling Up, Housing and Communities by the 1990 Act and the Planning Inspector appointed upon his behalf to determine the Appeal.

"Section 278 Agreement" means an agreement substantially in the form of the County Council's standard draft with such amendments as may be agreed with the County Council and made under section 278 of the 1980 Act to secure the carrying out of the Highway Works.

"S106 Site" means that part of the Property edged in red on Plan Z.

“Self-Build and Custom-Build Plots” means the Serviced plots comprised within the Development upon which the Self-Build and Custom-Build Units are to be constructed and disposed of in accordance with Schedule 11 and the Self-Build and Custom-Build Plots Scheme and **“Self-Build and Custom-Build Plot”** shall mean any one such

“Self-Build and Custom-Build Plots Scheme” means the scheme to be submitted in accordance with Paragraphs 1 and 2 of Schedule 11 and which shall include the following in relation to the Development:

- (a) the location of the Self-Build and Custom-Build Plots;
- (b) confirmation of the number of Self-Build and Custom-Build Plots (which shall not be less than 5% of the Dwellings); and
- (c) the Marketing Strategy for the Disposal of the Self-Build and Custom-Build Plots for the development of Self-Build and Custom-Build Units thereon.

“Self-Build and Custom-Build Units” means a dwelling which meets the definition at Section 1(A1) and Section 1(A2) of the Self-build and Custom Housebuilding Act 2015 and **“Self-Build and Custom-Build Unit”** shall mean one such.

“Service Charge” means a charge in addition to any rent payable in respect of an Affordable Housing Unit which covers repairs, maintenance and cleaning for communal areas, the structure of the building, buildings insurance and the landlord’s administration or management charges.

“Serviced” means access from the relevant Self-Build and Custom-Build 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-Build Plot boundary.

“Shared Equity” means a type of Intermediate Housing scheme provided by a Registered Provider where the purchaser buys a freehold or long leasehold interest in an Affordable Housing Unit at no more than 80% of Local Market Values with the remaining share held by the Registered Provider subject to a legal charge to protect the discounted share, if required by the Registered Provider, and with

no rent or interest charge payable by the occupier on the remaining share owned by the Registered Provider or with such variation as may be approved by the Council.

"Shared Equity Unit(s)" means an Affordable Housing Unit(s) to be provided by a Registered Provider under Shared Equity.

"Shared Ownership" means an Intermediate Housing shared ownership scheme provided by a Registered Provider which allows a purchaser to buy a share of the Affordable Housing Unit under a form of Long Lease to ensure that leases are mortgageable and which contains provisions whereby there is a limit on the initial equity share to be sold off and a 2.75% rent on the balance of the equity unsold as at the date of grant of the Long Lease.

"Shared Ownership Unit(s)" means an Affordable Housing Unit(s) to be provided by a Registered Provider under Shared Ownership.

"Social Housing Regulator" means the body which regulates and provides funding to Registered Providers and shall include any replacement or successor organisation to the housing regulator which is appointed or designated to carry out its functions.

"Social Rent" means housing owned by local authorities and private Registered Providers for which guideline target rents are determined through the national rent regime or owned by other persons and provided under equivalent rental arrangements as may be agreed with the Council or with Homes England.

"Social Rented Unit(s)" means all those Affordable Housing Unit(s) to be let to Qualifying Persons by the Registered Provider at a Social Rent the exact number and location of which to be approved by the Council pursuant to the Affordable Housing Scheme.

"Specified Terms" means the transfer:

- (a) with full title guarantee and vacant possession but with the benefit of rights of way, easements and rights of drainage, utilities or access enjoyed or to be enjoyed by the transferred land and sufficient to permit full and beneficial use

and enjoyment of it following the construction of the Development or Phase and subject only to rights which do not interfere with the use of the transferred land's purpose; and

- (b) subject to any other reasonable terms required by the transferee and transferor.

"Standards" means that the Affordable Housing Units shall be constructed to a standard to meet

- (a) the mandatory standards in relation to design, construction and accessibility required by Homes England in place at the time of the relevant Reserved Matters Approval; and
- (b) the nationally described space standards dated March 2015 as produced by the Department for Housing, Communities and Local Government or any successor replacement standard.

"Subsidy" means any public subsidy provided to the Registered Provider or the Owner in connection with the Affordable Housing Units.

"SUDS" means a sustainable drainage system comprising all treatment and drainage systems including any headwalls, pipework, permeable paving, swales, reed beds, ponds, filter trenches, attenuation tanks, detention basins and wet ponds in accordance with the Planning Permission.

"Travel Plan – Medical Centre Site" means the travel plan provided pursuant to Paragraphs 9 – 12 of Schedule 8 for the Medical Centre Site.

"Travel Plan – Vistry Land" means the travel plan provided pursuant to Paragraphs 3 - 8 of Schedule 8 for the Vistry Land.

"Travel Plan Audit Fee – Medical Centre Site" means the sum on FOUR THOUSAND FIVE HUNDRED POUNDS (£4,500) towards the County Council's costs of monitoring the Travel Plan – Medical Centre Site.

"Travel Plan Audit Fee – Vistry Land" means the sum of SIX THOUSAND POUNDS (£6,000) to be used towards the County Council's costs of monitoring the Travel Plan – Vistry Land.

“Vistry Land” means that part of the S106 Site excluding the Medical Centre Site.

“Workings Days” means Monday to Friday inclusive but excluding days which are public holidays.

“Youth and Adult Play Contribution” means the sum calculated in respect of the youth and adult playing space for the Development based on the Youth and Adult Play Formula as agreed by the Council in the Green Infrastructure Scheme, and such contribution to be calculated in accordance with the following formula:

$$A = B \times C$$

A = the Youth and Adult Play Contribution

B = £28.36 (Index Linked)

C= the total amount (in sqm) of youth and adult playing space required for the Development based on the Youth and Adult Play Formula for the number and type of Dwellings approved under Reserved Matters Approval payable to the Council as a contribution towards the youth and adult playing space in the Willingdon and Jevington Parish or adjoining parishes where accessible to the Development.

“Youth and Adult Play Formula” means the total sizes of the Dwellings approved by Reserved Matters Approval multiplied by the open space requirements set out in the table below:

<u>Size of Dwelling as approved by Reserved Matters</u>	<u>Youth and adult playspace (sqm)</u>
1 bedroom	17
2 bedroom	34
3 bedroom	51
4 bedroom	68
5 bedroom	85

“Zone Agent” means a local HomeBuy agent (or such other agent as may be appointed from time to time to fulfil that or a similar role) appointed by Homes England which acts as a first point of contact for families and single households seeking to buy a home through Homes England’s HomeBuy affordable home ownership products in the South East of England, the agent first establishing whether the applicants meet

the eligibility criteria before assessing their financial circumstances to ensure they can afford home ownership longer term.

2 CONSTRUCTION OF THIS DEED

- 2.1 Words importing the masculine include the feminine and vice versa.
- 2.2 Words importing the singular include the plural and vice versa.
- 2.3 Words importing persons include companies and corporations and vice versa.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually.
- 2.5 Any reference to a Clause, Paragraph, Schedule, Annex or Plan is to one in or attached to this Deed.
- 2.6 Any reference to a colour or letter is to be on the plans attached to this Deed.
- 2.7 Any reference to a statute includes any statutory modification or re-enactment of it and every statutory instrument, direction, specification made or issued under the statute or deriving validity from it.
- 2.8 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to their statutory functions as local planning authority.
- 2.9 This Deed is a planning obligation for the purposes of Section 106 of the 1990 Act.

3. LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the 1990 Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other powers so enabling the Council to enter into this Deed and to the extent that this Deed includes planning obligations for the purposes of Section 106 of the 1990 Act then those obligations relate to the S106 Site and are enforceable by the Council as the local planning authority for the area within which the S106 Site is situated (subject to Clause 8).

- 3.2 The various covenants restrictions requirements stipulations and other obligations imposed on the Owner contained in this Deed are entered into under the provisions and powers referred to in Clause 2.1 and are planning obligations for the purposes of Section 106 of the 1990 Act whether expressed to be planning obligations or not and are enforceable by the Council as local planning authority against the Owner and any person deriving title from the Owner and shall run with the S106 Site and shall bind the Owner its successors in title and assigns (subject to Clause 8).
- 3.3 The obligations in this Deed comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010.
- 3.4 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 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other enabling powers.
- 3.5 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.
- 3.6 In the event that the Secretary of State or inspector in the Appeal decision letter states in their decision letter either:
- 3.6.1 that a planning obligation contained in this Deed (or relevant part of a planning obligation) is not a material consideration in the granting of the Planning Permission pursuant to the Appeal; or
- 3.6.2 that a planning obligation contained in this Deed (or relevant part of a planning obligation) is incompatible with any one or more of the tests for planning obligations set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 and accordingly attaches no weight to that obligation in determining the Appeal

then that planning obligation (or part of the planning obligation as appropriate) shall not be enforceable and shall cease to have legal effect and the Owner shall not be required to comply with that obligation notwithstanding that the remaining provisions of this Deed shall take effect and remain effect and enforceable.

4. CONDITIONALITY

This Deed shall come into effect upon:

- (a) the grant of the Planning Permission; and
- (b) Commencement of the Development

save for clauses 1 – 4, 6 -10, 12 - 14 and clause 5 in respect of Part 1 Paragraph 1 and Part 2 Paragraphs 2 and 4 of Schedule 1, Paragraphs 1 and 2 of Schedule 4, Part 1 Paragraphs 1 and 2 of Schedule 9, Paragraphs 1 and 2 of Schedule 11 and Paragraph 2 of Schedule 12, which shall come into effect upon the date hereof.

5. THE OWNER'S COVENANTS

- 5.1 The Owner covenants with the Council to fully comply with and to perform the obligations contained herein and in Schedules 1 to 12 of this Deed in accordance with the requirements and timescales contained therein.
- 5.2 The Owner covenants with the Council that the Development and use of the S106 Site shall be in strict accordance with this Deed.

6 MISCELLANEOUS

- 6.1 Prior to the date hereof the Owner shall pay to the Council the Council's legal costs in connection with this Deed.
- 6.2 The Owner confirms and warrants to the Council that it has not leased mortgaged charged or otherwise created any interest in the S106 Site other than already set out in Recital (B) and that Recitals (A) and (B) of this Deed are correct and accurate in every respect.
- 6.3 For the purposes of (inter alia) the Contracts (Rights of Third Parties) Act 1999 nothing in this Deed is intended to confer any benefit upon or create rights in favour of any party other than the parties executing this Deed and their respective successors in title.
- 6.4 For the purposes of (inter alia) the Contracts (Rights of Third Parties) Act 1999 it is hereby AGREED AND DECLARED that the parties to this Deed (and their respective successors in title) may rescind or vary this Deed without the consent of any third party

- 6.5 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by a statutory procedure or expires prior to the Commencement of Development.
- 6.6 This Deed shall be registered as a local land charge by the Council.
- 6.7 The Owner hereby covenants with the Council for itself and its successors in title to the S106 Site:
- (a) permission shall be granted to authorised officers of the Council upon reasonable notice and request and at reasonable times (except in an emergency) and subject to any instructions which any contractor may give to ensure safety for officers of the Council (or their nominated representatives) at their own or at the Council's risk to gain access to the S106 Site in order to monitor compliance with this Deed; and
 - (b) where any steps required by this Deed to be taken are not taken, the Council may enter the S106 Site and take the steps, and it will pay the Council's costs incurred in doing so.
- 6.8 All approvals certificates consents agreements satisfactions confirmations or calculations (or anything of a similar nature) that may be requested by the Owner and/or given by the Council or its officers in accordance with this Deed shall be in addition to any other approvals consents agreements or confirmations that may be required by the 1990 Act or by any other statute or regulations.
- 6.9 In the event that any part of this Deed may be subject to challenge review deletion or otherwise rendered invalid, illegal, unenforceable, null, void or voidable the balance of the said Deed shall remain in full force and effect.
- 6.10 Notices required to be given or served under this Deed shall be addressed to the parties at their addresses referred to in the introduction of this Deed.
- 6.11 Where payment of any sum payable as aforesaid is made after the Due Date interest shall be payable from the Due Date until the date of actual payment and shall be added to and form part of such sum at the rate of four per cent above the base rate for the time being of the Bank of England per annum.

- 6.12 Where this Deed imposes a requirement for the making of a payment or the undertaking of an act or the cessation of an activity on a Due Date if the notice of a Due Date is not given the Council shall be entitled in its absolute discretion to determine the Due Date and shall give notice to the Owner of its determination.
- 6.13 When making any and all payments due under this Deed, the Owner shall to attach a fully completed Payment Notice with each payment.
- 6.14 The Owner shall give to the Council seven (7) Working Days prior written notice of each and every Due Date including:
- (a) Commencement of Development in respect of each and every Phase; and
 - (b) Occupation of 25% of the Private Dwelling Units on each and every Phase.
- 6.15 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed.
- 6.16 Nothing in this Deed shall be construed as prohibiting limiting or affecting any right to develop any part of the Property in accordance with a planning permission (other than the Planning Permission) granted by the Council or the Secretary of State on appeal or by reference to him after the date of this Deed and for the avoidance of doubt any operations works or development in accordance with such a planning permission shall not constitute Commencement of Development under the terms of this Deed.

7 WAIVER

No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant covenants, terms or conditions or for acting upon any subsequent breach or default.

8 COVENANTS NOT BINDING

- 8.1 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the S106 Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

8.2 This Deed shall not be enforceable against or binding on:

- 8.2.1 any statutory undertaker who has an interest in the S106 Site solely for the purposes of carrying out its statutory functions in connection with the provision of services necessary for the Development;
- 8.2.2 any mortgagee or chargee of the Owner (other than a Chargee) who has an interest in the S106 Site by virtue solely of a charge unless said mortgagee or chargee takes possession of the S106 Site (or any part thereof) whereupon they shall take subject to this Deed and shall be personally liable for any breach of the obligations in this Deed committed or continuing at a time when the said mortgagee or chargee is in possession of all or any part of the S106 Site;
- 8.2.3 an individual owner, occupier or tenant or mortgagee of a Private Dwelling Unit in their capacity as such EXCEPT where there is a provision restricting Occupation of a certain number of Private Dwelling Units in which case the Council shall be able to enforce any restriction on the Occupation of the Private Dwelling Units until the provision or covenant has been complied with;
- 8.2.4 an individual owner, occupier or tenant or mortgagee of an Affordable Housing Unit in their capacity as such EXCEPT for the obligations regulating the use of the Affordable Housing Units as contained in Paragraph 11 of Schedule 1 (SAVE THAT the said obligations regulating the use of the Affordable Housing Units shall not be binding on Protected Occupier(s) or any successor in title to such Protected Occupier(s) and their mortgagees and their successors in title

PROVIDED ALWAYS THAT (for the avoidance of doubt) the release of liability in this Clause 8.2.1 – 8.2.4 shall not apply to any person carrying out the Development.

- 8.2.5 the Medical Centre Occupier in their capacity as such EXCEPT for the obligations regulating the use of the Medical Centre Site as contained in Paragraph 7 of Schedule 12

PROVIDED ALWAYS THAT (for the avoidance of doubt) the release of liability in this Clause 8.2.5 shall not apply where the Medical Centre Occupier is carrying out the Development on the Vistry Land.

- 8.3 The obligations contained in Schedule 1 of this Deed shall not be binding on a Chargee or any persons or bodies deriving title through such Chargee PROVIDED THAT prior to seeking to dispose of the Affordable Housing Land (or part thereof) and/or Affordable Housing Units (or any number of them) (as applicable) pursuant to a default under the terms of the Charge such Chargee shall first serve a Default Notice and shall have used reasonable endeavours over a period of three (3) months from the date of service of the Default Notice on the Council to complete a disposal of the Affordable Housing Land (or part thereof) and/or Affordable Housing Units (or any number of them) (as applicable) to another Registered Provider for a consideration not less than the amount due and outstanding under the terms of the relevant Charge including all accrued principal monies interest and costs and expenses and if such disposal has not completed within the three (3) month period, the Chargee shall not be bound as aforesaid and the Chargee shall be entitled to dispose of the Affordable Housing Land (or part thereof) and/or the Affordable Housing Units(s) (or any number of them) free from the Affordable Housing obligations in Schedule 1 which obligations shall determine absolutely.

9 CHANGE IN OWNERSHIP

The Owner agrees with the Council to give the Council immediate written notice of any change in freehold ownership of the whole or part of the S106 Site occurring before all the obligations under this Deed have been discharged such notice shall 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 S106 Site or unit of occupation purchased by reference to a plan save that this clause shall not apply to a transfer of an individual Private Dwelling Unit to a private purchaser or of Affordable Housing Units once they have been transferred to the Registered Provider.

10 DISPUTES

- 10.1 All differences and disputes which may arise between the parties hereto concerning this Deed may by agreement between the parties:

- (a) where the difference or dispute relates to the construction or interpretation of this Deed be referred to the determination (as an expert and not as an arbitrator) of an independent leading planning counsel agreed upon by the parties in dispute but in default of such agreement appointed by the President

of the Law Society of England and Wales on the application of any of the parties in dispute; or

- (b) where the difference or dispute relates to the carrying out of works or construction be referred to the determination (as expert and not as an arbitrator) of an independent Chartered Surveyor or Civil Engineer as appropriate being a partner or director practising in a leading firm of surveyors or civil engineers based in the South East of England or London and experienced in the matter in dispute agreed upon by the parties in dispute but in default of that agreement appointed by the President of the Royal Institution of Chartered Surveyors or the Institution of Civil Engineers as appropriate on the application of any of the parties in dispute PROVIDED that where a contract for the relevant works has been let and provides that the dispute or difference under it shall be referred to arbitration or the court any such dispute or difference which may arise between the parties in connection with those works shall be determined likewise.

10.2 If the parties in dispute shall fail to agree on the nature of the difference or dispute between them or it is considered by either party that the difference or dispute does not fall within Clauses 10.1(a) or 10.1(b), then any of them may apply to the President of the Law Society to appoint an independent solicitor being a partner in a leading firm of solicitors practising in the South East of England or London to decide (as expert and not as arbitrator) unless the parties can agree on an appropriate expert (to act as expert and not as arbitrator).

10.3 Except as aforesaid any expert appointed pursuant to Clauses 10.1(a) 10.1(b) or 10.2 or any other person shall:

- (a) on his appointment serve written notice thereof on the parties in dispute;
- (b) consider any written representations by or on behalf of those parties which are received by him within twenty working days of such service and immediately forward a copy of the written representation of one party to the other party;
- (c) allow both parties to the dispute an opportunity of commenting in writing on the other party's representations within twenty working days of receipt by the other party thereof;

- (d) have an unfettered discretion to determine the reference to him;
- (e) serve notice of his determination as soon as he has made it;
- (f) give full and clear reasons for his decision;
- (g) be paid his proper fee and expenses in connection with such reference by the parties in dispute in equal shares or in such shares as he may determine and his determination shall be final and binding on the parties in dispute (save in the case of manifest error) PROVIDED THAT if any such expert shall die become insolvent or of unsound mind or if either of the parties in dispute shall serve on him written notice in their opinion he has unreasonably delayed making his determination he shall be ipso facto discharged and be entitled only to his reasonable expenses prior to such discharge and another person shall be appointed in his place as such expert.

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

11 INDEXATION

The Contributions (or any part thereof) shall be Index Linked to the Inflation Index so that the sum actually payable shall be recalculated by the application of the following formula:

$$A = (B \times C) \div D$$

Where:

A is the recalculated sum actually payable on the date of payment of the relevant Contribution (or any part thereof)

B is the amount of the relevant Contribution specified in this Deed

C is the Inflation Index for the month preceding the relevant date of payment of the Contribution (or part thereof)

D is the Inflation Index for the month preceding the date of this Deed

C divided by D is equal to or greater than 1

12 JURISDICTION

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

13 DELIVERY

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

14 DEVELOPER'S CONSENT

The Developer hereby consents to the completion of this Deed and declares that from the date of this Deed its interest in the Vistry Land shall be bound by the terms of this Deed.

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

SCHEDULE 1

Part 1 – Phasing Plan

The Owner covenants with the Council:

1. Not to Commence Development unless and until, with the first Reserved Matters Application for approval of details of the layout of part or all of the Development, the Owner has submitted a Phasing Plan (which for the avoidance of doubt may indicate that the Development will be carried out in a single Phase) to the Council in accordance with the Planning Permission and this has been approved by the Head of Planning and Environmental Services.

Part 2 – Affordable Housing

The Owner covenants with the Council:

1. In regard to the Affordable Housing Units, where the Phasing Plan indicates that there will be more than one Phase, the Phasing Plan shall show:
 - (a) the number, programming and physical extent of each Phase;
 - (b) the total number of Dwellings to be constructed within the Phase; and
 - (c) the total number of Affordable Housing Units to be constructed within each Phase which shall comprise 35% of the Dwellings (rounded to the nearest whole number) across the Development and the delivery of the Affordable Housing Tenure Mix (or such other similar size or tenure mix as may be approved by the Council) across the Development.
2. Not to Commence Development on ~~any Phase~~ unless and until, with the first Reserved Matters Application for approval of details of the layout of that Phase, the Owner has submitted the Affordable Housing Scheme (which shall conform with the Phasing Plan) to the Council and the Council has approved such scheme and any accompanying plans and details in writing AND the Council has approved the identity of the Registered Provider for the Affordable Housing Units across the Development.
3. That the Development shall be carried out in accordance with the approved Phasing Plan and approved Affordable Housing Scheme subject to any amendments approved in writing by the Council from time to time.

the Vistry Land BG (for Donescroft)
5m for Vistry Homes Limited

(for Danescroft)
SG (for Vistry Homes Limited)
The Vistry Land

4. Not to cause or permit Commencement of Development on ~~each Phase~~ unless and until the identity of the Registered Provider has been approved by the Head of Housing and EITHER:
 - 4.1 the land upon which the Affordable Housing Units are to be constructed is the subject of an unconditional and binding contract that provides for the transfer of the Affordable Housing Land in that Phase from the Owner to a Registered Provider together with a contract for the construction of the relevant Affordable Housing Units; OR
 - 4.2 the relevant Affordable Housing Units and associated Affordable Housing Land are the subject of an unconditional and binding contract for transfer from the Owner to a Registered Provider in a Clean Condition and Fully Serviced (unless otherwise agreed in writing by the Council), such transfer to be in accordance with Schedule 2.
5. The Affordable Housing Units shall be built in accordance with the Standards.
6. Not to cause or permit Occupation of:
 - 6.1 more than fifty per cent (50%) of the Private Dwelling Units in any Phase unless and until all the Affordable Housing Units in that Phase have been constructed and completed Fully Serviced ready for Occupation and the freehold interest in the land on which the Affordable Housing Units have been constructed has been transferred to the Registered Provider (such transfer to be in accordance with the terms set out in Schedule 2);
 - 6.2 any of the Affordable Rented Units and Social Rented Units in any Phase until all of the Affordable Rented Units and Social Rented Units in that Phase are subject to a Nomination Agreement whereby the Owner (being a Registered Provider) shall grant to the Council and the Council shall retain nomination rights in respect of one hundred per cent (100%) of the initial lettings of any Affordable Rented Units and Social Rented Units and thereafter seventy-five per cent (75%) of re-lettings of the Affordable Rented Units and Social Rented Units or such other arrangements as may be agreed with the Head of Housing; and
 - 6.3 any Social Rented Units or Affordable Rented Units other than by virtue of Assured Tenancies pursuant to the Housing Act 1988 and Housing Act 1996 (or such other form of tenancy as may from time to time be prescribed by statute as offering residential tenants of Registered Providers a similar measure of security of tenure) or

on such other basis as may from time to time be approved in writing by the Head of Housing.

7. Not to dispose of any of the Shared Ownership Units except at an initial equity share of the open market value of the unit being sold that the intended owner occupier can demonstrate they can afford and sustain in the long term PROVIDED THAT in each case the occupier pays a maximum rent of 2.75% of the value of unsold equity at the date of the sale of the initial equity share, rising by no more than the Inflation Index plus 0.5% per annum and that there is no prohibition on additional equity shares being subsequently sold.
8. Not to dispose of any Shared Equity Units except at a price of no more than 80% of Local Market Values with the remaining twenty per cent (20%) held by the Registered Provider as a legal charge to protect the discounted share and with no rent or charge (including interest charge) payable on the twenty per cent (20%) share owned by the Registered Provider.
9. Any Service Charge payable in respect of an Affordable Housing Unit and any associated Affordable Housing Land shall be set in accordance with the actual costs of service provision, charged separately to the rent and be affordable to those purchasing and renting Affordable Housing Units.
10. Where any resale of an Intermediate Housing Unit is referred back to a Zone Agent if the Owner satisfies the Head of Housing that there are no applicants who are Qualifying Persons, the Owner may on condition that it first obtains the consent in writing of the Head of Housing allocate the Intermediate Housing Unit otherwise than in accordance with this Deed.
11. Subject to Clause 8, not to cause or permit Occupation of:
 - 11.1 the Affordable Housing Units other than as Affordable Housing in accordance with the Affordable Housing Scheme and the terms of this Deed;
 - 11.2 any of the Affordable Rented Units other than as an Affordable Rented Unit;
 - 11.3 any of the Social Rented Units other than as a Social Rented Unit; and
 - 11.4 any of the Intermediate Housing Units other than as an Intermediate Housing Unit.

SCHEDULE 2

Terms related to the transfer of the Affordable Housing Units

1. Not to execute any transfer of the Affordable Housing Units or Affordable Housing Land except upon the following terms and conditions (unless otherwise agreed in writing by the parties to the transfer):
 - (a) title to the relevant Affordable Housing Units and/or Affordable Housing Land shall be deduced in accordance with Land Registration Act 2002;
 - (b) the relevant Affordable Housing Units and/or Affordable Housing Land will be transferred free of any financial charges together with the rights and easements but subject to the exceptions reservations rights easements and other matters contained and referred to in the Owner's title and subject to such other matters as the parties may agree;
 - (c) vacant possession of the relevant Affordable Housing Units and/or Affordable Housing Land shall be given on completion;
 - (d) completion shall take place within the time limits provided by this Deed with the date of completion to be agreed between the parties to the transfer or any extension of it agreed by the Owner and the Registered Provider;
 - (e) the transfer of the relevant Affordable Housing Units and/or Affordable Housing Land will be made with full title guarantee;
 - (f) the Standard Conditions of Sale (Fifth Edition) shall apply to the proposed transfer so far as they are not inconsistent with the conditions contained in this Deed;
 - (g) the transfer will grant:
 - (i) all such rights and easements over the Property as are appropriate to the transfer of the Affordable Housing Units and/or Affordable Housing Land together with a right of way with or without vehicles of any description and with or without domestic pets to and from the Affordable Housing Units and/or Affordable Housing Land and a public highway suitable for motor vehicles and pedestrians over the estate

roads to be constructed as are reasonably required for the use and enjoyment of the Affordable Housing Units and/or Affordable Housing Land and subject to an obligation to contribute to the costs incurred in the future upkeep repair replacement and maintenance of the same (if not adopted by the East Sussex County Council) according to user;

- (ii) such rights as may be reasonably required for the free and uninterrupted passage and running of water soil gas electricity telephone signals and like services from and to the Affordable Housing Units and/or Affordable Housing Land through the drains watercourses service cables pipes and wires which are now or may within a period of one hundred years from the date hereof be in or under or over the Property and benefiting the Affordable Housing Units and to make connections to and use all such conduits as aforesaid in and under the Property with all easements rights and privileges proper for repairing maintaining and reinstating the same the person or persons exercising the same making good all damage thereby occasioned subject to an obligation to contribute to the costs incurred in the future upkeep repair replacement and maintenance of the same if applicable.

SCHEDULE 3
Form of Nomination Agreement

THIS AGREEMENT is made on the day of 20xx BETWEEN

(1) LIMITED () whose registered office is at ("the Registered Provider")

(2) WEALDEN DISTRICT COUNCIL of the Council Offices Vicarage Lane Hailsham East Sussex BN27 2AX ("the Council")

(together hereinafter called "the Parties")

WHEREAS

- (A) The Registered Provider is a registered provider as defined in Section 80(2) of the Act and registered with the Homes England with registered number xxxxx.
- (B) The Registered Provider has purchased the Land on which the Housing Units have been built.
- (C) The Registered Provider has agreed to enter into this Nomination Agreement on the terms hereinafter appearing
- (D) The Land and Housing Units are subject to the provisions of the S106 Agreement and the provisions of that agreement shall apply to this Nomination Agreement and in the event of any conflict between the two provisions the S106 Agreement shall prevail
- (E) This Agreement is personal between the Registered Provider and the Council and shall not bind successors in title

DEFINITIONS

In this Agreement and the Schedule the following words and expressions shall have the following meanings unless the context requires otherwise:

"the Act" means the Housing and Regeneration Act 2008

"Affordable Housing" means housing provided for people who are unable to meet their housing needs in the local housing market because of the relationship between housing costs and income

"Allocations Policy" means the Council's policy as at the point of offer of accommodation setting out the priorities and procedures for the letting of council housing and nominations to registered providers which may be found at www.wealden.gov.uk/applyforhousing

"Homemove" means the choice-based letting scheme operated in Sussex as a letting and bidding scheme for Council and registered provider homes or such other scheme as the Council may from time to time adopt

"Homes England" means the agency established under Chapter 1 of the Act to regulate social housing or such other replacement organisation as may be appointed from time to time to carry out that function

"Housing Units" means the X units of Affordable Housing on the Land

"S106 Agreement" means the Deed of Agreement under s.106 of the Town and Country Planning Act 1990 dated and made between the Council (1) and (2) and (3)

"the Land" means the land known as land at East Sussex registered at the Land Registry under Title Number XXXX

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended

"Void" means a Housing Unit which is vacant, otherwise than as a result of a tenant having:-

- a) moved to other accommodation either by transfer or decant provided by the Registered Provider, or
- b) moved to other accommodation under a reciprocal arrangement provided by another registered provider registered with the Homes England

IT IS HEREBY AGREED by and between the Parties as follows:

1. For so long as the Registered Provider is the freehold owner of the Land the Council shall have the right and ability to nominate persons to occupy the Housing Units as follows:-
 - 1.1. In respect of 100% of the initial lettings of any of the Housing Units, and
 - 1.2. 75% of Voids thereafter.
2. The Registered Provider shall, within twenty four hours of a Void becoming available for nomination under Clause 1 above, inform the Council of such by email or telephone. Where email or telephone notification is not possible, the Registered Provider shall place an advert on the Homemove locata system ready to be published and advertised at www.sussexhomemove.org.uk PROVIDED ALWAYS that the Registered Provider and the Council shall operate their vacant property procedures through Homemove and in accordance with the Schedule hereto.
3. If the Registered Provider shall transfer the Land to another registered provider the said transfer shall require that the new registered provider enter into an agreement with the Council in similar terms to those contained herein.
4. This agreement is subject to and shall be construed in accordance with the matters referred to in the s106 Agreement and the matters approved thereunder and the Council's Allocations Policy shall apply to any allocation of accommodation comprised in the Housing Units

THE SCHEDULE above referred to

A. The Council shall:

1. *Provide the choice-based letting scheme called Homemove.*
2. *Advertise available properties on the Internet Site www.homemove.org.uk.*
3. *Publish a scheme user's guide for Homemove and make this available to all applicants and make this document available on the internet.*
4. *On payment of an agreed fee (currently £65) place an advert for the Registered Provider if required and ensure that all properties ready to nominate are checked and made ready to advertise no later than noon on the deadline day for property adverts*
5. *Produce a verified shortlist of applicants from the Council's housing register for the Registered Provider. This shortlist shall follow the process where applicants bid for a Housing Unit of their choice and the shortlist will be sent to the Registered Provider within 5 working days of close of bidding of an applicable Housing Unit.*
4. *All shortlists will be prioritised by the date the property is available for letting, the applicant's ranking by priority band (A, B, C or D), the time they have waited in accordance with the Council's Allocations Policy and any amendment modification or replacement thereof subsequently approved on behalf of the Council*
5. *The list shall contain the names of all applicants who satisfy the allocations criteria up to a maximum of three or such other number as may be agreed by the Council and the Registered Provider making the request in any specific case.*
6. *The Council agrees to supply the following information on shortlisted applicants:*
 - *Name and current address;*
 - *Household type and composition;*
 - *Details of access route (homeless, transfer, housing register);*
 - *Priority banding*
 - *Support needs and packages;*
 - *Relevant accommodation history*
 - *Whether the applicant is subject to a "do not visit alone" warning.*

7. *Comply with all applicable requirements of the Data Protection Legislation.*

8. *Keep the Registered Provider informed of any changes to Homemove.*

B. The Registered Provider shall:

1. *Inform the Council by email when a property is ready to advertise for occupation.*

The Registered Provider shall, as soon as they receive notice that a property is or will be available (those properties that will be available within 6 weeks or less) and will advertise the available property via the Homemove website or provide advert details in accordance with paragraph A4 of this Schedule. The Registered Provider is responsible for ensuring that property adverts will withstand scrutiny under the Property Misdescriptions Act 1991.

2. *Supply the following information about the property:*

- *Who is eligible for the property – Transfer/Homeseekers or both;*
- *Address of property;*
- *Size;*
- *Property type;*
- *Bedroom number;*
- *The minimum and maximum number of permitted occupants;*
- *Number of reception rooms (in larger units);*
- *Floor level;*
- *Rent level;*
- *Shared amenity space;*
- *Any sensitive lettings criteria;*
- *Any local lettings requirements;*
- *Heating type;*
- *Level of mobility accessibility (including wheelchair accessibility);*
- *Any other information needed by the choice based lettings scheme (if applicable);*
- *Unique selling points;*
- *Property available date;*
- *Photograph of the property if available.*

3. *On receipt of a shortlist in respect of a proposed letting, make an offer of the tenancy ("the Offer") to the applicant with the greatest priority.*
4. *Following acceptance of the Offer and where the applicant is a current tenant of the Council or another registered provider, the Registered Provider shall ensure that the tenancy start date enables the applicant to give four weeks' notice to terminate their existing tenancy.*
5. *Applicant(s) defined as statutorily homeless and being made an Offer of the tenancy must be informed that this Offer from the Registered Provider will be regarded as an offer from the Council in discharge of its statutory duty. If an applicant refuses an Offer, the Council must be informed first before the Housing Unit is re-offered. (This is crucial so that homeless households can be informed of the consequences of refusing the Offer).*
6. *Notify the Council as soon as an applicant accepts the Offer.*
7. *Notify the Council as soon as an applicant refuses the Offer and set out the reasons for refusal of any Offer when they are known.*
8. *Not reject an applicant unless under one of the following grounds:*
 - *Circumstances of applicant's household have changed since last assessment and the Housing Unit is not suitable;*
 - *Inaccurate information provided by the Council;*
 - *New information is received about the applicant's circumstances which affects the applicant's eligibility or suitability for the Housing Unit;*
 - *Applicant's household is too large for the Housing Unit;*
 - *Applicant's household is too small for Housing Unit;*
 - *Unit not suitably adapted for applicant's household (please state reason)*
 - *Accepted higher priority nomination; or*
 - *Very exceptional circumstances following agreement by the Council.*

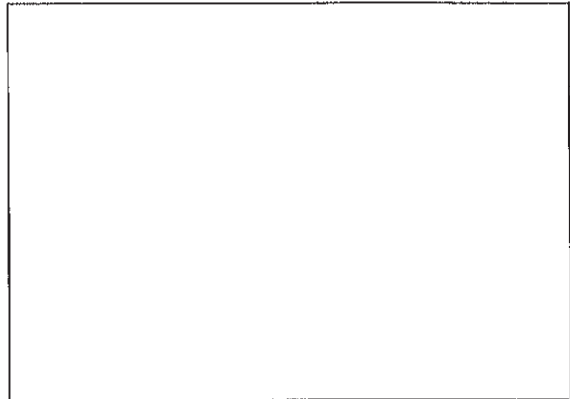
9. *Inform the Council with the results of the Offer on the same day as the Offer is made.*

10. *Comply with all applicable requirements of the Data Protection Legislation.*

IN WITNESS whereof the Common Seals of the Registered Provider and the Council have been hereunto affixed but so that this Deed shall not take effect until it has been dated the day and year first above written

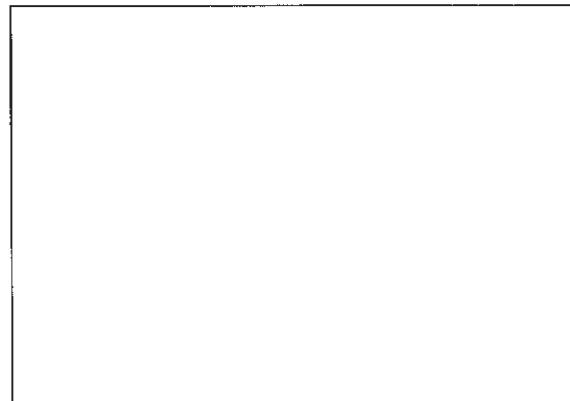
EXECUTED as a deed by affixing the
Common seal of **XXXX LIMITED** in the
presence of:

Authorised Signatory



EXECUTED as a deed by affixing the
Common seal of **WEALDEN DISTRICT
COUNCIL** in the presence of:

Authorised Signatory



SCHEDULE 4

Playing Pitch and Youth and Adult Play Contribution

The Owner covenants with the Council as follows:

Youth and Adult Play Contribution

- 3G (for Danescroft) SM (for Vistry Homes) Limited*
on the Vistry Land
1. Prior to Commencement of Development, to pay to the Council the 50% of the Youth and Adult Play Contribution in respect of all Dwellings in the Development together with any interest or Indexation payable under this Deed.
 2. Not to Commence Development until 50% of the Youth and Adult Play Contribution in respect of all Dwellings in the Development has been paid to the Council together with any interest and Indexation payable under this Deed.
 3. Prior to Occupation of the first Dwelling to be Occupied to pay to the Council the remaining 50% of the Youth and Adult Play Contribution in respect of all Dwellings in the Development together with any interest or Indexation payable under this Deed.
 4. Not to Occupy any Dwellings until the remaining 50% of the Youth and Adult Play Contribution in respect of all Dwellings in the Development has been paid to the Council together with any interest and Indexation payable under this Deed.
 5. In the event that the number of Dwellings to be provided as part of the Development increases after Commencement of the Development (due to reasons including but not limited to Commencement of an alternative Reserved Matters Approval or variation of the Planning Permission):
 - (a) to pay to the Council the Youth and Adult Play Contribution in respect of all additional Dwellings in the Development together with any interest or Indexation payable under this Deed; and
 - (b) not to Occupy the final twenty five per cent (25%) of Dwellings to be Occupied until the Youth and Adult Play Contribution have been paid to the Council in respect of all additional Dwellings in the Development together with any interest and Indexation payable under this Deed.
- on the Vistry Land 3G (for Danescroft) SM (for Vistry Homes) Limited*

Playing Pitch Contribution

6. To pay to the Council the Playing Pitch Contribution prior to Occupation of fifty per cent (50%) of the Dwellings on the Development to be Occupied.
7. Not to Occupy or cause or permit the Occupation of more than fifty per cent (50%) of the Dwellings on the Development to be Occupied until the Playing Pitch Contribution has been paid the Council.

SCHEDULE 5

Green Infrastructure

The Owner covenants with the Council:

Part 1 – Creating the Green Infrastructure

1. To provide the Green Infrastructure within the Development in accordance with the approved Green Infrastructure Scheme.
2. To transfer the Green Infrastructure for each Phase to the Management Company in accordance with Part 3 of this Schedule with arrangements in place which are financially viable to secure that it shall be properly maintained in perpetuity by said Management Company, and provide a certified copy of said transfer and details of those arrangements to the Council.
3. Not to cause or permit the use or Occupation of any part of the Playing Space unless the Council has been provided with a copy of the ROSPA Certificate relating to said Playing Space.

Part 2 – Retaining the Green Infrastructure

4. On completion of the Green Infrastructure in accordance with the approved Green Infrastructure Scheme not to cause or permit the use of the Green Infrastructure other than as open space with full and free access to the public in perpetuity.
5. At its own expense to maintain adequate public liability insurance in relation to such areas and to keep the Green Infrastructure for each Phase in good order, repair and condition ensuring that all trees and vegetation are cultivated and replaced where damaged or dying from such time as it is provided and laid out in accordance with the provisions of this Schedule and the relevant approved Green Infrastructure Scheme until such time as the Green Infrastructure for that Phase is transferred to the Management Company who will then be obliged to comply with this paragraph.

Part 3 – Transfer terms

6. In addition to the provisions of Part 2 of Schedule 6, any transfer pursuant to Schedule shall be for nil consideration and contain (unless otherwise agreed in writing by the Council):

- (a) Specified Terms;
- (b) a restrictive covenant that the Green Infrastructure may not be used otherwise than as public open space and an obligation on the transferee to secure the on-going management and maintenance of the same;
- (c) an obligation to perform and comply with the relevant Green Infrastructure Scheme approved pursuant to this Schedule (as varied or amended in writing by the Council from time to time);
- (d) an obligation to permit full and free public use of each area of Green Infrastructure from such time as it is provided and laid out in accordance with the relevant Green Infrastructure Scheme approved pursuant to this Schedule;
- (e) an obligation to put in place and thereafter maintain adequate public liability insurance (with a limit of at least £10 million a claim) in respect of the Green Infrastructure; and
- (f) the same terms as set out in Schedule 2 – Terms related to the transfer of the Affordable Housing Units which shall apply mutatis mutandis to the transfer.

SCHEDULE 6

Management Company

The Owner covenants with the Council as follows:

Part 1 – Management Company obligations

1. To submit to the Council for approval prior to first Occupation of a Phase a Management Company Structure Scheme for that Phase.
2. Not to Occupy a Phase until the Council has approved the Management Company Structure Scheme for that relevant Phase.
3. To procure that the Management Company for a Phase containing Dwellings uses its reasonable endeavours to enforce the obligation of an owner of a Dwelling to pay a charge towards the management of the Managed Land for that Phase to the Management Company.
4. Not to transfer or grant a long lease of any Dwelling or to sell or cause or permit any Dwelling to be sold other than by way of a transfer or long lease:
 - (a) that includes (or has supplemental to it) a covenant from the transferee or lessee to contribute a fair and reasonable proportion by way of a charge towards the costs of maintaining and managing the Managed Land for that Phase by the Management Company;
 - (b) that includes a covenant from the transferee or lessee to enter into a deed of covenant directly with the Management Company in respect of the covenant at Paragraph 4(a) above such covenant to pass on to successors in title to the Dwelling and to be subject to a restriction on the registered title preventing any disposition without certifying compliance with this requirement; and
 - (c) without procuring a covenant by the Management Company covering maintenance and management of the Managed Land for a Phase through the Management Company in accordance with the approved Management

Company Structure Scheme (if appropriate), and to use any charge received from the transferee or lessee for such management and maintenance

but for the avoidance of doubt if the Occupation of a Dwelling is to be under a lease or tenancy the covenant to contribute to a charge may be given by the owner of a reversionary interest.

5. To ensure that all relevant payments are made to the Management Company relating to its maintenance of the Managed Land in that Phase.
6. To maintain adequate public liability insurance for the Managed Land in that Phase for the lifetime of the Development.

Part 2 – Transfer

7. Not to cause or permit the disposal of the Managed Land in any Phase other than to the Management Company or in the case of a Registered Provider carrying out the Development of the Phase to the Management Company or the Registered Provider. Any such transfer shall (unless otherwise agreed in writing by the Council):
 - (a) be for a consideration of £1 and be made with full title guarantee;
 - (b) transfer the fee simple estate in the Managed Land in any Phase with vacant possession free of any encumbrances that would prevent the use of the Managed Land in that Phase for its intended purpose; and
 - (c) impose a restriction on the use of the Managed Land in that Phase so that the land transferred may only be used for the purposes of the Managed Land in that Phase and an obligation on the transferee to secure on-going management and maintenance of the same including compliance with the approved Green Infrastructure Scheme.

SCHEDULE 7
Bus Service Contribution

The Owner covenants with the Council as follows:

Bus Service Contribution

1. To pay to the Council the Bus Service Contribution as follows:
 - (a) Fifty per cent (50%) prior to the first Occupation of the first (1st) Dwelling to be Occupied; and
 - (b) The remaining fifty per cent (50%) prior to Occupation of fifty per cent (50%) of the Dwellings to be Occupied.
2. Not to Occupy or cause or permit the Occupation of :
 - (a) any Dwelling until fifty per cent (50%) of the Bus Service Contribution has been paid the Council; and
 - (b) More than fifty per cent (50%) of the Dwellings to be Occupied until the remaining fifty per cent (50%) of the Bus Service Contribution has been paid the Council.

SCHEDULE 8

Travel Plan

The Owner covenants with the Council as follows:

Travel Plan Audit Fees

1. To pay the Travel Plan Audit Fee – Medical Centre Site and the Travel Plan Audit Fee – Vistry Land to the Council prior to Occupation of the Development.
2. Not to Occupy the Development until the Travel Plan Audit Fee – Medical Centre Site and the Travel Plan Audit Fee – Vistry Land have been paid to the Council.

Travel Plan – Vistry Land

3. Prior to the first (1st) Dwelling to be Occupied the Owner will submit to the County Council for its approval a Travel Plan – Vistry Land based on the principles set out in the i Transport Framework Travel Plan dated 4 March 2021 (“the Transport Assessment”) and not to permit Occupation of any Dwelling unless and until this has been submitted.
4. The Owner will use reasonable endeavours to achieve the objectives set out in the Travel Plan (“the Travel Plan – Vistry Land Objectives”) and on the Occupation of the thirty fifth (35th) Dwelling to be Occupied to submit to the County Council base line data and thereafter monitoring information (data and report) in accordance with the methodology(ies) detailed in the Travel Plan – Vistry Land to demonstrate the extent to which the Travel Plan – Vistry Land Objectives are achieved.
5. Prior to the first (1st) Dwelling to be Occupied the Owner and a bondsman satisfactory to the County Council shall enter into a bond in such form as shall have been approved by the County Council acting reasonably guaranteeing the provision of targets in the Travel Plan – Vistry Land and not to permit Occupation of any Dwelling unless and such bond has been completed and provided to the County Council.
6. The amount of the bond referred to at Paragraph 5 above shall be one hundred pounds (£100) per Dwelling.
7. If in the opinion of the County Council the Travel Plan - Vistry Land Objectives are not being met the bond shall be drawn on by the County Council in order to implement

such further measures as are reasonably required by the County Council to achieve the implementation of the Travel Plan – Vistry Land.

8. If either at the end of the period of the Travel Plan - Vistry Land sustainable targets are met or if the bond is not drawn upon after 5 years following Occupation of the final Dwelling to be Occupied the bond may be released.

Preliminary draft Travel Plan – Medical Centre Site

- 9.1 Prior to first Occupation of any part of the Medical Centre Site to prepare and submit to the County Council a preliminary draft version of the Travel Plan – Medical Centre Site (“the Preliminary Draft Travel Plan - Medical Centre Site”) such plan to:
 - 9.1.1 be based on and consistent with the analysis contained in the Transport Assessment and in accordance with the aims and objectives of the Council’s Guidance on Travel Plans for Development (February 2020); and
 - 9.1.2 identify modal share targets to achieve year-on-year reductions in car use journeys to and from the Development (“the Preliminary Draft Travel Plan - Medical Centre Site Objectives”); and
 - 9.1.3 identify measures and initiatives to achieve the Preliminary Draft Travel Plan - Medical Centre Site Objectives; and
 - 9.1.4 include methodologies of the measurement and monitoring of the extent to which the Preliminary Draft Travel Plan - Medical Centre Site Objectives are achieved.

Draft Travel Plan - Medical Centre Site

- 10.1 Not to Occupy or cause or allow to be Occupied any part of the Medical Centre Site until the Preliminary Draft Travel Plan - Medical Centre Site including any appropriate adjustments (“the Draft Travel Plan - Medical Centre Site”) has been approved in writing by the County Council.
- 10.2 To use reasonable endeavours to achieve the Preliminary Draft Travel Plan – Medical Centre Site Objectives from the date of approval in writing by the County Council of the Draft Travel Plan - Medical Centre Site.

Revised Draft Travel Plan - Medical Centre Site

11. Following conclusion of the first six (6) months of the first Occupation of any part of the Medical Centre Site to prepare and not later than the conclusion of the first eight (8) months of Occupation of the Medical Centre Site to submit to the County Council a draft version of the revised Travel Plan – Medical Centre Site (“the Revised Draft Travel Plan - Medical Centre Site”) which will:-
 - 11.1 be based on the Draft Travel Plan - Medical Centre Site; and
 - 11.2 take account of a transport survey undertaken at the time of preparation of the Revised Draft Travel Plan - Medical Centre Site of the transport patterns and demands arising from the use and occupation of the Medical Centre; and
 - 11.3 set modal share targets to achieve year-on-year reductions in car use journeys to and from the Medical Centre Site (“the Revised Draft Travel Plan - Medical Centre Site Objectives”); and
 - 11.4 identify measures and initiatives to achieve the Revised Draft Travel Plan - Medical Centre Site Objectives; and
 - 11.5 include methodologies for the measurement and monitoring of the Revised Draft Travel Plan - Medical Centre Site Objectives

Travel Plan - Medical Centre Site

- 12.1 To use all reasonable endeavours to achieve modal share targets to achieve year-on-year reductions in car use journeys to and from the Medical Centre Site as set out Paragraph 11.3 of this Schedule by the Travel Plan – Medical Centre Site (“the Travel Plan - Medical Centre Site Objectives”) from the date of approval in writing by the County Council of the Travel Plan - Medical Centre Site.
- 12.2 To measure in accordance with the methodology(ies) detailed in the Travel Plan - Medical Centre Site the extent to which the Travel Plan - Medical Centre Site Objectives have been achieved at the end of each twelve (12) month period from the date of approval in writing by the County Council of the Travel Plan - Medical Centre Site for a period of five (5) years from the date of the first measurement exercise.
- 12.3 To produce to the County Council a report on the extent to which the Travel Plan - Medical Centre Site Objectives are being achieved (“the Monitoring Report”) immediately following each of the measurement exercises described in paragraph 12.2 of this Schedule.

12.4 To implement forthwith further suitable measures and initiatives (such measures and initiatives to be subject to the prior written approval of the Council) ("the Approved Measures") to achieve the Travel Plan - Medical Centre Site Objectives if the Monitoring Report reveals the Travel Plan - Medical Centre Site Objectives are not being achieved in full.

12.5 If:-

- a) The Owner fails to produce the Revised Draft Travel Plan – Medical Centre Site to the County Council within eight (8) months of the first Occupation of the Medical Centre Site; or
- b) upon receipt by the County Council of the next Monitoring Report following approval by the County Council of the Approved Measures it transpires that the Approved Measures have not been implemented in full

on each occasion the Owner shall pay to the County Council all reasonable direct and indirect costs on a full indemnity basis of implementation of the Approved Measures by the County Council and for the avoidance of doubt these shall include (but shall not be limited to) the costs and fees of any independent consultant and the administrative expenses of the County Council's Officers based upon such officers' hourly rates of charge for the additional time incurred in implementing the Approved Measures.

SCHEDULE 9

Highway Works

The Owner covenants with the County Council as follows:

PART 1

Section 278 Agreement

1. Prior to Commencement of the Development the Owner shall enter into the Section 278 Agreement with the County Council paying all of the County Council's proper and reasonable legal costs relating to the Section 278 Agreement.
2. The Owner shall not Commence or cause or allow Commencement of the Development until it has entered into the Section 278 Agreement with the County Council to secure the carrying out of the Highway Works.
3. The Owner will complete the Highways Works in accordance with the provisions of the Section 278 Agreement and in accordance with the timescales in Part 2 below.

PART 2

Highway Works

1. The Highway Works are those works set out at sub paragraphs 1.1, 1.3 and 1.5 to be provided as follows:
 - 1.1 Prior to Occupation of the first (1st) Dwelling to be Occupied the Owner shall complete the new site access to Eastbourne Road consisting of carriageway widening (east side only), pedestrian refuge, signage, junction alignment, shared footway/cycleway, right turn ghost island lane, car club parking space and charging point and crossing point as shown on Highways Drawing ITL15734-GA-003 Rev B (should the access be constructed in advance of County Council's HPEMAC Phase 1 works) or Drawing ITL15734-GA-001 Rev F (should the access be constructed after completion of the County Council's HPEMAC Phase 1 works) attached to this Deed at Appendix 5.

- 1.2 The Owner shall not Occupy or cause or allow Occupation of any Dwelling until it has completed the highways works as set out in Paragraph 1.1 above.
- 1.3 Prior to either the Occupation of fiftieth (50th) Dwelling to be Occupied or the Occupation of the Medical Centre Site (whichever is earlier) the Owner shall make provision for a series of traffic calming works on Wannock Road, Wannock Avenue, Wannock Lane, Broad Road, Farmlands Avenue and Coppice Avenue in the locations shown on drawing named "Traffic Calming – Willingdon" attached to this Deed at Appendix 5 or works to that affect agreed with the County Council.
- 1.4 The Owner shall not Occupy or cause or allow Occupation of more than forty-nine (49) Dwellings or Occupation of the the Medical Centre Site (whichever is earlier) until it has completed the highways works as set out in Paragraph 1.3 above.
- 1.5 Prior to the first (1st) Occupation of any part of the Development the Owner shall provide bus infrastructure requirements comprising Real Time Passenger Information (RTPI) for two (2) bus stops closest to the Medical Centre Site.
- 1.6 The Owner shall not Occupy or cause or allow Occupation of any part of the Development until it has completed the highways works as set out in Paragraph 1.5 above.

SCHEDULE 10

Car Club

The Owner covenants with the Council as follows:

1. Not to Occupy or cause or permit or suffer the Occupation of any Dwellings until such time as:
 - 1.1. the Owner has either entered into an agreement for a minimum period of 2 (two) years with the Car Club Provider to permit occupiers of the Dwellings to become members of the Car Club and to provide such occupiers free Car Club Membership for two years pursuant to Paragraph 5 below; or
 - 1.2. having used all reasonable endeavours to enter into such an agreement, the Owner has been unable to find a Car Club Provider which is willing to do so and having supplied the County Council with evidence in support, the County Council confirming in writing that this is acceptable in which case this Schedule shall no longer apply.
2. To notify the first household in Occupation of each Dwelling within 10 (ten) Working Days of their first Occupation of their entitlement to 2 (two) years' free membership of the Car Club.
3. To give the County Council 10 (ten) Working Days written notice prior to entering into an agreement with the Car Club Provider and to provide with that notice details of such Car Club Provider and the date of commencement of the Car Club.
4. To retain the Car Club Parking Space for the purpose of providing the Car Club for the minimum operation period of the Car Club being 2 (two) years or for such other period as the Car Club Provider may operate SUBJECT ALWAYS to Paragraph 1.2 above.
5. To provide the first occupiers of each Dwelling in the Development who are aged 18 or over with free membership of the Car Club for 2 (two) years with 50 (fifty) miles drivetime credit commencing on the date upon which they first Occupy the Development.
6. For the avoidance of doubt the provisions of this Schedule shall not require the Owner to provide any subsidy towards the operation of the Car Club beyond the cost of providing free membership for 2 (two) years with 50 (fifty) miles drivetime credit to the first occupier in Occupation of each Dwelling and FOR THE AVOIDANCE OF DOUBT

the Owner shall not be required to provide any second or subsequent occupier of a Dwelling free membership of the Car Club or 50 miles drivetime credit as set out in Paragraph 5 above.

SCHEDULE 11

Custom and Self Build Housing

The Owner covenants with the Council:

Self-Build and Custom-Build Plots Scheme

1. Prior to the Commencement of Development, to submit to the Council for approval the Self-Build and Custom-Build Plots Scheme (which shall include the Marketing Strategy).
2. Not to Commence Development unless and until the Self-Build and Custom-Build Plots Scheme (which shall include the Marketing Strategy) has been approved in writing by the Council.

on the Vistry hand
BG (for Damescroft)
SM (for Vistry Homes Limited)
on the Vistry hand
BG (for Damescroft)
SM (for Vistry Homes Limited)

Provision and use of Self-Build and Custom-Build Plots

3. To provide the Self-Build and Custom-Build Plots as part of the Development:
 - (a) in a Serviced state; and
 - (b) in accordance with the approved Self-Build and Custom-Build Plots Scheme.
4. Not to cause or permit Occupation of more than 50% (fifty per cent) of the Private Dwelling Units unless and until all of the Self-Build and Custom-Build Plots have been:
 - (a) laid out;
 - (b) in a Serviced state; and
 - (c) available for Disposal in accordance with this Deed and the approved Self-Build and Custom-Build Plots Scheme.

5. Not to cause or permit the Disposal use or Occupation of the Self-Build and Custom-Build Plots other than as Self-Build and Custom-Build Units unless otherwise approved in writing by the Council pursuant to Paragraph 10(a).

Marketing

6. To market and advertise the availability for Disposal of the Self-Build and Custom-Build Plots during the Marketing Period in accordance with the Marketing Strategy set out in the approved Self-Build and Custom-Build Plots Scheme.

Terms of Disposal

7. To act reasonably and in good faith throughout the marketing and negotiation of the Disposal of the Self-Build and Custom-Build Plots to purchasers.
8. The Disposal of each Self-Build and Custom-Build Plot shall be:
 - (a) subject to the same terms as set out in Schedule 2 – Terms related to the transfer of the Affordable Housing Units which shall apply mutatis mutandis to the Self-Build and Custom-Build Plot;
 - (b) for the purpose of developing a Self-Build and Custom-Build Unit;
 - (c) Disposed of in a Serviced state; and
 - (d) in accordance with the information approved by the Council as part of the Marketing Strategy.

Release

9. If at the expiration of the Marketing Period any Self-Build and Custom-Build Plots have not been Disposed of, the Owner shall:

- (a) provide evidence to the Council that the approved Marketing Strategy has been carried out for the Marketing Period;
 - (b) provide evidence to the Council that it has acted reasonably in any negotiations for the Disposal of the remaining Self-Build and Custom-Build Plots; and
 - (c) promptly provide to the Council any further evidence that the Council reasonably requires.
- 10. Upon receipt of the evidence provided at Paragraph 9 above, the Council shall (having sought an Independent Assessment if it so elects) in writing either:
 - (a) if it is satisfied with the evidence provided the Council shall confirm that the Owner shall no longer be required to comply with the obligations in this Schedule for the remaining plot(s) to be provided as Self-Build and Custom-Build Plots and shall be free to develop them as Private Dwelling Units; or
 - (b) if it is not satisfied with the evidence provided, the Council shall require a reasonable extension to the Marketing Period.
- 11. Where Paragraph 10(b) applies, the Owner shall continue to market and advertise the availability for Disposal of the Self-Build and Custom-Build Plots in accordance with the Marketing Strategy set out in the approved Self-Build and Custom-Build Plots Scheme for the further period as set out by the Council in writing.
- 12. Upon the expiration of the further period(s) of marketing as required by Paragraph 10(b), the provisions of Paragraphs 9, 10 and 11 shall continue to apply to the Owner.
- 13. To pay the reasonable and proper costs incurred by the Council in connection with any Independent Assessment within 10 (ten) Working Days of the Council's invoice.

SCHEDULE 12

Medical Centre

The Owner covenants with the Council as follows:

Medical Centre Marketing Strategy

1. Paragraphs 2 and 3 of this Schedule shall not apply where there has been a Medical Centre Disposal to a Medical Centre Occupier prior to Commencement of Development.
2. To submit the Medical Centre Marketing Strategy to the Council for approval prior to Commencement of Development and not to cause or permit the Commencement of Development unless and until the Medical Centre Marketing Strategy has been approved by the Council in writing.
3. To implement the approved Medical Centre Marketing Strategy for the Medical Centre Marketing Period, using best reasonable endeavours throughout the Marketing Period to seek a Medical Centre Disposal to a Medical Centre Occupier or (if earlier) such time as a Medical Centre Disposal occurs at which point the Medical Centre Marketing Period and the Medical Centre Marketing Strategy will come to an end.

Medical Centre Restriction and Disposal

4. Save for as provided in Paragraphs 9 and 10 below, not to cause or permit a Medical Centre Disposal other than to a Medical Centre Occupier on the Medical Centre Terms.
5. In the event of a Medical Centre Disposal of the Medical Centre Site to a Medical Centre Occupier the Owner shall provide the Council with written confirmation of this as soon as reasonably practicable.
6. Prior to Occupation of any Dwelling the Owner shall provide the Medical Centre Site Services
7. Not to cause or permit the use of the Medical Centre Site other than as a site for the purpose of providing a doctors' general practitioners surgery which for the avoidance

of doubt may include an ancillary pharmacy and ancillary facilities for treatments provided by general practitioners, nurses and other healthcare professionals, such services and treatments to be provided to the population of the surrounding area and the Development SUBJECT ALWAYS to Paragraphs 8 and 9 of this Schedule.

8. In the event that there has been no Medical Centre Disposal of the Medical Centre Site to a Medical Centre Occupier upon expiry of the Medical Centre Marketing Period, to:
 - (a) provide evidence to the Council that the approved Medical Centre Marketing Strategy has been carried out for the Medical Centre Marketing Period; and
 - (b) provide evidence to the Council that it has acted reasonably in any negotiations for a Medical Centre Disposal with any potential Medical Centre Occupier (including but not limited to the price).
9. In the event that the Owner has complied with Paragraph 3 of this Schedule but there has been no Medical Centre Disposal of the Medical Centre Site to a Medical Centre Occupier prior to the expiry of the Medical Centre Marketing Period and the Owner has provided to the Council the evidence required pursuant to Paragraph 5 of this Schedule, the Council may seek an extension to the Medical Centre Marketing Period (such extension to be agreed with the Owner) or agree in writing that the Owner shall be free to use the Medical Centre Site for any other purpose (subject to obtaining any necessary consents) and the provisions of this Schedule shall thereafter cease to have effect.
10. For the avoidance of doubt in the event that a Medical Centre Occupier takes possession or ownership of less than the entirety of the Medical Centre Site then upon the Council's written confirmation of such, the remainder of the Medical Centre Site shall be released from the provisions of this Schedule

Appendix 1 – Payment Notice

Deed of Agreement Details	
Application Site address	
Application	
Date of original Deed of Agreement [under S106 of the Town and Country Planning Act 1990]	
Date of variation of original Deed of Agreement [where relevant]	
Parties to: 1. original Deed of Agreement 2. variation [where relevant]	

Payee Details	
Payee [name, address and reference]	
Payee's relationship to the Parties to the Deed of Agreement	

Appendix 2

Plan 1 – The Property

Appendix 3

Plan 2 – The S106 Site





Appendix 4

Highways Drawings

ITL15734-GA-003 Rev B



ITL15734-GA-001 Rev F



Traffic Calming – Willingdon





Example of existing build out

Existing build out

Existing raised table

Existing on-street parking and/or narrow lane

Proposed build out

Proposed raised table

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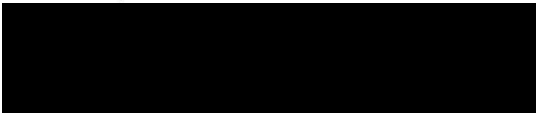
East Street

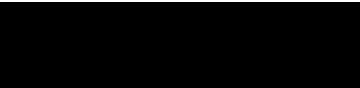


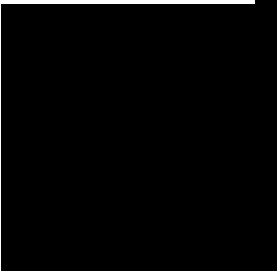
EXECUTED AS A DEED by
DANESCROFT (FROOF V WILLINGDON) LLP

Acting by a member in the presence of

Signature  Member

Signature of witness 

Name (in BLOCK CAPITALS) 

Address 

EXECUTED AS A DEED by

VISTRY HOMES LIMITED

Acting by two directors/ a director

and company secretary

