

**THIS DEED** is made the                      day of

**BY**       \*\*\*\*\*                      (“the Developer”)

**RECITALS**

1.     South Hams District Council (“the Council”) is the Local Planning Authority for the purposes of this Deed for the area within which the land described in the First Schedule (“the Land”) is situated and by whom the obligations contained in this Deed are enforceable
2.     Devon County Council (“the County Council”) is the Local Education Authority for the purposes of this Deed for the area within which the land described in the First Schedule (“the Land”) is situated and by whom the obligations contained in this Deed relating to the Education Contribution are also are enforceable
3.     The Developer is a person interested in the land as freehold owner of the Land with title registered at H.M. Land Registry under title Number DN\*\*\*\*\*
4.     \*\*\*\*\* (“the Mortgagee”) is mortgagee of the Land under a legal charge/mortgage by demise dated \*\*\*\*\* and by completing this Deed consents to the Developer entering into the obligations contained herein and confirms the Land will be bound by the said Obligations
5.     The Developer has by application/by its agents dated \*\*\*\*\* (“the Planning Application”) applied to the Council for permission to develop the Land in the manner and for the uses set out in the Planning Application and in the plans specifications and particulars deposited with the Council and forming part of the Planning Application more particularly set out in the Second Schedule (“the Development”)

6. The Council has not determined the Planning Application and the Developer enters into this obligation to the intent that any objections by the Council to the grant of planning permission are overcome

**NOW THIS DEED WITNESSETH** is made in pursuance of Section 106 of the Town and Country Planning Act 1990 and is a planning obligation for the purposes of that Section

**WITNESSES** and as follows:

1. The Developer covenants with the Council to perform the obligations specified in the Third Schedule
2. The Developer covenants with the County Council to perform the obligations contained in the Fourth Schedule
3. The Mortgagee consents by completing this Deed to the Developer entering into the obligations contained herein and acknowledges that the Land shall be bound by the obligations contained in the Third and Fourth Schedules herein
4. It is declared as follows:
  - 4.1 The obligations in this Deed shall be enforceable in accordance with the provisions of Section 106(3) of the Town and Country Planning Act 1990 by the Council and in respect of the obligation relating to the Education Contribution by the County Council
  - 4.2 No person shall be liable for breach of a covenant contained in this Deed after he shall have parted with all interest in the Land or the part in respect of which such breach occurs but without

prejudice to liability for any subsisting breach of covenant prior to parting with such interest

4.3 The covenants contained in this Deed shall take effect only upon the date specified by the Developer in a written notice served upon the Council as the date upon which the Development is to be commenced or if no such notice is served the actual date on which the Development was begun within the meaning of Section 56 of the Town and Country Planning Act 1990

4.4 If the permission granted pursuant to the Planning Application shall expire before the Development is begun as defined above or shall at any time be revoked this Deed shall forthwith determine and cease to have effect

4.5 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than one relating to the Development as specified in the Planning Application) granted (whether or not on appeal) after the date of this Deed

4.6 This Deed is a local land charge and shall be registered as such

## **5. Monitoring Fees**

5.1. The Owners acknowledge that the Council shall be entitled to use up to a two per cent (2%) part of the total payments and contributions payable pursuant to the provisions of this Agreement hereto towards the costs to be reasonably and properly incurred by the Council in monitoring compliance with this Agreement and in assessing the details submitted to the Council for approval pursuant to this Agreement

**IN WITNESS** whereof this Document has been executed by the parties as a Deed the day and year first before written

**FIRST SCHEDULE**

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**SECOND SCHEDULE**

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**THIRD SCHEDULE**

1. Prior to the Commencement of Development the Developer shall pay to the Council the Open Space Sport and Recreation Contribution towards the provision of public open space required as a result of the Development **PROVIDED THAT** in the event that aforementioned Contribution is not paid on the date of this Agreement then at the date that it is paid in accordance with the terms of this Agreement it shall be calculated in accordance with the Indexation Formula set out herein.

2. Prior to the Commencement of Development the Developer shall pay to the Council the Affordable Housing Contribution towards the provision of affordable housing required as a result of the Development **PROVIDED THAT** in the event the aforementioned Contribution is not paid on the date of this Agreement then at the date that it is paid in accordance with the terms of this Agreement it shall be calculated in accordance with the Indexation Formula set out herein.

**FOURTH SCHEDULE**

Prior to the Commencement of Development the Developer shall pay to the County Council the Education Contribution towards the provision of education facilities required as a result of the Development PROVIDED THAT in the event that the aforementioned Contribution is not paid on the date of this Agreement then at the date that it is paid in accordance with the terms of this Agreement it shall be calculated in accordance with the Indexation Formula set out herein.

## **FIFTH SCHEDULE**

### **Indexation Formula**

In the event that any of the Contributions set out in this Deed is not paid on the date of this Agreement then at the date that it is paid in accordance with the terms of this Agreement it shall be calculated in accordance with the following formula:-

$$C = \frac{\text{£Y} \times B}{A}$$

where:

A is the value of the the BCIS Index last published before the date hereof and

B is the value of the BCIS Index last published before the said contribution has been paid

C is the contribution to be paid

£Y is the amount of the Affordable Housing Contribution Education Contribution Open Space Sport and Recreation Contribution as the case may be

**THE CORPORATE SEAL** of \*\*\*\*\* )  
 )  
was affixed to this Deed in the presence )  
 )  
of: )

**SIGNED AND DELIVERED** as a deed )  
**For and on behalf of** Bank )  
**By a duly authorized Attorney** )  
**in the presence of:-** )