

MILLER HOMES LIMITED and VISTRY HOMES LIMITED

and

EMPIRE KNIGHT GROUP LIMITED

and

THE COUNCIL OF THE BOROUGH OF KIRKLEES

**Agreement under Section 106 and 106A
of the Town and Country Planning Act 1990**

**Land at Blackmoorfoot Road and Felks Street, Crosland Moor, Huddersfield
HD4 7AD**

Planning Ref: 2024/70/92614/W

THIS DEED is made the

day of

2025

BETWEEN

- (1) **THE COUNCIL OF THE BOROUGH OF KIRKLEES** of Town Hall, Huddersfield, West Yorkshire HD1 2TA (**the Council**); and
- (2) **MILLER HOMES LIMITED** (Scot Co. Reg. No. SC255429/xxx) whose registered office is at Miller House, 2 Lochside View, Edinburgh Park, Edinburgh, EH12 9DH and **VISTRY HOMES LIMITED** (Co. Reg. No 00397634) whose registered office is at 11 Tower View, Kings Hill, West Malling, United Kingdom, ME19 4UY (**the Owners**); and
- (3) **EMPIRE KNIGHT GROUP LIMITED** of Vistra Corporate Services Centre, Wickhams Cay II, Road Town, Tortola, VG1110, British Virgin Islands C/O 10/F LiFung Tower, 868 Cheung Sha Wan Road, Kowloon, Hong Kong and registered in the register of overseas entitled with ID OE008043 (**the Mortgagee**).

BACKGROUND

- (A) The Owners are now the freehold owners of the Site pursuant to a transfer dated 28 November 2024 and made between (1) Empire Knight Group Limited and (2) Miller Homes Limited and Vistry Limited and subject to a charge dated 28 November 2024 in favour of the Mortgagee and the Mortgagee hereby consents to the Owner entering into this Deed subject to the terms herein.
- (B) The Council is the local planning authority for the purposes of the Act for the administrative area in which the Site is situated and is identified in the Principal Agreement as the authority by whom the obligations created by the Principal Agreement are enforceable
- (C) The Owners have applied to the Council pursuant to Section 73 of the Act to carry out the Development (as originally defined in the Principal Agreement) without complying with certain conditions attached to the Planning Permission
- (D) The Council is minded to approve the Variation Application subject to the completion of this Deed to the effect that the obligations that restricted the Development pursuant to the Principal Agreement continue to do so subsequent

to the grant of the Variation Permission as defined herein subject to any variations set out in this Deed

OPERATIVE PARTS

1 Definitions

1.1 In this Deed the following expressions shall have the following meanings:

Expression	Meaning
Deed	this deed of variation
Principal Agreement	the agreement dated 25 th March 2022 made pursuant to (inter alia) Section 106 of the Act between the Council of the Borough of Kirklees (1) New Warton Holdings Limited (2) and Empire Knight Group Limited (3)
Variation Application	<p>the application submitted to the Council pursuant to Section 73 of the Act to carry out the Development without complying with conditions attached to the Planning Permission expressed as:</p> <p>“Variation and removal of conditions 4 (access works), 8 (Blackmoorfoot Road improvements), 10 (junction details), 16 (retaining wall design), 17 (highway structure design), 18 (surface water drainage strategy), 37 (external lighting strategy), and 39 (crime mitigation measures) of previous permission 2020/92546 for outline application (with details of points of access only) for the development of up to 770 residential dwellings (Use Class C3), including up to 70 care apartments (Use Classes C2/C3) with doctors surgery of up to 350 sq m (Use Class D1); up to 500 sq m of Use Class A1/A2/A3/A4/A5/D1 floorspace (dual use), vehicular and pedestrian access points off Blackmoorfoot Road and Felks Stile Road and associated works”</p> <p>and allocated with application number 2024/70/92614/W</p>

1.2 All other expressions in this Deed shall have the meaning set out in Clause 1 of the Principal Agreement

2 Legal effect

2.1 This Deed is made pursuant to both Section 106 and 106A of the Act and all relevant other enabling powers

2.2 This Deed is conditional on the grant by the Council of planning permission pursuant to the Variation Application

3 Variation of the Principal Agreement

3.1 It is hereby agreed that the Principal Agreement is varied as follows:

3.1.1 Substitute the definition of “**Care Apartments**” within clause 1 with:

“any apartments or bed spaces or rooms to be provided as C2 use or where such apartments or bed spaces or rooms provide personal care or assisted living services to the occupiers of the apartments or bed spaces or rooms and ancillary spaces within the care facility”

3.1.2 substitute the definition of ‘**the Development**’ within clause 1 with:

“The development of the Site of up to 770 residential dwellings (Use Class C3), including up to 70 care apartments (Use Classes C2/C3) with doctors surgery of up to 350 sq m (Use Class D1); up to 500 sq m of Use Class A1/A2/A3/A4/A5/D1 floorspace (dual use), vehicular and pedestrian access points off Blackmoorfoot Road and Felks Stile Road and associated works pursuant to the Planning Permission ”

3.1.3 substitute the definition of ‘**Application**’ within clause 1 with:

“means for the purposes of this Deed either the Original Application or the Variation Application;”

3.1.4 substitute the definition of “**Planning Permission**” within clause 1 with:

“means for the purposes of this Deed either the Original Planning Permission or the Variation Permission;”

3.1.5 substitute the definition of **“Reserved Matters Approval”** within clause 1 with:

“means approval of any Reserved Matters Applications”

3.1.6 After the definition of **‘Open Space Management Plan’** in clause 1 of the Principal Agreement insert:

“Original Application” the application for outline planning permission for the Development pursuant to Local Planning Authority reference number: 2020/92546;

“Original Planning Permission” means the outline planning permission granted pursuant to the Original Application;”

3.1.7 After the definition of **‘Relevant Reserved Matters Approval’** in clause 1 of the Principal Agreement insert:

“Reserved Matters Application” means any application for any of the reserved matters (being access, amount, layout, landscaping or scale) pursuant to the Planning Permission (being for the avoidance of doubt the Original Planning Permission or the Variation Permission) and for the further avoidance of doubt there may be any number of such applications in any Phase and a reference to **“Reserved Matters Applications”** shall be construed accordingly”

“Reserved Matters Approval” means any approval of any Reserved Matters Application

3.1.8 After the definition of “Travel Plan Monitoring Sum” insert:

“Variation Application” the application submitted to the Council pursuant to Section 73 of the Act to carry out the Development without complying with specified conditions attached to the Original Planning Permission expressed as:

“Variation and removal of conditions 4 (access works), 8 (Blackmoorfoot Road improvements), 10 (junction details), 16 (retaining wall design), 17 (highway structure design), 18 (surface water drainage strategy), 37 (external lighting strategy), and 39 (crime mitigation measures) of previous permission 2020/92546 for outline application (with details of points of access only) for the development of up to 770 residential dwellings (Use Class C3), including up to 70 care apartments (Use Classes C2/C3) with doctors surgery of up to 350 sq m (Use Class D1); up to 500 sq m of Use Class A1/A2/A3/A4/A5/D1 floorspace (dual use), vehicular and pedestrian access points off Blackmoorfoot Road and Felks Stile Road and associated works”

and allocated with application number **2024/92614**

“Variation Permission” means the planning permission to be granted by the Council pursuant to the Variation Application

3.1.9 Add the words “Only in the event that the Reserved Matters Approval relates to an area which has been identified as Open Space on the approved On-Site Open Space Masterplan:” beneath the heading “1. Open Space Management” of the Fifth Schedule

3.1.10 Add the words “Only in the event that the Reserved Matters Approval relates to an area which includes SuDS:” beneath the heading “2. SuDS Maintenance” of the Fifth Schedule

3.1.11 A new clause 12.4 shall be inserted:

“12.4 This Deed shall not be enforceable against the Mortgagee nor any mortgagee or chargee of the whole or any part of the Site or any part thereof unless it becomes a mortgagee in possession of the Site (or the relevant part or parts thereof) in which case it too will be bound by the obligations as if it were a person deriving title from the Owner and for the avoidance of doubt any mortgagee or chargee (including the Mortgagee) shall not be liable for any pre-existing breach of the obligations in this Deed”

3.1.12 A new clause 23 shall be inserted:

23 FUTURE PERMISSIONS

In the event that any application for Planning Permission pursuant to Section 73 or Section 73A or Section 73B (when/if Section 73B shall come into force) or an application for an amendment to the Original Planning Permission or the Variation Permission Section 96A of the Act is made and permission is granted by the Council in respect of that application then:

23.1 references to “Original Application” “Original Planning Permission” “Variation Application”, “Variation Permission” and “Development” in this Deed shall thereafter be deemed to include any application made pursuant to Sections 73 or 73A or 73B (when/if Section 73B shall come into force) or Section 96A of the Act, with any new planning permission granted pursuant to Section 73 or 73A or 73B (when/if Section 73B shall come into force) of the Act and the development permitted by that permission or as changed pursuant to Section 96A respectively; and

23.2 this Deed shall apply to and remain in full force in respect of both the Original Planning Permission and the Variation

Permission and that new planning permission without the need for a further agreement to be entered into pursuant to Section 106 or Section 106A of the Act unless required to do so by the Council.

but in each case **PROVIDED THAT:**

23.3 nothing in this Clause 23 shall fetter the discretion of the Council in determining any application(s) under Section 73 or 73A or 73B (when/if Section 73B shall come into force) or 96A of the Act or in requiring new or varied planning obligations whether by way of a new or supplemental deed pursuant to Section 106 and/or Section 106A of the Act; and

23.4 to the extent that any of the obligations herein have been discharged in respect of the Original Planning Permission or the Variation Permission nothing shall require the Owner to comply with that obligation again in respect of a planning permission granted under Section 73 or 73A or 73B (when/if Section 73B shall come into force) of the Act.”

4 Costs

4.1 The Owners covenant to pay the legal costs of the Council in respect of the preparation and completion of this Deed up to a maximum of £2,250 (two thousand two hundred and fifty) on or before the date hereof

5 Third Party Rights

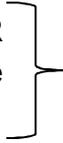
5.1 No person who is not a party to this Deed may enforce any terms hereof pursuant to the Contracts (Rights of Third Parties) Act 1999

IN WITNESS WHEREOF the parties hereto have executed this document as a deed on the date first appearing above

THE COMMON SEAL of the **COUNCIL OF THE BOROUGH OF KIRKLEES** was }
hereunto affixed in the presence of: }

Authorised signatory

EXECUTED AS A DEED by **MILLER HOMES LIMITED** acting by a director in the presence of:



Director

Signature
of Witness:

Name
(in BLOCK CAPITALS):

Address:
.....

Occupation

EXECUTED AS A DEED by **VISTRY HOMES LIMITED**

acting by

and

as Attorneys for and on behalf of VISTRY HOMES LIMITED under a Power of Attorney dated

..... in the presence of:



[Signature
of Witness]

.....

Name:

[Signature of Attorney]

Address:

Name:

Occupation:

[Signature
of Witness]

.....

Name:

[Signature of Attorney]

Address:

Name:

Occupation:

EXECUTED as a Deed by **EMPIRE KNIGHT GROUP LIMITED** a company incorporated in the British Virgin Islands acting by **TSANG Ling Chung Marcus** who in accordance with the laws of that territory is acting under the authority of that company

