**DATED 20***[ ]*

**NORTH DEVON DISTRICT COUNCIL**

**and**

***[ ]***

**PLANNING OBLIGATION BY AGREEMENT**

**UNDER SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990**

**Relating to**

***[ ]***

Legal Services

North Devon Council

PO Box 379

Barnstaple

EX32 2GR

Planning Application Ref: **PD/[ ]/[ ]**

File Ref: **LS/[ ]/[ ]**

DCC Ref: **[ ]**

**THIS PLANNING OBLIGATION BY AGREEMENT** is made the day of Two Thousand and ***[ ]***

Parties

1. NORTH DEVON DISTRICT COUNCIL of Lynton House, Commercial Road, Barnstaple, Devon EX31 1DG (“District Council”)
2. DEVON COUNTY COUNCIL of County Hall, Topsham Road, Exeter, EX2 4QD (“County Council”)
3. [ ] of [ ] (“ the [First] Owner”)
4. [ ] of [ ] (“ the [Second] Owner”)
5. [ ] (Co. Regn. No. [ ] ) of [ ] (“the Mortgagee”)
6. [ ] (Co. Regn. No. [ ] ) of [ ] (“the Applicant”)
7. [ ] (Co. Regn. No. [ ] ) of [ ] (“the Developer”)

Background

1. The District Council is the Local Planning Authority for the District of North Devon for the purposes of the 1990 Act for the area in which the Application Land is situated.
2. The County Council is the Education Authority and the Highways Authority for the area in which the Application Land is situated.
3. The [First]Owner is the Freehold owner of the Application Land comprised in Title No. DN**[ ]** at the Land Registry shown edged **[ ]** on the Location Plan (being [the whole of/a part of] the land comprised in the said title).
4. The [Second] Owner is the Freehold owner of the Application Land comprised in Title No. DN[ ] at the Land Registry shown edged [ ] on Plan 1 (being the [the whole of/a part of] the land comprised in the said title.
5. The Mortgagee has an interest in the Application Land by virtue of a legal charge dated [ ] and referred to at entries nos [ ] and [ ] in the Charges Register of title number DN[ ].

**NOW THIS DEED WITNESS AS FOLLOWS**

Interpretation

* 1. In this Agreement unless the context otherwise requires the following terms (arranged in alphabetical order) shall have the following meanings:

**1990 Act** means the Town and Country Planning Act 1990 and all subsequent amendments thereto

**Application** means the planning application made to the District Council for Planning Permission on the Application Land registered on **[ ]** under planning reference number **[ ]**

**Application Land** means the land shown edged **[ ]** on the Location Plan attached to this Agreement

**Commence Development** means the occurrence of 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) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, site survey works, laying out or pegging out works, erection of temporary means of enclosure, the temporary display of site notices or advertisements, and cognate expressions shall be construed accordingly

**Development** means the development as defined in the Application and the Planning Permission and includes any part or parts thereof

**District** means the administrative area of North Devon District Council

**Dwelling** means the Dwelling to be constructed as part of the Development on that part of the Holding as is shown edged **[ ]** on the Location Plan

**Head of Planning, Housing and Health** means the District Council’s Head of Planning, Housing and Health or such other officer(s) whom they shall delegate any of the District Council’s functions under Deed

**Holding** means the land shown edged **[ ]** on the Location Plan attached to this Deed

**Indexation Formula** means increased in accordance with the following indexation formula: C = £Y x B/A

Where:

A is the value of the BCIS Index last published before the date of this Deed;

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

C is the contribution to be paid; and

£Y is the amount of the relevant contribution as stated in this Deed

**Index Linked** means the payment of the sum specified together with any further amount due following application of the Indexation Formula to that sum

**Location Plan** means the plan annexed to this Agreement

**Occupation** means the occupation of a Dwelling or part of a Dwelling for residential purposes (which for the avoidance of doubt shall exclude occupation for the purposes of construction, fitting out, decoration, marketing and site security operations) and “Occupant”, “Occupy”, “Occupier” and “Occupied” shall be construed accordingly

**Planning Permission** means the Planning Permission issued pursuant to the Application

**Section 73 Permission** means planning permission issued following any new planning application made in respect of the Development pursuant to section 73 of the 1990 Act

Construction of this Deed

* 1. Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
  2. Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
  3. Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner.
  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 severally unless there is an express provision otherwise.
  5. Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
  6. References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and:

(a) in the case of the Owner this includes successors in title in respect of their interests in each and every part of the Application Land; and

(b) in the case of the **District Council and/or the County Council** the successor to **its/their respective** statutory functions.

* 1. Any covenant in this Deed whereby a party is not to do any act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done.
  2. The clause headings contained in this Deed are indicative of the meaning and intent of the clauses to which they respectively refer and are intended to assist in the interpretation of this Deed and may be taken into account accordingly.

Legal Basis

* 1. This Deed is made pursuant to Section 106 of the 1990 Act and, save as this Deed may be modified or discharged pursuant to Section 106A of the 1990 Act, all other enabling powers
  2. The covenants, restrictions and requirements imposed upon the Owner under this Deed are planning obligations pursuant to Section 106 of the Act which are enforceable by the **District Council and/or the County Council** as local planning authority against the **Owner/Applicant** and their respective successors in title, and bind the respective freehold interests of the **Owner/Applicant** in the Application Land.

Conditionality

This Deed is conditional upon:

(i) the grant of the Planning Permission; and

(ii) the Commencement of Development

save for the provisions of Clauses 6.1, 7, 8, 9, 10, 11, 12, 13, 14, 15 **[and 16]** and **Schedule [ ] clause [ ]** which shall come into effect immediately upon completion of this Deed.

Miscellaneous

* 1. The **Owner/Applicant** shall, prior to the execution of this Deed, pay the **District Council’s and/or the County Council’s** reasonable legal costs in connection with the preparation and completion of this Deed.
  2. No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
  3. The contents of this Deed shall be registerable by the District Council as a Local Land Charge pursuant to section 106(11) of the 1990 Act.
  4. Where the agreement, approval, consent or expression of satisfaction is required by the **Owner/Applicant** from the **District Council and/or the County Council** under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction (if given) shall be given on behalf of the **District Council and/or the County Council** by the Head of Planning, Housing and Health in writing, and any notices served by the **Owner/Applicant** shall be deemed to have been properly served if sent by recorded delivery post to the principal address or registered office (as appropriate) of the relevant party.
  5. Where the agreement, approval, consent or expression of satisfaction is required by the **District Council and/or the County Council**  from the **Owner/Applicant** under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed, and any notices served by the **District Council and/or the County Council**  shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.
  6. Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
  7. 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/Applicant**) it is modified by any statutory procedure or expires prior to the Commencement of Development.
  8. No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after he shall have parted with his entire interest in the Application Land or the part in respect of which the breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
  9. Nothing in this Deed shall prohibit or limit the right to develop any part of the Application Land in accordance with a planning permission (other than the Planning Permission or any approval of reserved matters pursuant to the Planning Permission) granted (whether or not on appeal) after the date of this Deed
  10. Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the **District Council and/or the County Council**  under all statutes by-laws statutory instruments orders and regulations in the exercise of their respective functions as a local authority and nothing herein contained or implied shall be taken to be a covenant or warranty or representation on the part of the **District Council and/or the County Council** that the **Owner/Applicant’s** proposals are lawful.
  11. No compensation shall be payable by the **District Council and/or the County Council** in respect of any provision of this Deed.
  12. Nothing in this Deed is or amounts to or shall be construed as a planning permission within the meaning of Section 336 of the 1990 Act
  13. No individual owner, occupier, Registered Provider or mortgagee of a single Dwelling shall be liable for any breach of the obligations contained in this Deed (except for in the case of an Affordable Dwelling for a breach the obligations contained in Schedule 1 to this Agreement where the breach relates to their Affordable Dwelling).
  14. No purchaser of a completed residential dwelling on the Application Site shall be personally liable for any breach of the obligations contained within this Deed, but this clause **[ ]** shall not release any developer or owner of the Application Land who sold the completed residential dwelling to the plot purchaser for its obligations hereunder.
  15. Nothing (contained or implied) in this deed shall fetter or restrict the statutory rights, powers, discretions and responsibilities of the **District Council and/or the County Council.**

Change in Ownership

The Owner agrees with the **[District Council and/or the County Council]** to give the **[District Council and/or the County Council]** written notice as soon as reasonably practicable of any change in ownership of any of its or their interests in the Application Land occurring before all the obligations under this Deed have been discharged, such notice to give details of the transferee’s full name and registered office (if a company) or usual address (if not) together with the area of the Application Land or unit of occupation purchased by reference to a plan.

Settlement of Disputes

* 1. Any dispute arising out of the provisions of this Deed shall be referred to a person having appropriate qualifications and experience in such matters (“the Expert”) for the determination of that dispute PROVIDED THAT the provisions of this clause shall be without prejudice to the right of any party to seek the resolution of any dispute arising out of the provisions of this Deed by referring the matter to the courts or to the right of the District Council to take action in accordance with Section 106(6) of the 1990 Act, and the referral of any such dispute to the Expert shall not prejudice prevent or delay the recourse of any party to the courts or to the provisions of Section 106 (6) of the 1990 Act for the resolution of any dispute arising out of the provisions of this Deed.
  2. The Expert shall be appointed jointly by the relevant parties to the dispute or in default of agreement then by a person nominated by the President for the time being of the Royal Institution of Chartered Surveyors on the application of any of the parties.
  3. The decision of the Expert shall be final and binding upon the relevant parties (subject to the right of the relevant parties to refer the matters to the court) and the following provisions shall apply:
  4. The charges and expenses of the Expert shall be borne equally between the relevant parties unless the Expert shall otherwise direct.
  5. The Expert shall give the relevant parties an opportunity to make representations and counter-representations to the Expert before the Expert shall make their decision.
  6. The Expert shall be entitled to obtain opinions from others if the Expert so wishes.
  7. The Expert shall make their decision within the range of any representations made by the relevant parties themselves.
  8. The Expert shall comply with any time limit or other directions agreed by the relevant parties on or before the appointment of the Expert.

Compliance Monitoring Contribution

The Owner shall, prior to the execution of this Deed, pay to the District Council the sum of **£[ ] ([ ] POUNDS)** as a contribution towards the District Council's costs of monitoring the implementation of this Deed.

Interest

If any payment due by the Owner under this Deed is paid late, interest will be payable from the date payment is due to the date of payment, at the Interest Rate.

VAT

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

Jurisdiction

This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

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.

Waiver

No waiver (whether express or implied) by any party to this Deed of any breach or default in performing or observing any of the provisions of this Deed by any other party shall constitute a continuing waiver and no such waiver shall prevent the party granting it (or implied to have done so) from enforcing any of the relevant provisions or from acting upon any subsequent breach or default.

Mortgagee Clause

The Mortgagee hereby consents to the execution of this Agreement by the Owner and agrees that the Holding shall be bound by the restrictions and obligations contained in this Deed and the Mortgagee agrees to observe and perform the restrictions and obligations contained in this Deed provided that the Mortgagee shall have no liability under this Agreement unless it shall have become entitled to enter the Holding or any part of it as mortgagee in possession or as a successor in title to the Owner.

Section 73 Applications and Future Permissions

* 1. In the event any Section 73 Permission is granted after the date of this agreement:
     1. the obligations in this Agreement (in addition to continuing to bind the land in respect of the permission) shall relate to and bind the development of the Application Land pursuant to such Section 73 Permission; and
     2. the definitions of “Application”, “Development” and “Planning Permission” shall be construed to include reference to the planning application for the Section 73 Permission, the development permitted by the Section 73 Permission and the Section 73 Permission respectively

PROVIDED THAT

* 1. Nothing in this clause shall fetter the discretion of the Council in determining the planning application for the Section 73 Permission and the appropriate planning obligations required in connection with the determination of the same;
  2. to the extent that any of the obligations in this Deed have already been discharged at the date that a Section 73 Permission is granted they shall remain discharged.

**SCHEDULE ONE**

Land Tie

The Owner shall hold the Dwelling and the remainder of the Holding together in one single ownership and the Owner shall not sell, lease, charge or otherwise dispose of the Dwelling and/or the remainder of the Holding except together as one holding.

**IN WITNESS** whereof the parties have executed this document as a Deed the day and year first before written

**EXECUTED AS A DEED )**

by affixing the Common Seal of  **)**

**NORTH DEVON DISTRICT COUNCIL** **)**

in the presence of :- **)**

**EXECUTED AS A DEED )**

by affixing the Common Seal of  **)**

**DEVON COUNTY COUNCIL**  **)**

in the presence of :- **)**

|  |  |  |
| --- | --- | --- |
| **EXECUTED AND DELIVERED AS A DEED** by **[ ]** | ) |  |
| in the presence of | ) |  |
| Witness Name | ) |  |
| Witness Signature | ) |  |
| Address | ) |  |
|  | ) |  |
| Occupation | ) |  |

**EXECUTED/SIGNED AS A DEED** by

**[ ]**

acting by-

Assistant Company Secretary

Director