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:

File Ref:

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

Between

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”**)

**INTRODUCTION**

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[ ].
6. The **Owner and/or Applicant** has submitted the Application to the District Council and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.

(7) The parties are satisfied that the restrictions and provisions contained in this Deed are necessary to make the Development acceptable in planning terms, are directly related to the Development and are fairly and reasonably related in scale and in kind to the Development.

**NOW THIS DEED WITNESS AS FOLLOWS**

|  |  |
| --- | --- |
| 1. DEFINED TERM |  DEFINITION |
|  |  |
| 1990 Act | means the Town and Country Planning Act 1990 and all subsequent amendments thereto |
| Applicant | means ***[insert name(s) of Applicant]*** |
| 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 |
| BCIS Index | means the Building Costs All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation |
| 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 |
| 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 |
| Indexation Formula | means increased in accordance with the following indexation formula: -C = £Y x B Awhere: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 |
| Interest Rate | means the Law Society’s Interest Rate calculated on a day to day basis |
| Location Plan | means the plan annexed to this Agreement |
| Local Needs Dwelling | means the dwelling to be created on the Application Land pursuant to the Planning Permission subject to the Occupation Criteria |
| Occupation | means 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 |
| Occupation Criteria | means the requirements for occupation set out in Schedule  **[ ]** |
| Owner | means **[*insert names of Owner)s)*]** and includes the Owner’s heirs and successors in title to the Land and persons deriving title under them in respect of the Land and each part of it |
| Planning Permission | means the Planning Permission issued pursuant to the Application |
| Section 73 Agreement | means a Deed made pursuant to Section 73 of the 1990 Act |
|  |  |

**2. CONSTRUCTION OF THIS DEED**

2.1 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.

2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

2.3 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.

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 severally unless there is an express provision otherwise.

2.5 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.

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

2.7 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.

2.8 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.

# **3. 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.

**4. 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.

**5. THE OWNER’S AND THE DISTRICT COUNCIL’S AND THE COUNTY COUNCIL’S COVENANTS**

5.1 The ***Owner/Applicant*** covenants with the District Council to observe and perform the obligations on their respective parts as set out in Schedule **[ ]** and the District Council covenants with the Owner to observe and perform the obligations on its part as set out in that Schedule.

***5.2 The Owner/Applicant covenants with the County Council to observe and perform the obligations on their respective parts as set out in the Schedules and the District Council covenants with the Owner to observe and perform the obligations on its part as set out in those Schedules.***

**6. Miscellaneous**

### 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.

### No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

### 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.

### 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.

###  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.

### 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.

* 1. 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.
	2. 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.
	3. 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
	4. 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.
	5. No compensation shall be payable by the ***District Council and/or the County Council*** in respect of any provision of this Deed.
	6. 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
	7. ***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).***
	8. 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.
	9. 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.***

**7. CHANGE IN OWNERSHIP**

The ***Owner/Applicant*** agree with the ***District Council and/or the County Council***  to give the District Council immediate written notice of any change in ownership of any of its or their interests in the Application Land (other than the sale of individual Dwellings) 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.

# **8. SETTLEMENT OF DISPUTES**

## 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 and/or the County 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 Agreement.

## 8.2 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.

## 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: -

### 8.4 The charges and expenses of the Expert shall be borne equally between the relevant parties unless the Expert shall otherwise direct.

### 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.

### The Expert shall be entitled to obtain opinions from others if the Expert so wishes.

### The Expert shall make their decision within the range of any representations made by the relevant parties themselves.

### The Expert shall comply with any time limit or other directions agreed by the relevant parties on or before the appointment of the Expert.

**9. COMPLIANCE MONITORING CONTRIBUTION**

The ***Owner and/or Applicant*** shall, on the execution of this Deed, pay to the District Council the sum of ***[£xxx]*** as a contribution towards the District Council's costs of monitoring the implementation of this Deed.

1. **INTEREST**

 If any payment due by the ***Owner/Applicant*** 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.

**11. VAT**

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

**12. 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.

## **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. *MORTGAGEE CLAUSE***

 ***The Mortgagee hereby consents to the execution of this Agreement by the Owner and agrees that the Application Land 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 Application Land or any part of it as mortgagee in possession or as a successor in title to the Owner at which time the terms of Schedule 3 shall come into force.***

**15. WAIVER**

 No waiver (whether express or implied) by any Party to this Agreement of any breach or default in performing or observing any of the provisions of this Agreement 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.

**16. SECTION 73 APPLICATIONS AND FUTURE PERMISSIONS**

In the event any Section 73 Permission is granted after the date of this agreement:

16.1the 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

16.2 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

16.3 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;

16.4 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 for the purposes of the Section 73 Permission.

 SCHEDULE 1

**Restrictions applying to Local Needs Dwellings**

1. No person shall occupy the Local Needs Dwelling other than as their sole or main residence.
2. The Owner must not occupy or allow either the occupation or ownership of the Local Needs Dwelling other than by a person who meets, or by persons who meet, the Occupation Criteria in respect of the Parish or

a, as allowed for under paragraph 3 of this Schedule.

b, as allowed for under paragraph 4 of this Schedule.

1. In the event that no willing purchaser or tenant who complies with the Occupation Criteria in respect of the Parish can be found after actively marketing the Local Needs Dwelling for a period of one month for housing for rent and three months for housing for sale from the date of first advertising the availability for sale or for rent of the Local Needs Dwelling then the requirements of paragraph 2 above shall not preclude the sale, letting, other disposition or occupation of the Local Needs Dwelling to a person who meets, or to persons who meet, the Occupation Criteria in respect of any of the Adjoining Parishes.
2. In the event that no willing purchaser or tenant who complies with the Occupation Criteria in respect of the Parish or the Adjoining Parishes can be found after actively marketing the Local Needs Dwelling for a further period of one month for housing for rent and three months for housing for sale following the termination of the one and three month periods referred to in paragraph 3 above paragraphs 2 and 3 hereof shall not preclude the sale, letting, other disposition or occupation of the Local Needs Dwelling to a person or persons who meet the Occupation Criteria in respect of the District.
3. The Owner shall notify in writing the Head of Planning, Housing and Health of the District Council on each Occasion that it offers the Local Needs Dwelling for sale or rent.

**SCHEDULE 2**

**Occupation Criteria for Local Needs Dwelling**

1. The Occupation Criteria shall be deemed to be satisfied by a person in need of a separate home who can demonstrate one or more of the following:-

 (a) at least one adult in the household was resident continuously in the Parish (or Adjoining Parishes or the District as the case may be) for a minimum of five years immediately prior to occupation;

 (b) at least one adult of the household was resident in the Parish (or Adjoining Parishes or the District as the case may be) for five years within the previous ten years immediately prior to occupation;

 (c) at least one parent, guardian, child or sibling of at least one adult in the household, has been resident in the Parish (or Adjoining Parishes or the District as the case may be) for a minimum of 5 years immediately prior to occupation; or

 (d) at least one adult in the household has been in continuous employment for at least 16 hours a week in the Parish (or Adjoining Parishes or the District as the case may be) for at least five years immediately prior to occupation.

2. For the purposes of paragraph 1 of this Schedule, a person shall be deemed to be in need of a separate home if he or she needs to set up a new household as a result of divorce or separation or commencing co-habitation or marriage, or as a result of leaving tied accommodation after retirement, or whose present accommodation is sub-standard or unsuitable to their present circumstances because of age, an impairment, medical condition or to meet the needs of a growing or reducing family size.

***SCHEDULE 3***

***Mortgagee Provisions***

1. ***For the avoidance of doubt and notwithstanding the terms of any legal charge or any rule of law incidental thereto any Mortgagee or Chargee shall be bound by the terms of this Deed upon exercising any power to take possession lease sell or otherwise deal with the Application Land or any part thereof.***

## ***Where a mortgagee or chargee intends to exercise a power of sale, or where a mortgagee or chargee has appointed a receiver under the mortgage or charge, the mortgagee or chargee shall notify the Head of Planning, Housing and Health in writing, 28 days prior to offering any Local Needs Dwelling for sale that it is their intention to offer any Local Needs Dwelling for sale, or within 28 days of appointing a receiver under the mortgage or charge that they have done so, as appropriate.***

## ***Where the Local Needs Dwelling is offered for sale by a mortgagee or chargee or where a mortgagee or chargee has appointed a receiver under the mortgage or charge it shall be offered for sale only on the basis that it shall first be offered by the mortgagee or chargee or receiver to persons or groups who meet the Occupation Criteria.***

## ***Where a mortgagee or chargee is exercising such a power of sale the periods set out in paragraphs 3 and 4 of Schedule 1 shall each be reduced to six weeks.***

## ***If within 12 weeks of a mortgagee or chargee first notifying the District Council that it intends to exercise a power of sale referred to above the District Council has not entered into a contract to purchase the Local Needs Dwelling or has not introduced a purchaser who meets the Occupation Criteria who is able to complete a transfer of the Local Needs Dwelling the mortgagee chargee or the receiver may sell the Local Needs Dwelling to any person who requires it as their sole or main residence provided that during the 12 week period the mortgagee or chargee or receiver has used reasonable endeavours to co-operate with the District Council to assist in the disposal of the Local Needs Dwelling.***

**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

**COMPANY LIMITED )**

acting by-

Assistant Company Secretary

Director