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 |
| Dwelling | means any Dwelling (including a house, bungalow, flat or maisonette) forming part of the Development |
| Family Member | means the Owner’s parents, spouse, siblings or children or an individual related by blood |
| 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  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 |
| 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 |
| Neighbourhood Development Plan | has the meaning given to it by Schedule 9, Part 2, Paragraph 7(2) of the Localism Act 2011 |
| 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 |
| 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 including a Planning Permission granted on appeal |
| Principal Residence | means the Dwelling Occupied as the resident’s sole or main residence where the resident spends the majority of their time when not working away from home |
| Proprietorship Register | means the register held by HM Land Registry providing official documentation to prove the ownership of land on which the Dwelling authorised by the Planning Permission is situated |
| Restriction | means a Restriction placed on the Proprietorship Register in terms set out in Schedule **[ ]** to protect the interests of the Council in securing compliance with this Deed |
| Section 73 Agreement | means a Deed made pursuant to Section 73 of the 1990 Act |
| Tenant | means a person who rents the Dwelling from the Owner pursuant to a lease of not less that twelve months’ duration and Occupies the Dwelling in accordance with the obligations in Schedule **[ ]** |
| Working Days | means Monday to Friday (other than any statutory or bank or public holidays) |
|  |  |

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/Applicant*** 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 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.

***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.***

1. **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.

1. **VAT**

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

1. **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.

***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***

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 ONE**

PRINCIPAL RESIDENCE TIE

1. The ***Owner/Applicant*** covenants with the Council as follows:
2. Not to permit the Occupation of the Dwelling otherwise than as his or her Principal Residence or the Principal Residence of a Family Member or Tenant (with their invitees and visitors for the time being)
   1. without prejudice to the generality of clause 2 above:
      1. the Dwelling shall not be occupied pursuant to a lease for a term of less than twelve months’ duration
      2. the Owner shall include within the terms of any lease a covenant that the Tenant shall Occupy the Dwelling as s Principal Residence
      3. the Dwelling shall not be occupied as a commercial or private holiday let
      4. the Dwelling shall not be advertised online, by newspaper or magazine or otherwise howsoever as available other than for sale of Occupation for a term of not less than twelve months’ duration
      5. shall keep proof that the Dwelling is being Occupied as a Principal Residence and shall produce in writing such proof as the Council may reasonably require within 21 days of being requested to do so by the Council. Such proof includes but is not limited to , being registered on the local electoral roll, at the local school, or for local healthcare
3. The Owner hereby agrees for a Restriction to be placed on the Proprietorship Register of the Land in the form set out in **[ ]** or other such form as meets the requirements of the Land Registry with the equivalent effect

SCHEDULE TWO

RESTRICTION

No transfer or lease of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by:

* the Applicant for registration or their conveyancer

and that the provisions of Schedule 1 of this Agreement dated [*insert date]* made between (1) North Devon District Council ***(2) Devon County Council [(3) insert party details]*** have been complied with or that they do not apply to the disposition

**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 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