

Dated 202[\*]

Isle of wight council

and

Owner

and

[MORTGAGEE]

**Planning obligation under section 106 of the town and country planning act 1990 relating to land at [address]**

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This deed is made on the day of 202[\*]

(1) ISLE OF WIGHT COUNCIL of County Hall, Newport, Isle of Wight, PO30 1UD (the ‘**Council**’);

(2) [NAME OF OWNER] of [ADDRESS OF OWNER] (the ‘**Owner**’); and

(3) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the ‘**Mortgagee**’)]

BACKGROUND

(A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated

(B) The Owner is the freehold owner of the Property [subject to a mortgage in favour of the Mortgagee but otherwise] free from encumbrances

(C) The Owner has made the Planning Application and is proposing to carry out the Development.

(D) [The Mortgagee is the registered proprietor of the charge dated [DATE] referred to in entry number [NUMBER] of the charges register of Title number [NUMBER] and has agreed to enter into this Deed to give its consent to the terms of this Deed]

(E) The Council having regard to the provisions of the Local Plan and to all other material considerations resolved [[at its meeting] on [DATE]] that Planning Permission should be granted for the Development subject to the prior completion of this Deed

AGREED TERMS

1. **Interpretation**

The following definitions and rules of interpretation apply in this Deed:

1.1 Definitions:

‘**Affordable Housing’**; as defined by Annex 2 of the National Planning Policy Framework

‘**Affordable Housing Land’**; the land upon which any Affordable Housing Units are to be built pursuant to the approved Affordable Housing Scheme

‘**Affordable Housing Provider’**; a provider of Affordable Housing which provider is required to be approved by the Council in accordance with Schedule 1

‘**Affordable Housing Scheme’**; a scheme which shall identify no less than 35% of the total number of Dwellings to be erected on the Property as Affordable Housing

‘**Affordable Housing Unit’**; the Dwelling to be erected as Affordable Housing as approved under, and built in accordance with the Affordable Housing Scheme and Planning Permission

‘**Affordable Rented Housing’**; shall have the same meaning as given to it in the National Planning Policy Framework

‘**Base Rate’**; the higher of 5% and the base rate from time to time of LLoyds Bank plc

‘**Commencement of Development’**; the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990 [but disregarding for the purposes of this Deed and for no other purpose, the following operations:demolition works;site clearance;ground investigations;site survey works;temporary access construction works;archaeological investigation; anderection of any fences and hoardings around the Property]

**Commence** and **Commences** shall be construed accordingly

‘[OTHER] **Contribution**’; the sum payable in accordance with Schedule 1 of this Deed

‘**Commencement Date’**; the date Development Commences

‘**Default Interest Rate’**; 4% per annum above the Base Rate

‘**Development**’; the development of the Property authorised by the Planning Permission

‘**Disposal Date’**; in paragraph 3.6 of Schedule 1 shall mean the completion of the relevant transaction and for the avoidance of doubt (a) in paragraph (iii) is the completion of the acquisition of the 100% interest and not the grant of the original demise

[‘**Dwelling’**; a building or part of a building designed for residential occupation by a single household pursuant to the Planning Permission]

‘**Habitat Mitigation Contribution** ’; the sum £[AMOUNT] as provided in Schedule 1 of this Deed which sums are payable in accordance with the Council’s Solent Special Protection Areas Supplementary Planning Document

‘**Index Linked’**; increased in accordance with the following formula:

Amount payable = the payment specified in this Deed x (A/B) where:

A= the figure for the Retail Prices Index (All Items) that applied immediately preceding the date the payment is due

B= the figure for the Retail Prices Index (All Items) that applied when the index was last published prior to the date of this Deed

‘**Intermediate Housing’**; shall have the same meaning as given to it in the National Planning Policy Framework

‘**Island Homefinder Scheme’**; a partnership between the Isle of Wight Council, Spectrum Medina, Southern Housing Group and Vectis Housing Association for the allocation of social housing in the locality.

[‘**Local Connection’**; means:

[TO BE PROVIDED IN INSTRUCTIONS].]

[‘**Local Lettings Plan’**; the local lettings plan attached to this deed as Appendix B]

‘**Local Plan’**; the Island Plan Core Strategy (including Waste and Minerals) and Development Management Development Plan Document

‘**Open Market Dwelling’**; any Dwelling to be constructed on the Property pursuant to the Planning Permission which is not an Affordable Housing Unit

[‘**Occupation**’; the beneficial use of the Development or any part thereof for its intended use as permitted by the Planning Permission [and Occupied shall be construed accordingly]]

‘[OTHER] **Contribution**’; the sum of [AMOUNT] payable to the Council in accordance with Schedule 1 of this Deed for the purposes identified therein

**‘Plan’**; the plan attached as Appendix A

‘**Planning Application’**; the application for [FULL **OR** OUTLINE] planning permission registered by the Council on [DATE] under reference number [NUMBER]

**‘Planning Permission’**; the planning permission to be granted by the Council in respect of the Planning Application

‘**Property**’; the land at [DESCRIPTION **OR** ADDRESS] shown edged red on the Plan and registered at HM Land Registry with absolute title under title number(s) [NUMBER[S]]

‘**Qualifying Person’** a person who is nominated by the Council or the Affordable Housing Provider or in accordance with the local allocation process in force at the time of nomination and such a person must have a Local Connection unless otherwise as agreed by the Council.

‘**Social Rented Housing’**; shall have the same meaning as given to it in the National Planning Policy Framework

‘**TCPA 1990’**; Town and Country Planning Act 1990

‘**VAT**’; value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax

‘**Working Day’**; any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England

1.2 Clause headings shall not affect the interpretation of this Deed

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality)

1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular

1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders

1.7 A reference to any party shall include that party's personal representatives, successors and permitted assigns and in the case of the Council the successors to its respective statutory functions

1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time

1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision

1.10 A reference to **writing** or **written** excludes faxes and e-mail

1.11 A reference to **this Deed** or to any other deed or document referred to in this Deed is a reference to this Deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this Deed) from time to time

1.12 References to clauses and Schedules are to the clauses and Schedules of this Deed

1.13 An obligation on a party not to do something includes an obligation not to allow that thing to be done

1.14 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms

1.15 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually

2. **Statutory provisions**

2.1 This Deed constitutes a planning obligation for the purposes of section 106 of the TCPA 1990, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.

2.2 The covenants, restrictions and obligations contained in this Deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owner with the intention that they bind the interests held by those persons in the Property and their respective successors and assigns

2.3 The covenants, restrictions and obligations contained in this Deed are enforceable by the Council in accordance with section 106 of the TCPA 1990

3. **Conditionality**

With the exception of clause 1, clause 2, clause 3, [clause 7], clause 10, clause 11, clause 13, clause 16, clause 17, clause 19, clause 20, clause 21, clause 22 and clause 24 [OTHER RELEVANT CLAUSES] (which take effect immediately), this Deed is conditional on the grant and issue of the Planning Permission

4. **Covenants to the Council**

4.1 The Owner [and the Mortgagee] covenant[s] with the Council to:

4.1.1 observe and perform the covenants, restrictions and obligations contained in Schedule 1

4.1.2 give at least 10 (ten) Working Days written notice to the Council of the intended Commencement Date.

5. **Covenants by the Council**

The Council covenants with the Owner to observe and perform the covenants, restrictions and obligations contained in Schedule 2

6. **Indexation**

6.1 All financial contributions payable to the Council shall be Index Linked

6.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this Deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Owner in writing

7. [**Mortgagee's consent**

7.1 The Mortgagee consents to the completion of this Deed and declares that its interest in the Property shall be bound by the terms of this Deed as if it had been executed and registered as a land charge prior to the creation of the Mortgagee's interest in the Property

7.2 The Mortgagee shall not be personally liable for any breach of the obligations in this Deed unless committed or continuing at a time when the Mortgagee is in possession of all or any part of the Property]

8. **Release**

No person shall be liable for any breach of a covenant, restriction or obligation contained in this Deed after parting with all of its interest in the Property, except in respect of any breach subsisting prior to parting with such interest

9. **Determination of deed**

9.1 The obligations in this Deed (with the exception of clause 11) shall cease to have effect if before the Commencement of Development, the Planning Permission:

9.1.1 expires;

9.1.2 is varied or revoked other than at the request of the Owner; or

9.1.3 is quashed following a successful legal challenge

10. **Local land charge**

This Deed is a local land charge and shall be registered as such by the Council

11. **Council's costs**

11.1 The Owner shall pay to the Council on or before the date of this Deed:

11.1.1 the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, negotiation, completion and registration of this Deed

11.1.2 the sum of £[AMOUNT] as a contribution towards the Council's costs of monitoring the implementation of this Deed

12. **Interest on late payment**

If any sum or amount has not been paid to the Council by the date it is due, the Owner shall pay the Council interest on that amount at the Default Interest Rate (both before and after any judgment). Such interest shall accrue on a daily basis for the period from the due date to and including the date of payment

13. **Ownership**

13.1 The Owner warrants that no person other than the Owner [and the Mortgagee] has any legal or equitable interest in the Property

13.2 [Until the covenants, restrictions and obligations in Schedule 1 have been complied with, the Owner will give to the Council within [NUMBER] Working Days, notice of the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Property:

13.2.1 the name and address of the person to whom the disposition was made; and

13.2.2 the nature and extent of the interest disposed of]

14. [**Reasonableness**

Any approval, consent, direction, authority, agreement or action to be given by the Council under this Deed shall not be unreasonably withheld or delayed]

15. **Cancellation of entries**

15.1 On the written request of the Owner at any time after each or all of the obligations have been performed or otherwise discharged (and subject to the payment of the Council's reasonable and proper costs) the Council will issue a written confirmation of such performance or discharge.

15.2 Following the performance and full satisfaction of all the terms of this agreement or if this Deed is determined pursuant to clause 9 (and subject to the payment of the Council's reasonable and proper costs and charges) the Council will on the written request of the Owner cancel all entries made in the local land charges register in respect of this Deed.

16. **Disputes**

16.1 Any dispute, controversy or claim arising out of or relating to this Deed, including any question regarding its breach, existence, validity or termination or the legal relationships established by this Deed, shall be finally resolved by arbitration in accordance with the Arbitration Act 1996. It is agreed that:

16.1.1 the tribunal shall consist of one arbitrator appointed jointly by the parties;

16.1.2 in default of the parties' agreement as to the arbitrator, the arbitrator shall be appointed on either party's request by the President for the time being of the Royal Institution of Chartered Surveyors;

16.1.3 the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator (or if the arbitrator makes no direction, then equally); and

16.1.4 the seat of the arbitration shall be London

17. **No fetter of discretion**

Nothing (contained or implied) in this Deed shall fetter or restrict the Council's statutory rights, powers, discretions and responsibilities

18. **Waiver**

No failure or delay by the Council to exercise any right or remedy provided under this Deed or by law shall constitute a waiver of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy

19. **Future Permissions**

Nothing in this agreement shall prohibit or limit the right to develop any part of the Property in accordance with any planning permission (other than the Planning Permission or modification, variation or amendment thereof) granted after the date of the Planning Permission.

20. **Agreements and Declarations**

20.1 The parties agree that:

20.1.1 nothing in this Deed constitutes a planning permission or an obligation to grant planning permission; and

20.1.2 nothing in this Deed grants planning permission or any other approval, consent or permission required from the Council in the exercise of any other statutory function

21. **Notices**

21.1 Any notice to be given under this Deed must be in writing and must be:

21.1.1 delivered by hand; or

21.1.2 sent by pre-paid first class post or other next working day delivery service.

21.2 Any notice to be given under this Deed must be sent to the relevant party as follows:

21.2.1 to the Council at County Hall, Newport, Isle of Wight, PO30 1UD marked for the attention of the Strategic Manager Planning & Infrastructure Delivery;

21.2.2 to the Owner at [ADDRESS] marked for the attention of [NAME/POSITION];

21.2.3 [to the Mortgagee at [ADDRESS] marked for the attention of [NAME/POSITION]]

or as otherwise specified by the relevant party by notice in writing to each other party.

21.3 Any notice given in accordance with clause 21.1 and clause 21.2 will be deemed to have been received:

21.3.1 if delivered by hand, on signature of a delivery receipt provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day; or

21.3.2 if sent by pre-paid first class post or other next working day delivery service, the second Working Day after posting

21.4 A notice given under this Deed shall not be validly given if sent by e-mail

21.5 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution

22. **Third party rights**

A person who is not a party to this Deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed

23. **Value added tax**

23.1 Each amount stated to be payable by the Council or the Owner to the other under or pursuant to this Deed is exclusive of VAT (if any)

23.2 If any VAT is at any time chargeable on any supply made by the Council or the Owner under or pursuant to this Deed, the party making the payment shall pay the other an amount equal to that VAT as additional consideration on receipt of a valid VAT invoice

24. **Governing Law**

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it

The common seal of the ISLE OF WIGHT COUNCIL

was affixed to this document in the presence of:

Authorised signatory

Signed as a deed by OWNER in the presence of:

.......................................

Witness’ Signature

[NAME, ADDRESS AND OCCUPATION OF WITNESS]

.......................................

Signature

Executed as a deed by [NAME OF MORTGAGEE] acting by [NAME OF DIRECTOR], a director, in the presence of:

.......................................

[SIGNATURE OF WITNESS]

[NAME, ADDRESS AND OCCUPATION OF WITNESS]

.......................................

Director

**Schedule 1**

**Covenants to the Council**

1. **Habitat Mitigation Contribution**

1.1 On or before the Commencement Date to pay to the Council the Habitat Mitigation Contribution as a contribution towards measures to mitigate the impacts of the Development on the Solent Special Protection Area

2. **OTHER Contribution**

2.1 On or before the Commencement Date to pay to the Council the OTHER Mitigation Contribution as a contribution towards measures to [DESCRIPTION]

3. [**Affordable Housing**

3.1 Not to cause or permit the Commencement of Development until the Affordable Housing Provider has been identified to, and approved in writing by the Council

3.2 Not to cause or permit the Commencement of Development until the Affordable Housing Scheme has been submitted to and approved by the Council in writing

3.3 To provide the Affordable Housing Units in accordance with the Affordable Housing Scheme

3.4 Not to cause or permit the Occupation of more than [X] Open Market Dwellings until the Affordable Housing Units have been constructed and transferred to the Affordable Housing Provider

3.5 Not to cause or permit the occupation of any Affordable Housing Unit other than by:-

3.5.1 a Qualifying Person’ ;or,

3.5.2 a wife or husband (or person living as such) of a Qualifying Person

3.6 Not to cause or permit the Affordable Housing Land to be used for any purpose other than for the provision of Affordable Housing in accordance with this Deed

Provided That:

(a) The covenants affecting the Affordable Housing Land under the provisions of this paragraph shall:-

(i) Not from the Disposal Date apply to any part of the Affordable Housing Land and/or the Affordable Housing Units which the Affordable Housing Provider shall be required to dispose of pursuant to a right to acquire under Part V of the Housing Act 1985 or Section 16 of the Housing Act 1996 or any similar or substitute right applicable or shall be required to sell to a tenant with the benefit of a voluntary purchaser grant provided under Sections 20 and 21 of the Housing Act 1996 (or any similar provision in any subsequent legislation)

(ii) Not from the Disposal Date bind any service supplier that purchases or leases or takes a transfer of any part of the Affordable Housing Land

(iii) Not from the Disposal Date apply to any Affordable Housing Unit demised by way of a Shared Ownership lease where (in the case of a Dwelling) the lessee or any assignee of such lease has staircased his interest in that unit such that he acquires one hundred per cent (100%) equity share in that unit and either takes a transfer of the freehold reversion or directs that the freehold reversion is transferred to a third party or (in the case of a flat) acquires a one hundred per cent (100%) equity share in the lease of flat and takes a new non-Affordable Housing lease of the flat or retains the existing lease

(b) it is agreed that:-

(i) a mortgagee or chargee of the Affordable Housing Land seeking to dispose of the Affordable Housing Land pursuant to its power of sale or other remedies under the terms of its mortgage or charge shall first seek to dispose of the said land to an Affordable Housing Provider or at the Council’s written election the Homes and Communities Agency (the Council being entitled to nominate an Affordable Housing Provider or the Homes and Communities Agency for these purposes by service of notice in writing to such mortgagee or chargee within 56 (fifty six) days of such mortgagee or chargee notifying the Council in writing of its intention to exercise its power of sale) Provided That for the avoidance of doubt such mortgagee or chargee shall not be under any obligation to dispose of the relevant Affordable Housing Land or Affordable Housing Unit for any sum less than the monies outstanding pursuant to the said mortgage or charge;

(ii) in the event of any sale not taking place in accordance with the foregoing paragraph within a period of three (3) months following the service of the Council's notice thereunder or in the absence of such notice any mortgagee or chargee (or its or their receiver or manager of the whole or any part of the relevant Affordable Housing Land) shall be entitled to sell such land or the relevant part thereof pursuant to its or their power of sale or other remedies under the mortgage or charge in question on the open market and from the date of actual completion the foregoing provisions of this Paragraph 4.1 shall not apply to the Affordable Housing Land as sold nor shall any successor in title to or person deriving title from such mortgagee or chargee be so bound.

3.7 Not to cause or permit the Affordable Housing Units to be managed once construction has been completed other than by the Affordable Housing Provider

3.8 To ensure that each Affordable Housing Unit is marketed or allocated [through Island Homefinder Scheme or Homebuy Agency] OR [in accordance with the Local Lettings Plan]]

3.9 No Discounted Market Sale Unit shall be Occupied following the first or any subsequent sale thereof unless:-

3.9.1 The sale price for the Discounted Market Sale Unit shall be not more than 80% (eighty per cent) of the Open Market Value of the respective Dwelling;

3.9.2 The transferee shall send to the Council within 14 (fourteen) days of completion of the transfer of each Discounted Market Sale Unit notice stating the total price paid;

3.9.3 It is (or in the case of the first sale will following completion of the registration at the Land Registry of the transfer of such Discounted Market Sale Unit be) subject to the Discounted Market Sale Restriction on the register of title to the relevant Discounted Market Sale Unit; and

3.9.4 A copy of the relevant restriction and the certificate referred to therein has been supplied to the Council (in accordance with clause 21 to this Deed) on each such disposition of such unit.

**Schedule 2**

**Covenants By the Council**

1. **Habitat Mitigation Contribution**

1.1 Not to use any part of the Habitat Mitigation Contribution other than for the purposes for which it was paid (whether by the Council or another party).

1.2 In the event that the Habitat Mitigation Contribution has not been spent or committed for expenditure by the Council within 5 (five) years following the date of receipt of the Habitat Mitigation Contribution the Council shall refund to the Owner any part of the Habitat Mitigation Contribution which has not been spent or committed for expenditure, together with any accrued interest

2. **[OTHER] Contribution**

2.1 Not to use any part of the [OTHER] Contribution other than for the purposes for which it was paid (whether by the Council or another party).

2.2 In the event that the [OTHER] Contribution has not been spent or committed for expenditure by the Council within 5 (five) years following the date of receipt of the [OTHER] Contribution the Council shall refund to the Owner any part of the [OTHER] Contribution which has not been spent or committed for expenditure, together with any accrued interest

Appendix A

Plan

Appendix B

[Local Lettings Plan]