

**DATED**

**202x**

**(1) THE COUNCIL OF THE ISLES OF SCILLY**

and

**(2) *The Owner***

**PLANNING OBLIGATION BY  
AGREEMENT under  
Section 106 of the Town and  
Country Planning Act 1990**

Relating to land at

*<Insert Site Address>*

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**Council of the Isles of Scilly  
Town Hall  
St Mary's  
Isles of Scilly**



**BETWEEN**

- (1) THE COUNCIL OF THE ISLES OF SCILLY** of Town Hall, St Mary's, Isles of Scilly TR21 0LW (**"the Council"**)
  
- (2) ("the Owner")**

**WHEREAS**

- 1. The Council is the Local Planning Authority for the purposes of this Deed for the area within which the Land is situated and by whom the obligations contained in this Deed are enforceable
  
- 2. The Owner is interested as Freehold Owner in the Land which is registered at the Land Registry with title absolute under title number *<insert title number>*
  
- 3. The Owner has applied to the Council for planning permission for the Development on the Land and the Council is minded to grant approval of the Development under reference number *<insert reference>* ("the Planning Permission") subject to the Owner first entering into this Deed

**NOW THIS DEED** is made in pursuance of Section 106 of the Act and contains planning obligations and is a planning obligation for the purposes of that Section and **WITNESSES** as follows:

## 1 DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

- “Act” the Town and Country Planning Act 1990.
- “Application” the application for planning permission dated *<insert date>* submitted to the Council for the Development and allocated reference number *<insert reference>*
- “Commencement of Development” the date on which any change of use or material operation (as defined in Section 56(4) of the 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, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “Commence Development” shall be construed accordingly.
- “Development” the development of the Land for *<insert description of development>* restricted in occupancy by Section 106 Planning Obligation as set out in the Application.
- “Dwelling” The dwelling shown edged red on the Layout Plan annexed hereto
- “the Expert” means a person having appropriate qualifications and local knowledge and experience in the matters in dispute as agreed by the Relevant Parties or failing agreement such person as is nominated by the President for the time being of the Royal Institution of Chartered Surveyors on the application of the Relevant Parties

"Household"	means any person who may reasonably be expected to reside with the Qualifying Person(s) or the first occupants as named in the second schedule
"Land"	means the Land referred to in the First Schedule and Recitals 1, 2 and 3 hereof
"Layout Plan"	means the plan titled layout plan and annexed hereto
"Letting Notice"	means a written notice setting out the name and address of the nominated occupant/s and the first date on which the Council intends to permit the Occupation of the Dwelling by the nominated occupant/s
"Mortgagee"	means the mortgagee of the Dwelling where the mortgagor has defaulted on the particular mortgage
"Occupation" and "Occupied"	occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations
"Occupation Notice"	means a written notice containing the name and address of the proposed occupant and details of his Household together with evidence that the proposed occupant has been approved by the Council as being a Qualifying Person
"Owner"	means the Freehold Owner
"Plan"	means the plan attached to this Deed
"Planning Permission"	the planning permission subject to conditions to be granted by the Council pursuant to the Application
"Qualifying Person"	means, a person who is confirmed in writing by the Council to be a person with a Specific Local Need in accordance with the Third Schedule

“Relevant Parties”	means the parties to this deed or their successors in title or assigns and in the case of the Council includes any statutory successors as local planning authority
“Specific Local Need”	means those requirements set out at the Third Schedule and any subsequent modifications or revisions to the definition of Specific Local Need approved by Council
“Vacancy Notice”	means written notice of the Vacation Date
“Vacation Date”	means the first date on which the Owner reasonably considers that the Dwelling will be vacant and ready for Occupation.

## **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 interchangeable 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 Council the successors to their respective statutory functions.
- 2.7 The headings are for reference only and shall not affect construction.

### **3 LEGAL BASIS**

- 3.1 This Deed is made pursuant to Section 106 of the Act and all other enabling powers and enactments which may be relevant for the purpose of giving validity hereto or facilitating the enforcement of the obligations herein contained with the intent to bind the Owner's interest in the Land and to the intent that the obligations on the part of the Owner herein contained falling within the provisions of Section 106 of the Act shall be planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council as local planning authority in accordance therewith but subject as hereinafter provided

### **4 CONDITIONALITY**

This Deed shall take effect from the date hereof PROVIDED THAT if the Planning Permission is revoked or expires by the effluxion of time then this Deed shall cease to have effect provided always that at the time of the said revocation no development has begun within the meaning of Section 56 of the 1990 Act;

### **5 THE OWNER'S COVENANTS**

The Owner covenants with the Council to fulfil the obligations and restrictions specified in the Second Schedule of this Deed.

### **6 MISCELLANEOUS**

- 6.1 The Owner shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed.
- 6.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 6.3 This Deed shall be registered:
- (a) as a Local Land Charge by the Council
  - (b) on the Charges Register of Title Number *<insert title number>* at the Land Registry by the Owner on each disposal and Office Copies from Land Registry provided to the Council as evidence of registration
- 6.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the 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 shall be given on behalf of the Council by the Senior Manager: Infrastructure & Planning and any notices 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.

6.5 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.

6.6 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) it is modified by any statutory procedure or expires prior to the Commencement of Development.

6.7 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

6.8 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

6.9 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

## **7 BANK CONSENT**

7.1 The Bank consents to this Deed and acknowledges that the Deed binds the Land. Should the Bank take possession of the Land it too will be bound by the obligations as if it were a person deriving title from the Owner however the Bank shall only be liable for a breach of the Deed that it has itself caused whilst mortgagee in possession and shall not be liable for any pre-existing breach.

## **8 SETTLEMENT OF DISPUTES**

8.1 Any dispute arising out of the provisions of this Deed shall be referred to 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 matter relating to the Deed by the courts and / or in accordance with Section 106(6) of the 1990 Act

8.2 The Expert shall be appointed jointly by the Relevant Parties who are in dispute

8.3 The decision of the Expert shall be final and binding upon the Relevant Parties and subject to the following provisions:-

- (a) the charges and expenses of the Expert shall be borne equally between the Relevant Parties who are in dispute unless the Expert shall otherwise direct;
- (b) the Expert shall give the Relevant Parties who are in dispute an opportunity to make representations and counter representations to him before making his decision;
- (c) the Expert shall make his decision within the range of any representations made by the Relevant Parties who are in dispute themselves;

## **9 WAIVER**

No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

## **10 JURISDICTION**

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

## **11 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.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.



## FIRST SCHEDULE

**ALL THAT** piece or parcel of land known as *<insert site address>* **ALL OF WHICH** said land is shown for identification purposes only edged with a red line on the Plan

## **SECOND SCHEDULE**

### **("the Obligations and Restrictions")**

1. The Dwelling shall not be occupied by anyone other than a Qualifying Person or in accordance with paragraphs 5 & 6 of this schedule.
2. The Dwelling shall not be Occupied otherwise than as the sole private residence of the Occupier with or without their Household in accordance with and subject to the provisions of this Second Schedule.
3. Nothing in paragraphs 1 and 2 shall prevent any former joint spouse civil partner or other member of the Qualifying Person's Household from continuing to reside at the Dwelling after the Qualifying Person ceases to reside there.
4. The Owner shall serve a Vacancy Notice on the Council each time the Dwelling becomes available for Occupation but in any event the Vacancy Notice shall not be served more than 28 days before the expected Vacation Date.
5. Prior to the Occupation of the Dwelling by a Qualifying Person the Owner shall serve on the Council an Occupation Notice and shall obtain the Councils written confirmation that the proposed occupant is a Qualifying Person PROVIDED THAT if the Council fails to respond to the Occupation Notice within 14 days of receipt of the Occupation Notice the proposed occupant shall be deemed to be a Qualifying Person for the purposes of this Deed.
6. In the event that the Owner after using reasonable endeavours is unable to identify a Qualifying Person who wishes to Occupy the Dwelling within a period of 6 months from the date of service of the Vacancy Notice the Dwelling may be Occupied by a person who need not be a Qualifying Person PROVIDED THAT the Owner has sent prior written notification to Council confirming what reasonable endeavours have been made and obtained written authorisation from the Council permitting such Occupation ALSO PROVIDED THAT the proposed occupier is only permitted to Occupy the Dwelling on terms that do not confer security of tenure for a period of more than 8 months upon the expiry of which the provisions of this Deed as to the Occupation of the Dwelling will again apply unless the Owner has obtained the Council's written approval to any renewal of those terms.
7. The provisions of paragraphs 4 to 6 of this Second Schedule shall not be binding on a Mortgagee.
8. Any purchaser from a Mortgagee shall be deemed to be a Qualifying Person for the purposes of this deed PROVIDED THAT on all subsequent occupations the restrictions in this deed as to the Occupation of the Dwelling will apply.

## THE THIRD SCHEDULE

### (Specific Local Need)

A person shall not be considered to be a person with a Specific Local Need unless they satisfy the following:

1. the property would be their sole private residence; and
2. they need to live permanently on the islands due to their employment circumstances and work commitments; or
3. they have been continuously resident on the islands for at least five years and require new accommodation as a result of the requirement to:
  - vacate tied accommodation; or
  - relocate to more suitable accommodation due to a medical and/or mobility condition; or
  - relocate to smaller accommodation due to under-occupation; or
4. they are a former resident who has previously lived permanently on the Isles of Scilly for a continuous period of at least 5 years and who:
  - a) has been away for educational, training purposes or to obtain work experience or professional or technical accreditation; or
  - b) is currently employed by the armed forces and merchant navy and whose main residence will be on the islands; or
  - c) is retired from the armed forces or merchant navy; or
  - d) needs to provide substantial care to a relative who has lived continuously on the islands for at least 5 years (substantial care means that identified as required by a medical doctor or relevant statutory support agency).

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**EXECUTED** as a **DEED** by )

**THE COUNCIL OF THE ISLES OF SCILLY** )

whose Common Seal was hereinto )

affixed in the presence of: )

Authorised Officer

[Print Name]

**SIGNED** as a **DEED** by **[OWNER]** )

In the presence of: )

Witness name

Address

Occupation