

DATED *[insert date]*

201x

THE COUNCIL OF THE ISLES OF SCILLY

(1)

and

[INSERT NAME OF LANDOWNER]

(2)

and

[INSERT NAME OF BANK]

(3)

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

Relating to land at
[insert application site address]

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

SAMPLE

BETWEEN

- (1) **THE COUNCIL OF THE ISLES OF SCILLY** of Town Hall, St Mary’s, Isles of Scilly TR21 0LW (“**the Council**”)
- (2) **[OWNER]** [(Company Registration No:)] of [ADDRESS] (“**the Owner**”)
- (3) **[BANK]** [(Company Registration No:)] of [ADDRESS] (“**the Bank**”)¹

WHEREAS

- 1. The Council is the Local Planning Authority for the purposes of this Deed for the area within which the land described in the First Schedule (“**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 CL []² subject to the charge made between [the Owner and the Bank] and dated []³
- 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 [] (“**the Planning Permission**”)⁴ subject to the Owner first entering into this Deed
- 4. *[By a notice of refusal datedthe Council refused planning permission for the reasons set out therein (“the Refusal”) and the Owner onappealed to the Secretary of State against the Refusal and enters into this obligation to the intent that any objections of the Council to the grant of planning permission are overcome.]⁵*

² Insert land registration details and provide up to date office copy entries and file plan to the Council

³ Insert details

⁴ Insert details of planning application

⁵ Para to be used only where application is at appeal

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 [*outline / full*] planning permission dated [] submitted to the Council for the Development and allocated reference number [].
- “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 [...*insert description of the development...*] as set out in the Application.
- “Dwelling” any dwelling/s (including a house flat or maisonette) comprised in the Development [*or the dwelling/s shown edged (red / green) 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)
“Key Worker”	means a person confirmed in writing by the Council to be a key worker in accordance with the Key Worker Policy and Procedure Document
“Key Worker Policy and Procedure Document”	means the document so titled and annexed at the Fourth Schedule which shall include any subsequent modifications or revisions to the Key Worker Policy and Procedure Document approved by the Council from time to time
“Land”	means the Land referred to in the First Schedule and Recitals 1 and 2 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 a/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 confirmation that the proposed occupant has been assessed by the Council in accordance with the Key Worker Policy and Procedure Document or the Specific Local Need criteria as set out in the Third Schedule and approved by the Council as a Qualifying Person
“Plan”	the plan attached to this Deed.
“Planning Permission”	the [<i>outline / full</i>] planning permission subject to conditions to be granted by the Council pursuant to the Application
“Qualifying Person”	means a Key Worker or 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

- 4.1 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

5.1 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 [] 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 Chief Planning & Development Officer 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.

6.7 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.

6.8 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.

6.10 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.

6.11 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 acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Land shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Land shall take effect subject to this Deed PROVIDED THAT the Bank shall otherwise have no liability under this Deed unless it takes possession of the Bank in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

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.

SAMPLE

SECOND SCHEDULE

("the Obligations and Restrictions")

- 1.1 *[Insert name of proposed occupant]* with or without their Household shall be the first occupant of the Dwelling and thereafter the Dwelling shall not be Occupied otherwise than:
 - 1.1.1 as the sole private residence of the Occupier ; and
 - 1.1.2 by a Qualifying Person with or without their Household PROVIDED THAT the Dwelling shall not be Occupied by any person other than *[insert name from 1.1 above]* until the Council has given its written approval that the prospective occupier is a Qualifying Person in accordance with paragraph 4; or
 - 1.1.3 in accordance with the provisions of paragraphs 5 or 6 of this Schedule.
2. Nothing in paragraph 1 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
3. 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.
4. Prior to the Occupation of the Dwelling by any person other than *[Insert name specified in paragraph 1 above]* the Owner shall serve on the Council an Occupation Notice and shall obtain the Council's 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.
5. 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 written notification to Council confirming what best 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

6. The provisions of paragraphs 3 to 5 of this Second Schedule shall not be binding on a Mortgagee
7. 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 both Condition A and Condition B is satisfied.

Condition A

He/she must be un-housed or living in inadequate accommodation and unable to rent a home appropriate to their circumstances on the local housing market

Condition B

He/she is the child of parents who, along with the child, have for the preceding 10 years been, and still are, in continuous residence on the Isles of Scilly in permanent residential accommodation, such accommodation not being commercial, and he/she has attained the age of 25 years

In assessing Condition B, those individuals who have left the Islands for the sole purpose of higher education, will be accepted as having a continuous main residence on the Islands

FOURTH SCHEDULE

(Key Worker Policy and Procedure Document)

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

SIGNED as a **DEED** by)

[BANK'S/MORTGAGEE SIGNATORY])

as attorney for and on behalf of)

[BANK/MORTGAGEE])

Authorised Officer

SAMPLE