**DATED 2023**

**[ ]**

**TO**

**NORTH DEVON DISTRICT COUNCIL**

**PLANNING OBLIGATION BY WAY OF**

**UNILATERAL UNDERTAKING 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: **PD/[ ]/[ ]**

File Ref: **LS/[ ]/[ ]**

DCC Ref: **[ ]**

**THIS UNILATERAL UNDERTAKING** is given the day of Two Thousand and Twenty Three

FROM

1.

TO

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”)

Background

* 1. The District Council is the Local Planning Authority for the purposes of the 1990 Act for the area within which the Land is situated.
	2. The Owner is the Freehold owner of the Application Land comprised in title no**. [ ]** at the Land Registry shown edged red on the Location Plan (being the **whole of/a part of** the land comprised in the said title).
	3. The Owner 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.
	4. 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 kind to the Development.

**THIS UNDERTAKING WITNESSES AS FOLLOWS**

Interpretation

* 1. In this Undertaking unless the context otherwise requires the following terms (arranged in alphabetical order) shall have the following meanings:

**1990 Act** means the Town and Country Planning Act 1990 and all subsequent amendments thereto

**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 red on the Location Plan attached to this Agreement

**Development** means the development as defined in the Application and the Planning Permission and includes any part or parts thereof

**District** means the administrative area of North Devon District Council

**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

**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

# INTERPRETATION

* 1. Where in this Undertaking 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 Undertaking.
	2. Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
	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.
	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.
	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.
	6. References to any party to this Undertaking 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 the successor to its respective statutory functions.
	7. Any covenant in this Undertaking 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.
	8. The clause headings contained in this Undertaking 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 Undertaking and may be taken into account accordingly.
1. **OBLIGATIONS AND STATUTORY POWERS**
	1. This Undertaking is entered into by unilateral undertaking and is a planning obligation for the purposes of section 106 of the 1990 Act and it is acknowledged by the Owner that the obligations contained within it are binding on the Application Land and subject to Clause 4, are enforceable by the District Council as the local planning authority against the Owner as owner of the Application Land and against its successors in title in respect of its interests in each and every part of the Application Land.
	2. The Owner hereby covenants to observe and perform the Planning Obligations.
2. **CONDITIONALITY**
	1. The obligations in this Undertaking are unless otherwise specified conditional on:
		1. the grant and issue of the Planning Permission; and
		2. the Commencement of Development.

5 **CHANGE IN OWNERSHIP**

## The Owner agrees to give the District Council immediate written notice of any change in ownership of any of its or their interests in the Application Land 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.

1. **LIABILITY**
	1. Upon parting with all or any interest in the Application Land no party shall have liability for the breach of any covenant or Planning Obligation in this Undertaking other than in respect of any breach by it at the time when it held such an interest.
	2. Nothing in this Undertaking shall prohibit or limit the right to develop any part of the Application Land in accordance with a planning permission (other than the Permission) granted (whether or not on appeal) after the date of this Undertaking.

# COMPLIANCE MONITORING CONTRIBUTION

The Owner shall, on the execution of this Deed, pay to the District Council the sum of **[£--- (----)]** as a contribution towards the District Council's costs of monitoring the implementation of this Deed.

# MISCELLANEOUS

* 1. This Undertaking shall be registered as a local land charge by the District Council;

## Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 nothing in this Undertaking confers or purports to confer any right to enforce any of the terms of this Undertaking on any person who is not a party hereto;

## Any notice served pursuant to this Undertaking shall be deemed to be served correctly if served to the above addresses by registered post and in the case of the District Council addressed to North Devon Council of Lynton House, Commercial Road, Barnstaple, Devon EX31 1DG or to the Owner addressed to **[---------------------------------];**

## This Undertaking shall cease to have effect (insofar only as it has not already been complied with) if the 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.

* 1. This Undertaking is governed by the laws of England and Wales.

**IN WITNESS** whereof the parties have executed this document as a Deed the day and year first before written

**EXECUTED AND DELIVERED )**

**AS A DEED** by **)**

 **)**

in the presence of:- **)**

Witness Name **)**

Witness Address **)**

 **)**

Signature **)**

Occupation **)**

**EXECUTED AND DELIVERED )**

**AS A DEED** by **)**

 **)**

in the presence of:- **)**

Witness Name **)**

Witness Address **)**

 **)**

Signature **)**

Occupation **)**

1. VARIATIONS

**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 Address **)**

 **)**

Signature **)**

Occupation **)**

**EXECUTED AND DELIVERED )**

**AS A DEED** by **)**

 **)**

in the presence of:- **)**

Witness Name **)**

Witness Address **)**

 **)**

Signature **)**

Occupation **)**

**EXECUTED/SIGNED AS A DEED** by

 ……………………………………………acting by

 [SIGNATURE OF DIRECTOR]