Dated 201

1. PURBECK DISTRICT COUNCIL

and

1. Landowner’s Full Name

and

(3) Developer’s Full Name

and

(4) Lender’s Full name

**AGREEMENT**

under section 106 of the Town and Country Planning Act 1990

relating to Land at Dorset

# **This AGREEMENT** is made the\_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_201

# **BETWEEN**

1. PURBECK DISTRICT COUNCIL of Westport House, Worgret Road, Wareham, Dorset BH20 4PP (“the Council”)
2.

of (“the Owner”)

1.

of (“the Developer”)

1.

of (“the Lender”)

# **INTRODUCTION**

1.1 This Agreement relates to land at Dorset edged red on the Plan (“the Land”)

1.2 The Owner is the freehold owner of the Land registered with the title absolute under title number(s) DT .

1.3 The Council is the Local Planning Authority for the area in which the Land is located

1.4 The Lender has a charge over the Land dated .

1.5 The Owner (or The Developer with the agreement of the Owner) has made the Planning Application to the Council

1.6 The Council has not yet decided the Planning Application and the Owner gives this Agreement on the basis that the obligations are (a) necessary to make the Development acceptable in planning terms; (b) directly related to the Development; and (c) fairly and reasonably related in scale and kind to the Development.

## 2 DEFINITIONS AND INTERPRETATION

2.1 For the purposes of this Agreement the following expressions shall have the following meanings:

|  |  |
| --- | --- |
| “Act” | the Town and Country Planning Act 1990  |
| "Affordable Housing Contribution”  | the sum of pounds (£ ) Index Linked as a contribution towards the provision of affordable housing within the spatial area (as defined in the Purbeck Local Plan Part 1) from which it is collected |
| “Commencement of Development” | the start of any material operation (as defined in Section 56(4) of the Act) forming part of the Development other than (for the purposes of this Agreement and for no other purpose) operations consisting of archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure and the temporary display of site notices or advertisements, and “Commence Development” shall be interpreted accordingly. |
| “Development” | the development of the Land as described in the Planning Application and under the Planning Permission |
| “Index Linked” | increased by the percentage (if any) by which the Retail Prices Index has increased between the date of its last publication immediately prior to the date of this Agreement and the date of payment;  |
| “Occupation” | 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 for security operations |
|  |  |
| “Plan” | the plan attached to this Agreement |
| "Planning Application” | the application for full planning permission for the Development submitted to the Council and given reference number   |
| “Planning Permission” | the full planning permission to be granted by the Council  |
| Retail Prices Index | the Index of Retail Prices published by the Office for National Statistics, or any official publication that replaces it |
|  |  |

2.2 Where in this Agreement 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 Agreement.

2.3 The singular meaning includes the plural meaning and vice versa.

2.4 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.

2.5 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 one or more of them unless this Agreement says otherwise.

2.6 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 getting validity from it.

2.7 References to any party to this Agreement include the successors in title to that party and any person getting title from or under that party and in the case of the Council the successors to its statutory functions.

2.8 The provisions of the Schedule are part of this Agreement

**3 OWNER’S COVENANTS**

3.1 The Owner covenants with the Council to:

3.1.1 observe and perform the restrictions stipulations and requirements specified in this Agreement and the Schedule

3.1.2 give the Council immediate written notice of any change in ownership of any of its interests in the Land occurring before all the obligations under this Agreement 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 Land or unit of occupation purchased by reference to a plan

3.1.3 pay to the Council £350.00 on or before the execution of this Agreement as a contribution to the Council’s costs in connection with the preparation and completion of this Agreement

**4 THE LENDER’S AGREEMENT**

4.1 The Lender agrees to the Owner giving this Agreement and acknowledges that the Land shall be bound by the restrictions and obligations contained in the Schedule unless this Agreement says so

**5 THE COUNCIL’S COVENANT**

5.1 The Council covenants with the Owner that it will pay to the Owner such amount of the Affordable Housing Contribution paid by the Owner to the Council under this Agreement which has not been spent on the provision of affordable housing (and the Affordable Housing Contribution shall be deemed to have been spent if the Council has properly entered into a contract to spend the Affordable Housing Contribution which is reasonably likely to result in the provision of affordable housing) within 15 years from the date of receipt of the payment of the Affordable Housing Contribution together with interest at the Co-operative Bank plc base rate from time to time for the period from the date of receipt to the date of refund.

**6 MISCELLANEOUS**

6.1 This Agreement is made under Section 106 of the Act with the intention that it will bind the Owner's interests in the Land and that the obligations shall be planning obligations.

6.2 The planning obligations contained in the Schedule are enforceable by the Council

6.3 Nothing in this Agreement shall be interpreted as a Planning Permission or approval

6.4 The Owner recognises that this Agreement is a Local Land Charge and is registerable in the Register of Local Land Charges maintained by the Council.

6.5 For the purposes of the Contracts (Rights of Third Parties) Act 1999 it is agreed that nothing in this Agreement shall confer on any third party (other than the Council) any right to enforce or any benefit of any term of this Agreement

6.6 If the Planning Permission expires (without being renewed or extended before the Development is Commenced) or is revoked this Agreement shall end immediately and cease to have effect

## 6.7 The Owner shall be taken to have Commenced Development under the Planning Permission if they Commence Development on the Land whether or not:-

## 6.7.1 The Owner has satisfied all conditions precedent to commencement set out in the Planning Permission; or

## 6.7.2 Those works are under the Planning Permission

## 6.8 It is acknowledged that:-

## 6.8.1 With the exception of clause 3.1.3 which shall be of immediate effect the obligations contained in this Agreement shall take effect upon the issue of the Planning Permission by the Council

## 6.8.2 No person shall be liable for breach of an obligation or covenant contained in this Agreement after he has transferred all his interest in the Land or the part in respect of which such breach occurs but without prejudice to liability for any breach of an obligation or covenant arising before the interest was transferred

6.8.3 Nothing in this Agreement 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 Agreement.

6.8.4 This Agreement is governed by and interpreted in accordance with the law of England and Wales

IN WITNESS of which the parties have executed this Agreement as a Deed on the day and year appearing on the first page.

**SCHEDULE**

The Owner for themselves and their successors in title to the Land covenant as follows:-

1. To pay the Affordable Housing Contribution to the Council no later than the date of first Occupation of the Development

2. Not to cause or permit first Occupation of the Development on the Land until the Affordable Housing Contribution has been paid to the Council.

EXECUTED as a DEED by )

\* )

in the presence of:- )

Signature of witness

…………………………………………………………

Name (in BLOCK CAPITALS)

…………………………………………………………

Address

…….……………………………………………………

EXECUTED as a DEED by )

\* )

in the presence of:- )

Signature of witness

…………………………………………………………

Name (in BLOCK CAPITALS)

…………………………………………………………

Address

…….……………………………………………………

THE COMMON SEAL of PURBECK )

DISTRICT COUNCIL was affixed )

in the presence of )

Authorised Officer

**GUIDANCE FOR COMPLETION**

– These notes do not form part of the Agreement and are to assist applicants in completing the Agreement and must not be included in the Agreement sent to the Council. The Agreement will only become binding upon the Council when the Council has sealed it

1. Applicants should ensure the following information is correctly inserted into the Agreement:

1. **Front Page:**
	* 1. Landowner's full name
		2. Developer's and Lender's name if they are a party
		3. Details of any additional owners, developers or lenders as appropriate
		4. The address/description of the Land to be developed
2. **Page 1:**
	* 1. The year at the end of first line
		2. Names and addresses of the owner(s), Developer(s) and any lenders who are parties to the Agreement in paragraphs (2)-(4)
		3. The site address at clause 1.1
		4. The title number(s) in clause 1.2
		5. The date of the charge(s) in clause 1.4
3. **Page 2:**
	* 1. The correct sum in the definition of “Affordable Housing Contribution”
		2. The application reference number in the definition of Planning Application
4. **Page 5/6:**
	* 1. Individuals, and limited companies sign deeds in different ways so Applicants need to ensure that not only are the names of the parties correct but the appropriate signature block describing how the party has signed the deed is used. If a party comprises more than one individual the appropriate attestation clause will need to be repeated for each individual.

2. Where no developer is a party, ensure that the following references to the Developer are deleted:

1. **Front Page:** (3)
2. **Page 1:** (3) and the words in brackets in clause 1.5

3. Where no lender is a party (see note 5 below), ensure that the following references to the Lender are deleted:

1. **Front Page:** (4)
2. **Page 1:** (4) and all of clause 1.4
3. **Page 3:** all of clause 4 including clause 4.1

4. Where more than one owner, developer or lender are involved, Applicants should ensure that:

1. Their interests and status are correctly recorded in the Introduction at page 1 by inserting further sub-paragraphs
2. References to the parties are appropriately amended to ensure that they are all correctly referred to and bound by the Agreement; and
3. Their details are inserted in the appropriate attestation clauses at the end of the Agreement.

5. Only where the amount of the Affordable Housing Contribution together with any other contributions will exceed £20,000 must all lenders having a mortgage against the land be parties to the Agreement.

6. Please check that the Plan includes all of the land that is to be developed and corresponds with the Owner's title.

7. Applicants should ensure that no obligations are being entered into that may affect land which does not belong to the Owner(s).

8. If the land is unregistered, Applicants will need to ask a solicitor to prepare evidence of the Owner(s)’ title (called an epitome of title) which will need to be checked by the Council’s solicitor.

10. Should Applicants remove any of the clauses from the Agreement the Council may refuse to accept the Agreement unless the Council’s solicitor has agreed to the deletion.