Dated 20

EXETER CITY COUNCIL

[and]

[DEVON COUNTY COUNCIL]

[and]

[ ]

**DEED OF VARIATION**

under section 106 and section 106A

of the Town and Planning Act 1990

relating to land at

[ ]

Planning Reference [ ]

Legal Services Reference [ ]



**DEED RELATING TO SECTION 106 AND 106A OF THE TOWN AND COUNTRY PLANNING ACT 1990**

**Relating to land at:** [ ]

**Dated:** 20

**Parties:**

1. **EXETER CITY COUNCIL** of the Civic Centre, Paris Street, Exeter EX1 1JN (the “**City Council**”);
2. [**DEVON COUNTY COUNCIL** of County Hall, Topsham Road, Exeter EX2 4QD (the “**County Council**”)];
3. [ ] of [ ] (the “**Owner**”); and
4. [[ ] incorporated and registered in England and Wales with company number [ ] whose registered office is at [ ] (the “**Mortgagee**”)].

**Introduction**

1. The City Council is the Local Planning Authority for the purposes of s106 and s106A of the 1990 Act for the area in which the Site is situated and is capable of enforcing the obligations in the Original Agreement.
2. [The County Council is the [Education][Highway] Authority for the area in which the Site is situated and is capable of enforcing the obligations in the Original Agreement.]
3. The Owner is the freehold owner of the Site with title number DN[ ] subject to the entries disclosed on the Charges Register of the said Title but otherwise free from incumbrances.
4. [The Mortgagee is the registered proprietor of the charge dated [ ] referred to in entry number [ ] of the charges register of Title number [ ] and has agreed to enter into this deed to give its consent to the terms of this Deed.].
5. On [insert date] the [City Council, the County Council, and the Owner] entered into the Original Agreement.
6. Without prejudice to the covenants in the Original Agreement the parties have agreed to vary the terms of the Original Agreement as set out in this Deed.

**N O W T H I S D E E D W I T N E S S E S** as follows:-

1. **Definitions**
	1. For the purposes of this Deed, the following expressions shall have the following meanings, unless the context requires otherwise:-

|  |  |
| --- | --- |
| **“Expert”** | means the person appointed by the parties hereto pursuant to the provisions of this Deed |
| **“Original Agreement”** | means the agreement made pursuant to s106 of the 1990 Act dated [ ] between the [ ] |
| **“Site”** | means the land which is bound by the obligations contained in the Original Agreement being the land defined as [defined term from Original Agreement] in the Original Agreement |
|  |  |

* 1. And except where otherwise specified or where the context requires otherwise, all definitions in the Original Agreement shall apply in this Deed as if the same were set out in this Deed.
1. **Construction of this Deed**
	1. Where reference is made to any clause, paragraph, schedule or recital, such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Deed.
	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. Where more than one person is obliged to observe or perform an obligation, the obligation can be enforced against all such persons jointly and against each individually 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 validly from it.
	6. References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party, and references to any local authority shall include the successors to its various statutory functions.
	7. Any covenant in this Deed, 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 Deed 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 Deed and may be taken into account accordingly.
	9. Where any obligation under the Original Agreement has been complied with that obligation shall be deemed to have been complied with under the Original Agreement as varied by this Deed.
2. **Legal basis**
	1. This Deed entered into by Deed is made pursuant to ss106 and 106A of the 1990 Act and pursuant to s111 of the Local Government Act 1972 and s1 of the Localism Act 2011 and any other enabling powers and is supplemental to the Original Agreement.
	2. It is acknowledged by the parties that the obligations contained within it are binding on the Site and are enforceable by the City Council as local planning authority and the County Council as [education][highway] authority against the [Owner] as owner of the Site and against any successors in title and assigns in respect of its interests in each and every part of the Site PROVIDED ALWAYS that no person shall be liable for any breach of any covenant or obligation in this Deed after it has parted with all of its interest in the Site or the part of the Site in respect of which such breach occurs (save in relation to any antecedent breach which occurs prior to parting with such interest).
3. **Variations to the Original Agreement**
	1. Without prejudice to the other covenants in the Original Agreement which shall continue in full force and effect, parties to this Deed agree that from the date of this Deed the Original Agreement shall be amended as set out in the Schedule to this Deed.
	2. The obligations and covenants in the Original Agreement as varied by this Deed relate to the Site, are planning obligations and are for the purposes of regulation 122 of the Community Infrastructure Regulations 2010 necessary, directly related to and fairly and reasonably related in scale and kind to the development of the Land.
4. **The Owner's covenants**
	1. The Owner covenants with the Council [and County Council] to observe and perform the covenants restrictions and obligations contained in the Original Agreement as amended by this Deed.
5. **City Council [and County Council] covenants**
	1. The City Council covenants with the Owner that it will observe and perform the covenants restrictions and obligations on its part contained in the Original Agreement as amended by this Deed.
	2. [The County Council covenants with the Owner that it will observe and perform the covenants restrictions and obligations on its part contained in the Original Agreement as amended by this Deed.]
6. **Miscellaneous**
	1. Upon the completion of this Deed, the [Owner] shall pay the reasonable legal costs of the City Council [and the County Council] incurred in the negotiation, preparation and execution of this Deed.
	2. No provisions of this Deed are intended to or will operate to confer any benefit pursuant to the Contracts (Rights of Third Parties) Act 1999 on a person who is not named as a party to this Deed, except that the application of that Act shall not prevent all or any of the future successors in title or to the statutory functions of any of the parties to this Deed from being able to benefit from or to enforce any of the obligations in this Deed.
	3. This Deed shall be registrable as a local land charge by the City Council.
	4. 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.
	5. 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.
7. **[Mortgagee's consent**

The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the Obligations contained in this Deed and that the security of the Mortgage over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site, in which case it too will be bound by the Obligations as if it were a person deriving title from the Owner. FOR THE AVOIDANCE OF DOUBT any buyer purchasing the Site or any part of it from the Mortgagee exercising a power of sale shall be bound by the terms of this Deed.]

1. **Waiver**

No waiver (whether express or implied) by any party to this Deed of any breach or default in performing or observing any of the provisions of this Deed by any other party shall constitute a continuing waiver, and no such waiver shall prevent the party granting it (or implied to have done so) from enforcing any of the relevant provisions or from acting upon any subsequent breach or default.

1. **Jurisdiction**

This Deed is governed by and interpreted in accordance with the law of England and Wales and (without prejudice to the jurisdiction of the High Court) the County Court in whose district the Site is situated shall have full jurisdiction to hear and determine proceedings arising from or relating to this Deed or for the enforcement of its terms or any of them.

1. **Expert Determination**
	1. Any failure to agree a matter arising out of the provisions of this Deed shall be referred to an expert being a person having appropriate qualifications and experience in such matters for determination of that dispute. The expert shall be appointed by the parties to the dispute or in default of agreement by a person nominated by the President for the time being of the Royal Institution of Chartered Surveyors on the application of any of the parties to the dispute
	2. The decision of the Expert shall (save in the case of manifest error or fraud) be final and binding upon the parties to the dispute and the following provisions shall apply:
		1. the charges and expenses of the Expert shall be borne equally between the parties to the dispute unless the Expert shall otherwise direct
		2. the Expert shall give the parties to the dispute an opportunity to make representations and counter-representations to him before making his decision
		3. the Expert shall be entitled to obtain opinions from others if he so wishes
		4. the Expert shall comply with any time limit or other directions agreed by the parties to the dispute either following or before his appointment
		5. the Expert shall make his reasoned decision within the range of representations by the parties to the dispute
2. **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.

**I N W I T N E S S** of which the parties hereto have executed this document as a deed the day and year first before written

**Schedule**

**Amendments to the Original Agreement**

* + 1. **The Original Agreement shall be amended as follows:**
			1. **[**Clause Number OR Definition**]** of the Original Agreement shall be deleted.
			2. A new clause number [*number*] shall be inserted into the Original Agreement after clause [*number*]: [*New wording*]
			3. **[**Clause Number OR Definition**]** of the Original Agreement shall be deleted and replaced with the following wording: [*New wording*].
			4. **[**Clause Number OR Definition**]** of the Original Agreement shall be amending by inserting [*specify location of wording to be added ie ‘after the words…’*] the following wording: [*New wording*].
			5. Wherever the word**[**s**]** [*defined term to be replaced*] appear in the Original Agreement **[**it OR they**]** shall be deleted and the words [*new defined term*] shall be inserted in **[**its OR their**]** place.

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

by affixing the Common Seal )

of **EXETER CITY COUNCIL** )

in the presence of:- )

Service Lead Legal Services

Team Leader - Housing & Litigation

Team Leader - ECL, Contracts Procurement & Licensing

Team Leader - Property, Planning and Non–Contentious

[**EXECUTED AS A DEED** by )

affixing THE COMMON SEAL of )

**DEVON COUNTY COUNCIL** )

in the presence of:- )

 Assistant County Solicitor

 Document no:]

[SIGNED as a DEED by )

 )

acting in the presence of:- )

Director

 Secretary]