



Unilateral Planning Obligation

under Section 106 of the Town &
Country Planning Act 1990

- (1) Aminghurst Limited
- (2) P & T Norris LLP
- (3) Arnllloyd Limited
- (4) Downing Corporate Finance Limited
- (5) Coast Constructors Limited
- (6) Gasdev Limited
- (7) Susan Kelly

Dated 23 JANUARY 2014

WE CERTIFY THAT
THIS IS A TRUE COPY
OF ITS ORIGINAL
23-01-14
M. WILLIAMSON
TLT LLP
ONE REDCLIFF ST
BRISTOL BS1 6TP

One Redcliff Street
Bristol BS1 6TP
T +44 (0)117 917 7777
F +44 (0)117 917 7778
DX 7815 Bristol

www.TLTsolicitors.com
/14724032.3

Contents

Clauses

1	Definitions and interpretation	2
2	Background	4
3	Conditionality	5
4	Statutory Provisions and Covenants	5
5	Notices	5
6	Indexation	6
7	Waiver	6
8	Miscellaneous	6
9	Third Parties	6
10	Severance	6
11	Release for Occupiers and Tenants	7
12	Consents	7
13	Monitoring Fees	7
14	Governing Law	7

Schedules

1	Covenants to the Council	9
---	--------------------------------	---

JANUARY

23

This Unilateral Planning Obligation is made the

day of 2014

And given by :

- (1) Aminghurst Limited (Company Registration Number 4822314) whose registered office is at 10 Lower Grosvenor Place, London SW1W 0EN (**Owner**)
 - (2) P & T Norris LLP (LLP Registration Number OC349578) of Manor Farm House, Oakley Road, Brill, HP18 9SL (**Norris**)
 - (3) Amlloyd Limited (Company Registration Number 2866394) whose registered office is at 71 Cloncurry Street, London SW6 6DT (**First Mortgagee**)
 - (4) Downing Corporate Finance Limited (Company Registration Number 2053006) whose registered office is at 10 Lower Grosvenor Place, London SW1W 0EN (**Second Mortgagee**)
 - (5) Coast Constructors Limited (Company Registration Number 5909774) whose registered office is at 10 Lower Grosvenor Place, London SW1W 0EN , SW1V 1AU (**Third Mortgagee**)
 - (6) Gasdev Limited (Company Registration Number 7617390) whose registered office is at 5 Castle Close, Flax Bourton, Bristol, BS48 3RG (**Lessee**)
 - (7) Susan Kelly of Oxford House, Hazel Road, West Byfleet KT14 6JJ (**Second Lessee**)
- to
- (8) South Hams District Council of Follaton House, Plymouth Road, Totnes, Devon TQ9 5NE (**Council**)

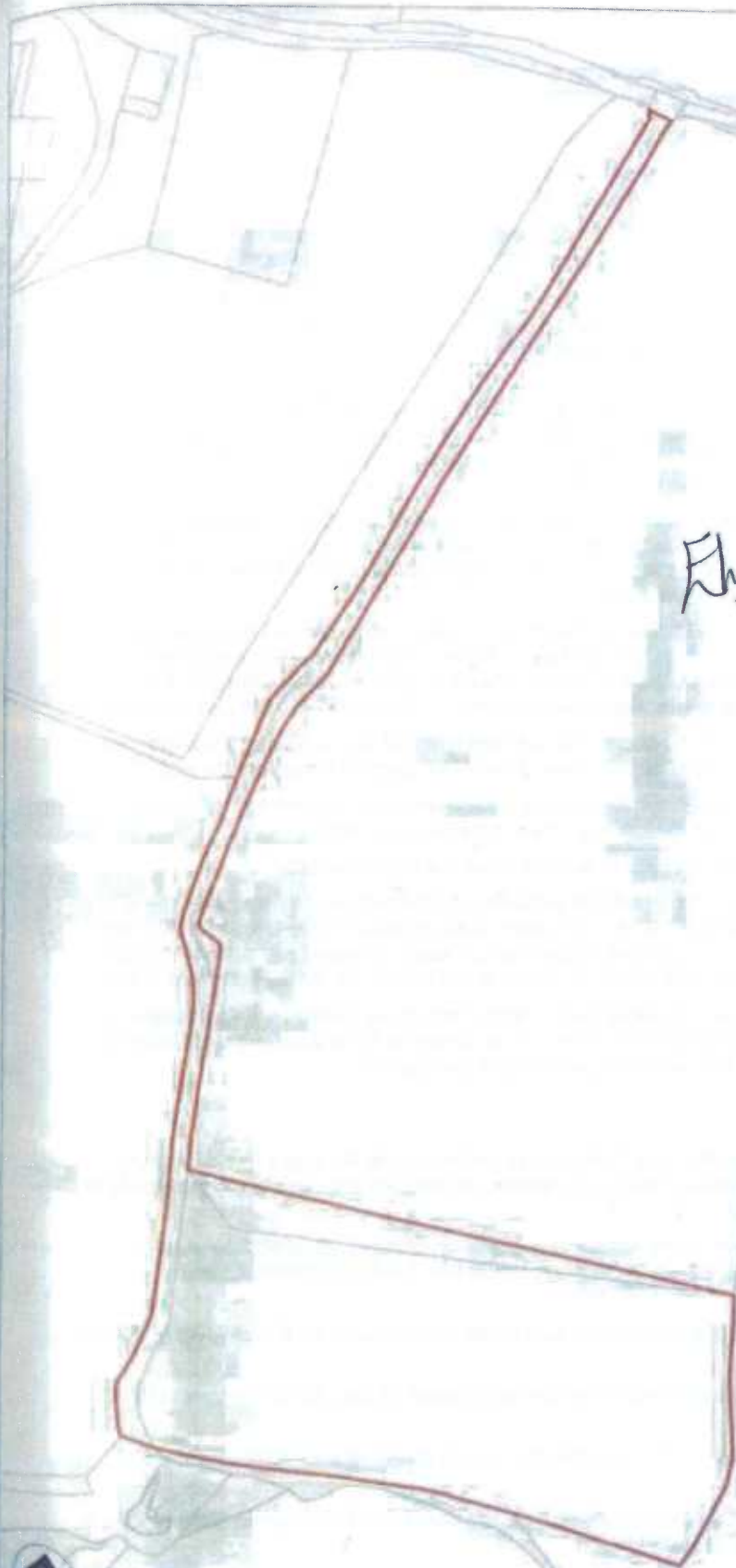
1 Definitions and interpretation

- 1.1 In this Unilateral Planning Obligation the following expressions shall where the context so requires or admits have the following meanings:

Act	the Town & Country Planning Act 1990 (as amended) or any re-enactment or modification thereof for the time being in force
Affordable Housing Contribution	the sum of £290,000 (two hundred and ninety thousand pounds) towards the provision of affordable housing within the District of South Hams
Application	the application registered by the Council on 11 th September 2013 under reference number 20/2104/13/F for planning permission to remove condition 3 of the Existing Planning Permission to allow unrestricted occupation of apartments and cottages
Application Site	land at Gara Rock Hotel, East Portlemouth, Salcombe, TQ8 8PH shown edged red on the Plan in respect of which the Owner has made the Application
Development	such development as may be authorised by the Planning Permission
Existing Planning Permission	planning permission granted by the Council under reference number 20/1058/12/F for variation of conditions 2,3,4,5 and 10 of planning permission 27/1710/11/F (redevelopment of existing site to provide a hotel comprising 18 bedroom suites, 14 self contained holiday apartments and 5 self contained holiday cottages, restaurant bar, swimming pool and spa, secret spa, external swimming pool, staff and ancillary infrastructure, car parking and associated

	works)
Implementation	in the case of implementation of the Planning Permission the carrying out of any of the material operations listed in Section 56 of the Act pursuant to the Planning Permission provided that for the purposes of determining whether or not a material operation has been carried out there shall be disregarded site clearance, demolition, site surveys and investigations and implement and implemented shall be construed accordingly
Index	Building Cost Information Service All-in Tender Price Index or any successor to that index
Indexation Formula	the amount calculated in accordance with the following formula: $C = \text{£}Y \times B/A$ Where: A is the value of the Index last published before the date hereof B is the value of the Index last published before the said contribution is paid C is the amount of the Affordable Housing Contribution or Open Space Sport and Recreation contribution to be paid £Y is the sum to which this formula is applied
Obligations	the obligations contained within the Schedule to this Unilateral Planning Obligation
Open Space Sport and Recreation Contribution	the sum of £10,000 (ten thousand pounds) towards the provision of Open Space Sport and Recreation facilities within the District of South Hams
Plan	the plan annexed to this Agreement
Planning Permission	the Planning Permission granted pursuant to the Application
Residential unit	any residential unit forming part of the Development
Residential Unit Owner	the owner of any of the Residential Units
Statutory Undertaker	those persons defined in Section 262 of the Act
Working Day	any day from Monday to Friday (inclusive) which is not Christmas Day Good Friday or a statutory bank holiday and Working Days shall be construed accordingly

- 1.2 In this Unilateral Planning Obligation, unless the context otherwise requires:
- 1.2.1 any reference to a statute or a provision of a statute shall be construed as a reference to that statute or provisions as amended, re-enacted or extended at the relevant time and shall include any subordinate legislation made under that statute or statutory provision;
- 1.2.2 any reference to a person shall be construed as a reference to any person, firm, company, corporation, government, state or agency of a state or any



© Copyright Do not scale this drawing
 Check all dimensions and levels on site. Only to be used
 for the purposes stated. The architect, planner,
 or other professional named in this drawing is not
 liable for any loss or damage, however caused,
 arising from the use of this drawing, or from any
 information from the site investigation and/or other
 sources. The user of this drawing is responsible for
 any loss or damage, however caused, arising from
 any use of this drawing other than for the purposes
 stated. No responsibility is accepted for any loss or
 damage, however caused, arising from any use of
 this drawing other than for the purposes stated.

Towns

I. Rand

Elizabeth M. Vaughan

Jonathan B...

M...

Kelly

REC'D - PLANNING

03 MAY 2012

SEARCH NAME NO

20/1058/12

Kendall Kingscott

Qualified Architects
 Qualified Building Supervisors
 Interior Designers
 CDM Co-ordinators
 Glenworth Court, Lime Kiln Close
 Stoke Gifford, Bristol BS34 5SP
 T: 0117 931 2602 F: 0117 931 2134
 www.kingscottkingcott.co.uk

Gara Rock
 East Portlemouth

Aminghurst

Site Location Plan

Project No 110237 SL100

Date	Drawn	Checked	Scale
12/0	GA	SW	As drawing no.
04-2012			PRELIMINARY

↑
Coastal Slope



- association or partnership (whether or not having separate legal personality) or one or more of the foregoing;
- 1.2.3 any reference to the singular shall include the plural and vice versa;
- 1.2.4 any reference to the masculine gender shall include the feminine and neuter and vice versa;
- 1.2.5 the table of contents and headings are inserted for ease of reference only and shall not affect the construction of this Unilateral Planning Obligation;;
- 1.2.6 where any party comprises two or more persons, any obligations of that party in, under or arising from this Unilateral Planning Obligation is undertaken by or binding upon such two or more persons jointly and severally;
- 1.2.7 references to any party to this Unilateral Planning Obligation include that party's personal representatives, successors-in-title and permitted assignees and in the case of any local authority shall also include any successor to its statutory functions;
- 1.2.8 references to numbered clauses, schedules, paragraphs or plans are references to the relevant clauses, schedules or plans in this Unilateral Planning Obligation or the relevant paragraph of this Unilateral Planning Obligation respectively;
- 1.2.9 where in this Unilateral Planning Obligation any approval or consent or a certificate is required to be given by the Council then such approval or consent shall unless otherwise stated be given by such officer as the Council as appropriate shall from time to time notify in writing to the Owner;
- 1.2.10 all payments in accordance with the terms of this Unilateral Planning Obligation shall be exclusive of any VAT payable in respect thereof;
- 1.2.11 an obligation in this Deed on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.2.12 reference to **writing** or **written** does not include email;
- 1.2.13 reference to **this Unilateral Planning Obligation** or to any other Deed or document referred to in this deed is a reference to this Unilateral Planning Obligation or such other document or deed as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time;
- 1.2.14 any phrase introduced by the terms **including**, **include**, **in particular**, or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2 Background

- 2.1 The Council is a Local Planning Authority as defined in the Act and a Local Planning Authority for the purposes of planning obligations imposed pursuant to the provisions of Section 106 of the Act.
- 2.2 The Owner is the owner in fee simple in possession of the Application Site with title absolute registered at HM Land Registry under title numbers DN386942 and DN388393
- 2.3 Norris has the benefit of a contract for sale dated 17 February 2010 in respect of part of the Application Site.
- 2.4 The First Mortgagee has the benefit of a charge dated 18 May 2010 in respect of the Application Site.
- 2.5 The Second Mortgagee has the benefit of a charge dated 18 May 2010 in respect of the Application Site.
- 2.6 The Third Mortgagee has the benefit of a charge contained in a debenture dated 7 April 2010 in respect of the Application Site.

- 2.7 The Lessee has the benefit of a lease registered at HM Land Registry under title number DN620624
- 2.8 The Second Lessee has the benefit of a lease registered at HM Land Registry under title number DN621725
- 2.9 The Application has been submitted to the Council by the Owner for Planning Permission for the development of the Application Site as described in the Application.
- 2.10 The Owner is willing to give an undertaking to perform the obligations set out in this Unilateral Planning Obligation in order to facilitate the grant of Planning Permission by ensuring that the Council can regulate the Development by securing the benefits contain in this Unilateral Planning Obligation.

3 Conditionality

- 3.1 This Deed is conditional upon:
 - 3.1.1 the grant of the Planning Permission; and
 - 3.1.2 Implementation

4 Statutory Provisions and Covenants

- 4.1 This Unilateral Planning Obligation is entered into pursuant to the provisions of sections 106 of the Act, section 111 of Local Government Act 1972 and any other enabling powers and shall be deemed to be planning obligations in respect of the Application Site for the purposes of that section but without prejudice to all and any other means of enforcing them at law or in equity or by statute
- 4.2 The covenants and obligations created by this Unilateral Planning Obligation are planning obligations for the purposes of Section 106 of the Act and are entered into by the Owner with the intention that they bind the interests held by those persons in the Application Site and their respective successors and assigns
- 4.3 This Unilateral Planning Obligation shall cease to have effect in respect of any then outstanding obligations in the event that the Planning Permission is revoked, or is modified without the Owner's consent or is quashed following a successful legal challenge.
- 4.4 No person will be liable for any breach of this Unilateral Planning Obligation unless they hold an interest in that part of the Application Site in respect of which such breach occurs or hold such an interest at the date of the breach provided that the person shall remain liable for any antecedent breach.
- 4.5 The Obligations are enforceable by the Council in accordance with Section 106 of the Act

5 Notices

- 5.1 Any notice, consent or other communication required or permitted under this Unilateral Planning Obligation shall be in writing and shall be sent by first class registered post, hand delivery or fax.
- 5.2 Subject to Clause 5.4 below any such notice, consent or other document shall be deemed to have been duly received:
 - 5.2.1 if despatched by first class, registered post - 48 hours from the time of posting to the relevant party; or
 - 5.2.2 if despatched by hand delivery - at the time of actual delivery; or
 - 5.2.3 if despatched by fax - 24 hours after the time of the despatch.
- 5.3 Unless otherwise notified by one party to the other in writing from time to time, for the purposes of this Clause the postal addresses of each party are those set out at the beginning of this Unilateral Planning Obligation.

- 5.4 In proving service by post it will be sufficient (unless any relevant part of the postal service is affected by industrial action) to prove that the envelope containing the notice was duly stamped addressed and posted to the addresses specified herein. In proving service by fax it shall be sufficient to prove that it was properly addressed and dispatched to the numbers or address specified herein. A party shall not attempt to prevent or delay the service on it of a notice under this Unilateral Planning Obligation.

6 Indexation

- 6.1 All financial contributions payable to the Council in accordance with this Deed shall be calculated in accordance with the Indexation Formula

7 Waiver

- 7.1 No delay or failure on the part of any party in enforcing any provision in this Unilateral Planning Obligation shall be deemed to be a waiver or create a precedent or in any way prejudice any party's rights under this Unilateral Planning Obligation.
- 7.2 The rights and remedies provided in this Unilateral Planning Obligation are cumulative and are additional to any rights or remedies provided by law.

8 Miscellaneous

- 8.1 If any party defaults in the payment when due of any sum payable under this Unilateral Planning Obligation (whether pursuant to a court order or otherwise) the liability of that party in default shall be increased to include interest on such sum from the date when such payment was due until the date of actual payment at a rate of 4% above the base rate from time to time of Barclays Bank plc such interest shall accrue from day to day and shall be compounded annually.
- 8.2 The Owner shall pay to the Council prior to completion of the Unilateral Planning Obligation its proper and reasonable legal costs incurred in connection with this Unilateral Planning Obligation not to exceed £2,000 (inclusive of VAT and disbursements).
- 8.3 The Owner hereby consents to the registration of this Deed as a Local Land Charge and as a Notice on Title Numbers DN386942 and DN388393
- 8.4 If any provision in this Unilateral Planning Obligation shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired.
- 8.5 The Owner hereby warrants to the Council that they have not leased mortgaged charged or otherwise created any interest in the Application Site save for those matters revealed on Title Numbers DN386942 and DN388393 at the date of this Unilateral Planning Obligation.
- 8.6 This Agreement constitutes a Deed.

9 Third Parties

- 9.1 The Owner declares and confirms that with the exception of any person who becomes an Owner, Lessee or Mortgagee of the Application Site no term of this Unilateral Planning Obligation is enforceable under the Contract (Rights of Third Parties) Act 1999 by a person who is not a party to this Unilateral Planning Obligation.

10 Severance

- 10.1 If any court or competent authority finds that any provisions of this deed (or part of any provision) is invalid, illegal or unenforceable, that provision or part provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this deed shall not be affected.
- 10.2 If any invalid, unenforceable or illegal provision of this Deed would be valid, enforceable and legal if some part of it were deleted the parties shall amend such provision so that,

as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties original intention

11 Release for Occupiers and Tenants

- 11.1 The obligations in this Unilateral Planning Obligation shall not be enforceable against:
 - 11.1.1 the Residential Unit owner and/or occupier of any Residential Unit
 - 11.1.2 the tenant of any building on the Application Site
 - 11.1.3 a statutory undertaker after the transfer of any building or land or apparatus by the Owner to that statutory undertaker

12 Consents

- 12.1 The First Mortgagee, the Second Mortgagee and the Third Mortgagee consent to this Unilateral Planning Obligation with the intention that notwithstanding Section 104 of the Law of Property Act 1925 their respective interests in the Application Site will be bound by the terms of this Unilateral Planning Obligation as if it had been executed and registered as a local land charge before the execution of the security.
- 12.2 Notwithstanding clause 12.1 of this Unilateral Planning Obligation the First Mortgagee, the Second Mortgagee and the Third Mortgagee will not incur any liability for any breach of the obligations contained in the Unilateral Planning Obligation unless and until it becomes a mortgagee in possession of the Application Site or appoints a receiver or administrative receiver under the security.
- 12.3 Norris consents to this Unilateral Planning Obligation.
- 12.4 The Lessee consents to this Unilateral Planning Obligation.
- 12.5 The Second Lessee consents to this Unilateral Planning Obligation

13 Monitoring Fees


- 13.1 The Owner acknowledges that the Council shall be entitled to use up to five percent (5%) of the total payments and contributions payable pursuant to the provisions of this Unilateral Planning Obligation towards the costs to be reasonably and properly incurred by the Council in monitoring compliance with this Unilateral Planning Obligation

14 Governing Law

- 14.1 This Unilateral Planning Obligation and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

In witness whereof this Deed has been duly executed by the parties the day and year first before written.

Signed as a Deed by
Aminghurst Limited
acting by
in the presence of

)
)
)
) 
.....
Director

Witness signature:
Name:
Address:
Occupation:

Carly Thomas
CARLY THOMAS
10 LOWER GROSVENOR PLACE
EXECUTIVE ASSISTANT


Signed as a Deed by
P & T Norris LLP
acting by
in the presence of

) 
)
) Director


Witness signature:
Name:
Address:
Occupation:

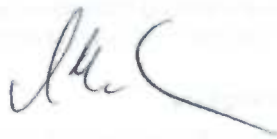
Jeanie Rawlins
JEAN RAWLINS
MANOR WEDGE, BRILL, HP18 9SL
Retired.

Signed as a Deed by
Amloyd Limited
acting by PAOL AMAUDINI
in the presence of

) 
)
) Director

Witness signature:
Name:
Address:
Occupation:


ERICA NELSON
HowardKennedyFai LLP
179 GREAT PORTLAND STREET
LONDON
W1W 6LS
Legal Secretary



Signed as a Deed by
Downing Corporate Finance Limited
acting by
in the presence of

)
) Director

Witness signature:
Name:
Address:
Occupation:

Carly Thomas
CARLY THOMAS
10 LOWER GROSVENOR PLACE
LONDON SW1W 0EN
EXECUTIVE ASSISTANT

Signed as a Deed by
Coast Constructors Limited
acting by
in the presence of

)
)
)
)
.....
Director

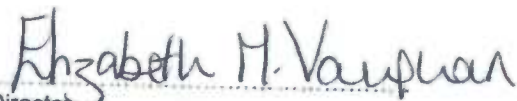


Witness signature:
Name:
Address:
Occupation:

Carly Thomas
CARLY THOMAS
10 LOWER GROSVENOR PLACE
EXECUTIVE ASSISTANT

Signed as a Deed by
Gasdev Limited
acting by in the presence of

)
)
)
)
.....
Director

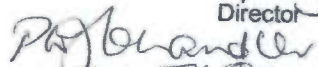


Witness signature:

Name: PHILIP WILLIAM JESSE, CHANDLER

Address: 3 Castle Close
Fax Bourton, Oxon OX48 3RR.

Occupation: Retired Chemical Engineer



Signed as a Deed by
Susan Kelly
in the presence of

)
)
)
)
.....
Director



Witness signature:

Name: DR. COPE

Address: Lower House, 12 Fairfield West.

Occupation: KINGSTON UPON THAMES, SURREY



Schedule

Covenants to the Council

- 1 Affordable Housing Contribution and Open Space Sport and Recreation Contribution
 - 1.1 Within fourteen days of legal completion of the sale of each of the first five Residential Units to give written Notice to the Council of such completion.
 - 1.2 Upon the legal completion of the sale of the fifth Residential Unit to pay to the Council the Affordable Housing Contribution and the Open Space Sport and Recreation Contribution in full.