

## UNILATERAL UNDERTAKING

UNDER SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990

**Dated :**

relating to the development of land at<sup>1</sup> .....

.....  
Planning Application Ref.....

**LANDOWNER(S) FULL NAME<sup>2</sup>**

**AND**

**APPLICANT/ DEVELOPER(S) FULL NAME<sup>3</sup>**

**AND**

**CHARGEHOLDER(S) FULL NAME<sup>4</sup>**

**IN FAVOUR OF RUSHMOOR BOROUGH COUNCIL**

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<sup>1</sup> Insert address of Application Site.

<sup>2</sup> Landowner - Insert the names of all those named as the owner of the land at the Land Registry. This should include all those with an "interest in land" to which Section 106 of the Town & Country Planning Act 1990 applies. You must supply up to date Land Registry Official Copies in respect of all registered titles within the development site.

<sup>3</sup> Insert name of Applicant/ Developer. If Landowner and Applicant/ Developer are the same delete references to Applicant/ Developer throughout.

<sup>4</sup> Insert the names of any mortgagees who are capable of taking possession of the land if the owner defaults on payments



This **UNDERTAKING** is made on the.....day of .....two thousand and twenty..... by:-

(1) .....(NAME) of .....(ADDRESS) a company registered in England with company registration number ..... (“the Owner”)<sup>5</sup>

(2) .....(NAME) of .....(ADDRESS) a company registered in England with company registration number ..... (“the Applicant”)<sup>6</sup>

(3) .....(NAME) of .....(ADDRESS) a company registered in England with company registration number ..... (“the Mortgagee”)<sup>7</sup>

**TO**

**RUSHMOOR BOROUGH COUNCIL** of Council Offices Farnborough Road Farnborough Hampshire GU14 7JU (“the Council”)

**RECITALS**

- A The Council is the local planning and housing authority for the area in which the Land is situated
- B The Owner is the freehold owner of the Land being registered with title absolute at the Land Registry under Title Number .....<sup>8</sup>
- C The Land is subject to a registered charge in favour of the Mortgagee dated ..... and made between the Owner and the Mortgagee<sup>9</sup>.
- D The [Owner] / [Applicant] has submitted the Application to the Council<sup>10</sup>.
- E The Council intends to grant planning permission for the Development subject to conditions and the prior completion of this Deed (without which planning permission would have been refused) making provision for inter alia planning obligations

<sup>5</sup> Insert name & Address. If the Owner is an individual, then insert name and address and delete reference to company registration. If a company insert registration.

<sup>6</sup> Insert name & Address. If the Applicant is an individual, then insert name and address and delete reference to company registration. If a company insert registration. Delete if does not apply.

<sup>7</sup> Insert name & Address. Delete if does not apply.

<sup>8</sup> Insert the Land Registry title number(s) for the land comprising the Application Site, including any leasehold

<sup>9</sup> Insert date of registered charge. If not applicable delete.

<sup>10</sup> Delete as appropriate.

- F The parties agree that the obligations contained in this Deed are necessary to make the Development acceptable in planning terms directly relate to the Development and fairly and reasonably relate in scale and kind to the Development in accordance with Regulation 122 of the Community Infrastructure Regulations 2010 and may secure other planning benefits
- G The parties agree that the prior completion of this Deed is necessary and without which planning permission would be refused

**NOW THIS DEED WITNESSES AS FOLLOWS:**

**OPERATIVE PART**

**1 DEFINITIONS**

For the purposes of this Deed the following expressions shall have the following meanings:

“the Act”	The Town and Country Planning Act 1990
“Application”	The application for full planning permission for the Development submitted to the Council and registered as valid on ..... <sup>11</sup> under reference ..... <sup>12</sup> number
“Conditions Precedent”	The conditions contained in clause 4
“Contributions”	The Contributions outlined in Schedule One
“Deed”	This planning obligation made by deed
“Development”	The Development of the Land by the [INSERT DESCRIPTION OF DEVELOPMENT AS SHOWN ON APPLICATION] <sup>13</sup>
“Implementation”	The carrying out of development in accordance with the Permission by

<sup>11</sup> Insert date that application was registered as valid

<sup>12</sup> Insert planning reference number.

<sup>13</sup> Insert description of development as provided by the planning officer.

	the carrying out of a “material operation” (as defined in section 56(4) of the Act) save that for the purposes of this Deed and for no other purpose; operations consisting of site clearance (including demolition) <sup>14</sup> , 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 shall not be included (and “Implement” and “Implemented” shall be construed accordingly)
“Interest”	Means interest at four per cent (4%) above the base lending rate of the Bank of England from time to time
“the Land”	The land against which this Deed may be enforced shown edged in red on the Plan <sup>15</sup>
“Legal Costs”	The Council’s legal costs in connection with the preparation and completion of this Deed
“Open Space Contribution”	£..... towards the off-site provision of public open space comprising..... <sup>16</sup>
“Parties”	means the Owner, [and the Applicant] and “Party” means any one of them

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<sup>14</sup> If the planning application specifies demolition remove “including demotion”

<sup>15</sup> The Plan should show the application site edged clearly with a red line on the location plan. It should include all land necessary to carry out the proposed development (eg land required for access to the site from a public highway, visibility splays, landscaping, car parking and open areas around buildings). A blue line should be drawn around any other land owned by the applicant, close to or adjoining the application site.

<sup>16</sup> Insert contribution amount and what contribution will comprise as advised by the planning Officer. Delete entire definition if not applicable.

"the Permission"	The planning permission subject to conditions to be granted by the Council pursuant to the Application
"Plan"	The plan attached to this Deed
"S106 Monitoring and Administrative Fee"	£..... towards the costs associated with monitoring this agreement calculated on the basis of 5% of the total financial contributions paid to the Council <sup>17</sup>
"SAMM"	The Strategic Access Management and Monitoring tariff as set out in the Thames Basin Heaths Strategic Access Management and Monitoring Project Tariff Guidance (Natural England 2010)
"SANG Land"	Land identified by the Council as suitable alternative green space (SANG) at .....SANG Hampshire <sup>18</sup>
"Special Protection Area (SPA) Contribution"	<p>[£xxx contribution (comprising £xxxx SANG and £xxx SAMM contributions) towards the maintenance improvement and management of the [Insert SANG] SANG Land and access management and monitoring of SPA]</p> <p>in order to mitigate the impact of the Development on SPA Land pursuant to NE1 and NE4 of the Rushmoor Local Plan 2014 - 2032 and Policy NRM6 of the South East Plan 2009</p>
"SPA Land"	"land designated on 9 March 2005 under the Wild Birds Directive (Council Directive 79/409/EEC or any successor statutory designation) as a Special Protection Area (SPA) to protect three species of breeding birds: Woodlark, Dartford Warbler and Nightjar being

<sup>17</sup> Insert fee amount as advised my planning officer.

<sup>18</sup> Insert name of SANG to which contribution relates.

	a fragmented area of European importance in the counties of Surrey, Hampshire and Berkshire
“Use”	Use of the Development for the purposes for which the Permission is to be granted
“Working Day(s)”	means a day which is not a Saturday Sunday, bank or other public holiday in England

## **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 of the masculine gender include the feminine and neuter genders and vice versa.
- 2.3 Words denoting persons include companies, corporations and firms and all such words shall be construed interchangeably 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 includes reference to any modification or replacement of that Act for the time being in force and includes all statutory instruments or regulations made 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 any of its relevant statutory functions.
- 2.7 Any headings and contents list are for reference only and are not part of this Deed.

## **3 LEGAL BASIS**

- 3.1 This Deed is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972, Section 33 of the Local Government (Miscellaneous Provisions) Act 1982, Sections 12 and 93 of the Local Government Act 2003 and Section 1 of the Localism Act 2011 and all other enabling powers.

3.2 The obligations undertaken by the Parties under this Deed are planning obligations or if found not to be planning obligations may confer other planning benefits and may be enforced by the Council

#### **4 CONDITIONS PRECEDENT**

This Deed is conditional upon:-

the grant of the Permission; save for the provisions of the Clauses concerning Local Land Charge, Costs, Notification, Jurisdiction and Delivery which shall come into effect immediately upon completion of this Deed

#### **5 THE PARTIES' COVENANTS**

The Parties covenant with the Council to perform the obligations on their part contained in this Deed and the schedules

#### **6 RELEASE AND LAPSE**

6.1 It is agreed that the Owner shall not be liable for a breach of any of their obligations under this Deed after they shall have irrevocably parted with all of their interests in the Land.

6.2 The parties agree that this Deed shall cease to have effect insofar as it has not already been complied with if;

6.2.1 the Permission is revoked modified or otherwise withdrawn without the consent of the Owner or;

6.2.2 the Permission is not Implemented

6.3 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 Permission) granted (whether or not on appeal) after the date of this Deed.

#### **7 LOCAL LAND CHARGE**

This Deed is a local land charge and may be registered as such by the Council.

#### **8 INTEREST**

If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

#### **9 WARRANTY AS TO TITLE**

The Parties **warrant** to the Council that the title details referred to in Recitals B and C are complete and accurate in every respect.



## **10 SEVERABILITY**

The Parties agree that if any part of this Deed shall be declared unlawful or invalid by a Court of competent jurisdiction then (to the extent possible) the remainder of this Deed shall continue in full force and effect.

## **11 SECTION 73**

In the event that an application is made pursuant to Section 73 of the Act for an amendment to the Permission, and planning permission is granted in respect of that application, references to the Permission in this Deed shall also include the new planning permission granted pursuant to Section 73 of the Act and this Deed shall apply to and remain in full force in respect of that new planning permission without the need for a further agreement to be entered into pursuant to Section 106 of the Act PROVIDED ALWAYS THAT nothing in this clause shall prevent the Council from deciding in determining any such Section 73 application that the grant of any planning permission under Section 73 as aforesaid should be subject to prior completion of a supplemental deed pursuant to Section 106 and Section 106A of the Act and/or other relevant powers.

## **12 THE COUNCIL'S COSTS**

- 12.1 The Parties agree to pay the Council's Legal Costs in connection with this deed prior to its completion.
- 12.2 The Parties agree to pay the s106 Monitoring and Administrative Fee on completion of the deed and prior to the Implementation of the Development.

## **13 NOTIFICATION OF COMMENCEMENT**

The Parties covenant to give no less than 20 days written notice of the intended date of Implementation and shall not Implement the Development until such notice has been provided to the Council

## **14 NOTICES**

Any notices required to be served by one party on another under this Deed shall be served by first class prepaid post in the following manner:

- 16.1 on the Council at the address shown above marked "for the attention of the Head of Planning" and bearing the reference [Reference No.]<sup>19</sup>
- 16.2 on the Owner at the address as detailed above or such other address as notified by the Owner in writing to the Council for the purpose;

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<sup>19</sup> Insert planning reference number.

- 16.3 on the Applicant at the address as detailed above or such other address as notified by the Owner in writing to the Council for the purpose;
- 16.4 on the Mortgagee at the address as detailed above or such other address as notified by the Mortgagee in writing to the Council for the purpose.<sup>20</sup>

## **17 PAYMENT OF THE CONTRIBUTIONS**

The Parties agree to pay the Contributions as set out in Schedule One to the Council

## **18 CONSENT OF THE MORTGAGEE**

The Mortgagee 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 Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Land in which case it too will be bound by the obligations as a person deriving title from the Owner.<sup>21</sup>

## **19 NOTIFICATION OF SUCCESSORS IN TITLE**

The Parties covenant with the Council to give immediate written notice to the Council of any disposition of the Land or any part of it together with a plan showing the Land or part of the Land affected prior to compliance with all the obligations in this deed.

## **20 JURISDICTION**

This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

**IN WITNESS** whereof the parties hereto have executed this Deed on the day and year first before WRITTEN.

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<sup>20</sup> Delete references to Applicant/ Mortgagee as appropriate

<sup>21</sup> Delete as appropriate

## **SCHEDULE ONE**

### **THE PARTIES' COVENANTS**

The Parties covenant with the Council as follows:

#### **1. SPECIAL PROTECTION AREA CONTRIBUTION**

Not to Implement the Development unless and until the Special Protection Area Contribution has been paid to the Council.

#### **2. OPEN SPACE CONTRIBUTION**

Not to Implement the Development unless and until the Open Space Contribution has been paid to the Council

#### **3. s.106 MONITORING AND ADMINISTRATIVE FEE**

Not to Implement the Development unless the s.106 Monitoring and Administrative Fee has been paid to the Council on completion of the deed.



<sup>22</sup>Signed as a Deed by )

..... )

In the presence of: )

Witness Signature

Print Name

Address

<sup>23</sup>Executed as a Deed (but not delivered until the date hereof) by LIMITED acting by its secretary and a director or by two directors or a director in the presence of an independent witness

.....  
Secretary/Director

.....  
Director

Witness Signature

Print Name

Address

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<sup>22</sup> For use where owner is an individual. Insert owner's name. Copy as appropriate if more than one owner.

<sup>23</sup> For use where Owner is company. Insert name of Owner. Copy as appropriate for more than one owner.

<sup>24</sup>Executed as a Deed (but not delivered until the date hereof) by

in the presence of under a subsisting power of attorney

.....  
Authorised Signatory  
Print Name

.....  
Authorised Signatory  
Print Name

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<sup>24</sup> Confirm with Mortgagee their preferred attestation clause and complete as appropriate.