

Unilateral Undertaking pursuant to Section 106 of the Town and Country Planning Act 1990 relating to land at

[^{Note 1}]

Dated

[^{Note 2}]
(Developer)

[^{Note 3}]
(Landowner)

[^{Note 4}]
(Mortgagee)

given to

Reigate and Banstead Borough Council

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This Undertaking is

Dated _____ and _____

Given by

- (1) [^{Note 5} _____] (the **Developer**)
[of ^{Note 6} _____]
[registered in England with number [_____]
whose registered office is at [_____]
whose principal place of business is at [_____]
- (2) The **Landowner** as defined in Schedule 4; and
- (3) The **Mortgagee** as defined in Schedule 5

To

- (4) Reigate and Banstead Borough Council of the Town Hall, Reigate, Surrey, RH2 0SH (the **Borough Council**)

Recitals

- A The Borough Council is the local planning authority for the purposes of Section 106 of the Act for the area within which the Application Site is situated.
- B The [Developer] [and] [Landowner]^{Note 7} is registered as the freehold owner of the Application Site with title absolute at HM Land Registry under title number [^{Note 8} _____].
- C [The Developer has an interest in the Application Site]^{Note 9}
- D [The Mortgagee has a registered Charge dated as specified in Schedule 5 in respect of the Application Site or some part of it]^{Note 10}
- E The Application for Planning Permission has been made by the Developer to the Borough Council to develop the Application Site.
- F The Parties have agreed that the provisions herein contained should have effect in order to secure the proper tariff in accordance with the Planning Obligations and Infrastructure Supplementary Planning Document ("the SPD") adopted by the Borough Council on 24 April 2008. This Deed reflects the form of agreement that the Borough Council intends to enter into in relation to all relevant sites

It is agreed:

1 Definitions

In this Deed the following expressions shall apply:

Act means the Town and Country Planning Act 1990 (as amended).

Application for Planning Permission means the application submitted by the Developer with reference number [^{Note 11} _____] seeking permission for _____

development of [Note 12] on
the Application Site.

Application Site means the site the subject of the Application for Planning Permission more particularly described in Schedule 1 of this Deed.

Commencement of Development means when a Material Operation has taken place

Commercial Buildings means any commercial floorspace which the Developer intends to build on the Application Site.

Development means the development the subject of the Application for Planning Permission.

Dwellings means any residential units which the Developer intends to build on the Application Site.

Index-Linked means linked to the annual rate of inflation as measured by the Retail Price Index from the date of this Deed to the date of payment

Infrastructure Contribution means the sum of [Note 13] pounds (£[]) Index-Linked as set out at Schedule 3 of this Deed comprising contributions towards the infrastructure, education, environmental and community facilities detailed in the SPD.

Legal Costs Sum means the sum of five hundred pounds (£500) for the reasonable legal costs of the Borough Council in reviewing this Deed.

Material Operation means a material operation pursuant to the Planning Permission on the Application Site the subject of this Deed pursuant to Section 56(4)(a)-(e) of the Act **Parties** means (1) the Developer (2) the Landowner and (3) the Mortgagee.

Plan means the plan annexed at Schedule 2.

Planning Permission means a planning permission for the Development granted pursuant to the Application for Planning Permission and any related planning permission subsequently granted pursuant to an application under section 73 of the Act.

2 Statutory Authorities

- 2.1 The obligations contained in Clause 4 and Schedule 3 of this Deed are planning obligations for the purposes of Section 106 of the Act and are enforceable by the Borough Council.
- 2.2 The obligations contained in Clause 4 and Schedule 3 of this Deed are entered into by the Parties with the intention that these provisions should bind their interests in the freehold of the Application Site as provided by Section 106 of the Act.
- 2.3 Save where otherwise indicated and where possible pursuant to the relevant statutory provision the covenants in this Deed shall be binding on the Parties and their successors in title to the land stated to be bound.

3 Conditionality

- 3.1 The obligations contained in Clause 4 and Schedule 3 of this Deed will not have effect unless:
 - 3.1.1 the Planning Permission has been granted;

3.2 If the Planning Permission shall expire prior to the carrying out of a Material Operation or shall at any time be revoked or modified without agreement this Deed shall forthwith determine and cease to have effect.

3.3 If the Planning Permission is quashed before the carrying out of a Material Operation then this Deed shall absolutely determine and become null and void but without prejudice to the rights of any Party against the other.

4 Planning Obligations

4.1 The Landowner, the Developer and the Mortgagee accept the restrictions and requirements in this Clause and:

4.1.1 will comply with the planning obligations set out herein and in Schedule 3 of this Deed; and

4.1.2 will serve a notice upon the Borough Council fourteen (14) days in advance of Commencement of Development; and

4.1.3 confirm that no person other than the Landowner holds an interest of ownership in this Land.

except that the Mortgagee will only be bound by these restrictions and requirements in the event that it becomes a mortgagee in possession.

5 Interest and Statements of Account

5.1 Without prejudice to any other right remedy or power herein contained or otherwise available to the Borough Council if any payment of any sum referred to herein shall have become due but shall remain unpaid for a period exceeding thirty (30) days the Parties shall pay on demand to the Borough Council interest thereon at the interest rate of five percentum (5%) per centum per annum above the Bank of England Base Rate from the date when the same became due until payment thereof.

6 Obligations after Disposal of Whole or Part

6.1 A Party shall cease to have any obligation or liability under the terms of this Deed in relation to the Application Site or any part thereof once it shall have parted with all its interest in the Application Site or that part thereof but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.

6.2 Subject to Clause 6.3, notwithstanding the foregoing sub-clause the obligations under this Deed shall not be enforceable against the persons who purchase (including purchasers of long leases) for their own occupation by themselves or their lessees tenants or others individual Dwellings or Commercial Buildings erected or to be erected on the Application Site nor against any statutory undertaker or public authority which acquires any part of the Application Site or an interest in it for the purposes of its statutory undertaking or functions (other than housing functions).

6.3 If the Developer or Landowner permits the occupation of any Dwelling or any part of any Commercial Building in circumstances that would be a breach of the obligation in Schedule 3 of this Deed and such obligation shall not be enforceable against the purchaser then, on notice from the Borough Council, all further development on the Application Site shall cease until the breaches have been remedied to the satisfaction of the Borough Council

7 Notices

- 7.1 Any notice to be given hereunder shall be in writing and shall either be delivered personally or sent by first class pre paid post. The addresses for service on the Developer, the Landowner, the Mortgagee and the Borough Council shall be those stated in this Deed or such other address in England for service as the Party to be served may have previously notified in writing.
- 7.2 Each notice served in accordance with sub-clause 7.1 hereof shall be deemed to have been given or made and delivered if by delivery when left at the relevant address or if by letter forty eight (48) hours after posting.

8 VAT

- 8.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any VAT properly payable.
- 8.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Deed then to the extent that VAT has not been charged in respect of that supply the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly.

9 General

- 9.1 The headings appearing in this Deed are for ease of reference only and shall not affect the construction of this Deed.
- 9.2 For the avoidance of doubt the provisions of this Deed (other than those contained in this sub-clause) shall not have any effect until this document has been dated.
- 9.3 Any covenant in this Deed by which the relevant Party is not to do an act shall be construed as if it were a covenant not to do or permit or suffer to be done such act.
- 9.4 Any covenant contained herein whereby the relevant Party is not to omit to do an act or thing shall be construed as if it were a covenant not to omit to do or permit or suffer to be omitted such act.
- 9.5 References to statutes by-laws regulations orders and delegated legislation shall include any statute by-law regulation order or delegated legislation re-enacting or made pursuant to the same.
- 9.6 References to the Landowner and the Developer include references to their successors in title as owners of the Application Site or any part thereof and in the case of the Mortgagee to any person or body to whom it transfers its Charge and this Deed shall bind such successors in title of the Application Site or any part thereof.

10 Local Land Charges

This Deed is a Local Land Charge and shall be registered as such by the Borough Council in the Local Land Charges Register provided that if the Planning Permission expires unimplemented, or is revoked, or if all obligations under this Deed have been discharged then the registered charge shall be treated as having ceased to have effect under rule 8 of the Local Land Charges Rules 1977 or any statutory re-enactment thereof and the registration shall be cancelled.

11 Contracts (Rights of Third Parties) Act 1999

The Parties do not intend that the provisions of this Deed shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not party to this Deed.

12 Costs

On the completion of this Deed the Developer shall pay to the Borough Council the Legal Costs Sum

13 Mortgagee's Consent

- 13.1 The Mortgagee consents to the completion of this deed and declares that its interest in the Application Site shall be bound by the terms of this deed as if it had been executed and registered as a land charge prior to the creation of the Mortgagee's interest in the Application Site
- 13.2 The Mortgagee shall not be personally liable for any breach of the obligations in this deed unless committed or continuing at a time when the Mortgagee is in possession of all or any part of the Application Site.

14 Future Permissions

Nothing in this Deed shall prohibit or limit the right to develop any part of the Property in accordance with any planning permission (other than the Planning Permission or modification, variation or amendment thereof) granted after the date of the Planning Permission save that if a condition attached to the Planning Permission is varied or released following an application made pursuant to Section 73 of the 1990 Act or pursuant to an appeal under the 1990 Act relating to such an application then the covenants and provisions of this Deed shall be deemed to apply to the varied planning permission and to any development carried out pursuant to the varied planning permission unless otherwise varied.

Schedule 1 – The Application Site

All that piece or parcel of land comprising [^{Note 14}], outlined red for identification purposes only on the Plan being land over which the Application for Planning Permission is made.

Schedule 2 – The Plan

Note 15

[Replace this blank page with the site location plan showing the application site outlined in red. The plan should include a north arrow and be to a scale of 1:1250 or 1:2500. The plan should be signed by all the parties to the deed].

Schedule 3 – Planning Obligation

- 1 The Parties covenant with the Borough Council so as to bind the Application Site to pay the Infrastructure Contribution to the Borough Council prior to Commencement of Development.
- 2 The Infrastructure Contribution as at the date of this Deed is calculated according to the “Basis for Calculating Formulae and Charges” which forms part of the SPD and as agreed on the s106 Standard Charges Sheet.

Schedule 4 – The Landowner

Note 16

Name: []

Address: []

Company number (if applicable): []

Land Registry Title Number: []

Name: []

Address: []

Company number (if applicable): []

Land Registry Title Number: []

Name: []

Address: []

Company number (if applicable): []

Land Registry Title Number: []

Schedule 5 – The Mortgagee

Note 17

Name: []

Address: []

Date of Mortgage/Charge: []

Executed as a deed and delivered on the date appearing at the beginning of this Deed

Note 18

FORM A IF THE DEVELOPER, LANDOWNER OR MORTGAGEE is an individual

Executed as a deed by the **Developer**)
in the presence of:-)

.....

Signature:

Name:.....

Address:

Executed as a deed by the **Landowner**)
in the presence of:-)

.....

Signature:

Name:.....

Address:

Executed as a deed by the **Mortgagee**)
in the presence of:-)

.....

Signature:

Name:.....

Address:

FORM B IF THE DEVELOPER, LANDOWNER OR MORTGAGEE is a Company having a Common Seal

The Common Seal of the Developer)
is affixed in the presence of:-)

Director:

Note: Seal to be impressed above

Director or Secretary:

Witness Signature:

Note: Witness signature required if only one director is executing this document (to assert director's signature is genuine)

Name:.....

Address:

The Common Seal of the Landowner)
is affixed in the presence of:-)

Director:

Note: Seal to be impressed above

Director or Secretary:

Witness Signature:.....

Note: Witness signature required if only one director is executing this document (to assert director's signature is genuine)

Name:.....

Address:

The Common Seal of the Mortgagee)
is affixed in the presence of:-)

Director:

Note: Seal to be impressed above

Director or Secretary:

Witness Signature:.....

Note: Witness signature required if only one director is executing this document (to assert director's signature is genuine)

Name:.....

Address:

FORM C IF THE DEVELOPER, LANDOWNER OR MORTGAGEE is a Company NOT having a Common Seal

Executed as a deed by the **Developer** acting)
by:-)
)

Director:

Director or Secretary:

Witness Signature:.....

Name:.....

Address:

Note: Witness signature required if only one director is executing this document (to assert director's signature is genuine)

Executed as a deed by the **Landowner** acting)
by:-)
)

Director:

Director or Secretary:

Witness Signature:.....

Name:.....

Address:

Note: Witness signature required if only one director is executing this document (to assert director's signature is genuine)

Executed as a deed by the **Mortgagee** acting)
by:-)
)

Director:

**Director or
Secretary:**

**Witness
Signature:**.....

Name:.....

Address:

Note: Witness signature required if
only one director is executing this
document (to assert director's
signature is genuine)

Notes on the Completion of the Unilateral Undertaking

***** The Council strongly recommends that all parties take independent legal advice before entering into this Undertaking *****

-
- Note 1 Insert the address of the Application Site
- Note 2 Insert the name of the Developer for planning permission
- Note 3 Insert the names of all those named as the owner of the land at the Land Registry if different to the Developer. This should include all those with an interest in land to which Section 106 of the Town & Country Planning Act 1990 applies (excluding mortgagees). If the Developer is the only landowner, delete this box. Please supply up to date Land Registry Official Copies in respect of all registered titles within the development site.
- Note 4 Insert the name of Mortgagee/Chargee or delete if none – see also Note 17
- Note 5 Insert the name of the Developer for planning permission
- Note 6 If the Developer is an individual, insert his/her address after "of". If the Developer is a registered company, insert the company number, registered office address and (if different) the principal place of business. Delete the boxes which are not applicable.
- Note 7 Delete as appropriate
- Note 8 Insert the Land Registry title number(s) for the land comprising the Application Site
- Note 9 This recital should be included only if the Developer has a legal interest in the title to the Application Site but is not the landowner.
- Note 10 Insert the name and address of any Mortgagee or Chargee or delete if none – see also Note 17
- Note 11 Insert the Council's planning application reference number here (this can be found on the correspondence received from the Council)
- Note 12 Insert the description of development as it is worded in the planning application
- Note 13 Insert the total amount of the contribution in words and in numbers
- Note 14 Insert a description of the Application Site (i.e. its address or location)
- Note 15 After this page include a plan showing the boundary of the Application Site for which planning permission is sought (sometimes referred to as the "red-line" plan)
- Note 16 Include the name, address, company number (if applicable) and relevant Land Registry title number for each landowner with an interest in the Application Site. If there is a mortgage over the property, the mortgagee should be listed in Schedule 5.
- Note 17 Include the name, address and date of Mortgage/Charge for each Mortgagee having a Mortgage/Charge on the Application Site or any part of it.
- Note 18 The Developer and each Landowner and Mortgagee listed in Schedules 4 and 5 must execute the Undertaking as a deed, Depending on whether the Developer/Landowner/Mortgagee is an individual person, a Limited Company using a Common Seal or a Limited Company not using a Common Seal the appropriate "form" selected from A, B or C should be used. More signature clauses can be added if needed.
NOTE: It is essential that any Bank, Building Society or other such entity who have a Mortgage/Charge on the Application Site sign the Undertaking and their details appear in Schedule 5.