

DATED¹

202[●]²

- (1) [INSERT NAME OF OWNER]
- (2) [INSERT NAME OF LEASEHOLDER]
- (3) [INSERT NAME OF DEVELOPER]
- (4) [INSERT NAME OF MORTGAGEE]

TO

- (5) [INSERT NAME OF COUNCIL]

**UNILATERAL UNDERTAKING PURSUANT TO SECTION 106 of the
TOWN AND COUNTRY PLANNING ACT 1990**

IN RELATION TO [INSERT SITE ADDRESS]

REFERENCE: [INSERT PLANNING APPLICATION REFERENCE]

[AND [INSERT PLANNING APPEAL REFERENCE]]³

¹ **Guidance note:** This document permits the creation of planning obligations under section 106 of the Town and Country Act 1990 without the local planning authority (LPA) being a party. A unilateral undertaking cannot impose obligations on the LPA.

² **Guidance note:** Once signed and dated, the unilateral undertaking is legally in effect and it cannot be undone or amended without a further bilateral agreement with the enforcing authority. It is common for the LPA to agree the form of an unilateral undertaking before completion.

³ **Guidance note:** Additional and alternative drafting is included in this template so that this template can also be used in the context of a planning appeal.

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This DEED OF UNDERTAKING is given on

202[●]⁴

By:⁵

- (1) [INSERT OWNER NAME] [of [INSERT OWNER ADDRESS]]/[company number [INSERT COMPANY NUMBER]] whose registered address is [INSERT OWNER ADDRESS] (the “Owner”); and]
- (2) [INSERT LEASEHOLDER NAME] [of [INSERT LEASEHOLDER ADDRESS]]/[company number [INSERT COMPANY NUMBER]] whose registered address is [INSERT LEASEHOLDER ADDRESS] (the “Leaseholder” [, together with the Owner, the “Owners”]⁶); and]
- (3) [[INSERT DEVELOPER NAME] (company number [INSERT COMPANY NUMBER]) whose registered address is [INSERT DEVELOPER ADDRESS] (the “Developer”)] [; and]
- (4) [[INSERT MORTGAGEE NAME] (company number [INSERT COMPANY NUMBER]) whose registered address is [INSERT MORTGAGEE ADDRESS] (the “Mortgagee”)]

To:

- (5) [INSERT COUNCIL NAME] Council of [INSERT COUNCIL ADDRESS] (the “Council”)

RECITALS⁷

- (A) The Owner is registered at the Land Registry as the freehold owner of [those parts of] the Site with title absolute registered under title number(s) [INSERT TITLE NUMBER(S)].
- (B) [The Leaseholder is registered at the Land Registry as the proprietor of a leasehold interest in the Site registered under title number(s) [INSERT TITLE NUMBER(S)].]
- (C) [The Developer has exchanged a conditional contract with the Owner dated [INSERT DATE OF CONTRACT] to acquire the Owner's freehold interests referred to in recital (A) in the Site. Following compliance with certain conditions under the contract, those freehold interests will be transferred to the Developer.]
- (D) [The Mortgagee has a registered charge over the title numbers listed in [recital (A)] dated [INSERT DATE OF CHARGE].]
- (E) The Council is the local planning authority for the area in which the Site is situated and is the appropriate statutory body to enforce the planning obligations in this Deed for the purposes of

⁴ **Guidance note:** Once signed and dated the unilateral undertaking is legally in effect and it cannot be undone or amended without a further bilateral agreement with the enforcing authority. It is common for the LPA to agree the form of a unilateral undertaking before completion.

⁵ **Guidance note:** Please see separate explanatory note on land ownership and identifying who should be a party to the agreement.

⁶ **Guidance note:** If it is identified that both a freehold owner and a leaseholder should be party to the undertaking (as above, see separate explanatory note) the obligations should usually be given jointly and severally. This is achieved by using the definition Owners (the name in which the obligations will be given) to mean the freehold owner and the leasehold owner. Please see further clause 10 of the undertaking in respect of joint and several liability.

⁷ **Guidance note:** The recitals are not legally binding but can set out useful context to help third parties understand the background and the roles and/or capacities of the parties. The recitals will need to be updated as required.

Section 106 of the 1990 Act. [The Council is also [the local housing authority and the highway authority] for the area in which the Site is situated.]⁸

- (F) The Planning Application was submitted to the Council. [The Council refused the Planning Application on [INSERT DATE OF DECISION NOTICE]. The Appeal was subsequently submitted to the Planning Inspectorate.]⁹
- (G) It is agreed by the Owner[s] [the Developer] [and the Mortgagee] that the Development shall be carried out in accordance with the obligations set out in this Deed.

OPERATIVE PROVISIONS

1. Definitions

- 1.1 In this Deed unless otherwise specified in this Deed or the context otherwise requires the following terms shall have the following meanings:

["1990 Act"]	means the Town and Country Planning Act 1990;] ¹⁰
["Appeal"]	means the planning appeal lodged [by the Owner[s]] in respect of the Planning Application having PINS reference [INSERT PINS REFERENCE NUMBER];] ¹¹
["Appeal Decision"]	means the decision letter to be published by the Inspector or the Secretary of State (as relevant) in relation to the determination of the Appeal;] ¹²
"Business Day"	means a day other than a Saturday or Sunday or a public holiday in England;
"Commencement"	means the date on which a material operation as defined in Section 56(4) of the 1990 Act is undertaken pursuant to the Planning Permission other than (for the purposes of this Deed and for no other purpose) operations consisting of: (a) demolition works; (b) excavation; (c) archaeological investigations and works; (d) site survey; (e) site clearance and preparation; (f) ecological surveys, investigations or assessments;

⁸ **Guidance note:** As above, it may assist to record the roles/capacities of the parties. Other roles may be cited where relevant to the obligations in the schedules, for example where the Council is local housing authority, highways authority, or education authority, this may also be cited. Guidance on other amendments required in these circumstances is contained in the guidance note.

⁹ **Guidance note:** Additional drafting will need to be included if this undertaking is being given in the context of a planning appeal. This additional drafting is provided in the appropriate places in this template.

¹⁰ **Guidance note:** References to the Highways Act 1980 (the "1980 Act") will only need to be included to the extent the agreement includes highways or highways payment obligations.

¹¹ **Guidance note:** This drafting should be included if the deed is being prepared for the purposes of a planning appeal.

¹² **Guidance note:** This drafting should be included if the deed is being prepared for the purposes of a planning appeal.

- (g) environmental preparatory works;
- (h) the erection of temporary fencing and/or hoarding to enclose the Development or any part of the Development and the erection of an enclosure for the purpose of site security, erection of temporary facilities for security personnel, erection of security cameras and interim landscaping works;
- (i) the provision of underground drainage and sewers and the laying of or provision of any services, removal of existing services and/or services diversion works;
- (j) works for temporary accesses and the laying out of roads for construction purposes;
- (k) temporary buildings, moveable structures and the erection of site buildings for construction purposes;
- (l) temporary display of site advertisements and notices;
- (m) piling;
- (n) contamination tests;
- (o) boreholes or trial pits; and
- (p) works of decontamination and remediation,

and "**Commenced**" or "**Commence**" shall be construed accordingly [and where used by reference to any Phase shall refer to the relevant date for that Phase];¹³

["Commercial Unit"]

means a self-contained unit of floorspace authorised by the Planning Permission for use for commercial purposes;]¹⁴

"Contributions"

means the financial contributions payable by the Owner[s] to the Council under this Deed (excluding the Council's legal and enforcement costs)¹⁵ payable in accordance with clauses 19.1 and 19.3 and "**Contribution**" shall be construed accordingly;

"Deed"

means this deed of undertaking;

¹³ **Guidance note:** This definition is included to reflect a point in time where the development has substantively commenced. A separate definition of "Implementation" refers to the first date that any material operation at all is carried out. Deadlines to comply with obligations should normally be linked to Commencement rather than Implementation as it is appropriate for minor and other early stage works to be permitted to be carried out in advance of the substantive obligations falling due for compliance. Further works or operations could be added to the list if appropriate in the context of the particular development.

¹⁴ **Guidance note:** This definition will be relevant where the development includes commercial uses as well as residential uses. The definition can be updated to refer to the specific commercial purposes, uses, or spaces within the Development.

¹⁵ **Guidance note:** Monitoring costs have not been excluded which means that they will be subject to indexation unless expressly excluded at clause 20. Other contributions that are not intended to be subject to indexation should also be expressly excluded at clause 20.

“Development”	means [INSERT DESCRIPTION OF DEVELOPMENT FROM THE PLANNING APPLICATION];
“Dwelling”	means any residential dwelling (including a house, flat or bungalow) permitted by the Planning Permission and “Dwellings” shall be construed accordingly;
“First Occupation”	means the date when the Development or such part of the Development as may be specified is first Occupied;
“Implementation”¹⁶	means the first date on which any material operation (as defined by section 56(4) of the 1990 Act) forming part of the Development begins to be carried out and the terms “Implement” and “Implemented” shall be construed accordingly;
“Index”	means [in relation to [SPECIFY RELEVANT CONTRIBUTION(S)]] the [SELECT RELEVANT INDEX]¹⁷: [the BCIS General Building Cost Index published by the Royal Institution of Chartered Surveyors (RICS)] / [the BCIS All-In Tender Price Index published by the Royal Institution of Chartered Surveyors (RICS)] / [the Consumer Price Index issued by the Office for National Statistics or any replacement index] / [the RPI All Items Excluding Mortgage Interest (RPIX) published by the Office for National Statistics] or in the event such index[es] cease to exist such replacement index as may be agreed between the parties for the purpose of calculating planning obligations;
“Index Linked”	means adjusted by reference to the relevant Index in accordance with the provisions of clause 20;
[“Inspector”	means the inspector appointed by the Secretary of State to determine the Appeal;] ¹⁸

¹⁶ **Guidance note:** This definition is included for the purposes of giving notice to the LPA that the Planning Permission has been implemented. Deadlines to comply with obligations should normally be linked to Commencement rather than Implementation as it is appropriate for minor and other early stage works to be permitted to be carried out in advance of the substantive obligations falling due for compliance.

¹⁷ **Guidance note:** Contributions will normally be indexed from the date of the Deed until they are paid as set out at clause 20. It may be appropriate to apply different indexes to different types of contributions.

¹⁸ **Guidance note:** This drafting should be included if the deed is being prepared for the purposes of a planning appeal.

"Interest"¹⁹	means interest at a rate of [INSERT PERCENTAGE FIGURE] % above the base rate of the [Bank of England]/ [INSERT BANK] from time to time;
"Monitoring Fee"	means the sum of [INSERT AMOUNT IN WORDS] (£ [INSERT AMOUNT IN FIGURES]) being the fee to be paid to the Council to be used to pay the Council's costs incurred in monitoring compliance with the planning obligations contained in this Deed;
"Occupation"	means physical occupation for the purposes permitted by the Planning Permission but does not include occupation for the purposes of construction, fitting-out, decoration, landscaping, marketing, sales or security of any part of the Development and "Occupy" , "Occupier" , "Occupiers" and "Occupied" shall be construed accordingly;
["Owner's Interests"]	means the Owner's interests in the Site as detailed in the Recitals to this Deed;]
["Owners' Interests"]	means the Owners' interests in the Site as detailed in the Recitals to this Deed;]
["Phase"]	means a part of the Development as identified on the Phasing Plan]; ^{20]}
["Phasing Plan"]	means a plan identifying the phases in the Development [approved by the Planning Permission]/[approved under condition [X] of the Planning Permission] or any variation that may be approved in writing by the Council]; ²¹
"Planning Application"	means the application for [•] ²² planning permission registered by the Council under reference [INSERT PLANNING APPLICATION REFERENCE] ;

¹⁹ **Guidance note:** Interest is applied to any payments if the deadline for payment has passed and they have not been paid as set out in clause 21. The Bank of England base rate is often referred to here, but in the alternative a specific bank can be inserted instead.

²⁰ **Guidance note:** some schemes may be phased, and if so, definitions of 'Phase' and 'Phasing Plan' should be inserted.

²¹ **Guidance note:** as above, phasing will usually be defined by reference to a Phasing Plan to show the extent of the phases. If a phasing plan has been submitted and approved, this can be appended to the agreement to show the phasing boundaries on an indicative basis. If a phasing plan has not been submitted and approved prior to the grant of planning permission but will be required to be approved pursuant to a condition, it will not need to be appended but the relevant condition appropriately referenced.

²² **Guidance note:** The type of planning application (i.e. full, hybrid, outline) should be inserted here as applicable. This also applies to the definition of Planning Permission below.

“Planning Permission”	means the [●] planning permission granted [by the Council pursuant to the Planning Application for the Development] / [by the Inspector or the Secretary of State (as relevant) in their Appeal Decision]; ²³
“Plan”	means those plans listed and numbered at Schedule 1 ²⁴ and a reference to a plan followed by a number in this Deed is a reference to the plan bearing that number;
[“Reserved Matters”	means reserved matters as defined in The Town and Country Planning (Development Management Procedure) (England) Order 2015 including any amendment to it;] ²⁵
[“Reserved Matters Approval”	means an approval of one or more Reserved Matters issued by the Council;]
[“Secretary of State”	means the Secretary of State for Housing, Communities and Local Government or their successor in statutory function;] ²⁶
“Site”²⁷	means the land at [INSERT DESCRIPTION OR ADDRESS OF SITE] as shown for identification purposes only edged red on the Plan.

2. Interpretation

- 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 incorporating the singular where the context so admits include the plural and vice versa and words importing any gender include every gender.
- 2.3 Words importing persons include firms, companies, other corporate bodies or legal entities and vice versa.
- 2.4 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.

²³ **Guidance note:** Alternative drafting to be included in the event of a planning appeal.

²⁴ **Guidance note:** A plan identifying the land to be bound must be included. Other plans may be required in respect of other obligations.

²⁵ **Guidance note:** Where the deed concerns an outline planning permission, it may be necessary to refer to reserved matters in connection with relevant planning obligations. This definition and the following definition for Reserved Matters Approval should therefore be included.

²⁶ **Guidance note:** This drafting should be included if the deed is being prepared for the purposes of a planning appeal.

²⁷ **Guidance note:** This will often correspond to the planning application boundary. However, it is not always necessary for all of the land within the planning application boundary to be bound by the deed. That may be so where, as is often the case the red line includes highway works on highway land, where there is statutory undertaker’s apparatus which will remain in place or small strips of unregistered land where no development is proposed.

- 2.5 References to the Council shall include the successors to its statutory functions as local planning authority²⁸.
- 2.6 Words denoting an obligation on a party to do any act matter or thing include an obligation to procure that it be done and any words placing a party under a restriction include an obligation not to cause, suffer or permit any infringement of that restriction.
- 2.7 Except where expressly stated to the contrary a reference to any statute or statutory provision shall be construed as a reference to the same as it may from time to time be amended, modified or re-enacted and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that statutory provision or deriving validity from it.
- 2.8 Headings used in this Deed and the titles of any plans are an aid to interpretation only and do not form part of this Deed.
- 3. Statutory provisions²⁹**
- 3.1 This Deed is made under section 106 of the 1990 Act.
- 3.2 The Owner[s] [the Developer] [and the Mortgagee] acknowledge that the obligations contained within this Deed are binding on the [Owner's] / [Owners'] Interest(s) in the Site and [subject to clauses 8, 9, 11, 12 and 16] are enforceable by the Council as local planning authority against the Owner[s] and [its]/[their] successors in title and any person deriving title from the Owner[s] in accordance with section 106(3) of the 1990 Act.
- 4. Conditionality³⁰**
- 4.1 This Deed shall come into effect on the date of this Deed save for clause 6.³¹
- 4.2 Clause 6 shall not come into effect until the grant of the Planning Permission [by the Inspector or the Secretary of State (as relevant) in their Appeal Decision]³² and Commencement has occurred, save for any obligations set out in Schedule[s] [] of this Deed that expressly require something to be done on or prior to Commencement, or which expressly prohibit Commencement before something has been done, which obligations shall come into effect on the grant of the Planning Permission [by the Inspector or the Secretary of State (as relevant) in their Appeal Decision].

²⁸ **Guidance note:** Any additional roles/capacities in which the Council is acting in the context of the particular S.106 should also be added here, e.g. as highway authority, local housing authority, highways authority, or education authority.

²⁹ **Guidance note:** Section 106(9) TCPA 1990 requires the undertaking to (a) be executed as a deed, (b) state that it is a planning obligation for the purposes of section 106, (c) identify the land in which the person entering in the undertaking is interested, (d) identify the person entering into the undertaking and their interest in the land and (e) identify the LPA by whom the undertaking is enforceable. This information is not required to appear in a particular format, but common practice is to include this information in one place for ease of review.

³⁰ **Guidance note:** Conditionality provisions are reasonable to ensure greater legal certainty as to when particular obligations come into effect. For example, if, for an unknown reason, planning permission is never granted, it is immediately clear on the face of the document that the obligations cannot be inadvertently breached.

³¹ **Guidance note:** Clause 6 cross-refers to substantive planning obligations to be included in the Schedules to the undertaking.

³² **Guidance note:** Conditionality provisions require further details if the deed is being prepared for the purposes of a planning appeal to reflect the decision-making process that would be carried out by a planning inspector.

5. [Appeal Provisions]³³

5.1 If the Inspector or Secretary of State (as relevant) expressly declares in their Appeal Decision that any of the covenants or obligations made by the Owner[s] in this Deed are:

- (a) not material planning considerations for the purposes of determining the Appeal; or
- (b) not compliant with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended),

such covenant or obligation shall cease to have effect but without prejudice to the legal effect of the remainder of this Deed.

5.2 If the Inspector or Secretary of State (as relevant) expressly declares in their Appeal Decision that any of the covenants or obligations made by the Owner[s] in this Deed should be worded in an alternative manner (including, for example, an alternative quantum of financial contribution) such covenant or obligation shall thereafter be read in the form expressly declared by the Inspector or Secretary of State (as relevant).]

6. [Owner's] / [Owners'] obligations³⁴

6.1 The Owner[s] covenant[s] with the Council to observe and perform or cause to be observed and performed the obligations on [its]/[their] part contained in this Deed at the times and in the manner provided within it.

7. [Developer's consent]³⁵

7.1 The Developer acknowledges and declares that this Deed has been entered into by the Owner[s] with its consent and accepts that the [Owner's] / [Owners'] Interests in the Site shall be bound by the obligations in this Deed provided that the Developer shall have no liability under this Deed unless and until it is a successor in title to the Owner[s] or derives any interest in the Site from the Owner[s] in which case its interests in the Site will be bound by the obligations in this Deed.]

8. [Mortgagee's consent]

8.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner[s] with its consent and that its interest(s) within the Site shall be bound by the obligations contained in this Deed provided that the Mortgagee (or any receiver appointed by the Mortgagee) shall have no liability under this Deed unless and until the Mortgagee (or receiver) takes possession of the Site or any part of it over which it holds a charge in which case they will be bound by the obligations in this Deed as if they were a person deriving title from [one or more of] the Owner[s].]³⁶

³³ **Guidance note:** This clause should be included if the deed is being prepared for the purposes of an appeal. This drafting is included to avoid appellants being bound to obligations that are ultimately not required to make the development acceptable in planning terms.

³⁴ **Guidance note:** A unilateral undertaking cannot impose obligations on the LPA, so there are no such obligations in this undertaking, but the LPA will of course be bound by its usual legal duties.

³⁵ **Guidance note:** Where the freehold owners of the land have entered into the s106 agreement, it should not be necessary to include a developer as a party to the agreement even if they have an interest in the land under an option agreement. This is because any party who becomes a freeholder owner or is granted a lease by the freehold owner will be bound by the agreement by virtue of s106(3). If a developer is to be included as a party, their covenant should be limited to giving consent rather than giving a primary obligation alongside the freehold owner as this creates uncertainty. Landowners and developers should have in place a separate private agreement between themselves covering liability and indemnity.

³⁶ **Guidance note:** This provision is only required if there is an existing mortgagee that is entering the undertaking.

9. Future chargees

- 9.1 Any future mortgagee or chargee of the whole or any part of the Site (or any receiver appointed by such mortgagee or chargee) shall have no liability under this Deed unless it takes possession of the Site (or any part of it) over which it holds a charge in which case it too will be bound by the obligations in this Deed as if it were a person deriving title from [one or more of] the Owner[s].

10. Liability³⁷

- 10.1 Where more than one party undertakes an obligation, such obligation can be enforced against all of them jointly or against each individually unless there is an express provision otherwise.

11. Exemptions³⁸

- 11.1 This Deed is conditional upon the obligations in this Deed not being enforceable against the following:³⁹
- (a) [save for the obligations set out in Schedule [●]]⁴⁰ any individual owner, tenant or occupier of any Dwelling whose sole interest in the Site relates to that Dwelling and their successors in title, and any mortgagee or chargee (or any receiver appointed by such mortgagee or chargee) and any person who is a successor in title or derives title through or under any such mortgagee, chargee (or such receiver); [and]
 - (b) [save for the obligations set out in Schedule [●]]⁴¹ any individual owner, tenant or occupier of a Commercial Unit and their successors in title, and mortgagee or chargee (or any receiver appointed by such mortgagee or chargee) and any person who is a successor in title or derives title through or under any such mortgagee or chargee (or such receiver); and]
 - (c) any statutory undertaker or other person with any interest in any part of the Site for the purpose of the supply of gas, electricity, water, drainage, public transport, telecommunication or data transmission services.

12. Release

- 12.1 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site or the part in respect of which

³⁷ **Guidance note:** Where there is more than one owner, the usual position is that there will be joint and several liability. Where the development is phased or divided into distinct parcels, it may be appropriate to 'ring fence' or allocate liability for some or all obligations to the owners of the phases or parcels only.

³⁸ **Guidance note:** It may be reasonable to include specific other parties or parts of the site against which the obligations should not be enforced depending on the details of the proposed development. For example, individual owners, tenants or occupiers of any commercial floorspace within the development where applicable.

³⁹ **Guidance note:** If these parties are at legal risk of being responsible for all obligations of the development, additional cost, delay and complexity is added to future conveyancing (as it usually requires enhanced due diligence and indemnity arrangements to be entered to provide acceptable legal protection). This can usually be simplified if the undertaking is clear on its face that these parties will not be bound.

⁴⁰ **Guidance note:** Certain obligations in the Schedules may need to continue to apply to the types of persons specified and those obligations will therefore need to be carved out from the exclusion so that they continue to apply to individual owners and occupiers of the Dwellings.

⁴¹ **Guidance note:** Certain obligations in the Schedules may need to continue to apply to the types of persons specified and those obligations will therefore need to be carved out from the exclusion so that they continue to apply to individual owners and occupiers of the Commercial Units.

such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

- 12.2 No person shall be liable for a breach of covenant or other provisions contained in this Deed where that person has no interest in that part of the Site in respect of which the breach was committed unless committed prior to the time it disposed of its interest save that any obligations concerning payment of Contributions shall be enforceable against any person with an interest in any part of the Site unless this Deed expressly provides otherwise.

13. Title Warranty

- 13.1 The Owner[s] warrant[s] to the Council that on the date of this Deed no person other than the Owner[s] [and the Mortgagee] has any interest in the Site which would allow such person to take possession of any part of the Site save for those (i) interests registered at the Land Registry on the titles listed below or (ii) (where not listed on the Land Registry titles) disclosed to the Council in writing prior to the date of this Deed:

[TITLE NUMBERS WITH DATE OF OFFICIAL COPY TO BE LISTED]

14. Future permissions⁴²

- 14.1 If any new planning permission(s) are granted pursuant to section 73 (or section 73B when in force) of the 1990 Act in respect of the Planning Permission and unless otherwise agreed with the Council with effect from the date that the new planning permission is granted:
- (a) the obligations in this Deed shall relate to any such planning permission(s) in respect of the Site granted pursuant to section 73 (or section 73B when in force) of the 1990 Act without the automatic need to enter into any subsequent deed of variation or new deed pursuant to section 106 of the 1990 Act; and
 - (b) the definitions of Planning Application, Planning Permission and Development in this Deed shall be construed to include reference to any applications under section 73 (and section 73B when in force) of the 1990 Act, the planning permission(s) granted thereunder and the development permitted by such subsequent planning permission(s) respectively,

PROVIDED THAT

- (i) nothing in this clause shall fetter the discretion of the Council in determining any application(s) under section 73 (or section 73B when in force) of the 1990 Act or the appropriate nature and/or quantum of planning obligations in so far as they are materially different to those contained in this Deed and required pursuant to a determination under section 73 (or section 73B when in force) of the 1990 Act whether by way of a new deed pursuant to section 106 of the 1990 Act or a deed of modification pursuant to section 106A of the 1990 Act;
- (ii) for the avoidance of doubt, to the extent that any of the obligations in this Deed have been discharged at the date that any new planning permission to which this clause 14 applies is granted, such obligations shall remain discharged for the purposes of the new planning permission.

⁴² **Guidance note:** This provision permits the undertaking to be used for future planning permissions granted by section 73 (or when in force section 73B). This can reduce legal costs and resources required by all parties by not requiring new deeds to be entered where no change is required to the obligations. The parties will need to be aware of this effect to ensure that where any new or amended obligations are required and therefore a new deed is required, the existing obligation in the original undertaking is taken into account and dealt with.

15. Future development

- 15.1 Subject to clause 14 above, nothing in this Deed shall be construed as prohibiting or limiting any right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted by the Council or by the Secretary of State on appeal or reference to such persons before or after the date of this Deed.

16. Termination of this Deed

- 16.1 This Deed shall cease to have any further effect if:
- (a) the Planning Permission lapses without having been Implemented;
 - (b) the Planning Permission is revoked;
 - (c) the Planning Permission is modified without the consent of the Owner[s]; [or]
 - (d) the Planning Permission is quashed following a successful legal challenge [.] / [; or
 - (e) the Appeal is determined such that planning permission is refused.]⁴³

17. Severance

- 17.1 If any provision in this Deed shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Deed (to the extent possible) shall not in any way be deemed thereby to be affected or impaired.

18. Notifications⁴⁴

- 18.1 The Owner[s] shall notify the Council in writing of the following:
- (a) the anticipated date of Implementation, no later than ten (10) Business Days prior to such date;
 - (b) the anticipated date of Commencement, no later than ten (10) Business Days prior to such date;
 - (c) the anticipated date of First Occupation, no later than ten (10) Business Days prior to such date; and
 - (d) the anticipated date of [Occupation of the [•]th Dwelling], no later than ten (10) Business Days prior to such date.
- 18.2 The Owner[s] shall notify the Council in writing⁴⁵ of the following:
- (a) the date of Implementation, within ten (10) Business Days of its occurrence;
 - (b) the date of Commencement, within ten (10) Business Days of its occurrence;
 - (c) the date of First Occupation, within ten (10) Business Days of its occurrence; and
 - (d) the date of [Occupation of the [•]th Dwelling], within ten (10) Business Days of its occurrence.

⁴³ **Guidance note:** This drafting should be included if the deed is being prepared for the purposes of a planning appeal.

⁴⁴ **Guidance note:** The intention of this clause is to assist the LPA in monitoring the obligations by providing notification that the relevant stage or date by which an obligation has to be complied with has been reached. Other deadlines for compliance from the obligations in the Schedules can be added to the list here, including where obligations or restrictions are linked to the occupation of certain numbers of dwellings, as set out at limb (d).

⁴⁵ **Guidance note:** LPAs may have specific requirements but sufficient time should be allowed so that it is possible to comply without practical difficulties.

19. Legal costs [and monitoring fees]⁴⁶

- 19.1 The Owner[s] shall pay to the Council its legal costs reasonably and properly incurred in the preparation, negotiation and completion of this Deed on or before completion of this Deed.⁴⁷
- 19.2 [The Owner[s] shall pay the Monitoring Fee to the Council prior to [Implementation]/[Commencement] of the Development.]⁴⁸
- 19.3 Subject to clause 19.4, the Owner[s] shall pay to the Council all costs, charges and expenses reasonably and properly incurred by the Council for the purpose of, or directly incidental to, the enforcement of any of the [Owner's] / [Owners'] obligations contained in this Deed.
- 19.4 The Owner[s] will not be liable to pay costs pursuant to clause 19.3:
- (a) unless the Owner[s] [has]/[have] failed to perform or otherwise breached one or more obligations and the Council has incurred costs in enforcing against such failure or breach;
 - (b) unless the Council has:
 - (i) served notice in writing on the Owner[s] stating that there is a breach of an obligation under the terms of this Deed;
 - (ii) afforded the Owner[s] a reasonable period to remedy the breach; and
 - (iii) the Owner[s] [has]/[have] failed to remedy the breach within that period; and
 - (c) to the extent that the Council has recovered any enforcement costs from any other parties or through any other procedure.

20. Indexation

- 20.1 All Contributions [save for the [●] Contribution] shall be Index Linked (or if payable in instalments, each instalment of a Contribution shall be Index Linked) by increasing the sum payable in accordance with the following formula:

Sum payable after indexation = A x B/C

Where:

A = the sum to be varied;

B = the Index at the earlier of the date on which the sum is paid or the deadline for payment; and

C = the Index at the date [of this Deed]⁴⁹.

- 20.2 In case of any decrease in the Index the change in the Index shall be deemed to be nil.

⁴⁶ **Guidance note:** Indemnities on behalf of the Owner to the LPA are generally not considered appropriate. There are additional mechanisms for recovery of costs in the event enforcement action through the courts is required.

⁴⁷ **Guidance note:** If there is no solicitor's undertaking in place, the amount of costs to be paid should be specified to avoid any dispute. Payment of costs should not include VAT. VAT is not recoverable by the Owner because it was not the recipient of the legal services. The LPA should be responsible for and recover the VAT. This obligation may not be required in all contexts (e.g. an appeal where the LPA has not reviewed the undertaking).

⁴⁸ **Guidance note:** The Monitoring Fee should be payable on or before Implementation or Commencement but not earlier. The monitoring fee could also be paid in instalments with one or more instalments to be paid after Commencement.

⁴⁹ **Guidance note:** Different dates may be appropriate depending on how the contribution has been calculated.

20.3 Where a Contribution is paid in instalments, only any residual balance shall be subject to further indexation.

21. Interest on late payments

21.1 If payment of any contribution or sum to be paid under the provisions of this Deed remains unpaid after the deadline for payment has passed then the Owner[s] shall pay Interest on the unpaid amount of such contribution or sum from the date that the relevant deadline expires to the date it is paid in full.

22. VAT

22.1 All consideration required to be given in accordance with the terms of this Deed is expressed as exclusive of any value added tax properly payable PROVIDED THAT if at any time VAT is or becomes chargeable in respect of any supply made in accordance with the provisions of this Deed then to the extent that VAT had not previously been charged in respect of that supply that VAT will be additional to the sums required and the Owner[s] will be entitled to valid VAT receipts in respect of any vatiable supplies properly incurred under this Deed.⁵⁰

23. No waiver

23.1 No waiver (whether express or implied) by the Council of any breach or default by the Owner[s] in performing or observing any of the obligations contained in this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing such obligations or from acting upon any subsequent breach or default.

24. Registration⁵¹

24.1 The Owner[s] [and the Mortgagee] acknowledge[s] that this Deed is a public document and that a copy must be placed on the planning register and the register of local land charges and/or otherwise published and/or made available to the public by the Council.

25. Third parties

25.1 No provisions of this Deed shall be enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999.

26. Jurisdiction

26.1 This Deed is governed by and interpreted in accordance with the law of England.

27. Notices

27.1 Any notices required to be given to the Council under this Deed shall be served on the Council:
by email to **[INSERT COUNCIL EMAIL ADDRESS]**;
by hard copy to **[INSERT COUNCIL CORRESPONDENCE ADDRESS]**;
[ADD ADDITIONAL NOTICE DETAILS AS REQUIRED]

⁵⁰ **Guidance note:** VAT is not normally payable on section 106 contributions.

⁵¹ **Guidance note:** A bilateral section 106 agreement would usually place an obligation on the LPA to register the agreement as a local land charge, as planning obligations are local land charges. In a unilateral undertaking this obligation cannot be imposed on the LPA. A planning obligation that is not registered as a local land charge will still be binding on future purchasers, however the purchasers would be entitled to compensation for any loss resulting from such non-registration.

or such other address for service or method of service as shall have been previously notified in writing by the Council to the Owner[s] [the Developer] [and the Mortgagee].

28. No fettering of discretion

28.1 Except in so far as is legally or equitably permitted, nothing in this Deed shall fetter, prejudice or affect the exercise of any statutory or regulatory power, duty or discretion of the Council.

29. Delivery

29.1 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.

This document is executed as a deed and is delivered and takes effect at the date written at the beginning of it

Schedule 1

Plan

1. **[INSERT A COPY OF THE PLAN SHOWING THE SITE]**

Schedule 2

Financial Contributions

1. Definitions

- 1.1 In this Schedule unless the context otherwise requires the following terms shall have the following meanings:

"[INSERT CONTRIBUTION NAME] Contribution" means [the sum of £[INSERT AMOUNT] Index Linked]⁵² / [the sum of £[INSERT AMOUNT] to be paid in instalments (each such instalment to be Index-Linked) in accordance with paragraph 2.1 of this Schedule]⁵³ to be paid to the Council for the purposes of [INSERT PURPOSES FOR WHICH THE CONTRIBUTION CAN BE USED]⁵⁴ ;

"[INSERT FORMULA-BASED CONTRIBUTION NAME] Contribution" [means a financial contribution to be paid to the Council for the purposes of [INSERT PURPOSES FOR WHICH THE CONTRIBUTION CAN BE USED]⁵⁵ and calculated in accordance with the following formula:

$A \times \text{£}[\text{INSERT AMOUNT OF COST MULTIPLIER}]$ (Index-Linked)

where A = [number of Dwellings]⁵⁶ approved for [the Development / a Phase] [pursuant to Reserved Matters Approvals];

⁵² **Guidance note:** This wording is to be used where a contribution is paid in total as a single payment, together with the associated optionality for operative obligations at paragraph 2.1.

⁵³ **Guidance note:** This wording is to be used where a contribution is to be paid in instalments, together with the associated optionality for operative obligations at paragraph 2.1.

⁵⁴ **Guidance note:** The purposes to which the contributions are intended to be applied should be agreed and clearly set out so it is clear that regulation 122 of the CIL Regulations has been satisfied. Should an LPA anticipate that a purpose may need to be adapted in the future, this should be addressed in this wording.

⁵⁵ **Guidance note:** As above.

⁵⁶ **Guidance note:** This drafting option is most likely to be applicable to outline permissions and/or phased permissions: it may be appropriate for some contributions to be calculated once reserved matters approvals have been obtained or when the extent of a phase is known, in circumstances where contributions are required to be calculated by reference to numbers of dwellings. In such cases a formula can be included to allow calculation of the contribution once all relevant reserved matters approvals have been obtained confirming the exact number of dwellings that will be built within the development or the number of dwellings within a phase is known.

2. The Contributions

2.1 The Owner[s] shall:

[OPTION 1: PAYMENT IN LUMP SUM:

- (a) pay the **[INSERT CONTRIBUTION NAME]** Contribution in full prior to [Commencement of]/[First Occupation of]/[Occupation of more than **[•]** Dwellings within]⁵⁷ [the Development]/[a Phase]; and
- (b) not [Commence]/[First Occupy]/[Occupy more than **[•]** Dwellings within] [the Development]/[a Phase] until the **[INSERT CONTRIBUTION NAME]** Contribution has been received in full by the Council.]

[OPTION 2: PAYMENT IN INSTALMENTS⁵⁸:

- (a) [pay **[•]**% of the **[INSERT CONTRIBUTION NAME]** Contribution prior to [Commencement of]/[First Occupation of]/[Occupation of more than **[•]** Dwellings within] [the Development]/[a Phase];
- (b) not [Commence]/[First Occupy]/[Occupy more than **[•]** Dwellings within] [the Development]/[a Phase] until **[•]**% of the **[INSERT CONTRIBUTION NAME]** Contribution has been received by the Council;
- (c) pay a further **[•]**% of the **[INSERT CONTRIBUTION NAME]** Contribution prior to [Occupation of more than **[•]** Dwellings] within [the Development]/[a Phase];
- (d) not to [Occupy more than **[•]** Dwellings] within [the Development]/[a phase of the Development] until a further **[•]**% of the **[INSERT CONTRIBUTION NAME]** Contribution has been received by the Council;
- (e) pay the final **[•]**% of the **[INSERT CONTRIBUTION NAME]** Contribution prior to [Occupation of more than **[•]** Dwellings] within [the Development]/ a Phase];
- (f) not to [Occupy more than **[•]** Dwellings] within [the Development]/[a Phase] until the final **[•]**% of the **[INSERT CONTRIBUTION NAME]** Contribution has been received in full by the Council.]

⁵⁷ **Guidance note:** Other deadlines may be appropriate depending on the particular facts and circumstances of the development. It is common to require payment of contributions prior to occupation of a certain number of dwellings or a specified amount of commercial floorspace for example. Thought should be given to when the impacts that the contribution is intended to mitigate will occur to determine when a reasonable deadline for payment should be set.

⁵⁸ **Guidance note:** Consideration should be given to requiring contributions to be paid in instalments, in particular (but not only) in cases of outline permissions where, for example, the exact number of Dwellings that will be built will not be known until reserved matters approvals have been obtained. Again, thought should be given to when the impacts that the contribution is intended to mitigate will occur, to determine when a reasonable deadline for payment of the instalments should be set. Amounts are expressed in percentages in this drafting but specific figures for each of the instalments can be inserted if known.

EXECUTION PAGE

[INSERT EXECUTION BLOCKS]⁵⁹

Signed as a deed by **[INSERT OWNER
NAME]**

.....

In the presence of:

Signature of witness

.....

Name (in BLOCK CAPITALS)

Address

⁵⁹ **Guidance note:** Each party will need to confirm and insert its attestation clause.