

Dated DAY, MONTH AND YEAR

Full name of Landowner

AND

Full name of Lender (if applicable)

UNILATERAL UNDERTAKING

**Made under Section 106 of the Town & Country Planning Act
1990 (as amended) relating to:-**

Land at ADDRESS OR DESCRIPTION OF THE LAND

IN FAVOUR OF THE DARTFORD BOROUGH COUNCIL

This **DEED OF UNDERTAKING** is made on the DAY of MONTH YEAR

By:

- (1) **FULL NAME AND ADDRESS OF OWNER AND REGISTERED OFFICE ADDRESS** ('Owner')
- (2) **FULL NAME AND ADDRESS OF LENDER WHO HAS A REGISTERED CHARGE OVER THE LAND** ('Lender')

To:

THE DARTFORD BOROUGH COUNCIL of Civic Centre Home Gardens Dartford Kent DA1 1DR ('Council')

Recitals

- (a) Words and phrases used in this Deed are to be found in Clause 1.
- (b) This Deed relates to land at ADDRESS in the County of Kent edged red on the attached Plan known as 'the Land'.
- (c) The Owner is the freehold owner of the Land registered with title absolute under title number(s) TITLE NUMBER(S).
- (d) The Council is the local planning authority for the purposes of Section 106 of the Act for the area within which the Land is situated and by whom the obligations contained in this Deed are enforceable.
- (e) The Lender has a charge over the Land dated DATE.
- (f) A Planning Application has been made to the Council.

- (g) The Council has not yet determined the Planning Application and the Owner enters into this Deed to secure the planning obligations which are only enforceable following a grant of the Planning Permission for the Development.

1. Definitions

- 1.1 In this Deed the following expressions shall unless the context otherwise requires have the following meanings:

the Act	means the Town and Country Planning Act 1990 (as amended)
Development	means the development of the Land as described in the Planning Application and in accordance with the Planning Permission
Commencement of Development	means the carrying out of any material operation as defined by Section 56(4) of the Act in connection with Development and "Commence" and "Commenced" shall be construed accordingly
Dwelling	means a building or part of a building designed for residential occupation by a single household and "Dwellings" shall be construed accordingly
Habitat Mitigation Contribution	means the sum of £xxx.xx being the total of £xxx.xx per Dwelling (Index Linked) to be paid by the Owner to the Council as a contribution towards measures to mitigate the impacts of the Development on the North Kent Special Protection Areas and RAMSAR site payable in accordance with paragraph 3 of the Schedule

Index	means the ‘all items’ index figure of the Indexes of Retail Prices published by the Office for National Statistics or such other index as the Council may reasonably nominate in the event the Index of Retail Prices shall no longer be published or its name or methodology be materially altered
Index Linked	means an increase to the sum to be paid which is calculated by applying to that sum the percentage increase (if any) in the Index between the date of this Deed and the date of payment
Interest	means interest at 4 per cent above the base lending rate of Lloyds Bank Plc from time to time
Land	means land situated at ADDRESS shown edged red on the Plan
Legal Contribution	means the sum of £500.00 (five hundred pounds) as a contribution to the legal costs of the Council in considering and approving this Deed payable in accordance with paragraph 2 of the Schedule
Plan	means the plan annexed to this Deed
Planning Application	means the application for planning permission submitted by the Owner to the Council on DATE and given reference [REFERENCE NUMBER]
Planning Permission	means planning permission granted by the Council pursuant to the Planning Application

1.2 Words with a masculine gender include the feminine gender and vice versa.

1.3 Words importing the singular meaning, unless the context otherwise requires, include the plural meaning and vice versa.

- 1.4 Reference to a clause, paragraph or schedule are, unless the context otherwise requires, references to a clause paragraph or schedule of this Deed.
- 1.5 Where reference is made in this Deed to:
- 1.5.1 the Owner it shall (unless the context otherwise requires) include its respective successors in title and assigns and anyone deriving title through or under the Owner;
- 1.5.2 the Council shall include any successor as local planning authority.
- 1.6 Where there is more than one covenantor all obligations of such covenantors shall be joint and several.
- 1.7 Reference in this Deed to a statute or a statutory instrument shall mean and include any statutory amendment or re-enactment thereof.
- 1.8 The clause headings are for the convenience of the parties only and do not form part of this Deed and shall not be taken into account in its construction or interpretation.
- 1.9 Nothing in this Deed shall be or shall be construed to be a fetter or restriction on the proper exercise at any time by the Council of any of its statutory powers functions or discretions in relation the Land or otherwise.
- 1.10 Words imposing an obligation on a party to do any act whatsoever include an obligation to procure that act and words placing a party under a restriction include an obligation not to cause permit or suffer any infringement of that restriction.

2. Operative Provisions

- 2.1 This Deed is made pursuant to section 106 of the Act Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and this Deed is a planning obligation for the purposes of Section 106 of the Act.
- 2.2 The planning obligations contained in the Schedule to this Deed are enforceable by the Council.
- 2.3 Nothing in this Deed is or amounts to or shall be construed as a Planning Permission or approval.
- 2.4 The Owner hereby covenants with the Council to observe and perform the restrictions stipulations and requirements specified in this Deed and the Schedule thereto.
- 2.5 The Lender hereby consents to the execution of this Deed and acknowledges that subject as herein provided the Land shall be bound by the restrictions and obligations contained in the Schedule to this Deed.
- 2.6 The Owner acknowledges that the planning obligation in this Deed is a local land charge and registerable as such in the Register of Local Land Charges maintained by the Council.
- 2.7 For the purposes of the Contracts (Rights of Third Parties) Act 1999 it is agreed that nothing in this Deed shall confer on any third party (other than the Council) any right to enforce or any benefit of any term of this Deed.
- 2.8 If the Planning Permission shall expire (without being renewed or extended) before the Development is Commenced or shall at any time be revoked this Deed shall forthwith determine and cease to have effect.

3. Covenants by the Parties

3.1 The Owner as owner of the Land and so as to bind their interest in the Land hereby undertakes and covenants to the Council to comply with the Obligations set out in the Schedule to this Deed.

3.2 Where in this Deed the Owner is required to comply with any requirement prior to Commencement of Development the Owner shall not Commence Development nor permit any other person to Commence Development before the said requirement has been satisfied.

3.3 It is acknowledged by the parties that:

(i) The obligations contained in this Deed shall take effect upon the issue of the Planning Permission by the Council and the Commencement of the Development; and

(ii) No person shall be liable for breach of an obligation or covenant contained in this Deed after he shall have parted with all interest in the Land or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of an obligation or covenant prior to parting with such interest.

3.4 The Owner shall be deemed to have Commenced the Development pursuant to the Planning Permission if it Commence works referable to the Development amounting to a material operation as defined in

Section 56(4) of the Act (not being works for which planning permission is not required) on the Land whether or not:-

- (i) The Owner has satisfied all conditions precedent to commencement set out in the Planning Permission; or
- (ii) Those works are in accordance with the Planning Permission.

SCHEDULE

1. The Owner covenants as follows:-

1.1 To pay the Legal Contribution on the execution of this Deed.

1.2 To pay the Habitat Mitigation Contribution Index Linked prior to Commencement.

1.3 Not to cause or permit Commencement of Development until the Habitat Mitigation Contribution and the Legal Contribution have first been paid to the Council.

2. If any payment due under this Deed is paid late, Interest shall accrue and shall be payable on the sum Index-Linked from the date payment is due to the date payment is received.

IN WITNESS whereof this planning obligation has been duly executed as a Deed on the date and year first before written

[Attestation Clauses – use the following variations as appropriate]

EXECUTED as a DEED by)

Full Name of Individual)

in the presence of:-)

Signature of witness

Name (in BLOCK CAPITALS)

Address

.....

.....

EXECUTED as a DEED by)

Full Name of Individual)

in the presence of:-)

Signature of witness

Name (in BLOCK CAPITALS)

Address

.....

.....

EXECUTED as a DEED and the Common)

Seal of Name of Organisation having a Common Seal)

was hereunto affixed in the presence of)

Authorised Signatory

EXECUTED as a DEED by)

Name of Organisation not having a Common Seal)

acting by)

Authorised Signatory

Authorised Signatory

ATTESTATION CLAUSE FOR LENDER

EXECUTED as a DEED and the Common)

Seal of Name of Organisation having a Common Seal)

was hereunto affixed in the presence of)

Authorised Signatory