

DATED _____

200- _____

[Name of party or parties giving the undertaking]

DEED OF UNILATERAL PLANNING OBLIGATION

Pursuant to Section 106 of the Town and Country Planning Act 1990
relating to [land at _____] Swindon

Directorate of Law and Democratic Services
Swindon Borough Council
Civic Offices, Euclid Street
Swindon SN1 2JH

Tel: 01793 463013
Fax: 01793 463035

THIS DEED OF UNDERTAKING is made the day of 200-

BY:

- (1) ----- of [] (“the Owner”); and
- (2) ----- of [] (“the Developer”)
- (3) ----- of [] (“the Mortgagee”)

TO:

Swindon Borough Council of Civic Offices, Euclid Street, Swindon (“the Council”).

RECITALS

- A. The Council is the local planning authority for the purposes of the Act for the area within which the Application Site is situated.
- B. The Owner is the proprietor of the freehold interest in the Application Site which is registered at the Land Registry under Title Number []
- C. The Mortgagee is the mortgagee of the Application Site under a registered charge dated []
- D. On 200- the Developer submitted the Planning Application to the Council.
- E. The Owner and the Developer enter into this Deed as a prerequisite to the Council granting planning permission.

IT IS AGREED:

1 Definitions and Interpretation

1.1 In this Deed where the context admits the following expressions shall have the following meanings:

“**Administration Fee**” means a sum equal to 5 per cent (5%) of the contributions payable under this Deed to be paid to the Council towards the administration and management of its Planning Obligations system.

“**Act**” means the Town and Country Planning Act 1990 (as amended);

“**Application Site**” means the site of the Development shown for identification purposes only edged red on the plan annexed to this Deed;

“**Affordable Housing**” means housing provided with or without public subsidy for purchase and/or rent or for any combination of purchase and rent significantly below

market level as defined by the Secretary of State for Communities and Local Government to be made available for persons who cannot afford to buy or rent houses generally available on the open market

“Affordable Housing Administration Fee” means the sum of Two Hundred Pounds (£200) per Affordable Housing unit that is provided under the terms of this Deed to be paid to the Council to cover the cost of administering access to the Affordable Housing units

“Affordable Housing Land” means those areas of the Application Site on which the Affordable Housing units are to be provided and the location of which the Owners and Council shall agree prior to Commencement of Development

“Central Area Public Realm Contribution” means the sum of [] Pounds.

“Commencement Date” means the date on which the Development is begun by the carrying out of a material operation (as defined by Section 56 (4) of the Town and Country Planning Act 1990) (as amended) provided always that :-

- (1) Any works necessary by the Owner in undertaking a land survey of or obtaining soil samples from the land
- (2) Any remedial works on the land necessary to prevent the risk of harm to human health and safety
- (3) Works of demolition on the land
- (4) Works of archaeological excavation on the land
- (5) Erections or holdings and fences on the land
- (6) Works utilities/utilities provision
- (7) Landscape clearance works
- (8) Works on or to internal roads

shall for the purposes of this Deed be deemed not to be works which shall begin the Development and "Commence" and "Commencement" shall be construed accordingly.

"Community Safety Contribution" means the sum of [] Pounds.

"Community Forest Contribution" means the sum of [] Pounds.

"Contributions" means the [Affordable Housing Contribution, Central Area Public Realm Contribution; Culture and Leisure Contribution, Community Forest Contribution Community Safety Contribution, Education Contribution, Highways Contribution, Local Health Contribution, Open Space Contribution, Public Art Contribution, and Social Services Facilities Contribution] the sum total of which is inclusive of the Administration Fee.

"Cultural and Leisure Contribution" means the sum of [] Pounds.

"Development" means the development of the Application Site as proposed in the Planning Application or as permitted by the Planning Permission

"Education Contribution" means the sum of [] Pounds.

“Highways Contribution” means the sum of [] Pounds.

“Index” means the Build Cost Information Service All In Tender Price Index published by the BCIS or such similar index as may from time to time be published to replace such index or if such Index ceases to be published (as to which the Council's reasonable decision shall be conclusive) such other public index of Build Cost Information Service All In Tender prices or the value of money as the Council and the Owner may agree PROVIDED THAT in the case of Highways Contribution and Open Space Contributions the Public Works Index shall be applicable.

“Index Linked” means adjusted in accordance with the movements in the Index between the date of this Deed and the date of the relevant payment;

"Local Health Contribution" means the sum of [] Pounds.

“Occupation” means occupation for any use authorised by the Planning Permission but does not include occupation for the purposes of construction, fitting out, marketing or decoration;

"Open Space Contribution" means the sum of [] Pounds.

“Parties” means the "Owner" and the "Developer" and the "Mortgagee" respectively include their successors in title and assigns.

“the Plan” means the plan annexed hereto.

"Planning Application" means the written application by [Owner/Developer/Agent] [dated []] / [bearing the statutory register number []] for planning permission for [] all on the Application Site.

"Public Art Contribution" means the sum of [] Pounds.

“Public Works Index” means the Public Sector Construction Works Quarterly Building Price or the Cost Indices for Road Construction as appropriate or in the event that the base of the calculation of such index shall change or if such index ceases to be published (as to which the Council's reasonable decision shall be conclusive) such other published index or public works prices or the value of money as the Council and the Developer [and/or the Owner] may agree.

"Social Services Facilities" Contribution means the sum of [] Pounds.

- 1.2 References to any statute include any statutory extension, modification, amendment or re-enactment of such statute and any subordinate instruments, regulations or orders made pursuant to it.
 - 1.3 The headings in this Deed are for ease of reference only and shall not affect the construction of this Deed.
 - 1.4 Where reference is made to a clause, paragraph, recital or schedule such reference (unless the context otherwise requires) is a reference to a clause, paragraph, recital or schedule in this Deed.
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- 1.5 In this Deed the singular includes the plural and vice versa and the masculine includes the feminine and vice versa.
- 1.6 References in this Deed to the "Council", the "Owner" and the "Developer" shall include their respective statutory successors in title or function and assigns except where the contrary is expressly provided.
- 1.7 Any covenants given by two or more parties are given jointly and severally.

2 Legal Effect

- 2.1 This Deed is made pursuant to Section 106 of the Act and constitutes a planning obligation binding the Application Site which is enforceable by Council.
- 2.2 Neither the Owner, the Developer nor their successors in title will be liable for any breach, non-performance or non-observance of the covenants, obligations and restrictions contained in this Deed in respect of any period during which it or they no longer have an interest in the Application Site or in the part in respect of which the breach, non-performance or non-observance occurs but without prejudice to liability for any subsisting breach, non-performance or non-observance prior to parting with such interest.
- 2.3 In the event of the Planning Permission being quashed as a result of legal proceedings or expiring before Implementation or being revoked or otherwise modified by any statutory procedure without the consent of the Owner and the Developer then this Deed shall be deemed to be void.
- 2.4 The covenants in this Deed are enforceable only by the Council as local planning authority and no part of this Deed shall or may be construed as creating any rights enforceable by a third party as defined by the Contracts (Rights of Third Parties) Act 1999.

3 Conditions Precedent

- 3.1 This Deed is conditional upon and shall not take effect until:-
- (a) the Planning Permission has been granted; and
 - (b) the Planning Permission has been Implemented.

SAVE for clause 5 (payment of the Council's legal costs) which shall take effect on the date hereof

4 Indexation

- 4.1 All sums of money payable to the Council under this Deed shall be Index Linked.

5. Legal Costs

5.1 The Owner and the Developer shall pay the Council's legal costs in the sum of £--- for the preparation and completion of this Deed

6. Interests

6.1 The Owner the Developer and the Mortgagee agree that their interests in the Application Site will be bound by the planning obligations contained in this Deed

IN WITNESS whereof the [Owner the Developer and the Mortgagee] have executed this document as a Deed the day and year first before written.

Schedule 1

The Application Site

Schedule 2

The Development

Schedule 3

Owner and Developer's Obligations

The Owner and the Developer hereby covenant with the Council as follows:

1. On the date hereof to pay to the Council the Administration Fee
 2. On [Commencement/Occupation] to pay to the Council
 - a. [the Affordable Housing Contribution]
 - b. [the Central Area Public Realm Contribution]
 - c. [Community Forest Contribution]
 - d. [Community Safety Contribution]
 - e. [the Culture and Leisure Contribution]
 - f. [Education Contribution]
 - g. [the Highways Contribution],
 - h. [Local Health Contribution]
 - i. [the Open Space Contribution]
 - j. [the Public Art Contribution]
 - k. [the Social Services Facilities Contribution]
-

EXECUTED AS A DEED)
by the [OWNER] in the presence)
of:)

EXECUTED AS A DEED)
by the [DEVELOPER] in the)
presence of:)

THE COMMON SEAL OF THE)
[MORTGAGEE] was affixed in the)
presence of:)
