

<b><u>Planning Reference Number</u></b>	
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**Dated**\_\_\_\_\_.

## **UNILATERAL UNDERTAKING**

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

**Land at**

**IN FAVOUR OF TEIGNBRIDGE  
DISTRICT COUNCIL**

This **DEED OF UNDERTAKING** is made on the \_\_\_\_\_ day of \_\_\_\_\_

**By:**

(‘Owner’)

**To:**

TEIGNBRIDGE DISTRICT COUNCIL of Forde House, Brunel Road, Newton  
Abbot, Devon, TQ12 4XX ('Council')

## Recitals

- (a) Words and phrases used in this Deed are to be found in Clause 1.
- (b) This Deed of Undertaking relates to land at  
in the County of Devon edged red on the attached Plan known as ‘the Land’.
- (c) The Owner is the freehold owner of the Land registered with the title absolute under title number(s) DN .
- (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) A Planning Application has been made to the Council.
- (f) 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:

<b>the Act</b>	means the Town and Country Planning Act 1990 as amended
<b>Development</b>	means the development of the Land as described in the Planning Application and in accordance with the Planning Permission
<b>Commencement of Development</b>	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
<b>Dwelling</b>	means a building or part of a building designed for residential occupation by a single household and "Dwellings" shall be construed accordingly
<b>Habitat Mitigation Contribution</b>	means the sum of £                      being the total of £                      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 Dawlish Warren Special Area of Conservation and the Exe Estuary Special Protection Area
<b>Index</b>	means the Retail Price Index
<b>Index Linked</b>	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 of Undertaking and the date of payment

<b>Interest Rate</b>	means the Law Society's Interest Rate calculated on a day to day basis
<b>Land</b>	means land situated at shown edged red on the Plan
<b>Legal Contribution</b>	means the sum of £95.00 as a contribution to the legal costs of the Council in considering and approving this Deed
<b>Plan</b>	means the plan annexed to this Deed
<b>Planning Application</b>	means the application for planning permission for at submitted to the Council for the Development on
<b>Planning Permission</b>	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 Owners it shall (unless the context otherwise requires) include its respective successors in title and assigns and anyone deriving title through or under the Owners;

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 and Section 111 of the Local Government Act 1972 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 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.
- 2.6 If the Planning Permission should 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;
- (ii) The County Court in whose district the Land is situate shall have full jurisdiction to hear and determine proceeding arising from or relating to this Deed or for the enforcement of its terms or any of them; and
- (iii) 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 they 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.

## **THE SCHEDULE**

### **HABITATS MITIGATION CONTRIBUTION**

The Owner for themselves and their successors in title to the Land covenant as follows:-

1. 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. To advise the Council of Commencement of Development within seven days of Commencement.
3. In the event of the Owner failing to settle any account or accounts that have been properly and duly rendered to the Owner within fourteen days of despatch to the Owner the sum due shall accrue interest at the Interest Rate.



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 )  
)

in the presence of:- )

Signature of witness .....

Name (in BLOCK CAPITALS) .....

Address .....  
.....  
.....

EXECUTED as a DEED by )  
)

in the presence of:- )

Signature of witness .....

Name (in BLOCK CAPITALS) .....

Address .....  
.....  
.....

EXECUTED as a DEED and the Common )

Seal of )

was hereunto affixed in the presence of )

Authorised Signatory .....

EXECUTED as a DEED by )

)

acting for )

Authorised Signatory .....

Authorised Signatory .....