

DATED

202x

(1)

(2)

in favour of

(3) EPPING FOREST DISTRICT COUNCIL

DEED OF UNILATERAL UNDERTAKING

Under Section 106 Town and Country Planning Act 1990
relating to land at

[ADDRESS]

Planning Application Reference:

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SUMMARY OF PAYMENTS DUE UNDER THIS DEED¹

Air Pollution Contribution	£
Recreation Contribution	£
Monitoring Contribution	£
Legal Fees	£225
TOTAL	£

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¹ This summary page is provided for ease of future reference by the parties to the Deed and the Council and does not form part of the operative terms of this Deed.

THIS DEED OF UNDERTAKING is made on

2020

BY

- (1) NAME of ADDRESS ("**the Landowner**")
- (2) NAME (Company Registration Number XXX) of REGISTERED OFFICE ADDRESS ("**the Mortgagee**")

in favour of

- (3) **EPPING FOREST DISTRICT COUNCIL** of Civic Offices, 323 High Street, Epping, Essex CM16 4BZ ("**the Council**")

1. BACKGROUND

- 1.1 For the purpose of the 1990 Act, the Council is the local planning authority for the area in which the Site is situated.
- 1.2 The Landowner is the freehold owner of the Site with registered title number [TITLE NUMBER] at HM Land Registry
- 1.3 The Mortgagee is the proprietor of a charge dated [INSERT DATE] registered against title number [TITLE NUMBER]
- 1.4 The Planning Application has been made to the Council by the Landowner and in granting the Planning Permission the Council considers it expedient that provision should be made for regulating or facilitating the Development or use of the Site in the manner hereinafter appearing and that entering into this Deed will be of benefit to the public
- 1.5 In order to satisfy the tests in Regulation 122 (2) of the Community Infrastructure Levy Regulations 2010 the Council and the other parties are satisfied that the planning obligations contained in this Deed are necessary to make the Development acceptable in planning terms, are directly related to the Development and fairly and reasonably related in scale and kind to the Development
- 1.6 The Landowner has agreed to enter into this Deed with the intention that the obligations contained in this Deed may, in the event that the Planning Permission is granted, be enforced by the Council against the Landowner and [his/her/their/its] successors in title

- 1.7 This Deed is a Planning Obligation for the purposes of section 106 of the 1990 Act and is entered into by the Landowner to mitigate any adverse effect on the integrity of the European Site as a result of the Development

IT IS HEREBY AGREED as follows:

2. OPERATIVE PROVISIONS

- 2.1 This Deed is made pursuant to Section 106 of the 1990 Act to the intent that it shall bind the Landowner and [his/her/their/its] successors in title and assigns and the persons claiming under or through them.
- 2.2 This Deed creates planning obligations for the purposes of Section 106 of the 1990 Act and such obligations and covenants hereinafter contained shall be enforceable by the Council acting under the powers contained in Section 106 of the 1990 Act
- 2.3 This Deed shall come into effect on the date of this Deed

3. DEFINITIONS AND INTERPRETATION

- 3.1 In this Deed (which includes the Schedules and Appendices to it) the following words and expressions have the following meanings:

"1990 Act" the Town and Country Planning Act 1990 ([as amended](#))

"Air Pollution Contribution" the sum of [AMOUNT IN WORDS (£)] Index Linked payable to the Council as a financial contribution to mitigate the impact of the Development on air pollution at the European Site in accordance with the Epping Forest Air Pollution Mitigation Strategy

"Commencement of Development" solely for the purposes of this Deed and for no other purpose to initiate the Development by carrying out a material operation as defined in section 56(4) of the 1990 Act. Where used in the context of part of the Development Commence means the carrying out of a material operation on that part. The terms "**Commencement**" and "**Commenced**" and "**Commence Development**", "**Commencement Date**" and other congruent terms are to be construed accordingly. The following matters do not constitute a

material operation and consequently shall not individually or together constitute Commencement:

- (a) Demolition;
- (b) Site clearance;
- (c) Site investigations, testing or surveys;
- (d) The provision of underground drainage and sewers and the laying and diversion of other services and service medium;
- (e) Archaeological investigations and digs;
- (f) Ecological surveys, investigations or assessments;
- (g) Decontamination and remediation works;
- (h) The construction of boundary fencing or hoardings (including the erection of an enclosure for the purpose of site security);
- (i) The construction of a temporary site compound and welfare facilities / buildings / enclosures

"Development"

the development of the Site [INSERT DETAILS] all in accordance with the Planning Permission

"Epping Forest Air Pollution Mitigation Strategy"

the "Epping Forest Air Pollution Mitigation Strategy: Managing the Effects of Air Pollution on the Epping Forest Special Area of Conservation" document adopted by the Council on [DATE] which was developed to support the implementation of policies DM2 and DM22 of the Epping Forest District Local Plan 2011-2033

"European Site"

all that land designated on 1 April 2015 under Article 4(4) of Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Flora and Fauna known as the Epping Forest Special Area of Conservation designated for the purpose of protecting three qualifying habitats namely beech forests on acid

soil, European dry heaths and North Atlantic wet heaths with cross-leaved heath and one qualifying species namely the Stag Beetle

"Index"

the Retail Prices (All Items) Index as published by the Office for National Statistics or (if such index is at the relevant time no longer published) such other comparable index or basis for indexation as the Council may direct

"Index-Linking"

the recalculation of any payment specified in this Deed by applying the following formula:-

$$A \times \frac{B}{C} = D$$

Where:

A = the payment specified in this Deed

B = the figure shown in the relevant Index for the month last published prior to the date the payment is made under this Deed

C = the figure shown in the relevant Index for the month immediately prior to the date of this Deed

D = the recalculated sum payable

and "**Index-Linked**" and other congruent terms shall be construed accordingly

"Interest"

interest at four (4) per cent above the base lending rate of the Bank of England from time to time

"Interim Mitigation Strategy"

the "Interim Approach to Managing Recreational Pressures on the Epping Forest Special Area of Conservation" document adopted by the Council in October 2018 to support the implementation of policies DM2 and DM22 of the Epping Forest District Local Plan 2011-2033

"Monitoring Contribution"	the sum of [AMOUNT IN WORDS (£)] payable to the Council towards monitoring compliance with the obligations in this Deed
"Party"	a party to this Deed and "Parties" shall be construed accordingly
"Plan"	the site plan attached to this Deed
"Planning Application"	the application for [outline] planning permission submitted to the Council by the Landowner for the [DESCRIPTION] and given application reference number EPP/[INSERT]
"Recreation Contribution"	the sum of [AMOUNT IN WORDS (£)] Index Linked payable to the Council as a financial contribution towards the maintenance, improvement, management, access management and monitoring of the European Site to mitigate the recreational impact of the Development on the European Site in accordance with the Interim Mitigation Strategy
"Planning Permission"	the planning permission granted pursuant to the Planning Application
"Regulations"	the Conservation of Habitats and Species Regulations 2017
"Site"	the land against which this Deed may be enforced known as [] shown for identification purposes edged red on the Plan
"Working Day"	any day of the week other than Saturday, Sunday or any bank holiday and any other day upon which the Council's offices are closed to the public

- 3.2 In this Deed, unless otherwise indicated, reference to:
- 3.2.1 The Landowner or the Council or any one or more of them shall include reference to their respective successors in title and to persons claiming through or under them;
 - 3.2.2 Recital, clause, sub-clause, paragraph number, schedule, appendix or plan is a reference to a recital, clause or sub-clause of, paragraph number of, schedule to, appendix to or plan annexed to this Deed;
 - 3.2.3 Words importing the singular meaning include the plural meaning and vice versa;
 - 3.2.4 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, other corporate bodies, firms or legal entities and all such words shall be construed interchangeably in that manner; and
 - 3.2.5 Statute shall include any amendment, modification, extension, consolidation or re-enactment of that statute for the time being in force and in each case shall include (as relevant) all statutory instruments, orders, regulations and directions for the time being made, issued or given under that statute or deriving validity from it.
- 3.3 Headings where they are included are for convenience only and are not intended to influence the construction and interpretation of this Deed.
- 3.4 Wherever an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually unless there is an express provision otherwise.
- 3.5 Where in this Deed a Party covenants:
- 3.5.1 to do something, that shall also be a covenant to procure that that something is done; and
 - 3.5.2 not to do something, that shall also be a covenant not to permit or allow that something to be done
4. **LEGAL BASIS**
- 4.1 This Deed is made under
- 4.1.1 Section 106 of the 1990 Act; and
 - 4.1.2 Section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other enabling powers that may be relevant to the enforcement of the obligations contained in this Deed.

- 4.2 The obligations, covenants and undertakings on the part of the Landowner in this Deed are planning obligations for the purposes of section 106 of the 1990 Act and so bind the Landowner's interest in the Site.
- 4.3 The obligations, covenants and undertakings on the part of the Landowner are entered into with the intent that they are enforceable not only against the Owner but also against any successors in title or assigns of the Landowner and any person claiming through or under the Landowner an interest or estate in the Site or any part of it as if that person had been the original covenanting party in respect of the interest for the time being held by it.
- 4.4 Insofar as any obligations, covenants and undertakings in Clause 4.2 are not capable of falling within section 106 of the 1990 Act they are entered into in pursuance of the relevant powers referred to in Clause 4.1.2.
- 4.5 References to the Landowner include [his/her/its/their] heirs, assigns, successors in title and persons deriving title through or under [him/her/it/them].
- 4.6 References in this Deed to the Council include its respective successors in statutory function and include persons deriving title through or under it.
- 4.7 Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the Council of any of their statutory powers, duties, functions or discretions in relation to the Site or otherwise.
- 5. OBLIGATIONS OF THE LANDOWNER**
- 5.1 The Landowner covenants with the Council to comply with each obligation, covenant and undertaking given on the part of the Landowner in this Deed as set out in the Schedule.
- 5.2 The Landowner shall upon the date hereof pay to the Council its reasonable and proper legal expenses in connection with the preparation completion and registration of this Deed in the sum of TWO HUNDRED AND TWENTY-FIVE POUNDS (£225) (no VAT)
- 5.3 The Landowner shall upon parting with all of [his/her/their/its] interest in the Site be released from all obligations, rights and duties under the terms of this Deed but shall remain liable for any breaches of this Deed occurring before parting with such interest.
- 5.4 The Landowner covenants to give the Council written notice of any change in ownership of any of [his/her/their/its] interests in the Site occurring before all the obligations under this Deed have been discharged.
- 5.5 The notice referred to in Clause 5.4 above shall give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.

6. GENERAL

- 6.1 Any covenant by the Landowner not to do an act or thing shall be deemed to include an obligation to use reasonable endeavours not to permit or suffer such act or thing to be done by another person where knowledge of the actions of the other person is reasonably to be inferred.
- 6.2 The Landowner acknowledges that nothing in this Deed shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions in any capacity and the respective rights powers duties and obligations of the Council under private, public or subordinate legislation may be effectively exercised.
- 6.3 Any obligation covenant or undertaking contained herein by any of the parties which comprise more than one person or entity shall be joint and several and where any obligation covenant or undertaking is made with or undertaken towards more than one person it shall be construed as having been made with or undertaken towards each such person separately.
- 6.4 If any provision of this Deed is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable the remaining provisions of this Deed shall continue in full force and effect and the parties shall amend those provisions in such a reasonable manner so as to achieve the intention of the parties provided that any party may seek the consent of the other or others to the termination of this Deed on such terms as may in all the circumstances be reasonable if the effect of the foregoing provisions would be to defeat the original intention of the parties.
- 6.5 No variation to this Deed shall be effective unless first approved by the Council and made by deed or pursuant to the determination of an application made under Section 106A of the 1990 Act.
- 6.6 Failure by the Council to enforce at any time or for any period any one or more of the terms or conditions of this Deed shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Deed.
- 6.7 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 6.8 This Deed will end (to the extent it has not already been complied with), if the Planning Permission
- 6.8.1 is quashed, revoked or otherwise withdrawn at any time so as to render this Deed or any part of it irrelevant, impractical or unviable; or
 - 6.8.2 expires before Commencement

7. MORTGAGEE'S CONSENT

7.1 Subject to Clause 7.2 the Mortgagee acknowledges and declares that this Deed has been entered into by the Landowner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Site shall take effect subject to this Deed

7.2 The Mortgagee shall have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations, covenants and undertakings as if it were a person deriving title from the Landowner

8. SUCCESSORS IN TITLE

8.1 If the Landowner or any person disposes of its entire interest in the Site or in any part of it that Party or person will be released from its obligations in this Deed which will no longer be enforceable against that Party or person in relation to the Site or that part of the Site disposed of (as relevant), except to the extent that disposal is the grant of an easement, restriction, restrictive covenant or similar.

8.2 The release of any person under Clause 8.1 is without prejudice to any subsisting liability for any antecedent breach or antecedent failure to comply with its obligations arising before parting with that interest.

9. OTHER DEVELOPMENT

9.1 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed

10. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

10.1 The Landowner declares that no person, other than the Council, shall be entitled to enforce any term of this Deed under the Contracts (Rights of Third Parties) Act 1999

11. NOTICES

11.1 Any notice or other written communication to be served on a Party or given by one Party to any other under the provisions of this Deed will be deemed to have been validly served or given if delivered by hand or sent by first class post or sent by recorded delivery post to the Party on whom it is to be served or to whom it is to be given and will conclusively be deemed to have been received:

11.1.1 If delivered by hand or courier, on the next Working Day after the day of delivery;

11.1.2 If sent by post, the day 2 Working Days after the date of posting; or

11.1.3 If sent by recorded delivery, at the time delivery was signed for.

- 11.2 If a notice, demand or any other communication is served after 4.00pm on a Working Day, or on a day that is not a Working Day, it is to be treated as having been served on the next Working Day.
- 11.3 Where proceedings have been issued in the Courts of England the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings.
- 11.4 A notice or communication will be served or given
- 11.4.1 On the Council at the address first given above marked for the attention of [TBI] quoting the Planning Application reference number;
- 11.4.2 On the Landowner at the address first given above or such other address as notified in writing to the Council from time to time;
- 11.4.3 On the Mortgagee at is registered office from time to time or such other address as notified in writing to the Council from time to time, marked for the attention of [];

12. LOCAL LAND CHARGE REGISTRATION

- 12.1 This Deed is a Local Land Charge and the Landowner accepts that it shall be registered as such by the Council in the Local Land Charges Register.

13. JURISDICTION AND LEGAL EFFECT

- 13.1 This Deed will be governed by and interpreted in accordance with the law of England and Wales and the Parties submit to the non-exclusive jurisdiction of the courts of England and Wales.
- 13.2 If any provision of this Deed is found (for whatever reason) to be invalid, illegal or unenforceable, that invalidity, illegality or unenforceability will not affect the validity or enforceability of the remaining provisions of this Deed.

14. VAT

- 14.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any properly payable VAT.
- 14.2 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.

15. INDEX-LINKING

15.1 Any sum referred to in this Deed or in the Schedules to this Deed as being payable by any Party shall be Index-Linked.

16. LATE PAYMENT

16.1 Without prejudice to any other right remedy or power herein contained or otherwise available to the Council, if any payment of any sum referred to herein shall have become due but shall remain unpaid the Landowner shall pay on demand to the Council Interest from the date when the same became due until payment thereof.

17. SPEND IN ADVANCE

17.1 The Landowner acknowledges and agrees that if prior to the receipt of any financial contribution payable under the terms of this Deed the Council incurs any expenditure in providing facilities or services to which this Deed authorises such financial contributions to be applied then the Council may immediately following receipt of such financial contributions deduct therefrom sums equivalent to such expenditure.

IN WITNESS whereof this document has been executed as a Deed and delivered the day and year first before written

SCHEDULE – OBLIGATIONS

NOTICE OF COMMENCEMENT OF DEVELOPMENT

1. At least ten (10) working days prior to Commencement of Development written notice confirming the date of Commencement of Development shall be given to the Council (addressed to [JOB TITLE OF OFFICER] at the Council's address at the head of this Deed or to such other address as at the relevant date of service appears on the Council's website for the service of documents) such notice to include the proposed date for such Commencement of Development together with details of the person or body who or which shall constitute the Landowner at the time of such Commencement of Development and quoting the Planning Application reference number.
2. Not to Commence Development unless and until the written notice referred to in paragraph 1 above has been given to the Council.

PAYMENT OF FINANCIAL CONTRIBUTIONS

3. To pay the Air Pollution Contribution to the Council in cleared funds prior to the Commencement of Development.
4. To pay the Recreation Contribution to the Council in cleared funds prior to the Commencement of Development.

Appendix 3 to PFH report on adoption of the Interim Air Pollution Mitigation Strategy
S106 template

5. To pay the Monitoring Contribution to the Council in cleared funds prior to the Commencement of Development
6. Not to Commence Development unless and until the Air Pollution Contribution, the Recreation Contribution and the Monitoring Contribution have been paid in full to the Council.

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APPENDIX – PLAN

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[EXECUTION CLAUSE FOR INDIVIDUALS]

SIGNED AS A DEED BY
[insert name of party]

Signature

in the presence of:

Witness Signature

WITNESS

Name

Address

Occupation

SIGNED AS A DEED BY
[insert name of party]

Signature

in the presence of:

Witness Signature

WITNESS

Name

Address

.....

.....
Occupation

[EXECUTION CLAUSE FOR COMPANY WITHOUT SEAL]

EXECUTED AS A DEED BY
[insert name of party] acting by [two
Directors]/ [a Director and the Company
Secretary]

Signature
[Director]

Signature
[Secretary / Director]

OR

EXECUTED AS A DEED BY
[insert name of party] acting by a Director

Signature
[Director]

in the presence of:

Witness Signature

WITNESS

Name

Appendix 3 to PFH report on adoption of the Interim Air Pollution Mitigation Strategy
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Address

.....

.....

Occupation

[EXECUTION CLAUSE FOR COMPANY WITH SEAL]

EXECUTED AS A DEED by affixing the
Common Seal of [insert name of party] in
the presence of:

Signature
[Director]

Signature
[Secretary / Director]

[EXECUTION CLAUSE FOR LIMITED LIABILITY PARTNERSHIP WITHOUT SEAL]

EXECUTED AS A DEED BY
[insert name of party] acting by two
members

Signature
[Member]

Signature
[Member]

OR

EXECUTED AS A DEED BY
[insert name of party] acting by a member

Signature
[Member]

in the presence of:

Witness Signature

WITNESS

Name
Address
.....
.....
Occupation

[EXECUTION CLAUSE FOR LIMITED LIABILITY PARTNERSHIP WITH SEAL]

EXECUTED AS A DEED by affixing the
Common Seal of [insert name of party] in
the presence of:

Signature
[Member]

Signature
[Member]

[EXECUTION CLAUSE FOR MORTGAGEE]

EXECUTED AS A DEED BY
[insert name of party] acting by [a
signatory] [two signatories] duly
authorised by the Board of Directors

Signature

Signature

