

DATE INSERT DATE

UNILATERAL UNDERTAKING

**Made under Section 106 of the Town and
Country Planning Act 1990 (as amended)**

relating to land at: INSERT ADDRESS

**IN FAVOUR OF [*
BOROUGH COUNCIL**

Legal Service
Grafton House
15-17 Russell Road
Ipswich
IP1 2DE

***[Where shown, amend accordingly before printing and signing (with
witness(es))]***

DATE [*INSERT DATE]

PARTIES

By [*INSERT FULL NAME AND ADDRESS] of
]

the “Owner”

[*And

[*INSERT FULL NAME AND ADDRESS] of
]

the “Owner”

[* And

the Bank/Building Society (Company no) of

] (**“the Bank/Building
Society”**)*

To [*] BOROUGH COUNCIL of Grafton House, 15-17 Russell Road, Ipswich, IP1
2DE **the “Borough Council”**

INTRODUCTION

- 1 The Borough Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- 2 The ownership of the Site is set out in the First Schedule [**and is subject to a charge in favour of the Bank/Building Society but otherwise] free from encumbrances*
- 3 [*The Bank/Building Society is mortgagee of the Land under a Legal Charge dated [insert date] and made between the Owner and the Bank/Building Society]**
- 4 [*The Bank/Building Society has agreed to the execution of this Agreement and acknowledges that subject as herein provided the Land shall be bound by the obligations contained in the Second Schedule]**
- 5 [*The Bank/Building Society acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Land shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Land shall take effect subject to this Deed PROVIDED THAT the Bank/Building Society shall otherwise have no liability under this Deed unless it takes possession of the Land in which case it too will be bound by the obligations in this Deed as if it were a person deriving title from the Owner]**
- 6 The Borough Council has not yet determined the Planning Application and the Owner enters into this Deed to secure the planning obligation which will take effect following a grant of the Planning Permission for the Development

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1 DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings and shall be read in conjunction with the definitions set out in the Third Schedule:

- “Act” the Town and Country Planning Act 1990 as amended;
- “Application Site” the land described in the First Schedule as shown edged red for identification purposes only on the Application Site Plan;
- “Application Site Plan” the plan attached to this Deed
- “Commencement of Development” the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out on the Site other than (for the purposes of this Deed and for no other purpose) operations consisting of archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements or the erection of temporary fences and “Commence Development” shall be construed accordingly;
- “Development” the development of the Site as described in the Planning Application and in accordance with the Planning Permission

“Dwelling”	any dwelling (including house flat or maisonette) to be constructed pursuant to the Planning Permission and dwellings shall be construed accordingly
“Habitats Sites Mitigation Contribution”	means the sum of £INSERT TOTAL (*in words) (Index Linked) calculated using the Habitat Mitigation Contribution Calculation to be paid by the Owner to the Borough Council as a contribution towards the impact of development on the Habitats Sites
“Habitats Sites Mitigation Contribution Calculation”	the sum of £121.89 x (multiplied by) the total number of new Dwellings proposed pursuant to the Planning Permission to calculate the Habitats Sites Mitigation Contribution
“Index”	means the All-in Tender Price Index published by the Building Costs Informative Service from time to time
“Index Linked”	the sum referred to in the Second Schedule of this Deed shall be increased or decreased by an amount equivalent to the increase or decrease in the Index from the date of the grant of Planning Permission until the date on which the Habitats Sites Mitigation Contributions is payable using the formula $A=B \times C/D$ but not to be decreased lower than B A – the sum payable under this Deed B – the original sum calculated C – the Index for the month 2 months before the date on which the Habitat Mitigation Contribution is payable D – the Index for the month 2 months before the date of the grant of the Planning Permission
“Interest”	interest at four (4) per cent above the base lending rate of the Bank of England from time to time
“Occupation”	occupation of any Dwelling on the Site for the purposes permitted by the Planning Permission and occupation would

be deemed to have taken place when the Council have evidence of the occupation of any Dwelling on the Site but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations

“Planning Application”

means the application for Planning Permission for INSERT DESCRIPTION OF DEVELOPMENT AS INCLUDED ON THE PLANNING APPLICATION

at INSERT ADDRESS OF DEVELOPMENT

submitted to the Borough Council on INSERT DATE

“Planning Permission”

the INSERT TYPE planning permission subject to conditions to be granted by the Borough Council pursuant to the Planning Application;

“Site”

the land described in the First Schedule against which this Deed may be enforced as shown edged red for identification purposes only on the Application Site Plan;

“Working Days”

Monday to Friday (inclusive) except Good Friday, Christmas Day and public or bank holidays from time to time in England.

2 CONSTRUCTION OF THIS DEED

- 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 importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament or Directive of the European Union shall include any modification, extension or re-enactment of that Act or Directive for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or Directive or deriving validity from it.
- 2.6 Any 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 and in the case of the Borough Council the successors to its respective statutory functions.
- 2.7 The headings are for reference only and shall not affect construction.
- 2.8 Any covenant by the Owner not to do an act or thing shall be deemed to include an obligation to use all 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.
- 2.9 Any notices required to be given under the terms of this Deed may (in addition to any other valid method of service) be given or served by sending the same by recorded delivery post addressed to the party to or upon whom it

is to be given or served at the address for that party given in this Deed or such other address in the United Kingdom as that party may by notice to the other parties hereto or their agent stipulate as that party's address for service of notice pursuant to this Deed or if not such address is given or stipulated at that party's last known address and any notice so given or served shall be deemed to be received and the date on which it is given or served shall be deemed to be 48 hours after posting.

3 LEGAL BASIS

3.1 This Deed is made pursuant to Section 106 of the Act and to the extent that it does not contain planning obligations Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers.

3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed that are planning obligations pursuant to Section 106 of the Act are enforceable by the Borough Council as the local planning authority against the Owner and their successors in title.

3.3 Any variation of this Deed is to be by way of a formal variation by deed between all the parties unless there is express provision in this Deed otherwise.

4 CONDITIONALITY

The provisions set out in this Deed are conditional upon:

- (i) the grant of the Planning Permission; and
- (ii) the Commencement of Development

save for the provisions of this Clause and Clauses 6.2, 6.11, 8, 9 and 10 which shall take effect immediately upon completion of this Deed.

5 THE OWNER'S COVENANTS

5.1 The Owner hereby covenants with the Borough Council as set out in the Second Schedule so as to bind the Site and each and every part thereof.

5.2 The Owner warrants that they are the freehold owner of the Site and have full power and capacity to enter into this Deed and that there is no other party or person having a charge or any other interest in or over the Site [(other than the Bank/Building Society)*] whose consent is necessary to make this Deed binding on the Site and all estates and interests therein.

6 MISCELLANEOUS

6.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

6.2 This Deed shall be registrable as a local land charge by the Borough Council.

6.3 It is acknowledged that following the performance and satisfaction of all the obligations contained in this Deed the Borough Council shall forthwith on the written request of the Owner mark accordingly all entries made in the Register of Local Land Charges in respect of this Deed.

6.4 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

6.5 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.

6.6 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 that part of the Site in respect of which such breach occurs) but without prejudice to liability for any subsisting breach arising prior to parting with such interest AND FOR THE AVOIDANCE OF DOUBT neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site (or any part or parts of the Site) shall constitute an interest for the purposes of this Clause.

- 6.7 Subject to clause 6.8 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 In the event that any new planning applications are made in respect of the Development pursuant to section 73 of the Act then with effect from the date that the new planning permission is granted pursuant to section 73 of the Act
- 6.9 the obligations in this Deed shall in addition to binding the Site in respect of the Planning Permission relate to and bind the Site in respect of any planning permission granted pursuant to section 73 of the Act
- 6.10 the definitions of Development Planning Application and Planning Permission shall be assumed to include references to any applications under section 73 of the Act, the planning permissions granted thereunder and the development permitted by such subsequent planning permissions PROVIDED THAT nothing in this clause shall fetter the discretion of the Council in determining any applications under section 73 of the Act and the appropriate nature and/or quantum of section 106 obligations in so far as they are materially different to those contained in this Deed and required pursuant to a determination under section 73 of the Act whether by way of a new deed or supplemental deed pursuant to section 106 of the Act or a modification pursuant to section 106A of the Act
- 6.11 Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, functions, powers, duties and obligations of the Borough Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.
- 6.12 The Owner covenants from the date that this Deed takes effect to allow the Borough Council, and its respectively duly authorised officers or agents at all reasonable times following at least three days' prior notice to enter into and upon the Site for the purposes of monitoring compliance with the provisions of this Deed.

6.13 The Owner hereby agrees that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of this Deed are hereby waived.

6.14 The Owner covenants to pay the Borough Council's reasonable legal costs incurred in the preparation and negotiation of this Deed on completion of this Deed.

7 WAIVER

No waiver (whether expressed or implied) by the Borough Council or the Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Borough Council or the Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

8 CHANGE IN OWNERSHIP

The Owner agrees with the Borough Council to give the Borough Council written notice within 10 Working Days of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice quoting the Planning Application reference number and to 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 purchased by reference to a plan and the title number or numbers thereof PROVIDED THAT this obligation shall not apply to any disposal to any of the statutory utilities for their operational purposes or to any mortgagee or charge of the Site.

9 JURISDICTION

This Deed is 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.

10 DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until the Planning Permission is granted

FIRST SCHEDULE

Details of the Owner's Title, and description of the Site

Freehold land at INSERT ADDRESS

within registered title number INSERT shown edged red for identification
only on the Application Site Plan.

or if unregistered*

[defined in the Conveyance dated [insert date] made between
and
[insert details of the parties]*

SECOND SCHEDULE

Habitats Sites Mitigation Contribution

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

- 1 To notify the Borough Council of Commencement of Development
- 2 Within 28 days of Commencement of Development in respect of the development permitted pursuant to the Planning Application the Owner shall pay to the Borough Council the Habitats Sites Mitigation Contribution
- 3 Not to cause or permit Occupation until the Habitats Sites Mitigation Contribution has first been paid to the Borough Council
- 4 In the event that the Habitats Sites Mitigation Contribution remains unpaid after 28 days of Commencement of Development, Interest will be payable from the date that the sum fell due until the date of actual payment
- 5 Any notice or other written communication relating this Deed for the Borough Council shall be addressed to the Legal Team by post to the Legal Team, Ipswich Borough Council, Grafton House, 15-17 Russell Road, Ipswich, IP1 2DE.

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

EXECUTED as a **DEED** by [enter full name:]

)
)

in the presence of:

Signature of Witness:.....

Full Name of Witness:.....

Address of Witness:.....

EXECUTED as a **DEED** by [enter full name:]

)
)

in the presence of:

Signature of Witness:.....

Full Name of Witness:.....

Address of Witness:.....

EXECUTED as a **DEED** by *[insert]*) *

BANK/BUILDING SOCIETY)

its seal having been affixed in the presence of:)

Authorised Signatory

[insert full name/title]

*[if not executed by seal, to be witnessed and please attach a certified copy of the
Power of Attorney for the signatory]*