**Section 106 unilateral undertaking Appeals document**

**THIS UNILATERAL UNDERTAKING** is given on the ……….. day of …………………….……….2022

### BY

1. **……......…………………………………………..** of ……………………………..................(“the Owner”);
2. ***insert name of mortgagee*** (Company Number ) whose registered office is at (“the Mortgagee”)

**TO: WOKING BOROUGH COUNCIL** of Civic Offices, Gloucester Square, Woking GU21 6YL

(“the Council”)

# RECITALS

1. The Council is the Local Planning Authority for the purposes of Section 106 of the 1990 Act for the area in which the Land is situated and for the purposes of enforcing this Deed.

2. The Owner is registered as the freehold owner of the Land.

3. The Owner has made the Application in order to develop the Land by carrying out the Development.

4. The Mortgagee is the registered proprietor of a legal charge over the Land dated ………………………………….. and has agreed to enter into this Deed in order to consent to the terms herein

5. The Council resolved on …………………………………………………. 2022 to refuse planning permission in respect of the Application and the Owner has submitted the Appeal for determination by the Secretary of State.

6. The Owner is prepared to enter into this deed in order to secure the planning obligations it creates in the event that Planning Permission is granted pursuant to the Appeal.

### It is agreed:

### DEFINITIONS

1. In this Deed the following words have the following meanings:

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

 “Application” means the application numbered **PLAN/………………………….** made to the Council for planning permission

“Appropriate Assessment” The Appropriate Assessment undertake by the Local Planning Authority of the implications of the application proposal on the conservation objectives of the Thames Basin Heaths Special Protection Area as required by Regulation 63 of The Conservation of Habitats and Species Regulation 2017

“Appeal” means the appeal to the Secretary of State following the refusal of the Application by the Council given appeal reference APP/A3655/??????

“Commencement” means the commencement of the Development by the carrying out of a material operation within the meaning of Section 56(4) of the 1990 Act but shall not include operations in connection with the marking out surveying ground investigation work site clearance demolition investigation for purposes of assessing contamination remedial action in respect of any contamination and the erection of means of enclosure for the purposes of site security and the term “Commenced” shall be construed accordingly

“Development” erection of ……………………………………………………….

“the Land” means all that land together with buildings erected thereon situate and known as ………………………………………………….. and registered under title number SY…………………………...…….. shown edged red on the Plan

“the Plan” the plan annexed to this Deed

“Planning Permission” means the planning permission issued by the Secretary of State in determining the Appeal

“Retail Price Index” being the Index of Retail Prices published by the Office for National Statistics or such successor authority

“SAMM” Strategic Access Management and Monitoring Contribution (SAMM) as classified under the EU Habitat Directive of 9 March 2005

“SAMM Contribution” means the sum of **……………………………….(in words) (£……………..(in numbers))** which sum shall be increased in line with any increase in the Retail Price Index between the date of this unilateral undertaking and the latest published figure on date of payment to the Council as the case may be in accordance with the Strategy

“Strategy” Thames Basin Heath Special Protection Area Mitigation Strategy

“Secretary of State” means the secretary of State for Housing Communities and Local Government or any other minister or authority for the time being entitled to exercise the powers given under sections 77,78 and 79 of the Town and Country Planning Act 1990 (as amended)

**CONSTRUCTION OF THE DEED**

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. The headings appearing in this Deed are for ease of reference only and shall not affect the construction of this Deed.

1. Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

4. 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.

5. 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 against each.

6. Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act 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 deriving validity from it.

7. References to any party to this Deed shall include the successors in title to that party and to anyone deriving title through or under that party and in the case of the Council its successors in title to its statutory functions.

**NOW THIS DEED WITNESSES AS FOLLOWS:**

1. This Deed is a unilateral undertaking given to the Council and is a planning obligation made pursuant to Section 106 of the 1990 Act and is enforceable by the Council.
2. This Deed is given by the Owner with the intent of binding the freehold interest in the Land from the date of this Deed.
3. This Deed is binding on the Owner and its successors in title to the Land stated to be bound.
4. The Mortgagee hereby consents to the Owner entering into this Deed and confirms that the Land shall be bound by the covenants and obligations contained herein and that the interest of the Mortgagee shall be subject to the provisions hereof.

1. The Owner undertakes to pay to the Council its reasonable expenses in the sum of £250 (no vat) in connection with the registration preparation and completion of the unilateral undertaking and of any transaction arising therefrom.
2. The Council hereby acknowledge receipt of a payment of £250 (Two Hundred and Fifty pounds) (no VAT) by the Owners as a contribution towards its legal and other costs incurred in the preparation and execution of this deed.
3. The Owner hereby covenants with the Council to observe and perform the covenant contained in the Schedule hereto.
4. No person shall be liable for breach of an obligation contained in this Deed if such breach occurs after he has parted with all interest in the Land (but shall not preclude liability for any antecedent breach).

9. If the Planning Permission granted by the Secretary of State for the Development expires

 before Commencement or at any time is revoked or quashed this Deed shall thenceforth

 cease to have effect

10. This Deed will be registered as a local land charge.

11. After all of the obligations contained in this Deed have in the reasonable opinion of the

 Council been fulfilled the Owner will be entitled to send a written request to the Council to

 issue written confirmation thereof and cancel the relevant entries in the Register of Local

 Land Charges.

12. It is not intended that a third party should have the right to enforce a provision of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

**INSERT PHYSICAL PLAN (ENSURE PLAN IS SIGNED AND PRINTED IN COLOUR)**

#### SCHEDULE

**SAMM Contribution**

The Owner covenants to pay to the Council the SAMM Contribution prior to Commencement which payment shall be calculated on the basis of the Thames Basin Heaths Special Protection Area Mitigation Strategy and the Appropriate Assessment associated with the Local Planning Authority’s decision in respect of the Application.

**IN WITNESS this document has been signed as a Deed and delivered on the date first above written**

**SIGNED AS A DEED BY** )

**insert name of owner** in )

the presence of:)

Witness Signature

Witness name

Witness address

Witness occupation

**[[1]](#endnote-1)SIGNED AS A DEED BY** )

**insert name of owner** in )

the presence of:-)

Witness Signature

Witness name

Witness address

Witness occupation

**[[2]](#endnote-2)SIGNED AS A DEED BY** )

**insert name of owner** in )

the presence of:-)

Witness Signature

Witness name

Witness address

Witness occupation

**[[3]](#endnote-3)SIGNED AS A DEED BY** )

**insert name of owner** in )

the presence of:-)

Witness Signature

Witness name

Witness address

Witness occupation

**[[4]](#endnote-4)OR**

**[[5]](#endnote-5)THE COMMON SEAL OF** ) **insert name of owner** )

was hereunto affixed in the presence )

of:- )

Director

Director/Company Secretary

**[[6]](#endnote-6)THE COMMON SEAL OF** ) **insert name of mortgagee** )

was hereunto affixed in the presence )

of:- )

Director

Director/Company Secretary

**Notes for the completion of the Unilateral Undertaking**

**The Council recommends that all parties to this agreement take independent advice before entering into this Undertaking**

The Council requires only one copy of this Deed to be submitted – this document will be required to be the original, and all signatures contained therein must be the original. Electronic submissions/copies of the S106 Unilateral Undertaking are not accepted.

The Council charges £250 to cover its reasonable legal costs for reviewing the draft agreement, completion and registration of the same. This fee must be paid in advance before the application is processed. Please note: Changes to the structure this document are not recommended and may not be accepted.

You will be charged an additional £250 per application if you choose to alter the content of the unilateral undertaking template or the appeals template (other than in the areas where instructed to do so) or decide to draft your own S106 unilateral undertaking.

The Council requires an Official Copy Entry from HM Land Registry, available on the Registry’s website. If this is not provided, the Council will be required to check with the Registry to ascertain ownership. This service will cost £50, and payment of the Council’s Land Registry Confirmation Charge will be required before ownership is confirmed with the Registry. If the Official Copy Entry is not provided, and no payment is made for the Council to confirm ownership, then no further progress can be made with this planning application.

The Council takes your privacy seriously, and will only process your data in line with data protection law. To learn more about how we comply with GDPR, and about your data rights and protections under the law, please view our privacy notice available on the Council’s website.

1. [↑](#endnote-ref-1)
2. [↑](#endnote-ref-2)
3. [↑](#endnote-ref-3)
4. [↑](#endnote-ref-4)
5. [↑](#endnote-ref-5)
6. [↑](#endnote-ref-6)