

**Dated**

**2014**

[<sup>note 1</sup>  
**(Applicant(s))** ]

[<sup>note 2</sup>  
**(Owner(s))** ]

[<sup>note 3</sup>  
**(Chargee(s))** ]

**given to**

**Surrey Heath Borough Council**

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**Unilateral Undertaking**

**pursuant to Section 106 of the Town and Country Planning Act 1990**

**relating to Land at:**

[<sup>note 4</sup> ]

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**Surrey Heath Borough Council  
Surrey Heath House  
Knoll Road  
Camberley  
GU15 3HD**

UU – SAMM  
Council's Planning Reference: SU/  
Council's Legal Reference:

## This Unilateral Undertaking is

Dated

2014

### and Given by:

- (1) [ <sup>note 5</sup> ]  
[of <sup>note 6</sup> ] (“The Applicant(s)”) ]  
[registered in England with number[ ]  
whose registered office is at [ ]  
whose principle place of business is at [ ]
- (2) [ <sup>note 7</sup> ]  
[of <sup>note 8</sup> ] (“The Owner(s)”) ]  
[registered in England with number[ ]  
whose registered office is at [ ]  
whose principle place of business is at [ ]
- (3) [ <sup>note 9</sup> ]  
[of <sup>note 10</sup> ] (“The Chargee(s)”) ]  
[registered in England with number[ ]  
whose registered office is at [ ]  
whose principle place of business is at [ ]

### To

- (4) SURREY HEATH BOROUGH COUNCIL of Surrey Heath House Knoll Road Camberley GU15 3HD (“the Council”)

### Introduction

1. 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
2. The [Applicant(s)] [and Owner(s) <sup>note 11</sup>] is/are registered as the freehold owner(s) of the Land with title absolute at HM Land Registry under title number [ <sup>note 12</sup> ]
3. [The Chargee(s) has/have a charge registered against the Land<sup>note 13</sup>]
4. The Applicant(s) has/have submitted the Application to the Council to develop the Land
5. The Applicant(s) has/have entered into this Deed in order to secure the planning obligations contained in it in accordance with the Council’s Planning Obligations and Infrastructure Provision Code of Practice” and “Special Protection Area Avoidance Strategy Policy” so that it may be taken into account as a material consideration in the determination of the Application by the Council

**NOW THIS DEED WITNESSES AS FOLLOWS:**

**1 Definitions**

For the purposes of this Deed the following expressions shall have the following meanings:

- “Act”** means the Town and Country Planning Act 1990 (as amended).
- “Application”** means the application for full planning permission dated [<sup>note 14</sup> ] and allocated reference number [SU/ / <sup>note 15</sup>] submitted by the Applicant(s) to the Council for the Development
- “Commencement of Development”** means Commencement of Development as defined by section 56 of the Act and shall not include site clearance works, site inspection works, demolition, remediation works and archaeological investigations, laying of services, erection of temporary fences or site compounds
- “Development”** means the development which is the subject of the Application for Planning Permission
- “Dwellings”** means any dwelling to be constructed pursuant to the Planning Permission
- “Indexation”** means 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 in pounds sterling  
B = the figure shown in the RPIX for the month last published prior to the date of the payment to be made under this Deed  
C = the figure shown in the RPIX for the month immediately prior to the date of this Deed  
D = the recalculation sum in pounds sterling payable under this Deed or if the RPIX shall cease to be compiled or the formula shall otherwise be incapable of operation then such other equivalent means as shall be proposed by the Applicant(s) [and Owner(s)] to recalculate such payment with the intent that it shall have like effect and be approved by the Council
- “Index-Linked/Linking”** means the adjustment of the financial contributions referred to in this Deed by Indexation from the last day of the month immediately prior to the date of this Deed to the date of actual payment
- “Interest”** means the rate of interest being 5% above the base lending rate of the Nat West Bank plc from time to time in force such interest to be apportioned on a daily basis
- “Land”** means the land situate at [<sup>note 16</sup> ] shown [<sup>note 17</sup> ] on the attached Plan
- “Occupation”** means the use of the land and buildings permitted by the Planning Permission but not including occupation by the personnel engaged in any construction fitting out or marketing activity

<b>“Payment Notice”</b>	means the notice of payment found annexed to this Deed in Schedule 3
<b>“Plan”</b>	means the plan annexed at Schedule 1
<b>“Planning Permission”</b>	means a planning permission for the Development granted pursuant to the Application
<b>“RPIX”</b>	means the definition afforded from time to time by the Office for National Statistics and for the avoidance of doubt is the figure shown as the Retail Prices Index Excluding Mortgage Interest Payments (RPIX) published by the Office for National Statistics every month
<b>“SAMM Contribution”</b>	means the contribution of [ <sup>note 18</sup> ] [£ <sup>note 19</sup> ] towards the costs of Strategic Access Management and Monitoring within the Council's Borough boundaries or as otherwise required by the Council's SANGS Strategy
<b>“Specified Date”</b>	means the date upon which any obligation arising under this Deed is due to be performed according to the terms of this Deed

- 1.2. Words in this Undertaking importing the singular meaning shall where the context so admits include the plural meaning and vice versa
- 1.3. Words in this Undertaking of the masculine gender shall include the feminine and neuter genders and vice versa and words denoting natural persons shall include corporations and vice versa
- 1.4. References in this Undertaking to any statutes or statutory instruments shall include and refer to any statute or statutory instrument amending consolidating or replacing them respectively from time to time and for the time being in force
- 1.5. Covenants given hereunder if made by more than one person are given jointly and severally

## **2. LEGAL EFFECT**

- 2.1. This Undertaking is given pursuant to Section 106 of the Town and Country Planning Act 1990 as amended Section 111 of the Local Government Act 1972 and all other powers so enabling
- 2.2. This Undertaking is a planning obligation for the purposes of the said Section 106 which is enforceable by the Council and which binds each and every part of the Land
- 2.3. The terms of this Undertaking come into effect on the date of this Undertaking other than Clause 3.1.1 which will come into effect upon the grant of the Planning Permission
- 2.4. Nothing contained or implied in this Undertaking shall prejudice or affect the rights, powers, duties and obligations of the Council in the exercise of their functions as Local Planning Authority and their rights, powers, duties and obligations under all public and private statutes, byelaws and regulations may be as fully and effectually exercised

- 2.5. If any provision in this Undertaking shall be held to be invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions shall not in any way be deemed thereby to be affected or impaired
- 2.6. No waiver (whether express or implied) by the Council of any breach or default in performing or observing any of the covenants, terms or conditions of this Undertaking shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said terms or conditions or from acting upon any subsequent breach or default
- 2.7. Nothing in this Undertaking shall be construed as a grant of planning permission
- 2.8. The covenants in this Undertaking shall be enforceable without any limit of time against the Applicants and any successors in title and assigns of the Applicants or any person claiming title through or under the Applicants to the Land or any part thereof as if that person had also been an original covenanting party in respect of the interest or estate for the time being held by that person **PROVIDED THAT** no person shall be liable for any breach of the covenants restrictions or obligations contained in this Undertaking occurring after he has parted with the whole of his interest in the Land or the part in respect of which such breach occurs
- 2.9. In accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999 it is hereby declared that none of the terms of this Deed shall in the absence of any express provision to the contrary be construed as being enforceable by any third party

### **3. THE APPLICANT('S) [and Owner(s)] COVENANTS**

- 3.1 The Applicant(s) [and Owner(s)] covenant to the Council as follows:-
  - 3.1.1 to observe and perform and cause to be observed and performed the undertakings covenants and restrictions contained in Schedule 2; and
  - 3.1.2 to pay on the execution hereof the Council's legal costs of £250.00 (Two Hundred and Fifty Pounds) for the consideration and settlement of this Deed
- 3.2 The Applicant(s) [and Owner(s)] warrant to the Council that they have full power to enter into this Deed [<sup>note 20</sup>and that there is no person other than the Chargees having a charge or any other interest in the Land whose consent is necessary to make this Deed binding on the Land and all estates and interests therein]
- 3.3 [<sup>note 21</sup>The Applicant(s) [and Owner(s)] hereby agree to indemnify and keep indemnified the Chargees from and against all action, costs claims and demands of whatsoever nature arising out of any breach or non observance of the terms of this deed]

### **[<sup>note 22</sup>4. CHARGEES' CONSENT**

The Chargee acknowledges and declares that this Deed has been entered into by the Applicant(s) [and Owner(s)] with their consent and that the Land shall be bound by the obligations contained in this Deed and that the security of the mortgages over that part of the Land shall take effect subject to this Deed **PROVIDED THAT** the Chargee shall

otherwise have no liability under this Deed until or unless it becomes a mortgagee in possession of the Land or a successor in title to the Applicant(s) [and Owner(s)] in which case it too will be bound by the obligations contained in this Deed]

## **5. INDEXATION, INTEREST AND VAT**

- 5.1 The Applicant(s) [and Owner(s)] confirm the contributions payable under this Deed shall be Index- Linked
- 5.2 The payment of any contribution under this Deed shall be taken to include the actual contribution payable including any amount for Index-Linking and also (if due) of any Interest
- 5.3 In the event that any contribution or part thereof is not paid by the Specified Date then Interest shall be due on the sum outstanding and will be apportioned on a daily basis from the Specified Date to the date of actual payment
- 5.4 It is agreed by the parties that any Interest paid will not form part of the contribution due and will belong to the Council
- 5.5 All consideration given in accordance with the terms of this Deed shall be exclusive of any VAT properly payable
- 5.6 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

## **6. LOCAL LAND CHARGES**

The Applicant(s) [and Owner(s)] recognise that this Unilateral Undertaking shall be registered as a Local Land Charge in the Register of Local Land Charges maintained by the Council

## **7. GENERAL**

- 7.1 This Unilateral Undertaking:
  - 7.1.1 is given by the Applicant(s) [and Owner(s)] to the Council
  - 7.1.2 is made pursuant to the provisions of s106 of the Act
  - 7.1.3 is a planning obligation for the purposes of that s106 of the Act
  - 7.1.4 is given with the intent to bind the Applicant's interest in the Land
  - 7.1.5 shall be enforceable by the Council as local planning authority
  - 5.1.6 is signed by the Applicant(s), [<sup>note 23</sup>and the Owner(s)] [and the Chargee] as a Deed

**Schedule 1 – The Plan**

**All parties to sign the Plan**

## Schedule 2 – Planning Obligations

### Notices

- 1.1 The Applicant(s) [<sup>note 24</sup>and the Owner(s)] covenant to give the Council the Commencement Notice
- 1.2 In the event the Commencement Notice has not been served and there has been Commencement of Development **THEN** the Applicant(s) [<sup>note 25</sup>and the Owner(s)] confirm(s) that the Council shall have the right to determine the date of Commencement of Development and the references to Specified Date shall be construed accordingly

### SAMM Contribution

- 1.3 The Applicant(s) [<sup>note 26</sup>and the Owner(s)] covenant to pay the Council the SAMM Contribution on or before Commencement of Development Provided that the Applicant(s) [<sup>note 27</sup>and the Owners] are not required to pay the SAMM Contribution in the event the Applicant(s) [and Owner(s)] do not commence the Development.
- 1.4 The Applicant(s) [<sup>note 28</sup>and the Owner(s)] covenant to the Council that there shall be no Occupation of any Dwelling until the SAMM Contribution has been paid in full to the Council FOR THE AVOIDANCE OF DOUBT paid in full would include the payment of any Interest and Indexation that may be due

### General

- 1.5 The Applicant(s) [<sup>note 29</sup>and the Owner(s)] covenant(s) to the Council that payment of the SAMM Contribution shall be accompanied by a Payment Notice
- 1.6 The Applicant(s) [<sup>note 30</sup>and the Owner(s)] confirm(s) and accept(s) that contribution paid pursuant to this Undertaking will be expended and applied to both the actual costs of provision along with the professional costs fees and disbursements associated with delivering the specific objective of the relevant contribution

**Schedule 3 - Payment Notice**

**Payment Notice**

To be sent to: Surrey Heath Borough Council  
Sc 106 Monitoring Officer, Development Control  
Built Environment  
Surrey Heath House, Knoll Road, Camberley, Surrey GU15 3HD  
Ref: [<sup>note 31</sup> SU/ ]

**Payment of monies due under a Unilateral Undertaking**

Please answer all the questions.

- 1. Payment made by/on behalf of:  
.....
- 2. Land at: .....
- 3. Deed Dated: .....
- 4. Obligation in Deed:
  - a. Clause no: .....
  - b. Contribution toward .....
  - c. Amount of contribution due: .....
  - d. Date upon which contribution is due.....
  - e. Indexation completed and added (state amount) .....
  - f. Interest added because payment late and state amount:.....
  - g. Amount of Contribution enclosed:.....

Official Use: Date R'cd: Notifications out: Interest/ Indexation Outstanding:	Confirmation of R'ct out:
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**In Witness whereof the Applicant(s) [<sup>note 32</sup>and the Owner(s)][<sup>note 33</sup>and the Chargee(s)] have executed this Deed on the day and year first before written**

**INDIVIDUAL EXECUTION CLAUSE**

EXECUTED AS A DEED by:

[<sup>Note 34</sup> ] .....

in the presence of: .....

Name & Address .....

& Occupation of Witness: .....

.....

**COMPANY EXECUTION CLAUSE (Director & Director/ Company Secretary)**

EXECUTED AS A DEED

**For and on behalf of :**

[<sup>Note 35</sup> ]

**by its Director** .....

in the presence of: .....

Director/ Company Secretary .....

.....

**COMPANY EXECUTION CLAUSE (Director & Witness)**

EXECUTED AS A DEED

**For and on behalf of :**

[<sup>Note 35</sup> ]

**by its Director** .....

in the presence of: .....

Name & Address .....

& Occupation of Witness: .....

.....

**CHARGEЕ EXECUTION CLAUSE**

EXECUTED AS A DEED

**For and on behalf of :**

[<sup>Note 36</sup> ]

**by its Authorised Officer** .....

in the presence of: .....

Name & Address .....

& Occupation of Witness: .....

.....

## Notes on the completion of the Unilateral Undertaking

**\*\*The Council strongly recommends that all parties take independent legal advice before entering into this Undertaking\***

- note 1 Insert the full name(s) of the person(s) applying for Planning Permission
- note 2 Insert the full name(s) of the person(s) of all those names as the owner of the land at the Land Registry if different from the Applicant. This should include all those with an interest in land to which Section 106 of the Town and Country Planning Act 1990 applies. If the Applicant is the only landowner, delete this line. Please supply up to date (within one calendar month old) Land Registry Official Copies in respect of all registered titles within the development site.
- note 3 Insert the names of all those holding a charge over the land (i.e. first mortgagees (that are capable of entitling the Chargee to possession of the land. These will appear on the land registry title.
- note 4 Insert the address of the Application Site
- note 5 Insert the full name of the Applicant for Planning Permission
- note 6 If the Applicant is an individual, insert his/her address after 'of'. If the Applicant is a registered company, insert the company number, registered office address and (if different) the principle place of business.  
Delete the boxes which are not applicable
- note 7 Please insert the names of the Owners of the land as per note 3.
- note 8 If the Owner is an individual, insert his/her address after 'of'. If the Owner is a registered company, insert the company number, registered office address and (if different) the principle place of business.  
Delete the boxes which are not applicable
- note 9 If the Chargee is an individual, insert his/her address after 'of'.
- note 10 If the Chargee is a registered company, insert the company number, registered office address and (if different) the principle place of business.  
Delete the boxes which are not applicable
- note 11 Delete as appropriate
- note 12 Insert the Land Registry title number(s) for the land comprising the Application Site
- note 13 Delete if there is not a Chargee party to the Unilateral Undertaking
- note 14 Insert the date of the application for Planning Permission
- note 15 Insert the Planning reference number for the application for Planning Permission
- note 16 Insert the address of the Application Site
- note 17 Insert the description of the Application site on the plan, i.e. hatched black, outlined in red.
- note 18 Insert the amount of contribution payable in words
- note 19 Insert the amount of contribution in figures
- note 20 Delete if there is not a Chargee party to the Unilateral Undertaking
- note 21 Delete if there is not a Chargee party to the Unilateral Undertaking
- note 22 Delete if there is not a Chargee party to the Unilateral Undertaking
- note 23 Delete as appropriate
- note 24 Delete as appropriate
- note 25 Delete as appropriate
- note 26 Delete as appropriate
- note 27 Delete as appropriate
- note 28 Delete as appropriate
- note 29 Delete as appropriate
- note 30 Delete as appropriate
- note 31 Insert the Planning reference number for the application for Planning Permission
- note 32 Delete as appropriate
- note 33 Delete as appropriate
- Note 34 Insert the full name of the Applicant for Planning Permission'
- Note 35 Insert name of registered company
- Note 36 Insert Name of Chargee