

UNILATERAL UNDERTAKING

GIVEN BY

{insert Name of Owner}

{insert Name of Developer}

{insert Name of Mortgagee}

Pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended)

IN RESPECT OF

{insert description of Land}



THIS UNILATERAL UNDERAKING is made on the day of two thousand and ¹
BY {insert name} of {insert address} (the Owner)²

INTERPRETATION

In this Undertaking unless the context indicates otherwise

1. Any reference to the parties or any other legal or natural person shall include his her its or their heirs assigns and successors in title and in the case of any local authority shall also include any successor in function
2. Any covenants obligations or other commitments given by more than one party shall be joint and several
3. Where the Owner is not a body corporate then neutral words shall include the masculine or feminine gender (as the case may be) and singular words shall include their plural numbers
4. The headings throughout this undertaking are for convenience only and shall not be taken into account in the construction and interpretation of this undertaking

DEFINITIONS

1. The words below shall mean as follows:-
 - 1.1. The "Act" shall mean the Town and Country Planning Act 1990 as amended
 - 1.2. The "Application Land" shall mean the land situate at {insert details}³ in South Gloucestershire shown edged red on Plan Number 1⁴ in respect of which the Owner has made the Planning Application
 - 1.3. The "Director" shall mean the Council's Director of Planning Transportation and Strategic Environment for the time being or his duly appointed agent
 - 1.4. The "Land" shall mean the Application Land
 - 1.5. The "Mortgage" shall mean a mortgage/legal charge dated the {Insert date of Legal Charge} and made between the Owner and the Mortgagee⁵
 - 1.6. "Plan Number 1" shall mean the plan annexed to this undertaking and numbered 1

¹ **DATE AND EXECUTION** - Please ensure that when the Unilateral undertaking has been approved by the Development Control Officer, that this part is dated and the undertaking is signed by the parties submitting the Unilateral Undertaking.

² **NAME AND ADDRESS** – The full names(s) of the person or persons who own the land and have applied for planning permission should be entered here in capital letters. If there is more than one owner, this should read {NAME} of {ADDRESS} and {NAME} of {ADDRESS} (the Owners). If there is an Owner and a Developer or a Mortgagee, this should read {NAME} of {ADDRESS} (the Owner) of the first part {NAME} of {ADDRESS} (the Developer) of the second part {NAME} of {ADDRESS} (the Mortgagee) of the third part. If the Owner is an individual, his full address should be included. If the Owner is a Company, this should read ..whose registered office is situated at {COMPANY'S REGISTERED OFFICE ADDRESS} (Co Regn No {INSERT COMPANY REGISTRATION NUMBER})

³ **ADDRESS OF LAND** - This should be the full postal address as stated on the planning application.

⁴ The plan should be an up to date Ordnance Survey plan at 1:1250 (or less) scale and the extent of the land (which is the subject of the planning permission) must be accurately edged in red

⁵ References to mortgage/mortgagee is only required where there is a charge on the land. If there is no mortgage on the land these can be deleted. The details of the date of the mortgage/charge can be found in the title deed.

- 1.7. The "Planning Application" shall mean the application made by the Owner to the Council (*insert reference number*) for planning permission to develop the Application Land by *{insert details}* and shall include any application relating to the Application Land which in the reasonable opinion of the Director is substantially similar to the Planning Application
- 1.8. The "Planning Permission" shall mean the Planning Permission which may be granted by the Council or the Secretary of State for the Environment Transport and the Regions in respect of the Planning Application and the "Development" shall mean such development that may be authorised by it or any development which in the reasonable opinion of the Director is substantially similar

WHEREAS:-

- (1) The Owner is registered at the Land Registry under title number *{insert title number}*⁶ as proprietor with freehold title in respect of the Land *{subject only to the Mortgage but otherwise⁵}* free from incumbrances
- (2) *{By the Mortgage the Land (with other land) was charged by way of legal mortgage to the Mortgagee to secure the principal and other monies mentioned in it⁵}*
- (3) The South Gloucestershire Council ("the Council") is the local planning authority and the local highway authority for the area in which the Application Land is situated and wishes to ensure that if Planning Permission is granted and the Development is commenced that a financial contribution is made towards *{insert details}*

NOW THIS DEED WITNESSES as follows:

1 STATUTORY POWERS

THIS undertaking will be registered as a Local Land Charge and is entered into pursuant to Section 106 of the Act and all other statutory and other enabling powers and shall be enforceable accordingly but without prejudice to all and any other means of enforcing them at law or in equity or by statute

2 ENFORCEMENT

THE covenants and obligations created by this Deed are planning obligations for the purposes of Section 106 of the Act and are enforceable as such by the Council

3 THIRD PARTIES

In accordance with Sections 1(2) and 2(3)(a) of the Contracts (Rights of Third Parties) Act 1999 no term of this Undertaking shall be enforceable by a third party (other than the Council) and

⁶ **TITLE** - This information should be taken from Official Copies (registered land) obtained from the Land Registry or on the title deeds for the land (unregistered land) **PLEASE ENSURE THAT PROOF OF TITLE IS SUBMITTED WITH YOUR DRAFT UNDERTAKING**

any term may be rescinded or varied without the consent of any third party except for the Council

4 SUBSTANTIVE COVENANTS

THE Owner for and on behalf of itself and its heirs assigns and successors in title with the intention that the following provisions shall bind the Land and every part of it into whosoever's hands it may come covenants that it will comply with the covenants contained in the Schedule annexed to this Undertaking

5 CHANGE OF OWNERSHIP

UNTIL the obligations enforceable by the Council have been complied with the Owner will furnish the Council with full details (including a plan if appropriate) of any conveyance transfer lease assignment mortgage or other disposition of all or any part of the Land including the name and address of the person to whom the disposition was made and the nature and extent of the interest disposed of to them within fourteen days of such disposal SAVE THAT in the event of a disposition of any individual dwelling comprising part of the Development this obligation will apply only if the information is specifically requested by the Council

6 WARRANTY

THE Owner warrants that it is entitled to carry out the Development

7 NOTICES

ANY notices to be served on or document to be submitted on or to {any party to this Undertaking shall be delivered or posted to that party at the address specified as theirs at the head of this Undertaking and in the case of – *delete as applicable*} the Council shall be addressed to the Council's Head of Legal and Democratic Services and quoting the planning reference number

8 CONFIRMATION OF INTERESTS

THE Owner confirms that {apart from the parties to this Undertaking - *delete as applicable*} there are no other persons with any interest (legal or equitable) in the Land or any part thereof

9 OPERATIVE DATE

SAVE in respect of obligations requiring compliance prior to commencement of Development this Undertaking shall not become operative until the commencement of Development which shall be determined by the carrying out of a "material operation" (as defined in Section 56(4) of the Act)

10 COMMENCEMENT OF DEVELOPMENT

THE Owner shall give to the Council seven days written notice of its intention to commence Development and shall confirm in writing within seven days following commencement that

Development has commenced PROVIDED that failure to provide either of the said notifications shall not render this Undertaking inoperative

11 INTEREST

If any sum payable under this undertaking is not paid within fourteen days of the date when it is due then save in the case of a manifest error by the Director in calculating the due sum the Owner shall in addition to any payment in respect of the sum due pay interest on the sum from the due date until actual payment at the rate of 3% above the base rate from time to time of National Westminster Bank Plc

12 COUNCIL'S LEGAL COSTS

12.1 THE Owner shall pay to the Council on the date hereof its reasonable legal costs incurred in connection with the assessment of this deed and its registration as a local land charge

12.2 THE Owner shall pay to the Council on the date hereof the sum of £ ⁷ as a contribution towards the Councils costs of monitoring the implementation of this undertaking

{13 POSITION OF MORTGAGEE

13.1 THE Mortgagee consents to the Owner entering into this undertaking

13.2 Subject to sub clause 17.3 the Mortgage shall be bound by and take effect subject to this undertaking

13.3 The Mortgagee shall not be personally liable for any breach of the obligations in this undertaking unless committed or continuing at a time when the Mortgagee is in possession of or has appointed a receiver or has foreclosed in respect of all or any part of the Land^{5}}

IN WITNESS whereof the Owner have executed this Deed on the day and year first before written

THE SCHEDULE(S)

Covenants by the Owner – the Planning Obligations

{Insert here the appropriate schedule(s) from the menu set out after the attestation clauses⁸ and delete those not required}

⁷ **MONITORING FEE** - The Council has approved the introduction of a monitoring fee for Section 106 work - the planning officer will notify the developer where there is a financial contribution due that they will be required to pay a 4% monitoring fee.

⁸ ATTESTATION CLAUSES:

WITNESS SIGNATURE – This execution clause is suitable if the Owner or the Developer is an individual. Please ensure that the execution clause is signed and witnessed.

SIGNED AS A DEED BY {insert name})
)
in the presence of:)

EXECUTED AS A DEED BY AFFIXING THE)
COMMON SEAL of {insert name} in the)
presence of:)

Director

Secretary

SELECTION OF SCHEDULES⁹

SCHEDULE XX : FINANCIAL CONTRIBUTION TOWARDS HIGHWAY IMPROVEMENTS

Part 1: Definitions relating to the financial contribution towards highway improvements.

1. The words below shall mean as follows :-
- 1.1 The "Highways Contribution" shall mean the sum referred to in Paragraph 2.1 of Part 2 of this Schedule
- 1.2 The "Index" shall mean the indices based on the Retail Price Index (all items) compiled and published by The Office for National Statistics or any other such index that substitutes the Retail Price Index¹⁰

Part 2: Covenants relating to the financial contribution towards highway improvements

- 2.1 The Owner/Developer will pay to the Council upon *{Insert trigger date for payment of contribution} {insert the amount in words}* the sum of (£ .00) *{insert the amount in figures}* (together with an additional sum calculated as set out below) as a contribution towards the cost of *{Insert how the highway contribution is to be spent}*¹¹
- 2.2 The Highways Contribution due and payable (having been calculated at *{Insert month and year of committee resolution}* prices)¹² shall be increased in accordance with any increases in the Index between that date and actual payment PROVIDED THAT if there is any change after the date of this deed in the reference base used to compile the Index the figure taken to be shown in the Index after such a change shall be the figure which would have been shown in the Index if the reference base current at the date of the execution of the deed had been retained

Only insert the following clause where the planning permission is to be outline¹³

⁹ **PLANNING OBLIGATION CLAUSES** – There are four alternative schedules each with a different contribution purpose. Any that apply should be completed. Any that do not apply should be deleted if there is a more than one contribution, the schedules should be consecutively numbered.

¹⁰ **INDEX LINKING** - The financial contribution, if not paid on the date that the Unilateral undertaking is signed will incur an additional payment calculated in line with the General Index of Retail Prices from the date of the committee decision.

¹¹ **FINANCIAL CONTRIBUTION** – Insert the trigger date when the financial contribution is due, i.e. on the date hereof or on commencement of development. This should be stated in figures and then in words. Insert details of how the financial contribution will be spend, i.e. to provide highway improvements within the vicinity of the site.

¹² See footnote 9 Index Linking. The date to be inserted will be the date of the Committee decision.

¹³ This clause only applies to outline permission. If the Unilateral Undertaking relates to full planning permission, this clause should be deleted.

2.3 The Highways Contribution has been calculated on the basis that *{Insert number of properties to be constructed}*¹⁴ properties will be constructed on the Application Land and in the event it is proposed that more than *{Insert number of properties to be constructed}* will be constructed on the Application Land the Owner/Developer will pay to the Council an amended Highways Contribution (together with the additional sum calculated in accordance with paragraph 2.2 of this Part of this Schedule) in accordance with the timing set out in paragraph 2.1 of this Part of this Schedule and in accordance with the following formula:-

$$A \div B \times C$$

Where:-

A = number of properties to be actually constructed

B = *{insert number of properties to be constructed}* proposed to be constructed

C = £ .00 *{insert amount of financial contribution}* (index linked in accordance with paragraph 2.2 of this Part of this Schedule)

¹⁴ The number of properties to be erected should be the same number as proposed in the planning application.

SCHEDULE XXX: EDUCATION CONTRIBUTION⁸

Part 1: Definitions relating to the financial contribution towards education

improvements/enhancements

1. In this Schedule the words below shall mean as follows:-
- 1.1 The "Education Contribution" shall mean the sum referred to in paragraph 2.1 of Part 2 of this Schedule
- 1.2 The "Index" shall mean the Royal Institute of Chartered Surveyors Building Cost Index⁹

Part 2: Covenants relating to the Education Contribution

- 2.1 The Owner/Developer shall pay to the Council *{Insert trigger date for payment of contribution}* the sum of *{Insert the amount in words}* (£ .00) *{insert the amount in figures}* (together with an additional sum calculated as set out below) as a contribution towards the cost of *{Insert details of how the education contribution is to be spent}*¹⁰
- 2.2 The Education Contribution due and payable (having been calculated at *{Insert month and year of committee resolution}* ¹¹prices) or (as the case may be) the date of subsequent prevailing Department of Children Schools and Family cost calculators) shall be increased in accordance with any increases in the Index between that date and actual payment PROVIDED THAT if there is any change after the date of this deed in the reference base used to compile the Index the figure taken to be shown in the Index after such a change shall be the figure which would have been shown in the Index if the reference base current at the date of the execution of the deed had been retained

Only insert the following clause where the planning permission is to be outline¹²

- 2.3 The Education Contribution has been calculated on the basis that *{Insert number of properties to be constructed}* properties will be constructed on the Application Land and in the event it is proposed that more than *{Insert number of properties to be constructed}* properties will be constructed on the Application Land the Owner/Developer will pay to the Council an amended Education Contribution (together with the additional sum calculated in accordance with paragraph 2.2 of this Part of this Schedule) in accordance with the timing set out in paragraph 2.1 of this Part of this Schedule and in accordance with the following formula:-
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$$A \div B \times C$$

Where:-

A = Number of properties to be actually constructed

B = *{Insert number of properties to be constructed}* proposed to be constructed

C = £ .00 *{Insert amount of financial contribution}* (index linked in accordance with paragraph 2.2 of this Part of this Schedule)

SCHEDULE XXXX: CONTRIBUTION TO OFF SITE PUBLIC OPEN SPACE⁸

Part 1: Definitions relating to the financial contribution towards off site public open space improvements/enhancements

1. The words below shall mean as follows :-
 - 1.1 The "Off Site Open Spaces Contribution" shall mean the sum referred to in Paragraph 2.1 of Part 2 of this Schedule
 - 1.2 The "Index" shall mean the indices based on the Updating Percentages published by the Building Cost Information Service for the Schedule of Rates for Grounds Maintenance 1987⁹

Part 2: Covenants relating to the financial contribution towards off site public open space improvements

- 2.1 The Owner/Developer will pay to the Council *{Insert trigger date for payment of contribution}* the sum of *{insert the amount in words}* (£ .00) *{insert the amount in figures}* (together with an additional sum calculated as set out below) as a contribution towards the cost of *{Insert details of how the off site public open space contribution is to be spent}*¹⁰
- 2.2 The Off Site Open Spaces Contribution due and payable (having been calculated at *{Insert month and year of committee resolution}*¹¹ prices) shall be increased in accordance with any increases in the Index between that date and actual payment PROVIDED THAT if there is any change after the date of this deed in the reference base used to compile the Index the figure taken to be shown in the Index after such a change shall be the figure which would have been shown in the Index if the reference base current at the date of the execution of the deed had been retained

Only insert the following clause where the planning permission is to be outline¹²

- 2.3 The Off Site Open Spaces Contribution has been calculated on the basis that *{insert number of properties to be constructed}* properties will be constructed on the Application Land and in the event it is proposed that more than *{Insert number of properties to be constructed}* properties will be constructed on the Application Land the Owner/Developer will pay to the Council an amended Off Site Open Spaces Contribution (together with the additional sum calculated in accordance with paragraph
-

2.2 of this Part of this Schedule) in accordance with the timing set out in paragraph 2.1 of this Part of this Schedule and in accordance with the following formula:-

$$A \div B \times C$$

Where:-

A = number of properties to be actually constructed

B = *{Insert number of properties to be constructed}* proposed to be constructed

C = £ .00 *{insert amount of financial contribution}* (index linked in accordance with paragraph 2.2 of this Part of this Schedule)

SCHEDULE XXX: CONTRIBUTION TO THE LOCAL LIBRARY⁸

Part 1: Definitions relating to the financial contribution to the local library

1. The words below shall mean as follows :-
 - 1.1 The "Local Library Contribution" shall mean the sum referred to in Paragraph 2.1 of Part 2 of this Schedule
 - 1.2 The "Index" shall mean the indices based on the Royal Institute of Chartered Surveyors Building Cost Index⁹

Part 2: Covenants relating to the financial contribution towards the local library

- 2.1 The Owner/Developer will pay to the Council *{Insert trigger date for payment of contribution}* the sum of *{insert the amount in words}* Pounds (£ .00) *{insert the amount in figures}* (together with an additional sum calculated as set out below) as a contribution towards the cost of improvement of the local library¹⁰
- 2.2 The Local Library Contribution due and payable (having been calculated at *{Insert month and year of committee resolution^{11}}}* prices) shall be increased in accordance with any increases in the Index between that date and actual payment PROVIDED THAT if there is any change after the date of this deed in the reference base used to compile the Index the figure taken to be shown in the Index after such a change shall be the figure which would have been shown in the Index if the reference base current at the date of the execution of the deed had been retained

Only insert the following clause where the planning permission is to be outline¹²

- 2.3 The Local Library Contribution has been calculated on the basis that *{Insert number of properties to be constructed}* properties will be constructed on the Application Land and in the event it is proposed that more than *{Insert number of properties to be constructed}* properties will be constructed on the Application Land the Owner/Developer will pay to the Council an amended Local Library Contribution (together with the additional sum calculated in accordance with paragraph 2.2 of this Part of this Schedule) in accordance with the timing set out in paragraph 2.1 of this Part of this Schedule and in accordance with the following formula:-

$$A \div B \times C$$

Where:-

A = number of properties to be actually constructed

B = *{Insert number of properties to be constructed}* proposed to be constructed

C = £ .00 *{insert amount of financial contribution}* (index linked in accordance with paragraph 2.2 of this Part of this Schedule)