**COTSWOLD BEECHWOODS SPECIAL AREA OF CONSERVATION**

**RECREATIONAL IMPACTS MITIGATION CONTRIBUTION**

**PAYMENT ON COMMENCEMENT OF DEVELOPMENT**

**PLANNING PERMISSION YET TO BE GRANTED**

**Town and Country Planning Act 1990**

**Section 106 Unilateral Undertaking**

**Relating to: *Insert property address***

**Application No: *Insert planning application reference***

**THIS DEED** and **UNILATERAL UNDERTAKING** is made on the *[insert date]*

**BY:**

**(1) *[iNSERT NAME OF OWNER of application site]*** of [*address of owner]*(“**the Owner**”)

**(2) *[INSERT NAME OF LANDOWNER’S MORTGAGEE IF APPLICABLE]*** of [*address of mortgagee*] (**“the Mortgagee”)** – *delete if not applicable*

**TO:**

**[name of] COUNCIL of [council address]** (“**the Council**”)

**BACKGROUND**

* 1. The Council is the Local Planning Authority for the purposes of the Act and for the area in which the Site is situated
  2. The Owner is the owner of the Site which is registered at The Land Registry under title number *[insert title number of the application site]* free from encumbrances other than those matters contained or referred to in the property and charges registers of that title as at the date of this Deed
  3. A planning application has been submitted to the Council and the [Mortgagee and] Owner has entered into this Deed in order to secure the planning obligations contained in this Deed
  4. Each obligation undertaken in this Deed by the Owner is a planning obligation for the purposes of Section 106 of the Act enforceable by the Council
  5. [The Mortgagee has a registered charge dated [*insert* date] over the Site as registered under title number [xxxx]] – *delete if not applicable*

**NOW THIS DEED WITNESSES AS FOLLOWS**

1. **Definitions**

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

|  |  |
| --- | --- |
| “**the Act**” | the Town and Country Planning Act 1990 |
| “**the Application**” | the application for planning permission for the Development which has been allocated planning reference number [*insert planning application reference number*] |
| “**Commencement**” | the carrying out of any material operation (as defined in Section 56 of the Act) forming part of the Development and “Commence” and “Commencement of Development” shall be construed accordingly |
| “**the Development**” | the [*insert application description of development e.g. erection of three dwellings*] on the Site as set out in the Application |
| **“Cotswold Beechwoods Special Area of Conservation Mitigation Contribution”** | means the sum of [*insert amount – sum of £673 x no. of net additional dwellings*] for expenditure on environmental and ecological mitigation measures for the impact of development on the Cotswold Beechwoods Special Area of Conservation. |
| **“Implementation Notice”** | means the notice in writing to be served upon the Council by the Owner notifying the Council of the anticipated Commencement of Development in the form annexed to this Deed |
| **“Index”** | means Consumer Price Index as published by the Office for National Statistics or any successor organisation provided that during any period where no such index exists the index which replaces or is the nearest equivalent thereto as agreed between the Owner [the Mortgagee] and the Council or in default of such agreement fixed by the President for the time being of the Law Society on the application of any of the Council[, Mortgagee] or Owner |
| **“Index Linked”** | means increased or decreased by an amount equivalent to the increase or decrease in the Index from the date hereof until the date on which the Cotswold Beechwoods Special Area of Conservation Mitigation Contribution is payable |
| **“Late Payment Interest”** | a rate calculated on a daily basis and compounded quarterly from the due date until payment at four per cent (4%) per annum over Bank of England bank rate from time to time in force |
| **“Monitoring Fee** | the fee of [£200] payable to the Council for the monitoring of the compliance with the obligations contained herein |
| “**the Plan**” | the site location plan annexed to this Deed |
| “**the Permission**” | the planning permission (if any) granted by the Council pursuant to the Application |
| “**the Site**” | the land known as [*insert planning application site address*] being the subject of the Application and shown edged red on the Plan. |
| “**Working Day(s)”** | means any day except Saturdays or Sunday or a bank holiday or any day which in England and Wales are public holidays |

## 2 Construction of this Deed

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

2.2 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

2.3 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 them jointly and against each individually

2.4 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to their respective statutory functions

2.5 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

2.6 Any covenant by any party to this Deed not to do any act or thing shall be deemed to include a covenant not to cause permit or suffer the doing of that act or thing

## 3 Legal Basis

3.1 This Deed is made pursuant to Section 106 of the Act and all other enabling powers.

3.2 The undertakings, restrictions and other requirements imposed upon the Owner [and the Mortgagee – *delete if not applicable*] under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as Local Planning Authority against the Owner [and the Mortgagee] – *delete if not applicable*

## 4 Conditionality

This Deed is conditional upon the grant of the Permission by the Council SAVE for clauses 5.5 and 5.6 which shall take immediate effect

## 5 The Owner’s Undertakings

The Owner undertakes so as to bind the Site and themself:

5.1 Not to Commence or otherwise permit Commencement of Development until the Cotswold Beechwoods Special Area of Conservation Mitigation Contribution Index Linked has been paid to the Council

5.2 To pay the Cotswold Beechwoods Special Area of Conservation Mitigation Contribution Index Linked to the Council prior to Commencement of Development

5.2 To notify the Council of the anticipated date of Commencement of Development at least 10 Working Days before the anticipated date by serving on the Council the Implementation Notice to the addressee as set out in the Implementation Notice and to notify the Council in writing to the same addressee of the actual date of Commencement of Development within 5 Working Days of such date

5.3 To reimburse the Council in respect to all legal and administrative costs it incurs in connection with the enforcement of any provision of this Deed as a result of the Owner’s non-compliance with this Deed

5.4 If any payment of any sum referred to in this Unilateral Undertaking becomes due but remains unpaid, then the Owner shall pay the Council Late Payment Interest on any such unpaid amount from the date when the amount became due to the date it is paid in full to the Council

5.5 To pay to the Council the Monitoring Fee on completion of this Deed

5.6 The Owner shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation and checking of this Deed

## 6 Miscellaneous

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.

## [7 Mortgagee’s Consent

The Mortgagee consents to the Owner entering into this Deed for the purposes of securing the covenants and obligations contained in this Deed however the Mortgagee shall not be personally bound by the said covenants and obligations and shall otherwise have no liability under this Deed unless and until and except to the extent that it should become a successor in title to the Owner to the Site or become a mortgage in possession of the Site in which case it will be treated as a successor in title to the Owner to the Site] – *delete if not applicable*

**Signed** as a **deed** by )

**[INSERT OWNER’S /OWNERS’ NAME(S)]** )

in the presence of: )

Signature of Witness:

Name, Address and Occupation of Witness:

**[EXECUTED ON BEHALF OF** )

**[MORTGAGEE]** )

BY )

)

)

ITS AUTHORISED SIGNATORY(IES) )]

*Delete if not applicable*

ANNEX – IMPLENTATION NOTICE

**NOTICE TO [NAME] COUNCIL ON COMMENCEMENT OF DEVELOPMENT**

|  |  |
| --- | --- |
| Planning Permission Reference: | ......................................................................... |
| Development Site: | ......................................................................... |
|  | ......................................................................... |
| Description of Development: | ........................................................................ |
|  | ........................................................................ |
| Date of Unilateral Undertaking: | …………………………………………………… |

Notice is hereby given to the [post of Council officer who will receive the notice] at [Name] Council that Commencement of Development of the above planning permission **will commence on**

.....................................................................

|  |  |
| --- | --- |
| Signed: | .....................................……………………….. |
| For and on behalf of : | .................………………………………………. |

Contact name and telephone no. ….………………………………………………...

Contact e-mail address: .…………………………………………………...

Date: ......................................................

**Complete and send this Notice to the address below together with the Cotswold Beechwoods Special Area of Conservation Mitigation Contribution**:

[Name of Council

Planning Department (Development Management)

[Address]