

**THIS DEED** is made the.....day of.....Two Thousand and.....  
**BY:**

(1) .....of..... and .....of .....(**“the Owners”**)

(2) ..... of ..... ( **“ the Mortgagee”**)

and creates planning obligations which are enforceable by

(2) **MALDON DISTRICT COUNCIL** of Council Offices Maldon (**“the Council”**)

**BACKGROUND:**

- A. For the purposes of the Act, the Council is the local planning authority for the area within which the Site is located.
- B. The Owners are the owners of the freehold interest in the Site registered at HM Land Registry under title number EX.....
- C. The Owners have has submitted a planning application under reference number ..... to the Council for planning permission for the Development
- D. This Deed is entered for the purposes of providing planning obligations binding the estate and interest of the Owners in the Site under Section 106 of the Act in the event that planning permission is issued

**THE UNILATERAL UNDERTAKING::**

**1. DEFINITIONS**

1.1 In this Deed where the context so admits the following words and expressions shall have the following meanings:

**“Act”** means the Town and Country Planning Act 1990,

**“Commencement of the Development”** means the implementation of the Planning Permission by the carrying out of a material operation described in Section 56 of the Act and “Commence the Development” shall include operations consisting of site clearance, demolition work, 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, however the temporary display of site notices or advertisements shall not be a material operation

**“Development”** means the development proposed in the planning application submitted to the Council relating to the Site with the Council’s reference of.....

<b>“Dwelling”</b>	means any residential unit of accommodation built pursuant to the Planning Permission or to any related planning permission granted by virtue of s73 of the Act
<b>“Index”</b>	means the “All Items” index figure of the Index of Retail Prices published by the Office for National Statistics or any such alternative index or comparable measure of price inflation as the Council reasonably requires
<b>“Index-Link(ed)”</b>	means increase(d) to reflect any increase in the Index during the period from and including the date of this Deed to and including the date of actual payment
<b>“Notice of Commencement”</b>	means notice in writing to advise the Council of the expected date of the Commencement of Development
<b>“Planning Permission”</b>	means the conditional planning permission for the Development at the Site
<b>“Site”</b>	means land at .....

1.2 Where the context so requires:

- (a) A reference in this Deed to an Act of Parliament or any Order Regulation Statutory Instrument or the like shall include a reference to any amendment or re-enactment of the same
- (b) Words importing the masculine gender include the feminine gender and vice versa. Words in the singular include the plural and vice versa and words importing individuals shall be treated as importing corporations and vice versa
- (c) Any headings or side notes are for ease of reference only and shall not affect the construction of this Deed
- (d) Where a party includes more than one person any obligations of that party shall be joint and several

## **2. INTERPRETATION AND LEGAL EFFECT**

2.1 This Deed is made pursuant to Section 106 of the Act and the covenants contained in it are planning obligations for the purposes of Section 106 of the Act in respect of which:

- (a) The Owners own the freehold title to the Site
- (b) The Council is the Local Planning Authority entitled to enforce the provisions of this Deed

- (c) This Deed is entered in respect of the Site with the intent that it shall bind the Owners freehold interest in the Site
  - (d) This Deed shall be binding on all successors and assigns in title of the Owners and any persons claiming under or through them
  - (e) This Deed has been executed as a Deed and the Owners shall supply a copy of it to the Council so that it may be registered by the Council against the Site as a Local Land Charge and entered into the planning register maintained by the Council under the Act
- 2.2 Nothing in this Deed is or amounts to or shall be construed as a planning permission or approval
- 2.3 This Deed shall come into effect on the Commencement of Development except for clause 4.4 which shall take effect on the signing and delivery of this Deed
- 2.4 The Mortgagee of the Site agrees to this Deed having priority over its legal charge but will not incur any liability for any breach of the obligations contained in this Deed unless and until it becomes a mortgagee in possession of the Site

### **3. NOTICES**

- 3.1 All notices given or served or required to be given or served under this Deed shall be given or served as follows:
- (a) by personal delivery by hand (in which case service is immediate)
  - (b) by first class post (in which case service is takes place on the second day after posting)
- 3.2 The address for service of notices for the Council shall be at the Council's address at the head of this Deed and notices shall be marked for the attention of the Council's s106 Monitoring Officer

### **4. THE OWNERS COVENANTS**

4. The Owners covenant:
- 4.1. To serve on the Council a Notice of Commencement not less than four weeks before the expected date of Commencement of the Development
  - 4.2 To pay a contribution of £169.45 Index Linked to the Council prior to the Commencement of the Development for each Dwelling to be constructed that represents one aspect of the costs of mitigation to any protected habitats site under the Recreational Disturbance Avoidance Mitigation Strategy of the Council for the purposes of the Conservation and Habitats Regulations 2017
  - 4.3 To pay a monitoring fee of £50 to the Council on the sending of this Deed to the Council
  - 4.4 To pay a checking fee of £75 to the Council on the sending of this Deed to the Council

5. **JURISDICTION**

5 This Deed is to be governed by and interpreted in accordance with the law of England and Wales; and the courts of England are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Deed

**SIGNED** as a deed by .....  
in the presence of:-

Witness' signature:

Name:

Address:

Occupation:

**SIGNED** as a deed by .....  
in the presence of:-

Witness' signature:

Name:

Address:

Occupation:

**SIGNED** as a deed .....  
in the presence of:-

Witness' signature:

Name:

Address:

Occupation: