

# **UNILATERAL UNDERTAKING**

<<Date>>

**Made under Section 106 of the Town & Country Planning Act 1990 (as amended)**

**Relating to land at [enter land]**

**Register Title and Plan [enter title information]**

**GIVEN BY**

**[enter owner name(s)] (jointly “the Owners”)**

**of [address]**

**AND**

**IN FAVOUR OF**

**SOUTH GLOUCESTERSHIRE COUNCIL, PO BOX 1953,  
BRISTOL BS37 0DE**

**NOW THIS DEED WITNESSES AS FOLLOWS**

**1 BACKGROUND**

- 1.1 The Owners own the freehold interest in the Land and are registered as proprietor under title numbers [enter title information] (subject only to matters appearing on the title at the date hereof but otherwise free from incumbrances).
- 1.2 The Council is the Local Planning Authority as defined in the Act for the administrative district in which the Application Site is located and the Local Planning Authority for the purposes of planning obligations imposed pursuant to the provisions of Section 106 of the Act.
- 1.3 The Owners have by the Application applied to the Council for planning permission to develop the Application Site. [, and the Application was permitted by the Council on <<date>>]

**2 DEFINITIONS**

2.1 In this Deed the following words and expressions shall have the following meanings:

the "Application" means the detailed application number [enter planning reference] made by the Owners to develop the Application Site for the [enter description of planning application]

the "Application Site" means the land edged red on Plan A being land at [enter address] being part of the land within title numbers [enter title information]

"Commencement of Development" means the carrying out of any material operation as defined by Section 56(4) of the Act in connection with Development and "Commence" and "Commenced" shall be construed accordingly

the "Development" means development of the Application Site pursuant to and in accordance with the Permission

the "Permission" means a planning permission granted by the Council or Secretary of State for Housing Communities and Local Government and shall

include any Application which in the reasonable opinion of the Director is substantially similar to the Application

“Residence” the home where persons ordinarily reside. The HMRC “Only or Main Residence” (“OMR”) criteria can apply as a reference for assessment

“Self-Build Dwelling” means a Residential Unit to be either constructed or commissioned by a person or person who intends to live in the said Residential Unit' and which meets the definition in the Self Build and Custom housing Act 2015 (as amended)

“Working Day” Any day from Monday to Friday (inclusive in each week except for Statutory Holidays any day in the period from Christmas Eve to New Year’s Day (inclusive)

## **Operative Provisions**

2.2 This Deed is made pursuant to section 106 of the Act and Section 111 of the Local Government Act 1972, and this Deed is a planning obligation for the purposes of Section 106 of the Act.

2.3 The planning obligations contained in the Schedule to this Deed are enforceable by the Council.

2.4 The covenants given in this Deed are conditional upon:

- (a) The grant of the Permission; and
- (b) The Commencement of Development.

2.5 Nothing in this Deed is or amounts to, or shall be construed as a Planning Permission or approval.

2.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 it is agreed that nothing in this Deed shall confer on any third party (other than the Council) any right to enforce or any benefit of any term of this Deed.

- 2.7 If the Planning Permission should expire (without being renewed or extended) before the Development is Commenced or shall at any time be revoked this Deed shall forthwith cease to have effect.
- 2.8 This Deed is capable of being registered as a land charge.

### **3 CONDITIONS AND COVENANTS**

- 3.1 The Owners hereby undertake and covenant to the Council to comply with the Obligations set out in the Schedule to this Deed.
- 3.2 Wherever there is more than one person named as a party (which shall include successors in title to that party and to anyone deriving title through or under that party) and where more than one party undertakes an obligation, all their obligations can be enforced against all of them jointly and against each individually.
- 3.3 Save as otherwise provided reference 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 its functions as local planning authority.
- 3.4 Headings in this Deed are for ease of reference only and are not part of the Deed nor are they intended to be used as a guide to its interpretation.
- 3.5 The Owner agrees to give the Council written notice of any change in ownership (excepting any transfer to a Statutory Undertaker) of their interests in the Application Site occurring before all the obligations under this Deed have been discharged within ten (10) Working Days of the same occurring.

### **4 STATUTORY PROVISIONS**

The Owners hereby agree that:

- 4.1 The obligations on the part of the Owners hereinafter contained are planning obligations imposed pursuant to the provisions of Section 106 of the Act which are enforceable by the Council and inter alia this is a Deed pursuant to Section 111 of the Local Government Act 1972 and other enabling powers
- 4.2 If the Permission shall expire before Commencement of Development this Deed shall forthwith cease to have effect but without prejudice to the validity of anything done whilst this Deed is in force.

- 4.3 IF the Council agrees pursuant to an application under section 73 of the Act to any variation or release of any condition contained in the Planning Permission or if any condition is varied or released following an appeal under section 78 of the Act the covenants or provisions of this Agreement shall be deemed to bind the varied permission and to apply in equal terms to the new planning permission save where the Council in their determination of such an application for the new planning permission or the Secretary of State or Inspector in their determination of such appeal indicate that consequential amendments are required to this Agreement to reflect the impact of the section 73 application and in such circumstances a separate deed pursuant to section 106 of the Act will be required to secure relevant planning obligations relating to the new planning permission.
- 4.4 The obligations created by this Deed are also conditional upon the Secretary of State for Housing Communities and Local Government or his appointed Inspector being satisfied in respect that obligation is made in accordance with Regulation 122 of the Community Infrastructure Levy Regulations 2010 that is they are:
- 4.4.1 Necessary to make the Development acceptable in planning terms;
  - 4.4.2 Directly related to the Development; and
  - 4.4.3 Fairly and reasonably related to the Development in scale and kind.

## **5 OWNERS' COVENANTS**

- 5.1 The Owners for themselves and their successors in title to the Application Site (**Red line set out in Plan A**) and each and every part of it hereby covenant with the Council as set out in Schedule 1 of this Deed that the construction of the dwelling will be as a Self-Build dwelling as identified in the Self Build and Custom housing Act 2015 (as amended).

## **6 MORTGAGEE CONSENT**

- 6.1 A mortgagee of any part of the Residence shall be bound by the obligations contained in this Deed to the extent that they are binding on that part of the Residence and the security of any mortgage shall take affect subject to this Deed PROVIDED THAT the mortgagee shall otherwise have no liability under this Deed unless they take possession of the Residence (or that part of it which the mortgage relates to) in which case it too will be bound by the obligations as if it were a person deriving title from the Owner PROVIDED FURTHER THAT it shall not in any event be liable for any breach of this Deed arising prior to it

becoming a mortgagee in possession of the land nor shall it be liable for any breach of this Deed unless it shall have caused such a breach to have occasioned.

## **7 RELEASE**

No person shall be liable for any breach of an obligation, restriction or covenant contained in this deed after parting with all of its interest in the Land, except in respect of any breach subsisting prior to parting with such interest.

## **8 DISPUTE RESOLUTION**

8.1 In the event of there being a dispute arising out of this Deed or the subject matter thereof the following provisions shall apply:

- a) The parties shall use their reasonable endeavours to resolve the dispute by agreement
- b) If agreement cannot be reached the matter in dispute shall be referred to and settled by a single independent expert ("the Expert") to be nominated by the President of the Royal Institution of Chartered Surveyors on the application of a party after giving notice in writing to the other parties to this Deed
- c) The person to be appointed pursuant to Clause 8.1 (b) shall be a person having five (5) years or more post qualification experience of projects comprising works of the scale and nature of the Development
- d) Notice in writing of the appointment of an Expert pursuant to this clause shall be given by the Expert to the Parties and he shall invite each to submit within a specified period (which will not exceed fifteen (15) Working Days) any written representations each wishes to make to him and any submissions shall be provided to the parties with an invitation to respond within a specified period (not exceeding ten (10) Working Days)
- e) Reference to the Expert shall be on terms that determination shall take place within twenty (20) Working Days of the Expert accepting his instructions or within such extended period as the parties may together allow
- f) The Expert shall act as an expert and not as an arbitrator and he shall consider any written representation submitted to him within the said specified period and shall not be in any way limited or fettered thereby and shall determine the dispute in accordance with his own judgement

- g) The Expert shall have the power to award costs of the determination in favour of any party to the dispute at the expense of another party and failing such determination such costs shall be borne by the parties in equal shares
- h) The Expert shall be limited in his findings to the matter in dispute referred to him and shall provide written reasons for his decision
- i) The findings of the Expert shall (other than in the case of a manifest material error) be final and binding on the parties to the dispute
- j) If for any reason the Expert fails to make a decision and give notice in accordance with the clauses of this Deed, any party may apply to the President of the Royal Institution of Chartered Surveyors for a substitute to be appointed in his place
- k) Nothing in this clause shall be taken to fetter the parties' ability to seek legal redress in the Courts (or otherwise) for any breach of the obligations in this Deed



IN WITNESS WHEREOF the Owners have executed this document as a Deed under hand on the day and year first before written.

SIGNED as a DEED by \_\_\_\_\_ **(first owner)**

Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SIGNED as a DEED by \_\_\_\_\_ **(second owner)**

Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

***in the presence of***

Signature of Witness \_\_\_\_\_

Name (in BLOCK CAPS) \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## **SCHEDULE 1: SELF-BUILD DEVELOPMENT**

The Owners hereby covenant with the Council as follows:

1. The construction of the dwelling shall be for a Self-Build Dwelling.
2. The Owner shall give notice in writing to the Council of the Commencement of Development within 5 Working Days of the same occurring.
3. The first Occupation of the dwelling shall be by The Owners who have had the primary input into the final design and layout of the dwelling.
4. On completion, the dwelling will be the registered address for occupants for purposes such as HMRC reporting, Electoral Role and registration with local GP or healthcare providers. HMRC Only or Main Residence (“OMR”) criteria can be used to assess compliance.

**PLAN A**

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