

**DATED**

**20[ ]**

**[ ](1)**

**TO**

**MID SUSSEX DISTRICT COUNCIL (2)**

**PLANNING OBLIGATION  
BY WAY OF UNILATERAL UNDERTAKING**

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

Relating to land known as

**[ ]**

Tom Clark  
Solicitor and Head of Regulatory Services  
Mid Sussex District Council  
'Oaklands' Oaklands Road  
Haywards Heath  
West Sussex  
RH16 1SS

**[IKEN REF]**

**THIS DEED** is dated the

day of

20[ ]

**BETWEEN**

(1) [ ] [of ] [incorporated and registered in England and Wales with company number ] whose registered office is at [ ] (**the Owner**)

**TO**

(2) **MID SUSSEX DISTRICT COUNCIL** of Oaklands, Oaklands Road, Haywards Heath, West Sussex, RH16 1SS (**the District Council**)

**BACKGROUND**

- (A) The Owner[s] [is/are] the freehold owner[s] of the Land with title absolute
- (B) [The Land is subject to a legal mortgage dated [ ] in favour of [ ] (“**the Mortgagee**”)] [and subject to an agreement dated [ ] between the Owner[s] and [ ] (“the Developer”)]
- (C) The District Council is the local planning authority for the purposes of the Act for the area in which the Land is situated
- (D) On [ ] the District Council issued the Approval
- (E) The Owner[s] [has/have] made the Application
- (F) As the Development is located within the 7km zone of influence surrounding the SPA, the Development generates a need for a financial contribution towards the Interim SAMM Strategy in accordance with Policy DP17 of the District Plan and having regard to the Habitats Regulations which would not be generated but for the Development
- (G) As required by the Habitats Regulations, the District Council has screened whether the Development will have a likely significant effect on the SPA and the District Council considers that subject to suitable contributions being secured towards the Interim SAMM Strategy the Development will not have a likely significant effect on the SPA
- (H) The Owner[s] [has/have] agreed to enter into this Deed to give the following obligations in the manner hereinafter appearing

**AGREED TERMS**

**1. INTERPRETATION**

1.1. In this Deed the following expressions shall unless the context otherwise requires have the following meanings:

**Act** means the Town and Country Planning Act 1990 as amended

**Application** means the application under reference [ ] for an approval under Regulation 77 of the Habitats Regulations in accordance with Informative [ ] of the Approval

<b>Approval</b>	means the prior approval for the Development which was granted by the District Council on [ ] and allocated reference [ ]
<b>Ashdown Forest SMM Contribution</b>	means the sum of [ ] pounds (£ ) calculated in accordance with the [Interim SMM Strategy]
<b>Commencement Date</b>	means the date on which the Commencement of the Development begins
<b>Commencement of the Development</b>	means the carrying out of a material operation pursuant to the Approval as defined in section 56(4) of the Act and all references to commencement shall be construed accordingly
<b>Commencement Notice</b>	means the written notice confirming the Commencement Date referred to in clause 4.1 and served in accordance with clause [ ]
<b>Default Interest Rate</b>	means 4% per annum above the base rate of the Bank of England and Interest shall be construed accordingly
<b>Development</b>	means the development of the Land by [ ] as set out in the Approval
<b>District Plan</b>	means the Mid Sussex District Plan 2014-2031 adopted on 28 <sup>th</sup> March 2018
<b>Habitats Regulations</b>	means Part 6 of The Conservation of Habitats and Species Regulations 2017 (SI 2017/1012) (as amended)
<b>[Interim SMM Strategy</b>	means the Interim Strategic Access Management and Monitoring Strategy published by the District Council and dated 22 August 2013]
<b>Land</b>	means the land against which this Deed may be enforced known as [ ] which is registered at HM Land Registry under title number [ ] and is shown for identification purposes only edged red on the attached plan
<b>SPA</b>	means the Ashdown Forest Special Protection Area (being a designated European site under the Habitats Regulations)

**Working Day** means any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England

- 1.2. Clause headings shall not affect the interpretation of this Deed
- 1.3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality)
- 1.4. A reference to a company shall include any company, corporation or other body corporate, whether and however incorporated or established
- 1.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular
- 1.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders
- 1.7. Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time
- 1.8. References to clauses and Schedules are the clauses and Schedules of this Deed
- 1.9. Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually
- 1.10. References to the District Council and the Owner[s] shall include the successors in title and assigns of each party including any local authority successor
- 1.11. Any obligation on a party not to do something includes an obligation not to allow that thing to be done

## **2. STATUTORY PROVISIONS**

- 2.1. This Deed constitutes a planning obligation for the purposes of section 106 of the Act, section 1 of the Localism Act 2011, section 111 of the Local Government Act 1972 and all other enabling powers
- 2.2. The covenants, restrictions and obligations contained in this Deed are planning obligations for the purposes of section 106 of the Act and are entered into by the Owner[s], with the intention that they bind their interests in the Land and their respective successors and assigns
- 2.3. The covenants, restrictions and obligations contained in this Deed are enforceable by the District Council in accordance with section 106 of the Act

## **3. CONDITIONALITY**

This Deed shall come into effect immediately upon the completion of this Deed

## **4. COVENANTS TO THE DISTRICT COUNCIL**

The Owner[s]] covenant[s] with the District Council:

- 4.1. To give the Commencement Notice to the District Council not less than 10 Working Days before the Commencement Date
- 4.2. To pay to the District Council upon completion of this Deed the Ashdown Forest SAMM Contribution

## **5. RELEASE**

No person shall be liable for any breach of any of 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

## **6. LOCAL LAND CHARGE**

This Deed is a local land charge and shall be registered as such by the District Council

## **7. THE DISTRICT COUNCIL'S COSTS**

The Owner[s]] shall pay to the District Council on or before the date of this Deed:

- 7.1. The District Council's reasonable legal costs together with all disbursements incurred in connection with the preparation, negotiation and completion of this Deed
- 7.2. The sum of £100 as a contribution towards the District Council's costs of monitoring the implementation of this Deed

and for the avoidance of doubt the costs referred to in this clause [7] do not constitute or purport to constitute planning obligations for the purposes of Section 106 of the Act and are payable pursuant to the other statutory provisions referred to in clause 2.

## **8. INTEREST ON LATE PAYMENT**

If any sum or amount has not been paid to the District Council by the date it is due, the Owner[s] shall pay the District Council interest on that amount at the Default Interest Rate (both before and after any judgment). Such interest shall accrue on a daily basis for the period from the due date to and including the date of payment

## **9. OWNERSHIP**

- 9.1. The Owner[s]] warrant[s] that no person other than [the Owner[s], [the Mortgagee] [and the Developer] has any legal or equitable interest in the Land
- 9.2. The Owner[s]] agree[s] to give the District Council immediate written notice of any change in ownership of any of its interests in the Land occurring before all the obligations under this Deed have been discharged, such notice to give details of the transferee's full name and registered office (if a company, or usual address if not) together with the area of the Land or unit of occupation purchased by reference to a plan

## **10. NO FETTER OF DISCRETION**

Nothing (contained or implied) in this Deed shall fetter or restrict the District Council's statutory rights, powers, discretions and responsibilities

## **11. WAIVER**

No failure or delay by the District Council to exercise any right or remedy provided under this Deed or by law shall constitute a waiver of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy

## **12. AGREEMENTS AND DECLARATIONS**

The parties agree that:

- 12.1. Nothing in this Deed constitutes a planning permission or an obligation to grant planning permission
- 12.2. This Unilateral Undertaking constitutes a Deed
- 12.3. Insofar as any clause or clauses of this Deed are held (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

## **13. NOTICES**

- 13.1. Any notice required by this Deed shall be in writing and addressed to the Section 106 Monitoring Team of the District Council at the address of the District Council given herein
- 13.2. Any notice may be given by one of the following means and shall be deemed to be served as described unless the actual time of receipt is proved:
  - (a) by first class post deemed served two Working Days after posting
  - (b) by hand deemed served on signature of a delivery receipt provided that if delivery occurs before 9.00am on a Working Day, the notice will be deemed to have been received at 9.00am on that day, and if delivery occurs after 4.00pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00am on the next Working Day
  - (c) through a document exchange deemed served on the first Working Day after the day on which it would normally be available for collection by the addressee

## **14. THIRD PARTY RIGHTS**

It is agreed that nothing in this Deed shall be construed as expressly providing a right for any third party within the meaning of the Contract (Rights of Third Parties) Act 1999 and nothing in this Deed is intended to confer on any third party (whether referred to herein by

name class description or otherwise) any benefit or any right to enforce any provision of this Deed

**15. GOVERNING LAW**

This Deed shall be governed by and interpreted in accordance with the law of England and Wales

**In witness whereof the parties hereto have duly executed this Deed on the day and the year first before written**

[Executed as a Deed by

**[NAME]**

in the presence of:-

Signature of witness

Name (in BLOCK CAPITALS)

Address

Occupation

.....  
.....  
.....  
.....  
.....]

[Executed as a Deed by

**[COMPANY NAME/SOCIETY/LLP]**

acting by [NAME], [a director/member/member of its Committee] and

[NAME], [a director/its secretary/member/member of its Committee]

Director

.....

Director/Secretary

.....]

[Executed as a Deed by

**[COMPANY NAME/LLP]**

acting by [NAME],

.....

a [director/member]

[Director/Member]

in the presence of:-

Signature of witness

.....

Name (in BLOCK CAPITALS)

.....

Address

.....

.....

Occupation

.....]

[Executed as a Deed by

affixing the Common Seal of

[COMMON SEAL]

**[COMPANY NAME/SOCIETY/LLP]**

in the presence of:-

[Director/Committee Member/  
Member]

.....

[Director/Secretary /

Committee Member/Member]

.....]