**CHECKLIST**

There are further footnotes with explanations to help you draft this document, but to assist you can you please:

1. Ensure the following information is correctly inserted into the Undertaking:

**Page 1:**

1. Landowner's full name and title
2. Owner's and Lender's name and address if they are a party
3. Details of any additional owners, developers or lenders as appropriate
4. Site address
5. The planning application reference

**Page 2:**

1. The site address
2. Names and addresses of the owner(s), Developer(s) and any lenders who are parties to the undertaking at paragraphs (1)-(3)
3. The title number(s) at paragraph (2) of the Introduction
4. The date of the charge(s) at paragraph (3)

**Page 3:**

1. Description of the development in the definition of Development
2. The correct sum in the definition of Habitat Mitigation Contribution
3. The application reference number in the definition of Planning Application

**Page 4:**

1. The site address in the definition of Site
2. The date the planning application was validated and the planning application reference in the definition of Planning Application

**Pages 10-11:**

1. The names of the parties in the appropriate attestation clauses

2. Where no Developer is a party, ensure that the following references to the Developer are deleted:

1. **Page 1:** The extraneous space for the name of the Developer
2. **Page 2:** Reference to the Developer as a party to the Deed
3. **Page 7:** Clause 9

3. Where no Lender is a party, ensure that the following references to the Lender are deleted:

1. **Page 2:** Reference to the Developer as a party to the Deed at paragraph (3)
2. **Page 2:** Recital (3) in the introduction
3. **Page 3:** Clause 8

4. Where more than one owner, developer or lender are involved, ensure that:

1. Their interests and status are correctly recorded in the Recitals on Page 2;
2. References to the parties are appropriately amended to ensure that they are all correctly referred to and bound by the Undertaking; and
3. Their details are inserted in the appropriate attestation clauses.

5. Ensure that all owners and lenders having a mortgage against the land are parties to the Undertaking and have approved the deed.

6. Check that the Plan correctly depicts the land and corresponds with the Owner's title.

7. Ensure that no obligations are being entered into that may affect land which does not belong to the Owner(s).

8. If the land is unregistered, refer the matter to your solicitor and request an epitome of title to be produced by the Owner/Developer.

9. Should the Owner/Developer remove any of the clauses from the Undertaking, ensure that the amended Undertaking is reviewed by your solicitor.

Dated 20

 Given by:

[ ][[1]](#footnote-1)

And

[ ][[2]](#footnote-2)

To:

EXETER CITY COUNCIL

**UNILATERAL UNDERTAKING**

under section 106 of the

Town and Planning Act 1990

relating to land at

[ ][[3]](#footnote-3)

Planning Reference [xx/xxxxx/xxx][[4]](#footnote-4)

Legal Services Reference [ ][[5]](#footnote-5)



**PLANNING OBLIGATION BY DEED OF UNILATERAL UNDERTAKING UNDER SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990**

**Relating to land at:** [ ][[6]](#footnote-6)

**Dated:** 20

**Given by:**

1. [ ] of [ ] (the “**Owner**”); and
2. [ ]  incorporated and registered in England and Wales with company number [ ] whose registered office is at [ ] (the “**Developer**”)[[7]](#footnote-7);

**[With the consent of:**

1. [[ ] incorporated and registered in England and Wales with company number [ ] whose registered office is at [ ] (the “**Lender**”)][[8]](#footnote-8).

**To:**

1. **EXETER CITY COUNCIL** of the Civic Centre, Paris Street, Exeter EX1 1JN (the “**City Council**”).

**Introduction**

1. The City Council is the Local Planning Authority for the purposes of Section 106 of the 1990 Act for the area within which the Site is situated and by whom the obligations contained in this Deed are enforceable.
2. The Owner is the freehold owner of the Site registered with the title absolute under title number(s) DN[ ].[[9]](#footnote-9)
3. The Lender has a charge over the Land dated [ ].
4. The Owner has made the Planning Application to the City Council.
5. The City Council has not yet determined the Planning Application and the Owner enters into this Deed to secure the planning obligations which are only enforceable following a grant of the Planning Permission for the Development.

**NOW THIS DEED WITNESSES AS FOLLOWS**:

**1. Definitions**

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

|  |  |
| --- | --- |
| **“the 1990 Act”** | means the Town and Country Planning Act 1990 as amended |
| **“Development”** | means the [ ][[10]](#footnote-10) |
| **“Commencement of Development”** | means the carrying out of any material operation as defined by Section 56(4) of the 1990 Act in connection with Development and "Commence" and "Commenced" shall be construed accordingly |
| **“Dwelling”** | means a building or part of a building designed for residential occupation by a single household and "Dwellings" shall be construed accordingly |
| **“Habitat Mitigation Contribution”** | means the sum of £[ ] ([ ] pounds)[[11]](#footnote-11) (Index Linked) to be paid by the Owner to the City Council as a contribution towards measures to mitigate the impacts of the Development on the [Exe Estuary and Pebblebed Heaths Special Protection Area][[12]](#footnote-12) in accordance with the Habitats Directive, the South East Devon European Site Mitigation Strategy and Policy CP16 of the February 2012 Adopted Exeter City Council Core Strategy |
| **“Index”** | means the Retail Price Index  |
| **“Index Linked”** | means an increase to the sum to be paid which is calculated by applying to that sum the percentage increase (if any) in the Index between the date of this Deed of Undertaking and the date of payment |
| **“Interest Rate”** | means the Law Society’s Interest Rate calculated on a day to day basis |
| **“Site”** | means land situated at [ ][[13]](#footnote-13) and shown for identification purposes only edged red on the Plan  |
| **“Plan”** | means the plan annexed to this Deed |
| **“Planning Application”** | means the application the Development validated by the City Council on [DD MMMM YYYY][[14]](#footnote-14) and given planning reference [xx/xxxxx/xxx][[15]](#footnote-15) |
| **“Planning Permission”** | means the planning permission to be granted by the City Council pursuant to the Planning Application  |

1.2 Words with a masculine gender include the feminine gender and vice versa.

1.3 Words importing the singular meaning, unless the context otherwise requires, include the plural meaning and vice versa.

1.4 Reference to a clause, paragraph or schedule are, unless the context otherwise requires, references to a clause paragraph or schedule of this Deed.

1.5 Where reference is made in this Deed to:

1.5.1 the Owner(s) [and the Lender(s)][[16]](#footnote-16) shall (unless the context otherwise requires) include his/her/their/its respective successors in title and assigns and anyone deriving title through or under the Owners;

1.5.2 the City Council shall include any statutory successor as local planning authority.

1.6 Where there is more than one covenantor all obligations of such covenanters shall be joint and several.

1.7 Reference in this Deed to a statute or a statutory instrument shall mean and include any statutory amendment or re-enactment thereof.

1.8 The clause headings are for the convenience of the parties only and do not form part of this Deed and shall not be taken into account in its construction or interpretation.

1.9 Nothing in this Deed shall be or shall be construed to be a fetter or restriction on the proper exercise at any time by the City Council of any of its statutory powers functions or discretions in relation the Site or otherwise.

1.10 Words imposing an obligation on a party to do any act whatsoever include an obligation to procure that act and words placing a party under a restriction include an obligation not to cause permit or suffer any infringement of that restriction.

**2. Operative Provisions**

## 2.1 This Deed is made pursuant to section 106 of the 1990 Act and Section 111 of the Local Government Act 1972 and is a planning obligation for the purposes of Section 106 of the 1990 Act.

2.2 The planning obligations contained in this Deed are enforceable by the City Council.

2.3 This Deed shall be registerable as a local land charge by the City Council

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

2.5 The Owner hereby covenants with the City Council to observe and perform the restrictions stipulations and requirements specified in this Deed and the Schedule thereto.

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 City 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 determine and cease to have effect.

**3. Covenants by the Parties**

3.1 The Owner so as to bind its interest in the Site hereby undertakes and covenants to the City Council to comply with the Obligations set out in the Schedule to this Deed.

3.2 Where in this Deed the Owner is required to comply with any requirement prior to Commencement of Development the Owner shall not Commence Development nor permit any other person to Commence Development before the said requirement has been satisfied.

3.3 The obligations contained in this Deed shall take effect upon the:

3.3.1 Issue of the Planning Permission by the City Council; and

3.3.2 Commencement of the Development

SAVE FOR clause 3.4 below and paragraph 1(b) of the Schedule which shall take immediate effect

3.4 The Owner shall pay to the City Council on completion of this Deed the reasonable legal costs of the City Council incurred in the negotiation, and execution of this Deed

3.5 The County Court in whose district the Site is situate shall have full jurisdiction to hear and determine proceedings arising from or relating to this Deed or for the enforcement of its terms or any of them.

3.6 No person shall be liable for breach of an obligation or covenant contained in this Deed after they shall have parted with all interest in the Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of an obligation or covenant prior to parting with such interest.

**5. Indexation and Interest**

5.1 All sums due to be paid to the City Council under the terms of this Agreement shall be increased in accordance with the indexation provisions of this clause. The increased sum shall be calculated (as at the date or dates upon which each sum is paid) in accordance with the following formula:

 **C = £Y x B**

 **A**

Where:

A is the value of the Index compiled and published by the relevant Government Department last published before the date hereof;

B is the value of such index last published before the said calculation;

C is the sum in question after application of this formula; and

£Y is the sum to which this formula is applied

PROVIDED THAT if the said Index shall cease to exist there shall be substituted such other index of building costs as shall be specified by the City Council, acting reasonably and provided further that if the application of this formula produces a reduction in the sum in question, such sum shall remain unchanged.

5.2 If any payment due to be paid by the Owner under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

**6. Jurisdiction**

This Deed is governed by and interpreted in accordance with the law of England and Wales.

**7. Arbitration**

Any dispute or difference arising between the parties with regard to their respective rights and obligations as to any matter or thing in any way arising out of or connected with the subject matter of this Agreement shall be referred to the decision of a single arbitrator to be agreed between the parties, or failing agreement between them, to be nominated by the President for the time being of the Royal Institution of Chartered Surveyors and any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or re-enactment for the time being in force.

**8. [Lender’s Consent**

The Lender acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Site shall take effect subject to this Deed PROVIDED THAT the Lender shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.][[17]](#footnote-17)

**9. [Developer’s Consent**

The Developer acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations PROVIDED THAT the Developer shall otherwise have no liability under this Deed unless and until it derives title to the Site in which case it will be bound by the Obligations.][[18]](#footnote-18)

**10. Delivery**

The provisions of this Deed (other than this clause and clause 3.3) which shall be of immediate effect) shall be of no effect until this Deed has been dated.

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

**THE SCHEDULE**

**HABITATS MITIGATION CONTRIBUTION**

1. The Owner covenants with the City Council:
	1. to pay the Habitat Mitigation Contribution in full prior to or upon Commencement of Development.
	2. that no Development shall Commence until the Habitat Mitigation Contribution shall have been paid in full to the City Council.

**[Attestation Clauses – use the following variations as appropriate][[19]](#footnote-19)**

**EXECUTED** as a **DEED** by )

**Full Name of Individual** )

in the presence of:- )

Signature of witness ……………………….

Name (in BLOCK CAPITALS) ……………………….

Address ……………………….

 ………………………..

 ………………………..

**EXECUTED** as a **DEED** by )

**Full Name of Individual** )

in the presence of:- )

Signature of witness …………………………

Name (in BLOCK CAPITALS) …………………………

Address …………………………

 …………………………

 …………………………

**EXECUTED** as a **DEED** and the Common )

Seal of **Name of Organisation having a** )

**Common Seal**

was hereunto affixed in the presence of )

Authorised Signatory …………………

**EXECUTED** as a **DEED** by )

**Name of Organisation not having a** )

**Common Seal**

acting by )

Authorised Signatory ………………….

Authorised Signatory …………………..

**SIGNED** as a **DEED** by

as the Attorney for and on

behalf of **BANK PLC**

in the presence of[[20]](#footnote-20)

1. Insert name of the owner of the land [↑](#footnote-ref-1)
2. Insert name of any Lender over that land [↑](#footnote-ref-2)
3. Address of the land [↑](#footnote-ref-3)
4. Insert planning application reference [↑](#footnote-ref-4)
5. To be completed by Legal Services [↑](#footnote-ref-5)
6. Insert address of the land [↑](#footnote-ref-6)
7. Where the developer is different than the owner of the land [↑](#footnote-ref-7)
8. If a bank has a charge over the land to secure a mortgage their details must be included here and they must be sent the documents to approve it. They will then (once the documents are approved) need to be sent the documents to sign. [↑](#footnote-ref-8)
9. Please insert the Land Registry Registration Number and provide title documents from Land Registry to the City Council when submitting the draft Deed for approval by the City Council [↑](#footnote-ref-9)
10. Insert the description of development as it appears on the planning application form or other description agreed with the City Council [↑](#footnote-ref-10)
11. Please insert the amount of money due to be paid in numbers and words as provided to you by the City Council [↑](#footnote-ref-11)
12. Please delete whichever does not apply [↑](#footnote-ref-12)
13. Please insert the address of the land in the Office Copy Entry from Land Registry [↑](#footnote-ref-13)
14. Please insert the validation date [↑](#footnote-ref-14)
15. Insert planning reference of the application [↑](#footnote-ref-15)
16. Delete Lender if not relevant [↑](#footnote-ref-16)
17. This clause can be removed if no Lender is entering into the deed [↑](#footnote-ref-17)
18. This clause can be removed where this is no Developer [↑](#footnote-ref-18)
19. Delete this reference before submitting to the City Council. Further please remove the yellow highlighting within the attestation clauses and insert the relevant details in Bold please [↑](#footnote-ref-19)
20. Where a signatory is signing under a Power of Attorney please provide a copy of the Power of Attorney to the City Council when submitting this draft with your application [↑](#footnote-ref-20)