**Date**

**Landowners full name**

**And**

**Developers full name**

**And**

**Lender's Full Name**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**UNILATERAL UNDERTAKING**

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

**Land at** **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**IN FAVOUR OF CITY OF BRADFORD METROPOLITAN DISTRICT COUNCIL**

This **UNDERTAKING** is made on the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ two thousand and ……… by:-

1.0 Full name and address of the landowner (‘the Owner’) and

1.1 Full name and address of the developer (‘the Developer’)

1.2 Name and address of the financial institution with any outstanding loan on the land\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (‘the Lender’)

2.0 **TO CITY OF BRADFORD METROPOLITAN DISTRICT COUNCIL** of City Hall, Bradford, West Yorkshire, BD1 1HY (‘the Council’)

3.0 **RECITALS**

3.1 This **UNILATERAL UNDERTAKING** relates to land at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in the Bradford District edged red on the attached Plan A (‘the Land’)

3.2 The Owner is the freehold owner of the Land registered with the title absolute under title number(s) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

3.3 The Council is the Local Planning Authority by whom the obligations contained in this Deed are enforceable

3.4 The Lender has a charge over the Land dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

3.5 The Owner has made the Planning Application to the Council

3.6 The Council has not yet determined the Planning Application and the Owner enters into this UNDERTAKING the obligations of which are only enforceable following a grant of the Planning Permission (see Definitions) for the Development

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4.0 DEFINITIONS

|  |  |
| --- | --- |
| **the Act** | Means the Town and Country Planning Act 1990 as amended |
|  |  |
| **Development** | Means the development of the Land as described in the Planning Application and in accordance with the Planning Permission |
|  |  |
| **Commencement of Development****and** **Commencement Date** | 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 |
| **“Commencement Notice”** | means the notice served pursuant to clause 2.5. of Schedule 1 hereto a copy of which is attached to this Deed in Schedule 2  |
|  |  |
| **Dwelling** | Means a building or part of a building designed for residential occupation by a single household and "Dwellings" shall be construed accordingly |
|  |  |
| **First Occupation**  | Means first occupation of any Dwelling but does not include temporary occupation for the purposes of construction fitting out or marketing and "First Occupy" shall be construed accordingly |
|  |  |
| **Habitat Mitigation Contribution** | Means the sum of **£375.61** or in relation to a planning permission for more than one Dwelling the sum of **£375.61** per Dwelling (Index Linked) to be paid to the Council as a contribution towards non-infrastructure measures to mitigate the impacts of the Development on the South Pennine Moors Special Protection Area |
|  |  |
| **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 Undertaking and the date of payment |
|  |  |
| **Interest Rate** | Means the rate of 4% above Base Rate of the National Westminster Bank PLC from time to time being charged from the date of demand until payment is made  |
|  |  |
| **Land** | Means land situated at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shown edged red on Plan A |
| **Monitoring Fee** | means the sum of **£100.00** (one hundred pounds) in respect of the monitoring of compliance with the terms of this Deed by the Planning Obligations Monitoring Officer; |
|  |  |
| **Planning Application**  | Means the application for planning permission submitted to the Council for the Development and given reference number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **Planning Obligations Monitoring Officer** | means the officer employed by the Council who is designated from time to time with the monitoring functions in relation to planning obligations under Section 106 of the 1990 Act |
|  |  |
| **Planning Permission** | Means planning permission to be granted by the Council pursuant to the planning application or by the Secretary of State on appeal. |
| **Reserved Matters** | Means those matters remaining to be approved by the Council in relation to the Planning Permission pursuant to Article 6 of The Town and Country Planning (Development Management Procedure) (England)Order 2015  |
| **South Pennine Moors Special Protection Area** | Means the area of the South Pennine Moors within the District of the Council shown edged Red on Plan 1. |

5.0 INTERPRETATION

5.1 Nothing in this Undertaking shall be or shall be construed to be a fetter or restriction on the proper exercise at any time by the Council of any of its statutory powers functions or discretions in relation the Land or otherwise

5.2 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

5.3 Words imparting the singular meaning shall unless the context otherwise requires include the plural and vice versa and where there is more than one covenantor all obligations of such covenantors shall be joint and several

5.4 The masculine feminine and neuter genders include each of the other genders and words denoting persons shall include corporations and vice versa

5.5 A reference to any Clause or Schedule (or any part of them) is unless the context otherwise requires a reference to a Clause or Schedule (or any part of them) contained in this Undertaking

5.6 A reference to an Act of Parliament or Statutory Instrument refers to the Act or Statutory Instrument as it applies at the date of this Undertaking SAVE THAT in the event any such Act or Statutory Instrument is consolidated amended or re-enacted then any reference to such Act or Statutory Instrument refers to that Act or Statutory Instrument as consolidated amended or re-enacted from time to time

5.7 References to any party in this Undertaking shall include the successors in title and assigns of that party and in the case of the Council includes any successor local planning authority exercising planning powers under the Act

5.8 The provisions of the Schedule shall be deemed imported into the operative parts of this Undertaking

6.0 THE OWNER AND THE DEVELOPER UNDERTAKE AS FOLLOWS**: -**

6.1 This UNDERTAKING is made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 and all other enabling powers and any enactments replacing or superseding the same with the intent to bind the Owner's interests in the Land and with the intent that the obligations herein contained shall be planning obligations

6.2 The planning obligations contained in the Schedule to this Undertaking are enforceable by the Council

6.3 Nothing in this Undertaking is or amounts to or shall be construed as a Planning Permission or approval

6.4 The Owner and the Developer (with the concurrence of the Mortgagee) hereby covenants with the Council to observe and perform the restrictions stipulations and requirements specified in this Undertaking and the Schedule thereto

6.5 The Lender hereby consents to the execution of the Undertaking and acknowledges that subject as herein provided the Land shall be bound by the restrictions and obligations contained in the Schedule to this Undertaking save that the Lender shall not be liable for any breach of the obligations in this deed committed or continuing at a time when they are not in possession of all or any part of the Land

6.6 The Owner recognises that this planning obligation is a Local Land Charge and registerable as such in the Register of Local Land Charges maintained by the Council

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

6.8 If the Planning Permission should expire (without being renewed or extended) before the Development is Commenced or shall at any time be revoked this Undertaking shall forthwith determine and cease to have effect

6.9 Where in this Undertaking the Owner is required to comply with any requirement prior to First Occupation the Owner shall not First Occupy nor permit any other person to Occupy any of the Dwellings before the said requirement has been satisfied

6.10 For the purposes of the obligation the Owner shall be deemed to have Commenced the Development pursuant to the Planning Permission if they Commence works referable to the Development amounting to a material operation as defined in Section 56(4) of the Act (not being works for which planning permission is not required) on the Land whether or not: -

 (i) The Planning Permission has been issued;

(ii) The Owner has satisfied all conditions precedent to commencement set out in the Planning Permission; or

(iii) Those works are in accordance with the Planning Permission

6.11 It is acknowledged that: -

(i) The obligations contained in this Undertaking shall take effect upon the Commencement of the Development

(ii) No person shall be liable for breach of an obligation or covenant contained in this Undertaking after he shall have parted with all interest in the Land 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

**7.0** FURTHER PERMISSION

**7.1**  In the event that an application is made pursuant to Section 73 of the 1990 Act for an amendment to the Planning Permission and planning permission is granted in respect of the application (and the Council is satisfied in its absolute discretion that no revised planning obligations are required as a result of such amendment) references to Planning Permission in this Agreement shall be to both the Planning Permission and any new planning permission granted pursuant to Section 73 of the 1990 Act and this Agreement shall apply to and remain in full force in respect of that new planning permission without the need for a further agreement to be entered into pursuant to Section 106 of the 1990 Act.

# SCHEDULE 1

**MONITORING FEE**

1. To pay the Monitoring Fee to the Council upon the Commencement of Development and not to Commence the Development without having first paid the Monitoring Fee to the Council**.**

**HABITATS MITIGATION CONTRIBUTION**

The Owner and the Developer for themselves and their successors in title to the Land covenant as follows:

* 1. Not to cause or permit First Occupation of the Development until the Habitat Mitigation Contribution has first been paid to the Council
	2. In relation to a planning permission for a number of Dwellings in excess of 25 the payment of the Habitat Mitigation Contribution shall be phased in accordance with the following formula and a percentage of Dwellings above the limits specified below shall not be Occupied until the corresponding percentage of the Habitat Mitigation Contribution is paid to the Council;
1. 26 - 149 Dwellings; Full payment within 3 months of the Commencement Date or prior to the Occupation of 50% of the Dwellings whichever occurs first.
2. 150 - 299 Dwellings; Full payment within 6 months of the Commencement Date or prior to the Occupation of 50% of the Dwellings whichever occurs first.
3. 300 plus Dwellings;
	1. The first instalment of 25% at 6 months from the Commencement Date or prior to the Occupation of 20% of the Dwellings whichever occurs first
	2. The second instalment of 25% at 12 months from the Commencement Date or prior to the Occupation of 40% of the Dwellings whichever occurs first
	3. The third instalment of 25% at 18 months from the Commencement Date after the commencement date or prior to the Occupation of 60% of the Dwellings whichever occurs first
	4. The final instalment of 25% at 24 months from the Commencement Date or prior to the Occupation of 80% of the Dwellings whichever occurs first.
	5. In the event of the Owner or Developer failing to settle any account or accounts that may be properly and duly rendered to the Owner within fourteen days of despatch to the Owner the sum due shall accrue interest at the Interest Rate.
	6. In relation to an Outline Planning Permissions the number of Dwellings for the purposes of this Schedule shall be determined by the approval of Reserved Matters.
	7. The Owner shall notify the Council in writing utilising a completed Commencement Notice within 14 days of the following events:
4. The Commencement of the Development
5. The Occupation of the first Dwelling
6. The Occupation of 50% of the Dwellings
7. The transfer of the ownership of all or part of the Owners interest in the Land (excluding the transfer of an interest in an individual Dwelling)

# SCHEDULE 2

Annex 1

**Commencement Notice**

To : BRADFORD METROPOLITAN DISTRICT COUNCIL, Planning Obligations Monitoring Officer, 4th Floor, Britannia House, Bradford, BD1 1HX

Planning application number:­­­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[to be completed in full]

Section 106 dated:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[to be completed in full]

Development Site Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[to be completed in full]

In accordance with the terms of the above section 106 Agreement, I GIVE YOU NOTICE that the following event has been reached (please complete as appropriate)

(1) this notification should be sent at no later than 14 after the commencement of works on the Development Site as required under Clause 2.5 of the Section 106 Agreement

Work commenced on the Development Site on\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[insert date]

The Occupation of the first Dwelling occurred on\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[insert date]

(where more than a single dwelling is being developed) The Occupation of 50% of the Dwellings occurred on\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[insert date]

The transfer of the ownership of all or part of the Owners interest in the Land (excluding the transfer of an interest in an individual Dwelling) occurred on\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[insert date]

From :

Company :

Address (required for invoicing):

Email address:

Please send this notification to:

By email: developercontributions@bradford.gov.uk (preferred option)

By post: Planning Obligations Monitoring Officer

Planning Service

4th Floor Britannia House

Hall Ings

Bradford

BD1 1HX

IN WITNESS of which this Planning Obligation has been duly executed as a Deed on the date and year first before written

**[Attestation Clauses – use the following variations as appropriate]**

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

# CHECKLIST

1. CHECKLIST

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

(a) Front Page:

i. Landowner's full name

ii. Developer's and Lender's full name if they are a party (Lender only need to be a party where a mortgage is revealed in the charges register of Land registry title document).

iii. Details of any additional owners, developers or lenders as appropriate

iv. Site address

(b) Page 1:

i. The year at the first line

ii. Names and addresses of the owner(s), Developer(s) and any lenders who are parties to the Undertaking at paragraphs 1.0-1.2

iii. The site address at paragraph 3.1

iv. The title number(s) at paragraph 3.2

v. The date of the charge(s) at paragraph 3.4

(c) Page 2:

The correct sum in the definition of Habitat Mitigation Contribution

The site address in the definition of Land .

The application reference number in the definition of Planning Application

The detail of the South Pennine Moors Protection Area (should be pre inserted in all UUs)

(d) Page 5

i. insert threshold of Dwellings for phased payment of Habitat Mitigation Contribution (could change this to **above 25** Dwellings but whatever threshold we agree on should be pre inserted in all UUs)

ii. Insert the deadline re the second/final payment of the Habitat Mitigation Contribution

(d) Page 6:

i. 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:

(a) Page 1: Entire paragraph 1.1, and references in paragraphs 3.5 and 3.6

(b) Page 3: References in heading 6.0 and paragraphs 6.4.

(c) Page 5: References in the first sentence and paragraph of Schedule 1.

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

(a) Page 1: Entire paragraphs 1.2 and 3.4

(b) Page 3: the entire paragraph 6.5

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

(a) Their interests and status are correctly recorded in the Recitals at page 1;

(b) References to the parties are appropriately amended to ensure that they are all correctly referred to and bound by the Undertaking; and

(c) 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.

6. Page 2 Check that Plan A (referred in in the definition of “Land”) 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 (this is unlikely to arise).

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

