

UNILATERAL UNDERTAKING under Section 106 Town and Country Planning Act 1990

Site:

Planning Application reference:

THIS UNDERTAKING is given on 200

BY

(1) PARTY 1
[(company registration number) whose registered office is at] of

(‘the First Landowner’/Landowner’); and

(2) PARTY 2 [if applicable] of

(‘the Second Landowner/Lender’);

IN FAVOUR OF

TENDRING DISTRICT COUNCIL of Council Offices, Thorpe Road, Weeley, Clacton-on-Sea, Essex CO16 9AJ (‘the Council’)

BACKGROUND

- (A) For the purposes of the 1990 Act, the Council is the local planning authority for the area within which the Site is located and the authority by whom the obligations in this Undertaking are enforceable.
- (B) The Landowner is the freehold owner of the whole of the Site [subject only to the Security but otherwise] free from encumbrances which would prevent the Landowner from entering into this Undertaking.
- (C) *[The Lender is the holder of a legal charge in respect of the Site and as such has an interest in the Site within the meaning of Section 106 of the 1990 Act]*
- (D) *By executing this Undertaking the Lender has consented to the Landowner binding the Site by the giving of the planning obligations contained in this Undertaking]*
- (E) A planning application reference number [] has been made to the Council for the Development on the Site
- (F) This undertaking is given to the Council to secure the payment of the Public Open Space Contribution

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 In this Undertaking, the following words and expressions have the following meanings:

“1980 Act” means the Highways Act 1980

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

“Commencement of Development” means the implementation of the Planning Permission by the carrying out of a material operation described in Section 56 of the 1990 Act and “Commence the Development” shall mutatis mutandis be construed accordingly

“Commencement Date” means the date of Commencement of Development

“Development” means

in accordance with the planning permission

“Dwelling” means a house or self-contained flat comprising part of the Development

“Index” 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

“Index-Link(ed)” means increase(d) to reflect any increase in the Index during the period from and including the date of approval of the first Reserved Matters to and including the date of actual payment

“Notice of Commencement” means notice in writing to advise of the Commencement Date

“Party” means a party to this Undertaking and specifically includes the Council in its capacity as the beneficiary of this Undertaking.

“Plan” means the plan attached to this Undertaking

“Occupation” means occupation in accordance with the Planning Permission except for the construction of the Development and **“Occupy”** and **“Occupied”** shall be construed accordingly

“Planning Application” means the planning application submitted to the Council under reference [] and for the avoidance of doubt for the purposes of this Undertaking the term “Planning Application” shall subject to the written confirmation of the Council to be given prior to the determination of any planning applications that may follow include any application(s) to vary or renew the Planning Permission or any application(s) for reserved matters approval, provided that such application(s) shall not increase the number of Dwellings and relate substantially to the same development of the Site as is proposed under the aforementioned application reference number

“Planning Permission” means planning permission (with conditions) granted pursuant to the Planning Application

“Reserved Matters” means the details for the Development reserved by the Planning Permission for later determination by the Council as local planning authority

“Security” means a [debenture][legal charge][mortgage] of the Site [and other property] dated [] made between (1) the Landowner and (2) the Lender

“Site” means the freehold property known as

[registered at HM Land Registry under Title Number EX
edged red on the Plan

shown for identification

1.2 In this Undertaking:

1.2.1 the clause headings do not affect its interpretation;

1.2.2 where in this Undertaking reference is made to a clause, paragraph, schedule, plan, drawing or recital, such reference (unless the context requires otherwise) is to a clause, paragraph, schedule, plan, drawing or recital of or (in the case of a plan or drawing) attached to this Undertaking;

1.2.3 Any reference to a statute a provision thereof a statutory instrument or such Specification Code of Practice or General Direction as is issued under statutory authority or by a Secretary of State shall include any modification extension or re-enactment thereof for the time being in force and shall include all instruments orders plans regulations permissions and directions for the time being made issued or given thereunder or deriving validity therefrom

1.2.4 references to the Site include any part of it;

1.2.5 references to any Party include the successors in title of that Party

1.2.6 “including” means “including, without limitation”;

1.2.7 any covenant by a Party not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing;

1.2.8 where two or more persons form a Party the obligations of that Party may be enforced against those persons jointly and severally and where the Landowner and the Developer are different persons obligations given by either shall be deemed to be given jointly and severally by both; and

1.2.9 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Undertaking shall be unaffected.

1.3 The Parties do not intend that any of the terms of this Undertaking will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party.

1.4 The Landowner acknowledges that any payment that is due to the Council under the terms of this Undertaking that is made later than the date such payment is due shall attract interest at the Bank of England base lending rate from the date payment was due until the date payment is received by the Council

2. **EFFECT OF THIS UNDERTAKING**

2.1 This Undertaking is made pursuant to section 106 and (where applicable) 299A of the 1990 Act. To the extent that they fall within the terms of the said sections, the obligations in this Undertaking are planning obligations for the purposes of those sections and are enforceable by the Council

- 2.2 This Undertaking shall be registered as a local land charge by the Council against the Site in accordance with Section 106 (11) of the 1990 Act.
- 2.3.1 This Undertaking is entered into in respect of the Site with the intent that it shall bind the Landowners freehold interest in the Site and the interest of the Lender in the Site
- 2.3.2 This Undertaking shall be binding on all successors in title and assigns of the Landowner and the Lender and any person claiming under or through them
- 2.4 The obligations in this Undertaking on the part of the Landowner or the Developer shall not be enforceable against a statutory undertaker in respect of any of the Site for the time being vested in it.
- 2.5 Nothing in this Undertaking amounts to or shall be construed as a planning permission or approval
- 2.6 If the Planning Permission shall expire before the Commencement Date or shall at any time be revoked this Undertaking shall forthwith determine and cease to have effect but without prejudice to any of the covenants that arise to be performed prior to any such expiration or revocation

3. **COMMENCEMENT DATE**

- 3.1 This Undertaking has immediate effect but the covenants contained in this Undertaking shall not take effect until the Planning Permission has been granted.

4. **OBLIGATIONS OF THE PARTIES**

- 4.1 The Landowner covenants with the Council to observe and perform the obligations in the Schedule to this Undertaking
- 4.2 The Landowner covenants with the Council to serve on the Council a Notice of Commencement (marked for the attention of the Council's Legal Agreements Manager) not less than fourteen (14) days prior to the Commencement of the Development
- 4.3 No person shall be liable for any breach of the terms of this Undertaking occurring after the date on which they part with their interest in the Site or the part of the Site in respect of which such breach occurs except to the extent that they have caused or contributed to that breach, but they will remain liable for any breaches of this Undertaking occurring before that date. Neither the reservation of any rights nor the inclusion of any covenants or restrictions over the Site in any transfer of the Site shall constitute an interest for the purposes of this clause.

5. **[LENDER'S CONSENT]**

- 5.1 [The Lender consents to this Undertaking with the intention that, notwithstanding section 104 Law of Property Act 1925, its interest in the Site shall be bound by the terms of this Undertaking as if it had been executed and registered as a local land charge before the execution of the Security.
- 5.2 Notwithstanding clause 5.1, the Lender shall not incur any liability for any breach of the obligations contained in this Undertaking unless and until it becomes a mortgagee in possession of the Site or appoints a receiver or administrative receiver under the Security.]

6. **NOTICES**

- 6.1 Any notice, demand or any other communication served under this Undertaking will be effective only if given in writing and delivered by hand, post, fax or e-mail.
- 6.2 Notices to the Council it shall be marked for the attention of the Legal Agreements Manager, Tendring District Council, Council Offices, Weeley, Clacton –on-Sea, Essex CO16 9AJ or such other recipient and address as notified in writing.

7. **COSTS OF THIS UNDERTAKING**

On or before the entering into of this Undertaking the Landowner shall pay to the Council a contribution of £325 towards the Councils administration costs of monitoring the performance of the planning obligations that the Landowner is required to observe and perform pursuant to the terms of this Undertaking

8. **DETERMINATION OF DISPUTES**

- 8.1 Wherever there is any dispute under the terms of this Undertaking which shall not be resolved within one month of any party having notified the others that such dispute exists any party shall have the right to refer the same to the decision of an independent expert (to act as an expert and not as an arbitrator in the absence of contrary agreement by the parties in dispute) with relevant professional expertise and agreed between the parties in dispute or (in absence of such agreement) to be appointed by the President for the time being of the Chartered Institute of Arbitrators (or other appropriate President of a professional institute with expertise in the relevant discipline as agreed between the parties in dispute) Such expert shall be required to give each party the opportunity to make representations to him and to comment on the representations of one another and shall be required to deliver his decisions in writing and supported by reasons within 8 weeks of his appointment His decision shall be binding on the parties save in the case of manifest error and the parties shall bear his fees in equal shares unless he awards otherwise

9. **JURISDICTION**

The applicable law for this Undertaking shall be English law.

10. **EXECUTION**

This Undertaking has been executed as a deed and it is delivered on the date set out above.

SCHEDULE

PUBLIC OPEN SPACE

1. **Defined terms**

In this Schedule, in addition to the words and expressions in Clause 1 of this Undertaking the following words and expressions have the following meanings:

“District Projects” means projects in the District of Tendring that are for the benefit of all persons residing in the District of Tendring and which projects include the provision and/or improvement

and/or maintenance of sport and recreation facilities such as swimming pools and indoor leisure facilities

“Public Open Space Contribution”

means a sum of money to be paid to the Council and which sum of money shall be the product of the Public Open Space Contribution Calculation

“Public Open Space Contribution Calculation”

means the calculation to produce the Public Open Space Contribution and which calculation shall depend on the number of Dwellings to be constructed as part of the Development and be in accordance with the version of Table 4 of the Council Supplementary Planning Document “Provision of Recreational Open Space for New Development” that is in force and approved by the Council at the date of the approval of the first Reserved Matters

“Public Open Space Contribution Purposes”

means the use of the Public Open Space Contribution towards both (a) the provision and/or improvement and/or maintenance of an area or areas of public open space and facilities thereon either in the parish ward or catchment area corresponding with the Development: and (b) the “District Projects”

2. Payment of the Contribution

2. The Landowner and (where applicable) the Developer covenants and undertakes with the Council:
- 2.1 To inform the Councils Legal Agreements manager of the date of approval of the first Reserved Matters and to request a copy of the version of Table 4 of the Council Supplementary Planning Document “Provision of Recreational Open Space for New Development” that is in force and approved by the Council at that date
 - 2.2 Not to Commence the Development before carrying out the Public Open Space Contribution Calculation and agreeing the amount of the Public Open Space Contribution with the Council
 - 2.3 To Index Link the Public Open Space Contribution
 - 2.4 To pay to the Council the Public Open Space Contribution before Commencement of the Development and not to Commence the Development unless and until the said Public Open Space Contribution has been paid to the Council PROVIDED THAT the Public Open Space Contribution is given strictly on the condition that:
 - 2.4.1 the Council will use the Public Open Space Contribution towards the Public Open Space Contribution Purposes
 - 2.4.2 the Council will use no more than ten percent (10%) of the Public Open Space Contribution towards the District Projects

2.4.3 the Landowner shall be entitled to request in writing that the Council returns to the Landowner any unused part of the Public Open Space Contribution (plus interest that has accrued on that unused part) on the twentieth (20th) anniversary of the date that the Council received the said Public Open Space Contribution PROVIDED THAT if such request has not been served on the Council within 6 months of the said 20th anniversary then the Council may retain and use such unused part of the said contribution for Public Open Space Contribution Purposes

THE COMMON SEAL of

[.....LIMITED/plc]

was affixed to this deed in the presence of:

Director

Director / Secretary

EXECUTED as a deed by the above-named

[.....LIMITED/plc]

acting by a director and its secretary

or two directors

Director

Director / Secretary

SIGNED as a deed on behalf of

[.....LIMITED/plc]

a company incorporated in [.....]

by [.....]

being [a person][persons] who, in accordance with the laws of that territory, [is][are]

acting under the authority of the company:

Authorised signatory

Authorised signatory

SIGNED as a deed by the above-named
[.....]

in the presence of:

Witness' signature:

Name:

Address:

Occupation:

SIGNED as a deed by the above-named
[.....]

in the presence of:

Witness' signature:

Name:

Address:

Occupation: