

DATED

20

(Insert Owner details) (1)

(Insert Developer details) (2)

[(Insert Mortgagee details) (3)]

UNILATERAL UNDERTAKING
pursuant to section 106
of the Town and Country Planning Act 1990 (as amended)
relating to the proposed development of land at
[insert details of the Site]

Director of Democratic and Legal Services
Scarborough Borough Council
Town Hall
St Nicholas Street
Scarborough
YO11 2HG

THIS UNDERTAKING is made the day of 20

BY: -

(1) *(insert details)*

(“the Owner”)

[(2) *Insert details of any other interested party e.g. Developer*

(“the Developer”)]

[(3) *Insert details of mortgage company)*

(“the Mortgagee”)]

[NB - If the Owner is a company a Surety may be required]

IS GIVEN TO:-

SCARBOROUGH BOROUGH COUNCIL of Town Hall St Nicholas Street
Scarborough North Yorkshire YO11 2HG (“the Council”)

WHEREAS:

(A) The Council is the Local Planning Authority for the purposes of the Act for the area within which the Land is situated and by whom the obligations contained in this Deed are enforceable.

(B) The Owner is registered at the Land Registry as proprietor of the Land with title absolute Title Number ***[insert details]***.

[(C) The Developer has an interest in the Land by way of a [insert details] dated [insert date] and made between the Owner and the Developer]

[(D) The Mortgagee has an interest in the Land by way of a registered charge dated [insert date] and made between the Mortgagee and the Owner]

- (E) The Owner submitted the Planning Application to the Council for permission under the Act to carry out the Development on the Land
- (F) The Council resolved on [**INSERT DETAILS**] to grant the Planning Permission for the Development subject to the giving of this Undertaking without which Planning Permission would not be granted.

OR

The Council is minded to grant the Planning Permission for the Development subject to the giving of this Undertaking without which Planning Permission would not be granted

- (G) The Owner by entering into this Deed does so to create planning obligations in favour of the Council pursuant to Section 106 of the Act and to be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained on the terms of this Deed.

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Undertaking the following words and expressions shall where the context so requires or admits have the following meanings: -

“Act” means the Town and Country Planning Act 1990 (as amended);

“Affordable Housing” has the meaning given to it in Annex 2 of the “National Planning Policy Framework” published by the Department for Communities and Local Government

“Affordable Housing Contribution” means the sum of £ (pounds) (Index Linked) to be paid towards the cost of the provision of Affordable Housing within the

Borough

“Commencement of Development”

means the date upon which the Development shall commence by the carrying out on the Owners Land pursuant to the Planning Permission of a material operation as specified in Section 56(4) of the Act **save that** the term “*material operation*” shall not include operations in connection with any work of or associated with demolition site clearance remediation works environmental investigation site and soil surveys erection of contractors work compound erection of site office or erection of fencing to site boundary and reference to “**Commence Development**” shall be construed accordingly;

“Development”

means the development to be carried out on the Owners Land pursuant to the Planning Permission;

“Index”

means the Building Costs Information All in Tender Price Index published by the Royal Institution of Chartered Surveyors (or contained in any official publication substituted therefore) or such other index as may from time to time be published in substitution thereof;

“Index Linked”

means increased on an annual basis or pro rata per diem from the date of this Deed until such time that payment of any sum in this Deed is made such index linking to be equivalent to any inflationary increase in such sums taking as the basis for the measure of

inflation the Index last published before the date of this Deed or any publication substituted for it;

“Interest”

means interest at the rate of 2% above the base lending rate of the Bank of England in force at the due date which shall mean the date when interest first becomes payable;

“Land”

means the land at *[insert details]* shown edged red on the Plan

“Monitoring Fee”

means the sum of [£ (pounds)] (Index Linked) to be paid towards the Council’s reasonable costs of monitoring compliance with the obligations in this Deed;

“Occupation”

means the beneficial occupation for the purpose for which a Dwelling was granted planning permission but shall exclude occupation for the purposes of decoration, fit out or marketing and reference to “**Occupy**” and “**Occupied**” shall be construed accordingly;

“Plan”

means the plan attached hereto

“Planning Application”

means the application for planning permission validated by the Council on *[date]* and allocated reference number *[insert planning reference no.]*;

“Planning Permission”

means the planning permission to be issued by the Council pursuant to the Planning Application

“Working Day”

means any day except Saturdays Sunday or a bank holiday and reference to **“Working Days”** shall be construed accordingly.

2 CONSTRUCTION OF THIS UNDERTAKING

- 2.1 Where in this Undertaking reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Undertaking.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act 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 under that Act or deriving validity from it.
- 2.6 References to any party to this Undertaking shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successor to its statutory functions.
- 2.7 The headings are for reference only and shall not affect construction.

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act and all other powers so enabling.
- 3.2 The covenants, restrictions and requirements on the part of the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner and any person deriving title under him

4 CONDITIONALITY

- 4.1 The planning obligations contained in this Deed shall not become effective until the following conditions are satisfied: -
- 4.1.1 the Planning Permission has been granted; and
- 4.1.2 unless otherwise stated the Commencement of Development
- save for the provisions of clauses 6.1, 7, 10, 14 and 15 which shall come into effect immediately upon the giving of this Undertaking.

5 THE OWNER'S [AND DEVELOPER'S] OBLIGATIONS

The Owner *[and Developer]* covenants with the Council so as to bind the Land to perform and observe the obligations specified in the Schedule

6. MISCELLANEOUS

- 6.1 The Owner shall pay to the Council on the date of this Undertaking the sum of £ [?] ([?] pounds) being a contribution to the reasonable legal costs of the Council
- 6.2 This Deed does not nor is intended to confer a benefit on a third party within the meaning of the Contracts (Rights of Third Parties) Act 1999.
- 6.3 This Deed shall be registrable as a local land charge by the Council.

- 6.4 Following the performance and satisfaction of all the planning obligations contained in this Deed the Council shall following receipt of a written request forthwith effect the cancellation of all related entries in the Register of Local Land Charges in respect of this Deed.
- 6.5 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 6.6 Insofar as any clause or clauses of this Deed are found (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.
- 6.7 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 6.8 The covenants contained in this Deed shall not be enforceable against a statutory undertaker holding an interest in the Land for the purposes of his or its undertaking
- 6.9 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 6.10 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

6.11 Any notice agreement consent acknowledgment or approval required to be given under this Deed shall not be unreasonably withheld or delayed and shall be in writing and shall be delivered personally or sent by pre-paid first class recorded delivery post or facsimile transmission.

6.12 The address for service of any such notice consent acknowledgment or approval as aforesaid shall: -

6.12.1 in the case of service upon the Council be at its address aforesaid or such other address for service as shall have been previously notified by the Borough Council; and

6.12.2 in the case of service upon the Owner, be the registered offices or such other address for service as shall have been previously notified by the Owner to the Council.

6.13 A notice agreement consent acknowledgment or approval under this Deed shall be deemed to have been served as follows: -

6.13.1 if personally delivered at the time of delivery;

6.13.2 if posted at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom;

6.13.3 if sent by facsimile transmission at the time of successful transmission on the day of transmission if sent before 3.30pm otherwise the following working day;

and in proving such service it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice consent or approval was properly addressed and delivered into the custody of the postal authority in a pre-paid or recorded delivery envelope (as appropriate) or that the facsimile was successfully transmitted on a tested line as the case may be.

7 DISPUTE RESOLUTION

Any dispute under or arising out of the operation of this Undertaking may be referred to a single arbitrator if all parties to the dispute shall agree such arbitrator or in default of agreement to be nominated (upon the application of any party to the dispute) by the President for the time being of the Law Society in accordance with and subject to the provisions of the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force

[8 MORTGAGEE'S CONSENT

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

9 WAIVER

No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

10 CHANGE IN OWNERSHIP

The Owner agrees to give the 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.

11 INDEXATION

Any sum to be paid to the Council in accordance with the Schedule shall be Index Linked.

12 INTEREST

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

13 VAT

The amount of all considerations, contributions and payments referred to in this Deed shall be increased by any value added tax properly payable on the consideration, contribution or payment.

14 JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

15 DELIVERY

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

EXECUTED as a Deed and delivered the day and year first before written.

SCHEDULE
(Owner's [and Developer's] Covenants)

The Owner **[and the Developer]** covenant**[s]** with the Council as follows: -

1. To notify the Council in writing seven Working Days prior to the Commencement of Development

2. To pay the following sums to the Council on or before the Commencement of Development:-
 - 2.1 The Affordable Housing Contribution;
 - 2.2 The Monitoring Fee;

[suitable attestation clauses to be added]

EXECUTED as a DEED by *[the Owner]*

in the presence of :-

EXECUTED as a DEED by *[the Developer]*

in the presence of :-

[EXECUTED as a DEED by *[the Mortgagee]*

in the presence of :-]