

**DATED**

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**UNILATERAL UNDERTAKING**

**By**

(1)

**And**

(2)

**To**

(3) **FENLAND DISTRICT COUNCIL**

Unilateral Undertaking given under  
Section 106 Town & Country Planning Act 1990  
relating to

Planning Ref:

**THIS DEED** is given the

day of

202

**BY**

1) of ("the Owner")

[AND]

2) (Co Regn. No.)

of ("the Mortgagee")

**TO**

3) **FENLAND DISTRICT COUNCIL** of Fenland Hall, County Road, March,  
Cambridgeshire, PE15 8NQ ("the Council")

**RECITALS**

- (A) The Council is the local planning authority for the purposes of the 1990 Act for the area within which the Site is situated and by whom the obligations and covenants contained in this Deed are enforceable.
- (B) The Council is the housing authority for the purposes of the Housing Act 1985
- (C) The Council is the local authority for the purposes of the 1972 Act and the 2011 Act
- (D) The Owner is the freehold owner of the Site which is registered at HM Land Registry under title number subject to a registered charge dated in favour of the Mortgagee].
- (E) To facilitate the Development the Owner has agreed to enter into this Deed to ensure that the Dwelling is secured as a Custom and Self-Build Unit and to secure the relevant infrastructure and rights that accompany the Custom and Self-Built Unit
- (F) The Owner in entering into this Deed does so to create planning obligations pursuant to section 106 of the 1990 Act in respect of their interest in the Site and the Owner agrees to be bound by and to observe and perform the covenants agreements conditions and stipulations hereinafter contained on the terms of this Deed

## **OPERATIVE PART**

### **NOW THIS DEED WITNESSETH AS FOLLOWS:**

#### **1. DEFINITIONS AND INTERPRETATION**

1.1. In this Deed the following terms and expressions shall have the following meaning:

"1972 Act"	means The Local Government Act 1972 (as amended)
"1990 Act"	means The Town and Country Planning Act 1990 (as amended)
"2008 Act"	means The Housing and Regeneration Act 2008 (as amended)
"2011 Act"	means The Localism Act 2011
"Commencement of Development"	means the date upon which the Development shall commence by the carrying out upon the Site pursuant to the Planning Permission of a material operation (as defined in Section 56(4) of the 1990 Act) other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements, erection of contractor work compounds, the provision of security measures or lighting or the provision of construction compounds and "Commencement" shall be construed accordingly

“Custom and Self-Build Plot”	means the Plot that is sold by the Owner to a Custom and Self-Build Purchaser with the sole intention that the Custom and Self-Build Purchaser will construct on that Plot a Dwelling that is to be a Custom and Self-Build Unit.
“Custom and Self-Build Purchaser”	means a bona fide purchaser of the Plot who has the sole intention of purchasing the Plot to build a Custom and Self-Build Unit thereon
“Custom and Self-Build Units”	means a Dwelling built pursuant to the Custom and Self-Build scheme/project and “Custom and Self-Build Unit” shall be construed accordingly
“Custom and Self-Build”	means the building of a dwelling by an individual/association of individuals/persons working with or for individuals or associations of individuals and that dwelling is to be occupied as a home by those individuals in accordance with section 1 of the Self-Build and Custom Housebuilding Act 2015 (or such other replacement or successor legislation)
“Development”	means the development the subject of the Planning Permission
“Dwelling”	means the dwelling (whether a house flat bungalow or maisonette) approved for construction pursuant to the Planning Permission

“Occupation”	means occupation of the Development for the purposes permitted by the Planning Permission but not including the occupation by personnel engaged in construction, fitting out or decoration, or occupation for marketing or display, or occupation in relation to security operation and "Occupied" and "Occupier(s)" shall be construed accordingly.
“Plan”	means the Plan annexed to this Deed at Schedule One.
“Planning Application”	means the planning application for  which has been allocated the Council’s reference number.
“Planning Permission”	means the planning permission issued pursuant to the Planning Application.
“Plot”	means the plot approved by the Planning Permission and/ or as further approved by the Council via a Reserved Matters Approval.
“Reserved Matters Approval”	means the Council's approval to an application for Reserved Matters pursuant to the Planning Permission.

“Serviced Site”	means a site that is remediated to an appropriate standard to allow a Custom and Self-Build Purchaser to construct a Dwelling on the Plot and without the presence of contamination or protected species, with all necessary and safe access rights, and a supply of electricity, potable water, foul and storm drainage, telecommunications, broadband internet and any other services of infrastructure appropriate to each Plot.
“Site”	means the land shown edged red on the Plan.
“Statutory Undertaker”	means any company corporation board or authority at the date of this Deed authorised by statute to carry on an undertaking for the supply of telephone and television communications electricity gas water or drainage and any authorised successor to any such undertaking.
“Working Day”	any day from Monday to Friday (inclusive in each week except for Statutory holidays and any day in the period from Christmas Eve to New Year’s Day (inclusive)).

- 1.2. Where in this Deed reference is made to any clause paragraph schedule plan or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph schedule recital or plan in this Deed.
- 1.3. Clause headings are for reference only and shall not affect the interpretation of this Deed.
- 1.4. Where in any schedule or part of any schedule reference is made to a paragraph such reference shall (unless the context requires otherwise) be to a paragraph of that schedule or (if relevant) part of that schedule.
- 1.5. References to any party to this Deed shall include reference to their successors in title and assigns and to persons claiming or deriving title through or under them except where stipulated otherwise.
- 1.6. Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 1.7. 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.
- 1.8. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.9. 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 against each individually unless there is an express provision otherwise.
- 1.10. An obligation in this Deed on a party not to do something includes an obligation not to agree, allow or suffer that thing to be done or procure the doing of that act or thing.
- 1.11. 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.
- 1.12. A reference to this Deed or any other agreement or document referred to in this Deed is a reference to this Deed or such other document or deed as varied or novated (in each case, other than in breach of the provisions of this Deed) from time to time.

2. **LEGAL BASIS**

2.1. This Deed is made pursuant to section 106 of the 1990 Act sections 111 and 120 and 139 of the 1972 Act and section 1 of the 2011 Act and all enabling powers

2.2. The covenants restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to section 106 of the 1990 Act and are intended to be enforceable by the Council as local planning authority.

3. **CONDITIONALITY**

This Deed is conditional upon:

- a) the grant of the Planning Permission; and
- b) the Commencement of Development

**SAVE FOR** the provisions of Clauses 4.c (land charge), 4.e (change of ownership) and 5.1.b (legal fees) which shall come into effect immediately upon completion of this Deed.

4. **AGREEMENTS AND DECLARATIONS**

The Owner declares that:

- a) except in relation to any successors to the parties as defined in this Deed the provisions of this Deed shall not be enforceable under the Contracts (Rights of Third Parties) Act 1999
- b) the covenants given in this Deed shall cease to have effect if:
  - i) the Planning Permission is quashed revoked or otherwise withdrawn at any time;
  - ii) the Planning Permission expires prior to the Commencement of Development; or
  - iii) the Planning Permission is modified by any statutory procedure without the consent of the Owner
- c) this Deed is capable of being registered as a land charge.
- d) no person or party shall be bound by the terms of this Deed or liable for a breach of the restrictions and obligations contained in this Deed:
  - (i) occurring after that person or party has parted with all of his interest in the Site or the part in respect of which the breach occurs (but without prejudice to any liability for any breach committed prior to such parting); or
  - (ii) if it is a Statutory Undertaker which has an interest in any part of the Site for the purposes of its undertaking; or
  - (iii) if it is an owner or Occupier of, or has a charge secured against any individual Dwelling



- e) the Owner agrees to give the Council written notice of any change in ownership (excepting any transfer to a Statutory Undertaker) of their interests in the Site occurring before all the obligations under this Deed have been discharged within ten (10) Working Days of the same occurring
- f) nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed
- g) nothing contained in this Deed shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of their functions as local authority and their rights powers duties and obligations under all public and private statutes byelaws and regulations may be as fully and effectually exercised as if the Council were not a party to this Deed
- h) if any severable provision of this Deed shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions shall not in any way be deemed thereby to be affected or impaired
- i) any notices requests demands or other written communications pursuant to this Deed shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party

## 5. **OWNER'S COVENANTS**

### 5.1 The Owner covenants so as to bind the Site

- a) to comply with its obligations as set out in Schedule Two
- b) to pay on the completion of this Deed the reasonable costs of the Council incurred in checking and monitoring of this Deed in the sum of;
  - i) Checking Fee: £ 66.00 (sixty-six pounds and zero pence) - inclusive of VAT
  - ii) Monitoring Fee: £ 114.00 (one-hundred and fourteen pounds and zero pence) - inclusive of VAT

**Total Fee:** £ 180.00 (one-hundred and eighty pounds and zero pence)  
payable on the completion of this Deed.

## 6. **MORTGAGEE CONSENT**

A mortgagee of any part of the Site shall be bound by the obligations contained in this Deed to the extent they are binding on that part of the Site and the security of any mortgage over any part of the Site shall take affect subject to this Deed PROVIDED THAT the mortgagee shall otherwise have no liability under this Deed unless they take possession of the Site (or that part of it which the mortgage relates

to) in which case it too will be bound by the obligations as if it were a person deriving title from the Owner PROVIDED FURTHER THAT it shall not in any event be liable for any breach of this Deed arising prior to it becoming a mortgagee in possession of the land and nor shall it be liable for any breach of this Deed unless it shall have caused such breach to have occasioned.

**7. JURISDICTION**

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

**8. WAIVER**

No waiver (whether expressed or implied) by the Council or the Owner 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 or the Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default

**9. DISPUTE RESOLUTION**

9.1. In the event of there being a dispute arising out of this Deed or the subject matter thereof the following provisions shall apply:

- a) The parties shall use their reasonable endeavours to resolve the dispute by agreement
- b) If agreement cannot be reached the matter in dispute shall be referred to and settled by a single independent expert ("the Expert") to be nominated by the President of the Royal Institution of Chartered Surveyors on the application of a party after giving notice (in accordance with Clause 4.1 (k)) in writing to the other parties to this Deed
- c) The person to be appointed pursuant to Clause 9.1 (b) shall be a person having five (5) years or more post qualification experience of projects comprising works of the scale and nature of the Development
- d) Notice in writing of the appointment of an Expert pursuant to this clause shall be given by the Expert to the Parties and he shall invite each to submit within a specified period (which will not exceed fifteen (15) Working Days) any written representations each wishes to make to him and any submissions shall be provided to the parties with an invitation to respond within a specified period (not exceeding ten (10) Working Days)

- e) Reference to the Expert shall be on terms that determination shall take place within twenty (20) Working Days of the Expert accepting his instructions or within such extended period as the parties may together allow
- f) The Expert shall act as an expert and not as an arbitrator and he shall consider any written representation submitted to him within the said specified period and shall not be in any way limited or fettered thereby and shall determine the dispute in accordance with his own judgement
- g) The Expert shall have the power to award costs of the determination in favour of any party to the dispute at the expense of another party and failing such determination such costs shall be borne by the parties in equal shares
- h) The Expert shall be limited in his findings to the matter in dispute referred to him and shall provide written reasons for his decision
- i) The findings of the Expert shall (other than in the case of a manifest material error) be final and binding on the parties to the dispute
- j) If for any reason the Expert fails to make a decision and give notice in accordance with the clauses of this Deed, any party may apply to the President of the Royal Institution of Chartered Surveyors for a substitute to be appointed in his place
- k) Nothing in this clause shall be taken to fetter the parties' ability to seek legal redress in the Courts (or otherwise) for any breach of the obligations in this Deed

10. **VAT**

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

11. **EXECUTION AND DELIVERY**

This document is executed as a deed and is delivered on the date stated at the beginning of this Deed

**SCHEDULE ONE**

**PLAN**

**SCHEDULE TWO**  
**THE OWNER'S COVENANTS**

**PART A – GENERAL PROVISIONS**

1. The Owner shall give notice in writing to the Council of the Commencement of Development within 5 Working Days of the same occurring
2. The Owner shall give notice in writing to the Council of the Commencement of Development of each individual Dwelling within 5 Working Days of the same occurring

**PART B – CUSTOM AND SELF-BUILD UNITS**

1. The Owner covenants to Occupy the Dwelling built on the Custom and Self-Build Plot pursuant to the Planning Permission as a Custom and Self-Build Unit
2. If paragraph 1 above is not applicable then paragraphs 3 – 7 (inclusive) below shall apply instead
3. The Owner covenants to only market/advertise the Plot on Site as a Custom and Self-Build Plot
4. The Owner covenants to dispose of/sell off the Plot on Site to a Custom and Self-Build Purchaser only
5. Upon the sale of the Plot the Owner covenants to include within the particulars of each sale all necessary rights of access to the prospective Custom and Self-Build Purchaser and reciprocal obligations of future maintenance and repair in respect of the Plot
6. The Owner covenants that the Dwelling permitted on Site pursuant to the Planning Permission shall only be constructed by a Custom and Self-Build Purchaser in accordance with the Planning Permission and any subsequent Reserved Matters Approvals
7. Prior to the Commencement of a Dwelling on the Plot pursuant to the Planning Permission the Owner covenants to provide the relevant Plot as a Serviced Site

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

EXECUTED AS A DEED by

NAME: .....

SIGNED: .....

In the presence of a witness:

Witness

Signature .....

Name .....

Address .....  
.....  
.....  
.....

EXECUTED AS A DEED by

NAME: .....

SIGNED: .....

In the presence of a witness:

Witness

Signature .....

Name .....

Address .....  
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