

PLANNING OBLIGATION
Under Section 106 of the Town & Country Planning Act 1990

(1)

(2)

(3)

Given to:

(4) Blaby District Council

Relating to

Dated

Contents

1.	Definitions and Interpretation	2
2.	Background.....	4
3.	Condition Precedent	5
4.	Statutory Provisions and Covenants.....	5
5.	Obligation.....	6
6.	Mortgagee's Consent.....	6
7.	Notices.....	6
8.	Waiver	7
9.	Miscellaneous	7
10.	Third Parties	7
11.	Schedule 1.....	8
12.	Schedule 2.....	9

constructed and available for occupation pursuant to the Planning Permission;

“Implementation”

in the case of implementation of the Planning Permission the carrying out of any of the material operations listed in Section 56 of the Act pursuant to the Planning Permission provided that for the purposes of determining whether or not a material operation has been carried out there shall be disregarded site clearance, demolition, site surveys and investigations and “implement” and “implemented” shall be construed accordingly;

“Indexation”

means indexation in accordance with Schedule 1.

“Monitoring Costs”

means the sum of £250 (two hundred and fifty pounds) or 2% of the total value of the contributions (whichever is the greater) index linked in accordance with Schedule 1 towards the cost of monitoring compliance with the obligations in this deed.

“Occupation”

means occupation other than for the purposes of construction, security, marketing and repair;

“Open Space Contribution”

means the sum of £ adjusted in accordance with Schedule 1 towards the provision, enhancement and/or development of public open space and recreational facilities within the Parish of

“Plan”

the plan numbered..... Attached hereto;

“Planning Permission”

the Planning Permission granted pursuant to the Application;

1.2 In this Unilateral Planning Obligation, unless the context otherwise requires:

- 1.2.1 any reference to a statute or a provision of a statute shall be construed as a reference to that statute or provisions as amended, re-enacted or extended at the relevant time;
- 1.2.2 any reference to a person shall be construed as a reference to any person, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) or one or more of the foregoing;
- 1.2.3 any reference to the singular shall include the plural and vice versa;
- 1.2.4 any reference to the masculine gender shall include the feminine and neuter and vice versa;
- 1.2.5 the table of contents and headings are inserted for ease of reference only and shall not affect the construction of this Agreement;
- 1.2.6 where any party comprises two or more persons, any obligations of that party in, under or arising from this Unilateral Planning Obligation is undertaken by or binding upon such two or more persons jointly and severally;
- 1.2.7 references to any party to this Unilateral Planning Obligation include its successors-in-title and permitted assignees and in the case of any local authority shall also include any successor in function;
- 1.2.8 references to numbered clauses, schedules or paragraphs are references to the relevant clauses or schedules in this Unilateral Planning Obligation or the relevant paragraph of this Unilateral Planning Obligation respectively;

2. Background

- 2.1 The Council is a Local Planning Authority as defined in the Act and a Local Planning Authority for the purposes of planning obligations imposed pursuant to the provisions of Section 106 of the Act.
- 2.2 The Owner is the owner in fee simple in possession of the Application Site with title absolute registered at HM Land Registry under title number
- 2.3 The Mortgagee has a legal charge over the Application Site dated.....
- 2.4 The Developer has a [details of interest – e.g. conditional contract/option to purchase] dated

- 2.5 The Application was submitted to the Council by for planning permission for the development of the Application Site as described in the Application.
- 2.6 The Owner and/or Developer is willing to give an undertaking to perform the obligations set out in this Unilateral Planning Obligation.

3. Condition Precedent

- 3.1 This Unilateral Planning Obligation (with the exception of Clauses 4, 6, 7, 8, 9, 10 which shall take effect on the date hereof) is conditional on and shall only have effect on the later of the following:
 - 3.1.1 the date six weeks after the grant of the Planning Permission in circumstances in which no legal proceedings shall have been issued by any person to challenge the validity of the Planning Permission; and
 - 3.1.2 the date on which the Owners shall begin the Development by an Implementation of the Planning Permission.
- 3.2 If before the expiry of six weeks after the grant of the Planning Permission any person shall issue legal proceedings to challenge the validity of the Planning Permission then the period of six weeks referred to in Clause 3.1.1 shall be extended until a date seven days after the final determination of such legal proceedings and any necessary determination or re-determination by the Secretary of State (when the preceding provision shall apply again).
- 3.3 If on the expiry of the period referred to in Clause 3.2 the Planning Permission is not extant then this Unilateral Planning Obligation shall absolutely determine and become null and void.

4. Statutory Provisions and Covenants

- 4.1 This Unilateral Planning Obligation is entered into pursuant to the provisions of Sections 106 of the Act and Section 111 of the Local Government Act 1972 and shall be deemed to be planning obligations in respect of the Application Site for the purposes of that section but without prejudice to all and any other means of enforcing them at law or in equity or by statute.
- 4.2 The covenants and obligations created by this Unilateral Planning Obligation are planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council as local planning authority.
- 4.3 This Unilateral Planning Obligation shall cease to have effect in respect of any then outstanding obligations in the event that the Planning Permission is revoked, or is modified without the Owner's consent.

- 4.4 No person will be liable for any breach of this Unilateral Planning Obligation unless they hold an interest in that part of the Application Site in respect of which such breach occurs or hold such an interest at the date of the breach provided that the person shall remain liable for any antecedent breach.

5. Obligations

The Owner and/or Developer covenant as follows:

- 5.1 To give the Council 7 days advance written notice of the Commencement of the Development
- 5.2 To pay to the Council the Council's legal costs involved in the negotiation and approval of this Deed on the date of completion of this Unilateral Planning Obligation.
- 5.3 To pay to the Council the Council's Monitoring Costs prior to the commencement of the development.
- 5.4 To pay to the Council the Open Space Contribution prior to first Occupation of the [Final] Dwelling.

6. Mortgagee's Consent

The Mortgagee consents to its interest in the Application Site being bound by the terms of this Unilateral Planning Obligation PROVIDED THAT it shall have no liability under this Unilateral Planning Obligation unless and until it becomes a mortgagee in possession of the Application Site save for any pre-existing Breach.

7. Notices

- 7.1 Any notice or consent required to be served upon the parties to this Unilateral Planning Obligation shall be in writing and shall be sent by first class registered post, hand delivery or fax. There shall be no right to serve notices or consents by email but if a party chooses to do so and the other party agrees email may be used.
- 7.2 Subject to Clause 7.4 below any such notice, consent or other document shall be deemed to have been duly received:
- 7.2.1 if despatched by first class, registered post – 48 hours from the time of posting to the relevant party; or
- 7.2.2 if despatched by hand delivery – at the time of actual delivery;
or

7.2.3 if despatched by fax or email – 24 hours after the time of the despatch.

7.3 Unless otherwise notified by one party to the other in writing from time to time, for the purposes of this Clause the postal addresses of each party are those set out at the beginning of this Unilateral Planning Obligation.

7.4 In proving service by post it will be sufficient (unless any relevant part of the postal service is affected by industrial action) to prove that the envelope containing the notice was duly stamped addressed and posted to the addresses specified herein. In proving service by fax or email it shall be sufficient to prove that it was properly addressed and dispatched to the numbers or address specified herein.

7.5 A party shall not attempt to prevent or delay the service on it of a notice under this Unilateral Planning Obligation.

8. Waiver

8.1 No delay or failure on the part of any party in enforcing any provision in this Unilateral Planning Obligation shall be deemed to be a waiver or create a precedent or in any way prejudice any party's rights under this Unilateral Planning Obligation.

8.2 The rights and remedies provided in this Unilateral Planning Obligation are cumulative and are additional to any rights or remedies provided by law.

9. Miscellaneous

9.1 The Owner hereby consent to the registration of this Deed as a Local Land Charge and as a Notice on Title Number LT.....

9.2 If any provision in this Unilateral Planning Obligation shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired.

9.3 This Agreement constitutes a Deed.

10. Third Parties

The Owners Developer and Mortgagee declare and confirm that with the exception of any person who becomes an Owner, Lessee, or Mortgagee of the Application Site no term of this Unilateral Planning Obligation is enforceable under the Contract (Rights of Third Parties) Act 1999 by a person who is not a party to this Unilateral Planning Obligation.

IN WITNESS whereof this Deed has been duly executed by the parties the day and year first before written.

Signed by [insert the name of the owner] Signed

.....

in the presence of:-

Witness

Signed by [insert the name of the developer] Signed

.....

in the presence of:-

Witness

Signed by [insert the name of the mortgagee] Signed

.....

in the presence of:-

Witness

If a Limited Company (*delete if not appropriate*)

Executed as a deed by [name of Company] acting by

..... **[Director]**

And

.....**[2nd Director or Company Secretary]**

in the presence of:-

Witness.....

SCHEDULE 1

INDEXATION

1. In this Schedule:-

“Index” means the All in Tender Price Index of Buildings Cost Information Services (“BCIS”) as published by the Royal Institution of Chartered Surveyors (“RICS”) or in the event that the RICS shall change the basis of compilation or cease to compile or publish the said Index such other Index as the parties hereto shall agree or in default of agreement such Index as shall be determined by an Arbitrator appointed by the President of the RICS for the purposes of this Agreement in all cases to ensure as nearly as possible that the sums of money involved shall fluctuate in accordance with the general level of the building industry costs.

“Base Index Date” means the date of this Deed or the date of the grant of planning permission whichever is the earlier.

“Base Index Figure” means the figure published in respect of the Index immediately prior to the Base Index Date.

“Final Index Figure” means the figure published or otherwise agreed or determined in respect of the Index immediately prior to the respective dates upon which the Open Space Contribution is paid.

2. The Open Space Contribution shall be increased by such sum, if any, in pounds sterling as shall be equal to the sum calculated according to the following formula:-

$$\text{Increased Sum} = \frac{A \times C}{B}$$

Where “A” equals the Open Space Contribution

“B” equals the Base Index Figure

“C” equals the Final Index Figure

3. If after the Base Index Date there should be any change in the Base Index Figure by reference to which changes in the Index are calculated, the figure taken to be shown in the Index after such change shall be the figure which would have been shown in the Index if the said Base Index Figure had been retained and the appropriate reconciliation shall be made.
4. If any substitution for the said All Items Retail Prices Index or the BCIS, or any index previously substituted therefore shall occur, the parties hereto shall endeavour to agree the appropriate reconciliation between the Index substituted on the one hand and the All Items Retail Prices Index or the BCIS or any index previously substituted therefore on the other hand.