

(Unilateral Undertaking to secure BNG Monitoring Fee – Payable prior to Commencement of Development- Significant onsite which is linked to a planning permission)

Dated _____ 2025

[INSERT COM NAME (1)]

and

[INSERT COMPANY NAME] (2)

and

[INSERT COMPANY NAME] (3)

to

CHESHIRE WEST AND CHESTER BOROUGH COUNCIL (4)

Planning Obligation by Unilateral Undertaking
given under Section 106 of the Town and Country Planning Act 1990
relating to land at [ENTER ADDRESS HERE]

Planning Application Reference: [ENTER PLANNING REFERENCE HERE]



**Cheshire West
and Chester**

Head of Legal Services
Cheshire West and Chester Borough Council
The Portal, Wellington Road, Ellesmere Port, CH65 0BA – Ref: [LS/.....]

THIS UNILATERAL UNDERTAKING IS MADE BY DEED ON **2025**

GIVEN BY:

- (1) **[ENTER COMPANY NAME HERE]** (company registration number: [xxxxxxx] whose registered office is at [INSTER ADDRESS HERE] (“the Owner”)
- (2) **[ENTER COMPANY NAME HERE]** (company registration number: [xxxxxxx] whose registered office is at [INSTER ADDRESS HERE] (“the Mortgagee”)
- (3) **[ENTER COMPANY NAME HERE]** (company registration number: [xxxxxxx] whose registered office is at [INSTER ADDRESS HERE] (“the Developer”)

TO:

- (4) **CHESHIRE WEST AND CHESTER BOROUGH COUNCIL** of The Portal, Wellington Road, Ellesmere Port, CH65 0BA (**the "Council"**)

INTRODUCTION

- (1) The Council is the local planning authority for the area in which the Application Site is situated and for the purpose of the 1990 Act is the authority by whom the planning obligations contained within this Deed are enforceable.
- (2) The Owner is the proprietor of the freehold interest in the land registered at HM Land Registry with absolute title under title number **[INSERT TITLE NUMBER HERE]** which comprises the Application Site (***delete if not applicable***).
- (3) The Mortgagee is the beneficiary of a charge dated **[XXXXXXXXX]** in respect of the [freehold/ leasehold] title registered at the Land Registry under title number **[XXXXXXXXXX]**
- (4) The Owner/Developer has submitted the Application to the Council on **[XXXXXXXXXX]** for the Development and condition xxxx of the Planning Permission will provide for on

site biodiversity net gain to be secured. This Deed is required to facilitate payment of the BNG Regulation and Reporting Fee.

- (5) The Council has resolved to grant the Planning Permission subject to the prior completion of this Deed without which the Planning Permission would not be granted.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. DEFINITIONS

- 1.1. For the purposes of this Deed the following expressions shall have the following meanings:

“Act”

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

“Application”

means the application for outline/full planning permission (received by the Council on

[XXXXXXXX]) and allocated reference number [XXXXXXXXXX]

“Application Site”

the land at [***Description of the land subject to the planning application***] as shown edged red on the Plan against which this Deed may be enforced;

“Biodiversity Net Gain (BNG)”

means Biodiversity Net Gain;

“BNG Regulation and Reporting Fee”

means the sum of [XXXXXXXXXX] paid by the [Owner/Developer] to the Council under clause 4 of this Deed to be used towards the Council's costs of ensuring compliance with condition [XXXXXXXXXX] of the Planning Permission;

“Commencement of Development”

The carrying out on the Application Site of any material operation (as defined in Section 56(4) of the Act) pursuant to the Planning Permission and “Commence Development” shall be construed accordingly;

“Deed”

means this Unilateral Undertaking;

“Development”

means the development of the Application Site for [ENTER SITE ADDRESS DETAILS HERE] as described in the Application;

“Index”

means the All Items Index of Retail Prices issued by the Office for National Statistics or any successor index issued by any successor organisation;

“Interest”

interest at four (4) per cent above the base lending rate of Lloyds Bank Plc from time to time;

“Parties”

means the Owner, the Developer and the Mortgagee (which expression shall also include their successors in title and assigns) and **“Party”** shall be construed accordingly;

“Plan”

the plan numbered [XXXXXXXX] attached to this Deed showing the extent of the Application Site;

“Planning Permission”

the Application Site’s planning permission for [ENTER DESCRIPTION OF DEVELOPMENT] to be granted under application number [ENTER APPLICATION NUMBER] and any planning permission granted pursuant to an application under section 73 of the Act relating to permission [ENTER APPLICATION NUMBER] (“a Subsequent Permission”) and any planning permission granted pursuant to an application under section 73 relating to a Subsequent Permission;

“Section 106 Monitoring Fee”

means the sum of £250.00 (two hundred and fifty pounds) towards the Council’s costs incurred in the monitoring of this Deed;

“Working Day(s)”

any day(s) from Monday to Friday (inclusive) which is neither Christmas Day nor Good Friday nor a bank or public holiday in England.

2. CONSTRUCTION OF THIS DEED

- 2.1. Unless otherwise indicated references to clauses and Schedules are to clauses of and Schedules to this Deed and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule.
- 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 wherever 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.
- 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 Deed shall include the successors in title to that Party and to any one deriving title through or under that Party and in the case of the Council the successors to its statutory functions.
- 2.7. Any covenant not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 2.8. References to the Application Site shall include any part of it.
- 2.9. The headings are for reference only and shall not affect construction.

- 2.10. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

3. LEGAL BASIS

- 3.1. This Deed is made pursuant to Section 106 of the Act and Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011.
- 3.2. The covenants, restrictions and requirements imposed upon the Owner [and the Developer] 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 the Developer] and their successors in title and to the extent that any of the obligations are not planning obligations within the Act they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers.

4. THE OWNER [AND DEVELOPER] COVENANTS

- 4.1. The Owner [and the Developer] covenants to pay the BNG Regulation and Reporting Fee to the Council prior to Commencement of Development and shall not Commence Development unless and until the BNG Regulation and Reporting Fee has been paid in full to the Council.
- 4.2. The Owner [and the Developer] covenants to provide at least seven (7) Working Days' notice to the Council of its intention to Commence Development.

5. MORTGAGEE

- 5.1. The Mortgagee consents to this Deed being entered into with the intention that their interests in the Application Site in the form of the registered charge detailed in Recital 3 of this Deed will be bound by the terms of this Deed as if this Deed had been executed and registered as a local land charge before the execution of the registered charge.
- 5.2. Notwithstanding clause 5.1, the Mortgagee (or any other mortgagee or chargee with a charge over the Application Site and including an administrative receiver appointed by the Mortgagee or such mortgagee or chargee) will not incur any liability for any breach of the obligations contained in this Deed unless and until it becomes a mortgagee or chargee in possession of the Application Site.

6. EXCLUSIONS

6.1. This Deed does not apply in any way to:

- 6.1.1. any person who ceases to have an interest in the Application Site but without prejudice to liability for any subsisting breach arising prior to cessation;
- 6.1.2. any person whose interest in the Application Site is solely for the purpose of drainage or sewerage or the supply of electricity, gas, water or telecommunications;
- 6.1.3. [individual owners and Occupiers of a Dwelling; [Delete if annexe, farm non-severance, affordable housing, occupation or other similar restriction in the first schedule]
- 6.1.4. any mortgagee or chargee with a charge over the Application Site (including an administrative receiver appointed by such mortgagee or chargee) unless and until it becomes a mortgagee or chargee in possession of the Application Site. [Delete if mortgagee a party]]

7. DETERMINATION OF DEED

7.1. The obligations in this Deed (with the exception of clause 16.1) shall cease to have effect if, before the Commencement of Development, the Planning Permission:

- (a) has expired within the meaning of Sections 91, 92 or 93 of the Act;
- (b) is varied or revoked or otherwise withdrawn by a statutory procedure without the consent of the Owner; or
- (c) is quashed following a successful legal challenge.

8. INTEREST

8.1. If any payment due under this Deed is paid late, Interest will be payable by the [Owner/Developer] from the date payment is due to the date of actual payment.

9. VAT

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

10. NOTICES

- 10.1. Any notice, demand or other communication to be delivered to a Party under this Deed shall be in writing or via email and shall be in the manner and marked for the attention of the person from time to time designated by it to the other parties to this Deed. The initial details so designated are as follows:

- 10.1.1. The Council: Head of Planning and Place Making, Council Offices, The Portal, Wellington Road, Ellesmere Port, CH65 0BA

Or section106@cheshirewestandchester.gov.uk quoting reference [ENTER PLANNING REFERENCE] or the reference of the Subsequent Permission and biodiversity@cheshirewestandchester.gov.uk

- 10.1.2. The Owner: [ENTER CONTACT DETAILS]

- 10.1.3. The Mortgagee: [ENTER CONTACT DETAILS]

- 10.1.4. The Developer: [ENTER CONTACT DETAILS]

- 10.2. Subject to clause 10.3 below and unless the date and/or time of actual receipt is proved a notice, demand or other communication sent by the following means is to be treated as having been served as follows:

- 10.2.1. If delivered by hand at the time of delivery;

- 10.2.2. If sent by pre-paid first class post on the second Working Day after posting;

- 10.2.3. If sent by recorded delivery at the date and time delivery was signed for;

- 10.2.4. If sent by email, on the day when acknowledgement of receipt has been provided by the Council.

- 10.3. If a notice, demand or other communication is served after 4.00pm on a Working Day or on a day that is not a Working Day it is to be treated as having been served on the next Working Day.

11. JURISDICTION

- 11.1. This Deed is governed by and shall be interpreted in accordance with the laws of England.

12. CHANGE IN OWNERSHIP

- 12.1. The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Application Site 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 Application Site or unit of occupation purchased by reference to a plan.

13. LOCAL LAND CHARGES

- 13.1. This Deed shall be registered in the Council's register of local land charges immediately on completion thereof.
- 13.2. Following the performance and satisfaction of all the obligations contained in this Deed the Council shall upon written request of the Owner [and the Developer] provide written confirmation of its discharge PROVIDED THAT should the request require formal cancellation of all entries made in the register of local land charges in respect of this Deed (which may only be done by way of a further deed) the person making such request shall pay the Council's reasonable legal costs in relation to the supplemental deed.

14. CONDITIONALITY

This Deed shall come into full force and effect on completion of this Deed.

15. WAIVER AND FETTER

- 15.1. 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.
- 15.2. Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers functions or discretions in relation to the Site or otherwise.

- 15.3. In the event that any condition or conditions attached to the Planning Permission are varied pursuant to Section 96A of the Act this Deed shall continue in full force and effect and the planning obligations in this Deed shall relate to and bind any amendment in respect of the Planning Permission with the relevant condition or conditions so varied.
- 15.4. In the event that an application is submitted pursuant to Section 73 of the 1990 Act for an amendment to the Planning Permission and planning permission is granted in respect of that application references to the Planning Permission in this Deed shall be to the new planning permission(s) granted pursuant to Section 73 of the 1990 Act and this Deed shall apply to and remain in full force in respect of that new planning permission(s) without the need for a further deed pursuant to Section 106 of the 1990 Act SAVE THAT nothing in this clause shall fetter the absolute discretion of the Council in determining any future application(s) under Section 73 of the 1990 Act to require that a new deed or supplemental deed be entered into pursuant to Section 106 and/or Section 106A of the 1990 Act if it considers this necessary.

16. MISCELLANEOUS

- 16.1. The Owner [and the Developer] shall pay to the Council on completion of this Deed the reasonable costs of the Council incurred in the negotiation, preparation and execution of this Deed together with the Section 106 Monitoring Fee.
- 16.2. Save as provided in respect of successors in title to the Application Site or any successor to the relevant statutory function of the Council no provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 16.3. Where the agreement, approval, consent or expression of satisfaction is required by the [Owner and the Developer] from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall be given in writing and on behalf of the Council by the Head of Planning and Place Making.
- 16.4. 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, legality or enforceability of the remaining provisions of this Deed.
- 16.5. The Owner warrants that no other person other than the [Developer/Mortgagee] has any legal or equitable interest in the Application Site.

17. INDEXATION

17.1 The BNG Regulation and Reporting Fee shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is paid.

IN WITNESS OF WHICH this document has been executed as a Deed by the respective Parties hereto in the appropriate manner and with the intention of such document being delivered on the part of each of them as a Deed on (but not before) the date at the top of this Deed.

Executed as a Deed by

Signature

in the presence of

Name of witness

Witness' signature

Address of witness

Occupation of witness:

DRAFT