[TEMPLATE MODEL S106 UU SANGS AND SAMMS FOR GUIDANCE PURPOSES ONLY]

DATED 202[ ]

[ ] (1)

and

[ ] (2)

and

[ ] (3)

TO

WEALDEN DISTRICT COUNCIL (4)

PLANNING OBLIGATION BY
DEED OF UNILATERAL UNDERTAKING
pursuant to Section 106 of
the Town and Country Planning Act 1990
as amended
relating to the development of
Land at [ ] East Sussex
Planning Ref: WD/[ ]

Legal Services Manager
Wealden and Rother Shared Legal Service
Wealden District Council
Council Offices
Vicarage Lane, Hailsham
East Sussex
BN27 2AX

FOR GUIDANCE PURPOSES ONLY

[TEMPLATE MODEL S106 UU SANGS AND SAMMS FOR GUIDANCE PURPOSES ONLY]

PLANNING OBLIGATION BY DEED OF UNILATERAL UNDERTAKING

THIS DEED of UNILATERAL UNDERTAKING is dated the day of 202[ ]

MADE BY:

(1) [ ] ("**the Owner**"); and

(2) [ ] (Company Registration Number) whose registered office is at ("**the Developer**"); and

(3) [ ] (Company Registration Number) whose registered office is at ("**the Mortgagee**")

TO

(4) **WEALDEN DISTRICT COUNCIL** of the Council Offices, Vicarage Lane, Hailsham East Sussex BN27 2AX ("**the Council**").

INTRODUCTION:

(A) The Owner has the freehold interest in the Land as set out in Schedule 1.

(B) The Council is the Local Planning Authority for the purposes of the 1990 Act for the area in which the Land is situated and for the purposes of enforcing this Deed.

(C) The Developer has entered into a contract [option agreement] to purchase the Land.

(D) The Mortgagee holds a charge over [some of] the Land by a charge dated [ ] and referred to in Entry No. [ ] of the Charges Register in Land Registry title number ESX[ ].

(E) The [Owner/Developer] has made the Application to the Council in order to develop the Land by carrying out the Development.

(F) The [Owner, the Developer and the Mortgagee] have agreed to enter into this Deed to secure the planning obligations set out herein.

(G) The [Owner, the Developer and the Mortgagee] are agreeable as hereinafter provided for their interests in the Land to be bound by the provisions of this Deed.

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NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1 DEFINITIONS

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

"1990 Act" means the Town & Country Planning Act 1990 as amended or any re-enactment or modification thereof for the time being in force.

"Application" means the application for planning permission for the Development bearing reference number WD/[ ]..

"Commencement of Development" means the date on which any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development begins to be carried out and **"Commence Development"** and **"Commence the Development"** shall be construed accordingly.

"Contributions" means the SAMMS Contribution and the SANGS Contribution.

"Deed" means this planning obligation.

"Development" means the development of the Land for the [full *application description*]. pursuant to the Planning Permission and any development in respect of which details have been submitted to and approved by the Council pursuant to the Planning Permission.

"Dwelling(s)" means any unit(s) of self contained residential accommodation within the meaning of Use Class C3 of the Town and Country Planning (Use Classes) Order 1987 as amended including any flat apartment or maisonette comprised in the Development.

"Due Date" means the date specified or the occurrence of an event triggering the making of a payment or the undertaking of an act or the cessation of an activity under the terms of this Deed.

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"Indexation" means that when a sum is payable under this Deed is required to reflect changing costs the sum shall be increased or reduced in accordance with the provisions of clause 9 of the Deed and **"Index Linked"** shall be construed accordingly.

"Inflation Index" means the "all items" index figure of the Retail Prices Index published by the Office for National Statistics or such other index as the Council may reasonably nominate in the event that the Retail Prices Index shall no longer be published or its name or methodology be materially altered.

"Land" means the land against which this Deed may be enforced as shown edged red on the Plan and described in the Schedule 1.

"Payment Notice" means a notice in the form set out in Appendix 1.

"Plan" means the plan attached to this Deed at Schedule 3

"Planning Permission" means the planning permission(s) to be granted by the Council pursuant to the Application and to any application submitted in amendment to the Planning Permission and for the avoidance of doubt shall include any permission granted pursuant to an application to amend or vary the Planning Permission pursuant to Section 73 of the 1990 Act unless the Council decides that a new agreement under section 106 of the 1990 Act is required.

"Relevant CIL Mitigation" means that, at the date of the Relevant CIL Payment, the decision of the Council's Full Council taken on 25 November 2015 applies such that any CIL receipt is first spent as a priority on mitigation for SAMMS and SANGS before being applied to other infrastructure.

"Relevant CIL Payment" means monies paid to the Council for a community infrastructure levy charge pursuant to the Community Infrastructure Levy Regulations 2010 for the Development, where at the date of payment Relevant CIL Mitigation is in place.

"SAMMS" means the Council's Strategic Access Management and Monitoring Strategy for the Ashdown Forest SPA relating to the delivery of a strategic access management and monitoring programme in the Ashdown Forest for the purposes

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of ensuring effective avoidance and mitigation of any significant effects of new residential developments that could have an impact on the Ashdown Forest SPA.

"SAMMS Contribution" means the sum of [ ] Thousand [ ] Hundred and [ ] pounds (£[.00]) based on the sum of £1,170.00 per Dwelling/holiday let within the Development payable to the Council as a contribution towards the SAMMS.

"SANGS" means the Council's strategic site(s) of suitable alternative natural green space provided as alternative recreational space(s) to the Ashdown Forest.

"SANGS Contribution" means the sum of [ ] Thousand pounds (£[.00]) based on the sum of £5,000.00 per Dwelling/holiday let within the Development payable towards the maintenance of the Council's SANGS.

"SPA" means a special protection area registered under regulation 17 of the Conservation of Habitats and Species Regulations 2017 (SI 2017/1012) as amended or other legislation which may replace it.

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1.2 CONSTRUCTION OF THIS DEED

1.2.1 Words importing the masculine include the feminine and vice versa.

1.2.2 Words importing the singular include the plural and vice versa.

1.2.3 Words importing persons include companies and corporations and vice versa.

1.2.4 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 against each individually and the Council may take action against, or release or compromise the liability of any such person or party, or grant time or other indulgence, without affecting the liability of any other such person or party.

1.2.5 Any reference to a clause, paragraph, schedule, annex or Plan is to one in or attached to this Deed.

1.2.6 Any reference to a colour or letter is to be on the plans attached to this Deed.

1.2.7 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.

1.2.8 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to their functions.

2 LEGAL BASIS

2.1 This Deed is a unilateral undertaking given to the Council made pursuant to Section 106 of the 1990 Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers.

2.2 The covenants, restrictions and obligations contained in this Deed are planning obligations for the purposes of section 106 of the 1990 Act and are entered into by the Owner [and the Mortgagee and the Developer] with the intention that they bind the interests held by such parties in the Land and their respective successors and assigns.

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2.3 The covenants, restrictions and obligations contained in this Deed are enforceable by the Council in accordance with section 106 of the 1990 Act.

2.4 The obligations in this Deed comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).

2.5 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.

3 CONDITIONALITY

This Deed shall come into effect immediately upon completion of this Deed save for the provisions of clauses [4 [Owner's Covenants] and 9 [Indexation]] which are conditional upon the grant of the Planning Permission.

4 THE OWNER'S COVENANTS

4.1 The Owner covenants with the Council to fully comply with and to perform the obligations contained herein and in the Schedules to this Deed in accordance with the requirements and timescales contained therein.

4.2 The Owner covenants with the Council that the Development and use of the Land shall be in strict accordance with this Deed.

5 MISCELLANEOUS

5.1 On the execution hereof the Owner shall pay to the Council the Council's proper and reasonable legal costs in the sum of £ [ ] in connection with the registration preparation and completion of the unilateral undertaking and of any transaction arising therefrom

5.2 On the execution hereof the Owner shall pay to the Council the Council's registration fee in the sum of £500.00 (five hundred pounds) towards the expenses associated with the registration process of this Deed.

5.3 The Owner confirms and warrants to the Council that it has not leased mortgaged charged or otherwise created any interest in the Land [other than the mortgage/Option Agreement with the Developer referred to in the Introduction at

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paragraph (C) and (D) and Schedule 1] at the date of this Deed and that paragraphs [(A) (C) and (D)] in the Introduction of this Deed and Schedule 1 are correct and accurate in every respect.

5.4 For the purposes of (inter alia) the Contracts (Rights of Third Parties) Act 1999 nothing in this Deed is intended to confer any benefit upon or create rights in favour of any party other than the parties executing this Deed and their respective successors in title.

5.5 For the purposes of (inter alia) the Contracts (Rights of Third Parties) Act 1999 it is hereby AGREED AND DECLARED that the parties to this Deed (and their respective successors in title) may rescind or vary this Deed without the consent of any third party.

5.6 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 a statutory procedure or expires prior to the Commencement of Development.

5.7 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.

5.8 This Deed shall be registered as a local land charge by the Council.

5.9 The Owner hereby AGREES and DECLARES that permission shall be granted to authorised officers of the Council upon reasonable notice and request and at reasonable times (except in an emergency) and subject to any instructions which any contractor may give to ensure safety for officers of the Council (or their nominated representatives) at their own or at the Council's risk to gain access to the Land in order to monitor compliance with this Deed.

5.10 All approvals certificates consents agreements satisfactions confirmations or calculations (or anything of a similar nature) that may be requested by the Owner and/or given by the Council or its officers in accordance with this Deed shall be in addition to any other approvals consents agreements or confirmations that may be required by the 1990 Act or by any other statute or regulations.

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5.11 In the event that any part of this Deed may be subject to challenge review deletion or otherwise rendered null/void or voidable the balance of the said Deed shall remain in full force and effect.

5.12 Notices required to be given or served under this Deed shall be addressed to the parties at their addresses referred to in the introduction of this Deed.

5.13 Where payment of any sum payable as aforesaid is made after the Due Date interest shall be payable from the Due Date until the date of actual payment and shall be added to and form part of such sum at the rate of four per cent above the base rate for the time being of the Bank of England.

5.14 Where this Deed imposes a requirement for the making of a payment or the undertaking of an act or the cessation of an activity on a Due Date

(a) if the notice of a Due Date is not given the Council shall be entitled in its absolute discretion to determine the Due Date and shall give notice to the Owner of its determination;

(b) to make any and all payments due under this Deed to the Council and to attach a fully completed Payment Notice with each payment.

5.15 The Owner shall give to the Council 7 working days prior written notice of the Commencement of Development.

5.16 This unilateral undertaking constitutes a Deed.

6 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 covenants, terms or conditions or for acting upon any subsequent breach or default.

7 COVENANTS NOT BINDING

This Deed shall not be enforceable against or binding on any statutory undertaker who has an interest in the Land solely for the purposes of carrying out its statutory

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functions in connection with the provision of services necessary for the Development.

8 CHANGE IN OWNERSHIP

The Owner agrees with the Council to give the Council immediate written notice of any change in freehold ownership of the whole or part of the Land occurring before all the obligations under this Deed have been discharged such notice shall 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.

9 INDEXATION

The Contributions (or any part thereof) shall be Index Linked to the Inflation Index so that the sum actually payable shall be recalculated by the application of the following formula:

$A = (B \times C) \div D$

Where:

A is the recalculated sum actually payable on the date of payment of the Contributions (or any part thereof)

B is the amount of the Contributions specified in this Deed

C is the Inflation Index for the month preceding the relevant date of payment of the Contributions (or part thereof)

D is the Inflation Index for the month preceding the date of this Deed

C divided by D is equal to or greater than 1

10 [THE MORTGAGEE'S/DEVELOPER'S CONSENT]

10.1 The Mortgagee hereby consents to the completion of this Deed and declares that from the date of this Deed its interest in the Land shall be bound by the terms of this Deed and that the security of the Mortgagee over the Land shall take effect subject to this Deed.

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10.2 The Mortgagee shall not be personally liable for any breach of the obligations in this Deed unless committed or continuing at a time when the Mortgagee is in possession of all or any part 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.

10.3 [The Developer acknowledges that upon obtaining a freehold or leasehold interest in the Land it will become bound by the provisions of this Deed]

11 JURISDICTION

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

12 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.

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SCHEDULE 1

Details of the Owner's title, [Mortgagee's charge]

and description of the Land

1. The Owner is the registered proprietor of freehold title number ESX[ ] registered at the Land Registry.

2. The Mortgagee holds a charge over [some of] the Land by a charge dated [ ] and referred to in Entry No. [ ] of the Charges Register in Land Registry title number ESX[ ]

3. The Land comprises [part/the whole] of freehold title number ESX[ ] and is known as [ ]

SCHEDULE 2

The Contributions

The Owner covenants with the Council:

1. to pay to the Council the SAMMS Contribution and the SANGS Contribution before the Commencement of Development together with any interest or Indexation payable under this Deed UNLESS the Council has received a Relevant CIL Payment prior to the Commencement of Development; and

2. subject to the Council not having received a Relevant CIL Payment prior to the Commencement of Development, not to Commence the Development until the SAMMS Contribution and the SANGS Contribution have been paid to the Council together with any interest and Indexation payable under this Deed.

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SCHEDULE 3

Plan

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Appendix 1

Deed of Unilateral Undertaking Details	
Application Site address	
Application	
Date of original Deed of Unilateral Undertaking [under S106 of the Town and Country Planning Act 1990]	
Date of variation of original Deed of Unilateral Undertaking [where relevant]	
Parties to: 1. original Deed of Unilateral Undertaking 2. variation [where relevant]	
Payee Details	
Payee [name, address and reference]	
Payee's relationship to the Parties to the Deed of Unilateral Undertaking	

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In witness this document had been signed as a Deed and delivered on the date first above written

SIGNED as a DEED by

[ ]

in the presence of:

Sign here

Signature of witness _____

Name of witness (in CAPITAL LETTERS) _____

Address of witness _____

_____

EXECUTED as a DEED by
[ ] LIMITED
acting by a director and its
secretary / two directors

Signature of director

Director

Full name(in block capitals).....

Signature of director or secretary

Director / Secretary

Full name(in block capitals).....

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EXECUTED as a DEED for and
on behalf of
[ ] BANK PLC
[by a duly authorised Attorney]

in the presence of

Sign here

Signature of witness _____

Name (in CAPITAL LETTERS) _____

Address _____

_____

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