**Unilateral Undertaking Proforma (SANGS and SAMM)**

*Please note that the grey boxes expand as text is typed into them and the “[ ]” are to remain*

Dated:[ 20][[1]](#endnote-1)

UNILATERAL UNDERTAKING GIVEN TO RUNNYMEDE BOROUGH COUNCIL PURSUANT TO SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED) RELATING TO LAND AT [][[2]](#endnote-2)

Between

[][[3]](#endnote-3)

(Landowners(s))

-and-

[][[4]](#endnote-4)

(Developer(s))

-and-

[][[5]](#endnote-5)

(Mortgagee(s))

###

### Undertaking

THIS DEED is made the [ day of  Two thousand and ]1

**BY:**

1. [][[6]](#endnote-6)of [][[7]](#endnote-7);and (hereinafter called the “Landowner(s)”),and
2. [][[8]](#endnote-8)of [][[9]](#endnote-9) and (hereinafter called the “Developer(s)”), and
3. [][[10]](#endnote-10)of [][[11]](#endnote-11) and (hereinafter called the “Mortgagee(s)”)

**To**: **Runnymede Borough Council** of Civic Offices, Station Road, Addlestone, Surrey KT15 2AH (“the Borough Council”)

**Recitals**

1. The Borough Council is the local planning authority for the purposes of Section 106 of the Act for the area within which the Application Site is situated.
2. The Landowner(s) are registered as the freehold owner(s) of the Application Site with title(s) absolute at HM Land Registry under title number(s) [][[12]](#endnote-12).
3. [The Developer has an interest in the Application Site by way of a [purchase agreement **OR** option agreement] dated [][[13]](#endnote-13) with the Owner [which is registered at HM Land Registry against Title number []12.
4. [The Mortgagee as Mortgagee under a legal charge registered under title number(s) []12 dated [][[14]](#endnote-14)is willing to enter into this Undertaking to give its consent to the same]
5. The Application for Planning Permission has been made [by the Applicant to the Borough Council to develop the Application Site as set out at Schedule 3].
6. The Application Site is sufficiently close to the SPA for Development to require mitigation and the Borough Council has adopted the Strategy.
7. The Parties have agreed that the provisions herein contained should have effect in order to secure the obligations contained herein.

H. This Deed reflects the form of undertaking that the Borough Council will accept in relation to all relevant sites.

### Definitions

In this Deed the following expressions shall apply:

| WORDS AND EXPRESSIONS | MEANINGS |
| --- | --- |
| **“Act”** | Town and Country Planning Act 1990 (as amended). |
| **“Application”** | application made to the Borough Council and dated[][[15]](#endnote-15) by or on behalf of the Landowner/Developer for planning permission for the Development on the Application Site as set out at Schedule 3. |
| **“Application Site”** | the site edged red on the attached Plan which is the subject of the Application for Planning Permission more particularly described in Schedule 1 of this Deed. |
| **“Commencement of Development”** | the date upon which any act or material operation is carried out or begun with the meaning of Section 56 of the Act in accordance with the planning permission issued pursuant to the Application. |
| **“Date of Decision”** | the date stated in the Borough Council’s formal decision notice of the grant of planning permission. |
| **“Development”** | means in respect of the SANGS and the SANGS Access Management and Monitoring (SAMM) Contributions this shall mean the development of the Application Site by the erection of [a] new dwelling(s), change of use of a property or the subdivision of a property to create new dwellings. |
| **“Dwellings”** | means any residential units which the Applicant intends to build on the Application Site. |
| **“Index-Linked”** | means the amount of the SANGS Contribution and the SPA Access Management and Monitoring Contribution payable pursuant to this Deed shall be increased by a percentage equivalent to the increase in the General Index of Retail Prices (all items) as published by the Office for National Statistics or any official publication substituted for them from the date of this Deed and the date the payment of the relevant contribution is due and **"Index-Linking"** shall be construed accordingly |
| **“Interest”** | means the rate of interest being Four Per Cent (4%) above the Bank of England base lending rate such interest to be apportioned on a daily basis.  |
| **“Material Operation”**  | means a material operation pursuant to the Planning Permission on the Application Site the subject of this Deed pursuant to Section 56(4)(a)-(e) of the Act provided that for the avoidance of doubt a Material Operation shall be deemed not to have taken place for the purposes of this Deed by any surveying ground investigation archaeological investigations structural or advanced planting site clearance demolition and decontamination works site preparation including earth moving laying of sewers and services the erection of fences and hoardings and the creation of a site compound. The undertaking of a Material Operation is considered to be the commencement of development pursuant to the Planning Permission. |
| **“Parties”** | means the Landowner(s), the Developer(s), and the Mortgagee(s)  |
| **“Planning Permission”** | the planning permission granted as a result of the Application. |
| **“Plan”** | the location plan annexed hereto (annexed at Schedule 4). |
| **“SANGS”**  | the Suitable Alternative Natural Green Space to be provided within the Borough of Runnymede in accordance with the Strategy. |
| **“SANGS Contribution” [[16]](#endnote-16)** | means the amount of [] (£) (Index-Linked) (which for the avoidance of doubt is the sum of Nine Hundred and Three Pounds and Fifty Pence (£903.50) per net additional occupant as set out in the Strategy x [] which is the occupancy rate based on the number of net additional bedroom(s) developed on the Application Site as stated in the Strategy), to be paid to the Borough Council by the Developer and/or the Landowner(s) as a contribution towards the cost of facilitating upgrading and maintaining the SANGS in accordance with the Strategy. |
| **“SPA"** | the Thames Basin Heaths Special Protection Area classified under the EU Habitat on the 9th March 2005. |
| **“****SPA Access Management and Monitoring Contribution”[[17]](#endnote-17)** | means the amount of [], (£),(Index Linked)(which for the avoidance of doubt is the sum of Four Hundred and Ten Pounds and Eighty Seven Pence (£410.87) per net additional occupant as set out in the Strategy x [] which is the occupancy rate based on the number of net additional bedroom(s) developed on the Application Site as set out in the Strategy), to be paid to the Borough Council by the Developer and/or the Landowner(s) as a contribution towards the funding of access management at the SPA and monitoring the effects of mitigation measures across the SPA (hereinafter referred to as the **SAMM Contribution**). |
| **“Strategy”** | means the Thames Basin Heaths Special Protection Area Supplementary Planning Document adopted by the Council on 14th April 2021. |

|  |  |
| --- | --- |
| **1.** | Declarations  |
| 1.1 | The Parties for itself/themselves and its/their successors in title covenant(s) pursuant to Section 106 of the 1990 Act with the Borough Council to perform the obligations herein specified. |
| 1.2 | As from the date of this Deed the Application Site shall be permanently subject to the restrictions and requirements hereof which shall be binding on the Parties and its/their successors in title and assigns [and the Mortgagee]. |
| 1.3 | Nothing contained or implied in this Deed shall prejudice or affect the rights powers duties and obligations of the Borough Council in the exercise of its functions as Local Planning Authority or its rights powers duties and obligations under all or any public or private statutes bylaws or regulations. |
| 1.4 | The Parties covenant to pay to the Borough Council upon the completion of this Deed its reasonable expenses as certified by the Corporate Head of Law and Governance for the time employed in connection with the preparation completion (or confirmation) and registration of this Deed and of any transaction arising therefrom. |
| 1.5 | 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 its remaining provisions. |
| 1.6 | This Deed shall cease to have effect (insofar as it has not already been complied with) if the Planning Permission is quashed, revoked or otherwise withdrawn or it is modified (other than by agreement with or at the request of the Parties) or it expires by effluxion of time prior to the Commencement of Development. |
| 1.7 | No person shall be liable for any breach of the planning obligation or other provisions of this Deed after they shall have parted with their entire interest in the Application Site but without prejudice to their liability for any subsisting breach arising prior to their parting with such interest. |
| 1.8 | The Mortgagee acknowledges and declares that this Deed has been entered into by the Landowner and/or the Developer with its consent and that the Application Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Application Site 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 Application Site in which case it too will be bound by the obligations as if it were a person deriving title from the Landowner.  |
| 1.9 | The Parties [and the Mortgagee] accept the restrictions and requirements in this Clause and will comply with the planning obligations set out herein and in Schedule 2 of this Deed; and |
|  | 1.9.1 | will serve a notice upon the Borough Council fourteen (14) days in advance of the first Material Operation taking place; and  |
|  | 1.9.2 | confirm that no person other than the Parties hold an interest of ownership in the Application Site. |
| **2.** | Legal Basis |
| 2.1 | 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 and all other enabling powers with the intent that the obligations herein run with and bind the Site. |
| 2.2 | The obligations contained herein are planning obligations for the purposes of Section 106 of the Act and are enforceable by the Borough Council in accordance with the Act. |
| **3.** | **Conditionality** |
| 3.1 | With the exception of Clauses 1.4 and 1.7 which shall come into effect immediately upon completion of this Deed this Deed will not have effect unless the Planning Permission has been granted.  |
| 3.2 | If the Planning Permission shall expire prior to the carrying out of a Material Operation or shall at any time be revoked or modified without agreement this Deed shall forthwith determine and cease to have effect. |
| 3.3 | If the Planning Permission is quashed before the carrying out of a Material Operation then this Deed shall absolutely determine and become null and void but without prejudice to the rights of any Party against the other.  |
| **4.** | Interest and Indexation |
| 4.14.24.3 | Without prejudice to any other right remedy or power herein contained or otherwise available to the Borough Council if any payment of any sum referred to herein shall have become due but shall remain unpaid the Parties shall pay on demand to the Borough Council Interest thereon on a daily basis from the date when the same became due until payment thereof. The Owner / Developer covenant that the payment of the SAMM Contribution and the SANG Contribution shall be Index-Linked.The payment of the SAMM Contribution and the SANG Contribution under this Deed shall include the actual contribution payable and any amount for the Index-Linking and also (if due) any Interest. |
| **5.** | Obligations after Disposal of Whole or Part |
| 5.1 | The Parties shall cease to have any obligation or liability under the terms of this Deed in relation to the Application Site or any part thereof once it shall have parted with all its interest in the Application Site or that part thereof but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.  |
| 5.2 | Subject to Clause 5.3, notwithstanding the foregoing sub-clause the obligations under this Deed shall not be enforceable against the persons who purchase (including purchasers of long leases) for their own occupation by themselves or their lessees tenants or others individual Dwellings erected or to be erected on the Application Site nor against any statutory undertaker or public authority which acquires any part of the Application Site or an interest in it for the purposes of its statutory undertaking or functions (other than housing functions). |
| 5.3 | If the Parties permit the occupation of any Dwelling in circumstances that would be a breach of the obligations in Schedule 2 of this Deed and such obligations shall not be enforceable against the purchaser then, on notice from the Borough Council, all further development on the Application Site shall cease until the breaches have been remedied to the satisfaction of the Borough Council. |
| **6.** | Notices |
| 6.1 | Any notice to be given hereunder shall be in writing and shall either be delivered personally or sent by first class pre-paid post. The addresses for service on the Landowner, the Developer, the Mortgagee and the Borough Council shall be those stated in this Deed or such other address in England for service as the Party to be served may have previously notified in writing. |
| 6.2 | Each notice served in accordance with sub-clause 6.1 hereof shall be deemed to have been given or made and delivered if by delivery when left at the relevant address or if by letter forty-eight (48) hours after posting. |
| **7.** | VAT |
| 7.1 | All consideration given in accordance with the terms of this Deed shall be exclusive of any VAT properly payable. |
| 7.2 | If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Deed then to the extent that VAT has not been charged in respect of that supply the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly.  |
| **8.** | General |
| 8.1 | The headings appearing in this Deed are for ease of reference only and shall not affect the construction of this Deed.  |
| 82 | For the avoidance of doubt the provisions of this Deed (unless otherwise stated in this Deed) shall not have any effect until this document has been dated. |
| 8.3 | Any covenant in this Deed by which the relevant Party is not to do an act shall be construed as if it were a covenant not to do or permit or suffer to be done such act.  |
| 8.4 | Any covenant contained herein whereby the relevant Party is not to omit to do an act or thing shall be construed as if it were a covenant not to omit or permit or suffer to be omitted such act. |
| 8.5 | References to statutes by-laws regulations orders and delegated legislation shall include any statute by-law regulation order or delegated legislation re-enacting or made pursuant to the same. |
| 8.6 | References to the Landowner and the Developer [and the Mortgagee] include references to their successors in title in the Application Site or any part thereof and this Deed shall bind such successors in title of the Application Site or any part thereof. |
| 8.7 | This Undertaking constitutes a deed. |
| 8.8 | This Deed is governed by and interpreted in accordance with the law of England and Wales. |
| **9.** | Local Land Charges |
| 9.1 | This Deed is a Local Land Charge and shall be registered as such by the Borough Council in the Local Land Charges Register provided that if the Planning Permission expires unimplemented, or is revoked, or if all obligations under this Deed have been discharged then the registered charge shall be treated as having ceased to have effect under rule 5 of the Local Land Charges Rules 2018 or any statutory re-enactment thereof and the registration shall be cancelled.  |
| **10.** | Contracts (Rights of Third Parties) Act 1999 |
| 10.1 | The Parties do not intend that the provisions of this Deed shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not party to this Deed.  |

**IN WITNESS** whereof the parties have caused their Common Seals to be hereunto affixed or have executed this Deed as a deed on the day and year first before written.

### Schedule 1 – The Application Site

All that piece or parcel of land comprising []2 outlined red for identification purposes only on the Plan being land over which the Application is made.

### Schedule 2 – Planning Obligations

The Parties covenant with the Borough Council:

1. To pay the SANGS Contribution prior to the commencement of a Material Operation.
2. To not commence a Material Operation until the SANGS Contribution has been paid in full.
3. To pay the SPAAccess Management and Monitoring Contribution (SAMM) to the Borough Council prior to commencement of a Material Operation;
4. To not commence a Material Operation until the SPA Access Management and Monitoring Contribution (SAMM) has been paid in full.

### Schedule 3 – The Planning Application

1. The planning application is that submitted by the Landowner/Developer applying for planning permission or approval for [][[18]](#endnote-18).
2. The planning application may be described by a reference number(s) and/or an alternative description as agreed in writing by the Landowner/Developer and the Borough Council at any time.

### Schedule 4 – The Plan[[19]](#endnote-19)

(Attach red line plan to document after this page)Schedule 5 – The Landowner(s)/Developer(s)/Mortgagee(s)**[[20]](#endnote-20)**

Name: []

Address: []

Company number (if applicable): []

Land Registry Title Number: []

Name: []

Address: []

Company number (if applicable): []

Land Registry Title Number: []

Name: []

Address: []

Company number (if applicable): []

Land Registry Title Number: []

Name: []

Address: []

Company number (if applicable): []

Land Registry Title Number: []

Name: []

Address: []

Company number (if applicable): []

Land Registry Title Number: []

Name: []

Address: []

Company number (if applicable): []

Land Registry Title Number: []

### Signatures Individuals (Landowner(s))[[21]](#endnote-21)

|  |  |
| --- | --- |
| EXECUTED as a deed by [**Insert full name of above signatory**] | Witnessed by: Please write full name and address of witness below: |
| EXECUTED as a deed by [**Insert full name of above signatory**] | Witnessed by: Please write full name and address of witness below: |
| EXECUTED as a deed by [**Insert full name of above signatory**] | Witnessed by: Please write full name and address of witness below: |
| EXECUTED as a deed by [**Insert full name of above signatory**] | Witnessed by: Please write full name and address of witness below: |

# **Signatures Companies (Landowner(s)/Developer(s)/Mortgagee(s))**[[22]](#endnote-22)

|  |  |
| --- | --- |
| EXECUTED as a deed by [**Insert full name of above signatory**][**Insert job title of above signatory** ] [**Insert full name of above signatory**][**Insert job title of above signatory** ] | Place company seal Here orWitnessed by: [**Insert full name of above signatory**][**Insert job title of above signatory or full postal address if not an employee of the company**] |
| EXECUTED as a deed by [**Insert full name of above signatory**][**Insert job title of above signatory** ] [**Insert full name of above signatory**][**Insert job title of above signatory** ] | Place company seal Here orWitnessed by: [**Insert full name of above signatory**][**Insert job title of above signatory or full postal address if not an employee of the company**] |
| EXECUTED as a deed by  [**Insert full name of above signatory**][**Insert job title of above signatory** ] [**Insert full name of above signatory**][**Insert job title of above signatory** ] | Place company seal Here orWitnessed by: [**Insert full name of above signatory**][**Insert job title of above signatory or full postal address if not an employee of the company**] |

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### Notes for the completion of the Unilateral Undertaking

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| --- |
| **The Council strongly recommends that all parties to this agreement take independent advice before entering into this undertaking** |

Please note that the Council when it receives an Undertaking will check with the Land Registry to ascertain the owners.

The Council also only requires one copy of the Undertaking to be submitted – this is required to be the original and all signatures contained therein must be the original.

A redacted Unilateral Undertaking will be published on the Council’s website if the application is granted.

We take your privacy seriously and only process your data in line with the data protection law. To learn more about how we comply with GDPR and, as a result, care for the security and privacy of personal data we collected from you, please view our privacy statement which is available on the Council’s website.

1. Insert the date the agreement was signed. If the agreement is received unsigned and the application is granted then the date of decision will be added to the Undertaking. If a copy of the dated Undertaking is required then charges will apply. [↑](#endnote-ref-1)
2. Insert the full postal address of the application site or if the site does not have its own postal address then for example “land to the rear of” [↑](#endnote-ref-2)
3. Insert the name(s) of the Landowner(s), eg. First name and surname or full company name. Please note that you cannot be a party to the agreement if you do not hold an interest in the land ie. Only those listed on the Land Registry title for the site can be listed in this Undertaking [↑](#endnote-ref-3)
4. Insert the name(s) of the Developers eg, First name and surname or full company name, a Developer is anyone who has an interest in the Application Site by way of a purchase agreement or option agreement if applicable otherwise leave blank [↑](#endnote-ref-4)
5. Insert the full company name of the mortgagee(s) if applicable otherwise leave blank [↑](#endnote-ref-5)
6. Insert the full names eg, first name and surname of all the relevant landowners or the full company name (if applicable). These should be in the same order as those listed on the front page. [↑](#endnote-ref-6)
7. Insert full postal address after “of” and/or if the landowner(s) is/are a company(s) insert the full company(s) registered address(s) and company number(s) after “of”. These should be in the same order as shown on the front page [↑](#endnote-ref-7)
8. Insert the full names eg, first name and surname of all the relevant developers or the full company name (if applicable). These should be in the same order as those listed on the front page. [↑](#endnote-ref-8)
9. Insert full postal address after “of” and/or if the developer(s) is/are a company(s) insert the full company(s) registered address(s) and company number(s) after “of”. These should be in the same order as shown on the front page [↑](#endnote-ref-9)
10. Insert the full names eg, first name and surname of all the relevant mortgagees or the full company name (if applicable). These should be in the same order as those listed on the front page [↑](#endnote-ref-10)
11. Insert full postal address after “of” and/or if the mortgagee(s) is/are a company(s) insert the full company(s) registered address(s) and company number(s) after “of”. These should be in the same order as shown on the front page [↑](#endnote-ref-11)
12. Insert appropriate land registry number(s) [↑](#endnote-ref-12)
13. Insert date of options agreement registered [↑](#endnote-ref-13)
14. Insert date of registered charge (date mortgage was registered on the land) [↑](#endnote-ref-14)
15. Insert the date the planning application was submitted to the Council or is intended to be submitted to the Council [↑](#endnote-ref-15)
16. Insert the total of contribution for SANGS in both words and figures and the NET additional number of units proposed [↑](#endnote-ref-16)
17. Insert the total of contribution for SAMM in both words and figures and the NET additional number of units proposed [↑](#endnote-ref-17)
18. A description of the proposal eg. As detailed on the planning application form submitted [↑](#endnote-ref-18)
19. Please attach to the Undertaking a red line plan clearly showing the application site edged in red. It should include all land necessary to carry out the proposed development – for example, land required for access to the site from a public highway, visibility splays, landscaping, car parking and open areas around the buildings [↑](#endnote-ref-19)
20. All Landowner(s)/Developer(s)/Mortgagee(s) listed previously in this undertaking must be listed individually on Schedule 4, if there are more Landowner(s)/Mortgagee(s) than space supplied please contact planning@runnymede.gov.uk before proceeding any further. The details of Landowner(s)/Developer(s))/Mortgagee(s) should match those given earlier in the undertaking eg. on the front page and page 3 [↑](#endnote-ref-20)
21. The Landowner(s)/Developer(s)/Mortgagee(s) listed within the Undertaking must execute the Undertaking as deed:

If any of the party(s) are an individual(s) then their signature(s) must be witnessed by a someone who is not a party to this undertaking and the witness(s) full name and full postal address(s) must be included in the undertaking [↑](#endnote-ref-21)
22. The Landowner(s)/Developer(s)/Mortgagee(s) listed within the Undertaking must execute the Undertaking as deed:

If any of the party(s) is/are a company(s) then they must sign on this page and:

The company(s) seal(s) should be attached in accordance with the attestation requirements contained in its constitution, or

the signatures of two authorised signatories on behalf of the company, or

the signatures of a director of the company on behalf of the company in the presence of a witness who attests the signature (the witness cannot be a party to this agreement and must supplied the required information – full name, job title if employee of company or full postal address if not)

All signatures on behalf of mortgagee(s) must be accompanied by a certified copy of the mortgagee(s) Deed of Power of Attorney which should be attached to the original Undertaking

This undertaking has been designed so that applicants do not have to pay the Council’s legal costs in preparing agreements such as this.

If when using this template you wish the Council’s Planning department to review a draft prior to it being signed by all the relevant parties the draft (in Word or PDF format) a completed version should be emailed to planning@runnymede.gov.uk - along with up to date Land Registry title(s) and plan(s) - dated no more than 3 months old from the date of email they are attached to.

If the Council’s legal team do become involved in the preparation of this Undertaking (or any bespoke S106 agreement) legal costs will be payable prior to the Undertaking being confirmed by the Council as acceptable. On the submission of any bespoke S106 agreement your Solicitor should also agree to you paying the Council’s solicitors costs in these matters. [↑](#endnote-ref-22)