

THIS UNDERTAKING is given on

201[]

BY:

- (1) **[NAME]** (registered number **[NUMBER]**) whose registered office is at **[ADDRESS]** (“**the Landowner**”); [and]
- (2) **[NAME]** (registered number **[NUMBER]**) whose registered office is at **[ADDRESS]** (“**the Lender**”).

TO:

SHEFFIELD CITY COUNCIL of Town Hall, Pinstone Street, Sheffield S1 2HH (“**the Council**”).

BACKGROUND

- (A) For the purposes of the 1990 Act, the Council is the local planning authority for the area within which the Site is located.
- (B) The Landowner is the freehold owner of the whole of the Site [subject only to the Security but otherwise] free from encumbrances that would prevent the Landowner entering into this Undertaking.
- (C) The Lender has an interest in that part of the Site registered at HM Land Registry under Title Number **[NUMBER]** by way of a registered charge dated **[DATE]**.
- (D) Pursuant to the Planning Application the Landowner has applied to the Council for planning permission for the Development.
- (E) Having regard to the provisions of the development plan and the planning considerations affecting the Site, the Landowner considers that certain planning obligations should be entered into as at the date of this Undertaking, subject to the conditions herein.
- (F) The Landowner has agreed to give this Undertaking with the intention that the obligations contained in this Undertaking may be enforced by the Council against the Landowner and its successors in title.

OPERATIVE PROVISIONS

1. INTERPRETATION

- 1.1 In this Undertaking, the following words and expressions have the following meanings:

| | |
|-------------------------------|--|
| “1990 Act” | the Town and Country Planning Act 1990; |
| “Commencement Date” | the date on which the Development commences by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act; |
| Development | the development of the Site as [DESCRIPTION OF DEVELOPMENT] and registered by the Council under reference [REFERENCE]; |
| “Index” | the Retail Prices Index; |
| “Plan” | the plan attached to this Undertaking showing for identification purposes only the Site edged red; |
| “Planning Permission” | the planning permission that may be granted in pursuance of the Planning Application; |
| “Planning Application” | an application for [outline][full] planning permission for the carrying out of the Development made [by][on behalf of] [the Landowner on [DATE], carrying the reference [REFERENCE]; |
| “Security” | a [debenture][legal charge][mortgage] of the Site [and other property] dated [DATE] made between (1) the Landowner and (2) the Lender; |
| “Site” | the land known as [ADDRESS OF PROPERTY] registered at HM Land Registry under Title Number [TITLE NUMBER] and shown for identification edged red on the Plan. |

1.2 In this Undertaking:

- 1.2.1 the clause headings do not affect its interpretation;
- 1.2.2 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Undertaking and references in a

Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;

- 1.2.3 references to any statute or statutory provision include references to:
 - 1.2.3.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and
 - 1.2.3.2 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;
- 1.2.4 references to the Site include any part of it;
- 1.2.5 references to any party in this Undertaking include the successors in title of that party. In addition, references to the Council include any successor local planning authority exercising planning powers under the 1990 Act;
- 1.2.6 “including” means “including, without limitation”;
- 1.2.7 any obligation on a party not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing;
- 1.2.8 where two or more people form a party to this Undertaking, the obligations they undertake may be enforced against them all jointly or against each of them individually; and
- 1.2.9 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Undertaking is to be unaffected.

1.3 The parties to this Undertaking do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it other than the Council and the successors to its respective statutory functions.

2. **EFFECT OF THIS UNDERTAKING**

2.1 This Undertaking is given pursuant to section 106 of the 1990 Act. To the extent that they fall within the terms of section 106 of the 1990 Act, the obligations contained in this Undertaking are planning obligations for the purposes of section 106 of the 1990 Act and are enforceable by the Council.

2.2 The obligations contained in Clause 3 and the Schedule[s] to this Undertaking are planning obligations for the purposes of section 106 of the 1990 Act and are entered into by the Landowner [and the Lender] with the intention that they bind the interests held by those persons in the Site and their respective successors and assigns.

2.3 This Undertaking shall come into effect on the date of grant of the Planning Permission.

2.4 The Council is the local planning authority having the power to enforce the planning obligations contained in this Undertaking pursuant to section 106 of the 1990 Act.

3. **OBLIGATIONS**

3.1 The Landowner undertakes to comply with the obligations set out in the Schedule to this Undertaking in relation to the Development.

3.2 No person will be liable for any breach of the terms of this Undertaking occurring after the date on which they part with their interest in the Site or the part of the Site in respect of which such breach occurs, but they will remain liable for any breaches of this Undertaking occurring before that date.

4. **TERMINATION OF THIS UNDERTAKING**

4.1 This Undertaking will come to an end if:

4.1.1 the Planning Permission is quashed, revoked or otherwise withdrawn before the Commencement Date so as to render this Undertaking or any part of it irrelevant, impractical or unviable; or

4.1.2 the Planning Permission expires before the Commencement Date without having been implemented.

5. **LENDER'S CONSENT**

5.1 The Lender consents to this Undertaking being entered into with the intention that, notwithstanding section 104 Law of Property Act 1925, its interest in the Site will be bound by the terms of this Undertaking as if it had been executed and registered as a local land charge before the execution of the Security.

5.2 Notwithstanding clause 5.1, the Lender will not incur any liability for any breach of the obligations contained in this Undertaking unless and until it becomes a mortgagee in possession of the Site.

6. INDEXATION OF CONTRIBUTIONS

6.1 All financial contributions payable to the Council pursuant to this Undertaking shall be increased to reflect any increase in the Index occurring in the period from and including the date of this Undertaking to and including the date of actual payment.

6.2 Should the Index cease to exist, or should it be replaced or rebased, then the term Index shall include reference to any index which replaces the Index or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this deed).

7. INTEREST

Should any financial contribution payable to the Council pursuant to this Undertaking not have been paid to the Council despite having become due then the Landowner shall pay interest thereon at the interest rate of four per cent per annum above the base lending rate of Barclays Bank plc for the period from the due date to and including the date of payment.

8. NOTICES

8.1 Any notice, demand or any other communication served under this Undertaking will be effective only if delivered by hand or sent by first class post, pre-paid or recorded delivery.

8.2 Any notice, demand or any other communication served is to be sent to the address of the relevant party set out at the beginning of this Undertaking or to such other address as one party may notify in writing to the others at any time as its address for service.

8.3 Any notice, demand or any other communication to be served on the Council is to be sent for the attention of the Head of Planning at Planning Service, Howden House, 1 Union Street, Sheffield, S1 2SH quoting the Planning Application reference.

8.4 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:

8.4.1 if delivered by hand, at the time of delivery;

8.4.2 if sent by post, on the second working day after posting; or

8.4.3 if sent by recorded delivery, at the time delivery was signed for.

8.5 If a notice, demand or any other communication is served after 4.00 pm 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.

8.6 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

9. **JURISDICTION**

9.1 This Undertaking is to be governed by and interpreted in accordance with the law of England and Wales.

9.2 The courts of England and Wales are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Undertaking.

10. **EXECUTION**

The parties have executed this Undertaking as a deed and it is delivered on the date set out above.

SCHEDULE

Contribution

1. Defined terms

In this Schedule, the following words and expressions have the following meanings:

| | |
|------------------------|--|
| “Contribution” | the sum of [AMOUNT]; |
| “Payment Date” | the Commencement Date; |
| “Specified Use” | [include a description of the use towards which the Contribution will be put]. |

2. Payment of the Contribution

The Landowner undertakes to pay the Contribution to the Council on or before the Payment Date to be used by the Council towards the Specified Use.

Executed as a deed by affixing)
the common seal of)
[NAME OF COMPANY / LLP])
in the presence of:)

Authorised Signatory (Signature)
(Name)

OR

Signed as a deed by)
[NAME OF COMPANY / LLP])
acting by two directors or)
one director and its secretary)

Director (Signature)
(Name)

Director/Secretary (Signature)
(Name)

OR

Executed as a deed by)
[NAME OF COMPANY / LLP])
acting by an attorney in the)
presence of a witness)

Attorney (Signature)
(Name)

Witness: (Signature)
(Name)
(Address)
.....
(Occupation)

OR

Signed as a deed by)
[NAME OF INDIVIDUAL])

In the presence of: _____)

Witness: (Signature)
(Name)
(Address)
.....
.....
(Occupation)

OR

[PLEASE ENSURE THAT THE CORRECT EXECUTION CLAUSE FOR THE PARTY SIGNING IS USED AND EVIDENCE PROVIDED TO VALIDATE THE SAME]