**THIS DEED** is made the day of 2020

### BY

**(1) …………………………………………….** (Company Number: ……………….) whose registered office is at……………………………………… (“Owner ”);

**OR**

**(1)** ……………………………………………. of ……………………………………… (“Owner ”); and

**(2) ………………………………..** (Company Number**:** …………………………….) whose registered office is at ……………………………….. (“the Mortgagee”)

**TO: WOKING BOROUGH COUNCIL** of Civic Offices Gloucester Square Woking Surrey GU21 6YL (“the Council”)

# BACKGROUND

1. 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

2. The Owner owns the freehold interest in the Land

3. The Mortgagee is the registered proprietor of a legal charge over the Land dated …………………….. and has agreed to enter into this Deed in order to consent to the terms herein

4. The Owner has made the Application in order to develop the Land by carrying out the Development

5.. The Council has resolved to grant the Planning Permission subject to the Owner entering into this Deed

6. Commencement of Development must not occur until Owner has received the written notification of the Council under Regulation 77 of The Conservation of Habitats and Species Regulations 2017

### DEFINITIONS

1. In this Deed the following words have the following meanings:-

“the 1990 Act” means the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991

“Application” means the application numbered HABREG/……./………… made to the Council for planning permission prior approval

“Appropriate Assessment” The Appropriate Assessment undertaken by the Local Planning Authority of the implications of the application proposal on the conservation objectives of the Thames Basin Heaths Special Protection Area as required by Regulation 63 of The Conservation of Habitats and Species Regulations 2017

“Commencement” means the commencement of the Development by the carrying out of a material operation within the meaning of Section 56(4) of the 1990 Act but shall not include operations in connection with the marking out surveying ground investigation work site clearance demolition investigation for purposes of assessing contamination remedial action in respect of any contamination and the erection of means of enclosure for the purposes of site security and the term “Commenced” shall be construed accordingly

“Development” Approval under Regulation 75 of the Conservation (Natural Habitats etc) Regulations 2010 for application ref:PLAN/………./………………… (prior approval for ……………………………………

“the Land” means all that land together with buildings erected thereon situate and known as ……………………………………………… and registered under title number ………………………………..shown for the purpose of identification only edged red on the Plan

“the Plan” the plan annexed to this Deed

“Planning Permission Prior Approval” means the planning permission to the prior approval under Schedule 2 Part 3 Class O of the Town and Country (General Permitted Development) (England) Order 2015 in respect of planning Application ref PLAN/………………/………………………..

“Retail Price Index” being the Index of Retail Prices published by the Office for National Statistics or such successor authority

“SAMM” Strategic Access Management and Monitoring Contribution (SAMM) as classified under the EU Habitat Directive of 9 March 2005

“SAMM Contribution” means the sum of ………………...........(in words) (£……………..) which sum shall be increased in line with any increase in the Retail Price Index between the date of this unilateral undertaking and and the latest published figure on date of payment to the Council as the case may be in accordance with the Strategy.

**CONSTRUCTION OF THE DEED**

1. Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.

2. Words importing the singular meaning where the context so admits include the plural meaning and vice versa

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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

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

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

6. References to any party to this Deed shall include the successors in title to that party and to anyone deriving title through or under that party and in the case of the Council its successors in title to its statutory functions

**NOW THIS DEED WITNESSES AS FOLLOWS:**

1. This Deed is a unilateral undertaking given to the Council and is a planning obligation made pursuant to Section 106 of the 1990 Act and is enforceable by the Council
2. This Deed is given by the Owner with the intent of binding the freehold interest in the Land from the date of this Deed
3. This Deed is binding on the Parties and their successors in title to the Land stated to be bound.
4. The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Land shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Land 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 Land in which case it too will be bound by the obligations as if it were a person deriving title from the Owner
5. The Owner undertakes to pay to the Council upon the completion of this Deed its reasonable expenses as certified by the Head of Democratic and Legal Services for the time being employed by the Council in connection with the registration preparation and completion of the unilateral undertaking and of any transaction arising therefrom
6. The Council hereby acknowledge receipt of a payment of £250 (two hundred and fifty pounds) (no VAT) by the Owner as a contribution towards its legal and other costs incurred in the preparation and execution of this deed
7. The Owner hereby covenants with the Council to observe and perform the covenant contained in the Schedule hereto
8. No person shall be liable for breach of an obligation contained in this Deed if such breach occurs after he has parted with all interest in the Land (but shall not preclude liability for any antecedent breach)
9. If the planning permission granted by the Council for the Development pursuant to the Application expires before Commencement or at any time is revoked or quashed this Deed shall thenceforth cease to have effect
10. This Deed will be registered as a local land charge
11. After all of the obligations contained in this Deed have in the reasonable opinion of the Council been fulfilled the Owner will be entitled to send a written request to the Council to issue written confirmation thereof and cancel the relevant entries in the Register of Local Land Charges.
12. It is not intended that a third party should have the right to enforce a provision of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999

#### SCHEDULE

**SAMM Contribution**

The Owner covenants to pay the Council the SAMM Contribution prior to Commencement which payment shall be calculated on the basis of the Thames Basin Heaths Special Protection Area Interim Mitigation Strategy and the Appropriate Assessment associated with the Local Planning Authority’s decision in respect of the Application and to accord with s73 of the Conservation of Habitats & Species Regulations 2010.

**INSERT PLAN (ENSURE PLAN IS SIGNED)**

**IN WITNESS** this document has been signed as a Deed and delivered on the date first above written

EXECUTED AS A DEED BY)

**……………………………………………….**

Acting by Director and its Secretary or )

two Directors)

……………………………………………………….

Director

…………………………………………………………

Director/Secretary

# THE COMMON SEAL OF

**………………………………………………….**

was hereunto affixed in the presence of

………………………. ………………………….

Director signature Director full name

………………………. …………………………………

Director/secretary signature Director/secretary full name

# SIGNED AS A DEED BY )

**…………………………………….** in )

the presence of:)

Witness Signature

Witness full name

Witness full address

Witness occupation