# **DATED\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_201[3]**

**[ENTER FULL NAMES OF THE PARTIES TO THIS DEED]**

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**DEED CONTAINING A PLANNING OBLIGATION**

**Pursuant to Section 106 of the Town and Country Planning Act 1990 as amended**

**Relating to Land at [ENTER DETAILS]**

**Ref: Planning Application [ENTER EDC Planning Application Reference No.]**

**[Template 2 - Commuted Sum for Affordable Housing – 3 units or less – Plural owners and a mortgagee]**

UNILATERAL PLANNING OBLIGATION

This Deed is made the day of 201[3]

by of (“the Owners”)

and of (“the Mortgagee”)

INTRODUCTION

1. Eden District Council (“the Council”) is the local planning authority for the purposes of the Act for the area in which the Site is situated and is entitled to take benefit of this Deed of Undertaking and by whom the obligations contained in this Deed are enforceable
2. The Owners are the freehold owners of the Site subject to a mortgage in favour of the Mortgagee.
3. The Owners have submitted the Application to the Council and the Application is one where the Council’s housing planning policies require the provision of affordable housing as part of the Development
4. The Owners enter into this Deed with the consent of the Mortgagee in order to secure the planning obligations contained in this Deed whereby the affordable housing requirement of the Development may be met by alternative means.
5. This Deed of Undertaking is intended to create a planning obligation for the purposes of section 106 of the Act and shall bind the landowners and their successors in title.

NOW THIS DEED WITNESSES AS FOLLOWS:

**OPERATIVE PART**

## 1 DEFINITIONS

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

“Act” the Town and Country Planning Act 1990 as amended

“Affordable Housing” subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available on the open market

“Application” the application for planning permission dated [INSERT DATE] and given reference number [INSERT EDC PLANNING APPLICATION REF. NO]

“Commenced” the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “Commence Development” shall be construed accordingly.

“Commuted Sum” 3% of the Open Market Value of each dwelling constructed/created through conversion less the cost of the valuation undertaken by the Owners to ascertain that Open Market Value

“Development” the development proposed in the Application

“Mortgagee” the mortgagee and any successor thereof

“Occupation” and “Occupied” occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in the construction, the fitting out or the decoration or occupation in relation to security operations

“Open Market Value” in respect of any dwelling such figure as shall be determined by a Royal Institution of Chartered Surveyors qualified valuer instructed by the Owners and verified by an independent valuer appointed by the Council. In the event of any disagreement as to the proper Open Market Value such disagreement shall be determined by the District Valuer or, in the event that such position no longer exists, a person appointed by the President for the time being of the Royal Institution of Chartered Surveyors, as the open market value of that dwelling at the date of completion of the dwelling

“Owners” any person with an interest in the Site and any person deriving title from such person

“Plan” the plan attached to this Deed

“Planning Permission” the planning permission for the Development subject to conditions to be granted by the Council pursuant to the Application

“Site” the property (including land and any buildings) against which this Deed may be enforced as shown edged red on the Plan and described in the First Schedule to this Deed.

## 2 CONSTRUCTION OF THIS DEED

2.1 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.

2.2 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 where 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 person deriving through or under that party any title interest or estate in any part of the Site and in the case of the Council the successors to its relevant statutory functions.

## 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.

3.2 The covenants, restrictions and requirements imposed upon the Owners 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 Owners.

## 4 CONDITIONALITY

4.1 This Deed shall not take effect unless and until

(i) the Council has granted the Planning Permission; and

(ii) the Development has been Commenced

## 5 THE OWNERS’ COVENANTS

5.1 The Owners covenant with the Council to observe the restrictions and perform the obligations as set out in the Second Schedule to this Deed and that there is no other person with a legal interest in the Site other than the parties who have entered this Deed.

**6 THE MORTGAGEE’S CONSENT**

6.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owners with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless the Mortgagee takes possession of the Site in which case the Mortgagee will be bound by the said obligations and that such liability will cease once the Mortgagee has parted with its interest in the Site.

## 7 MISCELLANEOUS

7.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999

7.2 This Deed shall be registrable as a local land charge by the Council.

7.3 Where the agreement, approval, consent or expression of satisfaction is required by the Owners from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Head of Planning Services, or in the event of any restructuring of posts by the Council such successor as the Council may from time to time determine, and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.

7.4 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 or enforceability of the remaining provisions of this Deed.

7.5 If the Planning Permission is quashed or revoked or otherwise withdrawn or ceases to have effect by operation of law or expires before the Development has commenced then  
a) this Deed shall (except for paragraph b) below) cease to have effect and  
b) the Council shall forthwith cancel all entries made in the register of local land charges in respect of this Deed and return to the Owners any payments made under the terms of this Agreement

7.6 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after such person shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

7.7 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

7.8 Nothing contained or implied in this Deed grants planning permission or other consent or shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions as a Local Authority and its rights powers duties and obligations under any statute byelaw or regulation may be as fully and effectually exercised as if the Council were not a party to this Deed

## 8 WAIVER

8.1 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.

## 9 CHANGE IN OWNERSHIP

The Owners undertake to give the Council immediate written notice of any change in ownership of any of its interests in the 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 Site or unit of occupation purchased by reference to a plan.

## 10 JURISDICTION

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

## 11 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.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

**FIRST SCHEDULE**

**The Site**

The land at [INSERT DETAILS] shown edged red on the Plan

The Site is registered at HM Land Registry under title no. [INSERT TITLE NUMBER]

## SECOND SCHEDULE

1. Commuted Sum
   1. Prior to the Occupation of each dwelling within the Site the Owners shall make payment of the Commuted Sum to the Council in respect of that dwelling
   2. If there shall be any disagreement as to the Open Market Value which requires the matter to be determined by the District Valuer, the cost of engaging the District Valuer shall be borne by the Owners and payment of that cost shall be made at the same time as payment of the Commuted Sum
   3. Payment of the Commuted Sum to the Council will be on the basis that the payment will be made into the Council’s Affordable Housing Fund which will be managed and used in accordance with the provisions of the version then current of the Supplementary Planning Document on the use by the Council of Off-Site Affordable Housing Commuted Sums, **provided always that** such capital and interest (if any) is used for Affordable Housing purposes only, **and that** if any part of the Commuted Sum (including interest if any) remains unspent after the expiry of a period of ten years after the payment of the Commuted Sum to the Council, the Council shall repay the said unspent sum to the owners who paid the Commuted Sum unless at that time the said owners decide to gift aid any unspent sum to the Council for Affordable Housing purposes only.

SIGNED AS A DEED by [INSERT FULL NAME] )

)

in the presence of: )

Full Name of Witness (in print)

Address of Witness:

[SIGNED AS A DEED by [INSERT FULL NAME] )

)

in the presence of: )

Full Name of Witness] (in print)

Address of Witness:

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| **\*\*\*Important Note for below\*\*\***  **The Attestation Clause For Mortgagee varies between organisations, you will need to check with the Mortgagee or the Mortgagee Lenders Handbook as to the correct attestation clause to be used – fill in and delete where relevant below** |

[EXECUTED as a DEED and the Common Seal of )

)

was hereunto affixed in the presence of )

Authorised Signatory]

[SIGNED as a DEED by )

Acting by )

Director/Secretary

Authorised Signatory

Acting by )

Director/Secretary

Authorised Signatory]