

**Unilateral Undertaking**

Under Section 106 of the Town and Country Planning Act 1990 as amended

**DATE:** .....

**GIVEN BY**

**Mr. J. Payne**

**FOR**

A commitment to provide £50,000 for the refurbishment/rebuilding of the  
Community Centre at Bumbles Green

and

To provide the 7 Self-Build Homes for Local People on a preferential basis

and

The provision of a Country Park

**DEVELOPMENT**

Broxlea Nursery Nursery Road, Nazeing Essex EN9 2JE

**PLANNING APPLICATION NUMBER**

EPF/1493/16

**THIS DEED OF UNILATERAL UNDERTAKING is given on**  
2017

**BY:**

- (1) **Mr. John Payne** whose address is Lynjon, Nursery Road, Nazeing, Essex, EN9 2JE, hereinafter called "**the Landowner**"

**IN FAVOUR OF:**

- (1) **EPHING FOREST DISTRICT COUNCIL** of Civic Offices High Street Epping Essex CM16 4BZ hereinafter called "**the Council**"
- (2) **NAZEING PARISH COUNCIL** of Nazeing Parish Council, The Leisure Centre, Bumbles Green, Nazeing. EN9 2SF "**the Parish Council**"

**Recitals**

- (1) The the Council is local planning authority for the purposes of the Town and Country Planning Act 1990 as amended for the area within which the Site is situated and the Council may enforce the terms of this Deed.
- (2) The Landowner is the owner of the Site registered at the Land Registry with Freehold Title Absolute under Title Number EX541780
- (3) The Planning Application has been made to the Council by the Landowner and in granting the Planning Permission the Council considered it expedient that provision should be made for regulating or facilitating the Development or use of the Site in the manner hereinafter appearing and that entering into this Deed will be of benefit to the public
- (4) In order to satisfy the tests in Regulation 122 (2) of the Community Infrastructure Levy Regulations 2010 the Council and the Landowner are satisfied that the planning obligations contained in this Deed are necessary to make the Development acceptable in planning terms are directly related to the Development and fairly and reasonably relate in scale and kind to the Development
- (5) The Landowner has agreed to enter into this Deed with the intention that the obligations contained in this Deed may in the event that the Planning Permission is granted be enforced by the Council against the Landowner and its respective successors in title

## IT IS HEREBY AGREED AS FOLLOW:-

### Operative Powers

- 1.1 This Deed is made pursuant to Section 106 of the 1990 Act to the intent that it shall bind the Landowner and its successors in title and assigns and the persons claiming under or through them
- 1.2 This Deed creates planning obligations for the purposes of Section 106 of the 1990 Act and such obligations and covenants hereinafter contained shall be enforceable by the Council or County acting under the powers contained in Section 106 of the 1990 Act
- 1.3 This Deed is conditional upon the grant of Planning Permission

### Interpretation

- 2.1 In this Deed the following expressions shall have the following meanings:-

**"1990 Act"** shall mean the Town and Country Planning Act 1990 as amended

**"Self-Build Houses"** means the 7 no houses the subject of the Planning Permission

**"Commencement"** means the carrying out on the Site of a material operation described in Section 56 of the 1990 Act PROVIDED ALWAYS for the purposes of this Deed shall exclude demolition site survey investigation preparation remediation the removal of services or the erection of fences or hoardings and **"Commence"** shall mutatis mutandis be construed accordingly

**"Deed"** means this deed

**"Development"** means the demolition of the existing buildings and the erection of 7 Self-Build Houses.

**"Occupation"** means occupation of a building constructed as part of the Development but excluding day time occupation by workmen involved in the construction of the Development or in so far as such uses are ancillary to the construction of the Development the use of finished buildings for sales purposes for use as temporary offices or for the storage of plant and materials and **"Occupied"** and **"Occupy"** shall mutatis mutandis be construed accordingly

**"Plan"** means the location plan attached hereto

**"Planning Application"** means the planning application which the

Council has given the reference EPF/1493/16 requesting permission to develop the Site to form 7no Self-Build Houses.

**"Planning Permission"** means the planning permission granted pursuant to the Planning Application including any reserved matters and/or amendments to the Planning Application and / or renewal of the Planning Application given planning permission by the Council whereby otherwise a deed of variation to this Deed would be required

**"Site"** means the land at Broxlea Mushroom Farm, Nursery Road, Nazeing, Essex, EN9 2JE, as shown edged red on the Plan

**"Self build and custom build Dwelling"** means a dwelling which meets the definition in the Housing & Planning Act 2016 (as amended) and the Community Infrastructure Levy Regulations (as amended).

**"Serviced Custom or Self Build plot"** means the plot on the Development upon which the Custom Build or self build Dwelling is to be constructed, which shall have legal access to a public highway, and electricity, water and waste water connections at least to the plot boundary.

**"Local Connection Test"** means the Self-Build Houses must be marketed for sale and/or Occupation to local people who have resided within the Nazeing Post Code of EN9 2 for the previous 5 years.

**"Self-Build Register"** means the Self-Build Register operated by EFDC as part of the Housing & Planning Act 2016.

**"Reserved Matters Application"** means an application for reserved matter details to be submitted by the Owner

**"Design Code"** means a set of building design criteria to be followed when the Applicants submit a Reserved Matters Application or Detailed Planning Application for each plot. The Design Code document is included as Appendix 1 in this document

**"Serviced Plot"** means a serviced Self Build plot and is defined as a parcel of land with legal access to a public highway. All Serviced Plots to have electricity, water, gas, foul and surface water drainage and telecommunications services.

**"Country Park"** means the area marked green on the attached plan (ELA/XX). This land is to have the freehold transferred to EFDC/Nazeing Parish Council or such body nominated by EFDC to run and manage this community area for the benefit of the residents of the local area. A planting or management scheme is to be agreed in writing and submitted with the detailed planning submission for the project in due course.

**"Community Project Payment"** means the sum of £50,000 as a contribution to Nazeing Parish Council towards the either the refurbishment or rebuilding of the Community Hall at Bumbles Green. Such sum to be payable with 3 months of the planning permission

being implemented.

- 2.2 References in this Deed to the Landowner and the Council or any one or more of them shall include reference to their respective successors in title and to persons claiming through or under them
- 2.3 Words importing the singular meaning where the context so admits shall include the plural meaning and vice versa
- 2.4 Words of the masculine gender include the feminine and neuter genders and words denoting natural persons include companies corporations and firms and all such words shall be construed interchangeably in that manner
- 2.5 Words denoting an obligation on the Landowner to do any act matter or thing shall include an obligation to procure that it be done and words placing the Landowner under a restriction shall include an obligation not to cause permit or allow infringement of the restriction
- 2.6 Any reference to an act of parliament shall include any modification extension or re-enactment thereof 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 thereunder or deriving validity therefrom
- 2.7 Headings contained in this Deed are for reference purposes only and should not be incorporated into this Deed and shall not be deemed to be any indication of the meaning of the parts of this Deed to which they relate
- 2.8 The applicable law for this Deed shall be English law

### **Notices**

- 3.1 Any notice or other written communication to be served or given by one party upon or to any other party under the terms of this Deed shall be deemed to have been validly served or given if received by electronic mail received by facsimile delivered by hand or sent by recorded delivery post to the party upon whom it is to be served or to whom it is to be given provided that the notice or other communication is marked as follows for each recipient:
  - 3.1.1 for the Landowner it shall be marked for the attention of Mr K Ellerbeck and addressed to Dunsley House, Riverside Avenue, Broxbourne, Hertfordshire, EN10 6RA
  - 3.1.2 for the Council it shall be marked for the attention of the Assistant Director – Development Management, Civic Offices, High Street, Epping, Essex, CM16 4BZ quoting reference EPF/0641/16

3.1.3 for the Parish Council it shall be marked for the attention of the Parish Clerk, Nazeing Parish Council, The Leisure Centre, Bumbles Green, Nazeing, EN9 2SF

#### **4. Self-Build Houses and Community Project Payment**

- 4.1 The Self-Build Houses must be marketed for sale and/or Occupation to persons who have resided within the Nazeing Post Code of EN9 2 for the previous 5 years. Should these self-build plots not be taken up by local residents within a 6 months marketing period, the plots shall be offered to sale to the wider community.
- 4.2 The Self-Build Houses can only be sold to those persons who are enrolled on the EFDC Self-Build Register.
- 4.3 The Landowner will provide to the Council a sum of £50,000 for the contribution to Nazeing Parish Council towards the either the refurbishment or rebuilding of the Community Hall at Bumbles Green. Such sum to be payable within 3 months of the planning permission being implemented.
- 4.4 Subject to the agreement of the Nursery Road Residents Association, to upgrade the existing private access road (Nursery Road), to provide a metalled surface for its whole length from the application site to the junction with Nazeing Road.
- 4.5 Works in connection with the Country Park must be completed before the occupation of any of the Self-Build properties

#### **Transfer of Interests**

- 5.1 The Landowner shall save for liability in respect of any antecedent breach upon parting with its interest in the Site be released from all obligations rights and duties under the terms of this Deed and all outstanding obligations rights and duties shall pass to the Landowners successors in title to the Site but so that such outstanding obligations rights and duties shall not pass to individual purchasers of Residential Dwellings
- 5.2 Otherwise than in relation to individual purchasers of Residential Dwellings on the Site the Landowner shall give to the within one month of the Landowner disposing of any part of the land comprised in the Site written notice of the name and address of the person or persons to whom the land has been transferred

#### **General**

- 6.1 Any covenant by the Landowner not to do an act or thing shall be deemed to include an obligation to use reasonable endeavours not to

permit or suffer such act or thing to be done by another person where knowledge of the actions of the other person is reasonably to be inferred.

- 6.2 The Landowner acknowledges that nothing in this Deed shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of their functions in any capacity and the rights powers duties and obligations of the Council under private public or subordinate legislation may be effectively exercised
- 6.3 Any obligation covenant or undertaking contained herein by any of the parties which comprise more than one person or entity shall be joint and several and where any obligation covenant or undertaking is made with or undertaken towards more than one person it shall be construed as having been made with or undertaken towards each such person separately
- 6.4 If any provision of this Deed is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable the remaining provisions of this Deed shall continue in full force and effect and the parties shall amend those provisions in such a reasonable manner so as to achieve the intention of the parties provided that any party may seek the consent of the other or others to the termination of this Deed on such terms as may in all the circumstances be reasonable if the effect of the foregoing provisions would be to defeat the original intention of the parties
- 6.5 No variation to this Deed shall be effective unless first approved by the Council and made by deed or pursuant to the determination of an application made under Section 106A of the 1990 Act
- 6.6 Failure by the Council to enforce at any time or for any period any one or more of the terms or conditions of this Deed shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Deed
- 6.7 Wherever there is any dispute under the terms of this Deed which shall not be resolved within six months from the date of notification to the relevant persons that such dispute exists any party shall have the right to refer the same to the decision of an Arbitrator to be appointed by the president for the time being of the Chartered Institute of Arbitrators in accordance with the provisions of the Arbitration Act 1996 from time to time subsisting
- 6.8 It is hereby agreed and declared that a person who is not a local planning authority shall not be entitled in his own right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999
- 6.9 The Landowner hereby agrees to pay forthwith the Council's reasonable

legal costs of and incidental to the preparation and negotiation of this Deed in the sum of £xxxxxx (no Vat)

6.10 This Deed shall be enforceable as a local land charge and shall be registered as such

I N W I T N E S S whereof this document has been executed as a Deed and delivered the day and year first before written

**SIGNED AS A DEED BY  
John Payne**

The Landowner in the presence of :

.....

John Payne

Signature of witness :

Name :

Address :

Occupation :