Dated ………………………………………………………..2021

Planning Obligation By Way Of Unilateral Undertaking Under Section 106 Of The Town & Country Planning Act 1990 Relating To Land At

Leydens Farm Lydens Lane Edenbridge Kent TN8 7EP

In Respect Of The Demolition Of The Former Pool / Office Building And Retention Of The Replacement Office Building

Between

Demetrious Michael & Wendy Michael

and

Barclays Security Trustee Limited

### THIS UNILATERAL UNDERTAKING is made by Deed on

### this day of 2021

**GIVEN BY**

### Demetrious Michael AND Wendy Michael of Leydens Farm Lydens Lane Edenbridge Kent TN8 7EP (jointly "the Owners")

**AND**

### Barclays Security Trustee Limited (Company Registration Number: 10825314) whose registered office is situate at P.O. Box 162761 Churchill Place, London, E14 5HP (“the Chargee”)

### TO

### Sevenoaks District Council, Council Offices Argyle Road Sevenoaks Kent TN13 1HG (“the Council”);

**WHEREAS:**

1. The Council is the local planning authority for the purposes of the Town and Country Planning Act 1990 (“the Act”) for the area within which the Site is situate and as such is entitled to enforce the planning obligations hereinafter recited.
2. The Owners are the freehold owners of the whole of the Site subject to the Charge.
3. The Chargee has the benefit of the Charge. The Chargee acknowledges and declares that this Deed has been entered into by the Owners with its consent and that the Land shall be bound by the obligations contained in this Deed and that the security of the Charge over the Land shall take effect subject to this Deed PROVIDED THAT the Chargee 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 in this Deed as if it were a person deriving title from the Owners.
4. This Deed is entered into pursuant to the Planning Appeal to the Planning Inspectorate against the Enforcement Notice served the Council and dated 28th January 2021.
5. The Owners have submitted a planning appeal under section 174 (2) (a), of the Town and Country Planning Act 1990 for the retention of the building, coloured green on the Plan attached to this Deed, the subject of an Enforcement Notice dated 28th January 2021.
6. The Owners propose to demolish the existing former pool/office room coloured red on the Plan within 6 months of the successful determination of the Planning Appeal.
7. The Planning Inspector has not yet determined the Planning Appeal and the Owners enter this Deed to secure that permission ought to be granted for the Proposed Development.

**NOW THIS DEED WITNESSES AS FOLLOWS**

1. **DEFINITIONS**

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

 **“The 1990 Act”** means the Town and Country Planning Act 1990 (as amended);

**“Charges”** means the charges dated 16th April 2018, made between the Owners and the Chargee referred to in the charges register of Title Numbers respectively K317340, K355009, and dated 6th February 2015 referred to in the charges register of Title Number K590823;

 “**Enforcement Notice”** means the Enforcement Notice served by the Council and dated 28th January 2021;

**“Land”** means the freehold property known as Leydens Farm, Lydens Lane, Edenbridge, Kent TN8 7EP registered at the Land Registry with Title Absolute under Title Numbers K317340, K355009 and K590823 edged red on the Plan;

**“Proposed Development”** means the demolition of the former pool / office building and retention of the replacement office building;

 **“Plan”** means the plan annexed to this Deed;

**“Planning Inspector”** means the inspector appointed by the Secretary of State to preside over the public inquiry in relation to the Appeal;

 **“Planning Appeal”** means the Appeal pursuant to section 174 of the 1990 Act;

 **"Planning Permission"** means the Planning Permission issued by the Secretary of State or the Planning Inspector in determining the Appeal;

 **“Site”** means the freehold property known as Leydens Farm Lydens Lane Edenbridge Kent TN8 7EP registered at the Land Registry with Title Absolute under Title Numbers K317340, K355009, K590823 which land is shown for identification purposes only edged red on the Plan;

 **“The Council” means** Sevenoaks District Council, Council Offices Argyle Road Sevenoaks Kent TN13 1HG;

1. **CONSTRUCTION OF THIS DEED**
2. 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.
3. Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
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 severally unless there is an express provision otherwise.
5. Any references to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party.
6. The headings are for reference only and shall not affect construction.
7. **LEGAL BASIS**

3.1 This Deed is made pursuant to Section 106 of the Act and to the extent that it does not contain planning obligations Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers.

3.2 The covenants, restrictions and requirements imposed upon the Owners under this Deed that are planning obligations pursuant to Section 106 of the Act are enforceable by the Council as the local planning authority against the Owners and their successors in title.

3.3 Any variation of this Deed is to be by way of a formal variation by deed between all the parties.

1. **CONDITIONALITY**

The provisions set out in this Deed are conditional upon:

The successful grant of planning permission following the Planning Appeal;

save for the provisions of this Clause and Clauses 6.2, 8, and 10 which shall take effect immediately upon completion of this Deed.

1. **THE OWNERS COVENANTS**

The Owner covenants with the Council as set out in Schedule 2 so as to bind the Site and each and every part thereof.

1. **MISCELLANEOUS**

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

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

6.3 It is acknowledged that following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith on the written request of the Owners mark accordingly all entries made in the Register of Local Land Charges in respect of this Deed.

6.4 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.

6.5 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owners) it is modified by any statutory procedure or expires prior to the demolition of the existing former pool/office room coloured red on the Plan.

6.6 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site (or that part of the Site in respect of which such breach occurs) but without prejudice to liability for any subsisting breach arising prior to parting with such interest AND FOR THE AVOIDANCE OF DOUBT neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site (or any part or parts of the Site) shall constitute an interest for the purposes of this Clause.

6.7 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.

1. **WAIVER**

No waiver (whether expressed or implied) by the Council or the Owners 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 or the Owners from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

1. **CHANGE IN OWNERSHIP**

The Owners agrees with the Council to give the Council written notice within 10 Working Days 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 quoting the Planning Application reference number and to give details of the transferee’s full name.

1. **JURISDICTION**

This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

1. **DELIVERY**

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until the Planning Inspector has determined the Appeal.

**FIRST SCHEDULE**

Details of the Owners Title, and description of the Site

Freehold land at Leydens Farm Lydens Lane Edenbridge Kent TN8 7EP within registered title numbers K317340, K355009, K590823 shown edged red for identification only on the Application Site Plan.

**SECOND SCHEDULE**

The Owners for themselves and their successors in title to the Site covenant as follows: -

1. To demolish the existing former pool/office room coloured red on the Plan within 6 months of the grant of the Planning Permission above.
2. To notify the Council when this has been completed.

IN WITNESS whereof this Deed has been duly executed by the parties the day and year first before written

SIGNED as a Deed by

DEMETRIOUS MICHAEL

in the presence of:- )

Witness signature...........................................................

Witness name.................................................................

Witness address..............................................................

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Witness occupation........................................................

SIGNED as a Deed by

WENDY MICHAEL

in the presence of:- )

Witness signature...........................................................

Witness name.................................................................

Witness address..............................................................

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Witness occupation........................................................

EXECUTED as a deed by Barclays Security Trustee Limited acting by

a director

………………………………………………

Director

in the presence of:

Signature of Witness

Name of Witness

Address of Witness

Occupation of Witness