

**DRAFT**

**DATED**

**2011**

**SECTION 106 UNILATERAL UNDERTAKING**

**BY**

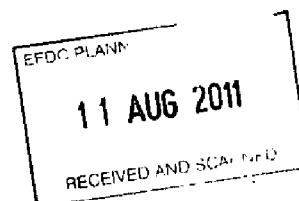
**VALLEY GROWN NURSERIES LTD**

**TOWARDS**

**EPPING FOREST DISTRICT COUNCIL**

**REGARDING**

**NURSERY DEVELOPMENT / EXTENSION AT PAYNES LANE, LOWER NAZEING**



**Ref ASM/106unilateralundertaking**

This Deed is dated [ ] and is given by:

(1) **VALLEY GROWN NURSERIES LTD** (Company No 03481811) whose registered office address is Nazelow Nursery, Sedge Green Road, Roydon, Harlow, Essex CM19 5JR ('the Owner')

towards

(2) **EPPING FOREST DISTRICT COUNCIL** whose registered office is at Civic Offices, High Street, Epping, Essex CM16 4BZ ('the District Council')

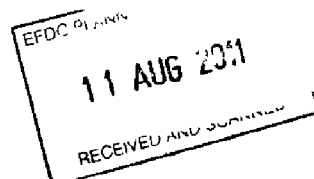
## 1. Background

- 1.1. The Owner is the registered proprietor under title number N12345 of the land at Paynes Lane Lower Nazeing shown for identification purposes only edged red on the Plan ('the Red Land')
- 1.2. The Red Land is wholly owned without charge by 'the owner'
- 1.3. Epping Forest District Council ('the Council') is the local planning authority
- 1.4. The Owner has by planning application number EPF/1811/11 applied to the Council for planning permission to develop the Red Land by the erection of a greenhouse and associated service buildings ("the Application")
- 1.5. The Owner is willing to give an undertaking to perform the obligations set out in this Deed in order to facilitate the grant of planning permission by ensuring that the District Council can regulate the Development by securing the benefits contained in this Deed

## 2. Interpretation

In this Deed

- 2.1. 'the Act' means the Town and Country Planning Act 1990
- 2.2. 'agreed' or 'approved' means agreed or approved in writing and given for the purpose of this Deed
- 2.3. 'the Application Site' means the Red Land
- 2.4. 'the Development' means the development of the Application Site proposed in the Application and permitted by the Permission
- 2.5. 'the Permission' means the planning permission reference EPF/1811/11 granted pursuant to the application



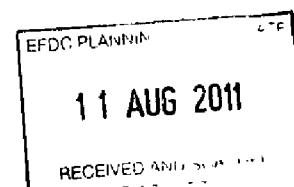
- 2.6. 'Ecology Mitigation Works Plan' means the plan to be agreed by the council which provides for the development of the lake and adjacent area as a wildlife habitat area and for its future maintenance
- 2.7. Words importing the masculine include the feminine and vice versa
- 2.8. Words importing the singular include the plural and vice versa
- 2.9. Words importing persons include companies and corporations and vice versa
- 2.10. 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
- 2.11. Any reference to a clause or schedule or plan is to one in or attached to this Deed
- 2.12. In the absence of contrary provision any reference to a statute includes any statutory modification or re-enactment of it and every statutory instrument direction specification made or issued under the statute or deriving validity from it
- 2.13. References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the District Council the successors to its functions as local planning authority and local housing authority

### **3. Enabling provisions**

- 3.1. This Deed is made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 and all other enabling powers
- 3.2. The obligations contained in clause 5 of this Deed are planning obligations for the purposes of Section 106 of the Act and are entered into by the Owner and the Applicant with the intention that they bind the interest held by those persons in the Red Land and in respect of its successors and assigns.

### **4. Commencement and determination**

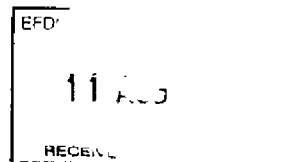
- 4.1. This Deed shall come into effect on the date of the grant of the planning permission granted pursuant to the Application but the obligations in clause 5 save 5.5 shall become effective only on the commencement of a material operation as defined in Section 56(4) of the Act ("Material Operation") but for the purposes of this Deed works involving soil investigations, archaeological investigations, demolition, site clearance, site preparation, the diversion and laying of services, the erection of fences and hoardings and the preparation of site access shall not constitute a Material Operation



4.2. If the planning permission granted pursuant to the Application shall expire before the commencement of a material operation or shall at any time be revoked then this Deed shall be determined and shall have no further effect

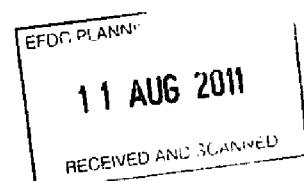
## 5. Planning Obligation

- 5.1. Not to divide or segment any of the Development whereby 3<sup>rd</sup> parties would own or operate all or part of the new greenhouse facility
- 5.2. to dismantle and remove from the Red Land any individual buildings forming part of the Development and erected pursuant to the Permission within 1 year of that building permanently ceasing production unless otherwise previously agreed in writing by the Council.
- 5.3. to reinstate the Red Land in accordance with the Specification which shall have been previously agreed with the Council to include the method of removal of any foundations to a condition suitable for agricultural use within 2 years of the Proposed Development permanently ceasing production unless otherwise previously agreed in writing by the Council.
- 5.4. The Owner covenants with the Council to create and maintain a long term wildlife habit area on the lake and adjacent area as detailed on the Red Line title by;
  - 5.4.1. Developing and agreeing a Ecology mitigation works plan before any development commences
  - 5.4.2. Creating the new landscape and wetlands area before any construction commences in the area directly adjacent to the lake
  - 5.4.3. Providing the features of the lake landscape as detailed in the Landscaping plan
  - 5.4.4. Constructing the additional hard landscape features as detailed in the Landscaping Plan
  - 5.4.5. Providing the 'Outdoor classroom' and information boards as detailed in the Landscaping Plan
  - 5.4.6. Working where appropriate with interested community and Ecology groups to complete the planting programme at the site
  - 5.4.7. Creating and agreeing an on-going site landscape management plan which will ensure the site retains its character and features
  - 5.4.8. Carrying out the required works to achieve 1.8m on an annual or ,where required, more frequent basis
- 5.5. To complete the development of the lake and adjacent area in 5.4 of this agreement before the greenhouse facility becomes operational [Plan identifying area to be included]



**6. General**

- 6.1. The Owner and the Applicant acknowledge and declare that:
- 6.2. the obligations contained in this Deed are planning obligations for the purpose of Section 106 of the Act and are enforceable by the District Council.
- 6.3. this Deed does not nor is intended to confer a benefit on a third party within the meaning of the Contracts (Rights of Third Parties) Act 1999
- 6.4. no person shall be liable for any breach of the covenants restrictions or obligations contained in this Deed after that person has parted with its interest in the Application Site or the part of it in respect of which the breach occurs but without prejudice to liability for any breach subsisting prior to parting with such interest
- 6.5. this Deed may be registered as a local land charge in the Register of Local Land Charges maintained by the Council
- 6.6. that the Owner has the sole proprietary interest in the Application Site and that there are no third party interests which would require any other party to enter this Deed
- 6.7. This Deed shall be determined and have no further effect if the Planning Permission granted pursuant to the Application expires before the commencement of any material operation on the Red Land or is varied or revoked other than at the request of the Applicant or is quashed by a successful legal challenge.
- 6.8. The Owner undertakes to pay the Council legal costs in the sum of £290.00 (no VAT) on the date hereof.



IN WITNESS etc

**SIGNED** as a deed by  
**VALLEY GROWN NURSERIES LTD**  
acting by a director and the secretary

Director

..... (Signature)

..... (Name in Block Capitals)

Secretary

..... (Signature)

..... (Name in Block Capitals)

In the presence of .....

(Signature of Witness)

.....  
(Name of witness - in block capitals)

.....  
.....  
(Address of witness)

EFDC PLANET DATE  
**11 AUG 2011**  
RECEIVED



# VALLEY GROWN NURSERIES

PAYNES LANE, NAZEING, ESSEX. EN9 2EX  
Telephone: (01992) 461093 Fax: (01992) 461816

9<sup>th</sup> August '11

Dear Neighbours,

Many thanks to those of you who have visited the nursery recently to see details of our proposed development. It has been good to have the opportunity to explain the project in more detail and get your thoughts and feedback on the scheme.

Some neighbours understandably expressed concern about whether the additional greenhouse will mean significant additional traffic to Paynes Lane. As we have explained in the briefings at the site, this will not be the case but we thought it would be useful to communicate this to everyone and to hopefully put your minds at ease.

Long term residents will have noticed that over the years there has been fewer and fewer lorry movements associated with the nursery. This has come about as we have changed the way we do business and the new greenhouse operation will be even more efficient. At maximum output during the summer we will be able to get all we produce onto just three lorries per day, In normal circumstances this will be just two and during the winter just one lorry can take everything we grow off site. We have prepared detailed calculations on this which have been submitted to the council.

Pick up and material deliveries will take place during normal working hours Monday to Friday and on Saturday mornings. Occasionally we may need to work Saturday afternoon and Sunday but this will be very rare.

We intend to keep the project presentation at the nursery open for several further weeks. If any of you would still like to visit or know more about any aspect of the development, please do give us a call.

With kind regards

Jimmy and Vince Russo

