

**THIS UNILATERAL UNDERTAKING** is made by Deed on

this

day of

2013

**GIVEN BY**

**XXXXXXXXXX** **[Name]** of xxxxxxxxxxxxxxxxxxxxxx **[Address with postcode]**

("the Owner")

**or**

**XXXXXXXXXX** and **XXXXXXXXXX** **[Names]** of xxxxxxxxxxxxxxxxxxxxxx

**[Address with postcode]** (jointly "the Owners")

**And/or**

**XXXXXX LIMITED** (Company Registration Number: xxxxxxxxxx) whose

registered office is situate at xxxxxxxxxxxxxxxxxxxxxx **[Address with postcode]**

("the Owner");

**AND** **[If applicable]**

**XXXXXXXXXXXXX BANK PLC** (Company Registration Number:

xxxxxxxxxxxxx) whose registered office is situate at xxxxxxxxxxxxxx

**[Address with postcode]** ("the Mortgagee") **[adding other Mortgagees if**

**applicable]**

**TO**

**HERTSMERE BOROUGH COUNCIL** of Civic Offices, Elstree Way,

Borehamwood, WD6 1WA ("the Council"); and

**AND**

**HERTFORDSHIRE COUNTY COUNCIL** of County Hall, Pegs Lane,

Hertford, SG13 8DE ("the County Council")

**WHEREAS:**

- (1) The Council and the County Council are the local planning authorities for the purposes of the 1990 Act for the area within which the Site is situate and as such are the local planning authorities entitled to enforce the planning obligations hereinafter recited.
- (2) The County Council is also the highway authority the education authority the library authority the social services authority and the fire and rescue authority for Hertfordshire. *[delete as necessary depending on the contributions required]*
- (3) The Owner(s) are the freehold owners of the whole of the Site. *subject to the Charge [delete highlighted section if no Mortgagee]*
- (3) *The Mortgagee has the benefit of the Charge [delete highlighted section if no Mortgagee]*
- (4) The Planning Application has been submitted to the Council.
- (5) This Deed is entered into to make provision for regulating the Development and securing the matters hereinafter referred to which are required in order to enable the Development to proceed.

**NOW THIS DEED WITNESSES AS FOLLOWS**

**OPERATIVE PART**

**1 DEFINITIONS**

***[Delete definitions and subsequent references throughout if not applicable]***

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);

**“Allotments Contribution”** means the sum of £xxxxxxxx (xxxxxxxx pounds xxxxxx pence) (index linked as hereinafter provided) as a contribution towards the cost of allotments serving the locality of the Development;

**“Cemetery Contribution”** means the sum of £xxxxxxxx (xxxxxxxx pounds xxxxxx pence) (index linked as hereinafter provided) as a contribution towards the cost of burial grounds serving the locality of the Development;

**“Charge(s)”** means the charge(s) dated xxxxx made between the Owner(s) and the Mortgagee referred to in the charges register of Title Number HD xxxxxxxx ;

**“Childcare Contribution”** means the sum of £xxxxxxx (xxxxxxx pounds xxxxxx pence) (indexed linked as hereinafter provided) as a contribution towards the cost of providing childcare facilities serving the locality of the Development;

**“Commencement Date”** means the date on which any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and no other purpose) operations consisting of site clearance, *demolition work [if demolition work is part of the Development it is a material operation therefore is deleted from this definition]*, 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 the expressions **“Commence”**, **“Commences”**, **“Commencement”** and **“Commenced”** shall be construed accordingly;

**“CPI”** means the Consumer Prices Index as sourced from the Office of National Statistics or such other equivalent index that may be applicable from time to time;

**“Development”** means xxxxxxxxxxxx *[insert description from planning application form]* as more particularly described in the Planning Application and associated documentation;

**“Director”** means the County Council’s Chief Executive and Director of Environment for the time being and his officers and agents;

**“Fire and Rescue Service”** means that part of the County Council known as the Hertfordshire Fire and Rescue Service;

**“Greenways Contribution”** means the sum of £xxxxxxxx (xxxxxxxx pounds and xxxxxxxx pence) (index linked as hereinafter provided) as a contribution towards the cost of creating and promoting a continuous and connected network of sustainable transport routes serving the locality of the Development;

**“Library Contribution”** means the sum of £xxxxxxxx (xxxxxxxx pounds and xxxxxxxx pence) (index-linked as hereinafter provided) as a contribution towards the cost of library facilities serving the locality of the Development;

**“Monitoring Fee”** means the sum of £xxxxxxxx (xxxxxxx pounds and xxxxxxxx pence) as a contribution towards the Council’s costs of monitoring the implementation of the obligations contained within this Deed;

**“Museums Contribution”** means the sum of £xxxxxxx (xxxxxxx pounds xxxxxxxx pence) (index linked as hereinafter provided) as a contribution towards the cost of creating and maintaining museums and cultural facilities serving the locality of the Development;

**“Nursery Education Contribution”** means the sum of £xxxxxxx (xxxxxxx pounds xxxxxxxx pence) (index linked as hereinafter provided) as a contribution towards the cost of providing nursery education facilities serving the locality of the Development;

**“Occupy” “Occupation” and “Occupied”** means occupation for the purposes of the Planning Permission but not including occupation by personnel engaged in the construction fitting out or decoration of the Development or occupation for marketing or display or occupation in relation to security operations at the Development;

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

**“Planning Application”** means the application for full planning permission validated on xxxxxxxx **[Date of validation]** bearing the Council’s reference number TP/xx/xxxx;

**"Planning Permission"** means the permission to be granted pursuant to the Planning Application;

**“Playing Fields Contribution”** means the sum of £xxxxxx (xxxxx pounds xxxxx pence) (index linked as hereinafter provided) as a contribution towards the maintenance of playing fields serving the locality of the Development;

**“Primary Education Contribution”** means the sum of £xxxxxxx (xxxxxx pounds xxxxxx pence) (index linked as hereinafter provided) as a contribution towards the cost of primary education facilities serving the locality of the Development;

**“Public Leisure Facilities Contribution”** means the sum of £xxxxxx (xxxxxxx pounds xxxxxx pence) (index linked as hereinafter provided) as a contribution towards public leisure facilities serving the locality of the Development;

**“Public Open Space Contribution”** means the sum of £xxxxxx (xxxxxx pounds xxxxxx pence) (index linked as hereinafter provided) as a contribution towards public open space facilities serving the locality of the Development;

**“PUBSEC Index”** means the Department for Business Innovation and Skills Tender Price Index of Public Sector Non Housing Smoothed All-In Index;

**“Remediating Amenity Space Contribution”** means the sum of £xxxxxx (xxxxxxx pounds xxxxxx pence) (index linked as hereinafter provided) as a contribution towards the cost of remediating amenity space serving the locality of the Development;

**“Secondary Education Contribution”** means the sum of £xxxxxxx (xxxxx pounds xxxxxx pence) (index-linked as hereinafter provided) as a contribution towards the cost of secondary education facilities serving the locality of the Development;

**“Site”** means the freehold property known as xxxxxxx **[Address with postcode]** registered at the Land Registry with Title Absolute under Title Number HD xxxxxxx which land is shown for identification purposes only edged red on the Plan;

**“SPONS Index”** means the index linked by reference to the price adjustment formula for construction contracts in the monthly bulletin of indices published by Her Majesty’s Stationary Office as collated into a single index known as the SPONS Construction Civil Engineering Cost Index;

**“Sustainable Transport Contribution”** means the sum of £xxxxxx (xxxxxx pounds xxxxx pence) (index-linked as hereinafter provided) as a contribution towards the design and construction of highway improvement works traffic management schemes traffic studies improvements to public transport and/or such measures as will encourage users of the Development to travel to and from the Development by means of transport other than the private car which the Director in his absolute discretion determines will contribute to the improvement of highway conditions on parts of the network affected by traffic associated with the Development;

**“Water Scheme”** means either the proposal prepared by or approved by the water undertaker for the area pursuant to the Water Industry Act 1991 to provide mains water services for the Development whether by means of new mains or extension to or diversion of existing services or apparatus OR where existing water services are to be used ‘Water Scheme’ shall mean the details of the residential dwellings and the water supply to them;

**“Working Day”** means any day other than a Saturday or a Sunday or a Public Holiday;

**“Youth Contribution”** means the sum of £xxxxxx (xxxxxx pounds xxxxxxx pence) (index-linked as hereinafter provided) as a contribution towards the cost of youth facilities serving the locality of the Development.



1.2 In this Deed:-

- 1.2.1 clause headings do not affect its interpretation;
- 1.2.2 words of the masculine gender shall incorporate the feminine and neuter genders and words of the singular shall include the plural and vice versa;
- 1.2.3 reference to any statute or section of a statute includes 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;
- 1.2.4 any reference to a clause, a paragraph or a schedule is unless the context otherwise requires a reference to a clause, a paragraph or a schedule of this Deed and any reference to a sub clause is a reference to a sub clause of the clause in which the reference appears;
- 1.2.5 references to the Site include any part of it;
- 1.2.6 where two or more people form a party to this Deed the obligations they undertake may be enforced against them all jointly or against each of them individually;
- 1.2.7 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 and in the case of the Council and the County Council the successors to their respective functions;

- 1.2.8 any covenant by the Owner(s) not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing and words denoting an obligation on the Owners to do any act matter or thing include an obligation to procure that it be done.

## **2 EFFECT OF THIS DEED**

- 2.1. This Deed is entered into pursuant to Section 106 of the 1990 Act. To the extent that they fall within the terms of Section 106 of the 1990 Act the obligations contained in this Deed are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable by the Council and the County Council.
- 2.2 To the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in Section 111 Local Government Act 1972, Section 1 Localism Act 2011 and all other enabling powers.
- 2.3 The Owner(s) enter into the obligations for themselves and their successors in title with the Council and the County Council to the intent that the obligations hereunder shall be enforceable not only against the Owners but also against the successors in title of the Owners and any person claiming through or under the Owners an interest or estate in the Site or any part thereof.
- 2.4 Subject to Clause 2.5 the obligations in this Deed are conditional upon and will not take effect until the grant of the Planning Permission.
- 2.5 The obligations in Clause 3.1(v) will take effect upon completion of this Deed.

### **3 OWNER COVENANTS**

3.1 The Owner(s) covenant with the Council and the County Council and with each of them so as to bind the Site and each and every part thereof:-

- (i) to observe and perform the covenants restrictions stipulations and obligations contained in Schedule 1 hereto;
- (ii) to give the Council and the County Council no less than five (5) Working Days' notice of the Commencement Date such notice to be given prior to the Commencement Date in writing using the proforma set out in Schedule 2 hereto;
- (iii) to give the Council and the County Council no less than five (5) Working Days' notice of the completion of the Development such notice to be in writing using the proforma set out in Schedule 2 hereto;
- (iv) to give the Council and the County Council no less than five (5) Working Days' notice of the Occupation of the Development such notice to be in writing using the proforma set out in Schedule 2 hereto;
- (v) upon completion of this Deed to pay to the Council and the County Council *[delete County Council if not applicable]* their respective costs in connection with the preparation negotiation and completion of this Deed together with payment to the Council of the Monitoring Fee.

3.2 The Owner(s) further covenant that:-

- (i) they are the freehold owners of the Site;

- (ii) the Site is free from all encumbrances material to this Deed;
- (iii) **save for the Mortgagee** *[delete if not applicable]* no other party has an interest in the Site.

#### **4 EXPENDITURE IN ADVANCE OF RECEIPT OF CONTRIBUTIONS**

It is acknowledged that if prior to the receipt of any of the Childcare Contribution, Nursery Education Contribution, Primary Education Contribution, Secondary Education Contribution, Library Contribution or Youth Contribution *[delete any that are not applicable]* the County Council incurs any expenditure in providing additional relevant facilities and/or services the need for which arises from or in anticipation of the Development then the County Council may immediately following receipt of the relevant contributions deduct from such contributions the expenditure incurred.

#### **5 INDEXATION**

- 5.1 The Allotments Contribution, the Cemetery Contribution, the Greenways Contribution, the Playing Fields Contribution, the Public Leisure Facilities Contribution, the Public Open Space Contribution, the Remediating Amenity Space Contribution and the Museums Contribution *[delete any that are not applicable]* shall each be index-linked to any increase in the CPI from the date of this Deed until the date each contribution is paid.
- 5.2 The Childcare Contribution, the Library Contribution, the Nursery Education Contribution, the Primary Education Contribution, the Secondary Education Contribution and the Youth Contribution *[delete any that are not applicable]* shall each be index-linked by reference to any increase from the PUBSEC Index figure of 175 to the finalised figure applicable to the quarter in which the each contribution is paid.

5.3 Where any sum is required to be index- linked by reference to the PUBSEC Index that sum payable shall be increased in accordance with any increase in the PUBSEC Index by the application of the formula  $A = B \times (C \div D)$  where:-

A is the total amount to be paid;

B is the principal sum stated in this Deed;

C is the PUBSEC Index for the date upon which the interim payment described below is actually paid and;

D is the figure of 175

5.4 The Sustainable Transport Contribution shall be index-linked to any increase in the SPONS Index from July 2006 to the date on which the Sustainable Transport Contribution is paid. *[delete this and subsequent references if not applicable]*

5.5 Where any sum to be paid to the Council or the County Council under the terms of this Deed is required to be index linked then an interim payment shall initially be made based on the latest available forecast figure (or figures as the case may be) at the date of payment and any payment or payments by way of adjustment shall be made within ten (10) Working Days of written demand by the Council or County Council or the payer of the interim payment (as the case may be) once the relevant indices have been finalised.

## **6 INTEREST**

If any payment due under this Deed is not made by the due dates interest shall be added to such payment on a daily basis at 4 per cent per annum above the current Barclays Base Rate from the due date to the date of payment.

**7 MISCELLANEOUS**

- 7.1 This Deed shall be registered as a local land charge by the Council.
- 7.2 Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 nothing in this Deed confers or purports to confer any right to enforce any of the terms and provisions herein on any person who is not a party hereto or a successor in title or a statutory successor to a party hereto.
- 7.3 Within five working days of the completion of transfer of any interest in the Site the Owner(s) shall notify the Council and the County Council giving details of the transferees name and address together with details of the part of the Site to which the interest applies.
- 7.4 Any notice to the parties hereto under this Deed shall be deemed to be sufficiently served if delivered personally or by recorded delivery service to the following officials/persons at the respective addresses hereinafter specified:

<u>In respect of the Owner(s)/Mortgagee(s) :</u>	<u>In respect of the Council:</u>	<u>In respect of the County Council:</u>
Name and address at head of Deed	Director of Environment Hertsmere Borough Council Civic Offices Elstree Way Borehamwood WD6 1WA (Ref TP/xx/xxxx)	The Chief Legal Officer, Hertfordshire County Council, County Hall, Pegs Lane, Hertford, Herts SG13 8DE (Ref :DU xxxx)

(Save that notices pursuant to paragraph 3 of Schedule 1 (Fire Hydrants) shall be sent to the person mentioned in paragraph 3.5 of Schedule 1).

- 7.5 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.
- 7.6 Nothing in this Deed shall be construed as imposing a contractual obligation upon the Council as to the issue of the Planning Permission or as restricting the exercise by the Council or the County Council of any powers exercisable by them respectively under the 1990 Act or under any other Act or authority.
- 7.7 No waiver whether express or implied by the Council or the County Council of any breach or default by the Owner(s) in performing or observing any of the obligations contained herein shall constitute a continuing waiver and no such waiver shall prevent the Council or the County Council from enforcing the relevant obligations or from acting upon any subsequent breach or default.
- 7.8 This Deed shall cease to have any effect (insofar only as it has not been complied with) if the Planning Permission shall be quashed revoked or otherwise withdrawn or if the Commencement Date has not occurred in accordance with section 56 of the 1990 Act before the expiration of the period specified in the Planning Permission.
- 7.9 Without prejudice to the Council's and the County Council's statutory rights the Owner(s) hereby grant to the Council and the County Council or any person duly authorised or instructed by them an irrevocable licence at all reasonable times to enter any part of the Site to inspect any of the works to be carried out for the purposes of the Development and any materials to be used in carrying out those works for any purpose directly or indirectly connected with or contemplated by this Deed.

**8 MORTGAGEE CONSENT** *[delete if not applicable]*

The Mortgagee hereby consents to the Owner(s) entering into this Deed and agrees that the security of the Charge over the Site 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 Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner(s).

**9 VALUE ADDED TAX**

All consideration given in accordance with the terms of this Deed shall be exclusive of any valued added tax properly payable.

**10 JURISDICTION**

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



## **SCHEDULE 1**

### **The Owner(s) Covenants Restrictions Stipulations and Obligations**

The Owner(s) covenant:-

#### **1. Payments to the Council**

- 1.1 To pay to the Council the Allotments Contribution, the Cemetery Contribution, the Greenways Contribution, the Playing Fields Contribution, the Public Leisure Facilities Contribution, the Public Open Space Contribution, the Remediating Amenity Space Contribution and the Museums Contribution *[delete any that are not applicable]* prior to the Commencement Date.
- 1.2 Not to Commence nor permit Commencement until the Allotments Contribution, the Cemetery Contribution, the Greenways Contribution, the Playing Fields Contribution, the Public Leisure Facilities Contribution, the Public Open Space Contribution, the Remediating Amenity Space Contribution and the Museums Contribution *[delete any that are not applicable]* have been paid in accordance with paragraph 1.1 of this Schedule.

#### **2. Payments to the County Council**

- 2.1 To pay to the County Council the Sustainable Transport Contribution, the Childcare Contribution, the Library Contribution, the Youth Contribution, the Nursery Education Contribution, the Primary Education Contribution and the Secondary Education Contribution *[delete any that are not applicable]* prior to the Commencement Date.

2.2 Not to Commence nor cause nor permit Commencement until the Sustainable Transport Contribution, the Childcare Contribution, the Library Contribution, the Youth Contribution, the Nursery Education Contribution, the Primary Education Contribution and the Secondary Education Contribution **[delete any that are not applicable]** have been paid in accordance with paragraph 2.1 of this Schedule.

### **3. Fire Hydrant Provisions**

3.1 With regard to the water supply to the Development:

- i) to ensure that the Water Scheme incorporates fire hydrants in accordance with BS 750 (2006) as reasonably and properly required by the Fire and Rescue Service;
- ii) to prepare and submit the Water Scheme to the Fire and Rescue Service for its written approval prior to Commencement;
- iii) not to Commence nor cause nor permit Commencement until the Water Scheme has been approved in writing by the Fire and Rescue Service.

3.2 To construct and provide at no cost to the Fire and Rescue Service or the County Council the fire hydrants reasonably and properly indicated in the Water Scheme and to advise the Fire and Rescue Service in writing of the date upon which each and every fire hydrant becomes operational ready to be used for the purpose of fire fighting by the Fire and Rescue Service.

*HBC Template S106 UU [Less than 5 Residential Units]*

- 3.3 Once operational as aforesaid to maintain the fire hydrants in good condition and repair such that they are suitable at all times for use by the Fire and Rescue Service until they are adopted by the Fire and Rescue Service which adoption shall take place on the date specified in a written confirmation issued by the Chief Fire Officer of the Fire and Rescue Service.
- 3.4 Not to Occupy nor cause nor permit Occupation of any residential unit forming part of the Development until such time as it is served by an adopted fire hydrant.
- 3.5 To address any notice to be given to the Fire and Rescue Service to the Water Services Officer, Fire and Rescue Service, Old London Road, Hertford SG13 7LD.

**SCHEDULE 2**

**PROFORMA**

**EVENT NOTIFICATION AND PAYMENT**

**PURSUANT TO SECTION 106 AGREEMENT/UNILATERAL UNDERTAKING**

DATED .....

MADE BETWEEN .....

PLANNING PERMISSION REFERENCE.....

HCC DU REFERENCE .....

SITE ADDRESS .....  
.....  
.....

**SITE OWNER DETAILS**

Name .....

Contact name .....

Address .....  
.....  
.....

Telephone nos.

Main .....

Mobile .....

Email .....

**EVENTS BEING NOTIFIED**

Dates:

Commencement/Number of Units (if relevant):.....

Completion of Development/Number of Units (if relevant) :.....

Occupation of Development/Number of Units (if relevant):.....

**COMPLIANCE WITH OBLIGATION(S)**

**Schedule** ..... **Paragraph** .....

**Details of obligation and compliance** .....

**PAYMENT OF S106 CONTRIBUTIONS**

Payment Type	Amount	Interim Indexation	Final Indexation	Total	Payable to
	X	Y	Z	X+Y	
	£	£	£	£	

Payment of S106 contributions can be made by BACS, CHAPS or cheque. In any event the form should be completed to ensure the payment is identified correctly and forward to:

a) The Chief Legal Officer  
 Hertfordshire County Council  
 County Hall  
 Pegs Lane  
 Hertford  
 Hertfordshire  
 SG13 8DE

(Ref : DU xxxx)

b) Director of Environment  
 Hertsmeire Borough Council  
 Civic Offices  
 Elstree Way, Borehamwood, WD6 1WA (Ref: TP/xx/xxxx)

**IN WITNESS** whereof the Owner(s) and **the Mortgagee** *[delete if not applicable]* have executed this Deed on the day and year above written.

**EXECUTED AS A DEED**

**BY XXXXXXXX**

Signature:-

Witnessed by:-

Signature:

Name (in block capitals):

Occupation

*And/or*

**BY XXXXXXXX LIMITED  
ACTING BY TWO OF ITS DIRECTORS  
OR BY A DIRECTOR  
AND COMPANY SECRETARY:-  
*(or other applicable attestation wording)***

**BY XXXXXX BANK PLC  
ACTING BY ITS POWER OF ATTORNEY  
IN THE PRESENCE OF:  
*(or other applicable attestation wording)***

**DATED**

**2013**

**GIVEN BY**

**XXXXXXXXXXXXXXXXXX  
("the Owner")**

**or**

**XXXXXXXXXXXXXXXXXX  
(jointly "the Owners")**

**AND (if applicable)**

**XXXXXXXXXXXXXXXXXX  
("the Mortgagee")**

**TO**

**HERTSMERE BOROUGH COUNCIL  
("the Council")**

**and**

**HERTFORDSHIRE COUNTY COUNCIL  
("the County Council")**

**UNILATERAL UNDERTAKING**

**Pursuant to Section 106 Town and  
Country Planning Act 1990  
(as amended)**

**relating to  
Land at xxxxxxxx  
xxxxxxxxxxxxx  
xxxxxxx  
xxxxxxx**

**HCC Ref : DU xxxxx**

**Planning Ref: TP/xx/xxxx**