

DATED

20

[XXXXXXXX] LIMITED

(The Owner)

and

[XXXXXXXXXXXXXX]

(The Mortgagee)

IN FAVOUR OF

WELWYN HATFIELD BOROUGH COUNCIL

(The Council)

and

HERTFORDSHIRE COUNTY COUNCIL

(The County)

UNILATERAL UNDERTAKING

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

Relating to
Land at [XXXXXXXXXXXXXX]

Ref: [XXXXXXXXXX]

Legal Services,
Welwyn Hatfield Borough Council
Council Offices
The Campus
Welwyn Garden City
Herts
AL8 3AE

**PLEASE NOTE:-
THE PROVISIONS OF THIS DOCUMENT MAY NEED TO BE AMENDED TO TAKE INTO
ACCOUNT OF MATTERS REQUIRED BY THIS COUNCIL AND THE COUNTY AND EACH FINAL
AGREEMENT WILL DEPEND UPON THE SPECIFIC APPLICATION**

PLEASE ALSO ENSURE YOU READ THE ACCOMPANYING NOTES

THIS UNILATERAL UNDERTAKING is made by deed on the [] day of [] 201

PARTIES

- (1) **[XXXXXXXX] LIMITED** of [whose Registered Office is **XXXXXXXXXXXXX**] (the Owner)(which expression shall include the Owner’s successors in title) and
- [(2) **[XXXXXXXXXXXXX]** of **[XXXXXXXXXXXXXXXXXXXXX]** (The Mortgagee)]

In favour of:

- (3) **WELWYN HATFIELD BOROUGH COUNCIL** of Council Offices, The Campus, Welwyn Garden City Herts AL8 6AE (The Council) and
- (4) **HERTFORDSHIRE COUNTY COUNCIL** of County Hall, Pegs Lane, Hertford, Herts SG13 8DE (The County)

WHEREAS:-

- (1) The Council and County are local planning authorities for the purposes of the Act for the area which the Site is situate and as such are local planning authorities entitled to enforce the planning obligations hereinafter recited
- (2) The County is also the highway authority the education authority the library authority the social services authority and the fire and rescue authority for Hertfordshire

- (3) The Owner is the freehold owner of the whole of the Site [subject to the Charge in favour of the Mortgagee]
- (4) The Planning Application has been submitted to the Council (as local planning authority)
- (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 go ahead

NOW THIS DEED WITNESSES as follows:-

OPERATIVE PART

1. DEFINITIONS

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

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

“the Allotments Contribution” means the sum [XXXXXXXXXXXXX] pounds (£ XXXX) (index linked as hereinafter provided) towards the cost of allotment 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 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, 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;

“ **Charge**” means the mortgage/charge dated [XXXXXXX] made between the Owner and the Mortgagee [To be used if a Mortgagee is a party]

“**Childcare Contribution**” means the sum [XXXXXXXXXXXXXX] pounds (£ XXXX) (indexed linked as hereinafter provided) towards the cost of childcare facilities serving the locality of the Development;

“**Community Facilities Contribution**” means the sum [XXXXXXXXXXXXXX] pounds (£ XXXX) (index linked as hereinafter provided) towards the cost of community facilities serving the locality of the Development

“**Development**” means the development of the Site with [XXXXXXXXXXXXXX] as set out in the Planning Application;

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

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

“**Green Space Contribution**” means the sum [XXXXXXXXXXXXXX] pounds (£ XXXX) (index linked as hereinafter provided) towards the provision of green space serving the locality of the Development

“**Indoor Sports Facilities Contribution**” means the sum [XXXXXXXXXXXXXX] pounds (£ XXXX) (index linked as hereinafter provided) towards the cost of indoor sports facilities serving the locality of the Development

“Library Contribution” means the sum of [XXXXXXXXXXXXXXXX] pounds (£XXXX) (index linked as hereinafter provided) towards the cost of additional library facilities serving the locality of the Development;

“Monitoring and Administration Fee ” means the sum of five thousand pounds (£5000) OR 5% of the total value of contributions, up to a maximum of five thousand pounds (£5000) (index linked as hereinafter provided) towards the cost of monitoring the obligations

“Nursery Contribution” means the sum of [XXXXXXXXXXXXXXXX] pounds (£XXXX) (index linked as hereinafter provided) towards the cost of nursery 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 or occupation for marketing or display or occupation in relation to security operations;

“Outdoor Sports Facilities Contribution” means the sum [XXXXXXXXXXXXXXXX] pounds (£ XXXX) (index linked as hereinafter provided) towards the cost of outdoor sports facilities serving the locality of the Development

“Plan” means the plan annexed to this Deed;

“Planning Application” means the application for full Planning Permission bearing the Council’s reference number [XXXXXXXXXXXX]

“Planning Permission” means the permission to be granted by way of approval of the Planning Application or from any reserved matters submissions or resulting from any other planning application covering all or part of the Site for any of the uses comprised in the Planning Application whether granted by variation alteration substitution addition or replacement;

“Play Facilities Contribution” means the sum [XXXXXXXXXXXXX] pounds (£ XXXX) (index linked as hereinafter provided) towards the cost of play facilities serving the locality of the Development

“Primary Education Contribution” means the sum of [XXXXXXXXXXXXXXXXXXXXX] Pounds (£XXXX) (index linked as hereinafter provided) towards the cost of primary educational 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;

“RPI Index” means the measure of change in the prices charged for goods and services brought for consumption in the UK produced by the Office for National Statistics;

“Secondary Education Contribution” means the sum of [XXXXXXXXXXXXXXXXXXXXX] Pounds (£XXXXXX) (index linked as hereinafter provided) towards the cost of secondary educational facilities serving the locality of the Development;

“Site” means the freehold property situate at [XXXXXXXXXXXXX], Hertfordshire [XXX XXX] [registered at the Land Registry with Title Absolute under Title Number XXXXXX] OR [all of which site title is unregistered and title to which is deduced by way of a conveyance dated XXXXXXXX] all of which land is shown for identification purposes 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 [XXXXXXXXXXXXXXXXXXXX] pounds £[XXXXXX] (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 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;

“Waste and Recycling Contribution” means a contribution towards waste and recycling facilities within the Development to be calculated in accordance with the formula set out below:

- [£75 per House or Bungalow with space/storage for individual bins X XX (XXXXXX) (index linked as hereinafter provided);
- [£940 each for up to and including 5 flats for a standard 1100 litre container and mini-recycling unit (£XXXXX) (index linked as hereinafter provided);

“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 it shall mean the details of the residential dwellings and the water supply to them;

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

“Youth Contribution” means the sum of [XXXXXXXXXXXXXXXXXXXX] pounds (£XXXX) (index linked as hereinafter provided) towards the cost of youth facilities serving the locality of the Development

1.2 In this Deed:

- 1.2.1 the 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 statute 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 statute 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 their successors to their respective functions;
- 1.2.8 any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act and or thing and words denoting an obligation on the Owner 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 Act. To the extent that they fall within the terms of Section 106 of the Act the obligations contained in this Deed are planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council and the County;
- 2.2 To the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of the 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 enters into these obligations for themselves and their successors in title with the Council and the County to the intent that the obligations hereunder shall be enforceable not only against the Owner but also against the successors in title of the Owner and any person claiming through or under them an interest or estate in the Site or any part thereof;
3. The covenants in this Deed shall come into immediate effect save for clause 4.1(i)-(iv) which shall take effect upon on the Commencement Date;
4. OWNER'S COVENANTS

4.1 The Owner covenants with the Council and the County:-

- (i) To observe and perform the covenants restrictions stipulations and obligations contained in the Schedules hereto
- (ii) To give the Council and County 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 pro-forma set out in Schedule 2 hereto.

- (iii) To give the Council and County no less than five (5) Working Days notice of the Occupation of the Development such notice to be in writing using the pro-forma set out in Schedule 2 hereto.
- (iv) To give the Council and County no less than five (5) Working Days notice of the completion of the Development such notice to be in writing using the pro-forma set out in Schedule 2 hereto.
- (v) Upon completion of this Deed pay to the Council's and County's legal costs in connection with the preparation negotiation and completion of this Deed
- (vi) To pay to the Council the Monitoring and Administration Fee on completion of this Deed

4.2 The Owner further covenants that:-

- (i) it is the freehold owner of the Site
- (ii) the Site is free from all encumbrances and
- (iii) [Save the Mortgagee] no other party has a material interest in the Site

EXPENDITURE IN ADVANCE OF RECEIPT OF CONTRIBUTIONS

5. If prior to the receipt of any of the Childcare Contribution the Nursery Contribution the Primary Education Contribution the Secondary Education Contribution the Library Contribution and the Youth Contribution the County incurs any expenditure in providing additional childcare primary education secondary education library and youth facilities as the case may be the need for which arises from or in anticipation of the Development then the County may immediately following receipt of the relevant contribution deduct from the appropriate contribution such expenditure incurred

6. INDEXATION

6.1 The Childcare Contribution the Nursery Contribution the Primary Education Contribution the Secondary Education Contribution the Library Contribution the Youth Contribution and the Waste and Recycling Contribution **[name all other Council contributions applying]** shall each be index linked by reference to the PUBSEC Index figure of 175 to the finalised figure applicable to the quarter in which the contribution is paid

6.2 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 change 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

6.3 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

6.4 The **[name all Council Contributions applying]** Contributions shall be index linked by reference to the Retail Price Index

6.5 Where any sum to be paid to the County or Council under the terms of this Deed is required to be indexed 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 County or Council once the relevant indices have been finalised

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 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:-

In respect of the Owner at:

[XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX]

In respect of the Council at:

The Head of Planning
Council Offices
The Campus
Welwyn Garden City
Herts AL8 6AE
Ref: XXXXXXXXXX

In respect of the County at:

The Chief Legal Officer
Hertfordshire County Council
County Hall, Pegs Lane
Hertford
Herts SG13 8DE
Ref: XXXXXXXXXX

- 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 provision of this Deed
- 7.5 Nothing in this Deed shall be construed as imposing a contractual or other obligation upon the Council as to the issue of the Planning Permission or as restricting the exercise by the Council or the County or any powers exercisable by them respectively under the Act or under any other act or authority
- 7.6 No waiver whether express or implied by the Council or County of any breach or default by the Owner 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 from enforcing the relevant obligations or from acting upon any subsequent breach or default
- 7.7 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 been initiated in accordance with Section 56 of the Act before the expiration of the period specific in the Planning Permission
- 7.8 Without prejudice to the Council's or the County's statutory rights the Owner hereby grant to the Council and/or the County or any person duly authorised or instructed by it an irrevocable licence at all reasonable times to enter the such parts 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. VALUE ADDED TAX

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

9. JURISDICTION

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

10. MORTGAGEES CONSENT (If Mortgagee is to be a Party to this Deed)

The Mortgagee hereby consents to the Owner 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

IN WITNESS whereof the Owner [and the Mortgagee] have executed this Deed but the same remains undelivered until the day and year first before written

SCHEDULE 1

The Owner's Covenants Restrictions Stipulations and Obligations

Sustainable Transport Contribution

- 1.1 To pay the Sustainable Transport Contribution to the County prior to the Commencement Date;
- 1.2 Not to Commence nor cause nor permit Commencement until such time as the Sustainable Transport Contribution shall have been paid to the County in accordance with paragraph 1.1 of this Schedule ;

Childcare Contribution Library Contribution Nursery Contribution Youth Contribution Primary Education Contribution and Secondary Education Contribution

- 2.1 To pay the Childcare Contribution the Nursery Contribution the Library Contribution the Primary Education Contribution the Secondary Education Contribution and the Youth Contribution to the County prior to Commencement Date;
- 2.2 Not to Commence nor cause nor permit Commencement until the Childcare Contribution the Library Contribution the Nursery Contribution the Youth Contribution the Primary Education Contribution and the Secondary Education Contribution have all been paid in accordance with paragraphs 2.1 of this Schedule;

Fire Hydrants

- 3.1 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 AND not to Commence or permit Commencement of the Development until the Water Scheme has been submitted to and 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 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;
- 3.3 Once operational in accordance with paragraph 3.2 above 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 or permit Occupation of any dwelling forming any 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 Telephone 01992 507521;

**Allotments Contribution Community Facilities Contribution Green Space Contribution
Indoor Sport Facilities Contribution Outdoor Sport Facilities Contribution Play
Facilities Contribution and Waste and Recycling Contribution**

- 4.1 To pay the [name all other Council Contributions applying] and Waste and Recycling Contribution to the Council prior to the Commencement Date;
- 4.2 Not to Commence nor cause nor permit Commencement until [name all other Council Contributions applying] and the Waste and Recycling Contribution has been paid in accordance with paragraph 4.1 above;

SCHEDULE 2

Proforma Event Notification and Payment

Pursuant to Section 106 Agreement/Unilateral Undertaking

DATED

MADE BETWEEN

PLANNING PERMISSION REFERENCE

WHBC REFERENCE: XXXXXX.....

HCC DU REFERENCE: XX XXXX.....

SITE ADDRESS

SITE OWNER DETAILS:

Name:

Contact Name :

Address:

Telephone No: Mobile:

Email:

EVENTS BEING NOTIFIED

Commencement Date – date:

Occupation of Development (Number if relevant) – date:

Completion of Development – date:

COMPLIANCE WITH OBLIGATION(S)

Schedule Paragraph

Details of obligation and compliance

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PAYMENT OF S106 CONTRIBUTIONS

Payment Type	Amount	Interim Indexation	Final Indexation	Total	Payable to
Example Education (primary)	X £	Y £	Z £	X+Y £	Herts County Council

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: XX XXXX

- b) The Head of Planning
Council Offices
The Campus
Welwyn Garden City
Herts AL8 6AE

Ref: XXXXXXXXX

The Common Seal of

[OWNER]

was hereto affixed in the presence of:

Director:-

Name:-

Signature:-

Company Secretary:-

Name:-

Signature:-

Executed as a Deed by (If Mortgagee is to be a Party to this Deed)

XXXX Bank PLC

acting by:

Name:-

Designation:-

Signature:-