

dated

2018

[Full Name(s) of owner(s) of 1st property]

and

[Full Name(s) of owner(s) of 2nd property]

and

[Name of 1st Mortgagee (if applicable)]

and

[Name of 2nd Mortgagee (if applicable)]

and

Welwyn Hatfield Borough Council

Unilateral Undertaking

in relation to **[site addresses]**

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[PLEASE NOTE:-

THE PROVISIONS OF THIS DOCUMENT MAY NEED TO BE AMENDED TO TAKE INTO ACCOUNT MATTERS REQUIRED BY WELWYN HATFIELD BOROUGH COUNCIL AND EACH FINAL AGREEMENT WILL DEPEND UPON THE SPECIFIC APPLICATION]

Unilateral Undertaking

dated 2018

Parties

- (1) **[Full name(s) of owners of 1st property]** of **[full address of 1st property]** (the **First Owner**);
- (2) **[Full name(s) of owners of 2nd property]** of **[full address of 2nd property]** (the **Second Owner**);
- (3) **[Full name of 1st mortgagee(if applicable)]** of **[Full address of 1st mortgagee]** (the **First Mortgagee**) and
- (4) **[Full name of 2nd mortgagee (if applicable)]** of **[Full address of 2nd mortgagee]** (the **Second Mortgagee**).

In favour of:

- (5) **Welwyn Hatfield Borough Council** of Council Offices, The Campus, Welwyn Garden City Herts AL8 6AE (the **Council**).

Introduction

- (A) The Council is the local planning authority for the purposes of the Act for the area which the Site is situate and as such is the local planning authority entitled to enforce the planning obligations hereinafter recited.
- (B) The Owners are the freehold owners of the properties **[subject to the Charges in favour of the Mortgagees (if applicable)]**.
- (C) The Planning Applications have been submitted to the Council (as local planning authority).
- (D) This Deed is entered into to make provision for regulating the Developments and securing the matters hereinafter referred to which are required in order to enable the Developments to be implemented.

Agreed terms

1 Definitions

- 1.1 In this Deed the following terms have the following meanings unless inconsistent with the context:

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

[Charges means the mortgage/charge dated [date month year] made between the First Owner and the First Mortgagee (**First Charge**) and the mortgage/charge dated [date month year] made between the Second Owner and the Second Mortgagee (**Second Charge**) (if applicable);]

Commencement Date means the date on which any material operation (as defined in section 56(4) of the Act) forming part of the Developments 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;

Development(s) means [description of 1st development] in respect of [1st property address] Road (**First Development**) and [description of 2nd development] in respect of [2nd property address] (**Second Development**) granted by separate Planning Permissions referenced under numbers 6/20XX/XXXX/HOUSE and 6/20XX/XXXX/HOUSE;

Monitoring Notice means the notice served on the Council pursuant to Schedules 1 and 2 (which for monitoring informs the Head of Planning of events and relevant information concerning performance of the obligations herein) in the form of the notice at Appendix 1;

Owners means collectively the First Owner and the Second Owner of the Site and severally and which expression shall include the Owners' successors in title;

Plan means the location plan annexed to this Deed at Appendix 2;

Planning Applications means the applications for full Planning Permissions bearing the Council's reference numbers 6/20XX/XXXX/HOUSE and 6/20XX/XXXX/HOUSE;

Planning Permissions means the permissions to be granted by way of approval of the Planning Applications or resulting from any other planning applications covering all or part of the Site for any of the uses comprised in the Planning Applications whether granted by variation alteration substitution addition or replacement;

Site means the freehold property situate at [address of 1st property], Hertfordshire registered at the Land Registry with Title Absolute under Title Number HD[XXXXXX] all of which land is shown for identification purposes edged red on the Plan and the freehold property situate at [address of 2nd property], Hertfordshire registered at the Land Registry with Title Absolute under Title Number HD[XXXXXX] all of which land is shown for identification purposes edged blue on the Plan;

Substantial Completion means physically complete save in all minor respects so that the Developments (or the appropriate part of the Developments concerned) can be used for the purpose and operate in the manner for which it was designed; and

Working Day means any day other than a Saturday or Sunday or a Public Holiday.

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 the successors to its respective functions;
- 1.2.8 any covenant by the Owners 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 Owners to do any act matter or thing include an obligation to procure that it be done;
- 1.2.9 save in respect of the Planning Permissions (which at all times shall prevail) in the event of any conflict between the terms, conditions and provisions of this Deed and any document annexed hereto or referred to herein, the terms, conditions and provisions of this Deed will prevail; and
- 1.2.10 all parts and schedules attached to this Deed are to be read as if the same were incorporated into the main body of this Deed.

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.
- 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 Owners enters into these obligations for themselves and their successors in title with the 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 them an interest or estate in the Site or any part thereof.

3 **Conditionality**

The covenants in this Deed shall come into immediate effect save for clause 4.1.1-4.1.3 which shall take effect upon the Commencement Date.

4 **Owners' Covenants**

4.1 The Owners covenant with the Council:

4.1.1 to observe and perform the covenants restrictions stipulations and obligations contained in the Schedules hereto;

4.1.2 to give the Council no less than five 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 Appendix 1 hereto; and

4.1.3 to give the Council no less than five Working Days' notice of the Substantial Completion of the Developments such notice to be in writing using the pro-forma set out in Appendix 1 hereto.

4.2 To pay the Council its reasonable legal costs incurred in the preparation of this Deed on the date hereof

4.3 The Owners further covenant that:

4.3.1 they are the freehold owners of the Site;

4.3.2 the Site is free from all encumbrances; and

4.3.3 **save the Mortgagees**, no other party has a material interest in the Site.

5 **Miscellaneous**

5.1 This Deed shall be registered as a local land charge by the Council.

5.2 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.

5.3 Any notice to the parties hereto under this Deed shall be deemed to be sufficiently served if delivered personally or by first class post or recorded delivery to the following officials/persons at the respective addresses hereinafter specified:

In respect of the First Owner at:

[Full name(s)]

[Full address]

In respect of the Second Owner at:

[Full name(s)]

[Full address]

In respect of the Council at:
The Head of Planning
Council Offices
The Campus
Welwyn Garden City
Herts. AL8 6AE
Refs: 6/2018/XXXX/HOUSE and 6/2018/XXXX/HOUSE

- 5.4 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.
- 5.5 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 any powers exercisable by them respectively under the Act or under any other act or authority.
- 5.6 No waiver whether express or implied by the Council of any breach or default by the Owners in performing or observing any of the obligations contained herein shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing the relevant obligations or from acting upon any subsequent breach or default.
- 5.7 This Deed shall cease to have any effect (insofar only as it has not been complied with) if the Planning Permission(s) shall be quashed revoked or otherwise withdrawn or expires prior to the Commencement Date.
- 5.8 Without prejudice to the Council's statutory rights the Owners hereby grant to the Council 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 Developments and any materials to be used in carrying out those works for any purpose directly or indirectly connected with or contemplated by this Deed.

6 Jurisdiction

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

7 [Mortgagees consent (if applicable)]

- 7.1 The First Mortgagee hereby consents to the First Owner entering into this Deed and agrees that the security of the First Charge over the Site shall take effect subject to this Deed provided that the First Mortgagee shall otherwise have no liability under this Deed unless the First Mortgagee takes possession of the Site in which case the First Mortgagee too will be bound by the obligations as if it were a person deriving title from the First Owner.
- 7.2 The Second Mortgagee hereby consents to the Second Owner entering into this Deed and agrees that the security of the Second Charge over the Site shall take effect subject to this Deed provided that the Second Mortgagee shall otherwise have no liability under this Deed unless the Second Mortgagee takes possession of the Site in which case the Second Mortgagee too will be bound by the obligations as if it were a person deriving title from the Second Owner.]

This Unilateral Undertaking has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Schedule 1

Notification and Monitoring

- 1 To serve a Monitoring Notice on the Head of Planning of the Council within five Working Days of (or before) the occurrence of any of the events listed below:
 - 1.1 Commencement of the Developments;
 - 1.2 Substantial Completion of the Developments; and
 - 1.3 Compliance with (an) obligation(s) contained in this Deed.

2 **Monitoring Provisions – General**

The matters in this Schedule are subject as follows:

- 2.1 If any event which triggers the performance of an obligation herein is omitted from paragraph 1.3 above it is deemed to be incorporated as if expressly entered into in this Deed.
- 2.2 If there is a conflict between the details of an event listed in this Schedule and that prescribed in the relevant schedule the latter shall prevail.

Schedule 2 – Owner covenants and obligations

- 1 The First Owner hereby covenants with the Council to Commence the First Development no later two months after the Second Development Commences.
- 2 The Second Owner hereby covenants with the Council to Commence the Second Development no later two months after the First Development Commences.
- 3 The Owners hereby covenant with the Council:
 - 3.1 to complete the Developments in accordance with the drawings approved by the Council in accordance with the relevant Planning Permissions;
 - 3.2 to ensure all materials used in connection with the Developments shall be in keeping to match the existing dwellings constructed on the Site;
 - 3.3 not to implement Planning Permissions 6/2018/XXXX/HOUSE and 6/2018/XXXX/HOUSE separately; and
 - 3.4 to simultaneously enter into a builder's contract with the same builder to carry out and complete the Developments pursuant to Planning Permissions 6/2018/XXXX/HOUSE and 6/2018/XXXX/HOUSE.

signed as a deed by)
[Full name of 1st Owner of 1st property])
in the presence of:)

witness signature

name
address
occupation

signed as a deed by)))

[Full name of 2nd Owner of 1st property (if jointly owned)]
in the presence of:)

witness signature

name
address
occupation

signed as a deed by)
[Full name of 1st Owner of 2nd property])
in the presence of:)

witness signature

name
address
occupation

signed as a deed by)

[Full name of 2nd Owner of 2nd property (if jointly owned)])

in the presence of:)

witness signature

name

address

occupation

Executed as a Deed by **[name of 1st Mortgagee (if applicable)]**

acting by:

Name:

Designation:

Signature:

[Correct attestation clause to be inserted as appropriate]

Executed as a Deed by **[name of 2nd Mortgagee (if applicable)]**

acting by:

Name:

Designation:

Signature:

[Correct attestation clause to be inserted as appropriate]

Appendix 1

Proforma Event Notification Pursuant to Unilateral Undertaking

Dated

Made between

.....

Planning Permission Reference(S): 6/2018/XXXX/HOUSE and/or 6/2018/XXXX/HOUSE

Site address

Site owner details:

Name:

Contact Name:

Address:

Telephone No: Mobile:

Email:

Event being notified

Commencement Date:

Completion of Development – date:

Compliance with obligation(s)

Schedule Clause

Details of obligation and compliance

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Send to:

The Head of Planning
Welwyn Hatfield Borough Council
The Campus
Welwyn Garden City
Herts. AL8 6AE

Appendix 2

Plan