

DATED

XXXX [OWNER]

AND XXX [MORTGAGEE]

TO

LEEDS CITY COUNCIL

UNILATERAL UNDERTAKING

under Section 106 of the Town and Country Planning Act 1990 (as amended)

relating to land at [] West Yorkshire

THIS UNDERTAKING (signed as a deed) is made the _____ day of _____ 20xx

BY: -

(1) **XXX of xx** (“the Owner”)

(2) **XXX BANK PLC** whose registered office is at (“the Mortgagee”)

TO:

Leeds City Council of Civic Hall, Leeds LS1 1UR

1 DEFINITIONS AND INTERPRETATION

1.1 In this Undertaking the following expressions shall have the following meanings:

DEFINITIONS

GENERAL

DEFINITIONS

"1990 Act" means the Town and Country Planning Act 1990 as amended

"Application" means the application reference number xxxx and registered by the Council on xxxx

"Chief Planning Officer" means the Chief Planning Officer of the Council for the time being or such other officer of the Council nominated by him for the purposes of this Undertaking

"Commencement of Development" means the date upon which the development shall commence by the carrying out on the land pursuant to the planning permission of a material operation as specified in Section 56(2) of the 1990 Act save that the term "*material operation*" shall not include operations in connection with any work of or associated with demolition site clearance remediation works environmental investigation site and soil surveys erection of contractors work compound erection of site office erection of fencing to site

boundary and commencement of development shall be construed accordingly

- “Contributions” means the education contribution, greenspace contribution, off-site highways contribution and public transport infrastructure contribution such payments to be indexed linked
- “Development” means the development of the land in accordance with the planning permission
- “Education Contribution” means the sum of xxx to be paid by the owner to the Council towards the provision of and/or improvement of educational facilities within the [specify area] required as a consequence of the development
- “Greenspace Contribution” means the sum of £[] (pounds) to be paid by the owner to the Council towards the provision of and/or the enhancement to greenspace within the community area or adjoining community area in which the land is located in accordance with Policy N4 of the Leeds Unitary Development Plan (as reviewed) and SPG4
- “Index” means the Building Costs Information All-in Tender Price Index published by the Royal Institution of Chartered Surveyors except where the terms of this Undertaking specify otherwise
- “Index Linked” means such increase to sum or sums payable to the Council under this Undertaking on an annual basis or pro rata per diem from the date of the resolution by the appropriate Plans Panel of the Council to approve the grant of planning permission or from the date of the delegated decision taken by the Chief Planning Officer to approve the grant of planning to the date of payment based upon the specified Index last published before the date of the decision to approve the grant of planning permission or any publication

substituted for it

“Land” means all that land situate at [] West Yorkshire shown edged red on the Plan

“Management Fee” means the sum of £[] (pounds) being the owner's maximum total contribution towards the costs incurred or to be incurred by the Council in monitoring, keeping of appropriate data and mechanisms up to date and related staff cost;

“Off-site Highways Works Contribution” means the sum of £[].00 (pounds) to be used by the Council in undertaking such off-site highways works as the Council may decide in its absolute discretion are necessary as a result of the development

“Plan” means the plan attached to this Undertaking

“Planning Permission” means a planning permission to be granted pursuant to the application

“Public Transport Infrastructure Contribution” means the sum of £[].00 (pounds) relating to public transport or other environmental improvements within the vicinity of the development or elsewhere within the administrative are of the Council required as a consequence of the development as the Council may in its absolute discretion may decide

“Travel Plan” means the travel plan prepared by xxx dated xxx appended to this Undertaking as the Third Schedule

“Travel Plan Monitoring Fee” means the sum of £xxx (xxx pounds) to be paid to the Council by the owner and used by the Council towards monitoring the travel plan the need for which directly arises from the development

Affordable Housing Definitions

“Affordable Dwellings”	means housing provided to eligible households whose needs are not met by the market in accordance with the definition in Annex B of PPS3 and includes social rented and submarket/intermediate affordable units
“Affordable Housing Contribution”	means the difference between the sum of the open market value of the affordable units at the expiration of the offer period and the sum produced by multiplying the total gross internal floor space of the social rented affordable units by the social rent price, plus the sum produced by multiplying the total gross internal floorspace of the submarket affordable units by the submarket price to be used by the Council in lieu of the affordable units on the land, for the provision of, or improvements to existing affordable units elsewhere within the Council’s area in the event that paragraph 1.7 of the First Schedule is applicable
“Affordable Units”	<p><i>On full applications:</i></p> <p>means [no. of] affordable dwellings comprising [no.] submarket/intermediate affordable units and [no.] social rented affordable units which are situated and shown edged red and blue respectively on plan 2</p> <p><i>On outline applications:</i></p> <p>means [%] (rounded up) of the total number of units, of which [%] will be submarket affordable units and [%] will be social rented affordable units, the location, mix and type to be agreed in writing with the Council before the commencement of development</p>
“Homes and Communities Agency”	means the Homes and Communities Agency or the Tenant Services Authority as may be or any bodies undertaking the existing functions of the Homes and Communities Agency within the meaning of Part I of the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-

enactment of such Act)

- "Housing Association" means any one or more of the housing associations identified on the Second Schedule or any other housing association or registered social landlord registered in accordance with Part 1 Chapter 1 of the Housing Act 1996 (or as redefined by any amendment, replacement or re-enactment of such Act) or any company or other body approved by the Homes and Communities Agency for receipt of social housing grant as proposed by the owner and approved by the Chief Planning Officer
- "Independent Surveyor" means a member of the Royal Institution of Chartered Surveyors appointed by the owner at its own costs but first approved by the Council and the phrase "independent surveyors" shall be construed accordingly;
- Marketing Strategy means written proposals setting out what measures the house builder will take over what time period to advertise the availability of submarket/intermediate affordable units to the public to help the housing association raise awareness about the availability of such dwellings to suitable households
- Offer Documentation" means plans, drawings, specification and other documentation which the housing association may reasonably require in order to make an offer for the affordable units including the following documents relating to the affordable units which shall be provided by the owner to a housing association: -
- (i) drawings showing the size, layout and design of the affordable units; and
 - (ii) site layout showing position of the affordable units in relation to the open market dwellings and the nature of the open market dwellings;

and

- (iii) a copy of the planning permission and this Undertaking

"Offer Period" means a period of six months from receipt of the offer documentation by a housing association or housing associations during which the housing association or housing associations may submit an offer for the purchase of the affordable units;

"Open Market Dwellings" means the residential units that may be built on the land as part of the development excluding the affordable dwellings and open market dwelling shall be construed accordingly;

"Open Market Value" means the open market value agreed between the Council and the owner as being the open market value of an affordable dwelling or if not agreed shall mean an average price based on the opinions of two independent surveyors of the price at which the sale of an interest in property would have been completed unconditionally for cash consideration on the date of valuation assuming:-

- (a) a willing seller;
- (b) that any restrictions imposed on the dwelling by reason of this Undertaking are disregarded;
- (c) that there are no restrictions as to the persons who may occupy the unit or to whom a transfer or lease of a dwelling may be granted or assigned; and

that both parties to the transaction had acted knowledgeably prudently and without compulsion;

Practical Completion means the stage when an affordable dwelling has been constructed and fitted out and is ready for

occupation

“Retail Price Index”	means the Retail Price Index published by the Office for National Statistics or any official publication substituted for it.
“Social Rented Affordable Units”	means affordable dwellings to be disposed of at the social rent price to a housing association(s), the units not to be occupied by persons other than tenants of a housing association(s) at no greater than the social rent
Social Rent Price	means no greater than the following sum per square metre of gross internal floor space during the year 2010/11, in accordance with the Council’s SPG Annex July 2005, Revision April 2010 and thereafter updated annually on 1 April by the Retail Price Index : In respect of the social rented dwellings the sum of £520 or a price that enables the housing association to achieve the social rent.
Social Rent	means a rent no higher than Homes and Communities Agency target rents
Sub Market/Intermediate Affordable Units	means affordable dwellings to be disposed of at the submarket price to a housing association(s), to be disposed of by the housing association(s) at prices and rents above those of social rent, but below market prices or rents, to include shared ownership, shared equity, discounted sale, sub market/intermediate rent, rent to buy, or any other sub market/intermediate type/model that meets the definition in Annex B PPS3.
Sub Market/Intermediate Price	means no greater than the following sum per square metre of gross internal floor space during the year 2010/11, in accordance with the Council’s SPG Annex July 2005, Revision April 2010 and thereafter updated annually on 1 April by the Retail Price Index (or

proportionally if the relevant date is part way through a year):

A) In respect of the submarket houses (for sale or rent) the sum of £958

B) In respect of the submarket flats (for sale or rent) the sum of £1,197 (£1,437 for city centre sites)

“Verification Fee” means the reasonable fee to be charged by the Council or its agent for verification of the open market value and subsequent affordable housing contribution in accordance with paragraph 1.9(a) of the First Schedule

1.2 Where the context so requires: -

- 1.2.1 The singular includes the plural and vice versa and words importing the masculine gender only include the feminine gender and extend to include a corporation sole or aggregate;
- 1.2.2 References to any party in this Undertaking shall include the successors in title and assigns of that party
- 1.2.3 Where a party includes more than one person any obligations of that party shall be joint and several;
- 1.2.4 Any covenant by the owner not to knowingly do any act or thing shall be deemed to include a covenant not to cause permit or suffer the doing of that act or thing;
- 1.2.5 A reference to an Act of Parliament refers to the 1990 Act as it applies at the date of this Undertaking;
- 1.2.6 References to clauses paragraphs and schedules are references to clauses paragraphs and schedules to this Undertaking and are for reference only and shall not affect the construction of this Undertaking.

2 RECITALS

- 2.1 By virtue of the 1990 Act the Council is the local planning authority for the purposes of this Undertaking for the area in which the land is situated and is the Authority by whom the planning obligations hereby created are enforceable.
- 2.2 The owner is the registered proprietor with absolute title of the land registered at HM Land Registry under Title Number xx
- 2.3 The mortgagee is mortgagee of the land by virtue of a legal charge dated xx and registered on xx and acknowledges that the land shall be bound by the provisions of this Undertaking
- 2.4 The Council would not grant planning permission for the development unless the planning obligations contained herein were entered into by the owner
- 2.5 The owner by entering into this Undertaking does so to create planning obligations in respect of the land and each part of it in favour of the Council pursuant to Section 106 of the 1990 Act and to be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained.
- 2.6 Where any notice or confirmation is to be served on the Chief Planning Officer or the Council under the terms of this Undertaking such notice or confirmation shall be sent to the Chief Planning Officer at Leonardo Building, 2 Rossington Street, Leeds LS2 8HD quoting the Application reference number

3 OPERATIVE PROVISIONS

- 3.1 This Undertaking is a planning obligation made in pursuance of Section 106 of the 1990 Act as substituted by Section 12 of the Planning and Compensation Act 1991 and to the extent that the covenants in this Undertaking are not made under Section 106 of the 1990 Act they are made under Section 111 of the Local Government Act 1972 and all other powers so enabling.
- 3.2 The planning obligations comprised in this Undertaking shall not become effective until the date hereof.

- 3.3 The owner hereby undertakes to the Council that the land shall be permanently from the date hereof subject to the restrictions and provisions regulating the development and use thereof specified in the First Schedule hereto.
- 3.4 This Undertaking is subject to the following conditions: -
- 3.4.1 No party shall be bound by the terms of this Undertaking or be liable for the breach of any covenants restrictions or obligations contained in this Undertaking occurring after he or it has parted with his or its interest in the land or the part in respect of which such breach occurs (but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest);
- 3.4.2 If the planning permission shall expire before the commencement of development or shall at any time be revoked this Undertaking shall terminate and cease to have effect and the Council shall immediately remove any entry relating to this Undertaking from the Register of Local Land Charges.
- 3.4.3 Nothing in this Undertaking shall be construed as restricting the exercise by the Council of any power or discretion exercisable by it under the 1990 Act or under any other Act of Parliament nor prejudicing or affecting the Council's rights powers duties and obligations in any capacity as a local or public authority.
- 3.4.4 The obligations hereby created may be registered as a Local Land Charge.
- 3.4.5 No person who is not a party to this Undertaking may enforce any terms hereof pursuant to the Contracts (Right of Third Parties) Act 1999 provided that this clause shall not affect any right of action of any person to whom this Undertaking has been lawfully assigned or becomes vested in law.
- 3.4.6 Nothing in this Undertaking shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than one relating to the development as specified in the application) granted after the date of this Undertaking.

3.4.7 The owner shall pay to the Council its reasonable legal fees on completion of this Undertaking

3.4.8 The owner shall pay to the Council the management fee within one month of commencement of development by sending or delivering the same to the Chief Planning Officer at Leonardo Building 2 Rossington Street Leeds LS2 8HD quoting the application reference number

FIRST SCHEDULE

("the Owner's Covenants")

The owner hereby undertakes to the Council: -

1. Affordable housing

1.1 to notify the Council of the commencement of development within two weeks thereof.

1.2 to procure that all submarket/intermediate affordable units shall be constructed on the land in accordance with the planning permission and approved plans or in accordance with any amended plans showing the location type and mix of the affordable units submitted to and approved by the Council (such approval not to be unreasonably withheld or delayed) for disposal to a housing association or housing associations by agreement between the owner and a housing association or housing associations as submarket affordable units at the submarket price.

1.3 to procure that all social rented affordable units shall be constructed on the land in accordance with the planning permission and approved plans or in accordance with any amended plans showing the location, type and mix of the affordable units submitted to and approved by the Council (such approval not to be unreasonably withheld or delayed) for disposal to a housing association or housing associations by agreement between the owner and a housing association or housing associations at the social rent price, the social rented affordable units not to be occupied by persons other than tenants of a housing association at no greater than the social rent except as provided by Chapters II and IV of the Housing Act 1996.

Submarket/intermediate affordable units

1.4 Upon the commencement of development to submit a marketing strategy to the Chief Planning Officer. On approval of the marketing strategy by the Chief Planning Officer (such approval not to be unreasonably withheld or delayed), to provide offer documentation in relation to the submarket/intermediate affordable units to the housing associations and at the same time to supply a copy of the offer documentation to the Chief Planning Officer and to use reasonable endeavours to dispose of the submarket/intermediate affordable units to a housing association or housing associations during the offer period (and beyond this period if negotiations with particular housing associations continue) at the submarket price.

Social rented affordable units

1.5 Upon the commencement of development to provide offer documentation in relation to the social rented affordable units to the housing associations and at the same to supply a copy of the offer documentation to the Chief Planning Officer and to use reasonable endeavours to dispose of the social rented affordable units to a housing association or housing associations during the offer period (and beyond this period if negotiations with particular housing associations continue) at the social rent price.

General provisions – Submarket/intermediate affordable units and social rented affordable units

1.6 In the event that no offers are received from a housing association within the offer period to purchase the social rented affordable units at the social rent price or the submarket/intermediate affordable units at the submarket price on the terms and conditions of this Undertaking pursuant to paragraphs 1.4 and 1.5 of this Schedule, the owner shall notify the Chief Planning Officer within 14 days thereof and shall submit evidence of its compliance with paragraphs 1.4 and 1.5 of this Schedule to the Chief Planning Officer together with evidence from the housing association(s) that they are not willing to so purchase the affordable units (if such evidence is available).

1.7 If the Chief Planning Officer acting reasonably confirms his approval in writing (such approval not to be unreasonably withheld or delayed) that he is satisfied that the owner has used all reasonable endeavours and no offers have been received from the housing association(s) to purchase the affordable units during the offer period pursuant to paragraphs 1.4 and 1.5 hereof, the owner shall thereafter be free to dispose of the affordable units on the open market at the open market value, or if a housing association has offered to purchase some but not all the affordable units then the provisions of this paragraph shall apply to any affordable units in respect of which no offer has been received,

Subject to the following provisions:-

- (a) the owner shall first pay to the Council the verification fee; and
- (b) the owner shall pay 25% of the total affordable housing contribution attributable to the relevant affordable units to the Council within 25 working days of the sale of 25% of the affordable units on the open market;
- (c) the owner shall pay the remaining 75% of the total affordable housing contribution attributable to the relevant affordable units to the Council within 25 working days of the sale of 75% of the affordable units on the open market;
- (d) on payment of the total affordable housing contribution the owner shall be released from all obligations in this paragraph 1 of this Schedule relating to those particular affordable units on the land ;

1.8 not to permit (unless the owner has paid to the Council the affordable housing contribution pursuant to paragraph 1.7 of this Schedule or the owner is entitled to dispose of the affordable units on the open market in accordance with the provisions of this Schedule):-

- (a) occupation of more than 25% of the open market dwellings until the owner has entered into a legally binding contract with a housing association for the purchase of the affordable units
- (b) occupation of more than 75% of the open market dwellings until practical completion of all the affordable units.

1.9 On production to the Council of a certified copy of the executed and dated transfer between the owner and the housing association(s) in accordance with this Schedule the obligations to provide affordable units hereunder shall be discharged and this shall be noted on the entry relating to this Undertaking in the Local Land Charges Register.

1.10 Any transfer of the affordable units shall contain reasonable provisions ensuring that the affordable units remain affordable in perpetuity but nothing in this Schedule shall apply upon:

- (i) the exercise by any person of a statutory right to buy, right to acquire or right to staircase out and take a subsequent freehold transfer under the

terms of a Shared Ownership Lease based substantially on the Homes and Communities Agency's model lease; or

- (ii) the exercise of its power of sale by a mortgagee of any of the Affordable Units or the sale by a receiver appointed by such mortgagee pursuant to statutory powers or the provisions of any mortgage or charge as required by a Court Order; or
- (iii) any subsequent disposition of the properties following a disposal falling within (i) or (ii) above

2. Greenspace contribution

- 2.1. To pay to the Council the greenspace contribution prior to the commencement of development
- 2.2. Not to commence development until the greenspace contribution has been paid to the Council

3. Off-site highway works contribution

- 3.1. To pay to the Council the off-street highways contribution prior to the commencement of development
- 3.2. Not to commence development until the off-site highways works contribution has been paid to the Council

4. Public transport infrastructure contribution

- 4.1. To pay to the Council the public transport infrastructure contribution prior to the commencement of development
- 4.2. Not to commence development until the public transport infrastructure contribution has been paid to the Council

5. Education contribution

- 5.1 To pay to the Council the education contribution prior to the commencement of development

- 5.2 Not to commence development until the education contribution has been paid to the Council

SECOND SCHEDULE

("List of housing associations approved by the Council")

1. Yorkshire Housing Association.
2. Chevin Housing Group
3. Unity Housing Association.
4. The Home Group.
5. Leeds Federated Housing Association.
6. Leeds and Yorkshire Housing Association
7. Connect Housing Association
8. Headrow Housing Group
9. Sanctuary Housing Association
10. Accent Group
11. Northern Counties Housing Association
12. Affinity Sutton Housing Association

IN WITNESS whereof the parties hereto have executed this deed the day and year first before written

SIGNED AS A DEED by
in the presence of:

SIGNED AS A DEED by
[Mortgagee]