

**Dated**

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**Planning obligation by way of unilateral undertaking  
under section 106 of the Town & Country Planning Act  
1990 relating to land at the Meriden Estate**

between

**WATFORD COMMUNITY HOUSING TRUST**

and

**PRUDENTIAL TRUSTEE COMPANY LIMITED**

and

**WATFORD BOROUGH COUNCIL**

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**Anthony Collins Solicitors LLP  
134 Edmund Street  
Birmingham  
B3 2ES**

**Reference: OJG 30608.0217**

**THIS UNILATERAL UNDERTAKING** is given on the                      day of                      2015

**BY**

- (1) **WATFORD COMMUNITY HOUSING TRUST** a registered society under the Co-operative Community Benefit Societies act 2014 with number 30183R whose registered office is at Gateway House, 59 Clarendon Road, Watford, Hertfordshire, WD17 1LA (**Owner**)
- (2) **PRUDENTIAL TRUSTEE COMPANY LIMITED** incorporated and registered in England and Wales with company number 1863305 whose registered office is at Laurence Pountney Hill, London, EC4R 0HH **Mortgagee**

**TO**    the **Council**

## **BACKGROUND**

- (A) Watford Borough Council (referred to in its capacity as local planning authority as “**the Council**”) is Local Planning Authority for the purposes of the Act for the Land shown for the purposes of identification only edged red on the plan annexed to this Undertaking.
- (B) The Owner is the registered proprietor with title absolute to the freehold of the Land shaded green on the attached plan comprised or included in title numbers HD7762 and HD544367.
- (C) The Owner has made the Planning Application to the Council and is proposing to carry out the Development.
- (D) The Council considers it expedient in the interests of the proper planning of their area and having regard to the provisions of the Development Plan (as defined in s.336 of the Act) and to all other material considerations that the Planning Permission should not be granted in the absence of this Undertaking and this Undertaking is given to make provision for regulating the Development and securing them matters hereinafter referred to which are required in order to enable the Development to take place.
- (E) The Mortgagee is the registered proprietor of the charge dated 10 September 2007 referred to in entry number C35, C36 and C37 of the charges register of Title number HD7762 and has agreed to enter into this deed to give its consent to the terms of the unilateral undertaking.
- (F) This Undertaking is given by the Owner in favour of the Council.

## AGREED TERMS

### 1. Interpretation

The following definitions and rules of interpretation apply in this deed.

#### 1.1 Definitions:

**Act:** The Town and County Planning Act 1990

**Affordable Rented Housing Dwellings:** means rented housing provided by a Registered Provider of social housing that is outside of the national rent regime, but is subject to other rent controls that require it to be offered to eligible households up to 80% of local market rents.

**Affordable Housing:** affordable housing as that term is defined in Annex 2 of The National Planning Policy Framework dated March 2012 and Affordable in accordance with the Council's Affordable Housing policies (or any amendments to such policy as may be made from time to time)

**Commencement of Development:** the date on which any material operation (as defined in 56(4) of the Act forming part of the Development beings to be carried out by the Owner or the Company other than (for the purposes of this Deed and no other purposes) 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 "Commence Development" shall be construed accordingly

**Commencement Date:** the date of Commencement of Development.

**Development:** the development of the Land described in the Planning Application.

**Dwelling:** a dwelling (including a house, bungalow or flat) to be constructed on the site pursuant to the planning Permission and "Dwellings" shall be construed accordingly

**General Needs Dwelling:** a Dwelling which is not an Older Persons Dwelling

**Housing Act:** the Housing Act 1985 or statutory modification or re-enactment thereof

**Land:** the freehold land at Central Meriden, Watford shown edged red on the Plan being part of the land registered at HM Land Registry with absolute title under title number HD7762 and HD544367.

**Older Persons Dwelling:** a Dwelling for persons of 55 years; except where a person has a disability or a special need which in the Owner's reasonable opinion is sufficient to depart from the age restriction and is otherwise in accordance with the Owners rules and regulations in relation to such dwellings from time to time.

**Open Market Dwellings:** the Dwellings on the Land that are not Affordable Housing.

**Plan:** the plan attached to this Unilateral Undertaking

**Planning Application:** the application for full planning permission dated 29<sup>th</sup> June 2015 submitted to the Council for the Development of the Land and allocated reference number [REFERENCE NUMBER]

**Planning Obligations:** those obligations respectively contained and set out in the Second Schedule

**Planning Permission:** the planning permission to be granted by the Council in respect of the Planning Application.

**Registered Provider:** means a registered provider registered with Homes and Communities Agency (or successor body) pursuant to the Housing and Regeneration Act 2008 or such other company or organisation as shall provide affordable housing similar to that provided by a registered provider.

**Shared ownership:** ownership under the terms of a lease of a Dwelling granted for a term of not less than 99 years at an initial premium of less than 76% of the whole value of the lease and providing for the tenant to acquire the additional shares in the Dwelling in terms specified in the lease provided that the share to be first disposed of shall be at least 25%

**Shared Ownership Lease:** means a lease or sub lease under which a housing may be disposed of by way of Shared Ownership or shared equity sale and/or lease granted at a premium to be paid by the lessee or sub lessee upon completion or raised by way of mortgage or charge and under which the initial purchaser or lessee acquires an initial share of the equity in that Dwelling and pays a rental element if required by the Registered Provider.

**Shared Ownership Dwellings:** means housing to be sold on the basis of Shared Ownership under Homes and Communities Agency's Model Lease or by Shared Ownership Lease

**Social Rented Housing Dwellings:** means housing to be provided on a rented basis which meets targets for social rented housing set by the Homes and Communities Agency (or successor body) from time to time.

**VAT:** the tax referred to in the Value Added Tax Act 1994 or any tax of a similar nature which is introduced in substitution for or as an addition to such tax from time to time

**Working Day(s):** any day except Saturday and Sunday or a statutory bank holiday in England

- 1.2 Clause headings shall not affect the interpretation of this deed.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.7 A reference to the Council shall include the successors to its respective statutory functions.
- 1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** includes fax but not e-mail.
- 1.11 A reference to **this unilateral undertaking** or to any other deed or document referred to in this unilateral undertaking is a reference to this unilateral undertaking or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.
- 1.12 References to clauses are to the clauses of this unilateral undertaking.
- 1.13 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.14 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

## **2. Statutory provisions**

- 2.1 This unilateral undertaking constitutes a planning obligation for the purposes of section 106 of the Act, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.
- 2.2 The obligations contained in clause 4 of this deed are planning obligations for the purposes of section 106 of the Act and are entered into by the Owner with the intention that they bind the interests held by those persons in the Land and their respective successors and assigns.
- 2.3 This unilateral undertaking shall come into effect on completion of this Unilateral Undertaking but subject to the Provisions of clause 3.1.

- 2.4 The obligations contained in clause 4 of this deed are enforceable by the Council in accordance with section 106 of the Act.

### **3. Conditionality**

- 3.1 This Unilateral Undertaking is conditional upon:
- 3.1.1 The grant of the Planning Permission; and
  - 3.1.2 The Commencement of Development
- 3.2 The Planning Obligations created by this unilateral undertaking are conditional upon the Council granting the Planning Permission for the Development and it is also accepted by the Owner in respect of each Planning Obligation that it is:
- 3.2.1. necessary to make the Development acceptable in planning terms;
  - 3.2.2. directly relates to the development; and
  - 3.2.3. fairly and reasonably related in scale and kind to the Development.
- 3.3. Nothing in this unilateral undertaking shall require the Owner (or their successors in title) to pay any Community Infrastructure Levy pursuant to the Community Infrastructure Levy Regulations 2010 (as amended) (or similar tax or levy) in respect of the Development in respect of any matter that has been or is to be funded pursuant to the Planning Obligations in this Unilateral Undertaking and to the extent that the Owner would otherwise pay twice.

### **4. Covenants with the Council**

The Owner covenants with the Council to observe and perform the covenants referred to in Schedule 1 attached to this unilateral undertaking.

### **5. Exemption Provisions**

- 5.1 The covenants and obligations in this unilateral undertaking shall not be binding on any tenant or lessee of an individual Dwelling or any mortgagee, chargee, receiver or manager (including administrative receiver) or any successor in title;

- 5.2 The covenants and obligations in this unilateral undertaking shall cease to apply where a Registered Provider shall be required to dispose of any part pursuant to a right to buy under Part V of the Housing Act 1985 or any similar or substitute right applicable or shall be required to sell to a tenant with the benefit of a voluntary purchase provided under Sections 20 and 21 of the Housing Act 1996 (or similar provision in any subsequent legislation);
- 5.3 The covenants and obligations in this unilateral undertaking shall not be enforceable against the owners, tenants or mortgagees of any individual Open Market Dwellings nor their successors in title.
- 5.4 The covenants and obligations in this unilateral undertaking shall:
- (a) Not bind any mortgagee or chargee of a Registered Provider or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or otherwise by a party who has provided loan facilities to a Registered Provider;
  - (b) Cease to apply to any part of the Affordable Rented Housing Dwellings, Social Rented Housing Dwellings or Shared Ownership Dwelling should any such Dwelling be transferred or leased by any mortgagee or chargee of a Registered Provider or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or otherwise by a party who has provided loan facilities to a Registered Provider.

## **6. Mortgagee's Consent**

- 6.1 The Mortgagee consents to the completion of this unilateral undertaking and declares that its interest in the Land shall be bound by the terms of this deed as if it had been executed and registered as a land charge prior to the creation of the Mortgagee's interest in the Land PROVIDED THAT the Mortgagee shall otherwise have no liability under this unilateral undertaking unless it takes possession of the Land in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.



- 6.2 The Mortgagee shall not be personally liable for any breach of the obligations in this deed unless committed or continuing at a time when the Mortgagee is in possession of all or any part of the Land.

**7. Release**

No person shall be liable for any breach of an obligation, restriction or covenant contained in this deed after parting with all of its interest in the Land, except in respect of any breach subsisting prior to parting with such interest.

**8. Determination of deed**

This deed shall be determined and have no further effect if the Planning Permission:

- 8.1.1 expires before the Commencement of Development;
- 8.1.2 is varied or revoked other than at the request of the Owner; or
- 8.1.3 is quashed following a successful legal challenge.

**9. Local land charge**

This deed is a local land charge and shall be registered as such by the Council.

**10. Ownership**

- 10.1 The Owner warrants that no person other than the Owner, and the Mortgagee have any legal or equitable interest in the Land other than as described in Schedule 2.

- 10.2 Until the obligations in clause 4 have been complied with the Owner will give to the Council within 10 Working Days, the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Land:

- 10.2.1 the name and address of the person to whom the disposition was made; and

10.2.2 the nature and extent of the interest disposed of.

## **11. Notices**

11.1 A notice or other communication to be given under or in connection with this deed must be in writing and must be:

11.1.1 delivered by hand; or

11.1.2 sent by pre-paid first class post or other next working day delivery service.

11.2 Any notice or other communication to be given under this deed must be sent to the relevant party as follows:

11.2.1 to the Council at: Head of Democracy and Governance, Watford Borough Council, Town Hall, Watford, WD17 3EX

11.2.2 to the Owner at: Company Secretary, Watford Community Housing Trust, Gateway House, 59 Clarendon Road, Watford WD17 1LA

11.2.3 to the Mortgagee at: [FOR THE ATTENTION OF] Laurence Pountney Hill, London, EC4R 0HH

or as otherwise specified by the relevant person by notice in writing to each other person.

11.3 Any notice or other communication given in accordance with clause 11.1 and clause 11.2 will be deemed to have been received:

11.3.1 if delivered by hand, on signature of a delivery receipt [or at the time the notice is left at the address provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day;

11.3.2 if sent by pre-paid first class post or other next working day delivery service at 10.00 am on the second Working Day after posting.

11.4 A notice or other communication given under this deed shall not be validly given if sent by e-mail.

11.5 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **12. Third party rights**

A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

## **13. Governing law**

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

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

## **Schedule 1 – Affordable Housing**

1. The Owner hereby covenants with the Council as follows:

- (a) To notify the Council (in writing to the Planning Obligations Coordinator, Regeneration and Development, Watford Borough Council, Town Hall, Watford, Herts, WD17 3EX using the form at

Annex A to this Undertaking) of the Commencement of the Development within seven days of this event occurring.

(b) That of the 133 Dwellings to be constructed on the Land the scheme shall comprise of:

(i) Dwellings intended for Older Persons Dwelling:

- i. 9 x one bed bungalows;
- ii. 42 x one bed flats; and
- iii. 8 x two bed flats (wheelchair adaptable).

(ii) Dwellings intended for General Needs Dwellings:

- i. 10 x one bed flats;
- ii. 2 x one bed flats (wheelchair adaptable);
- iii. 43 x two bed flats;
- iv. 4 x two bed houses; and
- v. 15 x three bed houses.

(c) The mix of the properties referred to in 1(b) of this schedule shall be as follows:

(ii) A minimum of 60% of the Dwellings shall be Affordable Rented Housing Dwellings;

(iii) A minimum of 7% of the Dwellings shall be Social Rented Housing Dwellings;

(iv) The remaining 33% shall be split, at the Owner's discretion, between Affordable Rented Housing Dwellings, Shared Ownership Dwellings and Open Market Dwellings.

**Schedule 2 – Interests Affecting the Land**

*[TO BE INSERTED ONCE DETERMINED]*

Executed as a deed by [NAME OF  
] acting by [NAME OF FIRST  
DIRECTOR], a director and [NAME  
OF SECOND DIRECTOR OR  
SECRETARY], [a director **OR** its  
secretary]

.....

[SIGNATURE OF FIRST  
DIRECTOR]

Director

.....

[SIGNATURE OF SECOND  
DIRECTOR OR SECRETARY]

[Director **OR** Secretary]

**OR**

Executed as a deed by [NAME OF  
] acting by [NAME OF DIRECTOR],  
a director, in the presence of:

.....

[SIGNATURE OF DIRECTOR]

Director

.....

[SIGNATURE OF WITNESS]

[NAME, ADDRESS [AND  
OCCUPATION] OF WITNESS]

**ANNEX A: FORM OF NOTICE**

*TO INSERT COUNCIL'S STANDARD FORM*