

DATED 19th May 2014

AIRWAYS HOMES LIMITED

TO

THE LONDON BOROUGH OF HILLINGDON

PLANNING OBLIGATION BY UNILATERAL UNDERTAKING
PURSUANT TO SECTION 106
OF THE TOWN AND COUNTRY PLANNING ACT 1990 AND ASSOCIATED
POWERS RELATING TO THE DEVELOPMENT OF LAND AT

Land adjacent to 43 – 44 Fairey Avenue, Hayes, Middlesex UB3 4NY

Planning application reference number 69055/APP/2014/37

Attn: Tim Brown
Planning & Corporate Team
Legal Services
London Borough of Hillingdon
Civic Centre
High Street
Uxbridge
Middlesex UB8 1UW
Tel: 01895 556 425
Ref: 3E/04/TB/5215

THIS PLANNING OBLIGATION BY UNILATERAL UNDERTAKING is dated
19th day of May 2014

And is **GIVEN BY:**

- (1) **AIRWAYS HOMES LIMITED** (Company number 00821158) a company incorporated in England and Wales whose registered office is situated at Glebe Croft, Chequers Lane, Fingest, Henley-on-Thames, Oxfordshire ("the Owner");

TO:

- (2) **THE LONDON BOROUGH OF HILLINGDON** of the Civic Centre, High Street, Uxbridge, Middlesex, UB8 1UW ("the Council").

BACKGROUND

- A The Council is the local planning authority for the purposes of the Act in respect of the Land and by whom the obligations in this Undertaking are enforceable.
- B The Owner has the freehold interest in the Land registered under title number MX450806 at Land Registry.
- C On 7.January 2014 the Owner submitted the Planning Application to the Council for permission to develop the Land for the purposes and in the manner described in the Planning Application.
- D The Owner intends to develop the Land pursuant to the Planning Permission.
- E. The Planning Application has not yet been determined and the Owner hereto enter into this Undertaking in the knowledge that the Planning Permission may not be granted for the development.

THIS UNDERTAKING WITNESSES AS FOLLOWS: -

1. DEFINITIONS AND INTERPRETATION

1.1 For the purposes of the recitals and this Undertaking, the following expressions shall have the following meaning:

"Authority's Area"	means the administrative area of the Council;
"Commencement of Development"	means the date on which any material operation as defined in Section 56 of the Act forming part of the Development begins to be carried out other than (for the purposes of this Undertaking and for no other purpose) and "Commence" and "Commencement" shall be construed accordingly;
"the Decision Date"	means the date of receipt by the Owner of the decision notice of the grant of Planning Permission;
"Development"	means the development authorised by the Planning Permission;
"the Director of Residents Services"	means the Council's Director of Residents Services or such person as the Council designates as undertaking this role;
"Education Contribution"	means the education contribution referred to in Schedule 1 towards the costs of providing education or educational improvements or facilities

in the Authority's Area including (but not limited to):

- New school facilities, including ancillary facilities;
- Improvements, adaptations or enhancements to existing school facilities in order to accommodate extra children; or
- Improvements and expansion of playground and external leisure spaces, including equipment and maintenance contributions;

"Form PO1"

means the form in the substantial form set out at **Appendix 1**;

"Index"

means the Index of Retail Prices (All Items) published by the Office for National Statistics and "Indexation" shall be construed accordingly;

"Interest"

means interest at 4% above the base lending rate of HSBC Bank PLC from time to time;

"Land"

means adjacent to 43 – 44 Fairey Avenue, Hayes, Middlesex UB3 4NY which is in the freehold ownership of the Owner and is registered at the Land Registry under Title No. MX450806 and is shown for identification purposes edged black and shaded in red on Plan annexed at Appendix 2 to this Undertaking;

"Occupation"

means occupation of the Land for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupy" and "Occupied" shall be construed accordingly;

"Planning Application"

means the application for planning permission for the erection of a two-storey detached building comprising 4 x 2-bedroom, self-contained flats with associated parking and amenity space including the installation of a cycle and bin store to the front and involving the demolition of existing garage blocks under the Council's reference number 69055/APP/2014/37;

"Planning Permission"

means the planning permission and plans to be granted pursuant to the Planning Application;

"Section 106 Reference"

means the Planning Application reference 69055/APP/2014/37;

"Specified Date"

means the date upon which an obligation arising under this Undertaking is due to be performed;

"Undertaking"

means this Deed; and

“VAT”

means Value Added Tax.

- 1.2 Unless the context otherwise requires, words denoting the singular shall include the plural and vice versa and words denoting any one gender shall include all genders and words denoting persons shall include bodies corporate, unincorporated associations and partnerships.
- 1.3 References in this Undertaking to any statute or statutory provision shall be construed as a reference to the same as it may from time to time be amended, extended, modified, consolidated or re-enacted whether before or at the date of this Undertaking.
- 1.4 Unless the context otherwise requires, reference to any clause, paragraph, sub-clause or schedule or appendix is a reference to a clause, paragraph, sub-clause, schedule or appendix of or to this Undertaking.
- 1.5 The headings in this document are inserted for convenience only and shall not affect the construction or interpretation of this Undertaking.
- 1.6 Where a party includes more than one person named as a party any obligations of that party shall be joint and several unless there is an express provision otherwise.
- 1.7 References to any party to this Undertaking shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to the Council's respective functions.
- 1.8 Where the agreement, approval, consent or an expression of satisfaction is required by the Owner under the terms of this Undertaking from the Council that agreement, approval, consent or satisfaction shall be given in writing and shall not be unreasonably withheld or delayed.

- 1.9 Without prejudice to the terms of any other provision contained in this Undertaking the Owner shall pay all costs charges and expenses (including without prejudice to legal costs and Surveyor's fees) reasonably incurred by the Council for the purpose of or incidental to the enforcement of any right or power of the Council or any obligation of the Owner arising under this Undertaking.

2. STATUTORY PROVISIONS

- 2.1 This Undertaking is made pursuant to section 106 of the Act, section 111 of the Local Government Act 1972, and section 16 of the Greater London Council (General Powers) Act 1974 to the intent that it will bind the Owner and the Mortgagee and their successors in title to the Land.
- 2.2 The covenants, restrictions and requirements imposed upon the Owner under this Undertaking create planning obligations pursuant to section 106 of the Act and are enforceable by the Council as local planning authority against the Owner without limit of time.

3. CONDITIONALITY

- 3.1 Save in relation to clauses 1.9, 6 and Schedule 1 inclusive or where otherwise provided, the obligations in this Undertaking are subject to and conditional upon:
- (i) the grant of the Planning Permission; and
 - (ii) Commencement of the Development.

4. MISCELLANEOUS

- 4.1 Nothing contained or implied in this Undertaking shall prejudice or affect the rights, powers, duties and obligations of the Council in exercise of their functions as local planning authority and their rights, powers, duties and obligations under all public and private statutes, bylaws and regulations may be as fully and effectually exercised as if the Council were not a party to this Undertaking.
- 4.2 If any provision in this Undertaking shall be held to be invalid, illegal or unenforceable then the validity, legality and enforceability shall not affect

the validity or enforceability of the remaining provisions of this Undertaking.

- 4.3 No waiver (whether express or implied) by the Council of any breach or default by the Owner in performing or observing any of the covenants undertakings obligations or restrictions contained in this Undertaking shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said covenants undertaking or obligation from acting upon any subsequent breach or default in respect thereof by the Owner.
- 4.4 Nothing in this Undertaking shall be construed as a grant of planning permission.
- 4.5 Unless expressly agreed otherwise in this Undertaking, the covenants in this Undertaking shall be enforceable without any limit of time against the Owner and any successors in title to the Land and assigns of the Owner or any person corporate or otherwise claiming title through or under the Owner an interest or estate to the Land or any part or parts of the Land as if that person had also been an original covenanting party in respect of the interest or estate for the time being held by that person.
- 4.6 No party to this Undertaking nor any of its successors in title nor any person deriving title from or under them shall be liable for any breach of any of the planning obligations or other obligations contained in this Undertaking after it shall have parted with its entire interest in the Land but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 4.7 This Undertaking shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission is quashed or revoked or otherwise withdrawn or (without the consent of the Owner or its successors in title) is modified by any statutory procedure or expires prior to Commencement of Development.

4.8 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 the Planning Permission) granted (whether or not on appeal) after the date of this Undertaking.

4.9 This Undertaking cannot be amended or discharged without the prior consent in writing of the Owner and the Council.

4.10 In the event of the planning obligations contained in this Undertaking being modified a note or memorandum thereof shall be endorsed upon this Undertaking.

5. THE OWNER'S PLANNING OBLIGATIONS

The Owner covenants with the Council so as to bind the Land to observe and perform the obligations contained in and Schedule One.

6. COSTS

The Owner hereby covenants with the Council that on execution of this Deed it will pay the Council's costs incurred in the negotiation, preparation and execution of this Deed in the sum of £500.

7. REGISTRATION OF UNDERTAKING

7.1 The Owner recognizes and agrees that covenants in this Undertaking shall be treated and registered:

- (a) As local land charges for the purposes of the Local Land Charges Act 1975; and
- (b) In the Charges Register of Title No MX450806 at the Land Registry.

7.2 The Owner shall as soon as reasonably practicable after the completion of this Undertaking at its own cost do or concur in doing all things necessary to enable an entry of this Undertaking to be made in the Charges Register of the above title number of the Land and following the making of such entry shall furnish the Council's Borough Solicitor with a certified copy of the title information document relating to the said title in

order that the Council may satisfy themselves that such entry has been made.

- 7.3 If the Owner fails to make the application referred to in clause 6.2 above the Council shall (without prejudice to any other right) be entitled to register the Undertaking and recover the expenses incurred in doing so from the Owner and the Owner hereby covenants with the Council to do or concur in doing all things necessary or advantageous to enable such entries to be made;

8. RIGHT OF ACCESS

Without prejudice to the Council's statutory rights of entry the Owner shall permit the Council and its authorised employees and agents upon reasonable written notice to enter the Land at all reasonable times for the purpose of verifying whether or not any obligation arising under this Undertaking has been performed or observed.

9. ARBITRATION

- 9.1 All disputes, differences or questions arising out of this Undertaking or as to the rights or obligations of the parties under it or in connection with its construction shall be referred to arbitration by a single arbitrator to be agreed between the parties or, failing agreement, within 21 days by an arbitrator to be appointed at the request of any party by the President of The Royal Institution of Chartered Surveyors as the case may be having due regard to any representations made to him as to the appropriate qualifications of such arbitrator.
- 9.2 The arbitration shall take place in London and shall be in accordance with the Arbitration Act 1996 or any re-enactment or modification of such Act for the time being in force, unless otherwise agreed in writing by the Council.

10. THIRD PARTIES

A person who is not named in this Undertaking does not have any right to enforce any term of this Undertaking under the Contracts (Rights of Third Parties) Act 1999.

11. NOTICES

11.1 All notices served under or in connection with this Undertaking shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party;

11.2 Any notice to be served under or in connection with this Undertaking shall be sent to the:

- a) Director of Residents Services, London Borough of Hillingdon, Civic Centre, High Street, Uxbridge, Middlesex, UB8 1UW and shall cite the Section 106 Reference for this Undertaking;
- b) Owner at Glebe Croft, Chequers Lane, Fingest, Henley-on-Thames, Oxfordshire RG9 6QE;

12. FORM PO1

Upon Commencement of the Development the Owner shall immediately notify the Council by completing and sending Form PO1 to the Council addressed to the Director of Residents Services, 3 North, London Borough of Hillingdon, High Street Uxbridge UB8 1UW and shall cite the Section 106 Reference.

13. CHANGE IN OWNERSHIP

The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interest in the Land occurring before all the obligations under this Undertaking have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Land or unit of occupation purchased by reference to a plan and the Section 106 Reference.

14. CONTRIBUTIONS

14.1 Payment of the Contributions required by this Undertaking shall be made on the following basis:

- (a) The Contributions due under this Undertaking shall be delivered to the person and address specified in clause 11.2(a) above;
- (b) The Council may retain any unexpended balance of the Contributions where this amounts to less than £10,000 for any other relevant purpose(s) related to the Development; and
- (c) Pursuant to the Local Government Act 2003, the Council shall be at liberty to charge the Contributions to a Council revenue account and for the avoidance of doubt it is agreed and declared that this shall be without prejudice to the Council's right to apply the Contributions or any part or parts thereof to revenue purposes or to capital purposes or partly to the one and partly to the other.

15. INDEX LINKING

The Owner agrees with the Council that any sums payable by the Owner under this Unilateral Planning Obligation shall be increased by the application of the formula $A=B \times C/D$ where:

- (a) A is the sum actually payable on the Specified Date;
- (b) B is the original sum mentioned in this Unilateral Planning Obligation;
- (c) C is the Index of Retail Prices (All Items) for the month 2 months before the Specified Date;
- (d) D is the Index of Retail Prices (All Items) for the month 2 months before the date of this Agreement; and
- (e) C/D is equal to or greater than 1.

16. INTEREST

All costs, payments and expenses payable to the Council under this Undertaking shall bear interest at the rate of 4% above the base rate of

HSBC Bank PLC from time to time being charged from the date such payment is due until the payment is received by the Council.

17. VAT

17.1 All consideration given in accordance with the terms of this Undertaking shall be exclusive of any VAT properly payable in respect thereof.

17.2 The Owner hereby acknowledges and agrees that if at any time VAT is required to be paid in respect of any Land and the Contributions then to the extent that VAT had not been previously charged in respect of that payment the Council shall have the right to issue a VAT invoice to the Owner and the VAT shall be paid accordingly.

18. JURISDICTION

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

IN WITNESS of which this Undertaking has been duly executed as a Deed and has been delivered once dated.

SCHEDULE 1
EDUCATION CONTRIBUTION

The Owner hereby covenants with the Council as follows:

1. Prior to Commencement of the Development to pay to the Council the Education Contribution in the sum of £14,118.00 (FOURTEEN THOUSAND ONE HUNDRED AND EIGHTEEN POUNDS) and
2. Not to Commence or cause or allow or permit to be Commenced, any part of the Development before the Education Contribution is paid.

TO: DIRECTOR OF PLANNING, ENVIRONMENT, EDUCATION AND
COMMUNITY SERVICES
LONDON BOROUGH OF HILLINGDON
CIVIC CENTRE 3N/04 HIGH STREET UXBRIDGE MIDDLESEX UB8 1UW

FORM PO1

SECTION 106 LEGAL AGREEMENT**SITE ADDRESS:****PLANNING REFERENCE:**

DESCRIPTION OF DEVELOPMENT:
DATE OF COMMITTEE AUTHORISATION:

SECTION 106 OBLIGATIONS:**DATE OF IMPLEMENTATION OF DEVELOPMENT:** _____**SECTION 106 OBLIGATION:****(i) NOTIFIED TO THE COUNCIL:** _____**(ii) SUBMITTED TO THE COUNCIL WITH THIS FORM:** _____**NB: Please continue of separate sheet(s) if necessary.**

**TICK BOX IF THIS FORM IS TO CONSTITUTE THE "FIRST NOTICE"
UNDER THE SECTION 278 HIGHWAY AGREEMENT IF THIS IS THE
"FIRST NOTICE" PLEASE ATTACH THE "FIRST PAYMENT" AS
SPECIFIED IN THE AGREEMENT**

☐
FOR COUNCIL USE**NB: IF THIS IS THE FIRST NOTICE PASS IMMEDIATELY TO HIGHWAYS ENGINEERS****COST CODE:** _____**PLANNING COSTS:** _____**LEGAL COSTS:** _____**OTHER COSTS (IDENTIFY):** _____**MAINTENANCE COSTS (COMMUTED SUM)****INTEREST BEARING ACCOUNT FOR BENEFIT OF OBLIGATIONS****YES/NO**

[illegible]

Executed as a Undertaking by
AIRWAYS HOMES LTD.

in the presence of:

DIRECTOR

A handwritten signature in cursive script, appearing to read "H. Biddell", written over a horizontal line.

DIRECTOR/SECRETARY

A handwritten signature in cursive script, appearing to read "D. Goddard", written below the "DIRECTOR/SECRETARY" label.