

DATED

2021

SHAVIRAM HYDE LIMITED

AND

INVESTEC BANK PLC

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

HPH Building 3, Hyde Park, Millington Road, Hayes UB3 4AZ
Planning Application 72360/APP/2021/1709

Attn: Vera Agbakoba
Planning & Corporate Team
Legal Services
London Borough of Hillingdon
Civic Centre
High Street
Uxbridge
Middlesex
Ref: []

THIS PLANNING OBLIGATION BY UNILATERAL UNDERTAKING is dated
day of 2021

And is **GIVEN BY:**

- (1) **SHAVIRAM HYDE LIMITED** incorporated in England and Wales (Company number 13312003) whose registered office is situated at First Floor Offices, Farley Court Allsop Place, London, NW1 5LG ("the Owner "); and
- (2) **INVESTEC BANK PLC** incorporated in England and Wales (Company number 00489604) whose registered office is situated at 30 Gresham Street, London, EC2V 7QP ("the Mortgagee");

TO:

- (3) **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 AGL55140 at Land Registry subject to a charge in favour of the Mortgagee.
- C The Mortgagee has an interest in the Land by way of a legal charge dated 20 April 2021 between the Mortgagee and the Owner and is willing to be a party to this Undertaking.
- D On 29 April 2021 the Owner submitted the Prior Approval Application to the Council for permission to develop the Land for the purposes and in the manner described in the Prior Approval Application.
- E The Owner intends to develop the Land pursuant to the Prior Approval.

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:

"Act"	means the Town and Country Planning Act 1990;
"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 and "Commence" and "Commencement" shall be construed accordingly;
"Contributions"	means the contributions set out in the schedules to this Undertaking;
"Development"	means the development authorised by the Prior Approval Decision;
"Dwelling"	means any dwelling (including a house flat or maisonette) to be constructed pursuant to the Planning Permission;
"the Director of Planning, Environment, Education and Community Services"	means the Council's Director of Planning, Environment, Education and Community Services or such person as the Council designates as undertaking this role;

"Form PO1"	means the form in the substantial form set out at Appendix 2;
"Interest"	means interest at 4% above the base lending rate of HSBC Bank PLC from time to time;
"Land"	means H.P.H. Building 3 Hyde Park, Hayes, Millington Road, Hayes UB3 4AZ which is in the freehold ownership of the Owner and is registered at the Land Registry under Title No AGL55140 and is shown for identification purposes edged in red on Plan 1 annexed to this Undertaking;
"Obligations"	means the planning obligations set out in the schedules to this Undertaking;
"Occupation"	means the beneficial occupation of the Development by private residential occupiers;
"Parking Permit"	means a resident's parking permit issued by the Council to include season tickets and car park permits in the existing and future expansion of the Parking Management Scheme in Hayes (which for the avoidance of doubt does not include

a disabled person's badge issued pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970);

"Plan 1"

means the Plan annexed to this Undertaking;

"Prior Approval Application"

means the application for prior approval for change of use from office (Class B1(A)) to residential (Class C3) to provide 113 units under the Council's reference number 72360/APP/2021/1709;

"Prior Approval Decision"

means the prior approval to be granted pursuant to the Prior Approval Application in the substantial form set out in Appendix 1;

"Safety and Convenience Improvement Works Contribution"

means the sum of £43,560 (forty-three thousand five hundred and sixty pounds) to be used towards the Safety and Convenience Works and to be provided in accordance with Schedule 2;

"Safety and Convenience Improvement Works"

means the works to improve safety and convenience with which occupiers of the site can cycle to Hayes and Harlington Station Elizabeth Line (Crossrail) station;

"Section 106 Reference" means the Prior Approval Application reference 72360/APP/2021/1709;

"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, section 2 of the Local Government Act 2000 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 4, 8 and 12 inclusive or where otherwise provided, the obligations in this Undertaking are subject to and conditional upon:
- a) the giving of the Prior Approval Decision or the expiry of the relevant period for a decision without Prior Approval Decision being given or refused
 - b) Commencement of 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 or prior approval.
- 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 Prior Approval Decision 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 Prior Approval Decision) 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

- 5.1 The Owner covenants with the Council so as to bind the Land to observe and perform the obligations contained in clauses 6, 11, 12, 13, 14, 15 and the schedules to this Undertaking.

6. REGISTRATION OF UNDERTAKING

- 6.1 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 AGL55140 at the Land Registry.

6.2 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.

6.3 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;

7. MORTGAGEE'S CONSENT

7.1 The Mortgagee consents to the Owner entering into this Undertaking and acknowledges that the Land shall be bound by the terms and obligations contained in this Undertaking and PROVIDED THAT the Mortgagee (or any other mortgagee) shall otherwise have no liability under this Undertaking unless that mortgagee 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.

8. ARBITRATION

8.1 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 Institute 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.

- 8.2 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.

9. 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.

10. NOTICES

- 10.1 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;
- 10.2 Any notice to be served under or in connection with this Undertaking shall be sent to the:
- a) Director of Planning, Environment, Education and Community Services, London Borough of Hillingdon, Civic Centre, High Street, Uxbridge, Middlesex, UB8 1UW and shall cite the Section 106 Reference for this Undertaking;
 - b) to the Owner at Cannon Place, 78 Cannon Street, London EC4N 6AG; or
 - c) to the Mortgagee at 1 Plantation Place, 30 Fenchurch Street, London EC3M 3BD

11. FORM PO1

- 11.1 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 Planning, Environment, Education and Community Services, 3 North, London Borough of Hillingdon, High Street Uxbridge UB8 1UW and shall cite the Section 106 Reference.

12. CHANGE IN OWNERSHIP

- 12.1 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.

13. CONTRIBUTIONS

- 13.1 The Owner hereby covenants with the Council to comply with the Obligations.
- 13.2 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 10 above;
 - b) Within 28 days of written request the Council shall return to the Owner any part of the Contribution that remains unexpended or uncommitted by the Seventh (7th) anniversary of the date of its payment (together with any Interest accrued on the unexpended part); and
 - c) Pursuant to the Local Government Act 2003, the Council shall be at liberty to charge the Contribution 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 Contribution or any part or parts thereof to revenue purposes or to capital purposes or partly to the one and partly to the other.

14. INTEREST

- 14.1 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.

15. VAT

- 15.1 All consideration given in accordance with the terms of this Undertaking shall be exclusive of any VAT properly payable in respect thereof.
- 15.2 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.

16. LIMITATION OF TRUSTEE LIABILITY

- 16.1 Sackville UKPEC6 Hayes Nominee 1 Limited and Sackville UKPEC6 Hayes Nominee 2 Limited and any party succeeding them are entering into this Undertaking as trustees of Threadneedle UKPEC6 Hayes Jersey LP and as such any liability on their part pursuant to this Undertaking is limited to assets held by them on trust for the time being of Threadneedle UKPEC6 Hayes Jersey LP.
- 16.2 Notwithstanding any provisions of this Undertaking neither Sackville UKPEC6 Hayes Nominee 1 Limited nor Sackville UKPEC6 Hayes Nominee 2 Limited have any obligation to meet any claim or liability under this Undertaking except to the extent that they can properly meet this claim or liability out of the assets of Threadneedle UKPEC6 Hayes Jersey LP.

17. JURISDICTION

- 17.1 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
TRAVEL PLAN

The Owner covenants as follows:

1. Prior to Occupation of the Development to submit to the Council for approval a full travel plan to be in general accordance with the "Travel Plan Framework". The approved travel plan ("**Travel Plan**") shall be implemented upon occupation of the Development and be subject thereafter to annual review for a period of five years.
2. Prior to Occupation of the Development to pay the sum of £5000 to the Council to be used by the Council for the purposes of auditing the Travel Plan for the period of 5 years referred to in paragraph 1 commencing with Occupation of the Development.
3. Prior to Occupation of the Development to enter into arrangements to secure a £20,000 bond to be used by the Council to deliver the measures contained in the Travel Plan in the event that the Owner fails to do so. The bond shall be retained by the Council for a period of 5 years and the bond shall be released or returned (together with interest accrued thereon) to the Owner in the event that the Owner implements all measures contained in the Travel Plan.
4. Not to Occupy or cause or allow or permit to be Occupied any part of the Development before the obligations set out in this schedule have been complied with.

SCHEDULE 2

SAFETY AND CONVENIENCE IMPROVEMENT WORKS CONTRIBUTION

The Owner hereby covenants with the Council as follows:

1. Prior to Occupation of the Development to pay the Safety and Convenience Improvement Works Contribution to the Council to be used for the Safety and Convenience Improvement Works; and
2. Not to Occupy or cause or allow or permit to be Occupied any part of the Development before the Safety and Convenience Improvement Contribution is paid.

SCHEDULE 3
RESIDENTIAL PARKING PERMIT

The Owner covenants and agrees with the Council as follows:

1. Upon Commencement of Development not to apply to the Council for a Parking Permit in respect of any Dwelling nor to knowingly permit any owner or occupier of the Dwelling to apply to the Council for a Parking Permit and if such a permit is issued in respect of the Dwelling it shall be surrendered to the Council within seven (7) days of written demand.
2. That all material used for advertising or marketing the Dwellings for letting or sale will notify prospective owners and occupiers that they will not be entitled to apply for a Parking Permit.
3. That in respect of every freehold transfer or lease granted assigned transferred or otherwise provided in respect of each Dwelling the following covenant shall be imposed (or covenant of substantially the same nature in respect of any tenancy agreement licence or other instrument entitling Occupation of the Dwelling):

“the transferee/lessee for himself and his successors in title being the owner or owners for the time being [of the terms of years hereby granted] hereby covenant with the transferor/lessor and separately with the Mayor and Burgesses of the London Borough of Hillingdon (“the Council”) not to apply for nor knowingly permit an application to be made by any person residing in the premises to the London Borough of Hillingdon for a resident’s parking permit (save for a disabled person’s “purple badge” issued pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970) in respect of such premises and if such a permit is issued then it shall be surrendered within 7 days of written request to do so from the Council and this covenant shall also be enforceable by the Council under the Contracts (Rights of Third Parties) Act 1999, section 1”

APPENDIX 1

DRAFT PRIOR APPROVAL DECISION

APPENDIX 2

PO1 FORM

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

FORM

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

Executed as a Deed by	)	
SHAVIRAM HYDE LIMITED acting	)	
by:	)	
.....	)	
and	)	Director
.....	)	
a director and its secretary or two		Director/Secretary
directors:		

Executed as a Deed on behalf of
INVESTEC BANK PLC,

AUTHORISED SIGNATORY

AUTHORISED SIGNATORY