

DRAFT

DATE

2008

08 / 3000 / CAC

UNILATERAL UNDERTAKING

by

HAMILTON LOFTS LTD

and

HERITABLE BANK LTD

to

**THE COUNCIL OF
THE LONDON BOROUGH OF RICHMOND UPON THAMES**



Relating to land known as

**37 Hamilton Road
Twickenham**

Pursuant to Section 106 of the Town and Country Planning Act 1990

THIS UNILATERAL UNDERTAKING is made as a Deed the
2008

day of

BY:

(1) HAMILTON LOFTS LTD (Company registered in England no5147307) whose registered office is situated at 20 Mortlake High Street, London, SW14 8JN ("the Owner"); and

(2) HERITABLE BANK LTD (Company registered in Scotland no717) whose principal office is situated at 8 Hill Street, London W1J 5NG ("the Mortgagee").

TO:

(3) THE COUNCIL OF THE LONDON BOROUGH OF RICHMOND UPON THAMES of Civic Centre, 44 York Street, Twickenham TW1 3BZ ("the Council")

WHEREAS:

1. The Council is the Local Planning Authority for the purposes of the Planning Act for the area within which the Property is situated.
2. The Owner is registered at HM Land Registry as the freehold owner of the Property and subject to the Mortgage but otherwise free from encumbrances, except as stated in the title, and has agreed to enter into this Unilateral Undertaking as hereinafter appearing.
3. The Owner enters into this undertaking so that should the Council grant planning permission for the Development such planning permission should be granted subject to this Unilateral Undertaking in order to facilitate and enable the provision of Intermediate Housing on the Property.

NOW THIS UNILATERAL UNDERTAKING WITNESSES as follows:

1. In this Unilateral Undertaking the following words and expressions shall have meaning and ascribed to them below:
 - 1.1 "Affordable Housing " means subsidised housing that is available to people who are on a register maintained by the Council and Registered Social Landlords who have properties in the Council's administrative area or (in the absence of such persons) persons who fulfil the occupation criteria of the relevant Registered Social Landlord
 - 1.2 "Affordable Housing Units" means the 6 1-bed and 2 2-bed residential units of Shared Ownership Affordable Housing to be built as part of the Development and in accordance with the Housing Corporation's Housing Quality Indicator Standards in force at the date of the Commencement of Development and will be provided in accordance with the provisions of **Schedule 1**.

- 1.3 "Application" means the planning application filed under the Council's references [] and submitted to the Council [and as subsequently amended] and which relates to the Property.
- 1.6 "Commencement of Development" means the date on which the Development commences by the carrying out on the site pursuant to the Planning Permission of a material operation as specified in Section 56 (4) of the 1990 Act.
- 1.7 "Development" means the development of the Property in accordance with the Planning Permission which seeks to part demolish and new build and part refurbish to provide 27 Dwellings, comprising a mix of 19 Market Units and 8 Affordable Housing Units, together with associated parking and landscaping.
- 1.8 "Development Control Manager" means the person in charge of development control for the time being of the Council or other person authorised by the Council to carry out that function.
- 1.9 "Dwelling" means the residential units to be constructed as part of the Development.
- 1.10 "Housing Corporation" means the government agency which funds new affordable homes and regulates housing associations in England and shall include any statutory successor of the Housing Corporation
- 1.11 "Indexed" means increased in accordance with the formula whereby the relevant contribution is multiplied by the fraction A divided by B where B represents the value of the Retail Prices Index (All Items) as at the date of this Deed and A represents the value of the same index as at the date of payment of the relevant contribution to the Council
- 1.12 "Long Lease" means a lease for a term exceeding 125 years from the date of its completion at a premium and consistent with the term of the leases for the Market Units.
- 1.13 "Market Units" means those residential units (other than the Affordable Housing Units) forming part of the Development.
- 1.14 "Mortgage" means the legal charge dated 8 February 2005 made between the Parties.
- 1.15 "Nominations Deed" means a deed of nomination rights in a standard form acceptable to the Registered Social Landlord and the Council to be entered into between the Registered Social Landlord and the Council giving the Council nomination rights in respect of the Affordable Housing Units.
- 1.16 "Occupation" means the date when a part of the Development is occupied as a dwelling or place of work (which for the avoidance of doubt shall not include occupation for purposes of fitting out the Development), and the phrases "Occupy", and "Occupied" shall be construed accordingly.

- 1.17 "the Parties" mean the Owner and the Mortgagee.
- 1.18 "Planning Act" means the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991 and the Planning and Compulsory Purchase Act 2004).
- 1.19 "Planning Permission" means the planning consent granted pursuant to the Appeal and for the avoidance of doubt this shall include any variation or amendment to the Planning Permission granted on application under Section 73 of the Planning Act.
- 1.20 "Property" means all that freehold property known as land at 37 Hamilton Road, Twickenham and registered at the Land Registry under title number TGL 254436.
- 1.21 "Registered Social Landlord" means any body registered as a social landlord as defined in Part 1 of the Housing Act 1996 with the Housing Corporation pursuant to section 3 of that Act and who has not been removed from the register pursuant to Section 4 of that Act and complying with the Council's Supplementary Planning Guidance on Affordable Housing dated 25 February 2003 and "Registered Social Landlords" shall be construed accordingly.
- 1.22 "Shared Ownership" means housing on a shared ownership basis which is to be made available to households in accordance with prevailing criteria of the Registered Social Landlord
- 1.23 "Target Rents" means the Housing Corporation Target Rents for the area within which the Property is located for the relevant year or any rent requirements stipulated for Registered Social Landlords by the Housing Corporation.
- 1.24 "Transfer Deed" means a transfer deed made between the Owner and the Registered Social Landlord by which the freehold title of the Affordable Housing Premises shall be transferred by the Owner to the Registered Social Landlord.
- 2 References to any party in this Unilateral Undertaking shall include the successors in title of that party.
- 3 This Unilateral Undertaking is made pursuant to the Section 106 of the Planning Act, Section 16 of the Greater London Council (General Powers) Act 1974, Section 111 of the Local Government Act 1972, Section 609 of the Housing Act 1985 and all other powers and enactments which may be relevant to the purpose of giving validity to this Unilateral Undertaking or for facilitating the enforcement of the obligations contained in it with the intent to bind the Owner.
- 3.1 Any covenants and restrictions or requirements imposed upon the Owner, under this Unilateral Undertaking and falling within the provision of Section 106 of the Planning Act, shall be deemed to be expressed to be planning obligations to which that said Section shall apply.

- 3.2 For the purposes of Section 106 (9) of the Planning Act, the Council is the local Planning Authority by whom the planning obligations within this Unilateral Undertaking are enforceable.
- 4 This Unilateral Undertaking shall take effect on the date of Commencement of Development.
- 5 The Owner hereby undertakes to fulfil the obligations on its part contained in the Schedules hereto.
- 6 The Mortgagee hereby consents to the Owner completing this Unilateral Undertaking and agrees that notwithstanding its charge the Property is subject to the terms hereof.
- 7 It is hereby agreed and declared as follows:
- 7.1 That the enforceability of this Unilateral Undertaking shall not be affected by any passage of time or any delay by or neglect or forbearance of the Council in enforcing the provisions of this Unilateral Undertaking or any extension of the time or other indulgences shown by the Council.
- 7.2 That the covenants and stipulations contained in this Unilateral Undertaking are intended to run with the Property and each and every part thereof and to bind the owners thereof from time to time, provided always that such provision shall not be enforceable against the lessees and/ or occupiers of Dwellings or Offices within the Property in their individual capacity as such and provided further that this proviso shall not apply to the provisions of Schedule 1 hereto.
- 7.3 This Unilateral Undertaking shall accordingly be registered as a local land charge by the Council.
- 7.4 Following compliance with all of its obligations under this Unilateral Undertaking, the Owner shall write to the Council confirming the same and requesting that a note to this effect is placed on the Local Land Charges Register.
- 7.5 In so far as any clause or clauses of this Unilateral Undertaking are found (for whatever reason) to be invalid or unenforceable then such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Unilateral Undertaking.
- 7.6 Save where otherwise expressly stated all covenants given by the Owner under this Unilateral Undertaking shall be complied with entirely at the expense of the Owner.
- 7.7 If there is any conflict between the terms of this Unilateral Undertaking and any conditions on the Planning Permission the latter shall take precedence.
- 7.8 The covenants undertakings and restrictions contained in this Unilateral Undertaking shall only be capable of being varied by a memorandum to be endorsed upon or annexed to this Unilateral

Undertaking by or on behalf of the relevant parties hereto or by a subsequent deed of variation to be agreed by the relevant parties.

- 8 This Unilateral Undertaking shall cease to have effect (insofar only as it has not already been complied with) if:
 - 8.1 The entirety of the Planning Permission shall be quashed revoked or otherwise withdrawn prior to the Commencement of Development.
 - 8.2 The entirety of the Planning Permission shall expire prior to the Commencement of Development or
 - 8.3 The entirety of the Planning Permission shall be quashed or revoked within three months of its grant.
- 9 Notwithstanding the terms contained herein the Mortgagee shall only be liable for any breach of any provisions of this Unilateral Undertaking during such period if any as it is Mortgagee in possession of the Property and then only if it shall have caused such breach or breaches to have been occasioned and provided that for the avoidance of doubt it shall not in any event be liable for any breach of this Unilateral Undertaking arising prior to its becoming Mortgagee in possession of the Property regardless of whether or not such pre-existing breach shall continue for any period during which it is Mortgagee in possession of the Property.
- 10 The Owner shall not be bound by any covenants or obligations contained in this Unilateral Undertaking after they have parted with the entirety of their interest in the Property but without prejudice to any breach of liability existing or arising prior to parting with such interest.
- 11 No provisions of this Unilateral Undertaking shall be construed as creating any rights enforceable by a third party as defined by the contracts (Rights of Third Parties) Act 1999 and all third party rights as maybe implied by law or deemed to be enforceable to the fullest extent permitted by law.
- 12 In the event that there shall be any dispute between Parties, in respect of any matter arising under the terms of this Unilateral Undertaking, such a dispute shall be referred upon the applications of any of the Parties to an independent expert agreed upon by the Parties at their joint expense in equal proportions. Of failing such an agreement nominated upon the applications of any of the Parties by the President for the time being of the Royal Institute of Chartered Surveyors and such independent expert shall act as arbitrator and not expert in accordance with the provisions of the Arbitrations Act 1996. The expert shall be subject to an express requirement that he reaches his decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 28 days from the date of appointment to act. The expert shall be required to give notice to each of the said parties inviting each of them to submit to him within 10 working days written submissions and supporting material and shall afford to each of the said parties an opportunity to make counter submissions within a further 5 working days in respect of any such submission and material and his decision shall be given in writing within 28 days of his appointment with reasons and in the absence of manifest error shall be binding on the said parties.

IN WITNESS whereof the Parties hereto executed this Deed the day and the year first above written

Executed as a Deed by Hamilton Lofts Ltd acting by

..... Director

..... Company Secretary

Executed as a Deed by Heritable Bank Ltd acting by

..... Director

..... Authorised Signatory

SCHEDULE 1

Affordable Housing

- 1.1 The Owner will not Occupy or permit the Occupation of any of the Market Units prior to the completion of a Transfer Deed for or the grant of a Long Lease of all the Affordable Housing Units to a Registered Social Landlord in accordance with the provisions of this Unilateral Undertaking and such Transfer Deed or Long Lease to include all necessary rights of access and passage of services and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Units and not to include any unduly onerous or unusual covenants which conflict with the nature of the use of the Affordable Housing Units for Affordable Housing purposes.
- 1.2 Prior to completion of the Transfer Deed or Long Lease to the Registered Social Landlord the Owner shall procure that the Registered Social Landlord enters into a Nominations Deed.
- 1.3 The Owner will not Occupy or permit the Occupation of more than 50% of the Market Units prior to the completion of construction ready for occupation of all the Affordable Housing Units.
- 1.4 From the date of Transfer Deed or Long Lease of the Affordable Housing Units as the case may be by the Owner to the Registered Social Landlord the Affordable Housing Units shall not be used for any purposes other than for the provision of Affordable Housing save that this provision shall:
 - 1.2.1 Not bind any Mortgagee of a Registered Social Landlord or any receiver or manager appointed pursuant to the Law of Property Act 1925 or otherwise by a party who has provided loan facilities to the Registered Social Landlord
 - 1.2.2 Cease to apply to any part of the Affordable Housing Units should such part be transferred or leased by any Mortgagee of a Registered Social Landlord or any receiver or manager appointed pursuant to the Law of Property Act 1925 or otherwise by a party who has provided loan facilities to a Registered Social Landlord
 - 1.2.3 Cease to apply to any part of the Affordable Housing Units where the Registered Social Landlord has disposed of any part pursuant to a right to buy under Part V of the Housing Act 1985 or section 16 of the Housing Act 1996 or any similar or substitute right applicable or has sold a further and/or final tranche of equity to a tenant pursuant to the terms of any shared equity lease granted in respect of any part or has sold to a tenant with the benefit of a voluntary purchase grant provided under sections 20 and 21 of the Housing Act 1996 (or any similar provision in any subsequent legislation).

LPA COMMENTS ON s106 UNDERTAKING

1. p.2 para 5(c) – the Council does not agree that the provision of the turning circle is an “on site public space improvement” to be included within the 106.
2. p.3 definition of “Affordable Housing Price”- this should be reinstated to set a baseline at which the affordable units should be transferred to the RSL.
3. p.4 typo 1.11- “regulates” not “regulations”
4. p.5 para 1.24- the Council must have prior approval of any proposed RSL particularly as no named RSL is included in the 106. It is a requirement of the Council’s SPG on affordable housing and must be expressed in the 106.
5. p.9 para 1.4-
 - (i) the Council does not accept that 12 units of affordable housing is a sufficient amount for this development.
 - (ii) whilst the tenure mix for a figure of 12 units would be acceptable (9 for Social Rent and 3 for Intermediate Housing), the size of the units for the Social Rented element on offer does not comply with the Council's SPG- these would need to be:
9 x 2 bed 4 person units
and not
5x 1 bed units + 2 x 2 bed 3 person units + 2 x 2 bed 4 person units
apparently on offer (though not specified in the 106)
 - (iii) in any event the size of units needs to be specified/secured either by the annexation of the relevant layout plans to the 106 or by relevant wording in the agreement otherwise there would be nothing to prevent the owner providing 12 x 1 bed units.
6. p13 Sched 5- the Transport Contribution falls short of the sum required under the Council’s POS by £121,572. The Appellant’s arguments relating to the calculation of the Transport contribution are not accepted by the Council.

However, in relation to the turning circle, if the Inspector accepts the Appellants argument that the turning circle is a public benefit which it is appropriate to include within the 106 then:

- i) the current provisions do not specify access “at all times (save for closure on one day in the year)” and are therefore defective
- ii) if it is also accepted by the Inspector that a deduction should be made for its provision from the Transport Contribution, the Appellant has provided no figures /justification / calculation for the sum of £85,000 it claims it will cost to provide the turning circle

K.Barnes, Legal Services, LBRUT
28/09/07

DATE

28 September

2007

UNILATERAL UNDERTAKING

by

HAMILTON LOFTS LTD

and

HERITABLE BANK LTD

to

**THE COUNCIL OF
THE LONDON BOROUGH OF RICHMOND UPON THAMES**

Relating to land known as

**37 Hamilton Road
Twickenham**

Pursuant to Section 106 of the Town and Country Planning Act 1990

THIS UNILATERAL UNDERTAKING is made as a Deed the 29 September day of 2007

BY:

(1) HAMILTON LOFTS LTD (Company registered in England no5147307) whose registered office is situated at 20 Mortlake High Street, London, SW14 8JN ("the Owner"); and

(2) HERITABLE BANK LTD (Company registered in Scotland no717) whose principal office is situated at 8 Hill Street, London W1J 5NG ("the Mortgagee").

TO:

(3) THE COUNCIL OF THE LONDON BOROUGH OF RICHMOND UPON THAMES of Civic Centre, 44 York Street, Twickenham TW1 3BZ ("the Council")

WHEREAS:

1. The Council is the Local Planning Authority for the purposes of the Planning Act for the area within which the Property is situated.
2. The Owner is registered at HM Land Registry as the freehold owner of the Property and subject to the Mortgage but otherwise free from encumbrances, except as stated in the title, and has agreed to enter into this Unilateral Undertaking as hereinafter appearing.
3. The Owner has submitted the Application to the Council and the Council resolved to refuse planning permission on 19 March 2007.
4. The Owner subsequently appealed to the Planning Inspectorate against this refusal by way of the Appeal.
5. The Owner enters into this undertaking so that should the Planning Inspectorate allow the Appeal and thereby grant planning permission for the Development such planning permission should be granted subject to this Unilateral Undertaking in order to facilitate and enable:
 - a. The provision of Social-Rented Housing and Intermediate Housing on the Property;
 - b. The making of certain financial contributions by the Owner to the Council; and
 - c. The delivery of on-site public space improvements.

NOW THIS UNILATERAL UNDERTAKING WITNESSES as follows:

1. In this Unilateral Undertaking the following words and expressions shall have meaning and ascribed to them below:
 - 1.1 "Affordable Housing " means subsidised housing that is available to people who are on a register maintained by the Council and

Registered Social Landlords who have properties in the Council's administrative area or (in the absence of such persons) persons who fulfil the occupation criteria of the relevant Registered Social Landlord It is comprised of two elements. Firstly, 'Social Rented Housing' provided for rent by a Registered Social Landlord at rents not exceeding Target Rents. Secondly, 'Intermediate Housing' which is housing which is let or disposed of in accordance with published Housing Corporation guidelines and retained equity level affordability criteria and is either:

- (i) housing at sub market rent which is above Housing Corporation Target Rents, but below open market levels. This category includes key worker housing.
- (ii) housing on a shared ownership basis which is affordable by households on annual incomes of less than £35,000 such sum to be revised in accordance with any revision to the Council's Supplementary Planning Guidance on Affordable Housing dated 25 February 2003 PROVIDED THAT such threshold shall not be revised to less than £35,000

- 1.2 "Affordable Housing Units" means the 12 residential units of Affordable Housing to be built as part of the Development and in accordance with the Housing Corporation's Housing Quality Indicator Standards in force at the date of the Commencement of Development and will be provided in accordance with the provisions of **Schedule 1**.
- 1.3 "Amenity Contribution" means the contribution to improvements to the public realm, open space, children's play facilities and playing fields to the north of the Property in accordance with **Schedule 2**.
- 1.4 "Appeal" means the appeal submitted by the Owner to the Council under PINS references: APP/L5810/A/07/2041553 & APP/L5810/E/07/2041554.
- 1.5 "Application" means the planning application filed under the Council's references 06/3890/FUL & 06/4229/CAC and submitted to the Council and as subsequently amended and which relates to the Property.
- 1.6 "Commencement of Development" means the date on which the Development commences by the carrying out on the site pursuant to the Planning Permission of a material operation as specified in Section 56 (4) of the 1990 Act.
- 1.7 "Development" means the development of the Property in accordance with the Planning Permission which seeks to part demolish and new build and part refurbish to provide 31 Dwellings, comprising a mix of 19 Market Units and 12 Affordable Housing Units, plus B1 space, together with associated parking and landscaping.
- 1.8 "Development Control Manager" means the person in charge of development control for the time being of the Council or other person authorised by the Council to carry out that function.
- 1.9 "Dwelling" means the residential units to be constructed as part of the Development.

- 1.10 "Education Contribution" means the sum set out in **Schedule 3**.
- 1.11 "Housing Corporation" means the government agency which funds new affordable homes and regulations housing associations in England and shall include any statutory successor of the Housing Corporation
- 1.12 "Indexed" means increased in accordance with the formula whereby the relevant contribution is multiplied by the fraction A divided by B where B represents the value of the Retail Prices Index (All Items) as at the date of this Deed and A represents the value of the same index as at the date of payment of the relevant contribution to the Council
- 1.13 "Long Lease" means a lease for a term exceeding 125 years from the date of its completion at a premium and consistent with the term of the leases for the Market Units.
- 1.14 "Market Units" means those residential units (other than the Affordable Housing Units) forming part of the Development.
- 1.15 "Mortgage" means the legal charge dated 8 February 2005 made ~~between the Parties.~~
- 1.16 "Nominations Deed" means a deed of nomination rights in a standard form acceptable to the Registered Social Landlord and the Council to be entered into between the Registered Social Landlord and the Council giving the Council nomination rights in respect of the Affordable Housing Units.
- 1.17 "Occupation" means the date when a part of the Development is occupied as a dwelling or place of work (which for the avoidance of doubt shall not include occupation for purposes of fitting out the Development), and the phrases "Occupy", and "Occupied" shall be construed accordingly.
- 1.18 "Offices" means the B1 units to be provided in the refurbished building at the centre of the Property and to be constructed in accordance with the provisions of **Schedule 6**.
- 1.19 "the Parties" mean the Owner and the Mortgagee.
- 1.20 "Planning Act" means the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991 and the Planning and Compulsory Purchase Act 2004).
- 1.21 "Planning Permission" means the planning consent granted pursuant to the Appeal and for the avoidance of doubt this shall include any variation or amendment to the Planning Permission granted on application under Section 73 of the Planning Act.
- 1.22 "Primary Healthcare Contribution" means the contribution towards facilities or services for the purposes of primary healthcare in accordance with the provision set out in **Schedule 4**.

1.23 "Property" means all that freehold property known as land at 37 Hamilton Road, Twickenham and registered at the Land Registry under title number TGL 254436.

1.24 "Registered Social Landlord" means any body registered as a social landlord as defined in Part 1 of the Housing Act 1996 with the Housing Corporation pursuant to section 3 of that Act and who has not been removed from the register pursuant to Section 4 of that Act and complying with the Council's Supplementary Planning Guidance on Affordable Housing dated 25 February 2003 and "Registered Social Landlords" shall be construed accordingly.

1.25 "Target Rents" means the Housing Corporation Target Rents for the area within which the Property is located for the relevant year or any rent requirements stipulated for Registered Social Landlords by the Housing Corporation.

1.26 "Transfer Deed" means a transfer deed made between the Owner and the Registered Social Landlord by which the freehold title of the Affordable Housing Premises shall be transferred by the Owner to the Registered Social Landlord.

~~1.27 "Transport Contribution" means the sum to be paid and the public benefits to be delivered in accordance with the provisions of Schedule 5.~~

- 2 References to any party in this Unilateral Undertaking shall include the successors in title of that party.
- 3 This Unilateral Undertaking is made pursuant to the Section 106 of the Planning Act, Section 16 of the Greater London Council (General Powers) Act 1974, Section 111 of the Local Government Act 1972, Section 609 of the Housing Act 1985 and all other powers and enactments which may be relevant to the purpose of giving validity to this Unilateral Undertaking or for facilitating the enforcement of the obligations contained in it with the intent to bind the Owner.
 - 3.1 Any covenants and restrictions or requirements imposed upon the Owner, under this Unilateral Undertaking and falling within the provision of Section 106 of the Planning Act, shall be deemed to be expressed to be planning obligations to which that said Section shall apply.
 - 3.2 For the purposes of Section 106 (9) of the Planning Act, the Council is the local Planning Authority by whom the planning obligations within this Unilateral Undertaking are enforceable.
- 4 This Unilateral Undertaking shall take effect on the date of Commencement of Development.
- 5 The Owner hereby undertakes to fulfil the obligations on its part contained in the Schedules hereto.
- 6 The Mortgagee hereby consents to the Owner completing this Unilateral Undertaking and agrees that notwithstanding its charge the Property is subject to the terms hereof.

7 It is hereby agreed and declared as follows:

- 7.1 That the enforceability of this Unilateral Undertaking shall not be affected by any passage of time or any delay by or neglect or forbearance of the Council in enforcing the provisions of this Unilateral Undertaking or any extension of the time or other indulgences shown by the Council.
- 7.2 That the covenants and stipulations contained in this Unilateral Undertaking are intended to run with the Property and each and every part thereof and to bind the owners thereof from time to time, provided always that such provision shall not be enforceable against the lessees and/ or occupiers of Dwellings or Offices within the Property in their individual capacity as such and provided further that this proviso shall not apply to the provisions of Schedule 1 hereto.
- 7.3 This Unilateral Undertaking shall accordingly be registered as a local land charge by the Council.
- 7.4 Following compliance with all of its obligations under this Unilateral Undertaking, the Owner shall write to the Council confirming the same ~~and requesting that a note to this effect is placed on the Local Land Charges Register.~~
- 7.5 In so far as any clause or clauses of this Unilateral Undertaking are found (for whatever reason) to be invalid or unenforceable then such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Unilateral Undertaking.
- 7.6 Save where otherwise expressly stated all covenants given by the Owner under this Unilateral Undertaking shall be complied with entirely at the expense of the Owner.
- 7.7 If there is any conflict between the terms of this Unilateral Undertaking and any conditions on the Planning Permission the latter shall take precedence.
- 7.8 The covenants undertakings and restrictions contained in this Unilateral Undertaking shall only be capable of being varied by a memorandum to be endorsed upon or annexed to this Unilateral Undertaking by or on behalf of the relevant parties hereto or by a subsequent deed of variation to be agreed by the relevant parties.

8 This Unilateral Undertaking shall cease to have effect (insofar only as it has not already been complied with) if:

- 8.1 The entirety of the Planning Permission shall be quashed revoked or otherwise withdrawn prior to the Commencement of Development.
- 8.2 The entirety of the Planning Permission shall expire prior to the Commencement of Development or

8.3 The entirety of the Planning Permission shall be quashed or revoked within three months of its grant.

- 9 Notwithstanding the terms contained herein the Mortgagee shall only be liable for any breach of any provisions of this Unilateral Undertaking during such period if any as it is Mortgagee in possession of the Property and then only if it shall have caused such breach or breaches to have been occasioned and provided that for the avoidance of doubt it shall not in any event be liable for any breach of this Unilateral Undertaking arising prior to its becoming Mortgagee in possession of the Property regardless of whether or not such pre-existing breach shall continue for any period during which it is Mortgagee in possession of the Property.
- 10 The Owner shall not be bound by any covenants or obligations contained in this Unilateral Undertaking after they have parted with the entirety of their interest in the Property but without prejudice to any breach of liability existing or arising prior to parting with such interest.
- 11 No provisions of this Unilateral Undertaking shall be construed as creating any rights enforceable by a third party as defined by the contracts (Rights of Third Parties) Act 1999 and all third party rights as maybe implied by law or deemed to be enforceable to the fullest extent permitted by law.
-

- 12 In the event that there shall be any dispute between Parties, in respect of any matter arising under the terms of this Unilateral Undertaking, such a dispute shall be referred upon the applications of any of the Parties to an independent expert agreed upon by the Parties at their joint expense in equal proportions. Of failing such an agreement nominated upon the applications of any of the Parties by the President for the time being of the Royal Institute of Chartered Surveyors and such independent expert shall act as arbitrator and not expert in accordance with the provisions of the Arbitrations Act 1996. The expert shall be subject to an express requirement that he reaches his decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 28 days from the date of appointment to act. The expert shall be required to give notice to each of the said parties inviting each of them to submit to him within 10 working days written submissions and supporting material and shall afford to each of the said parties an opportunity to make counter submissions within a further 5 working days in respect of any such submission and material and his decision shall be given in writing within 28 days of his appointment with reasons and in the absence of manifest error shall be binding on the said parties.

IN WITNESS whereof the Parties hereto executed this Deed the day and the year first above written

Executed as a Deed by Hamilton Lofts Ltd acting by

W.B. King Director

C.M. Cole Company Secretary

Executed as a Deed by Heritable Bank Ltd acting by

[Signature] Director

B. S. [Signature] Authorised Signatory

SCHEDULE 1

Affordable Housing

- 1.1 The Owner will not Occupy or permit the Occupation of any of the Market Units prior to the completion of a Transfer Deed for or the grant of a Long Lease of all the Affordable Housing Units to a Registered Social Landlord in accordance with the provisions of this Unilateral Undertaking and such Transfer Deed or Long Lease to include all necessary rights of access and passage of services and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Units and not to include any unduly onerous or unusual covenants which conflict with the nature of the use of the Affordable Housing Units for Affordable Housing purposes.
- 1.2 Prior to completion of the Transfer Deed or Long Lease to the Registered Social Landlord the Owner shall procure that the Registered Social Landlord enters into a Nominations Deed.
- 1.3 The Owner will not Occupy or permit the Occupation of more than 50% of the Market Units prior to the completion of construction ready for occupation of all the Affordable Housing Units.

- 1.4 From the date of Transfer Deed or Long Lease of the Affordable Housing Units as the case may be by the Owner to the Registered Social Landlord the Affordable Housing Units shall not be used for any purposes other than for the provision of Affordable Housing (and of the Affordable Housing Units, 9 shall not be used for any purpose other than for Social Rented Housing and 3 shall not be used for any purpose other than for Intermediate Housing) save that this provision shall:
 - 1.2.1 Not bind any Mortgagee of a Registered Social Landlord or any receiver or manager appointed pursuant to the Law of Property Act 1925 or otherwise by a party who has provided loan facilities to the Registered Social Landlord
 - 1.2.2 Cease to apply to any part of the Affordable Housing Units should such part be transferred or leased by any Mortgagee of a Registered Social Landlord or any receiver or manager appointed pursuant to the Law of Property Act 1925 or otherwise by a party who has provided loan facilities to a Registered Social Landlord
 - 1.2.3 Cease to apply to any part of the Affordable Housing Units where the Registered Social Landlord has disposed of any part pursuant to a right to buy under Part V of the Housing Act 1985 or section 16 of the Housing Act 1996 or any similar or substitute right applicable or has sold a further and/or final tranche of equity to a tenant pursuant to the terms of any shared equity lease granted in respect of any part or has sold to a tenant with the benefit of a voluntary purchase grant provided under sections 20 and 21 of the Housing Act 1996 (or any similar provision in any subsequent legislation).

SCHEDULE 2

Amenity Contribution

Payment of the Amenity Contribution

- 1.1 The Owner will pay to the Council £32,606 Indexed prior to the first Occupation of any of the Market Units by way of the Amenity Contribution.
 - 1.2 The Owner will give written notice pursuant to paragraph 1.1 above to the Council's Development Control Manager at least 28 days prior to the first occupation of any of the Market Units in anticipation of that event.
-

SCHEDULE 3

Education Contribution

Payment of the Education Contribution

- 1.1 The Owner will pay to the Council £46,214 Indexed prior to the first Occupation of any of the Market Units by way of the Education Contribution.
 - 1.2 The Owner will give written notice pursuant to paragraph 1.1 above to the Council's Development Control Manager at least 28 days prior to the first occupation of any of the Market Units in anticipation of that event.
-

SCHEDULE 4

Primary Healthcare Contribution

Payment of the Primary Healthcare Contribution

- 1.1 The Owner will pay to the Council £7,049 Indexed prior to the first occupation of any of the Market Units by way of the Primary Healthcare Contribution.
 - 1.2 The Owner will give written notice pursuant to paragraph 1.1 above to the Council's Development Control Manager at least 28 days prior to the first occupation of any of the Market Units in anticipation of that event.
-

SCHEDULE 5

Transport Contribution

Delivery of Turning Head for Public Use

- 1.1 The Owner will construct a vehicular turning head at the entrance to the property from Hamilton Road for vehicular use by the public, prior to the first occupation of the 25th Dwelling, in part provision of the Transport Contribution.
 - 1.2 The turning head will be constructed and maintained to adopted highway standards.
 - 1.3 Notwithstanding that the Owner shall make the turning head available for public use, the turning head shall remain part of the Property for legal title which shall remain vested in the Owner and its successors in title and the Owner shall be entitled to close the turning head and exclude any public access thereto on Christmas Day in each year in order to prevent any public or private right of way being acquired thereover by prescription.
-

Payment of the Transport Contribution

- 1.4 The Owner will pay to the Council £24,716 Indexed prior to the first occupation of any of the Market Units by way of part of the Transport Contribution, for the purposes of the carrying out of safety measures on local roads.
- 1.5 The Owner will give written notice to the Council's Development Control Manager at least 28 days prior to the first occupation of any of the Market Units in anticipation of that event.

SCHEDULE 6

Offices

- 1.1 The Owner will procure that the Offices will be constructed and available for use within six months of the first occupation of the 10th Dwelling.

Suggested conditions in the event that the appeal is allowed: 37 Hamilton road

1. The development to which this permission relates must be begun not later than the expiration of three years beginning with the date of this permission.

REASON: To conform to the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. The external surfaces of the buildings, including fenestration shall not be constructed other than in materials details/samples of which shall be submitted to and approved in writing by the Local Planning Authority.

REASON: To ensure that the proposed development does not prejudice the appearance of the locality.

3. Sample panels of facing brickwork showing the proposed colour, texture, face-bond and pointing shall be provided on site and approved by the Local Planning Authority before the relevant parts of the works are commenced and the sample panels shall be retained on site until the work is completed and has been approved.

REASON: To ensure that the proposed development is in keeping with the existing buildings and does not prejudice the appearance of the locality.

4. The development shall not be carried out other than in accordance with detailed drawings to a scale of not less than 1:20 which shall be submitted to and approved in writing by the Local Planning Authority, such details to show glazed canopy, doors, cross-sections and design of windows, metal infill panels, soffits, steel stairs, landing and bridges, mesh panels and high level screens to lift and walkway.

REASON: To ensure that the proposed development is in keeping with the existing building(s) and does not prejudice the appearance of the locality.

5. Before the development hereby permitted is commenced a scheme indicating the provision to be made for disabled people to gain access to the development shall have been submitted to and approved in writing by the Local Planning Authority. The agreed scheme shall be implemented before the development hereby permitted is brought into use.

REASON: To ensure the provision of a satisfactory and convenient form of development for people with disabilities.

6. No alteration shall be made to the development hereby approved nor shall they be occupied in anyway which would result in a reduction in the number residential units .

REASON: To ensure that the development continues to contribute to the housings needs of the Borough by the retention of dwellings of a variety of sizes and types,

7. None of the buildings hereby approved shall be occupied until arrangements for the storage and disposal of refuse/waste have been made in accordance with details to be submitted to and approved in writing by the Local Planning Authority.

REASON: To safeguard the appearance of the property and the amenities of the area.

8. Recycling facilities shall be provided as part of the development hereby approved in accordance with detailed drawings to be submitted to and approved in writing by the Local Planning Authority, such drawings to show position, size, design, materials, finishes and signage thereof.

REASON: To accord with this Council's policy to encourage the recycling of appropriate waste products.

9. Any external illumination of the premises shall not be carried out except in accordance with details giving the method and intensity of nay such external illumination which shall be submitted to an approved in wring by the Local planning Authority prior to the occupation of nay part of the buildings.

10. REASON: to protect/safeguard the amenities of the locality.

11. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting that Order) no additional windows, dormers or other openings shall be inserted at any time in the eastern elevations of the buildings hereby approved.

REASON: To safeguard the amenities of the occupiers of adjoining properties.

12. No building/dwelling/part of the development shall be occupied until cycle parking facilities have been provided in accordance with detailed drawings to be submitted to and approved in writing by the Local Planning Authority, such drawings to show the position, design, materials and finishes thereof.

REASON: To accord with this Council's policy to discourage the use of the car wherever possible.

13. Detailed drawings of the new access road shall be submitted to and approved in writing by the Local Planning Authority; such drawings to show method of construction, levels in relation to adjacent land and surface treatment. No part of the development shall be occupied until the works of construction have been carried out in accordance with the drawings so approved.

REASON: To ensure the provision of a satisfactory convenient and safe form of development.

14. The proposed finished floor levels of all buildings and the finished ground floor levels of the site in relation to existing site levels of surrounding land shall not be other than in accordance with details to be submitted to and approved in writing by the Local Planning authority.

REASON: in the interests of highway safety.

15. The gradient of any ramp shall not exceed 1 in 10 and for the first 5m from the edge of the carriageway of the adjoining highway, shall not exceed 1 in 25

REASON: In the interests of highway safety

16. Staff and customer/visitor travel surveys shall be undertaken in accordance with a survey methodology to be submitted to and approved by the Local Planning

Authority prior to it being carried out. Within 6 months of the use commencing, a new travel plan based on the results of the survey shall be submitted with clear objectives, targets, actions and timeframes to manage the transport needs of staff and customer / visitors to the development, to minimise car usage and to achieve a shift to alternative transport modes . Following approval by the Local Planning Authority, the applicant shall then implement these actions to secure the objectives and targets within the approved plan. The travel plan (including surveys) shall be annually revised and a written review of the travel plan submitted and approved by Council by the anniversary of its first approval and yearly thereafter. At the third anniversary, the travel plan (including surveys) shall be re-written, and resubmitted for further approval by the Council. This review and re-write cycle shall continue every three years and any approved revision shall be implemented within three months of the date of approval.

REASON: In order to comply with the objectives of national and local Planning Policies (within the Council's Unitary Development Plan) which promote sustainable development with particular regard to transport.

17. The dwelling(s) hereby approved shall achieve EcoHomes Rating excellent; in accordance with the requirements of the BREEAM Guide (or such national measure of sustainability for house design that replaces that scheme). No dwelling shall be occupied until a Post Construction Review Certificate has been issued for it certifying that the Rating Level as stated above has been achieved and has been submitted to the Local Planning Authority for approval.

REASON: In the interests of promoting sustainable forms of developments and to meet the terms of the application.

18. The dwellings hereby approved shall achieve a Code Level 3; in accordance with the requirements of the Code for Sustainable Homes: Technical Guide (or such national measure of sustainability for house design that replaces that scheme). No dwelling shall be occupied until a Final Code Certificate has been issued for it certifying that the Code Level stated above has been achieved and which has been submitted to the Local Planning Authority for approval.

REASON: in the interests of promoting sustainable forms of developments and to meet the terms of the application.

19. The plans and particulars submitted in accordance with condition ^IN; above shall include:-

a. A plan showing the location of, and allocating a reference number to, each existing tree on the site which has a stem with a diameter, measured over the bark at a point 1.5m above ground level, exceeding 75mm, showing which trees are to be retained and the crown spread of each retained tree.

b. Details of the species, diameter (measured in accordance with paragraph (a) above, and the approximate height, and an assessment of the general state of health and stability, of each retained tree and of each tree which is on land adjacent to the site and to which paragraphs (c) and (d) below apply;

c. Details of any proposed topping or lopping of any retained tree, or of any tree on land adjacent to the site;

d. Details of any proposed alterations in existing ground levels, and of the position of any proposed excavation, [within the crown spread of any retained tree or of any tree on land adjacent to the site] [within a distance from any retained tree, or any tree on land adjacent to the site, equivalent to half the height of that tree];

e. Details of the specification and position of fencing [and of any other measures to be taken] for the protection of any retained tree from damage before or during the course of development. In this condition "retained tree" means an existing tree which is to be retained in accordance with the plan referred to in paragraph (a) above.

REASON: The existing trees and other natural features represent an important amenity which the Local Planning Authority consider should be substantially maintained.

20. For a period of 5 years from the date of this permission no trees shall be willfully damaged, destroyed or uprooted, and no trees felled or lopped without the previous written consent of the Local Planning Authority. Any trees which die, are removed without the permission of the Local Planning Authority or become seriously damaged or diseased shall be replaced in the next planting season with

others of similar size and species unless the Local Planning Authority gives written consent to any variation.

REASON: The existing trees represent an important amenity which the Local Planning Authority considers should be substantially maintained.

21. No works or development shall take place until full details of all proposed tree planting, and the proposed times of planting, have been approved in writing by the Local Planning Authority, and all tree planting shall be carried out in accordance with those details and at those times.

REASON: To safeguard the appearance of the locality.

22. No development shall take place until full details of both hard and soft landscaping works have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. These details shall include proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc.); proposed and existing functional services above and below ground (e.g. drainage, power, communications cables, pipelines etc, indicating lines, manholes, supports etc); retained historic landscape features and proposals for restoration, where relevant]. Soft landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; implementation programme.

REASON: To ensure that the proposed development does not prejudice the appearance of the locality and to preserve and enhance nature conservation interests.

23. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the Local Planning Authority.

REASON: To ensure that the proposed development does not prejudice the appearance of the locality.

24. No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before the buildings are occupied or in accordance with a timetable agreed in writing with the Local Planning Authority. Development shall be carried out in accordance with the approved details.

REASON: To safeguard the visual amenities of the locality and the safety of residents adjacent to the operational railway land.

25. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting that Order) no other boundary fences walls, railings or gates other than those hereby approved by the preceding condition shall be erected within the site.

REASON: To maintain the quality of the development and in the interests of road safety.

26. Before building operations commence a fully detailed scheme for protecting the residential accommodation from rail noise adjacent to the north elevation shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall comprise such works as are necessary to ensure compliance in general terms with PPG24 (Planning and Noise) NEC category B. Thereafter, the development shall not be carried out other than in accordance with such approved scheme which shall be completed before any part of the accommodation hereby approved is occupied, unless the Local Planning Authority otherwise agrees in writing.

REASON: To protect the occupants of the new development for noise disturbance.

27. Those dwellings which are within 10 meters of the railway track must be subject to an assessment of the impact of the vibration from the railway prior to commencement of development. This assessment shall include details of recommended remedial measures should vibration levels be found to be unacceptable. This assessment shall be supplied to and approved in writing by the Local Planning Authority prior to commencement of development. The assessment shall be carried out in accordance with the method rating system as detailed in British standard BS 6472:1992,

REASON; To protect the occupants of the new development from noise disturbance.

28. No development approved by this permission shall be commenced until:}

a) A contaminated land assessment and associated remedial strategy, together with a timetable of works being submitted to and approved by the local planning authority.

b) Such contaminated land assessment shall include a desk study with details of the history of the site use, hazardous materials, substances used and details of a site investigation strategy based on the relevant information discovered by the desk study.

REASON: to protect future users of the site and neighbouring land and to protect the amenity of the environment including ground water quality.

29. No development approved by this permission shall be commenced until:}

a) The site investigation strategy has been implemented and completed. Such site investigation to include relevant soil, soil gas, surface and groundwater sampling, which to be carried out by a suitably qualified and accredited geo-environmental consultant/contractor in accordance with the current U.K. requirements for sampling and analysis and,

b) A site investigation report detailing all investigative works and sampling on site, together with the results of analyses, risk assessment to any relevant receptors and a proposed remediation strategy has been submitted to and approved by the local planning authority. The remedial works shall be of such a nature as to reduce the risk