

DATED

7th June

2010

BOVIS HOMES LIMITED (1)

BRYANT HOMES SOUTHERN LIMITED (2)

UNILATERAL UNDERTAKING

to

**WELWYN HATFIELD BOROUGH COUNCIL and
HERTFORDSHIRE COUNTY COUNCIL**
under Section 106 of the Town & Country Planning Act 1990
relating to
land forming part of the former Hatfield Aerodrome, Mosquito Way, Hatfield

Bovis Homes Limited
Legal Department
1 Bromwich Court
Gorse Lane
Colshill
B46 1JU
(Ref: A1C Hat4)

BETWEEN

- (1) **BOVIS HOMES LIMITED** (Company No 00397634) whose registered office is at Manor House North Ash Road New Ash Green Longfield Kent (“Bovis”) which expression is intended to include Bovis’s successors in title;
- (2) **BRYANT HOMES SOUTHERN LIMITED** (Company No 00346732) whose registered office is at 80 New Bond Street London United Kingdom W1S 1SB (“Bryant”) which expression is intended to include Bryant’s successors in title

TOGETHER called “the Developer”

IN FAVOUR OF:

- (3) **WELWYN HATFIELD BOROUGH COUNCIL** of Council Offices, The Campus Welwyn Garden City, Hertfordshire AL8 6AE (“the Council”), and
- (4) **HERTFORDSHIRE COUNTY COUNCIL** of County Hall, Hertford SG13 8DQ (“the County Council”)

1. RECITALS

- 1.1 The Council and the County Council are the local planning authorities for the purposes of the Act for the area within which the Site (as hereinafter defined) is located and as such are entitled to enforce the planning obligations hereinafter recited.
- 1.2 The County Council is also the Education Authority and the Library Authority
- 1.3 Bovis and Bryant are jointly the freehold owner of the Site
- 1.4 The Application (as hereinafter defined) has been submitted to the Council
- 1.5 It has been agreed between the Council and the Developer that additional Section 106 contributions will be required in relation to any units on the Site in excess of the figure of 130 notionally permitted by the Hatfield Aerodrome Supplementary Planning Guidance adopted in November 1999
- 1.6 The Application is for the number of 164 units, and additional contributions have been

agreed as set out below.

- 1.7 Accordingly, the Developer has determined to enter into this deed with the intention of supplementing the obligations set out in the Section 106 Agreement (as defined below) securing the matters hereinafter referred to and with the intention that the obligations contained in this deed (and in the Section 106 Agreement as supplemented by this deed) may be enforced by the Council and/or the County Council (as the case may be) against the Developer and any person or persons deriving title from them in the event of implementation of the Planning Permission and from Commencement

2. **DEFINITIONS AND INTERPRETATION**

- 2.1 Unless the context requires otherwise and save as otherwise defined in this deed all words and expressions defined in this Supplemental Unilateral Undertaking shall have the same meaning in this deed as is ascribed to them in the Section 106 Agreement and in particular (but without prejudice to the generality of the foregoing) the following words and expressions shall have the meanings set out opposite them below:

“the Act”	means the Town and Country Planning Act 1990 (as amended from time to time);
“the Additional Contribution”	means the sum of £120,652 index linked as hereinafter provided as a contribution towards the cost of primary and secondary education, childcare, nursery, library and youth facilities
“the Application”	means a reserved matters application (Reference: S6/2009/0891/MA) for the erection of 164 dwellings with associated roads, car parking and garages on the Site pursuant to an outline planning permission dated 29 December 2000 (Reference: S6/1999/1064/OP) (“the Outline Planning Permission”)
“Commence”	Means to commence the carrying out on the Site pursuant to the Planning Permission of any material operation as specified in Section 56(4) of the Act but not including any Site Preliminaries (as defined in the Section 106 Agreement) operations relating to site investigations or surveys or the demolition of any existing buildings or clearance of the Site;

	and "Commenced" shall be construed accordingly
"Commencement"	means the date upon which the Development shall be Commenced
"Development"	means that development of the Site which is permitted by the Outline Planning Permission and the reserved matters approval granted pursuant to the Application
"Dwelling"	means any unit of residential accommodation including a flat
"Index C"	means the Building Construction Information Service National Average All-In Tender Price Index multiplied by the regional figure for Hertfordshire
"Occupation"	means to occupy or permit occupation for residential purposes
"Planning Permission"	means the planning permission comprising the Outline Planning Permission and the reserved matters which may be approved pursuant to the Application
"Section 106 Agreement"	means an agreement under section 106 of the 1990 Act dated 29 December 2000 made between the Council (1) the County Council (2) City and District of St Albans District Council (3) BAe Systems plc (4) Arlington Property Developments Limited (5) the University of Hertfordshire Higher Education Corporation (6) and Hatfield Business Park Limited (7) as modified by a Deed of Modification dated 16 October 2002 and a supplemental Agreement dated 11 November 2003
"Site"	means the freehold property formerly part of the Hatfield Aerodrome site at Mosquito Way Hatfield registered (together with other land) under Title No HD399726 as shown for identification only edged red on the attached plan

2.2 In this deed,

2.2.1 a reference to the masculine, feminine or neuter gender includes each of the other genders and the singular includes the plural and vice versa;

2.2.2 a reference to any statute or section of a statute includes any modification extension or re-enactment of that Act for the time being in force and shall include

all instruments orders plans regulations permissions and directions for the time being made issued or given under that Act or deriving from it

2.2.3 a reference to a Clause or Schedule is a reference to a clause or sub-clause of or a schedule to this deed and a reference to a Paragraph is a reference to a paragraph of a schedule to this deed; and

2.3.4 The clause headings do not affect its interpretation

3. **OPERATIVE PROVISIONS**

3.1 The provisions of this deed (including, without limitation, those set out in the Schedule hereto) shall supplement the obligations set out in the Section 106 Agreement. The Section 106 Agreement shall remain in full effect and its provisions shall continue to apply supplemented by the provisions of this deed

3.2 This deed is made pursuant to Section 106 of the Act and the obligations contained in this deed are planning obligations for the purposes of that section. To the extent that any obligations are not planning obligations within the meaning of the 1990 Act they are entered into pursuant to the powers contained in Section 111 Local Government Act 1972, Section 2 Local Government Act 2000 and all other enabling powers.

3.3 The Councils are the local authorities by which the planning obligations contained in this deed are enforceable

3.4 The covenants contained in this deed shall only come into effect on Commencement unless otherwise specifically indicated by this deed

3.5 No person shall be liable for any breach of the covenants restrictions or obligations contained in this deed occurring after he has parted with this interest in the Site but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest

3.6 This deed shall cease to have effect if:

3.6.1 the Planning Permission shall be quashed revoked or otherwise withdrawn or modified (save only as to any minor modifications to the Development as shall be agreed from time to time by the Council and Bovis Developers prior to the occupation of the 131st dwelling which shall not have such effect) , or

3.6.2 the Planning Permission shall expire prior to Commencement ; or

3.6.3 the Council or any other competent authority shall at any time after the date hereof grant a new permission under which development is initiated for the

in compliance with the provisions of the Act

3. This deed shall be subject to any covenants with the Council and/or the County Council (as the case may be) to observe and perform the covenants set out in the First Schedule to this deed in relation to the Development

It is to be the effect that the covenants or other provisions set out in the First Schedule to this deed supplement the covenants set out in the Section 106 Agreement the covenants set out in the Section 106 Agreement are so supplemented

This deed is registerable as a local land charge

THE FIRST SCHEDULE

1 Payment of Additional Contribution

The Developer hereby covenants with the Council and/or the County Council (as the case may be) so as to bind the Site and its successors in title that it shall (in addition to the sums payable pursuant to clause 4 of the Section 106 Agreement)

- (a) Prior to Occupation of the 131st Dwelling pay to the County Council the Additional Contribution index linked by reference to Index C to the figure last published prior to payment of the Additional Contribution
- (b) give the County Council and the Council not less than 10 working days notice of
 - (i) the Commencement Date; and
 - (ii) the date of Occupation of the 130th Dwellingsuch notice to be given in writing to the address specified on page 1 of this deed

2 Indexation

Where the sum detailed in paragraph 1 of the First Schedule is required to be index linked by reference to Index C, the sum payable shall be increased or decreased in accordance with any change by application of the formula $A = B \times (C \text{ divided by } D)$ where

A is the total amount to be paid

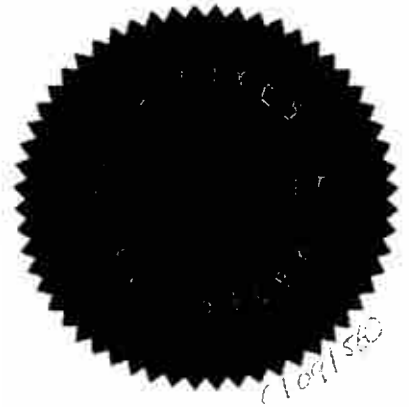
B is the principal sum stated above

C is the Index C figure last published prior to payment of the Additional Contribution; and

D is the figure of _____ being the figure for Index C last published on the date of completion of this deed

EXECUTED AS A DEED on the date specified at the commencement of this deed

EXECUTED as a Deed by
BOVIS HOMES LIMITED
by the affixing of its Common
Seal in the presence of two
Authorised Signatories



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EXECUTED as a Deed by
**BRYANT HOMES
SOUTHERN LIMITED**
acting by its authorised
signatories
in the presence of

*KEITH JONES
KATHARINE CRYMBO THORNTON
SECRETARY
SHEILA ALLEN
RECEPTIONIST*

Director
(initials)

Director
(initials)

HATFIELD 4



Rev	Date	Details	By
Drawings Authority Approval Date			
Highway Authority Approval Date			
<small>Do not make from this drawing. Use without dimensional only. When about re-issues between site levels and ground levels are to be checked on site. Any discrepancy or suggested modification is to be reported to Design and Engineering Director. Note: This drawing is the copyright of Bovis Homes Ltd.</small>			
		Bovis Homes Central Region Broadwick Court Highway Point Gorsey Lane Colehill B48 1JU Tel: 01875 437 000 Fax: 01875 437 094 DX: 728340 Colehill 2	
		SITE: HATFIELD Phase 4 DRAWING TITLE: AREAS LAYOUT	
Drawn BY	TTT	DATE	03-06-09
Scale	1:500	CHECKED/DATE	HAT4-AREAS