DATED 2008

GREEN ROAD DEVELOPMENTS

to

Barnsley Metropolitan Borough Council

UNILATERAL UNDERTAKING

Under section 106 of the Town and Country Planning Act 1990 relating to land at Green Road, Dodworth

Draft: 28 October 2008

THIS UNILATERAL UNDERTAKING is given this day of 2008

BY

(1) Green Road Developments of Green Road, Dodworth, Barnsley (hereinafter called "the Developer")

TO

(2) BARNSLEY METROPOLITAN BOROUGH COUNCIL of Planning and Transportation, PO Box 604, Barnsley, S70 9FE. (hereinafter called "the Council")

DEFINITIONS

In this Undertaking the expressions listed below shall have the meanings respectively assigned in relation thereto unless the context otherwise requires it

1990 Act: means the Town and Country Planning Act 1990 as amended

Affordable Units: means the *(number of units to be agreed)* units to be transferred to the Housing Association or Nominated Housing Association at the Subsidised Price

Application: means the application made by the Developer to the Council under reference ..... dated ..... for [outline] planning permission for residential development

Commencement of Development: means the date of the carrying out of a material operation pursuant to the Planning Permission within the meaning of Sections 56 and 91 of the 1990 Act and which for the avoidance of doubt shall not include any demolition or clearance works carried out prior to the implementation of the Planning Permission

Development: means the development proposed by the Application

Housing Association: means ... *(No HA in place)*

Nominated Housing Association: means a Housing Association nominated by the Council in substitution for the Housing Association pursuant to this Undertaking

Open Market Dwellings: means those units to be constructed on the Site (excluding the Affordable Units) for sale on the open market

Planning Permission: means the planning permission issued pursuant to the Application

Site: means the land at Green Road, Dodworth shown for identification purposes only edged red on the plan annexed hereto

Subsidised Price: means the agreed sum of £ *(to be agreed)*.....for the Affordable Units

WHEREAS

(1) The Council is the local planning authority for the purposes of the 1990 Act for the area within which the Site is situated and is the Local Planning Authority by whom this Undertaking is enforceable

(2) The Developer has the freehold interest in the Site under title number ..... *The developer has an option agreement in place and as yet does not have the freehold.*

(3) The Developer has made the Application to the Council for the Planning Permission

(4) The Council is satisfied that the Development is such as may be approved by the Council but would be unwilling to grant planning permission in the absence of this Undertaking

NOW THIS DEED WITNESSETH as follows:-

1. **THIS** Unilateral Undertaking is a planning obligation given by the Developer pursuant to Section 106 of the 1990 Act and all other powers so enabling

2. The Developer hereby covenants with the Council so as to bind the Site:

2.1 The Developer shall not occupy or permit the occupation of more than [...]% *(to be agreed)* of the Open Market Dwellings until a legally binding contract for the transfer of the Affordable Housing Area to the Housing Association has been made by the Developer

2.2 The Developer shall use all reasonable endeavours to transfer the freehold of the Affordable Units to the Housing Association with a good and marketable title at or at not more than the Subsidised Price in accordance with the terms of this Undertaking

2.3 The transfer of the Affordable Units to the Housing Association shall (inter alia) contain covenants providing that:

(a) the Affordable Units shall be built in accordance with the Planning Permission and shall be offered for ..... *[% mix or rental or shared ownership to be agreed].*

(b) the Affordable Units shall be managed at all times by the Housing Association or the Nominated Housing Association (or any similar organisation acting in substitution for them) in accordance with its objectives and/or Articles of Association

2.4 In the event that the Housing Association declines or is unable to accept the transfer of the Affordable Units in accordance with the terms of this Undertaking or if in the Developer's or the Council's opinion (acting reasonably) insufficient progress is being made towards the exchange of contracts with the Housing Association for the transfer of the Affordable Units either the Developer or the Council shall give written notice to the other and the Council may select a Nominated Housing Association and the Developer shall use all reasonable endeavours to transfer the freehold of the Affordable Units to the Nominated Housing Association with a good and marketable title at or at not more than the Subsidised Price in accordance with the terms of this Undertaking

2.5 The Developer shall not occupy or permit the occupation of more than [...] Open Market Dwellings until the sum of *£(to be agreed)* has been paid to the Council as a contribution toward public open space

3. IT IS HEREBY AGREED AND DECLARED as follows:

3.1 This Deed is conditional and shall only have effect upon:

3.1.1 the grant of the Planning Permission; and

3.1.2 the Commencement of Development

3.2 If planning permission for the Development is revoked or modified (other than in approval of an application by or on behalf of the Developer) or quashed as a result of legal proceedings then this Undertaking shall absolutely determine and become null and void but without prejudice to the rights of either party against the other in respect of any antecedent breach hereof

3.3 If the planning permission for the Development has not been implemented by the carrying out of a material operation as defined in section 56(4) of the 1990 Act within five years of the date of the planning permission for the Development this Undertaking shall absolutely determine and become null and void

3.4 No person shall be liable for a breach of any covenant or obligation contained in this Undertaking after parting with all interest in the Site or the part of the Site in respect of which such breach occurs but without prejudice to any liability in respect of any antecedent breach

3.5 For the purpose of such parts of this Undertaking as may be subject to the law against perpetuities this Undertaking shall remain in force for the period of eighty years from the date hereof or (if sooner) as long as the covenant herein may not have been performed

3.6 Any dispute arising between any of the parties as to their respective rights, duties or obligations or as to the failure of the Council to give or confirm its consent where required under this Undertaking or as to any other matter or thing arising out of or connected with the subject matter of this Undertaking or any failure to agree upon any matter may subject to the written agreement of the parties hereto be referred in accordance with the provisions of Clause 3.7 to the determination of an independent Chartered Surveyor

3.7 Any reference to an independent Chartered Surveyor in accordance with Clause 3.6 shall be to a reputable Chartered Surveyor unconnected to any of the parties hereto and experienced in commercial development matters who shall be agreed between the parties to the dispute or appointed on the application of any party to the dispute made at any time by the President for the time being of the Royal Institute of Chartered Surveyors or his duly appointed deputy and the decision of such independent Chartered Surveyor shall be final and binding upon the parties to the dispute (save for manifest error) and if the parties to the dispute shall agree in writing such reference shall be deemed to be a reference to an expert (and not an arbitrator) but shall otherwise be deemed to be a reference to an arbitrator pursuant to the Arbitration Act 1996 and if any Chartered Surveyor shall act as an expert pursuant to the terms of this Clause 3.7 then each of the parties to the dispute shall be entitled to submit to him representations and cross representations with such supporting evidence as they shall consider necessary and he shall have regard thereto in making his decision which he shall deliver in writing as expeditiously as possible and the reference to him shall include authority to determine in what manner all the costs of the referral (whether incurred by the parties to the dispute or the Chartered Surveyor himself) shall be paid

3.8 In this Undertaking the expressions "the Council" and "the Developer" shall where the context so admits be deemed to include their respective successors in title

3.9 Save as provided in respect of the successors in title to the Site or any successor to the relevant statutory functions of the Council this Undertaking shall not be enforceable by any third party pursuant to the Contracts Act

3.10 Nothing in this Undertaking shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than one relating to the Development) granted (whether or not on appeal) after the date of this Undertaking

3.11 The planning obligation hereby created shall be registered as a Local Land Charge

EXECUTED AS A DEED by the Developer on the day and year first hereinbefore appearing

EXECUTED AS A DEED
(but not delivered until the date hereof)
by **Green Road Developments Ltd**
and signed by a Director and the Secretary
or two Directors

Director

Director/Secretary