DATED 8th February 2011

EVANS BROS LIMITED (1)

and

CLYDESDALE BANK PLC (2)

UNILATERAL UNDERTAKING

Under Section 106 of the Town and Country Planning Act 1990

Relating to the demolition of existing building and the erection of fourteen dwellings with associated car parking and landscaping at Henton Engineering, Cotes Road, Burbage, Hinckley

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Marrons
1 Meridian South
Meridian Business Park
Leicester
LE19 1WY

THIS DEED is made the 8th day of February Two Thousand and Eleven

BY

(1) **EVANS BROS LIMITED** (Company Registration number 04320729) whose registered office is at Unit 1-4 Brunel Road Hinckley Leicester Leicestershire LE10 0AA ("the Owner")

(2) **CLYDESDALE BANK PLC (Scot. Co. Regn. No. SC1111)** of Yorkshire Bank 20 Merrion Way Leeds LS2 8NZ ("the Mortgagee")

TO

(3) **HINCKLEY AND BOSWORTH BOROUGH COUNCIL** of Council Offices Argents Mead Hinckley LE10 1BZ ("the Borough Council")

RECITALS:

A. The Borough Council is the local planning authority for the purposes of the Act for the area within which the Application Site is situated.

B. The County Council is the education authority for the area in which the Application Site is situated.

C. The Owner is the owner of the Application Site being registered at the Land Registry under title number LT165687 and being part of title number LT153630 with the Owner having Freehold Title Absolute

D. The Mortgagee has a legal charge over the Application Site dated 8 July 2010 made between the Owner and the Mortgagee and registered on the Charges Register of title numbers LT165687 and LT153630

E. By means of the Planning Application the Owner has applied to the Borough Council for Planning Permission to carry out the Development

F. The Borough Council has resolved to grant Planning Permission in respect of the Planning Application subject to conditions and subject to the completion of this Unilateral Undertaking

G. The Owner is willing to give this Unilateral Undertaking to the Borough Council pursuant to Section 106 of the Act in order to make provision for securing the planning obligations set out herein

H. The Borough Council considers it expedient in the interests of proper planning of its area that the development of the Application Site should be regulated in accordance with this Deed

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRTATION

1.1 In this Deed the following words and phrases shall have the following meanings (including for the avoidance of doubt in the above recitals):

"Act"	means the Town and Country Planning Act 1990 (as amended)
"Application Site"	means the land edged red on the Plan
"County Council"	means Leicestershire County Council
"Commencement of Development"	means the earliest date on which any of the material operations (as defined by Section 56(4) of the Act) is carried out on the Application Site pursuant to the implementation of the Planning Permission which expression shall not include demolition or site clearance works

"Development"	means the demolition of the existing building and the erection of fourteen dwellings with associated parking and landscaping as described in the Planning Application
"Equipped Play Space Contribution"	means the sum of Eight Thousand Two Hundred and Forty Two Pounds and Eighty Two Pence (£8,242.82) Index Linked comprising of Five Thousand Five Hundred and Forty Two Pounds and Seven Pence (£5,542.07) Index Linked ("the Equipped Play Space Capital Provision") and Two Thousand Seven Hundred Pounds and Seventy Five Pence (£2,700.75) Index Linked in respect of the maintenance of such equipped play space ("the Equipped Play Space Maintenance Sum") as a contribution towards the improvement and maintenance of equipped play space at Britannia Recreation Ground in Burbage
"Index Linked"	means the application to the sum concerned of the indexation set out in the First Schedule
"Informal Play Space Contribution"	means the sum of One Thousand Three Hundred and Thirteen Pounds and Thirty Two Pence (£1,313.32) Index Linked comprising Seven Hundred and Five Pounds and Ninety Four Pence (£705.94) Index Linked ("the Informal Play Space Capital Provision) and Six Hundred and Seven Pounds and Thirty Eight Pence (£607.38) Index Linked in respect of the maintenance of such Informal Play Space ("the Informal Play Space Maintenance Sum") as a contribution towards the improvement and maintenance of informal play space at Britannia Recreation Ground in Burbage
"Occupation"	means the date on which a dwelling constructed pursuant to the Planning Permission first becomes physically occupied other than for fitting out and decoration purposes and will not include use for show purposes and the words "Occupied" and "Occupation" shall be construed accordingly
"Plan"	means the plan attached to this Deed
"Planning Application"	means the planning application made by the Owner to the Borough Council and registered by the Borough Council on 3 November 2010

Proposed Site Layout Plan



Proposed Site Location Plan

Client	Mr Haydn Evans
Site Address	Land at Cotes Road, Barlaston
Drawing Title	Existing Site Plan
Date	27.07.2010
Scale	1:200 & 1:1250 @A1 AutoCAD
Drg No	149501

adm Surveyors Ltd
ADM Surveyors Limited
Building Surveying Services
3a The Parade, Needham Avenue,
Glen Parva, Leicester, LE2 9JW
Tel: 0116 2770221 Fax: 0116 2770228
Email: office@admsurveyors.co.uk
RICS

	and allocated reference number 10/00883/FUL for the Development on the Application Site
"Planning Permission"	means the planning permission granted pursuant to the determination of the Planning Application
"Primary School Contribution"	means the sum of Twenty Six Thousand Four Hundred and Ten Pounds and Forty Seven Pence (£26,410.47) Index Linked as a contribution towards Sketchley Hill Primary School Burbage
"Secondary School Contribution"	means the sum of Twenty Thousand and Thirty Three Pounds and Thirty Nine Pence (£20,033.39) Index Linked as a contribution towards John Cleveland College Hinckley

2. CONSTRUCTION OF THIS DEED

In this Deed unless the context indicates or requires otherwise:

2.1 Words in this Deed importing the singular meaning shall where the context so admits include the plural meaning and vice versa

2.2 Words in this Deed of the masculine gender shall include the feminine and neuter genders and vice versa and words denoting natural persons shall include corporations and vice versa

2.3 References in this Deed to any statutes or statutory instruments shall include and refer to any statute or statutory instrument amending consolidating or replacing them respectively from time to time and for the time being in force

2.4 Where in this Deed reference is made to a clause schedule or plan such references (unless the context otherwise requires) is a reference to a clause or schedule or plan of this Deed

2.5 The expressions the Borough Council the County Council the Owner and the Mortgagee shall include their respective successors and assignees

3. GENERAL PROVISIONS

Liability

3.1 The Owner is the freehold owner of the Application Site and the Owner's covenant contained herein is a planning obligation made pursuant to Section 106 of the Act

3.2 The Mortgagee consents to the Owner entering into this Deed and acknowledges that this Deed binds the Application Site PROVIDED THAT the Mortgagee shall only be liable for any breach of this Deed whilst the Mortgagee is in possession of the Application Site and the Mortgagee shall not be liable for any pre-existing breach

3.3 The covenants contained in clause 4 shall be enforceable by the Borough Council

3.4 The covenants contained herein on the part of the Owner are made with the intent that the covenants will bind the Application Site and be binding on and enforceable against successors in title or assigns and those deriving title under the Owner PROVIDED THAT without prejudice to the enforcement of the covenant against successors in title no person shall be liable for any breach or non-performance of the covenants contained herein or for the performance of any obligations which arise from the carrying out of the Development on and in respect of any land of which he is no longer seised save in respect of any prior subsisting breach

Contingencies

3.5 The obligations contained in clause 4 are conditional upon the issuing of the Planning Permission and the Commencement of Development

3.6 In the event of the Planning Permission expiring or in the event of the

revocation or quashing of the Planning Permission the obligations under this Deed shall cease absolutely save in so far as they are capable of relating to any part of the Development that has been carried out

Exclusion of the Contracts (Rights of Third Parties) Act 1999

3.7 The provisions of the Contract (Rights of Third Parties) Act 1999 shall not apply to this Deed

Local Land Charge

3.8 It is the intention of the Owner and the Mortgagee that the Borough Council register this Deed on the Register of Local Land Charges

Legal Costs

3.9 The Owner undertakes to pay to the Borough Council on the submission hereof the Borough Council's legal fees of £500.00 to cover the Borough Council's costs in approving this Deed

4. OWNER'S OBLIGATIONS TO THE BOROUGH COUNCIL

4.1 The Owner hereby undertakes to the Borough Council as follows:

4.1.1 Not to allow or permit the Occupation of more than seven dwellings until the Equipped Play Space Contribution has been paid to the Borough Council such payment being made with the expectation that the Borough Council shall use the Equipped Play Space Capital Provision for the provision of equipped play space at Britannia Recreation Ground in Burbage and the Equipped Play Space Maintenance Sum for the maintenance of that equipped play space

4.1.2 Not to allow or permit the Occupation of more than seven dwellings until the Informal Play Space Contribution has been paid to the Borough Council such payment being made with the expectation that the Borough Council shall use the Informal Play Space Capital Provision for the provision of informal play space at Britannia Recreation Ground in Burbage and the Informal Play Space

Maintenance Sum for the maintenance of that informal play space

4.1.3 To pay the Primary School Contribution to the County Council in ten instalments in accordance with the following:-

4.1.3.1 ten percent (being £2,641.02) on the Occupation of the third dwelling built pursuant to the Planning Permission

4.1.3.2 a further ten percent (being £2,641.05) on each occasion on the Occupation of the fourth fifth sixth seventh eighth ninth tenth eleventh and twelfth dwelling built pursuant to the Planning Permission

4.1.3.3 each such instalment being made with the expectation that the County Council shall use the Primary School Contribution for the improvement of facilities at Sketchley Hill Primary School Burbage within five years from the date of receipt following which any unexpended sums shall be returned to the payer

4.1.4 To pay the Secondary School Contribution to the County Council in ten instalments in accordance with the following:-

4.1.4.1 ten percent (being £2,003.33) on the Occupation of the third dwelling built pursuant to the Planning Permission

4.1.4.2 a further ten percent (being £2,003.34) on each occasion on the Occupation of the fourth fifth sixth seventh eighth ninth tenth eleventh and twelfth dwelling built pursuant to the Planning Permission

4.1.4.3 each such instalment being made with the expectation that the County Council shall use the Secondary School Contribution for the improvement of facilities at John Cleveland College Hinckley within five years from the date of receipt following which any unexpended sums shall be returned to the payer

4.1.5 to notify the Borough Council and the County Council within 14 days of each and every Occupation referred to in clause 4 of this Deed

FIRST SCHEDULE

In this Schedule:-

"Index Linked" means

(i) In respect of the Equipped Play Space Contribution and the Informal Play Space Contribution the All Items Retail Prices Index published by the Office of National Statistics contained in the Monthly Digest of Statistics (or contained in any official publication substituted therefor) or such other index as may from time to time be published in substitution therefor or if for any reason the Index shall be abolished, there shall be substituted for the purposes of this Schedule, such index of food price costs (including the altered All Items Retail Prices Index) as may from time to time be published by or under the authority of any Ministry or Department of Her Majesty's Government and if no such index is published, the parties thereto shall endeavour to agree such other index as shall most closely reflect changes in the costs of living; and

(ii) In respect of the Primary School Contribution and the Secondary School Contribution the All in Tender Price Index of Buildings Cost Information Services ("BCIS") as published by the Royal Institute of Chartered Surveyors ("RICS") or in the event that the RICS shall change the basis of compilation or cease to compile or publish the said Index such other Index as the parties hereto shall agree or in default of agreement such

Index as shall be determined by an Arbitrator appointed by the President of the RICS for the purposes of this Undertaking in all cases to ensure as nearly as possible that the sums of money involved shall fluctuate in accordance with the general level of the building industry costs

"Base Index Date" means the date of the grant of Planning Permission.

"Base Index Figure" means the figure published in respect of the Index immediately prior to the Base Index Date

"Final Index Figure" means the figure published or otherwise agreed or determined in respect of the Index immediately prior to the respective dates upon which the relevant contribution are paid

5. The relevant contribution shall be increased by such sum, if any, in pounds sterling as shall be equal to the sum calculated according to the following formula:-

$$\text{Increased Sum} = \frac{A \times C}{B}$$

Where: "A" equals the relevant contribution

"B" equals the Base Index Figure

"C" equals the Final Index Figure

6. If after the Base Index Date there should be any change in the Base Index Figure by reference to which changes in the Index are calculated, the figure taken to be shown in the Index after such change shall be the figure which would have been shown in the Index if the said Base Index Figure had been retained and the appropriate reconciliation shall be made

7. If any substitution for the said All Items Retail Prices Index or the BCIS, or any index previously substituted therefor shall occur, the parties hereto shall endeavour to agree the appropriate reconciliation between the Index substituted on the one hand and the All Items Retail Prices Index or the BCIS or any index previously substituted therefore on the other hand

IN WITNESS whereof the parties hereto have executed this Deed on the date first above written

SIGNED AS A DEED on behalf of)
EVANS BROS LIMITED acting by)

Director [redacted]

Director/Secretary [redacted]

EXECUTED AS A DEED by)
CLYDESDALE BANK PLC)
Acting by: S. GRANT) [redacted]

CLYDESDALE BANK PLC
(TRADING AS YORKSHIRE BANK)
LEICESTER
FINANCIAL SOLUTIONS CENTRE
BANK OFFICIAL