DRAFT 106

DATED 13th September **2011**

1) Smart Homes (Midlands) Limited

and

(2) Clydesdale Bank PLC

and

(3) HINCKLEY & BOSWORTH BOROUGH COUNCIL

UNILATERAL UNDERTAKING

pursuant to s106 Town and Country Planning Act 1990
relating to residential development at
The King William IV Public House
35 Station Road Market Bosworth

HINCKLEY AND BOSWORTH BOROUGH COUNCIL
COUNCIL OFFICES
ARGENTS MEAD
HINCKLEY
LEICESTERSHIRE

SCANNED

THIS DEED OF UNDERTAKING is dated 13th September 2011

and is given by

(1) Smart Homes (Midlands) Limited whose registered office is at Charter House 56 High Street Sutton Coldfield West Midlands B72 1UJ (company number 4287266) ("The Owner") and
(2) Clydesdale Bank Plc of Yorkshire Bank Merrion Way Leeds LS2 8NZ (company number SC 001111) "The Mortgagee")
to
(3) HINCKLEY & BOSWORTH BOROUGH COUNCIL of Council Offices, Argents Mead, Hinckley, Leicestershire LE10 1BZ ("The Council")

BACKGROUND

(A) The Council is the local planning authority for the purposes of the 1990 Act for the Site

(B) The Owner owns the freehold of the Site

(C) The Mortgagee is mortgagee of the Application Land under a legal mortgage dated 6 December 2004 and made between the Owner and the Mortgagee

(D) The Owner has submitted the Planning Application to the Council and the Council has resolved to grant the Permission subject to conditions on completion and delivery of this Undertaking without which planning permission would not be granted

1. DEFINITIONS

In this deed the following words and phrases have the meanings shown opposite:

1990 Act	the Town and Country Planning Act 1990 (as amended)
the Development	the development of the Site in accordance with the Permission.
Occupation	means the date on which a dwelling constructed pursuant to the Permission first becomes physically occupied other than fitting out and decoration purposes and will not include use for show purposes and the words Occupied and Occupation shall be construed accordingly

Off-Site Open Space Contribution	the sum of £1,299.00 towards the provision and/or improvement of open space in the vicinity of the Development in lieu of the provision of open space within the Development
the Plan	the plan annexed
the Planning Application	the application for planning permission under Council reference number 11/00274/CONDIT for residential development.
the Permission	the planning permission proposed to be granted in the form and subject to the conditions annexed or other conditions notified to the Council as accepted by the Owner for the purposes of this deed of obligation
the Site	the land the subject of the Planning Application shown on the Plan for the purposes of identification only outlined red and included within title number LT243044

2. FORMAL PROVISIONS

This undertaking :

2.1 is given by the Owner to the Council

2.2 is given pursuant to and for the purposes of Section 106 of the 1990 Act

2.3 is given with the intent to bind the Owner's freehold interest in the Site and his successors in title and any person claiming an interest in the Site or any part of the Site through or under him as if that person had been an original covenanting party in respect of the interest held by him PROVIDED ALWAYS that this Undertaking shall not bind any person or persons after they have disposed of all or the relevant part of their interest in the Site but without prejudice to the liability of any such person for any subsisting breach of this Undertaking prior to parting with such interest

2.4 is enforceable by the Council as the Local Planning Authority

2.5 is executed by the Owner as a deed.

2.6 is a planning obligation for the purposes of section 106 of the 1990 Act

3. CONDITIONS PRECEDENT

The covenant by the Owner in clause 4 is conditional and shall not take effect until the later of the following two dates:-

3.1 the date written notification of the Permission is issued; and

3.2 the date of Commencement of the Development

3.3 but if the Permission is at any time revoked before Commencement of the Development then the covenants on the part of the Owner will cease to have effect.

4. MORTGAGEE'S CONSENT

4.1 The Mortgagee consents to the Owner entering into this undertaking and acknowledges that it binds the proposed development provided that the Mortgagee shall not be liable for any pre-existing breach

5. OWNER'S COVENANT

5.1 No dwellings authorised to be constructed by the permission shall be Occupied until the Off-Site Open Space Contribution has been paid by the Owner to the Council

6. DECLARATIONS

The Owner declares

6.1 for the purposes of avoiding doubt, nothing in this deed is intended to prohibit or restrict or limit the right of any person to develop the Site in accordance with any planning permission (other than the Permission) granted after the date of this deed

6.2 this deed is a Local Land Charge and shall be registered as such.

6.3 Obligations and exaltations of a party comprising more than one person and obligations of such persons jointly and ancillary provided that no person shall be liable in respect of any breach other than in respect of land in his beneficial ownership AND further no person shall be liable for any breach of covenant first occurring after he has disposed of such interest in such land or the part thereof in respect of which such breach occurs

Executed as a Deed by the Owner and the Mortgagee on the date stated at the beginning of it.

Executed as a Deed by
Smart Homes (Midlands) Limited
by:

Director .....

Director/Company Secretary .....

THE COMMON SEAL OF CLYDESDALE BANK PLC was hereunto affixed in the presence of

Director .....

Director/Company Secretary .....

SIGNED AS A DEED AND DELIVERED BY

on behalf of Clydesdale Bank PLC
trading as Yorkshire Bank
in the presence of
Witness Signature
Full Name STUART JACKSON
Ref N9944708

of 20 Merrion Way
Leeds LS7 8NZ