

THIS UNILATERAL UNDERTAKING is made by deed on the [        ]  
2022

## PARTIES

1. John and Barbara Maffia ("the Owner") (which expression shall include the Owner's successors in title) and
2. Millen Homes Limited (Co. Regn. No. 07079288 ) whose registered office is situated at Millen House, Old Chorleywood Road, Rickmansworth, England, WD3 4EH ("the Developer").

In favour of

3.

**UTTLESFORD DISTRICT COUNCIL** of Council Offices, London Road,  
Saffron Walden, Essex, CB11 4ER

("the Council")

hereinafter referred to as "the Council"

## Recitals

- (1) The Council is the local planning authority for the purposes of the 1990 Act for the area within which the Site is situate and as such is the local planning authority entitled to enforce the planning obligations hereinafter recited
- (2) The Owner is registered as the freehold owner of the Site with title absolute as HM Land Registry under Title Number EX562634.
- (3) The Council refused to grant planning permission for the Site and the Owner appealed on 18 August 2022 to the Secretary of State against that refusal reference number [ ]
- (4) This Deed is entered into to make provision for regulating the Development and securing the matters hereinafter referred to which are required in order to enable the Development to go ahead.

NOW THIS DEED WITNESSES AS FOLLOWS

## OPERATIVE PART

### 1. DEFINITIONS

- 1.1 In this Deed the following expressions shall have the following meanings:-

**“the 1990 Act”** means the Town and Country Planning Act 1990 (as amended)

**“Applicant”** means a person who wishes to purchase one of the Dwellings.

**“Commencement Date”** means the date on which any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development begins to be carried out and the expressions “Commence”, “Commences”, “Commencement” and “Commenced” shall be construed accordingly;

**“Commencement Notice”** means a notice to the Council advising of the Commencement Date such notice to be in writing using the proforma set out in Schedule 2

**“Development”** means the development of the Site with 14 Self Build Dwellings on land at Highwoods Farm, Buttleys Lane, Stortford Road, Great Dunmow as set out in the Planning Application;

**“Dwellings”** means any residential unit to be constructed on the Site.

**“Local Connection”** means having a local connection to the Local Authority of Uttlesford which is satisfied if any of the following criteria are met:

- (1) The Applicant has lived in the Local Authority of Uttlesford for at least 12 months prior to their purchase of a Dwelling; or
- (2) The Applicant has been employed in the Local Authority of Uttlesford for at least 12 months prior to their purchase of a Dwelling; or
- (3) The Applicant has previously lived in the Local Authority of Uttlesford for at least 3 years; or
- (4) The Applicant has family resident in the Local Authority of Uttlesford who have been resident for at least 3 years prior to their purchase of a Dwelling.

**“Marketing Approach”** means a staged marketing structure, whereby the Dwellings comprising the Development will be disposed of adopted the following criteria in order of requirement:

1. the Council’s Right to Build Register Individuals and groups for a period of 3 months to establish a Law Society

Exchange of Contracts within 6 weeks thereafter (thus giving a total time period to the Council under this option of 4 months and 2 weeks) ,

2. after the expiration of the period contained in 1 above, the Dwellings can be marketed via Rightmove and a local reputable estate agent restricted to a Qualifying Person for a period of 6 months;
3. after the expiration of the period referred to in 1 and 2 above, the Dwellings can be disposed of without restriction to any self or custom builders nationally.

**“Occupy” “Occupation” and “Occupied”** means the occupation for the purposes of the Planning Permission being first residential occupation but not including occupation by personnel engaged in the construction, fitting out or decoration or occupation in relation to security operations

**“Plan”** means the plan annexed to this Deed;

**“Planning Appeal”** means a planning appeal lodged at the planning inspectorate on the date 18<sup>th</sup> August 2022 bearing the appeal reference [                    ]

**“Planning Application”** means the application for Outline planning permission bearing the Council’s reference number UTT/22/0391/OP

**“Planning Permission”** means the permission to be granted by way of approval of the Planning Application or subsequent Planning Appeal by the Planning Inspectorate.

**“Qualifying Person”** means an individual with a Local Connection including the Council’s Right to Build Register of Individuals.

**“Self/Custom Build”** means Housing units to be provided as Self Build or Custom Build, which is defined as the provision of non-speculative housing with an identified end user owner/occupier directly involved in the procurement process in accordance with the NPPF and the Self and Custom Housebuilding Act 2015. To be subject to a cascade marketing approach giving priority to people with a connection to Princes Risborough/ Lacey Green, then the Wycombe District and finally nationally.”

**“Site”** means the freehold land at Highwoods Farm, Buttleys Lane, Stortford Road, Great Dunmow registered at the Land Registry with Title Absolute under the Title Number EX562634 all which land is shown for identification purposes only edged red on the Plan

**“Onward Sale(s) Restriction”** means for the period of 3 years from the completion of purchase any Self Build or Custom Build housebuilder is unable to sell the Dwellings to prevent the opportunity for profiteering from the Development.

**“Working Day”** means any day other than a Saturday or a Sunday or a Public Holiday;

1.2 In this Deed:-

1.2.1 the clause headings do not affect its interpretation;

1.2.2 words of the masculine gender shall incorporate the feminine and neuter genders and words of the singular shall include the plural and vice versa;

1.2.3 the 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 validity from it;

1.2.4 any reference to a clause, a paragraph or a schedule is unless the context otherwise requires a reference to a clause, a paragraph or a schedule of this Deed and any reference to a sub clause is a reference to a sub clause of the clause in which the reference appears;

1.2.5 references to the Site include any part of it;

1.2.6 where two or more people form a party to this Deed the obligations they undertake may be enforced against them all jointly or against each of them individually;

1.2.7 references to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council and the County Council the successors to their respective functions;

1.2.8 any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing and words denoting an obligation on the Owner to do any act matter or thing include an obligation to procure that it be done;

### 1.3 **Legal Basis**

1.3.1 This agreement is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972,

Section 2 of the Local Government Act 2000 and all other powers enabling them.

1.3.2 The covenants, restrictions, obligations and requirements imposed upon the Owner under this Agreement create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council with respect to their relevant statutory functions.

#### 1.4 **Conditionality**

1.4.1 This Agreement is conditional upon:-

1.4.2 The Appeal being allowed by the Planning Inspectorate or permission being granted by the Council

## 2. **The Owner's Covenants**

2.1. The Owner covenants with the Council so as to bind the Site to observe and perform the obligations contained in Part 1 of Section 3

2.2 The Owner shall serve a Commencement Notice upon the Council fourteen (14) days in advance of Commencement of the Development.

2.3 The Owner enters into the obligations for itself and its successors in title with the Council to the intent that the obligations hereunder shall be enforceable not only against the Owner but also against the successors in title of the Owner and any person claiming through or under the Owner an interest or estate in the Site or any part thereof

2.4 The owner shall give the Council no less than five (5) Working Days notice of the completion of the Development such notice to be in writing using the proforma set out in Schedule 2 hereto

2.5 The Owner further covenants that:-

- (i) it is the freehold owner of the Site
- (ii) the Site is free from all encumbrances material to this Unilateral Undertaking

### **3. Enforceability and Liability**

3.1 Insofar as any clause or clauses of this Agreement are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement.

3.2 This Agreement shall cease to have effect (insofar only as it has not already been complied with) if the Planning Appeal is quashed, revoked or otherwise withdrawn or (without the consent of the Owner) is modified without any statutory procedure or expires within the meaning of sections 91, 92 or 93 of the Act.

3.3 Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 nothing in this Deed confers or purports to confer any right to enforce any of the terms and provisions herein on any person who is not a party hereto or a successor in title or a statutory successor to a party hereto

3.4 Any notice to the parties hereto under this Deed shall be deemed to be sufficiently served if delivered personally or sent by recorded delivery service to the following officials/persons at the respective addresses hereinafter specified:



In respect of the Owner :  
**JOHN AND BARBARA MAFFIA**  
**of Highwoods Farm, Buttleys Lane,**  
**Great Dunmow, Essex**

In respect of the Council:  
**UTTLESFORD DISTRICT**  
**COUNCIL** of Council Offices,  
London Road, Saffron Walden,  
Essex, CB11 4ER

- 3.5 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provision of this Deed.
- 3.6 Nothing in this Deed shall be construed as imposing a contractual obligation upon the Council as to the issue of the Planning Permission or Planning Appeal or as restricting the exercise by the Council of any powers exercisable by them respectively under the 1990 Act or under any other Act or authority
- 3.7 No waiver whether express or implied by the Council of any breach or default by the Owner in performing or observing any of the obligations contained herein shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing the relevant obligations or from acting upon any subsequent breach or default
- 3.8 Without prejudice to the Council's statutory rights the Owner hereby grants to the Council or any person duly authorised or instructed by them an irrevocable licence at all reasonable times to enter any part of the Site to inspect any of the works to be carried out for the purposes of the Development and any materials to be used in carrying out those

works for any purpose directly or indirectly connected with or contemplated by this Deed.

**4. Change in Ownership**

4.1 The Owner agrees to give the Council written notice as soon as reasonably practicable of any change in ownership of any of its interests in the Site (save for disposals of individual Dwellings).

**5. JURISDICTION**

This Deed is governed by and interpreted in accordance with the law of England and Wales

IN WITNESS whereof the parties have executed this Deed but the same remains undelivered until the day and year first before written.

## **SCHEDULE 1**

### **The Owner's Covenants Restrictions Stipulations and Obligations**

#### **Self/Custom Build Obligation**

- 1.1 The Owner agrees to follow the Marketing Approach for the Dwellings. Only parties that accord with the requirements of this Marketing Approach will be able to purchase a Dwelling on the Development.
  
- 1.2 Not to Commence nor permit Commencement of the Development until the Development has been marketed in accordance with 1.1 of this Schedule.

**SCHEDULE 2**

**PROFORMA**

**EVENT NOTIFICATION AND PAYMENT**

**PURSUANT TO SECTION 106 UNILATERAL UNDERTAKING**

DATED .....

MADE BETWEEN .....

PLANNING PERMISSION REFERENCE.....

SITE ADDRESS .....  
.....  
.....  
.....

**SITE OWNER DETAILS**

Name .....

Contact name .....

Address .....  
.....  
.....

Telephone nos.

Main .....

Mobile .....

Email .....

**EVENTS BEING NOTIFIED**

Commencement Date – date :.....

Occupation of Development (Number if relevant) – date:.....

Completion of Development – date: .....

b) To

**UTTLESFORD DISTRICT COUNCIL** of Council Offices, London Road,  
Saffron Walden, Essex, CB11 4ER

("the Council");

IN WITNESS whereof the parties have executed this Deed but the same  
remains undelivered until the day and year first before written.

DATED

20[ ]

JOHN AND BARBARA MAFFIA (the  
Owner)

IN FAVOUR OF Uttlesford District Council  
(the Council)

**DRAFT UNILATERAL UNDERTAKING**

Pursuant to Section 106 Town and Country  
Planning Act 1990  
(as amended)  
relating to  
Land at Highwoods Farm,  
Buttleys Lane, Stortford Road,  
Great Dunmow, Essex