

**DATED**

**2012**

**(1) GAS SPRING LIMITED**

**(2) URBAN LEISURE (PRIMROSE HILL) LIMITED**

**(3) NATIONAL WESTMINSTER BANK PLC**

to

**(1) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN**

**UNILATERAL UNDERTAKING**

pursuant to Section 106 of the Town and Country Planning Act 1990 in relation to the proposed development at 143 Adelaide Road, Chalk Farm, London NW3

**THIS UNDERTAKING** executed as a Deed is given this                day of                                2012

**BY:**

- (1) **GAS SPRING LIMITED** (incorporated in Gibraltar) c/o Howard Kennedy Solicitors, 19 Cavendish Square, London W1G 0PL (the **"Owner"**);
- (2) **URBAN LEISURE (PRIMROSE HILL) LIMITED** (UK Company Registration 06682609) of Finsgate, 5-7 Cranwood Street, London EC1V 9EE (the **"Lessee"**); and
- (3) **NATIONAL WESTMINSTER BANK PLC** (UK Company Registration 00929027) of 135 Bishopsgate, London EC2M 3UR (the **"Mortgagee"**).

**TO:**

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN** of Camden Town Hall, Judd Street, London, WC1H 9JE (the **"Council"**)

**RECITALS:-**

- (A) The Council is the local planning authority for the administrative area of the London Borough of Camden for the purposes of the 1990 Act.
- (B) The Owner is registered at the Land Registry with a freehold interest in the Land under title number LN47759.
- (C) The Lessee has a leasehold interest in the Land by way of an unregistered lease dated 13 January 1998 and enters into this Undertaking to consent to the terms thereof.
- (D) The Mortgagee has the benefit of a charge dated 8 September 2009 over the Land and enters into this Undertaking to consent to the terms thereof.

**1. INTERPRETATION**

1.1 In this Undertaking the following words and expressions shall have the following meanings:-

<b>"1990 Act"</b>	means the Town and Country Planning Act 1990 as amended
<b>"Construction Management Plan"</b>	means a written management plan detailing and recording the operational approach and procedures to be adopted during the construction of the Development
<b>"Development"</b>	[means the redevelopment of the Land to provide 5 x 4 bedroom houses with basement car parking

	(Class C3) following demolition of existing public house (Class A4)] <sup>1</sup>
<b>“Highway Works”</b>	means the formation of a new access to Elsworth Rise and remedial works to the pavement along the edges of the Land bordering Elsworth Rise and Adelaide Road <sup>2</sup> as shown on the plan at Appendix 2
<b>“Implementation”</b>	means a material operation as defined by section 56 of the 1990 Act (but excluding any works relating to site clearance site security and environmental or archaeological surveys and inspections of works associated with remediation of contamination or diversion or laying of sewers)
<b>“Infrastructure Contribution”</b>	means the sum of [XX] <sup>3</sup> to be used by the Council towards any of the following: (i) the provision of education facilities in the London Borough of Camden; or (ii) the provision of affordable housing in the London Borough of Camden.
<b>“Land”</b>	means the land known 143 Adelaide Road, Chalk Farm, London NW3 3NL against which this Undertaking may be enforced as shown edged red on the plan at Appendix 1
<b>"Occupation"</b>	means beneficial occupation of a Residential Unit (excluding occupation for the purposes of works carried out prior to or during construction fitting out commissioning advertising marketing or security) and "Occupier" shall be construed accordingly
<b>"Parking Bay"</b>	means a parking place designated by the Council by an order under the Road Traffic Regulation Act 1984 or other relevant legislation for use in the locality in which the Development is situated
<b>"Parking Permit"</b>	means a parking permit issued by the Council under section 45(2) of the Road Traffic Regulation Act 1984 allowing a vehicle to park in a Parking Bay
<b>"Planning Application"</b>	means a planning application submitted by Owner to the Council in respect of the Development assigned reference no. [ ] <sup>4</sup>
<b>“Planning</b>	means the full planning permission to be granted

<sup>1</sup> To be confirmed on validation

<sup>2</sup> To be confirmed once works reviewed by LB of Camden highways

<sup>3</sup> Amount to be confirmed once s278 works have been costed and any Mayoral CIL payable has been deducted.

<sup>4</sup> To be confirmed on validation

<b>"Permission"</b>	by the Council in respect of the Development pursuant to the Planning Application
<b>"Residential Unit"</b>	means any residential unit constructed on the Land pursuant to the Planning Permission
<b>"Sustainability Plan"</b>	means a plan securing the incorporation of sustainability measures (i) in the carrying out of the Development; (ii) in the fabric of the Development; and (iii) in the subsequent management and occupation of the Development. The measures proposed must demonstrate that the new residential units will achieve a minimum of at least Level 4 of the Code for Sustainable Homes
<b>"Undertaking"</b>	means this unilateral undertaking made pursuant to Section 106 of the 1990 Act

## 2. CONSTRUCTION OF THIS UNDERTAKING

- 2.1 Words in this Undertaking importing the singular meaning shall where the context so admits include the plural and vice versa.
- 2.2 Words in this Undertaking importing the masculine gender shall include the feminine and neutral genders and vice versa and words denoting natural persons shall include corporations and vice versa.
- 2.3 References in this Undertaking 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 Headings in this Undertaking are for reference purposes only and are not incorporated into this Undertaking and shall not be deemed to be an indication of the meaning of the parts of the Undertaking to which they relate.
- 2.5 References to Owner and Lessee shall include their successors in title to their respective interests in the Land and persons deriving title therefrom and permitted assigns.

## 3. LEGAL BASIS

- 3.1 This Undertaking is given pursuant to section 106 of the 1990 Act.
- 3.2 The covenants in this Undertaking on the part of Owner and with agreement of the Lessee are planning obligations for the purposes of section 106 of the 1990 Act and are entered into with the intent that the same are enforceable by the Council against the Owner and the Lessee and their respective successors in title to their respective interests in the Land.

3.3 If any provision in this Undertaking shall be held to be invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions shall not in any way be deemed thereby to be affected or impaired.

3.4 Nothing in this Undertaking shall be construed as a grant of planning permission.

3.5 Nothing in this Undertaking shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Undertaking.

#### **4. LEGAL EFFECT**

4.1 This Undertaking shall come into effect upon the grant of the Planning Permission by the Council.

#### **5. OWNER'S COVENANTS**

5.1 The Owner covenants with the Council to observe and perform or cause to be observed and performed the obligations contained in Schedule 1 to this Undertaking at the times and in the manner provided therein.

#### **6. ENFORCEABILITY OF OBLIGATIONS**

6.1 No person shall be liable for breach of this Undertaking after he shall have parted with all or any part of his interest in the Land but without prejudice to liability for any subsisting breach prior to parting with such interest.

6.2 The covenants in this Undertaking (with exception of the covenant at paragraph 1 of Schedule 1) shall not be binding upon nor enforceable against any owner, lessee or occupier of any individual Residential Unit.

6.3 The covenants in this Undertaking shall be treated and registered as local land charges for the purposes of the Local Land Charges Act 1975 and shall be capable of being registered as such by the Council.

6.4 This Undertaking is governed by and interpreted in accordance with the law of England and Wales.

#### **7. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

7.1 In accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999 it is hereby declared that none of the terms of this Undertaking shall in the absence of any express provision to the contrary be construed as being enforceable by any third party.

#### **8. MORTGAGEE**

8.1 The Mortgagee hereby consents to the completion of this Undertaking and acknowledges that from the date of this Undertaking the Land shall be bound by the obligations and restrictions contained herein and consents to the terms of this

Undertaking but without liability save in the event the Mortgagee becomes a mortgagee in possession of the Land.

## SCHEDULE 1

### THE OWNER'S OBLIGATIONS

#### 1. PARKING PERMIT RESTRICTIONS

- 1.1 The Owner shall ensure that prior to the Occupation of each Residential Unit, each new Occupier of a Residential Unit at the Development is informed by the Owner of the Council's policy that it shall not be entitled (unless they are the holder of a disabled person's badge issued pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970) to be granted a Parking Permit to park a vehicle in a Parking Bay.
- 1.2 The Owner for itself and its successors in title to the Land hereby acknowledges that the provision in paragraph 1.1 of this Schedule 1 will remain permanently.

#### 2. INFRASTRUCTURE CONTRIBUTION

- 2.1 Prior to first Occupation of the Development the Owner shall pay to the Council the Infrastructure Contribution.

#### 3. HIGHWAY IMPROVEMENT WORKS

- 3.1 Prior to first Occupation of the Development the Owner shall have entered into an agreement with the Council pursuant to section 278 of the Highways Act 1980 in order for the Council to carry out the Highway Works.

#### 4. CONSTRUCTION MANAGEMENT PLAN

- 4.1 Prior to the Implementation of the Development the Owner shall submit a Construction Management Plan to the Council.
- 4.2 The Owner shall:
- 4.2.1 amend the Construction Management Plan in light of any reasonable comments received from the Council (the "**Amended Construction Management Plan**"); and
- 4.2.2 construct the Development in accordance with the Amended Construction Management Plan.

#### 5. SUSTAINABILITY PLAN

- 5.1 Prior to the Implementation of the Development the Owner shall submit the Sustainability Plan to the Council.
- 5.2 The Owner shall:
- 5.2.1 amend the Sustainability Plan in light of any reasonable comments received from the Council (the "**Amended Sustainability Plan**"); and

- 5.2.2 construct and manage the Development in accordance with the Amended Sustainability Plan.
- 5.3 Prior to first Occupation of the Development the Owner shall submit a post-completion review of the Amended Sustainability Plan to the Council such review to be prepared by an appropriately qualified and recognised independent verification body and shall certify that the measures incorporated in the Amended Sustainability Plan have been achieved in the Development and will be maintainable in the Development's future management and occupation.



**IN WITNESS** whereof the Owner, Lessee and Mortgagee have executed this Undertaking on the day and year first before written.

Executed as a deed by  
**GAS SPRING LIMITED**  
in the presence of:-

Director

Director/Secretary

Executed as a deed by  
**URBAN LEISURE (PRIMROSE HILL) LIMITED**  
in the presence of:-

Director

Director/Secretary

Executed as a deed by  
**NATIONAL WESTMINSTER BANK PLC**  
in the presence of:-

Director

Director/Secretary

**APPENDIX 1**  
**PLAN OF THE LAND**

**APPENDIX 2**

**PLAN OF THE HIGHWAY WORKS**