

Dated this                      day of                      Two thousand and fifteen

**UNILATERAL UNDERTAKING GIVEN BY:**

(1) **ENHANCED DEVELOPMENTS LIMITED** (Company Number: 6917051) of Charterhouse, 56 High Street, Sutton Coldfield, West Midlands, B72 1UJ (“**the Owner**”) and

(2) **AIB GROUP (UK) PLC** (Northern Ireland Company Registration Number: 18800) of Legal and Central Security (GB) Bankcentre, Belmont Road, Uxbridge, Middlesex, UB8 1SA (“**the Chargee**”)

In favour of:

(3) **STAFFORDSHIRE MOORLANDS DISTRICT COUNCIL** of Moorlands House, Stockwell Street, Leek, Staffordshire, ST13 6HQ (“**the Council**”)

**WHEREAS:**

- (1) The Council is the Local Planning Authority for the area in which the Site is situate;
- (2) the Owner owns the Site in fee simple free from encumbrances save for the Legal Charge referred to herein;
- (3) the Chargee has a first Legal Charge over the Site;
- (4) the Owner has submitted the Application to the Council for the Development;
- (5) the Owner and the Chargee have agreed to enter into this Undertaking conditional on Planning Permission being granted for the Development either by the Council or by an Inspector appointed by the Secretary of State on appeal.

**NOW THIS DEED WITNESSES AS FOLLOWS:**

1. **DEFINITIONS**

1.1 For the purposes of this deed the following expressions shall have the following meanings:

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| <b>“the Act”</b>                  | The Town and Country Planning Act 1990;   |
| <b>“the Application”</b>          | the application described in the Second Schedule;   |
| <b>“Appropriate Professional”</b> | A professional (whether a general medical practitioner or medical consultant, social worker or occupational therapist or otherwise) who is suitably qualified and experienced to be able to assess a person’s need for Care;                                |
| <b>“Care”</b>                     | means personal care for people over the age of 55 years in need of such care by reason of physical or mental infirmity such that they are no longer fully capable of looking after themselves as confirmed by a Care Assessment;                            |
| <b>“Care Assessment”</b>          | an assessment of a person’s needs for Care carried out in accordance with paragraphs 1.4 and 1.5 of the Third Schedule;   |
| <b>“Care Management Company”</b>  | means a body (whether or not incorporated) established for the purpose of managing the occupation of the Care Village;  |
| <b>“Care Package Option”</b>      | means a Care Package Option prepared by the Care Management Company and offered by the Care Operator to a Qualifying Person prior to each occupation of a Residential Care Unit or Cottage Unit Provided (1) that the Care Package Option shall be based on |

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|                        | <p>one of a range of model Care Package Options previously approved (subject to clause 6.3) by the Council in writing prior to the commencement of development such model Care Package Options to be designed to meet a range of personal care requirements from those who require more limited support and assistance of no more than two hours each week to those who require daily support including medical care or such revised model Care Package Options as the Council may (subject to clause 6.3) at any time approve and (2) that the Council shall not in the absence of a legal requirement be entitled to see Care Package Options for individual Qualifying Persons which may contain confidential medical or other information;</p> |
| <b>“Care Operator”</b> | <p>the person or persons appointed by the Care Management Company to offer the Care Package Option to a Qualifying Person, to receive and undertake a review of the Care Assessment for each qualifying person on an annual basis and maintain an up-to-date record of each Care Assessment;</p>   |
| <b>“Care Village”</b>  | <p>the areas of the Application Site comprising the Residential Care Units and Cottage Units and the Facilities Building shown edged blue on the Plan;</p>   |
| <b>“Chargee”</b>       | <p>includes any mortgagee or chargee in respect of the Site or successor to the Chargee or any</p>   |

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|                                      | Receiver or Manager (including an Administrative Receiver appointed pursuant to the Law of Property Act 1925);   |
| <b>“Commencement of Development”</b> | the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purpose of this deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “Commence Development” shall be construed accordingly; |
| <b>“Cottage Units”</b>               | Forty two units comprising one or two bedroom dwellings to be constructed in the area shown coloured yellow on the Plan all of which are to be occupied by Qualifying Persons;   |
| <b>“Development”</b>                 | the Development of the Site as set out in the Application;   |
| <b>“Index”</b>                       | all items index of retail prices issued by the Office for National Statistics;   |
| <b>“Occupation” “Occupied”</b>       | occupation for the purposes permitted by the Planning Permission but excluding   |

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|                                  | occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations;  |
| <b>“the Plan”</b>                | the Plan attached to this deed;  |
| <b>“the Planning Permission”</b> | full permission granted (whether by the Council or by the Secretary of State) in respect of the Application as set out in the Second Schedule;   |
| <b>“Qualifying Person”</b>       | a person who, following a Care Assessment is in need of Care and accepts and agrees to the terms of a Care Package Option and enters into a contract to receive the Care outlined in the agreed Care Package Option and (for the purpose of occupation in accordance with paragraphs 1.2 and 1.3 of the Third Schedule only) including persons residing with a Qualifying Person as part of the same household or a widow or widower of such a person who formerly resided with them in a Residential Care Unit or a Cottage Unit at the site; |
| <b>“Residential Care Units”</b>  | means the units of one bedroom accommodation shown in the area coloured red on the Plan all of which are to be occupied only by Qualifying Persons;  |
| <b>“the Site”</b>                | the Site of the Application more particularly described in the First Schedule hereto and shown edged red on the Plan;  |
| <b>“the Social Centre</b>        | means the building or buildings comprising   |

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| <b>Building”</b>                    | the café, convenience store, meeting rooms and leisure and reception shown at location F on the Plan;  |
| <b>“Travel Plan Monitoring Fee”</b> | means the sum of £2,150.00 to be paid by the Owner to Staffordshire County Council as the Local Highway Authority to be used only in connection with monitoring the Travel Plan submitted to the Council as part of the Application. |

## 2. CONSTRUCTION OF THIS DEED

- 2.1 Any reference in this deed to a recital, clause, schedule or paragraph (unless the context otherwise requires) is to the recital, clause, schedule or paragraph with that number in this deed.
- 2.2 Words importing the singular shall (where the context so admits) include the plural and vice versa.
- 2.3 Words, importing the masculine gender shall include the feminine and neuter and vice-versa and references to “person” or “persons” shall (unless the context otherwise requires) include a company or unincorporated firm or partnership and vice versa.
- 2.4 Where more than one person is named as a party and undertakes an obligation in this deed such obligation may be enforced against all of them jointly or severally unless there is an express provision to the contrary.
- 2.5 Any reference to an Act of Parliament shall include 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 issued or given under that Act or deriving validity from it.

2.6 References to any party to this deed shall include the successors in title to that party in respect of the Site and in the case of the Council and Staffordshire County Council, any successor in respect of their respective statutory functions.

2.7 The headings herein are for reference only and shall not affect the construction of this deed.

### 3. **LEGAL BASIS**

3.1 This deed is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011.

3.2 The covenants contained in the deed shall be planning obligations pursuant to Section 106 of the Act enforceable in respect of the Site by the Local Planning Authority against the Owner.

### 4. **CONDITIONALITY**

This deed is conditional upon:

- (i) the grant of the Planning Permission; and
- (ii) the Commencement of the Development.

save for the provisions of clauses 8, 9, 12, 13 and 14 which shall come into effect immediately upon completion of this deed.

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

The Owner covenants with the Council as set out in the Third Schedule subject to the provisions of this deed.

### 6. **MISCELLANEOUS**

6.1 Save for the provision in relation to the Travel Plan Monitoring Fees to be paid to Staffordshire County Council no provision in this deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

- 6.2 This deed shall be registerable as a local land charge.
- 6.3 Where the agreement approval consent or expression of satisfaction is required by the Owner from the Council under the terms of this deed such agreement approval consent or expression of satisfaction shall not be unreasonably withheld or delayed by the Council or by the Officer authorised to act in the name of the Council.
- 6.4 Any notices to be served under this deed shall be deemed to be properly served if sent by recorded delivery or special delivery to the principal address or registered office (as the case may be) of the party intended to receive the notice.
- 6.5 Insofar as any clause of this deed is 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 provisions of this deed.
- 6.6 This deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed or revoked or modified by a statutory procedure without the consent of the Owner or expires prior to the Commencement of Development.
- 6.7 No person shall be liable for any breach of the planning obligations or other provisions of this deed after it shall have parted with its interest in the Site or the relevant part thereof but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 6.8 This deed shall not be enforceable against the owner-occupiers or tenants of the Cottage Units or Residential Care Units constructed pursuant to the Planning Permission nor against those deriving title from them.
- 6.9 Nothing in this deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission other than the Planning Permission.

- 6.10 Nothing contained or implied in this deed shall prejudice or affect the rights, discretions, powers, duties and obligations of the Council under all statutes by-laws statutory instruments or other regulations or in the exercise of its functions as a local planning authority.

7. **CHARGEЕ'S CONSENT**

The Chargee acknowledges and declares that this deed has been entered into by the Owner with its consent and that the Site will be bound by the obligations contained in this deed and that the security of the Chargee's charge over the Site shall take effect subject to this deed provided that the Chargee shall otherwise have no liability under this deed unless it takes possession of the Site in which case it will be bound by the obligations as if it were a person deriving title from the Owner.

8. **WAIVER**

No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing the covenants, terms or conditions of this deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or from acting upon any such breach or default.

9. **CHANGE IN OWNERSHIP**

The Owner undertakes to give the Council immediate written notice of any change in the ownership of the Site occurring before all the obligations under this deed have been discharged such notice to give details of the transferee's full name and address (being the registered office of a company) together with the area of the Site or the relevant part thereof by reference to a plan Provided that this provision shall not apply to the transfer of a Cottage Unit or Residential Care Unit for the occupation of a Qualifying Person.

10. **INDEXATION**

Any sum referred to in the Third Schedule shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date of payment.

11. **VAT**

Any payment due to be made in pursuant of this deed shall be exclusive of Value Added Tax payable.

12. **DISPUTE PROVISIONS**

12.1 In the event of any dispute or difference arising between the parties to this deed and the Council in respect of any matter contained in this deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of agreement) by or on behalf of the President for the time being of the professional body chiefly relevant in England to the matters in dispute and such person shall act as an expert and his decision shall be final and binding on the parties in the absence of manifest error and the parties' costs shall be payable as determined by the expert or failing such determination shall be borne by the Owner or Chargee (as the case may be) and the Council in equal shares.

12.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to clause 12.1 or the appropriateness of the professional body any such question may be referred by the Owner or the Council to the President for the time being of the Law Society for him to appoint a suitably qualified person to determine the dispute and the provisions of clause 12.1 shall apply to such person.

12.3 Any expert howsoever appointed shall be subject to an express requirement that this decision is reached and communicated to the Owner and the Council within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 28 working days after the conclusion of any hearing that takes place or 28 working days after the submission of final representations by the Owner and the Council.

12.4 The expert shall be required to give notice to each of the parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting materials with copies to the other party and the parties will be entitled to make a counter written submission within a further ten working days.

13. **JURISDICTION**

This deed is governed by law of England.

14. **DELIVERY**

This deed shall be of no effect until it has been dated.

**IN WITNESS** whereof the Owner and the Chargee have executed this deed but not delivered it until the day and year first before written.

**THE FIRST SCHEDULE**

**(The Site)**

All that freehold land and building thereon situated and known as Anzio Camp, Buxton Road, Blackshaw Moor, Leek, ST13 8TN registered at HM Land Registry under title number SF513873.

**THE SECOND SCHEDULE**

**(The Application)**

The application dated 21 October 2014 made to the Council and given the reference number [ ] for Development of the Site namely extra care housing, holiday park, live/work units, social building and ancillary facilities building.

**THE THIRD SCHEDULE**

**(The Owner's covenants)**

The Owner undertakes and covenants that:

1. **Care Provision**

- 1.1 The Care Village shall be managed by the Care Management Company.
- 1.2 The Care Village shall only be occupied by Qualifying Persons who have accepted and agreed to a Care Package Option in circumstances where the Care Management Company shall transfer individual Residential Care Units or Cottage Units (as the case may be) to a Qualifying Person and where that person's right of occupation is held either for a term of years or on a periodic tenancy subject in either case to a restriction preventing occupation by anyone other than a Qualifying Person and for the Qualifying Person's interest to revert to the Owner in the event of there ceasing to be a Qualifying Person in occupation.
- 1.3 The Residential Care Units and Cottage Units shall be occupied only by Qualifying Persons and if at any time a person ceases to be in need of Care he shall vacate the relevant unit which shall then only be occupied by another Qualifying Person Provided that (for the avoidance doubt) upon the death of a person in receipt of Care or that person becoming incapable through ill health or infirmity of continuing to occupy that unit, a person who was residing with that person (whether as spouse or partner or member of that person's household) at the time of his/her death or incapacity may continue to remain in occupation of that unit.
- 1.4 Qualifying Persons will prior to occupation be required to agree to be subject to a Care Assessment carried out by an Appropriate Professional and (where not carried out by the Care Operator) provided to the Care Operator in order to establish that they are in need of Care and this shall be reviewed at appropriate intervals by an Appropriate Professional (who need not be the same person as the Appropriate Professional who carried out any previous Care Assessment) Provided that for this purpose an appropriate interval shall be such period as the Appropriate Professional who carried out a previous Care Assessment or the Care Operator considers necessary.
- 1.5 The Care Assessment shall include a report from the Appropriate Professional who carried it out setting out the reasons why the Qualifying Person is in need

of care in a supported environment as well as the degree and type of care required which shall be incorporated into the agreed Care Package Option.

- 1.6 The Care Operator will to the extent required for a Qualifying Person as determined by the Care Assessment provide Care to the Qualifying Person in accordance with the Care Package Option agreed with the Qualifying Person Provided that if the Care Operator considers for any reason that a Qualifying Person should not receive a Care Package Option from the Care Operator the Care Operator shall use reasonable endeavours to assist in sourcing alternative operators of care and ancillary support for that Qualifying Person.

## 2. **COMMUNITY USE**

- 2.1 The Social Centre Building shall be available for the use of residents and other occupiers of the Site and the general public through the life of the Development subject to the Community Conditions.

- 2.2 The Community Conditions are that:

- (a) the café and convenience store shall be open and available to residents and other occupiers of the Site and to the general public at the same times;
- (b) the meeting rooms shall be subject to availability and to such rules and terms and charges as the Owner acting reasonably shall determine;
- (c) the Parish Council for the area in which the Site is located shall have the opportunity to use a meeting room for up to ten hours per month at no charge at such times as may be agreed between the Owner and the Tittesworth Parish Council;
- (d) The availability of facilities and employment opportunities at the Site shall be suitably publicised within the locality of the Site by the Owner by using the Parish Council notices boards in Tittesworth and Meerbrook and such other notice boards or newspapers or other means of communication in the locality of the Site as may be appropriate

(subject always to agreeing reasonable terms with the Parish Council or other person responsible for the relevant means of communication).

3. **TRAVEL PLAN MONITORING FEE**

On or before first Occupation of the Development the Travel Plan Monitoring fee shall be paid to Staffordshire County Council for the purpose of monitoring the operation of the travel plan.

**EXECUTED AS A DEED** by )

**ENHANCED DEVELOPMENTS** )

**LIMITED** )

by: )

Director

Director/Secretary

**EXECUTED AS A DEED** by )

**AIB GROUP (UK) PLC** )

by: )

Director

Director/Secretary