

DATED

2007

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[Landowner]

UNILATERAL UNDERTAKING

Relating to land at

In favour of

THE COUNCIL

**THIS DEED OF UNILATERAL UNDERTAKING<sup>[1]</sup>**

is made the \_\_\_\_\_ day of \_\_\_\_\_ **2007**

**BY**

[ _____ ] (Company Registration number _____ ) whose _____ registered _____ office _____ is at _____ ("the Owner")
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**IN FAVOUR OF**

**THE COUNCIL** of ("the Council")

**1 RECITALS**

1 (1) The Council is the Local Planning Authority for the purposes of the Town and Country Planning Act 1990 as amended (the "1990 Act") for the area within which the Land (as hereinafter defined) is situated and is the authority by whom the planning obligations contained in this Deed are enforceable

(2) The Owner is the registered proprietor with [title absolute/possessory/qualified] of the Land which is registered at District Land Registry under Title Number [ ] and holds the Land subject as stated on the Register [including a registered charge in favour of the Mortgagee dated the [ ] ]

**1.1 or**

1.2 (2) The Owner is the owner in fee simple absolute in possession of the Land [free from incumbrances] [subject to a mortgage in favour of the Mortgagee dated the [ ] ]

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- (3) The Owner has submitted the Application and the Council is satisfied that the Development is such as may be permitted by the Council under Part 3 of the 1990 Act and is minded to grant Permission subject to the further provisions of this Deed

**(a) 2 NOW THIS DEED WITNESSETH as follows:-**

2. 1 This Unilateral Undertaking is a deed made pursuant to Section 106 of the Act and constitutes a planning obligation for the purposes of the Act and shall be enforceable by the Council against the Owner and any person deriving title under the Owner

**3 DEFINITIONS AND INTERPRETATION**

(b)

- (i) 3.1 In this Deed the following words and expressions shall where the context admits have the following meanings:-

“the Act” means the Town and Country Planning Act 1990 as amended or re-enacted from time to time

“the Application” means the application for planning permission dated [ ] under reference [ ]

“Contribution” means a capital contribution towards the provision up-grading or improvement by the Council of such off-site facilities or other matters as further described in this Deed.

“the Development” means the erection of (insert relevant details) in accordance with the Application

“Implementation” means the carrying out on the Land pursuant to the Permission of a Material Operation and “Implement” shall be construed accordingly

“Material Operation” means a material operation as defined in Section 56(4) of the Act save that for the purposes of this Agreement the following shall not constitute a material operation:-

- (a) site clearance
- (b) earthworks
- (c) demolition of existing buildings
- (d) archaeological investigation
- (e) assessment of contamination
- (f) remedial action in respect of contamination
- (g) the erection of fences or other means of enclosure for site security
- (h) the diversion and laying of services
- (i) the erection of a site compound or site office or

temporary buildings or  
structures

(j) interim landscape works

“the Land” means the land which forms the subject of the Application and is for the purposes of identification shown edged red on Plan [1] annexed hereto

“Permission” means the planning permission for the Development to be issued by the Council in the form of the draft permission annexed to this Agreement

(ii) 3.2 Wherever the context so admits the following words and phrases in this Deed shall have the meanings herein attributed to them:-

- (a) The singular shall include the plural and vice versa
- (b) The masculine gender shall include the feminine and vice versa
- (c) Any words denoting natural persons shall include legal persons and vice versa
- (d) The reference to any statute or section of a statute includes any statutory re-enactment or modification
- (e) “Working Day” means any day from Monday to Friday inclusive which is not Christmas Day, Boxing Day, Good Friday, Easter Monday or a Statutory Bank Holiday

3.3 Any covenant given or made in this Deed shall be deemed to be given or made by the Owner on behalf of himself and his successors in title, and where such covenant is given or made by a party consisting of two or more natural persons be deemed to be given or made jointly and severally

**(c) 4 CONDITIONS PRECEDENT**

4.1 All provisions of this Deed are conditional upon the Council granting the Planning Permission pursuant to the Planning Application

4.2 With exception of clause 8 (Council's costs) none of the provisions of this Deed shall take effect prior to implementation

(i)

4.3 Any notice required to be given to the Council under this Deed shall be in writing and shall be delivered personally or sent by pre-paid first class recorded delivery post or facsimile transmission to the Head of Planning

(A)

4.4 No person shall be liable for a breach of covenant contained in this Deed after he shall have parted with all his interest in the Land (or the part in respect of which any such breach has occurred) but without prejudice to liability for any subsisting breach prior to his parting with such interest

(B)

4.5 If the Planning Permission is subsequently revoked quashed or withdrawn (with or without the consent of the Owner) or is so modified by a properly exercised statutory procedure so as to remove any need for the covenants contained in this Deed or expires before Implementation this Deed shall cease to have any effect

(ii)

**(d) 5 OWNERS COVENANTS**

(i) 5.1 THE OWNER HEREBY UNDERTAKES AND COVENANTS with the Council:-

(a) to comply with the obligations contained in this Deed and the schedule(s) thereto

(b) To give written notice of Implementation to the Council no later than five working days after such Implementation.

**6 REGISTRATION AS LOCAL LAND CHARGE**

(ii)

(iii)

(A) 6.1 This Agreement is a local land charge for the purposes of the Local Land Charges Act 1975 and shall be registered as such

## **7 INDEXATION<sup>[2]</sup>**

(iv)

(A) 7.1 Unless otherwise stated to the contrary all Contributions and other sums payable under the terms of this Deed by the Owner to the Council shall be increased by the increase in the Building Cost Information Service All-in Tender Price Index (TPI) as published by the Royal Institution of Chartered Surveyors (or in the event that such index ceases to be published then in its place such reasonably equivalent index as the Council shall specify)

(B)

7.1 The relevant Contribution will be increased by an amount equivalent to the percentage difference between the published TPI current at the date of the issue of Planning Permission and the published TPI current at the date of payment

## **8. LEGAL COSTS**

8.1 The Owner shall pay to the Council prior to completion of this Deed its reasonable and proper legal costs incurred in the preparation negotiation and completion of this Deed

## **9 THIRD PARTY RIGHTS**

9.1 It is not intended that any third parties will acquire any rights by virtue of the Contracts (Rights of Third Parties) Act 1999 under any part of this Deed

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**IN WITNESS** whereof the Owner has executed this document as a Deed on the date given on page one

(insert schedules as necessary from PART B)

THE COMMON SEAL of )  
was hereunto )  
affixed in the presence of:- )

Director

Company Secretary