

DATE: **2009**

[NAME OF OWNER]

AND

WEST LINDSEY DISTRICT COUNCIL

UNILATERAL UNDERTAKING

SECTION 106
TOWN AND COUNTRY PLANNING ACT 1990

RELATING TO:

[DESCRIPTION OF LAND]

GAINSBOROUGH

Legal Services Lincolnshire
County Offices
Newland
Lincoln
LN11YS

REF []

Planning Application Ref.

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THIS UNDERTAKING is made as a deed the day of 2009

1 PARTIES

1.1 **[NAME OF OWNER]** [of / whose registered office is situate at] [*address of Owner*] [(Company Registration Number [*insert number*])] (**“the Owner”**).

1.2 **[[NAME OF CHARGE]]** [of / whose registered office is situate at] [*address of Chargee*] [(Company Registration Number [*insert number*])] (**“the Chargee”**).

1.3 **WEST LINDSEY DISTRICT COUNCIL of Guildhall, Marshall’s Yard, Gainsborough, Lincolnshire, DN21 2NA** (**“the Council”**).

2 DEFINITIONS

In this Undertaking (except where the context otherwise requires):

2.1 **“the Act”** The Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991).

2.2 **“the Application”** The application in outline only numbered dated].
“the Application” planning application number dated .
“the Application” the reserved matter application number pursuant to the Outline Consent”.

2.3 **“ the Application Site”** The land edged red on the Plan

2.4 **“the Charge”** The Legal Charge dated 20 made between the Owner (1) and the Chargee (2) by which the Land became charged with the repayment of certain monies to the Chargee.

2.5 **“Commencement of the Development”** The earliest date upon which any material operations are begun in accordance with the provisions of Section 56(4)

of the Act save for the purposes of this Undertaking none of the following operations shall constitute a material operation:

- 2.5.1 site preparation works;
 - 2.5.2 archaeological investigations;
 - 2.5.3 site investigation works (including environmental investigations);
 - 2.5.4 [works of demolition;]
- 2.6 and “Commence the Development” shall be construed accordingly.
- 2.7 **“Completed” or “ Completion”** In respect of a Dwelling, the issue of a Final Certificate under the Building Act 1984
- 2.8 **“the Development”** The development authorised by the Planning Permission.
- 2.9 **“Dwellings”** A dwelling (including a house flat apartment or maisonette) to be constructed pursuant to the Planning Permission
- 2.10 **“the Development Services Manager”** The person the Council shall appoint as the Head of the Department responsible for Planning Services for the time being.
- 2.8 **“the Price Index”** The All In Tender Price Index published by Building Cost Information Service of the Royal Institute of Chartered Surveyors or any successor organisation
- 2.11 **“Index Linked”** Adjusted in proportion to movements in the Index between the date of this Undertaking and the date the particular payment is made.
- 2.12 **“the Land”** The Land shown for the purposes of identification only edged red on Plan Number [] known as [].
- 2.13 **“Occupation of the Development”** The beneficial occupation of any part of the Development for any purpose other than the carrying out of the Development and **“Occupy the Development”** shall be construed accordingly.
- 2.14 **“the Outline Consent”** The approval of planning permission in outline only under application number dated the day of 20].

- 2.15 **“Plan Number”** The plan annexed to this Undertaking of that number.
- 2.16 **“Planning Permission”** The planning permission to be granted by the Council pursuant to the Application in substantially the form of the draft annexed to this Undertaking.
- 2.16 **“Practical Completion”** The issue of a certificate of practical completion by the Owner’s architect or in the event that the development is constructed by a party other than the Owner the issue of a certificate of practical completion by that other party’s architect

3 INTERPRETATION

In this Deed

- (a) Words in the singular include the plural and vice versa
- (b) A reference to a person includes companies and all other legal entities
- (c) Wherever there is more than one person named as a part and where more than one party undertakes an obligation all their obligations can be enforced against all them jointly and against each party individually unless there is an express contrary provision
- (d) References to clauses and schedules are to clauses and schedules of this Deed unless stated otherwise
- (e) Reference to a paragraph is to a paragraph of the schedule to which the reference is made unless stated otherwise
- (f) The headings and table of contents of this Deed are for convenience only and shall not affect its interpretation
- (g) Unless this Deed states otherwise any reference to a statute or any other legislative provision includes any amendment extension modification or re-enactment of it for the time being in force
- (h) References to the Council’s Corporate Director of Regeneration and Culture shall include any successor office holders arising through any Council internal reorganisation

- (i) References to Council Departments shall include successor departments arising through any Council internal reorganisation
- (j) References to the Council the Owner and the Mortgagee (*add any other parties, e.g. the developer*) shall include their successors in title and assigns

4 INFORMATION

- 4.1 The Owner owns the freehold interest in the Land and is [entitled to be] registered as proprietor of it with Title Absolute at H M Land Registry free from incumbrances other than those matters contained or referred to in the Property and Charges Registers of Title Number [SF] at the date of this Undertaking].
- 4.2 The Council is the local planning authority for the purposes of the Act for the Land.
- 4.3 [The Owner] has by the Application applied to the Council for approval [of matters reserved under the Outline Consent / to carry out development on the Land].
- 4.4 The Council is satisfied that the Development is such as may be approved by the Council under the Act and planning permission granted (subject to conditions) subject to the Owner covenanting in the terms of this Undertaking.

5 STATUTORY AUTHORITY AND LEGAL EFFECT

- 5.1 This Undertaking shall constitute a planning obligation for the purposes of and made pursuant to Section 106 of the Act.
- 5.2 The obligations of the Owner in this Undertaking are planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council as local planning authority.
- 5.3 [Subject to clause 5.4,] the Owner covenants with the Council to the intent that this Undertaking shall be enforceable without limit of time (other than as expressly mentioned in this Undertaking) against the Owner and any person deriving title through or under it to the Land or any part or parts of it as if that

person had also been an original covenanting party in respect of the interest or estate for the time being held by that person.

- 5.4 [No person shall be bound by any obligations, rights and duties contained in this Undertaking and/or be liable for any breach of a covenant and/or obligation contained in this Undertaking after they shall have parted with all interest in the Land or the part in respect of which such obligation relates or such breach occurs PROVIDED THAT they shall remain liable for any subsisting breach of covenant prior to parting with their interest.]
- 5.5 No statutory undertaker shall be bound by any obligations, rights and duties contained in this Undertaking and/or be liable for any breach of a covenant and/or obligation contained in this Undertaking in respect of any site used only as an electricity substation, gas governor or pumping station.
- 5.6 If the Planning Permission expires (within the meaning of Sections 91, 92 or 93 of the Act) or is revoked or otherwise withdrawn before Commencement of the Development, this Undertaking shall forthwith determine and cease to have effect.
- 5.7 Nothing in this Undertaking shall be construed as prohibiting or limiting any 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.
- 5.8 Nothing in this Undertaking shall be construed as restricting the exercise by the Council of any powers exercisable by it under the Act or under any other Act or any statutory instrument, order or byelaw in the exercise of their functions as a local authority.

6 CONDITION PRECEDENT

The planning obligations contained in this Undertaking shall not be enforceable by the Council until the grant of the Planning Permission by the Council.

7 OBLIGATIONS

The Owner further covenants, agrees and declares in respect of the Land as set out in the Schedules.

8 COSTS

8.1 Prior to the execution of this Deed the Owner shall pay to the Council the sum of XXXXX being its reasonable costs in relation to the Council's administrative costs in connection with the enforcement and monitoring of this Deed (*the figure to be supplied by Development Services Manager*)

9 THE CHARGE

The Chargee for itself and its successors in title consents to the Owner entering into this Undertaking and covenants with the Council that in the event that the Chargee takes possession of the Land or any part of it and/or exercising its power of sale under the provisions of the Charge then the Chargee and its successors in title will observe and perform and be bound by the terms and conditions of this Undertaking so far as the same remain to be observed and performed.

10 INVALIDITY

It is agreed and declared that if any clause or sub-clause of this Undertaking shall be deemed to be unenforceable or ultra vires the remainder of this Undertaking shall remain in full force and effect provided severance from this Undertaking is possible.

11 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Nothing contained in this Undertaking shall give, or be construed as giving, any rights, privileges, powers or enforceability other than to the Council and to the specific person executing this Undertaking as the Owner and its successors (if any) as defined in this Undertaking and the provisions of the Contracts (Rights of Third Parties) Act 1999 and any benefits or rights which could arise from it are expressly excluded to the intent that no other third party within the meaning of that Act shall have any rights of enforcement in respect of any matter contained in this Undertaking.

12 OTHER MATTERS

- 12.1 The Owner shall indemnify the Council for any expenses or liability arising to [it/them]in respect of breach by the Owner of any obligations contained in this Undertaking.
- 12.2 The provisions of Section 196 of the Law of Property Act 1925 (as amended) shall apply to any notice or approval to be served under or in connection with this Undertaking and any such notice or approval shall be in writing and shall specifically refer to the name, date and parties to this Undertaking and shall cite the number and clause of this Undertaking to which it relates.
- 12.3 Payment of any money under this Undertaking shall be made by the Owner sending the full amount payable in the form of a Banker's Draft or Solicitors' client account cheque within the time specified in this Undertaking together with a letter specifically referring the name, date and parties to this Undertaking and citing the number and clause of this Undertaking to which the relevant sum relates and identifying which portion of the amount relates to any sum calculated to take account of Index Linking.
- 12.4 This Undertaking shall be registered as a Local Land Charge.

IN WITNESS of which the Parties have executed this Undertaking as a deed and have delivered it upon dating the day and year first before written.

SCHEDULE 1
General Obligations

The Owner covenants with the Council with the intent that these are planning obligations for the purposes of Section 106 of the Act:

1. To permit the Development Services Manager and any person or persons authorised by him access to the Land or any part of it at all reasonable times, on reasonable notice and in compliance with the Owner's reasonable requirements, and to permit him or them to inspect the Development and all materials intended for use in it.
2. To give the Council notice in writing no later than 7 days prior to the anticipated Commencement of the Development.
3. To give the Council notice in writing of the Commencement of the Development within 7 days of Commencement of the Development.
4. To give the Council notice in writing no later than 7 days prior to the anticipated Occupation of the Development.
5. To give the Council notice in writing of the Occupation of the Development within 7 days of Occupation of the Development.

[Insert *Schedules as required from list of other contributions*]

Schedule 2

THE COMMON SEAL of)
THE OWNER was affixed to this)
deed in the presence of:)

Director

Director / Secretary

EXECUTED as a deed by **THE**)
OWNER acting by)
)

Director

Director / Secretary

SIGNED AND DELIVERED as a)
deed by **THE OWNER** in the)
presence of:)

Witness: signature

name
address

occupation

EXECUTED as a deed by)
for and on behalf [)
BANK PLC])
in the presence of:)