

DATED 17TH SEPTEMBER 2012

**PLANNING OBLIGATION BY WAY OF UNILATERAL UNDERTAKING UNDER
SECTION 106 OF THE TOWN & COUNTRY PLANNING ACT 1990 RELATING
TO LAND AT TAYLOR VALVE WORKS, DOWKER STREET, MILNSBRIDGE,
HUDDERSFIELD HD3 4JX**

given by

(1) INVICTA DEVELOPMENTS LIMITED

and

(2) KIRKLEES COUNCIL

Spearing | Waite LLP

Solicitors
41 Friar Lane
Leicester LE1 5RB
Tel : 0116 2624225 Fax : 0116 2620607

THIS DEED is dated 17th September 2012

and is entered into by:

- (1) INVICTA DEVELOPMENTS LIMITED incorporated and registered in England and Wales with company number 06888058 whose registered office is at Kellaways Main Street, Tinwell, Stamford, Lincolnshire PE9 3UD "**the Owner**"

In favour of

- (2) KIRKLEES COUNCIL of Civic Centre, 3 Market Street, Huddersfield HD1 2TG "**the Council**"

BACKGROUND

- (A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated.
- (B) The Owner owns the Property.
- (C) The Owner has made the Planning Application and is proposing to carry out the Development.

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this deed:

Commencement of Development: the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990 [but disregarding for the purposes of this deed and for no other purpose, the following operations: demolition works; site clearance; ground investigations; site survey works; temporary access construction works; archaeological investigation; and erection of any fences and hoardings around the Property.]

Commenced and Commences shall be construed accordingly.

Commencement Date: the date of Commencement of Development.

Contribution: the sum of £40,000.00 towards the cost of improvements to the Crow Lane play area and/or improvements to the green corridor next to the river in Milnsbridge

Development: the development of the Property described in the Planning Application.

Plan: the plan attached to this deed.

Property: the freehold land on the west side of Dowker Street, Huddersfield, West Yorkshire shown edged red on the Plan and registered at HM Land Registry with absolute title under title numbers YWE2444; WYK650476; WYK650478; YK32078; YK22414 and YK22413

Planning Application: an application for planning permission registered by the Council on [DATE] under reference number 2011/90822

Planning Permission: the planning permission to be granted by the Council in respect of the Planning Application.

TCPA 1990: Town and Country Planning Act 1990.

Working Day: a day (other than a Saturday, Sunday or public holiday in England when banks in London are open for business).

- 1.2 Clause headings shall not affect the interpretation of this deed.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time provided that, as between the parties, no such amendment, extension or re-enactment shall apply to the deed to the extent that it would impose any new or extended obligation, liability or restriction, on, or otherwise adversely affect the rights of, any party.
- 1.9 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision provided that, as between the parties, no such amendment, extension or re-enactment shall apply to the deed to the extent that it would impose any new or extended obligation, liability or restriction, on, or otherwise adversely affect the rights of, any party
- 1.10 A reference to **writing** or **written** does not include faxes or e-mail.
- 1.11 References to clauses and plans are to the clauses and plans of this deed.
- 1.12 An obligation in this deed on a person not to do something includes an obligation not to agree or allow that thing to be done.

1.13 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.14 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2. STATUTORY PROVISIONS

2.1 This deed constitutes a planning obligation for the purposes of section 106 of the TCPA 1990, section 111 of the Local Government Act 1972 and any other enabling powers.

2.2 The obligations contained in clause 3 of this deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owner with the intention that they bind the interests held by those persons in the Property and their respective successors and assigns save for the plot purchaser of a unit constructed pursuant to the Planning Permission

2.3 This deed shall come into effect on the date of grant of the Planning Permission.

2.4 The obligations contained in clause 3 of this deed are enforceable by the Council in accordance with section 106 of the TCPA 1990.

3. COVENANT WITH THE COUNCIL

The Owner covenants with the Council to pay the Contribution to the Council upon the earlier of:

3.1 the date of legal completion of the sale of the tenth unit constructed on the Property pursuant to the Planning Permission; and

3.2 the date which is three years from and including Commencement of Development pursuant to the Planning Permission

4. RELEASE

No person shall be liable for any breach of an obligation, restriction or covenant contained in this deed after parting with all of its interest in the Property, except in respect of any breach subsisting prior to parting with such interest.

5. DETERMINATION OF DEED

This deed shall be determined and have no further effect if the Planning Permission:

- 5.1 expires before the Commencement of Development;
- 5.2 is varied or revoked other than at the request of the Owner; or
- 5.3 is quashed following a successful legal challenge.

6. LOCAL LAND CHARGE

This deed is a local land charge and may be registered as such by the Council.

7. OWNERSHIP

- 7.1 The Owner warrants that no person other than the Owner has any legal or equitable interest in the Property.
- 7.2 Until the obligations in clause 3 have been complied with the Owner shall give written notice of any change in ownership of the Property save that this obligation shall not apply in relation to any unit developed pursuant to the Planning Permission and sold to a plot purchaser.

8. NOTICES

- 8.1 Any notice or other communication required to be given under this deed shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to any person required to receive the notice or communication at its address as set out below:

- (a) Council: Name of contact Mr Bill Topping, Kirklees Council, Civic Centre, 3 Market Street, Huddersfield HD1 2TG;
- (b) Owner: Name of contact Mr Tim McBain Allan, Invicta Developments Limited, 17 Limesquare Business Park, Alma Park Road, Grantham, Lincolnshire NG31 9SN and Kellaways, Main Street, Tinwell, Stamford, Lincolnshire PE9 3UD;

or as otherwise specified by the relevant person by notice in writing to each other person.

- 8.2 Any notice or other communication shall be deemed to have been duly received:
 - (a) if delivered personally, when left at the address and for the contact referred to in this clause;
 - (b) if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Working Day after posting; or
 - (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

9. THIRD PARTY RIGHTS

No person other than a party to this undertaking, and their respective successors and permitted assigns, and the Council and the successors to its respective statutory functions shall have any rights to enforce any term of this deed.

10. MISCELLANEOUS

In entering into this deed it is not intended that the Owner shall be prohibited or limited from developing any part of the Property in accordance with a planning permission (other than the Planning Permission) granted whether or not on appeal after the date of this deed.

11. SEVERANCE

11.1 If any court or competent authority finds that any provision of this deed (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this deed shall not be affected.

11.2 If any invalid, unenforceable or illegal provision of this deed would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

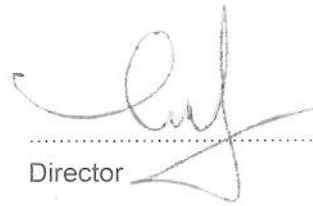
12. GOVERNING LAW

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by **INVICTA DEVELOPMENTS
LIMITED** acting by

Timothy Mark McBain Allan, a director, in the
presence of:


Director

Witness' signature 

Witness' name (block letters) GRAHAM IAN STANSFIELD

Address 17 WARREN CLOSE, STONE, AYLESBURY, LUCKS, HP17 8YK

Occupation MANAGING DIRECTOR



APPLICATION SITE



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INVESTIGATIONS	
INVESTIGATIONS	
PROPOSED RESIDENTIAL DEVELOPMENT	
PROPOSED LOCATION PLAN	
FORMER WORKS DOWKER STREET, MILNSBRIDGE HUDDERSFIELD	
Scale	Drawn By: BRW
Check By:	Check Date:
ID/MH/10015	
PLAN	
MILNSBRIDGE COUNCIL	
TEL: 01484 344444	