

**DATED 24<sup>th</sup> February**

**2017**

***Swift Properties Management and Consultancy***

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**UNILATERAL UNDERTAKING**  
**pursuant to section 106**  
**of the Town and Country Planning Act 1990 (as amended)**  
**relating to the proposed development of land at**  
**Former Parkam Foods Site, 395 Halifax Road, Liversedge**

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**Planning Services**  
**Civic Centre 3,**  
**Market Street,**  
**Huddersfield,**  
**HD1 2YZ**

**THIS UNDERTAKING** is made the 25 day of April 2017

**BY: -**

**(1) *Swift Properties Management and Consultancy***

(“the Owner”)

**IS GIVEN TO:-**

Kirklees Metropolitan Council of Civic Centre 3, Market Street, Huddersfield, HD1 2YZ (“the Council”)

**WHEREAS:**

- (A) The Council is the Local Planning Authority for the purposes of the Act for the area within which the Land is situated and by whom the obligations contained in this Deed are enforceable.
- (B) The Owner is registered at the Land Registry as proprietor of the Land with title absolute.
- (C) The Owner submitted the Planning Application to the Council for permission under the Act to carry out the Development on the Land
- (D) The Council resolved on **DATE TO BE INSERTED** to grant the Planning Permission for the Development subject to the giving of this Undertaking without which Planning Permission would not be granted.
- (E) The Owner by entering into this Deed does so to create planning obligations in favour of the Council pursuant to Section 106 of the Act and to be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained on the terms of this Deed.

# 1 DEFINITIONS AND INTERPRETATION

1.1 In this Undertaking the following words and expressions shall where the context so requires or admits have the following meanings: -

**“Act”** means the Town and Country Planning Act 1990 (as amended);

**“Contribution for off-site public open space”** means the sum of £32,200 to be paid towards **DETAILS TO BE PROVIDED BY LPA**

**Contribution for Metro Cards** means the sum of £6,650.50 for the purchase of metro cards to be given to future occupants of the dwellings

**“Commencement of Development”** means the date upon which the Development shall commence by the carrying out on the Owners Land pursuant to the Planning Permission of a material operation as specified in Section 56(4) of the Act **save that** the term *“material operation”* shall not include operations in connection with any work of or associated with demolition site clearance remediation works environmental investigation site and soil surveys erection of contractors work compound erection of site office or erection of fencing to site boundary and reference to **“Commence Development”** shall be construed accordingly;

<b>“Development”</b>	means the development to be carried out on the Owners Land pursuant to the Planning Permission;
<b>“Land”</b>	means the land at <b>395 Halifax Road</b> shown edged red on the Plan
<b>“Occupation”</b>	means the beneficial occupation for the purpose for which a Dwelling was granted planning permission but shall exclude occupation for the purposes of decoration, fit out or marketing and reference to <b>“Occupy”</b> and <b>“Occupied”</b> shall be construed accordingly;
<b>“Plan”</b>	means the plan attached hereto
<b>“Planning Application”</b>	means the application for planning permission validated by the Council on 5 <sup>th</sup> November 2015 and allocated reference number 2015/90435 ;
<b>“Planning Permission”</b>	means the planning permission to be issued by the Council pursuant to the Planning Application
<b>“Working Day”</b>	means any day except Saturdays Sunday or a bank holiday and reference to <b>“Working Days”</b> shall be construed accordingly.

## **2 CONSTRUCTION OF THIS UNDERTAKING**

- 2.1 Where in this Undertaking reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Undertaking.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 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 made, issued or given under that Act or deriving validity from it.
- 2.6 References to any party to this Undertaking shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successor to its statutory functions.
- 2.7 The headings are for reference only and shall not affect construction.

## **3 LEGAL BASIS**

- 3.1 This Deed is made pursuant to Section 106 of the Act and all other powers so enabling.
- 3.2 The covenants, restrictions and requirements on the part of the owner under this deed create planning obligations pursuant to section 106 of the

act and are enforceable by the council as local planning authority against the owner and any person deriving title under him

#### **4 CONDITIONALITY**

4.1 The planning obligations contained in this Deed shall not become effective until the following conditions are satisfied: -

4.1.1 the Planning Permission has been granted; and

4.1.2 unless otherwise stated the Commencement of Development

save for the provisions of clauses 7, 10, 14 and 15 which shall come into effect immediately upon the giving of this Undertaking.

#### **5 THE OWNER'S OBLIGATIONS**

The Owner [*and Developer*] covenants with the Council so as to bind the Land to perform and observe the obligations specified in the Schedule

#### **6. MISCELLANEOUS**

6.1 This Deed does not nor is intended to confer a benefit on a third party within the meaning of the Contracts (Rights of Third Parties) Act 1999.

6.2 This Deed shall be registrable as a local land charge by the Council.

6.3 Following the performance and satisfaction of all the planning obligations contained in this Deed the Council shall following receipt of a written request forthwith effect the cancellation of all related entries in the Register of Local Land Charges in respect of this Deed.

6.4 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.

- 6.5 Insofar as any clause or clauses of this Deed are 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 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 6.7 The covenants contained in this Deed shall not be enforceable against a statutory undertaker holding an interest in the Land for the purposes of his or its undertaking
- 6.8 Nothing in this Deed 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 Deed.
- 6.9 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 orders and regulations in the exercise of their functions as a local authority.
- 6.10 Any notice agreement consent acknowledgment or approval required to be given under this Deed shall not be unreasonably withheld or delayed and shall be in writing and shall be delivered personally or sent by pre-paid first class recorded delivery post or facsimile transmission.
- 6.11 The address for service of any such notice consent acknowledgment or approval as aforesaid shall: -
- 6.11.1 in the case of service upon the Council be at its address aforesaid or such other address for service as shall have been previously notified by the Borough Council; and

6.11.2 in the case of service upon the Owner, be the registered offices or such other address for service as shall have been previously notified by the Owner to the Council.

6.12 A notice agreement consent acknowledgment or approval under this Deed shall be deemed to have been served as follows: -

6.12.1 if personally delivered at the time of delivery;

6.12.2 if posted at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom;

6.12.3 if sent by facsimile transmission at the time of successful transmission on the day of transmission if sent before 3.30pm otherwise the following working day;

and in proving such service it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice consent or approval was properly addressed and delivered into the custody of the postal authority in a pre-paid or recorded delivery envelope (as appropriate) or that the facsimile was successfully transmitted on a tested line as the case may be.

## **7 DISPUTE RESOLUTION**

Any dispute under or arising out of the operation of this Undertaking may be referred to a single arbitrator if all parties to the dispute shall agree such arbitrator or in default of agreement to be nominated (upon the application of any party to the dispute) by the President for the time being of the Law Society in accordance with and subject to the provisions of the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force

## **9 WAIVER**

No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of 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 for acting upon any subsequent breach or default.

## **10 CHANGE IN OWNERSHIP**

The Owner agrees to give the Council immediate written notice of any change in ownership of any of its interests in the Land occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Land or unit of occupation purchased by reference to a plan.

## **11 INDEXATION**

Any sum to be paid to the Council in accordance with the Schedule shall be Index Linked.

## **12 INTEREST**

If any payment due under this Deed is paid late, Interest shall be payable from the date payment is due to the date of payment.

## **13 VAT**

The amount of all considerations, contributions and payments referred to in this Deed shall be increased by any value added tax properly payable on the consideration, contribution or payment.

## **14 JURISDICTION**

This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

**15 DELIVERY**

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

**EXECUTED** as a Deed and delivered the day and year first before written.

**SCHEDULE**  
**(Owner's [and Developer's] Covenants)**

The Owner covenant[s] with the Council as follows: -

1. To pay the following sums to the Council on completion of the 10<sup>th</sup> dwelling
  - 1.1 The Contribution for off-site public open space
  - 1.2 The Contribution for metro cards

**EXECUTED** as a **DEED** by ***[the Owner]***

in the presence of :-