

THIS DEED (given by way of Unilateral Undertaking) is made the

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day of Two thousand and Nine

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PARTIES

- (1) COTAX LIMITED and WINSLETT PROPERTY LIMITED (TRADING AS CYGNET INVESTMENTS) care of Swangrove Enterprises Limited, Little Parks, Woodlands Lane, Cobham, Surrey KT11 3QD (“the Owner”) and
- (2) HSBC BANK PLC of Birmingham Securities Processing Centre, PO Box 8042, Birmingham B2 4NR (“the Mortgagees”) and
- (3) GLOUCESTERSHIRE COUNTY COUNCIL of Shire Hall, Westgate Street, Gloucester, GL1 2TG (“the County Council”)

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1. Definitions and Interpretation

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

“Act” means the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991) or any re-enactment or modification thereof for the time being in force

“Application” the application made by the Owner for the erection of tourism accommodation comprising of 16 Pavilions, 45 Apartments and Leisure Complex

“Application Plan” the plan annexed hereto

“Application Site” Property known as Milestone House, London Road, Fairford Gloucestershire

“Development” such development as may be authorised by the

Planning Permission

**“Highways
Authority”
“Highway Works”**

Gloucestershire County Council

(1) the works to be carried out by the Owner or
by the Highway Authority using monies from
the Owner referred to in the Schedule hereto

“Implementation”

means in the case of implementation of the Planning
Permission the carrying out of any material
operations listed in Section 55 of the Act pursuant to
the Planning Permission provided that for the
purposes of determining whether or not a material
operation has been carried out there should be
disregarded site surveys and investigations and
“implement” and “implemented” shall be construed
accordingly

**“Planning
Permission”**

the Planning Permission granted or to be pursuant to
the Planning Application under reference number

2. Interpretation

For the purposes of this Deed:

- 2.1 The singular includes the plural and vice versa
- 2.2 The masculine gender includes the feminine and neuter genders and vice versa
- 2.3 References to persons include firms, companies, corporations, authorities or
other bodies and vice versa

- 2.4 References to Acts of Parliament Statutory Instruments or Government Circulars or sections or paragraphs of such Acts, Statutory Instruments or Government Circulars include any re-enactments, amendments or replacement of them
- 2.5 The references to the parties named in this Deed unless the context otherwise requires include their successors in title and assignees and in the case of any local authority shall also include any successor in function
- 2.6 The headings in this Deed are for convenience only and shall not be taken into account in the construction and interpretation of this Deed
- 2.7 Where in this Deed any approval or consent or a certificate is required to be given by the Council such approval, consent or certificate shall unless otherwise stated be given by such officers as the Council shall from time to time notify in writing to the appropriate party as being the appropriate officer for such purpose
- 2.8 Where the consent, approval or agreement of any party hereto is required for any purpose under or in connection with the terms hereof it shall be made in writing and any such consent, approval or agreement shall not be unreasonably withheld or delayed

3. Recitals

- 3.1 The Council is a local planning authority as defined in the Act and for the purposes of Planning Obligations imposed pursuant to the provisions of Section 106 of the Act
- 3.2 The County Council is the Highways Authority responsible for the implantation of the highways works
- 3.3 The Owner is the owner in fee simple in possession of the Application Site

3.4 The Application has been submitted to the Council by the Owner for Planning Permission for the development of the Application Site as described in the Application.

3.5 The Owner accepts that if Planning Permission is granted then certain payments should be made in respect of the Development and is prepared to enter into this Deed with the intent that this represents a material consideration in the determination of the Planning Application

3.6 The Mortgagees are registered with a legal charge in respect of the Application Site and consent to completion of this Deed and acknowledges that as from the date hereof (subject as hereinafter appearing) Lakes 103, 103A and 104 shall be bound by the restrictions and obligations contained in this Deed

4. Condition Precedent

4.1 This Deed is conditional on and shall only have effect on the date on which the Owner shall begin the Development by Implementation of the Planning Permission

5. Statutory Provisions and Covenants

5.1 This Deed is entered into pursuant to the provisions of Sections 106 of the Act and Section 111 of the Local Government Act 1972 and the relevant clauses herein shall be deemed to be planning obligations in respect of the land for the purposes of those sections but without prejudice to all and any other means of enforcing them at law or in equity or by statute and will be registered as a local land charge

5.2 The covenants and obligations created by this Deed are planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council

5.3 This Deed shall cease to have effect in respect of any then outstanding obligations in the event that Planning Permission is revoked

5.4 No person shall be liable for any breach of this Deed unless they hold an interest in that part of the Application Site in respect of which such breach occurs or held such an interest at the date of the breach

6. Obligations

6.1 The Owner undertakes to the County Council to carry out the obligations referred to in the Schedule hereto

7. Notices

7.1 Any notice or consent required or permitted under this Deed shall be in writing and shall be sent by first class registered post, hand delivery or fax. There shall be no right to serve notices or consents by email but if a party chooses to do so (and the other party agrees) email may be used.

7.2 Subject to Clause 7.4 below any such notice, consent or other document shall be deemed to have been duly received:-

7.2.1 if despatched by first class registered post - 48 hours from the time of posting to the relevant party; or

7.2.2 if despatched by hand delivery – at the time of actual delivery; or

7.2.3 if despatched by fax or email – 24 hours after the time of despatch

7.3 Unless otherwise notified by one party to the other in writing from time to time for the purposes of this clause the postal and email addresses and fax numbers for each party are set out herein

7.4 Proving service by post it will be sufficient (unless any relevant part of the postal service is affected by industrial action) to prove that the envelope

containing the notice was duly stamped addressed and posted to the addresses specified in Clause 7.3 above. In proving service by fax or email it will be sufficient to prove that it was properly addressed and despatched to the numbers or addresses specified in Clause 7.3 above

7.5 A party shall not attempt to prevent or delay the service on it of a notice under this Deed

8. Non-Waiver

It is hereby agreed by the parties hereto that failure by the County Council at any time to enforce the provisions of this Deed or to require performance strictly or otherwise by the Owner or any of the conditions, covenants, agreements or obligations of this Deed or any failure or delay by the County Council to exercise any right or remedy shall be construed as a waiver of or as creating an estoppel in connection with such condition covenant agreement or obligation and shall not affect the validity of this Deed or any part thereof or the right of the County Council to enforce any provision in any variation of the Deed agreed between the Owner and the County Council shall not vitiate the remainder of the Deed which shall remain in full force and effect subject to such amendment or amendments agreed

9 Miscellaneous

9.1 If any party defaults in the payment when due of any sum payable under this Deed (whether pursuant to a Court Order or otherwise) the liability of that party in default shall be increased to include interest on such sum from the date when such payment was due until the date of actual payment at the rate of 4% above the base rate from time to time of Lloyds Bank plc such interest shall accrue from day to day and shall be compounded annually

9.2 The Owner hereby consents to the registration of this deed as a local land charge

9.3 If any provision in this Deed shall be held to be invalid illegal or unenforceable the validity, legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired

10. Third Parties

Nothing in this Deed shall give any third party (not being a party to this Deed) any right to enforce any of the obligations rights or covenants on the part of the Owner or the County Council under this Deed whether in accordance with the Contract (Rights of Third Parties) Act 1999 or otherwise

SCHEDULE 1

HIGHWAY WORKS

1. To contribute the sum of £..... in respect of the WhelfordRoad/A417 London Road roundabout to the County Council by the following instalments:-

£..... on commencement

£..... to be on or before the completion of the 100th Unit

2. To contribute to the County Council towards the upgrading (off site) in respect of a length of footpath to Fairford as a cycle path for a length of approximately 600m in accordance with a suitable specification to be agreed in this respect between the Owner and the County Council subject to a maximum contribution of no more than £11,400 pounds. Payment to be made no less than 1 month consequent upon the notification being given as to the first occupation of the development.

3. To prepare and monitor a travel plan and to provide the results on an annual basis to the County Council subject to the costs in this connection not exceeding a maximum threshold of £3,800.

4. To contribute to the County Council towards the provision of Sheffield stands in the market place in Fairford for cycle parking up to a maximum payment of

£380. Payment to be made no less than 1 month consequent upon notification being given as to the first occupation of the development.

5. To contribute to the County Council towards a scheme as to the imposition of a 50 mph limit from the existing 50 mph buffer outside Fairford to just East of the Whelford Road junction, subject to the costs in this respect not exceeding a maximum threshold of £1,900

IN WITNESS whereof this document has been executed and delivered as a Deed by
the Owner and the Mortgagees the day and year first before written

EXECUTED as a Deed by the said

COTAX LIMITED

Acting by:

Director

Director/Secretary

EXECUTED as a Deed by the said

WINSLETT PROPERTY LIMITED

Acting by:

Director

Director/Secretary

EXECUTED as a Deed by the said

HSBC BANK PLC

Acting by:

Director

Director/Secretary

DATED

2009

COTAX LIMITED and WINSLETT PROPERTY LIMITED (TRADING AS
CYGNET INVESTMENTS) (1)

and

HSBC BANK PLC (2)

and

GLOUCESTERSHIRE COUNTY COUNCIL (3)

UNILATERAL UNDERTAKING AS TO
PLANNING OBLIGATION

relating to land at Milestone House
London Road, Fairford
Gloucestershire

Colemans-ctts Solicitors
1/3 Union Street
Kingston upon Thames
Surrey KT1 1RP