

DATED 20__

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and

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to

**THE MAYOR AND BURGESSES OF
THE ROYAL BOROUGH OF KINGSTON UPON THAMES**

UNILATERAL UNDERTAKING

under Section 106 of the Town and Country Planning Act 1990 and Section 16 of the
Greater London Council (General Powers) Act 1974

relating to land at

#####

South London Legal Partnership
Gifford House
67c St Helier Avenue
Morden SM4 6HY
DX 161030 Morden 3

Ref: #####

THIS UNILATERAL UNDERTAKING is made as a **DEED** the ____ day of 20__

BY

(company registration number #####) whose registered office address is situated at/of ##### (the “Owner”)

###WITH THE CONSENT OF

of ##### (the “Chargee”)

TO

THE MAYOR AND BURGESSES OF THE ROYAL BOROUGH OF KINGSTON UPON THAMES of Guildhall, Kingston upon Thames, Surrey KT1 1EU (the “Council”)

1. DEFINITIONS

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

“Act”	means the Town and Country Planning Act 1990
“Application”	means the planning application and registered plans under number ##### for full planning permission for the Development of the Land
“Charge”	means the legal charge over the Land dated ##### and registered at the Land Registry under title number #####

“Commencement of Development”	means the earliest date upon which a material operation is begun in accordance with the provisions of section 56 (4) of the Act and “Commence the Development” shall be construed accordingly
“CPZ”	means the controlled parking zone xxx or any controlled parking zone amending or replacing the same
“Development”	means ##### pursuant to the Application
“Disabled Persons Badge”	means a disabled person’s badge issued pursuant to Section 21 of the Chronically Sick and Disabled Persons Act 1970 (or such other legislation as may supersede it and provide for the issue of disabled persons parking badges/permits)
“HDM”	the Council's Head of Development Management for the time being or such other person as may be appointed from time to time to carry out that function
“Land”	means ##### registered at the Land Registry under title number ##### and shown edged with red on the Plan
“Management Monitoring Fee”	means the sum of ##### (£####) payable by the Owner to the Council towards the costs of administering and monitoring the obligations contained in this Undertaking
“Motor Vehicle”	means any mechanically propelled vehicles intended or adapted for use on a road and/or highway
“Parking Permit”	means a parking permit (whether for residential or for visitor use) for a Permit Parking Bay
“Permit Parking Bay”	means a parking space within the CPZ designated by the Council by order under the Road Traffic Regulation Act 1984 the Road Traffic Regulations (Parking) Act 1986 the Parking Act 1989 or the Road Traffic Act 1991 (or other relevant legislation)
“Plan”	means the plan attached hereto
“Planning Permission”	means the planning permission that may be granted pursuant to the Application

“Residential Units”	means the xxx residential units designated for C3 use as defined within the Use Classes Order to be provided on the Land pursuant to the Planning Permission and the term Residential Unit shall be construed accordingly
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2. INTERPRETATION

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

2.1 Reference to the masculine feminine and neuter genders shall include other genders.

2.2 Reference to the singular includes the plural and vice versa unless the contrary intention is expressed.

2.3 Reference to natural persons includes corporations and vice versa.

2.4 Headings in this Undertaking are for reference purposes only and shall not be taken into account in its construction or interpretation.

2.5 The expression “Owner” and ##“Chargee” shall include successors in title and assigns and the expression “Council” shall include a successor to its statutory functions.

2.6 A reference to a clause paragraph or schedule is (unless the context otherwise requires) a reference to a clause paragraph or schedule of this Undertaking.

2.7 Words denoting an obligation on a party to do any act or thing include an obligation to procure that it be done and words placing a party under a

restriction include an obligation not to cause permit or suffer any infringement of such restriction.

2.8 Where in this Undertaking a party includes more than one person any obligation of that party shall be joint and several.

2.9 Any reference in this Undertaking to a statute or to a section of a statute includes any statutory re-enactment or modification of it and any reference to a statutory instrument includes any amendment or consolidation of it from time to time and for the time being in force.

3. RECITALS

3.10 The Owner is the registered proprietor of the freehold title absolute in the Land

3.11 ~~###~~The Chargee is the registered proprietor of the Charge

3.12 The Council is the local planning authority for the purposes of the Act for the Land

3.13 The Owner has applied to the Council for full planning permission to redevelop the Land in accordance with the Application

3.14 The Council is satisfied that the Development is such as may be approved by the Council under the Act and that Planning Permission should be granted (subject to conditions) and subject to the Owner covenanting in the terms of this Undertaking

3.15 The Owner has agreed to enter into this Undertaking to give covenants to the Council in the terms herein contained

4. STATUTORY AUTHORITY AND LEGAL EFFECT

4.16 This Undertaking is made pursuant to section 106 of the Act and Section 16 of the Greater London Council (General Powers) Act 1974 and section 111 of the Local Government Act 1972 and all other enabling powers and enactments which may be relevant for the purposes of giving validity hereto

4.17 The obligations of the Owner in this Undertaking are planning obligations for

the purpose of section 106 of the Act and are enforceable by the Council as local planning authority.

3.1.1 Subject to clause 4.4 the Owner covenants with the Council in this Undertaking to the intent that the covenants given by the Council in this Undertaking shall be planning obligations and enforceable without limit of time (other than as expressly mentioned in this Undertaking) against the Owner and any person deriving title through or under the Owner to the Land (or any part or parts of it) as if that person had also been an original covenanting party

3.1.2 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 obligations contained in this Undertaking after they shall have parted with all interest in the Land provided that they shall remain liable for any subsisting breach of covenant prior to parting with their interest

3.2 No statutory undertaker shall be bound by any obligations rights and duties

contained in this Undertaking and/or be liable for any breach of covenant and/or

obligation contained in this Undertaking in respect of any site used only as an electricity substation gas governor station or pumping station

3.3 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 Application) granted (whether or not on appeal) after the date of this Undertaking

3.4 Nothing in this Undertaking shall be construed as restricting the exercise by the Council of any powers exercisable by them under the Act or under any other act or any statutory instrument order or bylaw in the exercise of their function as a local authority

3.5 In the event of any subsequent planning permission being granted by the Council pursuant to an application under S73 of the Act for the removal or variation of any condition attached to the Planning Permission the obligations contained in this Deed shall apply to the subsequent planning permission without the need for a further deed unless required by the Council.

5. CONDITION PRECEDENT

5.18 This Undertaking shall come into effect upon the grant of the Planning Permission

6. OBLIGATIONS

6.19 The Owner covenants agrees and declares in respect of the Land as set out in Schedule

7. INVALIDITY

- 7.20 It is agreed and declared that if a 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.

8. ##CHARGEES CONSENT

- 8.21 The Chargee consents to the Owner entering into this Deed with the Council to the intent that the Chargee shall be bound by the planning obligations undertakings and restrictions given by the Owner to the Council under this Deed and the Chargee's charge shall take effect subject to such planning obligations undertakings and restrictions provided always that nothing in this clause shall impose any planning obligation covenant or restriction on the Chargee except where the Chargee takes possession of the Land under its charge whereupon the Chargee acknowledges that it shall be bound by the planning obligations undertaking and restrictions given by the Owner to the Council in this Deed as if it were a person deriving title from the Owner.

- 8.22 No mortgagee shall have any liability under this Deed unless it becomes a successor in title or takes possession of the interest in the part of the Land over which it has a charge in which case it too will be bound by the obligations as if it were a person deriving title from the Owner

9. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 9.23 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 persons executing this Undertaking as the Owner and their 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

10. COSTS

10.24 The Owner agrees to pay to the Council on the signing of this Undertaking the Council's legal costs of £#### for the preparation and negotiation of this Undertaking.

11. REGISTRATION AS A LOCAL LAND CHARGE

11.25 This Undertaking shall be registered as a Local Land Charge

12. JURISDICTION

12.26 This Undertaking is governed by and shall be 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

SCHEDULE

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

1. Notification of Commencement

- 1.1. to permit the HDM 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

- 1.2. to give the HDM notice in writing no later than 7 days prior to the anticipated Commencement of the Development
- 1.3. to give the HDM notice in writing not later than 7 days following Commencement of the Development

2. Parking Permit

- 2.4. Not to make an application for a Parking Permit in respect of any Residential Unit or knowingly permit any owner or occupier of any Residential Unit to make such an application and further not to make an application to the Council to enter into a contract (other than individual contracts for one occasion) to park a Motor Vehicle in any car park controlled by the Council Provided that the provisions of this paragraph shall not apply to a person who is the holder of a Disabled Persons Badge.
- 2.5. In any case where an application is made as aforesaid and a Parking Permit is issued or contract entered into then to surrender such Parking Permit to the Council or terminate such contract with the Council within 7 days of written demand by the Council.
- 2.6. Not to occupy (or dispose of any interest in) the Land or cause or permit any person to occupy (or dispose of any interest in) the Land unless and until a notice in writing has been served on such person to the effect that such person shall not:
 - (a) be entitled (unless such person is or becomes entitled to be a holder of a disabled person's badge issued pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970) to be granted a Parking Permit in respect of the Residential Unit; or

- (b) be entitled to enter into a contract (other than individual contracts for one occasion) with the Council to park a Motor Vehicle in any car park controlled by the Council

2.7. That all material used for advertising or marketing the Residential Units for letting or sale will notify prospective owners and occupiers that they will not be entitled to apply for a Parking Permit or buy a contract to park within a car park owned or controlled by the Council.

2.8. That in respect of every lease tenancy agreement assignment licence or other disposition proposed to be granted assigned or otherwise created or transferred in respect of a Residential Unit and which would entitle any person to occupy any of the Residential Units the Owner shall impose the following covenant (or a covenant of substantially the same nature) on the lessee tenant assignee licensee or other disponee in every lease tenancy agreement assignment licence or other disposition namely:

“the lessee for himself and his successors in title being the owner for the time being of the terms of years hereby granted hereby covenants with the lessor and separately with the Mayor and Burgesses of the Royal Borough of Kingston Upon Thames (“the Council”) not to apply for or knowingly permit an application to be made by any person residing in the premises to the Royal Borough of Kingston Upon Thames for a Parking Permit in respect of such premises and if a Parking Permit is issued then it shall be surrendered within 7 days of written request to do so from the Council and this covenant shall be enforceable by the Council under the Contracts (Rights of Third Parties) Act 1999” Provided always that these provisions shall not apply to a person who is a holder of a disabled persons badge issued pursuant to section 21 of the Chronically Sick and Disabled Person Act 1970 (or such other legislation as may supersede it and provide for the

issue of disabled persons parking badges/permits

- 2.9. Upon receipt of a written request from the Council to provide to the Council such information as the Council may reasonably require to enable it to be satisfied as to compliance with the provisions of this Schedule.

3. Management Monitoring Fee

- 3.10. to pay the Management Monitoring Fee to the Council on the date of signing of this Undertaking.

IN WITNESS WHEREOF THIS AGREEMENT has been executed as a Deed by the parties hereto and is intended to be and is hereby delivered on the date first before written

SIGNED AS A DEED by

####

In the presence of

Witness signature

Witness name

Witness address

SIGNED AS A DEED by

###

Acting by
Director
Director/secretary

SIGNED AS A DEED by

####

Acting by

Authorised Signatory