

Dated

26th September

2014

- (1) ANDREW JOHN CECIL KIRKWOOD
 - (2) BELLWAY HOMES LIMITED
- TO
- (3) MAIDSTONE BOROUGH COUNCIL
 - (4) THE KENT COUNTY COUNCIL

UNILATERAL UNDERTAKING

pursuant to Section 106 Town and Country Planning Act 1990

relating to

the Development of Land North of Sutton Road Otham Kent

Speechly Bircham LLP
6 New Street Square
London
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Ref

Doc 17244576.2

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THIS UNILATERAL UNDERTAKING is dated

26th September 2014

BY

- (1) **ANDREW JOHN CECIL KIRKWOOD** of PO Box 1200 Jinja, Uganda ("**Owner**");
- (2) **BELLWAY HOMES LIMITED** (Company Number 00670176) whose registered office is at Seaton Burn House Dudley Lane Seaton Burn Newcastle upon Tyne NE13 6BE ("**Developer**");

TO

- (3) **MAIDSTONE BOROUGH COUNCIL** of Maidstone House, King Street, Maidstone, Kent ME15 6JQ ("**Borough Council**"); and
- (4) **THE KENT COUNTY COUNCIL** of County Hall Maidstone Kent ME14 1XQ ("**County Council**").

RECITALS

(A) Definitions

- (A1) Words and phrases used in this undertaking are defined in clause 2.1.

(B) Interests in the Site

- (B1) The Owner is the registered proprietor with freehold title of the Land under title number K949252 subject to the entries disclosed in the Charges Register of the said title.
- (B2) The Developer has entered into an option agreement with the Owner for the purchase of the freehold title of the Land.

(C) The Council

- (C1) The Borough Council is the local planning authority for the purposes of section 106 of the 1990 Act for the area in which the Land is situated.
- (C2) The County Council is the highway authority for the purposes of the Highways Act 1980 and the local education authority for the purposes of the Education Act 1996 for the area in which the Land is situated.

(D) Planning

- (D1) On 29 May 2013 Bellway Homes (South East) Limited submitted the Application to the Borough Council.
- (D2) By a decision of the Planning Committee of the Borough Council made on 6 February 2014 it was resolved that planning permission for the Development should

be granted subject to the terms of the Permission and the prior completion of a legal agreement to secure the measures set out in the Planning Committee's resolution.

- (D3) The Owner and the Developer consider that the planning obligation contained in this undertaking is required to mitigate the impact of the Development.

OPERATIVE PROVISIONS

1. OPERATIVE POWERS

This undertaking is given pursuant to section 106 of the 1990 Act.

2. DEFINITIONS AND INTERPRETATION

- 2.1 In this undertaking the following expressions shall unless the context otherwise requires have the following meanings:

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

Application means the planning application referred to in Recital D1 submitted to the Borough Council for planning permission for the Development and bearing reference number MA/13/0951;

Completion means the issue of a cover note by NHBC (or other warranty provider) certifying the Housing Unit is complete;

Development means erection of 186 dwellings comprising 1 2 3 4 and 5 bedroom properties with associated parking landscaping amenity space and engineering works;

Highways Contribution means a contribution of £613,800 of which £558,000 is intended to be applied towards the Sutton Road Improvement and £55,800 is intended to be applied towards improvements to the junction of Willington Street and Sutton Road further details of which are set out in Schedule 1 Highway Works;

Housing Unit or Units means any housing unit to be erected on the Land pursuant to the Permission including for the avoidance of doubt any flats or apartments;

Implementation means the carrying out by the Owner on the Land of a material operation as defined in section 56(4) of the 1990 Act pursuant to the Permission but not otherwise save that for the purpose of this definition the carrying out of any works of demolition, works of site clearance, ground investigation and site survey works, construction of boundary fencing or hoardings, construction of temporary accesses and/or highway works archaeological investigations, site decontamination or remediation works, landscaping works, laying of sewers and other services, creation of site compounds the display of advertisements (including erection of advertisement hoardings), works below ground level, interim landscaping works, arboricultural works and ecological works, noise attenuation works and works for the

laying out or maintenance of any play space shall not be deemed to be the carrying out of a material operation and Implement and Implemented shall be construed accordingly;

Index means the General Building Cost Index as published by the Building Costs Information Service on behalf of the Royal Institution of Chartered Surveyors or any similar successor index;

Index Linked means the sum payable shall be increased in the same proportion as the percentage increase in the Index between the firm quarterly Index figure immediately preceding the date of this Deed and the firm quarterly Index figure for the quarter immediately preceding the date of actual payment and "**Indexation**" shall be construed accordingly;

Land means all that land shown for identification purposes only edged red on Plan 1 and known as land north of Sutton Road Otham Kent;

Parties means the owner and the Developer

Plan 1 means the attached plan labelled with drawing number 12-2181-500;

Permission means planning permission for the Development pursuant to the Application and any planning permission subsequently granted under section 73 or 73A of the 1990 Act and the Permission shall be construed to include the development authorised by such subsequent planning permission;

Secretary of State means the Secretary of State for Communities and Local Government or other minister or other authority for the time being having or entitled to exercise the powers conferred on the Secretary of State for Communities and Local Government by the 1990 Act;

Statutory Undertaker means any public gas transporter water or sewerage undertaker electricity supplier or public telecommunications operator;

Working Day means any day from Monday to Friday inclusive which is not Christmas Day Good Friday a statutory bank holiday or a day between Christmas Day and New Year's Day; and

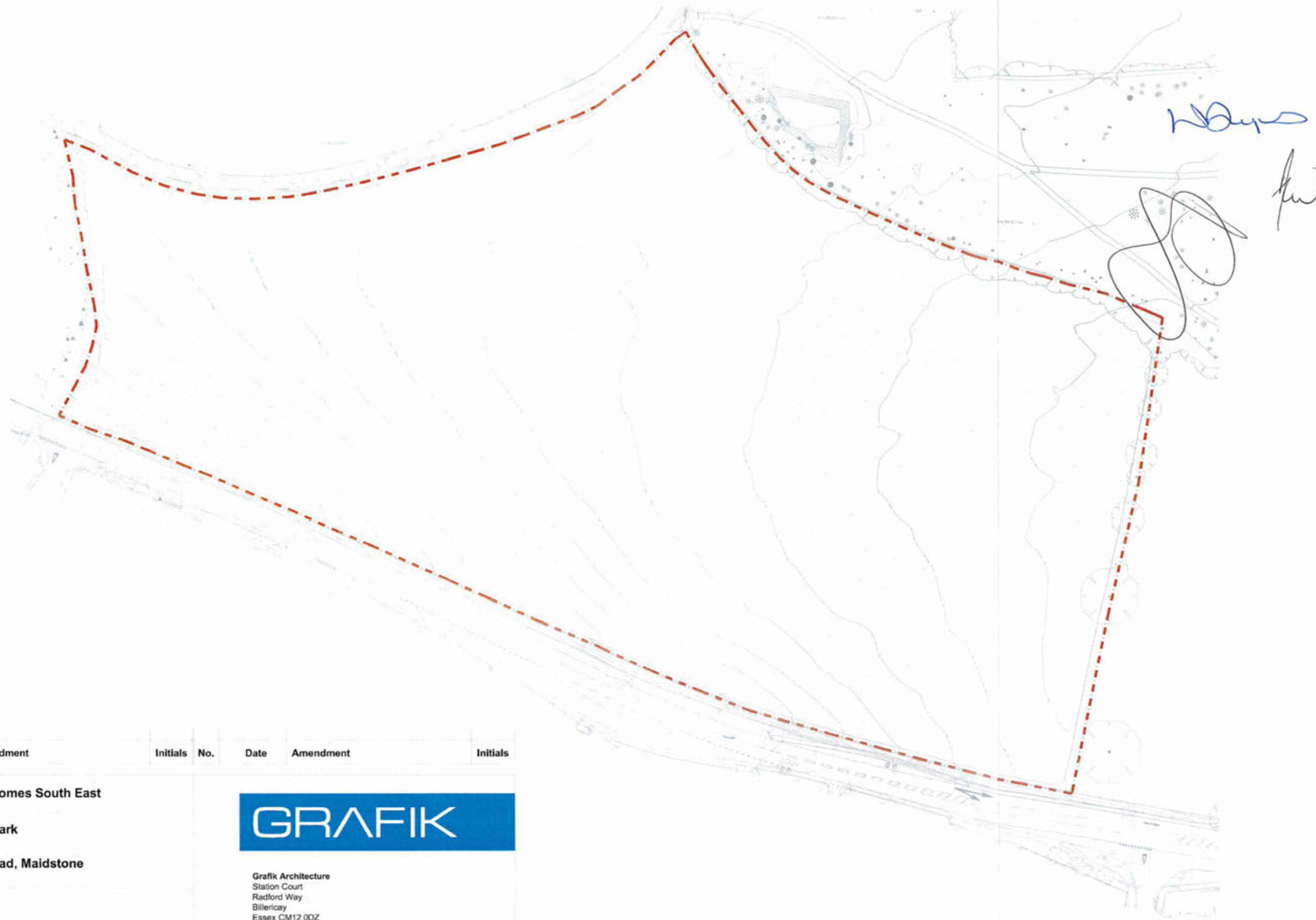
2.2 Where in this undertaking reference is made to a clause sub-clause paragraph Schedule plan or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph Schedule plan or recital of or (in the case of a plan) attached to this undertaking.

2.3 Words denoting any one gender only shall include both genders and may be used interchangeably and words denoting natural persons include firms companies and corporations and vice versa.

- 2.4 Words importing the singular number only shall include the plural number and vice versa and where there is more than one covenantor the obligation of such covenantors shall be joint and several.
- 2.5 Any reference to a statute or statutory instrument (whether or not specifically named) includes any statute or statutory instrument amending consolidating or replacing them respectively and for the time being in force and references to a statute include all statutory instruments orders plans regulations byelaws permissions and directions for the time being made issued or given or deriving validity pursuant to them.
- 2.6 Save where the context otherwise requires references to any party shall include the successors in title of that party.
- 2.7 References in this undertaking to the County Council and Borough Council shall include references to its successor as local authority.

3. LEGAL EFFECT

- 3.1 This undertaking is executed by the Parties as a deed and will constitute a planning obligation for the purposes of section 106 of the 1990 Act to the extent that it shall bind the Owner and his successors in title to each and every part of the Land subject to the terms of this undertaking.
- 3.2 The planning obligations contained in this undertaking shall be enforceable by the Borough Council and the County Council.
- 3.3 The Owner shall upon parting with the fee simple in any part of the Land be released from all obligations rights and duties under the terms of this undertaking insofar as they relate to such part of the Land (save in respect of liability for any antecedent breach of the undertaking) and shall upon parting with the entirety of his interest in the Land as a whole be released from all liability whatsoever under the terms of this undertaking save insofar as it relates to an antecedent breach of this undertaking.
- 3.4 If the Permission is Implemented by a party other than Bellway Homes Limited then Bellway Homes Limited shall be released from all obligations rights and duties to the Borough Council and the County Council under the terms of this undertaking in its capacity as Developer **PROVIDED THAT** in the event that Bellway Homes Limited acquires or owns an interest in any part of the Land Bellway Homes Limited shall continue to be bound by all obligations rights and duties to the Borough Council and the County Council under the terms of this undertaking in its capacity as the owner of such interest whilst it retains such interest.
- 3.5 This undertaking (save for clauses 1 to 3 and 6 and 7 which shall take effect on the date hereof) shall not take effect until the following conditions precedent have been satisfied:



No.	Date	Amendment	Initials	No.	Date	Amendment	Initials
-----	------	-----------	----------	-----	------	-----------	----------

Client : **Bellway Homes South East**
Project : **Imperial Park**
Sutton Road, Maidstone



Grafik Architecture
Station Court
Radford Way
Billericay
Essex CM12 0DZ
T +44 (0)1277 658 233
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Drawing : **Plan 1**
Scale : **1:1250 @ A3** Status : Rev :
Date : **Jan 2013** Dwg No : **12-2181-500**

© THIS DRAWING IS THE COPYRIGHT OF GRAFIK ARCHITECTURE. It shall not be in any way used or reproduced without their prior written consent. All dimensions are to be checked on site or in the workshop prior to commencing any work. Work only to figured dimensions. Any discrepancies are to be reported to the Architect.

- 3.5.1 the Permission being granted by the Borough Council; and
- 3.5.2 the Implementation of the Development.
- 3.6 Nothing in this undertaking shall be construed as prohibiting limiting or affecting any right to develop any part of the Land in accordance with a planning permission (other than the Permission) granted by the Borough Council or the Secretary of State on appeal or by reference to him after the date of this undertaking and for the avoidance of doubt any operations works or development in accordance with such a planning permission shall not constitute Implementation under the terms of this undertaking.
- 3.7 Each clause sub-clause paragraph Schedule or plan shall be separate distinct and severable from each other to the extent only that if any clause sub-clause paragraph Schedule or plan becomes or is invalid because of a change of circumstances or any other unforeseen reasons or if any one or more of such clause sub-clause paragraph Schedule or plan shall be held by the courts to be void for any reason whatsoever but would be valid if severed or any wording was deleted or any time period reduced or scope of activities or area covered diminished then any modifications necessary to ensure such clause sub-clause paragraph Schedule or plan be valid shall apply without prejudice to any other clause sub-clause paragraph Schedule or plan contained therein.
- 3.8 If the Permission shall expire within the meaning of sections 91 92 and 93 of the 1990 Act or be revoked modified or otherwise withdrawn by the Borough Council or the Secretary of State then (if the Owner or Developer so elects) this undertaking shall cease to have further effect but in ceasing to have further effect shall not prejudice any express or implied rights accrued or accruing to the Owner or Developer by virtue of anything done by the Borough Council in connection with or arising from the terms of this undertaking.
- 3.9 For the purposes of (inter alia) the Contracts (Rights of Third Parties) Act 1999 nothing in this undertaking is intended to confer any benefit upon or create rights in favour of any party other than the parties executing this undertaking and their respective successors in title.
- 3.10 Nothing in this undertaking shall be construed as imposing any obligation on persons who purchase or occupy completed Housing Units within the Development and the undertaking shall not be enforceable against any such persons.
- 3.11 Nothing in this undertaking shall be construed as imposing any obligation on any Statutory Undertaker who acquires an interest in the Land for the purpose of undertaking their statutory functions.

4. COUNTY COUNCIL CONTRIBUTIONS

4.1 The Owner covenants to pay to the County Council the Highways Contribution prior to Completion of the first Housing Unit

5. INDEX LINKED

The Highways Contribution payable under this undertaking shall be Index Linked.

6. LAND CHARGE

6.1 This undertaking is a local land charge and shall be registered as such by the Borough Council.

7. JURISDICTION

This undertaking is governed by and shall be interpreted in accordance with the laws of England.

**Schedule 1
Highway Works**

1. Mitigation works to the A274 Sutton Road/Willington Street/Wallis Avenue junction comprising: the widening of Sutton Road on the southern side to accommodate two lanes of traffic in both directions on the link between Willington Street and Wallis Avenue; the widening of the westbound Sutton Road approach arm to provide three lanes at the stop line; the widening of the eastbound Sutton Road approach arm to accommodate the additional westbound lane; and the linking of the controllers of the two junctions to improve the efficiency of the whole intersection.

2. Mitigation works to the A274 Sutton Road comprising the widening of the inbound carriageway of the A274 Sutton Road between the junctions of Wallis Avenue and Loose Road, incorporating bus prioritisation measures from the Willington Street junction to the Wheatsheaf junction. In addition, the provision of two new bus stops, serving the eastbound and westbound services on the A274 between the junctions as described, comprising of new shelters, bus boards and real time bus information.

fw ANNE CATHERINE WALTER as attorney for
SIGNED as a DEED by)
ANDREW JOHN CECIL KIRKWOOD)
in the presence of: *under a power*)
of attorney dated 18 march)
2012
in the presence of:

fw 

Witness signature: 

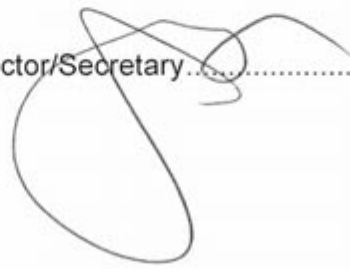
Name: *Malcolm Lakin*

Address: *17 Quai Charles-Page*
1205 GENEVA

Occupation: *Journalist*

SIGNED as a DEED by)
BELLWAY HOMES LIMITED)
in the presence of: acting by)
two Directors

Director..... 

Director/Secretary..... 

.....

Authorised signatory

DATED

4th September

2014

**UNILATERAL UNDERTAKING BY DEED UNDER
SECTION 106 OF THE TOWN AND COUNTRY
PLANNING ACT 1990**

relating to land at Langley Park
Maidstone Kent
given by

GEORGE WIMPEY LIMITED

to

THE KENT COUNTY COUNCIL

and

MAIDSTONE BOROUGH COUNCIL

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THIS UNILATERAL UNDERTAKING is dated 4th September 2014

BY

(1) **GEORGE WIMPEY LIMITED** (company number 1397926) of Gate House, Turnpike Road, High Wycombe, Buckinghamshire, HP12 3NR ("TW")

TO

(2) **THE KENT COUNTY COUNCIL** of County Hall, Maidstone, Kent ME14 1XQ ("the **County Council**"); and

(3) **MAIDSTONE BOROUGH COUNCIL** of Maidstone House, King Street, Maidstone, Kent ME15 6JQ ("the **Borough Council**")

Background

- 1 The County Council is the highways authority for the purposes of the Highways Act 1980.
- 2 TW is the freehold owner of the Site.
- 3 TW submitted the Application to Maidstone Borough Council on 27 June 2013.
- 4 Maidstone Borough Council resolved through its planning committee to approve the Application on 6 February 2014 subject to conditions and the prior completion of this Undertaking and the Deed.

NOW THIS UNDERTAKING WITNESSES AS FOLLOWS:

OPERATIVE PART

1 **Definitions**

For the purposes of this Unilateral Undertaking, the following expressions shall have the following meanings:

- | | |
|----------------------------------|---|
| "Act" | means the Town and Country Planning Act 1990 as amended; |
| "Affordable Housing Unit" | means an Affordable Rent Dwelling or a Shared Ownership Dwelling; |

"Affordable Rent Dwellings"

means an Affordable Housing Unit that is let by Registered Providers and which is subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges, where applicable) and "Affordable Rent" shall be construed accordingly;

"Application"

means the application for planning permission for the erection of up to 600 Dwellings, with associated local centre comprising a convenience store (use class A1) (1,300 sqm – 1500 sqm gross floor area); retail/commercial units (use class A1, A2, A3, A5 and/or D1) (400 sqm); and public house (use class A4) (550 sqm – 700 sqm); a two form entry primary school (with pre-school provision and a community facility); public open space; allotments; nature conversation area; and landscaping, submitted to Maidstone Borough Council on 27 June 2013 and allocated reference number MA/13/1149;

"Commencement of Development"

the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development is carried out other than (for the purposes of this Unilateral Undertaking and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements, the construction of site access roads and **"Commence"** **"Commence Development"** and **"Commencement"** shall be construed accordingly;

"Deed"

means the deed entered into between TW and Maidstone Borough Council of even date in respect of the Development;

"Development"	means the development of the Site as set out in the Application;
"Dwelling"	means any dwelling to be constructed pursuant to the Planning Permission on the Site which shall include Flats and Houses and shall include Open Market Units and Affordable Housing Units;
"First Phase"	means the first phase of the Development being brought forward (shown numbered 1 on the Phasing Plan);
"Flat"	means a flat or apartment being a Dwelling or part of a Dwelling;
"Highways Contribution"	means the sum of £3,000 (three thousand pounds) Index Linked payable per Dwelling in accordance with the instalments set out at paragraph 1.1 of Schedule 1 such contribution to be used by the County Council for the funding of the Highways Scheme;
"Highways Scheme"	means mitigation works to the A274 Sutton Road comprising the widening of the inbound carriageway of the A274 Sutton Road between the junctions of Wallis Avenue and Loose Road incorporating bus prioritisation measures from the Willington Street junction to the Wheatsheaf junction. In addition, the provision of two new bus stops, serving the eastbound and westbound services on the A274 between the two junctions as described, comprising of new shelters, bus boards and real time bus information;
"House"	means any Dwelling which is not a Flat;
"Index"	means the General Building Cost Index as published by the Building Costs Information Service on behalf of the Royal Institution of Chartered Surveyors or any similar successor index;

"Index Linked"

means the sum payable shall be increased or decreased in the same proportion as the percentage increase or decrease in the Index between the firm quarterly Index figure immediately preceding the date of this Unilateral Undertaking and the firm quarterly Index figure for the quarter immediately preceding the date of actual payment;

"Interest"

means interest at 2 (two) per cent above the base lending rate of the HSBC Bank Plc from time to time;

"Junction Contribution"

means the sum of £180,000.00 (one hundred and eighty thousand pounds) Index Linked being £300 (three hundred pounds) payable per Dwelling in accordance with paragraph 1.3 of Schedule 1 such contribution to be used by the County Council for the Willington Street Junction Enhancements;

"Occupation" and "Occupied"

means occupation of the Development as permitted by the Planning Permission but for the avoidance of doubt not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations;

"Open Market Units"

means those Dwellings for sale lease or other disposal on the open market and excluding the Affordable Housing Units;

"Phase"

means a distinct building phase of the Development as shown on the Phasing Plan;

"Phasing Plan"

means the plan showing the distinct building phases of the Development to be submitted to and approved by Maidstone Borough Council pursuant to condition 28 of the Planning Permission as amended from time to time;

"Planning Permission"

means the planning permission subject to conditions to be granted pursuant to the

	Application;
"Practical Completion" or "Practically Complete"	the issue of a certificate of practical completion by TW's architect or in the event that the Development or any part of it is constructed by a party other than TW the issue of a certificate of practical completion by the other party's architect;
"Registered Provider" or "RPSH"	means a registered provider of Social Housing as defined by S.80 of the Housing and Regeneration Act 2008 or any other entity providing Affordable Housing under equivalent rental or lease arrangements as is approved by the Borough Council in writing;
"Shared Ownership Dwelling"	means an Affordable Housing Unit provided on a tenure granted by a Registered Provider and to be disposed of pursuant to shared ownership arrangements within the meaning of Section 70(4) of the 2008 Act;
"Site"	means the land within the ownership of TW known as Langley Park Maidstone Kent and identified edged red on Plan 1 appended to this Unilateral Undertaking; and
"Willington Street Junction Enhancements"	means mitigation works to be carried out by the County Council to the A274 Sutton Road/Willington Street/Wallis Avenue junction comprising <ul style="list-style-type: none"> • the widening of Sutton Road on the southern side to accommodate two lanes of traffic in both directions on the link between Willington Street and Wallis Avenue; • the widening of the west bound Sutton Road approach arm to provide three lanes at the stop line; • the widening of the east bound Sutton

Road approach arm to accommodate the additional west bound lane; and

- the linking of the controllers of the two junctions to improve the efficiency of the whole intersection; and

"Working Day"

means any day which is not a Saturday, Sunday or Bank Holiday.

2 Construction of this Unilateral Undertaking

- 2.1 Where in this Unilateral 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 Unilateral 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.*
- 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.

3 Legal Basis

- 3.1 This Unilateral Undertaking is made pursuant to Section 106 of the Act.
- 3.2 TW acknowledges that the undertakings given by TW under this Unilateral Undertaking create planning obligations pursuant to Section 106 of the Act and are enforceable by the County Council and the Borough Council against TW and any person deriving title from TW.
- 3.3 Subject to clause 3.4 this Unilateral Undertaking shall be enforceable against TW and any person deriving title from TW.

3.4 None of the planning obligations contained in this Unilateral Undertaking shall be binding upon:

- (a) individual householders or occupational tenants of the Development; or
- (b) statutory undertakers.

4 Conditionality

4.1 Other than the obligations set out at clause 4.2 which shall have immediate effect, the obligations in the Schedules are conditional upon:

- (a) the grant of the Planning Permission; and
- (b) the Commencement of Development

4.2 The obligations referred to in clause 4.1 which have immediate effect are clauses 11(a) and 11(b).

5 Covenants by TW

5.1 TW undertakes to observe and perform the undertakings set out in the Schedule.

6 Miscellaneous

6.1 No provisions of this Unilateral Undertaking shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

6.2 This Unilateral Undertaking shall be registrable as a local land charge by Maidstone Borough Council.

6.3 Any notices shall be deemed to have been properly served if sent by first class post to the principal address or registered office (as appropriate) of the relevant party.

6.4 Insofar as any clause or clauses of this Unilateral Undertaking 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 Unilateral Undertaking.

6.5 This Unilateral Undertaking 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 TW) it is modified by any statutory procedure or expires prior to the Commencement of Development.

6.6 No body shall be liable for any breach of any of the planning obligations or other provisions of this Unilateral Undertaking after it shall have parted with its entire interest in that part of the Site to which the planning obligation relates, but without prejudice to liability for any subsisting

breach arising prior to parting with such interest.

- 6.7 Nothing in this Unilateral Undertaking shall prevent the development of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Unilateral Undertaking.

7 Indexation

Any sum referred to in the Schedules shall be Index Linked.

8 Interest

If any payment due under this Unilateral Undertaking is paid late, Interest will be payable from the date payment is due to the date of payment.

9 Payment and Calculation of Contributions

Payment of the contributions referred to in this Unilateral Undertaking shall be made subject to receipt by TW of written confirmation by the County Council that the contributions shall only be applied by the County Council towards the purposes specified in the relevant schedule to this Unilateral Undertaking.

10 VAT

All consideration given in accordance with the terms of this Unilateral Undertaking shall be exclusive of any value added tax properly payable.

11 Notices

TW shall serve written advance notice on the County Council of at least 10 Working Days prior to:

- (a) The Commencement of Development;
- (b) The Commencement of Development of each Phase;
- (c) Occupation of the 150th Dwelling, 300th Dwelling, 450th Dwelling and 600th Dwelling.

12 Jurisdiction

This Unilateral Undertaking 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.

13 **Delivery**

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

IN WITNESS whereof George Wimpey Limited has executed this Unilateral Undertaking on the day and year first before written.

The Schedule

Highways

1 TW undertakes to the County Council and separately to the Borough Council:

1.1 Immediately following the earlier of:

(a) the date on which the County Council first begins to implement the Highways Scheme;
or

(b) the date which is one year from the date on which Commencement of Development,

TW shall pay £450,000 of the Highways Contribution to the County Council.

1.2 Not to Occupy or permit Occupation of the number of Dwellings set out in Column 2 below until the relevant instalment of the Highways Contribution set out in Column 1 has been paid to the County Council.

Column 1	Column 2
<u>Instalment</u>	<u>Number of Dwellings</u> (cumulative total)
£450,000	100
£450,000	200
£450,000	300

1.3 Not to Occupy or permit Occupation of any Dwelling until the Junction Contribution has been paid to the County Council.

APPENDIX A

PLAN 1: The Site

EXECUTED as a DEED by)
GEORGE WIMPEY LIMITED)
acting by two Directors)

.....

Director

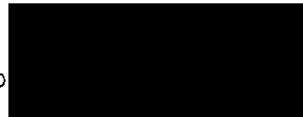
.....

Director

EXECUTED as a **DEED** by)
GEORGE WIMPEY LIMITED)
acting by two Directors)

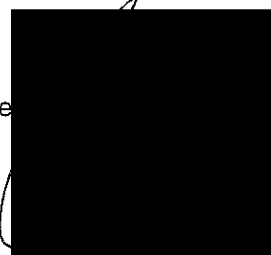
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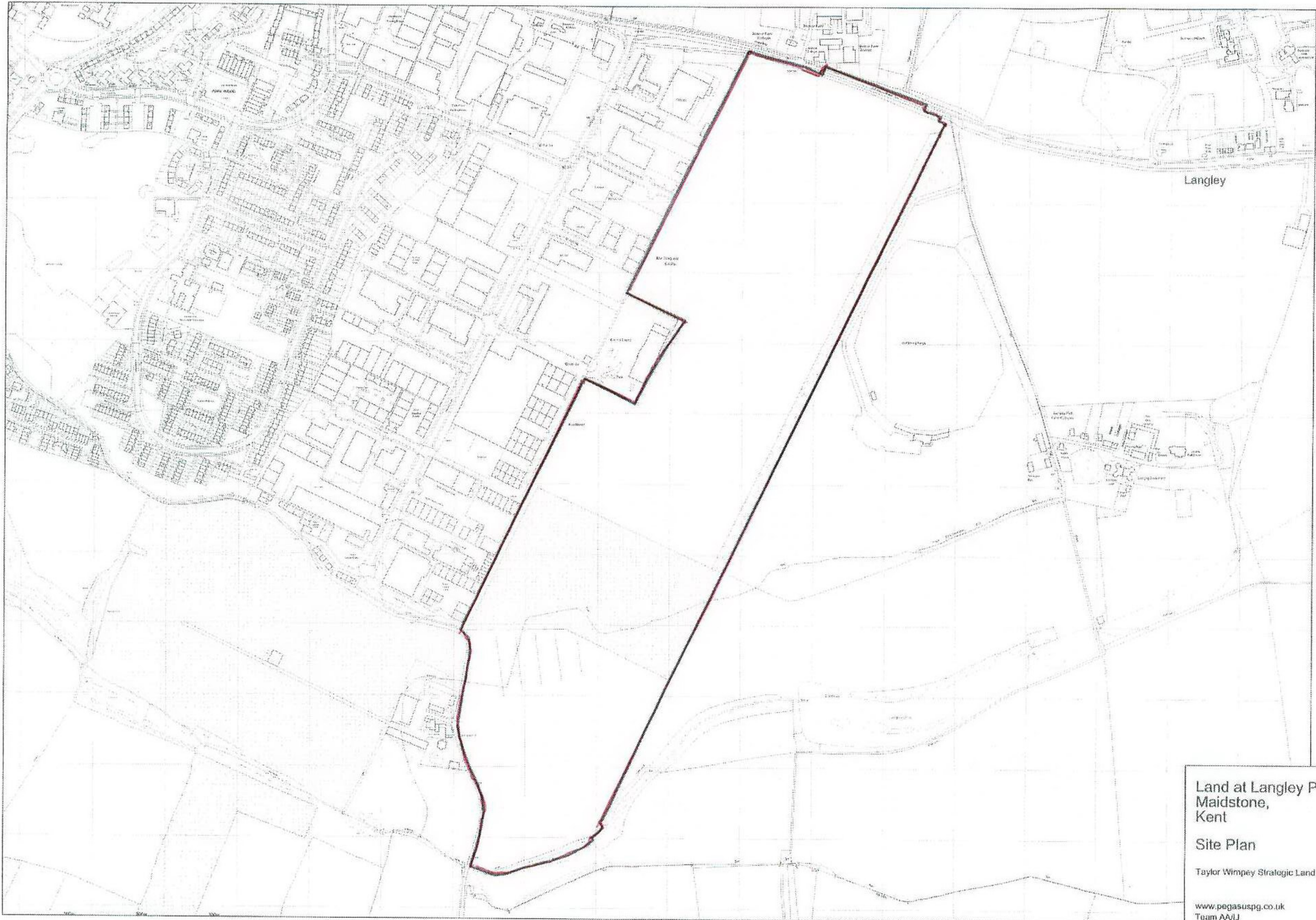
Directo



.....

Dire





Land at Langley Park,
Maidstone,
Kent

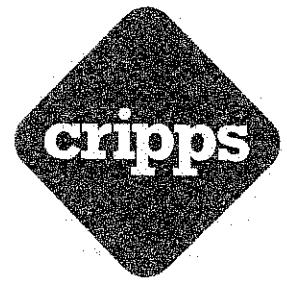
Site Plan

Taylor Wimpey Strategic Land

www.pegasuspg.co.uk
Team AA/J
31st March 2014
1:5,000 @A3



BRS.3089_32-1



UNILATERAL UNDERTAKING

pursuant to Section 106 Town and Country Planning Act 1990

relating to
the development of a site at
Sutton Road
Maidstone
Kent

**EDWARD JOHN UREN
and PETER JOHN UREN and GLENIS KAY UREN
and
REDROW HOMES LIMITED**

In favour of :

**MAIDSTONE BOROUGH COUNCIL
and
THE KENT COUNTY COUNCIL**

REF: JOT/RE45548.5

This Unilateral Undertaking is made as a deed and dated

14 November 2014

BY:

- (1) **EDWARD JOHN UREN PETER JOHN UREN and GLENIS KAY UREN** of Egremont House Boughton Lane Boughton Monchelsea Maidstone Kent ME18 4NA ("**First Owner**")
- (2) **REDROW HOMES LIMITED** (Company Number 01990710) whose registered office is at Redrow House, St Davids Park, Flintshire, CH5 3RX ("**Second Owner**")

TO:

- (3) **MAIDSTONE BOROUGH COUNCIL** of Maidstone House, King Street, Maidstone, Kent, ME15 6JQ ("**Borough Council**") and
- (4) **THE KENT COUNTY COUNCIL** of County Hall, Maidstone, Kent ME14 1XQ ("**County Council**")

RECITALS

A Definitions

- A.1 Words and phrases used in this undertaking are defined in clause 2.1

B Interests in the Site

- B.1 The First Owner is the registered proprietor with freehold title of the First Land under title number K530692.
- B.2 The Second Owner is the registered proprietor with freehold title of the Second Land under title number K531048.
- B.3 The Second Owner has entered into a contract with the First Owner for the purchase of the freehold title of the First Land.

C The Council

- C.1 The Borough Council is the local planning authority for the purposes of section 106 of the 1990 Act for the area in which the Land is situated.
- C.2 The County Council is the highway authority for the purposes of the Highways Act 1980 for the area in which the Land is situated.

D Planning

- D.1 The Second Owner on 2 September 2013 submitted the Application to the Borough Council.
- D.2 By a decision of the Planning Committee of the Borough Council made on 6 February 2014 it was resolved that planning permission for the Development should be granted subject to the terms of the Permission and the prior completion of this undertaking.

D.3 The Owners the County Council and the Borough Council agree the need for the planning obligations contained in this undertaking both for the benefit of the Development and in the interests of proper planning of the area and have executed it accordingly.

OPERATIVE PROVISIONS

1 Operative Powers

This undertaking is entered into pursuant to section 106 of the 1990 Act.

2 Interpretation

2.1 In this undertaking the following expressions shall unless the context otherwise requires have the following meanings:

2.1.1	1990 Act	The Town and Country Planning Act 1990 (as amended)
2.1.2	Application	The planning application submitted by the Second Owner to the Borough Council for planning permission for the Development and bearing Borough Council reference number MA/13/1523
2.1.3	The Borough	Means the local authority borough of Maidstone
2.1.4	Development	Development of 100 dwellings together with associated new access road car parking landscaping and open space
2.1.5	First Land	Means that part of the Land shown for identification purposes only edged red on Plan 2
2.1.6	Flat	A separate and self-contained set of premises constructed or adapted for use for the purpose of a dwelling and forming part of a building separate from some other part of which it is divided horizontally.
2.1.7	Highways Contribution	Means a contribution of £330,000 towards the construction costs of the highway works set out at Schedule 1
2.1.8	Housing Unit or Units	Any housing unit to be erected on the Land pursuant to the Permission including for the

avoidance of doubt any Flats or apartments

- 2.1.9 Implementation The carrying out by the Owners on the Land of a material operation as defined in section 56(4) of the 1990 Act pursuant to the Permission but not otherwise save that for the purpose of this definition the carrying out of any works of demolition works of site clearance ground investigation and site survey works construction of boundary fencing or hoardings construction of temporary accesses and/or highway works archaeological investigation site decontamination or remediation works landscaping works laying of sewers and other services creation of site compounds and noise attenuation works shall not be deemed to be the carrying out of a material operation and "Implement" and "Implemented" shall be construed accordingly
- 2.1.10 Index The General Building Cost Index as published by the Building Costs Information Service on behalf of the Royal Institution of Chartered Surveyors
- 2.1.11 Index Linked The sum payable shall be increased in the same proportion as the percentage increase in the Index between the firm quarterly Index figure immediately preceding the date of this undertaking and the firm quarterly Index figure for the quarter immediately preceding the date of actual payment and "Indexation" shall be construed accordingly
- 2.1.12 Land All that land shown for identification purposes only edged red on Plan 1 and known as land to the north of Sutton Road, Maidstone, Kent
- 2.1.13 Occupation Beneficial occupation of Housing

Units other than occupation for the purposes of construction fitting out security marketing or repair and 'Occupy' and 'Occupied' shall be construed accordingly.

- | | | |
|--------|----------------------|--|
| 2.1.14 | Owners | The First Owner and Second Owner together. |
| 2.1.15 | Plan 1 | The attached plan marked 'Plan 1' |
| 2.1.16 | Plan 2 | The attached plan marked 'Plan 2' |
| 2.1.17 | Permission | Planning permission for the Development pursuant to the Application |
| 2.1.18 | Second Land | Means that part of the Land shown for identification purposes only edged blue on Plan 2 |
| 2.1.19 | Secretary of State | Means the Secretary of State for Communities and Local Government or other minister or other authority for the time being having or entitled to exercise the powers conferred on the Secretary of State for Communities and Local Government by the 1990 Act |
| 2.1.20 | Statutory Undertaker | Any public gas transporter water or sewerage undertaker electricity supplier or public telecommunications operator |
| 2.1.21 | Working Day | Any day from Monday to Friday inclusive which is not Christmas Day, Good Friday, a statutory bank holiday, or a day between Christmas Day and New Year's Day |
- 2.2 Where in this undertaking reference is made to a clause sub-clause paragraph schedule plan or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph schedule plan or recital of or (in the case of a plan) attached to this undertaking.
- 2.3 Words denoting any one gender only shall include both genders and may be used interchangeably and words denoting natural persons include firms companies and corporations and vice versa.

- 2.4 Words importing the singular number only shall include the plural number and vice versa and where there is more than one covenantor the obligation of such covenantors shall be joint and several.
- 2.5 Any reference to a statute or statutory instrument (whether or not specifically named) includes any statute or statutory instrument amending consolidating or replacing them respectively and for the time being in force and references to a statute include all statutory instruments orders plans regulations byelaws permissions and directions for the time being made issued or given or deriving validity pursuant to them.
- 2.6 Save where the context otherwise requires references to any party shall include the successors in title of that party.
- 2.7 References in this undertaking to the County Council and Borough Council shall include references to their successors as local authorities.

3 Legal Effect

- 3.1 This undertaking is executed by the parties as a deed and will constitute a planning obligation for the purposes of section 106 of the 1990 Act to the extent that it shall bind the Owners and their successor in title to each and every part of the Land.
- 3.2 This undertaking shall be enforceable by the Borough Council and County Council.
- 3.3 The Owners shall upon parting with the fee simple in any part of the Land be released from all obligations rights and duties under the terms of this undertaking insofar as they relate to such part of the Land (save in respect of liability for any antecedent breach of the undertaking) and shall upon parting with the entirety of their respective interests in the Land as a whole be released from all liability whatsoever under the terms of this undertaking save insofar as it relates to an antecedent breach of this undertaking.
- 3.4 This undertaking (save for clauses 1 to 3 and 6 to 9 which shall take effect on the date hereof) shall not take effect until the following conditions precedent have been satisfied:
 - 3.4.1 the Permission being granted by the Borough Council; and
 - 3.4.2 the Implementation of the Development.
- 3.5 Nothing in this undertaking shall be construed as prohibiting limiting or affecting any right to develop any part of the Land in accordance with a planning permission (other than the Permission) granted by the Borough Council or the Secretary of State on appeal or by reference to him after the date of this undertaking and for the avoidance of doubt any operations works or development in accordance with such a planning permission shall not constitute Implementation under the terms of this undertaking.
- 3.6 Each clause sub-clause paragraph schedule or plan shall be separate distinct and severable from each other to the extent only that if any clause sub-clause paragraph schedule or plan becomes or is invalid because of a change of circumstances or any other unforeseen reasons or if any one or more of such clause sub-clause paragraph schedule or plan shall be held by the courts to be void for any reason

whatsoever but would be valid if severed or any wording was deleted or any time period reduced or scope of activities or area covered diminished then any modifications necessary to ensure such clause sub-clause paragraph schedule or plan be valid shall apply without prejudice to any other clause sub-clause paragraph schedule or plan contained therein.

- 3.7 If the Permission shall expire within the meaning of sections 91, 92 and 93 of the 1990 Act or be revoked modified or otherwise withdrawn by the Borough Council or the Secretary of State then (if the Owners so elect) this undertaking shall cease to have further effect but in ceasing to have further effect shall not prejudice any express or implied rights accrued or accruing to the Owners by virtue of anything done by the Borough Council or County Council in connection with or arising from the terms of this undertaking.
- 3.8 Except insofar as legally or equitably permitted nothing contained within this undertaking shall fetter the Borough Council or County Council in their future exercise of rights and powers under the 1990 Act or any other statutory power.
- 3.9 For the purposes of (inter alia) the Contracts (Rights of Third Parties) Act 1999 nothing in this undertaking is intended to confer any benefit upon or create rights in favour of any party (save for the avoidance of doubt the Borough Council and County Council) other than the parties executing this undertaking and their respective successors in title.
- 3.10 Nothing in this undertaking shall be construed as imposing any obligation on persons who purchase or occupy completed Housing Units within the Development and the undertaking shall not be enforceable against any such persons.
- 3.11 Nothing in this undertaking shall be construed as imposing any obligation on any Statutory Undertaker who acquires an interest in the Land for the purpose of undertaking their statutory functions.

4 Highways Contribution

- 4.1 The Owners covenant with the Borough Council and County Council to pay to the County Council the Highways Contribution to be used solely for the purposes referred to in clause 2.1.7 such payment to be made by instalments in the following manner:
 - 4.1.1 50% prior to the first Occupation of the 25th Housing Unit to be Occupied;
and
 - 4.1.2 50% prior to the first Occupation of the 75th Housing Unit to be Occupied.

5 Index Linked

The Highways Contribution payable under this undertaking shall be Index Linked

6 Costs

The Second Owner covenants with the Borough Council and the County Council to pay on demand the Borough Council's and the County Council's reasonable legal costs incurred in connection with the preparation and completion of this undertaking.

7 **Land Charge**

This undertaking is a local land charge and is to be registered as such by the Borough Council.

8 **Service Provisions**

Any notice or other written communication to be served upon or given under the terms of this undertaking shall be deemed to have been validly served or given if transmitted by facsimile (and confirmed by transmission confirmation slip) delivered by hand or sent by recorded delivery post to the party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing.

9 **Disputes**


- 9.1 In the event of any dispute or difference arising between any of the parties to this undertaking in respect of any matter contained in this undertaking (other than the quantum of the Contributions which are agreed) such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualification to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error or fraud and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.
- 9.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to clause 9.1 or as to the appropriateness of the professional body then such question may be referred by either party to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error or fraud and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.
- 9.3 Any expert howsoever appointed shall be subject to the express requirement that a decision is reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight Working Days after the conclusion of any hearing that takes place or twenty-eight Working Days after he has received any file or written representation.
- 9.4 The expert shall be required to give notice to each of the said parties inviting them to submit to him within ten Working Days of notification of his appointment written submissions and supporting material and all parties will be entitled to make counter written submissions with a further ten Working Days.


Schedule 1 Highway Works


1. The sum of £300,000 towards mitigation works to the A274 Sutton Road comprising the widening of the inbound carriageway of the A274 Sutton Road between the junctions of Wallis Avenue and Loose Road incorporating bus prioritisation measures from the Willington Street junction to the Wheatsheaf junction. In addition the provision of two new bus stops, serving the eastbound and westbound services on the A274 between the two junctions as described, comprising of new shelters, bus boards and real time bus information.

2. The sum of £30,000 towards mitigation works to the A274 Sutton Road/Willington Street/Wallis Avenue junction comprising: the widening of Sutton Road on the southern side to accommodate two lanes of traffic in both directions on the link between Willington Street and Wallis Avenue; the widening of the westbound Sutton Road approach arm to provide three lanes at the stop line; the widening of the eastbound Sutton Road approach arm to accommodate the additional westbound lane; and the linking of the controllers of the two junctions to improve the efficiency of the whole intersection.

EXECUTED and delivered as a deed on the date of this agreement

SIGNED as a deed by EDWARD JOHN UREN in the presence of:	Signature 
Signature of witness <u>D.R. Toon</u>	
Name (in BLOCK CAPITALS) <u>DORREN ROSE GOODWIN</u>	
Address <u>31 BOUGHTON LANE</u> <u>MAIDSTONE ME 15 9QN</u>	

SIGNED as a deed by PETER JOHN UREN in the presence of:	Signature 
Signature of witness <u>D.R. Toon</u>	
Name (in BLOCK CAPITALS) <u>DORREN ROSE GOODWIN</u>	
Address <u>31 BOUGHTON LANE</u> <u>MAIDSTONE ME 15 9QN</u>	

SIGNED as a deed by GLENIS KAY UREN in the presence of:	Signature 
Signature of witness <u>D.R. Toon</u>	
Name (in BLOCK CAPITALS) <u>DORREN ROSE GOODWIN</u>	
Address <u>31 BOUGHTON LANE</u> <u>MAIDSTONE ME 15 9QN</u>	

SIGNED as a deed by *KEITH PARRETT*
As attorney for **REDROW HOMES LIMITED** in the presence of:

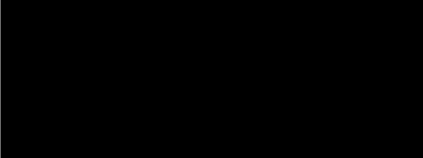
Signature of witness *[Signature]*

Name (in BLOCK CAPITALS) *JAS VIRDEE*

Address *REDROW HOMES SOUTH EAST*

2, AURUM COURT, SYLVAN WAY

LONDON, ESSEX SS15 6TU


as Attorney for **REDROW HOMES LIMITED**

SIGNED as a deed by *HARISH LAD*
As attorney for **REDROW HOMES LIMITED** in the presence of:

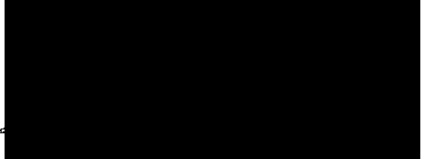
Signature of witness *[Signature]*

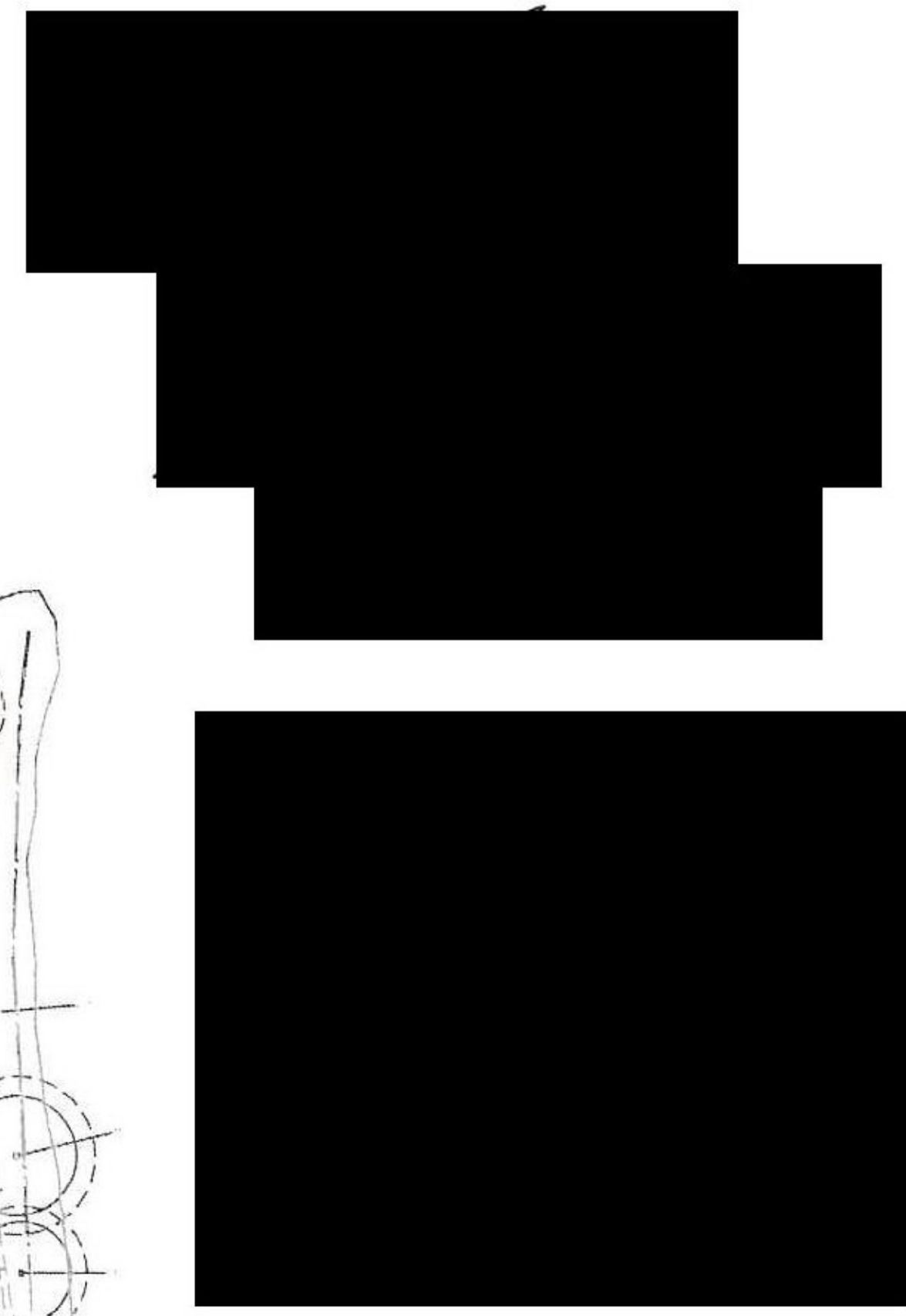
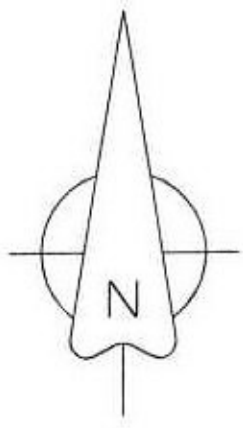
Name (in BLOCK CAPITALS) *JAS VIRDEE*

Address *REDROW HOMES SOUTH EAST*

2, AURUM COURT, SYLVAN WAY

LONDON, ESSEX SS15 6TU


.....
as Attorney for **REDROW HOMES LIMITED**



B 07/10/14 KEY REMOVED AT CRIPPS REQUEST
A 07/10/14 BOUNDARY AMENDED TO INCLUDE LAND TO EAST

Rev	Date	Description
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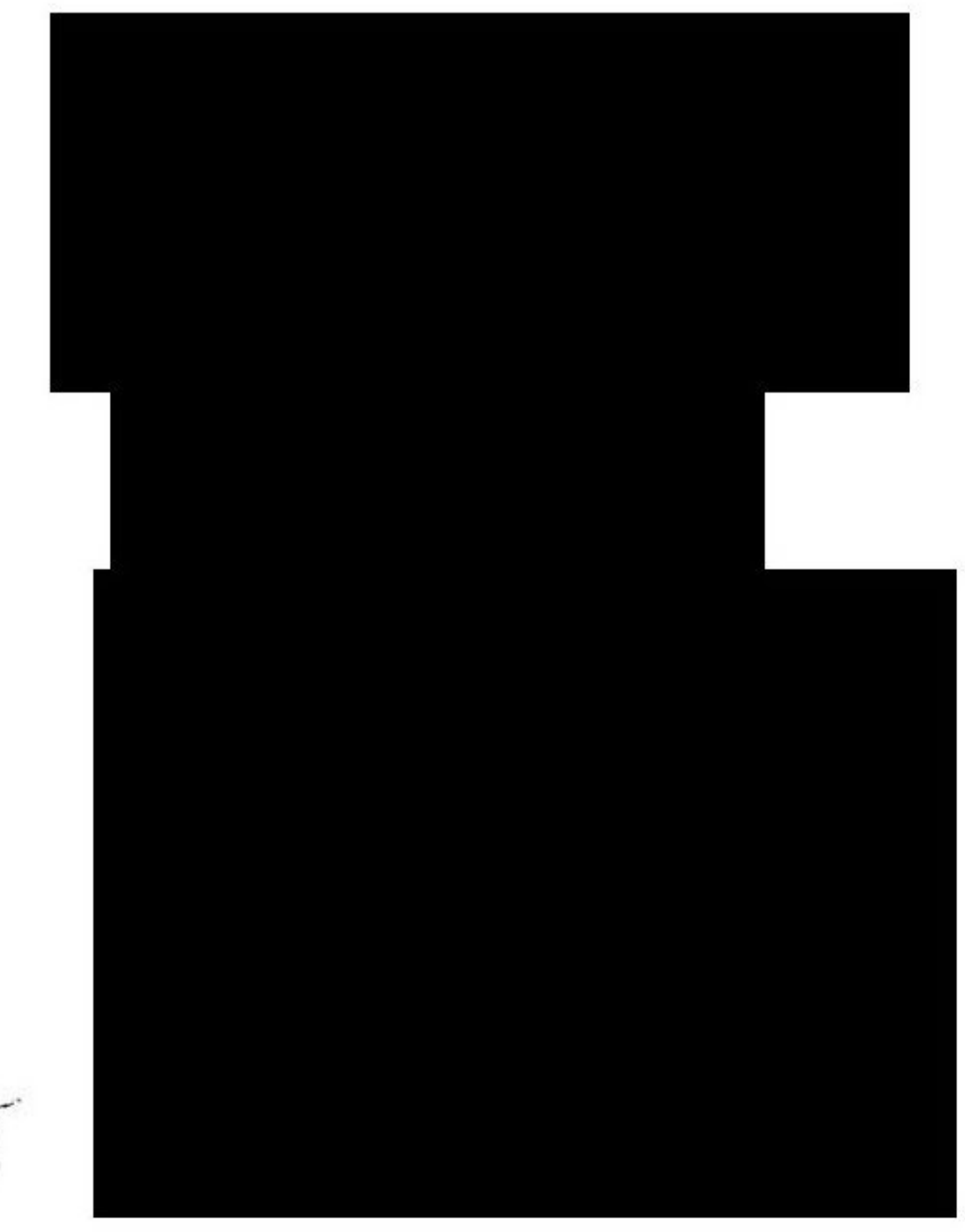
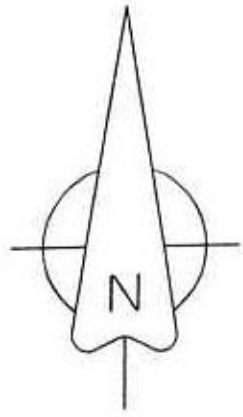
Ref	Dwg No	Rev
	PLAN 1	B

Drawing Title
SITE OWNERSHIP

Scale at A3	1:2000
Approval Date	03/10/2014



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Rev	Date	Description
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Ref	Dwg No	Rev
	PLAN 2	

Drawing Title
SITE OWNERSHIP

Scale at A3	1:2000
Approval Date	07/10/2014



- KEY:
- EXTENT OF REDROW OWNERSHIP
 - EXTENT OF UREN OWNERSHIP

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