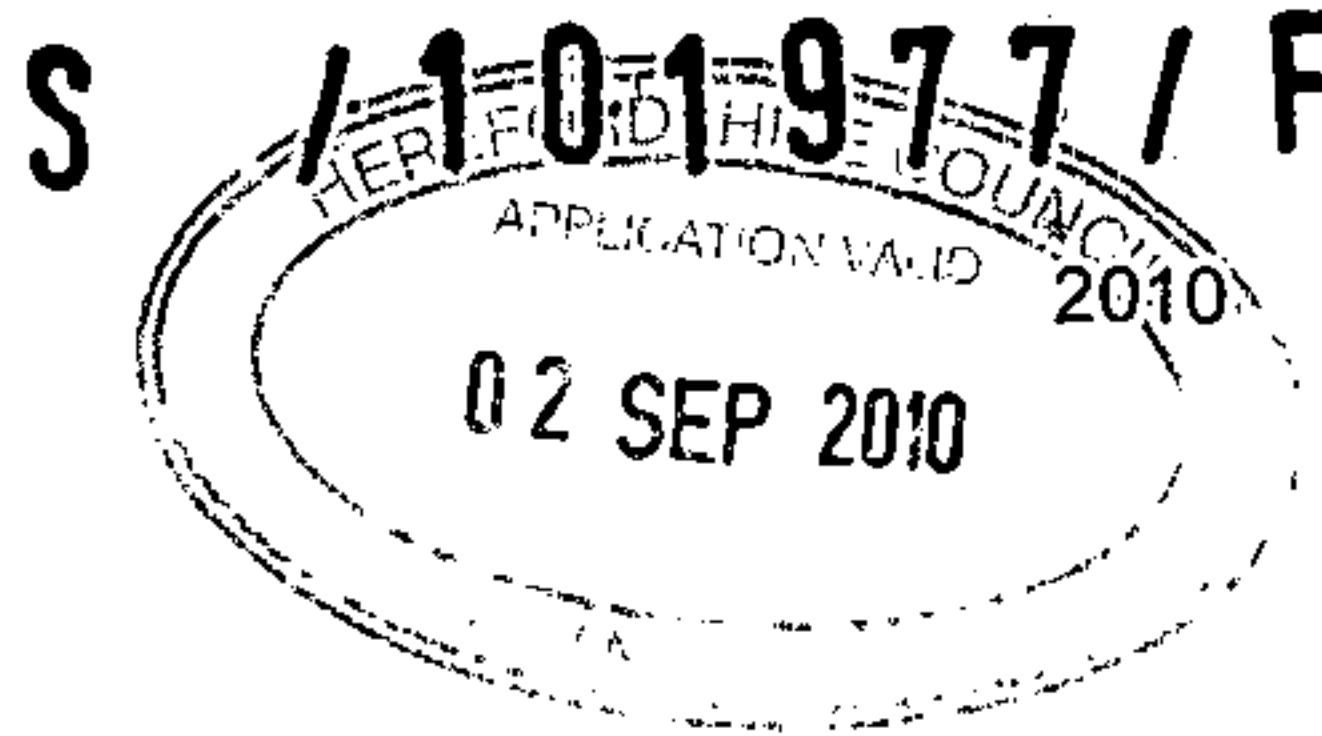


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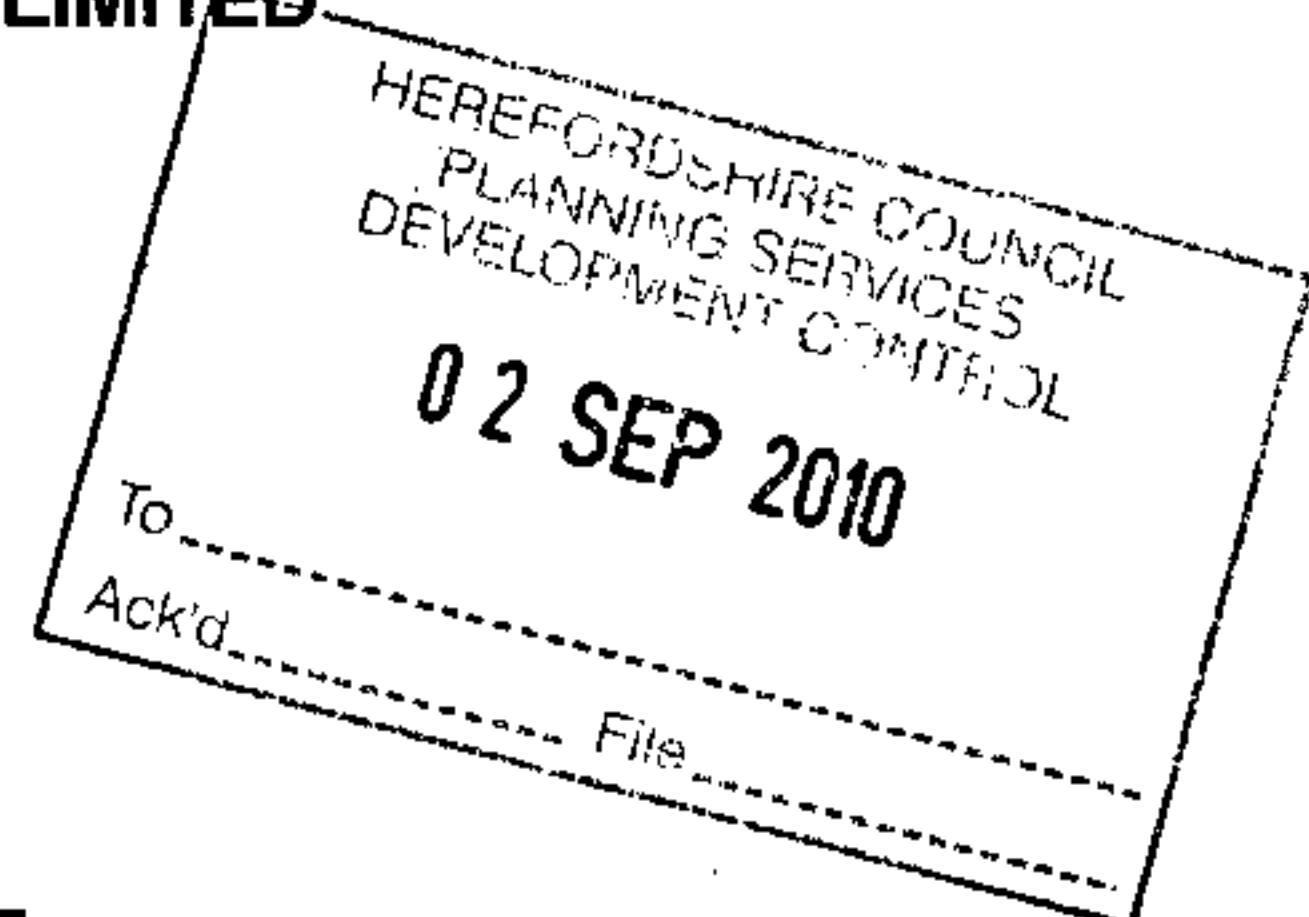
DEED OF UNDERTAKING AND UNILATERAL PLANNING OBLIGATION

Given by

CREST NICHOLSON OPERATIONS LIMITED

In favour of

HEREFORDSHIRE COUNCIL



DEED OF UNDERTAKING

relating to

Land North of Roman Road, Holmer, Hereford

Re Planning Application DMS/101977/F

DRAFT

DAVIES ARNOLD COOPER

6-8 Bouverie Street
London EC4Y 8DD

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THIS UNDERTAKING is given on

day of

2010

BY

CREST NICHOLSON OPERATIONS LIMITED a company incorporated in England and Wales (company number 1168311) of Crest House Pycroft Road Chertsey Surrey KT16 9GN ("the Developer")

IN FAVOUR OF

HEREFORDSHIRE COUNCIL of Brockington 35 Hafod Road, Hereford HR1 1SH (the "Council");

WHEREAS: -

- (A) The Council is the local planning authority for the purposes of the Town and Country Planning Act 1990 as amended (the "Act") for the area within which the Land is situated and is the authority by whom the planning obligations contained in this Undertaking are respectively enforceable
- (B) [By virtue of a deed of transfer dated 2 July 2010 the Developer is the owner of the freehold interest in the Land and is entitled to be registered as the proprietor of the Land] *or preferably, on completion of land registration* [The Developer is the registered proprietor with title absolute of the freehold interest in the Land]
- (C) The Developer has by a planning application with reference DMS/101977/F sought planning permission ('Planning Permission') from the Council to remove part of planning condition numbered 31 from outline planning permission CW2006/2619/O
- (D) The Council has not yet determined the application for Planning Permission and the Developer enters into this Undertaking with the intention that any objections of the Council to the grant of Planning Permission are overcome

NOW THIS UNDERTAKING WITNESSES as follows:-

1. STATUTORY PROVISIONS

This Undertaking is made pursuant to the provisions of Section 106 of the Act with the intention to bind the Developer's interest in the Land and the obligations in this Undertaking on the part of the Developer are planning obligations for the purposes of the Act enforceable by the Council

2. INTERPRETATION

- 2.1 In this Undertaking in addition to the parties hereinbefore referred to the following words and expressions shall where the context so requires or admits have the following meanings:-

"Deed of Acknowledgment and Undertaking" means the form of deed of acknowledgment and undertaking set out at Schedule 1 of this Undertaking

"Junction Improvement Contribution" means the sum of £80,395 (Eighty Thousand Three Hundred and Ninety-Five Pounds) as a contribution towards the Junction Improvement Works

"Junction Improvement Works" means the highway works/improvements to the Munstone Road/Roman Road/College Road Junction

"Land" means the land North of Roman Road Holmer [the subject of a pending application for registration at HM Land Registry under the provisional title number HE43668 and] *or* [registered under title number HE43668] indicatively shown edged red on the Plan attached to this Undertaking

2.2 In this Undertaking where the context so requires:-

- 2.2.1 the singular includes the plural and vice versa
- 2.2.2 references to clauses schedules and paragraphs are references to clauses schedules and paragraphs in this Undertaking except where otherwise specified
- 2.2.3 title headings to the clauses schedules and paragraphs are for convenience only and shall not affect the interpretation of this Undertaking
- 2.2.4 the Schedule(s) hereto shall be deemed to be incorporated herein and to have the same force and effect as if the provisions thereof were set out in extenso in the body of this Deed
- 2.2.5 references to any statute or statutory instrument shall except where otherwise specifically provided include reference to any statutory modification or re-enactment thereof for the time being in force
- 2.2.6 the expression the "Developer" shall include persons successors in title to the Developer and its assigns and all persons deriving title to all or part of the Land under or through it

3. **CONDITIONALITY**

- 3.1 The provisions of this Undertaking shall apart from clauses 1 to 3, 5.9 and 6 to 7 inclusive which shall have effect from the date of this Undertaking not take effect until the Planning Permission shall have been granted and issued by the Council

4. **THE PLANNING OBLIGATION**

- 4.1 Unless otherwise agreed in writing by the Council the Developer hereby undertakes to pay the Junction Improvement Contribution to the Council within ten working days of the date of the Planning Permission on condition that the Council shall within 20

working days of the receipt of the Junction Improvement Contribution deliver the Deed of Acknowledgement and Undertaking to the Developer duly executed and dated by the Council

5. MISCELLANEOUS

- 5.1 This Undertaking shall be registered as a local land charge for the purposes of the Local Land Charges Act 1975 by the Council
- 5.2 This Undertaking shall be enforceable against the Developer to the extent specified in Section 106(3) of the Act and against any person for the time being deriving title from the Developer as provided in Section 106 of the Act but PROVIDED THAT the Developer has first provided to the Council all relevant information (in accordance with Section 106(4) of the Act) the Developer shall not have any further liability under this Undertaking (but without prejudice to the rights of either party in respect of any antecedent breach) in respect of any period during which the Developer (or as the case may be such other person) no longer has an interest in the Land
- 5.3 Nothing herein contained or implied 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 its functions as a local authority
- 5.4 If the Planning Permission is quashed revoked or otherwise withdrawn or expires within the meaning of Sections 91 92 and 93 of the Act or is revoked or modified in accordance with Sections 97 to 100 inclusive of the Act without the consent of the Developer this Undertaking shall cease to have effect insofar only as it has not already been complied with (but without prejudice to the rights of either party against the other in respect of any antecedent breach)
- 5.5 No waiver (whether express or implied) by the Council of any breach or default by the Developer in performing or observing any of the obligations terms or conditions of this Undertaking shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said obligations terms or conditions or from acting upon any subsequent breach or default in respect thereto by the Developer
- 5.6 This Undertaking shall not be enforceable against the owner or occupier of a Dwelling Unit or a statutory undertaker after the transfer of statutory apparatus by the Developer to that statutory undertaker
- 5.7 If the Junction Improvement Contribution is paid late interest will be payable from the date payment is due to the date of payment at the rate of three per cent above the base lending rate of National Westminster Bank plc from time to time
- 5.8 All consideration given in accordance with the terms of this Undertaking shall be exclusive of any value added tax properly payable

- 5.9. On the date of this Undertaking the Developer shall pay to the Council their reasonable legal costs and disbursements in the approval and acceptance of this Undertaking

6. NOTICES

- 6.1 All approvals or authorities demands invoices information or notices and other documents or acts authorised or required by or under this Undertaking by the Developer shall be in writing

- 6.2 Where any document is required to be delivered to the Council it shall be addressed to the planning obligations manager (quoting reference DMS/101977/F) or other such officer of the Council as the Council may from time to time notify the Owner at the address given in this Undertaking or such other addresses as may be notified to it by the Council from time to time

- 6.3 Where any document is required to be delivered to the Developer it shall be sent to the address given in this Undertaking or to such other person or address as the Developer may from time to time direct

7. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

It is hereby agreed and declared that the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Undertaking

**SCHEDULE 1
DEED OF ACKNOWLEDGEMENT AND UNDERTAKING**

To:

CREST NICHOLSON OPERATIONS LIMITED a company incorporated in England and Wales (company number 1168311) of Crest House Pycroft Road Chertsey Surrey KT16 9GN

1. Words and phrases in this letter shall have the same meanings as those in a Deed of Undertaking dated [] ("the Undertaking") given by Crest Nicholson Operations ("the Developer") in favour of Herefordshire Council ("the Council")
- 1.1 In consideration of the obligations on the part of the Developer contained in the Undertaking the Council hereby covenants acknowledges and undertakes to the Developer and covenants with the Developer for itself and its successors in title or any successor to its statutory functions as follows;
 - 1.1.1 Upon receipt of the Junction Improvement Contribution to hold it in a separately identified interest bearing account and to only use or apply the Junction Improvement Contribution (together with any accrued interest) for the purpose of carrying out the Junction Improvement Works
 - 1.1.2 To refund to the Developer any part of the Junction Improvement Contribution which has not been expended or allocated to be spent for the purpose of carrying out the Junction Improvement Works within 5 years following the date of payment together with accrued interest from the date of payment to the date of refund.
 - 1.1.3 At the expiration of 5 years of the date of receipt by the Council of the Junction Improvement Contribution the Council covenants that upon written request it shall issue to the party that paid the Junction Improvement Contribution a certified account detailing how that sum has been expended and that any part of the Junction Improvement Contribution which has not been reasonably expended by the Council in accordance with the purpose specified at paragraph 1.1.1 shall be refunded to the party that paid the relevant sum together with accrued interest from the date of payment to the date of refund

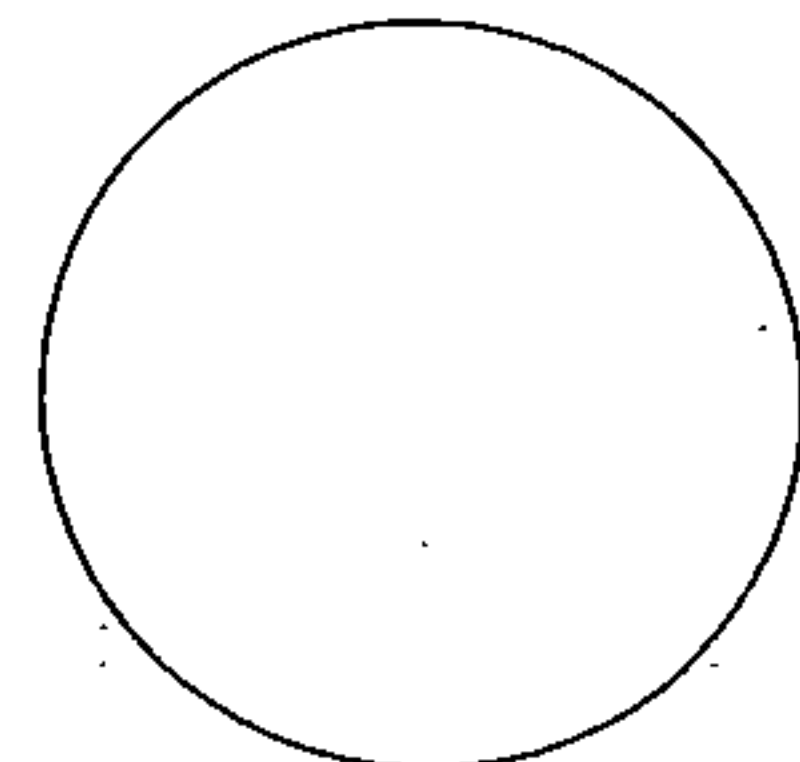
Executed as a deed by affixing the common seal of

HEREFORDSHIRE COUNCIL

By Order:

.....

Authorised Officer



IN WITNESS whereof the Developer has executed and delivered this Deed on the day and year first before written

SIGNED as a DEED by
CREST NICHOLSON OPERATIONS
LIMITED
acting by a director
In the presence of

Signature: _____
Director

Signature of witness: _____)
Name (in BLOCK CAPITALS): _____)
Address: _____)