

DATED _____ **2017**

(1) Ensco 1068 Limited

and

(2) Peter Michael Harris

and

(3) Vanessa Jane Harris

and

(4) Craig Lancelot Mitchell

and

(5) MC Trustees Limited

and

(6) Hinton Properties (Grovefield Way) Limited

and

(7) Barclays Bank plc

and

(8) Harris Cars plc

TO

(9) Cheltenham Borough Council

**UNILATERAL UNDERTAKING PURSUANT TO
SECTION 106 OF THE TOWN AND COUNTRY
PLANNING ACT 1990
relating to
land between New Road West, Grovefield Way,
Badgeworth Road and the A40, Cheltenham GL51 6RG**



Pinsent Masons

BETWEEN:-

1. **Ensco 1868 Limited** (Company Registration No 08995651) whose registered office is at 340 Melton Road, Leicester, LE4 7SL ("**Ensco**")
2. **Peter Michael Harris** of 154 Ulverscroft Lane, Newton Lindford, Leicester, LE6 0AJ ("**Peter Harris**");
3. **Vanessa Jane Harris** of 154 Ulverscroft Lane, Newton Lindford, Leicester, LE6 0AJ ("**Vanessa Harris**")
4. **Craig Lancelot Mitchell** of 40 Wakerley Road, Barrowden, Oakham, Leicestershire, LE15 8EF ("**Craig Mitchell**")
5. **M C Trustees Limited** (Company Registration No 06196502) whose registered office is at M W House 1 Penman Way, Grove Park, Enderby, Leicester, England LE19 1SY ("**MC Trustees**");

(together "**the Owners**")
6. **Hinton Properties (Grovefield Way) Limited** (Company Registration No 10164921) whose registered office is at The Old Council Chambers, Halford Street, Tamworth, Staffordshire, B79 7RB, (the "**Developer**");
7. **Barclays Bank plc** (Company Registration No 01026167) whose registered office is at 1 Churchill Place, London, E14 5HP ("**First Chargee**").
8. **Harris Cars plc** (Company Registration No 01587197) whose registered office is at 154 Ulverscroft Lane, Newton Lindford, Leicester, LE6 0AJ ("**Second Chargee**")

TO

9. **Cheltenham Borough Council** of Municipal Offices Promenade Cheltenham GL50 9SA, (the "**Council**");

INTRODUCTION:-

- (A) The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- (B) The Owners are the freehold owners of the Site which is registered at H M Land Registry with title numbers GR386623 and GR386708.
- (C) The First Mortgagee holds a charge dated 21 August 2014 over that part of the Site registered with freehold title number GR386623. The Second Mortgagee has a conditional contract dated 22 April 2013 registered over both registered titles relating to the Site.
- (D) The Developer will be entering into conditional contracts to acquire the Site from the Owners.
- (E) The Owners and the Developer consider that certain planning obligations should be entered into as at the date of this Deed so as 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 and planning obligations herein contained.

NOW THIS DEED WITNESSES as follows:-

OPERATIVE PART

1. DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:-

- "Act"** means the Town and Country Planning Act 1990
- "Application"** means the application for:
- full planning permission in respect of the Full Permission Area,
 - outline planning permission in respect of the Outline Permission Area,
- submitted to the Council for the Development and allocated reference number 16/02208/FUL;
- "Commencement of Development"** means the date on which any material operation (as defined in section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed 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 prior to and/or during construction of the Development, the temporary display of site notices or advertisements prior to and/or during construction of the Development and **"Commence Development"** shall be construed accordingly;
- "Development"** means the development of the Site as permitted by the Planning Permission and the terms of this Deed;
- "Implementation"** means any material operation (as defined in section 56(4) of the Act) carried out in relation to Office Building 1, and **"Implement"** shall be construed accordingly;
- "Full Permission Area"** means the area outlined in red on Plan 2
- "Non-Office Buildings"** means either or any of the buildings to be constructed on the Full Permission Area shown coloured yellow on Plan 2;
- "Occupation" and "Occupied"** means occupation or use for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration of the Development or occupation for marketing or display of the Development or occupation in relation to security operations for the Development during construction and **"Occupy"** shall be construed accordingly;

"Office Building 1"	means the building labelled Office 1 on Plan 2 proposed as part of the Application to be used for B1 use only.
"Office Building 2"	means the building labelled Office 2 on Plan 2 proposed as part of the Application to be used for B1 use only.
"Office Building 1 and 2 Access Road"	means the road hatched green on plan 2 proposed as part of the Application to access Office Building 1 and Office Building 2;
"Outline Permission Area"	means the area outlined in blue on Plan 2;
"Parking"	means a minimum of 102 parking spaces in the area outlined in pink on plan 2;
"Plan 1"	means the plan attached to this Deed labelled Plan 1;
"Plan 2"	means the plan attached to this Deed labelled Plan 2;
"Planning Permission"	means the planning permission to be granted by the Council pursuant to the Application;
"Reserved Matters"	has the same meaning as in the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended);
"Reserved Matters Application"	means an application for approval of Reserved Matters pursuant to the Planning Permission;
"Reserved Matters Approval"	means approval of a Reserved Matters Application;
"Site"	means the land against which this Deed may be enforced as shown edged red on Plan 1 located between New Road West, Grovefield Way, Badgeworth Road and the A40, Cheltenham GL51 6RG; and
"Working Days"	means any day except Saturday and Sunday or a bank holiday or any days which in England and Wales are public holidays

2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any Clause, Paragraph or Schedule or Introduction such reference (unless the context otherwise requires) is a reference to a Clause, Paragraph or Schedule or Introduction in this Deed.
- 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 against each individually 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' or 'Parties' to this Deed is a reference to the parties who are signatories to this Agreement or the successors in title to that party and to any body or persons deriving title from, through or under that party or from, through or under its successor in title and in the case of the Council the successors to its statutory functions.

2.7 The headings and contents list 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.

3.2 The covenants obligations and requirements imposed upon the Owners by this Deed create planning obligations pursuant to section 106 of the Act and are enforceable by the Council as local planning authority against the Owners and any body or persons deriving title from, through or under it or from, through or under its successors in title.

4. **CONDITIONALITY**

This Deed is conditional upon:-

4.1 the grant of the Planning Permission; and

4.2 the Commencement of Development

save for the provisions of Clauses 7 through to 14 inclusively, which shall come into effect immediately upon completion of this Deed.

5. **THE OWNER'S COVENANTS**

5.1 The Owner covenants with the Council as set out in Schedule 1.

6. **MISCELLANEOUS**

6.1 The Owners shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed.

6.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

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

6.4 Any notices shall be deemed to have been properly served if sent by recorded delivery:

6.4.1 to the principal address or registered office (as appropriate) of the relevant party if a partnership or company or to the last known address of an individual; and

6.4.2 in the case of the Council to the address set out at the beginning of this Deed (unless the Council has notified the parties in writing of an alternative address for service)

and postage shall be deemed to have been effected 48 hours after the notice was delivered into the custody of the postal authority for the United Kingdom.

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 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 expires prior to the Commencement of Development.
- 6.7 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 Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 6.8 Nothing in this Deed shall prohibit or limit the right to develop any part 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 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 statutory byelaws, statutory instruments, orders and regulations in the exercise of their functions as a local authority.

7. **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 covenants terms or conditions or from acting upon any subsequent breach or default.

8. **CHANGE IN OWNERSHIP**

The Owners agree with the Council to give the Council immediate written notice of any change in ownership of any of their interests in the Site 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 Site or unit of occupation purchased or leased by reference to a plan.

9. **DISPUTE PROVISIONS**

- 9.1 In the event of any dispute or difference arising between any of the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement between the parties to the dispute) by or on behalf of the president for the time being of the professional body chiefly relevant in England to 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 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 part 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 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 requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten working days.

10. **JURISDICTION**

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

11. **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.

12. **THE CHARGEES' CONSENT**

12.1 The First Chargee acknowledges and declares that:-

12.1.1 this Deed has been entered into by Ensco 1068 with its consent;

12.1.2 the part of the Site that falls under title number GR396623 shall be bound by the obligations contained in this Deed;

12.1.3 the security of the First Mortgagee over part of the Site that falls under title number GR396623 shall take effect subject to this Deed;

12.2 The Second Chargee acknowledges and declares that:-

12.2.1 this Deed has been entered into by Peter Harris, Vanessa Harris, Craig Mitchell and MC Trustees with their consent;

12.2.2 the part of the Site that falls under title number GR386708 and GR386623 shall be bound by the obligations contained in this Deed;

12.2.3 the security of the Second Mortgagee over part of the Site that falls under title number GR386708 and GR396623 shall take effect subject to this Deed

12.3 The First Mortgagee and the Second Mortgagee will be liable only for breaches of the provisions of this Deed occurring prior to or during such period as either is a mortgagee in possession of that part of the Site over which it has its security or is otherwise a successor in title and will not be liable for any breaches of the provisions of this Deed after either has parted with or released its respective interest in the Site.

13. **DEVELOPER'S CONSENT**

The Developer consents to the Owners entering into this Deed and acknowledges that it will be bound by the provisions of this Deed upon becoming a successor in title to the Site or any part or parts thereof.

14. **SECTION 73 VARIATION**

In the event that the Council shall at any time hereafter grant a planning permission pursuant to an application made under s73 of the Act in respect of conditions imposed on the Planning Permission, save and in so far as this Deed has been amended by a deed of variation prior to the grant of such planning permission, references in this Deed to the Application shall (save for the purposes of the definition of Planning Permission in relation to Clauses 4, 6.6 and 6.8) be deemed to include any such subsequent planning applications as aforesaid and this Deed shall henceforth take effect and be read and construed accordingly.

IN WITNESS whereof the parties hereto have executed this Deed and delivered the same on the day and year first before written.

SCHEDULE 1

DETAILS OF THE OWNERS' COVENANTS TO THE COUNCIL

The Owners covenant with the Council as follows:

1. Prior to the Commencement of Development to give written notice to the Director of Planning at the Council of the expected date of Commencement of Development.
2. Within 28 Working Days of the Commencement of Development to give written notice to the Director of Planning at the Council of the actual date of Commencement of Development.
3. Not to Occupy any of the Non-Office Buildings until Implementation has taken place.
4. Within 12 months of the date of Occupation of the first Non-Office Building to be Occupied to have completed construction of the Office Building 1 and 2 Access Road and the Parking.
5. Within 12 months of the date of Occupation of the first Non-Office Building to be Occupied to have completed construction of the structure and exterior, but not to have fitted out, Office Building 1.

EXECUTED AS A DEED by
ENSCO 1068 LIMITED
in the presence of:-

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)
)

Director

Director/Secretary

EXECUTED AS A DEED by
PETER MICHAEL HARRIS
in the presence of:-

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)
)

Peter Michael Harris

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)
)
)
)

Witness Name:

Witness Address:

Witness Occupation:

EXECUTED AS A DEED by
VANESSA JANE HARRIS
in the presence of:-

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)

Vanessa Jane Harris

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)
)
)
)

Witness Name:

Witness Address:

Witness Occupation:

EXECUTED AS A DEED by
CRAIG LANCELOT MITCHELL
in the presence of:-

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)
)

Craig Lancelot Mitchell

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)
)

Witness Name:

Witness Address:

Witness Occupation:

EXECUTED AS A DEED by
M C TRUSTEES LIMITED
in the presence of:-

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)
)

Director

Director/Secretary

THE COMMON SEAL of
GLOUCESTERSHIRE COUNTY COUNCIL
was affixed in the presence of:-

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)
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Head of Legal Services

EXECUTED AS A DEED by
HINTON PROPERTIES (GROVEFIELD WAY)
LIMITED
in the presence of:-

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Director

Director/Secretary

EXECUTED AS A DEED by
BARCLAYS BANK PLC
in the presence of:-

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Director

Director/Secretary

EXECUTED AS A DEED by
HARRIS CARS PLC
in the presence of:-

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Director

Director/Secretary

THE COMMON SEAL of
CHELTENHAM BOROUGH COUNCIL
was affixed in the presence of:-

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)
)

Authorised Signatory