



DATED 14<sup>th</sup> March 2012

PEEL INVESTMENTS (NORTH) LIMITED

TO

LIVERPOOL CITY COUNCIL

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**DEED OF UNILATERAL UNDERTAKING**

Pursuant to Section 106 of the Town and Country  
Planning Act 1990 (as amended)

Relating to Land at Speke Boulevard, Liverpool

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Professional. Legal. People.

**DWF LLP**

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THIS DEED OF UNDERTAKING is made the 14<sup>th</sup> day of March 2012

BY:

- (1) PEEL INVESTMENTS (NORTH) LIMITED (Company Number 187724) whose registered office is at Peel Dome The Trafford Centre Manchester M17 8PL ("the Owner")

TO:

- (2) LIVERPOOL CITY COUNCIL of Municipal Buildings Dale Street Liverpool L2 2DH ("the Council")

WHEREAS:

- (A) For the purposes of the 1990 Act the Council is the Local Planning Authority for the area within which the Site is situated
- (B) The Owner is the freehold owner of the Site at HM Land Registry under Title Number MS458857
- (B) The Owner has submitted the Planning Application to the Council for Planning Permission for the Development
- (C) The Council has resolved to grant the Planning Permission subject to the completion of this Undertaking
- (D) This Undertaking is made pursuant to the provisions of Section 106 of the 1990 Act and is a planning obligation for the purposes of Section 106 of the 1990 Act and is enforceable by the Council

**NOW THIS DEED WITNESSES AND IT IS HEREBY AGREED** as follows:

1. DEFINITIONS

In this Undertaking unless the context otherwise requires the following definitions shall have the following meanings:-

<u>Expression</u>	<u>Meaning</u>
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"1990 Act"	means the Town and Country Planning Act 1990 (as amended)
"Commencement Date"	means the date on which the Development commences by the carrying out on the Site pursuant to the Planning Permission of material operation as specified in Section 56(4) of the 1990 Act 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 works for any temporary access diversions and laying of services erection of any temporary means of enclosure or site compound the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly
"Development"	means the erection of a public house two drive through restaurants and two restaurant/diner units with associated parking and landscaping
"Highways Contribution"	means the sum of fifteen thousand pounds (£15,000) to be used by the Council for the proposed improvements to [ the junction of Speke Boulevard / Speke Hall Avenue / Speke Road / Speke Hall Road. The contribution is to be used to increase the length of the right turn lanes on Speke Hall Avenue northbound and/or Speke Boulevard westbound.
"Index"	means the All Items Index of Retail Prices issued by the Office for National Statistics or any successor organisation and in the event of the said Index being discontinued the nearest equivalent index

"Legal Fees"	means the sum of one thousand pounds (£1,000) payable in respect of the Council's legal expenses in the preparation and approval of this Undertaking
"Occupation"	means Occupation for the purposes permitted by the Planning Permission but not including Occupation by persons engaged in construction fitting out or decoration or occupation from marketing or display or occupation in relation to security operations
"Plan"	means the plan attached hereto
"Planning Application"	means an application for the carrying out of the Development made by the Owner received by the Council on 30 June 2011 carrying the reference 11F/1459
"Planning Permission"	means planning permission to be granted for the Development in pursuance of the Planning Application
"Site"	means the land shown for identification purposes only edged red on the Plan

## 2. INTERPRETATION

The clause headings in this Undertaking are for reference only and do not affect its construction or interpretation

- 2.1 References to clauses are to the clauses of this Undertaking unless otherwise stated
- 2.2 Words importing one gender include any other genders and words importing the singular include the plural and vice versa
- 2.3 A reference to a person includes a reference to a firm company authority board department or other body and vice versa
- 2.4 Unless this Undertaking states otherwise any reference to any legislation (whether specifically named or not) includes any modification extension amendment or re-enactment of that legislation for the time being in force and all instruments orders

notices regulations directions byelaws permissions and plans for the time being issued or given under that legislation or deriving validity from it

- 2.5 References to the Site include any part of it
- 2.6 References to any party in this Undertaking include the successors in title of that party and in the case of the Council include any successor local planning authority
- 2.7 References to "including" means "including without limitation"
- 2.8 Any covenant not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing
- 2.9 Where two or more people form a party to this Undertaking the obligations they undertake may be enforced against them all jointly or against each of them individually
- 2.10 If any provision is held to be illegal invalid or unenforceable the legality validity and enforceability of the remainder of this Undertaking shall be unaffected

### 3. LEGAL EFFECT

- 3.1 This Undertaking is made pursuant to section 106 of the 1990 Act
- 3.2 To the extent that they fall within the terms of Section 106 of the 1990 Act the obligations contained in this Undertaking are planning obligations for the purpose of section 106 of the 1990 Act and to the extent that any of the obligations contained in this Undertaking are not planning obligations within the meaning of the 1990 Act they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972 section 2 of the Local Government Act 2000 and all other enabling powers
- 3.3 The Council is the local authority having the power to enforce the planning obligations contained in this Undertaking
- 3.4 This Undertaking is capable of and may be registered as a local land charge by the Council
- 3.5 Nothing in this undertaking:

- (a) Prohibits or limits the right to develop any part of the Site in accordance with a planning permission other than one relating to the Development as specified in the Planning Application granted after the date of this Undertaking whether or not pursuant to an appeal;
- (b) Shall require the performance of any obligation whatsoever in upon or under land outside the Site;
- (c) Shall be construed as restricting the exercise by the Council of any powers exercisable by it under the 1990 Act or under any other Act in the exercise of its function as local authority

3.6 No person will be liable for any breach of the terms of this Undertaking occurring after parting with their interest in the Site or the part of the Site in respect of which such breach occurs but they will remain liable for any breaches of this Undertaking occurring before that date

3.7 In the event that the Council shall at any time hereafter grant a planning permission pursuant to the application made under Section 73 of the Town and Country Planning Act 1990 in respect of the conditions of the Planning Permission (and for no other purpose whatsoever) references in this Undertaking to Planning Permission shall be deemed to include any such subsequent planning permissions or approvals of reserved matters granted as aforesaid and this Undertaking shall henceforth take effect and be read and construed accordingly PROVIDED THAT the Council and the Owner shall agree such in writing by exchange of correspondence

#### 4. COMMENCEMENT

The obligations contained in this Undertaking will only take effect on the Commencement Date save for the second obligation set out in Schedule 1 which takes effect upon execution of this Undertaking.

#### 5. OBLIGATIONS

The Owner covenants with the Council to perform and comply with the obligations and restrictions set out in the First Schedule

#### 6. PAYMENT OF SUMS TO THE COUNCIL

Payment of the Highways Contribution under this Undertaking by the Owner in accordance with the terms of this Undertaking is conditional upon the Council giving the Owner its prior written agreement that it will:-

- 6.1 Pay the Highways Contribution into an account and expend all monies paid by the Owner to the Council in the manner and solely for the purpose for which the Highways Contribution was paid as soon as reasonably possible following receipt of payment from the Owner provided always that if any part of the Highways Contribution has not (in total) been expended or committed for expenditure for the purposes for which the Highways Contribution was paid within five (5) years after the date of payment of the Highways Contribution then any part of the Highways Contribution which remains unexpended or uncommitted at that date shall be reimbursed by the Council to the Owner with any interest actually accrued thereon such interest to be calculated for the period during which the sum repaid has been within the Council's control and for the purposes of this deed "committed" shall mean that a payment or part payment of the Highways Contribution has been authorised either by committee resolution the appropriate executive member or by an officer with appropriate written delegated authority

## 7. TERMINATION OF THIS UNDERTAKING

This Undertaking will come to an end if:-

- (a) The Planning Permission is quashed revoked or otherwise withdrawn or modified at any time so as to render this Undertaking or any part of it irrelevant impractical or unviable; or
- (b) The Planning Permission expires before the Commencement Date without having been implemented

## 8. NOTICES

- 8.1 Any notice demand or any other communication served under this Undertaking will be effective only if delivered by hand or sent by first class post pre-paid or recorded delivery
- 8.2 Any notice demand or any other communication served shall be sent to the address of the relevant party set out at the beginning of this Undertaking or to such other

address as one party may notify in writing to the others at any time as its address for service

8.3 Unless the time of actual receipt is proved a notice demand or communication sent by the following means shall be treated as having been served:

- (a) If delivered by hand at the time of delivery;
- (b) If sent by post on the second working day after posting; or
- (c) If sent by recorded delivery at the time delivery was signed for

8.4 If a notice demand or any other communication is served after 4PM on a working day or on a day that is not a working day shall be treated as having been served on the next working day

8.5 For the avoidance of doubt where proceedings have been issued in the Courts of England and Wales the provisions of the Civil Procedure Rules must be complied with in respect of those proceedings

9. INDEXATION

Any sum referred to in the Schedule to this Undertaking as being payable by the Owner shall be adjusted by an amount equivalent to the change in the Index from the date hereof until the date on which the sum is payable

10. SERVICE PROVIDER

The obligations under this Undertaking shall not be binding or enforceable against any statutory undertaker or other person who acquires any part of the Site or interest therein for the purpose of the supply of electricity gas water drainage telecommunications services or public transport services

11. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

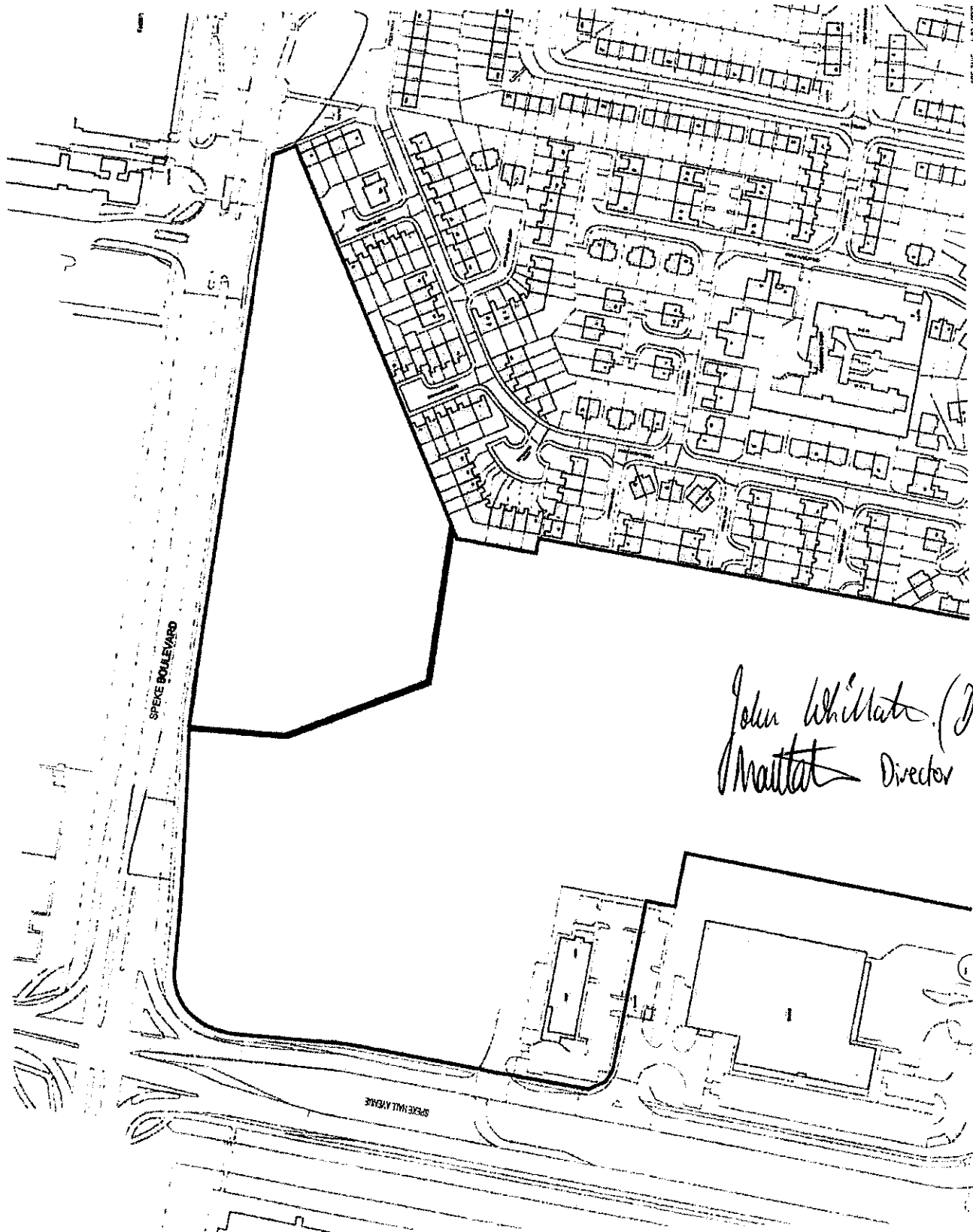
The parties to this Undertaking do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it

12. JURISDICTION



This Undertaking shall be governed by the laws of England and Wales and the Courts of England shall have sole jurisdiction in respect of the construction of this Undertaking and as to the respective rights and liabilities of the parties

IN WITNESS whereof the Council and the Owner have executed this Undertaking as a Deed and delivered it the day and year as stated at the beginning of this document



John Whillate (Director)  
Mantat Director

01 Proposed Location Plan

Scale 1:1250 @ A2

Rev	Description	Date	By	Check
1	PEEL REQUIRED SITE AND AREA ADDED TO DRAWING	04.03.11	PM	GB
2	DRAWING UPDATED TO INCLUDE TPO FOR THE STREET PARALLELS	05.01.11	WP	GB
3	DRAWING UPDATED TO SHOW ALTERATIONS AS REQUESTED	28.10.10	WP	GB
4	SITE BOUNDARY ADDED TO INCLUDE ROAD JUNCTION	10.09.10	WP	GB

Status	Purpose for Issue
Working	<input checked="" type="checkbox"/> Planning
Construction	<input type="checkbox"/> As Built

Client  
PEEL DEVELOPMENTS (UK) LTD

Contract  
PROPOSED DEVELOPMENT  
WINGS  
SPEKE, LIVERPOOL

Drawing  
APPLICATION LOCATION PLAN

**bale taylor architects**  
www.bale-taylor.co.uk

incumbent house  
24 canterbury street  
manchester m1 4sp  
t: 0161 274 1000  
f: 0161 274 1001  
mobile: 07794 100001

Drawing No: MH405-200  
Revision: D  
Scale: 1:1250 @ A2  
Date: JUL '10  
Drawn: WP  
Checked: GB

This drawing is the copyright of the Architect and may not be reproduced without licence.  
DO NOT scale from this drawing

## **SCHEDULE 1**

### **Highways Contribution**

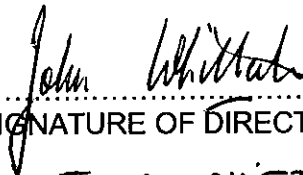
The Owner undertakes to the Council that prior to the Occupation of the Development it shall pay the Highways Contribution to the Council

### **Legal Fees**

The Owner undertakes to the Council that upon execution of this Undertaking it shall pay the Legal Fees to the Council

Executed as a Deed by  
PEEL INVESTMENTS (NORTH) LIMITED  
In the presence of two Directors or a  
Secretary/Director

)  
)  
)  
)



.....  
SIGNATURE OF DIRECTOR

JOHN WHITTAKER

.....  
NAME OF DIRECTOR



.....  
SIGNATURE OF DIRECTOR/SECRETARY

MARK WHITTAKER

.....  
NAME OF DIRECTOR/SECRETARY