

Dated

11 May

2006

- (1) REGAL EXECUTIVE HOMES (WEST) LIMITED
- (2) CLYDESDALE BANK PLC (TRADING AS YORKSHIRE BANK)

Undertaking

under section 106 Town and Country Planning Act 1990 relating to land at Pomona Place,
Hereford

Eversheds LLP
115 Colmore Row
Birmingham
B3 3AL

T +44 (0) 121 232 1000
F +44 (0) 121 232 1900
DX 13004 Birmingham
www.eversheds.com

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THIS UNDERTAKING is given on

11 May

2006

BY:

- (1) **REGAL EXECUTIVE HOMES (WEST) LIMITED** (registered number 05180271) whose registered office is at The Old Library, Vale Road, Stourport on Severn, Worcestershire DY13 8YS ("the Landowner"); and
- (2) **CLYDESDALE BANK PLC (TRADING AS YORKSHIRE BANK)** (registered number SC001111) whose registered office is at 30, St Vincent Place, Glasgow, G1 2HL ("the Lender");

TO:

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

BACKGROUND

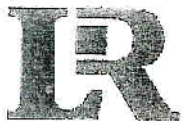
- (A) For the purposes of the 1990 Act, the Council is the local planning authority for the area within which the Site is located.
- (B) The Landowner is the freehold owner of the whole of the Site subject only to the Security but otherwise free from encumbrances that would prevent the Landowner entering into this Undertaking.
- (C) Pursuant to the Planning Application the Landowner has applied to the Council for full planning permission for the Development.
- (D) The Council has not determined the Planning Application. The Landowner enters into this undertaking to the intent that any objections of the Council to the grant of Planning Permission are overcome.
- (E) The Landowner considers that certain planning obligations should be entered into as at the date of this Undertaking, subject to the conditions set out in this Undertaking, in respect of the Site.
- (F) The Landowner has agreed to enter into this Undertaking with the intention that the obligations contained in this Undertaking may be enforced by the Council against the Landowner, the Lender and their respective successors in title. However, the Landowner does not intend that this Undertaking will take effect unless and until the Council determine that this Undertaking is necessary in order to overcome any objection to the grant of Planning Permission and, without this Undertaking, the Planning Permission would not otherwise be granted.

OPERATIVE PROVISIONS

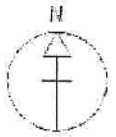
1. INTERPRETATION

1.1 In this Undertaking, the following words and expressions have the following meanings:

"1980 Act"	the Highways Act 1980
"1990 Act"	the Town and Country Planning Act 1990
"BCIS Index"	means adjusted in accordance with the percentage increase in the Building Cost Information Service All-In Tender Price Index compiled by the Royal Institute of Chartered Surveyors or any replacement index therefore calculated from the date of this Undertaking to the date of payment
"Commencement Date"	subject to clause 3.2 the date on which the Development commences by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act
"Development"	the development of the Site as a hotel, public house (A4 use) and residential premises.
"Education Acts"	has the meaning given to it in section 578 Education Act 1996
"the Index"	the "All Items" index figure of the Index of Retail Prices published by the Office for National Statistics or any successor ministry or department of government (or such alternative index or comparable measure of price inflation as the Council reasonably requires) calculated from the date of this Undertaking to the date of payment
"New Permission"	a planning permission authorising the redevelopment of the Site in a manner which would, if such redevelopment were completed, cause the Landowner to be in breach of any or all of the provisions contained in this Undertaking
"Plan"	the plan attached to this Undertaking



TITLE NUMBER
HE17930
 HEREFORDSHIRE



ORDNANCE SURVEY MAP REFERENCE: SO5039NW

SCALE: 1:1250

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SIGNED AS A DEED AND DELIVERED BY

YVONNE CYRUS
 on behalf of Clydesdale Bank PLC
 trading as Yorkshire Bank

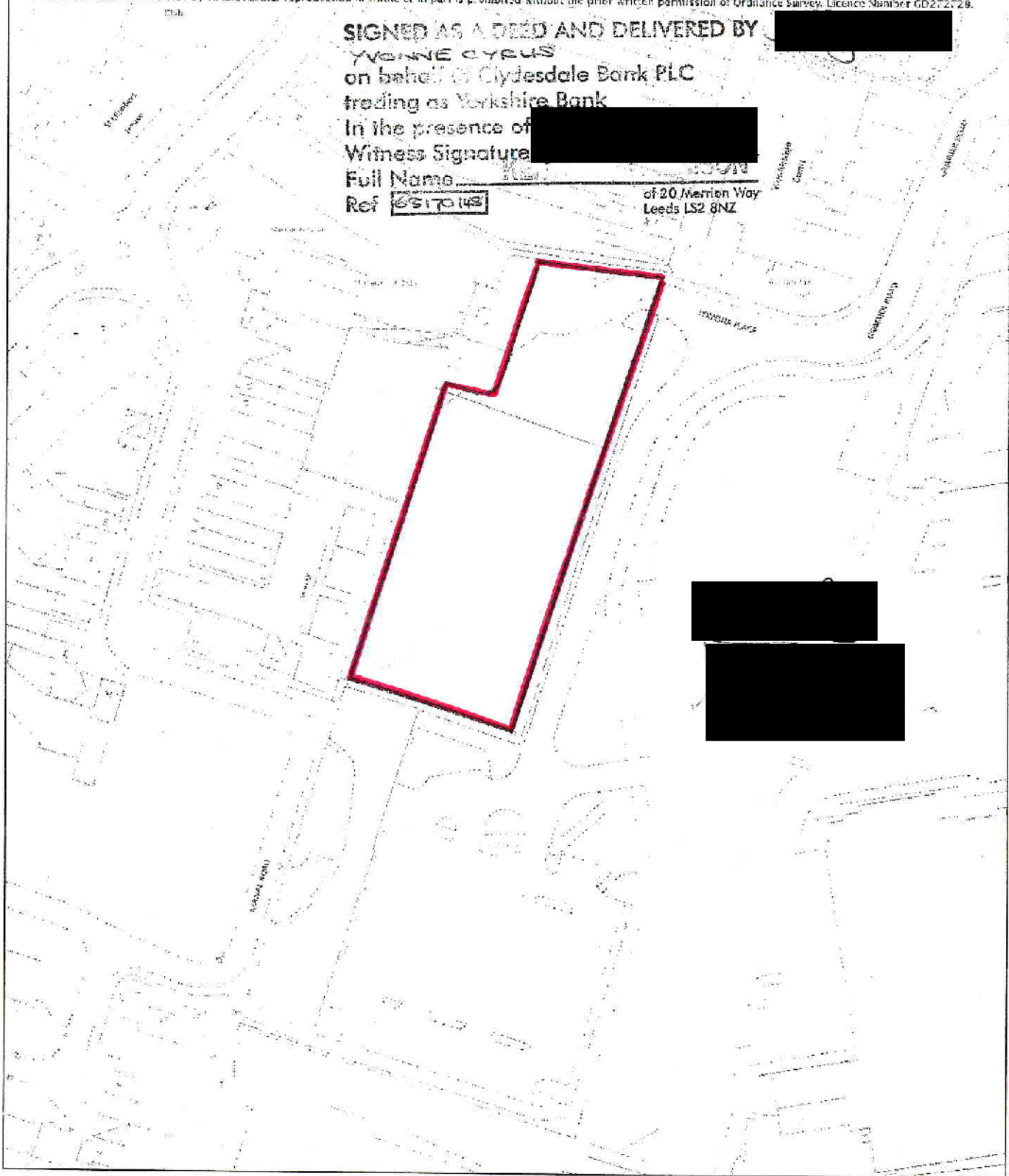
In the presence of

Witness Signature

Full Name

Ref **65170148**

of 20 Merriem Way
 Leeds LS2 8NZ



This title is dealt with by Land Registry, Telford Office.

This is a print of the view of the title plan obtained from HM Land Registry showing the state of the title plan on 12 APR 2006 at 16:34:15. It may not be to the scale shown on the title plan.

"Planning Application"	an application for full planning permission for the carrying out of the Development made by the Landowner carrying the reference DCCW2006/0960/F
"Planning Permission"	the planning permission that may be granted for the Development in pursuance of the Planning Application following the determination of the Planning Application
"Security"	a mortgage of the Site dated 3 May 2005 made between (1) the Landowner and (2) the Lender
"Site"	the freehold property known as Pomona Place, Hereford registered at HM Land Registry under the Title Number and shown for identification edged red on the Plan
"Title Number"	HE17930

1.2 In this Undertaking:

- 1.2.1 the clause headings do not affect its interpretation;
- 1.2.2 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Undertaking and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;
- 1.2.3 references to any statute or statutory provision include references to:
 - 1.2.3.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and
 - 1.2.3.2 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;
- 1.2.4 references to the Site include any part of it;
- 1.2.5 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 exercising planning powers under the 1990 Act and references to the Council include any successor local highway authority or local education authority exercising powers under the 1980 Act or the Education Acts;
- 1.2.6 "including" means "including, without limitation";

- 1.2.7 any covenant by the Landowner or the Lender not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing;
 - 1.2.8 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; and
 - 1.2.9 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Undertaking is to be unaffected.
- 1.3 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.

2. EFFECT OF THIS UNDERTAKING

- 2.1 This Undertaking is made pursuant to section 106 of the 1990 Act. 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 purposes of section 106 of the 1990 Act and are enforceable by the Council.
- 2.2 The Council is the local authority having the power to enforce the planning obligations contained in this Undertaking.
- 2.3 This Undertaking is capable of and may be registered as a local land charge by the Council.
- 2.4 Nothing in this Undertaking 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.

3. COMMENCEMENT DATE

- 3.1 The obligations contained in this Undertaking will only take effect on the date on which the Council grants the Planning Permission.
- 3.2 The Commencement Date will not be triggered by any of the following operations:
- 3.2.1 site investigations or surveys;
 - 3.2.2 site decontamination; and
 - 3.2.3 the demolition of any existing buildings or structures.

4. OBLIGATIONS OF THE PARTIES

- 4.1 The Landowner undertakes to comply with the obligations set out in **Schedule 1** in relation to the Development.
- 4.2 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. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site will constitute an interest for the purposes of this **clause 4.2**.

5. **TERMINATION OF THIS UNDERTAKING**

- 5.1 This Undertaking will come to an end if:
- 5.1.1 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;
 - 5.1.2 the Planning Permission expires before the Commencement Date without having been implemented; or
 - 5.1.3 at any time after the date of this Undertaking, the Council or any other competent authority grants a New Permission under which development is initiated for the purposes of section 56 of the 1990 Act

provided that **clause 5.1.1** above shall not entitle the Landowner to the repayment of any contribution paid to the Council and spent by the Council in accordance with the terms of this Undertaking.

6. **LENDER'S CONSENT**

- 6.1 The Lender consents to this Undertaking being entered into with the intention that, notwithstanding section 104 Law of Property Act 1925, its interest in the Site will be bound by the terms of this Undertaking as if it had been executed and registered as a local land charge before the execution of the Security.
- 6.2 Notwithstanding **clause 6.1**, the Lender will not incur any liability for any breach of the obligations contained in this Undertaking unless and until it becomes a mortgagee in possession of the Site or appoints a receiver or administrative receiver under the Security.

7. NOTICES

- 7.1 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.
- 7.2 Any notice, demand or any other communication served is to be sent to the address of the relevant party set out at the beginning of this Agreement or to such other address as one party may notify in writing to the others at any time as its address for service.
- 7.3 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:
- 7.3.1 if delivered by hand, at the time of delivery;
 - 7.3.2 if sent by post, on the second working day after posting; or
 - 7.3.3 if sent by recorded delivery, at the time delivery was signed for.
- 7.4 If a notice, demand or any other communication is served after 4.00 pm on a working day, or on a day that is not a working day, it is to be treated as having been served on the next working day.
- 7.5 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 the service of documents in connections with those proceedings.

8. JURISDICTION

- 8.1 This Undertaking is to be governed by and interpreted in accordance with the law of England and Wales.
- 8.2 The courts of England and Wales are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Undertaking.

9. LEGAL COSTS

On completion of this Undertaking the Landowner will pay to the Council their legal and administrative costs and disbursements reasonably incurred in connection with the acceptance of this Undertaking.

10. EXECUTION

The parties have executed this Undertaking as a deed and it is delivered on the date set out above.

SCHEDULE 1

Contributions

1. Defined terms

1.1 In this Schedule the following words and expressions have the following meanings:

"Camera Contribution"

either:

(i) the sum of THIRTY FIVE THOUSAND POUNDS (£35,000) together with the amount which represents the percentage increase in the Index payable in respect of the provision of one closed-circuit television camera on the Site and one closed-circuit television camera off the Site; or

(ii) in the event that the Landowner serves written notice on the Council prior to the occupation of the first residential dwelling on the Development to the effect that the Landowner intends to provide one closed-circuit television camera on the Site itself the sum of TWENTY SIX THOUSAND POUNDS (£26,000) together with the amount which represents the percentage increase in the Index

"Education Contribution"

the sum of SEVEN THOUSAND POUNDS (£7,000) together with the amount which represents the percentage increase in the Index in respect of the provision of an enhanced infrastructure for the nursery and primary schools within the catchment area of the Site

"Highway Contribution"

the payment of FIFTY ONE THOUSAND POUNDS (£51,000) together with the amount which represents the percentage increase in the BCIS Index in respect of the Highway Works

"Highway Works"

means all or any of the following:

- traffic calming and improved signing on Grimmer Road/Whitecross Road

- the Safe Routes for Schools Programme
- improved bus shelters/stops in the locality of the Site
- improvements to lighting to highway routes leading to the Site
- improved pedestrian and cyclist connectivity with the Site
- improvement and lighting to public footpaths in the vicinity of the Site

"Public Art Contribution"

the payment of one per cent (1%) of the total development costs of the Development for the provision of public art

Education Contribution

1.2 No residential dwellings forming part of the Development shall be occupied until the Education Contribution is paid to the Council by the Landowner on the condition that the Education Contribution is used solely towards the provision of an enhanced infrastructure for nursery and primary schools within the catchment area of the Site.

Highway Contribution

1.3 No residential dwellings forming part of the Development shall be occupied until the Highway Contribution is paid to the Council by the Landowner on the condition that the Highway Contribution is used solely towards the carrying out of the Highway Works.

Public Art Contribution

1.4 The Landowner hereby covenants with the Council to pay the Public Art Contribution to the Council and to provide the Council with evidence of actual development costs before the Landowner permits the first occupation of the hotel or the public house on the Development on the condition that the Public Art Contribution is used solely towards the provision of public art in the locality of the Development.

Camera Contribution

1.5 No residential dwellings forming part of the Development shall be occupied until the Camera Contribution is paid by the Landowner to the Council on the condition that

subject to the provisions of **Section 1.6** the Camera Contribution is used solely towards the provision of a closed-circuit television camera or cameras and its or their future maintenance.

- 1.6 If the Landowner has notified the Council that it intends to provide the closed-circuit television camera on the Site itself then the Landowner shall provide such a camera within 3 months of the first occupation of any residential dwelling forming any part of the Development and shall thereafter maintain the closed-circuit television camera at the Landowner's own expense.

SIGNED AS A DEED by
REGAL EXECUTIVE HOMES
(WEST) LIMITED
acting by a director and
its secretary or two directors

)
)
)
)
)

[Redacted]
[Redacted]

Director

Director / Secretary

[Redacted]

EXECUTED AS A DEED by
CLYDESDALE BANK PLC
(trading as YORKSHIRE BANK)
acting by

)
)
)
)

SIGNED AS A DEED AND DELIVERED
YVONNE CYRUS

on behalf of Clydesdale Bank PLC
trading as Yorkshire Bank

In the presence of

Witness Signature

[Redacted]

Full Name MERRYL HARRISON

Ref 0817048

of 20 Merrion Way
Leeds LS2 6NZ

Authorised Signatory