

Dated 1st August 2017

(1) MAGICARE LIMITED

and

(2) THE ROYAL BANK OF SCOTLAND PLC

to

(3) BARNSELY METROPOLITAN BOROUGH COUNCIL

**Deed of Unilateral Undertaking
Creating Planning Obligations under Section 106 Town and Country Planning Act 1990
Relating to Bollingbroke House Care Home (formerly "Coppins"), Common Road, Brierley,
Barnsley, South Yorkshire S72 9EA**

This DEED OF UNDERTAKING is made the 1st day of August 2017

BY

- (1) (the "Owner") MAGICARE LIMITED (Company number 05599876) of Magic House, 5/11 Green Lanes, London N13 4TN (formerly known as Flagswan Two Limited).
- (2) (the "Mortgagee") The Royal Bank of Scotland PLC of 1st Floor, Crompton House, Derwent Street, Derby, DE1 2EE

TO BARNSELY METROPOLITAN BOROUGH COUNCIL ("the Council") of PO Box 634 Barnsley, S70 9GG.

BACKGROUND

- (A) For the purposes of the Act, the Council is the local planning authority for the area within which the Site is located and the local planning authority which is entitled to enforce the obligations contained in this Deed of Undertaking.
- (B) The Owner is the freehold owner of the whole of the property known as Bollingbroke House Care Home (formerly "Coppins") Common Road, Brierley, Barnsley, South Yorkshire S72 9EA (the "Site") registered at the Land Registry with title absolute under the title SYK260159
- (C) The Owner has made the Planning Application to the Council for permission to develop the site according to the Planning Application.
- (D) The Owner give this Undertaking in anticipation of the grant of Planning Permission by the Council subject to the Owner entering into this Undertaking which makes provision for regulating the Development and securing the matters referred to in this Undertaking.
- (E) The Mortgagee is mortgagee of the Site under a legal charge dated the 8th day of February 2008 registered on the 21st day of February 2008.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. DEFINITIONS

"the Act"	the Town and Country Planning Act 1990;
"Commencement of Development"	shall mean the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development is begun other than (for the purposes of this 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 and "Commence Development" and similar expressions shall be construed

H.M. LAND REGISTRY		TITLE NUMBER	
		SYK 260159	
ORDNANCE SURVEY PLAN REFERENCE	SE 4110	SECTION	Scale 1/2500
COUNTY SOUTH YORKSHIRE		DISTRICT BARNSLEY	© Crown copyright 1982



	accordingly
"Development"	shall Mean the Erection of a four storey residential care building containing 32 extra care apartments as described in the Planning Application and in accordance with the Planning Permission
"Assessment"	A written report, carried out by an appropriate employee of The Operator to determine whether a potential Approved Occupier, on either initial occupation or any subsequent occupation, satisfies criteria (1) and (2) of the definition of Approved Occupier
"Approved Occupier"	Persons satisfying the following criteria: (1) They are over the age of 65 and/or are assessed as people being in need of care and support; and (2) They have undergone an Assessment defining them as a person in need of "Care Services"; and (3) The spouse or partner of an Approved Person residing with them as part of a single household.
"Care Services"	Personal care for people in need of such care by reason of old age, disablement, past or present mental disorder including medical care and treatment.
"Legal and Administrative Costs Contribution"	Shall mean a contribution of £1000 (one thousand pounds) to the legal and administrative costs of the Council in considering and approving this Undertaking
"Owner"	shall mean MAGICARE LIMITED (Company number 05599876) of Magic House, 5/11 Green Lanes, London N13 4TN (formerly known as FLAGSWAN TWO LIMITED
"The Operator"	MAG!CARE LIMITED, or their successors in title and/or a separate company employed by the "the Owner" of the "Development" who in each case shall be registered with the Care Quality Commission under the Health and Social Care Act 2008, who shall be responsible for the ongoing management, operation and provision of the "Care Services" to "Approved Occupiers" as required.

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"Plan"	shall mean the Plan annexed to this Undertaking
"Planning Application"	shall mean the application for planning permission submitted to the Council for the Development and allocated reference number 2016/0964 by the Council.
"Planning Permission"	shall mean the Planning Permission which may be granted by the Council pursuant to the Planning Application
"Site"	Means the freehold property at Bollingbroke House Care Home, Common Road, Brierley, Barnsley, S72 9EA as shown edged in red on the Plan and registered at the Land Registry under the Title Number SYK260159
"Undertaking"	Shall mean this Deed of Undertaking

2. INTERPRETATION AND CONSTRUCTION

- 2.1 The clause headings in this Undertaking are for reference only and do not affect its construction or interpretation.
- 2.2 References to clauses and Schedules are to the clauses and Schedules of this Undertaking, unless stated otherwise.
- 2.3 A reference to a paragraph is to the paragraph of the Schedule in which the reference is made, unless stated otherwise.
- 2.4 Words importing one gender include any other genders and words importing the singular include the plural and vice versa.
- 2.4 A reference to a person includes a reference to a firm, company, authority, board, department or other body and vice versa.
- 2.6 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, policies and plans for the time being made, issued or given under that legislation or deriving validity from it.
- 2.7 References to the Site include any part of it.
- 2.8 References to "written" "writing" or "written down" does not include faxes or e-mail.
- 2.9 References to any party in this Undertaking include the successors in title of that party and any references to the Council include any successor local planning authority exercising planning powers under the Act.

- 2.10 References to "including" means "including, without limitation" and where appropriate in context shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 2.11 Words imposing an obligation on a party to do any act whatsoever include an obligation to procure that act and words placing a party under a restriction include an obligation not to cause permit or suffer any infringement of that obligation.
- 2.12 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.
- 2.13 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. EFFECT OF THIS UNDERTAKING

- 3.1 This Undertaking is made by Deed pursuant to Section 106 of the Act.
- 3.2 To the extent that they fall within the terms of section 106 of the Act, the obligations contained in this Undertaking are planning obligations for the purposes of section 106 of the Act and are enforceable by the Council against the Owner.
- 3.6 The remedies provided in this Undertaking are cumulative and not exclusive of any remedies provided by law.
- 3.7 None of the terms of this Undertaking may be rescinded or varied except in accordance with Sections 106A and 106B of the Act.

4. COMMENCEMENT

- 4.1 Unless otherwise provided, this Undertaking its terms provisions covenants and obligations shall have effect from the date first shown above.
- 4.2 The Owners shall give to the Council not less than seven days written notice of intention to Commence Development on the Site and shall confirm in writing within seven days following Commencement of Development that it has Commenced PROVIDED THAT failure to provide either of the said notifications shall not render this Undertaking inoperative.
- 4.3 The Owner(s) shall be deemed to have Commenced the Development pursuant to the Planning Permission if they Commence works referable to the Development amounting to a material operation as defined in Section 56(4) of the Act (not being works for which planning permission is not required) on the Site whether or not:
- 4.3.1 The Owner has satisfied all conditions precedent to Commencement of Development set out in the Planning Permission
- 4.3.2 Those works are in accordance with the Planning Permission

5. OBLIGATIONS OF THE PARTIES

- 5.1 The Owner hereby UNDERTAKES AND COVENANTS as owner of the Site and so as to bind their interest in the Site with the Council to comply with its obligations as set out in this Undertaking and the Schedule in relation to the Development.
- 5.2 Where in this Undertaking the Owner undertakes to comply with any requirement prior to Commencement of Development the Owner shall not Commence Development nor permit any other person to Commence Development before the said requirement has been satisfied.
- 5.3 Where any payment is made in accordance with this Unilateral Undertaking it shall be provided with notice in writing giving the date of this Unilateral Undertaking and to the effect that it is paid in accordance with this Unilateral Undertaking and including reference to the Planning Application reference number assigned by the Council to the Planning Application

6. MORTGAGEE PROVISIONS

- 6.1 The Owner acknowledges the interest of the Mortgagee in the Site and hereby declares that other than the Mortgagee there are no third party interests which would require any other party to give this Unilateral Undertaking
- 6.2 The Owner hereby agrees to indemnify and keep indemnified the Mortgagee from and against all action, costs, claims and demands of whatsoever nature arising out of any breach or non-observance of the terms in this Unilateral Undertaking
- 6.3 The Mortgagee acknowledges and declares that this Unilateral Undertaking has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Unilateral Undertaking and that the security of the mortgage over the Site shall take effect subject to this Unilateral Undertaking
- 6.4 The Mortgagee shall have no liability for breaches of the obligations made under this Unilateral Undertaking except for a breach of the Unilateral Undertaking that it has itself caused whilst mortgagee in possession of the Site in which case it shall also be bound by the obligations as if it were a person deriving title from the Owner

7. REGISTRATION

- 6.1. The Owner(s) acknowledge that this Undertaking is a Local Land Charge and registrable as such the Register of Local Land Charges maintained by the Council.

8. NOTIFICATION

- 8.1 Any notice, demand or any other communication served under this Undertaking will be delivered by hand or sent by first or second 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 and in the case of service upon the Council shall be marked for the attention of the City Solicitor.

- 8.3 The Owner (mortgagee etc) undertakes to give the Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Undertaking 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 details of the area of the Site transferred to the transferee by reference to a plan.

9. TERMINATION

- 9.1 In so far only as it has not already been complied with this Undertaking shall lapse and be of no further effect if:

9.1.1 the Planning Permission is quashed, revoked or otherwise withdrawn at any time so as to render this Agreement or any part of it irrelevant, impractical or unviable or

9.1.2 the Planning Permission expires before the Commencement of Development without having been implemented

9.1.3 the Council refuses to grant the Planning Permission in respect of the Planning Application

10. COSTS

The Owner shall pay to the Council on completion of this Undertaking the Legal and Administrative Costs Contribution.

IN WITNESS whereof the parties hereto have caused this Undertaking to be executed as a deed the day and year first before written

**SIGNED AS A DEED by
MAGICARE LIMITED :**

Acting by a Director


In the presence of


Witness (Signature)


Name (Block caps)

Address:

**SIGNED AS A DEED by
THE ROYAL BANK OF SCOTLAND PLC**


.....
Director


.....
MINESH SHAH
.....
5 RIVERBEND, EDWARE,
HA8 9TA


.....
PHILIP LAING
DIRECTOR.

**ENFIELD COMMERCIAL BUSINESS CENTRE
3RD FLOOR, LOUGH POINT
2 GLADBECK WAY, WINDMILL HILL
ENFIELD, EN2 7JA**

SCHEDULE

THE OCCUPATION OF EXTRA CARE/ASSISTED LIVING APARTMENTS

The Owner(s) for themselves and their successors in title to the Site covenant as follows:

1. The use of each and every approved extra care/assisted living apartment by an Approved Occupier and or the spouse or partner of an Approved Occupier residing with them as part of a single household shall be restricted to that falling within Class C2 of the Town and Country Planning Act (Use Classes) Order 1987 as amended in accordance with the terms of the approved Planning Application.
2. That no extra care/assisted living apartment shall be occupied other than by an Approved Occupier or a person living with an approved occupier as part of a single household or a person who was living with part of a single household with the Approved Occupier who has now left.
3. That the Operator will carry out the "the Assessment" of all potential Approved Occupiers and the Operator must be satisfied that the Approved Occupier qualifies as an Approved Occupier prior to their occupation of any of the extra care apartments forming part of the Development.
4. That "the Operator" will keep written records of the Assessment of Approved Occupiers which shall be reviewed by the Council on written request within a reasonable time period of such a written request.
5. That "the Operator" shall provide or arrange for the supply and delivery of the Care Services to the Approved Occupiers as identified in the Assessment and as varied by regular ongoing reviews of care and support needs.

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