

Draft: 8th January 2010 by Wragge & Co LLP

10/0076/FUL

DATED

2010

RECEIVED

12 JAN 2010

PLANNING

Young & Co's Brewery Plc

To

**The Mayor and Burgesses of the
London Borough of Richmond Upon Thames**

DEED OF UNILATERAL UNDERTAKING
made under Section 106 of the Town &
Country Planning Act 1990 relating to land at
The Shakespeare Public House,
1 Shakespeare Terrace, Lower Richmond
Road, Richmond

Wragge&Co

3 Waterhouse Square
142 Holborn
London
EC1N 2SW

Draft: 8th January 2010 by Wragge & Co LLP

THIS UNILATERAL UNDERTAKING is made as a Deed the day of
two thousand and ten

BY

YOUNG & CO'S BREWERY PLC (company registration 00032762) whose registered office
is situate at Riverside House, 26 Osiers Road, Wandsworth, London SW18 1NH ("**the
Owner**")

IN FAVOUR OF

**THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF RICHMOND
UPON THAMES** of Civic Centre 44 York Street Twickenham Middlesex TW1 3BZ ("**the
Council**")

INTERPRETATION

IN this Deed the following words and expressions shall have the following meanings:-

"1990 Act"	the Town & Country Planning Act 1990 as amended or any re-enactment or modification thereof for the time being in force
"Accredited Car Club Provider"	an organisation accredited in the United Kingdom by Car Plus which provides cars for use by members of a Car Club in consideration of payment therefor
"Car Club"	a local club operated and managed by an Accredited Car Club Provider in which members can book cars owned by the Accredited Car Club Provider and parked in specifically reserved car club spaces and use them for the period of the booking
"Car Plus"	the national charity promoting responsible car use and which operates an accreditation scheme for Car Clubs
"Controlled Parking Zone"	a parking scheme established and operated by the Council in which on-street parking in a particular area is restricted to only those vehicles with parking permits issued by the Council for that scheme
"DCM"	the Council's Development Control Manager for the time being or such other person as may be appointed from time to time to carry out that function
"Development"	the development described in the Planning Permission

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"Material Start"	the carrying out in relation to the Development of a material operation as defined in Section 56(4) of the 1990 Act save that such shall not include works of demolition; works of site clearance; ground investigations site survey works; laying of services and service media; construction of temporary accesses; archaeological investigation; landscaping works off the public highway; and noise attenuation works
"Monitoring Fee"	the sum of one hundred and twenty five pounds (£125)
"Occupation"	beneficial occupation of the Development for any purpose authorised by the Planning Permission but not including occupation for the purposes of site security, finishing or decoration, construction, fitting out, or marketing, and "Occupied" and "Occupy" shall be construed accordingly
"Planning Application"	a planning application submitted by the Owner to the Council and registered as valid by the Council on • January 2010 bearing reference number • for redevelopment of the Property to provide nine flats (of 1 and 2 bedrooms) and associated works, through the conversion of the existing building at the Property and part 2, 3 and 4 storey development (revised application)
"Planning Permission"	the planning permission issued by the Council pursuant to the Planning Application in the form appended at Schedule 2 of this Deed
"Property"	land known as The Shakespeare Public House, 1 Shakespeare Terrace, Lower Richmond Road, Richmond TW9 4PL, delineated in red on the plan appended at Schedule 1 of this Deed
"Residential Units"	the nine residential units for private sale on the open market incorporated in the Development and comprising 1 and 2 bedroom flats

WHEREAS:

- (1) the Council is the local planning authority for its administrative area within which the Property is situate for the purposes of the 1990 Act and for the purposes of Section 106(9) of the 1990 Act is the local planning authority by whom the planning obligations contained within this Deed are enforceable
- (2) the Owner is registered at the Land Registry with absolute title under Title Number SY38966 as the proprietor of the freehold interest in the Property
- (3) in the Richmond upon Thames Unitary Development Plan: First Review 2005 saved policy TRN 2 provides that the Council will only permit new development or changes of use where it can be demonstrated that the transport infrastructure can accommodate it, or be adapted to do so, without creating congestion and hazards on the road network

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- (4) in the Richmond upon Thames Unitary Development Plan: First Review 2005 the supporting text to saved policy TRN 4 provides that where the demand for on-street residents parking within a Controlled Parking Zone is considered by the Council to be close to saturation and car parking on site would preclude the optimum utilisation of land or building or would have an adverse impact on residential amenity then the Owner of the Property would need to enter into a section 106 agreement for the purpose of restricting the provision of on-street parking permits
- (5) in December 2006 the Council adopted as Supplementary Planning Guidance a Car Club Strategy which provides inter alia that the Council will encourage new car club provision in the locality of a development through the Council's preferred Accredited Car Club Provider or, where appropriate and where capacity exists, affiliation to the preferred Accredited Car Club Providers Car Club
- (6) the Owner has agreed to enter into this Deed so that it may be taken into account as a material consideration in the determination of the Planning Application by the Council

NOW THIS DEED WITNESSETH as follows:-

1 GOVERNING LEGAL PROVISIONS

- 1.1 THIS Deed is made pursuant to Section 106 of the 1990 Act and the obligations contained in this Deed are planning obligations for the purposes of that section insofar as they fall within the terms of Section 106 of the 1990 Act

2 CONDITIONAL ENTRY INTO FORCE

- 2.1 The provisions of Clause 1, this Clause 2, Clause 4.1 and the provisions contained in Schedule 1 and Schedule 2, all have operative effect immediately upon completion of this Deed
- 2.2 The provisions of Clause 3 of this Deed are conditional upon and will not have operative effect unless and until both of the following have occurred, namely:
 - (a) the grant of the Planning Permission; and
 - (b) the occurrence of a Material Start

3. THE OWNER'S OBLIGATIONS

THE Owner hereby **UNDERTAKES** to the Council:-

- (a) if the highways abutting the Development are situated within a Controlled Parking Zone when the Residential Units or any of them are first Occupied then the Owner shall not allow any person to Occupy any of the Residential Units unless a notice has been served on such person that pursuant to the Council's policies to which reference is made in Recital (4) hereof or any other policy replacing the same:
 - i. the owners and occupiers of the Residential Units shall not be entitled (unless such person is or becomes entitled to be a holder of a Disabled Persons' Badge issued pursuant to Section 21 of the Chronically Sick and

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Disabled Persons' Act 1970) to be granted an on street parking permit to park a vehicle in any marked highway bay or other place within the Controlled Parking Zone within which the highways abutting the Development are situated ;

- ii. nor will the Council enter into a contract (other than individual contracts for one occasion) with any of the owners or occupiers of the Residential Units to park in any car park controlled by the Council
- (b) Not to Occupy or permit or allow the Occupation of any part of the Development until:-
- i. it has procured that each Residential Unit has free membership of the Car Club present on the Development (one per household) for the lifetime of the Development and has provided a copy of the final signed and dated contract with the Accredited Car Club Provider to the DCM
 - ii. it has promoted and advertised to each potential Occupier of the Development the value and benefits of membership of a Car Club
 - iii. it has included a provision in any lease, licence or tenancy agreement affecting the whole or any part of the Property that each Residential Unit shall be entitled to belong to the Car Club at the Property
 - iv. it has provided and distributed, or through the Accredited Car Club Provider has procured, the provision and distribution of marketing literature to residents of the Development that publicises the benefits of membership of the Car Club

4. THE COUNCIL'S COSTS

- 4.1 The Owner shall on the date hereof pay to the Council the Council's reasonable legal costs incurred in the preparation and completion of this Deed in the sum of four hundred pounds (£400)
- 4.2 The Owner shall not carry out or permit the carrying out of a Material Start until it has paid to the Council the Monitoring Fee

5. GENERAL-

- 5.1 Reference to the masculine feminine and neuter genders shall include the other genders and reference to the singular shall include the plural and vice versa
- 5.2 A reference to a clause is a reference to a clause contained in this Deed
- 5.3 The expressions "the Council" and "the Owner" shall include their respective successors in title and assigns
- 5.4 This Deed is a Local Land Charge and shall be registered as such in the Council's Register of Local Land Charges immediately on completion thereof

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- 5.5 References in this Deed to any statutes or statutory instruments shall include and refer to any statute or statutory instrument amending consolidating or replacing them respectively from time to time and for the time being in force
- 5.6 The construction validity and performance of this Deed shall be governed by English Law
- 5.7 In the event of the Planning Permission being revoked by the Council or any other authority having powers in relation to planning matters or otherwise withdrawn or modified by any statutory procedure without the consent of the Owner or its successors in title the obligations of the Owner under this Deed shall thereupon cease absolutely
- 5.8 The provisions hereof shall be enforceable by the Council against the Owner and all persons who shall have derived title through or under it in respect of the Property but so that no person shall be liable to the Council for any breach of the provisions committed after such a person has parted with all of their respective interests therein or the part in respect of which such breach occurs (as the case may be) but without prejudice to any rights of the Council in relation to any antecedent breach of those obligations or covenants
- 5.9 Any covenant contained herein whereby the relevant party is not to do an act or thing shall be construed as if it were a covenant not to do or permit or suffer to be omitted such act or thing and any covenant whereby the relevant party is not to omit to do an act or thing shall be construed as if it were a covenant not to omit or permit or suffer such act or thing to be omitted to be done
- 5.10 The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed and no person who is not a party to this Deed is to have the benefit of or be capable of enforcing any term in this Deed and no party is to have any rights to enforce this Deed other than those falling within the definitions of the Council and the Owner
- 5.11 This Deed shall be deemed to have been revoked and be of no effect (without any further act or deed on the part of either the Council or the Owner) if a Material Start has not taken place within 3 years of the date of this Deed or the Planning Permission having been granted shall be varied or revoked other than at the request of the Owner or the Planning Permission having been granted is quashed following a successful legal challenge

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SCHEDULE 1

PLAN OF THE PROPERTY

Draft: 8th January 2010 by Wragge & Co LLP

SCHEDULE 2

THE PLANNING PERMISSION

Draft: 8th January 2010 by Wragge & Co LLP

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