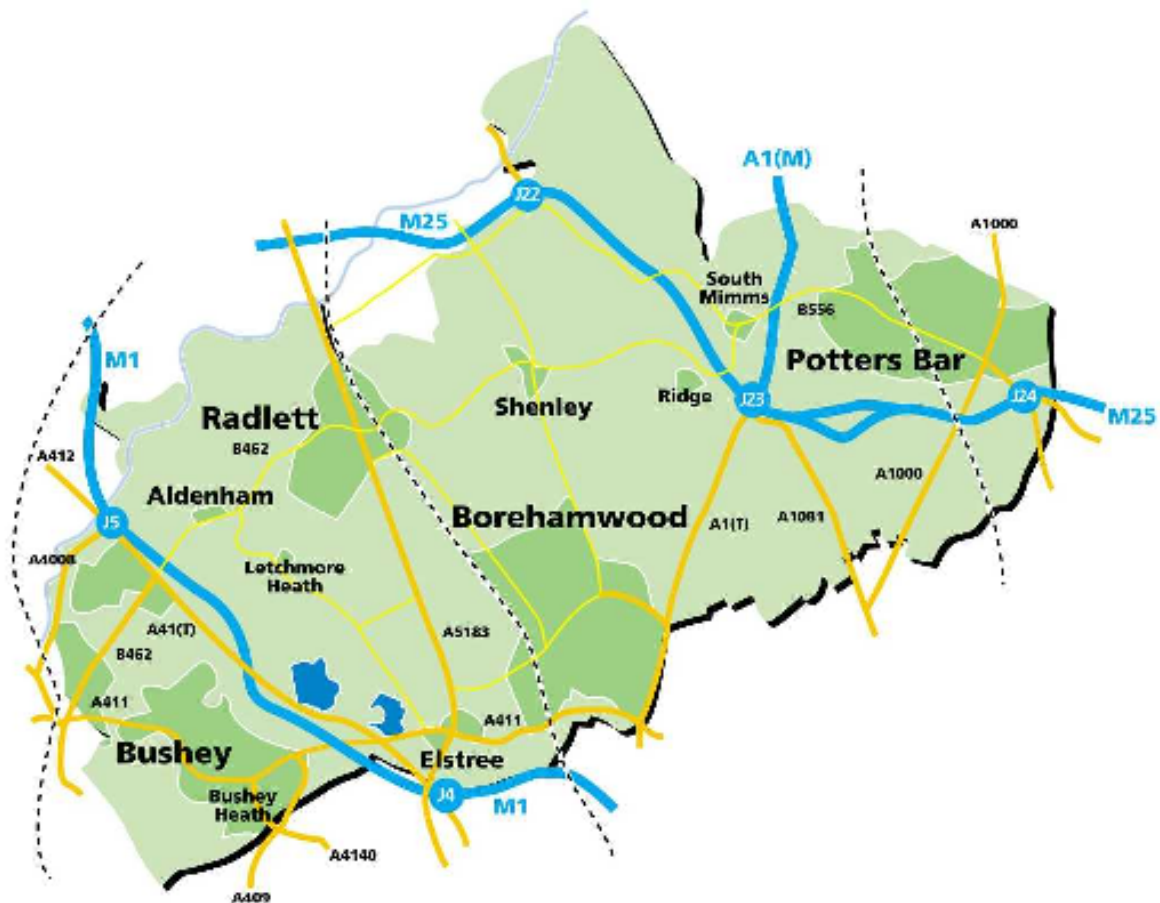


# Hertsmere Borough Council Local Development Framework



## Planning Obligations Supplementary Planning Document

### (Part A – General Principles)

December 2010

*This document is the first part of the Hertsmere Planning Obligations Supplementary Planning document, replacing the previous Section 106 procedural note. The second part deals with the methodology behind calculating contributions.*

## Part A - General Principles

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# 1. Introduction

## The purpose of this document

- 1.1 The purpose of the Planning Obligations Supplementary Planning Document (SPD) is to provide guidance on Hertsmere Borough Council's requirements and approach to Section 106 (or s106) agreements – also known as Planning Obligations. The SPD will be a material consideration in the determination of planning applications and provides an explanation of the council's internal procedures in order to make the process more efficient and reduce delays, setting out in detail what we do, why we do it and how we do it. It can be used as a guide for developers seeking pre-application advice, a day-to-day reference, an induction and training aid, evidence that we go about our work in a methodical, consistent and transparent manner, and a resource around which we may engage dialogue with on improving the planning application process.
- 1.2 Planning Obligations are made under s106 of the Town and Country Planning Act 1990 (as amended), although the Community Infrastructure Levy Regulations 2010 mean that aspects of circular 05/05 are a statutory requirement (see Part B of this document). Planning Obligations may be created by agreement between the developers and Local Planning Authorities (and other relevant parties) or may be created by the person with the interest making an undertaking ("a Unilateral Undertaking"). Planning Obligations are negotiated within the context of the determination of a planning application. They may restrict development or use of the land, require operations or activities to be carried out in, on, under or over the land; require the land to be used in any specified way; or require payments to be made to the authority either in a single sum or periodically. This document (both Parts A and B) largely focuses on the financial contributions association with s106 agreements.
- 1.3 Planning Obligations run with the land and may be enforced against both the original covenantor and against anyone acquiring an interest in the land from him/her, unless the agreement specifies otherwise. They are also a local land charge for the purposes of the Local Land Charges Act 1975 and so must be registered with the Local Land Charges Register.
- 1.4 Current government guidance in relation to Planning Obligations is set out in the government circular 05/05 (July 2005), called 'Planning Obligations'. Copies can be downloaded from:
- [www.communities.gov.uk/publications/planningandbuilding/circularplanningobligations](http://www.communities.gov.uk/publications/planningandbuilding/circularplanningobligations)
- The Community Infrastructure Levy Regulations 2010 (February 2010 can be downloaded from:
- [http://www.opsi.gov.uk/si/si2010/draft/pdf/ukdsi\\_9780111492390\\_en.pdf](http://www.opsi.gov.uk/si/si2010/draft/pdf/ukdsi_9780111492390_en.pdf)
- 1.5 The Council will negotiate s106 agreements within the parameters set by this circular and its guiding principles, including the need for obligations to be:
- (a) necessary to make the development acceptable in planning terms;
  - (b) directly related to the development; and
  - (c) fairly and reasonably related in scale and kind to the development.
- 1.6 It is especially important that the Council's policies, practices and procedures in respect of s106 agreements and unilateral undertakings are clearly set out and have regard to development plan and supplementary planning documents. This is to facilitate:

- A shared understanding of what may and may not be achieved;

- Clearly focused and constructive joint working between the council officers, developers and service providers;
- Avoidance of any unnecessary delay in negotiating and delivering service improvements;
- Ensuring that the necessary s106 benefits are maximized through managing those risks associated with the pre-application phase
- Ensuring that the Council does not act (and is not perceived to act) in an inconsistent, arbitrary or opaque manner in seeking S106 Agreements.

1.7 The successful implementation of these procedures and practices depends on:

- Fostering support from service providers/beneficiaries and the development community through strengthening joint working protocols;
- Training for Officers in the potential and limitations of S106 Agreements and effective negotiation skills;
- Building new capacity and capability into existing legal, administrative and monitoring systems;
- A solid evidence base to support the Council's values towards compliance and good governance.

#### **To which plan policies does the SPD relate?**

- 1.9 This SPD has been prepared whilst the Council is in the process of replacing the Local Plan with a series of Development Plan Documents (DPDs) that will make up the Local Development Framework. In this interim period, the SPD should be read in conjunction with policies in both the saved Local Plan and the emerging DPDs.
- 1.10 The revised draft Core Strategy was approved for interim development control purposes in December 2010. Policy CS20 of the Core Strategy seeks to secure for provision for on and off-site facilities, services and improvements, for a which a need is known to arise. Policy CS20 refers to specific arrangements for securing developer contributions being set out in a Supplementary Planning Document.
- 1.11 Policy D20 of the saved Local Plan states that the Council will produce a series of guidance, which develop and explain the application of policy. The SPD should also be read in conjunction with policies in the saved Local Plan including Policy R2, which covers Developer Requirements. Under the provisions of the Planning and Compulsory Purchase Act 2004, all policies in the Local Plan were automatically 'saved' for a period of three years from 27<sup>th</sup> September 2004, unless expressly replaced by a new policy. The Secretary of State released a direction in 2007 saving the majority of policies in the Hertsmere Local Plan, including Policy R2, beyond 27<sup>th</sup> September 2007.

## 2. The Hertsmere approach to s106 agreements and unilateral undertakings

2.1 To some extent any s106 is likely to be time-consuming and involve elements of complication and risks. It is clearly in the interest of all parties to keep this down to a minimum. The Borough Council in particular needs to meet targets for turning around the majority of applications within 8 weeks (13 weeks for larger applications). For this to occur:

- The s106 will be viewed as an integral part of the planning application process with applicants providing draft heads of terms at the earliest opportunity, preferably when the application is submitted;
- The committee report on any planning application will include clear recommendations indicating the nature of the s106 and any trigger points;
- All consultees (internal and external to the Council) will be given 21 days to indicate the nature of the s106 and any items they wish to be considered for inclusion in the agreement;
- For smaller applications (less than 10 units), the Council will consider a unilateral undertaking from an applicant instead of a s106 agreement, in order to provide a more expedited service. In such instances the Council expect the calculations in Part B to form the basis of contributions in a unilateral undertaking;
- In instances where planning permission is granted subject to the signing of a section 106 agreement, it is expected that the s106 should be agreed and completed expediently follow the committee decision. Unless there are exceptional and acceptable reasons for the delay, planning consent may be refused: The following resolution is proposed in such instances:

*“X Powers be delegated to the Head of Planning and Building Control to grant planning permission subject to the receipt of an agreement or unilateral undertaking under Section 106 of the Town and Country Planning Act,*

*X Should the agreement or unilateral undertaking under Section 106 not be completed by x, the Head of Planning and Building Control be delegated powers, should it be considered appropriate, to refuse the planning application for the reason set out.”*

2.2 The Council recognises that in some cases it may need to be flexible in terms of the level of obligations/financial contributions sought in order to bring a scheme forward. The viability of potential development schemes in different areas of the borough is considered in the Development Economic Studies (May 2010) and is available on our website (<http://www.hertsmere.gov.uk/planning/planningpublications.jsp>), the Council will consider the viability of schemes using the Three Dragons Toolkit.

2.3 On schemes greater than 15 units, a higher level of planning obligation than set out in this document may be sought where local factors determine that an additional amount is required to make the application acceptable in planning terms.

2.3 The Council will keep under review any emerging guidance and legislation and amend this note as required. Feedback from development teams and the outcomes of development projects in the Borough will also be used to make practical improvements to s106 procedures.

### **3. How this process fits into the Development Team Approach**

- 3.1 Hertsmere Borough Council (HBC) operates a Development Team Approach (DTA), in which the main public sector interest groups concerned with planning applications are brought together in regular meetings to improve the process of decision-making. Aside from the s106 Officer and other HBC officers, the DTA includes Hertfordshire Highways, County Property, Hertsmere PCT and Hertfordshire Constabulary.
- 3.2 The DTA covers all potential major residential applications (10 or more units) as well as all major commercial applications and any other applications which the Development Control Manager and/or an Area Team Leader considers would benefit from the DTA. There is a small fee charged for the provision of pre-application advice sought by developers as part of the Development Team Approach, who are strongly encouraged to utilise this serve.
- 3.3 The DTA has a number of objectives including;
- Ensuring consistent and coordinated advice is offered to applicants;
  - Early identification of risks and other key issues using improved pre-application advice;
  - Better quality applications and therefore better quality developments through raised awareness of best practice and up-to-date planning policies;
  - Speedier and more informed decision making;
  - Improved customer service.
- 3.4 Since the publication of the Council's earlier s106 procedural note, Hertfordshire County Council has produced their own guidance on planning obligations. Planning Obligations Guidance – a toolkit for Hertfordshire (January 2008) which can be obtained from the Hertfordshire County Council website. This document sets out the method used to calculate contributions in relation to education, sustainable transport, emergency services, libraries and social services. The 'Toolkit' also contains a model s106 agreement and model s106 unilateral undertaking, although please note that the templates would be subject to change due to Individual circumstances and will vary on a site by site basis.
- 3.5 Hertfordshire County Council is responsible for ensuring the provision of a range of services and seeks contributions and/or facilities from development, which would have an impact on service provision. HCC services include education, libraries, youth, childcare, fire and rescue services, special needs housing and services, transport and rights of way (as set out within the Toolkit). Matters relating to HCC services including when there will be a requirement for these obligations, payment/provision of obligations, indexation, expenditure and legal requirements should be referred to HCC.
- 3.6 Hertfordshire County Council's approach, methodology and calculations contributions in respect of the planning obligations sought towards these services is set out in Planning Obligations Guidance – Toolkit for Hertfordshire (2008) which was approved by the County Council's Cabinet on 21st January 2008 and it is available on the County Council website at [www.hertsdirect.org/planningobligationstoolkit](http://www.hertsdirect.org/planningobligationstoolkit)
- 3.7 A version of these templates is available in Word format, on request, from the Council and included as templates in Appendix 1 and 2. The unilateral template can be amended where necessary for Hertsmere only obligations.
- 3.8 Attention is drawn to Hertfordshire County Council's policy/approach towards highway adoption set out in Future Approach to Highway Adoption Policy for New Roads. Currently, roads serving five houses or more (with the exception of short cul-de-sacs)

should be considered for adoption. The extent of adoption should be agreed in principle by the developer and Highway Authority at the planning stage and where a developer does not intend to have roads adopted, measures to secure their long-term maintenance will be sought through a s106 agreement.

## 4. Financial and Legal Matters

- 4.1 As far as practicable, all trigger dates are to be based on commencement dates. Trigger dates based on completion dates should be based on an agreed estimated date for completion (between the council and the developer).
- 4.2 Generally trigger dates, which are based on 'Occupation', are prone to high risks and should be avoided. This type of condition or s106 clause will result in trigger points, which are unclear and require greater resources and time to monitor.
- 4.3 Included in the s106 will be a requirement for developers to notify the Planning Unit's Section 106 Monitoring Officer of trigger dates. For example, the commencement of development or the agreed date for completing a number of units as agreed in the s106 deed.
- 4.4 It is important to note that the agreed trigger date for completing a number of units will not necessarily be the same as the time in which the entire development is completed. The Council will be flexible in seeking immediate payment of outstanding contributions in cases where the developer or a representative gives notification that the agreed date cannot be met. In such cases a new date for completion can be agreed between the s106 monitoring officer and the developer.
- 4.5 Other key principles to note are as follows:

**Compliance:** S106 requirements and trigger points will be monitored by the s106 Monitoring Officer who will inform the signatories to the agreement if any monies or works have not been undertaken as agreed in the s106. If, after a polite letter of reminder, there are cases in which monies remain unpaid or works not carried out as agreed, then the Council will refer the matter to its Head of Legal Services.

**Deeds of Variation:** Where changing circumstances have led to part or all of a s106 agreement becoming obsolete, then the developer can apply for a deed of variation. In the first instance the developer should contact the Planning and Building Control Unit Department at Hertsmere Borough Council.

**Conditions:** Where items could be provided by a condition rather than as an item in a s106, generally they will be provided by condition.

**Monitoring:** It is proposed that the Council's s106 database (which includes contributes to Hertfordshire County Council) will continue to be presented every six months to the Hertsmere Overview and Scrutiny Committee. It is vital that the Monitoring Officer is kept informed by all parties of any changes related to s106 payments, conditions and disbursements. The Section 106 Officer should be notified of all s106 monies being released for spending prior to the actual monies being released and is accountable to ensure that all monies are spent in accordance with the relevant s106 agreement

**Section 106 Payments:** All s106 payments should be made to the s106 Monitoring Officer for monitoring and ratification with the respective s106 agreement clauses.

**Indirect Payments:** Where external organisations might benefit from monies paid under s106, such benefits will need to be indirect and paid through the Council, via the s106 monitoring officer.

**Index-Linking:** Hertsmere contributions will normally expect to be index-linked using the Consumer Price Index (CPI).

**Late s106 Payments:** The Developer/Owner shall in addition, pay interest calculated at a rate equivalent to 4% per annum above the base lending rate offered by the bank for the account, where the funds would have been deposited, at the time of the



signing of the s106 (or any other interest rate agreed between the Council's legal team and the developer).

**Refund Provision:** Where refunds are sought by the developer and incorporated into the s106, if any item of s106 infrastructure is not spent by the tenth (10<sup>th</sup>) anniversary of the receipt of the monies, then the relevant organisation (e.g. Hertsmere Borough Council or Hertfordshire County Council) will refund to the developer any unspent contributions along with any interest accrued.

**Company Searches:** At the time of exchanging draft heads of terms, where deemed necessary a full Company search will be undertaken for all the firms expected to be included in the obligation to ensure they are bona fide. The Head of Planning and Building Control at Hertsmere Borough Council will commission the search, the cost of the search. If any other firms are added to the heads of terms later on then they also have to be subject to a Company Search.

**Trigger Points:** The Council will adopt the most appropriate trigger point for each point of s106 infrastructure when a trigger mechanism is required.

**The Legal Agreement:** Once planning obligations have been agreed in principle between the parties, a draft s106 document may be drawn up. This can be produced by the Council's legal team, or by the applicant's solicitor. To speed up the process, the council recommends using the County Council standard templates or unilateral and Hertsmere BC standard clauses as set out in Appendix 1, Appendix 2, Appendix 3 , or the Law Society Model Agreement available via:

<http://www.lawsociety.org.uk/influencinglaw/policyinresponse/view=article.law?DOCUMENTID=428307>

The Council's Legal Department will, when considering/drawing up s106 obligations require the following:

1. The name and address of your solicitor
2. A solicitors undertaking on behalf of the applicant, undertaking to pay the reasonable legal fees of the Council in considering/drawing up the obligation.
3. Whether the obligation is to be an agreement or undertaking
4. Whether your solicitors would be preparing the first draft
5. Up to date land Registry Office Copies and Filed Plan of the application site confirming ownership
6. If the planning applicant is not the freehold owner of the land, and/or any other person, mortgagee, lessee, corporation, executor or trustee, has a legal interest in the land, then we require full contact details of these.

If this information is provided early in the planning process it will ensure that the agreement/undertaking is completed as swiftly as possible.

## **5. Securing a Green Travel Plan via a Legal Agreement**

- 5.1 Green Travel Plans (GTPs) offer a wide range of benefits both to employers and employees as well as for the local area and will be expected to accompany planning applications in accordance with Paragraph 87 to 91 of PPG13 (March 2001). Full guidance on developing and implementing GTPs in Hertfordshire is contained in the Hertfordshire Technical Chief Officers Association report “Developing a Green Travel Plan: A Guidance Note” available via <http://www.hertsdirect.org/envroads/roadstrans/transplan/hdc/greentravelplans/>
- 5.2 Legal agreements can be used to help secure travel plans, including school travel plans. Appendix A from the above guide provides a useful template that can be pasted into a draft s106 agreement. Council officers will ensure that conditions for Green Travel Plans are entered onto the Council’s own in-house planning and building control database (Acolaid).

## 6. The standard letter to the applicant or agent

The following constitutes a standard letter from HBC to the applicant or agent:

HBC officer

Tel: 020 8207 7....

### **WITHOUT PREJUDICE**

Dear Sir/Madam,

### **DESCRIPTION AND LOCATION OF THE DEVELOPMENT**

In accordance with the requirements of the adopted Hertsmere Borough Council Local Plan and emerging Core Strategy, in addition to the Planning Obligations SPD, applicants for new housing, commercial and certain other types of developments in the Borough are required to contribute towards the provision of social, community and transport infrastructure in the local area, so as to meet the needs generated by new residents and users of the development.

Should the Council resolve to grant planning permission for your proposals, we can confirm that the following contributions would be required, under the terms of a s106 agreement, as follows:

#### **Highways and Transportation Infrastructure: (££)**

Consisting of;

- (details of items sought)

#### **Education Housing & Community facilities: (££)**

Consisting of;

- (details of items sought)

#### **Recreational and Environment facilities: (££)**

Consisting of;

- (details of items sought)

#### **Legal, administration and monitoring costs: (££)**

Consisting of;

- (details of items sought)

All contributions will be index-linked from the following April but please note that if the Section 106 Agreement is not completed within 6 months of the resolution to grant planning permission, then the application will be refused under powers delegated to the Head of Planning and Building Control, who will determine the specific reasons for refusal in consultation with the Chairman.

The above matters are raised without prejudice to the final recommendation or decision on the application.

Yours faithfully

Planning Officer

**Appendix 1 Draft S106 Agreement Template**

**DATED \_\_\_\_\_ 2009**

**HERTSMERE BOROUGH COUNCIL**

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**DEED OF AGREEMENT**  
**Pursuant to S106 of the Town and Country Planning Act 1990 (as amended) in relation to the development of Site at**

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**PARTIES:**

1. **HERTFORDSHIRE COUNTY COUNCIL** of County Hall Hertford Hertfordshire SG13 8DE (“the County Council”)
  
2. **BOROUGH/DISTRICT COUNCIL** of Hertfordshire (“the Council”)
  
3. (Co. Regn. No. ) whose registered office is situate at (“the Owner”)
  
4. (Co. Regn. No. ) whose registered office is situate at
  
5. (Co.Regn. No. ) whose registered office is situate at

**WHEREAS**

- (1) The County Council and the Council are local planning authorities for the purposes of the 1990 Act for the area in which the Site is situate and as such are the local planning authorities entitled to enforce the planning obligations hereinafter recited
  
- (2) The County Council is the Highway Authority the Education Authority the Library Authority the Social Services Authority and the Fire and Rescue Authority for Hertfordshire
  
- (3) The Owner is the freehold owner of the whole of the Site [subject to the Charge]
  
- (4) The Mortgagee has the benefit of the charge referred to in Recital (3)
  
- (5) The [Owner/Developer] has submitted the Planning Application to the Council
  
- (6) On [date] the Council resolved to grant the Planning Permission subject among other things to the prior completion of this Deed
  
- (7) This Deed is entered into to make provision for regulating the Development and securing the matters hereinafter referred to which are required in order to enable the

Development to go ahead

**NOW THIS DEED WITNESSETH** as follows:

**OPERATIVE PART**

**1. DEFINITIONS**

1.1 In this Deed the following expressions shall have the following meanings:-

**“the 1990 Act”** means the Town and Country Planning Act 1990 (as amended)

**“Charge”** means the mortgage/charge dated [ ] made between the Owner (1) and the Mortgagee (2)

**“Childcare Contribution”** means the sum of [words and figures] [calculated in accordance with Schedule 3A] (indexed linked as hereinafter provided) to provide childcare facilities serving the locality of the development

**“Commencement Date”** means the date on which any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and 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 the expressions “Commence” “Commences” “Commencement” and “Commenced” shall be construed accordingly

**“Development”** means the development of the Site with [insert description of the development] as set out in the Planning Application

**“Director of Environment”** means the County Council’s Director of Environment for the time being and his agents

**“Education Contribution”** means the sum of [words and figures] [calculate din accordance with Schedule 3A] (index linked as hereafter provided) towards the cost of educational facilities serving the locality of the Development

**“Fire and Rescue Service”** means that part of the County Council known as the Hertfordshire Fire and Rescue Service

**“GTP Guidance”** means the County Council’s document entitled ‘Developing a Green Travel Plan – A Guidance Note’ which can be found at <http://www.hertsdirect.org/envroads/roadstrans/transplan/hdc/greentravelplans/>

**“Interest”** means the rate from time to time prescribed [under the Land Compensation Act 1961]

**“Library Contribution”** means the sum of [words and figures] [calculated in accordance with Schedule 3A] (index linked as hereinafter provided) towards the cost of additional library facilities serving the locality of the Development

**“Nursery Contribution”** means the sum of [words and figures] [calculated in accordance with Schedule 3A] (index linked as hereinafter provided) towards the cost of nursery facilities serving the Development

**“Occupy” “Occupation” and “Occupied”** means occupation for the purposes of the Planning Permission but not including occupation by personnel engaged in the construction fitting out or decoration or occupation for marketing or display or occupation in relation to security operations

**“Plan”** means the plan annexed to this Deed

**“Planning Application”** means the application for [outline/full] Planning Permission dated [ ] bearing the Council’s reference number [ ]

**“Planning Permission”** means the permission to be granted by way of approval of the Planning Application or from any reserved matters submissions or resulting from any other planning application covering all or part of the site for any of the uses comprised in the Planning Application whether granted by variation alteration substitution addition or replacement **PROVIDED THAT** if any form of development within the Site which individually or in combination with any other permission for development would lead to levels of development exceeding those set out in the Planning Application that development shall be subject to additional planning obligations

**“CPI”** means the Consumer Price Index as sourced from the Office of National Statistics

**“PUBSEC index”** means the Department of Trade and Industry Tender Price Index of Public Sector Non Housing Smoothed All-In Index

**“Section 278 Agreement”** means a valid agreement executed as a deed and to be entered into with the County Council pursuant inter alia to section 278 of the Highways Act 1980

**“Site”** means the freehold property situate at [ ] Hertfordshire registered at the Land Registry with Title Absolute under the Title Number [ ] all of which land is shown for identification purposes only edged red on the Plan

**“SPONS Index”** means the index linked by reference to the price adjustment formula for construction contracts in the monthly bulletin of indices published by Her Majesty’s Stationary Office as collaged into a single index known as the SPONS Construction Civil Engineering cost Index

**“Sustainable Transport Contribution”** means the sum of [words and figures] [calculated in accordance with Schedule 3B] (indexed linked as hereinafter provided) as a contribution towards [*specify reasons for contribution e.g. the design and construction of highway improvement works traffic management schemes traffic studies improvements to public transport or such other measures as will encourage users of the development to travel to and from the Development by means of transport other than the private car which the Director in his absolute discretion determines will contribute to the improvement of highway conditions on parts of the network affected by traffic associated with the Development*]

**“Water Scheme”** means either the proposal prepared by or approved by the water undertaker for the area pursuant to the Water Industry Act 1991 to provide mains water services for the Development whether by means of new mains or extension to or diversion of existing services or apparatus **OR** where existing water services are to be used it shall mean the details of the residential dwellings and the water supply to them which shall be provided by the Owner for the written approval of the Fire and Rescue Service prior to commencement of the construction of any residential dwelling to be constructed as part of the Development

**“Works”** shall mean the works to the highway shown in principle only on drawing numbers [ ] annexed to this Deed (subject as mentioned in clause 11 hereof) which works shall be for the avoidance of doubt include [ ] together with such ancillary works as may be required by the Director of Environment to facilitate the Development which ancillary works may without prejudice to the generality of the foregoing include the provision of street lighting traffic signs carriageway markings footways street furniture and drainage and any necessary alterations to statutory undertakers’ equipment



**“Working Day”** means any day other than a Saturday or a Sunday or a Public Holiday

**“Youth Contribution”** means the sum of [words and figures] [calculated in accordance with Schedule 3A] (index linked as hereinafter provided) towards the cost of [additional] facilities for young people within the locality of the Development

1.2 In this deed:-

1.2.1 the clause headings do not affect its interpretation

1.2.2 words of the masculine gender shall incorporate the feminine and neuter genders and words of the singular shall include the plural and vice versa

1.2.3 the reference to any statute or section of a statute includes any modification extension or re-enactment of that Act for the time being in force and shall include all instruments orders plans regulations permission and directions for time being made issued or given under that Act or deriving validity from it

1.2.4 any reference to a clause a paragraph or a schedule is unless the context otherwise requires a reference to a clause a paragraph or a schedule of this Deed and any reference to a sub clause is a reference to a sub clause of the clause I which the reference appears

1.2.5 references to the Site include any part of it

1.2.6 where two or more people form a party to this deed the obligations they undertake may be enforced against them all jointly or against each of them individually

1.2.7 references to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council and the County Council the successors to their respective functions

1.2.8 any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing and words denoting an obligation on the Owner to do any act matter or thing include an obligation to procure that it be done

[1.2.9 reference in this deed to “development” shall have the meaning given by Section 55 of the 1990 Act]

### **EFFECTS OF THIS DEED**

2.1 This Deed is entered into 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 Deed are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable by the Council and the County Council

- 2.2 To the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of the 1990 Act they are entered into pursuant to the powers contained in Section 111 Local Government Act 1972 Section 2 Local Government Act 2000 and all other enabling powers
- 2.3 The Owner enters into the obligations for itself and its successors in title with the Council and the County Council to the intent that the obligations hereunder shall be enforceable not only against the Owner by also against the successors in title of the Owner and any person claiming through or under the Owner an interest or estate in the Site or any part thereof

### **CONDITIONALITY**

3. This Deed is conditional upon:-
- (i) the grant of the Planning Permission and
  - (ii) the Commencement of Development
- save for the provisions of Clauses [ ] [i.e. payment of costs delivery and jurisdiction interpretation clauses and anything else that is relevant] which shall come into effect immediately upon completion of this Deed

## **OWNER'S COVENANTS**

- 4.1 The Owner covenants with the County Council:-
- (i) to observe and perform the covenants restrictions stipulations and obligations contained in Schedule 1 hereto
  - (ii) to give the County Council and the Council no less than five (5) Working Days notice of the Commencement Date such notice to be given prior to the Commencement Date in writing using the pro forma set out in Schedule 2 hereof
  - (iii) to give the County Council and the Council no less than five (5) Working Days notice of the Occupation of the Development  
Completion of the Development such notice to be in writing using the pro forma set out in Schedule 2 hereto
  - (iv) upon completion of this Deed pay to the Council and the County Council their costs in connection with the preparation negotiation and completion of this Deed

## COUNTY COUNCIL'S COVENANTS

- 5.1 The County Council hereby covenants with the Owner to use all sums received from the Owner under the terms of this Deed for the purpose(s) specified in this Deed for which they are paid
- 5.2 The County Council further covenants with the Owner that it will pay to the Owner a sum equal to the amount of any payment made by the Owner to the County Council under this Deed which has not been expended in accordance with the provisions of this Deed within ten (10) years of the date of receipt by the Council of such payment together with interest on such unexpended sum from the date of receipt to the date of payment

### **EXPENDITURE IN ADVANCE OF RECEIPT OF CONTRIBUTIONS**

6. *If prior to the receipt of any of [the Education contribution the Libraries Contribution the Youth Contribution the Nursery Contribution or the Childcare Contribution] the County Council incurs any expenditure in providing additional [education libraries youth nursery and childcare facilities as the case may be] the need for which arises from or in anticipation of the Development then the County Council may immediately following receipt of [the Education Contribution the Libraries Contribution the Youth Contribution the Nursery Contribution or the Childcare Contribution as the case may be] deduct from the Education Contribution the Libraries Contribution the Youth Contribution the Nursery Contribution or the Childcare Contribution] as appropriate such expenditure incurred*

### **INDEXATION**

- 7.1 *[The Library Contribution the Childcare Contribution the Youth Contribution the Nursery Contribution and the Education Contribution] shall [each] be index linked by reference to the PUBSEC Index figure of [x] to the figure applicable to the quarter in which the contribution is paid*
- 7.2 *Where any sum is required to be index linked by reference to the PUBSEC Index that sum payable shall be increased or decreased in accordance with any change in the Department of Trade and Industry Tender Price Index of Public Sector Non-Housing (PUBSEC) Smoothed All-in Index by the application of the formula  $A = B \times (C \div D)$  where:-*
- A is the total amount to be paid*  
*B is the principal sum stated in this deed*  
*C is the PUBSEC Smoothed All-in Index for the date upon which the interim payment described below is actually paid and*  
*D is the figure of [x – is figure specified in clause 7.1]*
- 7.3 *The Sustainable Transport Contribution shall be index-linked to movements in the SPONS Index from to the date on which the Sustainable Transport Contribution is paid*
- 7.4 *Where any sum to be paid to the County Council under the terms of this Deed is required to be indexed then an interim payment shall initially be made based on the latest available forecast figure (or figures as the case may be) at the date of payment and any payment or payments by way of adjustment shall be made within ten (10) Working Days of written demand by the County Council or the payer of the interim payment (as the case may be) once the relevant indices have been finalised*

**MISCELLANEOUS**

- 8.1 *The Owner hereby warrants that it is the owner of the freehold of the Site and that no other party has an interest in the site save as disclosed in writing to the County Secretary of the County Council prior to completion of this Deed*
- 8.2 *This Deed shall be registered as a local land charge by the Council*
- 8.3 *Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 nothing in this Deed confers or purports to confer any right to enforce any of the terms and provisions herein on any person who is not a party hereto or a successor in title or a statutory successor to a party hereto*
- 8.4 *Any notice to the parties hereto under this Deed shall be deemed to be sufficiently served if delivered personally or sent by recorded delivery service to the following officials/persons at the respective addresses hereinafter specified*

In respect of the  
Owner:

In respect of the  
Council:

In respect of the  
County Council:  
*The County Secretary  
Hertfordshire County Council  
County Hall Pegs Lane  
Hertford  
Herts. SG13 8DE  
(ref: DU[    ])*

*Save that notices pursuant to paragraph 4 of Schedule 1 (Fire Hydrants) shall be sent to the person mentioned in paragraph 4.5 of Schedule 1*

- 8.5 *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 provision of this Deed*
- 8.6 *Nothing in this Deed shall be construed as imposing a contractual obligation upon the Council as to the issue of the Planning Permission or as restricting the exercise by the Council or the County Council of any powers exercisable by them respectively under the 1990 Act or under any other Act or authority*
- 8.7 *No waiver whether express or implied by the County Council or Council of any breach or default by the Owner in performing or observing any of the obligations contained herein shall constitute a continuing waive rand no such waiver shall prevent the County Council or the Council from enforcing the relevant obligations or from acting upon any subsequent breach or default*
- 8.8 *This Deed shall cease to have any effect (insofar only as it has not been complied with) if the Planning Permission shall be quashed revoked or otherwise withdrawn or if the Commencement Date has not been initiated in accordance with section 56 of the 1990 Act before the expiration of the period specified in the Planning Permission*
- 8.9 *Where the approval consent expression of satisfaction agreement confirmation or certification of the Council or County Council or any officer of the Council or County Council is required for any purpose under or in connection with the terms of this Deed such approval consent expression of satisfaction agreement confirmation or certification shall not be unreasonably withheld or delayed*
- 8.10 *Without prejudice to the Council's and the County Council's statutory rights the Owner hereby grants to the Council and/or the County Council or any person duly authorised or instructed by it an irrevocable licence at all reasonable times to enter such parts of the Site to inspect any of the works to be carried out for the purposes of the Development any materials to be used in carrying out those works for any purpose directly or indirectly connected with or contemplated by this Deed*

**VALUE ADDED TAX**

- 9. *All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable*

## **JURISDICTION**

10. *This Deed is governed by and interpreted in accordance with the Law of England and Wales*

## **WORKS**

11. *If the Department for Transport Technical Design Standards or Advice is amended after the date of this Deed the Director of Environment shall be at liberty to review the Works and require any amendments he deems necessary to ensure that the Works comply with the revised standards and advice **SAVE THAT** in circumstances where detailed contract drawings have been approved in writing by the Director of Environment and the Works are commenced within three months of the date of the written approval then the Director of Environment shall seek no amendments to the Works*

## **MORTGAGEE'S CONSENT**

12. *The Mortgagee hereby consents to the Owner entering into this Deed and agrees that the security of the Charge over the Site shall take effect subject to this Deed **PROVIDED THAT** the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner*

**IN WITNESS** whereof the parties hereto have executed this Deed but the same remains undelivered until the day and year first before written

## **SCHEDULE 1**

### **The Owners Covenants stipulations and Obligations**

#### **Sustainable Transport Contribution**

- 1.1 *To pay the Sustainable Transport Contribution to the County Council prior to the Commencement Date*
- 1.2 *Not to Commence the Development until the Sustainable Transport Contribution has been paid in accordance with paragraph 1.1 of this Schedule*

#### **Green Travel Plan**

- 2.1 *Not to occupy or permit the Site or any part of the Site to be occupied for purposes pursuant to the Planning Permission until it has prepared and secured the written approval (which shall not be unreasonably withheld) of the County Council to a Green Travel Plan (GTP) in respect of the part or parts to be occupied and each such GTP shall contain as many of the provisions detailed in the GTP Guidance as are appropriate to the Site or the relevant part of the Site and further shall include provisions as to how the progress of the GTP shall be monitored*
- 2.2 *That if it or its successors in title occupy the Site or any part of the Site pursuant to the Development it or they will implement the approved GTP relating to the Site or that part of the Site and shall use all reasonable endeavours to achieve the targets set therein*
- 2.3 *That it will in relation to the Site include in any tenant's lease or occupier's licence of any part or parts of the Site a covenant that the tenant or occupier will implement the GTP for such part or parts of the Site once it has been approved by the County Council and further that it will use all reasonable endeavour to enforce such obligation against any such tenant or occupier*
- 2.4 *Within twenty (20) Working Days of the letting of the Site or any part or parts thereof it will procure the delivery to the County Council of a notice giving the following details:*
- (i) *the name and address of the tenant*
  - (ii) *a description of the premises demised*
  - (iii) *the length of the term and*
  - (iv) *a sufficient extract of the lease setting out the terms of the covenant expressed in favour of the County Council in relation to the GTP*

**Libraries Contribution Youth Contribution Childcare Contribution Nursery Contribution and Education Contribution**

- 3.1 To pay the [Libraries Contribution the Youth Contribution the Childcare Contribution the Nursery Contribution and the Education Contribution] to the County Council prior to the Commencement Date
- 3.2 Not to Commence the Development until the [Libraries Contribution the Youth Contribution the Childcare Contribution the Nursery Contribution and the Education Contribution] have been paid in accordance with paragraph 3.1 of this Schedule

**Fire Hydrants**

- 4.1 To ensure that the Water Scheme incorporates fire hydrants in accordance with BS 750 (1984) as reasonably and properly required by the Hertfordshire Fire and Rescue Service
- 4.2 To construct and provide at no cost to the Fire and Rescue Service or the County Council the fire hydrants reasonably and properly indicated in the Water Scheme and to advise the service in writing of the date upon which each and every fire hydrant becomes operational
- 4.3 Once operational to maintain the fire hydrants in good condition and repair such that they are suitable at all times for use by the Fire and Rescue Service until they are adopted by the Fire and Rescue Service which adoption shall take place upon the issue of a Certificate of Satisfaction by the Chief Fire Officer the issue of which shall not be unreasonably delayed **PROVIDED THAT** such Certificate shall not be issued prior to the issue by the Director of Environment of any Certificate of Maintenance for the highways in which the fire hydrants are located
- 4.4 Not to Occupy nor cause nor permit Occupation of any building forming part of the Development until such time as it is serviced by an operational fire hydrant
- 4.5 To address any notice to be given to the Fire and Rescue Service to the Water Services Officer Fire and Rescue Service Old London Road Hertford SG13 7LD Telephone 01992 507521

**Highway Works**

5. Not to Occupy nor cause nor permit Occupation of any part of the Development (or not to Commence the Development) until such time as the Works have been completed by the Owner to the satisfaction of the County Council as evidenced by issue of a certificate of completion by the Director of Environment in respect of the Works in accordance with the Section 278 Agreement

**SCHEDULE 2**

**PRO FORMA  
EVENT NOTIFICATION AND PAYMENT  
PURSUANT TO SECTION 106 AGREEMENT/UNILATERAL UNDERTAKING**

DATED.....  
MADE BETWEEN.....  
PLANNING PERMISSION REFERENCE.....  
HCC DU REFERENCE.....  
SITE ADDRESS.....  
.....

**SITE OWNER DETAILS**

Name.....  
Contact name.....  
Address.....  
.....  
Telephone Nos.  
Main.....  
Mobile.....  
E-Mail.....

**EVENTS BEING NOTIFIED**

Commencement Date:.....  
Occupation of Development (No. if relevant) date.....  
Completion of Development – date.....

**COMPLIANCE WITH OBLIGATION(S)**

Schedule.....Paragraph.....  
Details of obligation and compliance.....  
.....

**PAYMENT OF SECTION 106 CONTRIBUTIONS**

Payment Type	Amount	Interim Indexation	Final Indexation	Total	Payable to
Example Education (primary)	X £	Y £	Z £	X+Y £	Herts County Council

Payment of S106 contributions can be made by BACS CHAPS or cheque. In any event the form should be completed to ensure the payment is identified correctly and forward to:

- (a) The County Secretary  
Hertfordshire County Council  
County Hall Pegs Lane  
Hertford  
Hertfordshire SG13 8DE  
(Ref : DU)
- (b) To Hertsmere Borough Council  
Civic Offices, Elstree Way, Borehamwood  
Herts, WD6 1WA

The **COMMON SEAL** of )  
**HERTSMERE BOROUGH COUNCIL** )  
was affixed to this Deed in the presence of:- )

Head of Legal Services

The **COMMON SEAL** of )  
**HERTFORDSHIRE COUNTY COUNCIL** )  
Was affixed to this Deed in the presence of:- )

The **COMMON SEAL** of )  
 )  
was affixed to this Deed in the presence of:- )



**Appendix 2 Draft Unilateral Undertaking Template**

**DATED**

**2009**

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(the Owner)

(the Mortgagee)

In favour of

Hertsmere Borough Council  
(the Council)

HERTFORDSHIRE COUNTY COUNCIL  
(the County Council)

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## UNILATERAL UNDERTAKING

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

Hertfordshire

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**THIS UNILATERAL UNDERTAKING** is made by deed on the  
day of \_\_\_\_\_ 20\_\_\_\_

**PARTIES:**

1. \_\_\_\_\_ (Co. Regn. No. [ ] ) whose registered office is situate at \_\_\_\_\_ is (“the Owner”) (which expression shall include the Owner’s successors in title) and
2. \_\_\_\_\_ (Co. Regn. No. [ ] ) whose registered office is situate at \_\_\_\_\_ (“the Mortgagee”)

In favour of

3. Hertsmere Borough Council of Civic Offices, Elstree Way Borehamwood Herts WD6 1WA (“the Council”) and
4. Hertfordshire county Council of County Hall Pegs Lane Hertford SG13 8DE (“the County Council”)

hereinafter collectively referred to as “the Councils”

**WHEREAS**

- (1) The Council and the County Council are the local planning authorities for the purposes of the 1990 Act for the area within which the Site is situate and as such are the local planning authorities entitled to enforce the planning obligations hereinafter recited
- (2) The County Council is also the Highway Authority the Education Authority the Library Authority the Social Services Authority and the Fire and Rescue Authority for Hertfordshire
- (3) The Owner is the freehold owner of the whole of the Site [subject to the Charge]
- (4) The Mortgagee has the benefit of the charge referred to in Recital (3)
- (5) The Owner has submitted the Planning Application to the Council
- (6) This Deed is entered into to make provision for regulating the Development and securing the matters hereinafter referred to which are required in order to enable the Development to go ahead

**NOT THIS DEED WITNESSES ARE FOLLOWS**

## OPERATIVE PART

### 1. DEFINITIONS:

1.1 In this Deed the following expressions shall have the following meanings:-

**“the 1990 Act”** means the town and Country Planning Act 1990 (as amended)

**“Charge”** means the mortgage/charge dated [ ] made between the Owner (1) and the Mortgagee (2)

**“Childcare Contribution”** means the sum of [words and figures] (indexed linked as hereinafter provided) to provide childcare facilities serving the locality of the Development

**“Commencement Date”** means the date on which any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and no other purpose) operations consisting of site clearance demolition work archaeological 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 the expressions “Commence” “Commences” “Commencement” and “Commenced” shall be construed accordingly

**“Development”** means the development of the Site with [*insert description of the development*] as set out in the Planning Application

**“Director of Environment”** means the County Council's Director of Environment for the time being and his agents

**“Education Contribution”** means the sum of [words and figures] (index linked as hereinafter provided) towards the cost of educational facilities serving the locality of the Development

**“Fire and Rescue Service”** means that part of the County Council known as the Hertfordshire Fire and Rescue Service

**“GTP Guidance”** means the County Council's document entitled 'Developing a Green Travel Plan – A Guidance Note' which can be found at <http://www.hertsdirect.org/envroads/roadstrans/transplan/hdc/gretravelplans/>

**“Interest”** means the rate from time to time prescribed [under the Land Compensation Act 1961]

**“Library Contribution”** means the sum of [words and figures] (index linked as hereinafter provided) towards the cost of additional library facilities serving the locality of the Development

**“Nursery Contribution”** means the sum of [words and figures] (index linked as hereinafter provided) towards the cost of nursery facilities serving the Development

**“Occupy” “Occupation” and “Occupied”** means occupation for the purposes of the Planning Permission but not including occupation by personnel engaged in the construction fitting out or decoration or occupation for marketing or display or occupation in relation to security operations

**“Plan”** means the plan annexed to this Deed

**“Planning Application”** means the application for [outline[ [full] planning permission dated [ ] bearing the Council’s reference number [ ]

**“Planning Permission”** means the permission to be granted by way of approval of the Planning Application or from any reserved matters submissions or resulting from any other planning application covering all or part of the Site for any of the uses comprised in the Planning Application whether granted by variation alteration substitution addition or replacement **PROVIDED THAT** if any form of development within the Site which individually or in combination with any other permission for development would lead to levels of development exceeding those set out in the Planning Application that development shall be subject to additional planning obligations

**“PUBSEC Index”** means the Department of Trade and Industry Tender Price Index of Public Sector Non Housing Smoothed All-In Index

**“CPI”** means the Consumer Price Index as sourced from the Office of National Statistics.

**“Section 278 Agreement”** means a valid agreement executed as a deed and to be entered into the County Council pursuant inter alia to Section 278 of the Highways Act 1980

**“Site”** means the freehold property situate at [ ] Hertfordshire registered at the Land Registry with Title Absolute under the Title Number [ ] all of which land is shown for identification purposes only edged red on the Plan

**“SPONS Index”** means the index linked by reference to the price adjustment formula for construction contracts in the monthly bulletin of indices published by Her Majesty’s Stationary Office as collaged into a single index known as the SPONS Construction Civil Engineering Cost Index

**“Sustainable Transport Contribution”** means the sum [words and figures] [calculated in accordance with Schedule 3B] (index linked as hereinafter provided) as a contribution towards [*specify reasons for contribution e.g. the design and construction of highway improvement works traffic management schemes traffic studies improvements to public transport or such other measures as will encourage users of the Development to travel to and from the Development by means of transport other than the private car which the Director in his absolute discretion determines will contribute to the improvement of highway conditions on parts of the network affected by traffic associated with the Development*]

**“Water Scheme”** means either the proposal prepared by or approved by the water undertaker for the area pursuant to the Water Industry Act 1991 to provide mains water services for the Development whether by means of new mains or extension to or diversion of existing services or apparatus **OR** where existing water services are to be used it shall mean the details of the residential dwellings and the water supply to them which shall be provided by the Owner for the written approval of the Fire and Rescue Service prior to the commencement of the construction of any residential dwelling to be constructed as part of the Development

**“Works”** shall mean the works to the highway shown in principle only on drawing numbered [ ] annexed to this Deed (subject as mentioned in clause 11 hereof) which works shall for the avoidance of doubt include [ ] together with such ancillary works as may be required by the Director of Environment to facilitate the Development which ancillary works may without prejudice to the generality of the foregoing include the provision of street lighting traffic signs carriageway markings footways street furniture and drainage and any necessary alterations to statutory undertakers’ equipment

**“Working Day”** means any day other than a Saturday or a Sunday or a Public Holiday

**“Youth Contribution”** means the sum [words and figures] (index linked as hereinafter provided) towards the cost of [additional] facilities for young people within the locality of the Development

1.2 In this Deed:-

1.2.1 the clause headings do not affect its interpretation

1.2.2 words of the masculine gender shall incorporate the feminine and neuter genders and words of the singular shall include the plural and vice versa

1.2.3 the reference to any statute or section of a statute includes 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 in

1.2.4 any reference to a clause a paragraph or a schedule is unless the context otherwise requires a reference to a clause a paragraph or a schedule of this Deed and any reference to a sub clause is a reference to a sub clause of the clause in which the reference appears

1.2.5 references to the Site include any part of it

1.2.6 where two or more people form a party to this deed the obligations they undertake may be enforced against them all jointly or against each of them individually

1.2.7 references to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council and the County Council the successors to their respective functions

1.2.8 any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing and words denoting an obligation on the Owner to do any act matter or thing include an obligation to procure that it be done

*[1.2.9 reference in this Deed to “development” shall have the meaning given by Section 55 of the 1990 Act]*

### **EFFECT OF THIS DEED**

2.1 This Deed is entered into 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 Deed are planning obligations for the purposes of Section of the 1990 Act are enforceable by the Council and the County Council

- 2.2 To the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of the 1990 Act they are entered into pursuant to the powers contained in Section 111 Local Government Act 1972 Section 2 Local Government Act 2000 and all other enabling powers
- 2.3 The Owner enters into the obligations for itself and its successors in title with the Council and the County Council to the intent that the obligations hereunder shall be enforceable not only against the Owner but also against the successors in title of the Owner and any person claiming through or under the Owner an interest or estate in the Site or any part thereof
3. The covenants in this Unilateral Undertaking shall come into effect on the date of this Unilateral Undertaking

### **OWNER'S COVENANTS**

- 4.1 The Owner covenants with the County Council:-
- (i) to observe and perform the covenants restrictions stipulations and obligations contained in Schedule 1 hereto
  - (ii) to give the county Council and the Council no less than five (5) Working Days notice of the Commencement Date such notice to be given prior to the Commencement Date in writing using the pro forma set out in Schedule 2 hereof
  - (iii) to give the County Council and the Council no less than five (5) Working Days notice of the Occupation of the Development/Completion of the Development such notice to be in writing using the pro forma set out in Schedule 2 hereto
  - (iv) upon completion of this Deed pay to the Council and the County Council their costs in connection with the preparation negotiation and completion of this Deed
- 4.2 The Owner further covenants that:-
- (i) it is freehold owner of the Site
  - (ii) the Site is free from all encumbrances material to this Unilateral Undertaking
  - (iii) save the Mortgagee no other party has an interest in the Site

### **EXPENDITURE IN ADVANCE OF RECEIPT OF CONTRIBUTIONS**

5. If prior to the receipt of any of [the Education Contribution the Libraries contribution the Youth Contribution the Nursery Contribution or the Childcare Contribution] the County Council incurs any expenditure in providing additional [education libraries

youth nursery and childcare facilities as the case may be] the need for which arises from or in anticipation of the Development then the County Council may immediately following receipt of [the Education Contribution the Libraries Contribution the Youth Contribution the Nursery Contribution or the Childcare Contribution as the case may be deduct from the Education Contribution the Libraries Contribution the Youth Contribution the Nursery Contribution or the Childcare Contribution] and appropriate such expenditure incurred

## INDEXATION

- 6.1 [The Library Contribution the Childcare Contribution the Youth Contribution the Nursery Contribution and the Education Contribution] shall [each] be index linked by reference to the PUBSEC Index figure of [x] to the figure applicable to the quarter in which the contribution is paid
- 6.2 Where any sum is required to be index linked by reference to the PUBSEC Index that sum payable shall be increased or decreased in accordance with any change in the Department of Trade and Industry Tender Price Index of Public sector Non-Housing (PUBSEC) Smoothed All-in Index by the application of the formula  $A = B \times (C \div D)$  where:-
- A is the total amount to be paid  
B is the principal sum stated in this deed  
C is the PUBSEC Smoothed All-in Index for the date upon which the interim payment described below is actually paid and  
D is the figure of [x – is figure specified in clause 6.1]
- 6.3 The Sustainable Transport Contribution shall be indeed linked to movements in the SPONS Index from \_\_\_\_\_ to the date on which the Sustainable Transport contribution is paid
- 6.4 Where any sum to be paid to the County Council under the terms of this Deed is required to be indexed then an interim payment shall initially be made based on the latest available forecast figure (or figures as the case may be) at the date of payment or payments by way of adjustment shall be made within ten (10) Working Days of written demand by the County Council or the payer of the interim payment (as the case may be) once the relevant indices have been finalised



## MISCELLANEOUS

- 7.1 The Owner hereby warrants that it is the owner of the freehold of the Site and that no other party has an interest in the Site save as disclosed in writing to the County Secretary of the County Council prior to completion of this Deed
- 7.2 This Deed shall be registered as a local land charge by the Council
- 7.3 Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 nothing in this Deed confers or purports to confer any right to enforce any of the terms and provisions herein on any person who is not a party hereto or a successor in title or a statutory successor to a party hereto
- 7.4 Any notice to the parties hereto under this Deed shall be deemed to be sufficiently served if delivered personally or sent by recorded delivery service to the following officials/persons at the respective addresses hereinafter specified:

In respect of the  
Owner:

In respect of the  
Council:

In respect of the  
County Council  
The County Secretary  
Hertfordshire County Council  
County Hall Pegs Lane  
Hertford Herts SG13 8DE  
(ref : DU[        ])

Save that notices pursuant to paragraph 4 of the Schedule 1 (Fire Hydrants) shall be sent to the person mentioned in paragraph 4.5 of Schedule 1

- 7.5 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 provision of this Deed
- 7.6 Nothing in this Deed shall be construed as imposing a contractual obligation upon the Council as to the issue of the Planning Permission or as restricting the exerciser by the Council or the County Council of any powers exercisable by them respectively under the 1990 Act or under any other Act or authority
- 7.7 No waiver whether express or implied by the County Council or Council of any breach or default by the Owner in performing or observing any of the obligations contained herein shall constitute a continuing waiver and no such waiver shall prevent the County Council

or the Council from enforcing the relevant obligations or from acting upon any subsequent breach or default

- 7.8 This Deed shall cease to have any effect (insofar as it has not been complied with) if the Planning Permission shall be quashed revoked or otherwise withdrawn or if the Commencement Date has not been initiated in accordance with section 56 of the 1990 Act before the expiration of the period specified in the Planning Permission
- 7.9 Where the approval consent expression of satisfaction agreement confirmation or certification of the Council or County Council or any officer of the Council or County Council is required for any purpose under or in connection with the terms of this Deed such approval consent expression of satisfaction agreement confirmation or certification shall not be unreasonably withheld or delayed
- 7.10 Without prejudice to the Council's and the County Council's statutory rights the Owner hereby grants to the Council and/or the County Council or any person duly authorised or instructed by it an irrevocable licence at all reasonable times to enter the such parts of the Site to inspect any of the works to be carried out for the purposes of the Development and any materials to be used in carrying out those works for any purpose directly or indirectly connected with or contemplated by this Deed

#### **VALUE ADDED TAX**

8. All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable

#### **JURISDICTION**

9. This Deed is governed by and interpreted in accordance with the law of England and Wales

#### **WORKS**

10. If the Department of Transport Technical Design standards of Advice is amended after the date of this Deed the director of Environment shall be at liberty to review the Works and require any amendments he deems necessary to ensure that the Works comply with the revised standards and advise **SAVE THAT** in circumstances where detailed contract drawings have been approved in writing by the Director of Environment and the

Works are commenced within three months of the date of the written approval then the Director of Environment shall no amendments to the Works

**MORTGAGEES CONSENT**

11. The Mortgagee hereby consents to the Owner entering into this Deed and agrees that the security of the Charge over the Site shall take effect subject to this Deed **PROVIDED THAT** the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner

**IN WITNESS** whereof the Owner and the Mortgagee have executed this Deed but the same remains undelivered until the day and year first before written.

**SCHEDULE 1**  
**The Owner's Covenants Restrictions Stipulations and Obligations**

**Sustainable Transport Contribution**

- 1.1 To pay the Sustainable Transport Contribution to the County Council prior to the Commencement Date
- 1.2 Not to Commence the Development until such time as the Sustainable Transport Contribution shall have been paid to the County Council in accordance with paragraph 1.1 of this Schedule

**Green Travel Plan**

- 2.1 Not to occupy or permit the Site or any part of the Site to be occupied for purposes pursuant to the Planning Permission until it has prepared and secured the written approval (which shall not be unreasonably withheld) of the County Council to a Green Travel Plan (GTP) in respect of the part or parts to be occupied and each such GTP shall contain as many of the provisions detailed in the GTP Guidance as are appropriate to the Site or the relevant part of the Site and further shall include provisions as to how the progress of the GTP shall be monitored
- 2.2 That if it or its successors in title occupy the Site or any part of the Site pursuant to the Development it or they will implement the approved GTP relating to the Site or that part of the Site and shall use all reasonable endeavours to achieve the targets set therein
- 2.3 That it will in relation to the Site include in any tenant's lease or occupier's licence of any part or parts of the Site a covenant that the tenant or occupier will implement the GTP for such part or parts of the Site once it has been approved by the County Council and further that it will use all reasonable endeavours to enforce such obligation against any such tenant or occupier
- 2.4 Within twenty (20) Working Days of the letting of the Site or any part or parts thereof it will procure the delivery to the County Council of a notice giving the following details
  - (i) the name and address of the tenant
  - (ii) a description of the premises demised
  - (iii) the length of the term and
  - (iv) a sufficient extract of the lease setting out the terms of the covenant expressed in favour of the County Council in relation to the GTP

**Libraries Contribution Youth Contribution childcare Contribution Nursery Contribution and Education Contribution**

- 3.1 To pay the [Libraries Contribution the Youth Contribution the Childcare Contribution the Nursery Contribution and the Education Contribution] to the County Council prior to the Commencement Date
- 3.2 Not to Commence the Development until the [Libraries Contribution the Youth Contribution the Childcare Contribution the Nursery Contribution and the Education Contribution] have been paid in accordance with paragraph 3.1 of this Schedule

**Fire Hydrants**

- 4.1 To ensure that the Water Scheme incorporates fire hydrants in accordance with BS750(1984) as reasonably and properly required by the Hertfordshire Fire and Rescue Service
- 4.2 To construct and provide at no cost to the Fire and Rescue Service of the County Council the fire hydrants reasonably and properly indicated in the Water Scheme and to advise the Service in writing of the date upon which each and every fire hydrant becomes operational
- 4.3 Once operational to maintain the fire hydrants in good condition and repair such that they are suitable at all times for use by the Fire and Rescue Service until they are adopted by the Fire and Rescue Service which adoption shall take place upon the issue of a certificate of satisfaction by the Chief Fire Officer of the Service the issue of which shall not be unreasonably delayed **PROVIDED THAT** such certificate of satisfaction shall not be issued prior to the issue by the Director of the certificate of maintenance for the highways in which the fire hydrants are located
- 4.4 Not to occupy nor cause nor permit occupation of any building forming part of the Development until such time as it is served by an operational fire hydrant

## Highway Works

5. Not to Occupy nor cause nor permit Occupation of any part of the Development until such time as the Works have been completed by the Owner to the satisfaction of the County Council as evidenced by issue of a certificate of completion by the Director of Environment in respect of the Works in accordance with the Section 278 Agreement

**SCHEDULE 2**

**PRO FORMA  
EVENT NOTIFICATION AND PAYMENT  
PURSUANT TO SECTION 106 AGREEMENT/UNILATERAL UNDERTAKING**

DATED.....  
MADE BETWEEN.....  
PLANNING PERMISSION REFERENCE.....  
HCC DU REFERENCE.....  
SITE ADDRESS.....  
.....

**SITE OWNER DETAILS**

Name.....  
Contact name.....  
Address.....  
.....  
Telephone Nos.  
Main.....  
Mobile.....  
E-mail.....

**EVENTS BEING NOTIFIED**

Commencement Date.....  
Occupation of Development (No. if relevant) date.....  
Completion of Development date.....

**COMPLIANCE WITH OBLIGATION(S)**

Schedule.....Paragraph.....

Date of obligation and compliance.....

.....

**PAYMENT OF S106 CONTRIBUTIONS**

Payment type	Amount	Interim Indexation	Final Indexation	Total	Payable to
Example Education (primary)	X £	Y £	Z £	X + Y £	Herts County Council

Payment of S106 contributions can be made by BACS CHAPS or cheque. In any event the form should be completed to ensure the payment is identified correctly and forward to:

a) The County Secretary  
Hertfordshire County Council  
County Hall, Pegs Lane  
Hertford  
Herts SG13 8DE

(Ref : DU [     ])

b) To Hertsmere Borough Council  
Civic Offices, Elstree Way  
Borehamwood  
Herts WD6 1WA

Executed as a **DEED** by the said )  
 )  
acting by two of its directors or by one of its )  
directors and its company secretary )

Director:  
Name:  
Signature:  
Director  
Name  
Signature  
Company Secretary:  
Name:  
Signature:

Executed as a **DEED** by the said )  
 )  
acting by )  
 )



### **Appendix 3 Hertsmere Standard Clauses**

*To be inserted into standard agreements:*

To pay to the Council the following contributions prior to Commencement of Development:-

- x [insert amount] (index linked as hereinafter provided) towards greenways works serving the locality of the Development (“the Greenways Contribution”)
- x [insert amount] (index linked as hereinafter provided) towards the provision improvement and maintenance of public open serving the locality of the Development
- x [insert amount] (index linked as hereinafter provided) towards the provision improvement and maintenance of public leisure facilities within the borough of Hertsmere,
- x [insert amount] (index linked as herein after provided) towards the provision improvement and maintenance of playing fields within the borough of Hertsmere [serving the locality of the Development]
- x [insert amount] (index linked as hereinafter provided) towards the maintenance of cemeteries within the borough of Hertsmere
- x [insert amount] (index linked as hereinafter provided) towards the provision improvement and maintenance of allotments within the borough of Hertsmere
- x [insert amount] (index linked as hereinafter provided) towards the provision maintenance and upkeep of museums and cultural facilities within the borough of Hertsmere
- x [insert amount] (index linked as hereinafter provided) towards the costs associated with the design and implementation of parking restrictions along x including but not limited to the imposition of traffic regulation orders which the Council in consultation with the County Council determine are necessary as a result of the impact of the Development on the highway network (“the Parking Management Contribution”)

## **Other**

- The Greenways Contribution , Public Open Space Contribution, the Public Leisure Facilities Contribution, the Playing Fields Contribution, the Cemeteries Contribution, the Allotments Contribution and the Museums and Cultural Facilities Contribution shall be index linked to movements in the CPI Index from the date that Planning Permission is granted to the date on which the contribution is paid
- prior to the Commencement of the Development it shall pay to the Council a sum equal to 30% of the Planning Application fee payable and determined at the time of the Planning Application as a contribution towards the Council's costs of monitoring the implementation of this Deed such sum to be subject to interest at 4% above Barclays Base Rate from the date of this Deed to the date of payment