

Unilateral Undertaking Model Precedent

PLEASE NOTE:-

- (A) THE PROVISIONS OF THIS DOCUMENT MAY NEED TO BE AMENDED TO TAKE ACCOUNT OF MATTERS REQUIRED BY THE BOROUGH COUNCIL/COUNTY COUNCIL IN RELATION TO A SPECIFIC APPLICATION**
- (B) APPLICANTS SHOULD CONFIRM THE REQUIRED CONTRIBUTIONS WITH THE BOROUGH COUNCIL'S PLANNING CASE OFFICER BEFORE COMPLETING THIS DOCUMENT**
- (C) OTHER THAN THE INSERTION/DELETION OF CASE SPECIFIC DETAILS AS SHOWN IN SQUARE BRACKETS [] AMENDMENTS TO THIS DOCUMENT SHOULD NOT BE MADE WITHOUT THE APPROVAL OF THE COUNCIL'S LEGAL SERVICE**

THIS UNILATERAL UNDERTAKING is made by deed on the []
day of [] 20[]

PARTIES

- 1. whose address is ("the Owner" (which expression shall include the Owner's successors in title)) and
- 2. (Co. Regn. No. []) whose registered office is situate at address is ("the Developer")

In favour of

- 3. Dacorum Borough Council of Civic Centre, Marlowes, Hemel Hempstead, Hertfordshire, HP1 1HH ("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"

NB. i) Owners of all interests in all affected parts of the Site will need to be parties as well as the Developer (if a different person and they have a legal interest at the date of completing the undertaking)

ii) All lessees/option holders etc. will also need to be parties

ii) Title must be shown to all land within the Site and also over any land on which any highway works are to be carried out if not already part of the publicly maintained highway.

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 local 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
- (4) The Developer/Lessee [*delete as applicable*] has a legal interest in the Site by virtue of a [*describe how the legal interest was created*]
- (5) The Owner/Developer [*delete as applicable*] 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

NOW THIS DEED WITNESSES 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);

“Allotment Contribution” means the sum [of [] pounds (£[])] (index linked as hereinafter provided)

“Child Play Space Contribution” means the sum [of [] pounds (£[])] (index linked as hereinafter provided)

“Childcare Contribution” means the sum [of [] pounds (£[])] (indexed linked as hereinafter provided)

“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, 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;

“Cycle Networks Contribution” means the sum [of [] pounds (£[])] (index linked as hereinafter provided)

“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 and Commercial Services for the time being and his agents;

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

“Library Contribution” means the sum [of [] pounds (£[])] (index linked as hereinafter provided)

“Maintenance Contribution” means the sum [of [] pounds (£[])] (index linked as hereinafter provided)

“Monitoring and Administration Contribution” means the sum [of [] pounds (£[])]

“Natural Green Space Contribution” means the sum [of [] pounds (£[])] (index linked as hereinafter provided)

“Nursery Contribution” means the sum [of [] pounds (£[])] (index linked as hereinafter provided)

“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 full planning permission bearing the Council’s reference number [];

“Playing Pitches Contribution” means the sum [of [] pounds (£[])] (index linked as hereinafter provided)

“Planning Permission” means the permission to be granted by way of approval of the Planning Application;

“Police Contribution” means the sum [of [] pounds (£[])] (index linked as hereinafter provided)

“Primary Education Contribution” means the sum [of [] pounds (£[])] (index linked as hereinafter provided);

“PUBSEC Index” means the Department for Business Innovation and Skills Tender Price Index of Public Sector Non Housing Smoothed All-In Index;

“Regeneration Project Contribution” means the sum [of [] pounds (£[])] (index linked as hereinafter provided)

“Secondary Education Contribution” means the sum [of [] pounds (£[])] (index linked as hereinafter provided);

“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 collated into a single index known as the SPONS Construction Civil Engineering Cost Index;

“Sustainable Transport Contribution” means the sum [of [] pounds (£[])](indexed linked as hereinafter provided);

“TravelSmart Contribution” means the sum of [] pounds (£[])] (index linked as hereinafter provided)

“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

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

“Youth Contribution” means the sum of [] pounds (£[])(index linked as hereinafter provided);

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 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 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 and/or Developer 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/Developer to do any act matter or thing include an obligation to procure that it be done;

1.2.9 any covenant by the Owner and/or Developer not to Commence the Development shall be deemed to include a covenant not to Occupy the Development

2. 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 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, Section 1 of the Localism Act 2011 and all other enabling powers;

2.3 The Owner and/or Developer 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/Developer but also against the successors in title of the Owner/Developer and any person claiming through or under the Owner/Developer an interest or estate in the Site or any part thereof

2.4 The covenants in this Unilateral Undertaking shall come into effect on the date of this Unilateral Undertaking

3 OWNER'S/DEVELOPER'S COVENANTS [*delete as applicable*]

3.1 The Owner and the Developer [*delete as applicable*] covenants with the Council and 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 proforma set out in Schedule 2 hereto
- (iii) to give the County Council and the Council no less than five (5) Working Days notice of the completion of the Development such notice to be in writing using the proforma set out in Schedule 2 hereto
- (iv) to give the County Council and the Council no less than five (5) Working Days notice of the Occupation of the Development such notice to be in writing using the proforma set out in Schedule 2 hereto
- (v) to pay to the Council and the County Council on the date hereof their respective costs incurred in connection with the preparation negotiation and completion of this Deed

3.2 The Owner further covenants that:-

- (i) it is the freehold owner of the Site

- (ii) the Site is free from all encumbrances material to this Unilateral Undertaking
- (iii) save the Developer no other party has an interest in the Site
[delete if not applicable]

4. EXPENDITURE IN ADVANCE OF RECEIPT OF CONTRIBUTIONS

4.1 If prior to the receipt of any of [the Primary Education Contribution the Secondary Education Contribution the Library Contribution the Youth Contribution the Nursery Contribution the Childcare Contribution or the TravelSmart Contribution the County Council incurs any expenditure in providing additional primary education secondary education library youth nursery childcare facilities or incurs expenditure in relation to the TravelSmart initiative 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 Primary Education Contribution the Secondary Education Contribution the Library Contribution the Youth Contribution the Nursery Contribution the Childcare Contribution or the TravelSmart Contribution as the case may be deduct from the Primary Education Contribution the Secondary Education Contribution the Library Contribution the Youth Contribution the Nursery Contribution the Childcare Contribution or the TravelSmart Contribution] as appropriate such expenditure incurred

[delete references to contributions that do not apply]

5. INDEXATION

5.1 [The Library Contribution, the Childcare Contribution the Youth Contribution the Nursery Contribution the Primary Education Contribution and the Secondary Education Contribution] shall [each] be index linked by

reference to the PUBSEC Index figure of [175] to the figure applicable to the quarter in which the contribution is paid

5.2 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 PUBSEC 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 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 5.1]

5.3 The Sustainable Transport Contribution and the TravelSmart Contribution shall be index-linked to movements in the SPONS Index from June 2006 to the date on which the Sustainable Transport Contribution or the TravelSmart Contribution is paid

5.4 Where any sum to be paid to the County Council under the terms of this Deed is required to be index-linked 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

5.5 The Allotment Contribution the Child Play Space Contribution the Cycle Networks Contributions the Natural Green Space Contribution the Playing Pitches Contribution the Police Contribution the Maintenance Contribution the Regeneration Project Contribution and the Monitoring and Administration Contribution shall each be index-linked in accordance with any changes to the “All Items” index of retail prices

from April 2011 until the date of payment. *[delete references to contributions that do not apply]*

6. MISCELLANEOUS

6.1 This Deed shall be registered as a local land charge by the Council

6.2 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

6.3 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:
The Planning
Enforcement
Officer, Dacorum
Borough Council,
Civic Centre,
Marlowes, Hemel
Hempstead,
Hertfordshire, HP1
1HH

In respect of the
County Council:
The Chief Legal
Officer,
Hertfordshire
County Council,
County Hall,
Pegs Lane,
Hertford,
Herts
SG13 8DE

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

6.4 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.

- 6.5 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
- 6.6 No waiver whether express or implied by the County Council or Council of any breach or default by the Owner/Developer 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
- 6.7 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
- 6.8 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
- 6.9 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 any part 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.

7. VALUE ADDED TAX

7.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any valued added tax properly payable

8. JURISDICTION

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

SCHEDULE 1

The Owner's and Developer's Covenants Restrictions Stipulations and Obligations

Allotment Contribution Child Play Space Contribution Cycle Network Contribution Natural Green Space Contribution Playing Pitches Contribution Police Contribution Monitoring and Administration Contribution Maintenance Contribution and the Regeneration Project Contribution

[delete references to contributions that do not apply]

- 1.1 To pay the Allotment Contribution to the Council prior to Commencement as a contribution to be applied by the Council in its absolute discretion towards the cost of the provision of allotments serving the locality of the Development
- 1.2 To pay the Child Play Space Contribution to the Council prior to Commencement as a contribution to be applied by the Council in its absolute discretion towards the cost of the provision of child play space serving the locality of the Development
- 1.3 To pay the Cycle Network Contribution to the Council prior to Commencement as a contribution to be applied by the Council in its absolute discretion towards the cost of the provision of cycle networks and facilities serving the locality of the Development
- 1.4 To pay the Natural Green Space Contribution to the Council prior to Commencement as a contribution to be applied by the Council in its absolute discretion towards the cost of the provision of natural green space serving the locality of the Development
- 1.5 To pay the Playing Pitches Contribution to the Council prior to Commencement as a contribution to be applied by the Council in its

absolute discretion towards the cost of the provision of playing pitches serving the locality of the Development

- 1.6 To pay the Police Contribution to the Council prior to Commencement as a contribution to be applied by the Council in its absolute discretion towards the cost of policing serving the locality of the Development
- 1.7 To pay the Maintenance Contribution to the Council prior to Commencement as a contribution to be applied by the Council in its absolute discretion towards the cost of the upkeep and maintenance of facilities secured through this unilateral undertaking
- 1.8 To pay the Regeneration Project Contribution to the Council prior to Commencement as a contribution to be applied by the Council in its absolute discretion towards the cost of *[insert details of the regeneration project for which the contribution is sought]*
- 1.9 To pay the Monitoring and Administration Contribution to the Council prior to Commencement as a contribution to be applied by the Council in its absolute discretion towards the cost of negotiating and administering this Deed and ongoing compliance monitoring
- 1.10 Not to Commence nor cause nor permit Commencement until the Allotment Contribution Child Play Space Contribution Cycle Network Contribution Natural Green Space Contribution Playing Pitches Contribution Police Contribution Monitoring and Administration Contribution Maintenance Contribution and the Regeneration Project Contribution have been paid to the Council in accordance with paragraphs 1.1- 1.9 of this Schedule 1

Sustainable Transport Contribution

- 2.1 To pay the Sustainable Transport Contribution to the County Council prior to the Commencement Date as a contribution to be applied by the County Council at its sole discretion towards the costs of highway improvement works traffic management schemes traffic studies improvements to public transport or 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 of Environment in his absolute discretion determines will contribute to the improvement of highway conditions on parts of the highway network affected by traffic associated with the Development
- 2.2 Not to Commence nor cause nor permit Commencement until such time as the Sustainable Transport Contribution shall have been paid to the County Council in accordance with paragraph 2.1 of this Schedule
1

Library Contribution Youth Contribution Childcare Contribution Nursery Contribution TravelSmart Contribution Primary Education Contribution and Secondary Education Contribution

- 3.1 To pay the Library Contribution to the County Council prior to Commencement as a contribution to be applied by the County Council in its absolute discretion towards the cost of additional library facilities serving the locality of the Development
- 3.2 To pay the Youth Contribution to the County Council prior to Commencement as a contribution to be applied by the County Council in its absolute discretion towards the cost of additional youth facilities serving the locality of the Development
- 3.3 To pay the TravelSmart Contribution to the County Council prior to Commencement as a contribution to be applied by the Council in its absolute discretion towards the cost of the County Council's TravelSmart initiative

- 3.4 To pay the Childcare Contribution to the County Council prior to Commencement as a contribution to be applied by the County Council in its absolute discretion towards the cost of additional childcare facilities serving the locality of the Development
- 3.5 To pay the Nursery Contribution to the County Council prior to Commencement as a contribution to be applied by the County Council in its absolute discretion towards the cost of additional nursery facilities serving the locality of the Development
- 3.6 To pay the Primary Education Contribution to the County Council prior to Commencement as a contribution to be applied by the County Council in its absolute discretion towards the cost of additional primary education facilities serving the locality of the Development
- 3.7 To pay the Secondary Education Contribution to the County Council prior to Commencement as a contribution to be applied by the County Council in its absolute discretion towards the cost of additional secondary education facilities serving the locality of the Development
- 3.8 Not to Commence nor cause nor permit Commencement until the Library Contribution the Youth Contribution the Childcare Contribution the Nursery Contribution the TravelSmart Contribution the Primary Education Contribution and the Secondary Education Contribution have been paid in accordance with paragraphs 3.1 to 3.7 of this Schedule 1

Fire Hydrants

- 4.1 To ensure that the Water Scheme incorporates fire hydrants in accordance with BS 750 (2006) as reasonably and properly required by the Fire and Rescue Service AND not to Commence or permit Commencement of the Development until the Water Scheme has been

submitted to and approved in writing by the Fire and Rescue Service such approval not to be unreasonably withheld or delayed

- 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 Fire and Rescue 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 effect from the date of issue of written acceptance by the County Council's Chief Legal Officer the issue of which shall not be unreasonably delayed PROVIDED THAT such written acceptance 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 served by an adopted 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

SCHEDULE 2

PROFORMA

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

Email

EVENTS BEING NOTIFIED

Commencement Date – date :.....

Occupation of Development (Number if relevant) – date:.....

Completion of Development – date:

COMPLIANCE WITH OBLIGATION(S)

Schedule **Paragraph**

Details 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 Chief Legal Officer
Hertfordshire County Council
County Hall,
Pegs Lane
Hertford
Hertfordshire
SG13 8DE

(Ref : DU [])

b) To the Planning Enforcement Officer
Dacorum Borough Council, Civic Centre, Marlowes, Hemel Hempstead,
Herts, HP1 1HH

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

EXECUTED as a Deed)
XXXXXXXXXXXX)
LIMITED acting by two of its directors)
or by one its directors and)
its company secretary)

Director:

Name:-

Signature:-

Director:

Name:-

Signature:-

Company Secretary:-

Name:-

Signature:-

Executed as Deed by)
_____)

Witness name

Witness signature

Witness address

