

DATED

(1) **[INSERT NAME OF FIRST OWNER]**

and

(2) **[INSERT NAME OF LESSEE]**

and

(3) **[INSERT NAME OF MORTGAGEE]**

to

(4) EAST HERTFORDSHIRE DISTRICT COUNCIL

UNILATERAL UNDERTAKING pursuant to Section
106 Town and Country Planning Act 1990 (as
amended) relating to land at

[ADDRESS]

Planning Application Ref: [INSERT]



Development Management, Wallfields, Pegs Lane, Hertford, SG13 8EQ

SAMM Tariff Summary

Date of Submission	
Planning Application Number	
Standard for Payment of SAMM Contribution	$\pounds 540.07 \times \text{Number of New Dwellings} = \text{Value of Contribution.}$
Monitoring Costs	• For 1 -2 net additional dwellings – $\pounds 200$ • For 3-5 net additional dwellings – $\pounds 400$ • For 5 dwellings – + $\pounds 600$
Total Sum Due	

This Deed of Undertaking is made on [DATE]

By:

- (1) [INSERT NAME OF FREEHOLD OWNER] of [INSERT ADDRESS] ("the [First] Owner")
- (2) [INSERT NAME] of [INSERT ADDRESS] ("the Lessee")
- (3) [INSERT NAME OF LENDER] (Company Registration Number XXX) of [INSERT REGISTERED OFFICE ADDRESS] ("the Mortgagee")

TO:

- (4) EAST HERTFORDSHIRE DISTRICT COUNCIL of Wallfields, Pegs Lane, Hertford, SG13 8EQ (the "Council")

Background

- A** The [Owner] wishes to carry out the Development pursuant to the Planning Permission upon the Site.
- B** The Owner is the freehold owner of the part of the Site registered with title number [INSERT TITLE NUMBER] at HM Land Registry. [At the date of this Deed the freehold title is subject to a charge in favour of the Mortgagee].
- C** The Lessee is the leasehold owner of part of the Site registered with title number [INSERT TITLE NUMBER] at HM Land Registry.
- D** The Site is within the zone of influence of the Hatfield Forest Site of Special Scientific Interest (SSSI) and National Nature Reserve (NNR) and the planning obligations in this Deed are necessary to mitigate the impact of

the Development on it and make the Development acceptable in planning terms.

- E** The [First Owner, Second Owner and Lessee have/has] agreed to enter into this Deed with the intention that the obligations contained in this Deed may, in the event that the Planning Permission is granted, be enforced by the Council against the Owner and [his/her/their/its] successors in title.
- F** For the purpose of the 1990 Act, the Council is the local planning authority for the area in which the Site is situated.
- G** The obligations contained in this Deed are planning obligations for the purposes of section 106 of the 1990 Act and covenants and undertakings under the Acts.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. Definitions

- 1.1. In this Deed (which includes the Schedules and Appendices to it) the following words and expressions have the following meanings:

"1990 Act" means the Town and Country Planning Act 1990 (as amended);

"Acts" means section 111 of the Local Government Act 1972, section 16 of the Greater London Council (General Powers) Act 1974 and section 1 of the Localism Act 2011 and in each case any statutory amendment, variation, substitution or re-enactment thereof together with all other

statutory powers and acts pursuant to which the Parties hereto shall be empowered to enter into this Deed;

“Commencement”

means the carrying out on the Site and pursuant to the Planning Permission (irrespective of any non-compliance with any condition) of a material operation pursuant to section 56(4) of the Act 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 all references to “Commence” shall be construed accordingly;

“Development”

means the development of the Site by the [INSERT DESCRIPTION OF DEVELOPMENT] as set out in the Planning Application;

“Hatfield Forest Mitigation Strategy”

[means the strategic mitigation solution for the adverse impacts of recreational pressure on Hatfield Forest SSSI / NNR developed by Natural England alongside other stakeholders, outlined in the National Trust document “Hatfield Forest

NNR & SSSI Mitigation Strategy” and described in the letter published on the Council’s website from Natural England to Uttlesford District Council; Harlow District Council; Epping Forest District Council and East Hertfordshire District Council dated 08 April 2025] ;

“Site of Special Scientific Interest” or “SSSI”

means a site designated as a Site of Special Scientific Interest under section 28 of the Wildlife and Countryside Act 1981 (as amended), being an area notified by Natural England (or its successor body) as being of special interest by reason of its flora, fauna, geological or physiographical features;

“Index”

means the BCIS All in Tender Price Index or such other comparable index or basis for indexation as the Council may direct;

“Index-Linked”

means the recalculation of any payment specified in this Deed by applying the following formula:-

$$A \times \frac{B}{C} = D$$

Where:

A = the payment specified in this Deed

B = the figure shown in the relevant Index most recently published prior to the date the payment is made under this Deed

C = the figure shown in the relevant Index most recently published prior to the date of this Deed

D = the recalculated sum payable;

“Interest”

means interest at four per cent (4%) above the base lending rate of the Bank of England from time to time;

“Monitoring Contribution”

means the sum of £ [INSERT SUM (INSERT SUM in words)] payable to the Council towards monitoring compliance with the obligations in this Deed;

["Owner"]

[means the First Owner, the Second Owner and the Lessee];

“Occupation”

means occupation for the purposes permitted by the Planning Permission but not including use by personnel engaged in construction, fitting out or decoration; or use for marketing or display; or use in relation to security operations and “Occupied”, “Occupier” and “Occupy” shall be construed accordingly;

"Party"	means a party to this Deed and "Parties" shall be construed accordingly;
"Plan"	means the site plan annexed to this Deed;
"Planning Application"	means the application for full planning permission submitted to the Council for the Development allocated reference number [INSERT IF AVAILABLE];
"Planning Permission"	means the planning permission granted pursuant to the Planning Application;
"SMM Contribution"	means the sum of £[INSERT SUM (INSERT SUM in words)] Index Linked payable to the Council as a financial contribution towards the maintenance, improvement, management, access management and monitoring of the Hatfield Forest SSSI to mitigate the recreational impact of the Development on the Hatfield Forest SSSI in accordance with the Hatfield Forest Mitigation Strategy;
"S106" Monitoring Officer"	Means the Council's Section 106 Monitoring Officer for the time being or their successor post or any other officer to whom they delegate their Section 106 monitoring functions;
"Site"	means the land against which this Deed may be enforced known as [INSERT SITE ADDRESS]

shown for identification purposes edged red on the Plan;

“Section 73 Consent”

means a planning permission granted pursuant to section 73 of the Act which varies and/or removes any condition to which the Planning Permission and/or to which such planning permission granted pursuant to section 73 of the Act was granted;

“Working Day”

means any day of the week other than Saturday, Sunday or a bank holiday or a public holiday in England.

2. CONSTRUCTION

2.1. In this Deed, unless otherwise indicated, reference to:

2.1.1. The Owner or the Council or any one or more of them shall include reference to their respective successors in title and to persons claiming through or under them;

2.1.2. Recital, clause, sub-clause, paragraph number, schedule, appendix or plan is a reference to a recital, clause or sub-clause of, paragraph number of, schedule to, appendix to or plan annexed to this Deed;

2.1.3. Words importing the singular meaning include the plural meaning and vice versa;

- 2.1.4. Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, other corporate bodies, firms or legal entities and all such words shall be construed interchangeably in that manner; and
- 2.1.5. Statute shall include any amendment, modification, extension, consolidation or re-enactment of that statute for the time being in force and in each case shall include (as relevant) all statutory instruments, orders, regulations and directions for the time being made, issued or given under that statute or deriving validity from it.
- 2.1.6. Headings where they are included are for convenience only and are not intended to influence the construction and interpretation of this Deed.
- 2.1.7. Wherever an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually unless there is an express provision otherwise.
- 2.2. Where in this Deed a Party covenants:
 - 2.2.1. to do something, that shall also be a covenant to procure that that something is done; and
 - 2.2.2. not to do something, that shall also be a covenant not to permit or allow that something to be done

3. LEGAL BASIS

- 3.1. This Deed is made under Section 106 of the 1990 Act.

- 3.2. The obligations contained in this Deed are planning obligations for the purposes of section 106 of the 1990 Act and covenants and undertakings under the Acts.
- 3.3. The obligations, covenants and undertakings are entered into by the Owner on the basis that they are enforceable by the Council against the Owner and also against any successors in title or assigns of the Owner and any person claiming through or under the Owner an interest or estate in the Site or any part of it as if that person had been the original covenanting Party in respect of the interest for the time being held by it.
- 3.4. References in this Deed to the Council include its respective successors in statutory function and include persons deriving title through or under it.
- 3.5. Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the Council of any of their statutory powers, duties, functions or discretions in relation to the Site or otherwise.

4. CONDITIONALITY

- 4.1. This Deed shall come into effect on the date hereof.

5. OBLIGATIONS OF THE OWNER

- 5.1. The Owner covenants with the Council to comply with each obligation, covenant and undertaking given on the part of the Owner in this Deed as set out in the Schedule.
- 5.2. The Owner shall upon parting with all of their interest in the Site be released from all obligations, rights and duties under the terms of this Deed but shall remain liable for any breaches of this Deed occurring before parting with such interest.

- 5.3. The Owner covenants to give the Council written notice of any change in ownership of any of their interests in the Site occurring before all the obligations under this Deed have been discharged.
- 5.4. The notice referred to in Clause 5.3 above shall give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.
- 5.5. The Owner covenants to permit the Council and its authorised employees and agents access to the Site during the carrying out of the Development to inspect whether the provisions of this Deed are being observed and performed in accordance with the terms of this Deed.

6. GENERAL

- 6.1. Any covenant by the Owner not to do an act or thing shall be deemed to include an obligation to use reasonable endeavours not to permit or suffer such act or thing to be done by another person where knowledge of the actions of the other person is reasonably to be inferred.
- 6.2. The Owner acknowledges that nothing in this Deed shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions in any capacity and the respective rights powers duties and obligations of the Council under private, public or subordinate legislation may be effectively exercised.
- 6.3. 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 provisions of this Deed.

- 6.4. No variation to this Deed shall be effective unless first approved by the Council and made by deed or pursuant to the determination of an application made under Section 106A of the 1990 Act.
- 6.5. Failure by the Council to enforce at any time or for any period any one or more of the terms or conditions of this Deed shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Deed.
- 6.6. Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 6.7. This Deed will end (to the extent it has not already been complied with), if the Planning Permission
- 6.7.1. is quashed, revoked or otherwise withdrawn at any time so as to render this Deed or any part of it irrelevant, impractical or unviable; or
- 6.7.2. expires before Commencement.
- 6.8. Subject to the proviso in this clause, in the event that any new planning permission(s) are granted by the Council after the date of this Deed in relation to an application to remove and/or vary condition(s) attached to the Planning Permission pursuant to Section 73 of the Act;
- 6.8.1. The obligations in this Deed shall relate to and bind any subsequent Section 73 Consent and the Site without the automatic need to enter into any subsequent deed of variation/

supplemental deed to this Deed or new obligation pursuant to Section 106 of the Act; and

6.8.2. The definitions of Application, Planning Permission and Development in this Deed shall be construed to include reference to (respectively) any application(s) under Section 73 of the Act, any Section 73 Consent granted thereunder and any development permitted by such subsequent Section 73 Consent.

6.9. Any Section 73 Consent shall if the Council considers it appropriate include a condition/informative substantially in the following form:

“The obligations under the planning obligation by way of Agreement dated [] pursuant to the previous application [] will be equally applied to and satisfy the requirements necessitated under this application []”.

PROVIDED THAT it is hereby agreed and declared by the parties hereto that nothing in this clause shall fetter the discretion of the Council in determining any applications under Section 73 of the Act and the appropriate planning obligations required in connection with the determination of the same and the Council reserves the right to insist upon the completion of any subsequent deed of variation / supplemental deed to this Deed or new obligation pursuant to Section 106 of the Act in connection with any Section 73 applications if the Council considers it appropriate to do so.

7. LEGAL COSTS AND ENFORCEMENT COSTS

7.1. The Owner hereby undertakes to pay on or before the completion of this Deed the Council's reasonable legal costs and disbursements incurred in connection with this Deed.

7.2. The Owner covenants that it will reimburse the Council all legal and administrative costs reasonably and properly incurred in connection with the enforcement of any of the provisions of this Deed should, in the reasonable opinion of the Council, the need for enforcement arise.

7.3. Payment of the legal and administrative costs under clause 7.2 shall be made within 14 days of a written demand for payment being served upon the Owner.

8. OTHER DEVELOPMENT

8.1. Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

9. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

9.1. The Owner declares that no person, other than the Council, shall be entitled to enforce any term of this Deed under the Contracts (Rights of Third Parties) Act 1999.

10. NOTICES

10.1. The notice to be provided to the Council pursuant to paragraph 1.1 of the Schedule shall be deemed to have been validly served or given if sent by email to planning@eastherts.gov.uk], quoting the Planning Application reference number.

10.2. Any notice or other written communication to be served on a Party or given by one Party to any other under the provisions of this Deed will be deemed to have been validly served or given if delivered by hand or sent by first class post or sent by recorded delivery post to the Party on whom it is to be

served or to whom it is to be given and will conclusively be deemed to have been received:

- 10.2.1. If delivered by hand or courier, on the next Working Day after the day of delivery;
- 10.2.2. If sent by post, the day 2 Working Days after the date of posting;
or
- 10.2.3. If sent by recorded delivery, at the time delivery was signed for.
- 10.2.4. If a notice, demand or any other communication is served after 4.00pm on a Working Day, or on a day that is not a Working Day, it is to be treated as having been served on the next Working Day.

10.3. A notice or communication will be served or given in accordance with clause 10.2:

- 10.3.1. On the Council at the address first given above marked for the attention of the S106 Monitoring Officer, quoting the Planning Application reference number;
- 10.3.2. On the Owner at the address first given above or such other address as notified in writing to the Council from time to time quoting the Planning Application reference number;
- 10.3.3. On the Mortgagee at its registered office from time to time or such other address as notified in writing to the Council from time to time, marked for the attention of the S106 Monitoring Officer quoting the Planning Application reference number; [DELETE IF NOT REQUIRED]

- 10.3.4. On the Lessee at its registered office from time to time or such other address as notified in writing to the Council from time to time, marked for the attention of the S106 Monitoring Officer quoting the Planning Application reference number; [DELETE IF NOT REQUIRED]

11. LOCAL LAND CHARGE REGISTRATION

- 11.1. This Deed is a Local Land Charge and the Owner accepts that it shall be registered as such by the Council in the Local Land Charges Register.

12. JURISDICTION AND LEGAL EFFECT

- 12.1. This Deed will be governed by and interpreted in accordance with the law of England and Wales and the Parties submit to the non-exclusive jurisdiction of the courts of England and Wales.
- 12.2. If any provision of this Deed is found (for whatever reason) to be invalid, illegal or unenforceable, that invalidity, illegality or unenforceability will not affect the validity or enforceability of the remaining provisions of this Deed.

13. VAT

- 13.1. All consideration given in accordance with the terms of this Deed shall be exclusive of any properly payable VAT.
- 13.2. If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Deed then to the extent that VAT has not been charged in respect of that supply the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly.

14. INDEX-LINKING

- 14.1. Any contribution and/or payment of any sum referred to in this Deed or in the Schedules to this Deed as being payable by any Party shall be Index-Linked.

15. LATE PAYMENT

- 15.1. Without prejudice to any other right remedy or power herein contained or otherwise available to the Council, if any payment of any sum referred to herein shall have become due but shall remain unpaid the Owner shall pay on demand to the Council Interest from the date when the same became due until payment thereof.

16. SPEND IN ADVANCE

- 16.1. The Owner acknowledges and agrees that if prior to the receipt of any financial contribution payable under the terms of this Deed the Council incurs any expenditure in providing facilities or services to which this Deed authorises such financial contributions to be applied then the Council may immediately following receipt of such financial contributions deduct therefrom sums equivalent to such expenditure.

17. MORTGAGEE'S CONSENT

- 17.1. Subject to Clause 17.2 the Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Site shall take effect subject to this Deed.
- 17.2. The Mortgagee shall have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations,

covenants and undertakings as if it were a person deriving title from the Owner [DELETE PARAGRAPH 17 IF NO MORTGAGEE]

IN WITNESS whereof this document has been executed as a Deed and delivered the day and year first before written

DRAFT

THE SCHEDULE

OBLIGATIONS

1. NOTICE OF COMMENCEMENT OF DEVELOPMENT

- 1.1. The Owner shall provide written notice to the Council of the date of Commencement within 5 days thereof.

2. SAMM CONTRIBUTION

- 2.1. The Owner shall pay the SAMM Contribution to the Council before the first Occupation the of Development.
- 2.2. The Owner shall not Occupy the Development unless and until the SAMM Contribution has been paid to the Council.

3. MONITORING CONTRIBUTION

- 3.1. The Owner shall pay the Monitoring Contribution to the Council before the first Occupation of the Development.
- 3.2. The Owner shall not Occupy the Development unless and until the Monitoring Contribution has been paid to the Council.

**APPENDIX
PLAN**

DRAFT

[EXECUTION CLAUSE FOR INDIVIDUALS]

SIGNED AS A DEED BY

Click or tap here to enter text.

[insert name of party]

Signature

in the presence of:

Click or tap here to enter text.

Witness Signature

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Name

Click or tap here to enter text.

Click or tap here to enter text.

Address

Click or tap here to enter text.

Click or tap here to enter text.

Click or tap here to enter text.

Occupation

Click or tap here to enter text.

SIGNED AS A DEED BY

Click or tap here to enter text.

[insert name of party]

Signature

in the presence of:

Click or tap here to enter text.

Witness Signature

Name

Click or tap here to enter text.

Address

Click or tap here to enter text.

Click or tap here to enter text.

Click or tap here to enter text.

Occupation

Click or tap here to enter text.

W I T N E S S

[EXECUTION CLAUSE FOR COMPANY WITHOUT SEAL]

EXECUTED AS A DEED BY

Click or tap here to enter text.

[insert name of party] acting by [two
Directors]/ [a Director and the
Company Secretary]

Signature

[Director]

Click or tap here to enter text.

Signature

[Secretary / Director]

OR

EXECUTED AS A DEED BY

Click or tap here to enter text.

[insert name of party] acting by a
Director

Signature [Director]

in the presence of:

Click or tap here to enter text.

Witness Signature

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Name Click or tap here to enter text.

Address Click or tap here to enter text.

Click or tap here to enter text.

Click or tap here to enter text.

Occupation Click or tap here to enter text.