

Dated:

By:

1. [Landowner]
2. [Mortgagee]

In favour of:

Peterborough City Council

Unilateral

Undertaking

Relating to land at [insert address/land details]

FOR INFORMATION PURPOSES ONLY:

This is the longer form of Unilateral Undertaking where the obligations extend beyond financial contributions. It is for larger developments which comprise no affordable housing or where the developer wants to postpone payment until the development begins.

TO BE DELETED FROM FINAL VERSION.

THIS DEED is made the day of 20[..]
BY:

- (1) [Insert name / company name] (Company Registration number [.....])
whose registered office is at [Insert address]
("the Owner")

- (2) [Insert Mortgagee Name] (Company Registration number [.....])
whose registered office is at [Insert address]
("the Mortgagee")

RECITALS

- (1) Peterborough City Council is the Local Planning Authority for the purposes of the Town and Country Planning Act 1990 as amended ("the Act") for the area within which the Land (as hereinafter defined) is situated and is the authority by whom the planning obligations contained in this Deed are enforceable

- (2) The Owner is the registered proprietor with [title absolute/possessory/qualified] of the Land which is registered at HM Land Registry under Title Number CB [insert details] and holds the Land subject as stated on the Register (including a registered charge in favour of the Mortgagee dated the [.....])

or
- (2) The Owner is the owner in fee simple absolute in possession of the Land [free from incumbrances][subject to a mortgage in favour of the Mortgagee dated the [insert date]]

or
- (2) The Owner is a recent purchaser of the freehold of the Land by virtue of a transfer dated [insert date] and holds the same subject to the incumbrances and other matters therein stated although at the date hereof the registration of such transfer in the Peterborough District Land Registry has not been completed

- (3) By a written application submitted to the Council and numbered [dd/nnnn/suffix] the Owner applied to the Council for planning permission for the erection of [insert details of proposal] upon the Land ("the Development")

- (4) The Owner offers this Deed as a material planning consideration in consideration of the Development which might otherwise render the Development proposal as unacceptable

1 NOW THIS DEED WITNESSEES as follows:-

- 1.1 This Deed is made pursuant to Section 106 of the Act and constitutes a planning obligation for the purposes of the Act and shall be enforceable by the Council against the Owner and any person deriving title under the Owner

2 DEFINITIONS AND INTERPRETATION

- 2.1 In this Deed the following words and expressions shall where the context admits have the following meanings:-

“the Act”

means the Town and Country Planning Act 1990 as amended or re-enacted from time to time

“the Application”

means the application for planning permission dated [insert date] under reference [insert details]

“Contribution”

means a capital contribution towards the provision up-grading or improvement by the Council of such off-site facilities or other matters as further described in this Deed

“the Development”

means the erection of [insert relevant details] in accordance with the Application

“Dwelling”

means a self contained [house/bungalow/flat] constructed upon the Land pursuant to the Permission and Dwellings shall be construed accordingly

“Implementation”

means the carrying out on the Land pursuant to the Permission of a Material Operation and “Implement” shall be construed accordingly

“the Land”

means [describe the land] which forms the subject of the Application and is for the purposes of identification shown edged red on Plan [1] annexed

“Material Operation”

means a material operation as defined in Section 56(4) of the Act save that for the purposes of this Deed the following shall not constitute a material operation:-

- (a) site clearance
- (b) earthworks
- (c) demolition of existing buildings

- (d) archaeological investigation
- (e) assessment of contamination
- (f) remedial action in respect of contamination
- (g) the erection of fences or other means of enclosure for site security
- (h) the diversion and laying of services
- (i) the erection of a site compound or site office or temporary buildings or structures
- (j) interim landscape works

“Neighbourhood Infrastructure”

means works or facilities which are required to deal with the wider movement social recreational leisure and cultural impacts arising from development within the [select relevant details North/West/Central/East/South] Neighbourhood Investment Area as defined in the Council’s “Planning Obligations Implementation Scheme SPD” or any revision or replacement document for the time being in force

“Permission”

means the planning permission for the Development to be issued by the Council in the form of the draft permission annexed to this Deed

“SMART Targets”

means specific measurable achievable realistic and time bound targets

“Strategic Infrastructure”

means major land/development works or facilities which are required to enable development to proceed as defined in the Council’s “Planning Obligations Implementation Scheme SPD” or any revision or replacement document for the time being in force

2.2 Wherever the context so admits the following words and phrases in this Deed shall have the meanings attributed to them:-

- (a) The singular shall include the plural and vice versa
- (b) The masculine gender shall include the feminine and vice versa
- (c) Any words denoting natural persons shall include legal persons and vice versa
- (d) The reference to any statute or section of a statute includes any statutory re-enactment or modification
- (e) “Working Day” means any day from Monday to Friday inclusive which is not Christmas Day, Boxing Day, Good Friday, Easter Monday or a Statutory Bank Holiday

2.3 Any covenant given or made in this Deed shall be deemed to:-

- (a) Be given or made by the covenantor on behalf of [himself / herself / themselves / itself] and [his / her / their/ its] successors in title, and
- (b) Where such covenant is given or made by a party consisting of two or more persons be deemed to be given or made jointly and severally

3 GENERAL CLAUSES

- 3.1 The Owner enters this Deed in the expectation that the Council will grant the Permission arising from the Application
- 3.2 With the exception of clause 8 (Council's legal costs) none of the provisions of this Deed shall take effect prior to Implementation
- 3.3 No obligations or liabilities arising under this Deed shall be enforceable against:
- a) purchasers lessees or occupiers of individual Dwellings constructed as part of the Development nor the mortgagee or Mortgagee in possession of any such persons or receiver appointed by a mortgagee or Mortgagee of such persons
 - b) a statutory undertaker after the transfer of statutory apparatus and/or any land upon or in which the statutory apparatus is situated by the Owner to that statutory undertaker
- 3.4 No person shall be liable for a breach of covenant contained in this Deed after he shall have parted with all his interest in the Land (or the part in respect of which any such breach has occurred) but without prejudice to liability for any subsisting breach prior to his parting with such interest
- 3.5 If the Planning Permission is subsequently revoked quashed or withdrawn (with or without the consent of the Owner) or is so modified by a properly exercised statutory procedure so as to remove any need for the covenants contained in this Deed or expires before Implementation this Deed shall cease to have any effect

4. OWNERS COVENANTS

- 4.1 THE OWNER UNDERTAKES AND COVENANTS with the Council:-
- (a) To comply and perform all the provisions and obligations of this Deed
 - (b) To give written notice of Implementation to the Council no later than five Working Days after such Implementation.
 - (c) To give written notice of completion of the construction of the Dwelling no later than five Working Days after such completion.
- 4.2 The Owner and the Second Owner hereby separately covenant with the Council that if the Owner or the Second Owner shall themselves Implement or permit any third party other than the Developer to do so as applicable the Second Owner shall observe and perform all the provisions of this Agreement which remain to be observed and performed and shall comply with the provisions of the Schedule(s) hereto as though reference herein to the Developer is a reference to the Owner or the Second Owner as applicable and the party carrying out or permitting or procuring the Implementation shall give written notice of Implementation to the Council no later than five working days after such Implementation and shall pay the monitoring costs referred to in clause 8.2 insofar as not previously paid **[ONLY TO BE USED IN THE APPROPRIATE CIRCUMSTANCES]**

5. REGISTRATION AS LOCAL LAND CHARGE

- 5.1 This Deed is a local land charge for the purposes of the Local Land Charges Act 1975 and shall be registered as such

6. INTEREST

- 6.1 Should any of the sums payable to the Council under this Deed be more than 14 days in arrears then the sum payable shall attract interest calculated at a rate of 5% per annum above Barclays Bank plc base rate on a daily basis from the first day after it has become due

7. INDEXATION

- 7.1 Unless otherwise stated to the contrary all Contributions and other sums payable under the terms of this Deed by the Owner to the Council shall be increased by the increase in the Building Cost Information Service All-in Tender Price Index (TPI) (SE England excl London) as published by the Royal Institution of Chartered Surveyors (or in the event that such index ceases to be published then in its place such reasonably equivalent index as the Council shall specify)
- 7.2 The relevant Contribution will be increased by an amount equivalent to the percentage difference between the published TPI current at the date of the issue of Planning Permission and the published TPI current at the date of payment

8. LEGAL COSTS AND PLANNING OBLIGATIONS MONITORING FEE

- 8.1 The Owner shall pay to the Council prior to completion of this Deed its reasonable and proper legal costs incurred in the preparation negotiation and completion of this Deed
- 8.2 The Owner shall pay to the Council prior to completion of this Deed the sum of [Insert figure] POUNDS (£00,000.00) as a contribution towards the monitoring of the obligations arising from this Deed

9. THIRD PARTY RIGHTS

- 9.1 It is not intended that any third parties will acquire any rights by virtue of the Contracts (Rights of Third Parties) Act 1999 under any part of this Deed

10. NOTICES

- 10.1 Any notice required to be given under this Deed shall be in writing and shall be delivered personally or sent by pre-paid first class recorded delivery post or facsimile transmission

(a) in the case of the Owner to [REDACTED]

- (b) in the case of the Council to the Head of Planning, Transport and Engineering Services at Stuart House East Wing St John's Street Peterborough PE1 5DD or for legal notices and processes only to the Solicitor to the Council at Town Hall Peterborough PE1 1HG

or such other address as any party may notify to the other in writing from time to time

- 10.2 Any cheque payable to the Council for any contribution consideration or other matter arising under this Deed shall be made payable to Peterborough City Council and shall be sent or delivered to the Head of Planning, Transport and Engineering Services as provided in clause 10.1
- 10.3 Within five Working Days of the completion of the transfer of any interest in the Land the Owner shall serve notice upon the Solicitor to the Council together with a copy to the Head of Planning, Transport and Engineering Services giving details of the transferees name and address together with details of the site to which the interest applies

11. DISPUTE RESOLUTION

- 11.1 Any dispute or disagreement arising under this Deed which has been identified in writing by one party to the others and which has not been resolved within 20 Working Days may be referred at the instance of any party with the written consent of the other parties for determination by a single expert (the "Expert") whose decision (except in cases of manifest error or fraud) shall be final and binding on the parties.
- 11.2 The following provisions and terms of appointment shall apply to such disputes or disagreements:
- 11.2.1 the Expert shall have at least 10 years post-qualification experience in the subject matter of the dispute;
- 11.2.2 the Expert shall be agreed between the parties or in default of agreement within 10 Working Days of expiry of the period referred to in clause 11.1 above appointed by the President of the Royal Institution of Chartered Surveyors at the request of any party to the dispute;
- 11.2.3 if any party so requires (and notifies the other parties within 3 Working Days of the Expert's appointment) the matter shall be dealt with by oral hearing such hearing to take place within 20 Working Days of the Expert's appointment (or other timescale agreed between the parties);
- 11.2.4 if no party requires the matter to be dealt with by oral hearing:
- 11.2.5 the persons calling for the determination shall make written submissions to the Expert and the other parties within 20 Working Days of the Expert's appointment;
- 11.2.6 the other parties shall have 20 Working Days from the receipt of such written submission (or such extended period as the Expert shall allow) to respond;

- 11.2.7 the Expert shall disregard any representations made out of time;
 - 11.2.8 the Expert shall make his decision within 20 Working Days of the close of the oral hearing or period referred to in clause 11.2.5 or 11.2.6 above as appropriate;
 - 11.2.9 the Expert's decision shall be in writing and give reasons for his decision; and
 - 11.2.10 the Expert's fees shall be in the determination of the Expert
- 11.3 This clause 11 shall not apply to any issues involving a question of law

12. MORTGAGEES CONSENT

- 12.1 The Mortgagee consents to all the provisions of this Agreement PROVIDED THAT the Mortgagee shall in no circumstances be liable under this Agreement unless and until it has taken steps to enforce its security and is in occupation or possession of the Land or any relevant part
- 12.2 The Mortgagee shall upon parting with all its interest in or releasing or discharging its security over the Land or any relevant part be released from all obligations relating to the Land or such relevant part
- 12.3 The Mortgagee consents to the Owner entering into this Agreement and agrees that the Land shall be bound by the obligations and covenants contained within it and shall not transfer its interest as Mortgagee unless it also transfers the delegations and covenants within this Agreement

FIRST SCHEDULE

POOLED CONTRIBUTION TOWARDS PROVISION OF NEIGHBOURHOOD AND STRATEGIC INFRASTRUCTURE

SUBJECT TO INDEXATION

- 1. Upon first occupation of the [first] Dwelling the Owner shall pay to the Council the sum of [Insert figure] POUNDS (£00,000.00) subject to indexation being a contribution towards the costs incurred or to be incurred by the Council for the provision of Neighbourhood Infrastructure and Strategic Infrastructure needs arising from the Development

SECOND SCHEDULE

CONTRIBUTION TOWARDS PROVISION OF OFF-SITE PUBLIC OPEN SPACE

SUBJECT TO INDEXATION

Upon service of the notice referred to in Clause 4.1(b) and 4.1(c) of this Deed the Owner shall pay to the Council the sum of [Insert figure] POUNDS (£00,000.00) subject to indexation being a contribution towards the provision by the Council of off-site public open space to serve the area of Development at [insert details] shown edged green upon the plan annexed to this Deed in lieu of full on-site provision upon the Land

THIRD SCHEDULE

POLICING CONTRIBUTION

SUBJECT TO INDEXATION

Upon service of the notice referred to in Clause 4.1(b) and 4.1(c) of this Deed the Owner shall pay to the Council the sum of [Insert figure] POUNDS (£00,000.00) subject to indexation being a contribution towards the policing needs arising from the Development.

FOURTH SCHEDULE

CEMETERIES / CREMATORIA CONTRIBUTION

SUBJECT TO INDEXATION

Upon service of the notice referred to in Clause 4.1(b) and 4.1(c) of this Deed the Owner shall pay to the Council the sum of [Insert figure] POUNDS (£00,000.00) subject to indexation being a contribution towards the provision upgrading or expansion of crematoria and/or burial grounds to take account of the increased population generated by the Development.

FIFTH SCHEDULE

HAMPTON PUBLIC SERVICE BUILDING CONTRIBUTION

SUBJECT TO INDEXATION

[Applies to Hampton S106 Only]

Upon service of the notice referred to in Clause 4.1(b) and 4.1(c) of this Deed the Owner shall pay to the Council the sum of [Insert figure] POUNDS (£00,000.00) subject to indexation being a contribution towards the Hampton Public Service Building.

SIXTH SCHEDULE

LOCAL NEIGHBOURHOOD CENTRE CONTRIBUTION

SUBJECT TO INDEXATION

[Applies to Hampton S106 Only]

Upon service of the notice referred to in Clause 4.1(b) and 4.1(c) of this Deed the Owner shall pay to the Council the sum of [Insert figure] POUNDS (£00,000.00) subject to indexation being a contribution towards the Local Neighbourhood Centre.

SEVENTH SCHEDULE

WASTE MANAGEMENT

SUBJECT TO INDEXATION

RECYCLING AND WASTE DISPOSAL

Upon service of the notice referred to in Clause 4.1(b) and 4.1(c) of this Deed the Owner shall pay to the Council the sum of [Insert figure] POUNDS (£00,000.00) subject to indexation being a contribution towards the costs incurred by the Council for the provision of refuse disposal and waste management recycling facilities arising from the Development.

EIGHTH SCHEDULE

EDUCATION CONTRIBUTION

SUBJECT TO INDEXATION

Upon service of the notice referred to in Clause 4.1(b) and 4.1(c) of this Deed the Owner shall pay to the Council the sum of [Insert figure] POUNDS (£00,000.00) subject to indexation to enable the provision by the Council of education needs arising from the Development.

NINTH SCHEDULE

PRIMARY CARE CONTRIBUTION

SUBJECT TO INDEXATION

Upon service of the notice referred to in Clause 4.1(b) and 4.1(c) of this Deed the Owner shall pay to the Council the sum of [Insert figure] POUNDS (£00,000.00) subject to indexation being a contribution towards the provision of medical and health facilities arising from the needs of the Development.

TENTH SCHEDULE

PADHOLME DRAINAGE CONTRIBUTION

SUBJECT TO INDEXATION

Upon service of the notice referred to in Clause 4.1(b) and 4.1(c) of this Deed the Owner shall pay to the Council the sum of [Insert figure] POUNDS (£00,000.00) subject to indexation being a contribution towards The Padholme Catchment Drainage Works to accommodate the satisfactory drainage needs of the Land arising from the Development.

ELEVENTH SCHEDULE

REAL TIME PASSENGER INFORMATION BOARDS CONTRIBUTION

SUBJECT TO INDEXATION

Upon service of the notice referred to in Clause 4.1(b) and 4.1(c) of this Deed the Owner shall pay to the Council the sum of [Insert figure] POUNDS (£00,000.00) subject to indexation being a contribution towards the provision of [state number] real time passenger information boards at [state number] bus stops which in the opinion of the Council serves the area of the Development.

TWELFTH SCHEDULE

TRAVEL PLAN

- 1 There shall be no implementation unless and until a Travel Plan (“the Travel Plan”) has been agreed with the Council (such agreement not to be unreasonably withheld or delayed) to minimise the adverse environmental impact of the Development on the surrounding highway network the Travel Plan to address the following:-
 - (a) The Travel Plan shall have a projected duration of no less than 10 years
 - (b) The appointment of a Travel Plan Co-ordinator responsible for the implementation and review of the Travel Plan

- (c) Discussions with a public transport provider for the provision/upgrading of public transport to and from the Land
 - (d) The provision of transport by the Owners for persons employed within the Development
 - (e) Arrangements and promotion of for transport (car) sharing
 - (f) Arrangements to minimise the numbers of visitors to the Land using private motor cars
 - (g) Provision for and promotion of pedestrian and cycle access to the Development
 - (h) The introduction of working practices to avoid peak travel flows
 - (i) The procedure and terms of reference for annual reviews of the Travel Plan
 - (j) SMART targets to be agreed with Peterborough City Council
 - (k) Details of how the site wide travel plan will be implemented and managed
 - (l) Details of remedial measures that will be implemented should the targets not be met
- 2 The Travel Plan document shall be reviewed upon the first anniversary of its implementation and thereafter at five yearly intervals unless otherwise agreed in writing with the Council
- 3 Any amendments to the Travel Plan (whether or not following a periodic review) may not be implemented without the written approval of the Council

THIRTEENTH SCHEDULE

TRAVEL PLAN MONITORING CONTRIBUTION

SUBJECT TO INDEXATION

Upon service of the notice referred to in Clause 4.1(b) and 4.1(c) of this Deed the Owner shall pay to the Council the sum of [Insert figure] POUNDS (£00,000.00) subject to indexation being a contribution towards the MONITORING BY THE Council of the travel plan submitted to the Council with the Application (“the Travel Plan”) or any subsequent travel plan which may replace the Travel Plan in whole or in part.

FOURTEENTH SCHEDULE

HOUSEHOLD TRAVEL INFORMATION PACKS

Packs to be prepared supplied and issued to residents on occupation of each house comprised within the Development this obligation to extend to the first, second and third successive occupants of each house or to all new occupiers in the 5 years following completion whichever comes first.

The Owner to include a covering letter explaining the reasoning behind the Packs and a tear-off slip offering the residents either:-

- The option for new tenants to receive either a free 3 month Megarider
OR
- A Cycle Voucher up to the value of £100 for a bike (subject to Indexation) and a Peterborough Cycle Map available from the Travelchoice Centre or Tourist Information

The Packs shall also contain information about walking cycling public transport (bus and train) and car sharing as well as a localised map showing the nearest bank post office health facility schools etc.

The purpose of these Packs is to inform residents of the various sustainable travel options available to them and provide them with an incentive to use it. Peterborough is one of only three Sustainable Travel Demonstration Towns in the UK and has a great deal of national interest. A major project is underway to inform local residents of their travel options to create modal shift away from the private car where possible. It is important therefore that people moving into new developments also have access to this information.

The Travelchoice Team of the Council currently produce information material which can be supplied should the Owner prefer to use existing material rather than designing and printing his own. The information Travelchoice can provide is outlined below:-

- Car Share Leaflet
- Cycle by train Leaflet
- 'Share-it' Leaflet
- Text & Go Leaflet
- Mini Cycle Guides (Cycle Bretton/Cycle Werrington etc)
- Community Link
- Good Going Flyer (travel awareness and reward campaign) and sign-up postcard
- Area Guide Map
- General Travelchoice Leaflet
- Local Bus Timetables
- Give Walking A Try Leaflet

There is a charge currently of £2 per pack for the leaflets and folders and they are available to order in denominations of 10 (£20). Packing and distribution to households to be organised by the Owner. The Owner shall pay the charge appertaining at the time of the order

Upon the first anniversary of the first occupation and for 5 years thereafter the Owner shall inform the Council in writing the number of Megarider travel passes and cycle vouchers which have been distributed in the past year and to which addresses

FIFTEENTH SCHEDULE

PUBLIC ART CONTRIBUTION

SUBJECT TO INDEXATION

1. Public Art shall mean any statue mural or other object of artistic interpretation commissioned by the Council which is intended for public display on either a short term or a long term basis on or in any land or building to which the public have access
2. Upon service of the notice referred to in Clause 4.1(b) and 4.1(c) of this Deed the Owner shall pay to the Council the sum of **[Insert figure] POUNDS (£00,000.00)** towards the provision of Public Art in the vicinity of the Development

SIXTEENTH SCHEDULE

LIBRARIES CONTRIBUTION

SUBJECT TO INDEXATION

Upon service of the notice referred to in Clause 4.1(b) and 4.1(c) of this Deed the Owner shall pay to the Council the sum of **[Insert figure] POUNDS (£00,000.00)** subject to indexation being a contribution towards the provision or improvement of Libraries in the vicinity of the Development

THE SEVENTEENTH SCHEDULE

CCTV CAMERA CONTRIBUTION

SUBJECT TO INDEXATION

1. Upon service of the notice referred to in Clause 4.1(b) and 4.1(c) of this Deed the Owner shall pay the Council the sum of **[Insert figure] POUNDS (£00,000.00)** subject to indexation to enable the provision by the Council of [...] CCTV cameras within the Development.
2. Within 28 days of receipt of notice in writing by the Council that the installation of the said CCTV cameras is completed the Owner shall pay to the Council the sum of **[Insert figure] POUNDS (£00,000.00)** subject to indexation for the maintenance by the Council of the said CCTV cameras for a period of [...] years

EXECUTED and DELIVERED as a Deed on the date of this document

EXECUTED under the Common Seal of)
PETERBOROUGH CITY COUNCIL)
In the presence of:)

Duly Authorised Officer

EXECUTED by the said)
_____)
In the presence of:)

Signature of witness:

Name: (in block capitals)

Address:

EXECUTED under the Common Seal of)
_____)
Acting by/ a Director and its Secretary/ Two Directors)

Director

Director/Secretary

EXECUTED as a Deed by)
_____)
Acting by / a Director and its Secretary/Two Directors)

Director

Director/Secretary