Appendix 3

Model Section 106 Agreement

Planning Obligation by Deed of Agreement under Section 106 of the Town and Country Planning Act 1990 relating to [the development of ......................... on/at ...................... ]

Dated: 200...

[Local Planning Authority] (1)
[Local Highway Authority] (2)
[Freeholder] (3)
[Other Interested Person] (4)
[Other Interested Person] (5)

TABLE OF CONTENTS

INTRODUCTION

1 GENERAL GUIDANCE NOTE

The objective is to provide a document which is concise, clear and comprehensive. Modern legal drafting no longer employs archaic legal terminology. Instead, it should be drafted so as to be readily understood by all interested parties.

The solicitors responsible for drafting the document need to receive clear and unambiguous instructions from their clients.

A Section 106 Planning Agreement is a legal document. It creates legal commitments which bind the original parties and their successors, and the land, and these commitments may continue for many years. It is important to remember that a Section 106 Planning Agreement will usually be negotiated in conjunction with the planning permission, which also normally runs with the land.

The document should follow a logical sequence, starting with the parties followed by an Introduction which explains the objective of the Planning Agreement, then the legal provisions that enable the local planning authority and any other public authority to enter into the planning obligations, and the operative provisions containing the obligations of the landowner and, if appropriate, the local authorities.

A Unilateral Obligation may be employed where the obligations are made by the Owner and/or the Developer without any reciprocal commitments by the local planning authority, provided that the local planning authority by whom the Planning Obligation is enforceable is identified within the Deed.

The parties negotiating the Agreement are encouraged to follow the broad format of this agreement. Where necessary, however, they may substitute the provisions (especially those in square brackets) in this standard agreement for wording specific to the development and authority. Authorities should make standard materials available to applicant.
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1  DEFINITIONS</td>
<td>2</td>
</tr>
<tr>
<td>2  CONSTRUCTION OF THIS DEED</td>
<td>3</td>
</tr>
<tr>
<td>3  LEGAL BASIS</td>
<td>4</td>
</tr>
<tr>
<td>4  CONDITIONALITY</td>
<td>4</td>
</tr>
<tr>
<td>5  THE OWNER’S COVENANTS</td>
<td>4</td>
</tr>
<tr>
<td>6  THE COUNCIL’S COVENANTS</td>
<td>4</td>
</tr>
<tr>
<td>7  THE COUNTY COUNCIL’S COVENANTS</td>
<td>4</td>
</tr>
<tr>
<td>8  MISCELLANEOUS</td>
<td>5</td>
</tr>
<tr>
<td>9  MORTGAGEE’S CONSENT</td>
<td>5</td>
</tr>
<tr>
<td>10 WAIVER</td>
<td>6</td>
</tr>
<tr>
<td>11 CHANGE IN OWNERSHIP</td>
<td>6</td>
</tr>
<tr>
<td>12 INDEXATION</td>
<td>6</td>
</tr>
<tr>
<td>13 INTEREST</td>
<td>6</td>
</tr>
<tr>
<td>14 VAT</td>
<td>6</td>
</tr>
<tr>
<td>15 JURISDICTION</td>
<td>6</td>
</tr>
<tr>
<td>16 DELIVERY</td>
<td>6</td>
</tr>
<tr>
<td>FIRST SCHEDULE</td>
<td>7</td>
</tr>
<tr>
<td>[Details of the Owner’s Title, and description of the Site]</td>
<td>7</td>
</tr>
<tr>
<td>SECOND SCHEDULE</td>
<td>8</td>
</tr>
<tr>
<td>[Form of notice of planning permission]</td>
<td>8</td>
</tr>
<tr>
<td>THIRD SCHEDULE</td>
<td>9</td>
</tr>
<tr>
<td>The Owner’s Covenants with the Council</td>
<td>9</td>
</tr>
<tr>
<td>Transfer of property/open space/play areas/public squares/amenity space</td>
<td>9</td>
</tr>
<tr>
<td>Community Facilities</td>
<td>11</td>
</tr>
<tr>
<td>CCTV</td>
<td>13</td>
</tr>
<tr>
<td>Affordable Housing</td>
<td>14</td>
</tr>
<tr>
<td>Public Art</td>
<td>17</td>
</tr>
<tr>
<td>Highways Works</td>
<td>18</td>
</tr>
<tr>
<td>Transport Contribution</td>
<td>19</td>
</tr>
<tr>
<td>FOURTH SCHEDULE</td>
<td>20</td>
</tr>
<tr>
<td>The Owner’s Covenants with the County Council</td>
<td>20</td>
</tr>
<tr>
<td>Education Contribution</td>
<td>20</td>
</tr>
<tr>
<td>FIFTH SCHEDULE</td>
<td>21</td>
</tr>
<tr>
<td>Council’s Covenants</td>
<td>21</td>
</tr>
<tr>
<td>Corresponding covenant by Council where land transferred</td>
<td>21</td>
</tr>
<tr>
<td>SIXTH SCHEDULE</td>
<td>22</td>
</tr>
<tr>
<td>County Council’s Covenants</td>
<td>22</td>
</tr>
<tr>
<td>SEVENTH SCHEDULE</td>
<td>23</td>
</tr>
<tr>
<td>Contract and Land Transfer</td>
<td>23</td>
</tr>
<tr>
<td>EIGHTH SCHEDULE</td>
<td>24</td>
</tr>
<tr>
<td>Highways Agreement</td>
<td>24</td>
</tr>
<tr>
<td>NINTH SCHEDULE</td>
<td>34</td>
</tr>
<tr>
<td>Specification for Community Facilities Floorspace</td>
<td>34</td>
</tr>
<tr>
<td>ANNEX A: Affordable housing drafting notes</td>
<td>36</td>
</tr>
</tbody>
</table>
DATE  200...

PARTIES

(1) [LOCAL PLANNING AUTHORITY] of [..............................insert address..............................] ("Council")

(2) [LOCAL HIGHWAY AUTHORITY] of [..............................insert address..............................] ("County Council")

(3) [FREEHOLDER] of [..............................insert address..............................] ("Owner")

(4) [OTHER INTERESTED PERSON] of [..............................insert address..............................] ("Developer")

(5) [OTHER INTERESTED PERSON] of [..............................insert address..............................] ("Mortgagee")

INTRODUCTION

1 The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.

2 The County Council is the local highway authority, [and the county planning authority / the education authority] for the area in which the Site is situated.

3 The Owner is the freehold owner of the Site. In unitary areas, the unitary authority will have eg the education and (for non-trunk roads) highway authority powers. Thus the agreement will need to be modified when used in such areas essentially to substitute the Council for the County, making it clear in the recitals that the Council has the County functions.

4 This section is also known as "Recitals", sets the scene for the obligations which appear later in the Agreement.

5 Recital of ownership – see s.106(9)(b) and (c) for what must be stated.

6 Recital of ownership – see s.106(9)(b) and (c) for what must be stated.

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These are the parties who should sign the document as being interested in the land, where, "interested" has a legal meaning. The parties usually include the freeholder, any lessee(s), and the purchaser of the development site with a contract conditional upon obtaining planning permission or an option for a period of time within which the developer may obtain planning permission and then decide whether or not to purchase the land.

Local Planning Authority – the local authority for the area where the land is situated; this may be the District Council Unitary authority, London Borough, National Park Authority or Urban Regeneration Agency.

County Council – a County Council may also be joined as a party in its role as local highway authority and/or local education authority or local planning authority in relation to waste and minerals.

Mortgagee - In an event of a default by the mortgagor, the mortgagee may take possession of the land, and therefore be liable for the commitments in the planning obligation.
The Owner has submitted the Application to the Council and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.

The Council resolved on [....insert date....] to grant the Planning Permission subject to the prior completion of this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1 DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

- "1980 Act" the Highways Act 1980
- "Act" the Town and Country Planning Act 1990
- "Application" the application for outline [full] planning permission dated [ ] submitted to the Council for the Development and allocated reference number [ ]
- "Agreement" an agreement with a transfer annexed in the form set out and completed in accordance with the Seventh Schedule
- "Commencement of Development" the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than for the purposes of this Deed and for 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

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7 Recital of ownership – see s.106(9)(b) and (c) for what must be stated.

8 These are the provisions that follow the recitals and which set out:

(a) the method and means of performance of the obligations,
(b) the content of the obligations.

9 Modern draftsmen include their definitions at the beginning of the operative part of the Deed, unless the document is short.

A defined term should be given a capital letter wherever it subsequently appears in the document. The purpose of definitions is to remove ambiguity, and to avoid unnecessary repetition. Other definitions can be added, depending upon the terms of the obligations.
services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “Commence Development” shall be construed accordingly.

“County Engineer”[“Director”] the Director of Engineering or his appointed representative for the time being of the County Council.

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

“Dwelling” a dwelling (including a house flat or maisonette) to be constructed pursuant to the Planning Permission

“Highways Agreement” an agreement for […] insert purposes […] substantially in the form set out in the Eighth Schedule with such amendments as may be agreed between the parties thereto

“Index”[10] All Items Index of Retail Prices issued by the Office for National Statistics [All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation].

“Interest” interest at [ ] per cent above the base lending rate of the [ ] Bank Plc from time to time.

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

“Plan” the plan attached to this Deed

“Planning Permission” the outline[full] planning permission subject to conditions to be granted by the Council pursuant to the Application as set out in the Second Schedule.

“Property Transfer Trigger” the restriction on occupation of more than […] specify no. of dwellings/square metres as applicable […] set out in paragraph [1] of the Third Schedule.[11]

[10] The choice of index will depend on what is being indexed. More than one index may need to be specified.

CONSTRUCTION OF THIS DEED

2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
2.5 Any reference to an Act of Parliament shall include 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.
2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council and County Council the successors to their respective statutory function.

3 LEGAL BASIS

3.1 This Deed is made pursuant to Section 106 of the Act [Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000].
3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner.

4 CONDITIONALITY

This Deed is conditional upon:

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12 This will usually be the same as the Application site. It should be the land against which the obligations are to be enforced.

13 The operative provisions should follow a logical sequence, commencing with a statement of the legal powers which are relied upon by the local planning authority when entering into this agreement. Obviously, the primary authority is Section 106 of the Town and Country Planning Act 1990, but the local planning authority may also wish to include Section 111 of the Local Government Act 1972, and Section 2 of the Local Government Act 2000. Sections 111 and 2 should be mentioned where the local planning authority is also committing to carrying out certain actions. These sections enable the local authority to deal with obligations required from the landowner, that are not within the powers of Section 106. However, unlike s.106, obligations under section 111 and 2 do not run with the land.

14 Standard Terms
Formal requirement
It is necessary to state formally that the document is a planning obligation for the purposes of Section 106 of the Town and Country Planning Act 1990.
(i) the grant of the Planning Permission; and
(ii) the Commencement of Development
save for the provisions of [Clauses 8.1, 15 and 16 legal costs clause
jurisdiction and delivery clauses and any other relevant provisions] which
shall come into effect immediately upon completion of this Deed.

5 THE OWNER'S COVENANTS
5.1 The Owner covenants with the Council as set out in the Third Schedule.
5.2 The Owner covenants with the County Council as set out in the Fourth
Schedule.

6 THE COUNCIL'S COVENANTS
6.1 The Council covenants with the Owner as set out in the Fifth Schedule.

7 THE COUNTY COUNCIL'S COVENANTS
7.1 The County Council covenants with the Owner as set out in the Sixth
Schedule.

8 MISCELLANEOUS
8.1 The Owner shall pay to the Council on completion of this Deed the reasonable
legal costs of the Council incurred in the negotiation, preparation and execution of
this Deed.
8.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of
Third Parties) Act 1999
8.3 This Deed shall be registrable as a local land charge by the Council.
8.4 Where the agreement, approval, consent or expression of satisfaction is
required by the Owner from the Council or County Council under the terms of this
Deed such agreement, approval or consent or expression of satisfaction shall not be
unreasonably withheld or delayed and any such agreement, consent, approval or
expression of satisfaction shall be given on behalf of:
   (i) the Council by the Head of Development and Building Control;
   (ii) the County Council by the County Director

And any notices shall be deemed to have been properly served if sent by recorded
delivery to the principal address or registered office (as appropriate) of the relevant
party.
8.5 Following the performance and satisfaction of all the obligations contained in
this Deed the Council shall forthwith effect the cancellation of all entries made in the
Register of Local Land Charges in respect of this Deed.
8.6 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.
8.7 This Deed shall cease to have effect (insofar only as it has not already been
complied with) if the Planning Permission shall be quashed, revoked or otherwise
withdrawn or (without the consent of the Owner) it is modified by any statutory
procedure or expires prior to the Commencement of Development.
8.8 No person shall be liable for any breach of any of the planning obligations or
other provisions of this Deed after it shall have parted with its entire interest in the

15 These references will need to be tailored to the authority and agreement, and the potential for job titles to change borne in
mind.
Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

8.9 This Deed shall not be enforceable against owner-occupiers or tenants of dwellings constructed pursuant to the Planning Permission nor against those deriving title from them.\textsuperscript{16}

8.10 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 MORTGAGEE’S CONSENT

9.1 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 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.

10 WAIVER

No waiver (whether expressed or implied) by the Council [(or the County Council or Owner)] of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council [(or the County Council or Owner)] from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

11 CHANGE IN OWNERSHIP

The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to 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.\textsuperscript{17}

12 INDEXATION

Any sum referred to in the Third [and Fourth] Schedule[s] shall be increased by an amount equivalent to the increase in the Index from the [date hereof]\textsuperscript{18} until the date on which such sum is payable.

13 INTEREST

If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

\textsuperscript{16} Some parts of a planning agreement will need to be enforceable against owner occupiers or tenants, eg some affordable housing provisions. Consider whether this common exclusion is suitable for all parts of the agreement.

\textsuperscript{17} Consider whether sales to owner occupier and business tenancies are to be notified. The purpose of this clause is to assist the LPA in practical monitoring. Consider also including a clause on service of notices.

\textsuperscript{18} Insert appropriate point.
14 VAT
All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.¹⁹

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

16 DELIVERY
The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.
FIRST SCHEDULE\textsuperscript{20}

[Details of the Owner’s Title, and description of the Site]
Second schedule\textsuperscript{21}
[Form of notice of planning permission]

\textsuperscript{21} Form of notice of planning permission. Whilst the notice of planning permission will only be issued upon the completion and exchange of the signed Section 106 Planning Obligation, good practice is to annex a draft to the document so that all terms and conditions are known.