# *Template Agreement*

# DATED 201\_

## **BOROUGH COUNCIL/DISTRICT COUNCIL (Local Planning Authority)**

**- and -**

**STAFFORDSHIRE COUNTY COUNCIL**

**- and -**

**(Name of Mortgagee)**

**and**

**\_**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**SECTION 106 AGREEMENT**

**Description of Development Site)**

Planning Application Ref: \_

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**THIS DEED** is made on                         day of                               201

**BETWEEN:-**

1. (**“the Borough Council”/”the District Council”** Local Planning Authority)**;** and
2. **STAFFORDSHIRE COUNTY COUNCIL** of Staffordshire Place 2, Tipping Street, Stafford, ST16 2DH (**“the County Council**”)
3. **\_** (“**the Owner**”) (of whose registered office is situate at ) (address of owner) (company registration number - insert registration number)
4. (**Mortgagees**) (name of Mortgagees) (of whose registered office is situate at (address of mortgagee) (company registration number – insert registration number) “the Mortgagee”

**WHEREAS:**

1. The Owner has the freehold interest in the Site registered at HM Land Registry under Title Nos. \_
2. For the purposes of the Act the Borough Council/the District Council is the local planning authority for the area in which the Site is located.
3. The County Council is the local highway authority for the purposes of the Highways Act 1980 and the local education authority for the purposes of the Education Act 1996 for the area in which the Site is located.
4. The Owner has submitted the Application to the Borough Council/the District Council for permission to develop the Site for the purposes and in the manner described in the Application.
5. At a meeting of the District Council/Borough Council’s Planning Committee held on \_ it was resolved that, subject to the completion of this Deed, the Planning Permission should be granted.
6. The County Council as local highway authority is of the opinion that, in the event of the land being developed in accordance with the Planning Permission, for example the Owner should secure a bus service between the site and the Town Centre and to provide a Travel Plan Framework for the Development and enable its monitoring by making a financial contribution and /or other financial contributions /works.
7. The County Council as local education authority is of the opinion that, in the event of the Site being developed in accordance with the Planning Permission, for example the Owner should contribute towards local education provision by providing land on the Site for a primary school and either constructing the primary school or making a financial contribution towards the building of a primary school and /or making other financial contribution towards education provision.
8. The parties to this Deed have given due consideration to the provisions of Regulation 122 of the (Community Infrastructure Levy Regulations 2010 S1 2010 No. 948 (to the extent relevant to the obligations in this Agreement) and the advice set out at Paragraph 204 of the NPPF and agree that the planning obligations it contains are:
	1. necessary to make the development acceptable in planning terms;
	2. directly related to the development; and
	3. fairly and reasonably in scale and kind to the development
9. The Borough Council/District Council as local planning authority is of the opinion that, in the event of the Site being developed in accordance with the Planning Permission, he Owner should provide for example affordable housing, a sum towards off site sports facilities.
10. The Borough Council/District Council and the County Council consider and the Owner accepts by the terms of this Deed that the Development should not take place without the Owner entering into the obligations contained in this Deed.

**NOW THIS DEED WITNESSES AS FOLLOWS:-**

1. **STATUTORY PROVISIONS**

 This Deed is made pursuant to the provisions of Section 106 of the Act and all other powers enabling which may be relevant for the purpose of giving validity hereto or facilitating the enforcement of the obligations herein contained with intent to bind the Owner's interest in the Site and the covenants in this Deed on the part of the Owner are planning obligations for the purposes of the Act.

1. **INTERPRETATION**
	1. In this Deed in addition to the parties hereinbefore referred to the following words and expressions shall where the context so requires or admits have the following meanings:-

“1980 Act” the Highways Act 1980, as amended

“the Act” the Town and Country Planning Act 1990 (as amended) by the Planning and Compensation Act 1991)

"the Application" planning application reference

“the Borough Council Monitoring Fee” the sum of £\_ (Pounds)

“the Charge” (Mortgage) means the Legal Charge dated [ made between the Owner (1) and the Chargee (2) by which the land is charged with payment of certain monies to the Chargee]

“the Commencement Date” the date upon which the Development shall be commenced by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in Section 56(4) of the Act save for:
any site investigation works, trial holes or other operations to establish the ground conditions of the Site, any works of demolition, any site offices, security fencing and compounds, any works carried out in connection with any archaeological investigations, and the terms “Commence”, “Commenced” and “Commencement of the Development” shall be construed accordingly

“the Deed” this Deed which contains planning obligations made pursuant to Section 106 of the Act

"the Development" the development of the Site in accordance with the Planning Permission

“Dwelling” any single dwelling unit constructed on the Site intended for occupation by one or more private individuals

“Index Linked” means increased (if applicable) in proportion to movements in the Index between the date of this Deed and the date the particular payment is made and “Index Linking” shall be construed accordingly

“the Index” Statistics means the All Items Group (item reference CHAW) of the retail prices index published by HM Government Office for National Statistics provided that during any period where no such index exists, the index which replaces the same or is the nearest equivalent thereto (which shall be agreed by the parties or, in default of agreement, fixed by the president for the time being of the Law Society on the application of any party) shall be used.

“the Interest Rate” the base rate from time to time of the Lloyds Bank plc or such other bank as may be nominated by the Borough Council/District Council

“Occupation” 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 and the term “Occupy” shall be construed accordingly.

“the Due Date” the date of this Deed

“the Planning Permission” the planning permission to be issued by the Borough Council pursuant to the Application generally in the form of the draft annexed hereto as Appendix 2

“Reserved Matters Application” means a reserved matters application made pursuant to the Planning Permission

Satisfaction of the Council means to the normal standards of the Council applied elsewhere within their administrative area in respect of similar matters

Satisfaction of the County means to the normal standards of the County applied elsewhere within their administrative area in respect of similar matters

“the Site” that area of land situate at \_ which is more particularly delineated and edged red on the Site Plan

“Site Plan” the plan annexed to this Deed as Appendix

* 1. In this Deed where the context so requires:
	(a) references to the masculine, feminine and neuter genders shall include the other genders;

(b) references to natural persons are to include corporations and vice versa;

(c) the singular includes the plural and vice versa;

(d) references to any party will include the successors in title and assigns of that party and in the case of the Borough Council and the County Council their successors in title and assigns and the successors to their respective statutory functions;

(e) where a party includes more than one person and/or where more than one party undertakes an obligation, any obligations of that party/parties will be joint and several;

(f) references to clauses schedules and paragraphs are references to clauses and paragraphs in and schedules to this Deed except where otherwise specified;

(g) title headings to the clauses schedules and paragraphs are for convenience only and shall not affect the interpretation of this Deed

(h) references to any statute or statutory instrument shall except where otherwise specifically provided include reference to any statutory modification or re- enactment thereof for the time being in force;

(i) except where expressly provided otherwise the expression the "Owner" shall include persons successors in title to the Owner and its assigns and all persons deriving title to all or part of the Site under or through it; and

(j) words denoting an obligation on a party to do any act or thing includes an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause, permit or suffer any infringement of such restriction.

3. **COMMENCEMENT**Apart from clause 4 this Deed shall have effect from the date hereof save that the obligations contained in the Schedules will not take effect until the following conditions precedent have been fulfilled:
 (a) the Planning Permission has been granted;

4. **COVENANTS BY THE OWNER**

4.1 The Owner covenants with the District Council/Borough Council and the County Council to observe and perform the obligations on its part contained in the Schedules.

4.2 The Owner covenants with the District Council/Borough Council and the County Council with the intent that these are planning obligations for the purposes of Section 106 of the Act.

5. **CONFIRMATION OF INTEREST**

The Owner hereby warrants and confirms that apart from the parties hereto there are no other persons with a legal estate or beneficial interest in the rents and profits or proceeds of sale of the Site or any part thereof.

6. **COVENANTS BY THE BOROUGH COUNCIL (DISTRICT COUNCIL)**

6.1 The District Council/Borough Council covenants with the Owner to observe and perform the obligations on its part contained in the Schedules.

6.2 The District Council/Borough Council shall within [10] working days of the completion of this Deed grant the Planning Permission save that the Borough Council shall not be in breach of this obligation if it shall be prevented from issuing the Planning Permission by a court order.

6.3 The District Council/Borough Council will upon the written request of the Owner (or its successors in title) at any time after the obligations on the part of the Owner contained herein have been fulfilled issue confirmation thereof and thereafter cancel all related entries in the Register of Local Land Charges.

7 **COVENANTS BY THE COUNTY COUNCIL**

7.1 The County Council covenants with the Owners:

1. to observe and perform the obligations on its part contained in the Schedules;

8. **MISCELLANEOUS**

8.1 This Deed shall forthwith be registered as a Local Land Charge for the purposes of the Local Land Charges Act 1975.

8.2 This Deed shall be enforceable against the Owner to the extent specified in Section 106(3) of the Act and against any person for the time being deriving title from the Owner as provided in Section 106 of the Act but the Owner shall not have any further liability under this Deed (but without prejudice to the rights of either party in respect of any antecedent breach) in respect of any period during which the Owner (or as the case may be such other person) no longer has an interest in the Site or the part of the Site in respect of which a breach occurs.

* 1. This Deed will be enforceable by the District council/Borough Council as the local planning authority and the County Council as the local highway authority and/or the local education authority.
	2. Nothing herein contained or implied shall prejudice or affect the rights discretions powers duties and obligations of the District Council/Borough Council or the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of its functions as a local authority.
	3. If the Planning Permission is quashed revoked or otherwise withdrawn or expires within the meaning of Sections 91 92 and 93 of the Act or is revoked or modified in accordance with Sections 97 to 100 inclusive of the Act without the consent of the Owner this Deed shall cease to have effect (but without prejudice to the rights of either party against the other in respect of any antecedent breach) PROVIDED THAT in the case of a modification of the Planning Permission the Planning Permission shall be deemed to be incapable of implementation unless and until a further agreement pursuant to Section 106 of the Act is entered into by the parties or the Borough Council determines that no such agreement is required
	4. No waiver (whether express or implied) by the District Council/Borough Council or the County Council of any breach or default by the Owner in performing or observing any of the obligations terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the District Council/Borough Council or the County Council from enforcing any of the said obligations terms or conditions or from acting upon any subsequent breach or default in respect thereto by the Owner.
	5. Save as otherwise provided in this Deed, any approval in writing, certificate, consent or expression of satisfaction to be given by the District Council/Borough Council under this Deed will not be unreasonably withheld or delayed.
	6. Where the agreement, approval, consent or expression of satisfaction is required from the County Council under the terms of this Deed such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed PROVIDED ALWAYS that the County Council shall act in accordance with their normal practices and procedures and priorities as applied elsewhere within their administrative area in respect of similar matters.
	7. 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 provided that they are severable therefrom.
	8. Nothing in this Deed will be construed as prohibiting or limiting any right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted by the local planning authority or by the Secretary of State on appeal or by reference to him after the date of this Deed.
1. **NOTICES**
	1. All notices requests demands or other written communications to or upon the parties pursuant to this Deed shall be deemed to have been properly given or made if dispatched by first class recorded delivery letter or facsimile transmission to the party to which such notice request demand or other written communication is to be given or made under this Deed and addressed as follows:-

9.1.1 if to the Borough Council/District Council to (i) the Solicitor to the Borough Council/District Council;

9.1.2 if to the County Council, to the Director of Strategy, Governance and Change at the County Council;

9.1.3 if to any of the other parties to its address specified above;

9.1.4 or such other address for service as shall have been previously notified to the other party.

9.2 Any notice request or demand or other written communication shall be deemed to have been served as follows:-

* + 1. if posted recorded delivery at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom;
		2. if sent by e-mail at the time of the successful transmission provided that if any means of service shall be outside normal working hours such service shall be deemed to have taken place upon the day the recipient's office is next open for business;

and in proving such service it shall be sufficient to prove that the envelope containing such notice request demand or other written communication was properly addressed and delivered into the custody of the postal authority in a pre-paid first class or recorded delivery envelope (as appropriate) or by e-mail as the case may be.

10. **ARBITRATION**

 Any dispute or difference arising between the Owner and the Borough Council with regard to their respective rights and obligations as to any matter or thing in any way arising out of or connected with the Deed will, except as otherwise expressly provided, be referred to the decision of a single arbitrator to be agreed by the Owner and the Borough Council or failing agreement between them to be nominated by the President for the time being of the Royal Institute of Chartered Surveyors as the case may be and any such reference will be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any modification or re-enactment for the time being in force.

11 **LATE PAYMENT**

If any payment due under any of the provisions of this Deed is not made on or before the date upon which it is due the party from whom it was due shall at the same time as making the payment to the other party pay interest at 3% above the Interest Rate as at the Due Date for the period starting with the Due Date and ending with the date on which payment of the sum on which interest is payable is received

* + 1. **THIRD PARTY RIGHTS**

All third party rights arising under the Contracts (Rights of Third Parties) Act 1999 are excluded and no one other than the District Council/Borough Council, the County Council and the Owner shall have any right to enforce any obligation or term of this Deed

* + 1. **SECTION 73 VARIATION**

In the event that the Council shall at any time hereafter grant a planning permission pursuant to an application made under Section 73 of the Act in respect of conditions attached to the Planning Permission, save and in so far as this Agreement has been amended by way of a deed of variation prior to the grant of such planning permission, references in this Agreement to the Application and the Planning Permission shall (save for the purposes of the definition of Planning Permission in Clauses 2.1, 6.2) be deemed to include any such subsequent planning applications and planning permissions as aforesaid and this Agreement shall henceforth take effect and be read and construed accordingly.

* + 1. **LEGAL COSTS**

14.1 The Owners shall upon signing of this Deed pay the District Council/Borough Council’s and the County Council’s legal and administrative costs in connection with the preparation and completion of this Deed

14.2 The Owners will pay:

14.2.1 to the District Council/Borough Council the District Council/Borough Council Monitoring Fee

14.2.2 towards the costs of administering and monitoring the obligations contained within this Deed upon signing of the Deed

* + 1. **THE CHARGEE/MORTGAGEE**

[The Chargee for itself and its successors in title consents to the Owner entering into this Agreement and covenants with the Council (and the County) hat in the event that the Chargee takes possession of the land or any part of it and/or exercises its power of sale under the provisions of the Charge then the Chargee and its successors in title will observe and perform and be bound by the terms and conditions of this Agreement so far as the same remains to be observed and performed].

16 **INDEMNITY**

 The Owner shall indemnify [the Borough Council] and the County Council for any expenses or liability arising to them in respect of breach by the Owner of any obligations contained in this Agreement

* + 1. **JURISDICTION**

This Deed is governed by and interpreted in accordance with the Law of England

**IN WITNESS** the parties have sealed this planning obligation by agreement as a Deed on the date written above.

**THE COMMON SEAL** of )

**XXX BOROUGH COUNCIL/**

**DISTRICT COUNCIL** )

was affixed in the presence of: )

Authorised Signatory

**THE COMMON SEAL** of )

**STAFFORDSHIRE COUNTY COUNCIL** )

was affixed in the presence of: )

Authorised Signatory

**EXECUTED AS A DEED** by affixing )

THE COMMON SEAL of \_XXXX )

in the presence of:- )

 Director

 Secretary/Director

**EXECUTED AS A DEED** by )

acting by a Director and its Secretary )

or two Directors )

 Director

 Director/Secretary

**EXECUTED AS A DEED** by )

acting by a Director )

In the presence of: )

Signature of Director:

Signature of witness:

Name (in BLOCK CAPITALS):

Address:

**EXECUTED AS A DEED** by )

For and on behalf of Bank Plc )

In the presence of: )