

Appendix 2 – S106 Agreement TEMPLATE

Dated _____ 2015
Between:

(1)	The Owner	[_____]
[(2)]	The Mortgagee	[_____]]
(3)	The District Council	HORSHAM DISTRICT COUNCIL
(4)	The County Council	WEST SUSSEX COUNTY COUNCIL

AGREEMENT

under Section 106 of the Town and Country
Planning Act 1990 and other powers
Land [_____]

HDC Legal Ref [_____]
Planning Ref : [_____]
S106_ [_____]
Committee: Development Control (North/South)
Date: [_____]
Minute Ref: [_____]

[OR]

Delegated Decisions: Part 3 Schedule 13 Paragraph 6.10

Paul Cummins
Head of Legal and Democratic Services
Parkside
Chart Way
Horsham
West Sussex
RH12 1RL

Appendix 2 – S106 Agreement Template (Cont.)

This Agreement is dated _____ 2015 and is made between:

- (1) [_____] ('the Owner');
- (2) [_____] ('the Mortgagee')
- (3) Horsham District Council of Parkside, Chart Way, Horsham, West Sussex RH12 1RL ('the District Council'); and
- (4) West Sussex County Council of County Hall, West Street, Chichester, West Sussex PO19 1RQ ('the County Council')

1. **Background**

- 1.1 The Owner is the registered proprietor with Title Absolute of the Land registered at HM Land Registry under Title Number WSX[_____]
- 1.2 The Mortgagee by way of a charge dated [_____] has an interest in the Land
- 1.3 On [_____] the Application was submitted to the District Council for planning permission under reference DC[_____] in respect of the Land
- 1.4 The Proposed Development will generate additional demands for [community facilities, open space and recreation, library, refuse and recycling, education, transport and fire and rescue] which would not arise but for the Proposed Development and which cannot be accommodated by the existing infrastructure
- 1.5 The District Council is the local planning authority for the purposes of the Act for the area in which the Land is situated and is of the opinion that the obligations contained herein are necessary to address the impacts of the Proposed Development
- 1.6 The County Council is the Highways Authority as defined in the Highways Act 1980

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and is the Fire & Rescue, Education and Library Authority for the area of the Land and is of the opinion that the Fire & Rescue Contribution, Education Contribution, Library Contribution and Transport Contributions payable to the County Council and works hereunder are necessary to address the highways, library, fire and rescue and transportation impacts of the Development

- 1.7 The District Council is prepared to grant the Planning Permission subject to inter alia the Owner entering into the Planning Obligations and the Owner has indicated its willingness to enter into the Planning Obligations upon the terms set out in this Agreement
- 1.8 The District Council and the County Council are satisfied that this Agreement is to the benefit of the public
- 1.9 The parties hereto are satisfied that the provisions of this Agreement comply with the requirements of Regulation 122 and Regulation 123 of the Community Infrastructure Levy Regulations 2010 as amended
- 1.10 The Owner has agreed with the District Council and the County Council to pay the Financial Contributions and to carry out certain works in accordance with this Agreement and the Planning Permission

2. **Interpretation**

In this Agreement:

- 2.1 Words importing the masculine include the feminine and vice versa
- 2.2 Words importing the singular include the plural and vice versa
- 2.3 Words importing persons include companies and corporations and vice versa

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- 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
- 2.5 Any reference to a clause or schedule or plan is to a clause schedule or plan in to or attached to this Agreement
- 2.6 Any reference to a colour or letter is to a colour or letter on the plan attached to this Agreement
- 2.7 In the absence of contrary provision any reference to a statute includes any statutory modification or re-enactment of it and every statutory instrument, direction, specification made or issued under the statute or deriving validity from it
- 2.8 References to any party to this Agreement shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the District Council the successors to their functions as local planning authority and local housing authority and in the case of the County Council the successors to their functions as highways authority, library authority and fire and rescue authority.

3. Definitions

In this Agreement the following expressions shall unless the context otherwise requires have the following meanings:

“Act”	means the Town and Country Planning Act 1990 as amended;
“Air Quality Contribution”	means the sum of [] pounds (£[]) Index Linked to be used solely towards the provision/improvement of [
“All Requisite Consents”	means all requisite consents orders agreements authorisations licences and permissions required to implement the Scheme

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<p>“Application”</p>	<p>means the planning application number DC[] for full planning permission for []</p>
<p>“the Charge”</p>	<p>means the charge referred to in Clause 1.2 above</p>
<p>“Commencement of the Development”</p>	<p>means the carrying out of a material operation as defined in S 56(4) of the Act in respect of the Proposed Development but excluding any operation relating to works of investigations in respect of land contamination or remedial action in respect thereof enabling works site clearance archaeological investigations and digs exploratory boreholes operations permitted by the Town and Country Planning (General Permitted Development) Order 2015 the erection of hoardings and fencing temporary diversion of services and signage (including the formation of temporary construction accesses) preliminary landscaping before construction activity occurs on the Land and any works matters and operations to enable any of the foregoing to take place and “Commence Development” shall be construed accordingly;</p>
<p>“Commencement Date”</p>	<p>means the date on which the Commencement of the Development occurs;</p>
<p>“Commencement Notice”</p>	<p>means the written notice confirming the Commencement Date referred to in clause 9.1.1 and served in accordance with clause 9.3;</p>
<p>“Community Facilities Contribution”</p>	<p>means the sum of [] pounds (£[]) Index Linked to be used solely towards the provision/improvement of []</p>
<p>“Community Centres and Halls Contribution”</p>	<p>means the sum of [] pounds (£[]) Index Linked to be used solely towards the provision/improvement of []</p>
<p>“Dwelling Units”</p>	<p>means the dwelling units to be constructed on the Land pursuant to the Permission and “Dwelling Unit” and “Dwelling” means any one of them;</p>

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<p>“Education Contribution”</p>	<p>means the [Primary Education Contribution, the Secondary Education Contribution and the Sixth Form Education Contribution] together;</p>
<p>“First Occupation”</p>	<p>means beneficial occupation for any use for which the Proposed Development was designed (or part of the Proposed Development where the context so requires) other than occupation for the purposes of construction, fitting out or marketing;</p>
<p>“Financial Contributions”</p>	<p>means the [Air Quality Contribution, the Community Facilities Contribution, the Community Centres and Halls Contribution, the Education Contribution, the Fire and Rescue Services Contribution, the Refuse and Recycling Contribution, the Library Contribution, the Open Space and Recreation Contribution, the Public Art Contribution and the Total Access Demand Contribution] together;</p>
<p>“the Fire and Rescue Services Contribution”</p>	<p>means the financial contribution of [] pounds (£[]) increased or decreased by an amount equal to the proportionate increase in the All-In Tender Price Index published by the Building Costs Information Service of the Royal Institute of Chartered Surveyors between the quarter preceding the date of this Deed and the quarter preceding the date of payment of this contribution to be used solely towards the provision or improvement of fire and rescue services, [excluding the provision of fire hydrants], in the district of Horsham</p>
<p>“General Index”</p>	<p>means the BCIS General Building Cost Index of the Royal Institution of Chartered Surveyors and if the basis of computation of the Index shall change any official reconciliation between the two bases of computation shall be binding upon the parties hereto and shall be applied in adjusting the application of the Index hereto. In the absence of any such official reconciliation such adjustments shall be made to the figures of the Index as to make it correspond as nearly as possible to the previous method of computation and such adjusted figures shall be used to the exclusion of the actual</p>

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	published figures (until officially reconciled figures are published)
Index Linked	means as set out in Clause 10
“Interest”	means interest at the rate of 4% above the Bank of England base rate applicable at the Specified Date which shall be calculated on a day to day basis;
“Land”	means land at [] shown edged red on the attached Plan 1 for identification purposes only
“Library Contribution”	means the sum of [] pounds (£[]) being a financial contribution towards the provision of increased or decreased by an amount equal to the proportionate increase in the All-In Tender Price Index published by the Building Costs Information Service of the Royal Institute of Chartered Surveyors between the quarter preceding the date of this Deed and the quarter preceding the date of payment of this contribution
“Occupation”	means occupation for any purpose for which the Planning Permission has been granted by the District Council but not including occupation by personnel engaged in the construction, fitting out or occupation for security, marketing or display and “Occupy” and “Occupied” shall be constructed accordingly;
“Occupation Date”	means the date on which the first Dwelling is Occupied;
“Occupation Notice”	means the written notice confirming the Occupation Date referred to in clause 9.1.2 and served in accordance with clause 9.3;
“Open Space and Recreation Contribution”	means the sum of [] pounds (£[]) Index Linked to be used toward the provision or improvement of
“Payment Notice”	means a payment notice in the form attached at Schedule 1 to this Agreement;
“Plan”	means the plan attached at Schedule 2 to this Agreement;
“Planning Obligations”	means the obligations conditions and stipulations set out in clauses 6, 7, and 8 of this Agreement;

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<p>“Planning Permission”</p>	<p>means the planning permission for the Proposed Development pursuant to the Application;</p>
<p>“Primary Education Contribution”</p>	<p>means the financial contribution of [] pounds (£[]) towards the costs of providing the additional primary education infrastructure required to accommodate the extra demands for education services that would be generated by the proposed Development and should the Specified Date be after 31 March 2015 the Primary Education Contribution shall be re-calculated in accordance with the following formula:</p> $\text{Number of pupil places [0.4235] x Cost Multiplier}$ <p>And the Cost Multiplier shall be the DfE average build cost multiplier for primary schools where this has been newly published in the financial year in which the Education Contribution is paid but where this has not been newly published in the financial year in which the Education Contribution is paid the Education Contribution shall be increased or decreased by an amount equal to the proportionate increase in the All-In Tender Price Index published by the Building Costs Information Service of the Royal Institute of Chartered Surveyors between the quarter preceding the date of this Deed and the quarter preceding the date of payment of this contribution to be used towards the provision of additional primary education infrastructure required to accommodate the extra demands for education services that would be generated by the Proposed Development</p>
<p>“Public Art Contribution”</p>	<p>means the sum of [] pounds (£[]) Index Linked to be used towards the provision of public art on at [];</p>
<p>“Proposed Development”</p>	<p>means the development of the Land proposed by the Application or permitted by planning permission granted pursuant to the Application or carried out in accordance with such planning permission</p>

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<p>“Refuse and Recycling Contribution”</p>	<p>means the sum of [] pounds (£[]) Index Linked to be used towards the provision or improvement of refuse and recycling facilities or services in the district of Horsham;</p>
<p>“Scheme”</p>	
<p>“Secondary Education Contribution”</p>	<p>means the financial contribution of [] pounds (£[]) towards the costs of providing the additional secondary education infrastructure required to accommodate the extra demands for education services that would be generated by the proposed Development and should the Specified Date be after 31 March 2015 the Secondary Education Contribution shall be re-calculated in accordance with the following formula:</p> <p style="text-align: center;">Number of pupil places [0.3025] x Cost Multiplier</p> <p>And the Cost Multiplier shall be the DfE average build cost multiplier for primary schools where this has been newly published in the financial year in which the Education Contribution is paid but where this has not been newly published in the financial year in which the Education Contribution is paid the Education Contribution shall be increased or decreased by an amount equal to the proportionate increase in the All-In Tender Price Index published by the Building Costs Information Service of the Royal Institute of Chartered Surveyors between the quarter preceding the date of this Deed and the quarter preceding the date of payment of this contribution to be used towards the provision of additional secondary education infrastructure required to accommodate the extra demands for education services that would be generated by the Proposed Development;</p>
<p>“Section 73 Consent”</p>	<p>means a planning permission granted pursuant to Section 73 of the Act which varies and /or removes any condition subject to which the Planning Permission and/or such</p>

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	planning permission pursuant to Section 73 of the 1990 Act was granted
“Sixth Form Education Contribution	<p>means the financial contribution of [] pounds (£[]) towards the costs of providing the additional secondary education infrastructure required to accommodate the extra demands for education services that would be generated by the Proposed Development and should the Specified Date be after 31 March 2015 the Secondary Education Contribution shall be re-calculated in accordance with the following formula:</p> $\text{Number of pupil places [0.3025]} \times \text{Cost Multiplier}$ <p>And the Cost Multiplier shall be the DfE average build cost multiplier for primary schools where this has been newly published in the financial year in which the Education Contribution is paid but where this has not been newly published in the financial year in which the Education Contribution is paid the Education Contribution shall be increased or decreased by an amount equal to the proportionate increase in the All-In Tender Price Index published by the Building Costs Information Service of the Royal Institute of Chartered Surveyors between the quarter preceding the date of this Deed and the quarter preceding the date of payment of this contribution to be used towards the provision of additional secondary education infrastructure required to accommodate the extra demands for education services that would be generated by the Proposed Development</p>
“Specified Date”	means the date upon which an obligation arising under this Agreement is due to be performed;
“the Total Access Demand Contribution”	means the financial contribution of £ to be used towards the Scheme and which is calculated in accordance with the Total Access Demand Methodology increased or decreased

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	by an amount equal to the proportionate increase in the All-In Tender Price Index published by the Building Costs Information Service of the Royal Institute of Chartered Surveyors between the quarter preceding the date of this Deed and the quarter preceding the date of payment of this Contribution;
“Total Access Demand Methodology”	the methodology developed by the County Council and adopted by the District Council which requires contribution towards the cost of infrastructure and other measures that are necessary to mitigate the impact of development;

4. **Enabling Provisions**

This Agreement is made pursuant to section 106 of the Act, section 1 of the Localism Act 2011 section 111 of the Local Government Act 1972, and all other enabling powers and all other enabling powers and has been entered into by the District Council pursuant to its Development Management Committee [] resolution of [] (Minute No. []) / Part 3 Schedule 13 Paragraph 6.10.

5. **Commencement**

This Agreement shall come into effect upon the date hereof but the provisions in clauses 6, 7 and 8 shall only take effect upon:

5.1.1 the District Council granting the Planning Permission; and

5.1.2 the Commencement of Development

6. **Owner’s Covenants**

6.1 The Owner hereby covenants with the District Council and the County Council:

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- 6.1.1 On or before the Commencement of Development/first Occupation of any Dwelling Unit to pay to the District Council the Financial Contributions in a single sum and to attach to such payment a fully completed Payment Notice
- 6.1.2 Not to Commence Development /allow Occupation of any Dwelling Unit or cause or allow Commencement of Development/Occupation of any Dwelling Unit until the Financial Contributions have been paid to the District Council in full
- 6.1.3 In the event of failure by the Owner to pay the Financial Contributions prior to Commencement of Development/first Occupation of any Dwelling Unit under Clause 6.1.1 then the Owner covenants that it will pay Interest on the outstanding amount from the Specified Date to the date of actual payment of the Financial Contributions in full

7. District Council's Covenants

- 7.1 The District Council hereby covenants with the Owner and the County Council to transfer the Education Contribution, the Library Contribution, the Fire and Rescue Services Contribution and the Total Access Demand Contribution to the County Council within a reasonable period after receipt by the District Council of a reasonable written request specifying the particular infrastructure on which the said contribution will be spent by the County Council.
- 7.2 The District Council hereby covenants with the Owner that if or to the extent the District Council Contributions shall not have been spent by the District Council at the end of ten years of the date of receipt of the payment of the said contributions the the District Council shall, upon written request, on such date refund to the party that paid the relevant District Council Contribution any unexpended sum EXCEPTING THAT if at the end of the ten year period the District Council shall have entered into a contract or other legally binding obligation to expend the relevant District Council Contribution or part thereof for the purposes specified in this agreement then the District Council shall not be required to refund any part of the District Council Contributions required for that purpose but shall as soon as possible following the

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completion of the said contract or other legally binding commitment refund any unexpended part of the District Council Contributions.

- 7.3 The District Council Contributions sought and secured by this Agreement do not contravene Community Infrastructure Levy Regulations 2010 (as amended) regulation 123(3) and if such contravention is found to exist then those obligations found to be in contravention of regulation 123(3) shall not be sought nor enforceable under the terms of this Agreement Provided Always that no liability under this paragraph shall extend on behalf of the District Council in respect of the County Council covenant in this regard as set out in clause 8.4 below

8. **County Council's Covenants**

- 8.1 The County Council covenants that upon receipt of the Education Contribution, Library Contribution, Fire and Rescue Service Contribution and Total Access Demand Contribution from the District Council it will hold it in a separately identified interest bearing section of the County Council's combined accounts and apply the same towards the cost of education library fire and rescue and transport infrastructure in the vicinity of the Land
- 8.2 The County Council covenants that upon written request within ten years of the date of receipt of the Education Contribution Library Contribution Fire and Rescue Service Contribution and Total Access Demand Contribution it will issue to the party that paid the said contribution an account certified by the Executive Director of Finance and Performance for the time being of the County Council detailing the scheme on which the Education Contribution Library Contribution Fire and Rescue Service Contribution and Transport Contribution has been expended by the County Council
- 8.3 If or to the extent the Education Contribution Library Contribution Fire and Rescue Service Contribution and Total Access Demand Contribution shall not have been spent by the County Council at the end of the period referred to in paragraph 8.2 above the County Council shall on such date refund to the party that paid the Education Contribution Library Contribution Fire and Rescue Service Contribution and Total Access Demand Contribution any unexpended sum together with

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compound interest on such unexpended sum from the date of receipt of the said contributions by the County Council to the date of repayment at the base rate of the Bank of England applicable at the date of repayment calculated on a day to day basis.

- 8.4 If at the end of the period referred to in paragraph 8.2 above the County Council shall have entered into a contract or other legally binding obligation to expend the Education Contribution Library Contribution Fire and Rescue Service Contribution and/or Total Access Demand Contribution or part thereof for the purposes specified in paragraph 8.1 above then the County Council shall not be required to refund any part of the Education Contribution Library Contribution Fire and Rescue Service Contribution and/or Total Access Demand Contribution required for that purpose but shall as soon as possible following the completion of the said contract or other legally binding commitment account to the party that paid the Education Contribution Library Contribution Fire and Rescue Service Contribution and/or Total Access Demand Contribution in the manner set out in paragraph 8.2 above and refund any unexpended part of the Education Contribution Library Contribution Fire and Rescue Service Contribution and/or Total Access Demand Contribution in the manner set out in paragraph 8.3 above
- 8.5 The County Council Contributions sought and secured by this Agreement do not contravene Community Infrastructure Levy Regulations 2010 (as amended) regulation 123(3) and if such contravention is found to exist then those obligations found to be in contravention of regulation 123(3) shall not be sought nor enforceable under the terms of this Agreement Provided Always that no liability under this paragraph shall extend on behalf of the County Council in respect of the District Council covenant in this regard as set out in Clause 7 above

9. Notices

- 9.1 The Owner covenants with the District Council and the County Council as follows:

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- 9.1.1 to give the Commencement Notice to the District Council and the County Council not less than 14 days before the Commencement Date
- 9.1.2 to give the Occupation Notice to the District Council not less than 14 days before the anticipated Occupation Date
- 9.2 The parties to this Agreement agree that if the Owner fails to give the notice required by clause 9.1.1 and 9.1.2 above then the District Council shall be entitled in its absolute discretion to determine the Commencement Date and shall give notice to the Owner of the District Council's determination
- 9.3 Any notice certificate or other communication required or permitted to be given hereunder shall be given in writing to the relevant party at the relevant address referred to above or such other address as may be notified in writing to the other party and must be served personally or by registered or recorded delivery post and in the case of the District Council the Owner shall address any notice to the Head of Legal and Democratic Services of the District Council and in the case of and the County Council the Owner shall address any notice to the Monitoring and Records Team, Strategic Planning Division for the time being at the address of the County Council given herein.
- 9.4 Any notice certificate or other communication sent by post shall be deemed (in the absence of evidence of receipt) to have been delivered two days after despatch and in proving the fact of despatch it shall be sufficient to show that the envelope was properly addressed and posted
- 9.5 Any notice certificate or other communication delivered personally shall be deemed to have been delivered on the day of its despatch if despatched during or prior to normal business hours but otherwise on the next business day thereafter
10. **Index Linking**

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The Owner agrees with the District Council that any sums payable by the Owner under this Agreement shall be increased by the application of the following formula:

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

where A is the sum actually payable on the Specified Date

B is the original sum mentioned in this Agreement

C is the General Index for the month two months before the Specified Date

D is the General Index for the month two months before the date of this Agreement

$\frac{C}{D}$ is equal to or greater than 1

D

11. Interest

The Owner agrees with the District Council and the County Council to pay interest on sums due the District Council or the County Council under this Agreement but not paid on the Specified Date from the Specified Date until actual payment. The rate of interest shall be 4% above the Bank of England's base rate

12. Costs

The Owner agrees:

12.1 with the District Council to pay on the date hereof

12.1.1 The District Council's reasonable legal costs incurred in preparing and entering into this Agreement

12.1.2 The monitoring costs of [] pounds (£[])

12.1.3 The planning officer contribution of [] pounds (£[])

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12.2 with the County Council to pay on the date hereof the County Council's reasonable legal costs incurred in entering into this Agreement

13. **General**

The parties agree that:

13.1 nothing in this Agreement constitutes an obligation to grant planning permission

13.2 nothing in this Agreement grants planning permission or any other approval consent or permission required from the District Council or the County Council in the exercise of any other statutory function

13.3 nothing in this Agreement fetters or restricts the exercise by the District Council or the County Council of any of their powers

13.4 the obligations contained in this agreement are planning obligations for the purpose of s106 of the Act

13.5 this Agreement constitutes a deed

13.6 this Agreement is enforceable by the District Council and the County Council

13.7 nothing in this Agreement confers or is intended to confer a benefit on a third party under the Contracts (Rights of Third Parties) Act 1999

13.8 All payments in accordance with the terms of this Agreement shall be exclusive of any VAT payable in respect thereof

13.9 It is hereby agreed by the parties hereto that failure by the District Council and /or the County Council at any time to enforce the provisions of this Agreement or to require performance strictly or otherwise by the Owner of any of the conditions covenants agreements or obligations of this Agreement or any failure or delay by the District Council and /or the County Council to exercise any act right or remedy shall not be construed as a waiver of or as creating an estoppel in connection with any such condition covenant agreement or obligation and shall not affect the validity of this Agreement or any part thereof or the right of the District Council and/or the County Council to enforce any provision and any variation of this Agreement agreed between the Owner and the District Council and the County Council shall not vitiate the remainder of the Agreement which shall remain in full force and effect subject to such amendment or amendments

13.10 The parties hereby agree that

- (a) this Agreement supersedes and replaces all previous negotiations whether oral or written and

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- (b) no party has relied on any express or implied statement warranty representation or undertaking given by or on behalf of another
 - (c) nothing herein contained excludes the liability of any of the parties in relation to fraud
- 13.11 The Owner hereby consent to the registration of this Deed as a Local Land Charge
- 13.12 The Owner hereby gives consent for the Plans to be reproduced by the District Council and indemnifies the District Council and the County Council against all actions costs claims and demands which may be made against the District Council and /or the County Council or its employee's servants or agents in connection with the copyright in the same
- 13.13 Entry into this Deed does not constitute a transaction for a chargeable consideration for which Stamp Duty Land Tax is required and thus the District Council hereby certifies that a Land Transaction Return is not applicable in accordance with Section 79(3) of the Finance Act 2003
- 13.14 If any provision in this Agreement shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired
- 13.15 The Owner hereby warrants to the District Council that except as provided in recital 1.2 they have not leased mortgaged charged or otherwise created any interest in the Land at the date of this Agreement otherwise than those already set out in clause 1 of this Agreement . The Council agrees that this clause does not prevent the Owner from leasing mortgaging charging or otherwise creating any interest in the land in the future
- 13.16 Reference to any statute or statutory provisions includes a reference to:-
- 13.16.1 that statute or statutory provision as from time to time amended extended re-enacted consolidated or replaced; and
 - 13.16.2 all statutory instruments or orders made pursuant to it whether before or after the date of this Agreement.
- 13.17 This Agreement shall be governed by and interpreted in accordance with Laws of England and the parties submit to the exclusive jurisdiction of the Courts of England
- 13.18 Where the agreement approval consent or expression of satisfaction is required by the Owner from the District Council under the terms of this Agreement such agreement approval consent or expression of satisfaction shall not be unreasonably withheld or delayed

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13.19 The obligations in this Agreement (with the exception of clause 12) shall cease to have effect (insofar only as it has not already been complied with) if before the Commencement of Development the Planning Permission:

- (a) expires;
- (b) is varied or revoked other than at the request of the Owner/Developer/Applicant; or
- (c) is quashed following a successful legal challenge

but will remain in full force and effect so far as any subsisting Section 73 Consent is concerned.

13.20 The obligations in this Agreement (with the exception of clause 12) shall cease to have effect (insofar only as it has not already been complied with) in so far only as the relevant Section 73 Consent is concerned if before the Commencement of Development the relevant Section 73 Consent:

- (a) expires;
- (b) is varied or revoked other than at the request of the Owner/Developer/Applicant; or
- (c) is quashed following a successful legal challenge

but will remain in full force and effect so far as the Planning Permission and any other subsisting Section 73 Consent is concerned

13.21 The Owner (or any person deriving title to the Land from them) shall not be liable for any breach of the restrictions and obligations set out in this Agreement where such breach arises after the Owner shall have parted with its entire interest in the Land or such part of the Land to which such breach relates save in respect of liability for antecedent breach of this Agreement

13.21 The District Council and the County Council hereby agree no person shall be bound hereunder insofar as his interest is that of a statutory authority or service company which has acquired or is acquiring the site of any electricity sub-station gas governor or other structures or land

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13.22 It is hereby agreed that the provisions of this Agreement shall not be binding upon or enforceable against any future individual purchaser of any of the Dwelling Units after construction

13.23 Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 applies to the covenants in this agreement

13.24 references to the Land include any part of it

13.25 "including" means "including without limitation"

13.26 any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing

11.26 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with any planning permission (other than the Planning Permission or any modification variation or amendment thereof) granted after the date of the Planning Permission

11.27 Subject to the proviso to this clause if any Section 73 Consent is granted after the date of this Agreement:

(a) the obligations in this Agreement shall relate to and bind such Section 73 Consent; and

(b) the definitions of Planning Application, Development and Planning Permission (other than for the purposes of clause 1) shall be construed to include reference to (respectively) the planning application for the Section 73 Consent the development permitted by the Section 73 Consent and the Section 73 Consent itself

PROVIDED THAT:

(c) nothing in this clause shall fetter the discretion of the District Council in determining any planning application for a Section 73 Consent and the appropriate planning obligations required in connection with the determination of the same;

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- (d) to the extent that any of the obligations in this Agreement have already been discharged at the date that a Section 73 Consent is granted they shall remain discharged for the purposes of the Section 73 Consent; and
- (e) the District Council reserves the right to insist upon the completion of a separate planning obligation by deed of agreement in connection with any Section 73 Consent if the District Council (acting reasonably) considers it desirable to do so

14. **Mortgagee In Possession**

The Mortgagee acknowledges and declares that this Agreement has been entered into by the Owner with its consent and that those parts of the Land which are subject to the Charge shall be bound by the obligations contained within this Agreement and also that the Charge shall take effect subject to this Agreement PROVIDED THAT the Mortgagee shall have no liability under this Agreement unless and until it takes possession of the relevant part of the Land (and shall not be liable for any breaches occurring prior to it taking possession) in which case it will also be bound by the obligations as if it were a person deriving title from the Owner.

15. **DISPUTE RESOLUTION**

Where any matters fail to be agreed between the parties or any dispute or difference occurs the question shall be referred on the application of either party for the determination of a single expert to be agreed between the parties or in default of agreement to be nominated by the President for the time being of the Chartered Institute of Housing

16 **CHANGE IN OWNERSHIP**

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The Owners and Mortgagee agrees with the District Council and the County Council to give the District Council and the County Council immediate written notice of any change in ownership of any of its interests in the Land occurring before all the obligations under this Agreement 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 Land or unit of occupation purchased by reference to a plan

IN WITNESS whereof this Deed has been duly executed the day and year first hereinbefore mentioned

Appendix 2 – S106 Agreement Template (Cont.)

SCHEDULE 1

PAYMENT NOTICE

Payment of monies due under a Section 106 Agreement

Please answer all the questions

1. Payment made by/on behalf of
2. Land at :
Planning Reference:
3. Agreement dated
4. Obligation in Agreement
 - (a) Clause No.
 - (b) Contribution towards :
 - (c) Amount of contribution due: £
 - (d) Date upon which contribution is due
 - (e) Amount of contribution enclosed

SCHEDULE 2

Plan

