

**DATED** 12<sup>th</sup> August **2005**

**1. HERTFORDSHIRE COUNTY COUNCIL**

**and**

**2. STEVENAGE BOROUGH COUNCIL**

**and**

**3. SIMONS DEVELOPMENTS LTD**

**and**

**4. B & Q PLC**

**DEED MADE PURSUANT TO S.106  
TOWN AND COUNTRY PLANNING ACT 1990  
IN RESPECT OF STEVENAGE BOROUGH COUNCIL DEPOT  
LONDON ROAD, STEVENAGE, HERTFORDSHIRE**



Date:

10th August

2005

**PARTIES:**

1. **HERTFORDSHIRE COUNTY COUNCIL** of County Hall Hertford Hertfordshire ("the County Council")
2. **STEVENAGE BOROUGH COUNCIL** of Daneshill House Danestrete Stevenage Hertfordshire SG1 1HN ("the Council")
3. **SIMONS DEVELOPMENTS LIMITED** (Company Registration Number 640611) of Witham Park House Waterside South Lincoln LN5 7JP ("the Developer")
4. **B&Q plc** (Company Registration Number 973387 of Portswood House 1 Hampshire Corporate Park Chandlers Ford Eastleigh Hants S053 3YX ("the Store")

**WHEREAS**

- (1) The Council and the County Council are the Local Planning Authorities for the purposes of Section 106 of the Town and Country Planning Act 1990 (as amended) ("the Act") for the area of land known as Stevenage Borough Council Depot London Road Stevenage Hertfordshire ("the Application Site") which is shown edged red on the Plan attached hereto and the County Council is the Authority entitled to enforce the planning obligations contained in this Deed as set out hereafter
- (2) The County Council is the Highway Authority for Hertfordshire

- HD235456  
*[Signature]*
- (3) The Council is the **freehold** owner of the Land which is shown shaded pink on the Plan **attached** hereto which is registered at HM Land Registry under Title Nos ~~HD235440~~ and ~~HD180834~~ and is entitled to be registered ~~HD440119~~ as the registered proprietor of the residue that is unregistered at H M Land Registry *n*

- (4) By written application to the Council acting as Local Planning Authority and received on 14<sup>th</sup> October 2004 Simons Estates Limited and the Store jointly applied to the Council for planning permission under Application No. 04/00476/FP for the development of the Application Site by the erection of a two storey retail warehouse (approximately 13,000 square metres gross floorspace) a two storey car park (510 spaces) and associated access and landscaping ("the Development") and by letter dated 17 June 2005 Simons Estates Ltd assigned the benefit of its interest in the Application to the Developer
- (5) The Developer the Store and the Council acting as owner of the Land have agreed to enter into this Deed with the intention that the obligations contained in this Deed may be enforced as hereinafter set out by the County Council acting as Local Planning Authority against it/them and/or any person or persons deriving title from it/them in respect of the Land
- (6) Having regard to the District Plan and all other material considerations the Council acting as Local Planning Authority at a meeting of its Planning and Development Committee on 8<sup>th</sup> March 2005 resolved to grant planning permission pursuant to the Application with conditions subject to the prior completion of this Deed to secure the matters hereinafter appearing
- (7) This Deed is **entered** into to make provision for regulating the Development **and securing** the matters hereinafter appearing which are required in **order to enable** the Development to go ahead

**NOW THIS DEED WITNESSES AND IT IS HEREBY AGREED** as follows:

**1 DEFINITIONS**

In this Deed including the recitals and Schedules unless the context otherwise requires the following words and expressions shall have the respective meanings as set out opposite to them:

**"Account"** means an interest bearing account with a UK registered bank

**"the Act"** means the Town and Country Planning Act 1990 as amended and any amendments thereto and re-enactments thereof

**"Agreement for Lease"** means an agreement to lease the Store Site between the Developer and the Store dated 24 March 2005

**"the Application"** means the planning application as described in the Second Schedule hereto

**"Application Site"** means all that land and premises set out in the First Schedule hereto and more particularly delineated shown edged red on the Plan

**"Commencement Date"** means the date upon which is carried out any act pursuant to the Planning

|                                |  |
|--------------------------------|--|
|                                | Permission which constitutes a material operation within the meaning of Section 56 of the Act as amended and "Commence" and "Commenced" shall be construed accordingly |
| <b>"Commence Construction"</b> | means the carrying out of a Material Operation on the Application Site and "Commencement of Construction" shall be construed accordingly                               |
| <b>"Committee Resolution"</b>  | the resolution of the Planning and Development Committee on 8 March 2005 in respect of the Application   |
| <b>"Council"</b>               | means Stevenage Borough Council  |
| <b>"County Council"</b>        | means Hertfordshire County Council   |
| <b>"Developer"</b>             | means Simons Developments Ltd  |
| <b>"Development"</b>           | means the development of the Application Site as set out in the Application and in accordance with the Planning Permission   |
| <b>"Due Date"</b>              | means the date upon which sums payable under this Deed become due in accordance with the terms hereof  |
| <b>"Index"</b>                 | means the Price Adjustment Formula for Construction Contracts in the Monthly Bulletin of Indices published by HMSO as collated into a single index in                  |

accordance with the SPONS  
Constructed Civil Engineering Cost  
Index

**"Land"**

means all that land to be bound by the  
terms of this Agreement set out in the  
First Schedule hereto and more  
particularly shown shaded pink on the  
Plan

**"Maintenance  
Contribution"**

means the sum of Forty Seven  
Thousand pounds (£47,000.00) plus a  
sum for indexation to the Index the total  
to be paid in accordance with Clause 3.  
hereof

**"Material Operation"**

means a "material operation" as defined  
by section 56 of the Act in relation to  
the Development under the Planning  
Permission

**"Owner"**

means Stevenage Borough Council

**"Plan"**

means the plan annexed hereto marked  
"A"

**"Planning Permission"**

means the planning permission which  
may be granted in pursuance of the  
Application

**"Store"**

means B&Q Plc

**"Store Site"**

means the land shown for identification  
purposes edged yellow on the Plan

**"Transport  
Contribution"**

means the sum of one hundred and twenty five thousand pounds (£125000.00) plus a sum for indexation to the Index the total to be paid in accordance with Clause 3 hereof

**"Transport Works"**

means the costs of sustainable transport measures in the vicinity of the site to be applied at the sole discretion of the County Council to mitigate the impact of the Development on the highway network

## **2 INTERPRETATION**

- 2.1 This Deed is made pursuant to Section 106 of the Act and the obligations contained in this Deed are planning obligations for the purposes of that section insofar as they fall within the terms of subsection (1) of Section 106 and bind each and every part of the Land and insofar as any of the covenants contained in this Deed are not planning obligations within the meaning of the Act they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972 and all other enabling powers
- 2.2 The County Council is the local authority by which the planning obligations contained in Clause 3.1 and 3.2 in this Deed are enforceable
- 2.3 The terms of this Deed shall come into effect on the date hereof
- 2.4 No person shall be liable for any breach of the covenants restrictions or obligations contained in this Deed occurring after it has parted with all of its interest in the Land save that it shall remain liable for any such breach occurring before it parted with possession of such interest in the Land

2.5 This Deed shall **cease** to have effect: -

2.5.1 If the Planning Permission shall be quashed or revoked; or

2.5.2 If the Planning Permission shall expire prior to the Commencement of Construction without having been implemented

2.6 Nothing in this Deed shall be or shall be construed to be a fetter or restriction on the proper exercise at any time by the Council or the County Council of any of their respective statutory powers functions or discretions in relation to the Application Site or otherwise

2.7 Words imposing an obligation on a party to do any act whatsoever include an obligation to procure that act and words placing a party under a restriction include an obligation not to cause permit or suffer any infringement of that restriction

2.8 Words in this Deed imparting the singular meaning shall unless the context otherwise requires include the plural and vice versa and where there is more than one covenantor all obligations of such covenantors shall be joint and several

2.9 The masculine feminine and neuter genders include each of the other genders and words denoting persons shall include corporations and vice versa

2.10 A reference to any Clause or Schedule (or any part of them) is (unless the context otherwise requires) a reference to a Clause or Schedule (or any part of them) contained in this Deed

2.11 A reference to an Act of Parliament or a Statutory Instrument refers to the Act or Statutory Instrument as it applies at the date of this Deed **SAVE THAT** in the event any such Act or Statutory Instrument is consolidated amended or re-enacted then any reference to such Act or Statutory




Instrument ~~refers~~ to that Act or Statutory Instrument as consolidated, amended or re-enacted from time to time

2.12 References to any party in this Deed shall include the successors in title and assigns of that party and in the case of the Council and the County Council includes any successor local planning authority exercising planning powers under the Act and in the case of the County Council any successor highway authority

2.13 Unless otherwise specified where any agreement certificate or approval is to be given by the County Council and/or the Council under the terms of this Deed then the same shall not be unreasonably withheld or delayed

2.14 The provisions of the Schedules shall be deemed imported into the operations ~~of~~ parts of this Deed

3 THE COUNCIL (ACTING AS OWNER OF THE LAND) THE DEVELOPER AND THE STORE COVENANTS WITH THE COUNTY COUNCIL

 The ~~Owner~~ <sup>Council</sup> acting as owner of the Land the Developer and the Store (subject to the Developer indemnifying the Store against all liabilities claims charges costs and expenses arising in respect of any breach of this Agreement prior to the Store being granted a lease of the Store Site pursuant to the terms of the Agreement for Lease such that it has a legal interest in the Application Site) for each of themselves and their respective successors in title and persons deriving title from them hereby covenant with the County Council to observe and perform the covenants hereinafter appearing in relation to the Development with the intention of binding each and every part of the Land

### 3.1. Maintenance Contribution

- 3.1.1 On or before the Commencement Date to pay the Maintenance Contribution to the County Council as a contribution towards the costs of extending altering improving maintaining the landscaping provided by the Developer and/or the Store on the land shown coloured green on the Plan such payment to be index linked to the Index from the date of the Committee Resolution until the date of payment
- 3.1.2 Not to Commence nor cause nor permit the Commencement of the Development until the Maintenance Contribution has been paid to the Council in accordance with Clause 3.1.1 hereof

### 3.2 Transport Contribution

- 3.2.1 On or before the Commencement Date to pay the Transport Contribution to the County Council as a contribution to be applied by the County Council in its sole discretion towards the costs of providing the Transport Works which for the avoidance of doubt such costs shall include the costs towards design consulting and implementation of the Transport Works such sum to be index linked to the Index from the date of the Committee Resolution until the date of payment
- 3.2.2 Not to Commence nor cause nor permit the Commencement of the Development until the Transport Contribution has been paid in full to the County Council pursuant to Clause 3.2.1

### 3.3 Contingency

- 3.3.1 With the exception of Clause 3.4 none of the terms or provisions of this Agreement will have operative effect unless and until the date the Planning Permission has been duly granted**

### 3.3 Costs

- 3.3.1 On the date hereof to pay to both the County Council and the Council the reasonable costs and disbursements incurred by both the County Council and the Council in the preparation and completion of this Deed

**3.4 Notices**

- 3.4.1 To notify both the Council acting as Local Planning Authority and the County Council in writing or procure that they as so notified within 7 days of the Commencement Date

**3.5 Access**

- 3.5.1 Not to Commence nor cause nor permit the Commencement of Construction until a scheme for the provision of construction access to the Application Site has been submitted to and approved in writing by the County Council and such approved scheme for construction access shall have been completed to the reasonable satisfaction of the County Council in accordance with a validly executed agreement pursuant to Section 278 of the Highways Act 1980.

**4 COUNTY COUNCIL'S COVENANTS**

The County Council hereby covenants with the <sup>Council</sup>~~Owner~~ acting as owner of the Land the Developer and the Store as follows:



- 4.1 To invest all payments received by it under the terms of this Agreement in an interest bearing account
- 4.2 To apply the Maintenance Contribution and any interest accrued thereon solely towards the purpose specified in Clause 3.1.1

- 4.3 To use the Transport Contribution together with any interest accrued thereon for the purposes of securing the Transport Works and to refund to the person or body who paid such contribution any portion of the contribution remaining unspent on the tenth anniversary of the date of payment of the Transport Contribution pursuant to clause 3.2 hereto together with interest thereon at the rate from time to time prescribed under Section 32 of the Land Compensation Act 1961

**5 FURTHER ISSUE REGARDING THE CONTRIBUTION TO THE COUNTY COUNCIL**

- 5.1. Where any sum to be paid to the County Council under the terms of this Deed is required to be index linked then payment shall be made using the latest available forecast figure (or figures as the case may be) at the date of payment and any payment or payments by way of adjustment shall be made within 14 days of written demand by the County Council or the person or body who paid such sums as the case may be

**6 WARRANTY BY THE COUNCIL ACTING AS OWNER OF THE LAND**

- 6.1 The Council acting as the owner of the Land hereby warrants that it is the owner of the freehold of the Land (subject to a conditional contract for sale of the Land between the Council acting as owner of the Land and the Developer dated 1 September 2004 and the Agreement for Lease) and that no other party has an interest in the Land save as disclosed in writing to both the Borough Solicitor of the Council acting as Local Planning Authority and the County Secretary of the County Council prior to completion of this Deed

**7 LOCAL LAND CHARGE**

- 7.1 This Deed shall be registered as a Local Land Charge by the Council

## **8 CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999**

- 8.1 Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 nothing in this Deed confers or purports to confer any right to enforce any of the terms and provisions herein on any person who is not a party hereto or a successor in title to a party hereto in respect of the Land

## **9 NOTICES CONSENTS AND APPROVALS**

- 9.1 Any notice notification or application for any approval consent or other authorisation under this Deed shall be in writing and shall be deemed to have been validly served if delivered by hand or sent by registered or recorded delivery post to the party upon whom it is to be served as specified herein or as otherwise notified for the purpose in writing and

- 9.2 The address for any notice or other written communication is:

- (a) for the Council acting as Local Planning Authority at the address specified above marked for the attention of the Head of Development and Planning or such other person as may be advised in writing from time to time
- (b) for the Council acting as owner of the Land at the address specified above marked for the attention of the Estates Manager or such other person as may be advised in writing from time to time
- (c) for the County Council at the address specified above marked for the attention of the County Secretary or such other person as may be advised in writing from time to time

- (d) for the Developer at the address specified above marked for the attention of the Development Director or such other person as may be advised from time to time
- (e) for the Store at the address specified above marked for the attention of the Development Surveyor or such other person as may be advised from time to time

9.3 Any notice or other written communication shall be deemed valid and effectual if it is signed on behalf of the Council and/or the County Council by a duly authorised officer or signatory

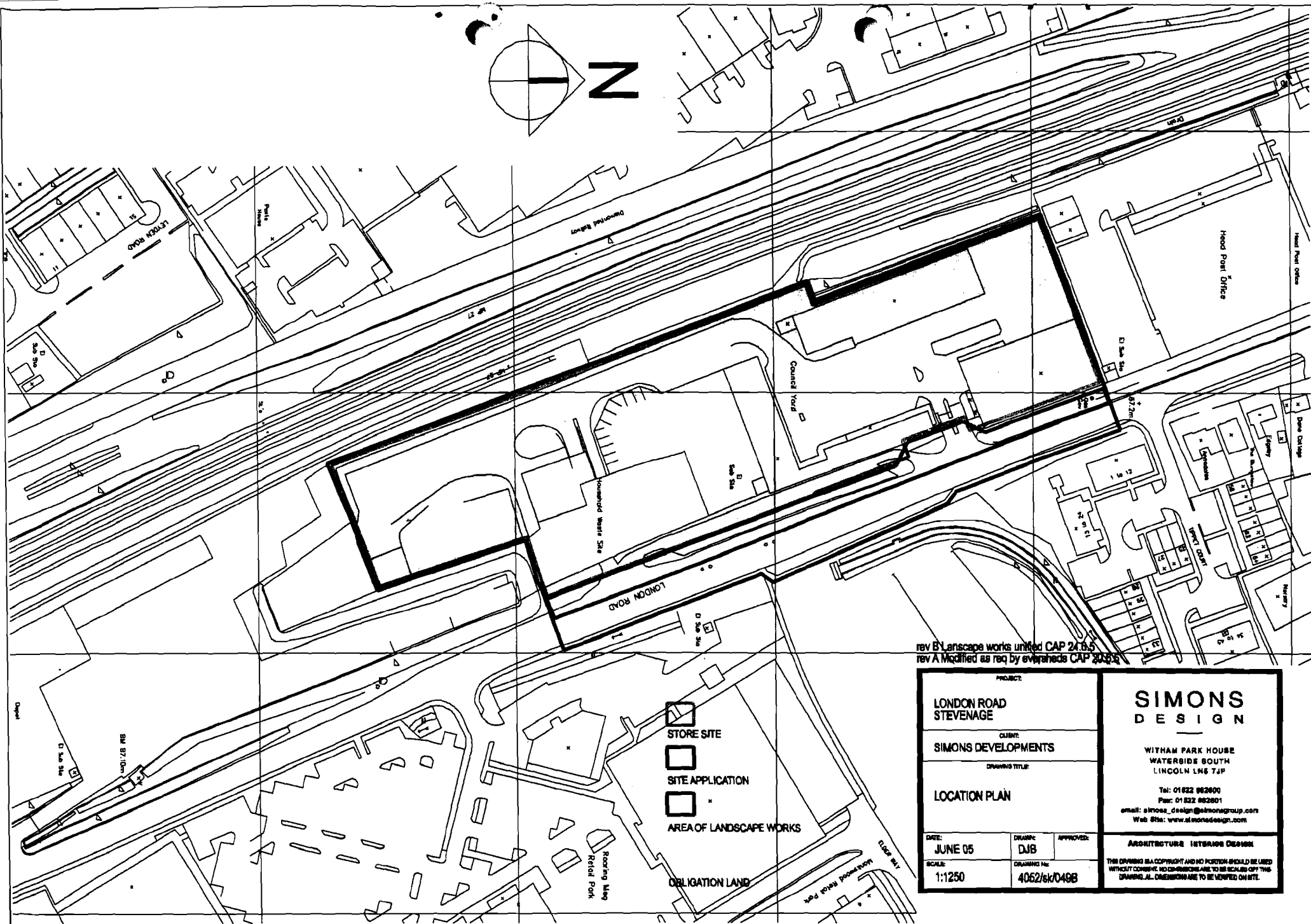
9.4 A notice consent or approval under this Deed shall be deemed to have been served as follows:

- (a) if personally served at the time of delivery
- (b) if posted at the expiration of forty eight (48) hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom

and in providing such service it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice consent or approval was properly addressed and delivered into the custody of the said postal authority in a prepaid first class or recorded delivery or registered post envelope (as appropriate)

## 10 INVALIDITY

10.1 If it is adjudged by any Court or other tribunal of competent jurisdiction that any Clause or part of any Clause (as opposed to the whole) of this Deed is unlawful or unenforceable the said Clause or part of the Clause shall be construed as severable from the remainder of the Deed to the



rev B Landscape works unified CAP 24.6.5  
rev A Modified as req by everheds CAP 20.8.5

|  |                                    |           |  |
|--|------------------------------------|-----------|--|
| PROJECT:<br><b>LONDON ROAD<br/>STEVENAGE</b> |                                    |           | <b>SIMONS<br/>DESIGN</b><br><br>WITHAM PARK HOUSE<br>WATERSIDE SOUTH<br>LINCOLN LN6 7JP<br><br>Tel: 01832 982900<br>Fax: 01832 682801<br>email: <a href="mailto:simons_design@simonsgroup.com">simons_design@simonsgroup.com</a><br>Web Site: <a href="http://www.simonsdesign.com">www.simonsdesign.com</a> |
| CLIENT:<br><b>SIMONS DEVELOPMENTS</b>        |                                    |           |  |
| DRAWING TITLE:<br><b>LOCATION PLAN</b>       |                                    |           |  |
| DATE:<br><b>JUNE 05</b>                      | DRAWN:<br><b>DJB</b>               | APPROVED: | ARCHITECTURE: <b>INTERIOR DESIGN</b><br><br>THIS DRAWING IS A COPYRIGHT AND NO PARTION SHOULD BE USED<br>WITHOUT CONSENT. NO DIMENSIONS ARE TO BE SCALED OFF THIS<br>DRAWING. ALL DIMENSIONS ARE TO BE VERIFIED ON SITE.   |
| SCALE:<br><b>1:1250</b>                      | DRAWING NO:<br><b>4062/6k/0498</b> |           |  |

effect that the said Deed shall be construed and enforceable as if the said Clause or part of the said Clause was never included in this Deed

IN WITNESS whereunto the parties hereto have caused their respective Common Seals to be hereunto affixed to this Deed but not delivered until the day and year first before written

The COMMON SEAL of  
HERTSMOUTH BOROUGH  
COUNCIL was hereunto affixed  
in the presence of:

ANDREW L L...  
Council Secretary/Assistant Town Clerk

The COMMON SEAL of  
STEVENAGE BOROUGH  
COUNCIL was hereunto affixed  
in the presence of:-

CHIEF EXECUTIVE  
Mayer

Principal  
Borough Solicitor

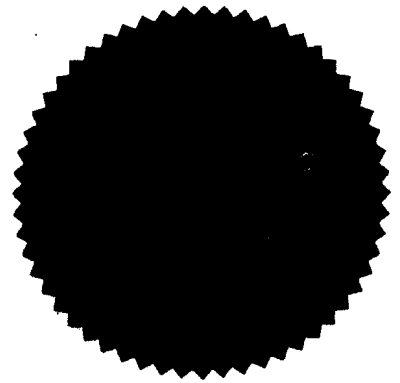
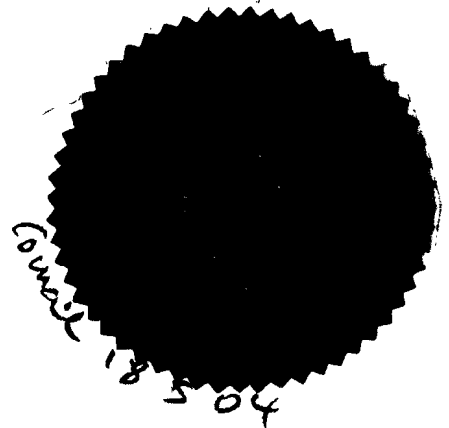
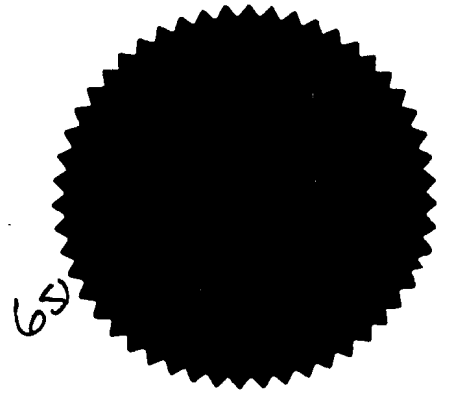
*[Signature]*  
*[Signature]*

THE COMMON SEAL of  
SIMONS DEVELOPMENTS LIMITED )  
was affixed to this deed in the )  
presence of: )

*[Signature]*  
*[Signature]*

Director



Secretary





Director/Secretary

EXECUTED AS A DEED by  
B&Q PLC acting by a director and  
company secretary/two directors

)   
)   
)

## THE FIRST SCHEDULE

### Particulars of the Land

All that Freehold premises known as Stevenage Borough Council Depot at London Road Stevenage Hertfordshire which is part unregistered and part registered in the Land Registry under title numbers ~~HD235446~~ and ~~HD235~~ ~~HD100001~~ and ~~HD100002~~ and which is more particularly delineated ~~HD440~~ shown shaded plan.

## SECOND SCHEDULE

### The Planning Application

An application for full planning permission for the erection of a two storey retail warehouse (approximately 13,000 square metres gross floorspace) a two storey car park (510 spaces) and associated access and landscaping ("the Development") at land and premises known as Stevenage Borough Council Depot London Road Stevenage Hertfordshire as more particularly set out in the application and accompanying plans and allocated reference 04/00476/FP