

DATED

2007

MASTER

THE COUNCIL

and

(Owner)

and

(Mortgagee)

AGREEMENT

made pursuant to Section 106 of the Town and Country Planning Act 1990
(as amended) relating to land at

CONTENTS

SECTION	DESCRIPTION	PAGE NO.
	RECITALS	6
1	CREATION OF PLANNING OBLIGATION	7
2	DEFINITIONS AND INTERPRETATION	7
3	OPERATIVE EFFECT AND GRANT OF PERMISSION	11
4	LIMITS OF ENFORCEABILITY	12
5	OWNERS COVENANTS	12
6	COUNCILS COVENANTS	13
7	REGISTRATION AS A LOCAL LAND CHARGE	13
8	NON-FETTER OF STATUTORY POWERS	13
9	LEGAL CHALLENGE – consequences for remainder of Agreement	13
10	APPROVAL – not to be unreasonably withheld or delayed	13
11	CERTIFICATION	13
12	CONTRIBUTIONS AND MAINTENANCE PAYMENTS – PAYMENT, POOLING AND REFUND	14
13	NOTICES AND PAYMENT OF CHEQUES	15
14	SUBSTITUTION OF PLANS AND OTHER VARIATIONS	16
16	INDEXATION	17
16	LEGAL COSTS	17
17	WARRANTY OF TITLE	17
18	DISPUTE RESOLUTION	18
19	THIRD PARTY RIGHTS	19
20	MORTGAGEES CONSENT	19
21	TRANSFER OF LAND	19

SCHEDULES

SCHEDULE NUMBER	HEADING AND SUMMARY OF PROVISIONS
1	<p>AFFORDABLE HOUSING</p> <p>(on-site provision)</p> <ul style="list-style-type: none"> • Affordable Housing scheme to be agreed prior to start on site • Transfer to RSL • Default provisions <p>(Financial contribution)</p> <ul style="list-style-type: none"> • Contribution of [£] to off-site affordable housing to be paid <i>[insert timetable for payment]</i>
2	<p>COMMUNICATION INFRASTRUCTURE</p> <p>PUBLIC TRANSPORT</p> <p>PEDESTRIAN/CYCLE</p> <p>TRAVEL PLAN</p> <p>OFF-SITE HIGHWAYS</p>
3	<p>ENVIRONMENTAL INFRASTRUCTURE</p> <p>PUBLIC OPEN SPACE/WOODLANDS</p> <p>(on-site provision)</p> <ul style="list-style-type: none"> • Scheme for Landscaping and Planting to be agreed prior to start on site • Maintenance period of 1 year (minimum) • Payment of [£] Maintenance Payment • Transfer to Council <p>(off-site provision)</p> <ul style="list-style-type: none"> • Contribution of [£] to off-site open space (and play areas) to be paid <i>[insert timetable for payment]</i> <p>(on-site play areas)</p>

	<ul style="list-style-type: none"> • Construction of play area • Equipped to Council requirements • Payment of Maintenance Payment of [£] <p>Transfer to Council</p> <p>SUSTAINABLE DRAINAGE (On-site and Off-site)</p> <ul style="list-style-type: none"> • Scheme for Sustainable Drainage and Flood Protection to be agreed prior to start on site • <i>Scheme to be implemented to Council's satisfaction</i> • <i>Payment of Maintenance Payment</i> • <i>Transfer to Council</i> <p>RECYCLING AND WASTE DISPOSAL</p>
4	<p>EDUCATION INFRASTRUCTURE</p> <p>PRIMARY SCHOOLS</p> <p>SECONDARY SCHOOLS</p>
5	<p>COMMUNITY INFRASTRUCTURE</p> <p>SPORT</p> <p>COMMUNITY CENTRES</p> <p>VILLAGE HALL/FACILITIES</p> <p>PUBLIC ART</p> <p>LIBRARIES</p> <p>CEMETERIES/CREMATORIA</p>
6	<p>EMERGENCY SERVICES</p> <p>POLICE STATIONS</p>
7	<p>HEALTH INFRASTRUCTURE</p> <p>CLINICS</p> <p>CARE HOMES</p>
8	<p>TERMS AND CONDITIONS FOR LAND TRANSFER</p>

ATTACHMENTS

NO. OF ATTACHMENT	DESCRIPTION
1	PLAN [no.]
2	DRAFT PLANNING PERMISSION

THIS AGREEMENT is made the _____ day of _____
2007 BETWEEN

(1)	THE COUNCIL of (“the Council”)
(2)	[_____] (Company Registration number _____) whose _____ registered _____ office _____ is at _____ (“the Owner”)
[(3)	[_____] (Company Registration number _____) <i>whose registered office is at _____</i> <i>(“the Mortgagee”)]</i>

RECITALS

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

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

or

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

or

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

(3) The Owner has submitted the Application and the Council is satisfied that the Development is such as may be permitted by the Council under Part 3 of the 1990 Act and is minded to grant Permission subject to the further provisions of this Agreement

[(4) The Mortgagee has consented to this Agreement and has agreed to join herein in manner hereinafter appearing]

1 NOW THIS DEED WITNESSETH as follows:-

1.1 This Agreement is a deed and is made pursuant to:-

- (a) Section 106 of the Act
- (b) Section 111 of the Local Government Act 1972
- (c) all other enabling powers (including the Well-Being provisions of the Local Government Act 2000)

1.2 This Agreement is a planning obligation pursuant to the Act and shall be binding and enforceable against the Owner and its successors in title

2 DEFINITIONS AND INTERPRETATION

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

“the Act”	means the Town and Country Planning Act 1990 as amended or re-enacted from time to time
“the Application”	means the application for planning permission dated [] under reference []
“Contribution”	means a capital contribution (not being a Maintenance Payment) towards the provision up-grading or improvement by the Council or a third party of such off-site facilities or other matters as further described in any schedule to this Agreement. Any payment clearly intended as a contribution towards legal or administrative costs (whether or not this is expressly stated) shall not be subject to the requirements of this Agreement regarding Contributions
“the Development”	means the erection of (insert relevant details) in accordance with the Application
“Implementation”	means the carrying out on the Land pursuant to the Permission of a Material Operation and “Implement” shall be construed accordingly

“Maintenance Payment” means a revenue contribution towards the future maintenance by the Council of any infrastructure element provided by the Owner and which the Council is or will be obliged to maintain under the provisions of this Agreement

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

- (a) site clearance
- (b) earthworks
- (c) demolition of existing buildings
- (d) archaeological investigation
- (e) assessment of contamination
- (f) remedial action in respect of contamination
- (g) the erection of fences or other means of enclosure for site security
- (h) the diversion and laying of services
- (i) the erection of a site compound or site office or temporary buildings or structures

(j) interim landscape works

“the Land”

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

“Permission”

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

“Pooled”

means that individual contributions paid under this Agreement may be amalgamated or pooled with similar contributions paid or to be paid to the Council under the provisions of any alternative planning obligation agreement or agreements so far as is permitted by statute and in compliance with the Council’s adopted Planning Obligation Strategy and circular 05/05 or any revision or replacement thereof for the time being in force

“Repayment Date”

means the day following the expiry of the relevant period. Such period to be calculated from the date of payment or in the case of phased payments from the date of the final payment. The relevant periods are:-

1. For all equipped play area
Contributions – 5 years
2. For Off-site Highway
Contributions – 15 years
3. For Cemetery/Crematorium
Contributions – 20 years
4. For all other Contributions – 10
years

“Spending Authority”

means either the Council or a third party having responsibility for the provision of any element of necessary infrastructure in respect of which a Contribution is paid under the terms of this Agreement and for the avoidance of doubt this can include a developer of other land who has provided or will provide such infrastructure upon terms which recognise that this is necessary to enable the proper development of the wider area which includes both the land of that developer and also the Land^[1]

2.2 Words and expressions defined in this part of this Agreement and words and expressions defined in any schedule hereto shall have the defined meaning wherever used unless the contrary intention is expressly stated

2.3 Wherever the context so admits the following words and phrases in this Agreement shall have the meanings herein attributed to them:-

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

2.4 Where any provision of this Agreement provides requires or authorises the Council to take any action whatsoever including but not by way of limitation the giving of or responding to notices or the issuing of expressions of satisfaction such provision shall be deemed to be a reference to such officer or officers of the Council having for the time being responsibility for the relevant function or functions of the Council and the Owner[Developer] shall not be entitled or required to question the authority of any such officer manifestly acting on behalf of the Council

2.5 Save where provided to the contrary by this Agreement the expressions the Council the Owner [and the Mortgagee] shall include their respective successors in title and assigns and the expression the Council shall include successors to its statutory functions

2.6 Any covenant given or made in this Agreement shall be deemed to:-

- (a) Be given or made by the covenantor on behalf of himself and his successors in title, and
- (b) where such covenant is given or made by a party consisting of two or more natural persons be deemed to be given or made jointly and severally

3 OPERATIVE EFFECT AND GRANT OF PERMISSION

3.1 With the exception of this Clause 3 and Clause 14 (legal costs) and any other provision of this Agreement which requires action by the Owner (including the payment of any contribution) prior to Implementation none of the terms or provisions in this Agreement will have operative effect unless and until:-

- (a) the Permission has been granted, and
- (b) Implementation has taken place

3.2 The Council shall grant the Permission without undue delay following the completion of this Agreement

4 LIMITS OF ENFORCEABILITY

4.1 Notwithstanding the provisions of Clause 3 no obligations or liabilities arising under this Agreement shall be enforceable against:

- (a) purchasers lessees or occupiers of individual Open Market Dwellings constructed as part of the Development nor the mortgagee or Mortgagee in possession of any such persons or receiver appointed by a mortgagee or Mortgagee of such persons
- (b) a statutory undertaker after the transfer of statutory apparatus and/or any land upon or in which the statutory apparatus is situated by the Owner to that statutory undertaker

4.2 No person shall be liable for any breach of this Agreement occurring after he has parted with his interest in the Land or any part of the Land in respect of which such breach occurs without prejudice to liability for any breach subsisting prior to parting with such interest.

5 OWNERS COVENANTS

5.1 THE OWNER HEREBY COVENANTS with the Council:-

- (a) to observe and perform all the provisions of this Agreement
- (b) to comply with the obligations contained in the various schedules to this Agreement
- (c) To give written notice of Implementation to the Council no later than five working days after such Implementation.

6 COUNCILS COVENANTS

6.1 The Council covenants with the Owner to perform or comply with the covenants and obligations on the part of the Council to be performed or complied with throughout this Agreement

7 REGISTRATION AS LOCAL LAND CHARGE

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

8 NON-FETTER OF STATUTORY POWERS

8.1 Nothing in this Agreement will fetter or prejudice the ability of the Council in the discharge of any of its statutory functions either as local planning authority or otherwise arising out of any provision of this Agreement or in respect of the Development

9 LEGAL CHALLENGE

9.1 In the event that any part of this Agreement may be subject to challenge review deletion or otherwise rendered null/void or voidable the balance of the said Agreement shall remain in full force and effect

10 APPROVAL

10.1 Where pursuant to this Agreement the approval consent expression of satisfaction or agreement of the Council is sought or required such approval consent agreement or expression of satisfaction shall be given in writing and shall not be unreasonably withheld or delayed.

11 CERTIFICATION

11.1 The Council shall within 15 Working Days of written request by any of the Owner at any time after each or all of the obligations contained in this Agreement have been performed or otherwise discharged (such written request to be accompanied by reasonable proof of performance or discharge) issue a written confirmation of such performance or discharge.

12 CONTRIBUTIONS AND MAINTENANCE PAYMENTS – PAYMENT, POOLING AND REFUND

12.1 The Owner shall pay all Contributions and Maintenance Payments on the Due Date (regardless of whether or not any formal demand for payment has been made by the Council) and in the event that payment of any Contribution or Maintenance Payment is late interest shall be added to such contribution or maintenance payment until payment is made on a daily basis at the rate of 5% per annum above the standard base rate of Barclays Bank

12.2 The Council shall as soon as practicable either:-

12.2.1 pay the Contributions received by the Council as Spending Authority into an interest bearing bank account and from time to time upon reasonable request by the Owner provide details of any interest earned and the manner and timing of the use or intended use by the Council of such contributions, or

- 12.2.2 pay the Contributions received by the Council but for which the Council is not the Spending Authority to the relevant Spending Authority
- 12.3 All Contributions received by the Council as Spending Authority under this Agreement may be Pooled
- 12.4 In the event that any Contribution or part of a Contribution received by the Council as Spending Authority pursuant to this Agreement or any interest accrued remains unexpended or uncommitted to an identified project or proposal on the Repayment Date such unexpended Contribution or part of a Contribution and interest accrued thereon shall be returned to the person who paid the Contribution to the Council within 15 Working Days of the Repayment Date

PROVIDED that there shall be no liability on the Council to refund any Contribution or part of a Contribution properly passed by the Council to a third party being the Spending Authority for the Contribution in question and

PROVIDED FURTHER and for the avoidance of doubt the provisions of clause 12.4 shall not apply to any Maintenance Payment and further there shall be no requirement on the Council to repay any Maintenance Payment or part of a Maintenance Payment except where the feature or other matter intended to benefit from such Maintenance Payment has either not been provided by agreement with the Council or has ceased to exist in which case any repayment shall be reduced by any sum or sums legitimately expended by the Council prior to repayment

- 12.5 Any Contribution identified in any schedule as being payable under the terms of this Agreement may if the Council so decides and in the interests of good planning be used instead for any other use (the "Alternative Use") identified in the same schedule SUBJECT TO the following requirements:

12.5.1 The Council must have resolved following the date of this Agreement and for proper planning reasons that the use for which the Contribution was paid as specified in such schedule is either no longer required or should be deferred in favour of the Alternative Use

12.5.2 The Alternative Use must be one which satisfies all statutory and planning policy requirements for the imposition and use of planning obligations in respect of the Development

12.5.3 If the relevant schedule does not identify an Alternative Use the provisions of this clause shall not apply

13 NOTICES AND PAYMENT OF CHEQUES

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

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

[REDACTED]

(b) in the case of the Council to the Head of Planning Services

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

13.2 Any Notice under this Agreement shall be deemed to have been served as follows:-

(a) if personally delivered at the time of delivery

(b) if by post 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

- (c) if sent by facsimile transmission at the time of successful transmission
- (d) and in proving such service it shall be sufficient to prove that personal delivery was made and a receipt obtained or that the envelope containing such notice consent or approval was properly addressed and delivered into the custody of the postal authority in a pre-paid first class recorded delivery envelope and a receipt obtained or that the facsimile was successfully transmitted on a tested line and acknowledged in writing as having been received by the addressee as the case may be

13.3 Any cheque payable to the Council for any contribution consideration or other matter arising under this Agreement shall be made payable to the Council and shall be sent or delivered to the Head of Planning Services as provided in clause 13.1(b)

14 SUBSTITUTION OF PLANS AND OTHER VARIATIONS

14.1 Where following the date of this Agreement any of the approved details of the Development and/or plan annexed hereto is/are changed or substituted by agreement between the Council and the Owner the Council will at the request and cost of the Owner enter into such supplemental deed or other confirmation as is reasonably necessary for the purpose of documenting such change or substitution.

15 INDEXATION^[2]

- 15.1 Unless otherwise stated to the contrary all Contributions and other sums payable under the terms of this Agreement by the Owner to the Council or otherwise due to the Council under the provisions of this Agreement will subject to the provisions of this clause be subject to increase by application of the principles of indexation as set out in the following parts of this clause.
- 15.2 For the purposes of applying indexation the index will mean the Building Cost Information Service All-in Tender Price Index (TPI) as published by the Royal Institution of Chartered Surveyors (or in the event that such index ceases to be published then in its place such reasonably equivalent index as the Council shall specify)
- 15.3 Indexation will commence on the completion of this Agreement and will end on the date or dates the said Contributions or other sums are actually paid in full
- 15.4 The relevant Contribution will be increased by an amount equivalent to the percentage difference between the published TPI current at the date of this Agreement and the published TPI current at the date of payment

16 LEGAL COSTS

- 16.1 The Owner shall pay to the Council prior to completion of this Agreement its reasonable and proper legal costs incurred in the preparation negotiation and completion of this Agreement

17 WARRANTY OF TITLE

- 17.1 The Owner confirms and warrants that the information contained in Recital (2) is correct in every detail

18. DISPUTE RESOLUTION

18.1 Any dispute or disagreement arising under this Agreement which has been identified in writing by one party to the others and which has not been resolved within 20 Working Days may be referred at the instance of any party for determination by a single expert (the "Expert") whose decision (except in cases of manifest error or fraud) shall be final and binding on the parties.

18.2 The following provisions and terms of appointment shall apply to such disputes or disagreements:

18.2.1 the Expert shall have at least 10 years post-qualification experience in the subject matter of the dispute;

18.2.2 the Expert shall be agreed between the parties or in default of agreement within 10 Working Days of expiry of the period referred to in clause 18.1 above appointed by the President of the Royal Institution of Chartered Surveyors at the request of any party to the dispute;

18.2.3 if any party so requires (and notifies the other parties within 3 Working Days of the Expert's appointment) the matter shall be dealt with by oral hearing such hearing to take place within 20 Working Days of the Expert's appointment (or other timescale agreed between the parties);

18.2.4 if no party requires the matter to be dealt with by oral hearing:

18.2.5 the persons calling for the determination shall make written submissions to the Expert and the other parties within 20 Working Days of the Expert's appointment;

18.2.6 the other parties shall have 20 Working Days from the receipt of such written submission (or such extended period as the Expert shall allow) to respond;

18.2.7 the Expert shall disregard any representations made out of time;

18.2.8 the Expert shall make his decision within 20 Working Days of the close of the oral hearing or period referred to in clause 18.2.5 or 18.2.6 above as appropriate;

18.2.9 the Expert's decision shall be in writing and give reasons for his decision; and

18.2.10 the Expert's fees shall be in the determination of the Expert.

19 THIRD PARTY RIGHTS

19.1 The parties do not intend that any third parties will acquire any rights by virtue of the Contracts (Rights of Third Parties) Act 1999 under any part of this Agreement

20 MORTGAGEES CONSENT

20.1 The Mortgagee consents to all the provisions of this Agreement provided:-

20.1.1 the Mortgagee shall in no circumstances be liable under this Agreement unless and until it has taken steps to enforce its security and is in occupation or possession of the Land or any relevant part thereof the Mortgagee shall upon parting with all its interest in or releasing or discharging its security over the Land or any relevant part thereof be released from all obligations relating to the Land or such relevant part thereof

20.1.2 The Mortgagee consents to the Owner entering into this Agreement and agrees that the Land shall be bound by the

covenants contained therein and will ensure that any obligations thereunder is transmitted to any transferee from it as Mortgagee

[21 TRANSFER OF LAND

21.1 Where any provision of this Agreement provides for or requires the transfer of any land to the Council the provisions of the [eighth] schedule shall apply to such transfer]

IN WITNESS whereof this Agreement is executed by the parties as a Deed on the date given on page one

(insert schedules as necessary from PART B)

THE COMMON SEAL of THE COUNCIL)

was hereunto affixed in the)
presence of:-)

Authorised Signatory

THE COMMON SEAL of)
was hereunto)
affixed in the presence of:-)

Director

Company Secretary