

**DRAFT**

**DATED** \_\_\_\_\_ **2006**

**THE COUNCIL OF THE CITY OF PLYMOUTH**  
**and**

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**AGREEMENT AND**  
**PLANNING OBLIGATION**  
**UNDER SECTION 106**

**TOWN AND COUNTRY PLANNING ACT 1990 (As Amended)**

**Relating to**

**Plymouth**

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“Plan”	means plan marked Plan Number 1 annexed to this Agreement;
“Site”	means the site known as and the land against which this Agreement may be enforced as shown edged in red on the Plan;
"Administration Fee"	means a fee in order to provide the Council the necessary resources required to efficiently implement contributions pursuant to Section 106 obligations and to administer monitor and maintain records in relation to such obligations pursuant to a Delegated Decision exercised by the Portfolio Holder for Strategic Planning, Policy and Regeneration on the 13 <sup>th</sup> August 2003

**(INSERT CONTRIBUTION DEFINITIONS AS REQUIRED)**

- 1.2 In this Agreement where the context so requires:
  - 1.2.1 The singular includes the plural;
  - 1.2.2 Where a party includes more than one person any obligations of that party shall be joint and several;
  - 1.2.3 Reference to clauses are references to clauses in this Agreement;
  - 1.2.4 A reference to an Act of Parliament refers to the Act as it applies at the date of this Agreement and any later amendments or re-enactment of it.
- 1.3 In this Agreement references to “the Applicant” “the Owner” and “the Council” shall where the context so admits included their respective successors in title.

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### **2 RECITALS**

- 2.1 The Applicant/Owner is the registered proprietor under Title Number DN of the Site.
- 2.2 The Council is the Local Planning Authority for the purposes of this Agreement within the meaning of Part III of the 1990 Act for the area within which the site is situate and by whom the obligations herein entered into are enforceable.
- 2.3 The Applicant/Owner has submitted the Application to the Council.
- 2.4 By a mortgage dated the day of made between the and the Bank/Mortgage the site was charged by way of legal mortgage to the Bank/Mortgagee.
- 2.5 The Council has resolved to grant the Planning Permission subject to conditions which are substantially in the form of the draft decision notice which is attached and subject to this Agreement being completed prior to the granting of the Planning Permission.

### **3 LEGAL EFFECT**

- 3.1 This Agreement is made pursuant to Section 106 of the 1990 Act to the intent that it shall bind the Applicant and its successors in title to each and every part of the Site as provided in that Section and the covenants contained in Clause 4 and 5 are planning obligations for the purposes of Section 106 of the 1990 Act.
- 3.2 This Agreement is also entered into pursuant to Section 111 of the Local Government Act 1972 and all other enabling legislation.
- 3.3 This Agreement shall come into effect upon the grant of Planning Permission.

### **4 OBLIGATIONS ON THE PART OF THE APPLICANT/OWNER**

- 4.1 The applicant/owner covenants to ensure that they are fully and effectually indemnified against all losses/actions/costs/claims and expenses arising directly or indirectly out of any breach or non observance of the terms/covenants/condition or other provision of this agreement including solicitors fees, court fees, court costs and court interest charges.

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4.2 The Applicant/Owner hereby covenants with the Council so as to bind the site and its successors in title that the Applicant/Owner shall:

4.2.1 **(INSERT RELEVANT OBLIGATIONS + CONTRIBUTIONS – SEE HEADS OF TERMS ANNEX AND DEFINITIONS (amounts in figures and numbers))**

## **5 COSTS**

5.1 The Applicant/Owner shall be responsible for the payment to the Council on completion of this Agreement of:

5.1.1 all reasonable legal costs which the Council incurs in preparing this Agreement.

5.1.2 the administration fee of **£ (amount in figures and numbers)**

## **6 OBLIGATIONS ON THE PART OF THE COUNCIL**

The Council hereby covenants with the Applicant/Owner as follows:

6.1 Having regard to the obligations on the part of the Applicant/Owner herein contained to grant the Planning Permission for the Development Proposal as soon as reasonably practical after completion of this Agreement and that such Planning Permission shall impose those conditions set out in the Schedule to this Agreement unless otherwise amended with the Agreement of both the Council and Applicant

6.2 If expenditure of any one or more of the contributions required to be made pursuant to this Agreement has not been fully committed within five years of the date of its receipt by the Council then the relevant contribution or any uncommitted balances as may be appropriate shall in each case be repaid to the Applicant together with all interest at the rate of the current Bank of England basic rate that shall have accrued thereon

**7 IT IS HEREBY AGREED AND DECLARED that** notwithstanding any other provisions in this Agreement:

7.1 The provisions of this Agreement shall become operative only in the event of Planning Permission having been granted and the Commencement of Development

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- 7.2 The Applicant/Owner shall only be responsible for complying with the terms of this Agreement so long as it shall retain an interest (within the meaning of Section 106 of the 1990 Act) in the Site or in any part thereof which is the subject of the obligations attached to the part of the Site in which its interest subsists and so that having parted with its interest in the Site or the relevant part the subject of the particular obligation any subsequent breach of the terms of this Agreement shall be enforced by the Council against the persons who are then the owners of occupiers of the Site or any part thereof in respect of which the obligation subsists but nothing in this clause shall release the Applicant in respect of any breach occurring before it shall have parted with all its interest in the Site
- 7.3 If the Planning Permission to which this Agreement relates shall expire before the Development has commenced or is revoked modified or otherwise withdrawn this Agreement shall forthwith determine and cease to have effect
- 7.4 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a Planning Permission (other than the Planning Permission relating to the Development Proposal) granted after the date of this Agreement
- 7.5 Any notices to be served or document to be submitted on or to any party to this Agreement shall be delivered or posted to that party at the address specified as theirs at the head of this Agreement
- 7.6 The Applicant/Owner shall give the Council 7 days written notice of the commencement of the development and shall subsequently give the Council 7 days written notice of other obligations payment triggers
- 7.7 The Council shall upon receipt of a written request from the Applicant/Owner and without unreasonable delay at any time after all the planning obligations under this Agreement have been fulfilled issue written confirmation thereof
- 7.8 Subject to the provisions of Section 106 and 106B of the 1990 Act the terms and conditions of this Agreement shall only be capable of being varied by supplemental agreement executed by the parties hereto or their successors in title
- 7.9 No person shall be entitled to enforce any provisions of this Agreement who would not have been so entitled but for the enactment of the Contracts (Rights of Third Parties) Act 1999

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- 7.10 The Bank/Mortgagee on behalf of itself and its successors in title hereby agree that the land shall be burdened by and be subject to the covenants conditions and restrictions and obligations contained or referred to herein
- 7.11 This Agreement is a local land charge and shall be registered as such
- 7.12 Nothing in this Agreement is or amounts to or shall be construed as a planning permission or approval.
- 7.13 If the payment due under this Agreement is paid late interest shall be payable from the date payment is due to the date of payment. Interest is defined as 4% above the base-lending rate of the Bank of England from time to time.
- 7.14 Indexation: If any of the contributions hereby due are not paid within 6 months of the date of this Agreement those contributions shall be index linked by increasing the specified sum in accordance with the formula:

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

Where

A is the value of the retail price index (RPI) compiled and published by the Office for the National Statistics last published before the said date hereof and

B is the value of the RPI last published before the contribution is given

C is the amount of the contribution specified in this agreement

Y is the amount of the contribution to be paid

EXECUTED as a deed by the Parties and delivered the day and year first above written

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**THE COMMON SEAL** of )  
**THE COUNCIL OF THE CITY OF** )  
**PLYMOUTH** )  
was hereunto affixed in the presence of: )

Plymouth City Council Authorised Signatory

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

Director

Director/Secretary

**SIGNED AS A DEED** by )  
was hereunto affixed in the presence of: )