

**DATED**

**2024**

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**BIRMINGHAM CITY COUNCIL**

**- and -**

**ASHBOURNE PROPERTIES & DEVELOPMENTS LIMITED**

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**SECTION 106 AGREEMENT**

**relating to**

**Land at 334-340 High Street and 8-22 Harborne Park Road, Harborne Birmingham B17  
9PU**

Planning Application Ref: 2022/06737/PA

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### **Schedules**

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Appendix 2: Draft Planning Consent

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Appendix 5: Occupation Notice



NOW THIS DEED WITNESSES as follows:-

1. **STATUTORY PROVISIONS**

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

2. **INTERPRETATION**

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

"Act"	the Town and Country Planning Act 1990 (as amended)
"Affordable Housing"	means affordable housing as defined in the National Planning Policy Framework that will be made available to eligible households who are unable to afford to buy or rent an appropriate property locally on the open market and which remains at an affordable price for future eligible households
"Appeal"	the appeal to the Secretary of State following the refusal of the Application by the Council given appeal reference APP/P4605/W/23/3336011
"Application"	planning application reference 2022/06737/PA

“Authorised Deposit Taker”	a person permitted to accept deposits pursuant to Part 4 of the Financial Services and Markets Act 2000
"Development"	demolition of existing buildings and construction of 83 residential apartments across two new development blocks, central amenity space including soft landscaping and planting, cycle storage, bin stores, plant store and enabling works
"Development Site"	all that land shown edged red on the Plan
“Director of Planning, Prosperity and Sustainability”	the Director of Planning, Prosperity and Sustainability at the Council or such other person performing that duty for the time being
“Due Date”	the date upon which any payment due under any of the provisions of this Deed is to be made
"Implementation Notice"	the notice in writing to be served upon the Council by the Owner notifying it of the Owner's intention to commence the Implementation Works in the form of the draft notice annexed hereto as Appendix 3
“Implementation Works”	any works to implement the Planning Permission by the carrying out of a material operation as defined by Section 56(4) of the Act (other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance (other than demolition), archaeological excavations, investigations for the purposes of

assessing ground conditions, remedial work in respect of contamination or other adverse ground conditions, erection of any temporary means of enclosure and the temporary display of site notices and the term "Implementation" shall be construed accordingly

"Index"

the Building Cost Information Service All-In Tender Price Index published by the Royal Institution of Chartered Surveyors (or such other index as may be agreed between the parties)

"NPPF"

the National Planning Policy Framework (2023)

date of this Deed to the date on which payment is made)

“Open Market Dwellings”

all those dwellings constructed as part of the Development and intended for sale in the private housing market at open market value, and the phrase Open Market Dwelling shall be construed accordingly

“Parking Impact Sum”

the sum of £25,000 (twenty five thousand pounds) (adjusted in accordance with any proportional increase in the Index from the date of this Deed





The provisions of this Deed shall have immediate effect upon the completion of this Deed SAVE FOR Clauses 4 and 5.1 that shall only have effect upon the date upon which the Planning Permission is granted

4. **COVENANTS BY THE OWNER**

- 4.1 The Owner covenants that it shall serve the Implementation Notice on the Council's Director of Planning, Transport and Sustainability before carrying out any Implementation Works
- 4.2 The Owner covenants with the Council not to carry out any Implementation Works before the service of the Implementation Notice
- 4.3 The Owner covenants to pay the Off-Site Affordable Housing Sum to the Council on the date of service of the Implementation Notice, which date shall subject to clause 10.7 constitute the Due Date for the Off-Site Affordable Housing Sum
- 4.4 The Owner covenants to pay the Parking Impact Sum to the Council on the date of service of the Occupation Notice, which date shall subject to clause 10.7 constitute the Due Date for the Parking Impact Sum
- 4.5 The Owner covenants not to Occupy or permit Occupation of any Residential Unit within the Development on the Development Site until the Parking Impact Sum has been paid to the Council

5.





Owner this Deed shall cease to have effect (but without prejudice to the rights of either party against the other in respect of any antecedent breach)

- 10.5 No waiver (whether express or implied) by the Council of any breach or default by the Owner in performing or observing any of the obligations terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said obligations terms or conditions or from acting upon any subsequent breach or default in respect thereto by the Owner
- 10.6 Unless otherwise specified where any agreement consent approval or expression of satisfaction is to be obtained from any party under the terms of this Deed the parties hereby agree that the same shall not be unreasonably withheld or delayed
- 10.7 If the Owner fails to serve the Implementation Notice before commencing Implementation Works the Due Date for the Off-Site Affordable Housing Sum shall be deemed to be the date of this Deed
- 10.8 This Deed shall not be enforceable against the purchaser or tenant nor any such purchaser's or tenant's mortgagee or chargee (including any receiver of any such mortgagee or chargee) nor any of their successors in title of an individual Residential Unit erected on the Development Site pursuant to the Planning Permission or a statutory undertaker after the transfer of statutory apparatus by the Owner to that statutory undertaker
- 10.9 Insofar as any clause or en~~ANCE~~ n~~Q~~\*n7e



Officer as appropriate or if by e-mail to the Director of Inclusive Growth at [Section106@birmingham.gov.uk](mailto:Section106@birmingham.gov.uk);

- (b) if to any of the other parties to their addresses specified above; or
- (c) such other address for service as shall have been previously notified to the other parties

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

- (a) if posted recorded delivery at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom; or
- (b) if sent by e-mail then if it is sent on a business day before 4:30pm, on that day, or in any other case, on the next business day after the day on which it was sent

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

## 12. **ARBITRATION**

In the event of any dispute or difference arising out of this Deed between the parties (other than a dispute or difference relating to a matter of law or concerning the meaning or construction of this Deed) such dispute or difference shall be referred to a sole arbitrator to be agreed between the parties and being a member of the Royal Institution of Chartered Surveyors or in the absence of agreement on the application of any party by the President of the Royal Institution of Chartered Surveyors and in these respects these presents shall be construed as a submission to arbitration within the meaning of the Arbitration Act 1996

13. **LATE PAYMENT**

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

14. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

It is hereby agreed and declared that unless specifically agreed the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed

15. **LEGAL COSTS**

The Owner shall prior to completion of this Deed pay to the Council the Council's reasonable legal costs up to a maximum of £3,000 in connection with the preparation, completion and monitoring of this Deed

16. **JURISDICTION**

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











## **THIRD SCHEDULE**

### **Parking Surveys**

1. The Owner covenants not to Occupy or permit Occupation of any Residential Units within the Development on the Development Site until an On-Street Parking Monitoring Plan (OSPMP) has been submitted to and approved in writing by the Council.
2. The Owner covenants not to Occupy or permit Occupation of any Residential Units within the Development on the Development Site until the Parking Survey Area has been agreed with the Council in writing.

**EXECUTED AS A DEED** the day and year first written

EXECUTED AS A DEED by affixing )  
THE COMMON SEAL of )  
BIRMINGHAM CITY COUNCIL )  
in the presence of:- )

Authorised Signatory

EXECUTED AS A DEED )  
by ASHBOURNE PROPERTIES & DEVELOPMENTS )  
LIMITED acting by a Director )  
in the presence of:- )

Signature of Director:\_\_\_\_\_

Signature of witness:\_\_\_\_\_

Name (in BLOCK CAPITALS):\_\_\_\_\_

Address:\_\_\_\_\_



**APPENDIX 1**

**Site Plan**

**APPENDIX 2**  
**Draft Planning Consent**



**APPENDIX 3**  
**Implementation Notice**

**Implementation Notice**

**NOTICE TO BIRMINGHAM CITY COUNCIL PLANNING OF COMMENCEMENT OF IMPLEMENTATION WORKS**

Planning Application Number.....

Development Site.....

Description of Development.....

.....

Date of S106 Agreement.....



**APPENDIX 4**  
**Section 106 Payment Form**



**IF PAYING ELECTRONICALLY**, make payment quoting Planning Application reference to:  
BCC General Fund  
Barclays Bank  
15 Colmore Row, Birmingham, B3 2BH  
Sort Code: 20-07-90  
Account Number: 53552667  
SWIFTBIC No: BARCGB22  
IBAN No: GB47 BARC 2007 9053 5526 67  
Date of Payment.....

**IF PAYING BY CHEQUE**, make cheque payable to 'Birmingham City Council-S106' and write Planning Application reference on



