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- email: planning.admin@ashfield.gov.uk
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S106/427

**ASHFIELD DISTRICT COUNCIL
MEMORANDUM**

TO: ADC LAND CHARGES
FROM: PLANNING TECHNICAL SUPPORT
**SUBJECT: LAND ADJ DOVERBECK LOWMOOR ROAD KIRKBY-IN-
ASHFIELD**

DATE: 14/03/2013

REF: V/2012/0197

Would you please register the above Section 106 Agreement (Town & Country Planning Act 1990) between:

Anthony Mornington Webster

And

The Royal Bank of Scotland plc

And

Ashfield District Council

Planning Technical Support



THIS AGREEMENT is made the 12th day of March 2013

BETWEEN:

- (1) **ANTONY MORNINGTON WEBSTER** of Brookfield Farm, 201 Sawley Road, Draycott, Derbyshire, DE72 3QF ('the Owner')
- (2) **THE ROYAL BANK OF SCOTLAND PLC** (Scot. Co. Regn. No. SC90312) of PO Box 7895, 5th Floor, Cumberland Place, Nottingham, NG1 7ZS ('the Mortgagee')
- (3) **ASHFIELD DISTRICT COUNCIL** of Council Offices, Urban Road, Kirkby-in-Ashfield, Nottinghamshire, NG17 8DA ('the Council')

1. **Definitions**

IN THIS AGREEMENT the following words and phrases shall have the following meaning:-

- 1.1 "the Act" means Town and Country Planning Act 1990 (as amended) and terms not otherwise defined in this Agreement have the meaning ascribed to them in the Act unless a contrary intention appears
- 1.2 "the Application" means the Planning Application dated 27th April 2012 in respect of the Proposed Development to which has been allocated the Council's Planning Application Reference No. 2012/0197
- 1.3 "the Application Site" means the land for which planning permission is sought to carry out the Proposed Development and which is shown for the purposes of identification only edged red on the Plan
- 1.4 "the Obligations" means the planning obligations contained or referred to in the First Schedule to this Agreement
- 1.5 "the Plan" means the plan attached to this Agreement

1.6 "the Planning Permission" means the grant of Planning Permission pursuant to the Application

1.7 "the Proposed Development" means the erection of eight apartments with associated parking as more particularly described in the Application

2. **Recitals**

WHEREAS:-

2.1 The Owner is registered at H.M. Land Registry as the proprietor of the Application Site with title absolute under title number NT 204174

2.2 The Mortgagee is mortgagee of the Application Site under two legal charges dated 31st March 2008 and 21st November 2012 respectively and made between the Owner and the Mortgagee

2.3 The Owner has submitted the Application

2.4 The Council is the Local Planning Authority for the purposes of the Act for the area in which the Application Site is situated

2.5 The Council's Local Plan Review adopted in November 2002 contains inter alia Policy HG6 (Public Open Space)

2.6 The Council acting through the delegated powers of its Head of Land and Property has resolved to grant the Planning Permission for the Proposed Development in accordance with the Application and subject to the terms of this Agreement without which the Planning Permission would not be granted

2.7 The Owner has agreed to enter into this Agreement for the purpose of procuring the issue of the Planning Permission

3. **Enabling Powers**

The parties hereto enter into this Agreement under and pursuant to Section 106 of the Act.

4. **Consent**

The Mortgagee hereby consents to the execution of this Agreement as a Deed and declares that subject as herein provided the Application Site shall be bound by the Obligations and its legal charges upon the Application Site shall take effect as if such legal charges had been executed after the date of this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Agreement unless it takes possession of the Application Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner

5. **Planning Obligations**

5.1 The Obligations are planning obligations for the purposes of Section 106 of the Act to the intent that the Obligations shall be binding and enforceable without time limit against the Owner and any persons deriving title from him in the manner specified in Section 106 of the Act.

5.2 The Council is the Authority entitled to enforce the Obligations.

6. **Conditionality**

The Obligations are conditional upon the issue of the Planning Permission.

7. **Covenant**

The Owner hereby covenants with the Council pursuant to Section 106 of the Act that the Application Site shall be subject to the Obligations and that the Owner will at his own expense duly carry out and perform the Obligations

8. **Agreements and Declarations**

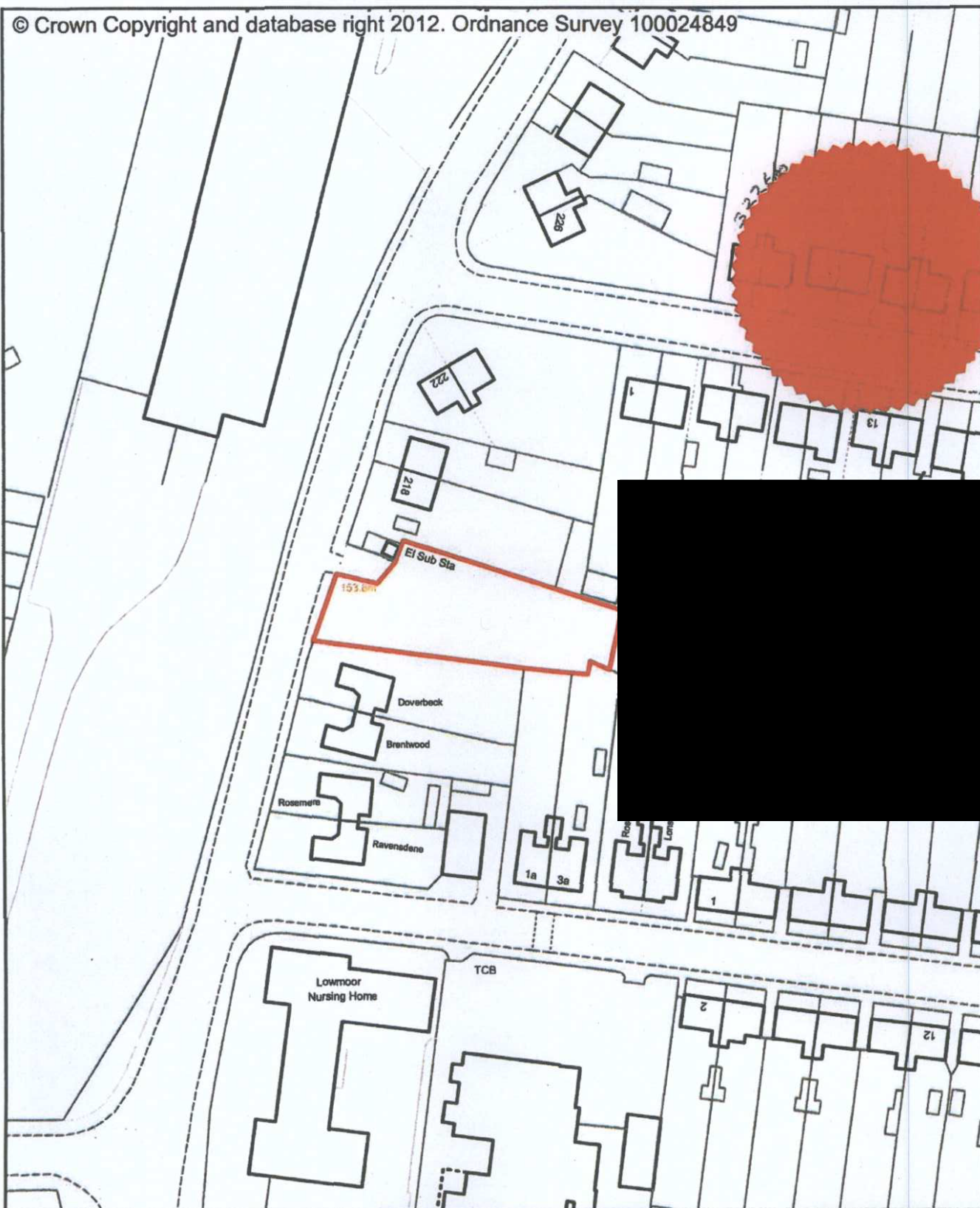
It is agreed and declared as follows:

- 8.1 Any reference to a party to this Agreement shall where the context so admits include their successors in title and assigns
- 8.2 Words importing one gender shall be construed as importing any gender, and words importing the singular shall be construed as importing the plural and vice versa
- 8.3 No person shall be liable for breach of covenant contained in this Agreement after he shall have parted with all interest in the Application Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest
- 8.4 The provisions of the Second Schedule shall apply to any monies paid pursuant to the First Schedule
- 8.5 If the Planning Permission having been granted shall expire before the Proposed Development is begun, or shall at any time be revoked, this Agreement shall forthwith determine and cease to have effect
- 8.6 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Application Site in accordance with a planning permission (other than the one relating to the Proposed Development as specified in the Application) granted after the date of this Agreement
- 8.7 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
- 8.8 The Agreement is a Local Land Charge and shall be registered as such

9. **Costs**

The Owner shall on the execution of this Agreement pay the Council's costs incurred in the preparation and settlement of this Agreement in the sum of £150.00

IN WITNESS whereof the parties have executed this Agreement as a Deed the day and year first before written



Section 106 Agreement - 2012/0197

Land adjacent 218 Lowmoor Road

Kirkby in Ashfield

Per Pro
Royal Bank of Scotland
Sheffield Credit/Direct



Ashfield

Scale: 1 to 1000

Date: 09 May 2012



FIRST SCHEDULE

THE OBLIGATIONS

Prior to the commencement of the Proposed Development there shall be paid as a commuted sum to the Council:

1. For the improvement of existing open space and/or the provision of new open space and or the planting of community woodland within the administrative district of Ashfield in Nottinghamshire the sum of TWENTY THOUSAND POUNDS (£20,000) ("the POS Sum")
2. Where any amount is payable pursuant to the provisions of this First Schedule the amount to be paid shall be adjusted for inflation in accordance with the following formula :-

$$(P + A) \times B$$

Where:-

P = the amount payable pursuant to this First Schedule

A = the 'all items' figure of the Retail Prices Index published by the Office for National Statistics or any successor body (the 'RPI figure') in respect of the month of May 2012.

B = the RPI figure for the month in which the relevant payment is made or (if earlier) falls due to be made

But so that if at any time B shall be less than A the amount payable pursuant to the relevant paragraphs as the case may be shall nevertheless be paid in full without reduction

PROVIDED ALWAYS that :

- (a) if such sum(s) or any part thereof shall not be paid before the actual commencement of the Proposed Development it shall carry interest at 8% per annum from the date of actual commencement until actual payment and no dwellinghouse to be built upon the Application Site shall be

occupied whilst such sum(s) or any part thereof (including interest as aforesaid) remains unpaid.

- (b) payment of the commuted sum(s) shall not in itself constitute commencement of the *Proposed Development* for the purposes of implementing the Planning Permission

SECOND SCHEDULE

TREATMENT OF COMMUTED SUMS

The following provisions shall apply to any sum paid pursuant to the First Schedule:-

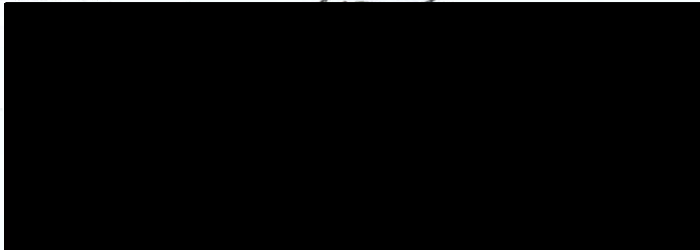
1. Any POS Sum received by the Council shall be ring fenced and be spent only in accordance with the following provisions of this Schedule and shall be kept at all times in an interest bearing account until used for the purposes herein specified.
2. The POS Sum shall only be spent for the purposes mentioned in Policy HG6 of the Council's Local Plan Review
3. If any POS Sum has *not been used* by the Council by the fifth anniversary of the date on which payment was made then upon receipt by the Council of written notice by the Owner requiring that such POS Sum be repaid the Council shall repay it (together with interest that has accrued thereon) to the Owner. For the avoidance of doubt, any part of a POS Sum spent by the Council after the fifth anniversary of the payment but before the Council is served with written notice pursuant to this paragraph shall not have to be repaid to the Owner
4. At any time prior to the fifth anniversary of the making of a POS Sum the Council shall upon written request by the Owner supply to the Owner reasonable short particulars of any expenditure from that POS Sum made by the Council pursuant to the provisions of this Schedule provided that the Council shall be under no further obligation to answer any such request after they have given sufficient particulars pursuant to this paragraph showing that the whole of such POS Sum as the case may be has been expended.
5. For the purposes of this Schedule 'Owner' shall mean the Owner by whom the payment is actually made and not their successors in title

SIGNED AND DELIVERED AS A DEED

by the said

ANTONY MORNINGTON WEBSTER

in the presence of



SIGNED AND DELIVERED AS A DEED

for and on behalf of

THE ROYAL BANK OF SCOTLAND PLC

by a duly authorised attorney

in the presence of



EXECUTED AS A DEED by

ASHFIELD DISTRICT COUNCIL

having affixed its **COMMON SEAL**

to this deed in the presence of

