

**Annex 2 – Section 106 Agreement dated 2 June 1997**

**(1) HASSALL HOMES (YORKSHIRE) LIMITED**

and

**(2) THE COUNCIL OF THE CITY OF YORK**

**SECTION 106 AGREEMENT**

In relation to  
1 and at Mayfield Grove York

**IRWIN MITCHELL**

S O L I C I T O R S



*Handwritten notes and signatures, including the name 'A. C. J.' and other illegible markings.*

*Faint, illegible text, possibly a date or reference number.*

THIS AGREEMENT is made the 2<sup>nd</sup> day of June 1997

**BETWEEN:**

- (1) **HASSALL HOMES (YORKSHIRE) LIMITED** whose registered office is at Raine House, Ashbourne Road, Mackworth, Derby DE22 4ND ("the Owner")
- (2) **THE COUNCIL OF THE CITY OF YORK** of Guildhall, York YO1 1QN ("the Council")
- (3) **BARCLAYS BANK PLC** of Murray House 1 Royal Mint Court London EC3N 4HH as Security Trustee ("the Mortgagee")

**WHEREAS**

- 1 The Council is the local planning authority for the purposes of this Agreement for the area within which the land described in the First Schedule ("the Land") is situated and by whom the obligations contained in this Agreement are enforceable.
- 2 The Owner is the Owner in fee simple in possession of the Land subject to a Supplemental Debenture in favour of the Mortgagee dated 16<sup>th</sup> May 1997 but otherwise free from encumbrances.
- 3 The Owner has by an application dated Reference 7/013/03321H/FUL ("the Planning Application") applied to the Council for permission to develop the Land in the manner and for the uses set out therein.
- 4 The Council has resolved to grant planning permission for the development in accordance with the Planning Application subject to the making of this Agreement without which planning permission for the development would not have been granted.
- 5 The Mortgagee enters into this Agreement to indicate its consent to the Owner entering into this Agreement.

**NOW THIS AGREEMENT** is made in pursuance of Section 106 of the Town and Country Planning Act 1990 and is a planning obligation for the purposes of that section and **WITNESSES** as follows:-

- 1 The Owner covenants with the Council to perform the obligations and activities specified in the Second Schedule.
- 2 The Mortgagee hereby consents to the execution of this Agreement and acknowledges subject as herein provided that the Land shall be bound by the restrictions and obligations contained in the Second Schedule hereto.
- 3 It is hereby agreed and declared as follows:-
  - 3.1 The expressions "the Council", "the Owner", "the Mortgagee" shall include their successors in title and assigns.
  - 3.2 No person shall be liable for breach of a covenant contained in this Agreement after he has passed with all his interest in the land or that 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.
  - 3.3 The Mortgagee shall not be liable for any breach of covenant contained in this Agreement unless and until the Mortgagee shall have entered into possession of the whole or any part of the Land and for the avoidance of doubt the Mortgagee shall not be personally liable for any breach of any covenant set out in this Agreement occurring at any time after it has disposed of its interest in the Land or the part of the Land in respect of which such breach occurs.
  - 3.4 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than one relating to the Development as specified in the Planning Application) granted (whether or not on appeal) after the date of this Agreement.
  - 3.5 The Council will upon written request of the Owner at any time after the obligations of the Owner under this Agreement have been fulfilled issue written confirmation thereof and thereafter cancel all related entries in the Register of Local Land Charges.
  - 3.6 This Agreement is a local land charge and shall be registered as such.
  - 3.7 If any dispute or difference as to whether an act or default of any party is unreasonable or any failure to reach agreement arises at any time and which shall not be resolved within one week of any party notifying the other that such dispute,

difference or failure to reach agreement exists any party shall have the right to refer the same to the decision of an appropriately qualified independent person experienced in matters of the kind to which the dispute or difference relates such person to be agreed between the parties or in default of agreement to be appointed by the President for the time being of the Law Society upon application by any such party and any person so appointed shall act as an expert and not as an arbitrator and his decision shall be binding on the parties provided that the costs of such determination shall be determined by the independent person and provided further that the parties shall use their best endeavours to ensure that the determination of the independent person shall be obtained as soon as possible.

**IN WITNESS** whereof the Council the Owner and the Mortgagee have set their common seals the day and year first before written

**FIRST SCHEDULE**  
**(Description of the Land)**

Land at Mayfield Grove/Nelson Lane, Dringhouses, York shown edged red on the plan attached hereto.

**SECOND SCHEDULE**  
**(Obligation)**

**1**     **OPEN SPACE**

1.1     Not to permit the occupation of any dwelling on the Land until:-

1.1.1   the Owner and the Council have agreed the details of open spaces which are to be laid out on the Land and which shall comprise an area of seven (7) acres or thereabouts as shown edged blue on the attached plan ("the Open Space").

1.1.2   the Owner has obtained the approval of the Council to a landscaping scheme for the Open Space including details of the completion of the phasing, top soil, seeding, contouring, grassing and planting.

1.2     Not to permit the occupation of more than 50 dwellings on the Land unless it has obtained a certificate or other approval from the Director of Environmental and Development Services or his nominee that Area A and Area B being the first and

second phases of the landscaping scheme for the Open Space and shown hatched green and yellow respectively on the attached plan have been completed to the reasonable satisfaction of the Council.

- 1.3 Not to permit the occupation of more than 100 dwellings on the Land unless it has obtained a certificate or other approval from the Director of Environmental and Development Services or his nominee that Area C being the third phase of the landscaping scheme for the Open Space shown hatched brown on the attached plan has been completed to the reasonable satisfaction of the Council.
- 1.4 To maintain the Open Space (excluding the Play Area) duly landscaped in accordance with the approved scheme for a period of two years after the date of issue of a Completion Certificate ("the Maintenance Period") allowing public access at all times during that period and remedying all defects which may appear during that time and replacing all shrubs and trees which die or are damaged as proposed in the Planning Application and at the end of the Maintenance Period upon request of the Council to transfer ownership and management of the Open Space (excluding the Play Area) to the Council or to such person or body as the Council may approve.
- 1.5 The Owner covenants with the Council so as to bind the Open Space (excluding both the Play Area and the remainder of the Land) not to transfer it or any part of it to any third party without the prior consent of the Council which shall not be unreasonably withheld if the Council is satisfied with the arrangements that are proposed for the future maintenance of it and the Owner will request the Chief Land Registrar to register such covenant in the Charges Register of the Title to the Land.
- 1.6 On the transfer referred to in clause 1.4 above to pay to the Council the sum of £36,000 for the maintenance of the Open Space (excluding the Play Area) less the assessed income that will be derived from the use of the fishing pond shown edged orange on the attached plan forming part of Area A being the first phase of the scheme for the period of 20 years thereafter and it is acknowledged that the Open Space is principally of benefit to the development rather than to the wider public,

## 2 PLAY AREA

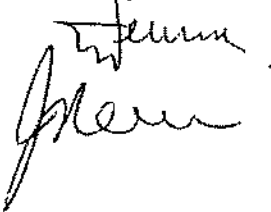
- 2.1 To provide and lay out a children's play area ("the Play Area") and informal car park in Area B in accordance with such details as shall be approved by the Council in writing and to the reasonable satisfaction of the Council prior to the occupation of the 51<sup>st</sup> dwelling on the Land.

2.2 Within 12 months of completion of the Play Area to transfer the freehold of the Play Area to the Council although the Play Area may be handed over to the Council for public use and for maintenance purposes in advance of such transfer provided the Play Area has been provided and laid out in accordance with clause 2.1 above.

2.3 Upon hand over or transfer referred to above to pay to the Council the sum of £10,000 by way of commuted sum for the future maintenance of the Play Area and it is acknowledged that the Play Area is principally of benefit to the development rather than to the wider public.

**EXECUTED AS A DEED** (but not delivered until the date hereof)  
**BY AFFIXING THE COMMON SEAL of HASSALL HOMES (YORKSHIRE) LIMITED**  
in the presence of:  
Director:

Secretary:

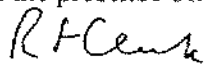


**EXECUTED AS A DEED** (but not delivered until the date hereof)  
**BY AFFIXING THE COMMON SEAL of BARCLAYS BANK PLC**  
in the presence of

 Assistant Secretary

Authorized Sealing Officer  
SER 197/2046

**EXECUTED AS A DEED** (but not delivered until the date hereof)  
**BY AFFIXING THE COMMON SEAL of THE COUNCIL OF THE CITY OF YORK**  
in the presence of:

  
Head of Legal Services

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