

DATED

2024

BIRMINGHAM CITY COUNCIL

- and -

ASHBOURNE PROPERTIES & DEVELOPMENTS LIMITED

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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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 2
“Implementation Works”	any works to implement the Planning Permission by the carrying out of a material operation as defined by s 1d(25) of the Planning (Listed Buildings and Conservation Areas) Act 1987 or such other person performing that duty for the time being

	<p>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</p>
"Index"	<p>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)</p>
"NPPF"	<p>the National Planning Policy Framework (2023) (or any future guidance that replaces or supplements it)</p>
"Occupation"	<p>shall mean occupation of the relevant Residential Unit for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupy", "Occupied" and "Occupier" shall be construed accordingly</p>
"Occupation Notice"	<p>the notice in the form of the draft notice annexed hereto as Appendix 4 to be completed and served by the Owner upon Occupation of the first Residential Unit in the Development</p>
"Off-Site Affordable Housing Sum"	<p>the sum of £220,000 (two hundred and twenty thousand pounds) (adjusted in accordance with any proportional increase in the Index from the</p>

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

“Secretary of State”

means the Secretary of State for Levelling Up, Housing and Communities from time to time appointed and includes any successor in function and any Inspector appointed thereby

“Section 106 Payment Form”

the form annexed hereto as Appendix 3 which is to be completed and sent to the Council when paying monies due under this Deed

5.2 Unless and until the Council has issued notice under clause 9.2 the Owner shall provide the Council with a certified copy (including a plan if appropriate) of any conveyance transfer lease assignment mortgage or other disposition ("Disposition") of all or any part of the Development Site (save to the owner and/or occupier of a single Residential Unit or mortgagee thereof) including the name and address of the person to whom the Disposition was made and the nature and extent of the interests disposed of to them within twenty one days of such Disposition

6. **CONFIRMATION OF INTEREST**

The Owner hereby warrants and confirms that apart from the parties hereto there are no other persons with a legal estate or beneficial interest in the rents and profits or

North, Kings Norton South, Longbridge and West Heath, Moseley, Northfield, Quinton, Rubery and Rednal, Stirchley, Weoley and Selly Oak

9.1.3 The Off-Site Affordable Housing Sum when received by the Council shall be held by the Council in accordance with the provisions contained in Part 2 of the First Schedule to this Deed

9.1.4 The Council covenants with the Owner to apply the Parking Impact Sum towards the following measures in the event that any or all of these measures are deemed necessary by the Council as a consequence of the Development following the Parking Surveys:

any minor highway works and maintenance thereof;

traffic regulation orders; and/or

all highway improvement measures

9.1.5 The Parking Impact Sum when received by the Council shall be held by the Council in accordance with the provisions contained in Part 2 of the Second Schedule to this Deed

10. **MISCELLANEOUS**

10.1 This Deed shall forthwith be registered as a Local Land Charge for the purposes of the Local Land Charges Act 1975

10.2 This Deed shall be enforceable against the Owner to the extent specified in Section 106(3) of the Act and against any person for the time being deriving title from the Owner as provided in Section 106 of the Act but PROVIDED THAT the Owner has first provided to the Council all relevant information pursuant to Clause 5.2, the Owner shall not (in accordance with Section 106(4) of the Act) have any further liability under this Deed (but without prejudice to the rights of either party in respect of any antecedent breach) in respect of any period during which the Owner (or as the case may be

11. NOTICES

11.1 All notices requests demands or other written communications to or upon the parties pursuant to this Deed shall be deemed to have been properly given or made if dispatched by first class recorded delivery letter or e-mail to the party to which such notice request demand or other written communication is to be given or made under this Deed and addressed as follows:-

(a) if to the Council by first class recorded delivery, to:

(i) the Director, Birmingham City Council Department of Planning and Development PO Box 28 Birmingham B1 1TR for the attention of the Projects Co-ordinator (or such other officer for the time being performing those functions); and

(ii) Birmingham City Council Housing Regeneration and Development Team PO Box 16572 Birmingham B2 2GL for the attention of the Chief Housing Officer as appropriate or if by e-mail to the Director of Inclusive Growth at 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

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**

to earn the highest rate of interest reasonably obtainable consistent with a high degree of security for the sum invested

5. If no part of the Off-Site Affordable Housing Sum shall have been contractually committed by the Council within the period of seven years (or whatever period of time shall be agreed in writing between the Council and the party responsible for paying the Off-Site Affordable Housing Sum) from the receipt in full of the Off-Site Affordable Housing Sum the Council shall upon written request repay the Off-Site Affordable Housing Sum (including any interest accrued but not including any monies required to be paid by the Owner in accordance with clause 13 hereof) to the Owner

as the "Parking Impact Account" and it shall be invested in such a way as to earn the highest rate of interest reasonably obtainable consistent with a high degree of security for the sum invested

5. If no part of the Parking Impact Sum shall have been contractually committed by the Council within the period of seven years (or whatever period of time shall be agreed in writing between the Council and the party responsible for paying the Parking Impact Sum) from the receipt in full of the Parking Impact Sum the Council shall upon written request repay the Parking Impact Sum (including any interest accrued but not including any monies required to be paid by the Owner in accordance with clause 13 hereof) to the Owner

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.
3. The OSPMP shall set out a process for monitoring and undertaking the Parking Surveys in relation to the existing on-street parking levels in the Parking Survey Area. It shall then set out a process for monitoring and undertaking the Parking Surveys in relation to on-street parking levels in the Parking Survey Area and will include the following:
 - a. the first Parking Survey to be undertaken in accordance with paragraph 5 of this Schedule; and
 - b. subsequent Parking Surveys to be undertaken at intervals of 6 months after Occupation of the first Residential Unit within the

APPENDIX 1

Site Plan

APPENDIX 2
Implementation Notice

Implementation Notice

NOTICE TO BIRMINGHAM CITY

Email. section106@birmingham.gov.uk

Tel. 07912 451258 (Hayley Claybrook)

07912 451439 (Nichola Shandley)

07912 451620 (Cate Crowe)

If you are enclosing monies, please also forward a copy of the Payment Form/Remittance Advice.

APPENDIX 3
Section 106 Payment Form

Section 106 Payment Form/Remittance Advice

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

