

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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THE DEED is made on

day of

2024

BETWEEN:-

- (1) **BIRMINGHAM CITY COUNCIL** of the Council House Birmingham B1 1BB ("the Council")
- (2) **ASHBOURNE PROPERTIES & DEVELOPMENTS LIMITED** (Company Number 09688682) whose registered office is situated at Sterling House, 71 Francis Road, Edgbaston, Birmingham, United Kingdom, B16 8SP ("the Owner")

WHEREAS

- (A) The Council is the Local Planning Authority for the purposes of the Act for the area within which the Development Site is situated
- (B) The Owner is interested in the Development Site as the person entitled to the freehold of the Development Site registered at the Land Registry under title numbers WM788865 and WM653804
- (C) The Owner wishes to secure the development of the Development Site and the Application has been submitted to the Council for that purpose
- (D) The Council resolved on 4 July 2023 to refuse planning permission in respect of the Application and the Owner has submitted the Appeal for determination by the Secretary of State
- (E) The Council and Owner are prepared to enter into this Deed in order to secure the planning obligations it creates in the event that the Planning Permission is granted pursuant to the Appeal
- (F) The Council considers and the Owner accepts by the terms of this Deed that the Development should not take place without the Owner entering into the obligations contained in this Deed

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

	<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 5 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 to the date on which payment is made)
“Parking Survey”	a parking survey to be undertaken or commissioned by a properly qualified expert to be agreed between the Owner and the Council at the Owner’s expense, in accordance with the Third Schedule and the phrase “Parking Surveys” is to be construed accordingly
“Parking Survey Area”	means an area consisting of the local roads around the Development Site agreed between the Owner and the Council
“Plan”	the site plan annexed hereto as Appendix 1 or such other plan as may be agreed with the Council in writing
“Planning Permission”	the planning permission to be issued by the Council pursuant to the Application generally in the form of the draft annexed hereto as Appendix

“Residential Units”	all dwellings including Open Market Dwellings constructed as part of the Development
“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
“Section 106 Payment Form”	the form annexed hereto as Appendix 4 which is to be completed and sent to the Council when paying monies due under this Deed
“Working Day”	a day that is not a Saturday or Sunday, Christmas Day, Good Friday or any day that is a bank holiday

2.2 In this Deed where the context so requires:-

2.2.1 the singular includes the plural and vice versa

2.2.2 references to clauses schedules and paragraphs are references to clauses schedules and paragraphs in this Deed except where otherwise specified

2.2.3 title headings to the clauses schedules and paragraphs are for convenience only and shall not affect the interpretation of this Deed

2.2.4 references to any statute or statutory instrument shall except where otherwise specifically provided include reference to any statutory modification or re-enactment thereof for the time being in force

2.2.5 the expression the "Owner" shall include persons successors in title to the Owner and its assigns and all persons deriving title to all or part of the Development Site under or through it

3. **COMMENCEMENT**

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. **FURTHER COVENANTS BY THE OWNER**

- 5.1 The Owner covenants with the Council to observe and perform the obligations contained in Part I of the First Schedule and in the Second Schedule and the Third Schedule hereto
- 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 proceeds of sale of the Development Site or any part thereof

7. **NOT USED**

8. **NOT USED**

9. **COVENANTS BY THE COUNCIL**

9.1.1 The Council shall within 10 working days of the completion of this Deed grant the Planning Permission save that the Council shall not be in breach of this obligation if it shall be prevented from issuing the Planning Permission by a court order

9.1.2 The Council will upon the written request of the Owner (or its successors in title) at any time after the obligations on the part of the Owner contained herein have been fulfilled issue confirmation thereof and thereafter cancel all related entries in the Register of Local Land Charges

9.1.3 The Council covenants with the Owner to apply the Off-Site Affordable Housing Sum towards off site Affordable Housing

9.1.4 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

9.1.5 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

9.1.6 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 such other person) no longer has an interest in the Development Site

10.3 Nothing herein contained or implied shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of its functions as a local authority

10.4 If the Planning Permission is quashed revoked or otherwise withdrawn or expires within the meaning of Sections 91 92 and 93 of the Act or is revoked or modified in accordance with Sections 97 to 100 inclusive of the Act without the consent of the

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 clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed
- 10.10 In the event that any new planning permission(s) are granted by the Council pursuant to Section 73 of the Act and unless otherwise agreed between the parties, with effect from the date that the new planning permission is granted pursuant to Section 73 of the Act:
- (a) the obligations in this Deed shall (in addition to continuing to bind the

Development Site in respect of the Planning Permission) relate to and bind all subsequent planning permission(s) in respect of the Site granted pursuant to Section 73 of the Act and the Development Site itself without the automatic need to enter into any subsequent deed of variation or new agreement pursuant to Section 106 of the Act and

- (b) the definitions of Application, Development and Planning Permission in this Deed shall be construed to include references to any applications under Section 73 of the Act, the planning permissions granted thereunder and the development permitted by such subsequent planning permission(s)

SAVE THAT nothing in this clause shall fetter the absolute discretion of the Council in determining any future application(s) under Section 73 of the Act to require that a new deed or supplemental deed be entered into pursuant to Section 106 and/or Section 106A of the Act if it considers this necessary

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 (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.

FIRST SCHEDULE

Off-Site Affordable Housing Sum

Part 1

1. The Owner shall pay the Off-Site Affordable Housing Sum to the Council on the Due Date either:
 - (i) by cheque made payable to “Birmingham City Council-S106”, or
 - (ii) by the Clearing House Automated Payment System (“CHAPS”) method, (details of which can be obtained by email from section106@birmingham.gov.uk),or using the details set out in the Section 106 Payment Form

Part 2

1. The Off-Site Affordable Housing Sum when received by the Council shall be recorded in its accounts in the name of the “334-340 & 8-22 Harborne Park Road - 2022/06737/PA/ Affordable Housing Account”. The Strategic Director of Resources (or such officer for the time being performing that function) shall upon written request from the Owner provide details of any transactions involving the Off-Site Affordable Housing Sum and of the balance outstanding. The Council shall pay a variable rate of interest calculated from the Bank of England base rate:
2. The adjusted FT rate shall be calculated by the Strategic Director of Resources
3. Interest on the Off-Site Affordable Housing Sum shall be calculated daily and added half yearly to the balance on 1 April and 1 October of each year
4. The Council reserves the right to invest the balance outstanding including any interest accrued with an Authorised Deposit Taker in a separate deposit account to be known as the “Off-Site Affordable Housing 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 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

SECOND SCHEDULE

Parking Impact Sum

Part 1

1. The Owner shall pay the Parking Impact Sum to the Council on the Due Date either:
 - (iii) by cheque made payable to “Birmingham City Council-S106”, or
 - (iv) by the Clearing House Automated Payment System (“CHAPS”) method, (details of which can be obtained by email from section106@birmingham.gov.uk),or using the details set out in the Section 106 Payment Form

Part 2

1. The Parking Impact Sum when received by the Council shall be recorded in its accounts in the name of the "334-340 & 8-22 Harborne Park Road - 2022/06737/PA/ Parking Impact Account". The Strategic Director of Resources (or such officer for the time being performing that function) shall upon written request from the Owner provide details of any transactions involving the Parking Impact Sum and of the balance outstanding. The Council shall pay a variable rate of interest calculated from the Bank of England base rate:
2. The adjusted FT rate shall be calculated by the Strategic Director of Resources
3. Interest on the Parking Impact Sum shall be calculated daily and added half yearly to the balance on 1 April and 1 October of each year
4. The Council reserves the right to invest the balance outstanding including any interest accrued with an Authorised Deposit Taker in a separate deposit account to be known 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 at intervals of 6 months for a period of 3 years after first Occupation of the Development.
4. The Parking Surveys shall be undertaken or commissioned by a properly qualified expert to be agreed between the Owner and the Council at the Owner's expense (such agreement not to be unreasonably withheld).
5. The Owner shall undertake the first Parking Survey after first Occupation of a Residential Unit within the Development on the Development Site
6. The Owner shall undertake further Parking Surveys in accordance with the agreed OSPMP

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.....

Notice is hereby given to Birmingham City Council that works to implement the above planning permission will commence on.....

Signed..... Print Name.....

for and on behalf of.....

Contact details in case of query.....
.....

Date.....

Please forward to:

S106 Projects Team
Birmingham City Council
Development Planning and Regeneration
PO Box 28
Birmingham
B1 1TU

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 4
Section 106 Payment Form

Section 106 Payment Form/Remittance Advice

Please forward a completed copy of this form for each payment/instalment relating to this Section 106 agreement whether made by cheque or electronically

Payment method: Cheque ELECTRONIC (please tick)

Planning Application reference:

Development site:

Date s106 agreement completed:

Payment made by:

Contact Name and Tel No:

Contact e-mail Address:

Monies being paid:

1. £.....

Purpose:

Account Name (per S106 agreement):.....

2. £.....

Purpose:

Account Name (per S106 agreement):

3. £.....

Purpose:.....

Account Name (per S106 agreement):
.....

Total Payment £.....

Amount(s) Previously Paid (if applicable) (1) £.....

(2) £.....

(3) £.....

CONTINUED...

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 the reverse of the cheque.

Complete this form and send together with cheque to the 'Section 106 Projects Team' at the address below.

PLEASE NOTE THAT PAYMENT VIA ELECTRONIC TRANSFER IS PREFERABLE. IF PAYING BY CHEQUE, CAN YOU PLEASE CONTACT US PRIOR TO SENDING THE CHEQUE.

Complete and send this form by post or email to the 'Section 106 Projects Team' once payment has been made: -

**Planning Obligations Team
Department of Planning and Development
Birmingham City Council
PO Box 28
Lancaster Circus,
Birmingham, B1 1TU**

Email. section106@birmingham.gov.uk

Tel. 07912 451258 (Hayley Claybrook)

07912 451439 (Nichola Shandley)

07912 451620 (Cate Crowe)

APPENDIX 5
Occupation Notice

NOTICE TO BIRMINGHAM CITY COUNCIL OF OCCUPATION OF DEVELOPMENT

Planning Permission Reference:

Development Site:
.....

Description of Development:
.....
.....
.....

Date of s.106 Agreement:

Notice is hereby given to Birmingham City Council that occupation of the first Residential Unit will take place on.....

Signed:

For and on behalf of:

Contact name and telephone no.

Contact e-mail address:

Date:

Complete and send this form to the 's.106 Projects Team' at the address below together with the Section 106 Payment Form if also paying in monies:

S106 Projects Team
Birmingham City Council
Department of Planning and Regeneration
Birmingham City Council
Lancaster Circus
PO Box 28
Birmingham B1 1TU
(Tel. 0121-303-3515/9886)

224512/SEBS/SEBS/13219181
29/03/2024
P888(s.106)

