

Dated

25th October

2020

PRIMETOWER PROPERTIES LIMITED

and

BOURNEMOUTH, CHRISTCHURCH AND POOLE COUNCIL

AGREEMENT

under Section 106 of the Town
and Country Planning Act 1990
agreeing planning obligations
on land known as

The Broadstone Hotel, (also known and described as "The Goods Yard")
14 Station Approach, Broadstone (BH18 8AX)

Reference: APP/19/00414/P

THIS AGREEMENT is made the 25 day of October 2020
BETWEEN:

- (1) **PRIMETOWER PROPERTIES LIMITED** a company registered in England and Wales with company registration number 02938378 whose registered office address is 1 Park Place, North Road, Poole, BH14 0LY (the “Owner”)
- (2) **BOURNEMOUTH, CHRISTCHURCH AND POOLE COUNCIL** of Town Hall, Bourne Avenue BH2 6DY (the “Council”)

Background

- 1 The Owner is the freehold owner of the Land
- 2 The Council is the local planning authority for the area within which the Land is situated
- 3 The Owner has applied to the Council for planning permission to develop the Land in accordance with the particulars set out in the Application and the parties have agreed to enter into this Deed in order to secure the planning obligations contained herein

NOW THIS AGREEMENT WITNESSES AS FOLLOWS:

1. Definitions

In this Agreement the following words and phrases shall have the meanings assigned to them in this clause:

“the Act”	the Town & Country Planning Act 1990
“Affordable Housing Contribution”	the sum of one hundred and sixty three thousand five hundred and forty nine Pounds (£163,549.00) together with an administration fee of five hundred Pounds (£500.00) to be paid by the Owner towards the provision of off-site Affordable Housing in accordance with Policy PP11 of the Poole Local Plan (adopted November 2018).
“Application”	means the planning application for outline permission for the Development which was submitted to the Council by the Owner 30 th April 2019 and given reference number APP/19/00414/P
“Commencement of Development”	the carrying out of a material operation under Section 56(4) of the Act SAVE THAT for the purposes of this Agreement operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground

	<p>conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and site survey shall not be taken to be a material operation and "Commence" shall be construed accordingly.</p>
"Development"	<p>the development of the Land by the erection of 33 apartments together with associated access and parking.</p>
"Heathland Strategic Access Management and Monitoring Contribution"	<p>the sum of eight thousand seven hundred and twelve pounds (£8,712.00) Index Linked plus an administrative fee of £350.00 to be paid by the Owner towards measures which avoid or mitigate against any adverse effect of the development on the Dorset Heathlands in accordance with Policy PP32 of the Poole Local Plan (adopted November 2018) and the Dorset Heathlands Planning Framework 2020-2025 Supplementary Planning Document.</p>
"Highway Agreement"	<p>An agreement under section 72 of the Highways Act 1980 for the widening of the highway in substantially the form attached to this deed at Appendix One</p>
"Highways Works"	<p>the works described in Appendix Two and shown in principle on the Drawing(s), which works are required to make good a deficiency in infrastructure provision arising from the Development, and any detailed design subsequently approved by the Council together with such other Ancillary Works as the Council may require.</p>
"Index Linked"	<p>means indexation in accordance with clause 9</p>
"Land"	<p>the land and property situate at and known as The Goods Yard, 14 Station Approach, Broadstone, Poole, Dorset as is registered at the Land Registry under title number DT284429 which is shown edged red on the Plan</p>

“Moor Road Loading Bay”

the loading bay to be installed on Moor Road in accordance with the details shown in drawing number PLT207-201 as attached hereto or as otherwise agreed in writing

“Occupied”

means occupation 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 related terms shall be construed accordingly

“Plan”

the plan annexed to this Agreement

“Planning Permission”

the grant of planning permission for the Development if granted by the Council pursuant to the Application

“Poole Harbour Strategic Access Management and Monitoring Contribution”

the sum of three thousand one hundred and thirty five pounds (£3,135.00) Index Linked plus an administrative fee of one hundred and fifty six pounds and seventy five pence (£156.75) to be paid by the Owner to avoid or mitigate against any adverse effect of the development on Poole Harbour in accordance with Policy PP32 of the Poole Local Plan (adopted November 2018) and the Poole Harbour Recreation 2019-2024 Supplementary Planning Document.

“Practical Completion”

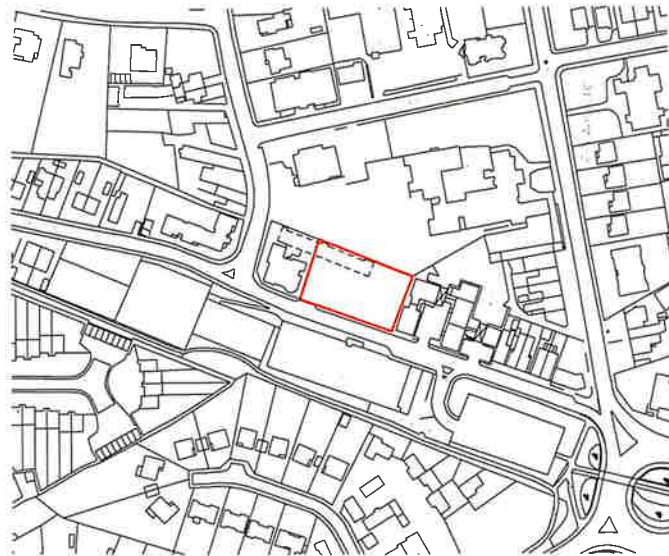
completion of the Highway Works that enables the Highway Works to be used for the purpose for which they were designed, save for any minor defects and Practically Completed shall be constructed accordingly.

“the Retail Price Index”

the United Kingdom fiscal annualised retail prices index as published by the Office for National Statistics or any successor organisation

“the Moor Road Traffic Regulation Order and Loading Bay Installation Costs Contribution”

the sum of fifteen hundred pounds (£1,500.00) as a contribution towards the Council’s costs of endeavouring to secure the traffic regulation order necessary for the installation of the Moor Road Loading Bay and the installation thereof



Location Plan
5m 10m 20m 30m 40m 50m

[Handwritten signature]
[Handwritten initials]

[Handwritten mark]

 UNION ARCHITECTURE 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

2. Construction

- 2.1 Words importing the feminine include the masculine and the neuter and vice versa and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.2 Words importing the singular include the plural and vice versa.
- 2.3 In this Agreement unless the context otherwise requires the expressions "the Council", and "the Owner" and substituted words therefor shall include their respective successors in title and assigns and the successor to its statutory functions in the case of the Council as a local authority.
- 2.4 Where the Owner is more than one person all covenants agreements and declarations on the part of the Owner herein contained shall be deemed to have been made jointly and severally by all such persons constituting the Owner and so that the said covenants agreements and declarations may be enforced by the Council against such persons jointly and severally as the Council shall in its absolute discretion decide or circumstances require.
- 2.5 Where reference is made in this Agreement to clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Agreement.
- 2.6 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans and regulations.
- 2.7 Insofar as any clause or clauses of this Agreement are found (for whatever reason) to be invalid or unenforceable then such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement.
- 2.8 Any approval consent or permission required in this Agreement shall not be unreasonably withheld or delayed.

3. Enabling Provisions

This Agreement is made pursuant to Section 106 of the Act.

4. Commencement

This Agreement shall come into effect upon the date of this Agreement but the obligations contained herein shall become effective only upon the grant of the Planning Permission save for Clause 8 which shall come into effect immediately upon completion of this Agreement.

5. Owner's Covenants and the Council's Covenants

- 5.1 The Owner with the intention that such covenants shall be binding on their successors in title and all persons deriving title under them **HEREBY COVENANTS** with the Council that following the Planning Permission being granted for the Development on the Land they will not permit or cause to permit the Commencement of the Development until:-

- 5.1.1 the Heathland Strategic Access Management and Monitoring Contribution, the Poole Harbour Strategic Access, Management and Monitoring Contribution and the Moor Road Traffic Regulation Order and Loading Bay Installation Costs Contribution have been paid in full to the Council; and
- 5.1.2 the Owner has also prepared a written scheme setting out the design details of the Highway Works and submitted the same to the Council for the Council's written approval and the Highways Works design details scheme shall include the following:
 - 5.1.2.a, the Widening/reconstruction of the footway in front of the site to a minimum of 2.0m, replacing the existing dropped kerbs with full height kerbs – kerb face to be 125mm. Standard footway construction but with a minimum of 200mm Type 1 sub-base material.
 - b, the reconfiguration of the existing bell-mouth access into the site to a dropped kerb style with continuous footway, 20mm kerb face and the footway surrounding the new access to be constructed to a carriageway standard.
 - c, the adjustment of any statutory undertaker covers and or boxes to new level.
 - d, to provide new double yellow line marking across mouth of reconfigured access.
 - e, if necessary to relocate lamp column N°3 to a position to be agreed with the Street Lighting Team.
- 5.1.3 The Owner has provided the Council with written notice of the intended date of Commencement no less than 8 (eight) weeks prior to the date of Commencement.
- 5.1.4 The Council shall provide a substantive written response to the Owner notifying the Owner as to whether the Highway Works design scheme as submitted referred to in clause 5.1.2 above is approved or is not approved within 1 month from receipt of the Highway Works design details scheme
- 5.2 The Owner with the intention that such covenants shall be binding on their successors in title and all persons deriving title under them **HEREBY COVENANTS** with the Council that following the Planning Permission being granted for the Development on the Land they will not cause or permit the first Occupation of the Development until:-
 - 5.2.1 the Highway Agreement has been completed and the Highway works completed in compliance with the terms of the Highway Agreement and the applicable land dedicated as highway land
- 5.3 The Owner with the intention that such covenants shall be binding on their successors in title and all persons deriving title under them **HEREBY COVENANTS** with the Council that following the Planning Permission being granted for the Development on the Land they will not cause or permit the Occupation of the 11th (eleventh) apartment constructed on the Land as part of the Development until:-

- 5.3.1 the first instalment of 34% of the Affordable Housing Contribution has been paid in full to the Council
- 5.4 The Owner with the intention that such covenants shall be binding on their successors in title and all persons deriving title under them **HEREBY COVENANTS** with the Council that following the Planning Permission being granted for the Development on the Land they will not cause or permit the Occupation of the 21st (twenty first) apartment constructed on the Land as part of the Development until:-
- 5.4.1 the second instalment of 33% of the Affordable Housing Contribution has been paid in full to the Council
- 5.5 The Owner with the intention that such covenants shall be binding on their successors in title and all persons deriving title under them **HEREBY COVENANTS** with the Council that following the Planning Permission being granted for the Development on the Land they will not cause or permit the Occupation of the 31st (thirty first) apartment constructed on the Land as part of the Development until:-
- 5.5.1 the third and final instalment of 33% of the Affordable Housing Contribution has been paid in full to the Council
- 5.5 The Council **HEREBY COVENANTS** with the Owner that within no more than 3 months of the date of this Agreement the Council shall commence the process required to secure the traffic regulation order necessary for the installation of the Moor Road Loading Bay in accordance with the details as shown on drawing number PLT207-201 as attached hereto
- 5.6 The Council also hereby covenants and undertakes to use their reasonable endeavours to complete the installation of the Moor Road Loading Bay within 8 (eight) weeks of the Traffic Regulation Order being completed.
- 6. Enforceability**
- 6.1 The covenants in clause 5 shall be enforceable (save as is hereinafter expressly provided) by the Council as Local Planning Authority against the Owner and any person deriving title under them in respect of their interest or any lesser interest in the Land as a whole as if that person had also been a party to this Agreement in respect of the interest for the time being held by him but no person or company shall be bound once he has parted with all interest in the Land in accordance with Section 106(4) of the Act.
- 6.2 No planning obligations contained in this Deed shall be binding on any freehold or leasehold owners or occupiers of the Residential Units (or their respective mortgagees from time to time) or land held by any of the statutory utilities for their operational purposes.
- 7. General**
- The parties agree that:
- 6.3 Nothing in this Agreement constitutes the grant or an obligation to grant planning permission

- 6.4 Nothing in this Agreement grants planning permission or any other approval consent or permission required from the Council in the exercise of any other statutory function
- 6.5 Nothing in this Agreement fetters or restricts the exercise by the Council of any of its powers
- 6.6 The obligations contained in this Agreement are planning obligations for the purpose of Section 106 of the Act
- 6.7 This Agreement constitutes a Deed
- 6.8 This Agreement is enforceable by the Council as local planning authority
- 6.9 This Agreement shall be registered as a local land charge by the Council
- 6.10 This Agreement does not confer nor is intended to confer a benefit on a third party within the meaning of the Contracts (Rights of Third Parties) Act 1999
- 6.11 This Agreement shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or if (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development
- 6.12 This Agreement is governed by and interpreted in accordance with the law of England and Wales

8. Costs

The Owner shall pay to the Council on completion of this Agreement the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Agreement plus any disbursements and taxes to a maximum of one thousand, five hundred pounds (£1,500.00).

9. Indexation

All monies due to the Council under this Agreement shall be increased by the percentage (if any) by which the Retail Price Index shall have increased between the date of its last publication immediately prior to the date of this Agreement and the date of its last publication prior to the date of payment of any such money.

10. Notices and invoices

- 10.1 Any notice or other communication given or made under this Agreement shall be in writing and shall be delivered personally or sent by recorded delivery post to the other party at the address specified in this Agreement or such other address as notified by the Owner from time to time and any such notice or communication sent by recorded delivery post shall be deemed to be received the day after posting.
- 10.2 Invoices for sums due under this Agreement shall be sent by first class post to the other party at the address specified in this Agreement or such other address as notified by the owner from time to time and shall be deemed to be received two days after posting.
- 10.3 Any notices or communications sent to the Council shall be addressed to the Head of Legal and Democratic Services or such other officer as may from time to time be notified to the parties by the Council.

Appendix One - form of highways agreement

DATED

2020

[Owner]

and

[Bank]

and

**BOURNEMOUTH, CHRISTCHURCH AND
POOLE COUNCIL**

DEED OF DEDICATION

Of land at []

THIS AGREEMENT is made the _____ day of _____ 2020

BETWEEN

(1) [] ("the Owner")

and

(2) [] ("the Mortgagee")

and

(3) **BOURNEMOUTH, CHRISTCHURCH AND POOLE COUNCIL** of Town Hall
Bournemouth Dorset BH2 6DY ("the Council")

WHEREAS

- (1) The Owner is the registered proprietor of the Land (subject only to the Charge)
- (2) The Owner has agreed to give up and dedicate the Land to the public so that it may be used for the purpose of a highway in accordance with this Deed and the Section 106 Agreement.

NOW THIS DEED WITNESSETH as follows: -

1. Interpretation

1.1. In this Deed the following terms shall have the meanings given to them: -

"Charge" means the Charge in favour of the Mortgagee referred to in entries [] and [] of the charges register of the Title to the Land

"Highways Act" means the Highways Act 1980

"the Land" means the area of land shown edged blue on the plan annexed hereto which is registered at HM Land Registry under title number []

"Section 106 Agreement" means the agreement dated [] made between the Owner and the Council

2. Dedication

- 2.1 In consideration of **ONE POUND (£1.00)** paid by the Council to the Owner (the receipt of which the Owner hereby acknowledges) the Owner hereby gives up and dedicates to the public the Land to the intent that from the date of this Deed the Land shall be dedicated for the purpose of public highway in accordance with Section 72 of the Highways Act

3. Council Undertakings

- 3.1. The Council undertakes to maintain the Land as a highway at the public expense from the date of this Deed

4. Mortgagee's Consent

- 4.1. The Mortgagee acknowledges and affirms that this Agreement has been entered into by the Owner with its consent and from the date herein consents that the Land be no longer subject to the Charge.

IN WITNESS WHEREOF this Agreement has been duly executed as a Deed by the parties hereto the day and date first written

EXECUTED AS A DEED by

[]

In the presence of:

Witness Signature:

Witness Name: (Block Capitals)

Witness Address:

EXECUTED AS A DEED by

[]

Acting by two directors or a director
and its company secretary

Director

Print name:

Director/Secretary

Print name:

EXECUTED AS A DEED BY)
BOURNEMOUTH, CHRISTCHURCH)
AND POOLE COUNCIL by affixing)
the common seal in the presence of:)

Monitoring Officer/Deputy Monitoring Officer

Appendix Two - description of Highway Works

The footway widening as shown on drawing PT207-201.

IN WITNESS of which this Agreement has been executed as a deed the day and year first before written


EXECUTED AS A DEED by)
PRIMETOWER PROPERTIES LIMITED)

Acting by two directors or a director
and its company secretary

Director
Print name:


John Thomas.

Director ~~OR~~ Secretary
Print name:


Mike Jones.

EXECUTED AS A DEED BY)
BOURNEMOUTH, CHRISTCHURCH)
AND POOLE COUNCIL by affixing)
the common seal in the presence of:)





Monitoring Officer/Deputy Monitoring Officer