

DATED

2021

- (1) THE DISTRICT COUNCIL OF NEW FOREST**
- (2) RENAISSANCE RETIREMENT LIMITED**
- (3) DERMOTT GRAHAM WEBB AND DIANE ELIZABETH WEBB**
- (4) GUY BENJAMIN HAINSWORTH AND LAURA JANE NABAVI HAINSWORTH**
- (5) PAUL GRAINGER DRISCOLL and CELIA MARY DRISCOLL**
- (6) GORDON STANLEY SIMPSON**
- (7) NATIONAL WESTMINSTER BANK PLC**

AGREEMENT

Pursuant to Section 106 of the Town and Country Planning Act 1990

relating to land at Stanford Hill, Lymington, SO41 8DE

Hampshire

APPLICATION NUMBER 20/10481

Legal Services
New Forest District Council, Appletree Court
Lyndhurst SO43 7PA

PL1/

(MM) HABITATS AQ CONTRIBUTIONS PRE-GRANT

THIS D E E D is made the day of 2021

B E T W E E N

- (1) **THE DISTRICT COUNCIL OF NEW FOREST** of Appletree Court Lyndhurst in Hampshire SO43 7PA ("Council")
- (2) **DERMOTT GRAHAM WEBB and DIANE ELIZABETH WEBB** of The Rise, Stanford Hill, Lymington, SO41 8DE (the "First Owners")
- (3) **GUY BENJAMIN HAINSWORTH AND LAURA JANE NABAVI HAINSWORTH** of Hill View, Stanford Hill, Lymington SO41 8DE (the "Second Owners")
- (4) **PAUL GRAINGER DRISCOLL and CELIA MARY DRISCOLL** of 12a Culworthy House, West Road, Guildford, Surrey (the "Third Owners")
- (5) **GORDON STANLEY SIMPSON** of Silver Birches, Stanford Hill, Lymington, Hants SO41 8DE (the "Fourth Owner")
- (6) **RENAISSANCE RETIRMENT LIMITED** (Company Registration Number 03259684) of Unit 3, Royal Court Church Green Close, Kings Worthy, Winchester, Hampshire, England, SO23 7TW ("the Developer");
- (7) **NATIONAL WESTMINSTER BANK PLC** (Co. Regn. No. 929027) of 250 Bishopsgate London EC2M \$AA .("the First Mortgagee")

WHEREAS:-

- (1) Words and phrases appearing in these recitals have the meanings ascribed to them in clause 1 of this Agreement
- (2) The First Owners are the freehold Owners registered with title absolute at the Land Registry under Title Number HP262016 and HP262017 of part of the Land
- (3) The Second Owners are the freehold Owners registered with title absolute at the Land Registry under Title Number HP286193 of part of the Land subject to a legal charge to the First Mortgagee dated 24 January 2018.
- (4) The Third Owners are the freehold Owners registered with title absolute at the Land Registry under Title Number HP184192 of part of the Land
- (5) The Fourth Owner is the freehold Owner registered with title absolute at the Land Registry under Title Number HP231657 of part of the Land
- (6) The Developer has the benefit of the following interests in respect of the Land:
 - a. Contract to Purchase dated 1 May 2019 made between (1) Dermott Graham Webb and Diane Elizabeth Webb and (2) Renaissance Retirement Limited;
 - b. Contract to Purchase dated 1 May 2019 made between (1) Guy Benjamin Hainsworth and Laura Jane Nabavi Hainsworth and (2) Renaissance Retirement Limited;

- c. An option to purchase dated 29 January 2019 made between (1) Paul Grainger Driscoll and (2) Renaissance Retirement Limited; and
 - d. An option to purchase dated 1 May 2019 made between (1) Gordon Stanley Simpson and (2) Renaissance Retirement Limited
- (7) The First Mortgagee has a legal charge over that part of the Land registered under title HP286193 under a legal charge dated 24 January 2018.
- (8) The Council is the local planning authority for the purpose of the Act for the area in which the Land is situated
- (9) The Developer has submitted the Application to the Council for the Development on the Land and the Application has been refused.
- (10) The Developer has submitted the Appeal.
- (11) The likely significant effects of the Development associated with recreational impacts on both the New Forest and the Solent and Southampton Water Special Protection Area Special Areas of Conservation and/or Ramsar sites cannot be ruled out were it not for the habitats mitigation and air quality provisions contained in this Agreement

NOW THIS DEED WITNESSETH as follows:-

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following words and phrases shall have the following meanings:-

“Act”	the Town and Country Planning Act 1990
“Air Quality Monitoring Contribution”	an Index Linked contribution towards the monitoring of the air quality effects on the European Nature Conservation Sites in accordance with the Local Plan 2016-2036 Part One: Planning Strategy New Forest District (outside of the New Forest) National Park policy ENV1 in the sum of Three thousand four hundred pounds (£3,400. 00)
“Air Quality Monitoring Contribution Date”	the date of Commencement of Development
“Agreement”	means this Deed
“Appeal”	means the appeal (ref: APP/B1740/W/20/3265937) submitted by the Developer pursuant to Section 78 of the Act against the Council's decision to refuse the Application

“Application”	the application for planning permission for the Development submitted by the Developer under reference number 20/10481
“CIL”	Community Infrastructure Levy as defined in the Community Infrastructure Levy Regulations 2010 (as amended)
“Commencement of Development”	the carrying out of a material operation as defined in Section 56(4) of the Act in respect of the Development
“Decision Notice”	A notice issued by either the Secretary of State or an Inspector determining the Appeal
“Development”	the demolition of existing buildings and the erection of 44 sheltered apartments for the elderly with associated access, mobility scooter store, refuse bin store, landscaping and 34 parking spaces
“Dwelling”	A house bungalow flat apartment or maisonette (and its curtilage) forming part of the Development and “Dwellings” means more than one of the same
“European Nature Conservation Sites”	<ol style="list-style-type: none"> 1. New Forest Special Area of Conservation 2. New Forest Special Protection Area 3. New Forest Ramsar site 4. Solent Maritime Special Area of Conservation 5. Solent and Isle of Wight Lagoons Special Area of Conservation 6. Solent and Southampton Water Special

Protection Area

7. Solent and Southampton Water Ramsar site

“Habitats Mitigation (Access Management and Monitoring) Contribution” an Index Linked contribution (towards non-infrastructure projects) to mitigate the impact which the Development would otherwise have on the European Nature Conservation Sites in accordance with the Local Plan 2016-2036 Part One: Planning Strategy New Forest District (outside of the New Forest National Park) policy ENV1 in the sum of Thirty Three Thousand Seven Hundred pounds (**£33,700.00**)

“Habitats Mitigation (Access Management and Monitoring) Contribution Date” the date of Commencement of the Development

“Habitats Mitigation (Infrastructure) Contribution” an Index Linked contribution (towards infrastructure projects) to mitigate the impact which the Development would otherwise have on the European Nature Conservation Sites in accordance with the Local Plan 2016-2036 Part One: Planning Strategy New Forest District (outside of the New Forest National Park) policy ENV1 in the sum of Eighty Five Thousand pounds (**£85,000.00**)

“Habitats Mitigation (Infrastructure) Contribution Date” the date of Commencement of the Development

"Index" the “All Items” index figure of the Index of Retail Prices published by the Office for National Statistics or any successor ministry or department of government

"Index Linked"	any sum expressed in this Agreement to be Index Linked shall be increased by an amount (if any) by which the Index for the month preceding the date on which any sum is required by this Agreement to be paid exceeds the Index for the month preceding the issue of the Permission
"Inspector"	means the Inspector from the Planning Inspectorate appointed by the Secretary of State to determine the Appeal.
"Interest in Default"	interest at the rate of 4% per annum over Lloyds Bank plc base lending rate from time to time in force
"Land"	the land described in the Schedule to this Agreement
"Occupation"	the completion of a tenancy agreement lease licence transfer or any physical occupation in respect of the whole or any part or parts of any one or more of the Dwellings 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" and "Occupied" shall be construed accordingly
"Owners"	the First Owners, the Second Owners, the Third Owners and the Fourth Owner
"Parties"	the Parties to this Agreement and where any Party comprises more than one person the obligations and liabilities of that Party under this Agreement shall be joint and several obligations and liabilities of those persons

“Permission” a valid planning permission for the Development

“Plan” the plan annexed to this Agreement

- 1.2 The references to the Parties or any other legal or natural person named in this Agreement shall include his her its or their successors in title heirs and assigns and in the case of any Local Authority shall include any successor in function
- 1.3 Unless otherwise stated references to clause numbers are references to clauses in this Agreement
- 1.4 Unless otherwise stated references to schedule recital and paragraph numbers are references to the schedule recital and paragraph numbers in this Agreement
- 1.5 The singular includes the plural and vice versa
- 1.6 The masculine gender includes the feminine and neuter genders and vice versa
- 1.7 References to persons includes natural persons and partnerships firms and other such unincorporated bodies corporate bodies and all other legal persons of whatever kind and however constituted
- 1.8 References to Acts of Parliament statutory instruments or Government circulars or regulations or sections or paragraphs of any such acts statutory instruments or Government circulars or regulations include any re-enactments amendments or replacements of them
- 1.9 Save as expressly provided by this Agreement covenants and obligations given by any of the Parties to this Agreement shall attach to the Land and every part of it and shall bind their successors in title and assignees or any persons claiming by under or through them
- 1.10 It is hereby agreed between the Parties hereto that if any provision in this Agreement shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions shall not in any way be deemed thereby to be affected or impaired
- 1.11 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 severally
- 1.12 This Agreement is governed by and interpreted in accordance with the law of England and Wales and the Parties submit to the non-exclusive jurisdiction of the courts of England and Wales

2. PLANNING OBLIGATIONS

- 2.1 This Agreement is made under Section 106 of the Act and the planning obligations entered into by way of the covenants in this Agreement are obligations under Section 106 of the Act to be discharged by the Owners and the Developer and are enforceable by the Council against the Owners and the Developer and any person deriving title from them and subject to the provisions of clause 13 the Mortgagee.
- 2.2 This Agreement shall take effect from the date hereof
- 2.3 Nothing in this Agreement shall be construed as restricting the exercise by the Council of any powers exercisable by it under the Act or under any other Act **PROVIDED ALWAYS** that this Agreement shall remain in full force and effect notwithstanding the terms and conditions of any planning permission which may be or has been issued by the Council or any other appropriate person or Authority pursuant to the provisions of that Act

3. HABITATS MITIGATION (ACCESS MANAGEMENT AND MONITORING) CONTRIBUTION

The Owners and the Developer covenants with the Council:

- 3.1 To pay to the Council the Habitats Mitigation (Access Management and Monitoring) Contribution on or before the Habitats Mitigation (Access Management and Monitoring) Contribution Date
- 3.2 To pay Interest in Default on the Habitats Mitigation (Access Management and Monitoring) Contribution from day to day from the Habitats Mitigation (Access Management and Monitoring) Contribution Date until actual payment if later
- 3.3 Not to take or allow Occupation of **any** Dwelling until all payments have been made in accordance with this clause 3

4. HABITATS MITIGATION (INFRASTRUCTURE) CONTRIBUTION

The Owners and the Developer covenants with the Council:

- 4.1 In the event that no CIL is paid or payable for the Development then the Owners and the Developer shall pay the Habitats Mitigation (Infrastructure) Contribution to the Council on or before the Habitats Mitigation (Infrastructure) Contribution Date
- 4.2 In the event that the total amount of CIL paid or payable for the Development is less than the Habitats Mitigation (Infrastructure) Contribution due for the **Dwellings** in the Development then the Owners and the Developer shall pay the difference between the CIL paid or payable and the Habitats Mitigation (Infrastructure) Contribution to the Council on or before the Habitats Mitigation (Infrastructure) Contribution Date

- 4.3 To pay Interest in Default on the Habitats Mitigation (Infrastructure) Contribution from day to day from the Habitats Mitigation (Infrastructure) Contribution Date until actual payment if later
- 4.4 Not to take or allow Occupation of any Dwelling until all payments have been made in accordance with this clause 4

5. AIR QUALITY MONITORING CONTRIBUTION

The Owners and the Developer covenant with the Council:

- 5.1 To pay to the Council the Air Quality Monitoring Contribution on or before the Air Quality Monitoring Contribution Date
- 5.2 To pay Interest in Default on the Air Quality Monitoring Contribution from day to day from the Air Quality Monitoring Contribution Date until actual payment if later
- 5.3 Not to take or allow Occupation of the any Dwelling until all payments have been made in accordance with this clause 5

6. THIRD PARTIES

For the purposes of the Contracts (Rights of Third Parties) Act 1999 this Agreement is not intended to and does not give any person who is not a Party to it any right to enforce any of its provisions other than by successors in title to the Parties

7. NATURE OF THIS AGREEMENT

This Agreement is a Local Land Charge and the Council shall register it in its Register of Local Land Charges in accordance with the provisions of the Local Land Charges Act 1975 and Section 106(11) of the Act

8. NOTIFICATION OF COMMENCEMENT OF DEVELOPMENT AND OCCUPATION

The Owners and the Developer covenant with the Council that they will:

- 7.1 notify the Council in writing of the date of Commencement of Development within five working days of it occurring
- 7.2 notify the Council in writing of the date of Occupation for the first time of any Dwelling or part of the Development within five working days of it occurring together with the name and contact address of the person occupying

9. NOTICES

- 9.1 Any notices required to be served by one Party on another under this Agreement shall be served by recorded delivery:-
 - 9.1.1 on the Council at the address shown above marked "for the attention of Legal Services" and bearing the reference PL1/ 20/10481
 - 9.1.2 on the Owners and the Developer at the address respectively shown above or such other address as may have been notified to the Council

10. WARRANTY AS TO TITLE

- 10.1 The Owners and the Developer hereby warrant to the Council that the title details referred to in recitals 2,3,4,5 and 6 are complete and accurate in every respect. Further the Owners and the Developer warrant that they know of no

other persons with an interest in the Land that they have not disclosed to the Council

10.2 The Owners and the Developer shall make good any loss to the Council as a result of a breach of this warranty within twenty eight days of a request to do so

11. LEGAL COSTS

The Developer covenants on or before the completion of this Agreement to pay the reasonable legal costs of the Council in the preparation completion and registration of this Agreement

12. CIL REGULATIONS

It is agreed between the Parties that the planning obligations secured by this Agreement are (i) necessary to make the Development acceptable in planning terms (ii) directly related to the Development and (iii) fairly and reasonably related in scale and kind to the Development and thus satisfy the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended)

13. MORTGAGEE

The First Mortgagee hereby agrees that this Agreement shall take effect as if it was executed by the Owners and the Developer and the Council and registered as a local land charge immediately prior to the Mortgage. The Mortgagee shall not be liable for the observance performance or non-performance of the covenants in this Agreement unless and until it becomes a mortgagee in possession in which case it too will be bound by the obligations as if it were a person deriving title from the Owners or the Developer. If the Mortgagee becomes a mortgagee in possession any liability as such will cease once it has parted with its interest in the Land SAVE for any subsisting breach of covenant prior to parting with such interest.

14. RELEASE AND LAPSE

It is hereby agreed that the Developer and the Owners shall not be liable for a breach of any of their obligations under this Deed (~~save for antecedent breaches~~) after they shall have parted with all of its respective interests in the Land.

15. COUNTERPARTS

This Deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

16. DECISION NOTICE

In the event that the Inspector concludes in the Decision Notice that the planning obligations set out in Clause 4 to this Deed are not required on the basis that the obligations are incompatible with any one of the tests for planning obligations set out at Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and accordingly attaches no weight to that obligation in determining the Appeal then Clause 4 and the relevant obligations shall from the date of the Decision Notice cease to have effect as set out in the Decision Notice and the Owners and Developer shall be under no obligation to comply with Clause 4 to this Deed.

THE SCHEDULE

Land

All that parcel of land known as land at Stanford Hill, Lymington shown for the purpose of identification only edged red on the Plan

IN WITNESS WHEREOF the Parties hereto have duly executed and delivered this Agreement as a Deed the day and year first before written

THE COMMON SEAL of THE DISTRICT COUNCIL OF NEW FOREST was affixed to this **DEED** in the presence of:-

Authorised Signatory

EXECUTED AS A DEED by)
RENAISSANCE RETIREMENT LIMITED)
in the presence of:)

Director:

Director/Secretary:

EXECUTED AS A DEED by
DERMOTT GRAHAM WEBB
in the presence of:
Signature:
Signature of witness:
Name:
Address:

EXECUTED AS A DEED by
DIANE ELIZABETH WEBB
in the presence of:
Signature:
Signature of witness:
Name:
Address:

EXECUTED AS A DEED by
GUY BENJAMIN HAINSWORTH

in the presence of:

Signature:

Signature of witness:

Name:

Address:

EXECUTED AS A DEED by
LAURA JANE NABAVI HAINSWORTH

in the presence of:

Signature:

Signature of witness:

Name:

Address:

EXECUTED AS A DEED by
PAUL GRAINGER DRISCOLL

in the presence of:

Signature:

Signature of witness:

Name:

Address:

EXECUTED AS A DEED by
CELIA MARY DRISCOLL

in the presence of:

Signature:

Signature of witness:

Name:

Address:

EXECUTED AS A DEED by
GORDON STANLEY SIMPSON

in the presence of:

Signature:

Signature of witness:

Name:

Address:

EXECUTED AS A DEED by)
NATIONAL WESTMINSTER BANK PLC)
in the presence of:)

Director:

Director/Secretary: