

DATED

2022

- (1) THE DISTRICT COUNCIL OF NEW FOREST
- (2) THE POLICE AND CRIME COMMISSIONER FOR THE HAMPSHIRE POLICE AREA
- (3) CHURCHILL RETIREMENT LIVING LIMITED

AGREEMENT

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

relating to land at
Former Police Station
Southampton Road
Lymington
SO41 9GH

APPLICATION NUMBER 21/10938

APPEAL REFERENCE APP/B1740/W/21/3289313

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

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

“Act” means the Town and Country Planning Act 1990 as amended

“Affordable Housing Contribution” an Index-Linked financial contribution towards the provision other than on the Land of affordable housing in accordance with the New Forest District Council Core Strategy policy CS15 and CS25 in the sum of £959,456 (nine hundred and fifty-nine thousand four hundred and fifty-six pounds)

“Affordable Housing Contribution Date” the date of Occupation of the sixteenth of the Dwellings to be occupied

“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 the New Forest National Park) policy ENV1 in the sum of £2,912 (two thousand nine hundred and twelve pounds)

“Air Quality Monitoring Contribution Date” the date of Commencement of the Development

“Application” the application for planning permission for the Development submitted by the Developer registered on 15 July 2021 under reference

number 21/10938

“Charge Holder”	means any mortgagee or chargee of the Land (or any part of the Land) from time to time or the successors in title to such mortgagee or chargee or any receiver or manager appointed by such mortgagee or chargee
“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 except for: <ul style="list-style-type: none">a) operations consisting of site clearance;b) investigations for the purpose of assessing ground conditions;c) archaeological investigations;d) remedial work in respect of any contamination or other adverse ground conditions;e) the erection of any temporary means of enclosures; orf) demolition
“Development”	Development of the Land consisting of the demolition of existing building and redevelopment of the site to form 32no. Retirement apartments including communal facilities, access, car parking and landscaping in accordance with the Application

“Dwelling” a flat apartment or maisonette forming part of the Development and “Dwellings” means more than one of the same

“European Nature Conservation Sites”

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 the New Forest National Park) policy ENV1 and the Mitigation for Recreational Impacts on New Forest European sites Supplementary Planning Document 2021 in the sum of £15,194 (fifteen thousand, one hundred and ninety-four pounds)

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

“Habitats Mitigation (Bird Aware Solent) Contribution” an Index-Linked contribution towards Bird Aware Solent in accordance with the Local Plan 2016-2036 Part One: Planning Strategy New Forest District (outside the New Forest National Park) policy ENV1 and the Solent Recreation Mitigation Strategy 2017 in the sum of £14,383 (fourteen thousand three hundred and eighty-three pounds)

“Habitats (Bird Aware Solent) Contribution Date” the date of Commencement of the Development

“Habitats Mitigation (Infrastructure) Contribution” an Index-Linked contribution (towards infrastructure projects in accordance with the Mitigation for Recreational Impacts on New Forest European Sites Supplementary Planning Document 2021) 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 the New Forest National Park) policy ENV1 and the Mitigation for Recreational Impacts on New Forest European sites Supplementary Planning Document 2021 in the sum of £101,466 (one hundred and one thousand, four hundred and sixty-six pounds)

“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 April 2022
"Inspector"	the inspector appointed by the Secretary of State to determine the Planning 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"	means 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 for the purposes of construction, fitting out or decoration for marketing or display purposes or in connection with security operations)
"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” means a valid planning permission for the Development

“Plan” means the plan annexed to this Agreement

“Planning Appeal” the planning appeal submitted by the Applicant under Section 78 of the 1990 Act in respect of the Council’s refusal of the Application which has been given reference APP/B1740/W/21/3289313

“Secretary of State” the Secretary of State for Levelling Up, Housing and Communities (or such successor Secretary of State or minister of state who shall assume the same decision making powers from time to time);

- 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 sections or paragraphs of any such acts statutory instruments or Government circulars 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 Owner and the Developer and are enforceable by the Council against the Owner and the Developer and any person deriving title from any of them
- 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
- 2.4 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in

the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest

- 2.5 No Charge Holder shall have any liability under or in connection with this Deed unless and until it takes possession of the Land or the relevant part of it (and it shall not be liable for any pre-existing breach arising prior to the date it enters into possession nor for any breach after it has parted with or released its interest in the Land).
- 2.6 Nothing in this Agreement prohibits or limits 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 Application, granted after the date of this Agreement, whether or not pursuant to an appeal.
- 2.7 This Agreement shall cease to have effect if in determining the Planning Appeal, the Secretary of State or the Inspector expressly states in his decision letter that this Agreement does not comply with regulation 122 of the Community Infrastructure Levy Regulations 2010.
- 2.8 If in determining the Planning Appeal, the Secretary of State or the Inspector expressly states in his decision letter that any individual obligation within this Agreement does not comply with regulation 122 of the Community Infrastructure Levy Regulations 2010 that/those obligations(s) will cease to have effect.

3. AFFORDABLE HOUSING CONTRIBUTION

The Owner and the Developer covenant with the Council:

- 3.1 To pay to the Council the Affordable Housing Contribution on or before the Affordable Housing Contribution Date
- 3.2 To pay Interest in Default on the Affordable Housing Contribution from day to day from the Affordable Housing Contribution Date until actual payment if later
- 3.3 Not to take or allow Occupation of more than sixteen Dwellings until all payments have been made in accordance with this clause 3

4. REFUND OF AFFORDABLE HOUSING CONTRIBUTION

The Council covenants with the party that pays the Affordable Housing Contribution that the Council will following receipt from that party of a written request in that regard served on the Council at any time after the expiry of ten years from the date of actual

payment return to that party any part of the Affordable Housing Contribution that at the date of the written request aforesaid has not been used by the Council for the purpose expressed in this Agreement PROVIDED THAT such sum shall be returned to that party and not to any person deriving title from them

5. AIR QUALITY MONITORING CONTRIBUTION

The Owner 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 Commence or permit or suffer to be Commenced the Development until all payments have been made in accordance with this clause 5

6. HABITATS MITIGATION (ACCESS MANAGEMENT AND MONITORING) CONTRIBUTION

The Owner and the Developer covenant with the Council:

- 6.1 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
- 6.2 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
- 6.3 Not to Commence or permit or suffer to be Commenced the Development until all payments have been made in accordance with this clause 6

7. HABITATS MITIGATION (BIRD AWARE SOLENT) CONTRIBUTION

The Owner and the Developer covenant with the Council:

- 7.1 To pay to the Council the Habitats Mitigation (Bird Aware Solent) Contribution on or before the Bird Aware Solent Contribution Date
- 7.2 To pay Interest in Default on the Habitats Mitigation (Bird Aware Solent) Contribution from day to day from the Habitats Mitigation (Bird Aware Solent) Contribution Date until actual payment if later

7.3 Not to Commence or permit or suffer to be Commenced the Development until all payments have been made in accordance with this clause 7

8. HABITATS MITIGATION (INFRASTRUCTURE) CONTRIBUTION

The Owner and the Developer covenant with the Council:

8.1 In the event that no CIL is paid or payable for the Development then the Owner and Developer shall pay the Habitats Mitigation (Infrastructure) Contribution to the Council on or before the Habitats Mitigation (Infrastructure) Contribution Date

8.2 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 Owner and 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

8.3 In the event that the total amount of CIL paid or payable for the Development is equal to or exceeds the Habitats Mitigation (Infrastructure) Contribution due for the Dwellings in the Development then the Owner shall not be obligated to make any payments in accordance with this clause 8.

8.4 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

8.5 Not to Commence or permit or suffer to be Commenced the Development until all payments have been made in accordance with this clause 8

9. 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

10. NATURE OF THIS AGREEMENT

10.1 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

10.2 The Council agrees that upon the Owners' obligations under this Agreement being satisfied and upon receipt of a written request by the Owner the Council will remove all relevant entries relating to this Agreement from the Register of Local Land Charges

11. LEGAL COSTS

The Owner and the Developer covenant to pay the Council's reasonable legal costs in the preparation completion and registration of this Agreement on or before the date hereof

12. NOTIFICATION OF COMMENCEMENT OF DEVELOPMENT AND OCCUPATION

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

12.1 notify the Council in writing of the date of Commencement of Development within five working days of it occurring

12.2 notify the Council in writing of the date of Occupation for the first time of any part of the Development within five working days of it occurring together with the name and contact address of the party occupying

12.3 notify the Council in writing of the date of Occupation of the sixteenth Dwelling to be Occupied within five working days of it occurring

13. NOTICES

13.1 Any notices required to be served by one party on another under this Agreement shall be served by recorded delivery:-

13.1.1 on the Council at the address shown above marked "for the attention of Legal Services" and bearing the reference PL1/222

13.1.2 on the Owner and the Developer at the address respectively shown above or such other address as may have been notified in writing to the Council

14. WARRANTY AS TO TITLE

14.1 The Owner hereby warrants to the Council that the title details referred to in recitals 2 and 3 are complete and accurate in every respect. Further the Owner warrants that they know of no other persons with an interest in the Land that they have not disclosed to the Council

- 14.2 The Owner shall make good any loss to the Council as a result of a breach of the warranty at clause 19.1 above within twenty-eight days of a request to do so
- 14.3 The Developer hereby warrants to the Council that the title details referred to in recital 4 are complete and accurate in every respect. Further the Developer warrants that that they know of no other persons with an interest in the Land that they have not disclosed to the Council
- 14.4 The Developer shall make good any loss to the Council as a result of a breach of the warranty at clause 19.3 above within twenty-eight days of a request to do so

15. 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)

16. TERMINATION

This Agreement will come to an end if:

- a) the Permission is quashed or revoked before the Commencement of Development;
- b) the Permission expires without having been implemented;
- c) the Planning Appeal is dismissed; or
- d) in determining the Planning Appeal the Secretary of State or the Inspector states in his decision letter that this Agreement is not a material planning consideration or that no weight can be attached to the deed in determining the Planning Appeal.

THE SCHEDULE

The Land

All that parcel of land known as Former Police Station, Southampton Road, Lymington SO41 9GH in Hampshire and shown for the purpose of identification only edged red on the Plan and registered at the Land Registry under title number HP664900

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 CHURCHILL
RETIREMENT LIVING LIMITED
Acting by:

Director
(sign)
(print name)

Director/Secretary*
*delete as applicable
(sign)
(print name)

[OWNER'S EXECUTION BLOCK]

Commented [PM1]: Owner to advise