

DATED

31st March

2021

(1) THE COUNCIL OF THE BOROUGH OF HAVANT

and

(2) JUDITH MARY DARMADY, EDWARD JOHN DARMADY, SIMON GERALD PIGOT WILLIAMS
and LUCY GEORGIANA PIGOT WILLIAMS

SECTION 106 AGREEMENT

Under Section 106 Town and Country Planning Act 1990

relating to land and on the east side of Helmsley House, Bartons Road, and west of Normandy Road,
Havant



THIS AGREEMENT is made on

31st March

2021

BETWEEN:

1. **THE COUNCIL OF THE BOROUGH OF HAVANT** of Public Service Plaza Civic Centre Road Havant PO9 2AX (**Council**); and
2. **JUDITH MARY DARMADY, EDWARD JOHN DARMADY, SIMON GERALD PIGOT WILLIAMS** and **LUCY GEORGIANA PIGOT WILLIAMS** of Meadowview 26 Vyne Road, Sherborne St John, Basingstoke, Hampshire RG24 9HX (**Owners**).

BACKGROUND

- (A) For the purposes of the Act, the Council is the local planning authority for the area within which the Land is situated.
- (B) The Owners are the freehold Owners of the whole of the Land.
- (C) The Application has been submitted to the Council for permission to develop the Land in accordance with the Planning Permission.
- (D) The Owners enter into this Agreement in anticipation of the grant of Planning Permission being made subject to the Owners entering into this Agreement which makes provision for regulating the Development and securing the matters referred to in this Agreement.
- (E) The parties have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council against the Owners and their successors in title.

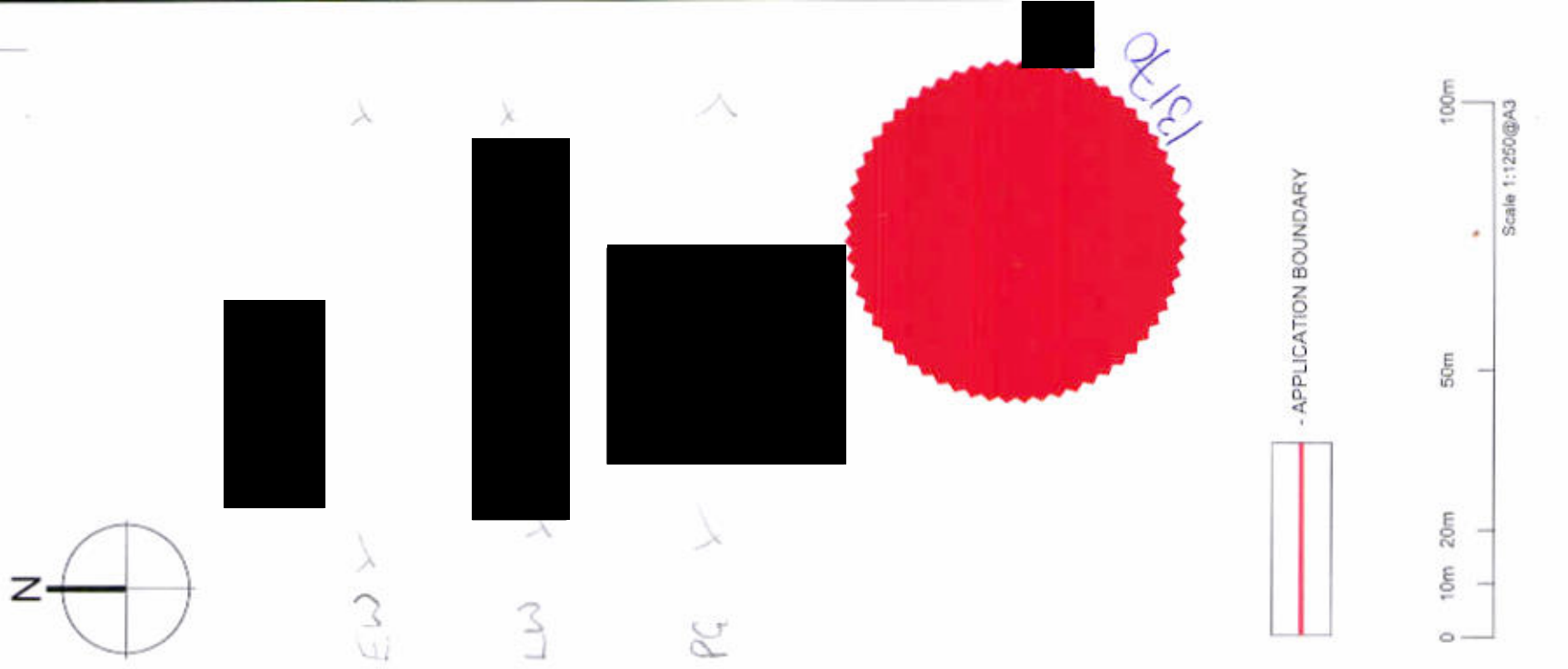
The parties agree as follows:

1 DEFINITIONS

- 1.1 From the date of this Agreement unless the context otherwise requires, the following definitions apply to this Agreement and Background:

"the Act"	means the Town and Country Planning Act 1990.
"Application"	means the application submitted to the Council for planning permission to carry out the Development and given the Council's reference number APP/20/00761.
"Approved Matters"	means any facilities, services, project work or infrastructure relating to the Development or in respect of which this Agreement authorises the financial contributions secured under this Agreement are to be applied.
"Commencement of Development"	means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development is begun other than (for the purposes of this Agreement and for no other purpose) operations consisting of: site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or

	other adverse ground conditions, diversion and laying of services on the Land, and "Commence", "Commencement" and similar expressions shall be construed accordingly.
"CPI"	means the consumer prices index published by the Office for National Statistics.
"Development"	means the erection of a 64 bed older persons care home (Use Class C2) together with the construction of a new access road, parking, drainage works, landscaping and other associated infrastructure on the Land and in accordance with the Planning Permission.
"Expert"	means an independent and suitable person holding appropriate professional qualifications and of at least 10 years' post qualification experience in the area of expertise relevant to the dispute and appointed in accordance with the provisions of clause 10 to determine a dispute
"Health Contribution"	means the sum of £5,600 payable to the Council as a contribution towards increasing the capacity of existing health care facilities in the vicinity of the Land in order to accommodate the increased demand for such services as a result of the Development.
"Index"	means CPI in respect of all financial sums payable to the Council.
"Index Linked"	means increased in accordance with the following formula: Amount payable = the payment specified in this Agreement x (A/B) where: A = the last figure published for the Index that applied immediately preceding the date that the payment is due B = the last figure published for the Index that applied immediately prior to the date of this Agreement.
"Interest"	means interest at 4% above the base lending rate of the Barclays Bank PLC from time to time
"Land"	means the freehold property being land on the east side of Helmsley House, Bartons Road, and west of Normandy Road, Havant, shown edged red on the Plan and registered at the Land Registry with title number SH23161.
"Nutrient Mitigation Contribution"	means the sum of £33,244.50 payable to the Council towards the costs to be incurred by the Council in providing measures to offset the nutrient load of the Development as mitigation against the water quality impacts arising from the Development on the Solent European Protected Sites.
"Occupation"	means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration



Revision

drawing reference:

SITE LOCATION PLAN

revision:
drawing number:
ASK001

M9437_ASK001_Site Location Plan Helmsley Care 1-1250@A3.dwg

date: AUG 2020

short:

checked: JW

Use figured dimensions only. All levels and dimensions to be checked on site. This drawing is to be read in conjunction with all other relevant drawings and specifications.
Huntlins is a trading name of Hunter & Partners Limited.
© Hunter & Partners Limited. All rights reserved.

T 020 8237 8200
F 020 8741 2514
mail@hunters.co.uk
www.hunters.co.uk

hunters

	or occupation for marketing or display and "Occupy" shall be similarly construed.
"Plan"	means the location plan appended to this Agreement with drawing number ASK001.
"Planning Permission"	means the conditional planning permission that may be granted in pursuance of the Application.
"Solent European Protected Sites"	means: • Chichester & Langstone Harbours Special Protection Area; • Chichester & Langstone Harbours Ramsar site • Solent Maritime Special Area of Conservation; • Solent and Dorset Coast Special Protection Area; • Solent and Southampton Water Special Protection Area and Ramsar Site; • Portsmouth Harbour Special Protection Area and Ramsar Site; and • Solent and Isle of Wight Lagoons Special Protection Area.
"Working Day"	means a day other than a Saturday, Sunday or public holiday in England.

2 INTERPRETATION

- 2.1 The clause and paragraph headings in this Agreement are for reference only and do not affect its construction or interpretation.
- 2.2 References to clauses and Schedules are to the clauses and Schedules of this Agreement, unless stated otherwise.
- 2.3 A reference to a paragraph is to the paragraph of the Schedule in which the reference is made, unless stated otherwise.
- 2.4 Words importing one gender include any other genders and words importing the singular include the plural and vice versa.
- 2.5 A reference to a person includes a reference to a firm, company, authority, board, department or other body and vice versa.
- 2.6 Unless this Agreement states otherwise, any reference to any legislation (whether specifically named or not) includes any modification, extension, amendment or re-enactment of that legislation for the time being in force and all instruments, orders, notices, regulations, directions, byelaws, permissions and plans for the time being made, issued or given under that legislation or deriving validity from it.
- 2.7 References to the Land include any part of it.
- 2.8 References to any party in this Agreement include the successors in title of that party and any references to the Council includes any successor local planning authority exercising planning powers under the Act.
- 2.9 References to "including" mean "including, without limitation".

- 2.10 Any covenant by the Owners not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 2.11 Where two or more people form a party to this Agreement, the obligations they undertake may be enforced against them all jointly or against each of them individually.
- 2.12 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement shall be unaffected.

3 STATUTORY PROVISIONS

- 3.1 This Agreement is made by deed pursuant to section 106 of the Act, section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011.
- 3.2 To the extent that they fall within the terms of section 106 of the Act, the obligations contained in this Agreement are planning obligations for the purposes of the Act and is enforceable by the Council.
- 3.3 To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the Act, they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other enabling powers.
- 3.4 Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers, functions or discretions in relation to the Land or otherwise.

4 COMMENCEMENT OF AGREEMENT

This Agreement shall have effect from the date hereof.

5 OWNERS COVENANTS

The Owners covenant with the Council to comply observe and perform the obligations as set out in this Agreement.

6 REGISTRATION

This Agreement shall be registered by the Council as a Local Land Charge in the Register of Local Land Charges maintained by the Council.

7 RELEASE

- 7.1 No party shall be liable for any breach of a covenant, restriction or obligation contained in this Agreement after parting with all its interest in the Land except in respect of any breach subsisting prior to parting with such interest.
- 7.2 No planning obligation contained in this Agreement shall be binding on any land held by any of the statutory undertakers for their statutory functions.

8 NOTICES

- 8.1 The Owners agree to give the Council immediate written notice of any change in Ownership of any of its interests in the Land occurring before all the obligations under this Agreement have been discharged and such notice shall give details of the transferee's full name and

8.1.1 registered office where the transferee is a company

8.1.2 usual address where the transferee is not a company

together with details of the area of the Land or unit of occupation transferred by reference to a plan.

8.2 Any notice, demand or any other communication to be given under or in connection with this Agreement shall be in writing and will be effective only if delivered by hand or sent by recorded delivery to the party due to receive the notice, demand or communication.

8.3 Any notice, demand or any other communication served shall be sent to the address of the relevant party set out at the beginning of this Agreement or to such other address as one party may notify in writing to the others at any time as its address for service and in the case of service upon the Council shall be marked for the attention of the Head of Legal.

8.4 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means shall be treated as having been served:

8.4.1 if delivered by hand, at the time of delivery; or

8.4.2 if sent by recorded delivery, at the time delivery was signed for.

8.5 If a notice, demand or any other communication is served after 4.00pm on a Working Day, or on a day that is not a Working Day, it shall be treated as having been served on the next Working Day.

8.6 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

9 COSTS OF THIS AGREEMENT

On or before completion of this Agreement the Owners shall pay to the Council its reasonable and proper legal costs in connection with the preparation, negotiation and completion of this Agreement.

10 DETERMINATION OF DISPUTES

10.1 Subject to clause 10.6, if any dispute arises relating to or arising out of the terms of this Agreement, either party may give to the other not less than 10 Working Days written notice requiring the dispute to be determined under this clause 10. The notice shall propose an appropriate Expert and specify the nature and substance of the dispute and the relief sought in relation to the dispute.

10.2 Any dispute over the appointment of the Expert appropriate to resolve the dispute may be referred at the request of either party to the President or next most senior available officer of the Law Society of England and Wales who will have the power, with the right to take such further advice as he may require, to determine the appropriate Expert and to arrange his nomination.

10.3 The Expert shall act as an independent expert and:

10.3.1 each party may make written representations within ten Working Days of his appointment and will copy the written representations to the other party;

- 10.3.2 each party shall have a further ten Working Days to make written comments on the other's representations and will copy the written comments to the other party;
- 10.3.3 the Expert shall be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;
- 10.3.4 the Expert shall not take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross examine each other;
- 10.3.5 the Expert shall have regard to all representations and evidence before him when making his decision, which shall be in writing, and shall give reasons for his decision; and
- 10.3.6 the Expert shall use all reasonable endeavours to publish his decision within 30 Working Days of his appointment.
- 10.4 Responsibility for the costs of referring a dispute to an Expert under this clause 10, including costs connected with the appointment of the Expert and the Expert's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Expert.
- 10.5 This clause 10 does not apply to disputes touching or concerning the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts.
- 10.6 The provisions of this clause 10 shall not affect the ability of the Council to apply for and be granted declaratory relief injunction specific performance payment of any sum damages or any other means of enforcing this Agreement and consequential and interim orders and relief.

11 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

For the purposes of the Contracts (Rights of Third Parties) Act 1999 this Agreement is not made for the benefit of nor shall any of its provisions be enforceable by any person other than the parties to his Agreement and their successors in title.

12 INDEXATION

- 12.1 All sums payable to the Council shall be Index Linked.
- 12.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Owners in writing.

13 INTEREST

If any sum due under this Agreement is paid late Interest will be payable from the date payment is due until the date of payment.

14 WAIVER

No failure or delay by the Council to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver (whether express or implied) for any breach or default by the Owners in performing or observing any of the covenants, restrictions or obligation contained in this Agreement. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

15 SPEND IN ADVANCE

15.1 The Council is entitled at its sole discretion to:

15.1.1 enter into contractual arrangements;

15.1.2 incur expenditure, including but not limited to any design costs; and/or

15.1.3 commence works,

in respect of any Approved Matters at any time, even if the trigger point for the payment of the relevant financial contribution has not yet arisen.

15.2 If the Council exercises its right under clause 15.1 and if the trigger point for the relevant financial contribution subsequently occurs:

15.2.1 the Council may immediately following receipt of any financial contribution secured under this Agreement, deduct from that financial contribution a sum equivalent to the amount of expenditure or liability incurred in relation to the associated Approved Matters (Deduction);

15.2.2 the Council shall not be required to repay any Deduction or account for any interest accrued on it; and

15.2.3 any such Deduction or any interest accrued on it shall be and remain the property of the Council.

16 TERMINATION

16.1 The obligations in this Agreement (with the exception of clause 9) shall cease to have effect if before Commencement of Development, the Planning Permission:

16.1.1 expires;

16.1.2 is revoked; or

16.1.3 is quashed following a successful legal challenge.

17 FUTURE PERMISSIONS

17.1 Subject to clause 17.2, nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement.

17.2 This Agreement shall apply to any planning permission subsequently granted under section 73 or 73A of the Act which permits non-compliance with any of the conditions attached to the Planning Permission or any planning permission granted under such powers (a "Subsequent Permission") and the Planning Permission shall be construed to include the development as stated in the Subsequent Permission unless otherwise required by the Council.

18 JURISDICTION

18.1 This Agreement shall be governed by and interpreted in accordance with the laws of England.

18.2 The Courts of England shall have jurisdiction in relation to any disputes between the parties arising out of or related to this Agreement.

SCHEDULE
OWNERS' COVENANTS

The Owners covenant:

1 COMMENCEMENT OF DEVELOPMENT

To give to the Council not less than ten Working Days written notice of their intention to Commence Development.

2 NUTRIENT MITIGATION CONTRIBUTION

Not to Commence or permit Commencement of Development until the Nutrient Mitigation Contribution has been paid to the Council.

3 HEALTH CONTRIBUTION

Not to Occupy nor permit Occupation of the Development until the Health Contribution has been paid to the Council.

IN WITNESS of which this document has been duly executed as a deed and delivered on the date stated at the beginning of this document.

EXECUTED as a DEED by affixing

THE COMMON SEAL of

THE COUNCIL OF THE BOROUGH OF HAVANT

in the presence of:



Authorised Signatory

Signed as a Deed by JUDITH MARY)
DARMADY in the presence of :)
)

.....
OWNER

Witness

.....
WITNESS

Name:

Address:

Occupation:

Peter Craham as attorney for

Signed as a Deed by EDWARD)

JOHN DARMADY in the presence of :)

OWNER

Witness

WITNESS

Name:

Address:

Occupation:

Signed as a Deed by SIMON)

GERALD PIGOT WILLIAMS in the)

presence of :)

OWNER

WITNESS

Witness

Name:

Address:

Occupation:

Signed as a Deed by LUCY

GEORGIANA PIGOT WILLIAMS in

the presence of :

)
)
)
)

[Redacted Signature]

OWNER

[Redacted Signature]

WITNESS

Witness

Name:

Address:

Occupation:

[Redacted Name, Address, and Occupation]