

DATED

17th December

2019

TUNBRIDGE WELLS BOROUGH COUNCIL

-and-

THE KENT COUNTY COUNCIL

-and-

PROGRESSIVE DEVELOPERS LAND LTD

-and-

MCCARTHY & STONE RETIREMENT LIFESTYLES LIMITED

-and-

OMNI PROPERTY FINANCE LIMITED

**DEED OF AGREEMENT PURSUANT TO
SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990
RELATING TO THE DEVELOPMENT OF
LAND AT THE WHITE HOUSE, HIGHGATE HILL, HAWKHURST, KENT TN18 4LB
Planning Application Ref No : 19/01271/FULL**

Mid Kent Legal Services
Tunbridge Wells Borough Council
Mount Pleasant Road
Royal Tunbridge Wells
Kent
TN1 1RS
Ref.: T013012



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THIS DEED OF AGREEMENT is dated the 17th day of December 2019

BETWEEN

- 1) **TUNBRIDGE WELLS BOROUGH COUNCIL** of Mount Pleasant Road, Royal Tunbridge Wells, Kent TN1 1RS (the "**Borough Council**") and
- 2) **THE KENT COUNTY COUNCIL** of Sessions House, County Hall, Maidstone, Kent ME14 1XQ (the "**County Council**") and
- 3) **PROGRESSIVE DEVELOPERS LAND LTD** (Company Registration No 10441462) whose registered office is at The Old Saw Mill, Langton Road, Speldhurst, Tunbridge Wells, Kent TN3 OJU (the "**Owner**") and
- 4) **OMNI PROPERTY FINANCE LIMITED** (Company Registration No 12085679) whose registered office is at 7 Air Street, London W1B 5AD (the "**Mortgagee**") and
- 5) **MCCARTHY & STONE RETIREMENT LIFESTYLES LIMITED** (Company Registration No 06622231) whose registered office is 4th Floor, 100 Holdenhurst Road, Bournemouth BH8 8AQ ("**McCarthy & Stone**")

RECITALS

- A. The Borough Council is the local planning authority and local housing authority for the area within which the Land is situated and the appropriate statutory body to enforce this Deed for the purposes of Section 106 of the 1990 Act.
- B. The County Council is a local planning authority for the purposes of the 1990 Act and is a principal council within the meaning of section 270(1) of the Local Government Act 1972 and is the statutory authority responsible for local highways and social care for the area within which the Land is situated.
- C. The Application was made to the Borough Council.
- D. The Borough Council by its Planning Committee at its meeting held on 11 September 2019 resolved that planning permission be granted for the Development subject to conditions and the prior completion of this Deed (without which planning permission would have been refused).
- E. The Owner is a person interested in the Land by virtue of being the registered proprietor with freehold title absolute of the Land as set out in Schedule 1.
- F. McCarthy & Stone is the beneficiary of a registered restriction on the title to the Land as set out in Schedule 1 (relating to a conditional contract for the purchase of the Land) and will observe the restrictions and perform the obligations contained in this Deed

once it shall have acquired a legal interest in the Land being not merely a registered contractual interest except those obligations which have been discharged before it acquires such interest.

- G. The Mortgagee is a person interested in the Land by virtue of being the proprietor of a registered charge on the Land as set out in paragraph 3 of Schedule 1.
- H. The Parties agree that the obligations contained in this Deed are necessary to make the Development acceptable in planning terms directly relate to the development and fairly and reasonably relate in scale and kind to the Development in accordance with Regulation 122 of the Community Infrastructure Regulations 2010.
- I. The Owner McCarthy & Stone and the Mortgagee have agreed to enter into this Deed to regulate the Development and to give effect to the terms of the resolution of the Borough Council's Planning Committee hereinbefore recited which Deed may also secure other planning benefits.
- J. The Borough Council is a Local Authority for the purposes of Section 111 of the Local Government Act 1972 and is satisfied that the arrangements made in this Deed will facilitate be conducive to and be incidental to the Borough Council's functions.
- K. This Deed is made pursuant to Section 106 of the 1990 Act and to the extent that any obligations contained in this Deed are not planning obligations for the purposes of the 1990 Act they are entered into by the Borough Council pursuant to the powers contained in section 111 of the Local Government Act 1972 sections 12 and 93 of the Local Government Act 2003 section 1 of the Localism Act 2011 and all other powers so enabling.

OPERATIVE PROVISIONS

IT IS AGREED as follows

1 DEFINITIONS

- 1.1 Unless the context otherwise requires where in this Deed the following defined terms and expressions are used they shall have the following respective meanings and (where applicable) be supplemented by the definitions contained in Paragraphs 1.1 to the relevant Schedule(s):

“1990 Act”	means the Town and Country Planning Act 1990 (as amended).
“All in Tender Price Index”	means the All in Tender Price Index published by the Building Costs Information Service on behalf of the Royal Institution of Chartered Surveyors.
“Application”	means the application for full planning permission submitted by McCarthy & Stone to the Borough Council to carry out the Development at the Land and given the registered reference number 19/01271/FULL.
“Borough Council Contributions”	means the financial contributions payable to the Borough Council pursuant to Schedule 3 comprising <ul style="list-style-type: none"> a) the Affordable Housing Contribution b) the NHS Healthcare Contribution c) the Traffic Regulation Order Contribution.
“Commencement of Development”	means the carrying out of a material operation as defined in section 56(4) of the 1990 Act which is not a Preparatory Operation and the words “Commence” and “Commence Development” shall be construed accordingly.
“County Council Contributions”	means the financial contributions payable to the County Council pursuant to Schedule 4 comprising <ul style="list-style-type: none"> a) the Public Transport Contribution b) Social Care Contribution c) Replacement Tree Contribution.
“Deed”	means this deed of agreement together with all Schedules and Appendices.
“Development”	means Demolition of existing dwelling and erection of 43 retirement living apartments with associated communal facilities, access, parking and landscaping on the Land

as set out in the Application pursuant to the Planning Permission.

“Dwelling”

means any residential unit to be erected on the Land pursuant to the Planning Permission.

“General Building Cost Index”

means the General Building Cost Index as published by the Building Costs Information Service on behalf of the Royal Institution of Chartered Surveyors.

“Index Linked”

means adjusted by reference to the relevant index pursuant to the provisions of Clause 19.

“Interest Rate (Borough Council)”

means interest at 4% per annum above the base lending rate of Lloyds Bank PLC from time to time applicable at the actual date of payment.

“Interest Rate (County Council)”

means interest at 4% per annum above the base lending rate of Bank of England base rate from time to time applicable at the actual date of payment.

“Land”

means the land against which this Deed may be enforced as detailed in Schedule 1 and shown edged red on the Plan.

“Occupy”

means taking beneficial occupation of a building forming part of the Development for any purpose authorised by the Planning Permission but not including non residential use occupation by personnel engaged in construction fitting out finishing or decoration or non residential use occupation for marketing of that building nor non residential use occupation in relation to site and building security operations and for the avoidance of doubt the sale of any Dwelling shall constitute permitting its occupation and **“Occupation”** **“Occupier”** or **“Occupied”** shall be construed accordingly.

“Parties”

means the Owner McCarthy & Stone the Mortgagee the Borough Council and the County Council as the context

so requires and **"Party"** means any one of them.

"Plan"

means the plan entitled "Site Location Plan" (Drawing No SE-2550-03-AC-01 A) and dated August 2018 annexed as Appendix 1.

"Planning Permission"

means planning permission for the Development to be granted pursuant to the Application subject to conditions.

"Practical Completion"

means the proper issue of one or more certificate(s) of practical completion of any works carried out pursuant to this Deed or as the context may allow any part section or phase thereof by an independent architect civil engineer chartered surveyor or other certifying professional (as the case may be) and the term **"Practically Complete"** shall be construed accordingly.

"Preparatory Operation"

means an operation or item of work of or connected with or ancillary to:

- a) archaeological investigations;
- b) investigations for the purpose of assessing ground conditions;
- c) exploratory boreholes and trial pits;
- d) site clearance;
- e) demolition work;
- f) works to remove any existing substation;
- g) remedial work in respect of any contamination or other adverse ground conditions;
- h) diversion decommissioning and/or laying of services for the supply or carriage of water sewerage gas electricity telecommunications or other media or utilities;
- i) the erection of fences and hoardings around the Land;

- j) the erection of any temporary means of enclosure;
- k) the temporary display of site notices or advertisements; and
- l) construction of temporary access and service roads.

"Statutory Undertakers" means any public gas transporter water or sewerage undertaker electricity supplier or public telecommunications operator.

"VAT" means Value Added Tax as referred to in the Value Added Tax Act 1994 (or any tax of a similar nature which may be substituted for or levied in addition to it).

"Working Day" means a day which is not a Saturday Sunday bank holiday in England (as defined in paragraph 1 of Schedule 1 to the Banking and Financial Dealings Act 1971) or other public holiday.

2 INTERPRETATION

- 2.1 A reference to any Clause Plan Paragraph Schedule Appendix or Recital such reference is a reference to a Clause Plan Paragraph Schedule Appendix or Recital in (or in the case of plans attached to) this Deed.
- 2.2 The headings in this Deed are for convenience only and shall not be deemed to be part of or taken into consideration in the interpretation of this Deed.
- 2.3 Words importing the singular include the plural and vice versa.
- 2.4 Words importing the masculine gender include the feminine and neuter genders and vice versa.
- 2.5 Words denoting actual persons include companies corporations and firms and all such words shall be construed as interchangeable in that manner.
- 2.6 Reference to any Party to this Deed shall include the successors in title to that Party and to any person deriving title through or under that Party and in the case of the

Borough Council or the County Council (as the case may be) shall include any successor to their respective statutory functions.

- 2.7 Reference to any officer of the Borough Council means such officer or such other officer as may be lawfully designated by the Borough Council for the purposes of discharging such duties and functions.
- 2.8 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 against each individual severally.
- 2.9 Words denoting an obligation on a Party to do any act matter or thing include an obligation to procure that it be done and words placing a Party under a restriction include an obligation not to cause permit or suffer any infringement of the restriction.
- 2.10 References in this Deed to statutes bye-laws regulations orders and delegated legislation shall include any statute bye-law regulation order delegated legislation plans regulations permissions and directions amending re-enacting consolidating replacing or made pursuant to the same as current and in force from time to time.
- 2.11 Any words following the terms "including" "include" "in particular" "for example" or any similar expression shall be construed as illustrative and shall not limit the sense of the words description definition phrase or term preceding those terms.

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to section 106 of the 1990 Act section 111 of the Local Government Act 1972 sections 12 and 93 of the Local Government Act 2003 section 1 of the Localism Act 2011 and any other enabling powers.
- 3.2 The covenants obligations restrictions and requirements imposed upon the Parties by this Deed:
- 3.2.1 are entered into pursuant to the provisions of section 106 of the 1990 Act;
- 3.2.2 are planning obligations for the purposes of section 106 of the 1990 Act;
- 3.2.3 relate to the Land;
- 3.2.4 subject to clause 8 of this Deed are entered into with intent to bind the Owners

McCarthy & Stone and the Mortgagee's interest(s) in the Land as set out in Schedule 1 and each and every part thereof into whosoever hands the same may come;

3.2.5 are enforceable by the Borough Council and the County Council (as the case may be) as local planning authority; and

3.2.6 are executed by the respective Parties as a deed.

3.3 To the extent that any obligations contained in this Deed are not planning obligations within the meaning of the 1990 Act they are entered into by the Borough Council and the County Council (as the case may be) pursuant to the powers contained in section 111 of Local Government Act 1972 sections 12 and 93 of the Local Government Act 2003 Section 1 of the Localism Act 2011 and all other powers so enabling.

4 CONDITIONALITY

4.1 With the exception of this Clause 4 and Clauses 1 2 3 5.3 and 7 to 24 inclusive (which take effect immediately on the date of this Deed) this Deed is conditional on the grant and issue of the Planning Permission.

5 COVENANTS AND OBLIGATIONS OF THE OWNER

5.1 The Owner covenants with the Borough Council and the County Council respectively (as the case may be) to perform and observe the covenants obligations restrictions and requirements contained within this Deed.

5.2 The Owner shall permit the Borough Council and its authorised employees and agents upon reasonable notice to enter the Land at all reasonable times for the purposes of verifying whether or not any planning obligations arising under this Deed have been performed or observed **SUBJECT TO** compliance by the Borough Council and its authorised employees and agents at all times with the Owner's site regulations and requirements and health and safety law and good practice.

5.3 The Owner covenants to pay before completion of this Deed:

5.3.1 the Borough Council's reasonable legal and administrative costs and disbursements in connection with the negotiation preparation and execution of this Deed; and

5.3.2 the County Council's reasonable legal and administrative costs in connection with the negotiation and execution of this Deed;

whether or not this Deed is delivered in accordance with Clause 24.

6 COVENANTS AND OBLIGATIONS OF THE BOROUGH COUNCIL AND THE COUNTY COUNCIL

6.1 The Borough Council covenants with the Owner that subject to the Owner carrying out and observing the Owner's covenants obligations restrictions and requirements herein it will perform the Borough Council's covenants as set out herein.

6.2 The County Council covenants with the Owner that subject to the Owner carrying out and observing the Owner's covenants obligations restrictions and requirements herein it will perform the County Council's covenants as set out herein.

7 MORTGAGEE'S CONSENT

7.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Land shall be bound by the obligations contained in this Deed and that the security of its charge over the Land shall take effect subject to this Deed **PROVIDED THAT** the Mortgagee shall have no liability under this Deed unless it takes possession of the Land or any part of the Land in which case the Mortgagee shall be bound by the provisions of this Deed as a person deriving title from the Owner.

8 RELEASE AND EXCLUSIONS

8.1 Save for Clause 5.2 this Deed shall not be enforceable against any Statutory Undertaker with any existing interest in any part of the Land or acquires an interest in any part of the Land for the purpose of the supply of electricity gas water or sewerage drainage or public telecommunication services.

8.2 Save for Clause 5.2 and those obligations contained in this Deed specifically regulating the use of land or buildings after construction no planning obligations contained in this Deed shall be binding on any freehold or leasehold owners or occupiers of individual Dwellings (or their respective mortgagees or successors in title) constructed pursuant to the Planning Permission.

8.3 No person shall be liable for breach of any of the planning obligations or other provisions of this Deed after they shall have irrevocably parted with their entire interest

in the Land or that part of the Land in relation to which such breach occurs but without prejudice to the rights of the Borough Council in relation to any subsisting or any antecedent breach non-performance or non-observance arising prior to parting with such interest.

9 DETERMINATION OF THE PLANNING PERMISSION

- 9.1 Save for Clause 5.3 this Deed 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 expires prior to Commencement of Development without the consent of the Owner.
- 9.2 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission or modification variation or amendment thereof) granted after the date of this Deed.
- 9.3 If the Borough Council agrees following an application under section 73 of the 1990 Act to vary or release any condition contained in the Planning Permission or if a condition is varied or released following an appeal under section 78 of the 1990 Act the covenants or provisions of this Deed shall be deemed to bind the varied permission and apply in equal terms to the new planning permission UNLESS the Borough Council in determining the application for the new planning permission (or the Secretary of State determining the section 78 appeal in relation to that application) indicates that consequential amendments are required to this Deed to reflect the impact of the section 73 application in which circumstances a separate deed under section 106 or s.106A of the 1990 Act (as the case may be) will be required to secure relevant planning obligations or other planning benefits relating to the new planning permission BUT nothing in this Deed shall in any way fetter the Borough Council's discretion in relation to the section 73 application or the determination thereof.

10 DISPUTES AND EXPERT DETERMINATION

- 10.1 Without prejudice to the rights of the Borough Council or the County Council; (as the case may be) to take immediate alternative action in the event of any dispute (or difference between the Parties touching or concerning any matter arising out of this Deed (SAVE FOR the amount of any contribution payable pursuant to this Deed or the due date of payment) such dispute or difference shall be referred to an expert ("the Expert") to be appointed on the application of the Parties by the President (or

equivalent person) for the time being of the professional body in England chiefly relevant to such dispute or difference.

- 10.2 In the absence of agreement as to whom to appoint as the Expert or as to the appropriate professional body referred to in Clause 10.1 within ten (10) Working Days after a written request by one Party to the others to agree to the appointment of an Expert then the question of the appropriate Expert or professional body shall be referred to a solicitor to be appointed by the President for the time being of the Law Society of England and Wales on the application of a Party and such a solicitor shall act as an expert and his decision as to the Expert or as to the appropriate professional body shall be final and binding on the Parties to the dispute or difference and his costs shall be payable by the Parties to the dispute in such proportion as he shall determine and failing such determination shall be borne in equal shares.
- 10.3 The Expert shall act as an expert and save in case of manifest error his decision shall be final and binding on the Parties to the dispute or difference and his costs shall be payable by the Parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the Parties to the dispute or difference in equal shares.
- 10.4 The Expert shall be required to give notice to each of the Parties to the dispute requiring them to submit to him within ten (10) Working Days of notification of his appointment written submissions and supporting material and the other Party will be entitled to make a counter written submission within a further ten (10) Working Days in respect of any such submission and supporting material.
- 10.5 Any expert howsoever appointed shall be subject to the express requirement that a decision shall be in writing (and give reasons for his decision) and shall be reached and communicated to the relevant Parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight (28) Working Days after the conclusion of any hearing that takes place or twenty-eight (28) Working Days after he has received the last submission or written representation.
- 10.6 Nothing in this Clause 10 shall be taken to fetter or limit the ability of the Borough Council to carry out its functions and duties nor to limit the ability of any of the Parties to refer a dispute to the Courts of England and Wales.

11 Notices

11.1 Any notice approval consent certificate direction authority agreement action expression of satisfaction or other communication to be given under this Deed must be in writing and shall be delivered by hand or sent by pre-paid first class post or other next Working Day delivery service marked for the attention of the person and copied to the person(s) (as the case may be) identified below **SAVE THAT** any of the Parties may by written notice notify the other Parties of an alternative address (which address must be based in England and Wales) for the service of subsequent notices or other written communications in which case those details shall be substituted for the details provided below:

The Borough Council Tunbridge Wells Borough Council

Address **The Head of Planning Services**
Mount Pleasant Road
Royal Tunbridge Wells
Kent
TN1 1RS

Reference 19/01271 THE WHITE HOUSE TN18 4LB

With a copy to **The Section 106 Monitoring Officer**

Where required **The Head of Housing, Health & Environment**

The County Council **The Kent County Council**

Address **Office of the General Counsel**
County Hall
Maidstone
Kent
ME14 1XQ

Reference PH/KEN002:000549

The Owner **Progressive Developers Land Limited**

Address The Old Saw Mill
Langton Road
Speldhurst
Tunbridge Wells
Kent
TN3 0JU

AND

C/O Rice-Jones & Smiths Solicitors
7 Ely Place
London
EC1N 6RY

Attention of David Kain

The Mortgagee

Omni Property Finance Limited

Address

7 Air Street
London
W1B 5AD

McCarthy & Stone

McCarthy & Stone Retirement Lifestyles Limited

Address

FAO Development Manager
2 Genesis Business Park
Albert Drive
WOKING
Surrey
GU21 5RW

11.2 Any notice approval consent certificate direction authority agreement action expression of satisfaction or other communication given pursuant to this Deed shall conclusively be deemed to have been received:

11.2.1 if delivered by hand on signature of a delivery receipt provided that if delivery occurs before 09h00 on a Working Day the notice will be deemed to have been received at 09h00 on that day and if delivery occurs after 17h00 on a Working Day or on a day which is not a Working Day the notice will be deemed to have been received at 09h00 on the next Working Day; or

11.2.2 if sent by pre-paid first class post or other next Working Day delivery service within the United Kingdom at 09h00 on the day 2 Working Days after the date of posting.

11.3 Any notice or request by the Owner for approval consent certificate direction authority agreement action expression of satisfaction or other communication required pursuant to this Deed shall cite the Clause or Paragraph of the relevant Schedule to this Deed to which such notice or request relates.

11.4 This Clause does not apply to the service of any proceedings or other documents in any legal action or where applicable any arbitration or other method of dispute

11.1 resolution.

12 LOCAL LAND CHARGE

12.1 This Deed is a local land charge and shall be registered as such.

12.2 Where in the opinion of the Owner any of the provisions of this Deed have been satisfied the Owner shall be entitled to apply to the Borough Council for confirmation to that effect and (subject to the payment of the Borough Council's reasonable costs and charges in connection therewith) upon the Borough Council being satisfied that the relevant obligation or covenant (as the case may be) has been satisfied the Borough Council shall as soon as is reasonably practicable issue a written confirmation to such effect to the Owner.

12.3 The Borough Council shall upon the written request of the Owner (and subject to the payment of the Borough Council's reasonable costs and charges in connection therewith) at any time after all the obligations of the Owner under this Deed have been performed or otherwise discharged and the Borough Council being satisfied that this Deed no longer serves a useful purpose as soon as is reasonably practicable cancel all entries made in the local land charges register in respect of this Deed.

13 SUCCESSORS IN TITLE

13.1 The Owner enters into the obligations set out in this Deed for itself and its successors in title for the benefit of the Borough Council and the County Council to the intent that the obligations in this Deed shall be enforceable not only against the Owner but also against the successors in title of the Owner and any person claiming through or under the Owner an interest or estate in the Land or any part thereof.

14 POWERS OF THE BOROUGH COUNCIL

14.1 Nothing contained or implied in this Deed shall fetter prejudice restrict or affect the rights discretions powers duties responsibilities and obligations of the Borough Council or the County Council (as the case may be) under all and any legislative instrument including statutes by-laws statutory instruments orders and regulations for the time being in force in the exercise of its function as a local authority.

15 SEVERABILITY

15.1 If any provision (or part thereof) of this Deed shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions (or such part of the provisions as is still enforceable) shall not in any way be deemed

thereby to be affected impaired or called into question.

16 RIGHTS OF THIRD PARTIES

- 16.1 The Parties intend that no terms of this Deed may be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to this Deed.

17 CHANGE OF OWNERSHIP AND NEW INTEREST

- 17.1 The Owner warrants that:

17.1.1 they have full authority to enter into this Deed;

17.1.2 no person other than the persons identified in Schedule 1 has any legal or equitable interest in the Land subject to the entries set out in the official copies for title no. TT62754 and that (save for the legal charge in favour of the Mortgagee) it has not leased mortgaged charged or otherwise created any interest in the Land at the date of this Deed;

17.1.3 they know of no impediment to the validity of this Deed;

17.1.4 there is no subsisting breach of the terms of any mortgage or legal charges secured on the Land and that (if applicable) all payments due to any mortgagee or chargee are paid as at the date of this Deed;

17.1.5 they shall make good any loss to the Borough Council as a result of a breach of this warranty within ten (10) Working Days of a request to do so.

- 17.2 The Owner shall give the Borough Council immediate written notice of any conveyance transfer lease assignment mortgage or other disposition entered into in respect of all or any part of the Land or change in ownership of any of its interests in the Land occurring before all the obligations under this Deed have been discharged such notice to give:

17.2.1 the name and address of the person to whom the disposition was made (and in the case of a company the full name and registered office address); and

17.2.2 the nature and extent of the interest disposed of by reference to a plan.

- 17.3 In the event that the Owner's existing interest in the Land shall be determined

(whether by surrender merger forfeiture or otherwise) and the Owner shall acquire another interest in the Land (written notice of which shall be given to the Borough Council) and the Planning Permission shall have either been Implemented or shall remain capable of Implementation then the Owner as the case may be will within twenty-eight (28) days from a written request from the Borough Council execute or procure the execution of another Deed on the same terms mutatis mutandis as this Deed.

- 17.4 In the event of the Borough Council considering it appropriate to note the provisions of this Deed against the title to the Land at H M Land Registry the Owner (and Mortgagee) hereby consents.

18 WAIVER

- 18.1 No waiver (whether expressed or implied) by the Borough Council or the County Council (as the case may be) of any breach or default or delay in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Borough Council or the County Council (as the case may be) from enforcing any of the relevant terms or conditions or acting upon any subsequent breach or default and 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.

19 INDEXATION

- 19.2 All the financial contributions payable pursuant to this Deed shall be Index Linked.
- 19.3 The following Borough Council Contributions payable pursuant to this Deed shall be increased in the same proportion as the percentage increase in the General Building Cost Index between the quarterly index figure immediately proceeding the Committee Resolution and the quarterly index figure for the quarter immediately preceding the date of the payment becoming due:
- 19.3.1 the Affordable Housing Contribution; and
- 19.3.2 the NHS Healthcare Contribution.
- 19.4 The following Borough Council Contribution payable pursuant to this Deed shall be increased in the same proportion as the percentage increase in the All in Tender Price

Index from October 2016 (Index 328.3) and the quarterly index figure for the quarter immediately preceding the date of the payment becoming due:

19.4.1 the Traffic Regulation Order Contribution.

19.5 The following County Council Contributions payable pursuant to this Deed shall be increased in the same proportion as the percentage increase in the General Building Cost Index from October 2016 (Index 328.3) and the quarterly index figure for the quarter immediately preceding the date of the payment becoming due:

19.5.1 the Public Transport Contribution;

19.5.2 the Replacement Tree Contribution; and

19.5.3 the Social Care Contribution.

19.6 Where reference is made to any index in this Deed 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) issued or caused to be issued from time to time by the Building Costs Information Service Royal Institution of Chartered Surveyors or other appropriate body and as may commonly be used in place of that index and as approved by the Borough Council or the County Council (as the case may be) or in the event the index is not replaced to an alternative reasonably comparable basis or index as the Borough Council or the County Council (as the case may be) shall approve.

20 INTEREST

20.2 If any sum or amount due under this Deed has not been paid to the Borough Council by the date it is due the Owner shall pay the Borough Council interest on that amount at the Interest Rate (Borough Council) with such interest accruing on a daily basis for the period from the date payment is due to and including the date of payment.

20.3 If any sum or amount due under this Deed has not been paid to the County Council by the date it is due the Owner shall pay the County Council interest on that amount at the Interest Rate (County Council) with such interest accruing on a daily basis for the period from the date payment is due to and including the date of payment.

21 VAT

21.1 Each amount stated to be payable by one Party to the other under or pursuant to this

Deed is exclusive of VAT.

- 21.2 If any VAT is at any time chargeable on any supply made by any Party under or pursuant to this Deed the Party making the payment shall pay the other an amount equal to that VAT as additional consideration subject to receipt of a valid VAT invoice.

22 AGREEMENTS AND DECLARATIONS

- 22.1 The Parties agree that:

22.1.1 nothing in this Deed constitutes a planning permission or an obligation to grant planning permission; and

22.1.2 nothing in this Deed grants planning permission or any other approval consent or permission required from the Borough Council or the County Council (as the case may be) in the exercise of any other statutory function .

23 JURISDICTION

- 23.1 This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

- 23.2 It is hereby agreed that the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

24 DELIVERY

- 24.1 This Deed is delivered on the date written at the start and the provisions of this Deed (other than this Clause and Clause 5.3 which shall be of immediate effect) shall be of no effect until this Deed has been dated.

IN WITNESS whereof the Parties hereto have executed this Deed on the day and year first before written

The COMMON SEAL of
**TUNBRIDGE WELLS BOROUGH
COUNCIL** was affixed to this Deed
in the presence of



Authorised Signatory

The COMMON SEAL of **THE KENT
COUNTY COUNCIL** was affixed to
this Deed in the presence of



Authorised Signatory

Executed as a deed by
**PROGRESSIVE DEVELOPMENTS
LAND LTD** acting David Anthony
McLaughlin a director in the
presence of:



Director Signature and NAME IN BLOCK
CAPITALS **DAVID ANTHONY MCLAUGHLIN**

.....
Witness Signature



Witness Name:

DAVID RAIN

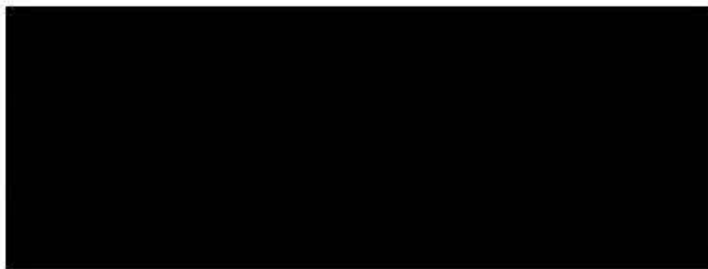
Witness Address:

RICE-JONES & SMITHS
7 ELY PLACE, LONDON, EC1N 6RY
OX 224 LONDON/CHANDERY LANE
TEL: 020 7831 2806 FAX: 020 7831 5465

Witness Occupation:

CONVEYANCER

EXECUTED as a deed by)
MCCARTHY & STONE)
RETIREMENT LIFESTYLES)
LIMITED acting by one director)
in the presence of)



Witness Signature

Witness Name: *NERONILA LIMBERGER*

Witness Address: *McCarthy & Stone
Retirement Lifestyles Ltd
48th Floor
100 Holdenhurst Road
Bournemouth BH8 8AQ*

Witness Occupation: *LEGAL ASSISTANT*

Executed as a deed by EMOK

~~AS ATTORNEY FOR AND ON
BEHALF OF OMNI PROPERTY
FINANCE LIMITED~~



Attorney *DIRECTOR*

Print name/title *ELISSA VON BROEMSEN - KLUEVER*



IN THE PRESENCE OF

Witness

Print name/ title *NIGEL MICHAEL ALEXANDER
Head of Underwriting*

SCHEDULE 1: THE LAND

The land against which this Deed is enforceable comprises all that land and premises situate at the west side of Highgate Hill, Hawkhurst, Cranbrook and known as the White House and as shown on the Plan of which:

1. The Owner is the registered proprietor of the freehold with title absolute of all the freehold land and premises as the same is shown edged red on the Plan and is registered at the Land Registry under title number TT62754 subject to the matters in the Charges Registers but otherwise free from encumbrances.
2. McCarthy & Stone are the beneficiary of a unilateral notice registered against title number TT62754 regarding an agreement for sale dated 2 July 2018 in respect of the land.
3. The Mortgagee is the proprietor of a registered charge dated 10 October 2019 on title number TT62754.

SCHEDULE 2: NOTICES

Without prejudice to any other notice required to be given pursuant to the terms of this Deed the Owner covenants that:

Pre-Commencement and Commencement Notification

- 1 it shall provide the Borough Council with no less than 20 Working Days prior notice of the intended date of Commencement of Development and the Owner shall:
 - 1.1 not Commence Development unless and until this notice has been provided to the Borough Council; and
 - 1.2 notify the Borough Council promptly and in any event within 5 Working Days of the actual date of Commencement of Development.

Occupation Notification

- 2 it shall provide the Borough Council with no less than 20 Working Days prior notice of the intended date of Occupation of the 15th Dwelling to be occupied in the Development; and
 - 2.1 the Owner shall not Occupy more than 14 Dwellings unless and until this notice has been provided to the Borough Council;
 - 2.2 it shall notify the Borough Council promptly and in any event within 5 Working Days of the actual date of Occupation of the Development.

Completion Notification

- 3 it shall provide the Borough Council with the final Certificate of Practical Completion of the Development.

SCHEDULE 3: FINANCIAL CONTRIBUTIONS PAYABLE TO THE BOROUGH COUNCIL

1 Interpretation of this Schedule

1.1 Unless the context otherwise requires where in this Schedule the following defined terms and expressions are used they shall have the following respective meanings and (where applicable) be supplemented by Clause 1.1 and Paragraph 1.1 of the other relevant Schedules:

- “Affordable Housing”** means housing for sale or rent, that will be available to Eligible Persons in Housing Need whose needs are not met by the market.
- “Affordable Housing Contribution”** means a contribution in the sum of £780,000 Index Linked payable in accordance with the provisions of this Schedule.
- “Affordable Housing Purpose”** means use by the Borough Council towards the subsidising the provision of Affordable Housing within the Borough Council's administrative boundary.
- “Allocations Scheme”** means the Borough Council's published scheme of allocations presently contained in the Borough Council's document entitled “Housing Allocations Policy 2013” as amended in March 2016 or any amendment update or variation thereto or any subsequent replacement thereof.
- “Eligible Persons in Housing Need”** Means:
- a) registered for rented social housing allocation in accordance with the Borough Council's Allocations Scheme; and or
 - b) be registered with the Help to Buy Agent to be granted a Shared Ownership Lease because the persons income is insufficient to enable them rent or buy housing available locally on the open market determined with regard to local incomes and local house prices.

"HE"

means the body known as the Homes England (or any successor body to its functions) within the meaning of Part I of the Housing and Regeneration Act 2008 that funds new affordable homes and regulates Registered Providers in England.

"Help to Buy Agent"

means an agent commissioned by HE to provide a one stop shop service to qualifying applicants enquiring about and applying for the low cost home ownership schemes within Tunbridge Wells Borough Council including shared ownership schemes.

"NHS Healthcare Contribution"

means a contribution in the sum of £27,936 Index Linked payable in accordance with the provisions of this Schedule.

"NHS West Kent CCG"

means the NHS West Kent Clinical Commissioning Group of Wharf House Medway Wharf Road Tunbridge Kent TN9 1RE which is a statutory body established under the Health and Social Care Act 2012 which have the function of commissioning services for the purposes of the health service in England and are treated as NHS bodies for the purposes of the National Health Service Act 2006 or its successor in title or successor to its statutory functions.

"NHS Healthcare Facilities"

means the new General Practice premises for Northridge Medical Practice and Wish Valley Surgery (which for the avoidance of doubt may include professional and other fees and investigative works and studies reasonably incurred and/or undertaken by NHS West Kent CCG

AND in the event that any of the above beneficiaries cease to exist or have merged practices into a primary healthcare facility then that primary healthcare facility shall take the benefit of the NHS Healthcare Contribution provided that the primary healthcare facility services some or all of the healthcare requirements of the occupiers of the Development.

“Shared Ownership Lease”	means a lease which accords with HE’s model form of lease issued from time to time.
“Traffic Regulation Order”	means an order made under Parts I, II, and IV of the Road Traffic Regulation Act 1984 as amended.
“Traffic Regulation Order Contribution”	means the sum of £2,500 payable in accordance with the provisions of this Schedule.
“Traffic Regulation Order Purpose”	means use towards obtaining a Traffic Regulation Order in order to manage overspill parking from the Development.

2 Affordable Housing Contribution

- 2.1 The Owner covenants that it shall pay to the Borough Council the first installment of the Affordable Housing Contribution in the sum of £390,000 before Commencement of Development.
- 2.2 The Owner covenants that it shall not Commence Development unless and until the first installment of the Affordable Housing Contribution has been paid to the Borough Council in accordance with paragraph 2.1.
- 2.3 The Owner covenants that it shall pay to the Borough Council the remainder of the Affordable Housing Contribution being the sum of £390,000 before Occupation of the 15th Dwelling.
- 2.4 The Owner covenants that it shall not Occupy or permit Occupation of more than 14 Dwellings unless and until the Affordable Housing Contribution has been paid to the Borough Council.
- 2.5 The Borough Council covenants with the Owner that it shall apply the Affordable Housing Contribution towards the Affordable Housing Purpose (with priority being given to available projects at the time of spend, in the Hawkhurst area followed by projects in the surrounding villages and finally within the Borough Council’s administrative area) or for such other purposes as achieve the same or similar objectives **PROVIDED THAT** for the avoidance of doubt the Borough Council shall be entitled to treat any accrued interest (if any) or any interest payable under Clause 20.1

as if it were part of the principal sum paid by the Owner.

- 2.6 In the event that all or any part of the Affordable Housing Contribution remains unspent or has not been allocated or committed or used for the purpose for which it was paid 10 years from the date of the notification to the Borough Council of Practical Completion of the Development pursuant to paragraph 3 of Schedule 2 to this Deed the Borough Council covenants on written request from McCarthy & Stone to repay such sum or amount (or such part thereof) to McCarthy & Stone together with any accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's administrative expenses.

3 NHS Healthcare Contribution

- 3.1 The Owner covenants that it shall pay to the Borough Council the NHS Healthcare Contribution before Commence of Development.
- 3.2 The Owner covenants that it shall not Commence Development unless and until the NHS Healthcare Contribution has been paid to the Borough Council.
- 3.3 The Borough Council shall not transfer the NHS Healthcare Contribution (or any part thereof) to NHS West Kent CCG unless the Borough Council is satisfied that NHS West Kent CCG will spend (and for the avoidance of doubt "spend" and "spent" includes allocate or commit) the contribution on the NHS Healthcare Facilities.
- 3.4 The Borough Council shall provide the Owner with written confirmation when the NHS Healthcare Contribution has been transferred.
- 3.5 If the Borough Council are of the view that the NHS Healthcare Contribution will not be spent in accordance with Paragraph 3.3 following a written request from McCarthy & Stone the Borough Council shall repay to McCarthy & Stone such of the NHS Healthcare Contribution as the Borough Council is holding with accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's administrative expenses after a period of ten years from the date of the Notification of Practical Completion of the Development pursuant to paragraph 3 of Schedule 2 to this Deed.

4 Traffic Regulation Order

- 4.1 The Owner covenants that it shall pay to the Borough Council the Traffic Regulation

Order Contribution before Commence of Development.

- 4.2 The Owner covenants that it shall not Commence Development unless and until the Traffic Regulation Order Contribution has been paid to the Borough Council.
- 4.3 The Borough Council shall spend (and for the avoidance of doubt "spend" and "spent" includes allocated or committed) the Traffic Regulation Order Contribution for the Traffic Regulation Order Purpose.
- 4.4 In the event that all or any part of the Traffic Regulation Contribution remains unspent or has not been allocated or committed or used for the purpose for which it was paid within 10 years from the date of the Notification of Practical Completion of the Development pursuant to paragraph 3 of Schedule 2 to this Deed the Borough Council covenants on written request from McCarthy & Stone to repay such sum or amount (or such part thereof) to McCarthy & Stone together with any accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's administrative expenses .

Schedule 4: Financial Contributions Payable to the County Council

1 Interpretation of this Schedule

1.1 Unless the context otherwise requires where in this Schedule the following defined terms and expressions are used they shall have the following respective meanings and (where applicable) be supplemented by Clause 1.1 and Paragraph 1.1 of the other relevant Schedules:

“Social Care Contribution” means a contribution in the sum of £15,227.16 Index Linked payable in accordance with the provisions of this Schedule.

“Social Care Contribution Purpose” means the use of the Social Care Contribution towards the social care element of the new Cranbrook Hub providing additional social care capacity for the rural weald area of the administrative area of Tunbridge Wells.

“Public Transport Contribution” means a contribution in the sum of £43,000 Index Linked payable in accordance with the provisions of this Schedule.

“Public Transport Purpose” means the use of the Public Transport Contribution by the County Council towards the cost of improving public transport services (which for the avoidance of doubt may include professional and other fees and investigative works and studies reasonably incurred and/or undertaken by the County Council towards public transport services and improved bus infrastructure adjacent to the Development).

“Replacement Tree Contribution” means a contribution in the sum of £25,000 Index Linked payable in accordance with the provisions of this Schedule.

Replacement Tree Purpose” means the use of the Replacement Tree Contribution by the County Council towards the cost of providing a replacement tree adjacent to the highway.

2 Public Transport Contribution

- 2.1 The Owner covenants that it shall pay to the County Council the Public Transport Contribution before Commencement of Development.
- 2.2 The Owner covenants that it shall not Commence Development unless and until:
- 2.2.1 the Public Transport Contribution has been paid to the County Council;
and
 - 2.2.2 the Owner has notified the Borough Council of this payment.
- 2.3 The County Council covenants with the Owner that it shall apply the Public Transport Contribution as a contribution towards the Public Transport Purpose or for such other purposes for the benefit of the Development as the Owner and the County Council may (in consultation with the Borough Council) otherwise agree in writing and not to use the Public Transport Contribution otherwise than for the purposes for which it was paid **PROVIDED THAT** for the avoidance of doubt the County Council shall be entitled to treat any accrued interest (if any) or any interest payable under Clause 20.2 of the Deed as if it were part of the principal sum paid by the Owner.

3 Replacement Tree Contribution

- 3.1 The Owner covenants that it shall pay to the County Council the Replacement Tree Contribution before Commencement of Development.
- 3.2 The Owner covenants that it shall not Commence Development unless and until
- 3.2.1 the Replacement Tree Contribution has been paid to the County Council and
 - 3.2.2 the Owner has notified the Borough Council of this payment.
- 3.3 The County Council covenants with the Owner that it shall apply the Replacement Tree Contribution as a contribution towards the Replacement Tree Contribution Purpose or for such other purposes for the benefit of the Development as the Owner and the County Council may (in consultation with the Borough Council) otherwise agree in writing and not to use the Replacement Tree Contribution otherwise than for the purposes for which it was paid **PROVIDED THAT** for the avoidance of doubt the County Council shall be entitled to treat any accrued interest (if any) or any interest payable under Clause 20.2 of the Deed as if it were part of the principal sum paid by the Owner.

4 Social Care Contribution

- 4.1 The Owner covenants that it shall pay to the County Council the Social Care Contribution before Commencement of Development.
- 4.2 The Owner covenants that it shall not Commence Development unless and until:
- 4.2.1 the Social Care Contribution has been paid to the County Council; and
 - 4.2.2 the Owner has notified the Borough Council of this payment.
- 4.3 The County Council covenants with the Owner that it shall apply the Social Care Contribution as a contribution towards the Social Care Contribution Purpose or for such other purposes for the benefit of the Development as the Owner and the County Council may (in consultation with the Borough Council) otherwise agree in writing and not to use the Social Care Contribution otherwise than for the purposes for which it was paid **PROVIDED THAT** for the avoidance of doubt the County Council shall be entitled to treat any accrued interest (if any) or any interest payable under Clause 20.2 of the Deed as if it were part of the principal sum paid by the Owner.

5 Repayment of Contributions

- 5.1 The County Council hereby covenants with the Owner to use all sums received within the borough in which it operates and for the purposes specified in this Deed.
- 5.2 The County Council hereby covenants with the Owner to commit all sums received in respect of the County Council Contributions within 10 years of receiving it and to repay any monies which have not been committed for use after 10 years to the party that paid the relevant contribution together with accrued interest from the date of receipt until and including the date of repayment.
- 5.3 The County Council shall provide the Owner with such evidence as the Owner shall reasonably require in order to confirm the expenditure of the sums paid under this Deed.

6 Discharge of Obligations

- 6.1 At the written request of the Owner the County Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.

APPENDIX 1: PLAN

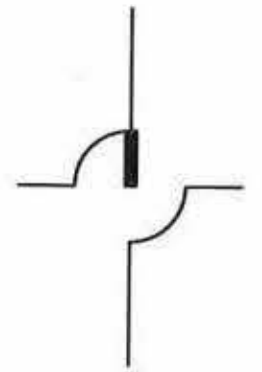
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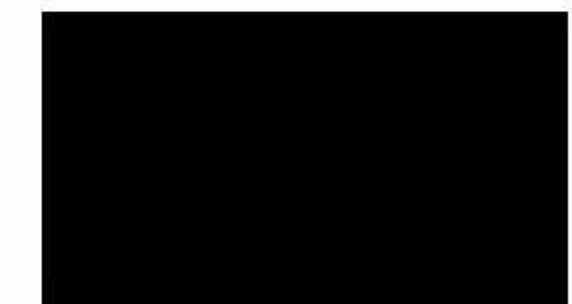
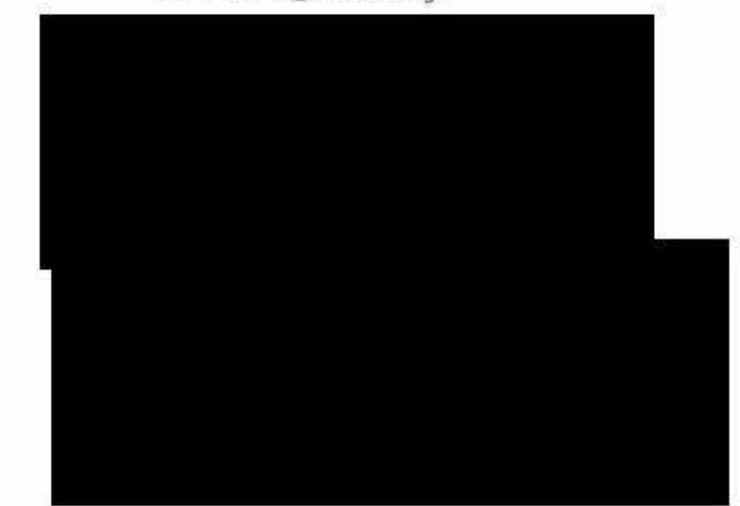


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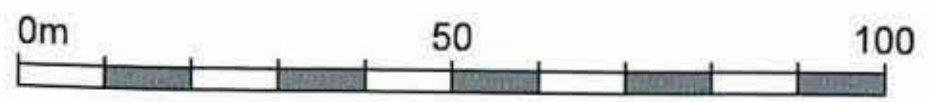


THE COMMON SEAL OF THE KENT COUNTY COUNCIL WAS HEREUNTO AFFIXED IN THE PRESENCE OF:-

Authorised Signatory



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Project title McCarthy & Stone, Proposed Retirement Living, The Whitehouse, Highgate Hill, Hawkhurst, Kent		Drawing title Site Location Plan	
Scale 1:1250 @ A3	Drawing number SE-2550-03-AC-01	Date August 2018	Revision A

