

DATED 22ND AUGUST 2018

(1) THE COUNCIL OF THE BOROUGH OF HAVANT

and

(2) MCCARTHY & STONE RETIREMENT LIFESTYLES LIMITED

DEED OF VARIATION to SECTION 106 AGREEMENT

relating to the development of

land at 38 to 44 London Road, Purbrook PO7 5LJ

THIS DEED OF VARIATION is dated

22ND AUGUST

2018

BETWEEN:

1. **THE COUNCIL OF THE BOROUGH OF HAVANT** of Public Service Plaza Civic Centre Road Havant PO9 2AX (**Council**)
2. **MCCARTHY & STONE RETIREMENT LIFESTYLES LIMITED** incorporated and registered in England and Wales with company number 06622231 whose registered office is at 4th Floor, 100 Holdenhurst Road, Bournemouth, BH8 8AQ (**Owner**);

BACKGROUND

- (A) For the purposes of the Act, the Council is the local planning authority for the area within which the Land is situated and is entitled to enforce the obligations contained in this deed.
- (B) The Owner is the freehold owner of the whole of the Land.
- (C) On the 21 December 2017 the Owner and the Council entered into the Original Agreement.
- (D) The Owner has submitted the New Planning Application to the Council for permission to vary condition 2 of the 2017 Permission to allow for a further 3 Dwellings to be built on the Land as part of the Development.
- (E) The Council has resolved to grant the New Planning Permission subject to the parties entering into this deed.
- (F) Without prejudice to the terms of the other covenants contained in the Original Agreement the parties have agreed to vary the terms of Original Agreement to secure further planning obligations as contained within this deed, requiring the Owner to pay the Additional Affordable Housing Contribution and the Additional Solent Recreation Mitigation Project Contribution.
- (G) This deed is made under section 106A of the Act and is supplemental to the Original Agreement.

1 DEFINITIONS

- 1.1 In this deed the following terms have the following meanings:

"New Planning Application"	means the application for planning permission submitted by the Owner for the Development and given the Council's reference number APP/18/00385
"New Planning Permission"	the conditional planning permission that may be granted pursuant to the New Planning Application
"Original Agreement"	means the Section 106 Agreement dated 21 December 2017 made between (1) McCarthy & Stone Retirement Lifestyles Limited and (2) the Council of the Borough of Havant
"2017 Permission"	means the planning permission granted by the Council on 21 December 2017 with reference APP/17/01141

2 INTERPRETATION

- 2.1 Save where expressly stated otherwise the words and expressions used in this deed shall have the meaning assigned to them in the Original Agreement.
- 2.2 Clause headings shall not affect the interpretation of this deed.
- 2.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 2.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 2.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 2.6 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 2.7 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 2.8 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 2.9 Unless the context otherwise requires, references to clauses are to the clauses of this deed.
- 2.10 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.
- 2.11 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

3 STATUTORY PROVISIONS

This deed is made pursuant to Section 106 and 106A of the Act, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers and contains amendments to the planning obligations contained in the Original Agreement.

4 VARIATIONS TO THE ORIGINAL AGREEMENT

- 4.1 This clause 4 shall take effect on and from the date that the New Planning Permission is Commenced.
- 4.1.1 The following definitions shall be inserted at clause 1.1 of the Original Agreement

"Additional Affordable Housing contribution"

means the sum of four thousand pounds (£4000) Index Linked to be applied towards the provision of Affordable Housing within the administrative boundary of the Council

"Additional Solent Recreation Mitigation"

means the sum of one thousand one hundred and sixty one pounds (£1161) as a contribution towards measures to mitigate the impacts of the Development on the Solent

Project Contribution Special Protection Areas (subject to indexation in accordance with the figures supplied to the Council by the Solent Recreation Mitigation Partnership) and delivered in accordance with the Solent Recreation Mitigation Strategy dated 1 April 2018

"Planning Applications" means the applications for planning permission submitted by the Owner to the Council for the Development and given the Council's reference numbers APP/17/01141 and APP/18/00385

"Planning Permission" means the conditional planning permission(s) granted by the Council for the Development pursuant to the Planning Applications

4.1.2 The definition of "Development" shall be deleted and replaced with the following:

"Development" means the development of the Land in accordance with the Planning Permission

4.1.3 The recital at paragraph 3 of the Background to the Original Agreement shall be deleted and replaced with:

(3) The Planning Applications have been submitted by the Owner to the Council for permission to develop the Land in manner and for the uses set out in the Planning Applications and in the plans, specifications and particulars deposited with the Council and forming part of the Planning Applications.

4.1.4 Paragraph 1.1 of Schedule 1 to the Original Agreement shall be amended to include the words *"and the Additional Affordable Housing Contribution"* after the words "Affordable Housing Contribution".

4.1.5 Paragraph 1.2 of Schedule 1 to the Original Agreement shall be amended to include the words *"and the Additional Affordable Housing Contribution"* after the words "Affordable Housing Contribution".

4.1.6 Paragraph 2.1 of Schedule 1 to the Original Agreement shall be amended to include the words *"and the Additional Solent Recreation Mitigation Project Contribution"* after the words "Solent Recreation Mitigation Project Contribution".

4.1.7 Paragraph 2.2 of Schedule 1 to the Original Agreement shall be amended to include the words *"and the Additional Solent Recreation Mitigation Project Contribution"* after the words "Solent Recreation Mitigation Project Contribution"

4.1.8 The definition of "Index Linked" at clause 1.1 to the Original Agreement shall for the purpose of calculating indexation for the Additional Affordable Housing Contribution only, be read as if the words "this Agreement" was a reference to this deed and not to the Original Agreement.

4.1.9 Save as expressly varied by this deed the Original Agreement shall remain in full force and effect.

5 COVENANTS TO THE COUNCIL

The Owner covenants to observe and perform the covenants restrictions and obligations contained in the Original Agreement as varied by this deed PROVIDED THAT where an

obligation has been fulfilled by the Owner pursuant to the 2017 Permission the Owner shall not as a result of this deed be required to perform such obligation again, unless such covenants restrictions and obligations are continuing obligations, in which case the Owner will be required to continue to observe and perform such obligations.

6 COSTS

The Owner shall pay to the Council on or before the date of completion of this deed, the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, completion and registration of this deed.

7 LAND CHARGES

This deed shall be registered as a local land charge by the Council.

8 THIRD PARTY RIGHTS

A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

9 GOVERNING LAW

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.

IN WITNESS whereof the parties hereto have sealed and/or executed this document as a deed the day and year first before written.

EXECUTED as a deed by affixing THE)
COMMON SEAL of the **COUNCIL OF THE**)
BOROUGH OF HAVANT in the presence of)

)

)

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13194



.....
Authorised Signatory

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



Witness Signature

) Director

Witness Name:

NERONILA LIMBERGER

Witness Address:

McCarthy & Stone
Retirement Lifestyles Ltd
4th Floor
100 Holdenhurst Road
Bournemouth BH8 8AQ

Witness Occupation:

LEGAL ASSISTANT