

DATED

21ST DECEMBER

2017

- (1) **MCCARTHY & STONE RETIREMENT LIFESTYLES LIMITED**
- AND**
- (2) **THE COUNCIL OF THE BOROUGH OF HAVANT**

**Planning obligation under section 106 of the Town and Country
Planning Act 1990 relating to Land at 38 to 44 London Road,
Purbrook PO7 5LJ**

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Ref: RBA.MCC.33.2591

THIS AGREEMENT is made the 21ST day of DECEMBER 2017

BETWEEN

- (1) **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
("the Owner")

AND

- (2) **THE COUNCIL OF THE BOROUGH OF HAVANT** : of Public Service Plaza, Civic Centre Road, Havant PO9 2AX
("Council")

BACKGROUND

- (1) The Council is the local planning authority for the purposes of Section 106 of the Act for the area within which the Land is located and the local planning authority by whom the planning obligations in this Agreement are enforceable.
- (2) The Owner is the freehold owner with title absolute of the Land.
- (3) The Owner has by planning application reference number APP/17/01141 and dated 23 October 2017 ("the Planning Application") applied to the Council for permission to develop the Land in the manner and for the uses set out in the Planning Application and in the plans specifications and particulars deposited with the Council and forming part of the Planning Application.
- (4) The Council having regard to all material considerations have resolved that Planning Permission should be granted for the Development subject to prior completion of this Agreement.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

In this Agreement:

- 1.1 the following words and expressions shall have the following meanings unless otherwise stated:

"Act" : means the Town and Country Planning Act 1990 (as amended).

"Affordable Housing" : means subsidised housing that will be available to persons who cannot afford to buy or rent housing generally available on the open market within the definition of affordable housing contained in Annex 2 of the NPPF or any subsequent replacement or modification thereof and such housing shall meet the needs of eligible households including

availability at a cost low enough for them to afford determined with regards to local incomes and local house prices.

- "Affordable Housing Contribution"** : means the sum of fifty thousand pounds (£50,000) Index Linked to be applied towards Affordable Housing within the administrative boundary of the Council.
- "Agreement"** : means this document, including the schedules.
- "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, works to remove the existing substation, 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, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" and "Commenced Development" shall be construed accordingly.
- "CPI"** : means the Consumer Prices Index published by the Office for National Statistics (or any amendment/comparable replacement thereof).
- "Development"** : means the development of the Land in the form of redevelopment to form 43 No. retirement apartments for older persons including communal facilities, parking provision and associated landscaping and 2 No. commercial/retail units as more particularly described in the Planning Application.
- "Dwelling"** : means any dwelling (including a house flat or maisonette) constructed pursuant to the Planning Permission.
- "Existing Undertakings "** : means both –
- the unilateral undertaking dated 10 August 2016 securing a contribution towards Affordable Housing entered into between (1) Battman Bros. Limited and

(2) McCarthy & Stone Retirement Lifestyles Limited and given to the Council in respect of the Original Planning Permission; and

- the unilateral undertaking dated 10 August 2016 securing a contribution towards transport and Solent mitigation entered into between (1) Battman Bros. Limited and (2) McCarthy & Stone Retirement Lifestyles Limited and given to the Council in respect of the Original Planning Permission.

"Expert"

: means such expert as may from time to time be appointed for the purposes of resolving a relevant dispute in relation to this Agreement and/or the Development as follows:

- (a) if the dispute relates to transport or highway works, engineering, demolition, or construction works, a chartered civil engineer being a member of the Institution of Civil Engineers (having not less than 10 years' relevant experience in the public or private sector) agreed by the parties to the dispute but in default of agreement appointed at the request of any of the parties by or on behalf of the President from time to time of the Institution of Civil Engineers;
- (b) if the dispute relates to any building within the Development or any similar matter, a chartered surveyor (having not less than 10 years' relevant experience) agreed by the parties to the dispute but in default of agreement appointed at the request of either party by or on behalf of the President from time to time of the Royal Institution of Chartered Surveyors;
- (c) if the dispute relates to financial matters or matters of accounting usually and properly within the knowledge of a chartered accountant, a chartered accountant (having not less than 10 years' relevant experience) agreed by the parties to the dispute but in default of agreement appointed at the request of either party by or on behalf of the President from time to time of the Royal Institute of Chartered Accountants in England and Wales; and

- (d) if the parties to the dispute fail to agree upon the nature of difference in question then it should be referred to a solicitor or barrister of at least 15 years' standing agreed by the parties but in default of agreement appointed at the request of either party by or on behalf of the President for the time being of the Law Society.

"Index Linked"

- : means in the case of any sum expressed in this Agreement to be Index Linked to the CPI and, to be increased or decreased in line with the following formula:

$$C = \text{£Y} \times (B / A)$$

Where:

A is the last figure for the CPI that applied the month immediately preceding the date of this Agreement.

B is the last figure of the CPI that applied for the month preceding the date of payment of a contribution pursuant to the provisions of this Agreement.

£Y is the contribution payable pursuant to this Agreement.

"Interest"

- : means interest at the rate of 4% above the Bank of England base rate applicable from time to time.

"Land"

- : means the land located at 38 to 44 London Road, Purbrook PO7 5LJ registered under title number SH18885 and shown edged red on the Plan.

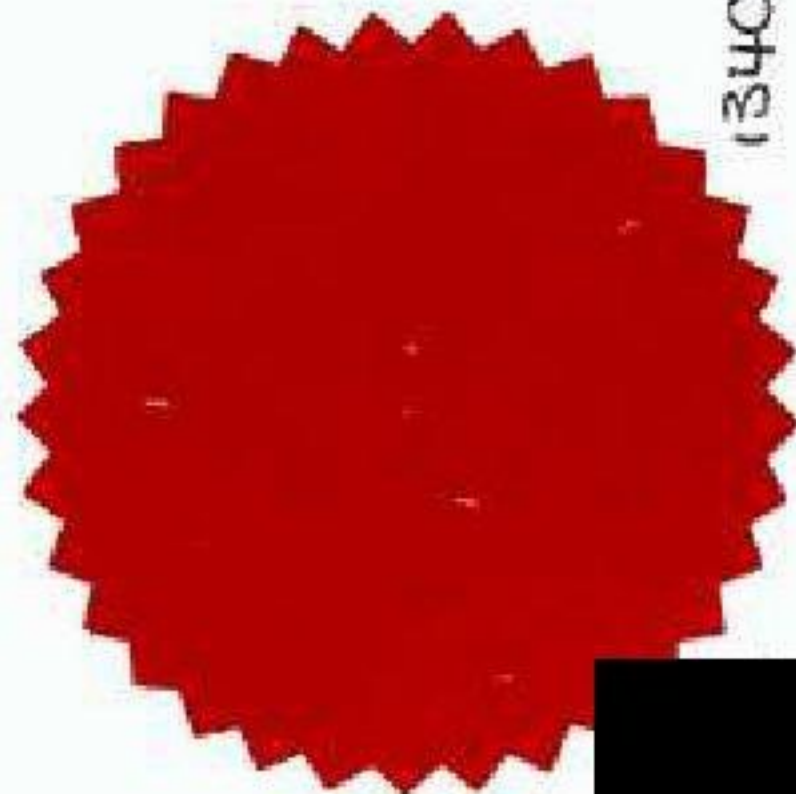
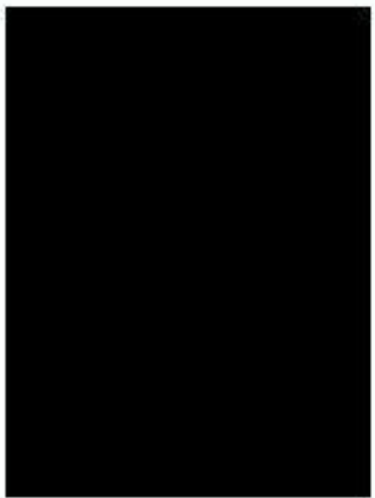
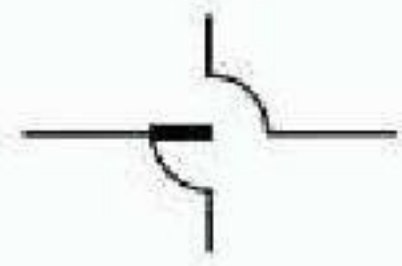
"Monitoring Fee"

- : means the sum of £660.00 (six hundred and sixty pounds), being a fee (applied at such time and in such manner as the Council shall in its absolute discretion determine) used towards the costs to be incurred by the Council in the provision of suitably qualified and experienced persons whose function is inter alia to monitor co-ordinate and enforce planning deeds.

- “Occupation” and “Occupied”** : means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing and Occupy shall be construed accordingly.
- “Original Planning Permission”** : means the planning permission granted on appeal allocated reference number APP/X1735/W/16/3145929 and dated 25 August 2016.
- “Planning Permission”** : means planning permission for the Development subject to conditions to be granted by the Council pursuant to the Planning Application.
- “Plan”** : means the plan attached to this Agreement.
- “Practical Completion”** : shall mean the Dwellings are fit for occupation and use and capable of being fully fitted out and ready for occupation and use.
- “Solent Recreation Mitigation Project Contribution”** : the sum of £7,783.00 (seven thousand seven hundred and eighty three pounds) Index Linked in respect of the Special Protection Area mitigation measures delivered through the Interim Solent Recreation Mitigation Strategy.
- “TRO Contribution”** : means the sum of three thousand pounds (£3,000) to be applied towards the implementation (which reference shall include all connected administration, supervision and the carrying out of) a road traffic regulation order(s) imposing parking restrictions in Stakes Road, London Road and the immediate vicinity to allow the safe operation of the local highway network.
- “Working Day”** : means any day from Monday to Friday (inclusive) that is not Christmas Day, Good Friday or a statutory Bank Holiday.

2. CONSTRUCTION OF THIS AGREEMENT

- 2.1 Where in this Agreement reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Agreement.
- 2.2 Clause headings shall not affect the interpretation of this Agreement.



13402

McCarthy & Stone Proposed Retirement Living, 38-44 London Road, Purbrook, Hampshire		Location Plan	
Scale: 1:1250 @ A3	Sheet: 1 of 1	Drawing Number: SE-2168-03-AC-001	Rev: 1.0
Client: McCarthy & Stone	Date: July 2015		



Church Barn, Millon Manor Farm, Ashford Road, Canterbury, Kent, CT14 7PP
t: 01227 458899 www.bdb-design.co.uk

Proposed Retirement Living, 38-44 London Road, Purbrook, Hampshire

- 2.3 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.4 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.5 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 unless there is an express provision otherwise.
- 2.6 An obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 2.7 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.8 References to any party to this Agreement shall (subject to clause 5.1 and 5.2) 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 Council the successors to their respective statutory functions.
- 2.9 The headings and contents list are for reference only and shall not affect construction.

3. THE PLANNING OBLIGATIONS

- 3.1 This Agreement constitutes a planning obligation for the purposes of section 106 of the Act, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.
- 3.2 The obligations contained in this Agreement constitute planning obligations for the purpose of section 106 of the Act and are enforceable against them and any person deriving title from them (subject to clause 5.1 and 5.2) by the Council.
- 3.3 This Agreement shall come into effect upon the grant of the Planning Permission with the exception of the obligations contained in clauses 7, 9, 12 and 13 which shall come into effect on the date of this Agreement.
- 3.4 The parties agree from the Commencement of Development the covenants set out in the Existing Undertakings shall cease to apply and shall not be enforceable against the Owner or their successor in title in so far as they apply to the Land PROVIDED THAT this clause 3.4 shall not apply where from the date which the Planning Permission is granted the Owner or their successors in title continue any development on the Land under the Original Permission.

4. COVENANTS TO AND BY THE COUNCIL

- 4.1 The Owner covenants with the Council to observe and perform the covenants and obligations on their part contained within this Agreement.
- 4.2 The Council covenants with the Owner to observe and perform the covenants and obligations on its part contained within this Agreement.

5. ENFORCEABILITY

- 5.1 No person shall be liable for 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.
- 5.2 This Agreement shall not be enforceable against
- 5.2.1 the owner-occupier, tenant or mortgagee of a Dwelling or any retail / commercial units to be constructed pursuant to the Planning Permission; or
 - 5.2.2 a statutory undertaker (within the meaning of section 262 of the Act) who acquires an interest in the Land pursuant to the exercise of its statutory powers.

6. DETERMINATION OF AGREEMENT

- 6.1 The obligations in this Agreement shall cease to have effect (insofar only as it has already been complied with and with the exception of clause 14) if prior to the Commencement of Development, the Planning Permission:
- 6.1.1. expires;
 - 6.1.2. is varied or revoked other than at the request of the Owner; or
 - 6.1.3. is quashed or otherwise withdrawn.

7. LOCAL LAND CHARGE

This Agreement is a local land charge and shall be registered as such by the Council.

8. FUTURE PERMISSIONS

Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with any planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement but 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 (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 or the circumstances in clause 6.1.2 arise.

9. NOTICES

- 9.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to any person required to receive the notice or communication at its address or as otherwise specified by the relevant person by notice in writing to each other person
- 9.2 Any notice shall be deemed to have been duly received:
- 9.2.1. if delivered personally, when left at the address set out in this Agreement;
 - 9.2.2. if sent by pre-paid first class post or recorded delivery, on the second Working Day after posting; or
 - 9.2.3. if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 9.3 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.

10. DISPUTE RESOLUTION

- 10.1 In the event of any dispute or difference between the parties or any of them arising out of this Agreement (other than a dispute or difference relating to a question of law or in relation to the interpretation of the Agreement) the parties agree that the matter in dispute will on the application of either of them be referred to the Expert and it is further agreed that:
- 10.1.1. the determination of the Expert shall be final and binding on the parties save in the case of manifest error;
 - 10.1.2. the parties shall be entitled to make representations and counter-representations in accordance with such timetable as the Expert shall direct;
 - 10.1.3. the Expert's costs shall be borne in such proportions as he/she may direct failing which the parties shall each bear their own costs of the reference and determination and the Expert's costs calculated by dividing the Expert's costs by the number of sides to the reference; and
 - 10.1.4. the Expert may be replaced by a fresh appointee in the event of his/her becoming at any time unable or unwilling for any reason to proceed to discharge his/her function and such fresh appointee shall be appointed in the same manner as the Expert.

11. MISCELLANEOUS

- 11.1 Nothing contained or implied in this Agreement shall prejudice or affect the rights discretions powers duties and obligations of the Council under all

statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

- 11.2 If any provision in this Deed shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired.

12. COSTS

The Owner shall pay the Council's reasonable legal fees incurred in the negotiation preparation and execution of this Agreement on completion of this Agreement.

13. CHANGE OF OWNERSHIP

The Owner covenants to give the Council written notice within 10 Working Days of any change in ownership of any of its freehold interest in the Land occurring before all the obligations under this Agreement have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Land or unit of occupation purchased by reference to a plan save for the transfer of any individual Dwelling.

14. INTEREST

If any payment due under this Agreement is paid late, Interest shall be payable from the date payment is due to the date of payment.

15. THIRD PARTY RIGHTS

No provisions of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

16. SEVERANCE

Insofar as any clause or clauses of this Agreement are found (for whatever reason) to be invalid, illegal or unenforceable, then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement.

17. VAT

All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable.

18. JURISDICTION

This Agreement is governed by and interpreted in accordance with the law of England and the parties submit to the non-exclusive jurisdiction of the courts of England.

19. DELIVERY

The provisions of this Agreement (other than this clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated.

IN WITNESS whereof the parties hereto have executed this Agreement as a deed on the day and the year first before written.

SCHEDULE 1 – COVENANTS BY THE OWNER

The Owner covenants with the Council as follows –

1. AFFORDABLE HOUSING CONTRIBUTION

- 1.1 Prior to the first Occupation of a Dwelling to pay the Affordable Housing Contribution to the Council.
- 1.2 Not to Occupy any Dwelling until the whole of the Affordable Housing Contribution has been paid.

2. SOLENT RECREATION MITIGATION CONTRIBUTION

- 2.1 Prior to first occupation of the Development to pay the Solent Recreation Mitigation Project Contribution to the Council in accordance with the figures supplied to the Council by the Solent Recreation Mitigation Partnership towards the Solent Recreation Mitigation Strategy such sum to be collected by the Council on behalf of the Solent Recreation Mitigation Partnership.
- 2.2 Not to occupy the Development until the whole of the Solent Recreation Mitigation Project Contribution has been paid to the Council.

3. TRO CONTRIBUTION

- 3.1 Following the submission by the Owner of a traffic regulation order application form the Owner shall upon receipt of an invoice issued by the Council pay the TRO Contribution to the Council.
- 3.2 At the written request of the Council at any time during the period beginning with the date of Commencement of Development and ending 3 years from Practical Completion of the Development pay to the Council such sum as the Council may reasonably require for the purpose of implementing or amending (which expression shall include all connected administration, supervision and the carrying out of) such traffic management measures as the Council considers appropriate to ensure that any overspill parking from the Development or operation of any existing parking restrictions does not interfere with the capacity, operation or safety of the adjoining local highway network PROVIDING THAT such sum shall not exceed £3,000.
- 3.3 The obligations imposed on the Owner within this paragraph are conditional upon the Council repaying upon the written request of the paying party any portion of the TRO Contribution which remains unexpended after 5 years from the date the Development is practically complete including accrued interest.

4. MONITORING FEE

- 4.1 Prior to Commencement of Development to pay to the Council the Monitoring Fee.
- 4.2 Not to allow cause or permit Commencement of Development until the Monitoring Fee has been paid to the Council.

SCHEDULE 2 – THE COUNCIL'S COVENANTS

1. REPAYMENT OF CONTRIBUTIONS

- 1.1 The Council hereby covenants with the Owner to use all sums received for the Affordable Housing Contribution for the purposes specified in this Agreement.
- 1.2 The Council hereby covenants with the Owner to use all sums received for the Solent Recreational Disturbance Mitigation Contribution for the purposes specified in this Agreement.
- 1.3 The Council hereby acknowledges receipt of the Monitoring Fee.
- 1.4 The Council hereby covenants with the Owner to commit all sums received in respect of the Affordable Housing Contribution and the Solent Recreational Disturbance Mitigation Contribution 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.
- 1.5 The Council shall at the written request of the Owner provide such evidence as the Owner shall reasonably require in order to confirm the expenditure of the sums paid under this Agreement.

2. DISCHARGE OF OBLIGATIONS

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

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

[Redacted Signature]

Witness Signature

HERONIKA LIMBERGER

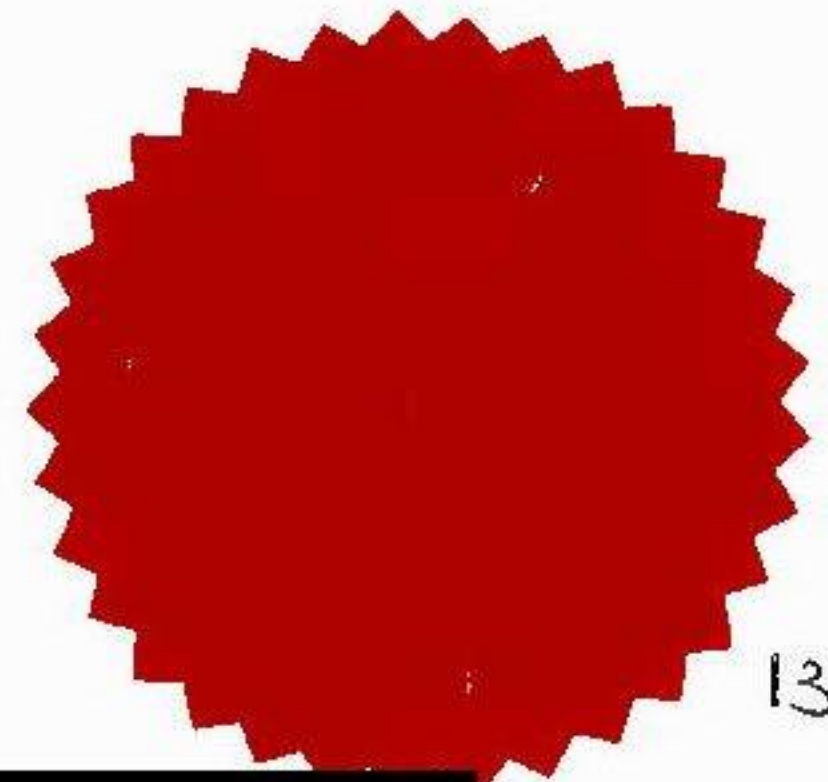
Witness Name:

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

Witness Address:

Witness Occupation: *Legal Assistant*

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



13402

[Redacted Signature]

Authorised Signatory