

DATED 19th DECEMBER

2016

- (1) SOUTHERN CO-OPERATIVE PROPERTIES LIMITED
- (2) MCCARTHY & STONE RETIREMENT LIFESTYLES LIMITED
- (3) THE COUNCIL OF THE BOROUGH OF HAVANT

Planning obligation under section 106 of the Town and Country
Planning Act 1990 relating to the Land at 117 Elm Grove, Hayling
Island PO11 9ED

Lester Aldridge LLP
Solicitors

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Ref: RBA.MCC.33.2220

THIS AGREEMENT is made the *19th* day of *December* 2016

By

- (1) **SOUTHERN CO- OPERATIVE PROPERTIES LIMITED** : incorporated and registered in England and Wales with company number 5016485) whose registered office is at 1000 Lakeside, Western Road, Portsmouth PO6 EFE
("Owner")
- (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
("Developer")
- (3) **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 Developer has entered into an option and a conditional contract to purchase the Land from the Owner dated 22 April 2016.
- (4) The Developer has by planning application reference number APP/16/00568 received on 26 May 2016 and validated on 3 June 2016 ("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.
- (5) The Owner and the Developer have agreed to enter into this Agreement in favour of the Council in order to secure the planning obligations contained in 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.
- "Affordable Housing Contribution"** : means the sum of TWENTY ONE THOUSAND POUNDS (£21,000) Index Linked to be applied towards the provision of Affordable Housing in accordance with the Council's policies and procedures.
- "Agreement"** : means this document, including the schedules.
- "Commencement Development"** of : means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out pursuant to the Planning Permission granted in respect of the Planning Application other than (for the purposes of this Agreement and for no other purpose) operations consisting of: demolition work; site clearance; 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; fences or hoardings around the Land; temporary access construction works; the temporary display of site notices or advertisements and Commence Development and Commenced Development shall be construed accordingly.
- "Development"** : means the development of the Land to erect

33 retirement living apartments with associated communal facilities and car parking.

"Dwelling"

: means any dwelling (including a house flat or maisonette) constructed pursuant to the 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 RPI and, to be increased or decreased in line with the following formula:

$$C = \text{£Y} \times (B / A)$$

Where:

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

B is the figure of the RPI 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.

C is the contribution payable pursuant to this Agreement.

"Interest"

- : means interest at the rate of 4% above the Bank of England base rate applicable at the Specified Date which shall be calculated on a day to day basis.

"Land"

- : means the land at 117 Elm Grove, Hayling Island PO11 9ED which is registered at the Land Registry under title number SH9500 and shown for the purposes of identification edged red on the Plan.

"Monitoring Fee"

- : means the sum of ONE THOUSAND TWO HUNDRED POUNDS (£1,200) 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.
"Planning Permission"	: means any planning permission for the Development subject to conditions to be granted by the Council pursuant to the Planning Application or to any subsequent application relating to the Development and made pursuant to section 73 of the Act.
"Plan"	: means the plan attached to this Agreement.
"RPI"	: means the Retail Prices Index published by the Office for National Statistics (or any amendment/comparable replacement thereof).
"Solent Mitigation Contribution" Recreation Project	: the sum of SIX THOUSAND AND NINETY EIGHT POUNDS AND FORTY PENCE (£6,098.40) Index Linked being calculated as the sum of £176.00 for each dwelling and an additional £8.80 per dwelling for monitoring in respect of the Special Protection Area mitigation measures delivered through the Interim Solent Recreation Mitigation Strategy.
"Specified Date"	: means the date upon which an obligation arising under this Agreement is due to be performed.
"TRO Contribution"	: means the sum of THREE THOUSAND POUNDS (£3000) to be paid by the Owner to the Council for 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 the vicinity of the Land 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.

Hayling Billy Pub, 117 Elm Grove, Hayling Island, Hampshire, PO11 9ED



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0.808 Acres

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.
- 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 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 set out in Schedule 1 of this Agreement constitute planning obligations for the purpose of section 106 of the Act and the planning obligations are to be discharged by the Owner and are enforceable against them and any person deriving title from them (subject to clause 5.1 and 5.2).
- 3.3 This Agreement shall come into effect upon the grant of the Planning Permission with the exception of the obligations contained in clause 4 and within Schedule 1 which shall not come into effect until the Commencement of Development and clause 9 which shall come into effect on the date of this Agreement.

4. COVENANTS TO AND BY THE COUNCIL

4.1 The Owner covenant with the Council to observe and perform the covenants and obligations on their part contained within Schedule 1.

4.2 The Council covenants with the Owner to observe and perform the covenants and obligations on its part contained within Schedule 2.

5. ENFORCEABILITY

The obligation imposed on the Owner at clause 4 is conditional upon the following:

5.1 The Council not seeking to enforce any breach of a covenant, restriction or obligation contained in this Agreement against any person after such person has parted with its interest in the Land except in respect of any breach subsisting prior to parting with such interest and neither the reservation of any rights or the inclusion of any covenants or restrictions over the Land in any transfer of the Land will constitute the retention of an interest for the purposes of this clause

5.2 The Council not seeking to enforce any provision of this Agreement against

5.2.1 the owner-occupier, tenant or mortgagee of a Dwelling or the 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 any interest in the Land.

5.3 The obligations in this Agreement ceasing to have effect if prior to the Commencement of Development the Planning Permission:

5.3.1. expires;

5.3.2. is varied or revoked other than at the request of the Owner; or

5.3.3. is quashed or otherwise withdrawn

6. DEVELOPER'S CONSENT

The Developer consents to the completion of this Agreement and declares that its interest in the Land shall be bound by the terms of this Agreement PROVIDED THAT the Developer shall not be personally liable for any breach of the obligations unless or until the Developer becomes the owner of the Land.

7. 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 or modification, variation or amendment thereof) granted after the date of the Planning Permission.

8. LOCAL LAND CHARGE

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

8.2 Following the performance and satisfaction of all the obligations contained in this Agreement the Council shall forthwith upon written request effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.

9. ISSUE OF PLANNING PERMISSION

The Council hereby covenants with the Owner to issue the Planning Permission within 3 days of the date of this Agreement.

10. MISCELLANEOUS

10.1 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.

10.2 this Agreement is enforceable by the Council.

10.3 The Owner hereby consents to the registration of this Agreement as a Local Land Charge.

10.4 If any provision in this Agreement 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.

11. COSTS

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

12. CHANGE OF OWNERSHIP

The Owner covenants to give the Council written notice within 10 days of any change in ownership of any of its interests 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.

13. LEGAL CHALLENGE

13.1 Where the Planning Permission is the subject of any judicial review proceedings or other legal challenge:

13.1.1. until such time as such proceedings or challenge including any appeal have finally been resolved the terms and provisions of this Agreement will remain without operative effect notwithstanding the grant of the Planning Permission unless the Planning Permission has been Commenced;

13.1.2. if following the conclusion of such proceedings or challenge the Planning Permission is quashed then this Agreement will cease to have any further effect as from the date upon which the Planning Permission is quashed

13.1.3. Wherever in this Agreement reference is made to a date on which "legal proceedings or challenge in relation to the Planning Permission are concluded" (or cognate expressions are used), the following provisions have application:

13.1.3.1 Proceedings by way of judicial review are concluded:

- (a) when permission to apply for judicial review has been refused and no further application may be made; or
- (b) when the court has given judgment in the matter and the time for making an appeal expires without an appeal having been made or permission to appeal is refused; or
- (c) when any appeal is finally determined.

13.1.3.2 Proceedings under section 288 of the Act or in respect of any other legal challenge are concluded:

- (a) when the court has given judgment in the matter and the time for making an appeal expires without an appeal having been made or permission to appeal is refused; or
- (b) when any appeal is finally determined.

14. NOTICES

14.1 Any notice or other communication to be given under this Agreement must be in writing and must be:

14.1.1. delivered by hand; or

14.1.2. sent by pre-paid first class post or other next working day delivery service.

14.2 Any notice or other communication to be given under this Agreement must be sent to the relevant party as follows:

14.2.1. to the Council at Public Service Plaza, Civic Centre Road, Havant, PO9 2AX marked for the attention of Heather Lealan;

14.2.2. to the Owner at Lakeside, Western Road, Portsmouth PO6 3FE marked for the attention of Richard Stileman; and

14.2.3. to the Developer at 4th Floor, 100 Holdenhurst Road, Bournemouth, BH8 8AQ marked for the attention of Gian Bendinelli

or as otherwise specified by the relevant party by notice in writing to each other party.

14.3 Any notice or other communication given in accordance with clause 14.1 and clause 14.2 will be deemed to have been received:

14.3.1. if delivered by hand, on signature of a delivery receipt or at the time the notice or document is left at the address provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day; or

14.3.2. if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Working Day after posting.

14.4 A notice or other communication given under this Agreement shall not be validly given if sent by e-mail.

14.5 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 resolution.

15. DISPUTE RESOLUTION

15.1 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:

15.1.1. the determination of the Expert shall be final and binding on the parties save in the case of manifest error;

15.1.2. the parties shall be entitled to make representations and counter-representations in accordance with such timetable as the Expert shall direct;

15.1.3. 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

15.1.4. 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.

16. THIRD PARTY RIGHTS

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

17. 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.

18. VAT

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

19. 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.

20. 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. SOLENT RECREATION MITIGATION PROJECT CONTRIBUTION

- 1.1 Prior to first occupation of the Development to pay the Solent Recreation Mitigation Project Contribution to the Council subject to Indexation and 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
- 1.2 Not to occupy the Development until the whole of the Solent Recreation Mitigation Project Contribution has been paid to the Council.

2. TRO CONTRIBUTION

- 2.1 Following receipt of written confirmation from the highway authority confirming that a TRO will be required the Owner shall upon receipt of an invoice issued by the Council pay the TRO Contribution to the Council.
- 2.2 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 THREE THOUSAND POUNDS (£3,000).
- 2.3 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 3 years from the date the Development is practically complete including accrued interest.

3. AFFORDABLE HOUSING CONTRIBUTION

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

4. Monitoring Fee

- 4.1 Prior to Commencement of the 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.

5. NOTIFICATIONS

To notify the Council as soon as practicable following:

- 5.1 the Commencement of Development; and
- 5.2 the first Occupation of a Dwelling.

SCHEDULE 2 – THE COUNCIL'S COVENANTS

1. REPAYMENT OF CONTRIBUTIONS

- 1.1 The 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 Agreement.
- 1.2 The Council hereby covenants with the Owner to commit all sums received in respect of the Solent Recreation Mitigation Project Contribution within 5 years of receiving it and on request to repay any monies which have not been committed for use after 5 years to the party that paid the relevant contribution together with any accrued interest from the date of receipt until and including the date of repayment and to commit all sums received in respect of the Affordable Housing Contribution within 8 years of receiving the same and on request to repay any monies which have not been committed for use after 8 years to the party that paid the said contribution together with any accrued interest from the date of receipt until and including the date of repayment.
- 1.3 The 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 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 SOUTHERN)
CO-OPERATIVE PROPERTIES)
LIMITED acting by one director in the)
presence of)



[Redacted Signature]

Witness Signature

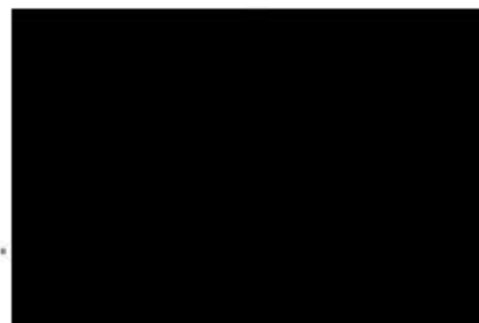
Witness Name:

[Redacted Name]

Witness Address: 47 BERRYWOOD GARDENS, HEDGE END
SO30 4QZ.

Witness Occupation: CHARTERED SURVEYOR.

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



[Redacted Signature]

Witness Signature

Witness Name:

[Redacted Name]

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

Witness Occupation: Legal Assistant.

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




.....
Authorised Signatory