

TW/13/02502

DATED 11<sup>th</sup> February

2014

- (1) MCCARTHY & STONE RETIREMENT LIFESTYLES LIMITED
- (2) TUNBRIDGE WELLS BOROUGH COUNCIL

Planning obligation under section 106 of the Town and Country Planning Act 1990 relating to the land at the former Council Offices, High Street, Cranbrook

26 - Retirement apartments.

**Lester Aldridge LLP**

**Solicitors**

Real Estate Team

Aileyn House

Carlton Crescent

Southampton

Hampshire

SO15 2EU

Tel: 02380 827400

Fax: 02380 827410

E mail: [enquiries@la-law.com](mailto:enquiries@la-law.com)

Ref: RBA.MCC.33.1303

THIS AGREEMENT is made the 11<sup>th</sup> day of February 2014

BETWEEN

- (1) **MCCARTHY & STONE** : incorporated and registered in England and Wales with company number 06622231 whose registered office is at Homelife House, 26-32 Oxford Road, Bournemouth, BH8 8EZ  
**RETIREMENT LIFESTYLES LIMITED**  
("The Owner")

AND

- (2) **TUNBRIDGE WELLS** : of Town Hall, Royal Tunbridge Wells, Kent, TN17 1RS  
**BOROUGH 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 of the Land.
- (3) The Council has granted the Planning Permission for the Development on the understanding that the planning obligations herein will be entered into by the Owner.
- (4) The Owner by entering into this Agreement does so to create planning obligations in respect of the Land and each part of it in favour of the Council pursuant to Section 106 of the Act and agrees to be bound by and observe and perform the covenants agreements conditions and stipulations hereafter contained.

### AGREED TERMS

#### 1. DEFINITIONS AND INTERPRETATION

In this Agreement:

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

**"Agreement"** : this document, including the schedules, as amended, modified or supplemented from time to time in accordance with its terms.

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

**"Adult Social Services Contribution"** : means the sum of one thousand nine hundred and fourteen pounds eighty nine pence (£1,914.89) Index Linked to be applied towards the provision of adult social services

within the locality of Tunbridge Wells.

- "Affordable Housing"** : subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available on the open market.
- "Affordable Housing Contribution"** : means the sum of three hundred and nine thousand four hundred pounds (£309,400) Index Linked to be applied towards the provision of Affordable Housing within the locality of Tunbridge Wells.
- "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 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 site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, 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.
- "Community Learning Contribution"** : means the sum of one hundred and thirty one pounds twenty three pence (£131.23) Index Linked to be applied towards the provision of community learning facilities within the locality of Tunbridge Wells
- "Development"** : means the development of the Land to form 26 later living retirement apartments (category II type) with associated communal facilities and car parking as more particularly described in the Planning Application
- "Dwelling"** : any dwelling (including a house flat or maisonette) constructed pursuant to the Planning Permission
- "Index"** : means :
- (a) in respect of the Affordable Housing Contribution only, the General Cost Build

Index as published by the BCIS on behalf of the RICS; and

(b) in respect of the Adult Social Services Contribution, Community Learning Contribution Local, Libraries Contribution and the Traffic Regulation Order Contribution, the Retail Prices Index as published by the Office for National Statistics

or any successor (or equivalent index should the Index cease to be compiled) and if the reference base used to compile that Index changes after the change is to be the figure that would have been shown in that Index if the reference base current at the date of this Agreement has been retained.

- "Index Linked"** : Any sum expressed to be Index Linked shall be increased proportionately in line with the amount (if any) by which the relevant Index for the month preceding the date on which any sum is required by this Deed to be paid exceeds the Index for the month preceding the date hereof.
- "Land"** : the land against which this Agreement may be enforced at the former Council Offices, High Street, Cranbrook, Kent, TN17 3EN currently registered at the Land Registry under title number K919966 and shown for the purposes of identification edged red on the Plan attached to this Agreement.
- "Local Libraries Contribution"** : means the sum of two hundred and thirty six pounds and twenty nine pence (£236.29) Index Linked to be applied towards the provision of library facilities within the locality of Tunbridge Wells
- "Monitoring Fee"** : means the sum of fifteen thousand seven hundred and nine pounds and twelve pence (15,709.12)
- "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 Application"** : The application for full planning permission submitted to the Council for the Development and allocated reference number 13/02502/FULMAJ
- "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.
- "Reasonable Endeavours"** : all those reasonable steps which a prudent and determined person or company acting in his or its best interests and anxious to achieve the stated objective would take (save where the Agreement otherwise indicates)
- "Traffic Regulation Order Contribution"** : means the sum of two thousand five hundred pounds (£2,500) Index Linked to be applied towards the regulation of traffic within the locality of Tunbridge Wells.
- "Working Day"** : 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.
- 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 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).

3.2 This Agreement shall come into effect upon the grant of the Planning Permission with the exception of the obligations contained in clauses 7 and 12 which shall come into effect on the date of this Agreement.

### **4. COVENANTS TO AND BY THE COUNCIL**

4.1 The Owner covenants with the Council and County 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**

5.1 No person shall be liable for breach of a covenant, restriction or obligation contained in this Agreement after parting 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 This Agreement shall not be enforceable against a statutory undertaker (within the meaning of section 262 of the Act) after the transfer of any freehold or leasehold interest in the Land by the Owner to that statutory undertaker as appropriate.

### **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) 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 Owners; or

6.1.3 is quashed or otherwise withdrawn.

## **7. LOCAL LAND CHARGE**

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

7.2 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.

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

## **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.

## **10. MISCELLANEOUS**

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. COSTS**

The Owner shall pay the Council one thousand five hundred pounds £1,500 towards 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. THIRD PARTY RIGHTS**

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

**14. 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.

**15. VAT**

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

**16. JURISDICTION**

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

**17. 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 to pay the Affordable Housing Contribution to the Council prior to the first Occupation of a Dwelling
- 1.2 not to Occupy or permit Occupation of any Dwelling until the whole of the Affordable Housing Contribution has been paid to the Council.

### **2. TRAFFIC REGULATION ORDER CONTRIBUTION**

- 2.1 to pay the Public Traffic Regulation Order Contribution to the Council prior to the first Occupation of a Dwelling.
- 2.2 not to Occupy or permit Occupation of any Dwelling until the whole of the Traffic Regulation Order Contribution has been paid to the Council.

### **3. COMMUNITY LEARNING CONTRIBUTION**

- 3.1 to pay the Community Learning Contribution to the Council prior to the first Occupation of a Dwelling
- 3.2 not to Occupy or permit Occupation of any Dwelling until the whole of the Community Learning Contribution has been paid to the Council.

### **4. ADULT SOCIAL SERVICES CONTRIBUTION**

- 4.1 to pay the Adult Social Services Contribution to the Council prior to the first Occupation of a Dwelling.
- 4.2 not to Occupy or permit Occupation of any Dwelling until the whole of the Adult Social Services Contribution has been paid to the Council.

### **5. LOCAL LIBRARIES CONTRIBUTION**

- 5.1 to pay the Public Local Libraries Contribution to the Council prior to the first Occupation of a Dwelling.
- 5.2 not to Occupy or permit Occupation of any Dwelling until the whole of the Local Libraries Contribution has been paid to the Council.

### **6. MONITORING FEE**

- 6.1 to pay the Monitoring Fee to the Council prior Commencement of Development
- 6.2 not to Commence Development until the whole of the Monitoring Fee has been paid to the Council.

**7. NOTIFICATIONS**

To notify the Council one month in advance of:

- 7.1 the Commencement of Development; and
- 7.2 the first Occupation of a Dwelling

## SCHEDULE 2 – THE COUNCIL'S COVENANTS

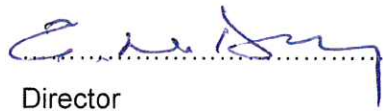
### 1. REPAYMENT OF CONTRIBUTIONS

- 1.1 The Council hereby covenants with the Owner to use the Affordable Housing Contribution received from the Owner within the district in which it operates and for the purposes specified in this Agreement.
- 1.2 The Council hereby covenants with the Owner to use its Reasonable Endeavours to ensure the Adult Social Services Contribution, the Community Learning Contribution, the Local Library Contribution and the Traffic Regulation Order Contribution received from the Owner is spent for the purposes specified in this agreement.
- 1.3 The Council hereby covenants with the Owner to use its Reasonable Endeavours to ensure all sums received in respect of the Affordable Housing Contribution, the Traffic Regulation Order Contribution, the Community Learning Contribution, the Adult Social Services Contribution and the Local Libraries Contribution are used within 5 years of receiving them and to use its Reasonable Endeavours to ensure any monies which remain unspent or uncommitted after 5 years are repaid to the party that paid the relevant contribution together with accrued interest from the date of receipt until and including the date of repayment.
- 1.4 The Council shall use its Reasonable Endeavours to 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 MCCARTHY )  
& STONE RETIREMENT )  
LIFESTYLES LIMITED acting by one )  
director in the presence of )

  
.....  
Director

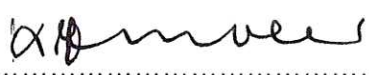
  
..... )

Witness Name: H. J. HOMER

Witness Address: 26-32 OXFORD RD  
BOURNE MOUTH  
BH8 8EZ

Witness Occupation: LEGAL ASSISTANT

EXECUTED as a deed by affixing the )  
COMMON SEAL of TUNBRIDGE )  
WELLS BOROUGH COUNCIL in the )  
presence of )

  
.....  
Authorised Signatory

  
.....  
Authorised Signatory



SEAL BOOK REFERENCE  
NUMBER:- 8888

