

PT 117648

DATED 21<sup>st</sup> July 2010

- (1) THE RYEDALE DISTRICT COUNCIL
  
- (2) MCCARTHY & STONE RETIREMENT LIFESTYLES LIMITED

**SUPPLEMENTAL AGREEMENT TO S106 AGREEMENT**  
relating to  
**LAND TO THE REAR OF BARTON COTTAGE, CASTLE HOWARD ROAD, MALTON**

**LESTER ALDRIDGE LLP**  
Solicitors  
Alley House  
Carlton Crescent  
Southampton  
SO15 2EU

Tel : 02380 827400  
Fax: 02380 827410

THIS DEED is made on

21st July

2010

**BETWEEN:-**

- (1) **Council** : **THE RYEDALE DISTRICT COUNCIL**  
whose principal office is at Ryedale  
House, Malton , North Yorkshire YO17  
7HH
- (2) **Owner** : **MCCARTHY & STONE RETIREMENT  
LIFESTYLES LIMITED**, (Company  
Registered Number 6622231) whose  
registered office is at Homelife House  
26/32 Oxford Road Bournemouth  
Dorset BH8 8EZ

**BACKGROUND**

- (A) This Deed is supplemental and collateral to the Original Agreement.
- (B) The Council and the Owner have agreed that the Original Agreement shall be varied in accordance with section 106A (1) (a) of the Town and Country Planning Act 1990.

**AGREED TERMS**

**1. INTERPRETATION**

- 1.1 The definitions in this clause apply in this Deed.

**Original Agreement** : a Planning Obligation by Agreement pursuant to section 106 of the Town and County Planning Act 1990 dated 25 February 2008 and made between the Council, McCarthy & Stone (Developments) Limited and Bank of Scotland Plc

- 1.2 A reference to the Original Agreement includes any deed, agreement, licence, consent, approval or other instrument supplemental to it.
- 1.3 A reference to laws in general is to all local, national and directly applicable supra-national laws in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any subordinate laws for the time being in force made under them and all orders, notices, codes of practice and guidance made under them.
- 1.4 A **person** includes a corporate or unincorporated body.

- 1.5 Except where a contrary intention appears, a reference to a clause or Schedule, is a reference to a clause of, or Schedule to, this Deed and a reference in a Schedule to a paragraph is to a paragraph of that Schedule.
- 1.6 Clause, Schedule and paragraph headings do not affect the interpretation of this Deed.
- 1.7 Except to the extent that they are inconsistent with the definitions and interpretations in clause 1 of this Deed, the definitions and interpretations in clause 1 of the Original Agreement shall apply to this Deed.

## **2. TRANSFER OF THE LAND**

By a transfer dated 24 April 2009 the Owner became the registered proprietor of the Land with freehold title absolute

## **3. VARIATION OF THE ORIGINAL AGREEMENT**

The Council and the Owner agree that the Original Agreement is varied as follows:

- 3.1 The definition of "Affordable Housing Contribution" at Clause 1.1.3 shall be deleted and replaced by the following:

"the sum of £250,000 (Two Hundred and Fifty Thousand Pounds)

- 3.2 Clause 1.1.7 shall be amended by the deletion of the words "house manager's accommodation"

- 3.3 A new definition shall be incorporated at clause 1.1.14 as follows:

"1.1.14 Index" means the Halifax House Price Index or any publication substituted for it between the [date of the supplemental agreement] and the date of payment of the Indexed Sum"

- 3.4 A new definition shall be incorporated at clause 1.1.15 as follows:

"1.1.15 "Indexed Sum" means a sum ("A") being equal to the Affordable Housing Contribution ("B") multiplied by a figure being a fraction of which the Index figure last published as at the 25 February 2009 is the denominator ("X") and the last Index figure published before the date the payment of

the Indexed Sum is made ("Y") less the last published Index figure as at 25 February 2009 ("X") is the numerator so that

$$A = B \times \frac{(Y - X)}{X}$$

X"

PROVIDED THAT the Index Sum shall not exceed £150,000 (One Hundred and Fifty Thousand Pounds)

3.5 A new definition shall be incorporated at clause 1.1.16 as follows:

"1.1.16 "Occupation" 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 or display or occupation in relation to security operations and Occupied shall be construed accordingly"

3.6 A new clause 3.12 shall be incorporated as follows:

"3.12 This Deed shall not be enforceable against owner-occupiers or tenants of Dwellinghouses nor those deriving title from them"

3.7 The Second Schedule shall be amended by the deletion of the words "1 house manager's two bedroom apartment"

3.8 The Third Schedule shall be amended so that it reads as follows:

"The Owner covenants with the Council:

1. Not to permit First Occupation unless and until the Public Open Space Contribution has been paid in full to the Council
2. Not to permit the Occupation of more than 12 Dwellinghouses until the Affordable Housing Contribution has been paid in full to the Council
3. Not to permit the Occupation of more than 36 Dwellinghouses until the Indexed Sum has been paid in full to the Council"

4. To construct the blocks of Dwellinghouses forming part of the Development to lower ground and ground floor level within 12 months of the date of this Deed.

**4. ORIGINAL AGREEMENT REMAINS IN FORCE**

4.1 The Council and the Owner confirm that the covenants and conditions contained in the Original Agreement except as varied by this Deed are to continue in full force and effect

**5. REGISTRATION**

This Deed shall be registered as a local land charge.

**6. EXECUTION**

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

**7. APPLICABLE LAW**

This Agreement shall be governed by and construed in accordance with the law of England and Wales.

**8. CONTRACTUAL RIGHTS OF THIRD PARTIES**

No term of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.

IN WITNESS whereof the Council and the Owner have executed this deed the day and year first before written

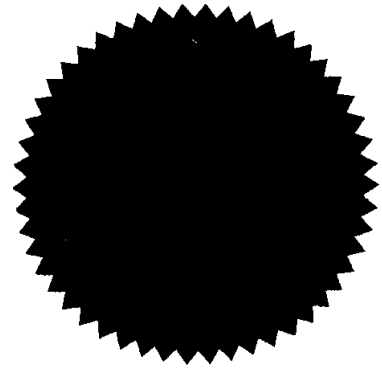
~~THE COMMON SEAL of~~

THE COMMON SEAL OF  
THE RYEDALE DISTRICT COUNCIL

was affixed to this Deed in the presence of:

 Chairman

 Council Solicitor

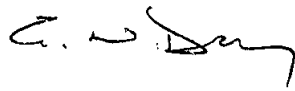


Minute 934/82  
Reg No. 6285  
Initials *cew*

SIGNED AS A DEED by

MCCARTHY & STONE RETIREMENT  
LIFESTYLES LIMITED

acting by:

Director 

Director/Company Secretary 