

DATED 23 SEPTEMBER

2013

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

Planning obligation under section 106 of the Town and Country Planning Act 1990 relating to site of Former North Riding Garage, Eastgate, Pickering YO18 7EQ

Lester Aldridge LLP

Solicitors

Real Estate Team

Alleyn House

Carlton Crescent

Southampton

Hampshire

SO15 2EU

Tel: 02380 827400

Fax: 02380 827410

E mail: enquiries@la-law.com

Ref: RBA.MCC.33.1206

THIS AGREEMENT is made the **23** day of **SEPTEMBER** 2013

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

- (3) **RYEDALE COUNCIL** : of Ryedale House, Malton, North Yorkshire, YO17 7HH
("The 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 which is registered at the Land Registry under title number NYK80032 and shown for the purposes of identification edged red on the Plan appended to this Agreement.
- (3) The Owner has by planning application reference number 13/00582/MFUL and dated 16 May 2013 ("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 has resolved to grant permission subject to the completion of this Agreement.
- (5) The Owner has agreed to enter into this Agreement with 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:

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).
- "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.
- "Development"** : means the development of the Land to provide later living retirement apartments with associated communal facilities, landscaping 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
- "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"

: means the 'All Items' Index of Retail Prices issued by the Office of 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 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"

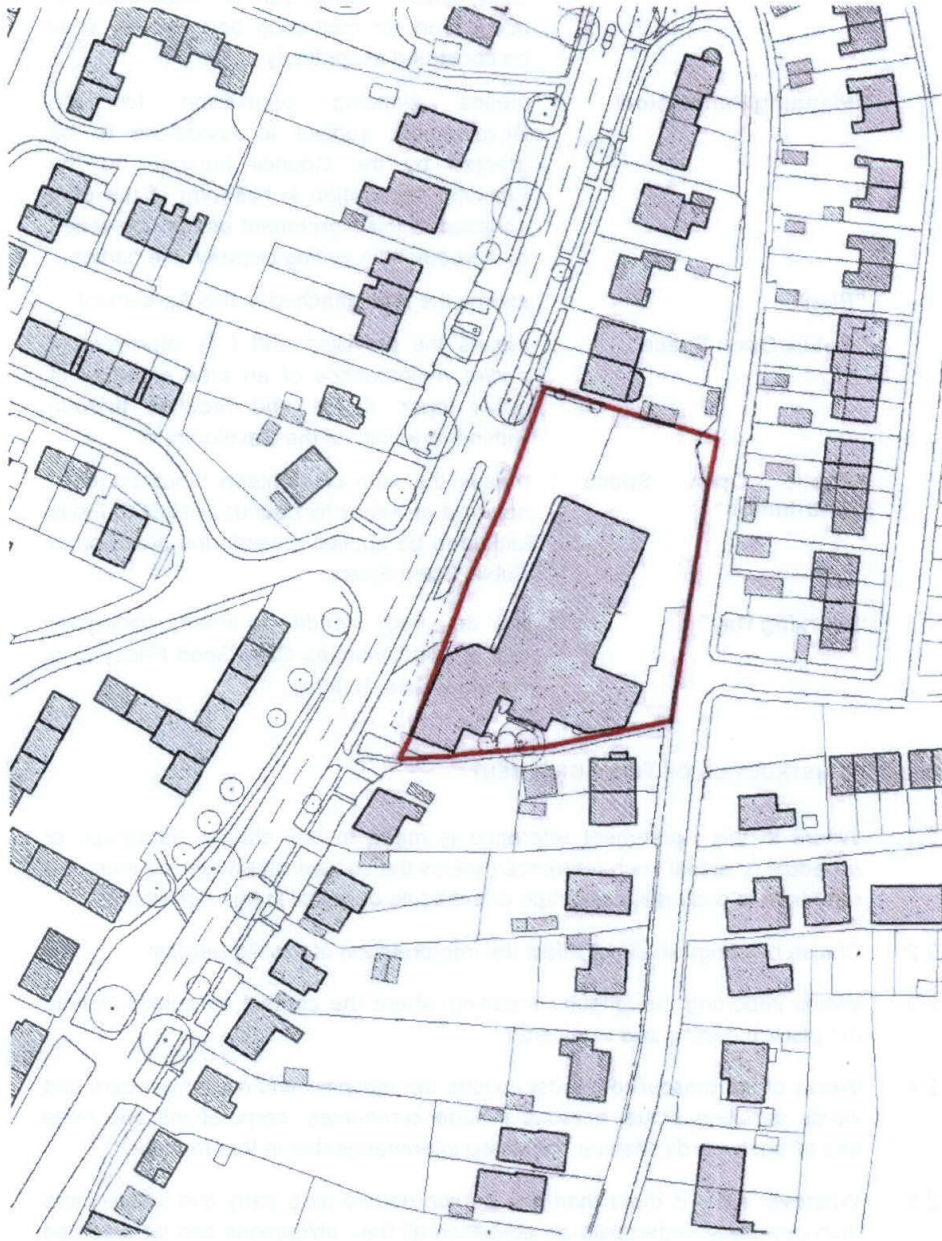
: means the land located at the Site of Former North Riding Garage, Eastgate, Pickering, YO18 7EQ and shown for the purposes of identification edged red on the Plan

- "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 planning permission for the Development subject to conditions to be granted by the Council pursuant to the Planning Application in the form of the draft annexed to this Agreement as may be varied by agreement in writing between the parties.
- "Plan"** : means the plan attached to this Agreement.
- "Public Open Space"** : means the provision and / or improvement and/or maintenance of an area or areas of public open space and facilities thereon within the vicinity of the Development
- "Public Open Space Contribution"** : means the sum of eighteen thousand eight hundred and sixty six pounds (£18,865) Index Linked to be applied towards the provision of Public Open Space.
- "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.

Eastgate, Pickering, YO18



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- 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 clause 4 and within Schedule 1 which shall not come into effect until both the grant of the Planning Permission and first Occupation and clauses 8 and 14 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 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 entire 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 the owner-occupier, tenant or mortgagee of a Dwelling or 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 Owner; 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. 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.

9. 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.

10. NOTICES

10.1 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.

10.2 Any notice shall be deemed to have been duly received:

10.2.1. if delivered personally, when left at the address set out in this Agreement;

10.2.2. if sent by pre-paid first class post or recorded delivery, on the second Working Day after posting; or

10.2.3. if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

11. DISPUTE RESOLUTION

11.1 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:

- 11.1.1. the determination of the Expert shall be final and binding on the parties save in the case of manifest error;
- 11.1.2. the parties shall be entitled to make representations and counter-representations in accordance with such timetable as the Expert shall direct;
- 11.1.3. 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
- 11.1.4. 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.

12. 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.

13. CHANGE OF OWNERSHIP

The Owner covenants to give the Council immediate written notice 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.

14. 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.

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 Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

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. PUBLIC OPEN SPACE CONTRIBUTION

- 1.1 to pay the Public Open Space 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 Public Open Space Contribution has been paid to the Council.

2 NOTIFICATIONS

to notify the Council the Council in advance of:

- 2.1 the Commencement of Development; and
 - 2.2 the first Occupation of a Dwelling
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SCHEDULE 2 – THE COUNCIL'S COVENANTS

1. REPAYMENT OF CONTRIBUTIONS

- 1.1 The Council hereby covenants with the Owner to use all sums 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 all sums received in respect of the Public Open Space Contribution within 10 years of receiving it and to repay any monies which remain unspent 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.
- 1.3 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 MCCARTHY)
& STONE RETIREMENT)
LIFESTYLES LIMITED acting by one)
director in the presence of)
)
)
)

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Director

Witness Name: DEBORAH PRICE

Witness Address: HOME LIFE, HOUSE, 26-32 OXFORD RD,
BOHEMERAM, SN8 8E2

Witness Occupation: PERSONAL ASSISTANT

EXECUTED as a deed by affixing the)
COMMON SEAL of RYEDALE)
DISTRICT COUNCIL in the presence of)
)
)



Minute
07/13/40
Reg No.
6439
Initials CS

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Council/Assistant Solicitor