

DATED

10th June

2019

- (1) BARNLEY METROPOLITAN BOROUGH COUNCIL
- (2) MCCARTHY & STONE RETIREMENT LIFESTYLES LIMITED

AGREEMENT

Under Sections 111 of the Local Government Act 1972 and 33 of the
Local Government (Miscellaneous Provisions) Act 1982

Relating to Land known as Victoria Road and Beckett Hospital,
Berneslai Close, Barnsley S70 2HL

Lester Aldridge LLP Solicitors

Real Estate Team

Alleyn House

Carlton Crescent

Southampton

Hampshire

SO15 2EU

Tel: 02380 827400

E mail: enquiries@la-law.com

Ref: MAI.MCC.33.2740

THIS AGREEMENT is made the 10th day of June, 2019

BETWEEN

- (1) **BARNSELY METROPOLITAN BOROUGH COUNCIL** : of West Gate Plaza, 1 West Street, Barnsley S70 2DR

("The Council")

AND

- (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

("The Developer")

BACKGROUND

- (1) The Council is the freehold owner of the Land.
- (2) The Developer has the benefit of two conditional contracts with the Council dated 25 August 2017 to purchase the Land.
- (3) The Developer has lodged the Planning Application with the Council as local planning authority for the area in which the Land is located.
- (4) The Council and the Developer have agreed to enter into this Agreement, with the intention that this Agreement may be enforced by the Council against the Developer.

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.

"Development" : means the development of the Land to form a part new build/part conversion development of 53 retirement living apartments together with communal facilities, landscaping, car parking

and associated access as more particularly described in the Planning Application.

"Land" : The land edged red on the Plan being part of the freehold property known as land located at Berneslai Close , Barnsley, S70 2HL S70 2HL and registered at the Land Registry with title absolute under title number SYK92660

"Planning Application" : The application for full planning permission submitted to the Council for the Development and allocated reference number 2017/1556.

"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.

"Section 106 Agreement" : Means the agreement between the Council and Developer in the form of the draft set out at Schedule 1 to this Agreement as may be varied by agreement in writing between the parties

2. CONSTRUCTION OF THIS AGREEMENT

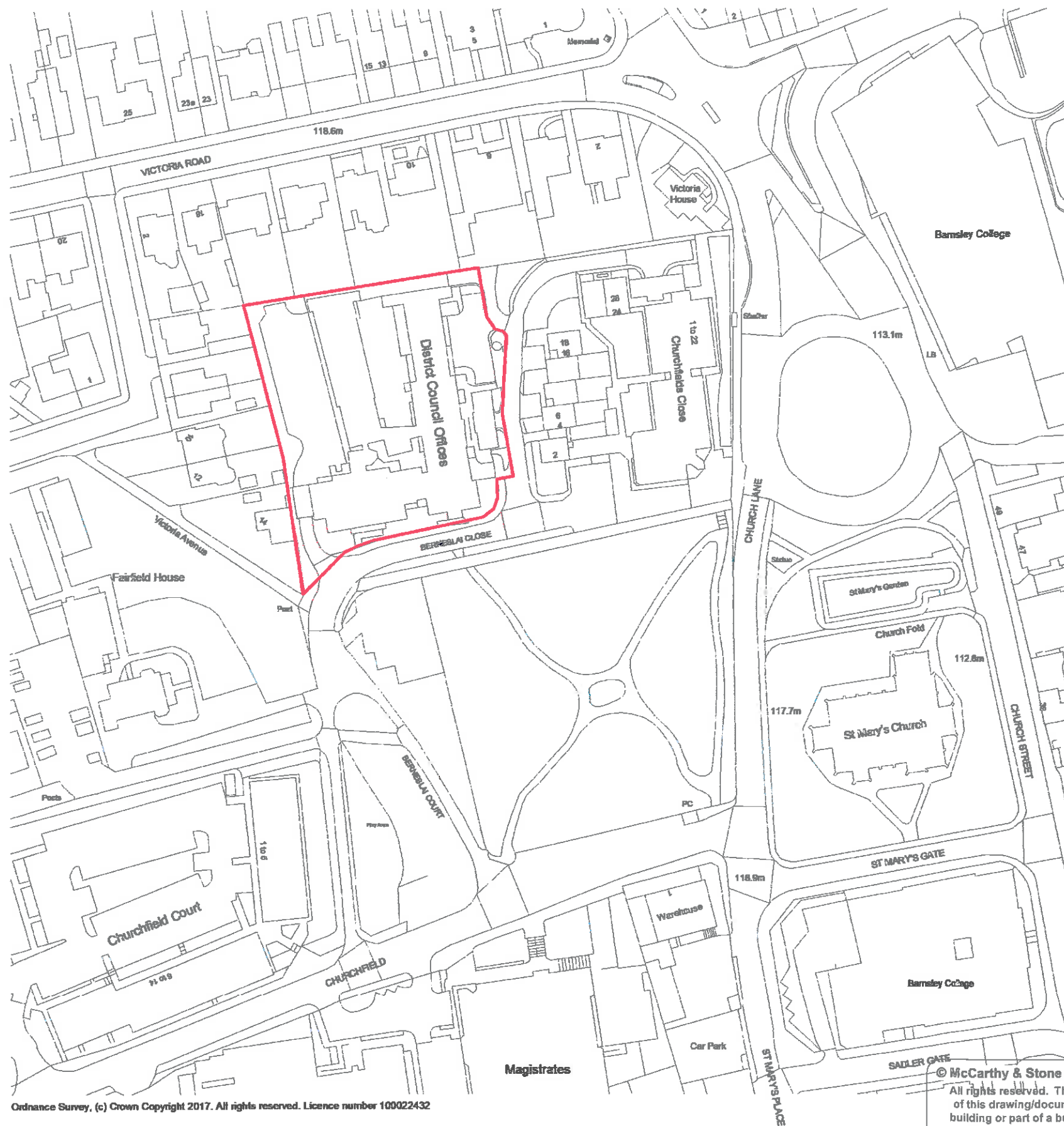
2.1 Where in this Agreement reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Agreement.

2.2 Clause headings shall not affect the interpretation of this Agreement.

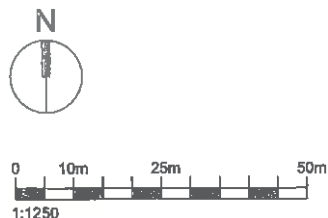
2.3 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

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



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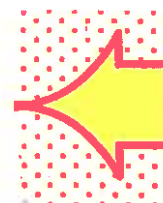
KEY

MCS development Site extents

notes:

- DO NOT SCALE FROM THIS DRAWING - USE FIGURED DIMENSIONS ONLY.
 - TO BE READ IN CONJUNCTION WITH ALL OTHER CONSULTANTS / SPECIALISTS DRAWINGS REPORT ANY DISCREPANCIES BEFORE AFFECTED WORK COMMENCES.
- ALL SETTING OUT DIMENSIONS TO BE CHECKED ON SITE BY CONTRACTOR BEFORE WORK COMMENCES.

Car. Day
Guyke



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CLIENT	McCarthy & Stone NE
PROJECT	M&S Berneslai Close, Barnsley
TITLE	Redline Boundary plan
PROJECT NO.	017146
DWG NO.	NE 2473-4-AC-001-2
REVISION	
STATUS	
SCALE	1 : 1250 @ A3
DATE	05/29/19
DRAWN BY	PJW
CHECKED BY	ZH

McCarthy & Stone
Retirement living to the full

seven.
SEVENARCHITECTURE.CO.UK

Studios at
61 Oxford Street,
MANCHESTER, M1 6EQ
t : 0161 236 5655
Clarendon House, Victoria Avenue,
HARROGATE, HG1 1DY
t : 01423 709 807
Garden 6, Doc Fictoria
CAERNARFON, LL55 1SQ
t : 01286 685 253
24 Greville Street, LONDON,
EC1N 8SS
t : 0203 030 0951

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DATE; DRAWN; CHECK

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 its respective statutory functions.
- 2.9 The headings and contents list are for reference only and shall not affect construction.

3. EFFECT OF THIS AGREEMENT

- 3.1 This Agreement is entered into pursuant to the powers contained in Sections 111 of the Local Government Act 1972 and 33 of the Local Government (Miscellaneous Provisions) Act 1982 ("the Acts") and all other enabling powers.
- 3.2 Nothing in this Agreement shall be construed as restricting the exercise by the Council of any power or discretion exercisable by it under the Acts or any other Act of Parliament or Local Act nor prejudicing or affecting the Council's rights powers duties and obligations in any capacity as a local or public authority.

4. OBLIGATIONS OF THE PARTIES

- 4.1 The Developer hereby covenants with the Council that it will:
 - 4.1.1 enter into the Section 106 Agreement;
 - 4.1.2 deliver the duly executed Section 106 Agreement to the Council;
and
 - 4.1.3 irrevocably release the Section 106 Agreement to the Council for completionwithin 10 days of the date of the completion of the transfer of the freehold interest in the Land from the Council to the Developer.
- 4.2 The Council hereby covenants with the Developer that it will issue the Planning Permission within 7 days of the date of this Agreement

5. NOTICES

- 5.1 Any notice required to be given or document required to be delivered 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.

5.2 Any notice or document shall be deemed to have been duly received:

- 5.2.1. if delivered personally, when left at the address set out in this Agreement;
- 5.2.2. if sent by pre-paid first class post or recorded delivery, on the second Working Day after posting; or
- 5.2.3. if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

6. 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.

7. 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 – S106 AGREEMENT

DATED

2019

- (1) MCCARTHY & STONE RETIREMENT LIFESTYLES LIMITED**
- (2) BARNSELY METROPOLITAN BOROUGH COUNCIL**

**Planning obligation under section 106 of the Town and Country
Planning Act 1990 relating to Land known as Victoria Road and
Beckett Hospital, Berneslai Close, Barnsley, S70 2HL**

Lester Aldridge LLP Solicitors

Real Estate Team

Alleyn House

Carlton Crescent

Southampton

Hampshire

SO15 2EU

Tel: 02380 827400

E mail: enquiries@la-law.com

Ref: MAI.MCC.33.2740

THIS AGREEMENT is made the day of 2019

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")
- (2) **BARNSELY METROPOLITAN BOROUGH COUNCIL** : of West Gate Plaza, 1 West Street, Barnsley, S70 2DR
("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.
- (3) The Owner has by planning application reference number 2017/1556 and dated 29 November 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 are content to grant the Planning Permission on the completion of this agreement but would not grant the Planning Permission unless the covenants contained herein were entered in to by the Owners.
- (5) The Owner and the Council enter into this Agreement in accordance with an agreement dated [] between the Owner and the Council pursuant to Sections 111 of the Local Government Act 1972 and 33 of the Local Government (Miscellaneous Provisions) Act 1982.

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).
- "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 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, 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.
- “Development”** : means the demolition of existing buildings and erection of 58 retirement living apartments including associated communal facilities landscaping and car parking and as more particularly described in the Planning Application.
- “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.

"Greenspace Contribution"

: means the sum of forty four thousand nine hundred and ninety four pounds and eleven pence (£44,994.11) to be applied towards improvements to Churchfield Peace Gardens and play area, or any other facility within 1km of the site.

"Land"

: means the land located at Berneslai Close, Barnsley, S70 2HL registered under title number SYK92660 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 granted by the Council pursuant to the Planning Application in the form of the draft annexed to this Agreement.

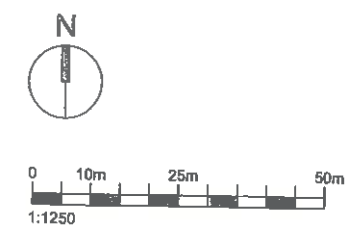
- “Plan”** : means the plan attached to this Agreement.
- “Working Day”** : means any day from Monday to Friday (inclusive) that is not Christmas Day, Good Friday or a statutory Bank Holiday.

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.
- 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.
- 2.10 This Agreement shall come into effect on the date hereof.

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



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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).

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 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
 - 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 any interest in the Land.

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;
 - 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. LEGAL CHALLENGE

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

- 8.1.1. 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 Development has been Commenced;
- 8.1.2. 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
- 8.1.3. 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:

11.1.3.1 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.

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

- (a) when permission to apply for statutory 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.

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. 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.

14. CHANGE OF OWNERSHIP

The Owner covenant to give the Council written notice within 10 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.

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. GREENSPACE CONTRIBUTION

- 1.1 Prior to Occupation of the 25th Dwelling to pay the Greenspace Contribution to the Council.
- 1.2 not to Occupy or permit Occupation of more than 24 Dwellings until the whole of the Greenspace Contribution has been paid to the Council.

2. NOTIFICATIONS

To notify the Council as soon as practicable following:

- 2.1 the Commencement of Development; and
- 2.2 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 expend or commit all sums received in respect of the Greenspace 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.
- 1.3 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) Director

.....
Witness Signature

Witness Name:

Witness Address:

Witness Occupation:

EXECUTED as a deed by affixing the)
COMMON SEAL OF BARNSLEY)
METROPOLITAN BOROUGH)
COUNCIL in the presence of)
) Authorised Signatory

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

G. N. Day
Director

GARY DAY)

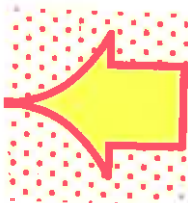
Witness Name: Heronika Limberger

Witness Address: HERONIKA LIMBERGER

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

EXECUTED as a deed by affixing the)
COMMON SEAL of BARNSELY)
METROPOLITAN BOROUGH)
COUNCIL in the presence of)
)
)

Gary K
Authorised Signatory



No. 1533
IN REGISTER