

20100718 / LA2010/008.

DATED 11 october 2010

NORFOLK COUNTY COUNCIL

-AND-

BROADLAND DISTRICT COUNCIL

- AND -

MCCARTHY AND STONE RETIREMENT
LIFESTYLES LIMITED

**AGREEMENT UNDER SECTION 106
OF THE TOWN AND COUNTRY PLANNING
ACT 1990**

Relating to the development of land at
149 Yarmouth Road, Thorpe St Andrew, Norfolk

Broadland District Council
Thorpe Lodge
Yarmouth Road
Norwich
NR7 0DU

THIS AGREEMENT is made the 11 day of October 2010

BETWEEN:

NORFOLK COUNTY COUNCIL ("the County Council") of County Hall Martineau Lane Norwich NR1 2DH of the first part and BROADLAND DISTRICT COUNCIL of Thorpe Lodge 1 Yarmouth Road Thorpe St Andrew Norwich Norfolk NR7 0DU ("the Council") of the second part and MCCARTHY & STONE RETIREMENT LIFESTYLES LIMITED (Company Registered Number 6622231) whose registered office is at Homelife House 26/32 Oxford Road Bournemouth Dorset BH8 8EZ ("the Owner")

1. INTERPRETATION AND DEFINITIONS

In this Agreement unless the context otherwise requires the following expressions shall have the following meanings:-

"Act"	the Town and Country Planning Act 1990 (as amended)
"Affordable Housing Contribution"	the sum of five hundred and twenty two thousand seven hundred and ninety pounds (£522,790)
"Application"	the detailed planning application dated 18 May 2010 for the demolition of any existing buildings and the erection on the land of a block of 48 sheltered apartments for the elderly including communal facilities and parking under reference number 20100718

"Commencement Date"	the initiation of the Development by the carrying out on the Site pursuant to the Planning Permission of a material operation within the meaning of Section 56 (4) of the Act (but not 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, erection of any temporary means of enclosure, the temporary display of site notices or advertisements) and "commence" shall be interpreted in accordance with this definition
"Development"	the development permitted by the Planning Permission
"Director"	the Council's Strategic Director and Chief Planner (Community Services) or other officers of the Council acting under his hand
"Index Linked"	Index-linked from the date of this Agreement until such time the payment of the Library Contribution is made such index linking to be equivalent to any increase in such sums in proportion to the increase in the Royal Institution of Chartered Surveyors Building Cost Information Service All in Tender Index (or if such index ceases to be published such other index as the County Council shall reasonably determine)

"Inflation Provision"	the increase (if any) in the BIS Output Price index for New Construction (2010) : All New Construction between 30 September 2006 and the date upon which a payment of the Open Space Contribution and the Affordable Housing Contribution is made pursuant to this Agreement
"Council's Monitoring Fee"	the sum of six hundred and twenty pounds (£620)
"County Council's Monitoring Fee"	the sum of three hundred pounds (£300)
"Occupation and Occupied"	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
"Open Space Contribution"	the sum of twenty four thousand seven hundred and sixteen pounds (£24,716)
"Plan"	the plan annexed to this Agreement
"Planning Obligations"	the planning obligations set out at clauses 14 and 15 below
"Planning Permission"	the planning permission to be granted pursuant to the Application
"Library Contribution"	the sum of two thousand eight hundred and eighty pounds (£2,880) such sum to be Index

Linked

"Residential Unit" a self-contained house or flat approved pursuant to the Planning Permission

"Site" the land at 149 Yarmouth Road, Thorpe St Andrew, Norfolk which is shown for the purposes of identification only edged red on the Plan

In this Agreement unless the context otherwise requires:

- (i) references to any party shall include the successors in title and assigns of that party
- (ii) references to clauses and schedules are references to clauses in and schedules to this Agreement except where otherwise specified
- (iii) any mention herein of any Act or of any Section Regulation or Statutory Instrument shall be deemed to refer to the same source as at any time amended and where such Act Section Regulation or Statutory Instrument has been replaced consolidated or re-enacted with or without amendment such mention shall be deemed to refer to the relevant provision of the updating consolidating or re-enacting Act or Section or Regulation or Statutory Instrument
- (iv) headings in this Agreement shall not form part of or affect its construction

W H E R E A S:

- A. The Council is the Local Planning Authority for the purposes of the Act for the area within which the Site is situated and the County Council is the relevant

Highway Authority and is also a Local Planning Authority for the purposes of the Act

- B. The Owner is the freehold owner of the Site pursuant to Title number NK362406
- C. The Owner has submitted the Application
- D. The Council has resolved to approve the Application subject to the completion of this Agreement

2. GENERAL PROVISIONS APPLICABLE TO THIS AGREEMENT

- 2.1 This Agreement is made under Section 106 of the Act, Section 111 of the Local Government Act 1972 and any other enabling powers
- 2.2 The obligations of the Owner hereunder are planning obligations for the purposes of the Act and enforceable by the Council and the County Council against the Owner and its respective successors in title and assigns
- 2.3 No person shall be liable for any breach of the covenants restrictions or obligations contained in this Agreement occurring after he has parted with the interest in the Site or the part of the Site in respect of which such breach occurs but without prejudice to liability for any subsisting breach which occurs prior to parting with such interest in the Site or any part thereof in respect of which any such breach has taken place
- 2.4 The provisions of this Agreement shall have immediate effect upon completion of this Agreement with the exception of the Planning Obligations which shall not come into effect until both the grant of the Planning Permission and the Commencement Date
- 2.5 This Agreement shall cease to have effect if:

2.5.1 the Planning Permission shall be quashed revoked or otherwise withdrawn

2.5.2 the Planning Permission shall expire prior to the Commencement Date

2.6 This Agreement shall be registered as a charge in the Council's Register of Local Land Charges

2.7 The County Council shall not be liable to any person under this Agreement after that person has parted with all interest in the Site but without prejudice to any liability arising prior thereto

3. AGREEMENTS AND DECLARATIONS

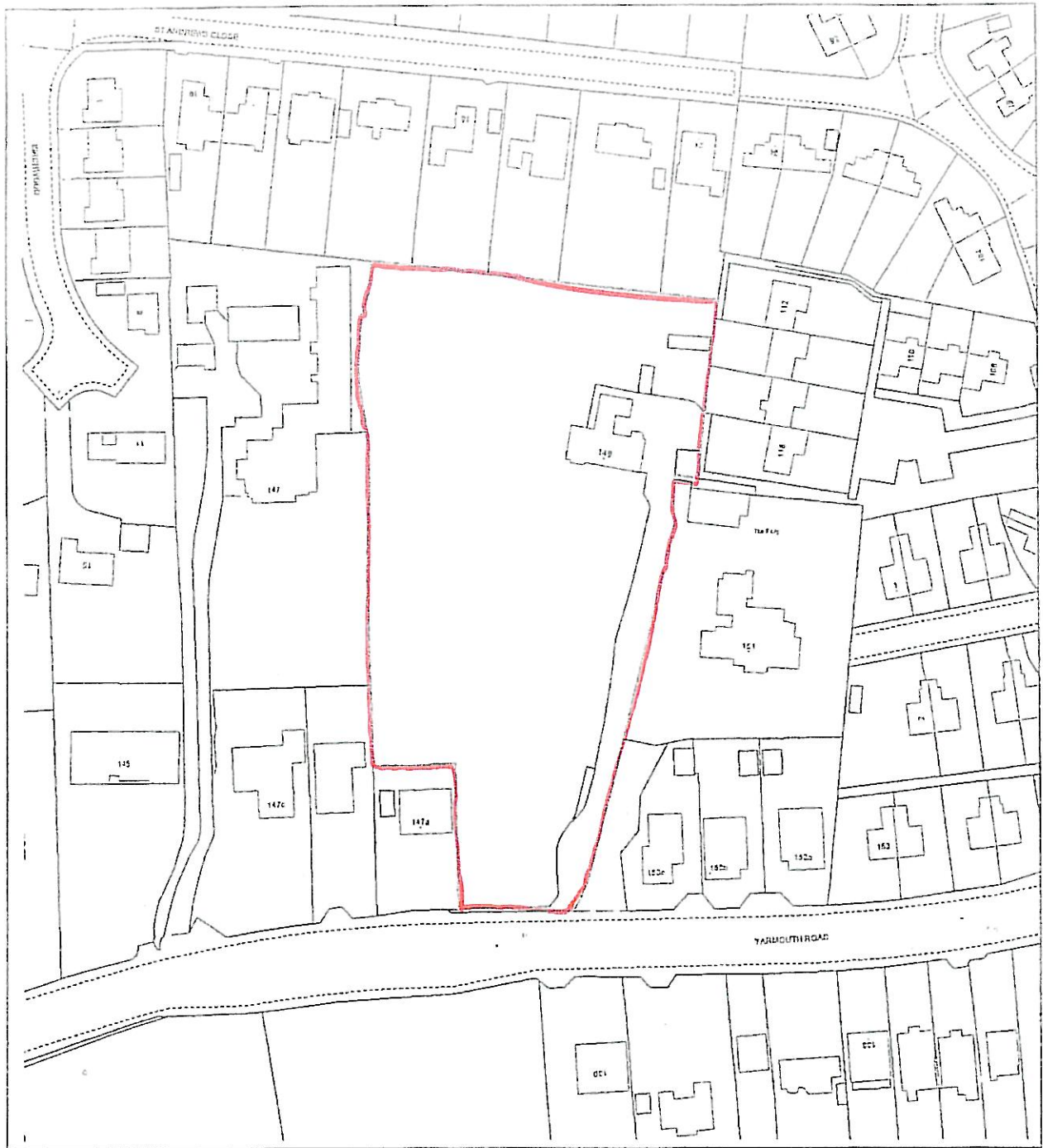
IT IS HEREBY AGREED AND DECLARED as follows:

3.1 No Fetter of Discretion

Save insofar as legally or equitably permitted nothing contained or implied in this Agreement shall prejudice or affect the rights discretions powers duties and obligations of the Council or the County Council in the exercise of its functions as Local Planning Authority and the rights powers duties and obligations under all public and private bylaws and regulations may be as fully and effectively exercised as if the Council or the County Council were not a party to this Agreement

3.2 Invalidity or Unenforceability of any of the Terms of this Agreement

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



Scale:
1:1250
Date:
2-Jun-10



6429

M. Moore

HEAD OF CORPORATE SERVICES

DIRECTOR M. J. Jones
DIRECTOR / SECRETARY G. M. Day

3.3 NO WAIVER

No waiver (whether express or implied) by the Council or the County Council of any breach or default by the Owner in performing or observing any of the covenants in this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council or the County Council from enforcing any of the covenants or from acting upon any subsequent breach or default in respect thereof

4. NOTICES

4.1 Any notice document or other correspondence required to be served or given under the provisions of this Agreement shall be in writing and delivered personally or sent by pre-paid letter or facsimile

4.2 The address for any notice or other written communication in the case of each party to this Agreement shall be as follows:-

The Council

The Strategic Director and Chief Planner
(Community Services) Broadland District
Council Thorpe Lodge 1 Yarmouth Road
Thorpe St Andrew Norwich Norfolk
NR7 0DU

The Owner

McCarthy and Stone Retirement Lifestyles
Limited Homelife House 26/32 Oxford
Road Bournemouth Dorset BH8 8EZ

The County Council

Head of Law Norfolk County Council
County Hall Martineau Lane Norwich
NR1 2DH

- 4.3 Any notice or other written communication to be given by the Council or the County Council shall be deemed to be valid and effective if on its face it is signed on behalf of the Council or the County Council by a duly authorised officer

5. THIRD PARTIES

- 5.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no person who is not a party to this Agreement (other than a successor in title to one of the original parties) shall be entitled in that person's own right to enforce any provisions of this Agreement pursuant to the provisions of the said Act

6. COSTS

- 6.1 The Owner shall on completion of this Agreement pay to the Council and the County Council its legal and administrative costs incurred in the preparation negotiation and completion of this Agreement

7. PAYMENT OF INTEREST

- 7.1 The Owner shall pay interest at the rate of 4% above HSBC Bank base rate for the time being in force on any monies due under the provisions of this Agreement in the event of late payment for the period from the date the monies should have been paid to the date the money is received

8. VAT

- 8.1 All consideration given in accordance with the terms of this Agreement shall be exclusive of any VAT properly payable
- 8.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Agreement, then to the extent that VAT has

not previously been charged in respect of that supply the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly

9. JURISDICTION

9.1 This Agreement is to be governed by and interpreted in accordance with the law of England and Wales

10. The Owner agrees that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of the Agreement are hereby waived

11. DISPUTE RESOLUTION

11.1 The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Agreement promptly through negotiations between the respective senior executives of the parties who have authority to settle the same

11.2 If the matter is not resolved through negotiations the parties will attempt in good faith to resolve the dispute or claim through an Alternative Dispute Resolution ("ADR") procedure as recommended to the parties by the Centre of Dispute Resolution

11.3 If the matter has not been resolved by an ADR procedure within 28 days of the initiation of such procedure or if either party will not participate in an ADR procedure the dispute may be referred by either party to arbitration for decision by a person appointed by agreement between the parties or in default of agreement by the President for the time being of the Institute of Civil Engineers who shall act as an expert and not as an arbitrator and whose decision shall be final and binding upon the parties

- 11.4 Nothing in Clause 11.1 and 11.2 shall apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings

12. TITLE WARRANTY

- 12.1 The Owner hereby warrants that it is the freehold owner of the Site which is registered at the Land Registry under title numbers NK362406 and has full power to enter into this Agreement

13. NOTIFICATION

- 13.1 The Owner shall notify the Council and the County Council of the Commencement Date and upon first occupation of the first Residential Unit

14. PLANNING OBLIGATIONS COUNCIL

The Owner hereby covenants with the Council as follows:

- 14.1 prior to the first Occupation of any Residential Unit on the Site to pay to the Council the Open Space Contribution as increased by the Inflation Provision and the Affordable Housing Contribution as increased by the Inflation Provision
- 14.2 the Council's Monitoring Fee which is required for checking the implementation and compliance with the terms of this Agreement shall be paid to the Council on or prior to the Commencement Date

15. PLANNING OBLIGATIONS COUNTY COUNCIL

The Owner hereby covenants with the County Council as follows:

- 15.1 prior to the first Occupation of any Residential Unit on the Site to pay to the County Council the Library Contribution as Index Linked

- 15.2 the County Council's Monitoring Fee which is required for checking the implementation and compliance with the terms of this Agreement shall be paid to the County Council on or prior to the Commencement Date

16. THE COUNCIL'S OBLIGATIONS

- 16.1 The Council agrees with the Owners that the Open Space Contribution shall be applied towards the provision and/or enhancement and/or maintenance of indoor/outdoor bowling greens/rinks within the administrative boundaries of the Council and for no other purpose
- 16.2 The Council hereby covenants with the Owner to use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the Council shall agree
- 16.3 The Council hereby covenants with the Owner that it will repay to the Owner such amount of any payment made by the Owner to the Council under this Deed which has not been expended in accordance with the provisions of this Deed (and money shall be deemed to be expended if the Council has properly entered into a contract for the expenditure of the money for the purpose for which it is paid which is reasonably likely to result in the fulfilment of that purpose) within eight years of the date of receipt by the Council of such payment
- 16.4 The Council shall provide to the Owner such evidence, as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner to the Council under this Deed

17. THE COUNTY COUNCIL'S OBLIGATIONS

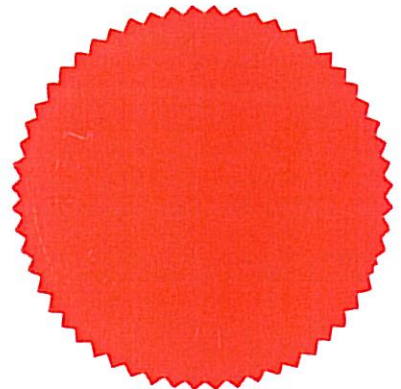
- 17.1 The County Council hereby covenants with the Owner to use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the Council shall agree
- 17.2 The County Council hereby covenants with the Owner that it will pay to the Owner such amount of any payment made by the Owner to the Council under this Deed which has not been expended in accordance with the provisions of this Deed (and money shall be deemed to be expended if the Council has properly entered into a contract for the expenditure of the money for the purpose for which it is paid which is reasonably likely to result in the fulfilment of that purpose) within five years of the date of final Occupation of the Development
- 17.3 If requested by the Owner the County Council shall provide details of expenditure of the sums paid to the County Council under this Deed

EXECUTED by the parties hereto as a deed on the date written above

THE COMMON SEAL of
BROADLAND DISTRICT COUNCIL
was hereunto affixed
in the presence of

)
)
)
)

M. Malone
Head of Corporate Services
and Monitoring Officer



6429

THE COMMON SEAL of
THE NORFOLK COUNTY
COUNCIL was hereunto
affixed in the presence of:-

)
)
)
)
Victor

Head of Law



29991

EXECUTED as a deed by
MCCARTHY AND STONE
RETIREMENT LIFESTYLES LIMITED
acting by two directors and its
secretary

)
)
)
)
)

M.J. Jennings

Director

Name: M. J. JENNINGS

G.N. Day

Director/Secretary

Name: G. N. DAY