Planning Application Reference:	**BR/153/09/**
Document Type:	**Unilateral Undertaking**
Date of Agreement:	**3rd March 2010**

NB: Text in bold to be included in free text field.

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Check **maps** for signatures and block.
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ARUN DISTRICT COUNCIL BR/153/09/

DATED 3rd March 2010

MCCARTHY & STONE RETIREMENT LIFESTYLES LIMITED

TO

ARUN DISTRICT COUNCIL

and

WEST SUSSEX COUNTY COUNCIL

Unilateral Undertaking

under Section 106 of the Town and Country Planning Act 1990

relating to Land at

Aldwick End, 282 Hawthorn Road, Bognor Regis, PO21 2UP

ARUN DISTRICT COUNCIL BR/153/09/

THIS DEED is made the 3rd day of March 2010

By

To: [redacted]

WEST SUSSEX COUNTY COUNCIL of County Hall Chichester West Sussex PO19 1RQ ("the County Council")

WHEREAS

(1) The Developer is the registered proprietor registered with title absolute at HM Land Registry under title number WSX291396 of the Land.

(2) The Developer has by the application of allocated ref no. BR/153/09 ("the Planning Application") applied to the Council to vary conditions 17 and 23 of planning permission BR/60/08 ("the First Permission")

(3) The Council is the local planning authority for the purposes of Section 106 of the 1990 Act for the area within which the Land is located and is the local authority by which the obligations in this Deed are enforceable.

(4) The County Council is the strategic planning authority and the authority responsible for the provision of fire services and libraries for the area within which the Land is located

(5) The Developer is willing to enter into the Planning Obligations as at the date of this Deed in respect of the Land.

ARUN DISTRICT COUNCIL BR/153/09/

(6) The Council considers that planning permission for the Development could be granted subject to certain conditions and for this purpose the Developer has agreed to enter into this Deed in the manner following:

NOW THIS DEED WITNESSES as follows:

1. **Definitions and Interpretation**

In this deed:

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

1.2 **"Affordable Housing Contribution"** means the sum of one hundred and ninety-five thousand pounds (£195,000.00) which shall be Index Linked

1.3 **"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 other than (for the purposes of this Deed 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** shall be construed accordingly

1.4 **"Contributions"** means the Affordable Housing Contribution, the Library Contribution and the Fire Service Contribution and **"Contribution"** shall mean any one of them

1.5 **"Development"** means the development described in the First Schedule as more particularly set out in the Planning Application

ARUN DISTRICT COUNCIL BR/153/09/

1.6 **"Dwellinghouse"** means any unit of the residential accommodation forming a part of the development for the sole use of private residence of the occupier other than house manager's accommodation.

1.7 **"Elderly Person"** means

1.7.1 being a single resident any person who has attained the age of sixty years unless the survivor of those persons mentioned in the clause 1.7.2

or

1.7.2 being the joint residents of one whom has attained the age of sixty years and the other has attained the age of fifty fife years.

1.8 **"Fire Service Contribution"** means the sum of five hundred pounds (£500.00) being a financial contribution towards the provision of fire service infrastructure (excluding fire hydrants) in the vicinity of the Land to serve the additional needs of the community generated by the Proposed Development which sum shall be increased by an amount equal to the proportionate increase in the All-in Tender Price Index published by the Building Costs Information Service of the Royal Institute of Chartered Surveyors between the quarter preceding the date of this Deed and the quarter preceding the date of payment of the Contribution and paid in accordance with the Second Schedule to this Deed

1.9 **"First Payment Date"** means on the Commencement of Development

1.10 **"First Unilateral Undertaking"** means a unilateral undertaking made under section 106 of the Act dated 1 May 2008 by McCarthy & Stone (Developments) Limited and Bank of Scotland Plc to the Council and County Council

1.11 **"Index"** means the 'all items' figure of the Index of Retail Prices published 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

ARUN DISTRICT COUNCIL BR/153/09/

changes after the date of this Deed the figure taken to be shown in that Index 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 Deed had been retained

1.12 **"Index Linked"** any sum expressed in this Deed 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 issue of the Permission

1.13 **"Interest in Default"** means interest at the rate of 4% over the Lloyds TSB Bank plc base lending rate from time to time in force

1.14 **"Land"** means land at Aldwick End, 262 Hawthorn Road, Bognor Regis, PO21 2UP shown edged red on the Plan

1.15 **"Library Contribution"** means the sum of Four Thousand, Four Hundred and Seventy Six Pounds (£4476.00) being a financial contribution towards the cost of providing the additional library infrastructure required to accommodate the extra demands for library services that would be generated by the proposed Development which sum shall be increased by an amount equal to the proportionate increase in the All-in Tender Price Index published by the Building Costs Information Service of the Royal Institute of Chartered Surveyors between the quarter preceding the date of this Deed and the quarter preceding the date of payment of the contribution and paid in accordance with the Second Schedule to this Deed

1.16 **"Occupation and Occupied"** means the occupation for the purposes permitted by the Permission but not including occupation by personnel engaged in construction, fitting our or decorating or occupation for marketing or display in relation to security operations.

1.17 **"Permission"** means planning permission for the Development pursuant to the Planning Application issued by the Council or the Secretary of State pursuant to any appeal submitted in respect of the Application

ARUN DISTRICT COUNCIL BR/153/09/

1.18 **"Plan"** means the plan annexed hereto

1.19 **"Planning Obligations"** means the obligations of the Developer specified in the First Schedule annexed hereto

1.20 **"Second Payment Date"** means on the Occupation of the first Dwellinghouse

1.21 **"Second Permission"** means the planning permission granted for the development of the Land with reference BR/223/08

1.22 **"Second Unilateral Undertaking"** means a unilateral undertaking made under section 106 of the Act dated 26 September 2008 by McCarthy & Stone (Developments) Limited and Bank of Scotland Plc to the Council and County Council

2. **The First and Second Unilateral Undertakings**

2.1 The Council granted the First Permission subject to the First Unilateral Undertaking and granted the Second Permission subject to the Second Unilateral Undertaking

2.2 Clause 2.4 of the First Unilateral Undertaking stated that the obligations contained within the First Unilateral Undertaking were not to come into effect until the implementation of the First Planning Permission

2.3 Clause 3.4 of the Second Unilateral Undertaking stated that the obligations contained within the Second Unilateral Undertaking were not to come into effect until the implementation of the First Planning Permission

2.4 Neither the First Planning Permission or the Second Planning Permission have been implemented

ARUN DISTRICT COUNCIL BR/153/09/

2.5 The obligations contained within the First Unilateral Undertaking and the Second Unilateral Undertaking therefore at the date of this Deed have no effect.

3. The Planning Obligations

3.1 The Planning Obligations are planning obligations for the purpose of Section 106 of the Act and the Developer undertakes to comply with them

3.2 This Deed shall bind the Developer and the Developer's successors in title to each and every part of the Land

3.3 The Developer shall upon disposing of:

3.3.1 any part of the Land be released from all liability under the terms of this Deed insofar as such liability relates to such part of the Land

3.3.2 the Land as a whole be released from all liability whatsoever under the terms of this Deed insofar as such liability relates to the Land

3.4 The Planning Obligations shall not come into effect until the Commencement of Development

3.5 This Deed is a local land charge and shall be registered as such by the District Council

3.6 The Developer covenants to inform the Council by notice in writing addressed to the Conditions Monitoring Officer, Development Services (quoting the allocated application reference number) within 14 days of the date of Commencement of Development and the County Council by notice in writing addressed to Head of Legal Services, County Hall, West Street, Chichester, PO19 1RQ within 14 days of the date of Commencement of Development in the form attached at the Second Schedule to this Deed.

3.7 The Developer covenants that a payment notice (in the form attached at the Third Schedule to this Deed) will accompany any payment made under this Deed.

ARUN DISTRICT COUNCIL BR/153/09/

4. Construction of Deed

4.1 Unless the context requires otherwise references in this Deed to a clause schedule or paragraph are references respectively to a clause schedule or paragraph of this Deed

4.2 Where any party to this Deed comprises two or more persons any obligations on the part of that party contained or implied in this Deed shall be deemed to be joint and several obligations on the part of those persons and references to that party shall include references to each or any of those persons

4.3 A reference to any statute or statutory section shall be taken to include a reference to any statutory amendment modification or re-enactment of it for the time being in force

4.4 The headings to this Deed do not and will not by implication form any part of this Deed and shall have no legal force whatsoever

4.5 Words denoting the singular shall include the plural and vice versa words denoting any gender shall include all genders and words denoting persons shall include bodies corporate and vice versa

5. Declarations

IT IS HEREBY DECLARED:

5.1 Lapse of Deed

that (unless otherwise proposed by the Developer) this Deed shall lapse and be of no further effect:-

5.1.1 if the Permission is not granted within 5 years after the date of this Deed; or

ARUN DISTRICT COUNCIL BR/153/09/

5.1.2 if the Permission shall lapse without having been Commenced shall be revoked or shall be modified other than at the request of the Developer; or

5.1.3 if the Permission shall be quashed as a result of legal proceedings; or

5.1.4 if a subsequent planning permission is granted in respect of the Land (either by the Council or on appeal) AND that planning permission is Commenced

5.2 It is hereby declared as follows:

5.2.1 The expression "the Developer" shall includes its successors in title and assigns and the expression "the Council" shall include its successor as Local Planning Authority and "the County Council" shall include its successors as the authority for the provision of library and fire infrastructure

5.2.2 Nothing in this Deed shall derogate from any of the rights powers and duties of the Council or the County Council pursuant to any of its statutory functions or in any capacity

5.2.3 The failure of the Council (or as the case may be the County Council) at any time to require performance by the other parties of any provisions of this Deed shall in no way affect the right of the Council (or County Council) to require performance of that provision

5.2.4 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed

5.3 This Deed shall not be enforceable against the owner-occupier or tenant of a Dwellinghouse

6. Invalidity

If any provision of this Deed shall be found by any Court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provisions shall not affect the other provisions of this Deed and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect and the parties hereunto agree to take all reasonable steps to substitute for any invalid or unenforceable provision a valid or enforceable provisions which achieves as far as reasonably practicable the legal social and environmental objectives of the invalid or unenforceable provision

7. Arbitration

Any dispute or difference arising with regard to any matters or thing arising out of or connected with this Deed shall be referred to the decision of a single arbitrator to be agreed by the parties or failing agreement between them to be nominated by the President for the time being of the Royal Institute of Chartered Surveyors and any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or re-enactment for the time being in force

8. Jurisdiction

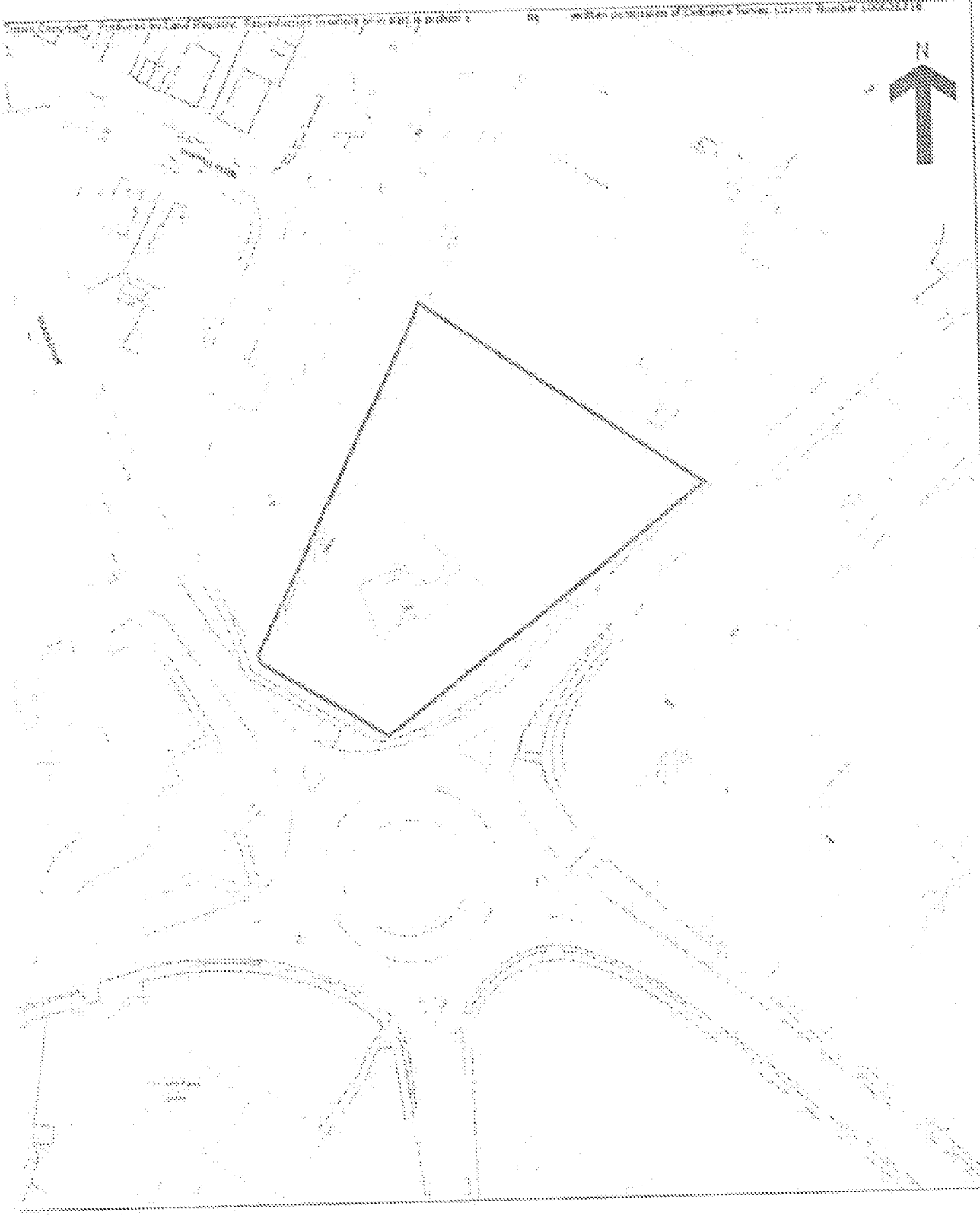
This Deed is to be governed by and interpreted in accordance with the law of England and Wales

IN WITNESS of which this Deed has been executed as a Deed by the Parties the day and the year first before written

ARUN DISTRICT COUNCIL BR/153/09/

and Registry
Official copy of
itle plan

Title number **WSX291396**
Ordnance Survey map reference **SZ9299SW**
Scale **1:1250**
Administrative area **WEST SUSSEX: ARUN**



[redacted]

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FIRST SCHEDULE
THE PLANNING OBLIGATIONS

The Contributions

1. Payment of the Contributions

1.1 The Developer covenants with the County Council that on or before the First Payment Date the following shall be paid to the County Council:

1.1.1 the Fire Service Contribution

1.1.2 the Library Contribution

1.2 The Developer covenants with the Council that on or before the Second Payment Date that the Affordable Housing Contribution shall be paid to the Council.

1.3 The Developer covenants to pay Interest in Default on any of the Contributions from day to day from the Payment Date until actual payment if payment of that Contribution occurs later than the Payment Date

1.4 On Commencement of the development the Developer will send a written Notice in the Form of that in the Third Schedule to the Council and the County Council and in default the Council and County Council will be free to determine such Commencement Date at their discretion exercised reasonably

1.5 All payments of Contributions shall be accompanied by a Payment Notice in the form of that contained in the Fourth Schedule

ARUN DISTRICT COUNCIL BR/153/09/

2. Elderly Persons

The Developer covenants with the Council to ensure that no Dwellinghouse shall be used for any other purpose other than as a private residence for the occupation of an Elderly Person unless otherwise agreed in writing by the council.

SECOND SCHEDULE

Commencement Notice

Failure to use this form may prejudice your ability to prove compliance with the planning obligation.

I advise you that the Development described below was commenced on the Start Date stated in this Notice.

Dated this _____ day of_____200

Signed _____

On Behalf Of: _____

TO:	[1] Head of Planning Services, Arun District Council, Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex BN17 5LF (DX: 57406) Littlehampton [2] County Planning Officer, West Sussex County Council, County Hall, Chichester, West Sussex PO19 1RQ (DX:30330) Chichester
FROM:	
DEVELOPMENT AT:	
NATURE OF DEVELOPMENT:	
PLANNING PERMISSION DATE & REFERENCE	
PLANNING OBLIGATION DATE & PARTIES	
START DATE:	

THIRD SCHEDULE
Payment Notice

Payment of Monies due under a Section 106 Planning Obligation

Failure to use this form may mean problems with acknowledgment of payment and may prejudice your ability to prove compliance with the planning obligation.





Please answer all the questions. It may

1. Payment to be made by/on behalf of.....

2. Land at.....

3. Agreement dated.....

4. Planning application reference number *[where applicable]*

5. Obligation in Agreement

[a]	Clause No.	
[b]	Contribution towards	
[c]	Amount of contribution	
[d]	Date upon which contribution is due	
[e]	Amount of contribution enclosed	

SIGNED as a deed by MCCARTHY & STONE RETIREMENT LIFESTYLES LIMITED acting by two directors or a director and its secretary

