Dated: 9 February 2009

[1] McCarthy & Stone (Developments) Limited

[2] The Reverend Roger Caswell

[3] The Chichester Diocesan Fund and Board of Finance (Incorporated)

[4] Bank of Scotland Plc

TO

Arun District Council

UNILATERAL UNDERTAKING

under Section 106 of the Town & Country Planning Act 1990
Land at 32, 33, 34 Fitzalan Road and 14, 16, 18 Church Street, Littlehampton BN17 6PX

I hereby certify that this copy is a true and complete copy of the original
Dated this 9 day of February 2009

[redacted]
Solicitor / Notary
LESTER ALDRIDGE LLP
2nd Floor Alleyn House, Carlton Crescent
SOUTHAMPTON SO15 2EU

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couple to occupy unless one aged 60 + and other being at least 55 +	

PLANNING ADMIN:
A copy is enclosed for your files. Please enter this on the Planning Register as a PE format.

The legal fees received for the preparation of this agreement were £nil due to terms of settlement of Inquiry ____

Delwyn Jones
Planning Solicitor

This Undertaking is dated 9 February 2009 and is made between:

[1] McCarthy & Stone (Developments) Limited (Company Registration Number 770529) whose registered office is at Homelife House 26/32 Oxford Road Bournemouth BH8 8EZ ("the Developer")

[2] The Reverend Roger Caswell, the Incumbent of the benefice of St Mary the Virgin Littlehampton of St Mary's Vicarage 34 Fitzalan Road Littlehampton BN17 5ET ("the Owner")

[3] The Chichester Diocesan Fund and Board of Finance (Incorporated) of 211 New Church Road Hove East Sussex BN3 4ED ("CDBF")

[4] Bank of Scotland Plc (Scottish Company Registration Number SC327000) whose registered office is at The Mound, Edinburgh EH1 1YZ ("the Lender")

TO:

Arun District Council of Arun Civic Centre Maltravers Road Littlehampton West Sussex BN17 5LF ("ADC")

1 **Background**

1.1 The Developer is the registered proprietor of the following parcels of Land:

1.1.1 title number WSX69067 of the land at 14 Church Street, Littlehampton,BN17 5PX subject to a Legal Charge in favour of the Lender dated 21 April 2008

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1.1.2 title number WSX155747 of the land at 16 Church Street Littlehampton BN17 5PX subject to a Legal Charge in favour of the Lender dated 28 April 2008

1.1.3 title number WSX30281 of the land at 18, Church Street Littlehampton BN17 5PX subject to a Legal Charge in favour of the Lender dated 21 April 2008

1.1.4 title number WSX89067 of the land at 32 Fitzalan Road Littlehampton BN17 5ET subject to a Legal Charge in favour of the Lender dated 3 June 2008

1.1.5 title number WSX93507 of the land at 32 Fitzalan Road Littlehampton BN17 5ET subject to a Legal Charge in favour of the Lender dated 28 April 2008

together "the Developer's Land" and shown for identification purposes shown coloured green on the attached plan

1.2 The Owner is the proprietor of the land at 34 Fitzalan Road Littlehampton BN17 5ET by virtue of a Conveyance dated 1 September 1959 shown for identification purposes only coloured blue on the attached plan ("the Owner's Land") free from encumbrances

1.3 ADC is the local planning authority and shall be responsible for the enforcement of the obligations contained herein.

1.4 The Developer has by planning application ("the Application") number LU/153/08 dated 18 June 2008 applied to ADC for planning permission to develop the Land by the erection of 60 extra care sheltered apartments

for persons satisfying the criteria set out in Clause 3.1 including house manager's office communal facilities car parking and landscaping

1.5 The Lender agrees to enter into this Undertaking in the manner hereinafter appearing

1.6 The Council refused the Application by Notice dated 16 September 2008 and the Application is now subject to an appeal to the Secretary of State under reference APP/C3810/A/08/2086867/NWF ("the Appeal")

2. Definitions and Interpretation

In this Undertaking:

2.1 "**the Act**" means the Town & Country Planning Act 1990 (as amended)

2.2 "**Affordable Housing**" means housing to be provided within the administrative area of ADC for those who are unable to access the general housing market by reason of level of income

2.3 "**Affordable Housing Contribution**" means the sum of one Hundred and eighty-five Thousand Pounds (£185,000) Index Linked

2.4 "**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 Permission 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

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2.5 **"the Development"** means the development described in the First Schedule pursuant to the Planning Application

2.6 **"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

2.7 **"Elderly Person"** means

2.7.1 being a single resident any person who has attained the age of sixty years unless the survivor of those persons mentioned in clause 2.7.2; or

2.7.2 being joint residents one of whom has attained the age of sixty years and the other the age of fifty-five years

2.8 **"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 changes after the date of this Undertaking 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 Undertaking had been retained

2.9 **"Index Linked"** any sum expressed in this Undertaking 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 Undertaking to be paid exceeds the Index for the month preceding the issue of the Permission

2.10 **"the Land"** means the Developer's Land and the Owner's Land being land at 32, 33, 34 Fitzalan Road and 14, 16, 18 Church Street, Littlehampton BN17 6PX shown outlined in red on the Plan

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2.11 **"Occupation" and "Occupied"** means occupation for the purposes permitted by the Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing

2.12 **"the Permission"** means planning permission for the Development issued by the Secretary of State pursuant to the Appeal

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

2.14 **"the Planning Obligations"** means the obligations specified in the Second Schedule annexed hereto
or carried out substantially in accordance with such planning permission.

3. **The Undertakings**

Subject to clause 3.3 hereof the Developer for itself and its successors in title and the Owner undertake as follows:-

3.1 Not to permit any unit of residential accommodation forming part of the Development (other than any guest suite) to be occupied by any person or persons other than an Elderly Person unless otherwise approved in writing by ADC

3.2 To pay to ADC the Affordable Housing Contribution on or before the first Occupation of a Dwellinghouse

3.3 The Developer and /or the Owner shall cease to have any liability under this clause once they have parted with ownership of the Land or any relevant part

3.4 The Developer undertakes with the Owner and its successor in title and CDBF to indemnify the Owner and CDBF against all costs and payments required to be paid to ADC in accordance with clause 3 hereof and against all costs claims actions liabilities demands payments and charges (including legal fees and other

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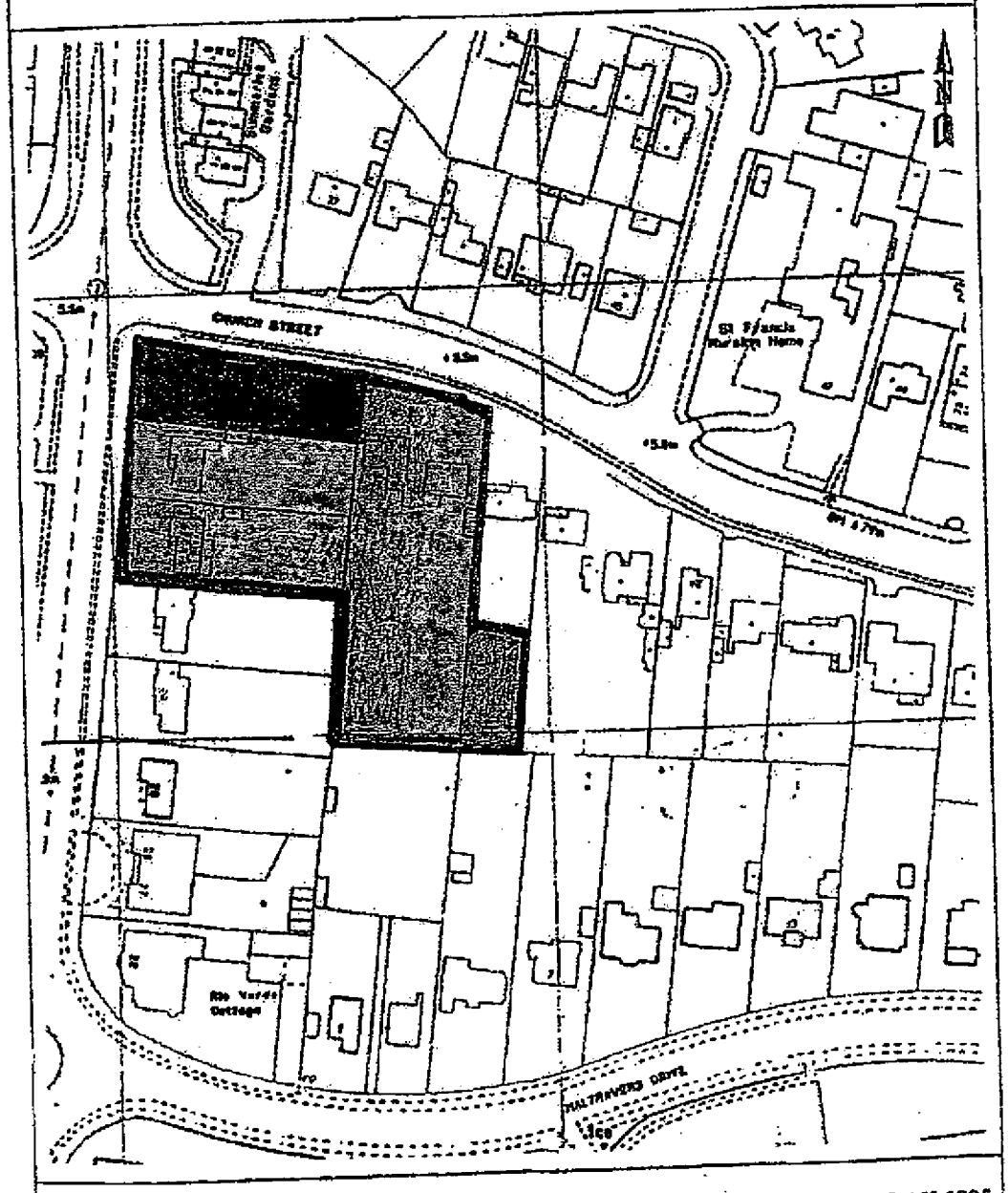
DIRECTOR ....[redacted]

DIRECTOR / SECRE[redacted]

FIGURE 1-5



NATIONAL GRID PLAN 1995
Scale 1: 1250

Reproduced from the 1995, 1 1250 Ordnance Survey map with the permission of Ordnance Survey on behalf of The Controller of Her Majesty's Stationery Office, © Crown copyright, Licence No.100014660

[redacted]

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professional fees) arising from any breach (either directly or indirectly) of clauses 3.1 and 3.2.

4. **Enabling Provisions**

This Undertaking is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972, and all other enabling powers.

5. **Commencement**

5.1 This Undertaking shall come into effect upon the grant of the Permission except for clause 3 which shall not come into effect until Commencement of Development

5.2 On commencement of the Development the Applicant will give to ADC notice in writing within 14 days of that commencement in the form of the Commencement Notice annexed to this Deed at Schedule 2 addressed to ADC's Head of Planning Services.

6. **Payment Notice**

All payments due under this Deed will be sent to the payee with a duly completed Notice in the form of Schedule 3

7. **General**

7.1 nothing in this Undertaking constitutes or constitutes an obligation to grant planning permission

7.2 nothing in this Undertaking grants planning permission or any other approval consent or permission required from ADC in the exercise of any other statutory function

7.3 nothing in this Undertaking fetters or restricts the exercise by ADC of any of their powers

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

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

7.4.2 if the Permission shall lapse without having been Commenced shall be revoked or shall be modified other than at the request of the Applicant or Owner; or

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

7.4.4 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

7.5 the obligations contained in Clause 3 and 4 are planning obligations for the purpose of Section 106 of the Act

7.6 this Undertaking constitutes a deed

7.7 this Undertaking is enforceable by ADC

7.8 nothing in this Undertaking confers or is intended to confer a benefit on a third party under the Contracts (Rights of Third Parties) Act 1999

7.9 This Undertaking shall apply to the Development as authorised by the planning permission issued pursuant to the Appeal or to the Development after variation or renewal of the planning permission from time to time

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7.10 This Undertaking is a Local Land Charge and shall be registered as such

8. **Lender's Consent**

The Lender acknowledges and declares that this Deed has been entered into by the Developer with its consent and that the Land shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Land shall take effect subject to this Deed PROVIDED THAT the Lender shall otherwise have no liability under this Deed unless it takes possession of the Land in which case it too will be bound by the obligations as if it were a person deriving title from the Developer

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

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SCHEDULE 1

(The Development)

Application for the redevelopment of the site to form 60 "extra care" frail elderly apartments for the Elderly plus ancillary communal facilities, associated car parking and landscaping

SCHEDULE 2

Commencement Notice

Pursuant to Planning Obligation Described Below

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
FROM:	
DEVELOPMENT AT:	
NATURE OF DEVELOPMENT:	
PLANNING PERMISSION DATE & REFERENCE	
PLANNING OBLIGATION DATE & PARTIES	
START DATE:	

SCHEDULE 3

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.

If ADC is Payee :	If WSCC is Payee :
Head of Planning Services Arun District Council Arun Civic Centre Maltravers Road Littlehampton West Sussex BN 17 5LF DX 57406 Littlehampton	County Planning Officer West Sussex County Council County Hall Chichester West Sussex PO19 1RQ DX 30330 Chichester

Please answer all the questions. It may

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

2. Land at:.....

3. Undertaking dated:.....

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

5. Obligation in Undertaking

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

EXECUTED AS A DEED BY

McCARTHY & STONE (DEVELOPMENTS) LIMITED

Acting by two Directors or a Director and its Secretary:

Director [redacted]

Director/~~Secretary~~ [redacted]

EXECUTED AS A DEED BY
BANK OF SCOTLAND PLC
in the presence of:

Authorised Signatory [redacted]

Witnessed by: [redacted]

EXECUTED AS A DEED BY

THE REVEREND ROGER CASWELL RC [redacted]

as Incumbent of the benefice of

St Mary the Virgin Littlehampton

in the presence of: Joan Dorothy Cook.

Witness
Name:
Signature: [redacted]
Address:

2 Parkside Court.
Meadow Way. LH.
BN17 6BN.

The Common Seal of

THE CHICHESTER DIOCESAN FUND & BOARD OF FINANCE

was hereunto affixed in the presence of :

[redacted] ~~Chairman~~ President

Secretary