

DATED10th JANUARY.....2023~~3~~4

- (1) GRAVESHAM BOROUGH COUNCIL
- (2) F. C. STARK LIMITED
- (3) MCCARTHY & STONE RETIREMENT LIFESTYLES LIMITED

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

relating to land at:

Gravesend Rugby Football Bowling Club, Donald Biggs Drive, Gravesend Kent DA12 2TL

DATED 10th JANUARY

2023

PARTIES

- (1) **GRAVESHAM BOROUGH COUNCIL** of Civic Centre Windmill Street Gravesend Kent DA12 1AU **(the Council)**
- (2) **F. C. STARK LIMITED** (Company Registration No. 00314309) whose registered office is at Gay Dawn Offices Pennis Lane Fawkham Longfield Kent DA3 8LZ **(the Owner)**
- (3) **MCCARTHY & STONE RETIREMENT LIFESTYLES LIMITED** (company registration number 06622231) whose registered office is at Fourth Floor 100 Holdenhurst Road Bournemouth Dorset BH8 8AQ **(the Developer)**

INTRODUCTION

- 1 The Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site is situated.
- 2 The Owner is the freehold owner of the Site which is part of the land registered at the Land Registry under title number K363965.
- 3 The Developer has an option to purchase the Site dated 8 July 2022 and has applied to the Council pursuant to the 1990 Act for permission to develop the Site under the Application and enters this Agreement with the intention that its interest is bound by the obligations contained herein.
- 4 The Owner and the Developer have agreed to enter into this Agreement in support of the Application so as to create a planning obligation in favour of the Council pursuant to Section 106 of the 1990 Act and to be bound and to observe and perform the covenants hereinafter contained.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1 DEFINITIONS

For the purposes of this Deed the following expressions in column one shall have the meanings respectively ascribed to them in column two:

Column One	Column Two
"1972 Act"	the Local Government Act 1972
"1990 Act"	the Town and Country Planning Act 1990 as amended
"Air Quality Mitigation Contribution"	the sum of £8,479.00 (Eight thousand four hundred and seventy-nine pounds) as a contribution towards mitigating the effect on air quality in the vicinity of the Site
"Application"	the application for planning permission for the Development and allocated reference number 20221328
"Approval"	any approval, agreement, consent, certificate or expression of satisfaction in relation to this Deed
"Commencement of Development"	the date on which any material operation (as defined in Section 56(4) of the 1990 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 "Commenced" and "Commence Development" shall be construed accordingly.
"Commencement Date"	the date of Commencement of Development
"Contribution"	the Air Quality Mitigation Contribution, the NHS Contribution, the SAMMS Contribution and the Leisure Contribution
"Chargee"	a mortgagee or chargee of the Site (or part thereof) or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a "Receiver") on the whole or any part of the Site or any persons or bodies deriving title through such mortgagee or chargee or Receiver

"Deed"	this planning obligation made pursuant to section 106 of the 1990 Act
"Development"	the demolition of the existing bowls pavilion and the erection of a 4-storey building to provide a 62 Unit use Class C2 retirement living complex, with a new access from Ellerslie, a new emergency access off Ellerslie, parking, landscaping and associated works
"Dwelling"	a unit of residential accommodation for retirement living constructed pursuant to the Planning Permission
"Leisure Contribution"	the sum of £80,000.00 (Eighty thousand pounds) as a contribution towards the improvements to bowling club facilities within five miles of the Site
"Monitoring Officer Costs"	the sum of £1,000.00 (One thousand pounds) being the agreed contribution to the Council's proper and reasonable costs in monitoring compliance with the obligations and requirements contained in this Deed
"NHS Contribution"	the sum of £37,512.00 (Thirty-Seven Thousand five hundred and twelve pounds) as a contribution towards refurbishment, reconfiguration and/or extension of Rochester Road Surgery, Gravesend Medical Centre, Parrock Street Surgery, Old Road West Surgery and Springhead Health and/or towards new general practice premises development in the area
"Notice"	any notice or notification in relation to this Deed
"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 and "Occupy" shall be construed accordingly
"Plan"	the plan attached to this Deed at Schedule 1
"Planning Permission"	the planning permission subject to conditions to be granted by the Council pursuant to the Application including any amendments, variations of that permission and all approvals granted under that permission and for the avoidance of doubt shall include any permission granted pursuant to an application to amend or vary the Planning Permission under 73 or 73B of the 1990 Act unless the Council decides that a new agreement under section 106 of the 1990 Act is required;
"SAMMs Contribution"	the sum of £19,471.10 (Nineteen thousand four hundred and seventy-one pounds and ten pence) as a contribution towards strategic access management and monitoring in respect of the SPA

"Site"	the land against which this Deed may be enforced as shown edged red on the Plan
"SPA"	The Thames Estuary and Marshes Special Protection Area and Ramsar site
"Specified Date"	the date on which any obligation arising under this Deed is due to be performed
"Working Day"	a day other than a Saturday or Sunday or public holiday in England

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed 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 Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 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.
- 2.4 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 against each individually unless there is an express provision otherwise.
- 2.5 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.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any party deriving title through or under that party and in the case of the Council the successors to its statutory functions.
- 2.7 The headings are for reference only and shall not affect construction.

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the 1990 Act, Section 111 of the 1972 Act, Section 1 Localism Act 2011 and all other powers enabling.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner in this Deed create planning obligations pursuant to Section 106 of the 1990 Act and are enforceable by the Council as local planning authority against the Owner.

4 CONDITIONALITY

This Deed is conditional upon the grant of the Planning Permission and the Commencement of Development save for the provisions of clauses 7.1, 13 and 14 (legal costs, change in ownership, jurisdiction and delivery clauses) which shall come into effect immediately upon completion of this Deed.

5 THE OWNER'S COVENANTS

The Owner covenants with the Council as set out in Schedule 3.

6 THE COUNCIL'S COVENANTS

The Council covenants with the Owner as set out in Schedule 2.

7 MISCELLANEOUS

- 7.1 The Developer shall pay to the Council on completion of this Deed their reasonable legal costs and disbursements incurred in the negotiation, preparation and execution of this Deed and the Monitoring Officer Costs.
- 7.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 7.3 Insofar as any part of this Deed is 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 Deed.
- 7.4 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure (save for an application granted under clause 18 of this Deed) or expires prior to the Commencement of Development.
- 7.5 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after they have parted with their entire interest in the Site unless they held such an interest at the date the breach occurred.
- 7.6 Without prejudice to Clause 18 nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed nor shall any payment be due pursuant to this Deed in respect of development carried out pursuant to such other planning permission.

- 7.7 The provisions of this Deed shall not be enforceable against:
- 7.7.1. owners or owner-occupiers or tenants of any individual Dwelling constructed pursuant to the Planning Permission nor against any Chargee of an Individual Dwelling nor against any other person or persons deriving title from any of them;
 - 7.7.2 any Chargee of the whole of the Site or some part thereof greater in extent than an individual Dwelling unless and until such Chargee shall enter into possession of the Site or such part thereof greater in extent than an individual Dwelling whereupon it shall become a person deriving title from the Owner subject to and in accordance with this Agreement;
 - 7.7.3 any statutory undertaker or other person who acquires any part of the Site or an interest in it for the purposes of the supply of electricity, gas, water, drainage, telecommunication services or public transport services;
 - 7.7.4 any one whose only interest in the Site is in the nature of the benefit of an easement or covenant.
- 7.8 Nothing contained or implied in this Deed 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.

8 WAIVER

No waiver (whether expressed or implied) by the Council and/or Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council and/or Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

9 CHANGE IN OWNERSHIP

The Owner agrees to give the Council immediate written notice of any change in ownership of its interest in the Site occurring before all the obligations under this Deed have been discharged (other than the transfer of the Site to the Developer or the sale or disposal of any individual Dwelling forming part of the Development) such notice to give details of the transferee's full name and address or registered office together with the area of the Site or unit of occupation purchased by reference to a plan.

10 VAT

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

11 JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England.

12 DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

13 SPECIFIED DATE

13.1 Where this Deed imposes a requirement to make a payment, undertake an act or cease an activity on a Specified Date the Owner shall:

13.1.1 make any and all payments due under this Deed to the Council by the Specified Date; and

13.1.2 give notice of the Specified Date to the Council not more than seven days after such Specified Date.

14 SERVICE OF NOTICES ETC

14.1 Any notice must be in writing and unless the receiving person or party or his authorised agent acknowledges receipt, is valid if, and only if -

14.1.1 it is given by hand, sent by registered post or sent by recorded delivery and

14.1.2 it is served at any of the following:

- the address of the receiving person or party stated in this Deed or such other address in England for service as the receiving person or party may have previously notified in writing
- the last known address of the receiving person or party
- in the event that the receiving person or party is a corporate body, at the registered office of that body in England or the principal office of that body in England.

14.2 Any notice given by hand in accordance with clause 14.1 is to be treated as served when left at the relevant address or office.

14.3 Unless it is returned through the Royal Mail undelivered, any notice sent by registered post or recorded delivery in accordance with clause 14.1 is to be treated as served on the third Working Day after posting, regardless of whether or not it is received.

14.4 If the receiving person or party consists of more than one person, a notice to one of them is notice to all.

15 LOCAL LAND CHARGE

- 15.1 This Deed shall be registered as a local land charge by the Council.
- 15.2 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall following written request from the Owner effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

16. DISPUTE PROVISIONS

- 16.1 In the event of any dispute or difference arising between any of the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.
- 16.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 16.1 or as to the appropriateness of the professional body then such question may be referred by either party to the president for the time being of the Law Society for them to appoint a solicitor to determine the dispute such solicitor acting as an expert and their decision shall be final and binding on all parties in the absence of manifest error and their costs shall be payable by the parties to the dispute in such proportion as shall be determined and failing such determination shall be borne by the parties in equal shares.
- 16.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty Working Days after the conclusion of any hearing that takes place or twenty Working Days after receiving any file or written representation.
- 16.4 The expert shall be required to give notice to each of the said parties requiring them to submit within ten Working Days of notification of appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten Working Days.
- 16.5 The provisions of this clause shall not affect the ability of the Council or the Owner to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.

17. DEVELOPER'S CONSENT

The Developer hereby consents to the Owner entering into this Agreement and agrees to the Developer's interest being bound hereby PROVIDED THAT the Developer shall not be liable to observe or perform any of the Owner's obligations in this Agreement unless and until the Developer becomes the freehold owner of the Site (or any part thereof) or acquires any other legal estate therein or is carrying out the Development (or any part thereof)

18. SECTION 73 PERMISSION

18.1 In the event that any new planning permission(s) are granted by the Council pursuant to Section 73 or 73B of the 1990 Act (as amended) and insofar as the obligations in this Deed remain unchanged by the grant of any new planning permission pursuant to Section 73 or 73B of the 1990 Act if then agreed between the Parties:-

18.1.1 the obligations in this Deed shall relate to and bind any subsequent planning permission(s) in respect of the Site granted pursuant to Section 73 or 73B of the 1990 Act and the Site itself without the need to enter into any subsequent deed of variation or a new agreement pursuant to Section 106 of the 1990 Act;

18.1.2 the definitions of Application, Development and Planning Permission in this Deed shall be construed to include reference to any application under Section 73 or 73B of the 1990 Act, the planning permission(s) granted thereunder and the development permitted by such subsequent planning permission(s); and

18.1.3 this Deed shall be endorsed with the following words in respect of any future Section 73 or 73B application: "The obligations in this Deed relate to and bind the Site in respect of which a new planning permission reference number () has been granted pursuant to Section 73 or 73B of the Town and Country Planning Act 1990 (as amended)".

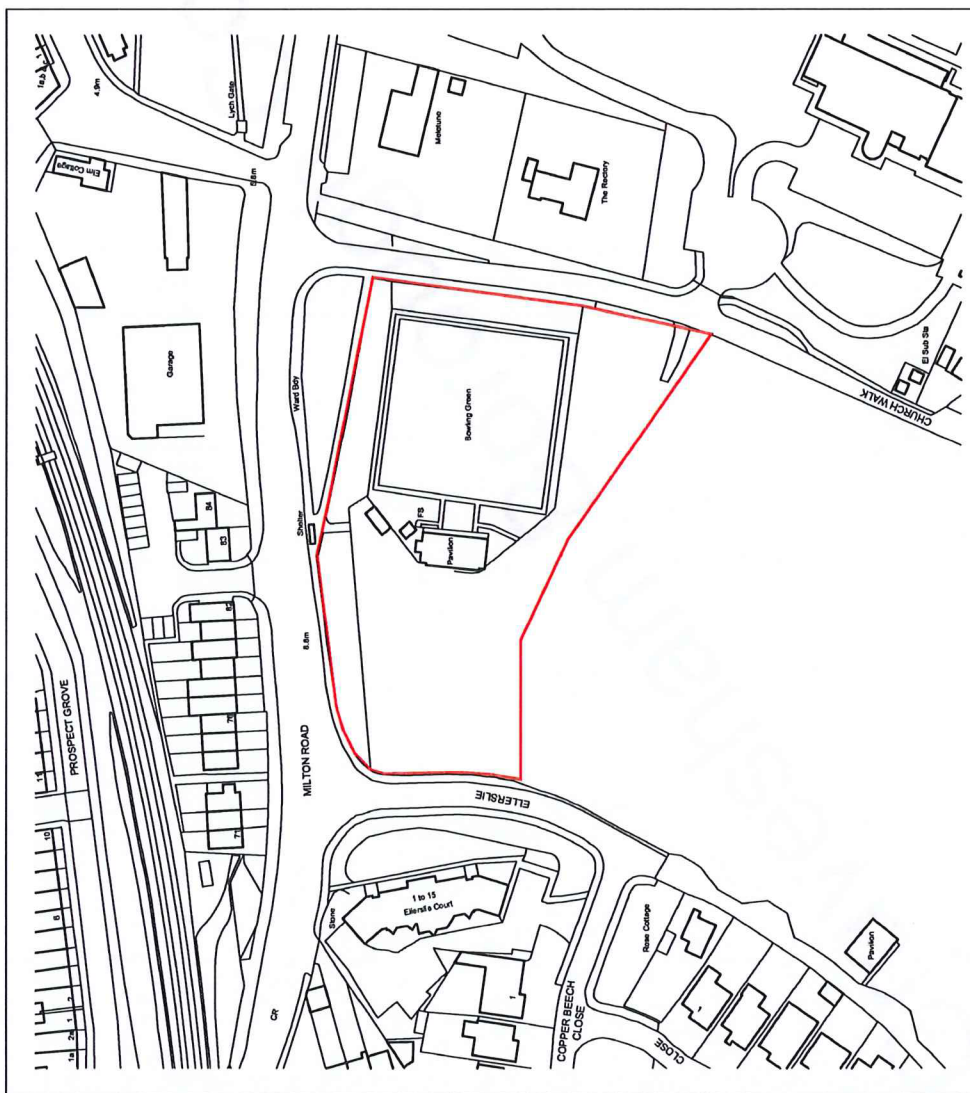
19. REASONABLENESS

Where the agreement approval consent certificate or other expression of satisfaction is requested or required by the Owner or the Developer from the Council under the terms of this Deed such agreement approval consent or expression of satisfaction shall not be unreasonably withheld or delayed and if the Owner shall in its absolute discretion or the Developer shall in its absolute discretion elect to treat the withholding of any such agreement approval consent or expression of satisfaction as a dispute referable by the Owner or the Developer for resolution pursuant to clause 16 any decision of an expert in favour of the Owner or the Developer shall be deemed to be an agreement approval consent or expression of satisfaction in respect of the subject matter submitted by the Owner or the Developer to the Council.

SCHEDULE 1

Plan

100



Site Location Plan
1:1250 @ A3



Scale: 1:1250

0 10 30 50 120m

● ARCH
ITECT
URE

Canterbury Studio
Logan House, 51 Andrews Close
Canterbury.
CT1 2BP
info@canterbury.co.uk
canterbury.co.uk
01777 64334

Page 1 of 2
Proposed Retirement Living Plus Development,
Bowls Club, Gravesend
County Council
McCarthy Stone
Contact Us
Site Location Plan

Order Number	Order Date	Order	Order
11:250@A3	Oct 2022	KY	OK

PINK FILE

Project No. LSE-2821-03-AC-0000

SCHEDULE 2

The Council's covenants with the Owner

The Council covenants with the Owner and the Developer:

1. Contributions

- 1.1 To use the Air Quality Mitigation Contribution, the NHS Contribution, the Leisure Contribution and the SAMMS Contribution received from the Owner or Developer under the terms of this Agreement only for the purposes specified in this Agreement for which it is paid and for no other purpose and in the case of the NHS Contribution to pay this for the specified purpose to NHS England and Improvement (NHSE/I) or such other national health service body as shall be nominated as the recipient thereof by NHS Kent and Medway Primary Care Estates Team.
- 1.2 When requested in writing the Council covenants with the Owner and Developer to refund all or any part of such sum to the person who paid such sum received by the Council under this Agreement which has not been expended in accordance with the provisions in this Agreement (and money shall be deemed to have been 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) after ten years of the date of receipt by the Council of such sum.
- 1.3 When requested in writing the Council shall provide written confirmation of the discharge of obligations contained in this Agreement when reasonably satisfied that such obligations have been performed.
- 1.4 Following the performance and satisfaction of all the obligations contained in this Agreement, the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.

SCHEDULE 3

The Owner's Covenants with the Council

LEISURE BOWLING CLUB IMPROVEMENTS CONTRIBUTION

1. Prior to the first Occupation of the first Dwelling to be Occupied to pay to the Council the Leisure Contribution
2. The Development shall not be Occupied until the Leisure Contribution has been paid to the Council

NHS CONTRIBUTION

3. Prior to the first Occupation of any of the Dwellings to pay to the Council the NHS Contribution
4. The Development shall not be Occupied until the NHS Contribution has been paid to the Council

SAMMS CONTRIBUTION

5. Prior to the Commencement of Development to pay to the Council the SAMMs Contribution
6. Not to cause or allow the Commencement of the Development until the SAMMs Contribution has been paid to the Council

AIR QUALITY MITIGATION CONTRIBUTION

7. Prior to the first Occupation of any of the Dwellings to pay to the Council the Air Quality Mitigation Contribution
8. The Development shall not be Occupied until the Air Quality Mitigation has been paid to the Council

IN WITNESS whereof the parties have executed this Deed the day and year above written

Executed as a Deed by
affixing the Common Seal of

GRAVESHAM BOROUGH COUNCIL

in the presence of:

Authorised Signatory

Print Name

Job Title

..........

.....*Vicky Nunn*.....

.....*Head of legal services*.....



mgb00310

EXECUTED as a **DEED** by

F. C. STARK LIMITED

acting by a Director:

.......... **SIGNATURE OF DIRECTOR**

in the presence of:

.......... **SIGNATURE OF WITNESS**

.....*TIM HEAVER*..... **NAME OF WITNESS**

.....*2 DENE BOTTOM FARM*..... **ADDRESS OF WITNESS**

.....*FAWKHAM RD,*.....

.....*LONGFIELD, KENT DA3 7BE*.....

.....*PROPERTY MANAGER*..... **WITNESS OCCUPATION**

SIGNED as a DEED by
STEVEN JOHN PLUMMER
as Attorney for MCCARTHY & STONE
RETIREMENT LIFESTYLES LIMITED
pursuant to a Power of Attorney
dated 26 January 2023


as Attorney

in the presence of:

..... SIGNATURE OF WITNESS

ROBERT JAMES WAITE..... NAME OF WITNESS

FLAT 3, 24-26 MUSTERS..... ADDRESS OF WITNESS

ROAD, WEST BRIDGFORD.....

NOTTINGHAM NG2 7PL.....

SOLICITOR..... WITNESS OCCUPATION