DATED 26th MARCH 2012

EASTLEIGH BOROUGH COUNCIL

-and-

McCARTHY & STONE RETIREMENT
LIFESTYLES LIMITED

A G R E E M E N T

Pursuant to Section 106 of the Town and Country Planning Act 1990 and Section 111 of the Local Government Act 1972 relating to the Centris Site, Leigh Road, Eastleigh in Hampshire

A R Ward
Head of Legal and Democratic Services
Civic Offices
Leigh Road
Eastleigh
Hampshire
SO50 9YN

MF/6/13/712/9417

THIS DEED is made the 26th day of March Two thousand and twelve

BETWEEN

(1) EASTLEIGH BOROUGH COUNCIL of Civic Offices Leigh Road Eastleigh Hampshire SO50 9YN ("the Council")

(2) McCARTHY & STONE RETIREMENT LIFESTYLES LIMITED (Co. Regn. No. 06622231) of Homelife House 26 – 32 Oxford Road Bournemouth Dorset BH8 8EZ ("the Owner")

RECITALS

(1) The Council is the local planning authority for the purposes of the Act (hereinafter defined) for the area within which the Site (hereinafter defined) is situate

(2) The Owner is the registered proprietor of the Site described in Schedule One

(3) Following completion of a S106 Agreement dated 20 September 2011 the Owner was granted planning permission reference F/10/68116 in respect of the Site ("the F/11/68116 Agreement")

(4) The Owner has by written application numbered F/11/69924 and dated 13 December 2011 ("the Application") applied to the Council for Planning Permission for the Development (hereinafter defined) of the Site

(5) The Council is desirous of granting planning permission for the Development of the Site subject to the conditions contained in the Planning Permission (hereinafter defined) and subject to the Owner entering into this Deed

(Definitions)

1. In this Deed in addition to the defined expressions herein referred to the following expressions shall have the following meanings:

"the Act"	means the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 the Planning and Compulsory Purchase Act 2004 and the Planning Act 2008 as amended
The Administration and Monitoring Fee"	means the sum of one thousand seven hundred and thirteen pounds (£1, 713.00) to be paid to the Council

	on completion of this Deed towards the administration and monitoring by the Council of the performance of the obligations set out in this Deed
"Affordable Housing"	means low cost housing which shall be offered for rent
"Affordable Housing Contribution"	means a contribution in respect of the provision of off-site Affordable Housing within the administrative boundaries of the Council in the sum of twenty thousand pounds (£20,000.00) index linked from the 1 November 2010 in accordance with Clause 12 of the Operative Provisions of this Deed
"Commencement of Development"	means the carrying out of any Material Operation in connection with the Development and the expression "Commenced" and "Commences" shall be construed accordingly
"Community Infrastructure Contribution"	means a contribution in respect of the provision of Community Infrastructure in the sum nine hundred and thirty six pounds (£936.00) index linked from the 1 January 2008 in accordance with Clause 12 of the Operative Provisions of this Deed to be used towards the provision or improvement of Community Infrastructure within a 1500 metre radius of the site

"Consents"	means the Planning Permission and the drawings referred to in it, or prepared pursuant to it and all other approvals, consents, permissions and licences of any local or other competent Authority or person which may from time to time be necessary to enable the Owner to lawfully commence and to carry out and complete the Development.
"Contribution Payments"	means the following payments to be made to the Council: (i) Affordable Housing Contribution (ii) the Community Infrastructure Contribution (iii) the Off-Site Open Space Contribution (iv) Sustainable Transport Contribution (v) Public Art Contribution
"Development"	means the development of the Site in the manner and for the purposes set out in Schedule 2 relating to the Site
"Dwellings"	means those dwellings to be constructed on the Site by the carrying out of the Development and the expression "Dwelling" shall be construed accordingly

"Material Operation"	means a material operation as defined in Section 56 of the Act save in respect of operations in connection with site clearance site preparation demolition archaeological investigation and evaluation investigation for the purposes of assessing contamination and remedial action in respect of any contamination works
"Occupation and Occupied"	means occupation or occupied by residents only (not including for the avoidance of doubt occupation for purposes of construction, security or marketing) and reference to "Occupy" shall be construed accordingly
"Off-Site Open Space Contribution"	means a contribution in the sum of five hundred and fourteen pounds (£514.00) index linked from the 1 January 2008 in accordance with Clause 12 of the Operative Provisions of this Deed to be used towards Open Space Facilities within a 1500 metre radius of the Site

"Owner"	means the Owner and his respective successors in title to the Site
"Planning Permission"	means planning permission for the development of the Site issued pursuant to the Application in the form set out in Schedule Three and numbered F/11/69924
"Public Art Contribution"	means a contribution in the sum of six hundred pounds (£600.00) index linked from the 1 November 2009 in accordance with Clause 12 of the Operative Provisions of this Deed towards the provision of public art within 1500 metre radius of the Site to include the costs associated with the administration and management of the commissioning and production of the off-site artwork
"Sustainable Transport Contribution"	means a contribution in the sum of three thousand six hundred and fifty eight pounds (£3,658.00) index linked from the 1 April 2009 in accordance with Clause 12 of the Operative Provisions of this Deed towards the provision of access improvement works in Eastleigh Town Centre
"Site"	means the land described in Schedule One

"Statutory Undertaker"	has the meaning ascribed to it in section 262 of the Act

OPERATIVE PROVISIONS :-

1. This Deed is made pursuant to Section 106 of the Act and Section 111 of the Local Government Act 1972 and all other enabling powers and in consideration of the covenants hereinafter contained

2. The obligations by the Owner in this Deed are deemed to be planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council

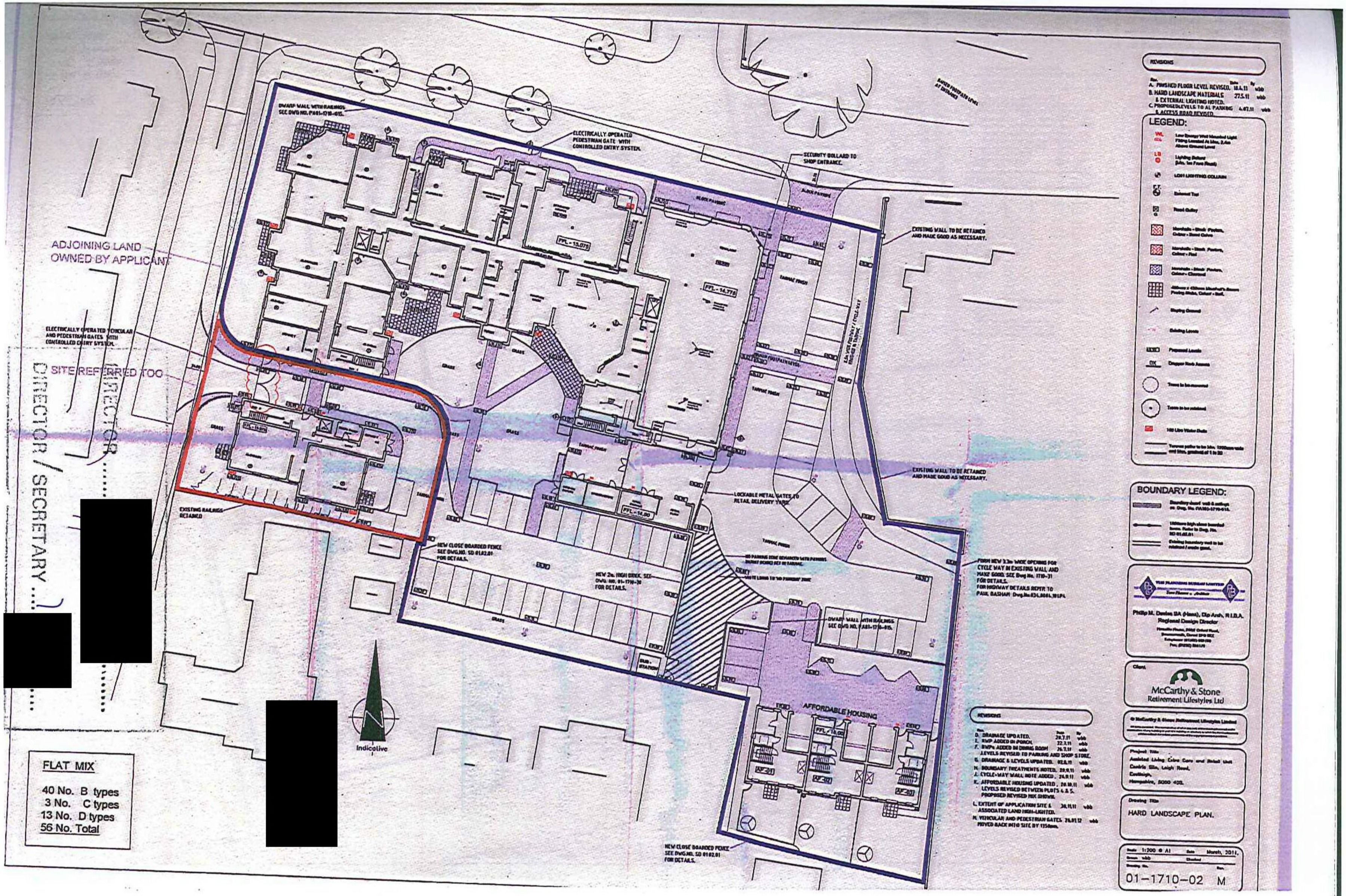
3. This Deed is conditional upon the grant of the Planning Permission and additionally the obligations set out in clauses 4 and 5 and Schedule Four to Schedule Nine inclusive are conditional upon the Commencement of Development

4. Subject to clause 6 the Owner for themselves and their respective successors in title hereby covenant with the Council with the intent of binding the Site so that such covenants shall be enforceable against successors in title and any person claiming through or under them to observe its restrictions and to perform its obligations referred to in Schedule Four and Schedule Five Part 1

5. The Council covenants with the Owner to perform the obligations set out in Schedule Five Part II

6. No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

7. The parties hereto hereby agree that where under the terms of this Deed the consent or approval or confirmation of the Council or their respective officers is



ADJOINING LAND OWNED BY APPLICANT
SITE REFERRED TOO
DIRECTOR / SECRETARY
DIRECTOR
[redacted]
[redacted]
[redacted]
DWARF WALL WITH RAILINGS SEE DWG NO. PA01-1710-015.
ELECTRICALLY OPERATED PEDESTRIAN GATE WITH CONTROLLED ENTRY SYSTEM.
SECURITY BOLLARD TO SHOP ENTRANCE.
EXISTING WALL TO BE RETAINED AND MADE GOOD AS NECESSARY.
ELECTRICALLY OPERATED VEHICULAR AND PEDESTRIAN GATES WITH CONTROLLED ENTRY SYSTEM.
EXISTING RAILINGS RETAINED
NEW CLOSE BOARDED FENCE SEE DWG.NO. SD 01.02.01 FOR DETAILS.
NEW 2m. HIGH BRICK. SEE DWG. NO. 01-1710-30 FOR DETAILS.
LOCKABLE METAL GATES TO RETAIL DELIVERY YARD.
FORM NEW 3.3m WIDE OPENING FOR CYCLE WAY IN EXISTING WALL AND MAKE GOOD. SEE Dwg No. 1710-31 FOR DETAILS.
FOR HIGHWAY DETAILS REFER TO PAUL BASHAM Dwg.No.034.0004.101P4
AFFORDABLE HOUSING
Indicative
FLAT MIX
40 No. B types
3 No. C types
13 No. D types
56 No. Total
REVISIONS
A. FINISHED FLOOR LEVEL REVISED. 18.4.11 wbb
B. HARD LANDSCAPE MATERIALS & EXTERNAL LIGHTING NOTED. 27.5.11 wbb
C. PROPOSED LEVELS TO AL PARKING & ACCESS ROAD REVISED. 4.07.11 wbb
LEGEND:
BOUNDARY LEGEND:
Phillip M. Davies BA (Hons), Dip Arch, R.I.B.A.
Regional Design Director
Client
McCarthy & Stone Retirement Lifestyles Ltd
Project Title
Assisted Living Extra Care and Retail Unit
Centrio Site, Leigh Road,
Eastleigh,
Hampshire, SO50 4DS.
Drawing Title
HARD LANDSCAPE PLAN.
Scale 1:200 @ A1
Date March, 2011.
Drawn wbb
Checked
Drawing No.
01-1710-02
Rev.
M

required such consent or approval or confirmation shall not be unreasonably withheld or delayed and the parties hereto shall use their respective reasonable endeavours to raise and answer any queries arising from submission for consents or approvals or confirmations as promptly as reasonably practicable to enable the Council to make the relevant decision on an informed basis

8. The performance of the obligations by the Owner aforesaid shall be subject to the provisos (if any) contained in Schedules Four and Five

9. This Agreement is a local land Charge and will be registered as such

10. The Owner will pay the Council's reasonable legal costs and disbursements and other costs in the preparation and completion of this Deed and the Council's Administration and Monitoring Fee to be paid on completion of this Deed

11. Save in respect of any provision herein requiring any disagreement or dispute between the parties to be referred to arbitration if any dispute or difference shall arise between the parties then the following provisions shall apply

11.1 the Dispute or difference may on written notice by any party at any time and served on the other (hereinafter called the "Determination Notice") be referred to and determined by an independent person (hereinafter called the "Independent Person") who shall have been qualified in respect of the general subject matter of the dispute or difference for not less than ten (10) years and who shall be a specialist in relation to such subject matter

11.2 the Independent Person shall be appointed by agreement between the Owner and the Council or (if within 10 working days after service of the Determination Notice they have been unable to agree) on the application of any relevant party by the President for the time being of the Law Society or his or her duly appointed deputy or any other person authorised by him or her to make appointments on his or her behalf

11.3. the Independent Person to be appointed under this Clause shall act as an expert and the following provisions shall have effect:

11.3.1. the Independent Person shall act as an expert and not as an arbitrator and his or her decision shall be final and binding upon the parties to the dispute or disagreement (save in the case of manifest error)

11.3.2. the Independent person shall consider (inter alia) any written representations made on behalf of any party (if made reasonably promptly) but shall not be bound by them

11.3.3. the parties to the dispute or disagreement shall use all reasonable endeavours to procure that the Independent Person shall give his or her decision as speedily as possible;

11.3.4. the cost of appointing the Independent Person and his or her costs and disbursements in connection with his or her duties under this agreement shall be shared between the parties to the dispute or disagreement in such proportions as the Independent Person shall determine, or in the absence of such determination equally between such parties; and

11.3.5. if the Independent Person shall be or become unable or unwilling to act then the above procedure for the appointment of an expert may be repeated as often as necessary until a decision is obtained

12. It is agreed between the parties that the Contribution Payments to be paid to the Council by the Owner under the terms of this Deed are required to be index linked from the date referred to in the definition of each of the Contribution Payments in this respect each relevant payment shall be increased by the percentage by which the index of Retail Prices Index (excluding mortgages) (RPIX) Published by the Office for National Statistics (or amendment or replacement thereof) to the date the relevant payment is made

13. No person who is not a part to this Deed has or shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term under this Deed

14. The Owner agrees with the Council to give the Council immediate written notice of any change of ownership of any of its interest in the Site occurring before all the obligations under this Deed have been discharged save for change in ownership of any Dwelling, or the sale or lease of any part of the Site to a Statutory Undertaker, such notice to give details of the transferees full name and registered office (if a company or usual address if not) together with the area of the Site purchased by reference to a plan.

15. The obligations contained in this Deed are additional to the obligations contained in the F/11/68116 Agreement which remain in full force and effect

16. In this Deed:

16.1 the masculine and the feminine and neuter gender include each of the other genders and the singular includes the plural and vice versa and references to persons include firms corporations and unincorporated associations;

16.2 a reference to a statute refers to the statute as it applies at the date of this Agreement and any later amendment or re-enhancement of it and any regulations or statutory instrument made under it; and

16.3 a reference to a Clause or Schedule is a reference to a clause or schedule contained in this Agreement

17. This Deed shall not be enforceable against owner-occupiers or tenants of Dwellings or Statutory Undertakers acquiring an interest in the Site nor against those deriving title from them

18. 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 or expires prior to the Commencement of Development or if a further planning permission is obtained in respect of the Site and that permission is commenced by the carrying out of a material operation (within the meaning of section 56 of the Act)

INDEX OF SCHEDULES

Schedule One	Description
Schedule Two	Proposed Development of the Site
Schedule Three	The Draft Planning Permission for the Development of the Site
Schedule Four	Notification
Schedule Five - Part I	The Contribution Payments
Schedule Five - Part II	Council's obligations

SCHEDULE ONE

(Description of Site)

The freehold land on the south side of Leigh Road (known as the Centris Site) Eastleigh in Hampshire shown for the purpose of identification only edged red on the Site Plan as the same is registered at the Land Registry with freehold title absolute under Title Number HP HP617417.

SCHEDULE TWO

(Proposed Development of the Site)

Construction of a 2 no. second floor flats with second floor covered link to main building (amendment to planning permission F/10/68116)

SCHEDULE THREE

(Draft Planning Permission)

The conditions contained in the Planning Permission a draft of which is annexed to this Agreement

SCHEDULE FOUR

(Notification)

1. The Owner shall notify the Council in writing or procure that they are so notified each of the following events within 21 days of such event occurring:
   1.1. Commencement of Development
   1.2. Occupation of the Development

SCHEDULE FIVE

Part I

(The Contribution Payments)

1. Prior to the Occupation of any Dwelling the Owner shall pay to the Council the Contribution Payments
2. Not to Occupy or cause or permit to be Occupied any Dwelling until the Contribution Payments referred to in Paragraph 1 of this Schedule shall have been paid to the Council

SCHEDULE FIVE

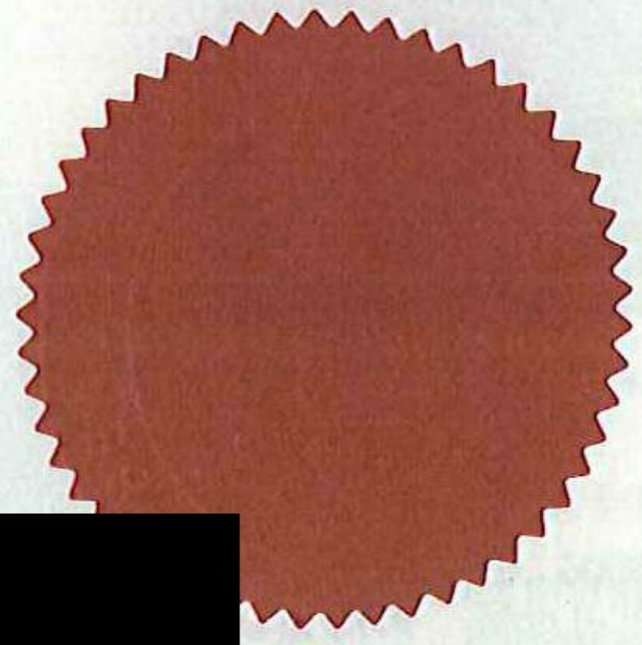
Part II

1. The Council hereby covenants with the Owner:

   1.1 to spend the Community Infrastructure Contribution the Off-Site Open Space Contribution the Sustainable Transport Contribution and the Public Art Contribution for the purposes specified in this Agreement and for no other purpose and to complete the works for which the relevant Contribution Payments are paid by the date being the date of expiry of a period of 5 years from the date of receipt of the relevant Contribution Payment

   1.2 in the event that funds have to be accumulated from a number of Contribution Payments before a scheme can be completed the date being 5 years from the date the Council receives the final relevant Contribution Payment for that scheme

EXECUTED as a DEED by affixing)
THE COMMON SEAL of EASTLEIGH)
BOROUGH COUNCIL was hereunto)
affixed in the presence of:)



[redacted]

Head of Legal and Democratic Services

EXECUTED as a DEED by McCARTHY)
& STONE RETIREMENT LIFESTYLES)
LIMITED acting by)

Director [redacted]

Director/Secretary [redacted]

Beacon Authority 2008-2009 Tackling Climate Change

Development Control
My ref F/11/69924
Your ref
Please ask for Dawn Errington
Direct dial 023 8068 8260
Hours of work Mon 9-3/Wed 9-1/Tu&Th 9-5
e-mail dawn.errington@eastleigh.gov.uk

The Planning Bureau
Homelife House
26-32 Oxford Road
Bournemouth
BH8 8EZ

03 February 2012

DRAFT

Town and Country Planning Act 1990
Town and Country Planning (Development Management Procedure) (England) Order 2010

Application No. F/11/69924

In pursuance of their powers under the above Act and in accordance with your application received on 13 December 2011, with subsequent amendments dated

27/01/2012

the Council, as Local Planning Authority hereby PERMIT the following:

Description: Construction of 2nd. second floor flats with second floor covered link to main building (amendment to planning permission F/10/68116).

Site: Catherine Court Development, Leigh Road, Eastleigh, SO50 9DT

Subject to due compliance with the following conditions:

(1) The development hereby permitted shall be carried out in accordance with the following approved plans: PPA102-01, 01-1710-02-M, PPA102-04-A, 01-1710-12-F, A01-1710-17-C, A01-1710-18-B. Reason: For the avoidance of doubt and in the interests of proper planning

(2) The development hereby permitted must be begun within a period of three years beginning with the date on which this permission is granted. Reason: To comply with Section 91 of the Town and Country Planning Act 1990.

Eastleigh Borough Local Plan Review 2001-2011, saved Policies. 28.ES, 34.ES, 35.ES, 37.ES, 72.H, 74.H, 59.BE, 100-105.T, 118.E, 134.TC, 190.IN, 191.IN

Under the Town and Country Planning [Fees for Applications and Deemed Applications][Amendment][England] Regulation 2008, a fee is now required for Discharge of Condition Applications.

N.B. Conditions not fully discharged, invalidate the planning permission.

Note to Applicant: The applicant/developer should enter into a formal agreement with Southern Water to provide the necessary sewerage infrastructure required to service this development.

C L Thomas
Head of Development Control

N.B. SEE ENCLOSED NOTES (PER)

DRAFT