

DATED

2022

(1) SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

and

(2) FH GREAT SHELFORD LIMITED

and

(3) LLOYDS BANK PLC

and

(4) CHURCHILL RETIREMENT LIVING LIMITED

AGREEMENT

under section 106 Town and Country Planning Act 1990

relating to Unit 2 Station Road Great Shelford Cambridge CB22 5LT

SH∞SMITHS

~BANNERH~

Ref. M-01011932

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APPENDIX 1 PLAN 1

THIS AGREEMENT is made on

2022

BETWEEN:-

- (1) **SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL** of South Cambridgeshire Hall Cambourne Business Park Cambourne, Cambridge CB23 6EA (the "**Council**");
- (2) **FH GREAT SHELFORD LIMITED** (Company registration number 09723887) of 50 Marshall Street, C/O Newcore Capital Management Llp, London, England, W1F 9BQ (the "**Owner**");
- (3) **LLOYDS BANK PLC** (Company registration number 00002065) of 25 Gresham Street London EC2V 7HN (the "**Mortgagee**")
- (4) **CHURCHILL RETIREMENT LIVING LIMITED** (Company registration number 06260373) of Churchill House, Parkside, Ringwood, Hampshire, England, BH24 3SG (the "**Developer**")

WHEREAS:-

- (A) By virtue of the 1990 Act the Council is the Local Planning Authority for the purposes of this Agreement for the area in which the Land is situated and is the Local Planning Authority by whom the planning obligations hereby created are enforceable.
- (B) The Owner is the registered freehold proprietor with absolute title of all that Land registered at HM Land Registry under Title Number CB228809 subject to a mortgage in favour of the Mortgagee
- (C) The Mortgagee is the registered proprietor of the charges dated 15 October 2015 and 28 December 2017 referred to in the charges register of title number CB228809 and has agreed to enter into this Agreement to give its consent to the terms of this Agreement.
- (D) The Owner and Developer submitted the Application to the District Council on 13 November 2020.
- (E) The Council failed to determine to the Application and the Developer has appealed the non-determination of the Application.
- (F) The Owner, the Developer and the Council enter into this Agreement to the intent that any objections of the Council or the Secretary of State to the grant of planning permission are overcome
- (G) The Council has confirmed that all the obligations and covenants included in this Agreement are compliant with Regulation 122 of the Community Infrastructure Regulations 2010 (as amended).
- (H) The Owner by entering into this Agreement does so to create planning obligations in respect of the Land and each part of it in favour of the Council pursuant to section 106 of the 1990 Act and to be bound by and observe and perform the covenants, agreements, conditions and stipulations hereinafter contained.

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following expressions shall have the following meanings:-

"1990 Act" means the Town and Country Planning Act 1990

“Allotments and Community Orchards Contribution”	means £3,900.00 (three thousand nine hundred pounds) towards the improvement of the existing allotments in Great Shelford and provision of a community orchard
“Affordable Housing”	means housing provided to eligible households whose needs are not met by the market in accordance with the definition in Annex 2 of the “National Planning Policy Framework” published by the Department for Communities and Local Government (as may be updated or superseded).
“Affordable Housing Contribution”	means £ 671,639 55,190.00 (sixty hundred and thirty five seventy one thousand one six hundred and thirty ninety pounds) towards the provision of Affordable Housing within the Council’s administrative area
“Appeal”	Means the appeal against non-determination of the Application made to the Secretary of State and allocated reference number APP/W0530/W/22/3296300
"Application"	means the full planning application (reference number 21/05276/FUL) registered by the Council on 1 December 2021 for the “redevelopment to form 39 retirement living apartments for older persons including communal facilities, car parking and associated landscaping”
“Burial Provision Contribution”	means £8,190.00 (eight thousand one hundred and ninety pounds) towards the provision of additional burial space at Great Shelford cemetery
"Chief Planning Officer"	means the Chief Planning Officer of the Council for the time being or such other officer of the Council nominated by her for the purposes of this Agreement
"Commencement of Development"	means the date upon which the Development shall commence by the carrying out on the Land pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act SAVE THAT the term "material operation" shall not include operations in connection with any work of or associated with demolition, site clearance, remediation works, archaeological investigations or excavation works, diversion laying construction enlargement repair maintenance or cleansing of services to serve the Land, environmental investigation, site and soil surveys, erection of a contractor's work compound, erection of a site office, pegging out of roads or paths, construction of temporary access and service roads, temporary display of site notices or advertisements and erection of fencing to the site boundary and " Commence Development " shall be construed accordingly
"Contributions"	means the Affordable Housing Contribution, Outdoor Sports Provision Contribution, Allotments and Community Orchards Contribution, Indoor Community Space Contribution, Green

Infrastructure Contributions, Burial Provision Contribution, Indoor Sports Contribution and Swimming Contribution.

"Development"	means the development of the Land in accordance with the Planning Permission
"Dwellings"	means the residential units that may be built on the Land as part of the Development and "Dwelling" shall be construed accordingly
"Expert"	means an independent person of at least 10 years standing in the area of expertise relevant to the dispute to be agreed between the parties to this Deed or, failing agreement, to be nominated at the request and option of any of them, at their joint expense, by or on behalf of the President for the time being of the Law Society
"Green Infrastructure Contribution"	Means £18,096.00 (eighteen thousand and ninety six pounds) towards the creation of new green space either at Wandlebury Park or the wider Gog Magog hills
"Index"	means:-
"Index Linked"	means such increase to any sum or sums payable under this Agreement on an annual basis or pro rata per diem from the date of this Agreement to the date of payment (or calculation as the case may be) based upon the relevant Index last published before the date of the is Agreement
"Indoor Community Space Contribution"	means £11,079.12 (eleven thousand and seventy nine pounds and twelve pence) towards improvements to Great Shelford Memorial Hall including a new kitchen
"Indoor Sports Contribution"	means £9,178.00 (nine thousand one hundred and seventy eight pounds) towards improving indoor sports facilities at Sawston Sports Centre
"Land"	means all that land situate at Station Road Great Shelford shown edged red on Plan 1
"Monitoring Fee"	Means £500.00 (five hundred pounds) towards the monitoring of the planning obligations in this Agreement
"Occupation"	means occupation for the purposes of 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" "Occupant" and "Occupier" shall be construed accordingly
"Outdoor Sports Contribution"	Means £24,403.33 (twenty four thousand four hundred and three pounds and thirty three pence) towards either the Great

Shelford sport pavilion (already built) or the improvement to outdoor sports courts at Sawston Sports Centre

- "Plan 1"** means the plan appended to this Agreement at [Appendix 1](#) and labelled Location Plan (40040GS/PA00)
- "Planning Inspector"** means the inspector appointed by the Secretary of State in determining the Appeal
- "Planning Permission"** means a planning permission to be granted pursuant to the Appeal
- "Secretary of State"** means the Secretary of State for Department for Levelling Up, Housing and Communities (or any successor in function)
- "Swimming Contribution"** means £10,226.00 (ten thousand two hundred and twenty six pounds) towards improving swimming pool facilities at Sawston Sports Centre

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1.2 Where the context so requires:-

- 1.2.1 the singular includes the plural and vice versa and words importing the masculine gender only include the feminine and neuter genders and extend to include a corporation sole or aggregate;
- 1.2.2 references to any party or body in this Agreement shall include the successors in title and assigns of that party and in the case of the Council shall include any successor Local Planning Authority exercising planning powers under the 1990 Act;
- 1.2.3 wherever there is more than one person named as a party and where more than one party undertakes a covenant all their covenants can be enforced against all of them jointly and against each individually unless there is an express provision otherwise;
- 1.2.4 any covenant by a party not to do any act or thing shall be deemed to include a covenant not to cause, permit, procure or suffer the doing of that act or thing;
- 1.2.5 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;
- 1.2.6 references to Clauses, paragraphs, and Schedules are references to clauses, paragraphs, and schedules to this Agreement and are for reference only and shall not affect the construction of this Agreement;
- 1.2.7 the headings and contents list are for reference only and shall not affect construction.

2 OPERATIVE PROVISIONS

- 2.1 This Agreement is a deed made pursuant to Section 106 of the 1990 Act.
- 2.2 The covenants, restrictions and requirements imposed upon the Owner under this Agreement create planning obligations pursuant to Section 106 of the 1990 Act and are enforceable by the Council as local planning authority against the Owner.

- 2.3 To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the 1990 Act they are entered into pursuant to powers contained in Section 111 of the Local Government Act 1972 and Sections 1 to 8 of the Localism Act 2011 and all other enabling powers.

3 CONDITIONALITY

Clause 5.1 below is conditional upon: -

- 3.1 the grant of the Planning Permission; and
- 3.2 the Commencement of Development (save for any pre-Commencement obligations).

4 COMMUNITY INFRASTRUCTURE LEVY REGULATIONS 2010 (AS AMENDED)

- 4.1 This Agreement shall cease to have effect if in determining the Appeal, the Secretary of State or the Inspector expressly states in his decision letter that this Agreement does not comply with regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).
- 4.2 If in determining the Appeal, the Secretary of State or the Inspector expressly states in his decision letter that any individual obligation within this Agreement does not comply with regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) that/those obligations(s) will cease to have effect but for the avoidance of doubt the remainder of this Agreement shall continue in full force and effect.

5 PLANNING OBLIGATIONS

- 5.1 From the date ascertained pursuant to Clause 3 the Owner hereby covenants with the Council that the Land shall be subject to the restrictions and provisions regulating the Development and use thereof specified in Schedule 1 of this Agreement.
- 5.2 The Council hereby covenants with the Owner and Developer to comply with the obligations contained in Schedule 2 of this Agreement.

6 MISCELLANEOUS

- 6.1 No party shall be bound by the terms of this Agreement or be liable for the breach of any covenants restrictions or obligations contained in this Agreement: -
- 6.1.1 occurring after he or it has parted with his or its interest in the Land or the part in respect of which such breach occurs (but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest);
- 6.1.2 if he or it shall be an owner-occupier or tenant of any of the Dwellings (or a mortgagee of an individual Dwelling lending money to such owner-occupier or tenant);
- 6.1.3 if it is a statutory undertaker which has an interest in any part of the Land for the purposes of its undertaking.
- 6.2 Where the agreement, approval, consent or expression of satisfaction is required by any party under the terms of this Agreement such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed.
- 6.3 The obligations hereby created shall be registered as a Local Land Charge.

- 6.4 Within 28 (twenty-eight) days of a request from the Owner or Developer the Council will certify whether or not an obligation under this Agreement has been satisfied and if not the steps that are required to be taken in order to secure its satisfaction provided that where such obligation is an ongoing obligation this clause shall not apply.
- 6.5 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.
- 6.6 This Agreement 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 or Developer) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 6.7 If pursuant to Clause 6.6 this Agreement shall terminate and cease to have effect the Council shall upon request remove any entry relating to this Agreement from the Register of Local Land Charges.
- 6.8 In the event that a condition or conditions to the Planning Permission is or are varied pursuant to section 96A of the 1990 Act this Agreement shall continue in full force in respect of the Planning Permission with the relevant condition or conditions as so varied.
- 6.9 In the event that an application is made pursuant to section 73 of the 1990 Act for an amendment to the Planning Permission and planning permission is granted in respect of the application references to Planning Permission in this Agreement shall include the new planning permission granted pursuant to section 73 of the 1990 Act and this Agreement shall apply to and remain in full force in respect of both the original planning permission and the new planning permission without the need for a further agreement to be entered into pursuant to section 106 of the 1990 Act.
- 6.10 Insofar as any Clause or Clauses of this Agreement are found (for whatever reason) to be invalid, illegal or unenforceable then such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of the remaining provisions of this Agreement.
- 6.11 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than one relating to the Development as specified in the Application) granted after the date of this Agreement.
- 6.12 Nothing in this Agreement shall be construed as restricting the exercise by the Council of any power or discretion exercisable by it under the 1990 Act or under any other Act of Parliament nor prejudicing or affecting the Council's rights, powers, duties and obligations in any capacity as a local or public authority.
- 6.13 Any future mortgagee or chargee shall not be personally liable for any breach of the obligations in this Agreement unless committed or continuing at a time when the mortgagee or chargee is in possession of all or any part of the Land **PROVIDED THAT** a mortgagee or chargee shall only remain liable for the part of the Land for which it has an interest.

7 NOTIFICATION

All notices, requests and demands or other written communications to or upon the parties pursuant to this Agreement shall be deemed to have been properly given or made if dispatched by first class letter or facsimile transmission to the party to which such notice, request, demand or other written communication is to be given or made under this Agreement and addressed as follows (or to such other address as the party to whom the notices, requests, demands or other

written communication is to be given or made shall from time to time notify in writing to the other parties as its address for the purposes of this Clause 7):-

- 7.1 to the Council care of the Chief Planning Officer at South Cambridgeshire Hall Cambourne Business Park Cambourne, Cambridge CB23 6EA quoting the Application reference number 21/05276/FUL;
- 7.2 to the Owner at its address shown on page 1 of this Agreement
- 7.3 to the Developer at its address shown on page 1 of this Agreement

8 THIRD PARTIES

No person who is not a party to this Agreement may enforce any terms hereof pursuant to the Contracts (Rights of Third Parties) Act 1999 **PROVIDED THAT** this Clause shall not affect any right of action of any person to whom this Agreement has been lawfully assigned or becomes vested in law.

9 WAIVER

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

10 LEGAL AND MONITORING COSTS

- 10.1 The Owner and Developer shall pay to the Council its reasonable legal fees up to £1,800.00 prior to completion of this Agreement.
- 10.2 The Owner and/or Developer shall pay the Monitoring Fee to the Council on Commencement of the Development

11 OWNERSHIP

The Owner covenants with the Council to give the Council 10 Working Days written notice of any change in ownership of any of their interests in the Land occurring before all the obligations under this Agreement have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Land or unit of occupation purchased by reference to a plan **SAVE THAT** this clause 11 shall not relate to the sale of any individual Dwelling constructed pursuant to the Planning Permission.

12 MORTGAGEE'S CONSENT

- 12.1 The Mortgagee consents to the completion of this deed and declares that its interest in the Property shall be bound by the terms of this deed as if it had been executed and registered as a land charge prior to the creation of the Mortgagee's interest in the Property.
- 12.2 The Mortgagee shall not be personally liable for any breach of the obligations in this deed unless committed or continuing at a time when the Mortgagee is in possession of all or any part of the Property **PROVIDED THAT** the Mortgagee shall only remain liable for the part of the Land for which it has an interest

13 INDEXATION

All the Contributions shall be Index Linked.

14 VAT

All consideration given in accordance with the terms of this Agreement all be exclusive of any Value Added Tax properly payable.

15 DISPUTE PROVISIONS

15.1 Any dispute arising between the parties relating to any matter contained in this Deed may be referred to the Expert by any party.

15.2 The Expert will act as an expert and not as an arbitrator.

15.3 Each party will bear its own costs and the Expert's costs will be paid as determined by her.

15.4 The Expert will be required to give notice to each of the parties, inviting each of them to submit to her written representations and cross representations with such supporting evidence as they shall consider necessary and the Expert shall have regard thereto in making his decision.

15.5 The Expert's decision will be given in writing as expediently as possible with reasons and in the absence of manifest error will be final and binding on the parties.

16 JURISDICTION

This Agreement is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

17 DELIVERY

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

IN WITNESS whereof the parties hereto have executed this Agreement the day and year first before written.

Schedule 1

The Owner's Obligations

The Owner and/or the Developer covenants with the Council: -

1 AFFORDABLE HOUSING CONTRIBUTION

- 1.1 to pay the Affordable Housing Contribution on or prior to Occupation of 50% of the Dwellings;
- 1.2 not to occupy more than 50% of the Dwellings until the Affordable Housing Contribution has been paid to the Council

2 ALLOTMENTS AND COMMUNITY ORCHARDS CONTRIBUTION

- 2.1 to pay the Allotments and Community Orchards Contribution to the Council on or prior to Occupation of the first Dwelling;
- 2.2 not to Occupy or permit to be Occupied the first Dwelling until the Allotments and Community Orchards Contribution has been paid to the Council

3 BURIAL PROVISION CONTRIBUTION

- 3.1 to pay the Burial Provision Contribution to the Council on or prior to Occupation of the first Dwelling;
- 3.2 not to Occupy or permit to be Occupied the first Dwelling until the Burial Provision Contribution has been paid to the Council

4 GREEN INFRASTRUCTURE CONTRIBUTION

- 4.1 to pay the Green Infrastructure Contribution to the Council on or prior to Occupation of the first Dwelling;
- 4.2 not to Occupy or permit to be Occupied the first Dwelling until the Green Infrastructure Contribution has been paid to the Council

4.3 INDOOR COMMUNITY SPACE CONTRIBUTION

- 4.4 to pay the Indoor Community Space Contribution to the Council on or prior to Occupation of the first Dwelling;
- 4.5 not to Occupy or permit to be Occupied the first Dwelling until the Indoor Community Space Contribution has been paid to the Council

5 INDOOR SPORTS CONTRIBUTION

- 5.1 to pay the Indoor Sports Contribution to the Council on or prior to Occupation of the first Dwelling;
- 5.2 not to Occupy or permit to be Occupied the first Dwelling until the Indoor Sports Contribution has been paid to the Council

6 OUTDOOR SPORTS CONTRIBUTION

6.1 to pay the Outdoor Sports Contribution to the Council on or prior to Occupation of the first Dwelling;

6.2 not to Occupy or permit to be Occupied the first Dwelling until the Outdoor Sports Contribution has been paid to the Council

7 SWIMMING CONTRIBUTION

7.1 to pay the Swimming Contribution to the Council on or prior to Occupation of the first Dwelling;

7.2 not to Occupy or permit to be Occupied the first Dwelling until the Swimming Contribution has been paid to the Council

Schedule 2

The Council's Covenants

The Council covenants with the Owner and the Developer: -

- 1 to issue separate receipts on request for any sum paid to the Council under this Agreement;
- 2 to place the Contributions in an interest-bearing account or in separate accounts as the Council shall at its discretion decide;
- 3 not to apply the Contributions for any purpose other than for the purposes set out in this Agreement within the Council's area; and
- 4 that in the event the Contributions or any part or parts thereof are not expended within 5 (five) years of the date of payment then the sum or sums not expended plus interest accrued will be repaid to the paying party or its nominees.

EXECUTED as a Deed (but not)
delivered until dated) by affixing)
the Common Seal of)
SOUTH CAMBRIDGESHIRE DISTRICT)
COUNCIL)

in the presence of:-

Name

Signature

Job Title

EXECUTED as a Deed)
(but not delivered until dated) by)
CHURCHILL RETIREMENT LIVING LIMITED)
acting by a director in the presence of a witness)
)

Director

.....
Witness signature

.....
Witness name

.....
Witness address

.....
Witness occupation

EXECUTED as a Deed)
(but not delivered until dated) by)
FH GREAT SHELFORD LIMITED)
acting by a director in the presence of a witness)

Director

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Witness signature

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Witness name

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Witness address

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Witness occupation

APPENDIX 1

Plan 1

