

Dated 7th February 2024

- (1) HORSHAM DISTRICT COUNCIL
- (2) CHURCHILL RETIREMENT LIVING LIMITED
- (3) SHIRLEY BLANCH, GEORGINA MACLEAN and ROSEMARY KENT

AGREEMENT

under Section 106 of the Town and Country Planning Act 1990 in respect of
Land at Roundstone Park, Worthing Road, Southwater, West Sussex RH13 9JF

Planning Application Ref: DC/22/0096

Lauren Kelly
Head of Legal and Democratic Services
Horsham District Council
Parkside
Chart Way
Horsham
West Sussex
RH12 1RL

This Agreement is made as a Deed and dated

7th February

2024

Between

- (1) **HORSHAM DISTRICT COUNCIL** of Parkside, Chart Way, Horsham, West Sussex RH12 1RL ('the Council')
- (2) **CHURCHILL RETIREMENT LIVING LIMITED** (Company Regn no. 06260373) whose registered office is at Churchill House, Parkside, Ringwood, Hampshire, England, BH24 3SG ('the Developer')
- (3) **SHIRLEY BLANCH, GEORGINA MACLEAN and ROSEMARY KENT** of Roundstone House, Roundstone Park, Worthing Road, Southwater, Horsham RH13 9JG ('the Owner')

1. **Background**

- 1.1 The Owner is the registered proprietor with Title Absolute of land registered at HM Land Registry under title numbers SX3310, SX35510 and SX128051. The Council is the Local Planning Authority as defined in the Act for the area within which the Site is situated for the purposes of this Agreement and for the purposes of Section 106 of the Act
- 1.2 The Owner and the Developer have entered into a contract for sale dated 29 September 2021 relating to the Site.
- 1.3 The Developer has an interest in the land included in the Site and has submitted the application.
- 1.4 The Council at a meeting of planning committee North dated 6th June 2023 authorised the Head of Development of the Council to grant Planning Permission subject to the conditions of the Planning Permission and the prior completion of this Agreement which includes provision for:
 - (a) Details to secure the provision of at least 33 trees on a separate site within Southwater Parish
 - (b) contribution towards affordable housing.
 - (c) the provision of a Management Plan which will detail the management and maintenance of the facility as retirement living apartments and cottages.
 - (d) a Parking Survey undertaking after occupation

- 1.5 This Agreement by Deed is intended to create planning obligations for the purposes of Section 106 of the Act
- 1.6 The Owner and the Developer are willing to enter into and be bound by obligations and be subject to the restrictions in this Deed on the terms set out herein.

NOW THIS DEED WITNESSES as follows:-

2. INTERPRETATION

In this Agreement:

- 2.1 Words importing the masculine include the feminine and vice versa
- 2.2 Words importing the singular include the plural and vice versa
- 2.3 Words importing persons include companies and corporations and vice versa
- 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
- 2.5 Any reference to a clause or schedule or plan is to a clause schedule or plan in to or attached to this Agreement
- 2.6 Any reference to a colour or letter is to a colour or letter on the plan attached to this Agreement
- 2.7 In the absence of contrary provision any reference to a statute includes any statutory modification or re-enactment of it and every statutory instrument, direction, specification made or issued under the statute or deriving validity from it
- 2.8 References to any party to this Agreement shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successors to their functions as local planning authority and local housing authority.

2.9 The headings are for reference only and shall not affect construction

3. DEFINITIONS

It is hereby agreed between the parties set out in this Agreement that the following expressions have the following meanings:

“Act”	means the Town and Country Planning Act 1990 as amended;
“Affordable Housing Contribution”	means a contribution of £646,349 (six hundred and forty six thousand three hundred and forty nine pounds) Index Linked payable by the Owner to the Council towards the provision of Off-Site Affordable Housing;
“AITP Index”	means the All-In Tender Price Index published by the Building Cost Information Service Index of the Royal Institution of Chartered Surveyors or (if such index is at the relevant time no longer published) such other comparable index or basis for indexation as the Council may specify;
“Application”	means the application number DC/22/0096 for planning permission for the demolition of existing buildings and erection of 36 retirement living apartments and 6 retirement cottages, including a lodge manager's office, communal facilities, a guest suite, parking and landscaping.
“Commencement of Development”	means the carrying out of a material operation as defined in Section 56(4) of the Act in respect of the Proposed Development but excluding (for the purposes of this Agreement and for no other purpose) any operation relating to site investigations or surveys, the demolition of existing buildings or structures, excavation works, the regrading of the Site, works connected with infilling, works for the provision or diversion of drainage or mains services to prepare the Site for development, the construction of access and service roads, works of investigations in respect of land contamination or remedial action in respect thereof enabling works demolition , site clearance works, earthworks, archaeological investigations and digs, exploratory

	boreholes, operations permitted by the Town and Country Planning (General Permitted Development) Order 2015 the erection of hoardings and fencing, temporary diversion of services and signage (including the formation of temporary construction accesses) and “Commence Development” shall be construed accordingly;
“Commencement Date”	means the date on which the Commencement of the Development occurs;
“Commencement Notice”	means the written notice confirming the Commencement Date referred to in Clause 7.1.1 and served in accordance with Clause 7.3;
“Development”	means the development of the Site pursuant to the Planning Permission
“District Matters”	means the Affordable Housing Contribution, the Tree Plan and the Management Plan
“District”	means the administrative area of the Council;
“Dwelling”	means a residential dwelling forming part of the Development and “Dwellings” shall be construed accordingly;
“GBC Index”	means the General Building Cost Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or (if such index is at the relevant time no longer published) such other comparable index or basis for indexation as the Council may specify;
“Index Linked”	means as set out in clause 8
“Interest”	means interest at the rate of 4% above the Bank of England base rate applicable at the Specified Date which shall be calculated on a day to day basis;
“Management Plan”	means a management plan which provides details of how the Retirement Facility shall be managed and maintained including details of how the communal areas and guest suite will be maintained;
“Monitoring Fee”	means the fee which the Council charges by virtue of its powers under S111 of the Local Government Act 1972 and S1 of the Localism Act 2011
“Occupation”	means occupation for any purpose for which the Planning Permission has been granted by the Council other than occupation for the purposes of construction or fitting out or occupation for security,

	marketing or display and “Occupy” and “Occupied” and “First Occupation” shall be construed accordingly;
“Occupation Date”	means the date on which the first Dwelling is Occupied
“Occupation Notice”	means the written notice confirming the Occupation Date referred to in Clause 7.1.2 and served in accordance with Clause 7.3;
“Off-Site Affordable Housing”	social rented, affordable rented and intermediate housing, provided to eligible households whose needs are not met by the market and as defined in the National Planning Policy Framework December 2023 or any such successor national planning policy;
“Parish”	Southwater Parish
“Planning Permission”	means the planning permission to be granted by the District Council pursuant to the Application
“Plan”	means the plan attached to this Agreement
“Retirement Facility”	means the facility to be constructed on the Site which will comprise 36 retirement living apartments and 6 retirement cottages, including a lodge manager's office, communal facilities, a guest suite and associated car parking.
“Section 73 Consent”	means a planning permission granted pursuant to Section 73 of the Act which varies and /or removes any condition subject to which the Planning Permission and/or such planning permission pursuant to Section 73 of the Act was granted;
“Site”	means the land shown for identification purposes only edged red on the Plan;
“Specified Date”	means the date upon which an obligation arising under this Agreement is due to be performed;
“Tree Plan”	A plan to be submitted to the Council for its approval which will show Tree Provision within the Parish
“Tree Provision within the Parish”	means details to show where at least 33 trees will go within a separate site in the Parish, the details shall include provision for the delivery of the trees (including a timetable) by: either the Owner or the owner of the separate site in the parish (delivery by the owner of the separate site may require a contribution to the owner of the separate site by the Owner)

4. **ENABLING PROVISIONS**

This Agreement is made pursuant to section 106 of the Act, section 111 of the Local Government Act 1972, and Section 1 of the Localism Act 2011 and all other enabling powers

5. **CONDITIONS PRECEDENT**

5.1 This Agreement shall come into effect upon the date hereof but the provisions in the Schedules shall only take effect upon:

5.1.1 the granting of Planning Permission; and

5.1.2 the Commencement of Development

6. **COVENANTS**

6.1 The Owner covenants with the Council to fully comply with and to perform the obligations contained herein and in the Schedules of this Agreement in accordance with the requirements and timescales contained therein.

6.2 The Owner covenants with the Council that the Development and use of the Site shall be in strict accordance with this Agreement

6.3 The Council covenants with the Owner to fully comply with and to perform the obligations on the Council contained herein and in the Schedule of this Agreement in accordance with the requirements and timescales contained therein.

6.4 Within 28 (twenty-eight) days of a request from the Owner 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.

7. **NOTICES**

7.1 The Owner covenants with the Council as follows:

7.1.1 to give the Commencement Notice to the Council not less than 14 days before the anticipated Commencement Date

7.1.2 to give the Occupation Notice to the Council not less than 14 days before the anticipated Occupation Date

7.2 The parties to this Agreement agree that if the Owner fails to give the notice required by Clause 7.1.1 and Clause 7.1.2 above then the Council shall be entitled in its absolute discretion to determine the Commencement Date and shall give notice to the Owner of the Council's determination

7.3 Any notice certificate or other communication required or permitted to be given hereunder shall be given in writing to the relevant party at the relevant address referred to above or such other address as may be notified in writing to the other party and must be served personally or by registered or recorded delivery post and in the case of the Council the Owner shall address any notice to the Head of Legal and Democratic Services of the Council

7.4 Any notice certificate or other communication sent by post shall be deemed (in the absence of evidence of receipt) to have been delivered two days after despatch and in proving the fact of despatch it shall be sufficient to show that the envelope was properly addressed and posted

7.5 Any notice certificate or other communication delivered personally shall be deemed to have been delivered on the day of its despatch if despatched during or prior to normal business hours but otherwise on the next business day thereafter

8. INDEX LINKING

8.1 The Owner undertakes to the Council that the Affordable Housing Contribution payable by the Owner under this Agreement to the Council shall be increased by the application of the following formula:

$$A = B \times \left(\frac{C}{D} \right) \text{ (where } C/D \text{ is equal to or greater than 1)}$$

where A is the sum actually payable on the Specified Date

B is the original sum mentioned in this Agreement

C is the GBC Index for the quarter preceding the Specified Date

D is the GBC Index for the quarter preceding the date of this Agreement.

- 8.2 The Owner undertakes to the Council that West Sussex County Council's reasonable costs in relation to the amendment of the TRO payable by the Owner under paragraph 7 to Schedule 2 to this Agreement shall be increased by the application of the following formula:

$$A = B \times \left(\frac{C}{D} \right) \text{ (where } C/D \text{ is equal to or greater than 1)}$$

where A is the sum actually payable on the Specified Date

B is the original sum mentioned in this Agreement

C is the AITP Index for the quarter preceding the Specified Date

D is the AITP Index for the quarter preceding the date of this Agreement.

9. INTEREST

The Owner undertakes to the Council to pay the Interest on sums due to the Council under this Agreement but not paid on the Specified Date from the Specified Date until actual payment

10. COSTS

The Developer undertakes to pay to the Council on or before the date hereof the Council's reasonable and proper legal costs incurred in preparing and entering into this Agreement.

11. Monitoring Fee

The Developer undertakes with the Council to pay on completion of this Agreement the Council's Monitoring Fee of £1,600.00

12. GENERAL

The parties undertake that:

- 12.1 to the extent that they fall within the terms of s106 of the Act the obligations contained in Clause 6 and the Schedules hereof are planning obligations for the purposes of s106 of the Act
- 12.2 this Agreement constitutes a Deed
- 12.3 this Agreement is enforceable by the Council
- 12.4 nothing in this Agreement confers or is intended to confer a benefit on a third party under the Contracts (Rights of Third Parties) Act 1999
- 12.5 It is hereby agreed by the Owner that failure by the Council at any time to enforce the provisions of this Agreement or to require performance strictly or otherwise by the Owner of any of the conditions covenants agreements or obligations of this Agreement or any failure or delay by the Council to exercise any act right or remedy shall not be construed as a waiver of or as creating an estoppel in connection with any such condition covenant Agreement or obligation and shall not affect the validity of this Agreement or any part thereof or the right of the Council to enforce any provision and any variation of this Agreement shall not vitiate the remainder of the Agreement which shall remain in full force and effect subject to such amendment or amendments
- 12.6 The Owner hereby undertakes that
 - (a) this Agreement supersedes and replaces all previous negotiations whether oral or written and
 - (b) the Owner has not relied on any express or implied statement warranty representation or undertaking given by or on behalf of the other
 - (c) nothing herein contained excludes the liability of any of the Owner in relation to fraud
- 12.7 The Owner hereby consents to the registration of this Agreement as a Local Land Charge
- 12.8 The Owner hereby gives consent for the Plan to be reproduced by the Council

12.9 If any provision in this Agreement shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired

12.10 Reference to any statute or statutory provisions includes a reference to:-

12.10.1 that statute or statutory provision as from time to time amended
extended re-enacted consolidated or replaced; and

12.10.2 all statutory instruments or orders made pursuant to it whether before or
after the date of this Agreement.

12.11 This Agreement shall be governed by and interpreted in accordance with Laws of England and the Owner submits to the exclusive jurisdiction of the Courts of England

12.12 The obligations in this Agreement (with the exception of Clause 10) shall cease to have effect (insofar only as it has not already been complied with) if before the Commencement of Development the Planning Permission:

- (a) expires;
- (b) is varied or revoked other than at the request of the Owner; or
- (c) is quashed following a successful legal challenge

but will remain in full force and effect so far as any subsisting Section 73 Consent is concerned

12.13 The obligations in this Agreement (with the exception of Clause 10) shall cease to have effect (insofar only as it has not already been complied with) in so far only as the relevant Section 73 Consent is concerned if before the Commencement of Development the relevant Section 73 Consent:

- (a) expires;
- (b) is varied or revoked other than at the request of the Owner or
- (c) is quashed following a successful legal challenge

but will remain in full force and effect so far as the Planning Permission and any other subsisting Section 73 Consent is concerned

12.14 the Owner (or any person deriving title to the Site from them) shall not be liable for any breach of the covenants, restrictions and obligations set out in this Agreement where such breach arises after the Owner has parted with its entire interest in the Site or such part of the Site to which such breach relates save in respect of liability for antecedent breach of this Agreement

12.15 The obligations in this Agreement shall not be enforceable:

- (a) against individual lessees or purchasers and their successors in title occupying or entitled to occupy Dwellings within the Development; or their mortgagees or chargees or
- (b) against any statutory undertaker whose apparatus may be situated within the Site or
- (c) against any mortgagee or chargee (or any receiver or manager (including an administrative receiver or any other administrator howsoever appointed) including a housing administrator 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)

12.16 Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 applies to the covenants in this agreement

12.17 references to the Site include any part of it

12.18 "including" means "including without limitation"

12.19 any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing

12.20 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with any planning permission (other than the Planning Permission or any modification variation or amendment thereof) granted after the date of the Planning Permission

12.21 Subject to the proviso to this Clause if any Section 73 Consent is granted after the date of this Agreement:

- (a) the obligations in this Agreement shall relate to and bind such Section 73 Consent;
and
- (b) the definitions of Application, Development and Planning Permission (other than for the purposes of Clause 1) shall be construed to include reference to (respectively) the planning application for the Section 73 Consent the development permitted by the Section 73 Consent and the Section 73 Consent itself

PROVIDED THAT:

- (c) nothing in this Clause shall fetter the discretion of the Council in determining any planning application for a Section 73 Consent and the appropriate planning obligations required in connection with the determination of the same;
- (d) to the extent that any of the obligations in this Agreement have already been discharged at the date that a Section 73 Consent is granted they shall remain discharged for the purposes of the Section 73 Consent; and
- (e) the Council reserves the right to insist upon the completion of a separate planning obligation by deed of agreement in connection with any Section 73 Consent if the Council (acting reasonably) considers it desirable to do so

13. DISPUTE RESOLUTION

- 13.1 Should a dispute or difference arise between the Owner and the Council concerning anything herein then the provisions of this Clause 13 shall apply
- 13.2 All differences and disputes which may arise between the parties hereto concerning this Agreement shall:
 - (a) where the difference or dispute relates to the construction or interpretation of this Agreement be referred to the determination (as an expert and not as an arbitrator) of an independent leading conveyancing/planning counsel agreed upon by the parties in dispute but in default of such agreement appointed by the President of the Law Society of England and Wales on the application of any of the parties in dispute;

- (b) where the difference or dispute relates to the carrying out of works or construction be referred to the determination (as expert and not as an arbitrator) of an independent Chartered Surveyor or Civil Engineer as appropriate being a partner or director practising in a leading firm of surveyors or civil engineers based in the South East of England or London and experienced in the matter in dispute agreed upon by the parties in dispute but in default of that agreement appointed by the President of the Royal Institution of Chartered Surveyors or the Institution of Civil Engineers as appropriate on the application of any of the parties in dispute PROVIDED that where a contract for the relevant works has been let and provides that the dispute or difference under it shall be referred to arbitration or the court any such dispute or difference which may arise between the parties in connection with those works shall be determined likewise
- 13.3 If the parties in dispute shall fail to agree on the nature of the difference or dispute between them then any of them may apply to the President of the Law Society to appoint an independent solicitor being a partner in a leading firm of solicitors practising in the South East of England or London to decide (as expert and not as arbitrator) in relation to any such matter which of Clauses 13.2(a) or 13.2(b) hereto is applicable
- 13.4 Except as aforesaid any expert appointed pursuant to Clauses 13.2(a) or 13.2(b) or any other person shall:
- (a) on his appointment serve written notice thereof on the parties in dispute;
 - (b) consider any written representations by or on behalf of those parties which are received by him within twenty working days of such service and immediately forward a copy of the written representation of one party to the other party;
 - (f) allow both parties to the dispute an opportunity of commenting in writing on the other party's representations within twenty working days of receipt by the other party thereof;
 - (g) have an unfettered discretion to determine the reference to him;
 - (h) serve notice of his determination as soon as he has made it;
 - (i) give full and clear reasons for his decision;
 - (j) be paid his proper fee and expenses in connection with such reference by the parties in dispute in equal shares or in such shares as he may determine and his determination shall be final and binding on the parties in dispute (save in the case of manifest error) PROVIDED THAT if any such expert shall die become insolvent or of unsound mind or if either of the parties in dispute shall serve on him written notice in their opinion he has unreasonably

delayed making his determination he shall be ipso facto discharged and be entitled only to his reasonable expenses prior to such discharge and another person shall be appointed in his place as such expert

- 13.5 The provisions of this clause shall not affect the ability of the Council to apply for and be granted any of the following: declaratory relief, injunction, and specific performance, payment of any sum, damages, and any other means of enforcing this Agreement and consequential and interim orders and relief.

14 CHANGE IN OWNERSHIP

The Owner undertakes to the Council to give the Council immediate written notice of any change in Ownership of any of its interests in the Site 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 Site or unit of occupation purchased by reference to a plan PROVIDED THAT this clause shall not apply to dispositions to any person against whom this agreement is not enforceable pursuant to clause 12.15.

Schedule 1

PLAN

SITE BOUNDARY



LOCATION PLAN - 1:1250

Proposed Retirement Living Apartments at Roundstone Caravans, Worthing Road, Southwater, RH13 9JF.



Churchill
Retirement Living

Churchill House • 4 Chertsey Road
Basingstoke • Hampshire • GU24 0JG
www.churchillretirementliving.co.uk
Telephone: 01425 336100 Fax: 01425 336101

planningissues
TOWN PLANNING AND ARCHITECTURE

Churchill House • Chertsey Road
Basingstoke • Hampshire • GU24 0JG
Telephone: 01425 462172 Fax: 01425 462173

Project Title
PROPOSED RETIREMENT LIVING APARTMENTS
SITE AT ROUNDSTONE CARAVANS
WORTHING ROAD
SOUTHWATER, RH13 9JF

Drawing Title
LOCATION PLAN
PLANNING

Scale	Date	Drawn	Checked	Rev.
1:1250 @ A1	JAN 22	JS	BS	
Drawing Title				Rev.
20083SW_PL_001				P1

Schedule 2

Owner's Obligations

The Owner hereby covenants and agrees with the Council:

1. to pay the Affordable Housing Contribution to the Council in the following instalments:
 - i) 50% (fifty percent) of the Affordable Housing Contribution prior to first Occupation of the Development;
 - ii) the remainder of the Affordable Housing Contribution prior to Occupation of 20th Dwelling in the Development; and
2. not to:
 - i) Occupy any of the Dwellings prior to paying 50% (fifty percent) of the Affordable Housing Contribution to the Council;
 - ii) Occupy the 20th Dwelling prior to paying the Affordable Housing Contribution to the Council;
3. prior to Occupation the Management Plan shall be submitted to the Council for its approval;
4. shall not Occupy or allow Occupation unless the Management Plan has been approved in writing by the Council.
5. prior to Commencement the Tree Plan shall be submitted to the Council;
6. shall not Commence or allow Commencement until the Tree Plan has been approved in writing by the Council;
7. that it shall, within six months of Occupation of all of the Dwellings, undertake on-street parking surveys on the section of Worthing Road adjoining the Site between the northern and southern boundaries of the Site to assess the impact of the Development on on-street parking along said section of Worthing Road. If as a result of the surveys an amendment to the Traffic Regulation Order is required by West Sussex County Council (acting reasonably) to limit cars parking on Worthing Road via the provision of yellow lines the Owner shall submit an application to West Sussex County Council to amend the TRO as required by West Sussex County Council (acting reasonably) and be liable for West Sussex County Council's reasonable costs in relation to the amendment of the TRO capped at a maximum sum of £9,370.60 (Index Linked).

Schedule 3
Council's Obligations

The Council hereby covenants and agrees with the Owner:

1. To use the Affordable Housing Contribution towards the purposes set out in this Agreement and for no other purposes within 10 years of receipt of the final instalment of the Affordable Housing Contribution
2. The Council agrees to repay to the party that pays the Affordable Housing Contribution, together with accrued interest, any part of the Affordable Housing Contribution that has not been spent or committed in accordance with this Agreement within 14 days of the end of the 10 year period referred to in paragraph 1 of this Schedule 3.

IN WITNESS whereof this Deed has been duly executed the day and year first hereinbefore mentioned

SEALED WITH THE COMMON SEAL OF

HORSHAM COUNCIL

in the presence of



Authorised Officer



EXECUTED as a DEED by **CHURCHILL
RETIREMENT LIVING LIMITED** acting by a
director and its secretary or two directors:

[Redacted Signature]

Signature of Director

[Redacted Name]

Print name

[Redacted Signature]

Signature of Director/Secretary

[Redacted Name]

Print name

SIGNED as a DEED by

[REDACTED]

Signature ..

[REDACTED]

Witnessed by

Signature

[REDACTED]

Name (in block capitals)

[REDACTED]

Address

79, TIMBERMILL

SOUTHWATER

W. SOSSEY

RH13 9SP

SIGNED as a DEED by

[REDACTED]

Signature

[REDACTED]

Witnessed by

[REDACTED]

Signature

Name (in block capitals

[REDACTED]

Address 79, TIMBERMILL

SOUTHWATER

W. SOSSEY

RH13 9 SP

SIGNED as a DEED by

[REDACTED]

Signature ..

[REDACTED]

Witness

Signature

[REDACTED]

Name (in block capitals)

[REDACTED]

Address 79 TIMBERMILL

SOUTHWATER

W. SUSSEX

RH13 9SP