

JEWSON, FORE STREET, EXMOUTH, EX8 1HX (“THE SITE”)

PROPOSED HEADS OF TERMS – SECTION 106 AGREEMENT

1 PARTIES

1.1 The Agreement will be between:

- (1) **CHURCHILL RETIREMENT LIVING LIMITED** (CRN 06260373) of Churchill House, Parkside, Ringwood, Hampshire, BH24 3SG (the “**Applicant**”);
- (2) **SGBD PROPERTY HOLDINGS LIMITED** (CRN 213753) of Saint-Gobain House, Binley Business Park, Coventry CV3 2TT (the “**Owner**”); and
- (3) **EAST DEVON DISTRICT COUNCIL** of Exmouth Town Hall, St Andrew’s Road, Exmouth EX8 1AW (the “**Council**”).

2 STATUTORY AUTHORITY

- 2.1 The Agreement will be entered into pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) (the “**1990 Act**”) and will contain planning obligations on behalf of the Owner capable of enforcement by the Council in respect of the development of the Site as described in paragraph 3.1 below.
- 2.2 The planning obligations will meet the statutory tests contained in Regulation 122 of the Community Infrastructure Levy Regulations 2010.

3 THE DEVELOPMENT

- 3.1 The Applicant has submitted a planning application for redevelopment of the Site for 54 retirement living apartments and 6 retirement living cottages, including communal facilities, access, car parking and landscaping and 178sqm of commercial use (Class E) (the “**Development**”).

4 CONDITIONALITY

- 4.1 The obligations contained within the Agreement will be conditional upon the prior satisfaction of the following events:
 - 4.1.1 The grant of planning permission by the Council for the Development; and
 - 4.1.2 Commencement of the Development by the carrying out of a material operation (as defined in the 1990 Act) but not including site investigations or surveys; archaeological works; site decontamination; the demolition of any existing buildings or structures; excavation works; the clearance or re-grading of the Site; the erection of hoardings and fences; works connected with infilling; works for the provision or diversion of drainage or mains services to prepare the Site for development; or the construction of access and service roads.

5 OBLIGATIONS OF THE OWNER

- 5.1 The Owner understands that provision of financial contributions towards infrastructure within the Council’s administrative area (the “**Obligations**”) will need to be secured through the Agreement.

- 5.2 The details of the obligations shall be negotiated between the Applicant and the Council so as to ensure that the impact of the Development can be properly mitigated.

6 COSTS

- 6.1 Upon completion of the Agreement, the Applicant will pay the Council's reasonable and proper legal costs incurred in connection with the preparation, negotiation and completion of the Agreement.

7 RELEASE AND SUBSTITUTION

- 7.1 It shall be a term of the Agreement that upon parting with its interest in the Site any party shall be released from all of its respective obligations, rights and duties under the terms of the Agreement insofar as they are referable to its ownership or relate to any such part of the Site (save in respect of any liability for any prior breach of the Agreement)

8 CHARGE HOLDERS/INDIVIDUAL OCCUPIERS/STATUTORY UNDERTAKERS

- 8.1 It will be a term of the Agreement that it will not be enforceable against:
- 8.1.1 holders of a charge over the Site (or part thereof) or the successors in title to such mortgagee or chargee or any receiver or manager appointed by such mortgagee or chargee unless and until it becomes mortgagee in possession, further, said charge holder shall not be liable for any pre-existing breach arising prior to the date it enters into possession nor for any breach after it has parted with or released its interest in the Site;
 - 8.1.2 the individual owners or occupiers or mortgagees of any Dwellings constructed on the Site pursuant to the Planning Permission nor anyone deriving title from such owners, occupiers or mortgagees nor against anyone whose only interest in the Site is in the nature of the benefit of an easement or covenant; or
 - 8.1.3 any statutory undertakers which acquire any part of the Site for the purposes of fulfilling statutory functions.

9 REASONABLENESS

- 9.1 Unless otherwise specified, where any agreement, certificate, consent, permission, expression of satisfaction or other approval is required to be given by the Council or any person on its behalf under the terms of the Agreement the same shall not unreasonably be withheld or conditioned or delayed

10 ALTERNATIVE PLANNING PERMISSIONS

- 10.1 Nothing contained in the Agreement shall prohibit or limit the Development of any part of the Site in accordance with any planning permission (other than the permissions specifically contemplated by the Agreement) granted either before or after the date of the Agreement

11 LAND OUTSIDE CONTROL

- 11.1 Nothing contained within the Agreement shall require the performance of any obligation in upon or under land outside the ownership of the party required to perform the obligation.

12 USE OF CONTRIBUTIONS

- 12.1 The Agreement will contain provisions requiring financial contributions to be expended by the Council for such particular purposes as may be necessary to mitigate the impact of the Development.

13 REPAYMENT OF UNEXPENDED CONTRIBUTIONS

- 13.1 The Agreement will contain provisions requiring the repayment of any unexpended contributions by the Council to the body that pays the contributions in the event that the whole or any part of any such contribution remains unexpended for their intended purpose by the Council after an agreed period.
- 13.2 The Agreement will contain provisions requiring the Council to account for the expenditure of the financial contributions.

9 September 2022