

DATED

2012

BETWEEN:

and

SHROPSHIRE COUNCIL

Section 106 Agreement
relating to land at Shropshire



LEGAL AND DEMOCRATIC SERVICES
The Shirehall Abbey Foregate Shrewsbury SY2 6ND
DX 702024 Shrewsbury 2

THIS AGREEMENT is made the _____ day of _____ Two thousand and twelve

BETWEEN:

- (1) _____ of, Shropshire (the "Owner") and
- (2) **SHROPSHIRE COUNCIL** of Shirehall Abbey Foregate Shrewsbury Shropshire SY2 6ND ("the Council")

WHEREAS

1. The Owner is the registered proprietor of the land described in the First Schedule hereunto (the "Land")
2. The Council is the Local Planning Authority for the purposes of the Town and Country Planning Act 1990 (the "Act") for the area within which the Land is situated and by whom the Obligations in this Deed are enforceable
3. On the _____ 201 the Owner applied to the Council for full planning permission under reference //FUL for the (the "Development") on the Land
4. The Council is prepared to grant conditional planning permission in the form of the draft annexed hereto and marked "A" ("Planning Permission") following the execution of this deed without which planning permission for the Development would not be granted

NOW THIS AGREEMENT WITNESSETH as follows:

1. This Agreement is made in pursuance to Section 106 of the Act Sections 111 and 120 Local Government Act 1972 and all other enabling legislation and contains Planning Obligations for the purposes of the Act
2. The Owner covenants with the Council to observe the covenants restrictions and obligations specified in the Second Schedule hereto and the Council covenants with the Owner to observe the covenants specified in the Third Schedule hereto

3. In consideration of the covenants by the Owner as aforesaid the Council has resolved to grant the Planning Permission for the Development
4. If the Planning Permission expires within the meanings of Sections 91 92 and 93 of the Act or is revoked or modified in accordance with Sections 97 to 100 inclusive of the Act without the consent of the Owner this Deed shall cease to have effect (but without prejudice to the rights of either party against the other in respect of any antecedent breach)
5. The Obligations in this Agreement (save for payment of legal costs) shall not come into effect until the Planning Permission is implemented by the carrying out of a material operation as defined in Section 56(4) of the Act
6. The covenants by the Owner herein contained are made with the intent that the covenants shall in respect of the Land be binding on the Land and be binding on and enforceable against the Owner and any successors in title and are covenants to which Section 106 of the Act applies
7. No party shall be liable for any breach of the covenants restrictions or obligations contained in this Agreement occurring after he has parted with his 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
8. The Owner shall pay the Council's legal costs in connection with the preparation and execution of this Agreement in the sum of £200 and further acknowledges that the Council shall utilise the sum of £ as detailed in clause 3 of the Second Schedule hereto in connection with any of the procedures in the Second Schedule of this Agreement
9. This Agreement is a local land charge and shall be registered as such by the Council
10. Any dispute or difference arising between the parties with regard to their respective rights and obligations as to any matter or thing arising out of or connected with this Agreement other than a dispute or difference relating to a matter of law or concerning the meaning or construction of this Agreement shall be referred to the decision of a single arbitrator to be agreed by the parties or failing agreement between them to be

nominated by the President for the time being of the Royal Institution of Chartered Surveyors and any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 for any statutory modification or re-enactment for the time being in force

11. It is not intended that any third party should have the right to exercise or enforce or take the benefit of any of the provisions of this Agreement for the purpose of the Contract (Rights of Third Parties) Act 1999 save as expressly provided herein

12. In this Deed where the context so requires:-

(a) The expressions the "Council" and the "Owner" shall include their respective successors in title and assigns and where there are two or more persons included in the expression the "Owner" covenants expressed to be made by the Owner shall be deemed to be made by such persons jointly and severally

(b) References to clauses schedules and paragraphs are references to clauses schedules and paragraphs in this Deed except where otherwise specified

(c) Title headings to the clauses schedules and paragraphs are for convenience only and shall not be constructed in or affect the interpretation of this Deed

(d) References to any statute or statutory instrument shall except where otherwise specifically provided include references to any statutory modifications or re-enactment thereof for the time being in force

(e) All notices requests demands or other written communications to or upon the parties pursuant to this deed shall be deemed to have been properly given or made if dispatched by first class recorded signed for 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 deed and addressed as follows:

Any notice request or demand or other written communication shall be deemed to have been served as follows:

- (i) If posted recorded signed for at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom; and
- (ii) If sent by facsimile transmission at the time of the successful transmission

PROVIDED that if any means of service shall be outside normal working hours such service shall be deemed to have taken place upon the day the recipient's office is next open for business and in proving such service it shall be sufficient to prove that the envelope containing such notice request demand or other written communication was properly addressed and delivered into the custody of the postal authority in a pre-paid first class recorded signed for envelope (as appropriate) or that the facsimile was successfully transmitted

FIRST SCHEDULE

Land at Shropshire shown edged red on the plan annexed herewith with title to the Land being registered at HM Land Registry under title number SL being

SECOND SCHEDULE

- (1) The Owner shall pay to the Council the total sum of £ as an Affordable Housing Payment (AHP) to be used by the Council to facilitate the delivery of additional affordable and/or supported housing elsewhere in the Council's administrative area payable within 2 years of the commencement of a material operation of the Development in accordance with section 56(4) of the Act or within 90 days of practical completion of the Development whichever date shall occur first.

(2) The Affordable Housing Payment has been calculated by the Council and agreed by the Owner in accordance with the following formula:

(a) Affordable Housing Payment (AHP) = B x F x C

Where

B = Balance of affordable housing requirement at the prevailing target percentage rate (expressed as a decimal fraction of one unit).

F = The gross internal floorspace of the Development, **OR** 100 square metres (whichever is the lower).

C = £900 per square metre (being the assumed standardised cost of construction for an affordable dwelling)

Actual Calculation for Development:

x X 100 X 900 = £.00

(2) The Owner acknowledges and consents to the fact that the Council shall use 2% of the Affordable Housing Payment (in the sum of £) for the monitoring and supervision of the obligations in this Agreement and that any refund of any unallocated or unspent part of the Affordable Housing Payment in accordance with clause 2 of the Third Schedule shall be reduced by such an amount

THIRD SCHEDULE

The Council covenants with the Owner:-

(1) to use the Affordable Housing Payment within ten (10) years of the date of payment for the purpose specified in clause (1) of the Second Schedule or for such other purpose as the Owner and the Council shall agree;

- (2) as soon as possible following written request by the Owner to the Council to pay to the Owner such amount of the Affordable Housing Payment which have not been allocated or expended in accordance with the provisions of this Agreement within ten (10) years of the date of receipt by the Council of the Affordable Housing Payment together with interest at Bank of England base rate from time to time for the period from the date of payment to the date of refund; and
- (3) to provide such evidence as the Owner shall reasonably require in order to confirm expenditure of the Affordable Housing Payment

IN WITNESS whereof the Owner and the Council have executed this document as a deed the day and year first before written

Executed as Deed by)
)
 in the presence of:-)

Witness.....
 Witness Name.....
 Witness Occupation.....
 Witness Address.....

Executed as Deed by)
)
 in the presence of:-)

Witness.....
 Witness Name.....
 Witness Occupation.....
 Witness Address.....

The **COMMON SEAL** of **SHROPSHIRE**)
COUNCIL was hereunto affixed in the)
presence of:-)

Authorised Signatory