

DATED

2024

(1) CHURCHILL RETIREMENT LIVING LIMITED

(2) LIDL GREAT BRITAIN LIMITED

to

(3) DORSET COUNCIL

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**UNILATERAL UNDERTAKING**

Under section 106 of the Town and Country Planning Act 1990  
relating to Land East of Lidl, Christys Lane, Shaftesbury

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PLANNING APPLICATION REF: P/FUL/2023/05051

PLANNING APPEAL REFERENCE: APP/D1265/W/24/3337301

**SHOOSMITHS**

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**THIS UNDERTAKING** is given on

2024

**BY:**

1. **CHURCHILL RETIREMENT LIVING LIMITED** (Company Regn No. 06260373), whose registered office is at Churchill House, Parkside, Ringwood, Hampshire, BH24 3SG (the **“Applicant”**);
2. **LIDL GREAT BRITAIN LIMITED** (Company Regn No. 02816429) whose registered office is at Lidl House, 14 Kingston Road, Surbiton, England, KT5 9NU (the **“Owner”**); and

**TO:**

3. **DORSET COUNCIL** of County Hall, Colliton Park, Dorchester, Dorset DT1 1XJ (the **“Council”**)

## **BACKGROUND**

- (A) For the purposes of the 1990 Act, the Council is the local planning authority for the area within which the Site is located.
- (B) The Owner is the freehold owner of the Site registered at HM Land Registry under Title Number DT444992, subject to the entries disclosed in the registered title and free from encumbrances that would prevent the Owner from entering into this Undertaking.
- (C) The Applicant is interested in the Site via an option to purchase dated 23 June 2023 in favour of the Applicant.
- (D) Pursuant to the Planning Application the Applicant applied to the Council for full planning permission for the Development.
- (D) The Planning Application was not determined within the statutory 13 weeks. The Applicant has made the Planning Appeal and the parties agree to enter into this Undertaking to the intent that any objections of the Council or the Secretary of State to the grant of planning permission are overcome.
- (E) The Owner and the Applicant consider that the planning obligation secured by this Deed are necessary to make the Development acceptable in planning terms and are directly related to the Development and are fairly and reasonably related in scale and kind to the Development and thus satisfy the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010.

The parties agree as follows:

## **2 DEFINITIONS**

In this Undertaking, unless the context otherwise requires, the following definitions apply:

<b>“1990 Act”</b>	the Town and Country Planning Act 1990;
<b>“Affordable Housing Contribution”</b>	the sum of £214,370 (two hundred and fourteen thousand three hundred and seventy pounds) to be paid by the Owner towards the provision of Affordable Housing in North Dorset;
<b>“Charge Holder”</b>	means any mortgagee or chargee of the Site (or any part of the Site) from time to time or the successors in title to such mortgagee or

	chargee or any receiver or manager appointed by such mortgagee or chargee;
<b>“Commencement of Development”</b>	<p>the date on which the Development commences by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act other than (for the purposes of this Undertaking and no other);</p> <p>(a) site investigations or surveys;</p> <p>(b) archaeological works;</p> <p>(c) site decontamination;</p> <p>(d) the demolition of any existing buildings or structures</p> <p>(e) excavation works;</p> <p>(f) the clearance or re-grading of the Site</p> <p>(g) the erection of hoardings and fences;</p> <p>(h) works connected with infilling;</p> <p>(i) works for the provision or diversion of drainage or mains services to prepare the Site for development; or</p> <p>(j) the construction of access and service roads;</p> <p>and <b>“Commence”</b> and <b>“Commenced”</b> shall be construed accordingly;</p>
<b>“Development”</b>	Erection of 41 No. retirement apartments including communal facilities & access, car parking and landscaping as detailed in the Planning Application;
<b>“Dwelling”</b>	a unit of residential accommodation comprised within the Development and <b>“Dwellings”</b> shall be construed accordingly;
<b>“Interest”</b>	means 4% above the base lending rate of Lloyds Bank from time to time or if such rate shall not be published at any time such other comparable rate of interest as the Council may then in writing specify having regard to interest rates current at such time;
<b>“Inspector”</b>	the inspector appointed by the Secretary of State to determine the Planning Appeal;
<b>“Obligation”</b>	means the planning obligation to be carried out by the Owner contained in Schedule 3;
<b>“Occupation”</b>	occupation of the Development for the purposes permitted by the Planning Permission but not occupation for the purposes of construction, fitting out or decoration for marketing or display purposes or in connection with security operations and <b>“Occupy”</b> and <b>“Occupied”</b> shall be construed accordingly;

<b>“Off-Site Affordable Housing”</b>	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;
<b>“North Dorset”</b>	means the area of the former North Dorset District Council’s administrative area.
<b>“Plan”</b>	the plan attached to this Undertaking;
<b>“Planning Appeal”</b>	the planning appeal submitted by the Applicant under Section 78 of the 1990 Act in respect of the Planning Application which has been given reference APP/D1265/W/24/3337301;
<b>“Planning Application”</b>	the application for full planning permission for the carrying out of the Development made by the Applicant and validated on 13 September 2023 and given the reference P/FUL/2023/05051 by the Council;
<b>“Planning Permission”</b>	the full planning permission that may be granted for the Development in pursuance of the Planning Application following the completion of this Undertaking;
<b>“Section 73 Permission”</b>	Planning permission granted by the Council pursuant to an application made under section 73 or section 73A of the 1990 Act
<b>“Secretary of State”</b>	the Secretary of State for Levelling Up, Housing and Communities (or such successor Secretary of State or minister of state who shall assume the same decision making powers from time to time)
<b>“Site”</b>	the Land East of Lidl, Christys Lane, Shaftesbury shown edged in red on the Plan against which this Undertaking may be enforced.

### **3 INTERPRETATION**

- 3.1 The clause headings in this Undertaking are for reference only and do not affect its construction or interpretation.
- 3.2 References to clauses and Schedules are to the clauses and Schedules of this Undertaking, unless stated otherwise.
- 3.3 A reference to a paragraph is to the paragraph of the Schedule in which the reference is made, unless stated otherwise.
- 3.4 Words importing one gender include any other genders and words importing the singular include the plural and vice versa.
- 3.5 A reference to a person includes a reference to a firm, company, authority, board, department or other body and vice versa.
- 3.6 Unless this Undertaking states otherwise, any reference to any legislation (whether specifically named or not) includes any modification, extension, amendment or re-enactment of that legislation for the time being in force and all instruments, orders, notices, regulations, directions, byelaws, permissions and plans for the time being made, issued or given under that legislation or deriving validity from it.
- 3.7 References to the Site include any part of it.

- 3.8 References to any party in this Undertaking include the successors in title of that party and in the case of the Council include any successor local planning authority exercising planning powers under the 1990 Act.
- 3.9 References to “including” means “including, without limitation”.
- 3.10 Any covenant by the tOwner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 3.11 Where two or more people form a party to this Undertaking, the obligations they undertake may be enforced against them all jointly or against each of them individually.
- 3.12 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Undertaking shall be unaffected.

#### **4 LEGAL EFFECT**

- 4.1 This Undertaking constitutes a Deed and is made pursuant to section 106 of the 1990 Act, s.111 of the Local Government Act 1972 and section 1 of the Localism Act 2011 and all other enabling powers and enactments that are relevant.
- 4.2 To the extent that they fall within the terms of section 106 of the 1990 Act, the obligations contained in this Undertaking are planning obligations for the purposes of section 106 of the 1990 Act with the intent that they bind the Site and are enforceable by the Council. Subject to Clause 5, the obligations, covenants and undertakings on the part of the Owner are entered into with the intent that they are enforceable by the Council not only against the Owner but against any successors in title or assigns of the Owner and any person claiming through or under the Owner an interest or estate in the Site or any part of it as if that person had been the original covenanting party in respect of the interest for the time being held by it AND so far as the obligations, covenants and undertakings in this Agreement are given by or to the Council they are entered into under the relevant powers referred to in Clause 4.1 and those obligations, covenants and undertakings are enforceable by or against the Council
- 4.3 The Council is the local planning authority having the power to enforce the planning obligations contained in this Undertaking against the Owner but without prejudice to all and any other means of enforcing them at law or in equity or by statute and a planning obligation not to do any act or thing includes an obligation not to cause or permit or suffer that act or thing to be done by any other person
- 4.4 This Undertaking shall apply to any Section 73 Permission in the same way as it applies to the Planning Permission provided that for the avoidance of doubt where the Council deems it appropriate the Council may require a further agreement under section 106 of the 1990 Act to secure additional obligations concerning the Section 73 Permission

#### **5 LIMITATION OF LIABILITY**

- 5.1 No person constituting the Owner will be liable for breach of a covenant restriction or obligation contained in this Undertaking after he has parted with all the interest in the Site 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.
- 5.2 This Undertaking may be registered as a local land charge by the Council.
- 5.3 No Charge Holder shall have any liability under or in connection with this Deed unless and until it takes possession of the Site or the relevant part of it (and for the avoidance of doubt the Charge Holder will be liable for any pre-existing breach arising prior to the date it enters into

possession and will be liable for any breach after it has parted with or released its interest in the Site).

5.4 Nothing in this Undertaking:

5.4.1 prohibits or limits the right to develop any part of the Site in accordance with a planning permission, other than one relating to the Development as specified in the Planning Application, granted after the date of this Undertaking, whether or not pursuant to an appeal;

5.4.2 shall be construed as restricting the exercise by the Council of any powers exercisable by it under the 1990 Act or under any other Act in the exercise of their functions as a local authority.

5.5 The obligations in this Undertaking will not be enforceable against:

5.5.1 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

5.5.2 a statutory undertaker after the transfer of statutory apparatus (and any land upon or in which the statutory apparatus is situated or is to be situated) by the Owner to that statutory undertaker..

5.6 This Undertaking shall cease to have effect if in determining the Planning Appeal, the Secretary of State or the Inspector expressly states in his decision letter that this Undertaking does not comply with regulation 122 of the Community Infrastructure Levy Regulations 2010.

5.7 If in determining the Planning Appeal, the Secretary of State or the Inspector expressly states in his decision letter that any individual obligation within this Undertaking does not comply with regulation 122 of the Community Infrastructure Levy Regulations 2010 that/those obligations(s) will cease to have effect.

## **6 CONDITIONALITY**

6.1 This Agreement shall come into force on the date hereof save for the obligations contained in the Schedule hereto which shall come into force as follows:

6.1.1 those obligations which expressly require something to be done prior to the Commencement of Development or prohibit the Commencement of Development before something has been done shall come into effect on the date of the Planning Permission; and

6.1.2 all remaining obligations and provisions shall come into effect on the Commencement of Development.

## **7 OBLIGATIONS OF THE OWNER AND APPLICANT**

7.1 The Owner covenants to comply with the obligations expressed to be on their part set out in Schedule 3 in relation to the Development.

7.2 The Owner undertakes to the Council to give written notice to the Council's Head of Planning not fewer than twenty (20) Working Days in advance of Commencement of Development.

7.3 The Owner undertakes to the Council to give the Council written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed

have been discharged within twenty (20) Working Days of any such change. Such notice to give details of the transferee's name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation transferred by reference to a plan PROVIDED THAT the Owner shall not be required to give such notice in respect of dispositions to those persons against whom this undertaking is not enforceable as per clause 5.4.

- 7.4 The Applicant acknowledges and declares that this Undertaking has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Undertaking and that its interests in the Site shall take effect subject to this Undertaking and for the avoidance of doubt the Applicant shall be bound by the Owner's covenants and obligations in this Undertaking if the Applicant becomes a freehold or leasehold owner of any part of the Site [or is carrying out the Development].

## **8 TERMINATION OF THIS UNDERTAKING**

- 8.1 This Undertaking will come to an end if:

- 8.1.1 the Planning Permission is quashed or revoked before the Commencement Date; or
- 8.1.2 the Planning Permission expires before the Commencement Date without having been implemented;
- 8.1.3 the Planning Appeal is dismissed; or
- 8.1.4 in determining the Planning Appeal the Secretary of State or the Inspector states in his decision letter that this Undertaking is not a material planning consideration or that no weight can be attached to the deed in determining the Planning Appeal.

## **9 NOTICES**

- 9.1 Any notice to be given hereunder shall be in writing and shall either be delivered personally or sent by first class pre paid post and where notices are to be served on the Council they must be addressed to and marked for the attention of the Head of Planning. The addresses for service on the Owner and the Council shall be those stated in this Deed or such other address in England for service as the Owner or Council may have previously notified in writing.
- 9.2 Each notice served shall be deemed to have been given or made when posted or hand delivered at the relevant address or if by letter forty eight (48) hours after posting or hand delivery.

## **10 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 10.1 The parties to this Undertaking do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it provided that the exclusion of the said Act shall not prevent all or any future successors in title to any of the parties to this Undertaking from being able to benefit from or to enforce any of the provisions of this Undertaking.

## **11 JURISDICTION**

- 11.1 This Undertaking shall be governed by the laws of England and Wales and the Courts of England shall have sole jurisdiction in respect of the construction of this Undertaking and as to the respective rights and liabilities of the parties.

## **12 INTEREST**

- 12.1 If any sum due under this Undertaking is paid late Interest will be payable from the date the

payment is due to the date of payment.

**13 FEES**

13.1 The Applicant covenants with the Council to pay to the Council prior to the date hereof the Council's reasonable legal fees for the preparation, negotiation and completion of this Undertaking.

IN WITNESS of which this document has been duly executed as a deed and delivered on the date stated at the beginning of this document.



**SCHEDULE 1**

**Plan**

**SCHEDULE 2**

Draft Planning Permission

**SCHEDULE 3**

## **Owner's Obligations**

### **1 CONTRIBUTIONS**

- 1.1 The Owner undertakes to the Council to pay the Affordable Housing Contribution to the Council on or before Occupation of any of the Dwellings.
- 1.2 The Owner undertakes to the Council not to Occupy any of the Dwellings prior to paying the Affordable Housing Contribution to the Council.

Signed as a deed by )

**CHURCHILL RETIREMENT LIVING LIMITED** )

acting by: )

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Director

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Director/Secretary

Signed as a deed by )

**LIDL GREAT BRITAIN LIMITED** )

acting by: )

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Authorised Signatory

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Authorised Signatory