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**THIS AGREEMENT** is made on

2025

**BETWEEN:**

1. **CHURCHILL LIVING LIMITED** (Company Regn No. 06260373), of Churchill House, Parkside, Ringwood, Hampshire, BH24 3SG (the “**Applicant**”);
2. **HANSON QUARRY PRODUCTS EUROPE LIMITED** (Company Regn No. 00300002) of Second Floor, Arena Court, Crown Lane, Maidenhead SL6 8QZ (the “**First Owner**”); and
3. **D [REDACTED] WESTON and R [REDACTED] WESTON of [REDACTED]**  
**[REDACTED]**
4. **NATIONAL WESTMINSTER BANK PLC** (Company Regn No. 929027) of Dorchester Business Centre, 49 South Street, Dorchester, DT1 1DW (the “**Mortgagee**”)
5. **DORSET COUNCIL** of Dorset Council, County Hall, Colliton Park, Dorchester, Dorset, DT1 1J (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 First Owner is the freehold owner of that part of the Site registered at HM Land Registry under Title Number DT399092 free from encumbrances that would prevent the Applicant from entering into this Agreement subject to an option to purchase dated 22 December 2023 in favour of the Applicant.
- (C) The Second Owner is the freehold owner of that part of the Site registered at HM Land Registry under Title Number DT255329 free from encumbrances that would prevent the Applicant from entering into this Agreement subject to a legal charge dated 29 May 2002 in favour of the Mortgagee.
- (D) Pursuant to the Planning Application the Applicant applied to the Council for full planning permission for the Development.
- (E) By notice of refusal dated 21 March 2025 the Council refused to grant the Planning Permission for the reasons set out in the notice. The Applicant has made the Planning Appeal and enters 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.

The parties agree as follows:

**1 DEFINITIONS**

In this Agreement, 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 £500,000 (five hundred thousand pounds) Index Linked to be paid by the Owners towards the provision of Off-Site Affordable Housing;
“ <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;

**“Commencement Date”** 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 Agreement and no other);

(a) site investigations or surveys;

(b) archaeological works;

(c) site decontamination;

(d) the demolition of any existing buildings or structures

(e) excavation works;

(f) the clearance or re-grading of the Site

(g) the erection of hoardings and fences;

(h) works connected with infilling;

(i) works for the provision or diversion of drainage or mains services to prepare the Site for development; or

(j) the construction of access and service roads;

and **“Commence”**, **“Commencement”** and **“Commenced”** shall be construed accordingly;

**“Committed”** subject to a contract or other legally binding obligation;

**“Development”** redevelopment to form Retirement Living accommodation comprising 48 apartments, 25 cottages communal facilities, access, car parking and landscaping to create an integrated retirement community as detailed in the Planning Application;

**“Dwelling”** a unit of residential accommodation comprised within the Development and **“Dwellings”** shall be construed accordingly;

**“Expert”** a person having appropriate qualifications and local knowledge and experience in the matters in dispute as agreed by the Relevant Parties or failing agreement such person as is nominated by the President for the time being of the Royal Institution of Chartered Surveyors on the application of the Relevant Parties;

**“Index”** the All in Tender Price Index published by the Building Cost Information Service of the Royal Institute of Chartered Surveyors or any successor organisation.

**“Index Linked”** an adjustment in the amount of any of the sums paid under this Deed in accordance with the provisions set out in Clause 11 and **“Index Linking”** shall be similarly construed;

<b>“Inspector”</b>	the inspector appointed by the Secretary of State to determine the Planning Appeal;
<b>“Interest”</b>	interest at 4 per cent above the base lending rate published by National Westminster Bank Plc 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>“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> , <b>“Occupied”</b> and <b>“Occupying”</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 2024 or any such successor national planning policy;
<b>“Owners”</b>	means both the First Owner and the Second Owner;
<b>“Plan”</b>	the plan attached to this Agreement;
<b>“Planning Appeal”</b>	the planning appeal submitted by the Applicant under Section 78 of the 1990 Act in respect of the Council’s refusal of the Planning Application which has been given reference APP/D1265/W/25/3372602;
<b>“Planning Application”</b>	the application for full planning permission for the carrying out of the Development made by the Applicant on 9 August 2024 validated on 27 September 2024 given the reference P/FUL/2024/04613 by the Council;
<b>“Planning Permission”</b>	the full planning permission that will be granted by the Council for the Development in pursuance of the Planning Application following the completion of this Agreement or any variation to that permission granted pursuant to Section 73 of the 1990 Act;
<b>“Relevant Parties”</b>	the parties to this Agreement;
<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 to rear of 156-172 South Street, Bridport DT6 3NP shown edged in red on the Plan against which this Agreement may be enforced.

## 2 INTERPRETATION

- 2.1 The clause headings in this Agreement are for reference only and do not affect its construction or interpretation.

- 2.2 References to clauses and Schedules are to the clauses and Schedules of this Agreement, unless stated otherwise.
- 2.3 A reference to a paragraph is to the paragraph of the Schedule in which the reference is made, unless stated otherwise.
- 2.4 Words importing one gender include any other genders and words importing the singular include the plural and vice versa.
- 2.5 A reference to a person includes a reference to a firm, company, authority, board, department or other body and vice versa.
- 2.6 Unless this Agreement 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.
- 2.7 References to the Site include any part of it.
- 2.8 References to any party in this Agreement 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.
- 2.9 References to “including” means “including, without limitation”.
- 2.10 Any covenant by the Applicant and/or the Owners not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 2.11 Where two or more people form a party to this Agreement, the obligations they undertake may be enforced against them all jointly or against each of them individually.
- 2.12 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Agreement shall be unaffected.

### **3 LEGAL EFFECT**

- 3.1 This Agreement constitutes a Deed and is made pursuant to section 106 of the 1990 Act and section 2 of the Localism Act 2011 and all other enabling powers and enactments that are relevant.
- 3.2 To the extent that they fall within the terms of section 106 of the 1990 Act, the obligations contained in this Agreement 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.
- 3.3 The Council is the local planning authority having the power to enforce the planning obligations contained in this Agreement against the Owners and/or the Mortgagee subject to clause 6.1 below 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.
- 3.4 No person constituting the Owners will be liable for breach of a covenant restriction or obligation contained in this Agreement 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

- 3.5 This Agreement will be registered as a local land charge by the Council.
- 3.6 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 it 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).
- 3.7 Nothing in this Agreement:
- 3.7.1 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 Agreement, whether or not pursuant to an appeal;
- 3.7.2 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.
- 3.8 The obligations in this Agreement will not be enforceable against:
- 3.8.1 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
- 3.8.2 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 Owners to that statutory undertaker.
- 3.9 This Agreement 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 Agreement does not comply with regulation 122 of the Community Infrastructure Levy Regulations 2010.
- 3.10 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 Agreement does not comply with regulation 122 of the Community Infrastructure Levy Regulations 2010 that/those obligations(s) will cease to have effect.

#### **4 COMMENCEMENT**

- 4.1 This Agreement will take effect on the Commencement Date save for clause 15 which shall take effect immediately upon completion of this Agreement.

#### **5 OBLIGATIONS OF THE PARTIES**

- 5.1 The Owners covenants to comply with the obligations expressed to be on their part set out in Schedule 1 in relation to the Development.
- 5.2 The Council covenants to comply with the obligations expressed to be on its part set out in Schedule 2.
- 5.3 Within 28 (twenty-eight) days of a request from the Owners 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.

- 5.4 The Council agrees that upon the Owners' obligations under this Agreement being satisfied and upon receipt of a written request by the Owners the Council will remove all relevant entries relating to this Agreement from the Local Land Charges Register.

## **6 MORTGAGEE'S CONSENT**

- 6.1 The Mortgagee acknowledges and declares that this Agreement has been entered into by the Second Owner with its consent and that the Second Owner's part of the Site shall be bound by the obligations contained in this Agreement and that the security of the mortgage over the Second Owner's part of the Site shall take effect subject to this Agreement PROVIDED THAT the Mortgagee shall otherwise have no liability under this Agreement unless it takes possession of all or any part of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Second Owner.

## **7 TERMINATION OF THIS AGREEMENT**

- 7.1 This Agreement will come to an end if:
- 7.1.1 the Planning Permission is quashed or revoked before the Commencement Date; or
  - 7.1.2 the Planning Permission expires before the Commencement Date without having been implemented;
  - 7.1.3 the Planning Appeal is dismissed; or
  - 7.1.4 in determining the Planning Appeal the Secretary of State or the Inspector states in his decision letter that this Agreement is not a material planning consideration or that no weight can be attached to the deed in determining the Planning Appeal.

## **8 NOTICES**

- 8.1 Any notices to be served on the Council under the provisions of this Deed shall be served on and marked for the attention of the Corporate Director for Planning unless otherwise provided for in a particular clause or paragraph in this Deed.
- 8.2 For the avoidance of doubt this clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution which shall be served on the Solicitor to the Council at the Council's address.
- 8.3 The Owners shall serve advance notice on the Council at least 8 Working Days prior to the Commencement of Development.
- 8.4 The Owners shall not Commence Development until they have served the notice under clause 8.3.

## **9 DETERMINATION OF DISPUTES**

- 9.1 Any dispute relating to or arising out of the terms of this Agreement shall be referred to the Expert for determination of that dispute provided that the provisions of this clause shall be without prejudice to the right of any party to seek the resolution of any matter relating to this Agreement by the courts and/or in accordance with Section 106(6) of the 1990 Act
- 9.2 The Expert shall be appointed jointly by the Relevant Parties who are in dispute
- 9.3 The decision of the Expert shall be final and binding upon the Relevant Parties who are in dispute and subject to the following provisions:

- 9.3.1 the charges and expenses of the Expert shall be borne equally between the Relevant Parties who are in dispute unless the Expert shall otherwise direct;
- 9.3.2 the Expert shall give the Relevant Parties who are in dispute an opportunity to make representations and counter representations to him before making his decision;
- 9.3.3 the Expert shall make his decision within the range of any representations made by the Relevant Parties who are in dispute themselves;
- 9.3.4 where there is a dispute as to the amount of any contribution the Owners shall pay its estimate of such contribution to the Council at the time specified in this Agreement and shall pay any difference between that figure and the amount determined by the Expert within 20 working days of the Expert's decision together with Interest thereon calculated (in accordance with this Agreement) from the date the payment was required until the date it is made

**10 DEVELOPER'S CONSENT**

- 10.1 The Applicant consents to its interest in the Site being bound by the obligations contained in this Agreement PROVIDED THAT the Applicant shall not be liable for the performance or non-performance of the covenants in this Agreement relating to the Site unless or until it acquires a legal interest in the relevant part of the Site or is carrying out the Development.

**11 INDEXATION**

- 11.1 All sums of money payable to the Council under this Deed shall be increased (as at the date or dates on which each payment is made) in accordance with the following formula:

$$C = \text{£}Y \times \frac{B}{A}$$

where:

**A** is the value of the Index specified in the provision concerned or, if none is specified, the Index, last published before the date of the Planning Permission

**B** is the value of such Index last published before the date on which the payment in question is made;

**C** is the sum in question after application of this formula; and

**£Y** is the sum to which this formula is applied;

provided that if the Index shall cease to exist, there shall be substituted such other index of building costs as shall be specified by the Council and provided further that if the application of this calculation produces a reduction in the sum in question, such sum shall remain unchanged.

**12 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 12.1 The parties to this Agreement 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 Agreement from being able to benefit from or to enforce any of the provisions of this Agreement.

**13 JURISDICTION**

- 13.1 This Agreement 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 Agreement and as to the respective rights and liabilities of the parties.

**14 INTEREST**

- 14.1 If any sum due under this Agreement is paid late Interest will be payable from the date the payment is due to the date of payment.

**15 FEES**

- 15.1 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 Agreement.

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**

### **Owners' Obligations**

#### **1 CONTRIBUTIONS**

##### 1.1 The Owners covenant with the Council

- 1.1.1 to pay the Affordable Housing Contribution as Index Linked to the Council prior to the Commencement Date.
- 1.1.2 not to Commence Development unless and until they have paid the Affordable Housing Contribution as Index Linked to the Council in full.

## **SCHEDULE 2**

### **Council's Obligations**

- 1.1 The Council agrees 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 Affordable Housing Contribution.
- 1.2 The Council agrees to repay to the party that pays the Affordable Housing Contribution any part of the Affordable Housing Contribution that has not been spent or Committed in accordance with this Agreement within 50 days of a written demand.

Signed as a deed by )

**CHURCHILL LIVING LIMITED** )

acting by: )

.....

)

Director

)

.....

Director/Secretary

Signed as a deed by )

**HANSON QUARRY PRODUCTS** )  
**EUROPE LIMITED** )

acting by: )

.....

Authorised Signatory

)

.....

Authorised Signatory

Signed as a deed by )

**DAVID GEORGE WESTON** )

acting by: )

.....

)

David George Weston

)

in the presence of:-

.....

(Full name of witness)

.....

(Signature of witness)

.....

.....

.....

.....

Address

.....

Occupation

Signed as a deed by )  
**RACHAEL ANN WESTON** and )  
acting by: )  
)  
)

.....

Rachael Ann Weston

in the presence of:-

.....

(Full name of witness)

.....

(Signature of witness)

.....

.....

.....

.....

Address

.....

Occupation

SIGNED as a DEED by )

[Attorney] )

**As Attorney of** )

**NATIONAL WESTMINSTER BANK PLC** )

in the presence of:- )

.....

(Full name of witness)

.....

(Signature of witness)

.....

.....

.....

.....

Address

.....

Occupation

Executed as DEED by affixing the )  
COMMON SEAL of )

**DORSET COUNCIL** )

in the presence of: )

)

)

.....

Authorised Signatory