Adur Copy

Planning obligation by deed of agreement under the Town and Country Planning Act 1990 s 106 and s106A relating to Lidl Store, Malthouse Trading Estate, Brighton Road, Shoreham-By-Sea BN43 6RJ

Application Number: AWDM/0085/16

Dated: 26 September 2016

Between:

(1) THE DISTRICT COUNCIL OF ADUR
(2) WEST SUSSEX COUNTY COUNCIL
(3) LIDL UK GmbH

DATE 26 September 2016 2016

BETWEEN:

A THE DISTRICT COUNCIL OF ADUR of Town Hall, Chapel Road, Worthing, West Sussex BN11 1HA ("the Council");

B WEST SUSSEX COUNTY COUNCIL of County Hall, Chichester, West Sussex PO19 1RH ("the County Council");

C LIDL UK GmbH (incorporated in Germany) (UK Registration Number FC 017929) of 19 Worple Road Wimbledon London SW19 4JS ("the Owner");

RECITALS

A The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.

B The County Council is the local highway authority and the county planning authority for the area in which the Site is situated.

C The Owner is the freehold owner of the Site.

D The parties to the Original Planning Obligation also included Dunedin UK Industrial Property Nominee Limited and Dunedin UK Industrial Property Nominee No.2 Limited ("former owners") and their Mortgagee, The Royal Bank of Scotland PLC, ("former mortgagee") although these parties no longer have an interest in the site, it having been sold to the Owner on 16th April 2015. As a result there is no requirement for the former owners or former mortgagee to be parties to this deed.

E The Owner has submitted the S.73 Application to the Council for permission under the Act to vary condition 14 (fourteen) of the Original Permission to extend the Store's opening hours and the parties have agreed to enter into this deed to secure the planning obligations applicable to the Original Permission and to link it to the Section 73 Permission, if granted and to any future S.73 permission.

NOW THIS DEED WITNESSES as follows:

1 Definitions and interpretation

1.1 Definitions

For the purposes of this deed the following expressions shall have the following meanings:

1.1.1 Unless the context otherwise requires, all words and phrases defined in the Original Planning Obligation shall have the same meaning in this deed.

1.1.2 **'the S.73 Application'** means the application made under the Act section 73 to vary condition 14 (*fourteen*) of the Original Permission and allocated reference number AWDM/0085/16 to increase the permitted opening hours to allow opening between the hours of 0800 and 2200 Monday to Sunday,

1.1.3 **'the Original Permission'** means the planning permission subject to conditions granted by the Council on 27th January 2015 under reference number AWDM/0431/14 in respect of which the S 73 Application has been made and a copy of which is attached to this deed as Schedule 3

1.1.4 **'the Original Planning Obligation'** means the planning obligation created by the agreement dated 19th January 2015 and a copy of which is attached to this deed as Schedule 4

1.1.5 **'the Plan'** means the plan attached to this deed at Schedule 2

1.1.6 **'the Section 73 Development'** means the development of the Site to vary condition 14 (Hours of Opening) of the Original Permission for the Development of the Site by demolition of existing units (units 1 and 2) and construction of a new discount food store (Lidl) together with 97 space car park and modified vehicular access and landscaping as set out in the Application to allow opening between the hours of 0800 and 2200 Monday to Sunday pursuant to the Section 73 Permission

1.1.7 **'the Section 73 Permission'** means the planning permission subject to conditions to be granted by the Council pursuant to the S.73 Application

1.1.8 **'the Site'** means the land against which this deed may be enforced as shown edged red on the Plan at Schedule 2 and described in Schedule 1

1.2 Interpretation

1.2.1 Reference in this deed to any recital, clause, paragraph or schedule is, unless the context otherwise requires, a reference to the recital, clause, paragraph or schedule in this deed so numbered.

1.2.2 Words importing the singular meaning include the plural meaning and vice versa where the context so admits.

1.2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.

1.2.4 Wherever an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually unless there is an express provision otherwise.

1.2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.

1.2.6 References to any Party shall include the successors in title to that Party and any person deriving title through or under that Party and in the case of the Council and the County Council the successors to their respective statutory functions.

1.2.7 Headings where they are included are for convenience only and are not intended to influence the interpretation of the agreement.

2 Legal basis

2.1 This deed is made pursuant to the Act sections 106 and 106A, the Local Government Act 1972 section 111 and the Local Government Act 2000 section 2.

2.2 The terms of this deed create planning obligations binding on the Owner pursuant to sections 106 and 106 A of the Act and are enforceable as such by the Council and the County Council as local planning authority.

3 Conditions, duration and enforcement

3.1 Conditions precedent

This deed is conditional upon the grant of the Section 73 Permission, save for the provisions of clause 7 and the variations to the Original Planning Obligation as set out in schedule 5 which shall come into effect immediately upon completion of this deed.

3.2 Duration

3.2.1 The obligations in clauses 4 and 5 of this deed shall cease to have effect, in so far only as not already been complied with, if the Section 73 Permission is quashed, revoked or otherwise withdrawn or, without the consent of the Owner, it is modified by any statutory procedure.

3.2.2 No person shall be liable for any breach of any of the planning obligations or other provisions of this deed after parting with his entire interest in the Site but without prejudice to liability for any subsisting breach arising before parting with that interest.

3.2.3 Nothing in this deed shall prevent compliance with any obligation pursuant to it before that obligation comes into effect under this clause 3, and no such early compliance shall amount to a waiver of the effect of this clause 3.

3.3 Other development

Nothing in this deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Section 73 Permission) granted (whether or not on appeal) after the date of this deed.

4 The Owner's covenants

The Owner covenants with the Council and the County Council to be bound by the terms and planning obligations of the Original Planning Obligation (insofar as they remain to be complied with), as varied in accordance with Schedule 5 and then *mutatis mutandis* as if the Original Planning Obligation had been entered in to in respect of the Section 73 Permission and the Section 73 Development.

5 Council's covenants

The Council covenants with the Owner by this deed to be bound by the terms and planning obligations of the Original Planning Obligation (insofar as they remain to be complied with) as varied in accordance with Schedule 5 and then *mutatis mutandis* as if the Original Planning Obligation had been entered in to in respect of the Section 73 Permission and the Section 73 Development.

6 County Council's covenants

The County Council covenants with the Owner by this deed to be bound by the terms and planning obligations of the Original Planning Obligation (insofar as they remain to be complied with) as varied in accordance with Schedule 5 and then *mutatis mutandis* as if the Original Planning Obligation had been entered in to in respect of the Section 73 Permission and the Section 73 Development.

7 Provisions of immediate effect

7.1 On completion of this deed the Owner shall pay to the Council and the County Council the reasonable legal costs incurred in the negotiation, preparation and execution of this deed.

7.2 Nothing in this deed shall create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999.

8 Local land charge

8.1 This deed shall be registered as a local land charge by the Council, and the Council shall immediately after the date of this deed register it as such.

8.2 Following the performance and satisfaction of all the obligations contained in this deed, the Council, on written request from the Owner, shall effect the cancellation of all entries made in the Register of Local Land Charges in respect of this deed.

9 Jurisdiction and legal effect

9.1 This deed shall be governed by and interpreted in accordance with the law of England and Wales.

9.2 In so far as any clause or clauses of this deed are found (for whatever reason) to be invalid, illegal or unenforceable, that invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this deed.

9.3 No waiver (whether expressed or implied) by the Council (or the County Council or Owner) of any breach or default in performing or observing any of the covenants terms or conditions of this deed shall constitute a continuing waiver and no such waiver shall prevent the Council (or the County Council or Owner) from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

9.4 The provisions of this deed (other than this clause 9.4 which shall be effective in any event) shall be of no effect until this deed has been dated.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

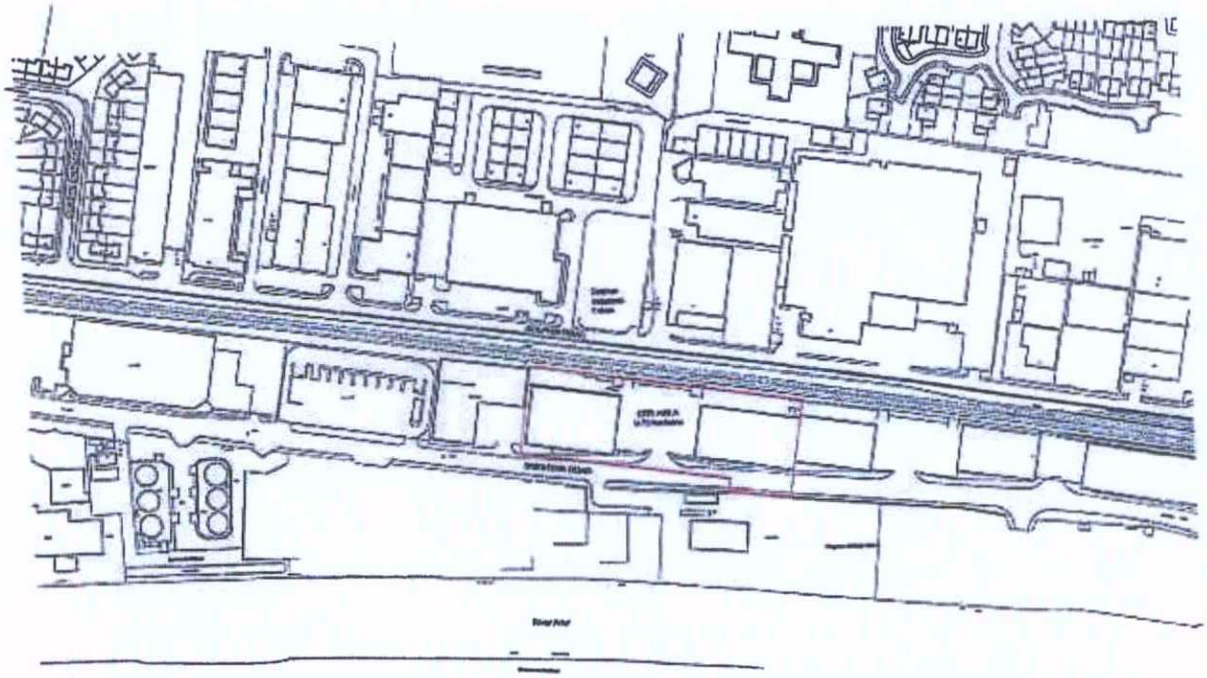
SCHEDULE 1

The Owner's Title and Site Description

1. The Owner is the registered proprietor of freehold title number ESX64632 registered at Land Registry and is known as Lidl, Malthouse Trading Estate, Brighton Road, Shoreham-By-Sea (BN43 6RJ).
2. The Owner warrants that to their knowledge no person other than the Owner has any legal or equitable interest in the Site.

SCHEDULE 2

Plan



SITE LOCATION PLAN - 1:1250

[redacted]

[redacted]

[redacted]

SCHEDULE 3

The Original Permission

Adur District Council

Planning, Regeneration and Wellbeing

Mr Jason Gratton
Lidl UK GmbH
1st Floor Property Office
33 London Road
Cowplain
Hampshire
PO8 8DF

PLANNING PERMISSION

TOWN AND COUNTRY PLANNING ACT 1990
TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2010

APPLICATION NUMBER: AWDM/0431/14

Details of Development
DEMOLITION OF EXISTING UNITS (UNITS 1 AND 2) AND CONSTRUCTION OF NEW DISCOUNT FOOD STORE (LIDL) TOGETHER WITH 97 SPACE CAR PARK AND MODIFIED VEHICULAR ACCESS AND LANDSCAPING

Location of Development
UNIT 1 MALTHOUSE TRADING ESTATE BRIGHTON ROAD SHOREHAM-BY-SEA WEST SUSSEX

In pursuance of their powers under the above-mentioned Act and Order the Council hereby notify you that they PERMIT the above development, in accordance with the application and relevant correspondence registered on 7th April 2014.

This is for reasons stated on the schedule overleaf and subject to compliance with the conditions specified thereon.

[redacted]

James Appleton
Executive Head of Planning, Regeneration and Wellbeing
27/01/2015

PTO

ADUR DISTRICT COUNCIL
Adur District Council, Planning Services, Portland House,
Richmond Road, Worthing, West Sussex, BN11 1LF
Tel: (01903) 221065 Fax: (01903) 221072
Minicom: (01903) 204500 DX: 142965 Worthing 10
web: www.adur.gov.uk

SCHEDULE

Reasons for Granting Permission

01. The loss of the two business units is regrettable but given their circumstances and collective policy, this could not be resisted.

Their replacement by a supermarket would not prejudice the longer term vision for Shoreham Harbour regeneration.

Whilst the development does not fully optimise development potential, it is brownfield land and reasonably sustainably located.

The site is out of centre but no feasible sequentially preferable town or edge of centre sites are apparent and no significant harm to any town centre shops as a result of the proposal alone should occur. Conditions to limit the scope of the store are proposed to provide additional safeguards. There is no evident quantitative need for another supermarket in the Shoreham area but a deep discounter as proposed would in many ways complement the existing and proposed local retail offer; help those on low incomes within the catchment area and has proven to be popular with the wider public.

The proposal will generate some employment and along with the proposed local recruitment and training measures will help compensate for the loss of the existing business units.

The site is well served by road and access/parking arrangements are satisfactory. Development contributions and provisions earmarked in the proposed legal agreement, together with the Travel Plan, are critical to ensuring access by public transport, cycle and foot is adequate and key junctions are not overloaded and impacts on air quality are minimised.

The design of the development is unimaginative but with the proposed public art integrated into its main street frontage, acceptable.

The development would not give rise to any other significant environmental impact.

The Secretary of State has raised no objections.

Subject to the recommended conditions and the legal agreement to secure necessary development contributions and other safeguards, the proposal is acceptable in relation to the Development Plan and all other material considerations as described above. It would consequently not conflict with the relevant saved policies of the Adur District Local Plan AG2, AG3, AP3, AP7, AN4, AB27, AB26, AB32, AT12, AE1, AE2, AE3, AS2 and AS4; The Revised Draft Adur Local Plan (2013) Policies 1, 2, 4, 8, 11, 14, 17, 18, 27, 28, 29, 31, 34 and 36; Draft Joint Area Action Plan (JAAP); Development Brief Western Arm of Shoreham Harbour; the Draft Shoreham Harbour Transport Strategy; Noise Action Plan; Air Quality Management Area; Streetscape Guide for Shoreham Harbour; the National

Planning Policy Framework; and Planning Practice guidance; Planning Noise advice document; Air Quality and Emissions guidance for Sussex; and Developer's Charter. and the policies of the National Planning Policy Framework. No objections have been raised by Secretary of State under Circular 02/2009.

Conditions

01. The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.

Reason: *To comply with Section 91 of the Town and Country Planning Act 1990.*

02. The development hereby permitted shall be carried out in accordance with the following approved plan unless indicated otherwise by any other condition imposed upon this planning permission:-

DRG. No. 1443-PO1 Validated 7.4.14
DRG. No. 1443-PO2 REV -C Validated 7.4.14
DRG. No. 1443-PO3 REV-C Validated 7.4.14
DRG. No. 1443-PO4 REV-A Validated 7.4.14
DRG. No. 1443-PO5 REV-D Validated 7.4.14
DRG. No. 1121 Validated 7.4.14
DRG. No. 47066424/1 Validated 7.4.14
Road Safety Audit Stage 1 Validated 7.4.14
Flood Risk Assessment and Drainage Assessment Validated 7.4.14
Agreed Framework Travel Plan Validated 6.6.14
The Extended Phase 1 Habitat Survey report, dated 4.9.13 prepared by Abricon Validated 6.6.14
Environmental Noise Report Reference: 5658/BL/pw January 2014 Acoustic Consultants Ltd Validated 7.4.14

Reason: *For the avoidance of doubt and in the interests of proper planning.*

03. Notwithstanding the General Permitted Development Order and any subsequent amendments or revocations, no mezzanine floor shall be inserted in the development hereby approved except by express planning permission granted by the Local Planning Authority.

Reason: *To control the scale of floorspace in this out of centre location in accordance with the spatial priorities and sustainable development and the National Planning Policy Framework and Policy 27 of the Draft Revised Adur Local Plan.*

04. The access from the site to the A259 shall be designed, laid out and constructed with kerb radii, visibility splays and sight lines in all respects in accordance with the approved plans and Road Safety Audit and provided prior to commencement of use. Thereafter such visibility splays and sight lines shall be kept clear of any obstruction.

Reason: *In the interests of highway safety and having regard to the National Planning Policy Framework.*

05. The building hereby permitted shall not be occupied until space has been laid out within the site as shown on the submitted plans respectively for the turning of all vehicles (including servicing generally) clear of the public highway and car and cycle parking.

Such spaces shall not thereafter be used other than as designated in the approved plans and shall be retained as approved thereafter.

Reason: *In the interests of highway safety and to meet operational need having regard to the National Planning Policy Framework.*

06. No development of any part of the scheme shall be carried out unless and until a schedule and samples of materials and finishes to be used for the external walls (including windows and doors) has been submitted to and approved in writing by the Local Planning Authority.

Reason: *In the interests of visual amenity and to comply with saved policy AG1 of the Adur District Local Plan and the policies of the National Planning Policy Framework.*

07. All planting, seeding or turfing comprised in the approved plans in respect of soft landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner, and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

All hard landscaping shall be carried out prior to first occupation of the building in accordance with the approved plans.

Reason: *In the interests of visual amenity and the environment and to comply with saved policies AB25-27 of the Adur District Local Plan and the policies of the National Planning Policy Framework.*

08. The development shall not be occupied unless and until a service management plan has been submitted to and approved by the Local Planning Authority. The development shall not operate other than in full accordance with any such approved plan.

Reason: *In the interests of highway safety and efficiency including to ensure that manoeuvring by large vehicles to reverse to either enter or exit the service bay does not have a detrimental impact on the safety of other car park users and to minimise the chance of conflict with departing HGVs and drivers using the right hand turn facility, in accordance with the National Planning Policy Framework.*

09. Within 6 months of the completion of construction of the building hereby approved, a certificate from a suitably accredited assessor shall be submitted to the Local Planning Authority demonstrating that the development hereby approved has been built to meet at least the Very Good Standard under BREEAM (Building Research Establishment Environmental Assessment Methodology).

Reason: *In the interests of sustainability having regard to the policies of the National Planning Policy Framework.*

10. The development shall not operate other than in full compliance with the approved Travel Plan.

Reason: *In order to encourage sustainable methods of travel in accordance with the aims of the National Planning Policy Framework.*

11. The development hereby approved shall be carried out in accordance with the approved Flood Risk and drainage Assessment (FRA) and in addition the following measures:-

a) the recessed loading bay shall have an Aco slot drain at the bottom of the ramp to prevent flooding of the ramp area by discharging rain and surface water into the storm sewer system (in a similar manner to the car park gullies);

b) Provision of a petrol/oil interceptor in respect of the disposal of surface water from the car parking area;

c) Provision of Hydro Filterra and Clearstone tree pits to use runoff from the car parking areas to water this landscaping.

Reason: *To reduce the risk of flooding to the proposed development, minimise pollution from run off and optimise water consumption in accordance with the principles of the National Planning Policy Framework.*

12. The use hereby approved shall not commence unless and until a scheme for wildlife enhancement has been implemented in accordance with the Recommendations of The Extended Phase 1 Habitat Survey report, dated 4.9.13 prepared by Abricon.

Reason: *In the interests of bio diversity in accordance with the National Planning Policy Framework.*

13. No development approved by this planning permission (or such other date or stage in development as may be agreed in writing with the Local Planning Authority) shall take place unless and until:-

a) the site has been stripped of Made Ground and a vapour membrane installed beneath the footprint of the building and another enclosed structures on site in accordance with the recommendations of OPUS Geo-Environmental Ground Investigation Report J-M0166.01 Draft or any such other measure as agreed by the Local Planning Authority in writing.

b) Results from the ground gas monitoring are made available to the Local Planning Authority in an addendum report for evaluation and such measures as prescribed by the Local Planning Authority have been complied with.

If during development, any visible contaminated or odorous material, (for example asbestos containing material, stained soil, petrol/diesel/solvent odour, underground tanks or associated pipework) not previously identified, is found to be present at the site, then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until it has been investigated by the developer. The Local Planning Authority must be informed immediately of the nature and degree of the contamination present and a method statement detailing how the unsuspected contamination shall be dealt with must be prepared and submitted to the Local Planning Authority for approval in writing before being implemented

In any event, as construction workers may come into contact with contaminated material, they should be advised of the guidance in HS (G) 66 - Protection of Workers and the General Public during Development of Contaminated Land.

Reason: *To minimise risk from potential land contamination and to safeguard public health having regard to the policies of the National Planning Policy Framework.*

14. The use hereby approved shall not be open for trade or business other than between the hours of 8 am and 9pm.

Reason: *In the interests of amenity and to comply with saved policy AG1 of the Adur District Local Plan and the policies of the National Planning Policy Framework.*

15. No deliveries or collections including waste and recycling shall take place between the hours of 7am to 9.30 pm on Mondays to Fridays and 8am and 10pm on Saturdays or Sundays.

Reason: *In the interests of road safety and traffic efficiency having regard to the policies of the National Planning Policy Framework.*

16. The development shall not operate other than in compliance with the Environmental Noise Report Reference: 5658/BL/pw January 2014 Acoustic Consultants Ltd in respect of noise emissions relating to plant and equipment.

Reason: *In the interests of amenity having regard to saved policy AG1 of the Adur District Local Plan and the policies of the National Planning Policy Framework.*

17. No development shall commence unless and until a scheme has been submitted to and approved by the Local Planning Authority to ensure all designs, materials and planting for street furniture/landscaping and public realm in respect of the approved development shall accord with the Streetscape Guide and adopted wider Shoreham Harbour strategy. The development shall not be implemented other than in full accordance with any such approval.

Reason: *In the interests of visual amenity and regeneration having regard to the Streetscape Guide and adopted wider Shoreham Harbour strategy the policies of the National Planning Policy Framework.*

18. No development shall start until a Construction Management Plan, to include details of:

No development shall take place, including any works of demolition, until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. Thereafter the approved Plan shall be implemented and adhered to throughout the entire construction period. The Plan shall provide details as appropriate but not necessarily be restricted to the following matters:-

- the anticipated number, frequency and types of vehicles used during construction,
- the method of access and routing of vehicles during construction,
- the parking of vehicles by site operatives and visitors,
- the loading and unloading of plant, materials and waste,
- the storage of plant and materials used in construction of the development,
- the erection and maintenance of security hoarding,
- the provision of wheel washing facilities and other works required to mitigate the impact of construction upon the public highway (including the provision of temporary Traffic Regulation Orders),
- details of public engagement both prior to and during construction works.

has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved Plan.

Reason: *In the interests of amenity and the environment having regard to the policies of the National Planning Policy Framework.*

19. No external lighting other than that shown in the approved plans shall be installed without the prior approval of the Local Planning Authority. All lighting shall be turned off outside of approved trading hours.

Reason: *In the interests of visual amenity having regard to the policies of the National Planning Policy Framework.*

20. No works shall commence unless and until a scheme to protect the memorial to PC Tooley from damage during construction/demolition and the operation of the approved use has been submitted to the Local Planning Authority. The development shall not be carried out other than in full compliance with any such approved scheme.

Reason: *In the interests of respect.*

21. The development shall not operate/commence unless and until a scheme has been submitted to and approved by the Local Planning Authority for the feasibility of provision of on site customer taxi pick up and set down. Any approved feasible scheme shall be implemented within 6 months of the first opening of the use.

Reason: *In the interests of customer choice and need and having regard to the policies of the National Planning Policy Framework.*

22. Notwithstanding the approved plans, no development shall commence unless and until a scheme has been submitted to and approved by the Local Planning Authority for scheme of public art to be incorporated into the development or in the vicinity, as appropriate. The approved scheme shall be implemented prior to commencement of use and shall be retained thereafter.

Reason: *In the interests of visual amenity, the environment and regeneration having regard to the National Planning Policy Framework.*

23. No buildings on the site shall be occupied until the associated facilities for storing refuse and waste, including for waste that can be recycled, have been provided in accordance with the approved plans.

Reason: *In the interests of amenity.*

24. No work for the implementation of the development hereby permitted shall be undertaken on the site other than between the hours of 8am and 6pm Monday to Friday and 8.30am and 1pm on Saturdays. There shall be no work on Sundays or Public Holidays.

Reason: *To safeguard the amenities of the occupiers of neighbouring properties having regard to saved policy AG1 of the Adur District Local Plan and the policies of the National Planning Policy Framework.*

Informatives / Notes to Applicant

01. The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern within the application (as originally submitted) and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

02. Section 278 Agreement of the 1980 Highways Act - Works within the Highway; The applicant is advised to enter into a legal agreement with West Sussex County Council, as Highway Authority, to cover the off-site highway works. The applicant is requested to contact The Implementation Team Leader (01243 642105) to commence this process. The applicant is advised that it is an offence to undertake any works within the highway prior to the agreement being in place.

SCHEDULE 4

The Original Planning Obligation

DATED 19 January ~~2014~~ 2015

THE DISTRICT COUNCILOF ADUR

- and –

WEST SUSSEX COUNTY COUNCIL

- and –

DUNEDIN UK INDUSTRIAL PROPERTY NOMINEE LIMITED

- and –

DUNEDIN UK INDUSTRIAL PROPERTY NOMINEE NO. 2 LIMITED

- and –

LIDL UK GmbH

- and –

THE ROYAL BANK OF SCOTLAND PLC

SECTION 106 AGREEMENT

relating to a development at

Lidl Store, Malthouse Trading Estate,

Brighton Road, Shoreham-By-Sea BN43 6RJ

DATE 19 January 2015

PARTIES

1) THE DISTRICT COUNCIL OF ADUR of Town Hall, Chapel Road, Worthing, West Sussex BN11 1HA ("the Council");

2) WEST SUSSEX COUNTY COUNCIL of County Hall, Chichester, West Sussex PO19 1RH ("the County Council");

3) DUNEDIN UK INDUSTRIAL PROPERTY NOMINEE LIMITED (Company Registration Number 07019227) and DUNEDIN UK INDUSTRIAL PROPERTY NOMINEE NO. 2 LIMITED (Company Registration Number 07235273) both of 6th Floor Clarendon House 12 Clifford StreetLondonW1S 2LL ("the Owner");

4) LIDL UK GmbH (incorporated in Germany) (UK Registration Number FC 017929) of 19 Worple Road Wimbledon London SW19 4JS ("the Developer");

5) THE ROYAL BANK OF SCOTLAND Public Limited Company (Scottish Company Registration Number SC090312) of 8th Floor, 280 Bishopsgate, London EC2M 4RB ("the Mortgagee").

INTRODUCTION

1 The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.

2 The County Council is the local highway authority the county planning authority the education authority and the authority responsible for the provision of the fire service and the library service for the area in which the Site is situated.

3 The Owner is the freehold owner of the Site.

4 The Developer has registered a unilateral notice affecting units 1 and 2 of The Malthouse Estate of a contract for sale dated 31 July 2013 between the Owner the Developer and Hansteen UK Industrial Property Limited Partnership.

5 The Mortgagee is the mortgagee of the Site under the terms of a legal charge dated 31 October 2014.

6 The Developer has submitted the Application to the Council and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.

7 The Council resolved on 4 August 2014 to grant the Planning Permission subject to the prior completion of this Deed.

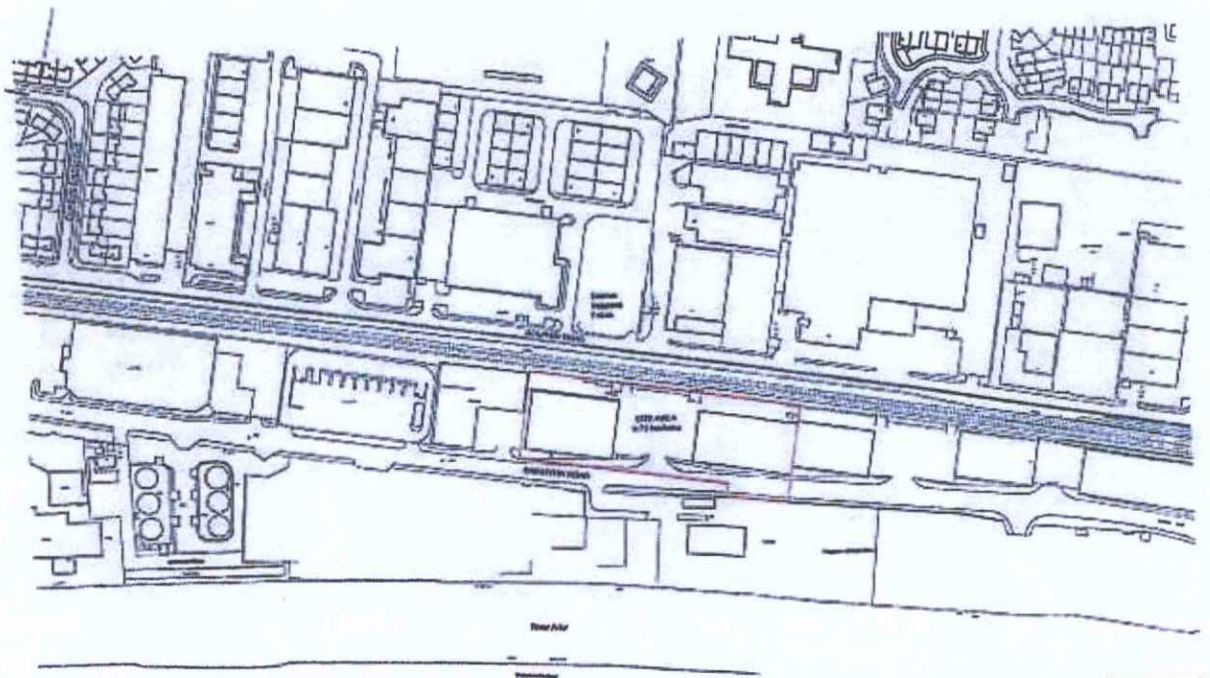
NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1 **DEFINITIONS**

For the purposes of this Deed the following expressions shall have the following meanings:

"1980 Act"	the Highways Act 1980.
"Act"	the Town and Country Planning Act 1990.
"Application"	the application for full planning permission submitted to the Council for the Development and allocated reference number AWDM/0431/14.
"Commencement of Development"	the date on which the first material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly.
"Development"	the Development of the Site by demolition of existing units (units 1 and 2) and construction of a new discount food store (Lidl) together with 97 space car park and modified vehicular access and landscaping as set out in the Application.
"Index Linked"	means index linked in accordance with the provisions of clause 12.
"Interest"	interest at 2% per cent above the base lending rate of National Westminster Bank plc applicable at the actual date of payment.
"Occupation" and "Occupied"	occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations.
"Plan 1"	the plan numbered 1 attached to this Deed.
"Plan 2"	the plan numbered 2 attached to this Deed.



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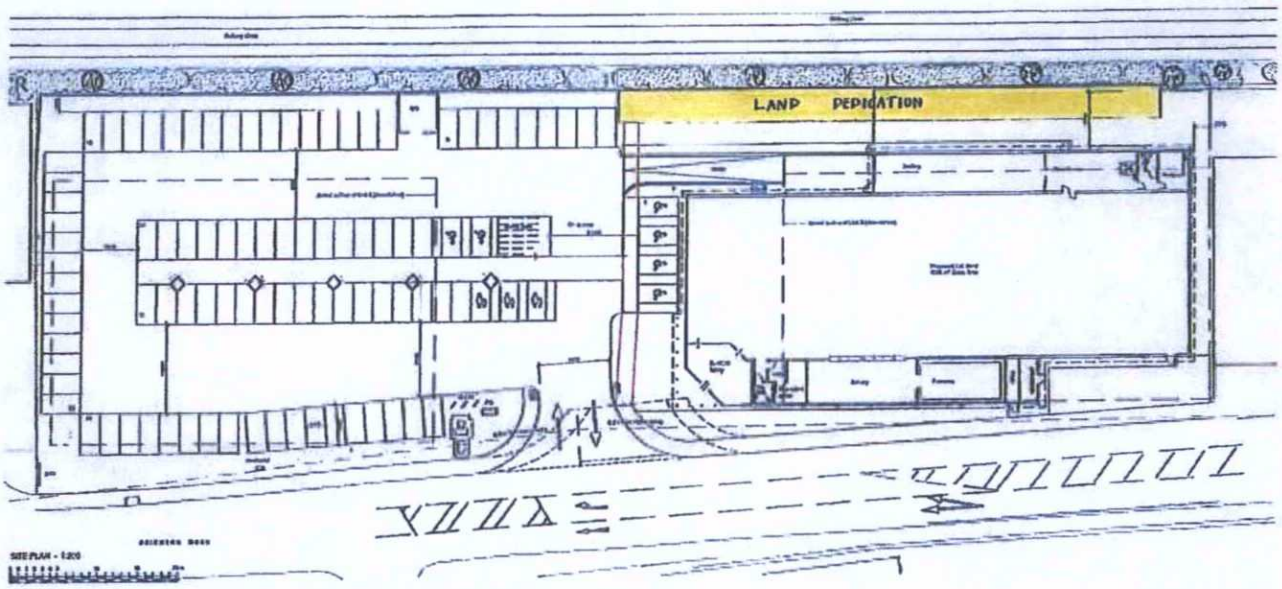
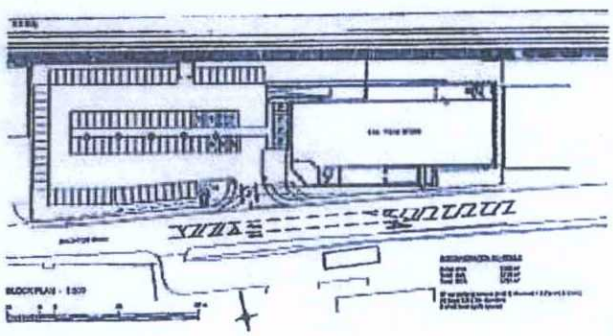
SITE LOCATION PLAN - 1:1250

[redacted]

thc architecture	LKS, PRIGHTONE, UNITE 1 & 2, THE MALTHOUSE ESTATE, BRIGHTON ROAD, SHOREHAM-BY-SEA	
	SITE LOCATION PLAN	PLAN 1
	AUG 2015	1:1250
	1443-PR1	ACML


LAND DEDICATION





"Planning Permission"	the full planning permission subject to conditions to be granted by the Council pursuant to the Application as set out in the Second Schedule.
"Site"	the land against which this Deed may be enforced as known as the Malthouse Trading Estate Brighton Road Shoreham-By-Sea West Sussex BN43 6RJ as shown edged red on Plan 1 and registered at the Land Registry under title number WSX64632.

2 CONSTRUCTION OF THIS DEED

2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.

2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.

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 severally unless there is an express provision otherwise.

2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.

2.6 References to any party to this Deed 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 and County Council the successors to their respective statutory functions.

2.7 The headings and contents list are for reference only and shall not affect construction.

3 LEGAL BASIS

3.1 This Deed 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.

3.2 The covenants, restrictions and requirements imposed upon the Owner and Developer under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council and County Council in the case of covenants made with them as local planning authorities against the Owner and Developer.

4 **CONDITIONALITY**

This Deed is conditional upon:

(i) the grant of the Planning Permission; and

(ii) the Commencement of Development

save for the provisions of Clauses 8.1, 11, 15, 16 and 17 which shall come into effect immediately upon completion of this Deed.

5 **THE OWNER & DEVELOPER'S COVENANTS**

5.1 The Owner and Developer covenants with the Council so as to bind the Site to perform the obligations as set out in the Second Schedule.

5.2 The Owner and Developer covenants with the County Council so as to bind the Site to perform the obligations as set out in the Third Schedule.

6 **THE COUNCIL'S COVENANTS**

6.1 The Council covenants with the Owner and Developer as set out in the Fourth Schedule.

7 **THE COUNTY COUNCIL'S COVENANTS**

7.1 The County Council covenants with the Owner and Developer as set out in the Fourth Schedule.

8 **MISCELLANEOUS**

8.1 The Owner and Developer shall pay to the Council and County Council on completion of this Deed the reasonable legal costs of the Council and County Council incurred in the negotiation, preparation and execution of this Deed.

8.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

8.3 This Deed shall be registrable as a local land charge by the Council.

8.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner and Developer from the Council or County Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.

8.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall at the Owner or Developer's request effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

8.6 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

8.7 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner or Developer) it is modified by any statutory procedure or expires prior to the Commencement of Development.

8.8 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

8.9 This Deed shall not be enforceable against owner-occupiers or tenants of Dwellings constructed pursuant to the Planning Permission nor against those deriving title from them.

8.10 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

8.11 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council and County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

9 MORTGAGEE'S CONSENT

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

10 WAIVER

10.1 No waiver (whether expressed or implied) by the Council or the County Council or Owner or Developer of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council or the County Council or Owner or Developer from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

11 CHANGE IN OWNERSHIP

11.1 The Owner and Developer agrees with the Council and the County Council to give the Council and County Council immediate 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 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.

12 INDEX LINKED

12.1 The Owner and Developer agrees with the Council that any sum payable by the Owner and Developer and referred to in the Second Schedule shall be increased by the application of the following formula:

A = (B x C) divided by D

Where
- A is the sum actually payable on the Specified Date
- B is the original sum mentioned in this Agreement
- C is the General Index of Retail Prices (All Items) for the month two months before the Specified Date
- D is the General Index of Retail Prices (All items) for the month two months before the date of this Agreement
- C/D is equal to or greater than 1

13 INTEREST

13.1 If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

14 VAT

14.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

15 DISPUTE PROVISIONS

Any dispute or difference arising between the parties hereto shall be dealt with as follows:-

15.1 in the case of any legal requirement or interpretation or other matter regarding this Deed the same shall be referred to Counsel of at least fifteen (15) years' experience in such matters who shall be appointed in default of agreement between the Owner and Developer and the Council or the County Council (as the case may be) by the President of the Bar or his deputy; and

15.2 any matter referred to Counsel shall be decided by such person as an expert (and not as an arbitrator) who shall permit one representation and one counter-representation (each in writing) by each party to the dispute and his determination shall be in writing and final and binding on the parties and the costs of such determination shall be paid as the expert shall

direct but if he does not direct shall be borne equally between the Owner and Developer and the Council or the County Council (as the case may be) provided that in all cases the expert shall direct the costs be borne by the Owner and Developer where the expert considers the Council or the County Council's case (as the case may be) is reasonable.

16 JURISDICTION

16.1 This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the non-exclusive jurisdiction of the courts of England.

17 DELIVERY

17.1 The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

FIRST SCHEDULE

Form of notice of planning permission

Adur District Council

Planning, Regeneration and Wellbeing

Mr Jason Gratton
Lidl UK GmbH

1st Floor Property Office
33 London Road
Cowplain
Hampshire
PO8 8DF

DRAFT

PLANNING PERMISSION

TOWN AND COUNTRY PLANNING ACT 1990
TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2010

APPLICATION NUMBER: AWDM/0431/14

Details of Development
DEMOLITION OF EXISTING UNITS (UNITS 1 AND 2) AND CONSTRUCTION OF NEW DISCOUNT FOOD STORE (LIDL) TOGETHER WITH 97 SPACE CAR PARK AND MODIFIED VEHICULAR ACCESS AND LANDSCAPING

Location of Development
UNIT 1 MALTHOUSE TRADING ESTATE BRIGHTON ROAD SHOREHAM-BY-SEA WEST SUSSEX

In pursuance of their powers under the above-mentioned Act and Order the Council hereby notify you that they PERMIT the above development, in accordance with the application and relevant correspondence registered on 7th April 2014.

This is for reasons stated on the schedule overleaf and subject to compliance with the conditions specified thereon.

James Appleton
Executive Head of Planning, Regeneration and Wellbeing

ADUR DISTRICT COUNCIL

Adur District Council, Planning Services, Portland House,
Richmond Road, Worthing, West Sussex, BN11 1LF
Tel: (01903) 221065 Fax: (01903) 221072
Minicom: (01903) 204500 DX: 142965 Worthing 10
web: www.adur.gov.uk

Ref: - AWDM

SCHEDULE

Reasons for Granting Permission

01. The loss of the two business units is regrettable but given their circumstances and collective policy, this could not be resisted.

Their replacement by a supermarket would not prejudice the longer term vision for Shoreham Harbour regeneration.

Whilst the development does not fully optimise development potential, it is brownfield land and reasonably sustainably located.

The site is out of centre but no feasible sequentially preferable town or edge of centre sites are apparent and no significant harm to any town centre shops as a result of the proposal alone should occur. Conditions to limit the scope of the store are proposed to provide additional safeguards. There is no evident quantitative need for another supermarket in the Shoreham area but a deep discounter as proposed would in many ways complement the existing and proposed local retail offer; help those on low incomes within the catchment area and has proven to be popular with the wider public.

The proposal will generate some employment and along with the proposed local recruitment and training measures will help compensate for the loss of the existing business units.

The site is well served by road and access/parking arrangements are satisfactory. Development contributions and provisions earmarked in the proposed legal agreement, together with the Travel Plan, are critical to ensuring access by public transport, cycle and foot is adequate and key junctions are not overloaded and impacts on air quality are minimised.

The design of the development is unimaginative but with the proposed public art integrated into its main street frontage, acceptable.

The development would not give rise to any other significant environmental impact.

The Secretary of State has raised no objections.

Subject to the recommended conditions and the legal agreement to secure necessary development contributions and other safeguards, the proposal is acceptable in relation to the Development Plan and all other material considerations as described above. It would consequently not conflict with the relevant saved policies of the Adur District Local Plan AG2, AG3, AP3, AP7, AN4, AB27, AB26, AB32, AT12, AE1, AE2, AE3, AS2 and AS4; The Revised Draft Adur Local Plan (2013) Policies 1, 2, 4, 8, 11, 14, 17, 18, 27, 28, 29, 31, 34 and 36; Draft Joint Area Action Plan (JAAP); Development Brief Western Arm of Shoreham Harbour; the Draft Shoreham Harbour Transport Strategy; Noise Action Plan; Air Quality Management Area; Streetscape Guide for Shoreham Harbour; the National

Planning Policy Framework; and Planning Practice guidance; Planning Noise advice document; Air Quality and Emissions guidance for Sussex; and Developer's Charter. and the policies of the National Planning Policy Framework. No objections have been raised by Secretary of State under Circular 02/2009.

Conditions

01. The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.

Reason: *To comply with Section 91 of the Town and Country Planning Act 1990.*

02. The development hereby permitted shall be carried out in accordance with the following approved plan unless indicated otherwise by any other condition imposed upon this planning permission:-

DRG. No. 1443-PO1 Validated 7.4.14
DRG. No. 1443-PO2 REV -C Validated 7.4.14
DRG. No. 1443-PO3 REV-C Validated 7.4.14
DRG. No. 1443-PO4 REV-A Validated 7.4.14
DRG. No. 1443-PO5 REV-D Validated 7.4.14
DRG. No. 1121 Validated 7.4.14
DRG. No. 47066424/1 Validated 7.4.14
Road Safety Audit Stage 1 Validated 7.4.14
Flood Risk Assessment and Drainage Assessment Validated 7.4.14
Agreed Framework Travel Plan Validated 6.6.14
The Extended Phase 1 Habitat Survey report, dated 4.9.13 prepared by Abricon Validated 6.6.14
Environmental Noise Report Reference: 5658/BL/pw January 2014 Acoustic Consultants Ltd Validated 7.4.14

Reason: *For the avoidance of doubt and in the interests of proper planning.*

03. Notwithstanding the General Permitted Development Order and any subsequent amendments or revocations, no mezzanine floor shall be inserted in the development hereby approved except by express planning permission granted by the Local Planning Authority.

Reason: *To control the scale of floorspace in this out of centre location in accordance with the spatial priorities and sustainable development and the National Planning Policy Framework and Policy 27 of the Draft Revised Adur Local Plan.*

Cont.../

04. The access from the site to the A259 shall be designed, laid out and constructed with kerb radii, visibility splays and sight lines in all respects in accordance with the approved plans and Road Safety Audit and provided prior to commencement of use. Thereafter such visibility splays and sight lines shall be kept clear of any obstruction.

Reason: *In the interests of highway safety and having regard to the National Planning Policy Framework.*

05. The building hereby permitted shall not be occupied until space has been laid out within the site as shown on the submitted plans respectively for the turning of all vehicles (including servicing generally) clear of the public highway and car and cycle parking.

Such spaces shall not thereafter be used other than as designated in the approved plans and shall be retained as approved thereafter.

Reason: *In the interests of highway safety and to meet operational need having regard to the National Planning Policy Framework.*

06. No development of any part of the scheme shall be carried out unless and until a schedule and samples of materials and finishes to be used for the external walls (including windows and doors) has been submitted to and approved in writing by the Local Planning Authority.

Reason: *In the interests of visual amenity and to comply with saved policy AG1 of the Adur District Local Plan and the policies of the National Planning Policy Framework.*

07. All planting, seeding or turfing comprised in the approved plans in respect of soft landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner, and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

All hard landscaping shall be carried out prior to first occupation of the building in accordance with the approved plans.

Reason: *In the interests of visual amenity and the environment and to comply with saved policies AB25-27 of the Adur District Local Plan and the policies of the National Planning Policy Framework.*

Cont.../

08. The development shall not be occupied unless and until a service management plan has been submitted to and approved by the Local Planning Authority. The development shall not operate other than in full accordance with any such approved plan.

Reason: *In the interests of highway safety and efficiency including to ensure that manoeuvring by large vehicles to reverse to either enter or exit the service bay does not have a detrimental impact on the safety of other car park users and to minimise the chance of conflict with departing HGVs and drivers using the right hand turn facility, in accordance with the National Planning Policy Framework.*

09. Within 6 months of the completion of construction of the building hereby approved, a certificate from a suitably accredited assessor shall be submitted to the Local Planning Authority demonstrating that the development hereby approved has been built to meet at least the Very Good Standard under BREEAM (Building Research Establishment Environmental Assessment Methodology).

Reason: *In the interests of sustainability having regard to the policies of the National Planning Policy Framework.*

10. The development shall not operate other than in full compliance with the approved Travel Plan.

Reason: *In order to encourage sustainable methods of travel in accordance with the aims of the National Planning Policy Framework.*

11. The development hereby approved shall be carried out in accordance with the approved Flood Risk and drainage Assessment (FRA) and in addition the following measures:-

a) the recessed loading bay shall have an Aco slot drain at the bottom of the ramp to prevent flooding of the ramp area by discharging rain and surface water into the storm sewer system (in a similar manner to the car park gullies);

b) Provision of a petrol/oil interceptor in respect of the disposal of surface water from the car parking area;

c) Provision of Hydro Filterra and Clearstone tree pits to use runoff from the car parking areas to water this landscaping.

Reason: *To reduce the risk of flooding to the proposed development, minimise pollution from run off and optimise water consumption in accordance with the principles of the National Planning Policy Framework.*

Cont.../

12. The use hereby approved shall not commence unless and until a scheme for wildlife enhancement has been implemented in accordance with the Recommendations of The Extended Phase 1 Habitat Survey report, dated 4.9.13 prepared by Abricon.

Reason: *In the interests of bio diversity in accordance with the National Planning Policy Framework.*

13. No development approved by this planning permission (or such other date or stage in development as may be agreed in writing with the Local Planning Authority) shall take place unless and until:-

a) the site has been stripped of Made Ground and a vapour membrane installed beneath the footprint of the building and another enclosed structures on site in accordance with the recommendations of OPUS Geo-Environmental Ground Investigation Report J-M0166.01 Draft or any such other measure as agreed by the Local Planning Authority in writing.

b) Results from the ground gas monitoring are made available to the Local Planning Authority in an addendum report for evaluation and such measures as prescribed by the Local Planning Authority have been complied with.

If during development, any visible contaminated or odorous material, (for example asbestos containing material, stained soil, petrol/diesel/solvent odour, underground tanks or associated pipework) not previously identified, is found to be present at the site, then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until it has been investigated by the developer. The Local Planning Authority must be informed immediately of the nature and degree of the contamination present and a method statement detailing how the unsuspected contamination shall be dealt with must be prepared and submitted to the Local Planning Authority for approval in writing before being implemented

In any event, as construction workers may come into contact with contaminated material, they should be advised of the guidance in HS (G) 66 - Protection of Workers and the General Public during Development of Contaminated Land.

Reason: *To minimise risk from potential land contamination and to safeguard public health having regard to the policies of the National Planning Policy Framework.*

14. The use hereby approved shall not be open for trade or business other than between the hours of 8 am and 9pm.

Reason: *In the interests of amenity and to comply with saved policy AG1 of the Adur District Local Plan and the policies of the National Planning Policy Framework.*

Cont.../

15. No deliveries or collections including waste and recycling shall take place between the hours of 7am to 9.30 pm on Mondays to Fridays and 8am and 10pm on Saturdays or Sundays.

Reason: *In the interests of road safety and traffic efficiency having regard to the policies of the National Planning Policy Framework.*

16. The development shall not operate other than in compliance with the Environmental Noise Report Reference: 5658/BL/pw January 2014 Acoustic Consultants Ltd in respect of noise emissions relating to plant and equipment.

Reason: *In the interests of amenity having regard to saved policy AG1 of the Adur District Local Plan and the policies of the National Planning Policy Framework.*

17. No development shall commence unless and until a scheme has been submitted to and approved by the Local Planning Authority to ensure all designs, materials and planting for street furniture /landscaping and public realm in respect of the approved development shall accord with the Streetscape Guide and adopted wider Shoreham Harbour strategy. The development shall not be implemented other than in full accordance with any such approval.

Reason: *In the interests of visual amenity and regeneration having regard to the Streetscape Guide and adopted wider Shoreham Harbour strategy the policies of the National Planning Policy Framework.*

18. No development shall take place, including any works of demolition, until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. Thereafter the approved Plan shall be implemented and adhered to throughout the entire construction period. The Plan shall provide details as appropriate but not necessarily be restricted to the following matters:-

- the anticipated number, frequency and types of vehicles used during construction,
- the method of access and routing of vehicles during construction,
- the parking of vehicles by site operatives and visitors,
- the loading and unloading of plant, materials and waste,
- the storage of plant and materials used in construction of the development,
- the erection and maintenance of security hoarding,
- the provision of wheel washing facilities and other works required to mitigate the impact of construction upon the public highway (including the provision of temporary Traffic Regulation Orders),
- details of public engagement both prior to and during construction works.

has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved Plan.

Reason: *In the interests of amenity and the environment having regard to the policies of the National Planning Policy Framework.*

19. No external lighting other than that shown in the approved plans shall be installed without the prior approval of the Local Planning Authority. All lighting shall be turned off outside of approved trading hours.

Reason: *In the interests of visual amenity having regard to the policies of the National Planning Policy Framework.*

20. No works shall commence unless and until a scheme to protect the memorial to PC Tooley from damage during construction/demolition and the operation of the approved use has been submitted to the Local Planning Authority. The development shall not be carried out other than in full compliance with any such approved scheme.

Reason: *In the interests of respect.*

21. The development shall not operate/commence unless and until a scheme has been submitted to and approved by the Local Planning Authority for the feasibility of provision of on site customer taxi pick up and set down. Any approved feasible scheme shall be implemented within 6 months of the first opening of the use.

Reason: *In the interests of customer choice and need and having regard to the policies of the National Planning Policy Framework.*

22. Notwithstanding the approved plans, no development shall commence unless and until a scheme has been submitted to and approved by the Local Planning Authority for scheme of public art to be incorporated into the development or in the vicinity, as appropriate. The approved scheme shall be implemented prior to commencement of use and shall be retained thereafter.

Reason: *In the interests of visual amenity, the environment and regeneration having regard to the National Planning Policy Framework.*

23. No buildings on the site shall be occupied until the associated facilities for storing refuse and waste, including for waste that can be recycled, have been provided in accordance with the approved plans.

Reason: *In the interests of amenity.*

24. No work for the implementation of the development hereby permitted shall be undertaken on the site other than between the hours of 8am and 6pm Monday to Friday and 8.30am and 1pm on Saturdays. There shall be no work on Sundays or Public Holidays.

Reason: *To safeguard the amenities of the occupiers of neighbouring properties having regard to saved policy AG1 of the Adur District Local Plan and the policies of the National Planning Policy Framework.*

SECOND SCHEDULE

The Owner and Developer's Covenants with the Council

Definitions

"Air Quality Monitoring Contribution"	the sum of One Thousand pounds (£1000.00) (Index Linked) towards the provision of air quality monitoring
"Deep Discounter"	means a retail food store such as Lidl, Aldi, Netto or any similar store operator which is characterised by dominance of private or exclusive labels with few national brands, selling a limited range of products (and in any event not exceeding 3,500 products), significantly cheaper products in terms of average price than all other multiple food retailers and non-food ranges promoted through "weekly specials".
"Public Art Contribution"	the sum of Ten Thousand pounds (£10,000) (Index Linked) towards the provision of public art
"Sales Area"	the Deep Discounter gross internal sales floor space of 1,286 square metres

The Owner and Developer COVENANTS with the Council as follows:

1.0 Deep Discounter

1.1 Notwithstanding the grant of Planning Permission any part of the Site permitted to be used for retail purposes under Class A of the Town and Country Planning (Use Classes Order) 1987 will not be Occupied by any trade or business other than by a Deep Discounter

1.2 The Deep Discounter permitted to Occupy the Site pursuant to paragraph 1.1 of this Schedule shall not provide the following at the Site

- 1.2.1 The sale of more than seven (7) different newspaper titles and fifty-five (55) different magazine titles;
- 1.2.2 a fresh meat counter;
- 1.2.3 a fresh fish counter;
- 1.2.4 a café /restaurant
- 1.2.5 a delicatessen/cheese counter;
- 1.2.6 post office services except for the sale of books of postage stamps
- 1.2.7 photographic shop or booths whether or not processed or printed in store;
- 1.2.8 a dry cleaning service;
- 1.2.9 cigarettes and tobacco products;
- 1.2.10 an opticians;
- 1.2.11 a pharmacy; or
- 1.2.12 national lottery sales except for the Health Lottery

1.3 For the avoidance of doubt none of the provisions in paragraphs 1.1 or 1.2 of this Schedule shall prohibit or restrict the sale of meat products, fish products, delicatessen items (including cheese and other savoury foods), and pharmaceutical products from general shelving, refrigerators or frozen or other display units with the Site.

1.4 Product lines shall not exceed 3,500.

1.5 Non-food comparison goods (ancillary to the Deep Discounter operation) shall not exceed 25% of the Sales Area

2.0 Public Art

2.1 To pay the Public Art Contribution on the first day of the Commencement of Development

2.2 To provide one or more of the display panels on the Brighton Road elevation of the store to be utilised for the physical attachment of the public art onto the store in accordance with a scheme that has been submitted to and approved by the Council in compliance with a planning condition attached to the Planning Permission; or alternatively to provide for public art in the vicinity of and for the benefit of the Development, in accordance with a scheme that has been submitted to and approved by the Council in compliance with a planning condition attached to the Planning Permission.

2.3 The public art referred to in paragraph 2.2 of this Schedule shall be provided on or before first Occupation of any part of the Development unless otherwise agreed in writing with the Council.

3.0 Air Quality Monitoring

3.1 To pay the Air Quality Monitoring Contribution on the first day of the Commencement of Development.

4.0 Local Education and Employment Benefits

4.1 To advertise construction phase contract opportunities locally.

4.2 To use reasonable endeavours to recruit 50% of employees from within the Council's administrative area to include both employees for the construction element of the Development and employees for the operational element of the Development PROVIDED ALWAYS that the Owner and the Developer shall not be required to do anything which would be commercially imprudent.

4.3 To use reasonable endeavours to aim for 50% of contractors employed during construction of the Development being businesses located within the Council's administrative area to include both contractors for the construction element of the Development and contractors for the operational element of the Development PROVIDED ALWAYS that the Owner and the Developer shall not be required to do anything which would be commercially imprudent.

4.4 Prior to the Commencement of Development to submit to the Council for approval (such approval not to be unreasonably withheld) and then use reasonable endeavours to implement the approved "Employment Skills Plan" which shall identify the means by which residents of the Council's administrative area shall be considered for employment, training and education opportunities in respect of the construction of the Development. The Employment Skills Plan shall follow the objectives outlined in the Fifth Schedule below to ensure these aims are achieved PROVIDED ALWAYS that the Owner and the Developer shall not be required to do anything which would be commercially imprudent.

4.5 Prior to beneficial occupation of the retail element of the Development to submit to the Council for approval (such approval not to be unreasonably withheld) and then use reasonable endeavours to implement the approved "Employment Skills Plan" which shall identify the means by which residents of the Council's administrative area shall be considered for employment, training and education opportunities in respect of the beneficial occupation of

the retail element of the Development PROVIDED ALWAYS that the Owner and the Developer shall not be required to do anything which would be commercially imprudent.

5.0 Taxi Phone

5.1 To use their best endeavours to sign up a taxi firm operating in the Council's administrative area to receive telephone calls from customers' of the Deep Discounter store requiring transportation

5.2 Where a taxi firm has been signed up in accordance with paragraph 5.1 of this Schedule, to provide a telephone in the customer area of the Deep Discounter store that is to be used by customers of the Deep Discounter store to call the said taxi firm

THIRD SCHEDULE

The Owner and Developer's Covenants with the County Council

Definitions

"Dedication Request"	not less than 56 Working Days' prior written notice which may be served by the County Council on the Owner in respect of the Safeguarded Land at any time during the Safeguard Period
"Transport Measures Contribution"	the sum payable in accordance with paragraph 1.1 of this Third Schedule being a financial contribution towards the Transport Measures to address the impact on the transport network arising from the Development
"Transport Measures"	the creation of new or improvements to existing of any or all of the following: • bus transport infrastructure on the A259 corridor and/or bus service access; • pedestrian realm between the access to the Development and Shoreham town centre • junction capacity mitigation at the Norfolk Bridge Junction of the A259 and A283 • pedestrian/cycle crossing across the A259 • Car club
"Safeguard Period"	the period from and including the date hereof until and including 31 December 2031
"Safeguarded Land"	the area of land within the Site shown for identification purposes shaded yellow on Plan 2
"Working Days"	any day on which clearing banks in the City of London are (or would be but for a strike lock out or other stoppage affecting such banks generally) open during banking hours

The Owner and Developer COVENANTS with the County Council as follows:

1.1 to pay to the County Council the Transport Measures Contribution on or before the Commencement of Development

1.2 not to cause or allow the Commencement of Development to occur before the Transport Measures Contribution shall have been paid;

1.3 the Transport Measures Contribution shall be the sum of one hundred and thirty nine thousand pounds (£139,000) increased by an amount equal to the proportionate increase in the All-In Tender Index between the quarter preceding the date of this Agreement and the quarter preceding the date of payment of the Transport Measures Contribution;

1.4 in the event the Transport Measures Contribution is not paid to the County Council on or before Commencement of the Development to pay to the County Council in addition interest from Commencement of the Development until the actual date of payment and any such interest shall be treated as part of the Transport Measures Contribution;

1.5 not to erect construct or place any building or wall or other structure or erection or any work of any kind whether permanent or temporary or plant any trees or shrubs within, on or over the Safeguarded Land during the Safeguard Period or where a Dedication Request has been served pursuant to paragraph 1.6 of this Third Schedule unless and until the Safeguarded Land has been dedicated and adopted as public highway PROVIDED THAT this covenant shall not be deemed to prevent the erection of boundary or other fences which are of an easily removable character PROVIDED FURTHER that this covenant shall not be deemed to prevent the installation of foul and storm water drainage pipes and manholes within the Safeguarded Land as long as the positions of such pipes and manholes do not prevent the subsequent installation of piled bridge foundations PROVIDED FURTHER in the event the Owner breaches this covenant then without prejudice to any other remedies available the County Council may (after serving 28 Working Days notice on the Owner and the default has not been made good before the expiry of that period) access the Site and the Safeguarded Land with or without vehicles plant and machinery servants contractors and others and all necessary materials to make good the default and recover its costs in so doing from the Owner;

1.6 in the event the County Council serves a Dedication Request during the Dedication Period the Owner shall prior to the expiry of the 56 Working Days notice period (or such longer period as the County Council may agree) enter into any such deeds, instruments or agreements as the County Council may reasonably require (including without limitation entering into a Section 38 Highways Act 1980 (as amended) agreement) in order for the Safeguarded Land to be dedicated as public highway;

1.7 in the event the Safeguarded Land is dedicated and adopted as public highway in accordance with paragraph 1.6 of this Third Schedule the Owner shall grant with full title guarantee the County Council immediately upon such adoption the right at any time and at all times in the day or night time with or without vehicles plant and machinery servants contractors and others and all necessary materials to enter upon and pass and repass the Site to access the Safeguarded Land by a route within the Site shown for indicative purposes edged red on Plan 2 or such other route as the County Council shall with the approval of the Owner (such approval not to be unreasonably withheld or delayed) from time to time require in order to carry works, maintain and use the Safeguarded Land and the Owner shall also grant the

public the full unrestricted right of access to and from the Safeguarded Land over the Site along the same route at all times

FOURTH SCHEDULE

The Council and County Council Covenants

The Council and County Council covenant (as appropriate) with the Owner and Developer as follows:

1 **Discharge of obligations**

1.1 At the written request of the Owner or Developer the Council or County Council as the case may be shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.

2 **Repayment of Contributions**

2.1 To use all sums received from the Owner or Developer under the terms of this Deed for the purposes specified in this Deed for which they are to be paid.

2.2 To pay to the Owner or Developer such amount of any payment made by the Owner or Developer to the Council under this Deed which has not been expended in accordance with the provisions of this Deed (and money shall be deemed to be expended if the Council has properly entered into a contract for the expenditure of the money for the purpose for which it is paid which is reasonably likely to result in the fulfilment of that purpose) within ten years of the date of receipt by the Council of such payment together with interest for the period from the date of payment to the date of refund.

2.3 To pay to the Owner or Developer such amount of any payment made by the Owner or Developer to the County Council under this Deed which has not been expended in accordance with the provisions of this Deed (and money shall be deemed to be expended if the County Council has properly entered into a contract for the expenditure of the money for the purpose for which it is paid which is reasonably likely to result in the fulfilment of that purpose) within seventeen years of the date of receipt by the County Council of such payment together with interest for the period from the date of payment to the date of refund.

2.4 The Council and County Council shall provide to the Owner or Developer such evidence, as the Owner or Developer shall reasonably require, in order to confirm the expenditure of the sums paid by the Owner or Developer under this Deed.

FIFTH SCHEDULE

General principles of the Employment Skills Plan

Details of arrangements to engage residents in the Council's administrative area in the construction and operation of the Development.

Details of arrangements to ensure employees have opportunities to develop their skills, participate in training programmes and attain recognised qualifications.

To provide job opportunities within the construction phase of the Development and the operation of the retail element for residents of the Council's administrative area.

To seek to achieve a target of 50% of employment opportunities during construction taken up by residents in the Council's administrative area

To seek to achieve a target of 50% of employment opportunities during Operation / Use of the retail element taken up by residents in the Council's administrative area

To provide apprenticeships on the following basis:

- 48 week undergraduate sandwich course / work placement covering all aspects of the business including sales, logistics, property, construction, purchasing and advertising.
- 24 month graduate store manager training programme.
- 6-9 month graduate district manager training programme

To advertise job opportunities locally including onsite banners, in-store marketing, local newspapers, coastalwestsussex.jobs.com and the local Jobcentre.

To work in partnership with the Local Planning Authority, the Council's Economic Development department and local employment agencies to target certain areas and/or community groups in order to get more people back into paid work and off benefits. Lidl will interview any suitable candidates put forward by the Local Planning Authority, Economic Development or local employment agencies.

To arrange a post-construction presentation, for final year Secondary School pupils or college students, describing the build process and construction activities from the Commencement of Development to the completion of the Development.

To engage with the local community keeping local residents and businesses informed of the key stages of the Development by issuing press releases and working with local newspapers.

To invite local residents and businesses to a preview evening in-store prior to the opening date.

To maintain a monitoring schedule including details of:

A member of staff responsible for the implementation of the Employment Skills Plan and liaising with the Council

To identify the scope of the opportunities taken up by local people, provide details of vacancies including job descriptions and person specifications together with a recruitment schedule to be updated regularly (as agreed)

To provide monitoring information to the Council on request

EXECUTED as a Deed by
ADUR DISTRICT COUNCIL
by the affixing of its Common Seal in the presence of:

[redacted]

Authorised Signatory



EXECUTED as a Deed by)
WEST SUSSEX COUNTY COUNCIL
by the affixing of its Common Seal in the presence:

[redacted]

Authorised Signatory



EXECUTED as a Deed by

DUNEDIN UK INDUSTRIAL PROPERTY NOMINEE LIMITED

by the affixing of its Common Seal in the presence of (or if no Common Seal is impressed then acting by):

Director [redacted]

Director/Secretary

EXECUTED as a Deed by

DUNEDIN UK INDUSTRIAL PROPERTY NOMINEE NO. 2 LIMITED

by the affixing of its Common Seal in the presence of (or if no Common Seal is impressed then acting by):

Director [redacted]

Director/~~Secretary~~ [redacted]

EXECUTED as a Deed by

LIDL UK GmbH

acting by):

Director [redacted]

Director

SIGNED AND DELIVERED as a Deed for and on behalf of

THE ROYAL BANK OF SCOTLAND Public Limited Company

by its duly authorised attorney , PETER NASH

Attorney [redacted]

In the presence of: [redacted]

Witness signature:

Witness name:

Witness address:

SCHEDULE 5

Variations to the Original Planning Obligation

1.1 The following wording shall be included in under the heading "Miscellaneous" after sub-clause 8.11 as new sub-clauses 8.12 to 8.15:

8.12 In the event that any new planning permission(s) are granted by the Council pursuant to Section 73 of the Act (as amended) and unless otherwise agreed between the parties:-

8.13 the obligations in this Deed shall relate to and bind any subsequent planning permission(s) in respect of the Site granted pursuant to Section 73 of the Act and the Site itself, and

8.14 the definitions of Application, Development and Planning Permission in this Deed shall be construed to include reference to any application under Section 73 of the Act, the planning permission(s) granted thereunder and the development permitted by such subsequent planning permission(s), and

8.15 this Deed shall be endorsed with the following words in respect of any future Section 73 application: -

"The obligations in this Agreement relate to and bind the Site in respect of which a new planning permission referenced ..... has been granted pursuant to Section 73 of the Town and Country Planning Act 1990 (as amended)"

PROVIDED THAT nothing in this clause shall fetter the discretion of the Council in determining any application(s) under Section 73 of the Act or the appropriate nature and / or quantum of Section 106 obligations required pursuant to a determination under Section 73 of the Act whether by way of a new deed or supplemental deed pursuant to S106 of the Act.

1.2 In all other respects the Original Planning Obligation (as varied by this deed) shall remain in full force and effect.

The common seal of **THE DISTRICT COUNCIL OF ADUR** was affixed to this document in the presence of:



[redacted]

Authorised signatory

The common seal of **WEST SUSSEX COUNTY COUNCIL** was affixed to this document in the presence of:



[redacted]

Authorised signatory

Executed as a deed by **LIDL UK GmbH** acting by

[redacted]

Director