DATED 5th October **2009**

(1) HOMES AND COMMUNITIES AGENCY

and

(2) CREST NICHOLSON (SOUTH EAST) LIMITED

to

(3) ADUR DISTRICT COUNCIL

UNILATERAL UNDERTAKING
under section 106 of the Town and Country Planning Act 1990

relating to
Elmcroft Croft Avenue Southwick BN42 4AA

Re Planning Application ADC/0289/09

THIS UNILATERAL UNDERTAKING is made by DEED on 5th October 2009

BY

1. **HOMES AND COMMUNITIES AGENCY** of 110 Buckingham Palace Road London SW1W 9SA (the "**Owner**")

2. **CREST NICHOLSON (SOUTH EAST) LIMITED** of Crest House Pyrcroft Road Chertsey Surrey KT16 9GN (the "**Developer**")

TO

3. **ADUR DISTRICT COUNCIL** of Civic Centre Ham Road Shoreham-by-Sea West Sussex BN43 6PR (the "**Council**");

RECITALS

A The Owner is the registered freehold owner of the Land (as hereinafter defined) shown edged red on the Plan

B The Council is the Local Planning Authority for the purposes of the Act and for the administrative area in which the Land is situated

C The Owner and the Developer have submitted to the Council an application for planning permission in respect of the Land under Planning Reference Number ADC/0289/09

D By a contract dated 31 March 2008 relating (inter alia) to the Land the Developer has covenanted with the Owner to build out the Development

E Upon completion of the Development the Owner has covenanted with the Developer to transfer to the Developer the freehold interest in the Land

F The Owner and the Developer consider that the Land should be bound by the Planning Obligations in the manner hereinafter contained

DEFINITIONS

In this Deed the following words and expressions shall where the context so admits have the following meanings:

1.1	"the Act"	means the Town and Country Planning Act 1990 as amended;
1.2	"Application"	means the planning application allocated Planning Reference Number as above by the Council;
1.3	"Commencement of Development"	shall refer to the Development and shall have the same meaning as ascribed to a "material operation" by Section 56 (4) of the 1990 Act excluding demolition works archaeological investigation site clearance works site reclamation works site remediation works and the erection of fencing by way of enclosure and "Commence Development" shall be construed accordingly;
1.4	"Development"	means the demolition of care home and redevelopment to provide 9 flats (6 two-bedroom and 3 one-bedroom) and 5 houses (3 two-bedroom and 2 three-bedroom) 15 car and 25 bicycle parking spaces and associated landscaping, utilising enlarged existing access
1.5	"First Occupation"	means to enter into occupation of the Development or any part thereof for the permitted use save for the purposes of construction fitting out commissioning advertising marketing or security and "Occupied" shall be construed accordingly
1.6	"Fire and Rescue Service Contribution"	means the sum of Two Hundred and Seventy Six pounds (£276) being a financial contribution towards the provision of fire service infrastructure (excluding fire hydrants) in the vicinity of the Land to serve the additional needs of the community generated by the Development subject to the provisions of paragraph 1 of the Schedule to this Deed;

1.7	"Interest Rate"	means the rate of 4% above the base rate from time to time of Bank of England applicable at the date the relevant contribution under this Deed is paid;
1.8	"the Land"	means all that land known as Elmcroft Croft Avenue Southwick West Sussex BN42 4AA registered at the Land Registry under title number WSX289096 and shown edged red on the Plan;
1.9	"the Plan"	means the plan annexed hereto;
1.10	"Planning Obligations"	means the planning obligations set out in the Schedule to this Deed;
1.11	"Planning Permission"	means the planning permission granted under Application Number ADC/0289/09;
1.12	"Statutory Undertaker"	means a statutory undertaker within the meaning of Section 329 of the Highways Act 1980 and shall include persons authorised under any enactment to carry out an undertaking for the supply of electricity gas water and any sewerage undertaking and shall also include the Environment Agency the holder of a licence to operate telecommunication systems the Civil Aviation Authority and the holder of a licence to supply cable television;
1.13	"Total Access Demand Contribution"	means the sum of Eleven Thousand Two Hundred and Eighty pounds (£11,280) being calculated in accordance with the Total Access Demand Methodology subject to the provisions of paragraph 2 of the Schedule to this Deed;
1.14	"Total Access Demand Methodology"	means the methodology developed by West Sussex County Council and adopted by the Council which requires contribution towards the cost of infrastructure and other measures that are necessary to mitigate the impact of development;
1.15	"Unit/Units of Accommodation"	means any or all of the flats and/or houses

Land Registry Official copy of title plan

Title number WSX289096
Ordnance Survey map reference TQ2405SW
Scale 1:1250
Administrative area WEST SUSSEX: ADUR

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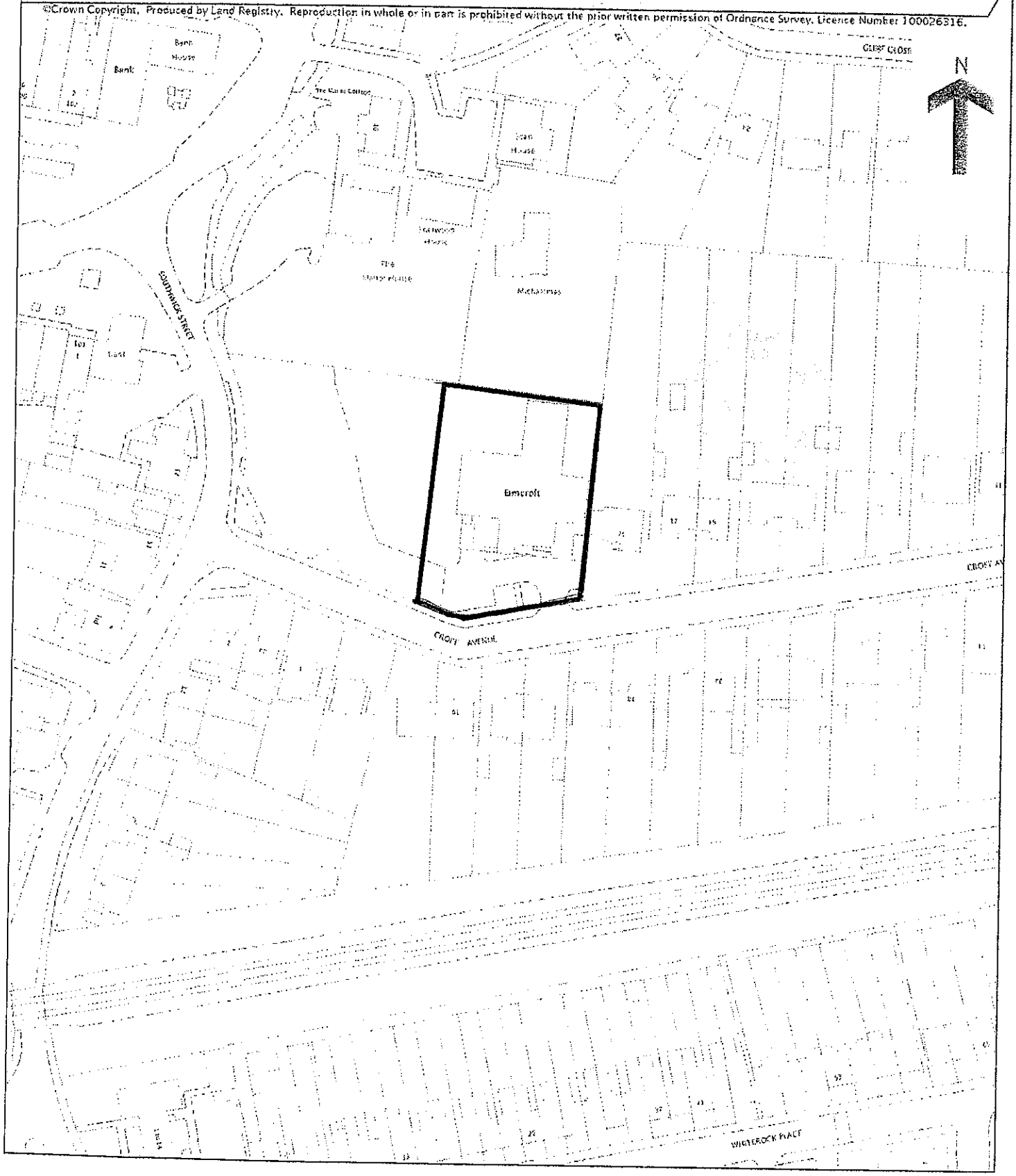

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		approved by the Planning Permission;

1.16 Unless the context requires otherwise references in this Deed to a clause schedule or paragraph are references respectively to a clause schedule or paragraph of this Deed

1.17 Where any party to this Deed comprises two or more persons any obligations on the part of that party contained or implied in this Deed shall be deemed to be joint and several obligations on the part of those persons and references to that party shall include reference to each or any of those persons

1.18 A reference to any statute or statutory section shall be taken to include a reference to any statutory amendment modification or re-enactment of it for the time being in force

1.19 The headings in this Deed do not and will not by any implication form any part of this Deed and shall have no legal force whatsoever

1.20 The expression "the Council" shall include successors in title and any statutory successor authorities and the expression "the Owner" shall include all persons deriving title to the Land under it and shall include (if appropriate) two or more owners of the legal estate

1.21 Words denoting the singular shall include the plural and vice versa words denoting any gender shall include all genders and words denoting persons shall include bodies corporate and vice versa

MAIN OPERATIVE CLAUSES

2.1 THIS Deed is made pursuant to section 106 of the Act and section 111 of the Local Government Act 1972 and all other powers and enactments thereby enabling and which may be relevant for the purposes of the enforcement of the covenants and or obligations contained herein to the intent that it shall bind the Owner and its successors in title and assigns of each and every part of the Land

2.2 THE Owner covenants with the Council that it will comply in all respects with the Planning Obligations to the effect that the Land and every part thereof shall be permanently subject thereto

2.3 THIS Deed shall come into effect upon the grant of the Planning Permission but the Planning Obligations shall become effective only on Commencement of Development

2.4 A person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed

2.5 THIS Deed is a Local Land Charge and is registrable as such by the Council

2.6 THIS Deed shall be governed by and construed in accordance with the Laws of England and each of the parties hereby submits to the exclusive jurisdiction of the English Courts

2.7 ANY Notice consent or approval required to be given under this Deed shall be in writing and shall be delivered personally or sent by prepaid first class recorded delivery post telex or facsimile transmission the address for service of any such notice consent or approval as aforesaid shall in the case of the parties be the address given in the above hereto or such address for service as shall have previously been notified by the party and in the case of the Council shall be Adur District Council Civic Centre Ham Road Shoreham-by-Sea West Sussex BN43 6PR

2.8 THE Developer agrees to pay the Council's reasonable legal costs in preparing and negotiating this Deed

2.9 NO person shall be liable for breach of the Planning Obligations after he shall have parted with all interest in the Land or the part in respect of which such breach occurs but without prejudice to the liability for any subsisting breach of the Planning Obligations prior to parting with such interest

2.10 IF the Planning Permission shall expire before Commencement of Development or shall at any time be revoked or withdrawn this Deed shall forthwith determine and cease to have effect

2.11 WHERE the agreement approval consent or expression of satisfaction is required by the Owner and or the Developer from the Council under the terms of this Deed such agreement approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed

2.12 THE Planning Obligations will not be enforceable against:

2.14.1 An owner and/or occupier and/or mortgagee of any individual Unit of Accommodation

2.14.2 A Statutory Undertaker after the transfer of any statutory apparatus and any land upon or in which the statutory apparatus is situated by the Owner to that Statutory Undertaker

2.13 THE Developer covenants with the Owner:

i) To comply in all respects with the Planning Obligations and

ii) to indemnify and keep indemnified the Owner against all reasonable costs liabilities and expenses incurred as a result of its entering into this Deed

PROVIDED ALWAYS that this clause shall cease to have effect if the Developer does not for any reason build out the Development

WAIVER

3 No waiver (whether express or implied) by the Council in respect of any breach or default by the Owner in the performance or observation of the Planning Obligations in whole or in part shall constitute a continuing waiver or prevent the Council from enforcing any of the obligations or conditions contained in the Planning Obligations or acting upon any subsequent breach or default of the Planning Obligations by the Owner

FUTURE PERMISSIONS

4 Save as expressly provided (if at all) nothing in this Deed shall be implied to prohibit or restrict the future development of the Land (or any part of it) in accordance with any planning permission granted after the date of the Planning Permission

ARBITRATION

5 Any dispute or difference arising between the parties with regard to their respective rights and obligations as to any matter or thing arising out of or connected with this Deed shall be referred to the decision of a single arbitrator to be agreed by the parties or failing agreement between them to be nominated by the President for the time being of the Royal Institution of Chartered Surveyors and any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or re-enactment for the time being in force

SEVERANCE

6 If any provision in this Deed shall in whole or in part be held to any extent to be illegal or unenforceable under any enactment or rule of law such provision shall to the extent required be severed from this Deed and rendered ineffective as far as possible without modifying the remaining provisions of this Deed and shall not in any way affect any other circumstances or the validity or enforcement of this Deed and in the event of any such deletion the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable and satisfactory alternative provision in place of the provision so deleted

GENERAL

7.1 Nothing in this Deed constitutes or constitutes an obligation to grant planning permission

7.2 Nothing in this Deed grants planning permission or any other approval consent or permission required from the Council in the exercise of any other statutory function

7.3 Nothing in this Deed fetters or restricts the exercise by the Council of any of their powers

7.4 The obligations contained in this Deed are planning obligations for the purpose of Section 106 of the Act

7.5 This Deed shall apply to the Development as authorised by the Planning Permission or to the Development after variation or renewal of the Planning Permission from time to time

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

THE SCHEDULE

1. FIRE AND RESCUE SERVICE CONTRIBUTION

1.1 To pay to the Council the Fire and Rescue Service Contribution on or before First Occupation of the Development

1.2 The Fire and Rescue Service Contribution shall be the sum of Two Hundred and Seventy Six pounds (£276) increased ~~or decreased~~ by an amount equal to the proportionate increase ~~or decrease~~ in the All-In Tender Price Index published by the Building Costs Information Service of the Royal Institute of Chartered Surveyors between the quarter preceding the date of this Deed and the quarter preceding the date of payment of the Fire and Rescue Service Contribution

1.3 To pay in addition interest on the Fire and Rescue Service Contribution due under this Deed but not paid on the due date for payment from the due date for payment until the actual date of payment at the Interest Rate and any such interest shall be treated as part of the Fire and Rescue Contribution

2. TOTAL ACCESS DEMAND CONTRIBUTION

2.1 To pay to the Council on or before First Occupation of the Development the Total Access Demand Contribution

2.2 The Total Access Demand Contribution shall be the sum of Eleven Thousand Two Hundred and Eighty pounds (£11,280) increased ~~or decreased~~ by an amount equal to the proportionate increase ~~or decrease~~ in the All-In Tender Price Index published by the Building Costs Information Service of the Royal Institute of Chartered Surveyors between the quarter preceding the date of this Deed and the quarter preceding the date of payment of the Total Access Demand Contribution

2.3 To pay in addition interest on the Total Access Demand Contribution due under this Deed but not paid on the due date for payment from the due date for payment until the actual date of payment at the Interest Rate and any such interest shall be treated as part of the said contribution

3. NOTICE

3.1 To give notice to the Council of the date of First Occupation of the Development not less than 14 days before such date (the "Occupation Notice")

3.2 If the Development is Occupied but an Occupation Notice has not been served as required under paragraph 3.1 above then the Council shall be entitled in their absolute discretion to determine the date of First Occupation of the Development and shall give notice to the Owner and the Developer of this determination

THE COMMON SEAL of **HOMES AND COMMUNITIES AGENCY** was hereunto affixed in the presence of:)

)

)

[redacted]

.....

Authorised Signatory

Executed as a deed by

CREST NICHOLSON (SOUTH EAST) LIMITED)

)

)

[redacted]

.....

Signature of Director

[redacted]

Signature of ~~Director~~/Secretary