WB/10/0308/FUL

DATED 6th July **2010**

By

Durnford Estates Limited (1)

AND

FBSE Limited, Mortgagee (2)

AND

Worthing Borough Council (3)

S106 Agreement

---

relating to

45-47 Warwick Gardens, Worthing, BN11 1PF

Jeremy Cook
Executive Head of Legal and
Democratic Services
Town Hall
Chapel Road
Worthing
West Sussex BN11 1HA
Ref 4974/jw

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THIS AGREEMENT is made the day of Two thousand and ten

BETWEEN

1) Durnford Estates Limited (Company Registration Number 07186704) whose registered office is at 31 Bramley Way, Angmering, West Sussex, BN16 4GA (the "Owner")

AND

2) FBSE Limited whose registered office is at Maple House, High Street, Potters Bar, Hertfordshire EN6 5BS (the "Mortgagee")

IN FAVOUR OF

3) Worthing Borough Council of The Town Hall, Chapel Road, Worthing, West Sussex, BN11 1HA (the "Council")

WHEREAS:

(1) The Owner is the freehold owner of the Property which interest is registered under Title No WSX38008 at H M Land Registry

(2) The Owner intends to develop the Property pursuant to the Planning Permission

(3) The Mortgagee holds a legal charge registered against the interest in the Property held by the Owner

(4) The Council is the local planning authority for the purposes of the Act and for the area in which the Property is located

(5) The Owner 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.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1 DEFINITIONS

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

"Act"	the Town and Country Planning Act 1990
"Application"	the application for full planning permission dated 11 May 2010 submitted to the Council for the Development and allocated reference number WB/10/0308/FULL
"Commencement of Development"	the date on which any 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 the conversion of 45-47 Warwick Gardens into nine one bedroom flats as set out in the Application
"Executive Head of Planning"	The Executive Head of Planning Regeneration & Wellbeing for the time being or such other proper officer of the Council responsible for planning functions
"Index"	All Items Index of Retail Prices issued by the Office for National Statistics All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation.

"Interest"	interest at 4 per cent above the base lending rate of The Bank of England from time to time.
"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.
"Party and Parties"	means the Owner, Mortgagee and or the Council.
"Plan"	the plan attached to this Deed
"Planning Permission"	the full planning permission subject to conditions to be granted by the Council pursuant to the Application
"Site"	the land against which this Deed may be enforced as shown edged red on the Plan.

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 neutral 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 against each individually 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 deriving title through or under that party and in the case of the Council and County Council the successors to their respective statutory functions.

3 LEGAL BASIS

3.1 This Deed is made pursuant to Section 106 of the Act

3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner.

4 CONDITIONALITY

4.1 This Deed is conditional upon:

(i) the grant of the Planning Permission; and

(ii) the Commencement of Development

save for the provisions of Clauses 6.1, 13 and 14 and any other relevant provisions which shall come into effect immediately upon completion of this Deed.

5 THE OWNER'S COVENANTS

5.1 The Owner covenants with the Council to pay the Council the Total Access Demand of £2610, indexed linked and subject to annual review, toward the provision of sustainable transport measures within 7 days of the Commencement of Development.

6 MISCELLANEOUS

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

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

6.3 This Deed shall be registerable as a local land charge by the Council.

6.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner 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 and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of:

(i) the Council by the Executive Head of Planning Regeneration and Wellbeing

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.

6.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

6.6 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.

6.7 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) it is modified by any statutory procedure or expires prior to the Commencement of Development.

6.8 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.

6.9 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.

6.10 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.

7 MORTGAGEE'S CONSENT

7.1 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.

8 WAIVER

8.1 No waiver (whether expressed or implied) by the Council 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 from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

9 CHANGE IN OWNERSHIP

9.1 The Owner agrees with the Council to give the 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.

10 INDEXATION

10.1 Any sum referred to in clause 5 shall be increased by an amount equivalent to the increase in the Index from the date hereof[1] until the date on which such sum is payable.

11 INTEREST

11.1 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.

12 VAT

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

13 JURISDICTION

13.1 This Deed is governed by and interpreted in accordance with the law of England and Wales.

14 DELIVERY

14.1 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.

EXECUTED as A DEED by)
Durnford Estates Limited)
acting by two Directors or a)
Director and its Secretary)

Director

~~Director~~/Secretary

EXECUTED as A DEED by)
FBSE Limited)
acting by two Directors or a)
Director and its Secretary)

Director

Director/Secretary

OR

Signed as a Deed by **Durnford Estates Limited**) .....
acting by [NAME OF DIRECTOR], a director,) [SIGNATURE OF DIRECTOR]
in the presence of:-)

..... Director
[SIGNATURE OF WITNESS]

[NAME, ADDRESS [AND OCCUPATION] OF WITNESS]

Signed as a Deed by **FBSE Limited**)
acting by [NAME OF DIRECTOR], a director,) [SIGNATURE OF DIRECTOR]
in the presence of:-)

..... Director
[SIGNATURE OF WITNESS]

[NAME, ADDRESS [AND OCCUPATION] OF WITNESS]

H.M. LAND REGISTRY

TITLE NUMBER	
WSX38008	

ORDNANCE SURVEY PLAN REFERENCE	COUNTY	SHEET	NATIONAL GRID	SECTION
	WEST SUSSEX		TQ 1502	F

Scale: 1/1250 WORTHING DISTRICT

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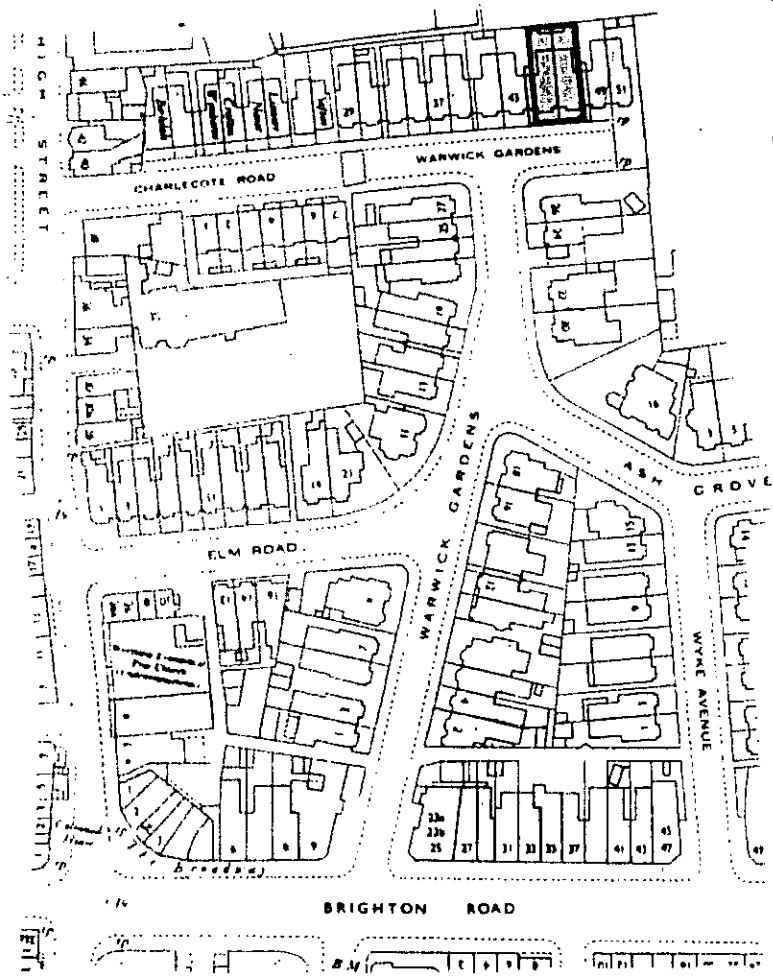

FILED PLAN H.M. LAND REGISTRY 1981

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