DB/07/1120full

DATED 18th December 2009

(1) CHURCHILL RETIREMENT LIVING LIMITED

(2) MARK ANTHONY COAD and CRYSTAL SYLVIA PAMELA COAD

(3) ALISON JAYNE GOODWIN

(4) CHRISTOPHER STEPHEN JAMES KARL BRODIE

(5) ALAN GEORGE COLLIER and DOROTHY ELIZABETH PRISCILLA COLLIER

(6) BARCLAYS BANK PLC

(7) NORTHERN ROCK PLC

(8) WEST BROMWICH MORTGAGE COMPANY LIMITED

TO

WORTHING BOROUGH COUNCIL

and

WEST SUSSEX COUNTY COUNCIL

UNILATERAL UNDERTAKING

Under Section 106 of the Town and Country Planning Act 1990

relating to land at 50-56 Bolsover Road, Worthing, West Sussex

---

shoosmiths

Russell House
1550 Parkway
Solent Business Park
Whiteley Fareham
Hampshire PO15 7AG
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THIS UNDERTAKING is made on 18th December 2009 ~~2008~~

BETWEEN:

1. **CHURCHILL RETIREMENT LIVING LIMITED**, a company incorporated in England and Wales (company number 1866076) whose registered office is at Millstream House, Parkside, Christchurch Road, Ringwood BH24 3SG (the **"Developer"**);

2. **MARK ANTHONY COAD** and **CRYSTAL SYLVIA PAMELA COAD** of 50 Bolsover Road, Worthing, West Sussex BN13 1NT (the **"First Owner"**);

3. **ALISON JAYNE GOODWIN** of 52 Bolsover Road, Worthing, West Sussex BN13 1NT (the **"Second Owner"**);

4. **CHRISTOPHER STEPHEN JAMES KARL BRODIE** of 12 Parkland Terrace, Seaham, County Durham SR7 OAP (the **"Third Owner"**)

5. **ALAN GEORGE COLLIER** and **DOROTHY ELIZABETH PRISCILLA COLLIER** of 56 Bolsover Road, Worthing, West Sussex BN13 1NT (the **"Fourth Owner"**)

6. **BARCLAYS BANK PLC** of 1 Churchill Place, London E14 5HP (the **"First Mortgagee"**)

7. **NORTHERN ROCK PLC** (Company Regn. No. 3273685) of Northern Rock House, Gosforth, Newcastle upon Tyne NE3 4PL (the **"Second Mortgagee"**)

8. **WEST BROMWICH MORTGAGE COMPANY LIMITED** (Company Regn. No. 2773114) of 374 High Street, West Bromwich, West Midlands B70 8LR (the **"Third Mortgagee"**)

TO:

WORTHING BOROUGH COUNCIL of Town Hall, Chapel Road, Worthing, West Sussex BN11 1HA (the **"Council"**)

and

WEST SUSSEX COUNTY COUNCIL of County Hall, West Street, Chichester, West Sussex PO19 1RQ (the **"County Council"**)

BACKGROUND

(A) For the purposes of the 1990 Act, the Council is the local planning authority for the area within which the Site is located.

(B) The County Council is the local highway authority for the purposes of the 1980 Act for the area within which the Site is located.

(C) The First Owner is the Owner of the First Land subject only to Charge 1 but otherwise free from encumbrances.

(D) The Second Owner is the owner of the Second Land subject only to Charge 2 but otherwise free from encumbrances.

(E) The Third Owner is the owner of the Third Land subject only to Charge 3 but otherwise free from encumbrances.

(F) The Fourth Owner is the owner of the Fourth Land

(G) The Developer has entered into agreements with the Owners to buy the Site subject to the grant of Planning Permission.

(H) The Planning Application was made to the Council on 5 September 2007.

(I) The Owners and the Developer consider that certain planning obligations should be entered into as at the date of this Undertaking, subject to the conditions set out in this Undertaking, in respect of the Site.

(J) The Owners and the Developer have agreed to enter into this Undertaking with the intention that the obligations contained in this Undertaking may be enforced by the Council and the County Council against the Owner, the Developer, the Lender and their respective successors in title. However, the Owner and the Developer do not intend that this Undertaking will take effect unless and until Planning Permission is granted by the Council.

The parties agree as follows:

1 DEFINITIONS

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

"1980 Act"	the Highways Act 1980;
"1990 Act"	the Town and Country Planning Act 1990;
"Affordable Housing"	housing for people in housing need who cannot afford to rent or buy accommodation in the open market
"Charge 1"	a registered charge of the First Land dated 25 February 2003 made between the First Owner (1) and the First Mortgagee (2);
"Charge 2"	a registered charge of the Second Land dated 3 April 2002 made between the Second Owner and the Second Mortgagee;

"Charge 3"	a registered charge of the Third Land dated 16 February 2006 made between the Third Owner and the Third Mortgagee;
"Commencement Date"	subject to clause 4.2, the date on which the Development commences by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act;
"Development"	the development of the Site to provide 38 sheltered apartments for the elderly including ancillary lodge managers accommodation, communal facilities, access, car parking and landscaping;
"First Land"	the land registered under title number WSX 252595;
"Fourth Land"	the land registered under title number SX12458;
"The Owners"	the First Owner, the Second Owner, the Third Owner and the Fourth Owner;
"Plan"	the plan attached to this Undertaking;
"Planning Application"	an application for planning permission for the carrying out of the Development made by the Developer, carrying the reference 07/1120/FUL;
"Planning Permission"	the planning permission that may be granted for the Development in pursuance of the Planning Application following the determination of the Planning Application;
"Second Land"	the land registered under title number SX12622;
"Site"	the freehold Property shown edged red on the Plan and comprising the First Land, the Second Land, the Third Land and the Fourth Land;
"Third Land"	the land registered under title number SX12453.

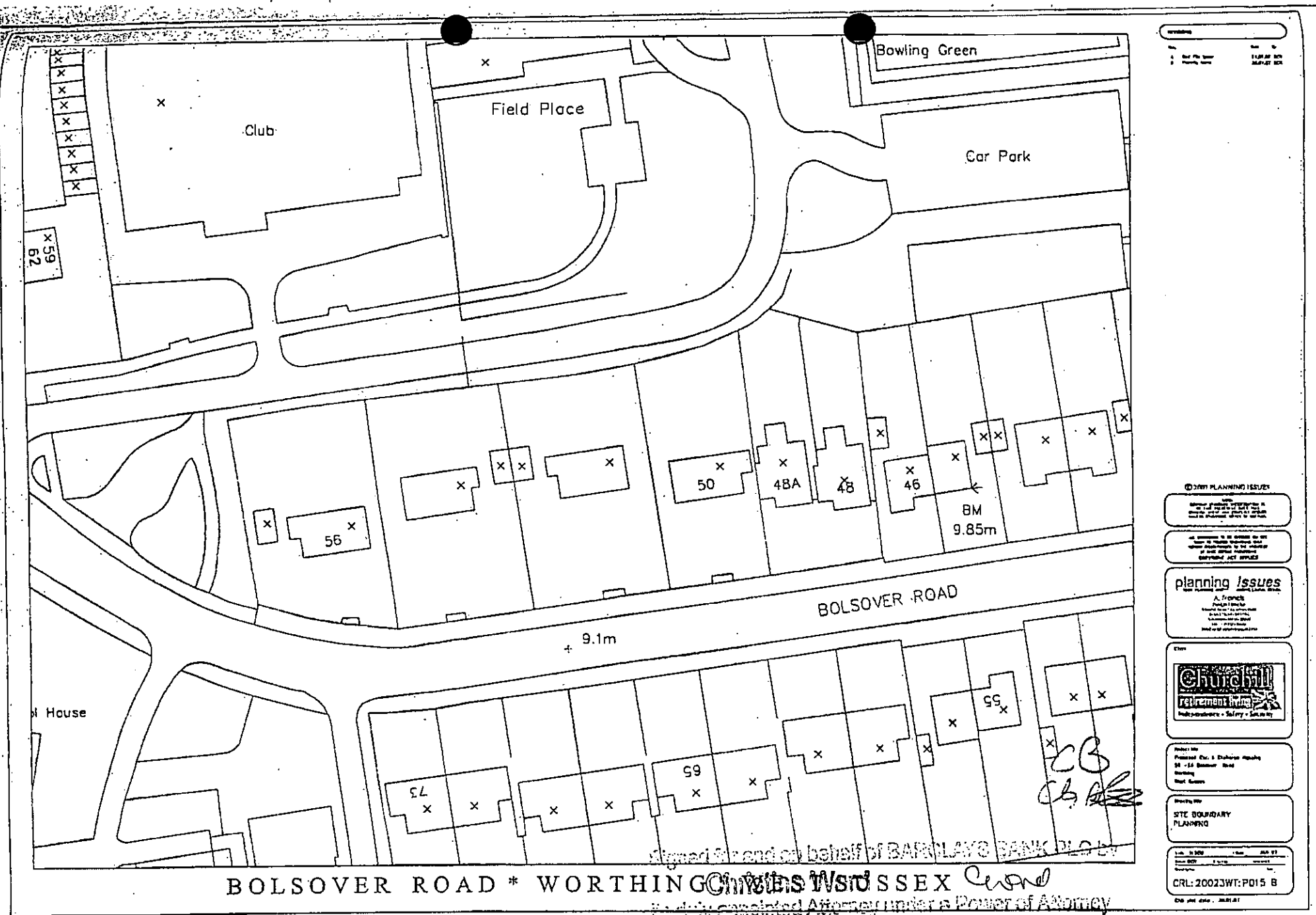
2 INTERPRETATION

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

2.2 References to clauses and Schedules are to the clauses and Schedules of this Undertaking, unless stated otherwise.

2.3 A reference to a paragraph is to the paragraph of the Schedule in which the reference is made, unless stated otherwise.

2.4 Words importing one gender include any other genders and words importing the singular include the plural and vice versa.



Signed for and on behalf of BARCLAYS BANK PLC by
its duly appointed Attorney under a Power of Attorney
in the presence of:
Witness
John Kenneth Henderson

2.5 A reference to a person includes a reference to a firm, company, authority, board, department or other body and vice versa.

2.6 Unless this Undertaking states otherwise, any reference to any legislation (whether specifically named or not) includes any modification, extension, amendment or re-enactment of that legislation for the time being in force and all instruments, orders, notices, regulations, directions, byelaws, permissions and plans for the time being made, issued or given under that legislation or deriving validity from it.

2.7 References to the Site include any part of it.

2.8 References to any party in this Undertaking include the successors in title of that party and in the case of the Council include any successor local planning authority exercising planning powers under the 1990 Act and references to the County Council include any successor local highway authority exercising powers under the 1980 Act.

2.9 References to "including" means "including, without limitation".

2.10 Any covenant not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.

2.11 Where two or more people form a party to this Undertaking, the obligations they undertake may be enforced against them all jointly or against each of them individually.

2.12 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Undertaking shall be unaffected.

2.13 This Undertaking may be executed in any number of counterparts by the parties as separate counterparts which, when executed and delivered, shall together constitute one and the same Undertaking.

3 LEGAL EFFECT

3.1 This Undertaking is made pursuant to section 106 of the 1990 Act.

3.2 To the extent that they fall within the terms of section 106 of the 1990 Act, the obligations contained in this Undertaking are planning obligations for the purposes of section 106 of the 1990 Act and are enforceable by the Council and the County Council.

3.3 The Council and the County Council are the local authorities having the power to enforce the planning obligations contained in this Undertaking.

3.4 This Undertaking is capable of and may be registered as a local land charge by the Council.

3.5 Nothing in this Undertaking:

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

3.5.2 shall require the performance of any obligation whatsoever in, upon or under land outside the ownership of the Owners;

3.5.3 shall be construed as restricting the exercise by the Council and the County Council of any powers exercisable by them under the 1990 Act or under any other Act in the exercise of their functions as a local authority and local highway authority respectively.

4 COMMENCEMENT

4.1 The obligations contained in this Undertaking will only take effect on the Commencement Date.

4.2 The Commencement Date will not be triggered by any of the following operations:

4.2.1 site investigations or surveys;

4.2.2 archaeological works;

4.2.3 site decontamination;

4.2.4 the construction of access and service roads;

4.2.5 the demolition of any existing buildings or structures;

4.2.6 excavation works;

4.2.7 the clearance or regrading of the Site;

4.2.8 the erection of hoardings and fences;

4.2.9 works connected with infilling; or

4.2.10 works for the provision or diversion of drainage or mains services to prepare the Site for development.

5 OBLIGATIONS OF THE PARTIES

5.1 The Owners and the Developer undertake to comply with the obligations set out in the Schedule in relation to the Development.

5.2 No person will be liable for any breach of the terms of this Undertaking occurring after parting with their interest in the Site or the part of the Site in respect of which such breach occurs but they will remain liable for any breaches of this Undertaking occurring before that date. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site will constitute an interest for the purposes of this clause 5.2.

5.3 The Developer will be released from its obligations contained in clause 5.1 in the event that;

5.3.1 it acquires an interest in the Site (for the avoidance of doubt at which point it shall be bound as a successor in title to the Site); or

5.3.2 in the event that the Commencement Date occurs prior to the Developer obtaining an interest in the Site PROVIDED THAT the Developer shall in accordance with the provisions of clause 2.8 be bound as a successor in title if it acquires an interest in the Site after the Commencement Date.

6 TERMINATION OF THIS UNDERTAKING

6.1 This Undertaking will come to an end if:

6.1.1 the Planning Permission is quashed, revoked or otherwise withdrawn or modified at any time so as to render this Undertaking or any part of it irrelevant, impractical or unviable; or

6.1.2 the Planning Permission expires before the Commencement Date without having been implemented.

7 MORTGAGEE'S CONSENT

7.1 The First Mortgagee consents to this Undertaking being entered into with the intention that, notwithstanding section 104 Law of Property Act 1925, its interest in the Site will be bound by the terms of this Undertaking as if it had been executed and registered as a local land charge before the execution of Charge 1.

7.2 Notwithstanding clause 7.1, the First Mortgagee will not incur any liability for any breach of the obligations contained in this Undertaking unless and until it becomes a mortgagee in possession of the Site or part thereof or appoints a receiver or administrative receiver under Charge 1.

7.3 The Second Mortgagee consents to this Undertaking being entered into with the intention that, notwithstanding section 104 Law of Property Act 1925, its interest in the Site will be bound by the terms of this Undertaking as if it had been executed and registered as a local land charge before the execution of Charge 2.

7.4 Notwithstanding clause 7.3, the Second Mortgagee will not incur any liability for any breach of the obligations contained in this Undertaking unless and until it becomes a mortgagee in possession of the Site or part thereof or appoints a receiver or administrative receiver under Charge 2.

7.5 The Third Mortgagee consents to this Undertaking being entered into with the intention that, notwithstanding section 104 Law of Property Act 1925, its interest in the Site will be bound by the terms of this Undertaking as if it had been executed and registered as a local land charge before the execution of Charge 3.

7.6 Notwithstanding clause 7.5, the Third Mortgagee will not incur any liability for any breach of the obligations contained in this Undertaking unless and until it becomes a mortgagee in possession of the Site or part thereof or appoints a receiver or administrative receiver under Charge 3.

8 NOTICES

8.1 Any notice, demand or any other communication served under this Undertaking will be effective only if delivered by hand or sent by first class post, pre-paid or recorded delivery.

8.2 Any notice, demand or any other communication served shall be sent to the address of the relevant party set out at the beginning of this Undertaking or to such other address as one party may notify in writing to the others at any time as its address for service.

8.3 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means shall be treated as having been served:

8.3.1 if delivered by hand, at the time of delivery;

8.3.2 if sent by post, on the second working day after posting; or

8.3.3 if sent by recorded delivery, at the time delivery was signed for.

8.4 If a notice, demand or any other communication is served after 4.00pm on a working day, or on a day that is not a working day, shall be treated as having been served on the next working day.

8.5 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

9 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

The parties to this Undertaking do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

10 JURISDICTION

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

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

SCHEDULE

Contributions

1 DEFINITIONS

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

"Affordable Housing"	housing for people in need who cannot afford to rent or buy accommodation in the Council's administration area;
"Affordable Housing Contribution"	a financial contribution of two hundred and forty four thousand pounds sterling (£244,000);
"Affordable Housing Contribution Payment Date"	the date of Occupation of the eleventh (11th) Dwelling;
"Fire Contribution"	a financial contribution of four hundred and ninety four pounds (£494.00);
"Fire Contribution Payment Date"	the Commencement Date;
"Index"	the All In Tender Price Index published by the Building Costs Information Service of the Royal Institution of Chartered Surveyors;
"Recreation Contribution"	a financial contribution of three thousand eight hundred and six pounds sterling (£3,806.00);
"Recreation Contribution Payment Date"	the date of Occupation of the first (1st) Dwelling;
"TAD Contribution"	a financial contribution of thirty two thousand pounds sterling (£32,000.00);
"TAD Contribution Payment Date"	the Commencement Date;
"TAD Methodology"	the methodology developed by the County Council and adopted by the Council which requires contributions towards the cost of infrastructure and other measures that are necessary to mitigate the impact of the development.

2 AFFORDABLE HOUSING

2.1 **Affordable Housing Contribution**

Subject to the grant of Planning Permission, the Owners and the Developer undertake to the Council:

2.1.1 to pay the Affordable Housing Contribution to the Council on or before the Affordable

Housing Contribution Payment Date.

2.1.2 that the Affordable Housing Contribution shall be increased by an amount equivalent to any increase in the Index between the date of this Agreement and the date on which the Affordable Housing Contribution is paid.

2.2 The Affordable Housing Contribution shall be paid to the Council with the intention that it be used by the Council towards the provision of Affordable Housing in its administrative area within seven years of receipt.

3 RECREATION

3.1 Subject to the grant of the Planning Permission the Owners and the Developer undertake to the Council:

3.1.1 to pay the Recreation Contribution to the Council on or before the Recreation Contribution Payment Date;

3.1.2 that the Recreation Contribution shall be increased by an amount equivalent to any increase in the Index between the date of this Agreement and the date on which the Recreation Contribution is paid;

3.2 The Recreation Contribution shall be paid to the Council with the intention that it be used by the Council towards the provision of recreational facilities in the vicinity of the Site within seven years of receipt.

4 TAD

4.1 Subject to the grant of the Planning Permission the Owners and the Developer undertake to the County Council:

4.1.1 to pay the TAD Contribution to the County Council on or before the TAD Contribution Payment Date;

4.1.2 that the TAD Contribution shall be increased by an amount equivalent to any increase in the Index between the date of this Agreement and the date on which the TAD Contribution is paid;

4.2 The TAD Contribution shall be paid to the County Council with the intention that it will be used by the County Council towards the provision of infrastructure in accordance with the TAD Methodology within seven years of receipt.

5 FIRE INFRASTRUCTURE

5.1 Subject to the grant of the Planning Permission the Owners and the Developer undertake to the County Council:

5.1.1 to pay the Fire Contribution to the County Council on or before the Fire Contribution Payment Date;

5.1.2 that the Fire Contribution shall be increased by an amount equivalent to any increase in the Index between the date of this Agreement and the date on which the Fire Contribution is paid.

[redacted]

[redacted]

[redacted]

5.2 The Fire Contribution shall be paid to the County Council with the intention that it will be used by the County Council towards the provision of fire service infrastructure in the vicinity of the Site within seven years of receipt.

Executed as a deed by affixing the common seal of)

BARCLAYS BANK PLC in the presence of:)

)

Signed for and on behalf of BARCLAYS BANK PLC by
Christine Ward
its duly appointed Attorney under a Power of Attorney
dated 9.2.09 in the presence of:

Witness ..... John Kenneth Henderson

Signature of director

.....

Signature of director/secretary

[redacted]

[redacted]

[redacted]

5.2 The Fire Contribution shall be paid to the County Council with the intention that it will be used by the County Council towards the provision of fire service infrastructure in the vicinity of the Site within seven years of receipt.

Signed as a deed by)

CHRISTOPHER STEPHEN JAMES)
KARL BRODIE)

in the presence of:

Signature of witness .....

Name (in BLOCK CAPITALS) EILEEN SMITH

Address 34 THISLMOOR
BLACKLEE ELL WASHINGTON
TYNE & WEAR NE37 1HU
GA TECHNICIAN

5.2 The Fire Contribution shall be paid to the County Council with the intention that it will be used by the County Council towards the provision of fire service infrastructure in the vicinity of the Site within seven years of receipt.

Executed as a deed by affixing the common seal of)

BARCLAYS BANK PLC in the presence of:)

)

Signed for and on behalf of BARCLAYS BANK PLC by
Christine Ward
its duly appointed Attorney under a Power of Attorney
dated 6.2004 in the presence of:
Witness
John Kenneth Henderson

Signature of director .....

Signature of director/secretary .....

Signed as a deed by)

ALISON JAYNE GOODWIN)

in the presence of:)

Signature of witness .....

Name (in BLOCK CAPITALS) .....
ROBERT JAMCETT, SOLICITOR
BENNETT GRIFFIN

Address .....
SEA LANE CHAMBERS
11 SEA LANE
FERRING
WEST SUSSEX BN12 5DR

.....

[redacted]

[redacted]

5.2 The Fire Contribution shall be paid to the County Council with the intention that it will be used by the County Council towards the provision of fire service infrastructure in the vicinity of the Site within seven years of receipt.

Signed as a deed by **CHURCHILL RETIREMENT LIVING LIMITED** acting by a director and its secretary or two directors)
)
)

Director

Director/Secretary

10.12.2009

[redacted]

5.2 The Fire Contribution shall be paid to the County Council with the intention that it will be used by the County Council towards the provision of fire service infrastructure in the vicinity of the Site within seven years of receipt.

Executed as a deed by affixing the common seal of **NORTHERN ROCK PLC** in the presence of:

JULIA PHILLIPSON

.....

Signature of director

.....

Signature of director/secretary

[redacted]

5.2 The Fire Contribution shall be paid to the County Council with the intention that it will be used by the County Council towards the provision of fire service infrastructure in the vicinity of the Site within seven years of receipt.

Executed as a deed by affixing the common seal of)
WEST BROMWICH MORTGAGE COMPANY LIMITED)
in the presence of:)
)

Samantha Doran
Team Leader

.....
Signature of director

.....
Signature of director/secretary