

THIS DEED OF EASEMENT is made the _____ day of
Two thousand and ten

BETWEEN

- (1) **GUY PETER WOODROFFE FOSTER** and **THE HONOURABLE WILLIAM JOHN CADOGAN** as trustees of the Churston Barony Settlement both care of Atrium Court 15-17 Jockey's Fields London WC1R 4QR (together "the Grantor")
- (2) **BLOOR HOMES LIMITED** (company number 02162561) whose registered office is at Ashby Road, Measham, Derbyshire DE12 7JP and **CHURSTON GOLF CLUB LIMITED** (company number 02571533) whose registered address is at Clubhouse Churston Brixham Devon TQ5 0LA (together referred to as "the Grantee")
- (3) **TORBAY COUNCIL** of Town Hall, Castle Circus, Torquay TQ1 3DR ("the Council")

1 DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this deed.

"Access Road" means the [private roadway and or footpath] [single track road with adequate passing bays] forming part of the Grantor's Land which passes between the points marked A, B and C on the Plan or such points agreed between the parties acting reasonably following consultation with the Council and that is no more than [and no less than] metres wide and is shown coloured green on the Plan together with the landscaping area adjoining the Access Road shown hatched red on the plan **"Grantee's Land"** means the land forming the Churston Golf Course as shown edged blue on the Plan the same is comprised in Title Number DN530280 (freehold) and DN478794 (leasehold) together with any other land which the Churston Golf Club Limited may acquire in the future

"Grantor's Land" means the land at Churston Court Farm Church Road Churston Ferrers Brixham TQ5 0JE shown edged red on the Plan and every part of it forming part of Title Number DN595597

"Grantee's Covenants" means the covenants set out in schedule 2

"Grantee's Construction Obligations" means the obligations set out in schedule 5

"Grantor's Covenants" means the covenants set out in schedule 3

"Conveyance" means the Conveyance dated 20 December 1972 made between The Churston Golf Club Limited (1) and Michael Fitzgerald Rawlence and others (2)

“Conduits” means the sewers, drains, ducts, gutters, pipes, wires, cables, watercourses and other conducting media and also manholes, inspection chambers, tanks, soakaways and apparatus used in conjunction with them

“Plan” means the plan annexed to this deed

“Reserved Rights” means the rights set out in clause schedule 4

“Rights” means the rights and liberties granted by schedule 1

“Services” means water foul and surface water drainage gas electricity telecommunications and other services and supplies as approved by the Grantor or his surveyor

“Service Strip” means the strip of land which passes between the points marked A, B and C on the Plan or such alternative route agreed between the parties acting reasonably following consultation with the relevant statutory authorities and that is no more than 6 metres wide and is shown coloured brown on the Plan

“Works” means the works to be carried out on the Grantor’s Land to construct the Access Road and to lay the Conduits in the Service Strip

- 1.2 Any reference to the Grantor and Grantee shall include that party’s personal representatives successors or permitted assigns
- 1.3 Words importing the masculine gender include the feminine and neuter genders and vice versa
- 1.4 Words importing the singular number include the plural number and vice versa and words importing persons and all references to persons include companies firms and corporations and vice versa
- 1.5 The clause headings do not form part of this deed and may not be taken into account in its construction or interpretation
- 1.6 The schedules from part of this deed and shall have effect as if set out in full in the body of this deed. Any reference to this deed includes the schedules
- 1.7 References to clauses or schedules are to the clauses and schedules of this deed (unless the context otherwise requires)
- 1.8 A reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time taking account of any amendment or re-enactment and includes any statute statutory provision or subordinate legislation which it

amends or re-enacts provided that as between the parties no such amendment or re-enactment shall apply for the purposes of this agreement to the extent that it would impose any new or extended obligation liability or restriction on or otherwise adversely affect the rights of any party

- 1.9 A reference to writing or written includes faxes but not email
- 1.10 Any obligation in this deed on a person not to do something includes an obligation not to agree or allow that thing to be done
- 1.11 Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms

2 BACKGROUND

- 2.1 The Grantor's Land is a registered freehold in the name of the Grantor with Title Number DN595597
- 2.2 The Grantee's Land forms part of the registered freehold in the name of the Council with Title Number DN530280
- 2.3 By virtue of a lease dated 3 April 2003 and made between the Council (1) and Churston Golf Club (2) the Churston Golf Club is the lessee of the Grantee's Land
- 2.4 By virtue of a development agreement dated [] Bloor Homes Limited and the Churston Golf Club have agreed inter alia to develop the Grantee's Land by the construction of a new club house and the relocation of the 1st and 18th holes of the Golf Club on the Grantee's land and access thereto
- 2.5 The Grantor has agreed to grant to the Grantee the Rights in consideration of the covenants on the part of the Grantee contained in this deed

3 GRANT

- 3.1 In consideration of the covenant given by the Grantee in clause 4 the Grantor with full title guarantee grants to the Grantee the Rights for the benefit of the Grantee's Land.
- 3.2 The Rights are not granted exclusively to the Grantee and are granted:
 - 3.2.1 subject to the Reserved Rights and any other rights of the Grantor in relation to the Grantor's Land whether or not referred to in this deed

3.2.2 in common with any other person lawfully entitled to the Rights or to similar rights in relation to the Grantor's Land

4 GRANTOR'S COVENANTS

The Grantor covenants with the Grantee so as to bind the Grantor's Land into whoever's hands it may come, for the benefit of the Grantee's Land, that the Grantor shall at all times observe and perform the Grantor's Covenants.

5 GRANTEE'S COVENANTS

The Grantee covenants with the Grantor so as to bind the Grantee's Land into whoever's hands it may come, for the benefit of the Grantor's Land, that the Grantee, and anyone authorised by any of them to use the Rights shall at all times observe and perform the Grantee's covenant.

6 HM LAND REGISTRY

6.1 The Grantor consents to notice of the Rights and of any restrictive covenants made in this deed by the Grantor being noted against the Grantor's registered title to the Grantor's Land

6.2 On completion of this deed the Grantee shall:

6.2.1 apply to HM Land Registry to note the Rights and any restrictive covenants against the Grantor's registered title.

6.2.2 apply to HM Land Registry to enter a notice of any restrictive covenants made by the Grantee in this deed against the registered title to the Grantee's Land and to enter the Rights in the property register of the Grantee's title as appurtenant rights.

6.3 As soon as possible after completion of this deed the Grantee shall give to the Grantor official copies of the registered title to the Grantor's Land and the Grantee's Land, to show that the Rights and any restrictive covenants made by the Grantor and/or the Grantee have been properly and correctly entered against the respective titles.

7 RESERVATION OF RIGHTS

The Grantor reserves to itself the Reserved Rights.

8 INDEMNITY

8.1 The Grantee shall indemnify the Grantor from and against all liabilities, costs, expenses, damages and losses arising from:

8.1.1 any abuse by the Grantee of the exercise of the Rights

8.1.2 any breach of any of the Grantee's Covenants

by the Grantee or by any occupier of the Grantee's Land or by an employee or invitee of the Grantee or by any other person who is allowed or permitted by the Grantee to exercise the Rights subject to a fair and reasonable contribution being made by any other party granted the Rights

9 LIABILITY

9.1 If the Grantor and/or the Grantee is/are more than one person then, unless otherwise expressly provided in this deed, those persons shall be jointly and severally liable for their respective obligations arising under this deed. Either party may take action against, or release or compromise the liability of, any one of those persons or grant time or other indulgence to any one of them without affecting the liability of any other of them

9.2 The Grantor shall not be liable to the Grantee for any failure of the Grantor to comply with the Grantor's Covenant contained in schedule 3 unless and until the Grantee has given the Grantor notice of the facts that give rise to the failure and the Grantor has not remedied the failure within a reasonable time

9.3 The Grantor is not liable for the death of, or injury to the Grantee its employees, invitees or for damage to any property of theirs, or for any losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability incurred by them in the exercise of the Rights

10 EXERCISE PERIOD

The Rights shall be exercisable only if the Rights and the Access Road come into existence within five years from the date of this deed

11 RIGHTS OF THIRD PARTIES

A person who is not a party to this deed will not have any rights under or in connection with it

12 GOVERNING LAW AND JURISDICTION

- 12.1 This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales
- 12.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this deed or its subject matter or formation (including non-contractual disputes or claims)

13 NOTICES

- 13.1 Any notice given pursuant to this deed must be in writing and must be delivered by hand or, sent by pre-paid first class post, or registered post as follows:
- 13.1.1 to the Grantor at:
- c/o Cumberland Ellis LLP Atrium Court 15-17 Jockey's Fields London
WC1R 4QR (reference: MIS/CHU/6/51)
- 13.1.2 to the Grantee at:
- [c/o Osborne Clarke 2 Temple Back East Temple Quay Bristol BS1 6EG
(reference: David Powell)] OR [Ashby Road, Measham, Derbyshire DE12
7JP and Clubhouse Churston Brixham Devon TQ5 0LA]
- 13.1.3 to the Council at:
- Town Hall, Castle Circus, Torquay TQ1 3DR (reference: [])
- 13.2 A correctly addressed notice sent by pre-paid first class post will be deemed to have been delivered at the time at which it would have been delivered in the normal course of the post

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it

SCHEDULE 1 - THE RIGHTS

1. The right for the Grantee to build the Access Road subject to the Grantee's Construction Obligations
2. The right for the Grantee and those authorised by it or them in common with the Grantor and those authorised by them to pass with or without private motor vehicles and utility vehicles and emergency service vehicles over and along the Access Road for all purposes connected with the use of the Grantee's Land as a Golf Club and Golf Course together with ancillary sporting and social activities and as permitted in the said Lease dated 3rd April 2003, but not for any other purpose
3. The right for the Grantee to lay the Conduits in through or under the Service Strip or the Access Road subject to the Grantee's Construction Obligations
4. The right for the Grantee in common with the Grantor and those authorised by them to use the Conduits for the free and uninterrupted passage of the Services
5. The rights in paragraph 2 and 4 of this schedule are to be exercised:
 - 5.1 in a reasonable manner
 - 5.2 in such way as not to obstruct the free flow of traffic and persons using the Access Road and

6. The Grantee subject to giving not less than two week's prior written notice to the Grantor shall have the right at its own cost to relocate the Access Road and Conduits within the Grantor's Land subject to the Grantor consenting to the new position of the Access Road and /or Conduits (such consent not to be unreasonably withheld or delayed)

SCHEDULE 2 – GRANTEE’S COVENANTS

The Grantee shall:

1 PERFORMANCE OF RIGHTS

- 1.1 Perform and undertake the Rights and his obligations under this deed in such manner as to satisfy the reasonable requirements of the Grantor and every requirement of all relevant statutory authorities
- 1.2 Observe the covenants set out in the Conveyance and referred to in the charges registers of the registered titles DN530280 and DN595597 in so far as they are relevant to the Rights and to the reasonable satisfaction of the Grantor

2 DAMAGE

Not cause any damage to the Grantor's Land and or any existing pipes and cables, or to any property of the owners or occupiers of the Grantor's Land, and immediately make good any damage caused to the Grantor's reasonable satisfaction and pay full compensation to the Grantor in respect of any damage caused that is not made good and any loss caused to the Grantor due to such damage

3 NUISANCE

Not cause any nuisance, annoyance or disturbance to the Grantor or occupiers of the Grantor's Land, or of any neighbouring land, or to any other person entitled to the Rights in common with the Grantee provided always that the exercise of the Rights for the purposes set out in clause 2 of Schedule 1 shall not per se be capable of being deemed a nuisance annoyance or disturbance

4 OBSTRUCTION OR WASTE

Not obstruct the Access Road or deposit any waste, rubbish, soil or other material on any part of the Grantor's Land or in any other way interfere with, or disturb, the exercise of the same Rights or similar rights by any other person authorised by the Grantor

5 REPAIR

Subject to payment of an appropriate contribution by all others now or hereafter similarly entitled to rights of access and to the passage of services:-

- 5.1 Keep the Access Road clean and free from obstruction and in good repair and condition and properly lit to the satisfaction of the Grantor or his surveyor
- 5.2 Maintain repair and relay the Conduits to the satisfaction of the Grantor or his surveyor and prevent any leakage of water or effluent and execute all works necessary in maintaining repairing and relaying the Conduits with all reasonable despatch

6 COSTS IN THE EVENT OF BREACH

Pay to the Grantor on written demand all costs reasonably and properly incurred by the Grantor in complying with any of the Grantee's Covenants if the Grantee has failed to comply with them, provided that the Grantor has first served on the Grantee written notice of the breach and the Grantee has failed to rectify the breach within 21 days of service of that notice

7 SECURITY

Use all reasonable endeavours to prevent trespass on or along the Access Road by anyone not authorised to exercise the Rights by the Grantee

8 OUTGOINGS

Subject to a suitable contribution from all others now or hereafter similarly entitled pay all rates taxes assessments and outgoings whatsoever now or at any time hereafter payable in respect of the Rights

9 ALTERATIONS

Not make any alterations to the Access Road and or Conduits or any diversion of them without the previous consent in writing of the Grantor or his surveyor (such consent not to be unreasonably withheld or delayed)

10 LOSS

Forthwith pay reasonable compensation to the Grantor for any loss of grazing that arises from the construction works relating to the creation of the Access Road and/or the laying of the service conduits

11 FENCING AND SIGNAGE

Erect fences and or hedges alongside the Access Road and appropriate signage to the reasonable satisfaction of the Grantor or his surveyor and as previously agreed with the Grantor or his surveyor and in accordance with the requirements of all relevant statutory authorities

12 INSURANCE

Without prejudice to the indemnity in clause 8 (and insofar as relates to 12.2 subject to payment of an appropriate contribution by all others now or hereafter similarly entitled to rights of access) adequately insure

12.1 the Works and all plant and unfixed materials and goods delivered to or placed on or adjacent to the Service Strip and intended for incorporation in the Works for not less than the full replacement or as the case may be the full reinstatement value thereof (taking into account the progress of the Works) together with all site clearance and professional fees incurred in connection with such reinstatement and

12.2 the Access Road in respect of injury to or death of any person or loss or damage to any real or personal property for an indemnity of not less than £10,000,000.00 for any one occurrence or series of occurrences arising out of the same event

SCHEDULE 3 – GRANTOR’S COVENANTS

1 INTERFERENCE WITH RIGHTS

Subject to the Reserved Rights, the Grantor shall not obstruct interrupt or interfere with the exercise of the Rights by the Grantee

The Grantor shall not grant any Rights to third parties without the consent of the Grantee (such consent not to be unreasonably withheld or delayed) and if any such Rights are granted then the Grantor shall ensure that the grantee of such rights shall be obliged to contribute a fair and reasonable proportion of the cost of maintenance in accordance with paragraph 5 of Schedule 2 and Insurance in accordance with paragraph 12 of Schedule 2

SCHEDULE 4 – RESERVED RIGHTS

The Grantor reserves the following rights for itself, and all other persons authorised by it to benefit from the same:

1 RIGHT TO CARRY OUR GRANTEE'S OBLIGATIONS

The right to enter onto the Access Road and or the Service Strip at any time to carry out any obligation of the Grantee contained in this deed provided that in so doing the Grantor will cause as little interference as is reasonable practicable to the exercise of the Rights by the Grantee and will forthwith rectify any damage caused

2 RIGHT TO REPAIR THE GRANTOR'S LAND

The right to enter onto the Access Road and or the Service Strip at any time to repair, maintain or replace any services, structures or facilities on any part of the Grantor's Land provided that in so doing the Grantor will cause as little interference as is reasonable practicable to the exercise of the Rights by the Grantee and will forthwith rectify any damage caused

3 RIGHT TO BUILD ON THE GRANTOR'S LAND

The right to use any part of the Grantor's Land as the Grantor thinks fit, or to build on or develop any part of the Grantor's Land or any neighbouring land, provided that any such use or works do not interfere with, or obstruct, the exercise of the Rights by the Grantee.

4 RIGHT TO CONNECT

The right to construct and use roads and services on the Grantor's Land connecting into the Access Road and the Service Strip provided that reasonable notice has been served on the Grantee and subject to the Conduits having sufficient capacity and subject to the approval of the relevant statutory authority that the Grantor makes good any damage caused to the Access Road and Conduits caused by such construction and use and that in exercising this right the Grantor will cause as little interference as reasonable practicable to the exercise of the Rights by the Grantee.

SCHEDULE 5 – GRANTEE’S CONSTRUCTION OBLIGATIONS

1 STARTING THE WORKS

- 1.1 The Grantee must not start the Works until it has complied with the requirements of this schedule
- 1.2 The Grantee must obtain all licences and consents that are required for the Works under all laws and by the Grantor and the owner or occupier of any neighbouring land or otherwise
- 1.3 The Grantee must provide details of the Works to the insurers of the Grantor’s Land and obtain their consent to carrying out the Works
- 1.4 The Grantee must produce all such licences and consents to the Grantor and obtain the Grantor’s confirmation they are satisfactory to the Grantor such confirmation not to be unreasonably withheld
- 1.5 The Grantee must give the Grantor three copies of the plans and specification for the Works
- 1.6 The Grantee must notify the Grantor and the insurers of the Grantor’s Land of the date it intends to start carrying out the Works

2 CARRYING OUT AND COMPLETING THE WORKS

- 2.1 The Grantee must carry out the Works:
 - 2.1.1 using good quality, new materials which are fit for the purpose for which they will be used
 - 2.1.2 in a good and workmanlike manner and in accordance with good building and other relevant practices codes and guidance and
 - 2.1.3 to the reasonable satisfaction of the Grantor
- 2.2 In carrying out the Works the Grantee must comply with all laws and the terms of all other licences and consents the requirements and recommendations of all relevant utility suppliers and those of the insurers of the Grantor’s Land
- 2.3 The Grantee must take all proper steps to ensure that carrying out the Works does not make any of the following unsafe: the structure and the current use of the Grantor’s Land any plant or machinery at the Grantor’s Land and any neighbouring land or building

- 2.4 The Grantee must cause as little disturbance and inconvenience as reasonably possible to the Grantor and the owners and occupiers of any neighbouring land. The Grantee must not infringe any of their rights nor the rights of any other person in relation to the Grantor's Land
- 2.5 The Grantee must immediately make good, to the reasonable satisfaction of the Grantor, any damage (including decorative damage) to any land or building or any plant and machinery which is caused by carrying out the Works
- 2.6 The Grantee must allow the Grantor and its surveyors access to the Access Road and or the Service Strip both while the Works are being carried out and afterwards and will give the Grantor the information it reasonably requests to establish that the Works are being and have been carried out in accordance with this schedule
- 2.7 The Grantee must use its reasonable endeavours to:
- 2.7.1 complete the Works within eighteen months commencing on the date of this deed and
- 2.7.2 must notify the Grantor as soon as the Works have been completed and send the Grantor three copies of plans showing the Property as altered by the Works.

3 THE CDM REGULATIONS

- 3.1 Before starting the works the Grantee must have made a written election that it is to be treated as the only client in respect of the Works for the purposes of the CDM Regulations and given the Grantor a copy of such election
- 3.2 To the extent that the Grantor may be a client for the purposes of the CDM Regulations in relation to the Works the Grantor agrees with the written election by the Grantee
- 3.3 The Grantee must comply with its obligations as a client for the purposes of the CDM Regulations and must ensure that the CDM co-ordinator and the principal contractor that it appoints in relation to the Works comply with their respective obligations under the CDM Regulations. The Grantee must liaise with the CDM co-ordinator to allow the CDM co-ordinator to assist the Grantee in performing the Grantee's duties as client under the CDM Regulations.

3.4 The Grantee must ensure that all relevant documents relating to the Works are placed in the health and safety file for the Access Road and the Conduits by the CDM co-ordinator in accordance with the CDM Regulations and otherwise comply with its obligations in the Conveyance relating to those documents and the file.

4 ADDITIONAL WORKS

4.1 If the terms of any planning permission licence or consent obtained for the Works require any other works to be carried out the Grantee must carry out such other works within any time limit imposed by such permission licence or consent

4.2 The terms of this schedule will apply to the carrying out of such other works as if they formed part of the Works.

4.3 This clause is without prejudice to any requirement on the Grantee to obtain the consent of any other person that may be required for such other works

5 INSURANCE OF THE WORKS PENDING COMPLETION OF THE WORKS

5.1 The Works will be at the sole risk of the Grantee and it is the Grantee's obligation adequately to insure the Works.

5.2 The Grantee must pay on demand any increase in the insurance premium and the amount of any additional insurance premium for the Grantor's Land or any neighbouring land of the Grantor's Land that arises because of the Works.

6 FEES, RATES AND TAXES

The Grantee must pay all fees rates and taxes that arise by reason of the Works (including any arising under any laws applying to the Works) whether imposed on the Grantor or the Grantee and must indemnify the Grantor from all liability in relation to such fees, rates and taxes

7 THE COVENANTS AND CONDITIONS

The Grantee's covenants set out in the Conveyance and referred to in the charges registers of the registered titles DN530280 and DN595597 will extend to the Works and apply to the Access Road and the Conduits in so far as they are applicable

8 NO WARRANTY BY THE GRANTOR

- 8.1 No representation or warranty is given or is to be implied by the Grantor entering into this deed or by any step taken by or on behalf of the Grantor in connection with it as to the suitability of the Grantor's Land for the Works
- 8.2 The Grantee acknowledges that it is not relying on and will have no remedy in respect of any representation that may have been made by or on behalf of the Grantor before the date of this licence as to any of the matters mentioned in clause 8.1
- 8.3 Nothing in this clause shall however operate to limit or exclude any liability for fraud

9 COSTS

- 9.1 The Grantee must pay on demand any further reasonable costs and disbursements of the Grantor its solicitors surveyors managing agents and insurers incurred in connection with the Works or any removal of them and reinstatement of the Property or in making good any damage to any land or building plant or machinery (other than the Property) which is caused by the carrying out of the Works or by the removal of them or the reinstatement of the Property up to a limit of two thousand pounds (£2,000)

SCHEDULE 6 – SPECIFICATIONS FOR CONDUITS

[Insert specification for Conduits]

SIGNED as a deed by the said)
GUY PETER WOODROFFE FOSTER)
in the presence of:)

Witness' Name :

Witness' Signature :

Witness' Address :

Witness' Occupation :

SIGNED as a deed by the said)
THE HONOURABLE WILLIAM JOHN)
CADOGAN in the presence of:)

Witness' Name :

Witness' Signature :

Witness' Address :

Witness' Occupation :

EXECUTED as a deed by)
BLOOR HOMES LIMITED)
acting by two Directors or a)
Director and the Secretary)

EXECUTED as a deed by)
CHURSTON GOLF CLUB LIMITED)
acting by two Directors or a)
Director and the Secretary)

EXECUTED as a deed by)
TORBAY COUNCIL)
acting by)
)

DATED 2010

**G P W FOSTER and
THE HONOURABLE W J CADOGAN (1)**

**BLOOR HOMES LIMITED and
CHURSTON GOLF CLUB LIMITED (2)**

TORBAY COUNCIL (3)

**DEED OF EASEMENT
relating to
land at Churston Ferrers near Brixham**