

## **Conditional Contract**

Relating to Churston Golf Course, Dartmouth Road

- (1) The Council of the Borough of Torbay
- (2) Bloor Homes Limited

Dated

2010

### **Osborne Clarke**

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**This Conditional Contract** is made on

2010

**Between:**

- (1) **The Council of the Borough of Torbay** of Town Hall, Castle Circus, Torquay, TQ1 3DR ("the Owner") and
- (2) **Bloor Homes Limited** whose registered office is at Ashby Road, Measham, Derbyshire DE12 7JP (company number 02162561) ("the Developer")

**It is agreed** as follows:

1. **Definitions and interpretation**

1.1 In this Contract the following expressions have the following meanings:

**"1972 Covenants"** means the covenants contained in a conveyance made between the Churston Estate (1), the Club (2) and the Woodcote (Guernsey) Investment Co Limited (3) and the Owner (4)

**"CE Agreement"** means an agreement of even date made between (1) The Developer and (2) the Churston Estate;

**"Charge"** means the charge in favour of Barclays Bank Plc dated 3rd April 2003 and registered at entry 4 of the charges register to title number DN479794, the registered proprietors of which are the Club;

**"Churston Estate"** means the Trustees of the Churston Barony Settlement c/o Cumberland Ellis, Atrium Court, 15 Jockeys Fields, London;

**"Churston Estate Land"** means all that freehold property registered with Absolute title at the Land Registry under title number DN595597, DN595541 and DN596006;

**"Churston Golf Course"** means the parcel of freehold land registered at the Land Registry under title number DN530280 (leasehold DN479794);

**"Club"** means Churston Golf Club Limited whose registered address is at The Clubhouse, Churston, Brixham, Devon TQ5 0LA (company number 02571533);

**"Club Agreement"** means the agreement made between the Club (1) and the Developer (2) of even date.

**"Commercial Conditions"** means the Standard Commercial Property Conditions of Sale (First Edition);

**"Completion Date"** means the 10<sup>th</sup> working day after the date on which the Completion Pre-conditions are satisfied;

**"Completion Documents"** means the following documents:

- (a) the Deed of Surrender; and

- (b) the New Lease; and
- (c) a valid form of discharge in relation to the Charge insofar as it relates to the Property; and
- (d) a letter of non crystallisation in respect of the Debenture; and
- (e) the Practical Completion Certificate.

**"Completion Pre-conditions"** means the conditions set out in paragraph 2 of the Third Schedule;

**"Contract Period"** means from the date of this Contract to [*insert date 18 months after date of Contract*] or as extended (if at all) by the operation of Clause 7;

**"Contract Pre-conditions"** means the condition precedents set out in paragraph 1 of the Third Schedule;

**"Court Proceedings"** means any application, appeal, motion or other proceeding whether in the High Court or another Court whether initiated by the Owner or the Developer or any other person in respect of any Application or Appeal or Planning Permission or any representations in respect of any Local Plan or otherwise related to the seeking of a Planning Permission, including:

- (a) an application for judicial review whether under Order 53 of the Rules of the Supreme Court (Schedule 1 Civil Procedure Rules), or Section 288 of the 1990 Act or otherwise, including such an application arising from the grant or refusal of a Planning Permission following a reconsideration of a Planning Application by either the Local Planning Authority or the Secretary of State; or
- (b) any reconsideration by the Local Planning Authority or the Secretary of State of an Appeal following the quashing of an earlier grant or refusal of Planning Permission;

**"Debenture"** means the debenture in favour of Barclays Bank Plc dated [ ];

**"Deed of Easement"** means the deed of easement in respect of access and services which is to be completed pursuant to the CE Agreement, the form of which is attached at Appendix [ ];

**"Deed of Surrender"** means the deed of surrender of part of the Lease to be made between the Owner (1), the Club (2) and Churston Estate (3) which shall be in the form attached at Appendix [ ];

**"Developer"** means the second party named above and includes its successors in title and assigns;

**"Developer's Solicitors"** means Osborne Clarke of 2 Temple Back East, Temple Quay, Bristol BS1 6EG (reference DP/0951565) or such other solicitor(s) as the Developer notifies the Owner in writing for the purposes of this Contract;

**“Development”** means a development of the Property for residential (including any use under C2 of the Changes to use and Permitted Classes Order 1987 (amended 2006/2007)) and for development (including infrastructure works) ancillary thereto;

**"Development Management Agreement"** means the agreement between the Developer and the Club a copy of which is attached at Appendix [ ];

**"the Development Documents"** means the following documents:

- (a) the Deed of Easement;
- (b) the New Golf Course Land Transfer;
- (c) the Development Management Agreement;
- (d) the Security Deed; and
- (e) the FBT Surrender;

**"Easement Land"** means that part of the Churston Estate Land over or under which the various rights granted in the Deed of Easement are situated;

**"FBT Surrender"** means a deed of surrender of a Farm Business Tenancy dated 28 August 2002 and made between the Churston Estate (1) and Richard Anthony Haddock (2) which shall be completed pursuant to the CE Agreement;

**"finally determined"** means the date when Court Proceedings or an Application or Appeal is or are finally determined so that all rights of appeal or challenge are exhausted, finally withdrawn, finally dismissed or finally discontinued or if any order is made during or in consequence of Court Proceedings requiring the re-determination of an Appeal or Application then the date upon which that Appeal or Application is finally re-determined and, in relation to either any resolution by the Local Planning Authority to grant Planning Permission or a decision of the Secretary of State to grant Planning Permission in either case subject to the creation of a Planning Obligation, an Application is not to be treated as finally determined until either the grant of Planning Permission by the Local Planning Authority or the final decision of the Secretary of State after delivery of the Planning Obligation (whichever is appropriate);

**"Golf Course Land"** means the land on which the Golf Course is presently constructed (except the Property) as shown edged orange on Plan 2;

**“Grant Date”** means either:-

- (a) the day upon which the Developer or its agent receives a Qualifying Planning Permission in writing; or
- (b) the date of receipt by the Developer of a letter of decision from the Secretary of State stating that a Qualifying Planning Permission has been granted on Appeal;

PROVIDED THAT if the validity of any grant of Planning Permission is challenged in any Court Proceedings then the relevant Planning Permission will be deemed not to have been granted until such Court Proceedings have been finally determined or the Court will otherwise have upheld the validity of such grant;

**“Interest Rate”** means 2% above Bank of England Base Rate as amended from time to time

**"Lease"** means the lease of the Churston Golf Course dated 3 April 2003 and made between the Owner (1) and the Club (2);

**“Local Plan”** means any proposed, draft or actual Local Plan, Structure Plan, local development frame work, Unitary Development Plan and any Planning Brief and Regional Guidance;

**"Local Planning Authority"** means any local planning authority for the area in which the Property or any part of it is situated;

**"Local Planning Charge"** means a local planning charge or tariff in respect of infrastructure for new development in addition to negotiated contributions for specific matters contained in a Planning Obligation;

**"New Golf Course Land"** means that part of the Churston Estate Land shown edged green on plan 2 together with the Easement Land;

**"New Golf Course Land Transfer"** means the transfer of the New Golf Course Land and the Easement Land which shall be in the form attached at Appendix [ ];

**"New Golf Course"** means the new holes which will be constructed on the New Golf Course land;

**"New Lease"** means the new lease of the Property to be made between the Owner (1) and the Developer (2) which shall be in the form attached at Appendix [ ];

**“Owner”** means the first party hereto named above and includes its successors in title and assigns and (in the case of an individual) his or her estate and those deriving title under them;

**“Owner’s Solicitors”** means Legal Services, Torbay Council, Town Hall, Castle Circus, Torquay TQ1 3DR (ref. JO/CS 0203) or such other solicitor(s) as the Owner notifies the Developer in writing for the purposes of this Contract;

**“Plan”** means the plan numbered EM1950 annexed to this Contract and a reference to a numbered plan is to one so numbered;

**“Planning Acts”** means the 1990 Act, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990 and the Planning (Consequential Provisions) Act 1990 and any subsidiary, delegated, associated, related or supplementary legislation thereto;

**“Planning Permission”** means a planning permission for the Development granted either by the Local Planning Authority or by the Secretary of State and includes outline permission, a full planning permission and an approval of Reserved Matters;

**“Planning Obligation”** means any agreement, obligation or undertaking pursuant to Section 106 of the 1990 Act and/or Section 299A of the 1990 Act and/or Sections 111 and/or 120 Local Government Act 1972 and/or Section 33 Local Government (Miscellaneous Provisions) Act 1982 and/or Section 16 Greater London (General Powers) Act 1974 or any similar statutes or statutory re-enactments or modifications thereof (whether or not affecting other land);

**"Practical Completion Certificate"** means the certificate issued by the architect/employer's agent confirming practical completion under the terms of the Development Management Agreement;

**“Price”** means the sum of Two Million Pounds (£2,000,000) plus interest (if any) as provided for in clause 3.3(c);

**“Property”** means the land and premises described in the First Schedule;

**“Qualifying Planning Permission”** means a Planning Permission which is immediately implementable upon grant and is in terms which are satisfactory to the Developer;

**"Requisite Consents"** means such permissions, consents, approvals, licences, certificates and permits in legally effectual form as may be necessary lawfully to commence, carry out and complete any part of the Development including Planning Permission and Reserved Matters approvals, building regulation consents and bye-law approvals, the requirements of all competent authorities regulating the Development and the consents of all parties having interests or rights in or over the adjoining land and/or other land who by the lawful exercise of their powers or the absence of such consent could prevent or impede the carrying out of or the progress of the Development;

**"Reserved Matter"** means any matter which is reserved for the subsequent approval of the Local Planning Authority by a Planning Permission (including a Qualifying Planning Permission) whether within the definition in Article 1(2) of the Town and Country Planning (General Development Procedure) Order 1995 (S.I. 1995/419) or otherwise;

**"Satisfaction Certificate"** means a notice served by the Developer on the Owner in accordance with clause 13 confirming that a Planning Permission is a Qualifying Planning Permission;

**“Satisfaction Date”** means the date (if any) on which the Contract Pre-Conditions have been satisfied and this Contract becomes unconditional in accordance with its provisions;

**“Secretary of State”** means the Secretary of State for Transport, Local Government and the Regions and includes (where appropriate) any inspector appointed by her and

acting on her behalf and any minister, however designated, carrying out her functions under the Planning Acts and related legislation in the future;

**"Security Deed"** means a guarantee given by Bloor Holdings Limited [in the form attached at Appendix [ ]];

**"VAT"** means Value Added Tax and any tax or duty of a similar nature replacing it; and

**"Works Agreement"** means any agreement that is made under one or more of Sections 38 and/or 278 Highways Act 1980 and Section 104 Water Industry Act 1991 or under the Gas Act 1980, the Water Act 1989 or any statutory provision with a similar purpose or any agreement with a local water authority, the Environment Agency, an Internal Drainage Board or other appropriate authority about water supply to and drainage of foul and surface water [and effluent] from the Property or any other agreement with a competent authority or body relating to other services for the benefit of or access to and from the Property.

- 1.2 Headings in this Contract are not to affect its construction or interpretation.
- 1.3 Words importing one gender include all other genders and words importing the singular include the plural and vice versa.
- 1.4 References to a specific statute include any statutory extension, modification, consolidation, amendment or re-enactment of that statute and any regulations or orders made under it and any general references to "statute" include any statute enacted after today's date and any derivative regulations or orders.
- 1.5 Expressions defined in the Commercial Conditions have the same meaning if used in this Contract.
- 1.6 References to clauses, paragraphs or schedules are to clauses, paragraphs or schedules of this Contract unless otherwise indicated.
- 1.7 The word "including" means "...including but not limited to...".
- 1.8 References to the Property and any other parcel of land include references to any part or parts of it.
2. **Recitals**
  - 2.1 The Developer has agreed with the Club to use its reasonable endeavours to try and secure a Qualifying Planning Permission.
  - 2.2 In consideration of the Price, the Owner has agreed to enter into the Deed of Surrender and the New Lease, subject to the terms hereof.
  - 2.3 Churston Estate has agreed in the CE Agreement to enter into the Deed of Surrender in order to acknowledge that the Development does not represent a breach of the 1972 Covenants.

- 2.4 On completion of the Deed of Surrender the New Lease will be completed and a valid form of discharge in relation to the Charge insofar as it relates to the Property; and a letter of non crystallisation in respect of the Debenture will be provided to the Developer by the Club.
- 2.5 The freehold estate in the New Golf Course Land will be transferred to the Club by the Estate under the terms of the CE Agreement and the Club Agreement once the Satisfaction Certificate has been served under the terms of those agreements. Simultaneously with the completion of the transfer of the freehold of the New Golf Course Land, the FBT Surrender will be completed.
- 2.6 The Developer intends to construct new golf holes for the use of the Club on the New Golf Course Land in accordance with the terms of the Development Management Agreement.
- 2.7 The Owner agrees to execute the Deed of Easement to facilitate access to the Golf Course Land.

### 3. **Completion Procedure**

- 3.1 Subject to the satisfaction of the Contract Pre-conditions, on the date which falls 10 working days after the date of the Satisfaction Certificate, the Development Documents will be completed and the Owner agrees to execute the Deed of Easement and release the same to the Developer for completion.
- 3.2 On the Completion Date, subject to satisfaction of the Completion Pre-conditions the Completion Documents will be completed.
- 3.3 The Price shall be payable by the Developer to the Owner in the following amounts and on the following dates:
- (a) One Million Pounds (£1,000,000) on the Completion Date;
  - (b) One Million Pounds (£1,000,000) on or before the date which falls on the date three years after the Completion Date not including the Completion Date; and
  - (c) Interest at the Interest Rate calculated on the sum set out in clause 3.3(b) from the Completion Date until the date on which the sum set out in clause 3.3(b) is paid.
- 3.4 The Security Deed will be released on the date in 3.3(b) provided that the payments referred to in clauses 3.3(b) and 3.3(c) are made.

### 4. **Commercial Conditions**

- 4.1 This Contract incorporates the Commercial Conditions as amended by this Contract. If there is a conflict between the Commercial Conditions and any other provision of this Contract, that other provision prevails.

- 4.2 The following words are to be added at the end of Commercial Condition 1.1.1 (m)  
“... or any day between (but including) Christmas Eve and the following 1st  
January.”
- 4.3 In Commercial Condition 1.3.2 the words “.. or by ..” will be inserted after the word  
“to” at both places where it occurs.
- 4.4 Commercial Conditions 1.5 and 6.8.4 will not apply.
- 4.5 The contract rate is to be two percent per annum over the base lending rate from time  
to time of National Westminster Bank Plc.

5. **VAT**

The Owner warrants that neither it nor any company in the same VAT group as it has made an election to waive exemption in respect of the Property under paragraph 2(1) of Schedule 10 of the Value Added Tax Act 1994 and undertakes that neither it nor any such company will do so before completion and, if this warranty becomes untrue, Section 89 of the Value Added Tax Act 1994 will not apply and the Price will be taken to include VAT.

6. **Contract Period Extensions**

- 6.1 If, on any date when (but for this Clause) the Contract Period would end, any of the following apply; the Contract Period will automatically be extended as follows:
- (a) If, on any such date, an application, an appeal or any Court Proceedings have not been finally determined, the Contract Period will not end until the expiry of the period of six months starting on (and including) the date upon which the Developer receives formal written notification that such application, appeal or Court Proceedings has or have been finally determined;
  - (b) If, on any such date, any Planning Permission has been granted but less than four months have elapsed since its Grant Date, then the Contract Period will not end until the expiry of the period of four months starting on (and including) the Grant Date; and
  - (c) If any Court Proceedings are commenced during the periods of three and four months referred to in Sub-clauses 7.1(a) and 7.1(b) then the Contract Period will not end until the expiry of 20 working days starting on (and including) the date on which such Court Proceedings are finally determined; and
  - (d) If, on any such date, the "contract period" as defined in the CE Agreement ("the CE Contract Period") has not expired, the Contract Period will not end until the date on which the CE Contract Period expires.

PROVIDED THAT nothing in this clause 7 shall serve to extend the Contract Period beyond the date which is the 3rd anniversary of this Contract.

**7. Access by Developer etc.**

7.1 Subject to the Developer obtaining the consent of the Club in respect of the same, the Owner will permit the Developer and those authorised by it at all times to enter the Property with all necessary vehicles, plant, equipment and apparatus on at least 7 days prior written notice:

- (a) to inspect, survey and measure the Property and assess its suitability for development;
- (b) to carry out archaeological, ecological, and other planning surveys (including environmental assessments and environmental impact studies) and soil, ground and other tests on the Property and any adjoining land;
- (c) in connection with the negotiation and performance of any Planning Obligation or Works Agreement;
- (d) to effect hedge or tree planting if likely to facilitate the grant of a Qualifying Planning Permission (providing such work does not materially interfere with the Owner's current use of the Property); and
- (e) for any other reasonable purpose in connection with this Contract and/or the Development;

PROVIDED that the Developer will cause as little disruption and inconvenience as reasonably possible and make good to the reasonable satisfaction of the Owner any damage caused or pay reasonable compensation if making good is not practicable.

**8. Restrictions on Disposals**

8.1 The Owner will not dispose of, deal with, encumber, or grant any interest in or right or easement over the Property or agree to do so or hold the Property upon trust for anyone else or enter into any Planning Obligation in its capacity as landowner of the Property or Works Agreement in respect of the Property during the Contract Period without the prior written consent of the Developer, not to be unreasonably withheld or delayed) and without giving not less than 20 working days prior notice and otherwise in accordance with the following provisions of this Clause.

8.2 The Developer may (inter alia) require that any mortgagee or chargee will enter into a deed with the Developer containing the following:

- (a) an acknowledgement by the mortgagee or chargee that this Contract has priority in all respects to the mortgage or charge and the sums or obligations secured by it and that the mortgage or charge is subject to this Contract;
- (b) a covenant by the mortgagee or chargee with the Developer (whether or not the sums secured by the mortgage or charge are wholly or partly discharged or not discharged at all) to release the Property and to consent to and confirm the grant of any rights to the Developer in accordance with the terms of this Contract on or following completion of the transfer of the Property; and

- (c) a covenant by the mortgagee or chargee, free of cost to the Developer, to enter into any and every Planning Obligation in order to consent to it and to postpone the charge or mortgage to each such Planning Obligation.
- 8.3 The Developer may (inter alia) require that any easement, right or privilege granted by the Owner in relation to the Property in the future will be on terms that the owner of the servient tenement from time to time may divert or re-route such easement, right or privilege to facilitate the Development or enable it to be carried out more expediently (and interrupt it temporarily for such purpose) and on terms that the owners, mortgagees, chargees, tenants and occupiers of the dominant tenement can be required by the Developer to agree to and execute such documentation covering such diversion or re-routing of the relevant easement, right or privilege as the Developer may reasonably require.
- 8.4 The Developer may require that anyone to whom the Owner intends (with the Developer's prior consent) to sell or otherwise dispose of any estate or interest in the Property covenants by deed (in such terms as the Developer reasonably requires) with the Developer that it will observe and perform the terms of this Contract as though it had been named as the Owner in it so as to procure that this Contract will be enforceable by the Developer against the disponee under the Law of Property (Miscellaneous Provisions) Act 1989 Section 2.
- 8.5 The Owner consents to the registration of a restriction in the following form against the title to the Property:
- "No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by Bloor Homes Limited whose registered office is at Ashby Road, Measham, Derbyshire DE12 7JP (company number 02162561) or their conveyancer that the provisions of clause 9 of a Contract dated [ ] and made between Torbay Borough Council (1) and Bloor Homes Limited (2) have been complied with or that they do not apply to the disposition".
- 8.6 If and when this Contract terminates (other than by the Completion Date arising) the Developer will within 10 working days of such termination remove any notice and/or restriction registered in respect of this Contract.
- 9. Owner's Property Obligation**
- 9.1 The Owner will not use the Property for any purpose or purposes other than those presently authorised or permitted under the Planning Acts and will not do anything that damages, contaminates or pollutes or is likely to damage, contaminate or pollute it or any land in its vicinity or which changes its character or condition or that of any adjacent or neighbouring land.
- 10. Owner's Planning Obligations**
- 10.1 During the currency of this Contract and until the Development has been completed, the Owner in its capacity as landowner will not itself or via any intermediary object do

anything or cause or procure or suffer the doing of anything which might prejudice the success of the Developer's endeavours in relation to any Local Plan, any Application, Appeal or Court Proceedings or the determination of any application for the approval of any Reserved Matter arising from or in connection with a Planning Permission or an Application or the Developer's endeavours to obtain any Requisite Consent or which diminishes the Owner's or Developer's capacity or ability to enter into a Planning Obligation or Works Agreement.

- 10.2 The Owner will not itself apply for a Planning Permission for the Development (other than the application for the Outline Planning Permission) or for any other Planning Permission or any application for approval of any Reserved Matter relating to the Property or any part of it or any nearby property or take any other action that is detrimental to or increases the cost of obtaining a Qualifying Planning Permission.
- 10.3 The Owner acknowledges that the Developer will be required to enter into Planning Obligation(s) in connection with the Qualifying Planning Permission in respect of the leasehold interest in the Property and that such Planning Obligation(s) will be binding on that leasehold interest.
- 10.4 As long as it retains any interest in the Property, the Owner will not infringe or breach the terms, conditions and limitations of any relevant Planning Permission or Planning Obligation.
- 10.5 If Planning Permission is granted for the Development, then the Owner will not, during the currency of this Contract, carry out any action on or in respect of the Property which is or might be a 'material operation' as defined by section 56(4) of the 1990 Act or might otherwise implement or initiate any development pursuant to section 56(1) of the 1990 Act.

## 11. **The Satisfaction Certificate**

If the determination of the Developer's planning application for Planning Permission results in the grant of a Planning Permission and the Developer acting reasonably considers such Planning Permission to constitute a Qualifying Planning Permission, then the Developer will serve notice on the Owner within 30 working days of the Grant Date confirming that the Planning Permission is a Qualifying Planning Permission provided always that the Developer shall not be entitled to specify that such Planning Permission is a Qualifying Planning Permission until the Club shall have confirmed in writing to the Developer that the Planning Permission is satisfactory in relation to a new golf course clubhouse, the New Golf Course Land and the Easement Land (a "Satisfaction Certificate").

## 12. **Obligations relating to the Development Documents and the Completion Documents**

- 12.1 The Developer and the Owner shall use reasonable endeavours to:
  - (a) agree those Development Documents and Completion Documents to which they are a party; and

- (b) execute those Development Documents and Completion Documents to which they are a party; and
- (c) release those Development Documents and Completion Documents to which they are a party provided that such release shall be made on the basis that completion of all Development Documents will take place simultaneously on the date referred to in clause 3.1 and completion of all the Completion Documents will take place simultaneously on the Completion Date.

### **13. Contract & Completion Date**

- 13.1 Subject to satisfaction of all of the Completion Pre-conditions, completion of the Completion Documents will take place on the Completion Date unless Court Proceedings are commenced before completion takes place.
- 13.2 If completion under clause 13.1 or 13.2 is delayed by Court Proceedings then if and when they are finally determined on terms that result in a Qualifying Planning Permission existing in law in a form that otherwise satisfies the provisions of this Contract, the 10th working day after they are finally determined.
- 13.3 If the Court Proceedings result in the Qualifying Planning Permission being quashed, modified or otherwise invalidated, the Developer may within 10 working days after the day on which such Court Proceedings were finally determined, elect (by written notice to the Owner to that effect) to proceed with the purchase and completion will take place 10 working days after service of such an election notice.

### **14. Extent of the Adopted Highway**

The Owner hereby confirms to the Developer that the adopted highway in Dartmouth Road and Bascombe Road abuts the boundary to the Property and that in the event that this is found not to be the case, the Owner agrees to enter into such deeds and documents as may be necessary in order to grant to the Developer rights of way at all times and for all purposes and rights for services for the benefit of the Property and each and every part of it over and across firstly such part of title number DN98987 and secondly any other intervening land which is within the ownership of the Owner but which in both cases are not comprised within the adopted highway.

### **15. Entire Contract etc.**

- 15.1 This Contract (together with the documents listed in the Second Schedule) contains the entire agreement between the parties and may only be varied or amended by a further written agreement that specifically refers to this Clause.
- 15.2 This Contract will not create a partnership between the parties.

### **16. Incorporation of documents**

The letters, undertakings and documents referred to in the Second Schedule (if any) are incorporated into and are part of this Contract.

17. **Insurance**

The Owner is under no obligation to the Developer to insure the Property.

18. **Contracts (Rights of Third Parties) Act 1999**

For the purposes of Sub-section 1(1)(b) of the Contracts (Rights of Third Parties) Act 1999, the parties hereto agree and declare that they do not intend any term of this Contract to be enforceable by any third party except to the extent that the third party has any right or remedy that exists or is available and is enforceable apart from that Act.

19. **Termination**

19.1 If the Satisfaction Date has not occurred by 5.00 p.m. on the day on which the Contract Period expires then either party may thereafter in writing rescind this Contract by written notice to that effect to the other (but not after the Satisfaction Date has occurred) which notice will be effective as soon as it has been given.

19.2 The Developer may terminate this Contract by written notice to the Owner to that effect, such notice to be effective as soon as it is given if and after it is advised by its professional advisers that either there is no reasonable or practical prospect of obtaining a Qualifying Planning Permission within the Contract Period or that the Development is unlikely to be economically or commercially viable.

19.3 Termination of this Contract under this Clause will not prejudice or affect any liability of one party to the other arising from any prior breach of this Contract.

20. **Default**

20.1 If the Developer fails to serve any notice or do any other thing within any period for performance stipulated by this Contract then it will not be in breach of this Contract unless and until the Owner has first served upon the Developer a notice particularising the Developer's default and the Developer has failed to remedy that default within a reasonable period.

20.2 For the avoidance of doubt, the service of a notice under clause 20.1 will not make time of the essence for remediation or performance of the default referred to in that notice.

21. **Jurisdiction**

This Contract is to be governed by and construed in accordance with English Law and the parties submit to the jurisdiction of the English courts.

22. **Deed**

This contract is a deed and has been executed as such.

23. **Council as Local Authority**

- 23.1 Nothing herein contained or implied shall prejudice or affect the Owner's rights powers duties and obligations as a Local Authority (including for the avoidance of doubt as local planning authority) and the rights powers obligations and duties of the Owner under all public and private statutes bye-laws orders and regulations may be as fully and effectively exercised in relation to the Property and any other land as if this agreement has not been executed by the Owner.
- 23.2 Nothing in this agreement is or amounts to or shall be construed as a Planning Permission

## **The First Schedule - The Property**

All that piece or parcel of freehold land, buildings, car park being part of the Churston Golf Course and registered at the Land Registry with absolute title being part of title number DN530280 ( Leasehold title DN479794) shown for the purposes of identification only edged red on the Plan

**The Second Schedule - Incorporated letters, undertakings and documents referred to in  
Clause 16**

[none]

**The Third Schedule-The Contract and Completion Pre-Conditions**

1. The Contract Pre-conditions will be satisfied by:
  - (a) Service of a Satisfaction Certificate; and
  - (b) the Development Documents having been executed by all parties and released for completion.
  
2. The Completion Pre-conditions will be satisfied by:
  - (a) the Contract Pre-conditions having been satisfied; and
  - (b) the Completion Documents having been executed by all parties and released for completion.

EXECUTED as a Deed by affixing )  
the COMMON SEAL of )  
THE COUNCIL OF THE BOROUGH OF TORBAY )  
in the presence of )

Proper Officer and Authorised Signatory

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