

**Appendix 2b to Report 267/2010**

DATED

2010

**THE COUNCIL OF THE  
BOROUGH OF TORBAY**

- and -

**BLOOR HOMES LIMITED**

LEASE

Of premises adjoining Churston Golf Club,  
Churston, Torbay, Devon

ELIZABETH RAIKES  
Chief Executive  
Town Hall  
TORQUAY

**THIS LEASE** is made the \_\_\_\_\_ day  
of \_\_\_\_\_ Two thousand and ten

**BETWEEN**

- (1) **THE COUNCIL OF THE BOROUGH OF TORBAY** of the Town Hall, Castle Circus, Torquay, TQ1 3DR (hereinafter called "the Landlord") of the one part and
- (2) **BLOOR HOMES LIMITED** (Company Number 02162561) whose registered office is at Ashby Road, Measham, Derbyshire, DE12 7JP ("the Tenant") of the other part

**NOW THIS DEED WITNESSES** as follows:

**1. DEFINITIONS AND INTERPRETATION**

In this Lease:-

- 1.0 "the DCC Transfer" means the conveyance dated the 5th day of December 1979 and made between the Landlord of the one part and Devon County Council of the other part
- 1.1 "the Plan" means the plan annexed to this Lease
- 1.2 "the Premises" means all those pieces or parcels of land situate in the Parish of Churston Ferrers in the Borough of Torbay together with the buildings erected thereon ALL WHICH premises are for the purposes of identification only delineated on the Plan and thereon edged red
- 1.3 "the Term" means from and including \_\_\_\_\_ 2010 to and including 31 March 3002
- 1.4 "the Rent" means

- 1.4.1 One Pound per annum payable on the 1<sup>st</sup> day of April in each year on demand as hereafter provided;
- 1.4.2. ONE MILLION POUNDS (£1,000,000) on or before the third anniversary of the date hereof; and
- 1.4.3 Interest at 2% above Bank of England Base Rate (as amended from time to time) calculated on the sum set out in clause 1.4.2 from the date hereof until the date on which the sum set out in clause 1.4.2 becomes due (and thereafter at the Interest Rate).
- 1.5 "the Premium" means the sum of ONE MILLION POUNDS (£1,000,000.00) payable on the date hereof;
- 1.6 "the Surveyor" means any person or firm appointed by the parties hereto or in default of agreement and on the application of either party by the President for the time being of the Devon and Exeter Incorporated Law Society or the Court to perform any of the functions of a surveyor under this Lease
- 1.7 "Pipes" means all pipes sewers drains mains ducts conduits gutters watercourses wires cables flues and all other conducting media and includes any fixings and other ancillary equipment
- 1.8 "Neighbouring Property" means any neighbouring or adjoining land or premises in which the Landlord has a Freehold or Leasehold interest or in which during the Term the Landlord shall acquire a Freehold or Leasehold interest
- 1.9 'the Planning Acts' means the Town and Country Planning Act 1990 and all statutes regulations and orders included by virtue of the

following clause

- 1.10 Any references to a specific statute include any statutory extension or modification amendment or re-enactment of such statute and any regulations or orders made under such statute or statutes
- 1.11 “Development” has the same meaning given by the Town & Country Planning Act 1990 Section 55
- 1.12 “Permitted User” means the use of the Premises for residential use (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;
- 1.13 “Interest” means during the period from the date on which payment is due to the date of payment both before and after any judgment at the Interest Rate then prevailing or should the base rate referred to cease to exist such other rate of interest as is most closely comparable with the Interest Rate to be agreed between the parties
- 1.14 “Interest Rate” means 4% per year above the base lending rate of National Westminster Bank PLC or such other bank as the Landlord may from time to time nominate in writing
- 1.15 “the Farm Tenancy Agreement” shall mean a Tenancy Agreement dated the 11<sup>th</sup> day of May 1957 and made between Baron Churston of the one part and S J Fish and D Fish of the other part (so far as the same is still subsisting and capable of affecting the premises or any part thereof)
- 1.16 “Consent of the Landlord” or words to similar effect means a consent in writing signed by or on behalf of the Landlord and

“approved” or “authorised” or words to similar effect mean (as the case may be) approved or authorised in writing by or on behalf of the Landlord

- 1.17 The expression “the Landlord” includes the person for the time being entitled to the reversion immediately expectant on the determination of the Term
- 1.18 The expression “the Tenant” includes the Tenant’s successors in title
- 1.19 Where the Landlord or the Tenant for the time being comprises two or more persons obligations expressed or implied to be made by or with such party are deemed to be by or with such persons jointly and severally
- 1.20 Words importing one gender shall be construed as importing any other gender
- 1.21 Words importing the singular shall be construed as importing the plural and vice versa
- 1.22 References to any right of the Landlord to have access to the Premises shall be construed as extending to all persons authorised by the Landlord (including agents professional advisers contractors workmen and others)
- 1.23 Any covenant by the Tenant not to do an act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person
- 1.24 References to any clause sub-clause or schedule without further designation shall be construed as a reference to the clause sub-

clause or schedule to this Lease so numbered

- 1.25 The clause paragraphs and schedule headings do not form part of this lease and shall not be taken into account in its construction or interpretation

## **2. DEMISE**

In consideration of the Premium paid by the Tenant to the Landlord (receipt of which the Landlord acknowledges) and of the rent reserved in this Lease the Landlord with full title guarantee demises to the Tenant the Premises EXCEPTING AND RESERVING to the Landlord the rights specified in part two of the Schedule TO HOLD the Premises to the Tenant for the Term subject to the matters referred to in part One of the Schedule and to all rights easements privileges restrictions covenants and stipulations of whatever nature affecting the Premises YIELDING AND PAYING to the Landlord the Rent payable in advance without any deduction on the 1<sup>st</sup> day of April in each year

## **3. THE TENANT'S COVENANTS**

The Tenant covenants with the Landlord:-

- 3.1 To pay to the Landlord the Rent (where demanded) on the days and in the manner set out in this Lease
- 3.3 To pay to the Landlord all costs fees charges disbursements and expenses (including without prejudice to the generality of the above those incurred in respect of advice or services by counsel solicitors surveyors bailiffs) properly and reasonably incurred by the Landlord in relation to or incidental to:-
- 3.3.1 every application made by the Tenant for a consent or

licence required by the provisions of this Lease save where such consent or licence is unreasonably withheld or refused

3.3.3 the recovery or attempted recovery of any sum due from the Tenant

3.4 to pay interest at the Interest Rate on any of the above payments in manner hereinafter stipulated

3.5 if so required in writing by the Landlord to make such payments by Banker's Order or Credit Transfer to any bank and account that the Landlord may from time to time nominate in writing

3.6 Aviation

Not to use the premises or any part of the premises for any aviation purpose and in particular not to permit any aircraft or helicopter to land on or take off from the Premises nor to permit any unreasonable helicopter or aviation noise

3.7 Outgoings and VAT

To pay and indemnify the Landlord against:-

3.7.1 All rates taxes assessments duties charges impositions and outgoings which are now or during the Term shall be charged assessed or imposed upon the Premises or upon the owner or occupier of them

3.7.2 VAT (or any tax of a similar nature that may be substituted for it or levied in addition to it) chargeable in respect of any payment made by the Tenant under any of the terms of or in connection with this Lease or in

respect of any payment made by the Landlord where the Tenant agrees in this Lease to reimburse the Landlord for such payment

3.8 Electricity Gas and other services consumed

To pay to the suppliers of and to indemnify the Landlord against all charges for electricity gas and other services consumed or used at or in relation to the Premises including meter rents

3.9 Repair cleaning decoration, etc

3.9.1 Where the use of the Pipes boundary structures or other things is common to the Premises and other property to be responsible for and to indemnify the Landlord against all sums due from and to undertake all work that is the responsibility of the owner lessee or occupier of the Premises in relation to those Pipes or other things

3.10 Waste and Alterations

Not to knowingly:-

- 3.10.1 commit any waste
- 3.10.2 make any alteration to the Premises except alterations in connection with the development of the facilities detailed in the Permitted User
- 3.10.3 make any new connection with the Pipes that serve the Premises otherwise than in accordance with plans and specifications notified to the Landlord subject to the consent to make such connection having previously been obtained from the competent statutory authority or



undertaker

3.11 Statutory Obligations

- 3.11.1 At the Tenant's own expense to execute all works and provide and maintain all arrangements upon or in respect of the Premises or the use to which the Premises are being put that are required in order to comply with the requirements of any statute regulation order or bye law (already or in the future to be passed) or of any government department local authority other public or competent authority or court of competent jurisdiction regardless of whether such requirements are imposed on a landlord a tenant or the occupier
- 3.11.2 Without prejudice to the generality of the above to comply in all respects with the provisions of all statutes regulations orders or bye laws from time to time applicable to the Premises or in regard to the carrying of the Permitted User
- 3.11.3 Upon receipt of any notice order requisition direction or other thing from a competent authority affecting or likely to affect the Premises to deliver as soon as possible (but in any event within 14 days of receipt) a copy to the Landlord and at the cost of the Landlord to make or join with the Landlord in making such objection or representation against or in respect of any notice order requisition direction or other thing as the Landlord may

deem expedient save where such action does not prejudice the Permitted User of the Tenant.

3.12 User

3.12.1 To the effect that this covenant shall be a condition to the continuance of the Lease to use the Premises for the Permitted User and not to use the Premises for any other use or such other use that may be permitted under a lawfully granted planning permission.

3.12.2 On the termination of the Term whether prematurely or not to do all acts and things which may be requisite to transfer all licences relating to the Premises to the landlord or to its nominees or to any succeeding tenant of the Premises

3.12.3 Not to use the Premises for any dangerous, noxious or offensive trade business manufacture or occupation

3.13 Alienation

Not to assign or underlet part or the whole of the Premises other than to an assignee or under tenant who shall first execute a deed in favour of the Landlord containing a covenant to observe and perform the terms of this Lease

3.14 Nuisance

Not to do or allow to remain upon the Premises anything which may be or become a nuisance or may cause damage to the Landlord or its tenants or the owners or occupiers of adjacent or neighbouring premises PROVIDED that the redevelopment and

use of the Premises for the Permitted User shall not constitute a nuisance for the purposes of this clause

3.15 The Planning Acts

3.15.1 Not to knowingly commit any breach of planning control (such term to be construed as it is used in the Planning Acts) and to comply with the provisions and requirements of the Planning Acts that affect the Premises whether as to the Permitted User or otherwise and to indemnify (both during or following the expiry of the Term in the event of any subsisting breach) and keep the Landlord indemnified against all liabilities whatsoever including costs and expenses in respect of any contravention

3.15.2 At the expense of the Tenant to obtain all planning permissions and to serve all such notices as may be required for the carrying out of any operations or user on the Premises which may constitute Development

3.15.3 Not to carry out or make any alteration or addition to the Premises or any change of use until:-

3.15.3.1 all necessary notices under the Planning Acts have been served

3.15.3.2 all necessary permissions under the Planning Acts have been obtained and will be fully complied with and the Landlord has acknowledged that every necessary planning permission is acceptable to it as lessor such

acknowledgement not to be unreasonably withheld

3.16 Plans Documents and Information

If called upon to do so to produce to the Landlord all plans documents and other evidence as the Landlord may reasonably require in order to satisfy itself that the provisions of this Lease have been complied with

3.17 Indemnities

3.17.1 The Tenant will fully and effectively indemnify the Landlord and any servant or agent of the Landlord against all liabilities claims actions proceedings demands costs charges or expenses which may be incurred by or made against the Landlord and/or any servant or agent of the Landlord in respect of sickness or personal injury (including injury resulting in death) or loss or damage to nay property by reason of or in any way connection with this Lease other than those arising from the negligence of the Landlord its servants or agents

3.17.2 The Tenant will use its best endeavours to effect and maintain throughout the term of the Lease with an insurance company or companies of repute a policy or policies of insurance covering all the matters which are the subject of the indemnities and undertakings herein. The minimum level of insurance cover shall be £5,000,000.00 in respect of any claim or series of claims

arising out of any one event but it remains the responsibility of the Tenant having taken independent professional advice to determine the appropriate level of cover having regard to the nature of its business and the perceived level of risk and the Tenant shall annually review the adequacy of the level of cover and shall not more than once in each year produce to the Landlord on written request evidence that the insurance cover referred to above is valid and in force

3.17.3 The Tenant shall indemnify the Landlord against any breach or non-observance of the covenants conditions or other provisions of this Lease or any matters to which this demise is subject

3.18 Encroachment

To take all necessary steps to prevent any encroachment upon the Premises or the acquisition of any new right to light passage drainage or other easement over upon or under the Premises and to give immediate notice to the Landlord of any threatened encroachment or attempt to acquire such easement

3.19 Yield Up

At the expiry of the Term to yield up the Premises in accordance with the terms of this Lease

3.20 Interest on Arrears

3.20.1 If the Tenant shall fail to pay the rents or any other sums due under this Lease within 30 days of the date due

whether formally demanded or not the Tenant shall pay to the Landlord Interest on the rents or other sums from the date when they were due to the date on which they were paid whether before or after any judgment and such Interest shall be deemed to be rent due to the Landlord

3.20.2 Nothing in the preceding sub-clause shall entitle the Tenant to withhold or delay any payment of the rents or any other sum due under this Lease after the date on which they fall due nor shall it in any way prejudice affect or derogate from the rights of the Landlord in relation to such non-payment including (without prejudice to the generality of the above) under the proviso for re-entry contained in this Lease

3.21 Statutory Powers

Nothing contained in this Lease shall in any way prejudice or be construed to prejudice the statutory rights powers duties and authority conferred upon the Landlord as local authority

3.22 Landlord's Costs on Grant

To pay the Landlord's costs in the preparation and completion of this Lease in the sum of [£5,000.00]

3.23 Compliance with Obligations

To the effect that this covenant shall be a condition to the continuance of the Lease. To observe and perform all obligations and covenants on the part of the Landlord or its predecessors in title contained in

- 3.23.1 the Farm Tenancy Agreement
- 3.23.2 the DCC Transfer
- 3.23.3 the Conveyance dated the 20th day of December 1972 and made between Churston Golf Club Limited (1) Michael Fitzgerald Rawlence and others (2) Woodcote (Guernsey) Investment Company (3) the Borough of Torbay (4) save for the covenants contained in clause 5 of the said Conveyance

as far as they shall still be subsisting and capable of affecting and affect the Premises and to indemnify the Landlord against any breach or non-observance thereof

- 3.24 Not to carry out or permit anything to be done upon the land coloured pink hatched red and the blue hatched land on the plan annexed to the DCC Transfer which would in any way alter affect or interfere with the support of the adjoining highways or the highway improvements carried out there

**4. QUIET ENJOYMENT**

The Landlord covenants with the Tenant that the Tenant may enjoy the Premises peaceably during the Term without any interruption by the Landlord or any person lawfully claiming under or in trust for the Landlord

**5. PROVISOS**

**5.1 Fitness of Premises**

Nothing in this Lease or any consent granted by the Landlord under this Lease shall imply or warrant that the Premises or any of the

buildings thereon may be lawfully used under the Planning Acts or are sufficient or are fit for the Permitted User or such other user as may be authorised in accordance with the terms of this Lease nor does anything in this Lease imply or warrant that the land or any part thereof complies with or is subject to any particular assumed or specific conditions

5.2 Compensation

All right of the Tenant for compensation for alterations or improvements to the Premises or to claim compensation from the Landlord on vacating the Premises shall be excluded so far as the law allows

5.3 Service of Notices

The provisions of the Law of Property Act 1925 Section 196 as amended by Recorded Delivery Services Act 1962 shall apply to the giving and service of all notices and documents under or in connection with this Lease except that in Section 196 the final words of Section 194 (4) "and that service...be delivered" shall be deleted and there shall be substituted "and that service shall be deemed to be made on the third working day after the registered letter has been posted; and any notice or document shall also be sufficiently served on a party if served on solicitors who have acted for that party in relation to this Lease or the Premises at any time within the year preceding the service of the notice of document and any notice or document shall also be sufficiently served if sent by telephone facsimile transmission to the party to be served (or to



solicitors who have acted for that party in relation to this Lease or the Premises at any time within the year preceding the service of the notice or document (and that service shall be deemed to be made on the day of transmission if transmitted before 4.00 p.m. on a working day but otherwise on the next “working day” means any day from Monday to Friday (inclusive) other than Christmas Day Good Friday and any statutory Bank Holiday”

5.4 Rights of Third Parties

The parties do not intend any clauses of this Lease to confer any right on or to be enforceable by any third party under the provisions of the Contracts (Rights of Third Parties) Act 1999 or any similar or amending legislation

5.5 Landlord as Local Authority

5.5.1 Nothing herein contained or implied shall prejudice or affect the Landlord’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 Landlord 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 Landlord.

5.5.2 Nothing in this agreement is or amounts to or shall be construed as a Planning Permission.

**6 FORFEITURE**

6.1 The Landlord may re-enter the Property (or any part thereof) at any

time after any of the following occurs:

6.1.1. if that part of the Rent referred to in clause 1.4.2 (together with the sum referred to in clause 1.4.3 (if applicable)) is unpaid 30 days after becoming payable whether formally demanded or not

6.1.2 any breach of any condition, or breach of covenant on the part of the Tenant, in this lease

save that the Landlord will not re-enter under this clause 6.1 without first notifying any lender or guarantor and giving them reasonable time to rectify the breach

6.2 If the Landlord re-enters the Property (or any part thereof) pursuant to clause 6.1, this lease shall immediately end, but without prejudice to any right or remedy of the Landlord in respect of any breach of covenant by the Tenant or any guarantor.

IN WITNESS whereof this Deed has been executed the day and year first above written

## **THE FIRST SCHEDULE**

### **PART I**

Matters to which this Lease is subject

1. The exceptions and reservations and covenants contained in a Conveyance dated the 20<sup>th</sup> day of December 1972 and made between Churston Golf Club Limited (1) Michael Fitzgerald Rawlence and others (2) Woodcote (Guernsey) Investment Company (3) the Borough of Torbay (4) (save for the covenants contained in clause 5 of the said Conveyance) as far as the same shall still be subsisting and capable of affecting and affect the Premises
2. The Farm Tenancy Agreement so far as the same is still subsisting and capable of affecting and affects fields OS Numbers 4957 6265 and 8075
3. The Rights and Covenants and other matters contained in the DCC Transfer
4. All other matters referred to in the Landlord's Title

## PART II

### Rights Reserved

1. The right at any time during the Term and upon reasonable notice (except in cases of emergency) to enter or (in case of emergency) to break and enter the premises to exercise any of the rights granted to the Landlord elsewhere in this Lease
2. Full uninterrupted right of passage and running of water soil gas and electricity from all neighbouring lands and premises of the landlord through all sewers drains channels pipes conduits or cables laid in on over or under the Premises
3. The right at any time during the term and upon reasonable notice (except in cases of emergency) to enter (or in the case of emergency) to break and enter onto such part of the Premises as is not built upon for the purpose of:
  - 3.1 cleansing repairing and maintaining altering removing or renewing any such sewers drains channels pipes conduits and cables or for the purpose of laying or installing such additional sewers drains channels pipes conduits and cables in such positions and to such specification as the Landlord may require
  - 3.2 cleansing redecorating repairing maintaining altering removing renewing or rebuilding any other premises belonging to the Landlord or repairing or restoring the support shelter and protection to which any other part of

the Landlord's adjoining or neighbouring lands and premises is entitled

3.3 repairing maintaining and reinstating the coastal footpath shown coloured yellow on the Plan

3.4 discharging any of its functions and/or duties as Local Authority for the area in which the Premises are situated

4. The right at any time during the term and upon reasonable notice (except in cases of emergency) to enter (or in the case of emergency) to break and enter onto the land

4.1 coloured blue hatched blue on the plan annexed to the DCC Transfer in order to:

(i) construct use re-lay repair renew maintain and inspect a drainage soakaway with manhole in the blue hatched land

(ii) break up the surface of the blue hatched land in which the soakaway and manhole is laid so far as may be necessary from time to time for the purpose of constructing re-laying repairing renewing maintaining and inspecting the same

4.2 coloured pink hatched red on the plan annexed to the DCC Transfer in order to:-

(i) construct use repair renew maintain and inspect the earthworks and other works carried out thereon in connection with the improvement and support of the adjoining highways known as Dartmouth Road

and Bridge Road at Churston in the County of Devon

(ii) construct use repair renew maintain and inspect the drain or pipe to be laid in the approximate position shown on the said plan by a brown line

(iii) break up and alter the surface of the land

4.3 coloured blue on the plan annexed to the DCC Transfer to construct use re-lay repair renew maintain and inspect the adjoining public highway and the wall supporting the same

PROVIDED ALWAYS that all such works referred to in this schedule shall be carried out as expeditiously as possible and with as little inconvenience to the tenant as possible and the Landlord shall immediately make good any damage caused to the Premises

THE COMMON SEAL of THE COUNCIL )  
OF THE BOROUGH OF TORBAY was )  
hereunto affixed in the presence of:- )

Proper Officer and  
Authorised Signatory

EXECUTED as a DEED by )  
BLOOR HOMES LIMITED )  
Acting by:- )

Director:-

Director/Company Secretary:-