

Planning Application Reference:	BE/47/09/
Document Type:	Unilateral undertaking
Date of Agreement:	23/12/09

NB: Text in bold to be included in free text field.

Guidelines for Blocking

Check thoroughly for **names with addresses** and block.

Check **maps** for signatures and block.

Check throughout for **signatures** and block.

Please return original to Hazel Aldington

**Unilateral Undertaking pursuant to Section 106 of the Town
and Country Planning Act 1990 relating to land at
Chalcroft Nurseries, Chalcroft Lane North Bersted Bognor
Regis West Sussex PO21 5TS**

Dated *23rd December* 2009

**Orchard Enterprises (Southern) Limited
(Applicant)**

**Chalcroft Associates LLP and Others
(Landowner)**

**HSBC Bank PLC
(Bank)**

given to

Arun District Council and West Sussex County Council

**Staffurth & Bray
Solicitors
York Road Chambers
Bognor Regis
West Sussex
PO21 1LT**

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This Undertaking is

Dated *23rd December 2009* and

Given by

- (1) **Orchard Enterprises (Southern) Limited** (the **Applicant**)
registered in England with number 3010021
whose registered office is at The Orchard Temple Lane East Meon Hampshire GU32 1PZ
- (2) The **Landowner** as defined in Schedule 4
- (3) The **Bank** as defined in Schedule 4

To

- (4) **Arun District Council** of Arun Civic Centre Maltravers Road Littlehampton West Sussex BN17 5HF (the **District**) and
- (5) **West Sussex County Council** of County Hall West Street Chichester West Sussex PO19 1RQ (the **County**)

Recitals

- A The District is the local planning authority for the purposes of Section 106 of the Act for the area within which the Application Site is situated.
- B The County is the education authority and is responsible for library and fire infrastructure.
- C The Landowner [is] [are] (Note 6) registered as the freehold owner of the Application Site with title absolute at HM Land Registry under title numbers WSX318871, WSX32009 and WSX89589
- D The Application for Planning Permission has been made by the Applicant to the District to develop the Application Site and the District refused Planning Permission on 12th August 2009
- E The Applicant has appealed to the Secretary of State pursuant to Section 78 of the Act against refusal of Planning Permission under reference number APP/C3810/A/09/2112065
- F The Parties have agreed that the provisions herein contained should have effect upon grant of Planning Permission by the Secretary of State pursuant to the Appeal

It is agreed:

1 Definitions and Interpretation

1.1 In this Deed the following expressions shall apply:

Act means the Town and Country Planning Act 1990 (as amended).

Application for Planning Permission means the application submitted by the Applicant under reference BE/47/09 seeking permission for development on the Application Site as described in Schedule 5

Application Site means the site the subject of the Application for Planning Permission more particularly described in Schedule 1 of this Deed.

Commercial Buildings means any commercial units or floor space which the Applicant intends to build or construct on the Application Site.

Development means the development the subject of the Application for Planning Permission.

Dwellings means any residential units which the Applicant intends to build on the Application Site.

Contributions mean the Education Contribution, Library Contribution and Fire Service Contribution defined in Schedule 3.

First Occupation means the occupation of any dwelling erected pursuant to the Planning Permission or any part thereof save for the purposes of construction or fitting out or decoration or occupation for marketing or display or occupation in relation to security operations

Parties means (1) the Applicant and (2) the Landowner

Plan means the plan annexed at Schedule 2.

Planning Permission means a planning permission for the Development granted pursuant to the Application for Planning Permission on appeal or any variations or renewals thereof from time to time

- 1.2 Where the context so admits words importing the singular number shall include the plural number and vice versa.
- 1.3 Where the Parties comprise more than one person or body or where the Parties comprise one person or body but more than one person or body becomes the successor in title or otherwise derives title under that person or body of the whole or any part of the Application Site the planning obligations hereunder shall be enforceable against them jointly and severally.

2 Statutory Authorities and Liabilities

- 2.1 The obligations contained in Clause 4 and Schedule 3 of this Deed are planning obligations for the purposes of Section 106 of the Act and are enforceable by the District and the County as appropriate.
- 2.2 The obligations contained in Clause 4 and Schedule 3 of this Deed are entered into by the Parties with the intention that these provisions should bind its or their interests in the freehold of the Application Site as provided by Section 106 of the Act.
- 2.3 The covenants in this Deed shall be binding on the Parties and their successors in title to the Application Site.
- 2.4 The Bank consents to the Landowner entering into this Agreement and acknowledges that this Deed is binding on the Application Site. The Bank shall only be liable for any breach of this Deed if it has itself caused the breach whilst mortgagee in possession and it shall not be liable for any pre-existing breach. For the avoidance of doubt, the Bank shall have no liability after it has discharged its security over the Application Site or has disposed of the said Application Site whether by sale or otherwise.
- 2.5 This Deed is only applicable to the relevant part of the Application Site which is subject to the Bank's security (in so far as the Deed relates to the Bank).

3 Conditionality

- 3.1 The obligations contained in Clause 4 and Schedule 3 of this Deed will not have effect unless the Planning Permission has been granted; but:
- 3.2 If the Planning Permission shall expire prior to the First Occupation or shall at any time be revoked or modified without agreement this Deed shall forthwith determine and cease to have effect.

- 3.3 If the Planning Permission is quashed before the First Occupation then this Deed shall absolutely determine and become null and void but without prejudice to the rights of any party (including in this instance the District and the County or either of them) against the other or others.

4 Planning Obligations

- 4.1 The Applicant and the Landowner accept the restrictions and requirements in this Clause and:
- 4.1.1 will comply with the planning obligations set out herein and in Schedule 3 of this Deed; and
- 4.1.2 will serve a written notice in the form of that contained in the Schedule 6 upon the District and the County fourteen (14) days in advance of the First Occupation; and
- 4.1.3 confirm that no person other than the Landowner holds an interest of ownership in the Application Site.

5 Interest and Statements of Account

- 5.1 Without prejudice to any other right remedy or power herein contained or otherwise available to the District or County if any payment of any sum referred to herein shall have become due but shall remain unpaid for a period exceeding thirty (30) days the Parties shall pay on demand to the District or the County interest thereon at the rate of four per centum (4%) per centum per annum above the Bank of England Base Rate from the date when the same became due until payment thereof.

6 Obligations after Disposal of Whole or Part

- 6.1 The Parties shall cease to have any obligation or liability under the terms of this Deed in relation to the Application Site or any part thereof once it or they shall have parted with all its or their interest in the Application Site or that part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.
- 6.2 Subject to Clause 6.3, notwithstanding the foregoing sub-clause the obligations under this Deed shall not be enforceable against the persons who purchase (including purchasers of long leases) for their own occupation by themselves or their lessees tenants or others individual Dwellings or Commercial Buildings erected or to be erected on the Application Site nor against any statutory undertaker or public authority which acquires any part of the Application Site or an interest in it for the purposes of its statutory undertaking or functions (other than housing functions) only.
- 6.3 If the Applicant or Landowner permits the occupation of any Dwellings or any part of any Commercial Buildings in circumstances that would be a breach of the obligation in Schedule 3 of this Deed and such obligation shall not be enforceable against the purchaser then, on notice from the Council, all further development on the Application Site shall cease until the breaches have been remedied to the satisfaction of the District and County

7 Notices

- 7.1 Any notice to be given hereunder shall be in writing and shall either be delivered personally or sent by first class pre paid post. The addresses for service on the Applicant, the Landowner, and the District and County shall be those stated in this Deed or such other address in England and Wales for service as the party to be served may have previously notified in writing.
- 7.2 Each notice served in accordance with sub-clause 7.1 hereof shall be deemed to have been given or made and delivered if by personal delivery when left at the relevant address or if by letter forty eight (48) hours after posting.

8 VAT

- 8.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any VAT properly payable.
- 8.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Deed then to the extent that VAT has not been charged in respect of that supply the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly.

9 General

- 9.1 The headings appearing in this Deed are for ease of reference only and shall not affect the construction of this Deed.
- 9.2 For the avoidance of doubt the provisions of this Deed (other than those contained in this sub-clause) shall not have any effect until this document has been dated.
- 9.3 Any undertaking in this Deed by which the relevant Parties are not to do an act shall be construed as if it were a covenant not to do or permit or suffer to be done such act.
- 9.4 Any undertaking contained herein whereby the relevant Parties are not to omit to do an act or thing shall be construed as if it were a covenant not to omit or permit or suffer to be omitted such act.
- 9.5 References to statutes by-laws regulations orders and delegated legislation shall include any statute by-law regulation order or delegated legislation re-enacting or made pursuant to the same.
- 9.6 References to the Landowner and the Applicant include references to their successors in title as owners of the Application Site or any part thereof and this Deed shall bind such successors in title of the Application Site or any part thereof.

10 Local Land Charges

This Deed is a Local Land Charge and shall be registered as such by the District in the Local Land Charges Register provided that if the Planning Permission expires unimplemented, or is revoked, or if all obligations under this Deed have been discharged then the registered charge shall be treated as having ceased to have effect under rule 8 of the Local Land Charges Rules 1977 or any statutory re-enactment thereof and the registration shall be cancelled.

11 Contracts (Rights of Third Parties) Act 1999

The Parties do not intend that the provisions of this Deed shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not party to this Deed.

12 Costs

The Landowner will on completion of this Deed pay the reasonable legal costs of the County and the District in preparing and completing this Deed

Executed as a deed and delivered on the date appearing at the beginning of this Deed

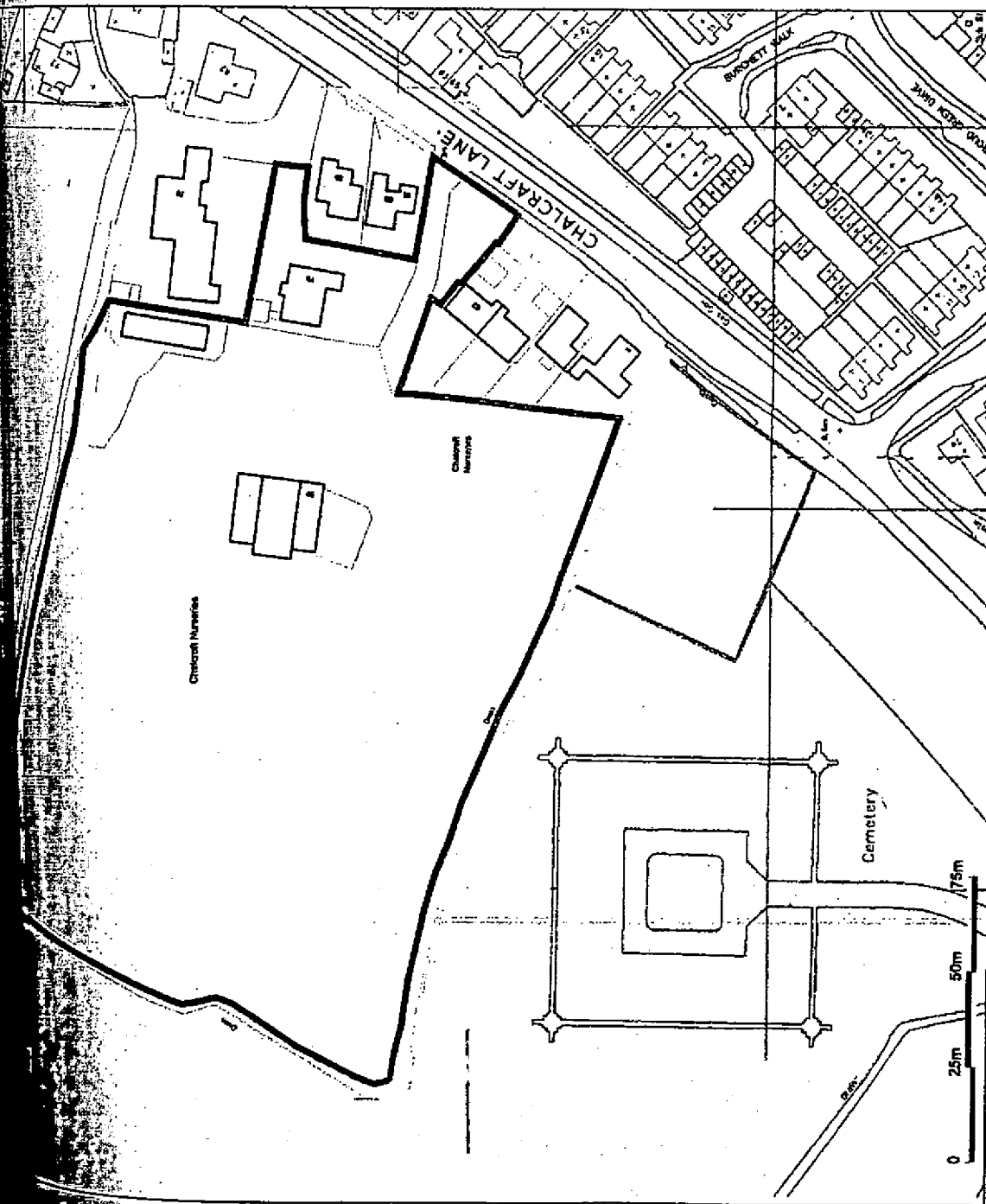
Schedule 1 – The Application Site

All that piece or parcel of land at Chalcroft Nurseries Chalcraft Lane North Bersted Bognor Regis West Sussex PO21 5TS outlined in red for identification purposes only on the Plan being land over which the Application for Planning Permission has been made.

Schedule 2 – The Plan

As attached

Please See Original S106 Agreement for
Map Detail



PO BOX 3924
Sheffield
S1 9BD

Manager

OUTLINE APPLICATION FOR THE DEMOLITION OF ALL EXISTING BUILDINGS AND REDEVELOPMENT OF THE SITE WITH UP TO 70 DWELLINGS, PUBLIC OPEN SPACE AND STRATEGIC LANDSCAPING, CHALCROFT NURSERIES SITE, CHALCRAFT LANE, BOGNOR REGIS for Orchard Enterprises (Southern) Ltd

DRG NO 28.2008.01 SCALE 1:1250 @ A3 DATE MAY 2009

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PLANNING & PROPERTY CONSULTANTS LTD
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Tel: 01243 784671 or 01243 784672 and 0800 700 000
Company Reg No: 02240223 VAT Reg No: 812 7518 11

Schedule 3 – Planning Obligations

IN FAVOUR OF THE COUNTY

Part I

1 The Parties covenant with the District and the County so as to bind the Application Site to pay the Contributions to the County on or prior to the First Occupation.

2 The Contributions consist of the Education Contribution as defined in Part II of this Schedule, the Library Contribution as defined in Part III of this Schedule and the Fire Service Contribution as defined in Part IV of this Schedule.

3 The following criteria are used to produce the assumed occupancy rates where applicable to the formula set out in this schedule.

Houses/Bungalows Dwelling Size	Assumed Occupancy
1 bedroom =	1.7 persons
2 bedrooms =	1.8 persons
3 bedrooms =	2.2 persons
4 bedrooms =	2.7 persons
5 bedrooms =	3.0 persons
Flats/Maisonettes Dwelling Size	Assumed Occupancy
1 bedroom =	1.2 persons
2 bedrooms =	1.3 persons
3 bedrooms =	1.7 persons
4 bedrooms =	2.4 persons
5 bedrooms =	2.0 persons

Part II

The Education Contribution for the purposes of the County to use towards the provision of primary, secondary and further secondary school places within the catchment area of the Application Site

DfCSF Figure x ACP = Total Education contribution where:

The DfCSF Figure = Department for Children, Schools and Families (DfCSF) school building costs per pupil place as adjusted for the West Sussex area applicable at the date when the School Infrastructure Contribution is paid (which currently for the financial year 2009/2010 are – Primary £13,115, Secondary £19,762, Further Secondary £21,432), updated as necessary by the Royal Institute of Chartered Surveyors Building Cost Information Service All-In Tender Price Index.

x = multiplied by and

ACP (Additional Child Product) = The estimated additional number of school age children likely to be generated by the development calculated by reference to the net increase in the number of dwellings (less any Social rented affordable dwellings) as approved by a subsequent reserved matters planning application and the estimated population of the development based on the assumed occupancy rates.

The ACP is calculated on the assumptions that there are 14 persons per 1000 population in each school year group for houses and 5 persons per 1000 population in each school year group for flats. There are 7 year groups for primary (years R to 6) and 5 for secondary (years 7 to 11). For Sixth

Form, a factor of 0.54 is applied to the Child Product figure as this is the average percentage of year 11 school leavers who continue into Sixth Form colleges in West Sussex.

Part III

The Library Contribution for the purposes of the County to use towards the provision of library infrastructure that will reasonably serve the needs of the occupiers of the Application Site

$L \times AP$ = Libraries Infrastructure Contribution where:

L = Extra library space in sq.m. per 1,000 population x the library cost multiplier (which currently for the financial year 2009/2010 are 30sq.m and £3,620 per sq.m respectively) updated as necessary by the Royal Institute of Chartered Surveyors Building Cost Information Service All-In Tender Price Index.

x = multiplied by and

AP (Additional persons) = The estimated additional number of persons likely to be generated by the development calculated by reference to the net increase in the number of dwellings (less any Social rented affordable dwellings) as approved by a subsequent reserved matters planning application and the estimated population of the development based on the assumed occupancy rates.

Part IV

The Fire Service Contribution for the purposes of the County to use towards the cost of improvements to fire and rescue infrastructure serving the area in which the Application Site is located

$Y \times (Z / M)$ = Fire and Rescue Infrastructure Contribution where:

Y = The estimated population increase calculated by reference to the net number of dwellings (less any Social rented affordable dwellings) as approved by a subsequent reserved matters planning application and the estimated population of the development based on the assumed occupancy rates.

x = multiplied by

Z = the estimated costs of providing additional Fire and Rescue Infrastructure in the Southern Service Division of West Sussex at the time of payment (which, for information, for 2007/2008 was £5,530,000)

/ = divided by and

M = the projected population of the Fire and Rescue Service Southern Service Division of West Sussex in 2016 at the time of payment (which, for information, for the 2007/2008 financial year was 429,647)

IN FAVOUR OF THE DISTRICT

FOR AFFORDABLE HOUSING

Contributions

In this schedule

Affordable housing is:

'Affordable housing includes social rented and intermediate housing, provided to specified eligible households whose needs are not met by the market. The Affordable housing should:

- Meet the needs of eligible households including availability at a cost low enough for them to afford, determined with regard to local incomes and local house prices.
- Include provision for the home to remain at an affordable price for future eligible households or, if these restrictions are lifted, for the subsidy to be recycled for alternatively affordable housing provision'.

Social rented housing is:

'Rented housing owned and managed by local authorities and registered social landlords, for which guideline target rents are determined through the national rent regime. The proposals set out in the Three Year Review of Rent Restructuring (July 2004) were implemented as policy in April 2006. It may also include rented housing owned or managed by other persons and provided under equivalent rental arrangements to the above, as agreed with the local authority or with the Housing Corporation as a condition of grant'.

Intermediate affordable housing is:

'Housing at prices and rents above those of social rent, but below market price or rents, and which meet the criteria set out above. These can include shared equity products (e.g. HomeBuy), other low cost homes for sale and intermediate rent'.

- 1.2 "Market Housing Units" means Residential Units within the Development which are not Affordable Housing as defined at 1.1.
- 1.3 "Eligible Households" means households who are unable to resolve their housing needs at a cost low enough for them to afford determined with regard to local incomes and local house prices.
- 1.4 "Affordable housing providers" means any provider of social rented and/or Intermediate affordable Housing which meets the definitions given at 1.
- 1.5 "Reserved Matters" means any matter reserved for later approval by virtue of a condition imposed on planning permission for the Development granted pursuant to the Application for Planning Permission on appeal or any variations or renewals thereof from time to time.

2. Obligations

- 2.1 To make provision for 40% of the dwellings within the development to be affordable housing of which 80% shall be social rented and 20% intermediate affordable housing.
- 2.2 To provide the district council with a plan detailing the type and location on the site of the affordable housing provision to be made at the same time as providing details to discharge any reserved matters.
- 2.3 Not to permit any more than 50% of the market housing units to be occupied prior to fulfilling those obligations set out at 2.4 – 2.6.
- 2.4 To offer the land detailed on the plan at 2.2 for transfer to an affordable housing provider or providers at a price and on terms which reflect market value and conditions at time of the Offer within one month of the approval of reserved matters (offer date) and ensure that this offer remains open for acceptable for 3 months following the date on which the offer is made (the first offer period).

- 2.5 In the event that the first offer made in accordance with the above is not accepted within the first offer period then the parties undertake to make a second offer for transfer to another affordable housing provider or providers not later than one month after the expiry of the first offer period ("the second offer") and such offer shall consist of the same as the first offer subject to revisions necessitated by lapse of time and shall remain open for acceptance for no less than 3 months ("the second offer period") from the date of the offer being made ("the second offer date").
- 2.6 In the event that the second offer made in accordance with the above is not accepted within the second offer period the owners undertake to pay Arun District Council a commuted sum equivalent to the cost at that time of providing the Affordable Housing Units within the District of Arun and will complete and permit to be occupied the affordable housing as market housing units.

Schedule 4 – The Landowner and Mortgagees

(Note 13)

Name: Chalcroft Associates LLP
Address: 5 Culver Road Felpham Bognor Regis West Sussex PO22 7EF
Company number (if applicable): ~~3040024~~ 00337417 Y
Land Registry Title Number: WSX318871

Bank (as mortgagee)

Name: HSBC Bank plc
Address: Securities Processing Centre PO Box 3924 Sheffield
S1 9BD
Company number (if applicable): 00014259
Land Registry Title Number: WSX318871

Name: Orchard Enterprises (Southern) Limited
Address: The Orchard Temple Lane East Meon Petersfield Hants GU32 1PZ
Company number (if applicable): ~~030310024~~ 03010021 Y
Land Registry Title Number: WSX32009

Name: 
Address: 
Company number (if applicable): 
Land Registry Title Number: WSX89589

Schedule 5 – The Application for Planning Permission

1. The Application for Planning Permission is that submitted by the Applicant to the District under reference BE/47/09 applying for planning permission or approval for up to 70 dwellings (up to 28 affordable) public open space and strategic landscaping
2. An appeal against refusal of permission has been lodged with the Planning Inspectorate under reference APP/C3810/A/09/2112065

Schedule 6 – Notice of First Occupation

By this Notice we notify you of First Occupation of the Development described below

To	Arun District Council Assistant Director Planning and Hosuing Strategy Maltravers Road Littlehampton BN 17 5LF West Sussex County Council Chief Planning Officer County Hall West Street Chichester West Sussex PO 19 1RQ
Development	Chalcroft Nurseries Chalcraft Lane North Bersted Bognor Regis west Sussex PO 21 5TS
Planning Permission Ref	BE/47/09
Date of First Occupation	
From	Name Address E mail Ref Tel and fax numbers

(Note 14)

EXECUTED AS A DEED by Orchard Enterprises (Southern) Limited acting by its Secretary and a Director or by two Directors

EXECUTED AS A DEED by Chalcroft Associates LLP

acting by two Members.

SIGNED as a **DEED** and delivered
by **David Robert Groves**
in the presence of:

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SIGNED

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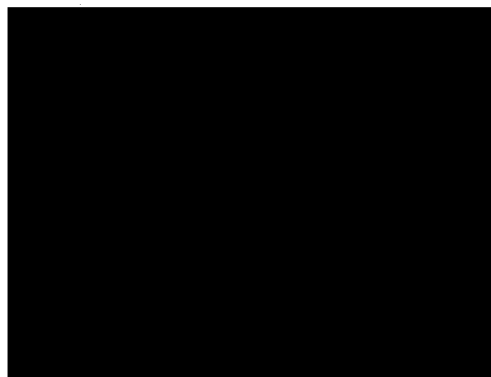
BY THIS POWER OF ATTORNEY given the 4th day of February two thousand and nine HSBC Bank plc ('the Bank') incorporated in England with registered number 14259 and having its Registered Office at 8 Canada Square, London E14 5HQ appoints **CHARLES ADRIAN BRYNMOR JONES** to be the attorney of the Bank in the name of the Bank and on its behalf to do or execute as the act and deed of the Bank or otherwise to execute any deed or sign any document:

1. required to discharge, release, surrender, convey, re-convey, transfer, re-transfer, assign, re-assign, postpone or defer or otherwise regulate the priority of, firstly, any mortgage, charge, standard security or other security vested in the Bank of any heritable or moveable or real or personal property comprised therein and, secondly, any bond, guarantee, undertaking or indemnity or any other similar engagement in favour of the Bank, and thirdly, any indebtedness secured by any of the foregoing;
2. required to convey assign or transfer any heritable or moveable or real or personal property pursuant to any powers contained in any mortgage or charge held by the Bank;
3. required to create, grant, release or vary or to confirm or consent to the creation, granting, release or variation of any right, privilege, estate or interest in any heritable or moveable or real or personal property the subject of any mortgage, charge, standard security or other security vested in the Bank;
4. being a bond, guarantee, undertaking or indemnity or any other similar engagement by the Bank;

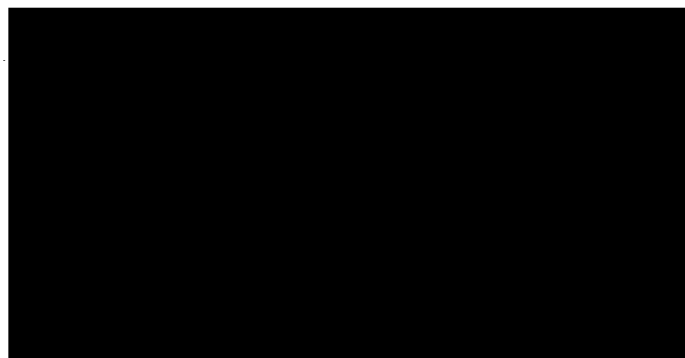
and generally for all or any of these purposes to act as the Bank's attorney and declares that each of the powers granted by this Power shall be read separately and in no way to be limited by reference to any other of such powers.

This Power of Attorney will expire twelve months from the date hereof unless previously revoked by the Bank.

IN WITNESS WHEREOF HSBC Bank plc has caused its common seal to be affixed to this deed the day and year first above written in the presence of:



027655



SIGNED as [REDACTED]	
by Sarah Ja	
in the prese	
W	Signatu
I	Name:
T	Address: David M Lowe F.Inst.L.Ex
N	Legal Executive with
E	Staffurth and Bray Solicitors
S	Bognor Regis, West Sussex
S	Occupation:

SIGNED as a DEED and delivered)	
by	
as Attorney of HSBC BANK P [REDACTED]	
in the presence of:-	
W	Sig
I	Nar
T	Add
N	SHEFFIELD SECURITIES
E	PROCESSING CENTRE
S	
S	Occupation: BANK OFFICIAL