

Dated

13th January

2014

SCARBOROUGH BOROUGH COUNCIL

and

NORTH YORKSHIRE COUNTY COUNCIL

and

COAST & COUNTRY HOUSING LIMITED

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SUPPLEMENTAL AGREEMENT UNDER SECTION 106A OF THE TOWN  
& COUNTRY PLANNING ACT 1990

RELATING TO LAND AT MUSTON ROAD FILEY

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This deed is made on the 13<sup>th</sup> day of January 2014

- (1) SCARBOROUGH BOROUGH COUNCIL of Town Hall St Nicholas Street Scarborough North Yorkshire YO11 2HG (the **Borough Council**)
- (2) NORTH YORKSHIRE COUNTY COUNCIL of County Hall Northallerton North Yorkshire DL7 8AD (the **County Council**);
- (3) COAST & COUNTRY HOUSING LIMITED of 14 Ennis Square Dormanstown Redcar Cleveland TS10 5JR (the **Owner**); and

#### BACKGROUND

- (A) The Borough Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated.
- (B) The County Council is the Local Education Authority for the area in which the Property is situated
- (C) On 13 November 2007 the Original Agreement was entered into between the Borough Council (1) the County Council (2) Deborah Lee Taylor Elissa Kate Howard and Philippa Anne Robertson (therein described as the 'First Owners') (3) Mill Properties Limited (therein described as the 'Developer') (4) Fortis Reads Trustees Limited as Trustees of the Willows Trust (therein described as the 'Second Developer') (5) and Stephen Brian Southwell and David Clive Southwell (therein described as the 'Second Owners')(6)
- (D) The Owner has acquired the freehold ownership from the First Owners and Second Owners of the Land which is registered with Absolute Freehold Title under Title Numbers NYK300128 and NYK273530 and the Developer and the Second Developer no longer have any interest in the Land
- (E) Without prejudice to the terms of the other covenants contained in the Original Agreement the parties have agreed to rescind the Filey Junior School Contribution of £274,800.00 and to reduce the Infant and Nursery School Contribution to £27,192.00 and to vary the terms of Original Agreement as set out in this Deed.
- (F) This agreement is made under section 106A of the TCPA 1990 and is supplemental to the Original Agreement.

#### AGREED TERMS

##### 1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this Deed.
- 1.2 All words and phrases defined in the Original Agreement shall have the same meaning in this Deed save where the context otherwise dictates.
- 1.3 In this Deed the following expression shall have the following meaning:

Original Agreement; the agreement made under section 106 of the T CPA 1990 dated 13<sup>th</sup> November 2007 between the parties named in paragraph (C) above

- 1.4 All references in this Deed to clauses in the Original Agreement are to clauses within the Original Agreement.
- 1.5 Clause headings shall not affect the interpretation of this Deed.
- 1.6 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.7 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.8 Unless the context otherwise requires, words in the singular include the plural and in the plural shall include the singular.
- 1.9 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.10 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the Borough Council the successors to its respective statutory functions.
- 1.11 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time provided that, as between the parties, no such amendment, extension or re-enactment shall apply to the deed 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.
- 1.12 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.13 A reference to **writing** or **written** does not include e-mail.
- 1.14 References to clauses, Schedules and plans (unless the context otherwise requires) are to clauses, Schedules and plans of this Deed.
- 1.15 An obligation in this Deed on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.16 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.
- 1.17 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2. STATUTORY PROVISION

This Deed is made pursuant to the provisions of sections 106 and 106A of the TCPA 1990, and all other enabling powers.

3. VARIATIONS TO THE ORIGINAL AGREEMENT

3.1 Clause 1 of the Original Agreement shall be amended as follows:-

3.1.1 the following definition shall be deleted :

"Filey Junior School Contribution" means the sum of £274,800.00 (Two hundred and seventy four thousand eight hundred pounds only) to be paid by the Owners or the Developers to the Council as a contribution towards the improvements of Filey Junior School the need for which directly arises from the Development

3.1.2 the definition of "Infant and Nursery School Contribution" shall be deleted and replaced with the words:

"means the Index Linked sum of £27,192.00 (twenty-seven thousand one hundred and ninety-two pounds) to be paid by the Owner to the Borough Council as a contribution towards the improvement of Filey CE VC Infant and Nursery School the need for which directly arises from the Development"

3.1.2 the definition of "Index Linked" shall be inserted with the words:

"means such increase (if any) to sums payable to the Borough Council (under this Agreement) on an annual basis or pro rata per diem from 1 September 2013 until such time that payment of any sum in this Agreement is made such index linking to be equivalent to any inflationary increase in such sums in proportion to the increase taking as the measure of inflation the BCIS All-In Tender Price Index last published before 1 September 2013 or any publication substituted for it;

3.2 Paragraph 2. of the First Schedule to the Original Agreement shall be amended as follows:-

3.2.1 paragraphs 2.1 2.2 and 2.3 shall be amended by substituting the sum of "£11,450.00" with the sum of "9,064.00 Index Linked" in each of those paragraphs respectively and by deleting the word "County" and replacing it with the word "Borough" in each of those paragraphs respectively

3.2.2 paragraphs 2.4, 2.5 and 2.6 shall be deleted

3.3 The Third Schedule to the Original Agreement shall be amended as follows:-

3.3.1 the words "the Filey Junior School Contribution" shall be deleted from paragraph 1.1

3.3.2 paragraph 1.4 shall be deleted

3.3.3 the words "and/or the Filey Junior School Contribution" shall be deleted from paragraph 1.5

3.4 The Fifth Schedule to the Original Agreement shall be amended as follows:-

3.4.1 a new paragraph 1.5 shall read:

"The Borough Council shall upon receipt of the sums paid to the Borough Council pursuant to paragraph 2 of the First Schedule to this Agreement immediately forward such monies to the County Council.

3.4 In all other respects the Original Agreement (as varied by this deed) shall remain in full force and effect

#### **4. COVENANTS TO THE BOROUGH COUNCIL**

The Owner covenants to observe and perform the covenants, restrictions and obligations contained in the Original Agreement as varied by this Deed.

#### **5. LOCAL LAND CHARGE**

This Deed shall be registered as a local land charge.

#### **6. BOROUGH COUNCIL'S AND COUNTY COUNCIL'S COSTS**

The Owner shall pay to the Borough Council and to the County Council on or before the date of completion of this Deed respectively the Borough Council's and the County Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, completion and registration of this Deed.

#### **7. THIRD PARTY RIGHTS**

A person who is not a party to this Deed shall not have any rights under, or in connection with, it by virtue of the Contracts (Rights of Third Parties) Act 1999.

#### **8. GOVERNING LAW**

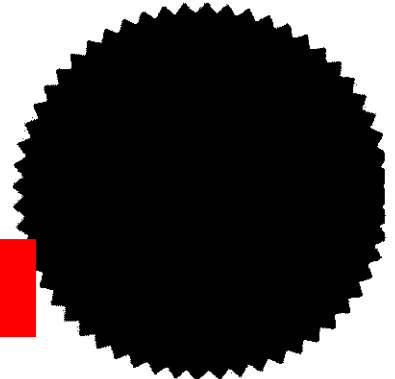
This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

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

EXECUTED BY Affixing the Common Seal of  
SCARBOROUGH BOROUGH COUCIL in the  
presence of:-



Authorised signatory



13257

EXECUTED BY Affixing the Common Seal  
OF NORTH YORKSHIRE COUNTY COUNCIL  
in the presence of:-

*Rebecca Jackson, Solicitor  
Legal Services Manager*

Authorised signatory

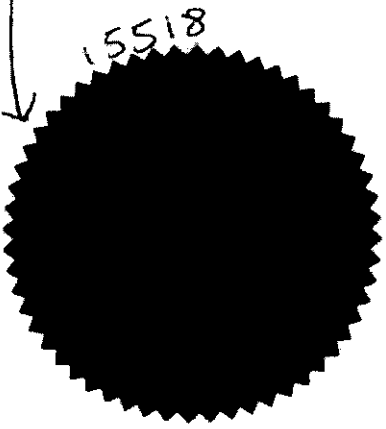
EXECUTED as a Deed by COAST AND  
COUNTRY HOUSING LIMITED acting by  
Its Director and Company Secretary or  
two Directors



Director

Director/Company Secretary

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**AUTHORISED  
SIGNATORY**

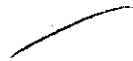
P+D COMMITTEE

11.07.2013

ITEM 10

GAC

29.11.2013



GAC

29.11.2013