


### Particulars of a charge

<b>4</b>	<b>Brief description</b>	<p>Please give a short description of any land, ship, aircraft or intellectual property registered or required to be registered in the UK subject to a charge (which is not a floating charge) or fixed security included in the instrument.</p>	<p>Please submit only a short description. If there are a number of plots of land, aircraft and/or ships, you should simply describe some of them in the text field and add a statement along the lines of, "for more details please refer to the instrument".</p> <p>Please limit the description to the available space.</p>
	Brief description	<p>The Charge secures the repayment of a loan of £291,400.00 (inclusive of VAT) made to the Company and is granted over part of the Freehold land being part of the land registered at The Land Registry under title numbers HP680822, HP740233 and HP756769 (for more details refer to the Instrument).</p>	
<b>5</b>	<b>Other charge or fixed security</b>		
	<p>Does the instrument include a charge (which is not a floating charge) or fixed security over any tangible or intangible or (in Scotland) corporeal or incorporeal property not described above? Please tick the appropriate box.</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>		
<b>6</b>	<b>Floating charge</b>		
	<p>Is the instrument expressed to contain a floating charge? Please tick the appropriate box.</p> <p><input type="checkbox"/> Yes Continue</p> <p><input checked="" type="checkbox"/> No Go to <b>Section 7</b></p> <p>Is the floating charge expressed to cover all the property and undertaking of the company?</p> <p><input type="checkbox"/> Yes</p>		
<b>7</b>	<b>Negative Pledge</b>		
	<p>Do any of the terms of the charge prohibit or restrict the company from creating further security that will rank equally with or ahead of the charge? Please tick the appropriate box.</p> <p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>		
<b>8</b>	<b>Trustee statement <sup>1</sup></b>		
	<p>You may tick the box if the company named in Section 1 is acting as trustee of the property or undertaking which is the subject of the charge.</p> <p><input type="checkbox"/></p>		
<sup>1</sup> This statement may be filed after the registration of the charge (use form MR06).			
<b>9</b>	<b>Signature</b>		
	<p>Please sign the form here.</p>		
Signature	<div style="border: 1px solid black; padding: 5px;"> <p style="margin: 0;">Signature</p>  </div>		
<p>This form must be signed by a person with an interest in the charge.</p>			

# MR01

## Particulars of a charge



### Presenter information

You do not have to give any contact information, but if you do, it will help Companies House if there is a query on the form. The contact information you give will be visible to searchers of the public record.

Contact name

Nicholas Wookey

Company name

Sharratts (London) LLP

Address

1 The Old Yard

Rectory Lane

Brasted

Westerham

County/Region

Kent

Postcode

T N 1 6 1 J P

Country

DX

DX 83512 Westerham

Telephone

01959 568000



### Certificate

We will send your certificate to the presenter's address if given above or to the company's Registered Office if you have left the presenter's information blank.



### Checklist

We may return forms completed incorrectly or with information missing.

Please make sure you have remembered the following:

- ☐ The company name and number match the information held on the public Register.
- ☐ You have included a certified copy of the instrument with this form.
- ☐ You have entered the date on which the charge was created.
- ☐ You have shown the names of persons entitled to the charge.
- ☐ You have ticked any appropriate boxes in Sections 3, 5, 6, 7 & 8.
- ☐ You have given a description in Section 4, if appropriate.
- ☐ You have signed the form.
- ☐ You have enclosed the correct fee.
- ☐ Please do not send the original instrument; it must be a certified copy.



### Important information

Please note that all information on this form will appear on the public record.



### How to pay

A fee of £23 is payable to Companies House in respect of each mortgage or charge filed on paper.

Make cheques or postal orders payable to 'Companies House.'



### Where to send

You may return this form to any Companies House address. However, for expediency, we advise you to return it to the appropriate address below:

#### For companies registered in England and Wales:

The Registrar of Companies, Companies House,  
Crown Way, Cardiff, Wales, CF14 3UZ.  
DX 33050 Cardiff.

#### For companies registered in Scotland:

The Registrar of Companies, Companies House,  
Fourth floor, Edinburgh Quay 2,  
139 Fountainbridge, Edinburgh, Scotland, EH3 9FF.  
DX ED235 Edinburgh 1  
or LP - 4 Edinburgh 2 (Legal Post).

#### For companies registered in Northern Ireland:

The Registrar of Companies, Companies House,  
Second Floor, The Linenhall, 32-38 Linenhall Street,  
Belfast, Northern Ireland, BT2 8BG.  
DX 481 N.R. Belfast 1.



### Further information

For further information, please see the guidance notes on the website at [www.gov.uk/companieshouse](http://www.gov.uk/companieshouse) or email [enquiries@companieshouse.gov.uk](mailto:enquiries@companieshouse.gov.uk)

This form is available in an alternative format. Please visit the forms page on the website at [www.gov.uk/companieshouse](http://www.gov.uk/companieshouse)



**FILE COPY**

## **CERTIFICATE OF THE REGISTRATION OF A CHARGE**

Company number: 397634

Charge code: 0039 7634 0311

The Registrar of Companies for England and Wales hereby certifies that a charge dated 18th September 2019 and created by BOVIS HOMES LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 20th September 2019.

JD

Given at Companies House, Cardiff on 30th September 2019



**Companies House**



**THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES**

Dated 18 September

2019

## LEGAL MORTGAGE

relating to

**Parcel 10**  
**Bury Farm, Botley Road, Curdridge and**  
**at Whiteley Lane, Whiteley, Fareham**

**BOVIS HOMES LIMITED (as Mortgagor)**

and

**VIVID HOUSING LIMITED (as Mortgagee)**

REF: GAB/BO45224.000044/20305822.1

We hereby certify  
this to be a true copy  
of the original

Shearman & Sterling (London) LLP  
18/09/19

THIS LEGAL MORTGAGE is made on the 15 day of September 2019

**BETWEEN:-**

- (1) **BOVIS HOMES LIMITED**, Company Registration Number 397634 whose registered office is at The Manor House, North Ash Road, New Ash Green, Longfield, Kent DA3 8HQ (the '**Mortgagor**'); and
- (2) **VIVID HOUSING LIMITED**, Registered Society Number 7544 whose registered office is at Peninsular House, Wharf Road, Portsmouth PO2 8HB (the '**Mortgagee**').

**WHEREAS:-**

- (A) The Mortgagee and the Mortgagor have entered into a contract dated on the date of this Deed (the 'Agreement') pursuant to which the Mortgagor will sell and the Mortgagee will buy the property (as such term defined herein) on the terms more fully set out therein.
- (B) It is a requirement of the Agreement that the Mortgagor enters into this Deed to secure the repayment of the Deposit (as such term is defined in the Agreement) by the Mortgagee to the Mortgagor in the circumstances more fully set out in the Agreement and the obligations of the Mortgagor to transfer the Property to the Mortgagee as required by the Agreement
- (C) It is intended that this Deed takes effect as a deed notwithstanding the fact that a party may only execute this Deed under hand.

**NOW THIS DEED WITNESSES:-**

**1 DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

Terms defined in the Agreement shall, unless the context otherwise requires, have the same meanings when used in this Deed. In addition, the following expressions have the following meanings:-

Act	means the Law of Property Act 1925.
Administrator	means an administrator appointed pursuant to Schedule BI to the Insolvency Act 1986.
Business Day	means a day (other than a Saturday or Sunday) on which banks are open for general business in London and in Edinburgh.
Enforcement Event	means an event specified in Clause 9.1.2 of this Deed.
Parcel 10	means Plots 97-100 and as shown edged red on the plan annexed
Parcel 10 Deposit Amount	means the sum of £291,400 (inclusive of any VAT payable in respect of Parcel 10) by the Mortgagor in respect of that part of the Deposit apportioned to Parcel 10 pursuant to the Agreement.
Parcels	has the same definition as referred to within the Agreement and comprising Parcel 1, Parcel 2, Parcel 3, Parcel 4,

Parcel 5, Parcel 6, Parcel 8, Parcel 10, Parcel 11, Parcel 12, Parcel 13, Parcel 14 and Parcel 15

Permitted Disposal

means;

- (a) the grant of a lease, easement or other transfer in respect of any electricity substation, gas governor, pumping station or any other land required for the *provision of services or infrastructure*; or
- (b) the transfer, lease or surrender of any land to the local authority to comply with highway requirements or to comply with any Planning Agreement.

Permitted Security

means:

- (a) a lien arising by operation of law and in the ordinary course of trading securing obligations not more than 30 days overdue;
- (b) any floating charge granted by the Mortgagor in favour of any provider of debt facilities to it or its corporate group over or in respect of the Property and over any interest of the Mortgagor therein, provided that any such floating charge is not at any time registered against the property at the Land Registry;
- (c) any Security Interest arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to the Mortgagor in the ordinary course of trading and on the suppliers standard or usual terms and not arising as a result of any default or omission by the Mortgagor; and
- (d) any Security Interest created by this Deed or otherwise created with the prior written consent of the Mortgagee.

Property

means the land known as Parcel 10 being part of the freehold land at Bury Farm, Botley Road, Curdridge and at Whiteley Lane, Whiteley, Fareham being part of the land currently within title number HP680822, HP740233 and HP756769 and which is part of the land transferred to the Mortgagor by the Partition Transfers (as defined in the Agreement) being shown edged red on the plan attached to this Deed and more particularly described in the Agreement.

Receiver

includes any person or persons appointed by the Mortgagee (and any additional person or persons appointed or substituted) as receiver, manager, or receiver and manager of all or any part of the Property.

Secured Liabilities	means the Parcel 10 Deposit Amount.
Security Interest	means a mortgage, charge, pledge, lien, hypothecation, right of set-off, assignment by way of security, title retention or other security interest securing any obligation of any person or any other agreement or arrangement having the same effect.
Security Period	means the period commencing on the date of this Deed and ending on the date on which completion of the granting of the Leases takes place in accordance with the Agreement.
Tax	means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).
VAT	or Value Added Tax means value added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature.

## 1.2 Interpretation

In this Deed:-

- 1.2.1 Clause headings are inserted for convenience only and shall not affect the construction of this Deed and unless otherwise specified, all references to Clauses are to clauses of this Deed;
- 1.2.2 unless the context otherwise requires, words denoting the singular number shall include the plural and vice versa;
- 1.2.3 references to a person include references to bodies corporate and unincorporate and include its successors and permitted transferees and assigns whether direct or indirect;
- 1.2.4 references to assets include property, rights and assets of every description both present and future;
- 1.2.5 references to each of the 'Mortgagor' and the 'Mortgagee' shall be construed so as to include their respective successors in title, permitted assigns and permitted transferees;
- 1.2.6 references to the Agreement or any other agreement or instrument shall be construed as a reference to the Agreement or other agreement or instrument as amended, novated, supplemented, extended or restated from time to time;
- 1.2.7 references to any statute or other legislative provision shall include any statutory or legislative modification or re-enactment thereof, or any substitution therefor;
- 1.2.8 references to a 'mortgage' includes a transfer or assignment by way of mortgage;
- 1.2.9 the terms of the Agreement and of any side letters between any parties in relation to the Agreement are incorporated into this Deed to the extent required to ensure that any purported disposition of the Property contained in this Deed is a valid



disposition in accordance with Section 2(1) of the Law of property (Miscellaneous Provisions) Act 1989; and

- 1.2.10 references to an 'overriding interest' are to an unregistered interest which would override first registration or, as the case may be, a registered disposition as set out in Schedule 1 and Schedule 3 to the Land Registration Act 2002.

## **2 COVENANT TO PAY**

The Mortgagor covenants with the Mortgagee that it will on demand pay and discharge the Secured Liabilities when due.

## **3 SECURITY**

The Mortgagor, with full title guarantee and to the intent that the security hereby created shall rank as a continuing security for the payment and discharge of the Secured Liabilities charges in favour of the Mortgagee byway of first legal mortgage, all its estate and interest in the Property.

## **4 APPLICATION TO LAND REGISTRY**

- 4.1 The Mortgagor and the Mortgagee hereby jointly apply to the Chief Land Registrar to enter a restriction in the Proprietorship Register of the title to the Property in the following terms:-

'No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the charge dated in favour of Vivid Housing Limited referred to in the charges register or their conveyancer.'

## **5 REPRESENTATIONS AND WARRANTIES**

The Mortgagor makes the representations and warranties set out in this Clause 5 to the Mortgagee.

### **5.1 General**

- 5.1.1 it is a limited liability company, duly incorporated and validly existing under the laws of England and Wales;
- 5.1.2 it has the power to own its assets and carry on its business, as it is being conducted;
- 5.1.3 it has the power to enter into, perform and deliver, and has taken all necessary action to authorise the entry into, performance and delivery of this Deed and the transactions contemplated by this Deed;
- 5.1.4 this Deed constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms;
- 5.1.5 the entry into and performance by it of and the transactions contemplated by, this Deed do not and will not:-
- 5.1.5.1 conflict with any law or regulation or judicial or official order having jurisdiction over it or any of its assets; or
- 5.1.5.2 conflict with its memorandum or articles of association; or

5.1.5.3 conflict with any document which is binding upon it or any of its assets;

## **5.2 The Property**

5.2.1 *The Mortgagor is the sole legal and beneficial owner of the Property.*

5.2.2 The Property is free from any Security Interest other than permitted Security.

## **5.3 Security**

This Deed creates those Security Interests it purports to create and is not liable to be avoided or otherwise set aside on the liquidation or administration of the Mortgagor or otherwise.

## **5.4 Times for making representations and warranties**

The representations and warranties set out in Clause 5 (Representations and Warranties) are made on the date of this Deed and are deemed to be repeated by the Mortgagor on each date during the Security Period with reference to the facts and circumstances then existing.

## **6 MORTGAGOR'S COVENANTS**

The covenants set out in this Clause 6 remain in force throughout the Security Period in favour of the Mortgagee and any Receiver appointed by the Mortgagee.

### **6.1 Deposit of Certificates**

If the Mortgagee so requires, the Mortgagor shall deposit with the Mortgagee all certificates and other documents of title or evidence of ownership in relation to the Property and shall execute and deliver to the Mortgagee all such transfers and other documents as may be necessary to enable the Mortgagee or its nominees to be registered as the owner or otherwise obtain a legal title to the same.

### **6.2 Negative Pledge**

The Mortgagor further covenants with the Mortgagee that throughout the Security Period it shall not:-

6.2.1 create, incur or permit to exist any Security Interest in, over or affecting the Property (other than a Permitted Security);

6.2.2 except with the prior written consent of the Mortgagee, sell, assign, transfer or otherwise dispose of the whole or any part of the Property or any interest therein (whether by one transaction or a series of transactions and whether related or not), provided that the Mortgagor shall be entitled to make the Permitted Disposals without such consent; or

6.2.3 except with the prior written consent of the Mortgagee grant to, or allow to be acquired by, any third party any right, licence or interest whatsoever in or over the Property, nor exercise any of the powers of leasing or of agreeing to lease or of accepting surrenders conferred on mortgagors by the Act or release or vary or agree to release or vary any terms of, nor grant any licences or consents (including for the avoidance of doubt licences or consents for the assignment or subletting of the whole or any part the Property) under, any leases for the time being affecting the Property, nor without such consent as aforesaid exercise any power to determine or forfeit the same or extend the same, provided always that

the Mortgagor shall be entitled to make a Permitted Disposal without the consent of the Mortgagee and shall be entitled to grant such licences to contractors and sub-contractors as are usual in the normal course of development.

## **7 PERMITTED DISPOSALS**

At the request of the Mortgagor, the Mortgagee shall promptly give all necessary consents, confirmations and releases in relation to the Permitted Disposals.

## **8 PRESERVATION OF SECURITY**

### **8.1 Continuing Security**

The Mortgagor declares and agrees that:-

- 8.1.1 the security created by and covenants and provisions contained in this Deed shall be held by the Mortgagee as a continuing security and shall not be satisfied by any intermediate payment or satisfaction of any part of the Secured Liabilities and shall remain in full force and effect until the Secured Liabilities hereby secured have been unconditionally and irrevocably paid and discharged in full to the satisfaction of the Mortgagee;
- 8.1.2 the Mortgagee shall not be bound to enforce any guarantee or other security or proceed or take any other steps against any other person before enforcing this Deed; and
- 8.1.3 this Deed shall be in addition to, and not in substitution for, any other rights which the Mortgagee may now or hereafter have under or by virtue of any guarantee or other security or agreement or any lien or by operation of law or under any collateral or other security now or hereafter held by the Mortgagee or to which the Mortgagee may be entitled.

### **8.2 Avoidance of Payments**

- 8.2.1 Any settlement, discharge or release under this Deed between the Mortgagee and the Mortgagor shall be conditional upon no security or payment to the Mortgagee by the Mortgagor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any provision or enactment relating to bankruptcy, insolvency, administration or liquidation for the time being in force, and if such condition is not satisfied, the Mortgagee shall be entitled to recover from the Mortgagor on demand the value of such security or the amount of any such payment as if such settlement, discharge or release had not occurred.
- 8.2.2 The Mortgagee shall be at liberty at its absolute discretion to retain the security created by this Deed as security for the Secured Liabilities for a period of one month plus such statutory period within which any security or payment given or made pursuant to this Deed may be avoided or invalidated after the Secured Liabilities shall have been paid or discharged in full, notwithstanding any release, settlement, discharge or arrangement given or made with the Mortgagee on or as a consequence of such termination of liability. If at any time within such period after such termination a petition shall be presented to a competent court for an order for the bankruptcy, insolvency, winding up or similar process of the Mortgagor or the appointment of an administrator in respect of the Mortgagor or the Mortgagor shall commence to be wound up voluntarily, the Mortgagee shall be at liberty and notwithstanding as before mentioned to continue to retain such

security or any part thereof for and during such further period as the Mortgagee in its absolute discretion shall determine. The Mortgagor agrees that such security shall be deemed to have been and to have remained held by the Mortgagee as and by way of security for the payment to the Mortgagee of all or any sums which may become due and owing to the Mortgagee in respect of the Secured Liabilities.

## **9 ENFORCEMENT**

### **9.1 Enforceability of Security**

9.1.1 upon the occurrence of an Enforcement Event, the security constituted by this Deed shall become immediately enforceable and the power of sale and other powers conferred on mortgagees by the Act as varied or amended by this Deed shall be immediately exercisable upon and at any time thereafter. After the security constituted by this Deed has become enforceable, the Mortgagee may in its discretion enforce all or any part of such security in such manner as the Mortgagee sees fit.

9.1.2 Each of the following events or circumstances is an Enforcement Event:-

9.1.2.1 failure by the Mortgagor to fulfil its obligations under clause 3.5 of the Agreement within 10 Business Days of such obligations becoming due and payable under or pursuant to the Agreement; and

9.1.2.2 any order is made by any competent court or any resolution is passed by the Mortgagor for its winding-up or dissolution or for the appointment of a liquidator of the Mortgagor..

### **9.2 Exclusion of Certain Provisions of the Act**

*For the purposes of all powers implied by statute the Secured Liabilities shall be deemed to have become due and payable on the date hereof and Section 103 of the Act (restricting the power of sale) and Section 93 of the Act (restricting the right of consolidation) shall not apply to this Deed. The statutory powers of leasing conferred on the Mortgagee shall be extended so as to authorise the Mortgagee to lease, make agreements for leases, accept surrenders of leases and grant options as the Mortgagee shall think fit and without the need to comply with any of the provisions of Sections 99 and 100 of the Act.*

### **9.3 Redemption of Prior Charges**

At any time after the security constituted by this Deed shall have become enforceable, the Mortgagee may redeem any prior Security Interest against the Property or procure the transfer thereof to itself and may settle or pass the accounts of any holder of such Security Interest and any accounts so settled and passed shall be conclusive and binding on the Mortgagor. All principal monies, interest, costs, charges and expenses of and incidental to the redemption and transfer shall be Secured Liabilities.

### **9.4 Appointment of Receiver or Administrator**

At the request of the Mortgagor or at any time after the security constituted by this Deed becomes enforceable the Mortgagee may subject to the provisions Of paragraph 43 of Schedule 1 to the Insolvency Act 2000:-

9.4.1 without further notice appoint by writing one or more persons to be a Receiver of the Property or any part thereof; or

- 9.4.2 apply to a court of competent jurisdiction to appoint any person or persons to be an Administrator of the Mortgagor,

in each case, upon such terms as to remuneration and otherwise as it shall think fit and shall agree with such Receiver or Administrator and may from time to time remove any Receiver or Administrator so appointed and appoint another in his stead. A Receiver or Administrator so appointed shall give notice of his appointment (*inter alia*) to the Mortgagor and shall be deemed to act as the agent of the Mortgagor in the exercise of the powers granted hereunder or by statute or otherwise and the Mortgagor shall be responsible for such Receiver's or Administrator's acts and defaults and for his remuneration, costs, charges and expenses to the exclusion of liability on the part of the Mortgagor.

#### 9.5 Joint Receivers

Where more than one person is appointed as a Receiver the powers of such persons may be exercised either jointly or individually by any one of such persons.

#### 9.6 Receiver's Powers

A Receiver appointed in accordance with Clause 9.4 hereof (and the Mortgagee if it goes into possession as mortgagee) shall have all the powers conferred on a Receiver by the Act and all such powers as are set out in Schedule 1 to the Insolvency Act 1986 notwithstanding that such Receiver may not be an administrative receiver and in addition shall have power to:-

- 9.6.1 take possession of and get in the Property and for this purpose to make demands and take proceedings as he may think fit in respect thereof in such manner as he thinks fit;
- 9.6.2 carry on or concur in carrying on such of the business Of the Mortgagor (and for this purpose to borrow money on the security of the Property in priority to this charge or otherwise as he may consider expedient and carrying interest at such rate as he may consider necessary) and manage, conduct, amalgamate, develop and reconstruct the same (and concur in so doing) in such manner and to such extent as he may think fit;
- 9.6.3 make and effect all repairs and maintain, renew, increase or surrender insurances and do all such other acts and things which the Mortgagor might do in the ordinary course of its or their business for the protection and/or for the improvement of the Property;
- 9.6.4 sell by public auction or private contract, grant licences or options or otherwise assign the Property in such manner and on such terms as he shall think proper; lease and accept surrenders of leases of any of the Property and with respect thereto make provision for and effect rent reviews (or concur in so doing); any such sale, lease, licence, option, surrender or assignment may be for cash, loan capital, debentures, shares, stock, securities or other consideration and be payable immediately or by instalments deferred and spread over such period as he shall think fit and may be on terms whereby the total amount of the consideration is to be ascertained by reference to the turnover or profits of the purchaser;
- 9.6.5 without any further consent by or notice to, as the case may be, the Mortgagor, exercise on its or their behalf all the powers and provisions conferred on a landlord or a tenant pursuant to any legislation from time to time in force relating to rents

in respect of any part of the Property but without any obligation to exercise any of such powers and without any liability in respect of powers so exercised or omitted to be exercised;

- 9.6.6 purchase any additional land adjacent to or in the vicinity of the Property for the purpose of enhancing the value of such property or facilitating the disposal thereof and for such purposes borrow monies from the Mortgagee on such terms as the Receiver may think fit;
- 9.6.7 make allowances to and re-arrangements with any lessees, tenants of the Property or other persons from whom any rents and profits may be receivable and to negotiate and agree or refer to arbitration any revision of rent under any leases in respect of which the rental may fall to be reviewed and to accept service of or serve any notice received or required or deemed desirable in connection with any such review or with the exercise of any options;
- 9.6.8 do any repairs and make any structural or other alterations, improvements or additions in or to the Property and purchase or otherwise acquire any materials, articles or things and do anything else in connection therewith which the Receiver may think desirable for the purpose of making productive or increasing the letting or market value thereof;
- 9.6.9 institute, arrange, carry on and conduct services of lighting, heating and cleansing and all other services which may be deemed proper for the efficient use or management of the Property;
- 9.6.10 reconstruct, alter, improve, decorate, furnish and maintain the whole or any part of the buildings on the Property;
- 9.6.11 sell all or any of the fixtures (other than tenants' trade fixtures) either as a part Of and/or together with or separately and detached from the Property;
- 9.6.12 perform, treat as repudiated, rescind or vary any contract or agreement for or which relates in any way to any development, improvement, reconstruction or repair of the Property or any part thereof or which is in any other way connected therewith;
- 9.6.13 without prejudice to the generality of any of the foregoing powers carry out, continue and/or perform any development of any part of the Property and to enter into a building contract or appointment or any other contract or agreement for or relating to any development for any such purposes as aforesaid to purchase such materials and other articles and things as he may think fit to discontinue such development or any part thereof and to repudiate and rescind any building contract or any such contract or agreement as aforesaid;
- 9.6.14 in connection with any development obtain planning permissions, bye law consents and any other permissions and/or approvals, enter into agreements under the Highways Act 1980 and any other agreements requisite for the development, to enter into and arrange bonds and in particular road bonds and indemnities in connection therewith and to dedicate any part of the Property as a public highway or grant any other rights over under or relating to the Property;
- 9.6.15 promote the formation of companies with a view to the same purchasing, leasing, licensing, managing or otherwise acquiring interests in the Property or otherwise, arrange for such companies to trade or cease to trade and to purchase, lease,

license or otherwise acquire the Property on such terms and conditions whether or not including payment by instalments secured or unsecured as he may think fit;

- 9.6.16 make calls conditionally or unconditionally on the members of the Mortgagor *concerned in respect of uncalled capital*;
- 9.6.17 effect any policy or policies Of insurance for any purpose in connection with the receivership and without prejudice to the generality of the foregoing particularly to support and underwrite any indemnity given by the Mortgagor hereunder;
- 9.6.18 make any arrangement or compromise or disclaim, alter, enter into or cancel any contract or liability which he shall think expedient;
- 9.6.19 sign any document execute any deed and do all such other acts and things as he may in his absolute discretion consider to be incidental or conducive to any of the *matters and powers aforesaid* or to the *realisation of the security constituted by this Deed*;
- 9.6.20 present or, as the case may be, defend a petition for the winding up of the Mortgagor;
- 9.6.21 employ or engage, upon such terms (as to remuneration or otherwise) as he may think proper, such professional advisers, managers, servants and agents as he considers necessary including without limiting the generality of the foregoing architects, estate agents, quantity surveyors, solicitors, valuers auctioneers, surveyors and accountants;
- 9.6.22 bring or defend any action or legal proceedings or discontinue the same on behalf of the Mortgagor;
- 9.6.23 exercise any option or right of election available at law to the Mortgagor or the Mortgagee or a Receiver that the supplies made in respect of any lease or tenancy hereby charged shall be chargeable or taxable for Value Added Tax purposes at the standard or any other applicable rate of tax;
- 9.6.24 obtain, renew, extend, amend or otherwise deal with such permissions, consents and/or licences for the benefit of or otherwise connected with or ancillary to all or part of the Property or its use or development of the Mortgagor's business;
- 9.6.25 do all such other acts and things as may be considered to be expedient for the protection of the property or to be incidental or conducive to any of the above matters and powers or any other act or thing which he could do if he were absolutely entitled to the Property and which the Receiver may lawfully do as agent for the Mortgagor;
- 9.6.26 use the name of the Mortgagor for all or any of the above purposes with full power to convey, transfer or assign the whole or any part of the Property sold in the name of the Mortgagor.

## 9.7 Protection of Third Parties

No person or persons (including a purchaser) dealing with the Mortgagee or any Receiver or Administrator shall be concerned to enquire whether any event has happened upon which any of the powers herein contained may have arisen or be exercisable or otherwise as to the

propriety or regularity of any exercise thereof or of any act purporting or intended to be in exercise thereof or whether any monies remain owing upon the security of this Deed and all the protection of the Act shall apply to any person purchasing from or dealing with the Mortgagee or any Receiver or Administrator.

#### **9.8 Delegation**

The Mortgagee and any Receiver or Administrator may at any time and from time to time delegate by power of attorney or in any other manner to any person any right, power or discretion exercisable by the Mortgagee under this Deed. Any such delegation may be made upon such terms and conditions (including power to sub-delegate) and subject to any regulations which the Mortgagee or such Receiver or Administrator (as the case may be) may think fit. Neither the Mortgagee nor any Receiver or Administrator will be in any way liable or responsible to the Mortgagor for any loss or damage arising from any act, default, omission or misconduct on the part of any such delegate or sub-delegate.

#### **9.9 Mortgagee's Liability**

Neither the Mortgagee nor any Receiver nor any of their respective agents, managers, officers, employees, delegates or advisers shall in any circumstances be liable to the Mortgagor for any claim, demand, liability, loss, damage, cost or expense from any exercise, purported exercise or non-exercise by the Mortgagee or any Receiver of any power, authority, right or discretion conferred upon it in relation to the Property or any part thereof by or pursuant to this Deed or by the Act or the Insolvency Act 1986.

#### **9.10 Vacation of Possession**

If the Mortgagee or any Receiver or Administrator appointed by the Mortgagee or any such delegate as aforesaid shall enter into possession of the Property or any part thereof it or he may from time to time at pleasure go out of such possession.

#### **9.11 Not Mortgagee in Possession**

Neither the Mortgagee nor any Receiver or Administrator shall by reason of the taking of possession of the whole or any part of the Property by any of them be liable to account as mortgagee-in-possession or for anything except actual receipts or be liable for any loss upon realisation or for any default or omission for which a mortgagee-in-possession might be liable.

### **10 APPLICATION OF PROCEEDS**

Subject to claims having priority to the charges created by this Deed and to any applicable statutory requirement as to the payment of preferential debts, all monies received under the powers conferred by this Deed shall be applied in the following order:-

- 10.1 in payment of all costs charges and expenses relating to the exercise of all or any of the powers aforesaid and of all other outgoings payable by the Receiver or Administrator (or as the case may be by the Mortgagee);
- 10.2 (if applicable) in payment of remuneration to the Receiver or Administrator at such rate as may be agreed between him and the Mortgagee;
- 10.3 in or towards payment pro rata of any sums due but unpaid under this Deed; and
- 10.4 the surplus (if any) shall be paid to the Mortgagor or to whomsoever else may be entitled thereto in priority to the Mortgagor.



## **11 COSTS AND EXPENSES**

- 11.1 The Mortgagor covenants with the Mortgagee that it shall within three Business Days of demand reimburse or pay to the Mortgagee or any Receiver or Administrator and each agent, attorney, manager or other person appointed by the Mortgagee under this Deed (on the basis of a full indemnity) the amount of all proper and reasonable costs, charges and expenses incurred or sustained by the Mortgagee or the Receiver or Administrator in connection with:-
- 11.2 the exercise by or on behalf of the Mortgagee or any Receiver or Administrator of any of the powers of the Mortgagee, any agent or attorney; and/or
- 11.3 the enforcement of the Mortgagee's rights under this Deed.

## **12 FURTHER ASSURANCE**

The Mortgagor hereby covenants that it and all other necessary parties (if any) immediately on demand at the Mortgagor's expense will:-

- 12.1 execute and do all such assurances acts and things as the Mortgagee or any Receiver may in its absolute discretion require for:-
- 12.1.1 perfecting, preserving or protecting the security created (or intended to be created) by this Deed or any of the rights of the Mortgagee or any Receiver under this Deed; or
- 12.1.2 facilitating the appropriation or realisation of the Property or any part thereof and enforcing the security constituted by this Deed in either case on or at any time after the same shall have become enforceable; or
- 12.1.3 the exercise of any power, authority or discretion vested in the Mortgagee or any Receiver under this Deed.

## **13 ASSIGNMENT**

- 13.1 This Deed shall be binding upon and shall enure to the benefit of the Mortgagee and the Mortgagor and their respective successors and, in the case of the Mortgagee, its assigns and transferees and references in this Deed to any of them shall be construed accordingly.
- 13.2 The Mortgagor may not assign or transfer all or any part of its rights and/or obligations under this Deed.
- 13.3 The Mortgagee may not assign or transfer all or any part of its rights and/or obligations hereunder.

## **14 MISCELLANEOUS**

### **14.1 Giving of Time**

The Mortgagee shall be at liberty from time to time to give time for payment of any liability of the Mortgagor to the Mortgagee as the Mortgagee shall in its discretion think fit without in any manner releasing the Mortgagor or affecting the security hereby made.

### **14.2 No other Registered Proprietor**

During the Security Period no person other than the Mortgagor shall be registered under the Land Registration Act 2002 as proprietor of the property or any part thereof without the prior

written consent of the Mortgagee and the costs incurred by the Mortgagee of lodging from time to time a caution against the registration of the property shall be deemed to be an expense properly incurred by the Mortgagee in relation to this Deed.

#### **14.3 Discharge**

Subject to Clause 8.2 (Avoidance of Payments) above, upon the earlier of:

- 14.3.1 the Secured Liabilities having been unconditionally and irrevocably paid and discharged in full; and
- 14.3.2 completion of the transfer Of the property to the Chargee pursuant to Clause 3.2 of the Agreement,

the Mortgagee will forthwith release the security created by this Deed. For the avoidance of doubt, where the Mortgagee is under an obligation to release the security created by this Deed pursuant to this Clause 14.3, it shall provide a form DSI and form RX4 (in respect of the restriction referred to at clause 4.1) duly dated and released and in the event that the solicitors acting for the Mortgagor have not received the form DSI and/or the RX4 within 14 days of such repayment then the Mortgagor is hereby irrevocably appointed by the Mortgagee as the attorney of the Mortgagee to execute the DSI and/or the RX4 in the name of and on behalf of the Mortgagee.

#### **14.4 Perpetuity Period**

If applicable, the perpetuity period under the rule against perpetuities shall be 125 years from the date of this Deed.

#### **14.5 Tax gross-up**

All payments to be made by the Mortgagor to the Mortgagee under this Deed shall be made without set-off and free and clear of and without withholding or deduction for or on account of taxes.

#### **14.6 Set-off**

The Mortgagee may set off any matured obligation due from the Mortgagor under this Deed against any matured obligation owed by the Mortgagee to the Mortgagor.

#### **14.7 Partial Invalidity**

Each of the provisions Of this Deed is severable. If any such provision is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction the legality, validity or enforceability in that jurisdiction of the remaining provisions of this Deed or, in any other jurisdiction, of that provision or any other provisions Of this Deed, shall not in any way be affected or impaired thereby.

#### **14.8 Remedies and Waivers**

- 14.8.1 No omission to exercise or delay in exercising on the part of the Mortgagee any right, power or remedy provided by law or under this Deed shall constitute a waiver of such right, power or remedy or any other right, power or remedy or impair such right, power or remedy. No single or partial exercise of any such right, power or remedy shall preclude or impair any other or further exercise thereof or

the exercise of any other right, power or remedy provided by law or under this Deed.

14.8.2 Any waiver of any right, power or remedy under this Deed, or any consent or approval given by the Mortgagee hereunder, shall only be effective if given in writing and may be given subject to any conditions which the grantor may think fit. Unless otherwise expressly stated, any waiver shall be effective only in the instance and only for the purpose for which it is given.

14.8.3 No variation of this Deed shall be of any effect unless it is agreed in writing and executed by or on behalf of each party.

14.8.4 Unless specifically provided otherwise, rights arising under this Deed are cumulative and do not exclude any other rights provided by law or otherwise.

#### **14.9 Counterparts**

This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed.

#### **15 LAW AND JURISDICTION**

15.1 This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, English law.

15.2 The parties irrevocably agree that the courts of England and Wales are to have exclusive jurisdiction over any dispute:

15.2.1 arising from or in connection with this Deed; or

15.2.2 relating to any obligations arising from or in connection with this Deed and for such purposes, irrevocably submit to the jurisdiction of such courts.

#### **16 NOTICES**

Clause 19 (Notices) of the Agreement shall apply and extend to this Deed as if they were set out herein but with the references in those clauses to 'this Contract' and 'the Seller' and 'the Buyer' (howsoever described) being replaced respectively by references to 'this Deed', 'the Mortgagor' and 'the Mortgagee' (where appropriate).

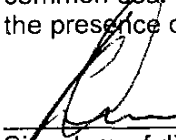
#### **17 RIGHTS OF THIRD PARTIES**


Unless expressly provided to the contrary in this Deed, a person who is not a party to this Deed has no right under the Contracts (Rights of Third parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed.

**IN WITNESS** whereof the parties hereto have caused this Deed to be duly executed and delivered (in the case Of the Mortgagor, as its deed) on the day and year first before written.

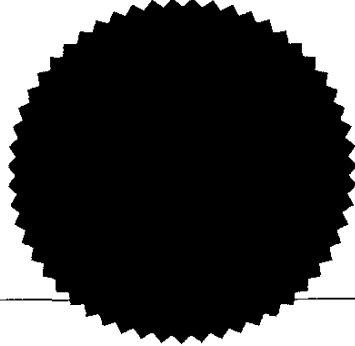
**MORTGAGOR**

**EXECUTED** as a deed by affixing the common seal of **BOVIS HOMES LIMITED** in the presence of:

  
\_\_\_\_\_  
Signature of director

  
\_\_\_\_\_  
Signature of secretary (or director)

*Common seal of company*



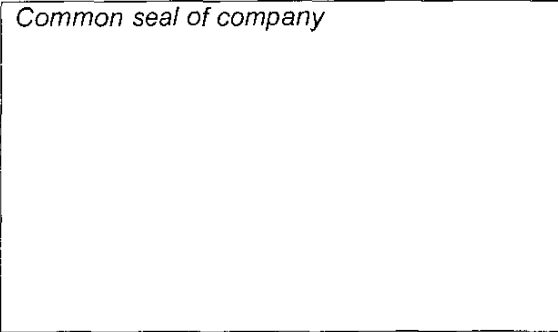
**MORTGAGEE**

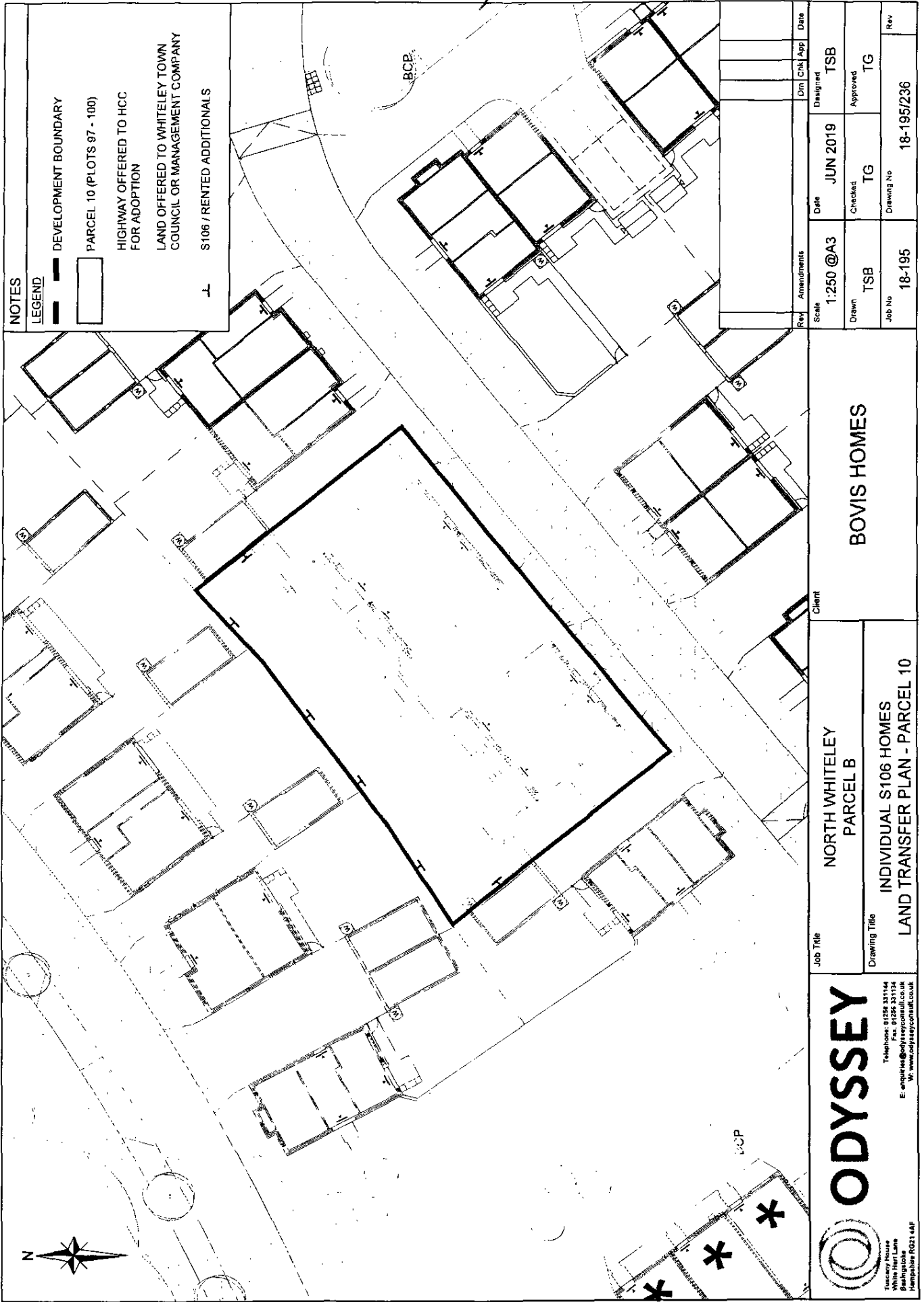
**EXECUTED** as a deed by affixing the common seal of the **VIVID HOUSING LIMITED** in the presence of:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of secretary (or director)

*Common seal of company*





Dated 18 September

2019

## LEGAL MORTGAGE

relating to

**Parcel 10**  
**Bury Farm, Botley Road, Curdridge and**  
**at Whiteley Lane, Whiteley, Fareham**

**BOVIS HOMES LIMITED (as Mortgagor)**

and

**VIVID HOUSING LIMITED (as Mortgagee)**

REF: GAB/BO45224.000044/20305822.1

We hereby certify  
this to be a true copy  
of the original

Sherratts (London) LLP  
18/09/19

THIS LEGAL MORTGAGE is made on the 15 day of September 2019

**BETWEEN:-**

- (1) **BOVIS HOMES LIMITED**, Company Registration Number 397634 whose registered office is at The Manor House, North Ash Road, New Ash Green, Longfield, Kent DA3 8HQ (the '**Mortgagor**'); and
- (2) **VIVID HOUSING LIMITED**, Registered Society Number 7544 whose registered office is at Peninsular House, Wharf Road, Portsmouth PO2 8HB (the '**Mortgagee**').

**WHEREAS:-**

- (A) The Mortgagee and the Mortgagor have entered into a contract dated on the date of this Deed (the 'Agreement') pursuant to which the Mortgagor will sell and the Mortgagee will buy the property (as such term defined herein) on the terms more fully set out therein.
- (B) It is a requirement of the Agreement that the Mortgagor enters into this Deed to secure the repayment of the Deposit (as such term is defined in the Agreement) by the Mortgagee to the Mortgagor in the circumstances more fully set out in the Agreement and the obligations of the Mortgagee to transfer the Property to the Mortgagee as required by the Agreement
- (C) It is intended that this Deed takes effect as a deed notwithstanding the fact that a party may only execute this Deed under hand.

**NOW THIS DEED WITNESSES:-**

**1 DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

Terms defined in the Agreement shall, unless the context otherwise requires, have the same meanings when used in this Deed. In addition, the following expressions have the following meanings:-

Act	means the Law of Property Act 1925.
Administrator	means an administrator appointed pursuant to Schedule BI to the Insolvency Act 1986.
Business Day	means a day (other than a Saturday or Sunday) on which banks are open for general business in London and in Edinburgh.
Enforcement Event	means an event specified in Clause 9.1.2 of this Deed.
Parcel 10	means Plots 97-100 and as shown edged red on the plan annexed
Parcel 10 Deposit Amount	means the sum of £291,400 (inclusive of any VAT payable in respect of Parcel 10) by the Mortgagor in respect of that part of the Deposit apportioned to Parcel 10 pursuant to the Agreement.
Parcels	has the same definition as referred to within the Agreement and comprising Parcel 1, Parcel 2, Parcel 3, Parcel 4,

Parcel 5, Parcel 6, Parcel 8, Parcel 10, Parcel 11, Parcel 12, Parcel 13, Parcel 14 and Parcel 15

Permitted Disposal

means;

- (a) the grant of a lease, easement or other transfer in respect of any electricity substation, gas governor, pumping station or any other land required for the provision of services or infrastructure; or
- (b) the transfer, lease or surrender of any land to the local authority to comply with highway requirements or to comply with any Planning Agreement.

Permitted Security

means:

- (a) a lien arising by operation of law and in the ordinary course of trading securing obligations not more than 30 days overdue;
- (b) any floating charge granted by the Mortgagor in favour of any provider of debt facilities to it or its corporate group over or in respect of the Property and over any interest of the Mortgagor therein, provided that any such floating charge is not at any time registered against the property at the Land Registry;
- (c) any Security Interest arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to the Mortgagor in the ordinary course of trading and on the suppliers standard or usual terms and not arising as a result of any default or omission by the Mortgagor; and
- (d) any Security Interest created by this Deed or otherwise created with the prior written consent of the Mortgagee.

Property

means the land known as Parcel 10 being part of the freehold land at Bury Farm, Botley Road, Curdridge and at Whiteley Lane, Whiteley, Fareham being part of the land currently within title number HP680822, HP740233 and HP756769 and which is part of the land transferred to the Mortgagor by the Partition Transfers (as defined in the Agreement) being shown edged red on the plan attached to this Deed and more particularly described in the Agreement.

Receiver

includes any person or persons appointed by the Mortgagee (and any additional person or persons appointed or substituted) as receiver, manager, or receiver and manager of all or any part of the Property.



Secured Liabilities	means the Parcel 10 Deposit Amount.
Security Interest	means a mortgage, charge, pledge, lien, hypothecation, right of set-off, assignment by way of security, title retention or other security interest securing any obligation of any person or any other agreement or arrangement having the same effect.
Security Period	means the period commencing on the date of this Deed and ending on the date on which completion of the granting of the Leases takes place in accordance with the Agreement.
Tax	means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).
VAT	or Value Added Tax means value added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature.

## 1.2 Interpretation

In this Deed:-

- 1.2.1 Clause headings are inserted for convenience only and shall not affect the construction of this Deed and unless otherwise specified, all references to Clauses are to clauses of this Deed;
- 1.2.2 unless the context otherwise requires, words denoting the singular number shall include the plural and vice versa;
- 1.2.3 references to a person include references to bodies corporate and unincorporate and include its successors and permitted transferees and assigns whether direct or indirect;
- 1.2.4 references to assets include property, rights and assets of every description both present and future;
- 1.2.5 references to each of the 'Mortgagor' and the 'Mortgagee' shall be construed so as to include their respective successors in title, permitted assigns and permitted transferees;
- 1.2.6 references to the Agreement or any other agreement or instrument shall be construed as a reference to the Agreement or other agreement or instrument as amended, novated, supplemented, extended or restated from time to time;
- 1.2.7 references to any statute or other legislative provision shall include any statutory or legislative modification or re-enactment thereof, or any substitution therefor;
- 1.2.8 references to a 'mortgage' includes a transfer or assignment by way of mortgage;
- 1.2.9 the terms of the Agreement and of any side letters between any parties in relation to the Agreement are incorporated into this Deed to the extent required to ensure that any purported disposition of the Property contained in this Deed is a valid

disposition in accordance with Section 2(1) of the Law of property (Miscellaneous Provisions) Act 1989; and

- 1.2.10 references to an 'overriding interest' are to an unregistered interest which would override first registration or, as the case may be, a registered disposition as set out in Schedule 1 and Schedule 3 to the Land Registration Act 2002.

## **2 COVENANT TO PAY**

The Mortgagor covenants with the Mortgagee that it will on demand pay and discharge the Secured Liabilities when due.

## **3 SECURITY**

The Mortgagor, with full title guarantee and to the intent that the security hereby created shall rank as a continuing security for the payment and discharge of the Secured Liabilities charges in favour of the Mortgagee by way of first legal mortgage, all its estate and interest in the Property.

## **4 APPLICATION TO LAND REGISTRY**

- 4.1 The Mortgagor and the Mortgagee hereby jointly apply to the Chief Land Registrar to enter a restriction in the Proprietorship Register of the title to the Property in the following terms:-

'No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the charge dated in favour of Vivid Housing Limited referred to in the charges register or their conveyancer.'

## **5 REPRESENTATIONS AND WARRANTIES**

The Mortgagor makes the representations and warranties set out in this Clause 5 to the Mortgagee.

### **5.1 General**

- 5.1.1 it is a limited liability company, duly incorporated and validly existing under the laws of England and Wales;
- 5.1.2 it has the power to own its assets and carry on its business, as it is being conducted;
- 5.1.3 it has the power to enter into, perform and deliver, and has taken all necessary action to authorise the entry into, performance and delivery of this Deed and the transactions contemplated by this Deed;
- 5.1.4 this Deed constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms;
- 5.1.5 the entry into and performance by it of and the transactions contemplated by, this Deed do not and will not:-
- 5.1.5.1 *conflict with any law or regulation or judicial or official order having jurisdiction over it or any of its assets; or*
- 5.1.5.2 conflict with its memorandum or articles of association; or

5.1.5.3 conflict with any document which is binding upon it or any of its assets;

## **5.2 The Property**

5.2.1 The Mortgagor is the sole legal and beneficial owner of the Property.

5.2.2 The Property is free from any Security Interest other than permitted Security.

## **5.3 Security**

This Deed creates those Security Interests it purports to create and is not liable to be avoided or otherwise set aside on the liquidation or administration of the Mortgagor or otherwise.

## **5.4 Times for making representations and warranties**

The representations and warranties set out in Clause 5 (Representations and Warranties) are made on the date of this Deed and are deemed to be repeated by the Mortgagor on each date during the Security Period with reference to the facts and circumstances then existing.

## **6 MORTGAGOR'S COVENANTS**

The covenants set out in this Clause 6 remain in force throughout the Security Period in favour of the Mortgagee and any Receiver appointed by the Mortgagee.

### **6.1 Deposit of Certificates**

If the Mortgagee so requires, the Mortgagor shall deposit with the Mortgagee all certificates and other documents of title or evidence of ownership in relation to the Property and shall execute and deliver to the Mortgagee all such transfers and other documents as may be necessary to enable the Mortgagee or its nominees to be registered as the owner or otherwise obtain a legal title to the same.

### **6.2 Negative Pledge**

The Mortgagor further covenants with the Mortgagee that throughout the Security Period it shall not:-

6.2.1 create, incur or permit to exist any Security Interest in, over or affecting the Property (other than a Permitted Security);

6.2.2 except with the prior written consent of the Mortgagee, sell, assign, transfer or otherwise dispose of the whole or any part of the Property or any interest therein (whether by one transaction or a series of transactions and whether related or not), provided that the Mortgagor shall be entitled to make the Permitted Disposals without such consent; or

6.2.3 except with the prior written consent of the Mortgagee grant to, or allow to be acquired by, any third party any right, licence or interest whatsoever in or over the Property, nor exercise any of the powers of leasing or of agreeing to lease or of accepting surrenders conferred on mortgagors by the Act or release or vary or agree to release or vary any terms of, nor grant any licences or consents (including for the avoidance of doubt licences or consents for the assignment or subletting of the whole or any part the Property) under, any leases for the time being affecting the Property, nor without such consent as aforesaid exercise any power to determine or forfeit the same or extend the same, provided always that

the Mortgagor shall be entitled to make a Permitted Disposal without the consent of the Mortgagee and shall be entitled to grant such licences to contractors and sub-contractors as are usual in the normal course of development.

## **7 PERMITTED DISPOSALS**

At the request of the Mortgagor, the Mortgagee shall promptly give all necessary consents, confirmations and releases in relation to the Permitted Disposals.

## **8 PRESERVATION OF SECURITY**

### **8.1 Continuing Security**

The Mortgagor declares and agrees that:-

- 8.1.1 the security created by and covenants and provisions contained in this Deed shall be held by the Mortgagee as a continuing security and shall not be satisfied by *any intermediate payment or satisfaction of any part of the Secured Liabilities* and shall remain in full force and effect until the Secured Liabilities hereby secured have been unconditionally and irrevocably paid and discharged in full to the satisfaction of the Mortgagee;
- 8.1.2 the Mortgagee shall not be bound to enforce any guarantee or other security or proceed or take any other steps against any other person before enforcing this Deed; and
- 8.1.3 this Deed shall be in addition to, and not in substitution for, any other rights which the Mortgagee may now or hereafter have under or by virtue of any guarantee or other security or agreement or any lien or by operation of law or under any collateral or other security now or hereafter held by the Mortgagee or to which the Mortgagee may be entitled.

### **8.2 Avoidance of Payments**

- 8.2.1 Any settlement, discharge or release under this Deed between the Mortgagee and the Mortgagor shall be conditional upon no security or payment to the Mortgagee by the Mortgagor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any provision or enactment relating to bankruptcy, insolvency, administration or liquidation for the time being in force, and if such condition is not satisfied, the Mortgagee shall be entitled to recover from the Mortgagor on demand the value of such security or the amount of any such payment as if such settlement, discharge or release had not occurred.
- 8.2.2 *The Mortgagee shall be at liberty at its absolute discretion to retain the security created by this Deed as security for the Secured Liabilities for a period of one month plus such statutory period within which any security or payment given or made pursuant to this Deed may be avoided or invalidated after the Secured Liabilities shall have been paid or discharged in full, notwithstanding any release, settlement, discharge or arrangement given or made with the Mortgagee on or as a consequence of such termination of liability. If at any time within such period after such termination a petition shall be presented to a competent court for an order for the bankruptcy, insolvency, winding up or similar process of the Mortgagor or the appointment of an administrator in respect of the Mortgagor or the Mortgagor shall commence to be wound up voluntarily, the Mortgagee shall be at liberty and notwithstanding as before mentioned to continue to retain such*

security or any part thereof for and during such further period as the Mortgagee in its absolute discretion shall determine. The Mortgagor agrees that such security shall be deemed to have been and to have remained held by the Mortgagee as and by way of security for the payment to the Mortgagee of all or any sums which may become due and owing to the Mortgagee in respect of the Secured Liabilities.

## **9 ENFORCEMENT**

### **9.1 Enforceability of Security**

9.1.1 upon the occurrence of an Enforcement Event, the security constituted by this Deed shall become immediately enforceable and the power of sale and other powers conferred on mortgagees by the Act as varied or amended by this Deed shall be immediately exercisable upon and at any time thereafter. After the security constituted by this Deed has become enforceable, the Mortgagee may in its discretion enforce all or any part of such security in such manner as the Mortgagee sees fit.

9.1.2 Each of the following events or circumstances is an Enforcement Event:-

9.1.2.1 failure by the Mortgagor to fulfil its obligations under clause 3.5 of the Agreement within 10 Business Days of such obligations becoming due and payable under or pursuant to the Agreement; and

9.1.2.2 any order is made by any competent court or any resolution is passed by the Mortgagor for its winding-up or dissolution or for the appointment of a liquidator of the Mortgagor..

### **9.2 Exclusion of Certain Provisions of the Act**

For the purposes of all powers implied by statute the Secured Liabilities shall be deemed to have become due and payable on the date hereof and Section 103 of the Act (restricting the power of sale) and Section 93 of the Act (restricting the right of consolidation) shall not apply to this Deed. The statutory powers of leasing conferred on the Mortgagee shall be extended so as to authorise the Mortgagee to lease, make agreements for leases, accept surrenders of leases and grant options as the Mortgagee shall think fit and without the need to comply with any of the provisions of Sections 99 and 100 of the Act.

### **9.3 Redemption of Prior Charges**

At any time after the security constituted by this Deed shall have become enforceable, the Mortgagee may redeem any prior Security Interest against the Property or procure the transfer thereof to itself and may settle or pass the accounts of any holder of such Security Interest and any accounts so settled and passed shall be conclusive and binding on the Mortgagor. All principal monies, interest, costs, charges and expenses of and incidental to the redemption and transfer shall be Secured Liabilities.

### **9.4 Appointment of Receiver or Administrator**

At the request of the Mortgagor or at any time after the security constituted by this Deed becomes enforceable the Mortgagee may subject to the provisions Of paragraph 43 of Schedule 1 to the Insolvency Act 2000:-

9.4.1 without further notice appoint by writing one or more persons to be a Receiver of the Property or any part thereof; or

- 9.4.2 apply to a court of competent jurisdiction to appoint any person or persons to be an *Administrator of the Mortgagor*,

in each case, upon such terms as to remuneration and otherwise as it shall think fit and shall agree with such Receiver or Administrator and may from time to time remove any Receiver or Administrator so appointed and appoint another in his stead. A Receiver or Administrator so appointed shall give notice of his appointment (inter alia) to the Mortgagor and shall be deemed to act as the agent of the Mortgagor in the exercise of the powers granted hereunder or by statute or otherwise and the Mortgagor shall be responsible for such Receiver's or Administrator's acts and defaults and for his remuneration, costs, charges and expenses to the exclusion of liability on the part of the Mortgagor.

## 9.5 **Joint Receivers**

Where more than one person is appointed as a Receiver the powers of such persons may be exercised either jointly or individually by any one of such persons.

## 9.6 **Receiver's Powers**

A Receiver appointed in accordance with Clause 9.4 hereof (and the Mortgagee if it goes into possession as mortgagee) shall have all the powers conferred on a Receiver by the Act and all such powers as are set out in Schedule 1 to the Insolvency Act 1986 notwithstanding that such Receiver may not be an administrative receiver and in addition shall have power to:-

- 9.6.1 take possession of and get in the Property and for this purpose to make demands and take proceedings as he may think fit in respect thereof in such manner as he thinks fit;
- 9.6.2 carry on or concur in carrying on such of the business Of the Mortgagor (and for this purpose to borrow money on the security of the Property in priority to this charge or otherwise as he may consider expedient and carrying interest at such rate as he may consider necessary) and manage, conduct, amalgamate, develop and reconstruct the same (and concur in so doing) in such manner and to such extent as he may think fit;
- 9.6.3 make and effect all repairs and maintain, renew, increase or surrender insurances and do all such other acts and things which the Mortgagor might do in the ordinary course of its or their business for the protection and/or for the improvement of the Property;
- 9.6.4 sell by public auction or private contract, grant licences or options or otherwise assign the Property in such manner and on such terms as he shall think proper; *lease and accept surrenders of leases of any of the Property and with respect thereto make provision for and effect rent reviews (or concur in so doing);* any such sale, lease, licence, option, surrender or assignment may be for cash, loan capital, debentures, shares, stock, securities or other consideration and be payable immediately or by instalments deferred and spread over such period as he shall think fit and may be on terms whereby the total amount of the consideration is to be ascertained by reference to the turnover or profits of the purchaser;
- 9.6.5 without any further consent by or notice to, as the case may be, the Mortgagor, exercise on its or their behalf all the powers and provisions conferred on a landlord or a tenant pursuant to any legislation from time to time in force relating to rents

in respect of any part of the Property but without any obligation to exercise any of such powers and without any liability in respect of powers so exercised or omitted to be exercised;

- 9.6.6 purchase any additional land adjacent to or in the vicinity of the Property for the purpose of enhancing the value of such property or facilitating the disposal thereof and for such purposes borrow monies from the Mortgagee on such terms as the Receiver may think fit;
- 9.6.7 make allowances to and re-arrangements with any lessees, tenants of the Property or other persons from whom any rents and profits may be receivable and to negotiate and agree or refer to arbitration any revision of rent under any leases in respect of which the rental may fall to be reviewed and to accept service of or serve any notice received or required or deemed desirable in connection with any such review or with the exercise of any options;
- 9.6.8 do any repairs and make any structural or other alterations, improvements or additions in or to the Property and purchase or otherwise acquire any materials, articles or things and do anything else in connection therewith which the Receiver may think desirable for the purpose of making productive or increasing the letting or market value thereof;
- 9.6.9 institute, arrange, carry on and conduct services of lighting, heating and cleansing and all other services which may be deemed proper for the efficient use or management of the Property;
- 9.6.10 reconstruct, alter, improve, decorate, furnish and maintain the whole or any part of the buildings on the Property;
- 9.6.11 sell all or any of the fixtures (other than tenants' trade fixtures) either as a part of and/or together with or separately and detached from the Property;
- 9.6.12 perform, treat as repudiated, rescind or vary any contract or agreement for or which relates in any way to any development, improvement, reconstruction or repair of the Property or any part thereof or which is in any other way connected therewith;
- 9.6.13 without prejudice to the generality of any of the foregoing powers carry out, continue and/or perform any development of any part of the Property and to enter into a building contract or appointment or any other contract or agreement for or relating to any development for any such purposes as aforesaid to purchase such materials and other articles and things as he may think fit to discontinue such development or any part thereof and to repudiate and rescind any building contract or any such contract or agreement as aforesaid;
- 9.6.14 in connection with any development obtain planning permissions, bye law consents and any other permissions and/or approvals, enter into agreements under the Highways Act 1980 and any other agreements requisite for the development, to enter into and arrange bonds and in particular road bonds and indemnities in connection therewith and to dedicate any part of the Property as a public highway or grant any other rights over under or relating to the Property;
- 9.6.15 promote the formation of companies with a view to the same purchasing, leasing, licensing, managing or otherwise acquiring interests in the Property or otherwise, arrange for such companies to trade or cease to trade and to purchase, lease,

license or otherwise acquire the Property on such terms and conditions whether or not including payment by instalments secured or unsecured as he may think fit;

- 9.6.16 make calls conditionally or unconditionally on the members of the Mortgagor concerned in respect of uncalled capital;
- 9.6.17 effect any policy or policies Of insurance for any purpose in connection with the receivership and without prejudice to the generality of the foregoing particularly to support and underwrite any indemnity given by the Mortgagor hereunder;
- 9.6.18 *make any arrangement or compromise or disclaim, alter, enter into or cancel any contract or liability which he shall think expedient;*
- 9.6.19 sign any document execute any deed and do all such other acts and things as he may in his absolute discretion consider to be incidental or conducive to any of the matters and powers aforesaid or to the realisation of the security constituted by this Deed;
- 9.6.20 present or, as the case may be, defend a petition for the winding up of the Mortgagor;
- 9.6.21 employ or engage, upon such terms (as to remuneration or otherwise) as he may think proper, such professional advisers, managers, servants and agents as he considers necessary including without limiting the generality of the foregoing architects, estate agents, quantity surveyors, solicitors, valuers auctioneers, surveyors and accountants;
- 9.6.22 bring or defend any action or legal proceedings or discontinue the same on behalf of the Mortgagor;
- 9.6.23 exercise any option or right of election available at law to the Mortgagor or the Mortgagee or a Receiver that the supplies made in respect of any lease or tenancy hereby charged shall be chargeable or taxable for Value Added Tax purposes at the standard or any other applicable rate of tax;
- 9.6.24 obtain, renew, extend, amend or otherwise deal with such permissions, consents and/or licences for the benefit of or otherwise connected with or ancillary to all or part of the Property or its use or development of the Mortgagor's business;
- 9.6.25 do all such other acts and things as may be considered to be expedient for the protection of the property or to be incidental or conducive to any of the above matters and powers or any other act or thing which he could do if he were absolutely entitled to the Property and which the Receiver may lawfully do as *agent for the Mortgagor*;
- 9.6.26 use the name of the Mortgagor for all or any of the above purposes with full power to convey, transfer or assign the whole or any part of the Property sold in the name of the Mortgagor.

## 9.7 Protection of Third Parties

No person or persons (including a purchaser) dealing with the Mortgagee or any Receiver or Administrator shall be concerned to enquire whether any event has happened upon which any of the powers herein contained may have arisen or be exercisable or otherwise as to the



propriety or regularity of any exercise thereof or of any act purporting or intended to be in exercise thereof or whether any monies remain owing upon the security of this Deed and all the protection of the Act shall apply to any person purchasing from or dealing with the Mortgagee or any Receiver or Administrator.

#### **9.8 Delegation**

The Mortgagee and any Receiver or Administrator may at any time and from time to time delegate by power of attorney or in any other manner to any person any right, power or discretion exercisable by the Mortgagee under this Deed. Any such delegation may be made upon such terms and conditions (including power to sub-delegate) and subject to any regulations which the Mortgagee or such Receiver or Administrator (as the case may be) may think fit. Neither the Mortgagee nor any Receiver or Administrator will be in any way liable or responsible to the Mortgagor for any loss or damage arising from any act, default, omission or misconduct on the part of any such delegate or sub-delegate.

#### **9.9 Mortgagee's Liability**

Neither the Mortgagee nor any Receiver nor any of their respective agents, managers, officers, employees, delegates or advisers shall in any circumstances be liable to the Mortgagor for any claim, demand, liability, loss, damage, cost or expense from any exercise, purported exercise or non-exercise by the Mortgagee or any Receiver of any power, authority, right or discretion conferred upon it in relation to the Property or any part thereof by or pursuant to this Deed or by the Act or the Insolvency Act 1986.

#### **9.10 Vacation of Possession**

If the Mortgagee or any Receiver or Administrator appointed by the Mortgagee or any such delegate as aforesaid shall enter into possession of the Property or any part thereof it or he may from time to time at pleasure go out of such possession.

#### **9.11 Not Mortgagee in Possession**

Neither the Mortgagee nor any Receiver or Administrator shall by reason of the taking of possession of the whole or any part of the Property by any of them be liable to account as mortgagee-in-possession or for anything except actual receipts or be liable for any loss upon realisation or for any default or omission for which a mortgagee-in-possession might be liable.

### **10 APPLICATION OF PROCEEDS**

Subject to claims having priority to the charges created by this Deed and to any applicable statutory requirement as to the payment of preferential debts, all monies received under the powers conferred by this Deed shall be applied in the following order:-

- 10.1 in payment of all costs charges and expenses relating to the exercise of all or any of the powers aforesaid and of all other outgoings payable by the Receiver or Administrator (or as the case may be by the Mortgagee);
- 10.2 (if applicable) in payment of remuneration to the Receiver or Administrator at such rate as may be agreed between him and the Mortgagee;
- 10.3 in or towards payment pro rata of any sums due but unpaid under this Deed; and
- 10.4 the surplus (if any) shall be paid to the Mortgagor or to whomsoever else may be entitled thereto in priority to the Mortgagor.

## **11 COSTS AND EXPENSES**

- 11.1 *The Mortgagor covenants with the Mortgagee that it shall within three Business Days of demand reimburse or pay to the Mortgagee or any Receiver or Administrator and each agent, attorney, manager or other person appointed by the Mortgagee under this Deed (on the basis of a full indemnity) the amount of all proper and reasonable costs, charges and expenses incurred or sustained by the Mortgagee or the Receiver or Administrator in connection with:-*
- 11.2 *the exercise by or on behalf of the Mortgagee or any Receiver or Administrator of any of the powers of the Mortgagee, any agent or attorney; and/or*
- 11.3 *the enforcement of the Mortgagee's rights under this Deed.*

## **12 FURTHER ASSURANCE**

The Mortgagor hereby covenants that it and all other necessary parties (if any) immediately on demand at the Mortgagor's expense will:-

- 12.1 execute and do all such assurances acts and things as the Mortgagee or any Receiver may in its absolute discretion require for:-
- 12.1.1 perfecting, preserving or protecting the security created (or intended to be created) by this Deed or any of the rights of the Mortgagee or any Receiver under this Deed; or
- 12.1.2 facilitating the appropriation or realisation of the Property or any part thereof and enforcing the security constituted by this Deed in either case on or at any time after the same shall have become enforceable; or
- 12.1.3 the exercise of any power, authority or discretion vested in the Mortgagee or any Receiver under this Deed.

## **13 ASSIGNMENT**

- 13.1 This Deed shall be binding upon and shall enure to the benefit of the Mortgagee and the Mortgagor and their respective successors and, in the case of the Mortgagee, its assigns and transferees and references in this Deed to any of them shall be construed accordingly.
- 13.2 The Mortgagor may not assign or transfer all or any part of its rights and/or obligations under this Deed.
- 13.3 The Mortgagee may not assign or transfer all or any part of its rights and/or obligations hereunder.

## **14 MISCELLANEOUS**

### **14.1 Giving of Time**

The Mortgagee shall be at liberty from time to time to give time for payment of any liability of the Mortgagor to the Mortgagee as the Mortgagee shall in its discretion think fit without in any manner releasing the Mortgagor or affecting the security hereby made.

### **14.2 No other Registered Proprietor**

During the Security Period no person other than the Mortgagor shall be registered under the Land Registration Act 2002 as proprietor of the property or any part thereof without the prior

written consent of the Mortgagee and the costs incurred by the Mortgagee of lodging from time to time a caution against the registration of the property shall be deemed to be an expense properly incurred by the Mortgagee in relation to this Deed.

#### **14.3 Discharge**

Subject to Clause 8.2 (Avoidance of Payments) above, upon the earlier of:

- 14.3.1 the Secured Liabilities having been unconditionally and irrevocably paid and discharged in full; and
- 14.3.2 completion of the transfer Of the property to the Chargee pursuant to Clause 3.2 of the Agreement,

the Mortgagee will forthwith release the security created by this Deed. For the avoidance of doubt, where the Mortgagee is under an obligation to release the security created by this Deed pursuant to this Clause 14.3, it shall provide a form DSI and form RX4 (in respect of the restriction referred to at clause 4.1) duly dated and released and in the event that the solicitors acting for the Mortgagor have not received the form DSI and/or the RX4 within 14 days of such repayment then the Mortgagor is hereby irrevocably appointed by the Mortgagee as the attorney of the Mortgagee to execute the DSI and/or the RX4 in the name of and on behalf of the Mortgagee.

#### **14.4 Perpetuity Period**

If applicable, the perpetuity period under the rule against perpetuities shall be 125 years from the date of this Deed.

#### **14.5 Tax gross-up**

All payments to be made by the Mortgagor to the Mortgagee under this Deed shall be made without set-off and free and clear of and without withholding or deduction for or on account of taxes.

#### **14.6 Set-off**

The Mortgagee may set off any matured obligation due from the Mortgagor under this Deed against any matured obligation owed by the Mortgagee to the Mortgagor.

#### **14.7 Partial Invalidity**

Each of the provisions Of this Deed is severable. If any such provision is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction the legality, validity or enforceability in that jurisdiction of the remaining provisions of this Deed or, in any other jurisdiction, of that provision or any other provisions Of this Deed, shall not in any way be affected or impaired thereby.

#### **14.8 Remedies and Waivers**

- 14.8.1 No omission to exercise or delay in exercising on the part of the Mortgagee any right, power or remedy provided by law or under this Deed shall constitute a waiver of such right, power or remedy or any other right, power or remedy or impair such right, power or remedy. No single or partial exercise of any such right, power or remedy shall preclude or impair any other or further exercise thereof or

*the exercise of any other right, power or remedy provided by law or under this Deed.*

14.8.2 Any waiver of any right, power or remedy under this Deed, or any consent or approval given by the Mortgagee hereunder, shall only be effective if given in writing and may be given subject to any conditions which the grantor may think fit. Unless otherwise expressly stated, any waiver shall be effective only in the instance and only for the purpose for which it is given.

14.8.3 No variation of this Deed shall be of any effect unless it is agreed in writing and executed by or on behalf of each party.

14.8.4 Unless specifically provided otherwise, rights arising under this Deed are cumulative and do not exclude any other rights provided by law or otherwise.

#### **14.9 Counterparts**

This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed.

#### **15 LAW AND JURISDICTION**

15.1 This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, English law.

15.2 The parties irrevocably agree that the courts of England and Wales are to have exclusive jurisdiction over any dispute:

15.2.1 arising from or in connection with this Deed; or

15.2.2 relating to any obligations arising from or in connection with this Deed and for such purposes, irrevocably submit to the jurisdiction of such courts.

#### **16 NOTICES**

Clause 19 (Notices) of the Agreement shall apply and extend to this Deed as if they were set out herein but with the references in those clauses to 'this Contract' and 'the Seller' and 'the Buyer' (howsoever described) being replaced respectively by references to 'this Deed', 'the Mortgagor' and 'the Mortgagee' (where appropriate).

#### **17 RIGHTS OF THIRD PARTIES**

Unless expressly provided to the contrary in this Deed, a person who is not a party to this Deed has no right under the Contracts (Rights of Third parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed.

**IN WITNESS** whereof the parties hereto have caused this Deed to be duly executed and delivered (in the case Of the Mortgagor, as its deed) on the day and year first before written.

**MORTGAGOR**

**EXECUTED** as a deed by affixing the common seal of **BOVIS HOMES LIMITED** in the presence of:

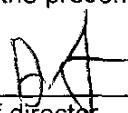
\_\_\_\_\_  
Signature of director

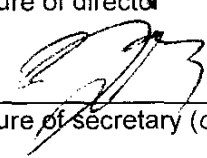
\_\_\_\_\_  
Signature of secretary (or director)

*Common seal of company*

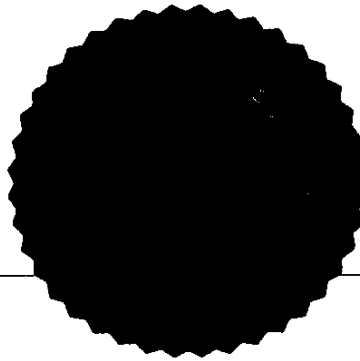
**MORTGAGEE**

**EXECUTED** as a deed by affixing the common seal of the **VIVID HOUSING LIMITED** in the presence of:

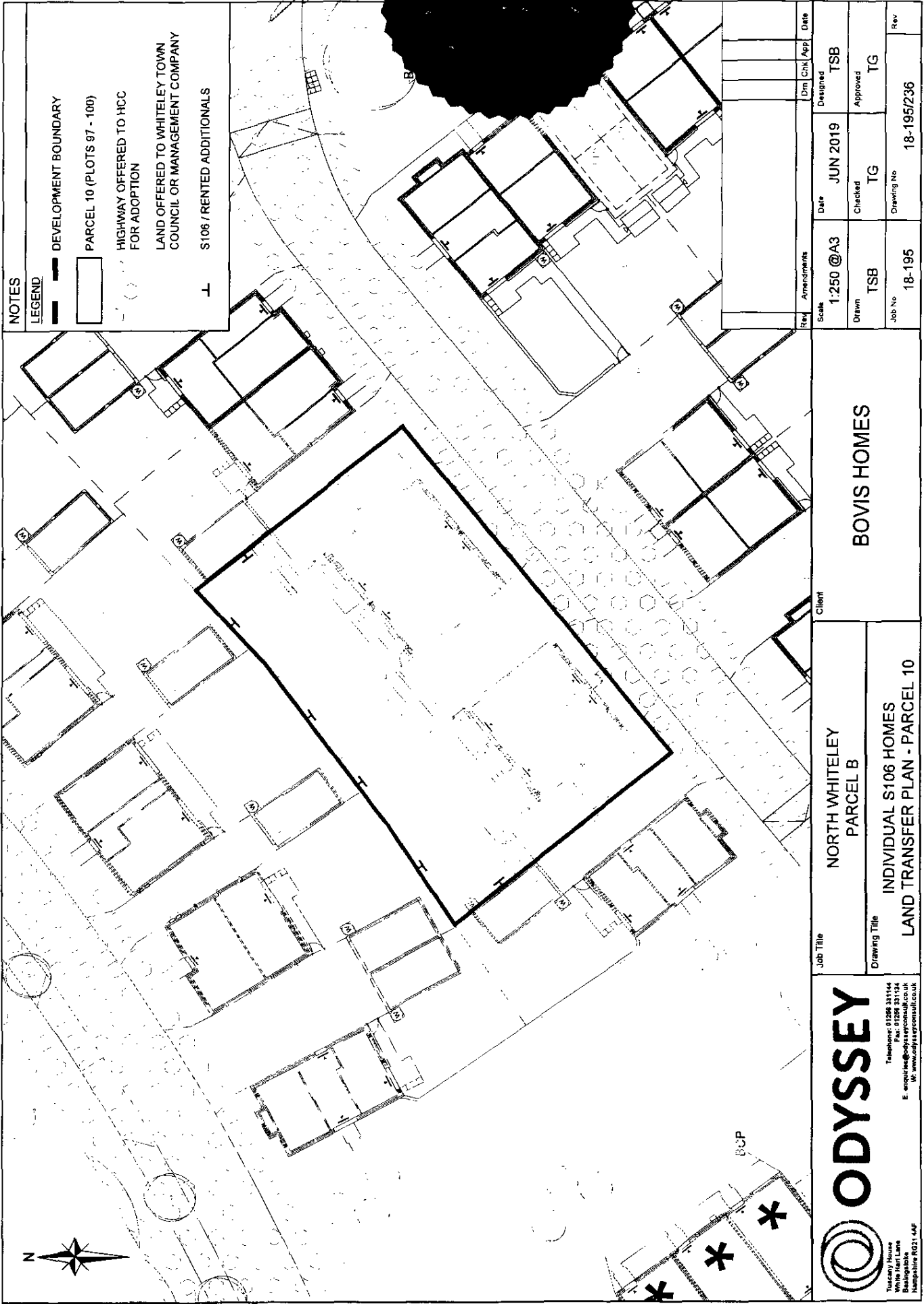
  
\_\_\_\_\_  
Signature of director

  
\_\_\_\_\_  
Signature of secretary (or director)

*Common seal of company*



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