

221599-23

In accordance with Sections 859A and 859J of the Companies Act 2006.

# MR01

## Particulars of a charge



Companies House



Go online to file this information  
[www.gov.uk/companieshouse](http://www.gov.uk/companieshouse)

A fee is be payable with this form  
Please see 'How to pay' on the last page.

**What this form is for**  
You may use this form to register a charge created or evidenced by an instrument.

**What this form is NOT for**  
You may not use this form to register a charge where there is no instrument. Use form MR00.

For further information, please refer to our guidance at:  
[www.gov.uk/companieshouse](http://www.gov.uk/companieshouse)  
COMPANIES HOUSE

This form **must be delivered to the Registrar for registration 21 days** beginning with the day after the date of creation of the delivered outside of the 21 days it will be rejected unless it is accompanied by a court order extending the time for delivery.

You **must** enclose a certified copy of the instrument with this form scanned and placed on the public record. **Do not send the original**

SATURDAY



\*A8HV2AW\*

A07

09/11/2019

#294

COMPANIES HOUSE

For official use  
**3580**

→ **Filling in this form**  
Please complete in typescript or in bold black capitals.

All fields are mandatory unless specified or indicated by \*

### 1 Company details

Company number: 0 1 1 0 8 6 7 6

Company name in full: Linden Limited

### 2 Charge creation date

Charge creation date: d 2 d 5 m 1 m 0 y 2 y 0 y 1 y 9

### 3 Names of persons, security agents or trustees entitled to the charge

Please show the names of each of the persons, security agents or trustees entitled to the charge.

Name: Robert Mills

Name

Name

Name

If there are more than four names, please supply any four of these names then tick the statement below.

I confirm that there are more than four persons, security agents or trustees entitled to the charge.

MRO1  
Particulars of a charge

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**Brief description**

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.

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".

Please limit the description to the available space.

Brief description

Phase 1, Daddon Hill Farm, Bideford.

5

**Other charge or fixed security**

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.

**Yes**

**No**

6

**Floating charge**

Is the instrument expressed to contain a floating charge? Please tick the appropriate box.

**Yes** Continue

**No** Go to **Section 7**

Is the floating charge expressed to cover all the property and undertaking of the company?

**Yes**

7

**Negative Pledge**

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.

**Yes**

**No**

8

**Trustee statement** <sup>1</sup>

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.

<sup>1</sup> This statement may be filed after the registration of the charge (use form MR06).

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**Signature**

Please sign the form here.

Signature

Signature

\* Trovers & Hamblins LLP \*

This form must be signed by a person with an interest in the charge.

# MRO1

## 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  
Stephanie Taylor

Company name  
Trowers & Hamblins LLP

Address  
The Senate

Southernhay Gardens

Post town  
Exeter

County/Region  
Devon

Postcode  
E X 1 1 U G

Country

DX

Telephone  
01392 612600

### 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: 1108676

Charge code: 0110 8676 0380

The Registrar of Companies for England and Wales hereby certifies that a charge dated 25th October 2019 and created by LINDEN LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 9th November 2019.

A handwritten signature, possibly 'S', in black ink.

Given at Companies House, Cardiff on 18th November 2019



**Companies House**



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

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

Dated 28<sup>th</sup> day of October 2019

Trowers and Hamlin  
Trowers & Hamlin, Solicitors

## Legal Mortgage

between

- (1) Linden Limited
- (2) Robert Mills

Dated 25 October 2019

### Osborne Clarke LLP

2 Temple Back East  
Temple Quay  
Bristol  
BS1 6EG

HMP/1080508/40511354

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This Deed is made on 25 October 2019

**Between:**

- (1) **LINDEN LIMITED** (company number: 01108676) whose registered office is at Cowley Business Park, Cowley, Uxbridge, Middlesex, UB8 2AL ("**Buyer**"); and
- (2) **ROBERT MILLS** both of Daddon Hill Farm, Northam, Devon, EX39 3PW ("**Seller**").

**Background:**

- (A) The Buyer has agreed to purchase the Property on the terms set out in the Agreement for Sale.
- (B) Under the Agreement for Sale the First Deferred Consideration and Second Deferred Consideration are payable in the manner set out in the Agreement for Sale.
- (C) Under this deed, the Buyer provides security to the Seller for payment of the Deferred Consideration.

**Agreed terms**

**1. Definitions and interpretation**

**1.1 Definitions**

Terms defined in the Agreement for Sale shall, unless otherwise defined in this deed, have the same meaning in this deed. In addition, the following definitions apply in this deed:

**"Affordable Housing"** means residential units for letting or shared ownership or shared equity purchase or discounted low cost housing to be made available by an Association to persons who are unable to compete for or afford similar property in the open market place

**"Association"** means:-

- (a) a housing association or registered social landlord registered in accordance with the Housing and Regeneration Act 2008; or
- (b) such other company or body as is:-
  - (i) a company or body approved by the Homes England ("HE" and so that references to HE shall include any successor or replacement body) as a qualified recipient of social housing grant; and
  - (ii) subject to HE control in respect of Affordable Housing;

**"Agreement for Sale"** means the agreement for sale relating to the Property dated 11 October 2019 and made between Robert Mills (1) Robert Mills and Mary-Ann Mills (2) Urban & Civic Northam Limited (3) Linden Limited (4) and Daddon Hill Estate Management Company Limited (5).

**"Approval"** means written approval by the Seller which shall not be unreasonably withheld or delayed provided that the Seller shall be entitled to withhold Approval until and unless it considers that the document requiring Approval contains a mortgagee protection clause in a form acceptable to the Seller and/or that the said document does not have a Material Adverse Effect and further provided that if the Seller shall not have responded to a request for Approval within ten (10) Business Days of such a request having been made by the Buyer the Seller shall be deemed to have given Approval.

**"Business Day"** means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**"Charged Assets"** means all the assets, property and undertaking of the Buyer, which are, or are intended to be, subject to the Security created by, or pursuant to, this deed (and references to the Charged Assets shall include references to any part of them).

**"Deed of Release"** means a form DS3 or DS1 (or any form amending or replacing the same).

**"Deferred Consideration"** means the First Deferred Consideration and the Second Deferred Consideration.

**"Delegate"** means any person appointed by the Seller or any Receiver under *Clause 15* and any person appointed as attorney of the Seller, Receiver or Delegate.

**"Environment"** means the natural and man-made environment including all or any of the following media, namely air, water and land (including air within buildings and other natural or man-made structures above or below the ground) and any living organisms (including man) or systems supported by those media.

**"Environmental Law"** means all applicable laws, statutes, regulations, secondary legislation, bye-laws, common law, directives, treaties and other measures, judgments and decisions of any court or tribunal, codes of practice and guidance notes in so far as they relate to or apply to the Environment.

**"Environmental Licence"** means any authorisation, permit or licence necessary under Environmental Law in respect of any of the Charged Assets.

**"Event of Default"** means each of the events or circumstances set out in paragraphs (a) to (n) of Schedule 2.

**"First Deferred Consideration"** means the sum of Five Hundred and Thirty Three Thousand Six Hundred and Seven Pounds and Fifty Pence (£533,607.50) payable pursuant to clause 3.7(b) of the Agreement for Sale

**"Land Registry Documents"** means all such forms (including Land Registry forms RX3 and RX4) and (excluding any Deed of Release) any documents duly signed and completed as may be required to procure the removal of any restriction on the registers of title to the Property that has been entered pursuant to any provision of this deed or to ensure that it is not registered against the title to any part of the Property that is either comprised in an Permitted Disposal or which is released pursuant to clause 20 of this deed.

**"LPA 1925"** means the Law of Property Act 1925.

**"Material Adverse Effect"** means a material adverse effect on:

- (c) the business, property, or financial condition of the Buyer; or
- (d) the ability of the Buyer to perform its material obligations under the Agreement for Sale or this deed; or
- (e) the validity, legality and enforceability of, or the effectiveness or ranking of any Security granted or purported to be granted pursuant to this deed; or
- (f) the rights or remedies of the Seller under the Agreement for Sale or this deed.

**"Permitted Disposal"** means:

- (a) a disposition to a Relevant Authority pursuant to an obligation in any service or utility agreement and/or in connection with the provision of services including, without limitation, for an electricity substation, gas governor, sewage or water pumping station, drainage balancing device, telecoms mast or aerial, energy centres or other similar matters on the Property; or
- (b) the grant of any wayleave or easement or the like to a third party which is reasonably and properly required for the purposes of development of the Property and/or the Seller's Adjoining Land; or
- (c) a disposition of land to a local planning authority or other Relevant Authority pursuant to a condition in the Planning Consent or any associated reserved matters approval; or
- (d) a disposition pursuant to a Planning Agreement or Works Agreement;
- (e) any licence to carry out works in connection with the development permitted by the Planning Consent on the Property which does not carry the right to occupy;
- (f) any disposal (whether by way of transfer of the freehold, the grant of a lease or otherwise), the grant of easement or wayleave to a service provider or to the local authority or to the highway authority or other public bodies for the purpose of access improvement, services, pursuant to an obligation in an Works Agreement required in connection with the development permitted by the Planning Consent or to comply with any other highways requirements relating to the development of the Property in accordance with the Planning Consent;
- (g) the grant of any easements constructed over the Property for the benefit of any dwelling constructed outside of the Property pursuant to the Planning Consent;
- (h) any disposal (whether by way of transfer of the freehold the grant of a lease or otherwise) of any common parts or other amenity land to a residents management company or company set up for the purpose of managing such property;
- (i) a disposal of a freehold reversion;
- (j) the disposal of up to 35 Residential Units prior to the first anniversary of this deed and subject to payment of the First Deferred Payment the disposal of a further 35 Residential Units;
- (k) the disposal of Affordable Housing or land which has been designated for use as Affordable Housing; or
- (l) the grant of a wayleave or easement or the like which is required for the development of the Property and/or the Seller's Adjoining Land granted pursuant to any of the disposals at paragraphs (a) to (k) (inclusive) of this definition.

**"Plan 1"** means the plan appended to this deed in Schedule 1, marked "Plan 1".

**"Plan 2"** means the plan appended to this deed in Schedule 1, marked "Plan 2".

**"Planning Agreement"** means an agreement (including without limitation a unilateral or other undertaking) and any variation of any of the Section 106 Agreements pursuant to Section 106 or Section 106A of the Town and Country Planning Act 1990 (as amended) and/or the Local Government (Miscellaneous Provisions) Act 1982 Section 33 and/or the Local Government Act 1972 Section 111 and/or the Public Health Act 1936 Section 18.

**"Planning Consent"** has the meaning given to that term by the Agreement for Sale.

**"Property"** means the land described in Schedule 1.

**"Receiver"** means a receiver or receiver and manager appointed by the Seller under Clause 13.

**"Relevant Authority"** means the local county highway and planning authorities gas water electricity cable television and telecommunications companies and any other authority company utility body corporation or organisation (including a management company set up for the purpose) concerned with the grant of planning permission the control of development the adoption of roads and drainage systems and maintenance of open space and ponds or the provision of utility services (including telecoms masts or aerials) and "Relevant Authority" means any one of them as the context may admit.

**Residential Unit:** means a private residential dwelling to be constructed on the Property

**"Scheme Details"** means all reports, drawings, surveys and other documents prepared in connection with the proposed development of the Property pursuant to the Planning Consent.

**"Second Deferred Consideration"** means the sum of Five Hundred and Thirty Three Thousand Six Hundred and Seven Pounds and Fifty Pence (£533,607.50) payable pursuant to clause 3.7(c) of the Agreement for Sale

**"Secured Liabilities"** means all present and future liabilities and obligations at any time due, owing or incurred by the Buyer to the Seller:

- (a) in respect of, and in connection with, the payment of the First Deferred Consideration and/or the Second Deferred Consideration; or
- (b) under and in connection with this deed,

in each case, both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity, and in each case together with all interest (including, without limitation, default interest), damages and other amounts accruing pursuant to the terms of the Agreement for Sale or this deed (as applicable) in respect of those liabilities and obligations.

**"Security"** means any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect.

**"Security Period"** means the period starting on the date of this deed and ending on the date that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full.

**"Section 106 Agreements"** has the meaning given to that term by the Agreement for Sale.

**"Seller's Adjoining Land"** means the land comprised in title numbers DN636883, DN636886 DN636878, DN636889, DN636894, DN473161, DN639927, DN438082 excluding the Property.

**"Services"** foul and surface water drainage (and land drainage), water, gas, electricity and telephone services;

**"Service Media"** sewers, drains, channels, pipes, watercourses, gutters, wires, cables, and other conducting media and all related chambers, tanks or other infrastructure and equipment to be used in connection with such service apparatus.

**"VAT"** means value added tax or any equivalent tax chargeable in the UK or elsewhere.

**"Works Agreement"** means any agreement that is made under one or more of Sections 38 and/or 278 Highways Act 1980 and Section 104 Water Industry Act 1991 or under the Gas Act 1980 or the Water Act 1989 or any statutory provision with a similar purpose; or any agreement with a Relevant Authority about water supply to and drainage of foul and surface

water and effluent; or any agreement (including grant of easements) relating to the installation of service media and for the provision and supply of utility services (including telephone and cable television); or any agreement relating to access for such works.

## 1.2 Interpretation

In this deed:

- (a) clause, Schedule and paragraph headings shall not affect the interpretation of this deed;
- (b) a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality);
- (c) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- (d) unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- (e) a reference to a party shall include that party's successors, permitted assigns and permitted transferees and this deed shall be binding on, and enure to the benefit of, the parties to this deed and their respective personal representatives, successors, permitted assigns and permitted transferees;
- (f) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- (g) a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- (h) a reference to **writing** or **written** includes fax and email;
- (i) an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- (j) a reference to **this deed** (or any provision of it) or to any other agreement or document referred to in this deed is a reference to this deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this deed) from time to time;
- (k) unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this deed and a reference to a paragraph is to a paragraph of the relevant Schedule;
- (l) any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- (m) a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and **amend** and **amended** shall be construed accordingly);
- (n) a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;
- (o) a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;

- (p) a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it; and
- (q) a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

### 1.3 **Clawback**

If an amount paid by the Buyer in respect of the Secured Liabilities is avoided or otherwise set aside on the liquidation or administration of the Buyer or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this deed.

### 1.4 **Nature of security over real property**

A reference in this deed to a **charge or mortgage of or over the Property** includes:

- (a) all buildings and fixtures and fittings (including trade and tenant's fixtures and fittings) and fixed plant and machinery that are situated on or form part of the Property at any time;
- (b) the proceeds of the sale of any part of the Property and any other monies paid or payable in respect of or in connection with the Property;
- (c) the benefit of any covenants for title given, or entered into, by any predecessor in title of the Buyer in respect of the Property, and any monies paid or payable in respect of those covenants; and
- (d) all rights under any licence, agreement for sale or agreement for lease in respect of the Property.

### 1.5 **Law of Property (Miscellaneous Provisions) Act 1989**

For the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the Agreement for Sale and of any side letters between any parties in relation to the Agreement for Sale are incorporated into this deed.

### 1.6 **Perpetuity period**

If the rule against perpetuities applies to any trust created by this deed, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).

### 1.7 **Schedules**

The Schedules form part of this deed and shall have effect as if set out in full in the body of this deed. Any reference to this deed includes the Schedules.

## 2. **Covenant to pay**

The Buyer shall, on demand, pay to the Seller and discharge the Secured Liabilities when they become due under the Agreement for Sale or under this deed (as applicable) (or on such earlier date as the Buyer may elect).

## 3. **Grant of security**

### 3.1 **Legal mortgage and fixed charges**

As a continuing security for the payment and discharge of the Secured Liabilities, the Buyer with full title guarantee charges to the Seller:

- (a) by way of a first legal mortgage, the Property; and
- (b) by way of a first fixed charge:
  - (i) the benefit of all other contracts, guarantees, appointments and warranties relating to the Charged Assets and other documents to which the Buyer is a party or which are in its favour or of which it has the benefit relating to any letting, development, sale, purchase, use or the operation of the Charged Assets or otherwise relating to the Charged Assets (including, in each case, but without limitation, the right to demand and receive all monies whatever payable to or for its benefit under or arising from any of them, all remedies provided for in any of them or available at law or in equity in relation to any of them, the right to compel performance of any of them and all other rights, interests and benefits whatever accruing to or for its benefit arising from any of them); and
  - (ii) all licences, consents and authorisations (statutory or otherwise) held or required in connection with its business carried on at the Property or the use of any Charged Asset, and all rights in connection with them.

#### 4. Perfection of security

##### 4.1 Registration of legal mortgage at the Land Registry

The Buyer consents to an application being made by the Seller to the Land Registrar for the following restriction in Form P to be registered against its title to the Property:

"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 ~~25 October~~ <sup>2017</sup> in favour of Robert Mills referred to in the charges register or their conveyancer."

#### 5. Liability of the Buyer

##### 5.1 Liability not discharged

The Buyer's liability under this deed in respect of any of the Secured Liabilities shall not be discharged, prejudiced or affected by:

- (a) any security, guarantee, indemnity, remedy or other right held by, or available to, the Seller that is, or becomes, wholly or partially illegal, void or unenforceable on any ground;
- (b) the Seller renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or
- (c) any other act or omission that, but for this Clause 5.1, might have discharged, or otherwise prejudiced or affected, the liability of the Buyer.

##### 5.2 Immediate recourse

The Buyer waives any right it may have to require the Seller to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this deed against the Buyer.

**6. Representations and warranties**

**6.1 Times for making representations and warranties**

The Buyer makes the representations and warranties set out in this Clause 6 to the Seller on the date of this deed and they are deemed to be repeated on each day of the Security Period with reference to the facts and circumstances existing at the time of repetition.

**6.2 Ownership of Charged Assets**

The Buyer is the sole legal and beneficial owner of the Charged Assets and has good, valid and marketable title to the Property.

**6.3 No Security**

The Charged Assets are free from any Security other than the Security created by this deed.

**6.4 No adverse claims**

The Buyer has not received, or acknowledged notice of, any adverse claim by any person in respect of the Charged Assets or any interest in them.

**6.5 No adverse covenants**

There are no covenants, agreements, reservations, conditions, interests, rights or other matters whatever that materially and adversely affect the Charged Assets.

**6.6 No breach of laws**

There is no breach of any law or regulation that materially and adversely affects the Charged Assets.

**6.7 No interference in enjoyment**

No facility necessary for the enjoyment and use of the Charged Assets is subject to terms entitling any person to terminate or curtail its use.

**6.8 No overriding interests**

Nothing has arisen, has been created or is subsisting, that would be an overriding interest in the Property.

**6.9 No prohibitions or breaches**

There is no prohibition on the Buyer assigning its rights in any of the Charged Assets and the entry into of this deed by the Buyer does not, and will not, constitute a breach of any policy, agreement, document, instrument or obligation binding on the Buyer or its assets.

**6.10 Environmental compliance**

The Buyer has, at all times, complied in all material respects with all applicable Environmental Law and Environmental Licences.

**6.11 Avoidance of security**

No Security expressed to be created under this deed is liable to be avoided, or otherwise set aside, on the liquidation or administration of the Buyer or otherwise.

**6.12 Enforceable security**

This deed constitutes and will constitute the legal, valid, binding and enforceable obligations of the Buyer and is, and will continue to be, effective security over all and every part of the Charged Assets in accordance with its terms.

## **7. General covenants**

### **7.1 Negative pledge and disposal restrictions**

The Buyer shall not at any time, except with the prior written consent of the Seller:

- (a) create, purport to create or permit to subsist any Security on, or in relation to, any Charged Asset other than any Security created by this deed;
- (b) save by way of Permitted Disposal, sell, assign, transfer, part with possession of, or otherwise dispose of in any manner (or purport to do so), all or any part of, or any interest in, the Charged Assets; or
- (c) create or grant (or purport to create or grant) any interest in the Charged Assets in favour of a third party.

### **7.2 Preservation of Charged Assets**

The Buyer shall not knowingly do, or permit to be done, any act or thing that would or might depreciate, jeopardise or otherwise prejudice the security held by the Seller or materially diminish the value of any of the Charged Assets (save as strictly required to comply with its obligations under the Agreement for Sale) or the effectiveness of the security created by this deed.

### **7.3 Compliance with laws and regulations**

- (a) The Buyer shall not, without the Seller's prior written consent, use or permit the Charged Assets to be used in any way contrary to law.
- (b) The Buyer shall comply with the requirements of any law or regulation relating to or affecting the Charged Assets or the use of them or any part of them.

### **7.4 Enforcement of rights**

The Buyer shall use its reasonable endeavours to:

- (a) procure the prompt observance and performance by the relevant counterparty to any agreement or arrangement with the Buyer and forming part of the Charged Assets of the covenants and other obligations imposed on such counterparty; and
- (b) enforce any rights and institute, continue or defend any proceedings relating to any of the Charged Assets that the Seller may require from time to time.

### **7.5 Notice of misrepresentation and breach**

The Buyer shall, promptly on becoming aware of any of the same, notify the Seller in writing of:

- (a) any representation or warranty set out in this deed that is incorrect or misleading in any material respect when made or deemed to be repeated; and
- (b) any breach of any covenant set out in this deed.

### **7.6 Title documents**

The Buyer shall, promptly on request by the Seller, either:

- (a) deposit with the Seller and the Seller shall, for the duration of this deed, be entitled to hold all deeds and documents of title relating to the Charged Assets that are in the possession or control of the Buyer; or
- (b) procure that its solicitors provide an undertaking to the Seller and the Seller's solicitors (*in form and substance satisfactory to the Seller and the Seller's solicitors (acting reasonably)*) under which the Buyer's solicitor undertakes to hold the documents referred to in paragraph (a) to the Seller's order.

**8. Property covenants**

**8.1 Development restrictions**

The Buyer shall not, without the prior written consent of the Seller and save as required to fulfil its obligations under the Agreement for Sale:

- (a) make or, in so far as it is able, permit others to make any application for planning permission or development consent in respect of the Property; or
- (b) carry out, or permit or suffer to be carried out, on the Property any development (as defined in each of the Town and Country Planning Act 1990 and the Planning Act 2008) or change or permit, or suffer to be changed, the use of the Property.

**8.2 Insurance**

- (a) The Buyer shall insure and keep insured the Charged Assets on terms acceptable to the Seller (acting reasonably).
- (b) Any such insurance must be with a reputable insurance company or underwriters and on such terms as are reasonably acceptable to the Seller.
- (c) The Buyer shall, if requested by the Seller, produce to the Seller each policy, certificate or cover note relating to any insurance required by Clause 8.2(a).
- (d) The Buyer shall ensure that each Insurance Policy effected or maintained by it or any person on its behalf in accordance with Clause 8.2(a) contains:
  - (i) Seller is named as mortgagee;
  - (ii) terms ensuring that it cannot be avoided or vitiated as against the Seller by reason of the act or default of any other insured party or any misrepresentation, non-disclosure or failure to make a fair presentation of risk by any other insured party;
  - (iii) a waiver of each insurer's rights of subrogation against the Buyer, the Seller and the tenants of the Property other than any such rights arising in connection with any fraud or criminal offence committed by any of those persons in respect of the Property or any Insurance Policy; and
  - (iv) terms ensuring that no insurer can repudiate, rescind or cancel it, treat it as avoided in whole or in part nor treat it as expired due to non-payment of premium without giving at least 30 days' prior written notice to the Seller.

**8.3 Insurance premiums**

The Buyer shall:

- (a) promptly pay all premiums in respect of each Insurance Policy required by Clause 8.2(a) and do all other things necessary to keep that policy in full force and effect; and

- (b) (if the Seller so requires) give to the Seller copies of the receipts for all premiums and other payments necessary for effecting and keeping up each Insurance Policy required by Clause 8.2(a).

**8.4 No invalidation of insurance**

The Buyer shall not do or omit to do, or permit to be done or omitted, any act or thing that may invalidate or otherwise prejudice any Insurance Policy required by Clause 8.2(a)

**8.5 Proceeds from Insurance Policies**

All monies payable under any Insurance Policy required by Clause 8.2(a) shall if the security constituted by this deed has become enforceable):

- (a) be paid immediately to the Seller;
- (b) if they are not paid directly to the Seller by the insurer, be held, pending such payment, by the Buyer as trustee of the same for the benefit of the Seller; and
- (c) at the option of the Seller, be applied in making good or recouping expenditure in respect of the loss or damage for which those monies are received or in, or towards, discharge or reduction of the Secured Liabilities.

**8.6 Leases and licences affecting the Property**

Save by way of Permitted Disposal, the Buyer shall not, without the prior written consent of the Seller:

- (a) grant any licence or tenancy affecting the whole or any part of the Property, or exercise the statutory powers of leasing or of accepting surrenders under section 99 or section 100 of the LPA 1925 (or agree to grant any such licence or tenancy, or agree to exercise the statutory powers of leasing or of accepting surrenders under section 99 or section 100 of the LPA 1925);
- (b) in any other way dispose of, accept the surrender of, surrender or create any legal or equitable estate or interest in the whole or any part of the Property (or agree to dispose of, accept the surrender of, surrender or create any legal or equitable estate or interest in the whole or any part of the Property);
- (c) let any person (other than the Seller) into occupation, or share occupation, of the whole or any part of the Property; or
- (d) grant any consent or licence under any lease or licence affecting the Property (other than a farm business tenancy or grazing licence to the Seller).

**8.7 No restrictive obligations**

The Buyer shall not, without the prior written consent of the Seller, enter into any onerous or restrictive obligations affecting the whole or any part of the Property or create or permit to arise any overriding interest, easement or right whatever in or over the whole or any part of the Property, other than a Permitted Disposal.

**8.8 Proprietary rights**

Save for a Permitted Disposal the Buyer shall procure that no person shall become entitled to assert any proprietary or other like right or interest over the whole or any part of the Property, without the prior written consent of the Seller.

**8.9 Compliance with and enforcement of covenants**

The Buyer shall:

- (a) observe and perform all covenants, stipulations and conditions to which the Property, or the use of it, is or may be subject and (if the Seller reasonably requires) produce to the Seller evidence sufficient to satisfy the Seller (acting reasonably) that those covenants, stipulations and conditions have been observed and performed; and
- (b) diligently enforce all covenants, stipulations and conditions benefiting the Property and shall not (and shall not agree to) waive, release or vary any of the same.

**8.10 Notices or claims relating to the Property**

- (a) The Buyer shall:
  - (i) give full particulars to the Seller of any notice, order, direction, designation, resolution, application, requirement or proposal given or made by any public or local body or authority (a "Notice") that specifically applies to the Property, or to the locality in which it is situated, within seven days after becoming aware of the relevant Notice; and
  - (ii) (if the Seller reasonably requires) immediately, and at the cost of the Buyer, take all reasonable and necessary steps to comply with any Notice, and make, or join with the Seller in making, any objections or representations in respect of that Notice that the Seller thinks fit (acting reasonably).
- (b) The Buyer shall give full particulars to the Seller of any claim, notice or other communication served on it in respect of any modification, suspension or revocation of any Environmental Licence or any alleged breach of any Environmental Law, in each case relating to the Property.

**8.11 Environment**

The Buyer shall in respect of the Property:

- (a) comply in all material respects with all the requirements of Environmental Law; and
- (b) obtain and comply in all material respects with all Environmental Licences.

**8.12 Inspection**

The Buyer shall permit the Seller, any Receiver and any person appointed by either of them to enter on and inspect the Property on reasonable prior notice.

**9. Obligations of the Seller**

- (a) Without consideration or charge to the Buyer (unless such a charge is otherwise provided for in this deed or in the Agreement for Sale) the Seller covenants to consent to the Buyer entering into any Permitted Disposal and/or any Works Agreement.
- (b) On request by the Buyer, (and at the Buyer's cost) the Seller shall within 10 Business Days of receipt of documentation in a form which complies with this paragraph (b) in its capacity as mortgagee only but subject always to Approval, enter into or consent to any Works Agreement as may reasonably be required to ensure the construction maintenance and (where appropriate) adoption of roads, footpaths, sewers and the provision of utility services including without limitation water, gas, electric, telephone and fibre optic services in connection with development proposed to be undertaken pursuant to the Planning Consent subject to:

- (i) the Seller being indemnified against all reasonable and proper legal costs and expenses of the Seller in completing any such Works Agreement; and
  - (ii) the Buyer indemnifying the Seller against all costs claims demands actions proceedings losses and expenses and liability arising from such agreement (other than costs claims demands actions proceedings losses and expenses and liability arising from the Seller's breach or non-performance of its obligations in such agreement).
- (c) On request by the Buyer, (and at the Buyer's cost) the Seller shall within 10 Business Days of receipt of documentation in a form which complies with this paragraph (c) in its capacity as mortgagee only but subject always to Approval enter into any Planning Agreement or any variation of any Planning Agreement including the Section 106 Agreements (insofar as any such Planning Agreement relates to the Property, with or without other land) as may reasonably be required by the Buyer subject to:
- (i) the Seller being indemnified against all reasonable and proper legal costs and expenses of the Seller in completing any such Planning Agreement or variation; and
  - (ii) the Seller being indemnified against all actions costs demands actions proceedings losses expenses and liabilities arising from such Planning Agreement or variation (other than costs claims demands actions proceedings losses and expenses and liability arising from the Seller's breach or non-performance of its obligations in such Planning Agreement or variation).

## **10. Powers of the Seller**

### **10.1 Power to remedy**

- (a) The Seller shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Buyer of any of its obligations contained in this deed.
- (b) The Buyer irrevocably authorises the Seller and its agents to do all things that are necessary or desirable for that purpose.
- (c) Any monies expended by the Seller in remedying a breach by the Buyer of its obligations contained in this deed shall be reimbursed by the Buyer to the Seller on a full indemnity basis and shall carry interest in accordance with Clause 17.1.
- (d) In remedying any breach in accordance with this Clause 10.1, the Seller, its agents and their respective officers, agents and employees shall be entitled to enter onto the Property and to take any action as the Seller may reasonably consider necessary or desirable including, without limitation, carrying out any repairs, other works or development.

### **10.2 Exercise of rights**

The rights of the Seller under Clause 10.1 are without prejudice to any other rights of the Seller under this deed. The exercise of any rights of the Seller under this deed shall not make the Seller liable to account as a mortgagee in possession.

### **10.3 Seller has Receiver's powers**

To the extent permitted by law, any right, power or discretion conferred by this deed (either expressly or impliedly) or by law on a Receiver may, after the security constituted by this deed has become enforceable, be exercised by the Seller in relation to any of the Charged Assets whether or not it has taken possession of any Charged Asset and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

#### 10.4 **New accounts**

- (a) If the Seller receives, or is deemed to have received, notice of any subsequent Security or other interest, affecting all or part of the Charged Assets, the Seller may open a new account for the Buyer in the Seller's books. Without prejudice to the Seller's right to combine accounts, no money paid to the credit of the Buyer in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.
- (b) If the Seller does not open a new account immediately on receipt of the notice, or deemed notice, referred to in Clause 10.4(a), then, unless the Seller gives express written notice to the contrary to the Buyer, all payments made by the Buyer to the Seller shall be treated as having been credited to a new account of the Buyer and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt or deemed receipt of the relevant notice by the Seller.

#### 10.5 **Indulgence**

The Seller may, at its discretion, grant time or other indulgence, or make any other arrangement, variation or release with any person not being a party to this deed (whether or not any such person is jointly liable with the Buyer) in respect of any of the Secured Liabilities or of any other security for them without prejudice either to this deed or to the liability of the Buyer for the Secured Liabilities.

#### 11. **When security becomes enforceable**

##### 11.1 **Security becomes enforceable on Event of Default**

The security constituted by this deed shall become immediately enforceable if an Event of Default occurs.

##### 11.2 **Discretion**

After the security constituted by this deed has become enforceable, the Seller may, in its absolute discretion, enforce all or any part of that security at the times, in the manner and on the terms it thinks fit, and take possession of and hold or dispose of all or any part of the Charged Assets.

#### 12. **Enforcement of security**

##### 12.1 **Enforcement powers**

- (a) The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this deed) shall be immediately exercisable at any time after the security constituted by this deed has become enforceable under *Clause 11.1*.
- (b) Section 103 of the LPA 1925 does not apply to the security constituted by this deed.

##### 12.2 **Extension of statutory powers of leasing**

The statutory powers of leasing and accepting surrenders conferred on mortgagees under the LPA 1925 and by any other statute are extended so as to authorise the Seller and any Receiver, at any time after the security constituted by this deed has become enforceable, whether in its own name or in that of the Buyer, to:

- (a) grant a lease or agreement for lease;
- (b) accept surrenders of leases; or

- (c) grant any option in respect of the whole or any part of the Property with whatever rights relating to other parts of it,

whether or not at a premium and containing such covenants on the part of the Buyer, and on such terms and conditions (including the payment of money to a lessee or tenant on a surrender), as the Seller or Receiver thinks fit, without the need to comply with any of the restrictions imposed by sections 99 and 100 of the LPA 1925.

#### **12.3 Redemption of prior Security**

- (a) At any time after the security constituted by this deed has become enforceable, the Seller may:
  - (i) redeem any prior Security over any Charged Asset;
  - (ii) procure the transfer of that Security to itself; and
  - (iii) settle and pass the accounts of the holder of any prior Security (and any accounts so settled and passed shall, in the absence of any manifest error, be conclusive and binding on the Buyer).
- (b) The Buyer shall pay to the Seller immediately on demand all principal, interest, costs, charges and expenses of, and incidental to, any such redemption or transfer, and such amounts shall be secured by this deed as part of the Secured Liabilities.

#### **12.4 Protection of third parties**

No purchaser, mortgagee or other person dealing with the Seller, any Receiver or any Delegate shall be concerned to enquire:

- (a) whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;
- (b) whether any power the Seller, a Receiver or Delegate is purporting to exercise has become exercisable or is being properly exercised; or
- (c) how any money paid to the Seller, any Receiver or any Delegate is to be applied.

#### **12.5 Privileges**

Each Receiver and the Seller is entitled to all the rights, powers, privileges and immunities conferred by the LPA 1925 on mortgagees and receivers.

#### **12.6 No liability as mortgagee in possession**

Neither the Seller nor any Receiver or Delegate shall be liable, by reason of entering into possession of a Charged Asset or for any other reason, to account as mortgagee in possession in respect of all or any of the Charged Assets, nor shall any of them be liable for any loss on realisation of, or for any act, default or omission for which a mortgagee in possession might be liable.

#### **12.7 Relinquishing possession**

If the Seller, any Receiver or Delegate enters into or takes possession of a Charged Asset, it or he/she may at any time relinquish possession.

#### **12.8 Conclusive discharge to purchasers**

The receipt of the Seller, or any Receiver or Delegate shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Charged Assets or in making

any acquisition in the exercise of their respective powers, the Seller, and every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it thinks fit.

**13. Receivers**

**13.1 Appointment**

At any time after the security constituted by this deed has become enforceable, or at the request of the Buyer, the Seller may, without further notice, appoint by way of deed, or otherwise in writing, any one or more persons to be a Receiver of all or any part of the Charged Assets.

**13.2 Removal**

The Seller may, without further notice (subject to section 45 of the Insolvency Act 1986), from time to time, by way of deed, or otherwise in writing, remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

**13.3 Remuneration**

The Seller may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the LPA 1925 and the remuneration of the Receiver shall be a debt secured by this deed, to the extent not otherwise discharged.

**13.4 Power of appointment additional to statutory powers**

The power to appoint a Receiver conferred by this deed shall be in addition to all statutory and other powers of the Seller under the Insolvency Act 1986, the LPA 1925 or otherwise, and shall be exercisable without the restrictions contained in sections 103 and 109 of the LPA 1925 or otherwise.

**13.5 Power of appointment exercisable despite prior appointments**

The power to appoint a Receiver (whether conferred by this deed or by statute) shall be, and remain, exercisable by the Seller despite any prior appointment in respect of all or any part of the Charged Assets.

**13.6 Agent of the Buyer**

Any Receiver appointed by the Seller under this deed shall be the agent of the Buyer and the Buyer shall be solely responsible for the contracts, engagements, acts, omissions, defaults, losses and remuneration of that Receiver and for liabilities incurred by that Receiver. The agency of each Receiver shall continue until the Buyer goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Seller.

**14. Powers of Receiver**

**14.1 Powers additional to statutory powers**

- (a) Any Receiver appointed by the Seller under this deed shall, in addition to the rights, powers and discretions conferred on him/her by statute, have the rights, powers and discretions set out in *Clause 14.2 to Clause 14.20*.
- (b) A Receiver has all the rights, powers and discretions conferred on a receiver (or a receiver and manager) under the LPA 1925, and shall have those rights, powers and discretions conferred on an administrative receiver under the Insolvency Act 1986 whether he/she is an administrative receiver or not.

- (c) If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him/her states otherwise) exercise all of the powers conferred on a Receiver under this deed individually and to the exclusion of any other Receiver.
- (d) Any exercise by a Receiver of any of the powers given by *Clause 14* may be on behalf of the Buyer, the directors of the Buyer or himself/herself.

#### **14.2 Repair and develop the Property**

- (a) A Receiver may undertake or complete any works of repair, alteration, building or development on the Property and may apply for and maintain any planning permission, development consent, building regulation approval or any other permission, consent or licence to carry out any of the same.
- (b) At any time after the security constituted by this Charge has become enforceable the Buyer if requested to do so by the Seller within 20 working days of the Charge becoming enforceable shall so far as it is able assign all such right, title, or interest as it has in the Scheme Details to the Seller or the Receiver at nil consideration in such a way that they can be used in relation to development of the Property by the Seller or Receiver and one further assignee.

#### **14.3 Grant or accept surrenders of leases**

A Receiver may grant, or accept, surrenders of any leases or tenancies affecting the Property on any terms, and subject to any conditions, that he/she thinks fit.

#### **14.4 Employ personnel and advisers**

- (a) A Receiver may provide services and employ, or engage, any managers, officers, servants, contractors, workmen, agents, other personnel and professional advisers on any terms, and subject to any conditions, that he/she thinks fit.
- (b) A Receiver may discharge any such person or any such person appointed by the Buyer.

#### **14.5 Make and revoke VAT options to tax**

A Receiver may make, exercise or revoke any VAT option to tax as he/she thinks fit.

#### **14.6 Charge for remuneration**

A Receiver may charge and receive any sum by way of remuneration (in addition to all costs, charges and expenses incurred by him/her) that the Seller may prescribe or agree with him/her.

#### **14.7 Take possession**

A Receiver may take immediate possession of, get in and realise any Charged Asset.

#### **14.8 Manage or reconstruct the Buyer's business**

A Receiver may carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying the business of the Buyer carried out at the Property.

#### **14.9 Dispose of Charged Assets**

A Receiver may grant options and licences over all or any part of the Charged Assets, grant any other interest or right over, sell, exchange, assign or lease (or concur in granting options

and licences over all or any part of the Charged Assets, granting any other interest or right over, selling, exchanging, assigning or leasing) all or any of the Charged Assets in respect of which he/she is appointed for such consideration and in such manner (including, without limitation, by public auction or private sale) and generally on any terms and conditions as he/she thinks fit. A Receiver may promote, or concur in promoting, a company to purchase the Charged Assets to be disposed of by him/her.

**14.10 Sever fixtures and fittings**

A Receiver may sever and sell separately any fixtures or fittings from the Property without the consent of the Buyer.

**14.11 Give valid receipts**

A Receiver may give a valid receipt for all monies and execute all assurances and things that may be proper or desirable for realising any of the Charged Assets.

**14.12 Make settlements**

A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claim, account, dispute, question or demand with or by any person who claims to be a creditor of the Buyer or relating in any way to any Charged Asset.

**14.13 Bring legal action**

A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to any of the Charged Assets as he/she thinks fit.

**14.14 Insure**

A Receiver may, if he/she thinks fit, but without prejudice to the indemnity in Clause 17.2, effect with any insurer any policy of insurance either in lieu of or satisfaction of, or in addition to, the insurance required to be maintained by the Buyer under this deed.

**14.15 Form subsidiaries**

A Receiver may form a subsidiary of the Buyer and transfer to that subsidiary any Charged Asset.

**14.16 Borrow**

A Receiver may, for whatever purpose he/she thinks fit, raise and borrow money either unsecured or on the security of all or any of the Charged Assets in respect of which he/she is appointed on any terms that he/she thinks fit (including, if the Seller consents, terms under which that security ranks in priority to this deed).

**14.17 Redeem prior Security**

A Receiver may redeem any prior Security and settle and pass the accounts to which the Security relates. Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Buyer, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.

**14.18 Delegation**

A Receiver may delegate his/her powers in accordance with this deed.

**14.19 Absolute beneficial owner**

A Receiver may, in relation to any of the Charged Assets, exercise all powers, authorisations and rights he/she would be capable of exercising as, and do all those acts and things, an absolute beneficial owner could exercise or do in the ownership and management of all or any part of the Charged Assets.

#### **14.20 Incidental powers**

A Receiver may do any other acts and things that he/she:

- (a) may consider desirable or necessary for realising any of the Charged Assets;
- (b) may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this deed or law; or
- (c) lawfully may or can do as agent for the Buyer.

#### **15. Delegation**

##### **15.1 Delegation**

The Seller or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it or him/her by this deed (including the power of attorney granted under *Clause 19.1*).

##### **15.2 Terms**

The Seller and each Receiver may make a delegation on the terms and conditions (including the power to sub-delegate) that it or he/she thinks fit.

##### **15.3 Liability**

Neither the Seller nor any Receiver shall be in any way liable or responsible to the Buyer for any loss or liability arising from any act, default, omission or misconduct on the part of any Delegate.

#### **16. Application of proceeds**

##### **16.1 Order of application of proceeds**

All monies received or recovered by the Seller, a Receiver or a Delegate under this deed or in connection with the realisation or enforcement of all or part of the security constituted by this deed shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied in the following order of priority (but without prejudice to the Seller's right to recover any shortfall from the Buyer):

- (a) in or towards payment of all costs, liabilities, charges and expenses incurred by or on behalf of the Seller (and any Receiver, Delegate, attorney or agent appointed by it) under or in connection with this deed and of all remuneration due to any Receiver under or in connection with this deed;
- (b) in or towards payment of the Secured Liabilities in any order and manner that the Seller determines; and
- (c) in payment of the surplus (if any) to the Buyer or other person entitled to it.

##### **16.2 Appropriation**

Neither the Seller, any Receiver nor any Delegate shall be bound (whether by virtue of section 109(8) of the LPA 1925, which is varied accordingly, or otherwise) to pay or appropriate any

receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Secured Liabilities.

### 16.3 **Suspense account**

All monies received by the Seller, a Receiver or a Delegate under this deed:

- (a) may, at the discretion of the Seller, Receiver or Delegate, be credited to a suspense account;
- (b) shall bear interest, if any, at the rate agreed in writing between the Seller and the Buyer; and
- (c) may be held in that account for so long as the Seller, Receiver or Delegate thinks fit.

## 17. **Costs and indemnity**

### 17.1 **Costs**

The Buyer shall, after the Security constituted by this deed has become enforceable pursuant to the terms of this deed, within five Business Days of demand, pay to, or reimburse, the Seller and any Receiver, on a full indemnity basis, all costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal, printing and out-of-pocket expenses) incurred by the Seller, any Receiver or any Delegate in connection with:

- (a) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Seller's, a Receiver's or a Delegate's rights under this deed; or
- (b) taking proceedings for, or recovering, any of the Secured Liabilities,

together with interest, which shall accrue and be payable (without the need for any demand for payment being made) from the date on which the relevant cost, charge, expense, tax or liability arose until full discharge of that cost, charge, expense, tax or liability (whether before or after judgment, liquidation, winding-up or administration of the Buyer) at the rate and in the manner specified in the Agreement for Sale.

### 17.2 **Indemnity**

- (a) The Buyer shall indemnify the Seller, each Receiver and each Delegate, and their respective employees and agents against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by any of them arising out of or in connection with:
  - (i) the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this deed or by law in respect of the Charged Assets;
  - (ii) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the security constituted by this deed; or
  - (iii) any default or delay by the Buyer in performing any of its obligations under this deed.
- (b) Any past or present employee or agent may enforce the terms of this Clause 17.2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

**18. Further assurance**

18.1 The Buyer shall promptly, at its own expense, take whatever action the Seller or any Receiver may reasonably require for:

- (a) creating, perfecting or protecting the security created or intended to be created by this deed;
- (b) facilitating the realisation of any Charged Asset; or
- (c) facilitating the exercise of any right, power, authority or discretion exercisable by the Seller or any Receiver in respect of any Charged Asset,

including, without limitation the execution of any mortgage, transfer, conveyance, assignment or assurance of all or any of the assets forming part of (or intended to form part of) the Charged Assets (whether to the Seller or to its nominee) and the giving of any notice, order or direction and the making of any filing or registration which, in any such case, the Seller may consider necessary or desirable.

**19. Power of attorney**

**19.1 Appointment of attorneys**

By way of security, the Buyer irrevocably appoints the Seller, every Receiver and every Delegate separately to be the attorney of the Buyer and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things that:

- (a) the Buyer is required to execute and do under this deed; or
- (b) any attorney deems proper or desirable in exercising any of the rights, powers, authorities and discretions conferred by this deed or by law on the Seller, any Receiver or any Delegate.

**19.2 Ratification of acts of attorneys**

The Buyer ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in Clause 19.1.

**20. Release**

**20.1 Release**

- (a) The Seller shall, at the request and cost of the Buyer, within 10 Business Days of receipt of request and full documentation and information from the Buyer, execute such Deed of Release and/or Land Registry Documents as may be reasonably necessary to enable the Buyer to effect a Permitted Disposal.
- (b) The Buyer is entitled to repay the Secured Liabilities in full at any time after the date of this deed and, on the date on which the Seller is satisfied (acting reasonably) that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full, the Seller shall, at the request and cost of the Buyer, execute and deliver to the Buyer a completed Deed of Release together with any necessary Land Registry Documents in respect of the Property (including, for the avoidance of doubt, Land Registry form DS1).

**21. Assignment and transfer**

**21.1 Assignment by Seller**

- (a) At any time, without the consent of the Buyer, the Seller may assign or transfer any or all of its rights and obligations under this deed to any person or entity to whom it assigns or transfer any or all of its rights and obligations under the Agreement for Sale.
- (b) The Seller may disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Buyer, the Charged Assets and this deed that the Seller considers appropriate.

**21.2 Assignment by Buyer**

The Buyer may not assign any of its rights, or transfer any of its rights or obligations, under this deed.

**22. Set-off**

**22.1 Seller's right of set-off**

The Seller may at any time set off any liability of the Buyer to the Seller against any liability of the Seller to the Buyer, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this deed. If the liabilities to be set off are expressed in different currencies, the Seller may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Seller of its rights under this Clause 22.1 shall not limit or affect any other rights or remedies available to it under this deed or otherwise.

**22.2 Exclusion of Buyer's right of set-off**

All payments made by the Buyer to the Seller under this deed shall be made in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

**23. Amendments, waivers and consents**

**23.1 Amendments**

No amendment of this deed shall be effective unless it is in writing and signed by, or on behalf of, each party (or its authorised representative).

**23.2 Waivers and consents**

- (a) A waiver of any right or remedy under this deed or by law, or any consent given under this deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.
- (b) A failure or delay by a party to exercise any right or remedy provided under this deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this deed. No single or partial exercise of any right or remedy provided under this deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this deed by the Seller shall be effective unless it is in writing.

**23.3 Rights and remedies**

The rights and remedies provided under this deed are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

**24. Severance**

If any provision (or part of a provision) of this deed is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of this deed.

**25. Counterparts**

This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.

**26. Third party rights**

**26.1 Third party rights**

- (a) Except as expressly provided elsewhere in this deed, a person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this deed. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- (b) The rights of the parties to rescind or agree any amendment or waiver under this deed are not subject to the consent of any other person.

**27. Further provisions**

**27.1 Independent security**

The security constituted by this deed shall be in addition to, and independent of, any other security or guarantee that the Seller may hold for any of the Secured Liabilities at any time. No prior security held by the Seller over the whole or any part of the Charged Assets shall merge in the security created by this deed.

**27.2 Continuing security**

The security constituted by this deed shall remain in full force and effect as a continuing security for the Secured Liabilities, despite any settlement of account, or intermediate payment, or other matter or thing, unless and until the Seller discharges this deed in writing.

**27.3 Discharge conditional**

Any release, discharge or settlement between the Buyer and the Seller shall be deemed conditional on no payment or security received by the Seller in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded under any law relating to insolvency, bankruptcy, winding-up, administration, receivership or otherwise. Despite any such release, discharge or settlement:

- (a) the Seller or its nominee may retain this deed and the security created by or under it, including all certificates and documents relating to the whole or any part of the Charged Assets, for any period that the Seller deems necessary to provide the Seller with security against any such avoidance, reduction or order for refund; and
- (b) the Seller may recover the value or amount of such security or payment from the Buyer subsequently as if the release, discharge or settlement had not occurred.

**27.4 Certificates**

A certificate or determination by the Seller as to any amount for the time being due to it from the Buyer under this deed shall be, in the absence of any manifest error, conclusive evidence of the amount due.

**27.5 Consolidation**

The restriction on the right of consolidation contained in section 93 of the LPA 1925 shall not apply to this deed.

**28. Notices**

**28.1 Delivery**

Any notice or other communication given to a party under or in connection with this deed shall be:

- (a) in writing;
- (b) delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by fax; and
- (c) sent to:

(i) the Buyer at:

Cowley Business Park, Cowley, Uxbridge, Middlesex, UB8 2AL; and

Linden Homes South West, Camberwell House, Grenadier Road, Exeter Business Park, Exeter, Devon EX1 3QF

Attention: Andrew Rowe

(ii) the Seller at:

Daddon Hill Farm, Northam, Devon, EX39 3PW

Attention: Robert Mill and Mary-Ann Mills

or to any other address or fax number (if applicable) as is notified in writing by one party to the other from time to time.

**28.2 Receipt by Buyer**

Any notice or other communication that the Seller gives to the Buyer shall be deemed to have been received:

- (a) if delivered by hand, at the time it is left at the relevant address; and
- (b) if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; and
- (c) if sent by fax (if applicable), when received in legible form.

A notice or other communication given as described in Clause 28.2(a) or Clause 28.2(c) on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

**28.3 Receipt by Seller**

Any notice or other communication given to the Seller shall be deemed to have been received only on actual receipt.

**28.4 Service of proceedings**

This Clause 28 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**29. Governing law and jurisdiction**

**29.1 Governing law**

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

**29.2 Jurisdiction**

Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this deed or its subject matter or formation. Nothing in this clause shall limit the right of the Seller to take proceedings against the Buyer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

**29.3 Other service**

The Buyer irrevocably consents to any process in any legal action or proceedings under *Clause 29.2* being served on it in accordance with the provisions of this deed relating to service of notices. Nothing contained in this deed shall affect the right to serve process in any other manner permitted by law.

**Schedule 1**

(Property)

The freehold property being Phase 1, Daddon Hill Farm, Bideford shown edged red on Plan 1 and comprised (with other land) at the date of this charge in Land Registry Title Numbers DN636879, DN636881, DN636878 and DN636886.

## Schedule 2

### (Events of Default)

Each of the following events or circumstances shall be an Event of Default:

- (a) a failure to comply with a demand under Clause 2 (*Covenant to pay*);
- (b) the Buyer is in breach of this deed and fails to remedy such breach within a reasonable period of time;
- (c) any representation or statement made or deemed to be made by the Buyer under this deed is or proves to have been incorrect or misleading in any respect when made or deemed to be made;
- (d) the Buyer:
  - (i) is unable or admits inability to pay its debts as they fall due; or
  - (ii) suspends making payments on any of its debts;
- (e) the value of the assets of the Buyer is less than its liabilities (taking into account contingent and prospective liabilities);
- (f) a moratorium is declared in respect of any indebtedness of the Buyer. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium;
- (g) any formal corporate action, legal proceedings or other procedure or step is taken in relation to:
  - (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Buyer;
  - (ii) a composition, compromise, assignment or arrangement with any creditor of the Buyer;
  - (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Buyer or any of its assets; or
  - (iv) enforcement of any Security over the Charged Assets;
- (h) any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of the Buyer;
- (i) the Buyer suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business;
- (j) it is or becomes unlawful for the Buyer to perform any of its obligations under the Agreement for Sale or the Security created or expressed to be created or evidenced by this deed ceases to be effective;
- (k) any obligation or obligations of the Buyer under the Agreement for Sale or this deed are not or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Seller;

- (l) the Agreement for Sale or this deed cease to be in full force and effect of any Security created under this deed ceases to be legal, valid, binding, enforceable or effective or is alleged by the Buyer to it to be ineffective;
- (m) any part of the Property is compulsorily purchased or the applicable local authority makes an order for the compulsory purchase of all of any part of the Property and in the opinion of the Seller, taking into account the amount and timing of any compensation payable, the compulsory purchase has or will have a Material Adverse Effect;
- (n) any part of the Property is destroyed or damaged and in the opinion of the Seller, taking into account the amount and timing of receipt of the proceeds of insurance effected in accordance with the terms of this deed, the destruction or damage has or will have a Material Adverse Effect.

**Signatures**

**Buyer**

EXECUTED AS A DEED by

[ Andrew Rowe ]

and [ Bradley Davison ]

as the Attorneys on behalf of

**LINDEN LIMITED**

in exercise of the Power conferred

upon them by a Power of Attorney

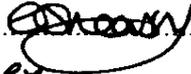
dated [ 28 March 2019 ]

SIGNATURE OF ATTORNEY



in the presence of:

SIGNATURE OF WITNESS



Name: LOUISE SHEASBY

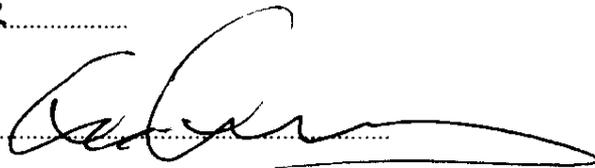
Address: CAMBERWELL HOUSE

GRENADIER ROAD

EXETER, EX1 3QF

Occupation: LAND BUYER

SIGNATURE OF ATTORNEY



in the presence of:

SIGNATURE OF WITNESS



Name: LOUISE SHEASBY

Address: CAMBERWELL HOUSE

GRENADIER ROAD,

EXETER, EX1 3QF

Occupation: LAND BUYER

**Seller**

**Signed as a Deed by** )  
**ROBERT MILLS** )  
in the presence of: )

*Signature* .....

*Signature of witness* .....

*Name of witness* .....

*Address of witness* .....

*Occupation of witness* .....

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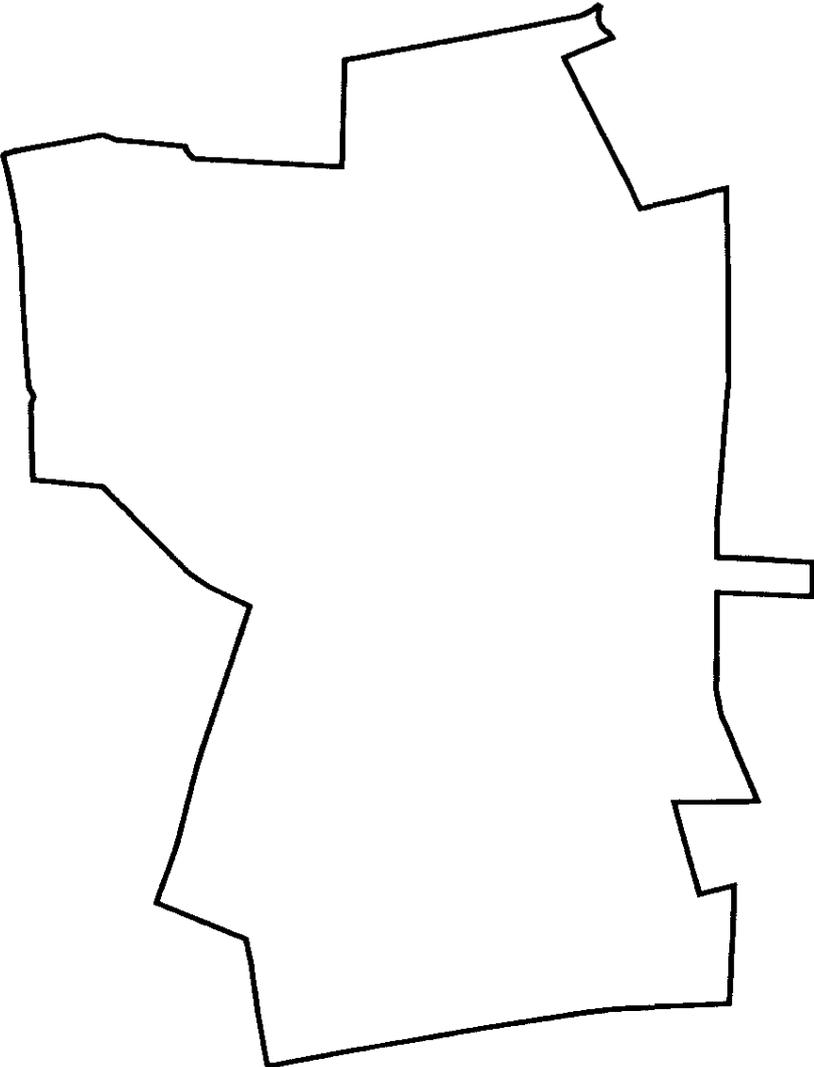
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### DADDON HILL, NORTHAM Contract Plan 1 - Property

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