



**Registration of a Charge**

Company name: **WESTCO PROPERTIES LIMITED**

Company number: **02677745**



X89FGTR6

Received for Electronic Filing: **10/07/2019**

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**Details of Charge**

Date of creation: **01/07/2019**

Charge code: **0267 7745 0005**

Persons entitled: **LIVEWEST HOMES LIMITED**

Brief description: **THE FREEHOLD PROPERTY BEING LAND AT SOUTH WEST EXETER,  
DEVON SHOWN EDGED RED ON THE PLAN.**

**Contains fixed charge(s).**

**Contains negative pledge.**

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**Authentication of Form**

This form was authorised by: **a person with an interest in the registration of the charge.**

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**Authentication of Instrument**

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT  
TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC  
COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION  
FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL  
INSTRUMENT.**





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

Company number: 2677745

Charge code: 0267 7745 0005

The Registrar of Companies for England and Wales hereby certifies that a charge dated 1st July 2019 and created by WESTCO PROPERTIES LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 10th July 2019 .

Given at Companies House, Cardiff on 11th July 2019

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

## Legal Charge

between

- (1) Bovis Homes Limited and Westco Properties Limited
- (2) LiveWest Homes Limited

Dated

18 July 2019

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This Deed is made on

18 July 2019

**Between:**

- (1) **Bovis Homes Limited** (Company No. 00397634) whose registered office is at 11 Tower View, Kings Hill, West Malling, Kent, ME19 4UY and **Westco Properties Limited** (Company No. 2677745) whose registered office is at 1 Wellington Way, Skypark Business Park, Clyst Honiton, Exeter, EX5 2FZ (CAKE) (together the "**Seller**")
- (2) **LiveWest Homes Limited** a registered society as defined in section 1 Co-operative and Community Benefit Societies Act 2014 (registration number 7724) whose registered office is at 1 Wellington Way, Skypark Business Park, Clyst Honiton, Exeter EX5 2FZ (the "**Buyer**").

**Background:**

- (A) Under the terms of the Down Payment Agreement the Buyer has paid to the Seller the Down Payment.
- (B) Under the Down Payment Agreement the Down Payment is repayable by the Seller to the Buyer in the manner set out in the Down Payment Agreement.
- (C) Under this deed, the Seller provides security to the Buyer for repayment of the Down Payment.

**Agreed terms**

**1. Definitions and interpretation**

**1.1 Definitions**

In this Deed unless the context otherwise requires the following definitions in this deed :

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:

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

**"Seller's Adjoining Land"** means that part of the Estate not comprising the Property.

**"Charged Assets"** means all the assets, property and undertaking of the Seller, 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).

**"Delegate"** means any person appointed by the Buyer or any Receiver under Clause 18 and any person appointed as attorney of the Buyer, Receiver or Delegate.

**"Down Payment"** means the sum of £3,677,519.00 payable pursuant to clause 2.4 of the Down Payment Agreement

**"Down Payment Agreement"** means the agreement of even date made between the Seller (1) and the Buyer (2) in respect of the Down Payment.

**"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.

**"Estate"** means the land at Trood Farm, Matford, Exeter and Little Silver Lane, Alphington, Exeter as more particularly defined in two Transfers of even date the first made between John Dudley Tom Drake and Andrew Richard Drake (1) and Bovis Homes Limited (2) and the second made between Thomas Byrne (1) and Bovis Homes Limited (2).

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

**"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 23 of this deed.

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

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

- (a) the business, property, or financial condition of the Seller; or
- (b) the ability of the Seller to perform its material obligations under the Down Payment Agreement or this deed; or
- (c) 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
- (d) the rights or remedies of the Buyer under the Down Payment Agreement 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 Estate 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; or
- (e) the grant of a wayleave or easement or the like which is required for the development of the Estate and/or the Seller's Adjoining Land granted pursuant to any of the disposals at paragraphs (a) to (d) (inclusive) of this definition.

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

**"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"** means the outline planning consent granted by the Council on 2 November 2018 allocated application reference number 15/0000708/MAJ.

**"Property"** means the freehold property owned by the Seller described in Schedule 1 (this is the property to be charged)

**"Receiver"** means a receiver or receiver and manager appointed by the Seller under Clause 16.

**"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.

**"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 and any reserved matters planning approvals relating thereto in respect of the Property.

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

- (a) in respect of, and in connection with, the re-payment of the Down Payment; 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 Down Payment Agreement 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 Agreement"** means the agreement dated 2 November 2018 pursuant to Section 106 of the Town and Country Planning Act 1990 between the Council (1) Devon County Council (2) Bovis (3) Peter Mervyn Ash (4) David Peter Steele-Perkins and Robert George Pulsford the trustees of the Thomas Mervyn Ash Discretionary Trust (5) Thomas Byrne (6) John Dudley Tom Drake as executor of the estate of Jane Rutherford Drake (7) and John Dudley Tom Drake (8) relating to the Development;

**"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 Seller 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 Down Payment Agreement 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 Seller shall, on demand, pay to the Buyer and discharge the Secured Liabilities when they become due under the Down Payment Agreement or under this deed (as applicable) (or on such earlier date as the Seller 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 Seller with full title guarantee charges to the Buyer:

- (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 Seller 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 Seller consents to an application being made by the Buyer 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 [DATE] in favour of LiveWest Homes Limited referred to in the charges register or their conveyancer."

## **5. Liability of the Buyer**

### **5.1 Liability not discharged**

The Seller'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 Buyer that is, or becomes, wholly or partially illegal, void or unenforceable on any ground;
- (b) the Buyer 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 Seller.

## **5.2 Immediate recourse**

The Seller waives any right it may have to require the Buyer 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 Seller.

## **6. Representations and warranties**

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

The Seller makes the representations and warranties set out in this Clause 6 to the Buyer 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 Seller 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 Seller 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 referred to in Clause 3.1 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 Seller 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 Seller or otherwise.

#### **6.12 Enforceable security**

This deed constitutes and will constitute the legal, valid, binding and enforceable obligations of the Seller 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 Seller shall not at any time, except with the prior written consent of the Buyer:

- (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 Seller 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 Buyer or materially diminish the value of any of the Charged Assets (save as strictly required to comply with its obligations under the Down Payment Agreement) or the effectiveness of the security created by this deed.

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

- (a) The Seller shall not, without the Buyer's prior written consent, use or permit the Charged Assets to be used in any way contrary to law.
- (b) The Seller 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 Seller shall use its reasonable endeavours to:

- (a) procure the prompt observance and performance by the relevant counterparty to any agreement or arrangement with the Seller 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 Buyer may require from time to time.

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

The Seller shall, promptly on becoming aware of any of the same, notify the Buyer 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 Seller shall, promptly on request by the Buyer, 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 Seller shall not, without the prior written consent of the Buyer and save as required to fulfil its obligations under the Down Payment Agreement:

- (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 Leases and licences affecting the Property**

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

- (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 Buyer) 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.

### **8.3 No restrictive obligations**

The Seller shall not, without the prior written consent of the Buyer, 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.

### **8.4 Proprietary rights**

Save for a Permitted Disposal the Seller 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 Buyer.

### **8.5 Compliance with and enforcement of covenants**

The Seller 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 Buyer reasonably requires) produce to the Buyer evidence sufficient to satisfy the Buyer (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.

### **8.6 Notices or claims relating to the Property**

(a) The Seller shall:

- (i) give full particulars to the Buyer 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 Buyer reasonably requires) immediately, and at the cost of the Seller, take all reasonable and necessary steps to comply with any Notice, and make, or join with the Buyer in making, any objections or representations in respect of that Notice that the Buyer thinks fit (acting reasonably).
- (b) The Seller shall give full particulars to the Buyer 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.

### **8.7 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.

### **8.8 Inspection**

The Seller shall permit the Buyer, 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 Buyer**

- (a) Without consideration or charge to the Seller (unless such a charge is otherwise provided for in this deed or in the Down Payment Agreement) the Buyer covenants to consent to the Seller entering into any Permitted Disposal and/or any Works Agreement.
- (b) On request by the Seller, (and at the Seller's cost) the Buyer shall within 20 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 Buyer being indemnified against all reasonable and proper legal costs and expenses of the Buyer in completing any such Works Agreement; and
  - (ii) the Seller indemnifying the Buyer 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 Buyer's breach or non-performance of its obligations in such agreement).
- (c) On request by the Seller, (and at the Seller's cost) the Buyer shall within 20 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 Seller subject to:
  - (i) the Buyer being indemnified against all reasonable and proper legal costs and expenses of the Buyer in completing any such Planning Agreement or variation; and
  - (ii) the Buyer 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 Buyer's breach or non-performance of its obligations in such Planning Agreement or variation).

**10. Powers of the Buyer**

**10.1 Power to remedy**

- (a) The Buyer shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Seller of any of its obligations contained in this deed.
- (b) The Seller irrevocably authorises the Buyer and its agents to do all things that are necessary or desirable for that purpose.
- (c) Any monies expended by the Buyer in remedying a breach by the Seller of its obligations contained in this deed shall be reimbursed by the Seller to the Buyer on a full indemnity basis and shall carry interest in accordance with Clause 20.1.



- (d) In remedying any breach in accordance with this Clause 10.1, the Buyer, its agents and their respective officers, agents and employees shall be entitled to enter onto the Property and to take any action as the Buyer 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 Buyer under Clause 10.1 are without prejudice to any other rights of the Buyer under this deed. The exercise of any rights of the Buyer under this deed shall not make the Buyer liable to account as a mortgagee in possession.

#### **10.3 Buyer 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 Buyer 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 Buyer receives, or is deemed to have received, notice of any subsequent Security or other interest, affecting all or part of the Charged Assets, the Buyer may open a new account for the Seller in the Seller's books. Without prejudice to the Buyer's right to combine accounts, no money paid to the credit of the Seller in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.
- (b) If the Buyer 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 Buyer gives express written notice to the contrary to the Seller, all payments made by the Seller to the Buyer 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 Buyer.

#### **10.5 Indulgence**

The Buyer 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 Seller) 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 Seller 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 Buyer 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. Rights granted for the benefit of the property**

The Property is charged together with the grant of the following rights over the Seller's Adjoining Land for the benefit of the Property which shall only become exercisable in the event that the security created by this Charge becomes enforceable pursuant to clause 11.1:

### **12.1 Existing services**

The right in common with the Seller to use and connect to any Service Media in, on, under or over the Seller's Adjoining Land for the passage of Services to and from the Property. The benefit of this right is subject to:

- (a) the Buyer obtaining the prior written consent of the Seller before exercising the right to connect to the Service Media, such consent not to be unreasonably withheld or delayed provided that the Seller may withhold such consent where, in its reasonable opinion, the Service Media would be overloaded by the additional passage of Services in or through them following connection to them by the Buyer;
- (b) the Buyer paying to the Seller a fair and proper proportion according to use of the cost of repairing, maintaining, replacing, renewing and cleaning any of the Service Media used in common between the Property and the Seller's Adjoining Land and all of such costs so incurred in relation to any Service Media which serve only the Property;
- (c) before commencing work, the person exercising such rights shall obtain all necessary consents from statutory undertakers or local authority or as the case may be; and
- (d) the right of the Seller or owner for the time being of the Seller's Adjoining Land from time to time to modify or divert the route of such Service Media, subject to such person first giving reasonable prior notice to the Buyer to that effect and following the completion of such works, the rights in respect of the Service Media shall be exercised as so varied.

### **12.2 New services**

The right in common with the Seller to install upgrade and enlarge and use new Service Media in on under or over the Seller's Adjoining Land for the passage of Services to and from the Property. The benefit of this right is subject to:

- (a) the Buyer obtaining the prior written consent of the Seller before exercising the right to install new Service Media, such consent not to be unreasonably withheld or delayed provided that the Seller shall have discretion as to the route of such new Service Media;
- (b) the Buyer repairing, maintaining, replacing, renewing and cleaning any Service Media installed pursuant to this right, whether or not the Service Media are used in common between the Property and the Seller's Adjoining Land;
- (c) the right for the Seller and those authorised by it to connect to and use any Service Media installed pursuant to this right but subject to the Seller:
  - (i) obtaining the prior written consent of the Buyer before connecting to the new Service Media, such consent not to be unreasonably withheld or delayed provided that the Buyer may withhold such consent where, in its reasonable opinion, the Service Media would be overloaded by the additional passage of Services in or through them following connection to them by the Seller; and
  - (ii) paying to the Buyer a fair and proper proportion according to use of the costs of repairing, maintaining, replacing, renewing and cleaning any of the Service Media so used;

- (d) before commencing work, the person exercising such rights shall obtain all necessary consents from statutory undertakers or local authority or as the case may be; and
- (e) such rights shall not be exercised so as to lay Service Media beneath existing buildings or where it is genuinely intended that buildings be constructed in the future.

### **12.3 Support**

The right of support for the Property and any buildings on it from the Seller's Adjoining Land.

### **12.4 Access onto the Estate for repair**

The right for the Buyer to enter and remain upon so much as is necessary of the Seller's Adjoining Land by prior written appointment (except in case of emergency) with or without workmen, plant and equipment to:

- (a) repair, maintain, replace, renew, clean, connect to and sever connections with any Service Media in relation to which rights are granted by this Charge;
- (b) install further Service Media and apparatus in accordance with the rights granted in clause 12.2; and
- (c) to the extent only that the same cannot reasonably be achieved from the Property repair, maintain, decorate, replace, renew and clean any buildings or fences on the Property or boundary fences or party walls between the Seller's Adjoining Land and the Property.

### **12.5 Right to develop the Property**

The right to build new buildings on and to rebuild, extend, alter or carry out any other works to any buildings from time to time on the Property notwithstanding the restriction or interruption of the passage of light and air to any buildings from time to time on the Seller's Adjoining Land.

### **12.6 Right of way**

A right of way with or without vehicles (including any construction traffic) at all times and for all purposes over and along the roads and footpaths already constructed or to be constructed upon the Seller's Adjoining Land.

### **12.7 Charge Of Part**

- (a) The Seller so as to bind the whole and every part of the Seller's Adjoining Land covenants with the Buyer for the benefit of the whole and every part of the Property that the Seller will not make any objection whether to the Land Registry or otherwise following a disposal of all or part of the Property by the Buyer or its Receiver to the entry on the Seller's register of title to the Estate of easements benefitting the Property over the Estate in the terms of the easements contained in clause 12.
- (b) The Seller covenants with the Buyer that it will not transfer, lease or charge all or any part of the title to the estate roads and estate service corridors on the Estate during the duration of this Charge without (in the case of a transfer or lease) reserving for the benefit of the Property easements over such part or parts of the same as are necessary in the terms of the easements contained in clause 12 and the Seller and the Buyer hereby apply to the Land Registry to enter the following restriction in the Proprietorship Register of the Estate:

"No transfer lease or charge of the whole or any part of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by a conveyancer that the provisions of clause 12.7 of the charge

dated [ ] 2019 have been complied with or that the provisions thereof do not apply to the disposition."

### **13. Rights reserved for the benefit of the Estate**

There are reserved out of the Property for the benefit of the Estate the following rights:

#### **13.1 Existing services**

The right for the Seller to use and connect to any Service Media in, on, under or over the Property for the passage of Services to and from the Estate. The benefit of this right is subject to:

- (a) the Seller obtaining the prior written consent of the Buyer before exercising the right to connect to the Service Media, such consent not to be unreasonably withheld or delayed provided that the Buyer may withhold such consent where, in its reasonable opinion, the Service Media would be overloaded by the additional passage of Services in or through them following connection to them by the Seller;
- (b) the Seller paying to the Buyer a fair and proper proportion according to use of the cost of repairing, maintaining, replacing, renewing and cleaning any of the Service Media used in common between the Property and the Estate and all of such costs so incurred in relation to any Service Media which serve only the Estate;
- (c) before commencing work, the person exercising such rights shall obtain all necessary consents from statutory undertakers or local authority or as the case may be; and
- (d) the right of the Buyer or owner for the time being of the Property, from time to time to modify or divert the route of such Service Media, subject to such person first giving reasonable prior notice to the Seller to that effect and following the completion of such works, the rights in respect of the Service Media shall be exercised as so varied.

#### **13.2 New services**

The right for the Seller to install upgrade and/or enlarge and use new Service Media in on under or over the Property for the passage of Services to and from the Seller's Adjoining Land. The benefit of this right is subject to:

- (a) the Seller obtaining the prior written consent of the Buyer before exercising the right to install new Service Media, such consent not to be unreasonably withheld or delayed provided that the Buyer shall have discretion as to the route of such new Service Media;
- (b) the Seller repairing, maintaining, replacing, renewing and cleaning any Service Media installed pursuant to this right whether or not the Service Media are used in common between the Property and the Estate;
- (c) the right for the Buyer and those authorised by it to connect to and use any Service Media installed pursuant to this right but subject to the Buyer:
  - (i) obtaining the prior written consent of the Seller before connecting to the new Service Media, such consent not to be unreasonably withheld or delayed provided that the Seller may withhold such consent where, in its reasonable opinion, the Service Media would be overloaded by the additional passage of Services in or through them following connection to them by the Buyer; and
  - (ii) paying to the Seller a fair and proper proportion according to use of the cost of repairing, maintaining, replacing, renewing and cleaning any of the Service Media so used; and

- (d) such rights shall not be exercised so as to lay Service Media beneath existing buildings or where it is genuinely intended that buildings be constructed in the future.

### **13.3 Right of Support**

The right of support for the Estate and any buildings on it from the Property.

### **13.4 Access onto the Property for repair**

The right for the Seller to enter and remain upon so much as is necessary of the Property by prior written appointment (except in case of emergency) with or without workmen, plant and equipment:

- (a) to repair, maintain, replace, renew, clean, connect to and sever connections with any Service Media in relation to which rights are reserved by this Charge;
- (b) to install further Service Media and apparatus in accordance with the rights granted in Clause 13.2;
- (c) to the extent only that the same cannot reasonably be achieved from the Property to repair, maintain, decorate, replace, renew and clean any buildings or fences on the Estate or boundary fences or party walls between the Estate and the Property.

### **13.5 Right of way**

A right of way with or without vehicles (including construction traffic) at all times and for all purposes over and along the roads and footpaths already constructed or to be constructed upon the Property.

## **14. Conditions for rights of entry**

14.1 The rights of entry and to connect to and install Service Media or to modify or divert the same granted and reserved by this Charge under Clauses 12 and 13 respectively are subject to the person exercising such rights:

- (a) first obtaining any consents required from statutory undertakers or the local authority as the case may be for the installation of or connection to any Service Media;
- (b) causing as little inconvenience as reasonably practicable in the exercise of these rights and no interruption to the flow of Services to the property over which the rights are exercised except for any interruption for required attention replacement or reconnection;
- (c) except in a case of emergency, carrying out any works required expeditiously and in accordance with a programme of works, plans and specifications previously approved by the Seller or Buyer (as applicable), such approval not to be unreasonably withheld or delayed; and
- (d) making good as soon as reasonably possible all damage caused to the land and any buildings from time to time on it to the reasonable satisfaction of the person thereby affected;
- (e) not constructing any new Services over or under any building constructed or to be constructed on the Estate or the Property or its curtilage.

## **15. Enforcement of security**

### **15.1 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.

#### **15.2 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 Buyer 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 Seller, 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 Seller, and on such terms and conditions (including the payment of money to a lessee or tenant on a surrender), as the Buyer or Receiver thinks fit, without the need to comply with any of the restrictions imposed by sections 99 and 100 of the LPA 1925.

#### **15.3 Redemption of prior Security**

- (a) At any time after the security constituted by this deed has become enforceable, the Buyer 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 Seller).
- (b) The Seller shall pay to the Buyer 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.

#### **15.4 Protection of third parties**

No purchaser, mortgagee or other person dealing with the Buyer, 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 Buyer, a Receiver or Delegate is purporting to exercise has become exercisable or is being properly exercised; or
- (c) how any money paid to the Buyer, any Receiver or any Delegate is to be applied.

#### **15.5 Privileges**

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

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

Neither the Buyer 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.

#### **15.7 Relinquishing possession**

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

#### **15.8 Conclusive discharge to purchasers**

The receipt of the Buyer, 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 Buyer, and every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it thinks fit.

### **16. Receivers**

#### **16.1 Appointment**

At any time after the security constituted by this deed has become enforceable, or at the request of the Seller, the Buyer 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.

#### **16.2 Removal**

The Buyer 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.

#### **16.3 Remuneration**

The Buyer 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.

#### **16.4 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 Buyer 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.

#### **16.5 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 Buyer despite any prior appointment in respect of all or any part of the Charged Assets.

#### **16.6 Agent of the Seller**

Any Receiver appointed by the Buyer under this deed shall be the agent of the Seller and the Seller 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 Seller goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Buyer.

## **17. Powers of Receiver**

### **17.1 Powers additional to statutory powers**

- (a) Any Receiver appointed by the Buyer 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 17.2 to Clause 17.19*.
- (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 17* may be on behalf of the Seller, the directors of the Seller or himself/herself.

### **17.2 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 Seller if requested to do so by the Buyer 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 Buyer 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.

### **17.3 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.

### **17.4 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 Seller.

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

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

### **17.6 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 Buyer may prescribe or agree with him/her.

**17.7 Take possession**

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

**17.8 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 Seller carried out at the Property.

**17.9 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.

**17.10 Sever fixtures and fittings**

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

**17.11 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.

**17.12 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.

**17.13 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.

**17.14 Form subsidiaries**

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

**17.15 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).

**17.16 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 Seller, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.

#### **17.17 Delegation**

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

#### **17.18 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.

#### **17.19 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 Seller.

### **18. Delegation**

#### **18.1 Delegation**

The Buyer 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 22.1*).

#### **18.2 Terms**

The Buyer 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.

#### **18.3 Liability**

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

### **19. Application of proceeds**

#### **19.1 Order of application of proceeds**

All monies received or recovered by the Buyer, 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 Buyer's right to recover any shortfall from the Seller):

- (a) in or towards payment of all costs, liabilities, charges and expenses incurred by or on behalf of the Buyer (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 Buyer determines; and
- (c) in payment of the surplus (if any) to the Seller or other person entitled to it.

## **19.2 Appropriation**

Neither the Buyer, 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.

## **19.3 Suspense account**

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

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

## **20. Costs and indemnity**

### **20.1 Costs**

The Seller 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 Buyer 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 Buyer, any Receiver or any Delegate in connection with:

- (a) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Buyer'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 Seller) at the rate and in the manner specified in the Down Payment Agreement.

### **20.2 Indemnity**

- (a) The Seller shall indemnify the Buyer, 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 Seller in performing any of its obligations under this deed.
- (b) Any past or present employee or agent may enforce the terms of this *Clause 20.2* subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

## **21. Further assurance**

21.1 The Seller shall promptly, at its own expense, take whatever action the Buyer 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 Buyer 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 Buyer 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 Buyer may consider necessary or desirable.

## **22. Power of attorney**

### **22.1 Appointment of attorneys**

By way of security, the Seller irrevocably appoints the Buyer, every Receiver and every Delegate separately to be the attorney of the Seller 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 Seller 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 Buyer, any Receiver or any Delegate.

### **22.2 Ratification of acts of attorneys**

The Seller 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 22.1*.

## **23. Release**

### **23.1 Release**

- (a) The Buyer shall, at the request and cost of the Seller, within 20 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 Seller to effect a Permitted Disposal.
- (b) The Seller is entitled to repay the Secured Liabilities at any time after the date of this deed and, on the date on which the Buyer is satisfied (acting reasonably) that all the

Secured Liabilities have been unconditionally and irrevocably paid and discharged in full, the Buyer shall, at the request and cost of the Seller, execute and deliver to the Seller 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).

**24. Assignment and transfer**

**24.1 Assignment by Buyer**

- (a) At any time, without the consent of the Seller, the Buyer 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 Down Payment Agreement.
- (b) The Buyer may disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Seller, the Charged Assets and this deed that the Buyer considers appropriate.

**24.2 Assignment by Seller**

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

**25. Set-off**

**25.1 Buyer's right of set-off**

The Buyer may at any time set off any liability of the Seller to the Buyer against any liability of the Buyer to the Seller, 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 Buyer may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Buyer of its rights under this *Clause* 25.1 shall not limit or affect any other rights or remedies available to it under this deed or otherwise.

**25.2 Exclusion of Seller's right of set-off**

All payments made by the Seller to the Buyer 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).

**26. Amendments, waivers and consents**

**26.1 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).

**26.2 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 Buyer shall be effective unless it is in writing.

### **26.3 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.

### **27. 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.

### **28. 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.

### **29. Third party rights**

#### **29.1 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.

### **30. Further provisions**

#### **30.1 Independent security**

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

#### **30.2 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 Buyer discharges this deed in writing.

#### **30.3 Discharge conditional**

Any release, discharge or settlement between the Seller and the Buyer shall be deemed conditional on no payment or security received by the Buyer 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 Buyer 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 Buyer deems necessary to provide the Buyer with security against any such avoidance, reduction or order for refund; and
- (b) the Buyer may recover the value or amount of such security or payment from the Seller subsequently as if the release, discharge or settlement had not occurred.

#### 30.4 Certificates

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

#### 30.5 Consolidation

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

### 31. Notices

#### 31.1 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 Seller at:

11 Tower View, King Hill, West Malling, Kent, ME19 4UY (Bovis); and

1 Wellington Way, Skypark Business Park, Clyst Honiton, Exeter, EX5 2FZ (Westco)

Attention: [JAM LAMMER] (Bovis) and Tony Franklin (Westco)

- (ii) the Buyer at:

1 Wellington Way, Skypark Business Park, Clyst Honiton, Exeter, EX5 2FZ

Fax: N/A

Attention: Gareth Jones

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.

#### 31.2 Receipt by Seller

Any notice or other communication that the Buyer gives to the Seller 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 31.2(a) or Clause 31.2(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.

### **31.3 Receipt by Buyer**

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

### **31.4 Service of proceedings**

This Clause 31 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.

## **32. Governing law and jurisdiction**

### **32.1 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.

### **32.2 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.

### **32.3 Other service**

The Seller irrevocably consents to any process in any legal action or proceedings under Clause 32.2 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**

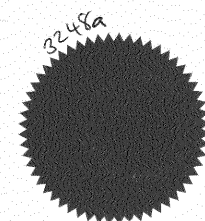
(Property)

The freehold property being land at South West Exeter, Devon shown edged red on the Plan.

The scaling of this drawing cannot be assured

Revision	Date	Drn	Ckd
A	27.06.19	JK	JT

Updated to client comment



*[Signature]*  
 Authorised Signatory/Secretary  
*[Signature]*  
 Authorised Signatory

Project  
 South West Exeter

Drawing Title  
 Deposit Plan

Date	Scale	Drawn by	Check by
17.06.19	1:5000 @ A3	JK	JT
Project No	Drawing No	Revision	
20835	9970	A	

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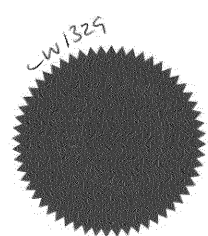
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330022 - 2009010000 - 2009010001 - South West Exeter - Core Strategy (A1) - Design & Regeneration Master Planning Drawing 20835 - 9970 Deposit Plan A1 - A3



The scaling of this drawing cannot be assured

Revision	Date	Drn	Ckd
A	Updated to client comment	27.06.19	JK JT



*[Signature]* *sign*  
Authorised Signatory/Secretary  
*[Signature]* *sign*  
Authorised Signatory

Project  
South West Exeter

Drawing Title  
Deposit Plan

Date  
17.06.19

Scale  
1:5000 @ A3

Project No  
20835

Drawn by  
JK

Check by  
JT

Revision  
A



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J:\40850 - 20835\20835 - South West Exeter - Case Strategy\A4 - Design & Register\Master Planning\Drawings\20835 - 2070 Deposit Plan\_A.docx - A3

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## Schedule 2

### (Events of Default)

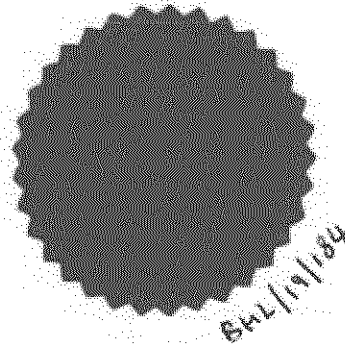
Each of the following events or circumstances shall be an Event of Default:

- (a) a failure to comply with a demand under Clause 2 (*Covenant to pay*);
- (b) the Seller is in material 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 Seller under this deed is or proves to have been incorrect or misleading in any respect when made or deemed to be made;
- (d) it is or becomes unlawful for the Seller to perform any of its obligations under the Down Payment Agreement or the Security created or expressed to be created or evidenced by this deed ceases to be effective;
- (e) any obligation or obligations of the Seller under the Down Payment Agreement 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 Buyer;
- (f) the Down Payment Agreement or this deed cease to be in full force and effect or any Security created under this deed ceases to be legal, valid, binding, enforceable or effective or is alleged by the Seller to be ineffective.

Signatures

The common seal of **BOVIS HOMES LIMITED** was affixed to this deed in the presence of :-

)  
)  
)



TWO ATTACHED  
SIGNATURES



The common seal of **WESTCO PROPERTIES LIMITED** was affixed to this deed in the presence of :-

)  
)  
)

Director

Director / Secretary

The common seal of **LIVEWEST HOMES LIMITED** was affixed to this deed in the presence of :-

)  
)  
)

Authorised signatory

Authorised signatory

**Signatures**

The common seal of **BOVIS HOMES LIMITED** was affixed to this deed in the presence of :-

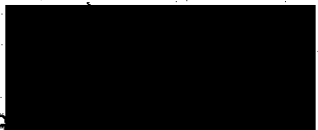
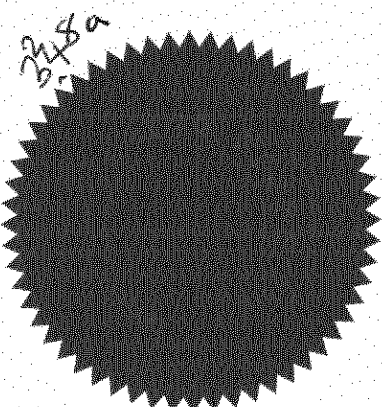
)  
)  
)

Director

Director / Secretary

The common seal of **WESTCO PROPERTIES LIMITED** was affixed to this deed in the presence of :-

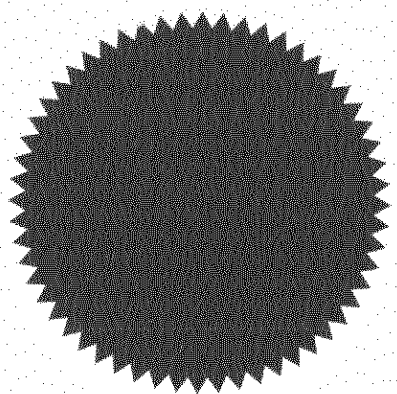
)  
)



~~Director~~  
Authorised Signatory



~~Director / Secretary~~  
Authorised Signatory



The common seal of **LIVEWEST HOMES LIMITED** was affixed to this deed in the presence of :-

)  
)  
)

Authorised signatory

Authorised signatory

**Signatures**

The common seal of **BOVIS HOMES LIMITED** was affixed to this deed in the presence of :-

)  
)  
)

Director

Director / Secretary

The common seal of **WESTCO PROPERTIES LIMITED** was affixed to this deed in the presence of :-

)  
)  
)

Director

Director / Secretary

The common seal of **LIVEWEST HOMES LIMITED** was affixed to this deed in the presence of :-

)  
)  
)



Authorised Signatory/Secretary



Authorised Signatory

