

MR01

Particulars of a charge



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

You can use the WebFiling service to file this form online  
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✓ **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 MR08

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

This form **must be delivered to the Registrar for registration within 21 days** beginning with the day after the date of creation of the charge. If 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, scan it and place it on the public record. **Do not send the original.**

WEDNESDAY



\*A3NE68YP\*

A26

24/12/2014

#317

COMPANIES HOUSE

**1 Company details**

Company number 5 3 9 4 4 8 5

Company name in full ELAN HOMES (SEQ) LIMITED ✓

0007

For official use

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

All fields are mandatory unless  
specified or indicated by \*

**2 Charge creation date**

Charge creation date 2 2 1 2 2 0 1 4 ✓

**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 TERESA FLOOD ✓

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

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4

**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

Brief description

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

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)

9

**Signature**

Please sign the form here

Signature

Signature

X DLA Piper UK LLP X

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

# MR01

## Particulars of a charge



### Presenter information

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

Contact name Ben Tumelty

Company name DLA Piper UK LLP

Address Victoria Square House

Victoria Square

Birmingham

Post town

County/Region

Postcode B 2 4 D L

Country

DX DX: 13022 BIRMINGHAM 1

Telephone 08700 111 111



### 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 £13 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

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



**FILE COPY**

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

Company number: 5394485

Charge code: 0539 4485 0007

The Registrar of Companies for England and Wales hereby certifies that a charge dated 22nd December 2014 and created by ELAN HOMES SEQ LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 24th December 2014.

DP

Given at Companies House, Cardiff on 6th January 2015



**Companies House**



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

DATED 22 December 2014

# Fixed and Floating Security Document

between

Elan Homes (SEQ) Limited  
(registered number 5394485)  
as Company

and

Teresa Flood  
as Noteholder

This Debenture is subject to and has the benefit of an Intercreditor Agreement originally dated 18 July 2012 and made between, inter alios, Barclays Bank PLC, Robert Flood and Elan Homes (SEQ) Limited as amended and restated, supplemented or varied from time to time (as each such term is defined in the Facility Agreement as defined in this Deed)



I CERTIFY THAT SAVE FOR MATERIAL REDACTED  
PURSUANT TO s859G OF THE COMPANIES ACT 2006,  
THIS IS A TRUE, COMPLETE AND CORRECT COPY  
OF THE ORIGINAL INSTRUMENT

DATE 22.12.14

SIGNED [Signature]  
DLA PIPER UK LLP

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**THIS DEED** is dated

22 December

2014 and made

**BETWEEN:**

- (1) **ELAN HOMES (SEQ) LIMITED** (registered number 05394485) a company incorporated in England and Wales whose registered office is at Oak House, Lloyd Drive, Cheshire Oaks Business Park, Ellesmere Port, Cheshire CH65 9HQ (the "Company"), and
- (2) **TERESA FLOOD** whose address is ~~100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000~~ (the "Noteholder")

**BACKGROUND:**

- (A) The Company is entering into this Deed in connection with the Loan Note Deed
- (B) The Board of Directors of the Company is satisfied that entering into this Deed is for the purposes and to the benefit of the Company, and its business
- (C) The Noteholder and the Company intend this document to take effect as a deed
- (D) The original noteholder was Robert Flood, who assigned the Notes to the Noteholder on 18 July 2012.
- (E) The Noteholder acceded to the Intercreditor Agreement as a Second Creditor on 13 February 2014

**IT IS AGREED** as follows

**1. Definitions and Interpretation**

**1.1 Definitions**

In this Deed, unless a contrary indication appears herein, terms used in the Loan Note Deed have the same meaning and construction and

"**Administrator**" means an administrator appointed under Schedule B1 to the Insolvency Act 1986

"**Assigned Contract**" means any agreement assigned, or expressed to be assigned, to the Noteholder pursuant to Clause 3.2 (*Assignments*)

"**Authorisation**" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration

"**Bank Accounts**" of the Company means all current, deposit or other accounts with any bank or financial institution in which it now or in the future has an interest and (to the extent of its interest) all balances now or in the future standing to the credit of or accrued or accruing on those accounts

"**Book Debts**" of the Company means all book and other debts of any nature, and all other rights to receive money (excluding Bank Accounts), now or in the future due, owing or payable to it and the benefit of all related negotiable instruments, rights, Security, guarantees and indemnities of any kind



**"Business Day"** means a day (other than Saturday or Sunday) on which banks are open for general business in London

**"Charged Assets"** means the assets from time to time subject, or expressed to be subject, to the Charges or any part of those assets.

**"Charges"** means all or any of the Security created or expressed to be created by or pursuant to this Deed.

**"Currency of Account"** means the currency in which the relevant indebtedness is denominated or, if different, is payable

**"Delegate"** means a delegate or sub-delegate appointed under Clause 16.2 (*Delegation*)

**"Enforcement Event"** means an Event of Default

**"Event of Default"** means any event or circumstance specified as such in clause 6.1 (*Accelerated Repayment Clause*) of the Loan Note Deed

**"Facility"** has the meaning conferred on it in the Facility Agreement

**"Facility Agreement"** means the facility agreement originally dated 19 November 2008, as amended from time to time including on 18 July 2012 and on or about the date of this Deed between the Company as borrower and Barclays Bank PLC as Lender

**"First Ranking Charge"** means the fixed and floating security entered into between the Company and Barclays Bank PLC on or around the date of this Deed.

**"Fixtures"** means fixtures, fittings (including trade fixtures and fittings) and fixed plant, machinery and apparatus at any time in or on each freehold and/or leasehold property falling within the definition of Real Property

**"Group"** means the Company and its Subsidiaries (other than Eerie Basin Limited) for the time being

**"Hedging Documents"** has the meaning conferred on it in the Facility Agreement.

**"Insolvency Act"** means the Insolvency Act 1986 as amended from time to time

**"Insurances"** means all policies of insurance (and all cover notes) of any kind now or in the future taken out by or on behalf of the Company or (to the extent of its interest) in which it now or in the future has an interest.

**"Intellectual Property"** means all trade marks, service marks, trade names, domain names, logos, get-up, patents, inventions, registered and unregistered design rights, copyrights, topography rights, database rights, rights in confidential information and know-how, and any associated or similar rights anywhere in the world, which it now or in the future owns or (to the extent of its interest) in which it now or in the future has an interest (in each case whether registered or unregistered and including any related licences and sub-licences of the same granted by it or to it, applications and rights to apply for the same)

**"Intercreditor Agreement"** has the meaning conferred on it in the Facility Agreement

**"Investments"** of the Company means:

- (a) securities and investments of any kind (including shares, stock, debentures, units, depositary receipts, bonds, notes, commercial paper and certificates of deposit),
- (b) warrants, options or other rights to subscribe for, purchase or otherwise acquire securities and investments,
- (c) all rights relating to securities and investments which are deposited with, or registered in the name of, any depositary, custodian, nominee, clearing house or system, investment manager, chargee or other similar person or their nominee, in each case whether or not on a fungible basis (including rights against any such person), and
- (d) all other rights attaching or relating to securities or investments and all cash or other securities or investments in the future deriving from investments or such rights,

in each case now or in the future owned by it or (to the extent of its interest) in which it now or in the future has an interest.

**"Liabilities"** means all present and future moneys, debts and liabilities due, owing or incurred by the Company to the Noteholder under or pursuant to the Loan Note Deed whether actually or contingently and whether as principal, surety or otherwise.

**"Loan Note Deed"** means the executive loan note deed executed by, *inter alios*, the Company and dated 18 July 2012 relating to the issue of £400,000 Secured Executive Loan Notes.

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

**"Notes"** has the meaning given to it in the Loan Note Deed

**"Party"** means a party to this Deed

**"Planning Acts"** means all laws and regulations of any relevant jurisdiction which control the development and use of land or buildings or protect buildings of historic or architectural importance.

**"Real Property"** means freehold and leasehold property in England and Wales and other real property anywhere in the world (in each case including any estate or interest therein, all rights from time to time attached or relating thereto and all Fixtures from time to time therein or thereon).

**"Receiver"** means a receiver and manager or other receiver appointed in respect of the Charged Assets and shall, if allowed by law, include an administrative receiver

**"Security"** means a mortgage, charge, pledge, lien or other security.

**"Subsidiary"** means a subsidiary within the meaning of section 1159 of the Companies Act 2006

**"Supplemental Mortgage Deed"** means a supplemental mortgage deed in the form set out in Schedule 6 (*Form of Supplemental Mortgage Deed*) or such other form as the Noteholder requires.

## **1.2 Construction**

- (A) Any reference in this Deed to "**Loan Note Deed**" or any other agreement or instrument is a reference to that Loan Note Deed or other agreement or instrument as amended, novated, supplemented, restated or replaced and includes any increase in, extension of or change to any facility made available under that Loan Note Deed or other agreement or instrument
- (B) The other provisions in clause 1.2 (*Construction*) of the Facility Agreement apply to this Deed with all necessary changes.
- (C) Unless a contrary indication appears, any reference in this deed to the "**Company**" or the "**Noteholder**" or any other persons shall be construed so as to include its successors in title, permitted assigns and permitted transferees.

## **1.3 Third Party Rights**

A person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Deed

## **1.4 Disposition of Property**

The terms of the Loan Note Deed and of any agreement, document or side letter between the Parties are incorporated into this Deed to the extent required for any purported disposition of all or any part of the Real Property or any other relevant Charged Asset contained in this Deed to be a valid disposition in accordance with Section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989

## **2 Undertaking to pay**

The Company shall pay each of its Liabilities when due in accordance with its terms or, if they do not specify a time, immediately on demand by the Noteholder

## **3. Fixed charges and assignments**

### **3.1 Creation of fixed charges**

The Company, with full title guarantee and as security for the payment of all Liabilities, charges in favour of the Noteholder

- (A) by way of first legal mortgage, all Real Property in England and Wales (including that described in Schedule 2 (*Real Property*)) now belonging to it,
- (B) by way of first fixed equitable charge, all other Real Property now belonging to it and all Real Property acquired by it in the future, and
- (C) by way of first fixed charge, all its present and future
  - (1) Book Debts;
  - (2) Bank Accounts,
  - (3) Investments,
  - (4) uncalled capital and goodwill,

- (5) Intellectual Property,
- (6) beneficial interest in any pension fund,
- (7) plant and machinery (except that mortgaged or charged by paragraph (A) or (B) of this Clause 3),
- (8) rights under any contract or other document relating to or in any way connected with the appointment of any managing agent of any Real Property,
- (9) rights under any agreement relating to the purchase of Real Property,
- (10) rights under any agreement for the sale of any Charged Asset,
- (11) benefit of all present and future Authorisations held in connection with its business or the use of any Charged Asset specified in any other subparagraph of this Clause and the right to recover and receive all compensation which may be payable in respect of them,
- (12) interest in the benefit of all guarantees, warranties and representations given or made by any manufacturers, suppliers and installers of any plant, machinery, equipment, fixtures and fittings now or in future on the Real Property and/or by any other person under contract with or under a duty to the Company in respect of them,
- (13) future easements and other rights at any time vested in, or conferred on, the Company in connection with or otherwise for the benefit of the Charged Assets,
- (14) (to the extent not subject to an effective assignment under clause 3.2 (*Assignments*)) rights under any Hedging Documents.

### **3.2 Assignments**

The Company, with full title guarantee, assigns (with effect from the First Ranking Charge ceasing to be effective) absolutely to the Noteholder all its present and future right, title and interest in and to

- (A) each Hedging Document,
- (B) any agreements, contracts and Insurances, including all moneys payable to the Company,
- (C) any claims, awards and judgments in favour of the Company, under or in connection with any agreements, contracts and Insurances,
- (D) all Insurances and all proceeds in respect of Insurances and all benefits of Insurances (including all claims relating to, and all returns of premium in respect of, Insurances), and
- (E) its rights, title and interests in the Real Property (except those charged by paragraphs (A) and (B) of Clause 3.1 (*Creation of fixed charges*)), including all rights against all past, present and future undertenants of any Real Property and their respective guarantors and sureties

### **3 3 Notice of fixed charge and assignment**

The Company shall give notice in writing of the fixed charge credited in respect of the Bank Accounts in Clause 3.1(C)(2) and of the assignments in Clause 3.2 (Assignments) as soon as reasonably practicable upon the First Ranking Charge ceasing to be effective. The Company shall use its best endeavours to ensure that each recipient of any notice promptly signs and returns the relevant form of acknowledgement

### **3 4 Miscellaneous**

A reference in this Deed to a Charge of any freehold or leasehold property includes

- (A) all buildings and Fixtures on that property,
- (B) the proceeds of sale of any part of that property, and
- (C) the benefit of any covenants for title given or entered into by any predecessor in title of the Company in respect of that property or any moneys paid or payable in respect of those covenants.

## **4. Floating charge**

### **4 1 Creation**

The Company, with full title guarantee and as security for the payment of all Liabilities, charges in favour of the Noteholder by way of first floating charge its undertaking and all its assets, both present and future (not otherwise charged (or if any such Charge does not take effect for any reason) by Clause 3 (*Fixed Charges and Assignments*))

### **4 2 Qualifying Floating Charge**

- (A) The floating Charge created by the Company pursuant to Clause 4 1 (*Creation*) above is a "qualifying floating charge" for the purposes of paragraph 14 2(a) of Schedule B1 to the Insolvency Act
- (B) Paragraph 14 of Schedule B1 to the Insolvency Act shall apply to this Deed and the Noteholder may appoint an Administrator of the Company pursuant to that paragraph

### **4 3 Ranking**

The floating Charge created by the Company ranks.

- (A) behind the First Ranking Charge,
- (B) behind all the fixed Charges created by the Company, but
- (C) in priority to any other Security over the Charged Assets except for Security ranking in priority in accordance with paragraph 6 of Schedule 1 (*Rights of Receivers*)

#### **4.4 Conversion by notice**

The Noteholder may convert the floating Charge over all or any of the Charged Assets into a fixed Charge by notice to the Company specifying the relevant Charged Assets (either generally or specifically)

- (A) if it considers a specified Charged Asset to be in danger of being seized or sold under any form of distress, attachment, execution or other legal process; and/or
- (B) while an Enforcement Event is continuing

#### **4.5 Automatic conversion**

If

- (A) the Company takes any step to create any Security in breach of Clause 5.1 (*Security*) over any of the Charged Assets not subject to a fixed Charge, or
- (B) any person takes any step to effect any expropriation, attachment, sequestration, distress or execution against any of those Charged Assets,

the floating Charge over the relevant Charged Assets shall automatically and immediately be converted into a fixed Charge.

### **5 Restrictions and further assurance**

#### **5.1 Security**

Except for the Charges, the Company shall not create or permit to subsist any Security over any Charged Asset except as permitted by clause 20.3 (*Negative pledge*) of the Facility Agreement

#### **5.2 Disposal**

The Company shall not (nor agree to) enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to sell, lease, license, sub-license, transfer or otherwise dispose of any Charged Asset except as permitted by clause 20.4 (*Disposals*) of the Facility Agreement

#### **5.3 Further assurance**

The Company shall promptly do whatever the Noteholder reasonably requires:

- (A) to perfect or protect the Charges or the priority of the Charges, or
- (B) to facilitate the realisation of the Charged Assets or the exercise of any rights vested in the Noteholder or any Receiver,

including executing any transfer, conveyance, charge, assignment or assurance of the Charged Assets (whether to the Noteholder or its nominees or otherwise), making any registration and giving any notice, order or direction

**6. Real property**

**6.1 Acquisition**

The Company shall promptly notify the Noteholder of its acquisition or, or agreement to acquire, any Real Property

**6.2 Documents**

Subject to the First Ranking Charge ceasing to be effective, the Company shall deposit with the Noteholder and the Noteholder shall be entitled to hold, all title deeds and documents relating to the Company's present and future Real Property

**6.3 Existing Real Property**

In the case of the Company's existing Real Property in England and Wales, the Company shall upon the First Ranking Charge ceasing to be effective

- (A) promptly apply to the Land Registry for first registration of that Real Property (where that Real Property is not already registered at the Land Registry) and registration of the Company as proprietor of that Real Property,
- (B) promptly apply to the Land Registry to register the first legal mortgage created by paragraph (A) of Clause 3.1 (*Creation of fixed charges*) and notice of all other Charges,
- (C) promptly submit to the Land Registry the duly completed Form RX1 (or such other appropriate form) requesting a restriction in the form specified by the Noteholder to be entered on the register of the title to that Real Property in respect of the Charge created by paragraph (A) of Clause 3.1 (*Creation of fixed Charges*), and
- (D) promptly pay all appropriate registration fees,

or, if the Noteholder gives notice to the Company that the Noteholder will submit the relevant forms to the Land Registry, the Company shall promptly provide the Noteholder with all duly completed forms reasonably requested by the Noteholder and all appropriate registration fees.

**6.4 Future Real Property**

In the case of the Company's future Real Property in England and Wales, the Company shall upon the First Ranking Charge ceasing to be effective.

- (A) promptly apply to the Land Registry for first registration of that Real Property (where that Real Property is not already registered at the Land Registry) and registration of the Company as proprietor of that Real Property,
- (B) promptly apply to the Land Registry to register the first fixed equitable charge created by paragraph (B) of Clause 3.1 (*Creation of Fixed Charges*),
- (C) promptly apply to the Land Registry requesting a restriction in the form specified by the Noteholder to be entered on the register of the title to that Real Property in respect of the Charge created by paragraph (B) of Clause 3.1 (*Creation of Fixed Charges*), and

(D) promptly pay all appropriate registration fees,

or, if the Noteholder gives notice to the Company that the Noteholder will submit the relevant forms to the Land Registry, the Company shall promptly provide the Noteholder with all duly completed forms reasonably requested by the Noteholder and all appropriate registration fees.

#### **6.5 Unregistered Real Property**

In the case of the Company's Real Property in England and Wales, both present and future, which is not registered at the Land Registry and is not required to be so registered, the Company will promptly upon the First Ranking Charge ceasing to be effective, apply to register this Deed and the Charges at the Land Charges Registry if the title deeds and documents are not deposited with the Noteholder.

#### **6.6 Legal charge**

With effect from the First Ranking Charge ceasing to exist, as security for the Liabilities, the Company shall promptly execute and deliver to the Noteholder a Supplemental Mortgage Deed of such of its Real Property from time to time in England and/or Wales as the Noteholder requires. The Company shall as soon as reasonably practicable (but in any event within any relevant priority period) apply to the Land Registry for registration of any such legal charge.

#### **6.7 Title Information Document**

On completion of the registration of any Charge pursuant to this Clause 6, the Company shall promptly supply to the Noteholder a certified copy of the relevant title information document issued by the Land Registry.

#### **6.8 Compliance with obligations**

The Company shall comply in all material respects with any covenants, stipulations, conditions, licences, consents and any other statutory, regulatory or contractual obligations relating to its Real Property or its use, including those requiring payment of sums in respect of its Real Property

#### **6.9 Leases**

The Company shall

- (A) comply in all material respects with all obligations imposed on it, and enforce the due observance and performance of all material obligations of all other persons of which it has the benefit, under any lease of Real Property; and
- (B) not exercise any of the powers, of leasing or agreeing to lease any Real Property vested in or conferred on mortgagors by the general law in a manner materially adverse to the interests of the Noteholder.

#### **6.10 Access**

The Company shall permit the Noteholder and any person nominated by it at all reasonable times on reasonable notice to enter upon any part of the Real Property to view the state of it.



#### **6.11 Investigation of title**

The Company shall grant the Noteholder or its lawyers on reasonable notice all reasonable facilities to enable the Noteholder or its lawyers to carry out investigations of title to the Real Property and enquiries into matters in connection with the Real Property

#### **6.12 Power to remedy**

- (A) If, at any time, the Company fails to perform any obligation affecting the Real Property, the Noteholder may (without any obligation to do so) enter upon the Real Property with or without agents appointed by it, architects, contractors, workmen and others as it may determine and execute such works and take such steps as may, in the opinion of the Noteholder, be required to remedy or rectify any such failure and do or take any action on or in relation to the Real Property as may in the opinion of the Noteholder be required to remedy or rectify such failure
- (B) The fees, costs and expenses incurred by the Noteholder for such works and taking such steps will be reimbursed by the Company to the Noteholder on demand
- (C) The exercise by the Noteholder of its powers under paragraph 6.12(A) above will not render the Noteholder liable to account as mortgagee in possession

### **7 Insurance**

#### **7.1 Documents**

The Company shall promptly execute and/or deliver to the Noteholder a copy of such insurance policies effected by it and the related premium receipts, and of such other documents relating to the Insurances, as the Noteholder reasonably requires.

#### **7.2 Maintenance**

- (A) The Company shall effect or procure to be effected
  - (1) insurance of the Real Property and the plant and machinery on that Real Property including fixtures and improvements on a full reinstatement basis, including, without limitation, site clearance, professional fees, VAT, subsidence and not less than three years' loss of rent on all occupational tenancies and licences of that Real Property,
  - (2) third party liability insurances,
  - (3) insurance against business interruption;
  - (4) insurance against acts of terrorism, and
  - (5) such insurances as a prudent person in the same business as the Company would effect.
- (B) Each insurance policy required under paragraph (A) above shall be for an amount and in form and substance and with an insurance company or underwriters acceptable to the Noteholder

- (C) The Company will procure that the Noteholder's interest is noted on all insurance policies required under paragraph (A) above.
- (D) The Company will procure that there be given to the Noteholder such information in connection with the insurances and copies of the policies as the Noteholder may reasonably require and will promptly notify the Noteholder of renewals made and variations or cancellations of policies made or, to the knowledge of the Company, threatened or pending
- (E) The Company shall procure prompt payment of all premiums (and provide evidence of the same to the Noteholder) and all other things necessary to keep all of the insurance policies in force

### **7.3 Enforceability**

The Company shall not do or omit to do or permit to be done or omitted anything which might render any such Insurance void, voidable or unenforceable.

### **7.4 Noteholder may insure**

If the Company fails within three Business Days to produce copies of insurance policies, premium receipts and such other evidence as the Noteholder requires which prove to the satisfaction of the Noteholder that the Company is complying with Clause 7.2 (*Maintenance*), the Noteholder (acting reasonably) may (at the Company's expense) arrange such insurances of the assets of the Company or any of them as it thinks fit.

## **8 Investments**

### **8.1 Acquisition**

The Company shall promptly notify the Noteholder of its acquisition or agreement to acquire any investment.

### **8.2 Documents**

With effect from the First Ranking Charge ceasing to be effective, the Company shall

- (A) deposit with the Noteholder, or as it directs, all certificates representing the Investments,
- (B) execute and/or deliver to the Noteholder such other documents relating to the Investments, including transfers of the Investments executed in blank, as the Noteholder requires;
- (C) deposit, execute and/or deliver such other documents relating to the Investments as the Noteholder may from time to time request

### **8.3 Voting before enforcement**

Subject to clause 8.4 (*Voting after enforcement*), the Company shall be entitled to exercise or direct the exercise of the voting and other rights attaching to the Investments as it sees fit provided that

- (A) it does so for a purpose not inconsistent with the Loan Note Deed, and

- (B) the exercise of or failure to exercise those rights would not prejudice the interests of the Noteholder.

#### **8 4 Voting after enforcement**

At any time after the occurrence of an Enforcement Event

- (A) the Noteholder or the Receiver shall be entitled to exercise or direct the exercise of the voting and other rights attaching to the Investments in such manner as it sees fit, and
- (B) the Company will comply or procure the compliance with any directions of the Noteholder or the Receiver in respect of the exercise of those rights and shall promptly execute and/or deliver to the Noteholder or the Receiver such forms of proxy as it requires with a view to enabling such person as it selects to exercise those rights.

#### **8 5 Power of attorney**

If any Investment is not held in the Company's name, the Company shall promptly deliver to the Noteholder an irrevocable power of attorney, expressed to be given by way of security and executed as a deed by the person in whose name the Investment is held. That power of attorney shall appoint the Noteholder, each Receiver and each Delegate, as the attorney of the holder and shall be in such form as the Noteholder requires

### **9 Book Debts**

#### **9.1 Collection**

The Company shall promptly collect all Book Debts and shall hold the proceeds of collection on trust for the Noteholder.

#### **9 2 Payment into designated Bank Account(s)**

The Company shall immediately pay all moneys received or receivable by it from any source (including the proceeds of collection of all Book debts) into a Bank Account or as the Noteholder directs

#### **9 3 Restrictions on dealing with Book Debts**

Without prejudice to and in addition to clauses 5 1 (*Security*), 5 2 (*Disposals*) and 5 3 (*Further assurance*) except as required by Clause 5.3 (*Further assurance*), the Company shall not enter into a single transaction or a series of transaction (whether related or not and whether voluntary or involuntary) to sell, factor, transfer or otherwise dispose of, all or any part of, its Book Debts

### **10. Bank Accounts**

#### **10 1 Restriction on Bank Accounts**

The Company shall not have any Bank Accounts other than those Bank Accounts agreed from time to time with the Noteholder.

## **10.2 Restrictions on dealing with Bank Accounts**

Without prejudice to and in addition to clauses 5.1 (*Security*), 5.2 (*Disposals*) and 5.3 (*Further assurance*) except as required by Clause 5.3 (*Further assurance*), the Company shall not enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to sell, factor, transfer or otherwise dispose of, all or any part of, its Bank Accounts.

## **10.3 Documents**

The Company shall promptly execute and/or deliver to the Noteholder such documents relating to such Bank Accounts as the Noteholder requires, including any notice to the relevant bank or financial institution of the Charges over them.

## **11. Intellectual property**

### **11.1 Acquisition**

The Company shall promptly notify the Noteholder of its becoming the legal and/or beneficial owner of or its acquisition of, agreement to acquire (by licence or otherwise) any Intellectual Property, and any application by it or on its behalf to register any Intellectual Property.

### **11.2 Documents**

The Company shall promptly on request by the Noteholder execute and/or deliver to the Noteholder such documents relating to its Intellectual Property as the Noteholder requires.

### **11.3 Grant**

Without prejudice to Clause 5.2 (*Disposals*), the Company shall not grant any exclusive user agreement or exclusive licence in relation to any of its present or future Intellectual Property.

## **12. General undertakings**

### **12.1 Protection of assets**

The Company shall keep or cause to be kept all the Charged Assets in good working order and condition, ordinary wear and tear excepted.

### **12.2 Access**

The Company shall ensure that representatives of the Noteholder (with or without surveyors, workmen and others) are able at all reasonable times to view the condition of any of the Charged Assets.

### **12.3 No fixing**

The Company shall not fix or permit the affixing of any Charged Asset to the Real Property which is not itself a Charged Asset.

**12 4 No other prejudicial conduct**

The Company shall not do, or permit to be done, anything which could prejudice the Charges in any material respect

**13 Representations and warranties**

The Company makes the representations and warranties set out in this Clause 13 (*Representations*) to the Noteholder on the date of this Deed.

**13 1 Title**

**(A) The Company**

(1) is the legal and beneficial owner of the Real Property specified in Schedule 2 (*Real Property*), and

(2) has good and marketable title to its interests in the Real Property specified in Schedule 2 (*Real Property*).

(B) There are no covenants, agreements, stipulations, reservations, conditions, interest, rights or other matters whatsoever (other than those disclosed in any relevant Report on Title) which adversely affect the Real Property specified in Schedule 2 (*Real Property*).

(C) Except as permitted by clause 20.3 (*Negative Pledge*) of the Facility Agreement the Real Property specified in Schedule 2 (*Real Property*) is free from any Security (other than any Security created by the Loan Note Deed or any tenancies or licences (other than those disclosed in any relevant Report on Title).

(D) Except as permitted by clause 20 3 (*Negative Pledge*) of the Facility Agreement nothing has arisen or has been created or is outstanding which overrides first registration or any registered disposition of the Real Property specified in Schedule 2 (*Real Property*).

(E) Except as permitted by clause 20.3 (*Negative Pledge*) of the Facility Agreement the Company has not received any notice of any claim by any person in respect of ownership of the Real Property specified in Schedule 2 (*Real Property*) or any interest in it, nor has any acknowledgement been given to any person in respect of any person which in either case, could be expected to adversely affect the value of the Real Property specified in Schedule 2 (*Real Property*)

**13 2 Report on Title**

(A) All information supplied by the Company or on its behalf to the solicitors for the Company for the purposes of preparing any Report of Title and the solicitors for the Noteholder for the purpose of reviewing that Report of Title is, in each case, true, complete and accurate in all material respects and no information has been omitted which if disclosed would reasonably be expected to materially and adversely affect the decision of the Noteholder considering whether or not to provide finance to the Company

(B) Nothing has occurred between the date the information was supplied under paragraph (A) above in relation to any Report of Title and the date the finance was provided by the Noteholder to the Company pursuant to the Loan Note Deed which renders the information untrue or misleading in any material respect.

## **14    Enforcement**

### **14.1    When enforceable**

As between the Company and the Noteholder the Charges shall be enforceable, and the powers conferred by Section 101 of the LPA as varied and extended by this Deed shall be exercisable, while an Enforcement Event is continuing

### **14.2    Power of sale**

The statutory power of sale, of appointing a Receiver and the other statutory powers conferred on mortgagees by Section 101 of the LPA as varied and extended by this Deed shall arise on the date of this Deed

### **14.3    Section 103 LPA**

Section 103 of the LPA shall not apply to this Deed

## **15    Appointment and rights of receivers**

### **15.1    Appointment of receivers**

If

- (A)    requested by the Company,
- (B)    any corporate action, legal proceedings or other procedure or step is taken in relation to the administration of the Company, or
- (C)    any other Enforcement Event is continuing (whether or not the Noteholder has taken possession of the Charged Assets),

without any notice or further notice, the Noteholder may, by deed, or otherwise in writing or by any person authorised for this purpose by the Noteholder, appoint one or more persons to be a Receiver. The Noteholder may similarly remove any Receiver and appoint any person instead of any Receiver. If the Noteholder appoints more than one person as Receiver, the Noteholder may give those persons power to act either jointly or severally

### **15.2    Scope of appointment**

Any Receiver may be appointed Receiver of all of the Charged Assets or Receiver of a part of the Charged Assets specified in the appointment. In the latter case, the rights conferred on a Receiver as set out in Schedule 1 (*Rights of Receivers*) shall have effect as though every reference in that Schedule to any Charged Assets were a reference to the part of those assets so specified or any part of those assets.

### **15.3    Rights of Receivers**

Any Receiver appointed pursuant to this Clause 15 shall have the rights, powers, privileges and immunities conferred by the Insolvency Act on administrative or other receivers duly appointed under the Insolvency Act, and shall also have the rights set out in Schedule 1 (*Rights of Receivers*)

#### **15.4 Agent of Company**

Any Receiver shall be the agent of the Company for all purposes. The Company alone shall (subject to the Companies Act 2006 and the Insolvency Act) be responsible for the Receiver's contracts, engagements, acts, omissions, defaults and losses and for liabilities incurred by the Receiver.

#### **15.5 Remuneration**

The Noteholder may determine the remuneration of any Receiver and direct payment of that remuneration out of moneys he receives as Receiver. The Company alone shall be liable for the remuneration and all other costs, losses, liabilities and expenses of the Receiver.

#### **16. Noteholder's rights**

##### **16.1 Same rights as Receiver**

Any rights conferred by the Loan Note Deed upon a Receiver may be exercised by the Noteholder, or to the extent permitted by law, an Administrator after the Charges become enforceable, whether or not the Noteholder shall have taken possession or appointed a Receiver of the Charged Assets.

##### **16.2 Delegation**

The Noteholder may delegate in any manner to any person any rights exercisable by the Noteholder under the Loan Note Deed. Any such delegation may be made upon such terms and conditions (including power to sub-delegate) as the Noteholder thinks fit.

#### **17. Order of distributions**

##### **17.1 Application of proceeds**

All amounts received or recovered by the Noteholder or any Receiver or Delegate in exercise of their rights under this Deed shall, subject to the rights of any creditors having priority, be applied in the order provided in Clause 17.2 (*Order of distributions*).

##### **17.2 Order of distributions**

The order referred to in Clause 17.1 (*Application of proceeds*) is.

- (A) in or towards the payment of all costs, losses, liabilities and expenses of and incidental to the appointment of any Receiver or Delegate and the exercise of any of his rights, including his remuneration and all outgoings paid by him,
- (B) in or towards the payment of the Liabilities in the order selected by the Noteholder, and
- (C) in payment of any surplus to the Company or other person entitled to it

**18. Liability of Noteholder, receivers and delegates**

**18.1 Possession**

If the Noteholder, any Receiver or any Delegate takes possession of the Charged Assets, it or he may at any time relinquish possession. Without prejudice to Clause 18.2 (*Noteholder's liability*), the Noteholder shall not be liable as a mortgagee in possession by reason of viewing or repairing any of the present or future assets of the Company.

**18.2 Noteholder's liability**

Neither the Noteholder nor any Receiver or Delegate shall (either by reason of taking possession of the Charged Assets or for any other reason and whether as mortgagee in possession or otherwise) be liable to the Company or any other person for any costs, losses, liabilities or expenses relating to the realisation of any Charged Assets or from any act, default, omission or misconduct of the Noteholder, any Receiver, any Delegate or their respective officers, employees or agents in relation to the Charged Assets or in connection with the Loan Note Deed.

**19. Power of attorney**

**19.1 Appointment**

The Company by way of security irrevocably appoints the Noteholder, every Receiver and every Delegate severally its attorney (with full power of substitution), on its behalf and in its name or otherwise, at such time and in such manner as the attorney thinks fit:

- (A) to do anything which the Company is obliged to do (but has not done) under the Loan Note Deed (including to execute charges over, transfers, conveyances, assignments and assurances of, and other instruments, notices, orders and directions relating to, the Charged Assets), and
- (B) to exercise any of the rights conferred on the Noteholder, any Receiver or any Delegate in relation to the Charged Assets or under the Loan Note Deed, the LPA or the Insolvency Act.

**19.2 Ratification**

The Company ratifies and confirms and agrees to ratify and confirm whatever any such attorney shall do in the exercise or purported exercise of the power of attorney granted by it in Clause 19.1 (*Appointment*).

**20. Protection of third parties**

**20.1 No duty to enquire**

No person dealing with the Noteholder, any Receiver or any Delegate shall be concerned to enquire

- (A) whether the rights conferred by or pursuant to the Loan Note Deed are exercisable,
- (B) whether any consents, regulations, restrictions or directions relating to such rights have been obtained or complied with,



- (C) otherwise as to the propriety or regularity of acts purporting or intended to be in exercise of any such rights, or
- (D) as to the application of any money borrowed or raised

## **20.2 Protection to purchasers**

All the protection to purchasers contained in Sections 104 and 107 of the LPA, Section 42(3) of the Insolvency Act or in any other applicable legislation shall apply to any person purchasing from or dealing with the Noteholder, any Receiver or any Delegate.

## **21. Saving provisions**

### **21.1 Continuing Security**

Subject to Clause 22 (*Discharge of Security*), the Charges are continuing Security and will extend to the ultimate balance of the Liabilities, regardless of any intermediate payment or discharge in whole or in part

### **21.2 Reinstatement**

If any payment by the Company or any discharge given by the Noteholder (whether in respect of the obligations of the Company or any security for those obligations or otherwise) is avoided or reduced as a result of insolvency or any similar event:

- (A) the liability of the Company and the Charges shall continue as if the payment, discharge, avoidance or reduction had not occurred, and
- (B) the Noteholder shall be entitled to recover the value or amount of that security or payment from the Company, as if the payment, discharge, avoidance or reduction had not occurred

### **21.3 Waiver of defences**

Neither the obligations of the Company under this Deed nor the Charges will be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of the Company's obligations under the Loan Note Deed or any of the Charges (without limitation and whether or not known to it or the Noteholder) including.

- (A) any time, waiver or consent granted to, or composition with the Company or any other person,
- (B) the release of the Company or any other person under the terms of any composition or arrangement with any creditor of any member of the Group,
- (C) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce any rights against, or security over assets of, the Company or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security,
- (D) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Company or any other person,

- (E) any amendment (however fundamental) or replacement of the Loan Note Deed or any other document or security,
- (F) any unenforceability, illegality or invalidity of any obligation of any person under the Loan Note Deed or any other document or security, or
- (G) any insolvency or similar proceedings, or
- (H) any postponement, discharge, reduction, non-provability or other similar circumstance affecting any obligation of the Company or any other person under the Loan Note Deed resulting from any insolvency, liquidation or dissolution proceedings or from any law, regulation or order

#### **21.4 Immediate recourse**

The Company waives any right it may have of first requiring the Noteholder (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from the Company under this Deed. This waiver applies irrespective of any law or any provision of a Loan Note Deed to the contrary.

#### **21.5 Appropriations**

Until all the Liabilities have been irrevocably paid in full and all facilities which might give rise to Liabilities have terminated, the Noteholder (or any trustee or agent on its behalf) may

- (A) refrain from applying or enforcing any other moneys, security or rights held or received by the Noteholder (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Company shall not be entitled to the benefit of the same, and
- (B) hold in an interest-bearing suspense account any moneys received from the Company or on account of the Company's liability under this Deed.

#### **21.6 Deferral of Company's rights**

Until all the Liabilities have been irrevocably paid in full and all facilities which might give rise to Liabilities have terminated and unless the Noteholder otherwise directs, the Company will not exercise any rights which it may have by reason of performance by it of its obligations under the Loan Note Deed

- (A) to be indemnified by any other person,
- (B) to claim any contribution from any other provider of Security for or any other guarantor of the Company's obligations under the Loan Note Deed, and/or
- (C) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Noteholder under the Loan Note Deed or of any guarantee or other security taken pursuant to, or in connection with, the Loan Note Deed by the Noteholder

**21.7 Additional Security**

The Charges are in addition to and are not in any way prejudiced by any other guarantees or security now or subsequently held by the Noteholder.

**21.8 Tacking**

The Noteholder shall comply with its obligations under the Loan Note Deed (including any obligation to make further advances)

**22 Discharge of security**

**22.1 Final redemption**

Subject to Clause 22.2 (*Retention of security*), if the Noteholder is satisfied that all the Liabilities have been irrevocably paid in full and that all facilities which might give rise to Liabilities have terminated, the Noteholder shall at the request and cost of the Company release, reassign or discharge (as appropriate) the Charged Assets from the Charges

**22.2 Retention of security**

If the Noteholder considers that any amount paid or credited to it under the Loan Note Deed is capable of being avoided or otherwise set aside, that amount shall not be considered to have been paid for the purposes of determining whether all the Liabilities have been irrevocably paid

**22.3 Consolidation**

Section 93 of the LPA shall not apply to the Charges.

**23. Enforcement expenses**

**23.1 Expenses**

The Company shall, within three Business Days of demand, pay to the Noteholder the amount of all costs, losses, liabilities and expenses (including legal fees) incurred by the Noteholder, any Receiver or any Delegate in relation to the enforcement of, or preservation of any right under, this Deed

**24 Payments**

**24.1 Demands**

Any demand for payment made by the Noteholder shall be valid and effective even if it contains no statement of the relevant Liabilities or an inaccurate or incomplete statement of them

**24.2 Payments**

All payments by the Company under this Deed (including damages for its breach) shall be made in the Currency of Account and to such account, with such financial institution and in such other manner as the Noteholder may direct.

**25 Rights, waivers and determinations**

**25.1 Ambiguity**

Where there is any ambiguity or conflict between the rights conferred by law and those conferred by or pursuant to the Loan Note Deed, the terms of the Loan Note Deed shall prevail

**25.2 Amendments and Waivers**

Any provision of this Deed may be amended only if the Noteholder and the Company so agree in writing and any breach of this Deed may be waived before or after it occurs only if the Noteholder so agrees in writing. A waiver given or consent granted by the Noteholder under this Deed will be effective only if given in writing and then only in the instance and for the purpose for which it is given

**25.3 Exercise of rights**

No failure to exercise, nor any delay in exercising, on the part of the Noteholder, Receiver or Delegate, any right or remedy under the Loan Note Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in the Loan Note Deed are cumulative and not exclusive of any rights or remedies provided by law, including the right to appoint an Administrator under the Insolvency Act

**25.4 Determinations**

Any certification or determination by the Noteholder or any Receiver or Delegate under the Loan Note Deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

**26 Indemnities**

**Environmental Indemnity**

The Company shall indemnify the Noteholder against any and all costs, losses, liabilities or expenses incurred by the Noteholder arising (directly or indirectly) out of or in connection with

- (A) any actual or alleged breach of or liability under Environmental Law by any member of the Group or affecting any property currently or previously owned, leased, occupied or controlled by any member of the Group (including any offsite waste management or disposal location utilised by any member of the Group);
- (B) any responsibility on the part of the Noteholder in respect of any clean-up, repair or other corrective action in relation to any such actual or alleged breach or liability, or
- (C) the business or any Real Property of the Company

**27. Transfers**

The Noteholder may assign or transfer all or any part of his rights under this Deed to the extent that he also transfers his interest in the Notes pursuant to clause 12 (*Transfer of Notes*) of the Loan Note Deed. The Company shall, immediately upon being requested to do so by the Noteholder, enter into such documents as may be necessary or desirable to effect such assignment or transfer.

**28. Partial Invalidity Clause**

All the provisions of this Deed are severable and distinct from one another and if at any time any provision is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of any of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

**29 Inconsistency**

29.1 If there is any conflict or inconsistency between any provision of this Deed and any provision of the Intercreditor Agreement and/or the Loan Note Deed, the provisions of the Intercreditor Agreement shall prevail.

29.2 If there is any conflict or inconsistency between any provision of this Deed and any provision of the Intercreditor Agreement, the Intercreditor Agreement shall prevail

**30. Counterparts**

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

**31 Governing law**

This Deed and any non-contractual obligations arising from or in connection with this Deed are governed by English law

**In witness whereof this Deed has been duly executed and delivered on the first date specified on page 1 of this Deed**

## **SCHEDULE 1: RIGHTS OF RECEIVERS**

Any Receiver appointed pursuant to Clause 15 (*Appointment and rights of Receivers*) shall have the right, either in his own name or in the name of the Company or otherwise and in such manner and upon such terms and conditions as the Receiver thinks fit, and either alone or jointly with any other person:

- 1 Enter Into possession**  
to take possession of, get in and collect the Charged Assets;
- 2. Carry on business**  
to manage and carry on any business of the Company,
- 3 Contracts**  
to enter into any contract or arrangement and to perform, repudiate, rescind or vary any contract or arrangement to which the Company is a party;
- 4 Deal with Charged Assets**  
to sell, transfer, assign, exchange, hire out, lend or otherwise dispose of or realise the Charged Assets (including any Fixtures, which may be sold separately from the related Real Property) to any person (including a new company formed pursuant to paragraph 5 (*Hive down*)) either by public offer or auction, tender or private contract and for a consideration of any kind (which may be payable or delivered in one amount or by instalments spread over a period or deferred);
- 5. Hive down**  
to form a new company and to subscribe for or acquire (for cash or otherwise) any investment in or of the new company and to sell, transfer, assign, exchange and otherwise dispose of or realise any such investments or part thereof or any rights attaching thereto,
- 6 Borrow money**  
to borrow or raise money either unsecured or on the security of the Charged Assets (either in priority to the Charges or otherwise),
- 7. Covenants and guarantees**  
to enter into bonds, covenants, guarantees, indemnities and other commitments and to make all payments needed to effect, maintain or satisfy them,
- 8. Dealings with tenants**  
to grant leases, tenancies, licences and rights of user, grant renewals and accept surrenders of leases, tenancies, licences or rights of user, and otherwise to reach agreements and make arrangements with, and to make allowances to, any lessees, tenants or other persons (including a new company formed pursuant to paragraph 5 (*Hive down*)) from whom any rents and profits may be receivable (including those relating to the grant of any licences, the review of rent in accordance with the terms of, and the variation of, the provisions of any leases, tenancies, licences or rights of user affecting the Charged Assets),

**9. Rights of ownership**

to manage and use the Charged Assets and to exercise and do (or permit the Company or any nominee of it to exercise and do) all such rights and things as the Receiver would be capable of exercising or doing if he were the absolute beneficial owner of the Charged Assets,

**10. Insurance, repairs, improvements etc.**

to insure the Charged Assets on such terms as he thinks fit, to carry out decorations, repairs, alterations, improvements and additions to the Charged Assets (including the development or redevelopment of any Real Property) and to purchase or otherwise acquire or do anything in connection with the Charged Assets,

**11. Claims**

to settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person who is or claims to be a creditor of the Company or relating to the Charged Assets;

**12. Legal actions**

to bring, prosecute, enforce, defend and abandon actions, suits and proceedings in relation to the Charged Assets or any business of the Company,

**13. Redemption of Security**

to redeem any Security (whether or not having priority to the Charges) over the Charged Assets and to settle the accounts of any person with an interest in the Charged Assets,

**14. Employees etc.**

to appoint, hire and employ officers, employees, contractors, agents, advisors and others and to discharge any such persons and any such persons appointed, hired or employed by the Company,

**15. Insolvency Act**

to exercise all powers set out in Schedule 1, Schedule B1 or (in the case of a Scottish Receiver) Schedule 2 to the Insolvency Act as now in force (whether or not in force at the date of exercise and whether or not the Receiver is an administrative receiver) and any powers added to Schedule 1 or Schedule 2, as the case may be, after the date of this Deed, and

**16. Other powers**

to do anything else he may think fit for the realisation of the Charged Assets or incidental to the exercise of any of the rights conferred on the Receiver under or by virtue of the Loan Note Deed to which the Company is party, the LPA or the Insolvency Act.

## **SCHEDULE 2: REAL PROPERTY**

**Elan Homes (SEQ) Limited (Company No. 05394485)**

<b>No</b>	<b>Description</b>	<b>Town</b>	<b>Land Registry Number</b>
1.	TBC		



### SCHEDULE 3: FORM OF NOTICE FOR BANK ACCOUNTS

To [The bank]

Address: [•]

[Date]

Teresa Flood (the "Noteholder") and Elan Homes (SEQ) Limited, (the "Company") give notice that by a fixed charge contained in a Fixed and Floating Security Document dated [◆] 2014 between the Company and the Noteholder, the Company charged to the Noteholder all its present and future right, title and interest in and to the accounts held with you listed below (each a "Bank Account") including all moneys which may be standing from time to time to the credit of each Bank Account.

Name of Bank Account	Sort Code	Account number
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Accordingly, unless you have been notified by the Noteholder that an Enforcement Event is continuing, in which case you should apply any amount standing to the credit of a Bank Account only as directed from time to time by the Noteholder, withdrawals from a Bank Account may only be made in accordance with the mandate for that Bank Account

You agree

- (A) to disclose to the Noteholder such information relating to the Bank Accounts as the Noteholder may from time to time request, and
- (B) not to claim or exercise any security interest in, set-off, counterclaim or other rights in respect of any Bank Account.

This authority and instruction is irrevocable without the prior consent of the Noteholder

Please acknowledge receipt of this Notice of Charge, and confirm that you will pay all moneys in respect of the Bank Accounts as directed by or pursuant to this Notice of Charge, by signing the acknowledgement on the attached copy of this Notice of Charge and returning that copy to the Noteholder at [•], marked for the attention of [•].

Signed by  
Teresa Flood  
as Noteholder

For and on behalf of  
Elan Homes (SEQ) Limited  
as Company

[On duplicate]

We acknowledge receipt of the Notice of Charge of which this is a copy and agree to comply with its terms. We confirm that we have not received any other notice of charge or notice that any other person claims any rights in respect of the Bank Accounts

For and on behalf of  
[bank]

Date .....

#### SCHEDULE 4: FORM OF NOTICE OF ASSIGNMENT OF INSURANCES

To [The Insurers]

Address [●]

[Date]

Teresa Flood (the "Noteholder") and Elan Homes (SEQ) Limited, (the "Company") give notice that by an assignment contained in a Fixed and Floating Security Document dated [◆] 2014 between the Company and the Noteholder, the Company assigned to the Noteholder (subject to a provision for re-assignment) all its present and future right, title and interest in and to the insurances, details of which are set out in the attached schedule (the "Insurances").

#### 2 Insurances other than third party Insurance

All moneys payable by you to the Company in respect of the Insurances other than third party Insurances shall be paid as directed by the Company, unless and until you receive written notice from the Noteholder to the contrary, in which event you should make all future payments as then directed by the Noteholder

#### 3 Third Party Liability Insurance

Subject to any applicable legislation and despite the assignments referred to above, all sums in respect of any claim under any third party Insurance by an insured party shall be paid.

3.1 directly to the person whose claim(s) constitute(s) the risk or liability insured against, provided that such person has executed a discharge of all claims against each insured party in respect of the risk or liability in relation to which the claim was made; or

3.2 (despite any policy term to the contrary) to the extent that insurers accept liability to Indemnify the insured party in respect of the claims or liabilities which the insured party has settled directly with the claimant, to the relevant insured party, unless the insured party is the Company, in which case such sums shall be paid as directed by the Noteholder.

#### 4 Irrevocable Authority

This authority and instruction is irrevocable without the prior written consent of the Noteholder

Please acknowledge receipt of this Notice of Assignment, and confirm that you will pay all moneys in respect of the Insurances as directed by or pursuant to this Notice of Assignment, by signing the acknowledgement on the attached copy of this Notice of Assignment and returning that copy to the Noteholder at [●], marked for the attention of [●]

Signed by  
Teresa Flood  
as Noteholder

For and on behalf of  
Elan Homes (SEQ) Limited  
as Company

[On duplicate]

We acknowledge receipt of the Notice of Assignment of which this is a copy and agree to comply with its terms. We confirm that we have not received any other notice of assignment or notice that any other person claims any rights in respect of the Insurances.

.....  
For and on behalf of  
[The Insurers]

Date ..... .

**SCHEDULE 5 : FORM OF NOTICE FOR ASSIGNED CONTRACTS**

To. [counterparty]

Address [•]

[Date]

Teresa Flood (the "Noteholder") and Elan Homes (SEQ) Limited, (the "Company") give notice that by an assignment contained in a Fixed and Floating Security Document dated [♦] 2014 between the Company and the Noteholder, the Company assigned to the Noteholder (subject to a provision for re-assignment) all its present and future right, title and interest in and to [describe agreement] (the "Agreement").

The Company will remain liable under the Agreement to perform all the obligations assumed by it under the Agreement. None of the Noteholder, its agents, any receiver or any other person will at any time be under any obligation or liability to you under or in respect of the Agreement

The Company will be entitled to exercise all of its rights, powers and discretions under the Agreement, and you should continue to give notices under the Agreement to the Company, unless and until you receive notice from the Noteholder to the contrary. In this event, all the rights, powers and discretions under the Agreement will be exercisable by, and notices must be given to, the Noteholder or as it directs

Please note that the Company has agreed not to amend, waive or vary any provision of or terminate the Agreement without the prior consent of the Noteholder

Please acknowledge receipt of this Notice of Assignment, and confirm that you will pay all moneys in respect of the Agreement as directed by or pursuant to this Notice of Assignment, by signing the acknowledgement on the attached copy of this Notice of Assignment and returning that copy to the Noteholder at [•], marked for the attention of [•].

Signed by  
Teresa Flood  
as Noteholder

For and on behalf of  
Elan Homes (SEQ) Limited  
as Company

[On duplicate]

We acknowledge receipt of the Notice of Assignment of which this is a copy and agree to comply with its terms. We confirm that we have not received any other notice of assignment or notice that any other person claims any rights in respect of the Agreement

For and on behalf of  
[The Counterparty]

Date

**SCHEDULE 6: FORM OF SUPPLEMENTAL MORTGAGE**

**SUPPLEMENTAL MORTGAGE DEED**

Dated [                      ]

between

**Elan Homes (SEQ) Limited (registered number  
5394485)**

as Company

and

**Teresa Flood**

as Noteholder

THIS SUPPLEMENTAL MORTGAGE DEED is dated [•] between.

- (1) **ELAN HOMES (SEQ) LIMITED** (registered number 5394485), (the "**Company**"), and
- (2) **TERESA FLOOD** (the "**Noteholder**").

**BACKGROUND.**

- (A) The Company and the Noteholder are party to
  - (a) a Loan Note Deed dated 18 July 2012 between the Company and the Noteholder (the "**Loan Note Deed**"), and
  - (b) Fixed and Floating Security Document dated [◆] 2014 made between the Company and the Noteholder (the "**Debenture**")
- (B) This Deed is supplemental to the Debenture and it is intended that it takes effect as a deed notwithstanding the fact that a party may only execute it under hand

**NOW IT IS AGREED as follows**

**1. Interpretation**

- (a) Unless the contrary intention appears, terms used in this Deed have the same meaning as in the Debenture.
- (b) In this Deed, unless the contrary intention appears, the provisions of Clause 1 2 (*Construction*) of the Facility Agreement will apply with all necessary modifications as if they were set out in full in this Deed
- (c) The terms of the Loan Note Deed and of any side letters between any parties in relation to the Loan Note Deed are incorporated in this Deed to the extent required to ensure that any purported disposition of the property contained in this Deed is a valid disposition in accordance with Section 2(1) of the Law of the Property (Miscellaneous Provisions) Act 1989.
- (d) The charges, mortgages and assignments granted by each Company under this Deed are given with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994
- (e) A reference in this Deed to any assets includes, unless the contrary intention appears, present and future assets.

**2 Fixed Security**

- (a) The Company, with full title guarantee and as security for the payment of all Liabilities, charges in favour of the Noteholder by way of a first legal mortgage the property specified in the Schedule (*Real Property*) to this Deed
- (b) The Company confirms that it has
  - (i) charged in favour of the Noteholder by way of first fixed charge the assets relating to the property specified in the Schedule to this Deed and referred to in Clause 3 1(C) (*Creation of fixed charges*) of the Debenture, and

- (ii) assigned to the Noteholder by way of security the assets relating to the property specified in the Schedule and referred to in Clause 3.2 (*Assignments*) of the Debenture.

### **3 Incorporation**

The provisions of Clause 3.4 (*Miscellaneous*) and Clauses 5 (*Restrictions and further assurance*) to 26 (*Indemnities*) of the Debenture shall be deemed to be incorporated into this Deed with all necessary modifications as if they were set out in full in this Deed with the references to notices and acknowledgements in the forms of schedules 3, 4 and 5 to the Debenture being deemed to be references to notices and acknowledgements to and from each occupational tenant of the property specified in the Schedule on the date of this Deed.

### **4 Continuation**

- (a) Except insofar as supplemented hereby the Debenture will remain in full force and effect
- (b) References in the Debenture to "this Deed", "hereof", "hereunder" and expressions of similar import shall be deemed to be references to the Debenture as supplemental by this Deed to this Deed

### **5. Counterparts**

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

### **6. Governing Law**

This Deed and any non-contractual obligations arising from or in connection with it are governed by English law.

THIS DEED has been entered into as a deed on the date stated at the beginning of this Deed

**SIGNATORIES TO THE SUPPLEMENTAL MORTGAGE DEED**

**Company**

Executed as a deed, but not delivered until )  
the first date specified on page 1, by )  
**ELAN HOMES (SEQ) LIMITED** )

Signature .....

Name (block  
capitals) .....  
**Director**

Signature .....

Name (block  
capitals) .....  
**Secretary/Director**

**The Noteholder**

By.

Signed as a deed, but not delivered until )  
the first date specified on page 1, by )  
**TERESA FLOOD** in the presence of )

Signature .....

Witness  
signature .....

Witness name  
(block capitals) .....

Witness address .....

.....

.....



EXECUTION PAGE TO FIXED AND FLOATING SECURITY DOCUMENTS

THE COMPANY

Executed as a deed, but not delivered until )  
the first date specified on page 1, by )  
**ELAN HOMES (SEQ) LIMITED.** )

Signature 

Name (block capitals) J. W. ENOCH  
Director

Signature 

Name (block capitals) A. BRAVINGTON  
Secretary/Director

THE NOTEHOLDER

By:

Signed as a deed, but not delivered until )  
the first date specified on page 1, by )  
**TERESA FLOOD** in the presence of )

Signature 

Witness signature 

Witness name A. BRAVINGTON  
(block capitals)

Witness address One House  
LLOYD DRIVE  
ELWESMORE PARK  
CHESTER

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