



**Registration of a Charge**

Company name: **EDENSTONE HOMES LIMITED**

Company number: **06397071**



X489XFC1

Received for Electronic Filing: **27/05/2015**

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**Details of Charge**

Date of creation: **22/05/2015**

Charge code: **0639 7071 0039**

Persons entitled: **ULTIMATE CAPITAL LIMITED**

Brief description: **ALL LEASEHOLD AND/OR FREEHOLD PROPERTIES (WHETHER REGISTERED OR UNREGISTERED) AND ALL COMMONHOLD PROPERTIES NOW OR IN THE FUTURE (AND FROM TIME TO TIME) OWNED BY THE COMPANY OR IN RESPECT OF WHICH THE COMPANY HAS AN INTEREST INCLUDING BUT NOT LIMITED TO THOSE PROPERTIES REFERRED TO IN THE SCHEDULE TO THE DEBENTURE AS CHARGED IN CLAUSES 3.1.1 AND 3.1.2.1 TO 3.1.2.5 OF THE DEBENTURE AND ALL RIGHTS OF THE COMPANY FROM TIME TO TIME IN ANY INTELLECTUAL PROPERTY OR SIMILAR RIGHTS INCLUDING (WITHOUT LIMITATION) ALL PRESENT AND FUTURE PATENTS, DESIGNS, COPYRIGHTS, DESIGN RIGHTS, TRADE MARKS, SERVICE MARKS, KNOW HOW SOFTWARE, COMPUTER RIGHTS AND PROGRAMMES DISK AND ANY INTEREST IN ANY OF THESE RIGHTS (WHETHER REGISTERED OR NOT) INCLUDING ANY APPLICATIONS AND RIGHTS TO APPLY FOR REGISTRATION OF ANY OF THEM AND ALL FEES, ROYALTIES AND OTHER RIGHTS DERIVED FROM, OR INCIDENTAL TO, THESE RIGHTS.**

**Contains fixed charge(s).**

**Contains floating charge(s) (floating charge covers all the property or undertaking of the company).**

**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: **WE CERTIFY THAT THE ELECTRONIC COPY INSTRUMENT  
DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION  
IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **FIELD SEYMOUR PARKES LLP**



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

Company number: 6397071

Charge code: 0639 7071 0039

The Registrar of Companies for England and Wales hereby certifies that a charge dated 22nd May 2015 and created by EDENSTONE HOMES LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 27th May 2015 .

Given at Companies House, Cardiff on 28th May 2015

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

DATED

22 MAY

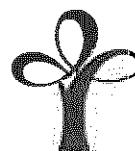
2015

## DEBENTURE

- (1) EDENSTONE HOMES LIMITED
- (2) ULTIMATE CAPITAL LIMITED

WE HEREBY CERTIFY THIS TO BE  
TRUE COPY OF THE ORIGINAL

Field Seymour Parkes  
Field Seymour Parkes LLP  
Date: 26 May 2015



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THIS DEED is dated

22 MAY

2015

BETWEEN:

- (1) EDENSTONE HOMES LIMITED a company registered in England under number 06397071 whose registered office is Priory House, Priory Street, Usk, Monmouthshire NP15 1BJ (the "Company"); and
- (2) ULTIMATE CAPITAL LIMITED a company registered in England under number 09018285 whose registered office is at Typhoon Building, Oakcroft Road, Chessington, Surrey, KT9 1RH (the "Lender").

IT IS AGREED as follows:

## 1 DEFINITIONS

1.1 In this Deed the following words and expressions (unless the context otherwise requires) have the following meanings:

"Administrator"	an administrator appointed to manage the affairs, business and property of the Company pursuant to Clause 11.8;
"Book Debts"	all present and future book and other debts and monetary claims due or owing to the Company and the benefit of all security, guarantees and other rights of any nature enjoyed or held by the Company in relation to any of them;
"Business Day"	a day (not being a Saturday, Sunday or a public holiday) upon which banks are open for business in London;
"Charged Property"	all the assets, property and undertaking of the Company charged to the Lender by this Deed (and references to the Charged Property include any part of it);
"Costs"	all costs, charges, expenses and liabilities of any kind including, without limitation, costs and damages in connection with litigation, professional fees, disbursements and any value added tax charged on Costs;
"Enforcement Event"	has the meaning given to it in Clause 9.1;
"Environment"	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"	all applicable statutes, treaties, regulations, secondary legislation, bye-laws, common law, directives, treaties or similar measures, judgments and decisions of any court or tribunal, codes of practice and guidance notes in so far as they relate or apply to the Environment

	relating to the pollution or protection of the environment that affects the Charged Property;
"Equipment"	the assets listed in Clause 3.1.2.6;
"Facility Agreement"	the facility agreement dated the date of this Deed and made between the Company and the Lender;
"Financial Collateral"	has the meaning given to that expression in the Financial Collateral Regulations;
"Financial Collateral Regulations"	the Financial Collateral Arrangements (No 2) Regulations 2003 (SI 2003/3226);
"Investments"	the assets listed at Clause 3.1.2.8;
"Properties"	all leasehold and/or freehold properties (whether registered or unregistered) and all commonhold properties now or in the future (and from time to time) owned by the Company or in respect of which the Company has an interest including but not limited to those properties referred to in the Schedule and reference to "Property" shall mean any one of them;
"Receiver"	a receiver, manager or receiver and manager of any or all of the Charged Property appointed pursuant to this Deed in respect of the Company or all or any of the Charged Property;
"Secured Liabilities"	all present and future monies, obligations and liabilities which are from time to time due, owing or incurred in whatsoever manner to the Lender by the Company, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity whatsoever including all interest (including, without limitation, default interest) accruing in respect of those monies or liabilities together with all associated costs and expenses which the Lender may incur;
"Security Period"	the period starting on the date of this Deed and ending on the date on which all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further secured liabilities are capable of being outstanding;
"Security Right"	any interest of any person whether arising by operation of law, contract, assignment or otherwise and which includes a mortgage, charge, pledge, lease, lien, rights conferring a reservation of title, option, restriction, third party right or interest and any other encumbrance or security interest whatsoever having the same commercial or economic effect as a security interest or encumbrance whether fixed or floating, equitable or legal which secures or purports to secure any obligation of any person over any present or future property, assets or undertaking.

1.2 In this Deed:

- 1.2.1 references in this Deed to Clauses or the Schedule are to clauses of and the schedule to this Deed;
- 1.2.2 any headings in this Deed and the Schedule are for convenience only and do not affect the construction of this Deed and the Schedule;
- 1.2.3 the Schedule to this Deed forms part of this Deed;
- 1.2.4 references in this Deed to any statute or statutory provision include a reference to any subordinate legislation made under that statute or statutory provisions and that statute or statutory provision as from time to time amended, extended or re-enacted and to any statute or statutory provision that it consolidated or re-enacted before the date of this Deed;
- 1.2.5 in this Deed words importing the singular include the plural, words importing any gender include every gender and words importing persons include bodies corporate and unincorporate and (in each case) vice versa;
- 1.2.6 in this Deed references to "writing" or "written" shall include faxes but not emails;
- 1.2.7 in this Deed general words shall not be given a restrictive meaning because they are preceded or followed by words indicating a particular class or example of acts, matters or things;
- 1.2.8 references in this Deed to an amendment include a supplement, variation, novation or re-enactment (and amended shall be construed accordingly);
- 1.2.9 a reference to assets includes present and future properties, undertakings, revenues, rights and benefits of every description;
- 1.2.10 a reference to an authorisation includes an authorisation, consent, licence, approval, resolution, exemption, filing, registration and notarisation.

## **2 COVENANT TO PAY**

The Company shall on demand pay the Secured Liabilities to the Lender and discharge the Secured Liabilities when they become due.

## **3 THE SECURITY**

- 3.1 The Company as continuing security for the payment of the Secured Liabilities with full title guarantee:
  - 3.1.1 charges to the Lender by way of first legal mortgage all the Properties listed in the Schedule;
  - 3.1.2 charges to the Lender by way of first fixed charge:
    - 3.1.2.1 all Properties owned on the date of this Deed by the Company to the extent not charged by Clause 3.1.1 and all Properties acquired by the Company in the future;
    - 3.1.2.2 all buildings fixtures and fittings (including trade fixtures and fittings) and fixed plant and machinery from time to time on or in the Properties;
    - 3.1.2.3 the benefit of all other agreements relating to land which the Company is or may become party to or otherwise entitled;
    - 3.1.2.4 all present and future rights, licences, guarantees, rents, deposits,



contracts, covenants and warranties relating to the Properties;

- 3.1.2.5 all present and future interests of the Company not effectively mortgaged or charged under the preceding provisions of this Clause 3 in or over freehold or leasehold property;
  - 3.1.2.6 all present and future equipment, plant and machinery, tools, vehicles, furniture, fittings, computers and other tangible property of the Company together with all spare parts, replacements, modifications and additions thereto;
  - 3.1.2.7 all rights of the Company from time to time in any intellectual property or similar rights including (without limitation) all present and future patents, designs, copyrights, design rights, trade marks, service marks, know how, software, computer rights and programmes disk and any interest in any of these rights (whether registered or not) including any applications and rights to apply for registration of any of them and all fees, royalties and other rights derived from, or incidental to, these rights;
  - 3.1.2.8 all present and future stocks, shares, loan capital, securities, bonds and investments (whether or not marketable) including in any subsidiary of the Company for the time being owned (at law or in equity) by the Company including all rights accruing or incidental to those investments from time to time;
  - 3.1.2.9 all present and future goodwill and uncalled capital for the time being of the Company;
  - 3.1.2.10 the benefit of all warranties, instruments, guarantees, charges, pledges and other security, any licences, consents and authorisations, statutory or otherwise held or required in connection with the Company's business or the use of any Charged Property at any time and all rights in connection with them;
  - 3.1.2.11 all rights, interest and claims under all policies of insurance and assurance, contracts or policies now or in the future held by or insuring to the benefit of the Company which relate to the Charged Property (including all money payable under such contracts and policies) or otherwise;
  - 3.1.2.12 all Book Debts;
  - 3.1.2.13 all other present and future debts or monetary claims of the Company against third parties (excluding those charged under Clause 3.1.2.11);
  - 3.1.2.14 all present and future monies and credit balances standing to the credit of the Company from time to time with any bank or other financial institution, person or organisation whatsoever and all rights relating to or attaching to them (including the right to interest); and
  - 3.1.2.15 all other existing and future property of the Company not charged in Clauses 3.1.2.1 to 3.1.2.14 inclusive other than the stock in trade of the Company.
- 3.1.3 charges to the Lender by way of first floating charge the whole of its undertaking and property assets and rights whatsoever and wheresoever situated, present and/or future, to the extent not effectively mortgaged,

charged or assigned under Clauses 3.1.1 and 3.1.2 inclusive.

3.1.4 assigns to the Lender absolutely, subject to a proviso for reassignment on irrevocable discharge in full of the Secured Liabilities, all its rights in the insurance policies referred to in Clause 3.1.2.11 above.

3.2 Without prejudice to the other rights of the Lender under this Deed the floating charge created by the Company under this Deed is a "qualifying floating charge" for the purposes of paragraph 14.2(a) of Schedule B1 to the Insolvency Act 1986. Paragraph 14 of Schedule B1 to the Insolvency Act 1986 shall apply to this Deed.

#### **4 CONVERSION OF THE FLOATING CHARGE**

4.1 The Lender may in its sole discretion at any time, by written notice to the Company, convert the floating charge created by Clause 3.1.3 into a fixed charge as regards any part of the Charged Property specified by the Lender in that notice.

4.2 The floating charge created by Clause 3.1.3 will automatically and immediately (without notice) be converted into a fixed charge over the relevant Charged Property if:

4.2.1 the Company creates or, attempts to create, a Security Right or any trust in favour of another person over all or any part of the Charged Property without the Lender's prior written consent;

4.2.2 the Company disposes or, attempts to dispose, of all or any part of the Charged Property (other than Charged Property that is only subject to the floating charge while it remains uncrystallised);

4.2.3 any person levies (or attempts to levy), any distress, attachment, execution or other process against all or any part of the Charged Property;

4.2.4 a Receiver is appointed over all or any of the Charged Property that is subject to the floating charge; or

4.2.5 the Lender receives notice of the appointment of, or a proposal or an intention to appoint, an Administrator of the Company.

4.3 Any asset acquired by the Company after any crystallisation of the floating charge created by this Deed which, but for such crystallisation, would be subject to a floating charge under this Deed, shall (unless the Lender confirms in writing to the contrary) be charged to the Lender by way of first fixed charge.

4.4 The Lender may at any time after any conversion of the floating charge over any Charged Property into a fixed charge in accordance with Clauses 4.1 and 4.2 reconvert such fixed charge into a floating charge.

#### **5 RESTRICTIONS ON DEALING**

5.1 The Company covenants with and undertakes to the Lender that it shall not at any time without the prior written consent of the Lender:

5.1.1 (except for charges in favour of the Lender created under or pursuant to this Deed) create or permit to subsist any Security Right on, or in relation to any Charged Property;

5.1.2 sell, assign, transfer, part with possession of, or otherwise dispose of in any manner (or purport to do so) the whole or any part of or any interest in the Charged Property (except in the Charged Property which is only subject to an uncrystallised floating charge) other than in the ordinary course of and for the purposes of carrying on its business;

- 5.1.3 create or grant (or purport to create or grant) any interest in the Charged Property in favour of a third party;
- 5.1.4 in respect of the Properties make any structural or material alteration to, or to the user of, any of the Properties (except for necessary repairs or the substitution of full value replacements) or do or permit to be done anything which is a "development" within the meaning of the Town and Country Planning Acts from time to time (or any orders or regulations under such Acts) or do or permit to be done any act, matter or thing where to do so would have a material and adverse effect on the value of any of its Properties or on the marketability of any of such Properties;
- 5.1.5 part with any interest or share possession or occupation of any of the Properties or any part thereof nor confer upon any person whatsoever any licence, right or interest to occupy or grant any licence or permission to assign, under-let or part with possession of the same;
- 5.1.6 make or incur any expenditure or liabilities of any exceptional or unusual nature.

## 6 COVENANTS

- 6.1 The Company covenants with and undertakes to the Lender that subject to the rights of any prior chargee it shall:
  - 6.1.1 on execution of this Deed (or, if later, the date of acquisition of the relevant Charged Property) deposit with the Lender and the Lender shall for the duration of this Deed be entitled to hold:
    - 6.1.1.1 all deeds and documents of title relating to the Charged Property which are in the possession or control of the Company (and if these are not within the possession or control of the Company, the Company undertakes to obtain possession of all such deeds and documents of title);
    - 6.1.1.2 all policies of insurance and assurance relating to any of the Charged Property which the Company is entitled to possess; and
    - 6.1.1.3 all certificates and other documents of title to the stocks, shares and other securities referred to in Clause 3.1.2.8 above together with stock transfer forms in respect of the same executed in blank (except for the number and class of shares and the name of the transferor) and left undated. The Lender may at any time after the date of this Deed complete the instrument of transfer on behalf of the Company in favour of itself or such other person as it shall select.
  - 6.1.2 keep such parts of the Charged Property as are insurable, comprehensively insured to the Lender's satisfaction in writing (and if so required by the Lender in the joint names of itself and the Company) against loss or damage by fire and other usual risks as is normal for prudent companies in businesses similar to those of the Company and such other risks as the Lender may require to their full replacement value and where such insurance is not in joint names procure that the Lender's interest is noted on all policies required under this Clause;
  - 6.1.3 duly and promptly pay all premiums and other monies necessary for maintaining the insurances required under Clause 6.1.2 and on demand produce the insurance policies and premium receipts to the Lender;

- 6.1.4 apply any insurance monies received in making good the loss or damage in respect of which the money is received or in or towards discharge of the Secured Liabilities as the Lender may in its absolute discretion require;
- 6.1.5 not do, or permit to be done, any act or thing that would or might depreciate, jeopardise or otherwise prejudice the security held by the Lender, or materially diminish the value of any of the Charged Property or the effectiveness of the security created by this Deed;
- 6.1.6 apply to the Chief Land Registrar for a restriction to be entered on the Register of Title of each Property in the following terms:  
  
 "no dispositions or charge or other security interest 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 the consent of the proprietor for the time being of the charge dated [ ] in favour of [ ] referred to in the Charges Register";
- 6.1.7 apply to the Chief Land Registrar for a note to be entered on the Register of Title of each Property in respect of any obligation on the part of the Lender to make further advances to the Company and this Deed shall cover such further advances;
- 6.1.8 keep all buildings and all plant, machinery, fixtures, fittings and other effects forming part of the Charged Property in good repair and working order;
- 6.1.9 promptly pay or cause to be paid, and indemnify the Lender and any Receiver against, all present and future rents, rates, taxes, duties, charges, assessments, impositions and outgoings whatsoever now or at any time in the future payable in respect of the Properties (or any part of them) or by the owner or occupier of them;
- 6.1.10 observe and perform all the requirements of Environmental Law both in the conduct of its general business and in the management possession or occupation of each Property and shall apply for and obtain all authorisations necessary to ensure that it does not breach Environmental Law;
- 6.1.11 inform the Lender promptly of any acquisition by the Company of, or contract made by the Company to acquire, any freehold, leasehold or other interest in any Property;
- 6.1.12 not vary, surrender, cancel or dispose of, or permit to be forfeit, any leasehold interest in any of its Properties;
- 6.1.13 observe and perform all covenants, agreements and stipulations from time to time affecting its interest in any of its Properties or contained in any lease, agreement for lease or tenancy agreement under which any part of such Properties may be held;
- 6.1.14 notify the Lender immediately in the event of any creditor executing diligence against the Company or any distress or execution is levied or enforced against the Company or any third party debt order or freezing order is made and served on the Company;
- 6.1.15 not allow any person other than itself, without the prior written consent of the Lender, to be registered under the Land Registration Acts 1925 to 2002 as proprietor of any of its Properties (or any part of them) or create or permit to arise any overriding interest (as specified in Schedule 1 or Schedule 3 to the Land Registration Act 2002) affecting any such property;

- 6.1.16 not do or cause or permit to be done anything which may in any way depreciate, jeopardise or otherwise prejudice the value or marketability of any of its Charged Property;
  - 6.1.17 maintain its centre of main interests (COMI) for the purposes of the EU Regulation on Insolvency Proceedings 2000 (NO 1346/2000), in the United Kingdom;
  - 6.1.18 execute and do all such assurances and things as the Lender may reasonably require for perfecting the security constituted by this Deed and after the monies secured by it shall have become payable for facilitating the realisation of the Charged Property or any part thereof and for exercising all powers, authorities and discretions conferred by this Deed upon the Lender or any Receiver or Administrator appointed by the Lender; and
  - 6.1.19 promptly notify the Lender of any meeting to discuss any steps or any proposal or application or the giving of any notice for the appointment of an Administrator, Receiver, liquidator or similar official in respect of the Company or any of its assets and if any such official is appointed, of his appointment.
- 6.2 The Company, shall promptly, on becoming aware of any of the same, give the Lender notice in writing of any breach of any covenant set out in this Clause 6.

## **7 DEALING WITH BOOK DEBTS**

- 7.1 The Company will, as an agent for the Lender, use its best endeavours to collect and realise the Book Debts.
- 7.2 The Company shall not (except with the prior written consent of the Lender) release, exchange, compound, set-off, grant time or indulgence in respect of, or in any other manner deal with, all or any of the Book Debts.
- 7.3 As and when required by the Lender the Company will provide to the Lender a schedule of the names and addresses of all debtors of the Company and the amount owing from each of them and such other information relating to the Book Debts as the Lender may reasonably require.
- 7.4 As and when required by the Lender the Company will execute a legal assignment of any of the Book Debts to the Lender in such terms as the Lender may require and give notice of such assignment to the debtors from whom the Book Debts are due owing or incurred.
- 7.5 The Company will pay the proceeds of realisation of any Book Debt into an account specified by the Lender and pay or otherwise deal with such proceeds in any such account in accordance with any directions given by the Lender from time to time.
- 7.6 The Lender will be under no obligation to take any steps to recover any of the Book Debts.

## **8 PROTECTION OF SECURITY**

- 8.1 If the Company fails to perform any of its obligations under Clauses 6.1.2, 6.1.3 or 6.1.8, the Lender may take out or renew any insurance or effect such repairs and take such other action as it may deem appropriate to remedy such failure (with power to enter upon the Property for that purpose) and, recover the premiums and other expenses so incurred from the Company, on demand without in any such case becoming liable to account as a mortgagee in possession. If the Company fails to produce an insurance policy or premium receipt as specified in Clause 6.1.3 in respect of any part of the Charged Property, the Lender shall be entitled to assume that the Company has made default in insuring it as required by Clause 6.1.2.

- 8.2 The Company will permit any authorised representative of the Lender at all reasonable times to enter upon any part of the Properties of the Company and of any other property where the Company may be carrying out any contract or other works and to inspect the Company's books of account and other books and documents and those of its subsidiaries.
- 8.3 The Lender shall be entitled, at its sole discretion, to have a valuation of the Charged Property or any part of them carried out from time to time by an independent surveyor or valuer (to be appointed at the Lender's sole discretion) and the Company consents to any such valuation report being prepared and agrees to provide such access and other assistance as may be reasonably required by the Lender for such purposes; and the Company shall ensure that any tenant or other occupier of the Properties shall ensure access and assistance is provided for the foregoing purposes.
- 8.4 No statutory or other power of granting or agreeing to grant or of accepting or agreeing to accept surrenders of leases or tenancies of the whole or any part of the Properties charged under this Deed will be capable of being exercised by the Company without the previous written consent of the Lender.
- 8.5 The obligations of the Company under this Deed will not be affected by any act, omission, circumstance, matter or thing which but for this provision might operate to release or otherwise exonerate it from any of its obligations hereunder in whole or in part, including (without limitation):
- 8.5.1 any variation, extension, discharge, compromise, dealing with, exchange or renewal of any right or remedy which the Lender may have now or in the future from or against the Company or any other person in respect of the Secured Liabilities;
  - 8.5.2 any act or omission by the Lender or any other person in taking up, perfecting or enforcing any security or guarantee from or against the Company or any other person or the invalidity or unenforceability of any such security or guarantee;
  - 8.5.3 any amendment, variation, restatement or supplement of or to, or novation, transfer or termination (in whole or in part) of, any document relating to the Secured Liabilities or any exercise by the Lender (in its absolute discretion) of its rights to refuse, grant, continue, vary, review, determine or increase any credit or facilities to the Company or any other person;
  - 8.5.4 any grant of time, indulgence, waiver or concession to the Company or any other person;
  - 8.5.5 any arrangement or compromise entered into between the Lender and the Company or any other person;
  - 8.5.6 the administration, insolvency, bankruptcy, sequestration, liquidation, winding-up, receivership, dissolution, incapacity, limitation, disability, discharge by operation of law or any change in the constitution, name and style of, the Company or any other person;
  - 8.5.7 the invalidity, illegality, unenforceability, irregularity or frustration of the Secured Liabilities or any of the obligations of the Company or any other person; and
  - 8.5.8 any postponement, discharge, reduction, non-provability or other similar circumstance affecting any obligation of any other person resulting from any administration, insolvency, liquidation, receivership or dissolution proceedings or from any law, regulation or order.

## 9 ENFORCEMENT

9.1 This Deed shall be immediately enforceable if:

- 9.1.1 any of the Secured Liabilities are not paid or discharged when the same ought to be paid or discharged by the Company (whether on demand or at scheduled maturity or by acceleration or otherwise as the case may be); or
- 9.1.2 the Company is in breach of any of its obligations under this Deed or under any other agreement between the Company and the Lender and that breach (if capable of remedy) has not been remedied to the satisfaction of the Lender within 5 Business Days of notice by the Lender to the Company to remedy the breach; or
- 9.1.3 the Company:
  - 9.1.3.1 is unable to pay its debts as they fall due (and/or the value of the Company's assets is less than the amount of its liabilities taking into account the Company's contingent and prospective liabilities); or
  - 9.1.3.2 commences negotiations with any one or more of its creditors with a view to the general readjustment or rescheduling of its indebtedness; or
  - 9.1.3.3 makes a general assignment for the benefit of or a composition with its creditors; or
- 9.1.4 the Company passes any resolution or takes any corporate action, a petition is presented or proceedings are commenced or any action is taken by any person for its winding up, dissolution, administration or re-organisation or for the appointment of a receiver, administrative receiver, administrator, trustee or similar officer of it or of any or all of its revenues and assets; or
- 9.1.5 a distress, execution, attachment or other legal process is levied or enforced upon or sued against all or any part of the assets of the Company and remains undischarged for 5 Business Days; or
- 9.1.6 any event occurs in relation to the Company that is analogous to those set out in paragraphs 9.1.3 or 9.1.5; or
- 9.1.7 any representation, warranty or statement made or deemed to be made, by the Company under this Deed is, or proves to have been, incorrect or misleading in any material respect when made or deemed to be made; or
- 9.1.8 an Event of Default (as defined in the Facility Agreement) occurs.

The events referred to Clauses 9.1.1 to 9.1.8 (inclusive) shall each be referred to as an "Enforcement Event" for the purposes of this Deed.

9.2 Upon the occurrence of an Enforcement Event, this Deed shall become immediately enforceable and (whether or not the event is continuing) without prejudice to any other rights of the Lender the powers of sale under the Law of Property Act 1925 shall immediately be exercisable and the Lender may in its absolute discretion enforce all or any part of the security created by this Deed as it sees fit.

9.3 The statutory powers of sale conferred by the Law of Property Act 1925 shall, as between the Lender and a purchaser from the Lender, arise on and be exercisable at any time after the execution of this Deed, but the Lender shall not exercise such power of sale until the security constituted by this Deed has become enforceable under Clause 9.1.

9.4 The statutory powers of leasing and accepting surrenders conferred on mortgagees under the Law of Property Act 1925, and by any other statute, are extended so as to authorise the Lender 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 Company, to:

9.4.1 grant any lease or agreement for lease;

9.4.2 accept surrenders of leases; or

9.4.3 grant any option of the whole or any part of the freehold and leasehold property of the Company with whatever rights relating to other parts of it,

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

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

9.5.1 whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;

9.5.2 whether any power the Lender or a Receiver is purporting to exercise, has become exercisable; or

9.5.3 how any money paid to the Lender, any Receiver or any Delegate is to be applied.

9.6 Neither the Lender, nor any Receiver nor any Administrator shall be liable to account as mortgagee in possession in respect of all or any of the Charged Property, nor shall any of them be liable for any loss on realisation of, or for any neglect or default of any nature in connection with, all or any of the Charged Property for which a mortgagee in possession might be liable as such.

## **10 RIGHT OF APPROPRIATION**

10.1 To the extent that:

10.1.1 the Charged Property constitutes Financial Collateral; and

10.1.2 this Deed and the obligations of the Company hereunder constitute a Security Financial Collateral Arrangement,

the Lender shall have the right, at any time after the security constituted by this Deed has become enforceable, to appropriate all or any of that Charged Property in or towards the payment or discharge of the Secured Liabilities in such order as the Lender may, in its absolute discretion, determine.

10.2 The value of any Charged Property appropriated in accordance with this Clause 10 shall be the price of that Charged Property at the time the right of appropriation is exercised as listed on any recognised market index, or determined by such other method as the Lender may select (including independent valuation).

10.3 The Company agrees that the methods of valuation provided for in this Clause are commercially reasonable for the purposes of the Financial Collateral Regulations.



## **11 APPOINTMENT OF RECEIVER OR ADMINISTRATOR**

- 11.1 In this Deed any reference to a Receiver shall be deemed to include a reference to one or more receivers, to a receiver and manager (or one or more of them) and any reference to an Administrator shall be deemed to be to an administrator appointed to manage the affairs business and property of the Company pursuant to Clause 11.8.
- 11.2 At the request of the Company or, at any time after the occurrence of an Enforcement Event, the Lender may appoint by written notice a Receiver of the Charged Property upon such terms as it shall think fit and (subject to Section 45 of the Insolvency Act 1986) may from time to time by way of deed, or otherwise in writing, remove any Receiver (as the case may be) so appointed and appoint another in his place in a similar manner.
- 11.3 The Lender may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the Law of Property Act 1925, and the remuneration of the Receiver shall be a debt secured by this Deed which shall be due and payable immediately upon it being paid by the Lender.
- 11.4 The powers of sale and appointing a Receiver conferred by this Deed shall be in addition to all statutory and other powers of the Lender under the Insolvency Act 1986, the Law of Property Act 1925 or otherwise, and shall be exercisable without the restrictions contained in sections 103 and 109 of the Law of Property Act 1925 or otherwise.
- 11.5 A Receiver so appointed shall be the agent of the Company until the Company goes into liquidation and the Company shall be solely responsible for such Receiver's acts and defaults and for his remuneration, costs, charges and expenses to the exclusion of liability on the part of the Lender. On liquidation of the Company, the Receiver shall be acting as principal and not as agent for the Lender.
- 11.6 The Lender may, whether or not there are still monies outstanding secured upon the Charged Property, by written notice return to the control of the directors any of the Charged Property specified in the said notice over which a floating charge hereunder has become fixed. Upon receipt of such notice by the Company, the property so specified shall cease to be subject to a fixed charge and shall again become subject to a floating charge under the terms of this security. For this purpose the Lender may by written notice remove and not re-appoint any Receiver appointed hereunder from all or any part of the Charged Property but, unless such notice otherwise provides the removal of a Receiver hereunder (whether or not another Receiver or Administrator is appointed in his place) shall not of itself cause any charge to refloat.
- 11.7 The power to appoint a Receiver (whether construed by this Deed or by statute) shall be and remain exercisable by the Lender notwithstanding any prior appointment in respect of all or any part of the Charged Property.
- 11.8 The Lender may, without notice to the Company, appoint any one or more persons to be an Administrator of the Company pursuant to Paragraph 14 of Schedule B1 of the Insolvency Act 1986 if the security constituted by this Deed becomes enforceable. Any appointment under this Clause shall:
- 11.8.1 be in writing signed by a duly authorised signatory of the Lender; and
- 11.8.2 take effect, in accordance with Paragraph 19 of Schedule B1 of the Insolvency Act 1986, when the requirements of Paragraph 18 of that Schedule B1 are satisfied.
- 11.9 The Lender may, subject to any necessary approval from the court, end the appointment of an Administrator by written notice in accordance with this Clause and appoint under that paragraph a replacement for any Administrator whose

appointment ends for any reason.

## **12 POWERS OF RECEIVER**

- 12.1 A Receiver appointed pursuant to this Deed shall be entitled to exercise all powers conferred on a receiver by the Law of Property Act 1925 and the Insolvency Act 1986 in accordance with and to the extent permitted by the laws applicable to the Charged Property and by way of addition to and without limiting those powers such Receiver shall have the power to:
- 12.1.1 take immediate possession of, get in and collect the Charged Property or any part of it in respect of which he is appointed and, for that purpose, to make such demands and take any proceedings as may seem expedient and to take possession of the Charged Property with like rights;
  - 12.1.2 manage, carry on, develop, reconstruct, amalgamate or diversify or concur in carrying on managing, developing, reconstructing, amalgamating or diversifying the business of the Company;
  - 12.1.3 make and effect all repairs and insurances and do all other acts which the Company might do in the ordinary conduct of its business as well for the improvement as for the protection of the Charged Property in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the Company under this Deed;
  - 12.1.4 sell and realise all or any part of the Charged Property by public auction or private contract and generally in such manner and on such terms and conditions as he shall think proper including severing and selling plant and machinery or other fixtures separately from the property to which they are annexed and Section 103 Law of Property Act 1925 shall not apply to this Deed or to any sale made hereunder;
  - 12.1.5 call up all or any portion of the uncalled capital of the Company;
  - 12.1.6 give valid receipts for all monies and execute and do all assurances and things which he may consider proper or desirable for realising the Charged Property;
  - 12.1.7 use the name of the Company for all or any of the said purposes and in any legal proceedings with full power to convey any property sold in the name of the Company;
  - 12.1.8 raise or borrow money to rank after this security and with the prior written consent of the Lender to rank with or before the Lender and from the Lender or any other person, secured or not upon the Charged Property for the purpose of carrying on the business of the Company or managing or realising all or any of the Charged Property or for remunerating the Receiver or for any other purpose which may seem expedient to the Receiver for the better exercise of his powers hereunder;
  - 12.1.9 if there shall be any building works or other developments on the Charged Property which shall remain unfinished to continue and/or complete the said building works or development in such manner as he shall think fit;
  - 12.1.10 demolish existing building and/or commence any new building works or development of the Charged Property and continue and/or complete the same in such manner as he shall think fit;
  - 12.1.11 make and effect repairs, improvements, maintenance works and renewals of or to any Property and its contents;

- 12.1.12 sell, let and accept surrenders of leases or tenancies of any Property in such manner and on such terms and conditions as he thinks fit and without the restrictions imposed by Sections 99 and 100 of the Law of Property Act 1925 and to carry any sale, letting or surrender into effect by conveying, leasing, letting or accepting surrenders in the name of or on behalf of the Company or otherwise. Any consideration for such sale, leasing, letting or surrender may be by cash or any other valuable consideration. Plant machinery and other fixtures may be severed and sold separately from any freehold or leasehold property;
- 12.1.13 sever and sell separately any fixtures or fittings from any Property without the consent of the Company;
- 12.1.14 exercise or revoke any value added tax option to tax as he thinks fit;
- 12.1.15 appoint managers, officers, agents, accountants, clerks, servants, workmen, and others for the said purposes upon such terms as to remuneration or otherwise as he may think proper;
- 12.1.16 make any arrangement, settlement or compromise between the Company and any other person that he may think expedient;
- 12.1.17 make such substitutions of or improvements to the Equipment, as he may think expedient;
- 12.1.18 sell and assign all or any of the Book Debts in respect of which he is appointed in such manner and generally on such terms and conditions, as he thinks fit;
- 12.1.19 redeem any prior Security Right and settle and pass the accounts to which the Security Right relates and any accounts so settled and passed will be conclusive and binding on the Company and the monies so paid will be deemed to be an expense properly incurred by him;
- 12.1.20 charge and receive such sum by way of remuneration (in addition to all costs charges and expenses incurred by him) as the Lender may prescribe or agree with him; and
- 12.1.21 do all such other acts and things as he may consider desirable or necessary for realising any of the Charged Property, incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this Deed or by law or which he lawfully may or can do as agent for the Company.
- 12.2 After the occurrence of an Enforcement Event, the Company shall do all such acts and things and shall execute all such assurances and instruments as any Receiver appointed under this Deed in the exercise of any of the powers conferred upon him shall reasonably require.

### **13 APPLICATION OF PROCEEDS**

- 13.1 All monies received in the exercise of any enforcement powers conferred by this Deed shall be applied in the following order:
  - 13.1.1 first, in payment of all unpaid costs, fees, charges, taxes and expenses incurred and payments made by the Lender and/or the Receiver (as the case may be) in the exercise of all or any of his powers and of and incidental to the appointment of the Receiver together with other outgoings properly payable by the Receiver;
  - 13.1.2 second, in payment of the remuneration of any Receiver (as agreed between the Receiver and the Lender);

13.1.3 third, in or towards discharge of the Secured Liabilities in such order and manner as the Lender shall determine;

13.1.4 finally, the surplus (if any) shall be paid to the Company or any other person entitled to it.

13.2 Neither the Lender nor any Receiver shall be bound (whether by virtue of section 109(8) of the Law of Property Act 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.

#### **14 CONTINUING SECURITY**

This Deed shall:

14.1 be a continuing security to the Lender notwithstanding any settlement of account or other matter or thing whatsoever unless and until the Lender discharges this Deed in writing;

14.2 not be discharged or affected by any failure of or defect in any agreement given by or on behalf of the Company in respect of any Secured Liability nor by any legal limitation or lack of any borrowing powers of the Company or lack of authority of any person appearing to be acting for the Company or by any other fact or circumstance (whether known or not to the Company or the Lender) as a result of which any Secured Liabilities may be rendered illegal, void or unenforceable by the Lender;

14.3 remain binding on the Company notwithstanding any amalgamation, reconstruction, reorganisation, merger, sale or transfer by or involving the Lender or its assets and this Deed and all rights conferred on the Lender hereunder may be assigned or transferred by the Lender accordingly;

14.4 be without prejudice and in addition to any other security for the Secured Liabilities (whether by way of mortgage equitable charge or otherwise) which the Lender may hold now or hereafter on all or any part of the Charged Property; and

14.5 be in addition to any rights powers and remedies at law.

Where there is any ambiguity or conflict between the powers conferred on mortgagees, administrators or receivers by statute or common law and those conferred by this Deed the terms of this Deed shall prevail.

#### **15 POWER OF ATTORNEY**

15.1 By way of security the Company irrevocably appoints each of the Lender and any person nominated in writing by any officer of the Lender and any Receiver or Administrator appointed under this Deed, jointly and severally as the attorney of the Company with full power of substitution for the Company and, in its name, on its behalf and as its act and deed, to execute, seal and deliver and otherwise perfect any deed, assurance, agreement, instrument, act or other document and do any things that:

15.1.1 the Company is required to execute and do under this Deed; and

15.1.2 any attorney may deem proper or desirable in exercising any powers, authorities and discretions conferred by this Deed or by the law on the Lender or any Receiver.

15.2 The Company 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 powers, authorities and discretions referred to in Clause 15.1.

## **16 COSTS AND INDEMNITY**

16.1 The Company shall pay to, or reimburse, the Lender and any Receiver on demand, on a full indemnity basis, all Costs incurred by the Lender or any Receiver in connection with:

16.1.1 this Deed or the Charged Property;

16.1.2 protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Lender's, Receiver's or Administrator's rights under this Deed;

16.1.3 suing for, or recovering, any of the Secured Liabilities,

including, without limitation, the Costs of any proceedings in connection with this Deed or the Secured Liabilities together with interest on any amount due at any default rate of interest specified in the Facility Agreement.

16.2 The Lender and any Receiver, and their respective employees and agents, shall be indemnified on a full indemnity basis out of the Charged Property in respect of all actions, liabilities and Costs incurred or suffered in or as a result of:

16.2.1 the exercise, or purported exercise, of any of the powers, authorities or discretions vested in them under this Deed;

16.2.2 any matter or thing done, or omitted to be done, in relation to the Charged Property under those powers; or

16.2.3 any default or delay by the Company in performing any of its obligations under this Deed.

Any past or present employee or agent may enforce the terms of this Clause 16.2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

## **17 CURRENCY, NEW ACCOUNTS AND SET OFF**

17.1 For the purpose of, or pending the discharge of, any of the Secured Liabilities, the Lender may convert any monies received, recovered or realised by it under this Deed (including the proceeds of any previous conversion under this Clause 17.1) from their existing currencies of denomination into any other currencies of denomination that the Lender may think fit.

17.2 Any conversion carried out pursuant to Clause 17.1 shall be effected at Barclays Bank PLC's then prevailing spot selling rate of exchange for such other currency against the existing currency.

17.3 Each reference to a currency in this Clause 17 extends to funds of that currency and, for the avoidance of doubt, funds of one currency may be converted into different funds of the same currency.

17.4 If the Lender receives, or is deemed to have received, notice of any subsequent Security Right, or other interest, affecting all or part of the Charged Property, the Lender may open a new account for the Company in the Lender's books. Without prejudice to the Lender's right to combine accounts, no money paid to the credit of the Company in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.

17.5 If the Lender does not open a new account immediately on receipt of the notice, or deemed notice, under Clause 17.4, then, unless the Lender gives express written notice to the contrary to the Company, all payments made by the Company to the Lender shall be treated as having been credited to a new account of the Company

and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt of the relevant notice by the Lender.

- 17.6 If the Lender has more than one account for the Company in its books, the Lender may at any time after:

17.6.1 the security constituted by this Deed has become enforceable; or

17.6.2 the Lender has received, or is deemed to have received, notice of any subsequent Security Right or other interest affecting all or any part of the Charged Property;

transfer, without prior notice, all or any part of the balance standing to the credit of any account to any other account that may be in debit. After making any such transfer, the Lender shall notify the Company of that transfer.

## **18 FURTHER ASSURANCES**

The Company shall whenever requested by the Lender and at the cost of the Company immediately execute and sign all such deeds and documents and do all such things as the Lender may require over property or other assets if necessary specified by the Lender for the purpose of perfecting or more effectively providing security to the Lender for the payment and discharge of the monies, obligations and liabilities secured by this Deed.

## **19 MISCELLANEOUS**

- 19.1 This Deed shall be in addition to, and independent of, every other security or guarantee that the Lender may hold for any of the Secured Liabilities at any time. No prior security held by the Lender over the whole or any part of the Charged Property shall merge in the security created by this Deed.

- 19.2 Subject to Clause 19.3 below, on the expiry of the Security Period (but not otherwise), the Lender shall, at the costs and expense of the Company, take whatever action is necessary to release the Charged Property from the security constituted by this Deed.

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

19.3.1 the Lender or its nominee may retain this Deed and the security created by or pursuant to it, including all certificates and documents relating to the whole or any part of the Charged Property, for such period as the Lender deems necessary to provide the Lender with security against any such avoidance, reduction or order for refund; and

19.3.2 the Lender may recover the value or amount of such security or payment from the Company subsequently as if such release, discharge or settlement had not occurred.

- 19.4 A certificate or determination by the Lender as to any amount for the time being due to it from the Company shall (in the absence of any manifest error) be conclusive evidence of the amount due.

- 19.5 If the Lender considers that an amount paid by the Company in respect of the Secured Liabilities is capable of being avoided or otherwise set aside on the liquidation or administration of the Company or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this Deed.

- 19.6 The rights and remedies of the Lender conferred by this Deed are cumulative, may be exercised as often as the Lender considers appropriate, and are in addition to its rights and remedies under the general law.
- 19.7 The terms of the documents under which the Secured Liabilities arise and of any side letters between the Company and the Lender in relation to them are incorporated herein to the extent required for any purported disposition of the Charged Property (or any of them) contained in this Deed to be a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.
- 19.8 Any waiver or variation of any right or remedy by the Lender (whether arising under this Deed or under the general law), or any consent given under this Deed, will only be effective if it is in writing and signed by the waiving, varying or consenting party, and applies only in the circumstances for which it was given, and shall not prevent the party giving it from subsequently relying on the relevant provision.
- 19.9 No act or course of conduct or negotiation by, or on behalf of, the Lender shall, in any way, preclude the Lender from exercising any right or remedy under this Deed or constitute a suspension or variation of any such right or remedy.
- 19.10 No delay or failure to exercise any right or remedy under this Deed shall operate as a waiver of that right or remedy.
- 19.11 No single or partial exercise of any right or remedy under this Deed shall prevent any further or other exercise of that right or remedy, or the exercise of any other right or remedy under this Deed.
- 19.12 The restriction on the right of consolidation contained in section 93 of the Law of Property Act 1925 shall not apply to this Deed.
- 19.13 The invalidity, unenforceability or illegality of any provision (or part of a provision) of this Deed under the laws of any jurisdiction shall not affect the validity, enforceability or legality of the other provisions. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with any modification necessary to give effect to the commercial intention of the parties.
- 19.14 Save as expressly provided in Clause 16.2, a Third Party (being any person other than the Company or the Lender and its permitted successors and assigns) has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce, or to enjoy the benefit of, any terms of this Deed.
- 19.15 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).

## **20 NOTICES**

- 20.1 All communications between the Parties with respect to this Deed shall be in writing.
- 20.2 The address of each Party for any communication or document to be made or delivered with respect to this Deed are to its registered office for the time being or any substitute address as any Party may notify the others by not less than 5 Business Days notice for the receipt of notices or copy notices.
- 20.3 Any such notice shall be deemed to be served:
- 20.3.1 if delivered by hand, at the time when the same is delivered to the relevant address of the Party to be served if delivered between 9am and 5pm (UK time) on a Business Day and otherwise at 9am (UK time) on the next succeeding Business Day; or

20.3.2 if served by post, on the third Business Day following the day of posting and in proving the same it shall be sufficient that such letter was properly addressed, pre-paid and placed in the post.

## **21 LAW AND JURISDICTION**

- 21.1 This Agreement shall be governed by and construed in accordance with English law and the Parties irrecoverably submit to the exclusive jurisdiction of the courts of England in respect of any dispute or matter arising out of or connected with this Deed.
- 21.2 Each Party irrevocably waives any objection which it may have now or later to proceedings being brought in the courts of England and any claim that proceedings have been brought in an inconvenient forum. Each Party further irrevocably agrees that a judgement in any proceedings brought in the courts of England shall be conclusive and binding on each Party and may be enforced in the courts of any other jurisdiction.

## **22 ASSIGNMENT AND TRANSFER**

- 22.1 The Lender may at any time without the consent of the Company assign or transfer the whole or any part of the Lender's rights under this Deed to any person.
- 22.2 The Company may not assign any of its rights or transfer any of its obligations under this Deed or enter into any transaction which would result in any of these rights or obligations passing to another person.

## **23 COMPLIANCE WITH OBLIGATIONS**

It is hereby certified by the Company that this Deed does not contravene any of the provisions of the Company's Memorandum or Articles of Association or any other obligation binding on it and has been executed in accordance therewith.

## **24 COUNTERPARTS**

This Deed may be executed in any number of counterparts by the parties on separate counterparts each of which when executed and delivered shall constitute an original but both of which shall together constitute one and the same instrument.

**EXECUTED** and delivered as a Deed on the date stated at the beginning of it.



## THE SCHEDULE

### Registered Land H M Land Registry Charge of Whole

County, County Borough or London Borough	Title Numbers(s)	Description of Property
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### Unregistered Land


Description of Property	Date of Document	Document	Parties
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SIGNED as a DEED  
by **EDENSTONE HOMES LIMITED**  
acting by a director



in the presence of:

Witness signature



Witness name

CLAUDIA LE GROS.

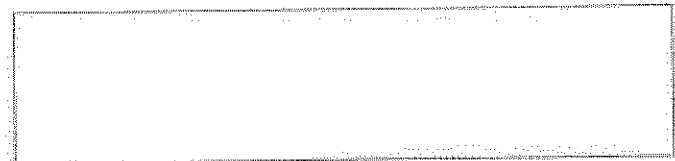
Address

Le Gros Solicitors LLP  
James William House  
9 Museum Place

Occupation

Cardiff, CF10 3BD  
SOLICITOR.

SIGNED as a DEED  
by **ULTIMATE CAPITAL LIMITED**  
acting by a director



in the presence of:

Witness signature



Witness name

Address

Occupation

