



**Registration of a Charge**

Company name: **YALDING LIMITED**

Company number: **09721183**



X5ZHE0CG

Received for Electronic Filing: **03/02/2017**

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**Details of Charge**

Date of creation: **31/01/2017**

Charge code: **0972 1183 0001**

Persons entitled: **ST. MODWEN DEVELOPMENTS LIMITED**

Brief description: **THE FREEHOLD LAND KNOWN AS SITE 1 LAND AT HAMPSTEAD LANE, YALDING, MAIDSTONE, KENT MORE PARTICULARLY DESCRIBED IN THE SALE AGREEMENT DATED 1 AUGUST 2016 MADE BETWEEN YALDING LIMITED AND ST. MODWEN DEVELOPMENTS LIMITED AND BEING PART OF THE LAND REGISTERED AT HM LAND REGISTRY WITH TITLE ABSOLUTE UNDER TITLE NUMBER K433531.**

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**Authentication of Form**

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

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**Authentication of Instrument**

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





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

Company number: 9721183

Charge code: 0972 1183 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 31st January 2017 and created by YALDING LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 3rd February 2017 .

Given at Companies House, Cardiff on 6th February 2017

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 31st June 2018

YALDING LIMITED

(1)


AND

ST MODWEN DEVELOPMENTS LIMITED

(2)

Legal Charge to Secure Overage

Relating to Site 1 Land at Hampstead Lane,  
Yalding, Maidstone, Kent

We certify this to be a true and complete  
photographic copy of the original  
SIGNED 

Gowling WLG (UK) LLP  
LONDON, SE1 2AU

DATE 2nd February 2017

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THIS DEED is made on

31st June

2017

**BETWEEN:**

- (1) **Yalding Limited** incorporated and registered in England and Wales with company number 09721183 whose registered office is at Camburgh House, 27 New Dover Road, Canterbury, Kent CT1 3DN (the "**Chargor**"), and
- (2) **St. Modwen Developments Limited** incorporated and registered in England and Wales with company number 892832 of Park Point, 17 High Street, Longbridge, Birmingham B31 2UQ (the "**Chargee**")

**BACKGROUND**

- (A) By the Transfer, the Chargee transferred the Property to the Chargor for the consideration stated in the Transfer.
- (B) In the Overage Agreement the Chargor agreed that it will pay Overage to the Chargee in certain circumstances as provided in the Overage Agreement.
- (C) It was agreed that this Deed should be executed by the Chargor in order to secure payment to the Chargee of the Overage.

The Chargee and the Chargor agree as follows.

**1 DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Deed:

"1925 Act"	means the Law of Property Act 1925;
"Change of Control"	occurs if a person who controls the Chargor (directly or indirectly) ceases to do so or if another person acquires control of it;
"Development"	the construction on the Property of up to 18 or 19 dwellings for which outline planning consent has been obtained under reference MA/10/2159;
"Disposition"	includes a Change of Control and a conveyance, a transfer, a lease, (whether or not amounting to a parting with or sharing of possession), a mortgage and a charge but neither a mortgage nor a charge shall be a disposition (a) if it ranks in priority after the charge created by this deed and (b) if (when applying for registration of that charge) the chargee also applies for a restriction in a form referred to under Rule 91 of the Land Registration Rules 2003 (as set out in Schedule 4 of the said Rules) to the effect that no disposition by the proprietor of that charge is to be registered without the consent of the Chargee and "dispose of" and "disposal" and "disposals" have

corresponding meanings:

<b>"Events of Default"</b>	means the events or circumstances described in Schedule 2 ( <i>Events of Default</i> ) and "Event of Default" shall be construed accordingly;
<b>"Overage"</b>	means the sums to be paid by the Chargor to the Chargee pursuant to clause 20 of the Overage Agreement;
<b>"Overage Agreement"</b>	means the sale agreement dated 1 August 2016 made between the Chargor (1) and the Chargee (2);
<b>"Party"</b>	means any party to this Deed and "Parties" shall be construed accordingly;
<b>"Plots"</b>	shall mean the dwellings to be erected on the Property;
<b>"Property"</b>	means the freehold property known as Site 1 Land at Hampstead Lane Yalding, Maidstone, Kent described more particularly in the Overage Agreement and being part of the land registered at HM Land Registry with title absolute under title number K433531 which has been transferred by the Chargee to the Chargor by the Transfer;
<b>"Receiver"</b>	means any one or more receivers and/or managers appointed by the Chargee pursuant to this Deed in respect of the Chargor or over all or any part of the Property;
<b>"Secured Obligations"</b>	means the Overage and all other moneys agreed to be paid by the Chargor to the Chargee under the Overage Agreement together with any VAT payable by the Chargor to the Chargee pursuant to the Overage Agreement;
<b>"Transfer"</b>	means the transfer dated 31 <sup>st</sup> July 2017 made between the Chargor (1) and the Chargee (2);
<b>"VAT"</b>	means value added tax as referred to in the Value Added Tax Act 1994; and
<b>"Working Day"</b>	means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory Bank Holiday;

## 1.2 Interpretation

In this Deed:

- (a) the clause headings shall not affect its construction;
- (b) words importing only one gender shall include the other genders;

- (c) words importing the singular shall include the plural and vice versa;
- (d) every reference to any clause number or Schedule shall be a reference to that clause of or Schedule to this Deed;
- (e) every reference to any legislation in this Deed shall be deemed to refer to any statutory amendment or modification or re-enactment for the time being in force;
- (f) references to the Property include any part of the Property;
- (g) the expressions "Chargee" and "Chargor" include their respective successors, and (in the case of the Chargee) its transferees and assignees;
- (h) where the expression "Chargor" includes more than one person the expression shall include each and all of such persons as the context may permit, and each such person shall be jointly and severally liable under this Deed; and
- (i) where any term in this Deed is not defined in it then that term shall have the meaning ascribed to it in the Overage Agreement.

## **2 COVENANT TO PAY**

The Chargor covenants that it will discharge and pay to the Chargee the Secured Obligations when they become due for payment or discharge in accordance with the Overage Agreement.

## **3 CHARGE**

The Chargor with full title guarantee as a continuing security for the payment and discharge of the Secured Obligations charges the Property to the Chargee by way of legal mortgage.

## **4 UNDERTAKINGS**

The Chargor covenants that during the continuance of this security it will comply with the undertakings set out in Schedule 1 (*Undertakings*).

## **5 FURTHER ASSURANCE**

The Chargor covenants that it shall (if and when required by the Chargee) do all such acts and things as the Chargee shall from time to time reasonably require to perfect or protect the security intended to be created by this Deed over the Property or to facilitate the realisation of the security.

## **6 CERTAIN POWERS OF THE CHARGE: ENFORCEMENT**

### **6.1 Powers of enforcement**

At any time on or after an Event of Default or if requested by the Chargor, the Chargee may, without further notice, without the restrictions contained in the 1925 Act and whether or not a Receiver shall have been appointed, exercise



- (a) all the powers conferred upon mortgagees by the 1925 Act as varied or extended by this Deed; and
- (b) all the powers and discretions conferred by this Deed on a Receiver either expressly or by reference.

## 6.2 Statutory power of leasing

Following an Event of Default, the Chargee shall have the power to lease and make agreements for leases at a premium or otherwise, to accept surrenders of leases and to grant options on such terms as the Chargee shall consider expedient and without the need to observe any of the provisions of sections 99 and 100 of the 1925 Act

## 7 **APPOINTMENT AND POWERS OF RECEIVER**

### 7.1 Appointment

- (a) At any time after an Event of Default or if requested by the Chargor, the Chargee may by instrument in writing executed as a deed appoint any qualified person to be a Receiver of the Property.
- (b) Where more than one Receiver is appointed, each joint Receiver shall have power to act severally, independently of any other joint Receivers, except to the extent that the Chargee may specify to the contrary in the appointment.
- (c) The Chargee may (subject, where relevant, to section 45 of the Insolvency Act 1986) remove any Receiver so appointed and appoint another in his place.

### 7.2 Receiver as agent

Any Receiver shall be the agent of the Chargor and the Chargor shall be solely responsible for his acts or defaults and for his remuneration.

### 7.3 Powers of Receiver

- (a) Any Receiver shall have all the powers conferred from time to time on receivers and administrative receivers by statute (in the case of powers conferred by the 1925 Act, without the restrictions contained in section 103 of the 1925 Act) and power on behalf and at the expense of the Chargor to do or omit to do anything which the Chargor could do or omit to do in relation to the Property.
- (b) Without limitation to the powers referred to in paragraph (a) a Receiver shall have power to:
  - (i) take possession of, collect and get in all or any of the Property;
  - (ii) manage, develop, alter, improve or reconstruct the Property;
  - (iii) buy, lease or otherwise acquire and develop or improve properties or other assets without being responsible for loss or damage;

- (iv) acquire, renew, extend, grant, vary or otherwise deal with easements, rights, privileges and licences over or for the benefit of the Property;
- (v) without the restrictions imposed by section 103 of the 1925 Act or the need to observe any of the provisions of sections 99 and 100 of the 1925 Act, sell by public auction or private contract, let, surrender or accept surrenders, grant licences or otherwise dispose of or deal with the Property in such manner for such consideration and generally on such terms and conditions as he may think fit with full power to convey, let, surrender, accept surrenders or otherwise transfer or deal with the Property in the name and on behalf of the Chargor or otherwise;
- (vi) make and effect such repairs or renewals to the Property as he may think fit and maintain, renew, take out or increase insurances;
- (vii) appoint managers, agents, officers and employees for any of the purposes referred to in this clause 7.3 (*Powers of Receiver*) or to guard or protect the Property at such salaries and commissions and for such periods and on such terms as he may determine;
- (viii) without any further consent by or notice to the Chargor exercise for and on behalf of the Chargor all the powers and provisions conferred on a landlord or a tenant by any legislation from time to time in force in any relevant jurisdiction relating to security of tenure or rents or agriculture in respect of the Property but without any obligation to exercise any of such powers and without any liability in respect of powers so exercised or omitted to be exercised;
- (ix) institute, continue, enforce, defend, settle or discontinue any actions, suits or proceedings in relation to the Property or submit to arbitration as he may think fit; and
- (x) sign any document, execute any deed and do all acts and things as may be considered by him to be incidental or conducive to any of the powers in this clause 7.3 (*Powers of Receiver*) or to the realisation of the security created by or pursuant to this Deed and to use the name of the Chargor for all these purposes.

#### 7.4 Remuneration

- (a) The Chargee may from time to time determine the remuneration of any Receiver and s109(6) of the 1925 Act shall be varied accordingly.
- (b) A Receiver shall be entitled to remuneration appropriate to the work and responsibilities involved upon the basis of charging from time to time adopted by the Receiver in accordance with the current practice of his firm

### 8 **APPLICATION OF PROCEEDS: PURCHASERS**

#### 8.1 Application of proceeds

All moneys received by the Chargee or by any Receiver shall be applied, after the discharge of the remuneration and expenses of the Receiver and all liabilities having

priority to the Secured Obligations, in or towards satisfaction of such of the Secured Obligations and in such order as the Chargee in its absolute discretion may from time to time determine.

8.2 Protection of purchasers

No purchaser or other person shall be bound or concerned to see or enquire whether the right of the Chargee or any Receiver to exercise any of the powers conferred by this Deed has arisen or be concerned with notice to the contrary or with the propriety of the exercise or purported exercise of such powers.

8.3 No liability as mortgagee in possession

Neither the Chargee nor any Receiver shall be liable to account as mortgagee in possession in respect of the Property or be liable for any loss upon realisation or for any neglect or default of any nature whatsoever for which a mortgagee in possession may be liable.

9 **RELEASE**

The Chargee will release the Property from this Deed in accordance with the Overage Agreement

10 **MISCELLANEOUS**

10.1 Remedies Cumulative

No failure or delay on the part of the Chargee to exercise any power, right or remedy shall operate as a waiver thereof nor shall any single or any partial exercise or waiver of any power, right or remedy preclude its further exercise or the exercise of any other power, right or remedy.

10.2 Successors and assigns

Any appointment or removal of a Receiver under clause 7 (*Appointment and Powers of Receiver*) and any consents under this Deed may be made or given in writing signed by or on behalf of any successors or assigns of the Chargee.

10.3 Unfettered discretion

Any liability or power which may be exercised or any determination which may be made under this Deed by the Chargee may be exercised or made in its absolute and unfettered discretion and it shall not be obliged to give reasons therefor.

10.4 Provisions severable

Each provision of this Deed is severable and distinct from the others and, if at any time one or more of such provisions is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Deed shall not in any way be affected or impaired

#### 10.5 Covenants relating to releases and consents

The Chargee covenants with the Chargor and the other owners and lessees for the time being of the Plots but subject as the case may be to reimbursement of the proper and reasonable legal costs incurred on behalf of the Chargee for the procurement by the Chargor of the appropriate form of releases or consents as follows:

- (a) To provide a restriction consent to the registration of a Disposition of the individual Plots and following receipt of the sums due pursuant to clause 20.2 of the Overage Agreement to execute a release of the whole or part of the charge created by this deed (as the case may be) subject to payment of the Chargee's legal costs to be limited to £75 plus VAT for each release and restriction consent;
- (b) That the Chargee, if requested in writing to do so by the Chargor, will consent to the postponement of the charge created by this deed to a prior legal charge or legal charges to secure without limitation such sum as will enable the Chargor to undertake Development on the Property pursuant to the relevant planning permissions; and
- (c) That if requested by the Chargor the Chargee will as mortgagee on payment of its reasonable legal costs consent to and join in any agreement or deed previously approved by the Chargee required by any authority and/or service supply company to secure the provision of and adoption of all conduits for services and roads to be constructed on the Property subject to the Chargor indemnifying the Chargee in respect of all liability arising as a result of such document and subject to such document being in a form which includes a full release of the Chargee upon discharge of the charge created by this deed.

### 11 NOTICES

#### 11.1 Form of notices

Any notice served under this Deed is to be

- (a) in writing;
- (b) signed by or on behalf of the Party giving it; and
- (c) delivered by hand, first-class post, pre-paid or recorded delivery at the address of the Party on whom it is served set out above or such other address which it may notify in writing to the other Parties at any time.

#### 11.2 Time of receipt

If a notice is received after 4 00 pm on a Working Day, or on a day which is not a Working Day, it is to be treated as having been received on the next Working Day

#### 11.3 Deemed receipt

Unless the time of actual receipt is proved, a notice served by the following means is to be treated as having been received.

- (a) if delivered by hand, at the time of delivery; or
- (b) if sent by post, on the second Working Day after posting.

## **12 ENFORCEMENT**

### **12.1 Governing law**

This Deed and any dispute or claim arising out of or in connection with it (whether contractual or non-contractual in nature) shall be governed by the law of England and Wales.

### **12.2 Jurisdiction**

Subject to any provision of this Deed which expressly permits or requires some other means of dispute resolution to be used, each Party irrevocably submits to the non-exclusive jurisdiction of the courts of England and Wales in respect of any matter, dispute or claim arising out of or in connection with this Deed (whether contractual or non-contractual in nature).

## **13 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

Each Party confirms that no term of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Deed.

**THIS DOCUMENT** has been executed

## SCHEDULE 1

### (Undertakings)

#### Compliance with covenants etc.

Observe and perform all covenants affecting the Property (whether imposed by agreement statute or otherwise).

#### Property outgoings.

Punctually pay, or cause to be paid, all present and future rent, rates, taxes, duties, charges, assessments, impositions and outgoings whatsoever (whether imposed by agreement, statute or otherwise) now or at any time during the continuance of this security payable in respect of the Property or by the owner or occupier of it.

#### Orders and proposals.

Within seven days of receipt send to the Chargee copies of any notice or order (or proposal for the same) given issued or made to the Chargor by any local or other authority whether under agreement, statute or otherwise relating to the Property.

## SCHEDULE 2

### (Events of Default)

#### Breach of obligations to the Chargee

The failure by the Chargor to pay or discharge the Secured Obligations pursuant to clause 2 (*Covenant to Pay*) or to comply with any other provision of this Deed.

#### Insolvency

The Chargor is deemed unable to pay its debts within the meaning of section 123(1)(a), (b), (e) or (2) Insolvency Act 1986 or otherwise becomes insolvent or stops or suspends making payments with respect to all or any class of its debts or announces an intention to do so or the Chargor (being an individual) dies or becomes mentally disordered or has a bankruptcy petition presented against him/her or has an interim order or bankruptcy order made against him/her (in each case within the meaning of the Insolvency Act 1986).

#### Legal Process

Any judgment or order made against the Chargor is not complied with within five Working Days or any execution, distress, sequestration or other process is levied or enforced upon or sued out against any of the assets of the Chargor and is not discharged within five Working Days.

#### Appointment of Receivers and Managers

An administrative or other receiver is appointed of or any part of the assets and/or undertaking of the Chargor or any other steps are taken to enforce any security over all or any part of the assets of the Chargor.

#### Compositions

Any steps are taken, or negotiations commenced, by the Chargor or by any of its creditors with a view to proposing any kind of composition, compromise or arrangement involving the Chargor and any of its creditors.

#### Winding up

Any petition is presented or other step is taken for the purpose of winding up the Chargor or an order is made or resolution passed for the winding up of the Chargor or a notice is issued convening a meeting for the purpose of passing any such resolution.

#### Administration

Any petition is presented or other step is taken for the purpose of the appointment of an administrator of the Chargor or an administration order is made in relation to the Chargor

#### Analogous Proceedings

There occurs, in relation to the Chargor, in any country or territory in which it carries on business or to the jurisdiction of whose courts any part of its assets is subject, any event which, in the opinion of the Chargee, appears in that country or territory to correspond with, or have an effect equivalent or similar to, any of those mentioned above in this schedule or the Chargor otherwise becomes subject, in any such country or territory, to the operation of any law relating to insolvency, bankruptcy or liquidation.

#### Security defective

Any part of the security constituted by this Deed fails or ceases in any respect to have full force and effect or to be continuing or is disputed or challenged or becomes in jeopardy, invalid or unenforceable

#### Change of Control

Control (as defined in section 435 Insolvency Act 1986) of the Chargor (being a company) is acquired by any person or group of associates (as defined in such section) not having control of the Chargor at the date of this Deed.

#### Prior Charges

The holders of the Prior Charges take any steps to enforce them or to demand the money secured by them.

#### Material adverse change

There occurs, in the opinion of the Chargee, a material adverse change in the financial condition or trading position of the Chargor

#### Material Events

Any other event occurs or circumstance arises which, in the opinion of the Chargee, is likely materially and adversely to affect the ability of the Chargor to perform all or any of its obligations under or otherwise to comply with the terms of this Deed or to pay or discharge any of the Secured Obligations.



SIGNED as a DEED by

YALDING LIMITED

acting by a Director and its Secretary (or two Directors)

Director

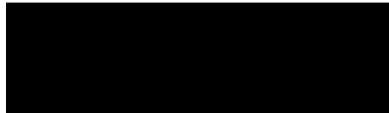


Director/Secretary



**SIGNED as a DEED by**  
**ST MODWEN DEVELOPMENTS LIMITED**  
acting by a Director and its Secretary (or two Directors)

Director



Director/Secretary

*[Handwritten signature]*

