



## Registration of a Charge

LLP name: **HILBRE PROJECTS LLP**  
LLP number: **OC414694**



X6ACVWA2

Received for Electronic Filing: **10/07/2017**

## Details of Charge

Date of creation: **29/06/2017**  
Charge code: **OC41 4694 0001**  
Persons entitled: **WIRRAL PARTNERSHIPS HOMES (DEVELOPMENTS) LIMITED**  
Brief description: **85 MARKET STREET, EDENFIELD, BURY - REGISTERED AT THE LAND REGISTRY UNDER TITLE NUMBER LA464491. FOR MORE DETAILS OF THE LAND CHARGED PLEASE REFER TO THE INSTRUMENT.**

**Contains fixed charge(s).**

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

**Contains negative pledge.**

## Authentication of Form

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

## Authentication of Instrument

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 AS APPLIED BY**

**THE LIMITED LIABILITY PARTNERSHIPS (APPLICATION OF COMPANIES ACT 2006) REGULATIONS 2009 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by:

**TROWERS & HAMLINS LLP**



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

LLP number: OC414694

Charge code: OC41 4694 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 29th June 2017 and created by HILBRE PROJECTS LLP was delivered pursuant to Part 25 of the Companies Act 2006 as applied by The Limited Liability Partnerships (Application of Companies Act 2006) (Amendment) Regulations 2013 on 10th July 2017 .

Given at Companies House, Cardiff on 12th July 2017

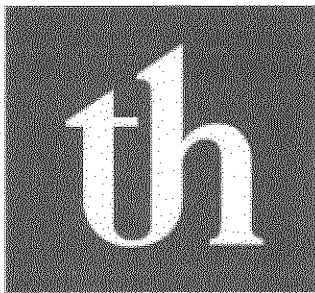
The above information was communicated by electronic means and authenticated  
by the Registrar of Companies under the Limited Liability Partnership  
(Application of the Companies Act 2006) Regulations 2009 SI 2009/1804



**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES



dated 29<sup>th</sup> June 2017

**Hilbre Projects LLP**

(as Chargor)

and

**Wirral Partnership Homes (Developments) Limited**

(as Lender)

**Debenture**

(To: The Chief Land Registrar. Note: This Debenture contains (in clause 5.1) the consent of the Chargor to the lodgement at the Land Registry of an application by or on behalf of the Lender to enter a restriction in the Proprietorship Register and (in clause 5.3.3) the consent of the Chargor to the lodgement at the Land Registry of an application by or on behalf of the Lender to enter a notice on the Charges Register.)

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# Deed

dated 29th June 2017

## Parties

- (1) **Hilbre Projects LLP** (the **Chargor**) a limited liability partnership registered in England and Wales with number OC414694, and whose registered office is Partnership Building, Hamilton Street, Birkenhead, Merseyside CH41 5AA; and
- (2) **Wirral Partnership (Developments) Limited** (the **Lender**) a company registered in England and Wales with number 07882199 and whose registered office is Partnership Building, Hamilton Street, Birkenhead, Merseyside CH41 5AA.

## Introduction

- (A) The Lender has agreed to make loan facilities available to the Chargor in accordance with the terms of the Facility Agreements (as defined below).
- (B) It is a condition precedent to the granting of the loan facilities under the Facility Agreements that the Chargor enters into this Deed to provide security to the Lender for the purposes and on the terms as described below.
- (C) It is intended by the parties to this document that it will take effect as a deed.

## Agreed terms

### 1 Definitions and interpretation

#### 1.1 Definitions

In this Deed, unless the context otherwise requires:

**Administrator** has the meaning given to it by paragraph 1 of Schedule B1 to the Insolvency Act 1986 (incorporated by Schedule 16 to the Enterprise Act 2002);

**Certificate of Title** means any report on or a certificate of title relating to the Mortgaged Property provided to the Lender by the Chargor (or on its behalf);

**Collateral Rights** means all rights, powers and remedies of the Lender provided by or pursuant to this Deed or by law;

**Competent Authority** means any legal person and/or any court of law or tribunal in each case having authority under applicable Environmental Law;

**Dangerous Substances** means any substance or waste (as defined in the Environmental Protection Act 1990) which is capable of causing harm to man or any living organism supported by the Environment or damaging the Environment or public health or welfare;

**Development** means any development and/or conversion of property carried out by the Chargor in accordance with the Members' Agreement;

**Environment** means the environment as defined in Section 1(2) of the Environmental Protection Act 1990;

**Environmental Audit** means a full risk assessment of the Security Assets to ascertain the nature and extent of any harm or detriment caused to, or the risk of any possible harm or detriment which may be caused to the Environment by any activity, including soil, air or water testing of the Security Assets and any other property;

**Environmental Law** means any applicable common or statutory law, regulation, standard or code having the force of law, any code of practice, circular, guidance note, judgment or decision of any court or tribunal relating to the protection of human health and safety, the workplace or the Environment;

**Environmental Licence** means a licence, permit, certificate of registration, consent, or approval, including any conditions which attach thereto, which relates to or affects the Security Assets and which is required by an Environmental Law;

**Event of Default** has the meaning given to it in any of the Facility Agreements;

**Facility Agreements** means the various loan agreements entered into or to be entered into between the Chargor and the Lender under which the Lender has agreed to make available certain loan facilities to the Chargor;

**Finance Documents** means the Facility Agreements and other documents, as such term is defined in any of the Facility Agreements;

**Financial Collateral** shall have the meaning given to that expression in the Financial Collateral Regulations;

**Financial Collateral Regulations** means the Financial Collateral Arrangements (No 2) Regulations 2003 (SI 2003/3226);

**Fixtures** includes all buildings, erections and structures at any time on or in the course of construction on the Mortgaged Property and includes all fixtures, fittings, plant, materials, machinery, equipment, installations and apparatus now and from time to time in or on the Mortgaged Property;

**Floating Charge Assets** means the assets charged pursuant to clause 3.3;

**Insurances** means all contracts and policies of insurance of whatever nature which are from time to time taken out by or with the authority or on behalf of the Chargor in relation to the Security Assets or any part of them;

**Insured Risks** means fire, storm, tempest, flood, earthquake, lightning, explosion, impact, aircraft and other aerial devices and articles dropped from them, riot, civil commotion, malicious damage, landslip, subsidence, burst pipes, environmental pollution, terrorist acts and other such risks as the Lender may, from time to time, require including demolition and site clearance costs and expenses and architects', surveyors' and other professional fees and all other incidental expenses;

**Member Loan** shall have the meaning given to that term in the Members' Agreement;

**Members' Agreement** means the members' agreement dated 12<sup>th</sup> April 2017 in relation to the Chargor between the Lender, Starfish Commercial Limited and the Chargor;

**Mortgaged Property** means all the freehold and leasehold property specified in Schedule 1 and any other freehold or, as the case may be, leasehold property which is the subject of a Security Interest under this Deed;

**Planning Acts** means the **consolidating Acts** as defined in the Planning (Consequential Provisions) Act 1990 together with the Planning and Compensation Act 1991, the Planning and Compulsory Purchase Act 2004, the Planning Act 2008 and the Localism Act 2011 and all applicable laws, orders, regulations, instruments, by laws, instructions and standards, whether national, regional or local, including any subordinate legislation relating to town and country planning and to the use and/or occupation of a Mortgaged Property;

**Potential Event of Default** has the meaning given to it in the Facility Agreements;

**Receiver** means a receiver or receiver and manager of the whole or any part of the Security Assets;

**Rent** means all amounts payable to or for the benefit of the Chargor by way of rent or licence fee, service charge, dilapidations, ground rent and rent charge in respect of any part of the Mortgaged Property and all other monies payable to or for the benefit of the Chargor in respect of the occupation or use of any part of the Mortgaged Property;

**Related Rights** means, in relation to any asset which comprises the Security Assets:

- (a) the proceeds of sale of any part of that asset;
- (b) all rights under any licence, agreement for sale or agreement for lease in respect of that asset;
- (c) all rights, covenants, easements, benefits, claims, contracts, warranties, remedies, security, indemnities or covenants for title in respect of that asset; and
- (d) any monies and proceeds paid or payable in respect of that asset;

**Secured Liabilities** means all present and future monies, obligations and liabilities now or hereafter due owing or incurred to the Lender by the Chargor under or pursuant to the Finance Documents or otherwise in respect of Member Loans (including, without limitation, under any amendments, supplements or restatements of any of the Finance Documents or in relation to any new or increased advances or utilisations) whether present or future, actual or contingent and whether owed by the Chargor as principal or surety or incurred solely or jointly with another, together with all interest accruing thereon and all costs, charges and expenses incurred by the Lender in connection therewith;

**Securities** means all shares, stock, warrants, debentures, and other securities present and future (certificated or uncertificated) or units in an account of balance (whether held in the name of the Chargor or by a nominee) of the Chargor and all income and rights deriving from or attaching to the same;

**Security** means the security constituted by or pursuant to this Deed;



**Security Assets** means all the assets, rights, property and undertaking of the Chargor from time to time mortgaged, charged, assigned or agreed to be assigned to, the Lender by the Chargor under this Deed including, without limitation, the Mortgaged Property;

**Security Financial Collateral Arrangement** shall have the meaning given to that expression in the Financial Collateral Regulations;

**Security Interest** means any mortgage, pledge, lien, charge, security assignment, right of set off, hypothecation or security interest or any other agreement or arrangement having the effect of conferring security (including, for the avoidance of doubt, a floating charge) or any other type of preferential arrangement (including, without limitation, title transfer or retention of title) having a similar effect;

**Security Period** means the period beginning on the date hereof and ending on the date upon which the Lender is satisfied that all the Secured Liabilities have been irrevocably and unconditionally paid and discharged in full and no further Secured Liabilities are capable of being outstanding;

**Tax** includes any form of taxation, levy, duty, charge, contribution or impost of whatever nature (including any applicable fine, penalty, surcharge or interest) imposed by any government authority, body or official (whether central, local, state or federal) anywhere in the world competent to impose any of them; and

**Valuation** means any valuation relating to the Mortgaged Property supplied to the Lender by the Chargor (or on its behalf).

## 1.2 Interpretation

In this Deed, unless the context otherwise requires, a reference to:

**assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;

an **authorisation** includes an authorisation, consent, approval, resolution, licence, exemption, filing or registration;

the **Chargor** or the **Lender** includes a reference to its respective successors, permitted assigns and permitted transferees;

a **person** includes a permitted body corporate, unincorporated association and partnership, in each case, whether or not having a separate legal personality;

a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;

one gender shall include a reference to other genders; an individual will be treated as including corporations and vice versa; words importing the singular will be treated as including the plural and vice versa and words importing the whole will be treated as including a reference to any part, in each case except where the context specifically requires otherwise;

this Deed or to any provision of this Deed or any other document (including, without limitation any of the Finance Documents) is a reference to it as amended, restated, supplemented, varied or novated from time to time;

the words **include** or **including** (or any similar term) are not to be construed as implying any limitation and general words introduced by the word **other** (or any similar term) will not be given a restrictive meaning by reason of the fact that they are preceded or followed by words indicating a particular class of acts, matters or things; and

a statute, a statutory provision, enactment or an EU Directive or subordinate legislation is a reference to any amendment, modification, extension, consolidation, replacement or re-enactment of any such statute, statutory provision, enactment or EC Directive, whether before or after the date of this Deed;

the making of an administration order shall be treated as including a reference to the appointment of an Administrator under paragraph 14 (by the holder of a qualifying floating charge in respect of the Chargor's property) or paragraph 22 (by the Chargor or the directors of the Chargor) of Schedule B1 to the Insolvency Act 1986; and

the making of an application for an administration order by petition shall be treated as including a reference to making an administration application to the court under Schedule B1 to the Insolvency Act 1986, appointing an Administrator under paragraphs 14 or 22 of that Schedule, or giving notice under paragraphs 15 or 26 of that Schedule of intention to appoint an Administrator.

### **1.3 Facility Agreements**

1.3.1 Words and expressions defined in the Facility Agreements will have the same meanings when used in this Deed, unless the context otherwise requires. In the case of inconsistency, definitions set out in the Facility Agreements will prevail.

1.3.2 In the event of any inconsistency, ambiguity or discrepancy between the provisions of the Facility Agreements and the provisions of this Deed, then the provisions of the Facility Agreements shall prevail.

### **1.4 Headings**

The clause, paragraph and Schedule headings and the table of contents are inserted for ease of reference only and will not affect construction.

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

For the purposes of Rule 68 of the Land Registration Rules 2003 (as amended) the covenant set out in section 4(1)(b) of the Law of Property (Miscellaneous Provisions) Act 1994 will be extended by the provisions of this Deed.

### **1.6 Nature of security over Mortgaged Property**

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

1.6.1 all buildings and Fixtures and fittings (including trade and tenant's Fixtures and fittings) and fixed plant and machinery which are situated on or form part of the Mortgaged Property at any time; and

1.6.2 all Related Rights.

### 1.7 Third party rights

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

### 1.8 Qualifying floating charge

This Deed contains a qualifying floating charge which gives the Lender the power to appoint an administrator of the Chargor and paragraph 14 of schedule B1 to the Insolvency Act 1986 applies to the floating charge created by clause 3.2 of this Deed.

### 1.9 Avoidance of payments

If the Lender considers an amount paid by the Chargor in respect of the Secured Liabilities is capable of being avoided or otherwise set aside on the insolvency, liquidation or administration of the Chargor or otherwise set aside, that amount shall not have been irrevocably and unconditionally paid for the purposes of this Deed.

## 2 Payment of Secured Liabilities

### 2.1 Covenant to pay

The Chargor covenants with the Lender that it will, on demand, pay and discharge the Secured Liabilities as and when they fall due for payment in the manner provided in the relevant Finance Document.

### 2.2 Interest on demand

If the Chargor fails to pay any sum on the due date for payment of that sum the Chargor will pay interest on such sum (before and after any judgment) from the date of demand until the date of payment calculated at the rate of 8% (eight per cent) per annum.

## 3 Security

### 3.1 Legal mortgage and fixed charges

The Chargor hereby charges in favour of the Lender with full title guarantee as continuing security for the payment and discharge of the Secured Liabilities:

3.1.1 (a) by way of legal mortgage the Mortgaged Property;

(b) by way of a first fixed legal mortgage all estates or interests in any freehold or leasehold property (except any assets specified in clause 3.1.1(a)) now or in the future belonging to it;

3.1.2 by way of first fixed charge:

- (a) the benefit of all present and future licences, consents and authorisations (statutory or otherwise) held or utilised by the Chargor in connection with the Security Assets or the use of any of the Security Assets and all rights in connection with them;
- (b) the benefit of all other contracts, guarantees, appointments, covenants and warranties relating to the Mortgaged Property and other documents to which the Chargor is a party or which are in its favour or of which it has the benefit relating to letting, development, sale, purchase, use or the operation of the Mortgaged Property or any part of it or otherwise relating to the Mortgaged Property;
- (c) all furniture, furnishings, tools, vehicles, computers, computer software and hardware and office and other equipment and other chattels belonging to the Chargor and not regularly disposed in the ordinary course of business together with the benefit of all contracts, licences and warranties relating to the same;
- (d) all Fixtures;
- (e) all present and future goodwill, uncalled and called but unpaid capital of the Chargor; and
- (f) insofar as the legal mortgages referred to in clause 3.1.1 shall for any reason be ineffective as a legal mortgage, the assets referred to in those clauses.

### 3.2 Assignments

The Chargor hereby assigns and agrees to assign by way of security to the Lender with full title guarantee for the payment and discharge of the Secured Liabilities all the Chargor's right, title and interest in, to and under each of the following present and future assets:

- 3.2.1 the benefit of all contracts, guarantees, appointments, covenants and warranties relating to the Mortgaged Property and other documents to which the Chargor is a party or which are in its favour or of which it has the benefit relating to letting, development, sale, purchase, use or the operation of the Mortgaged Property or any part of it or otherwise relating to the Mortgaged Property;
- 3.2.2 all its rights and interests in the Rent and the benefit of any guarantee or security in respect of the Rent;
- 3.2.3 all its rights and interests in and claims under the Insurances;
- 3.2.4 all rights and claims in relation to any Mortgaged Property including, without limitation, all rights and claims against any lessees, tenants, sub-lessees, sub-tenants, licensees or occupiers of the Mortgaged Property from time to time and all guarantors and sureties for the obligations of such persons;
- 3.2.5 the benefit of all contracts, deeds, undertakings, agreements, rights, warranties, securities, covenants, guarantees, bonds and indemnities of any nature now or

at any time enjoyed or held by the Chargor and relating to the Mortgaged Property and all compensation paid in relation to the Mortgaged Property and all VAT payable on the same;

- 3.2.6 the benefit of any development documents and all undertakings, agreements, rights, warranties, securities, covenants, guarantees, bonds and indemnities of any nature now or at any time enjoyed or held by the Chargor;
- 3.2.7 the benefit of all guarantees, warranties and representations given or made by, and any rights or remedies to which the Chargor may now or in the future be entitled against, all or any professional advisors and contractors in relation to the Mortgaged Property, and any business carried on thereat, and the manufacturer supplier and installers of all plant, machinery, Fixtures and fittings or other items now or hereafter in buildings located on the Mortgaged Property and any other person now or from time to time under contract or under a duty to the Chargor including without limitation the right to prosecute in the name of the Chargor proceedings against any such person and the benefit of all sums recovered in proceedings against all or any such persons; and
- 3.2.8 all claims, remedies, awards or judgments paid or payable to the Chargor (including, without limitation, all liquidated and ascertained damages payable to the Chargor under the above),

provided that, in each case, to the extent (if any) that the benefits, rights, titles, claims and interests assigned under this clause 3.2 are not assignable, such assignment will operate as an assignment of all proceeds received by the Chargor in connection with such benefits, rights, titles, claims and interests.

### **3.3 Floating charge**

The Chargor hereby charges in favour of the Lender with full title guarantee for the payment and discharge of the Secured Liabilities by way of floating charge the whole of the Chargor's undertaking, property and assets, present and future wherever situate not from time to time subject to an effective mortgage, fixed charge or assignment under this Deed.

## **4 Conversion of the Floating Charge**

### **4.1 Notice of conversion**

- 4.1.1 The Lender may from time to time, by notice in writing to the Chargor following the occurrence of Event of Default which is continuing or if the Lender considers those assets to be in danger of being seized or sold under any form of distress, attachment, execution, diligence or other legal process or to otherwise be in jeopardy, convert the floating charge contained in clause 3.3 into a fixed charge as regards any Floating Charge Assets specified in such notice.
- 4.1.2 The floating charge contained in clause 3.3 may not be converted into a fixed charge solely by reason of the obtaining of a moratorium or anything done with a view to obtaining a moratorium under the Insolvency Act 2000.

## **4.2 Automatic conversion**

Notwithstanding anything contained in this Deed, if (without the prior written consent of the Lender):

- 4.2.1 the Chargor creates any Security Interest over or otherwise encumbers any of the Security Assets created by this Deed or attempts to do so other than as permitted under the Finance Documents;
- 4.2.2 any person levies or attempts to levy any distress, execution, diligence, sequestration or other process against the Security Assets;
- 4.2.3 a resolution is passed or a petition is presented for the winding up, dissolution, administration or re-organisation of the Chargor other than any petition which is frivolous and vexatious has been disclosed to the Lender and is being diligently contested by the Chargor;
- 4.2.4 a receiver, an administrative receiver or a receiver and manager is appointed over the Security Assets or, if any person entitled to do so, gives notice of intention to appoint a receiver, an administrative receiver or a receiver and manager over the Security Assets or files such a notice with the court; or
- 4.2.5 an Administrator is appointed in respect of the Chargor or the Lender receives notice of an intention to appoint an Administrator pursuant to paragraphs 15 or 26 of Schedule B1 of the Insolvency Act 1986 in respect of the Chargor,

the floating charge created by this Deed over the Floating Charge Assets shall with immediate effect and without notice automatically convert into a fixed charge.

## **5 The Land Registry and further advances**

### **5.1 Land registration**

The Chargor hereby consents to an application being made to the Chief Land Registrar by or on behalf of the Lender to enter the following restriction (in form P of Schedule 4 to the Land Registration Rules 2003) in the Proprietorship Register of any property which is, or is required to be, registered forming part of the Mortgaged Property:

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the proprietor for the time being of the charge dated the date of this Deed in favour of Wirral Partnership Homes (Developments) Limited (as Lender) referred to in the Charges Register or their conveyancer or an individual identified as an authorised signatory of the Lender".

### **5.2 Implied covenants**

For the purposes of Rule 68(1) of the Land Registration Rules 2003, the covenants set out in Sections 2 to 5 (inclusive) of the Law of Property (Miscellaneous Provisions) Act 1994 will be extended by the provisions of this Deed.

### **5.3 Further advances**

- 5.3.1 Subject to the terms of the Finance Documents, the Lender is under an obligation to make further advances to the Chargor.
- 5.3.2 For the purposes of section 94(1)(c) of the Law of Property Act 1925, section 49(3) of the Land Registration Act 2002 and Rule 108 of the Land Registration Rules 2003, the obligation on the Lender to make further advances will be deemed to be incorporated in this Deed as if the same were set out in this Deed.
- 5.3.3 For the purposes of the Land Registration Rules 2003 and section 49(3) of the Land Registration Act 2002, the Chargor hereby consents to an application being made to the Chief Land Registrar by or on behalf of the Lender for the entry of a note of the obligation to make further advances on the Charges Register of any registered land forming part of the Mortgaged Property.

## **6 Further assurance**

### **6.1 Further assurance: general**

The Chargor shall, at its own expense, promptly do all such acts or execute all such documents (including, without limitation, assignments, transfers, mortgages, charges, notices and instructions) as the Lender or any Receiver may specify (and in such form as the Lender or any Receiver may require) in favour of the Lender or its nominees:

- 6.1.1 to perfect or protect the security created or intended to be created in respect of the Security Assets (which may include the execution by the Chargor of a mortgage, fixed charge or assignment over all or any of the assets constituting, or intended to constitute, Security Assets) or for the exercise of the Collateral Rights; and/or
- 6.1.2 to facilitate the realisation of the Security Assets; and/or
- 6.1.3 to obtain all necessary consents to procure the registration of this Deed with the registrar of companies (if applicable) and, in respect of the Mortgaged Property, at the Land Registry or on the Land Charges Register, as appropriate.

### **6.2 Consents**

The Chargor will use all reasonable endeavours to obtain (in form and content satisfactory to the Lender) as soon as possible any consents necessary to enable the relevant Security Assets purported to be so charged to be the subject of an effective fixed charge pursuant to clause 3.1 and, immediately upon obtaining any such consent, the relevant Security Asset shall become subject to such Security and the Chargor shall promptly deliver a copy of each such consent to the Lender.

### **6.3 Preservation of rights**

Neither the obligations of the Chargor contained in this Deed nor the rights, powers and remedies conferred in respect of the Chargor upon the Lender by the Finance Documents or by law shall be discharged, prejudiced or otherwise affected by:

- 6.3.1 the winding-up, dissolution, administration or reorganisation of the Chargor or any other person or any change in its status, function, control or ownership;
- 6.3.2 any of the obligations of the Chargor or any other person under the Finance Documents or under any other security relating to the Finance Documents being or becoming illegal, invalid, unenforceable or ineffective in any respect;
- 6.3.3 any time or other indulgence being granted or agreed to be granted to the Chargor or any other person in respect of its obligations under the Finance Documents;
- 6.3.4 any amendment to, or any variation, waiver or release of any obligation of the Chargor or any other person under the Finance Documents;
- 6.3.5 any failure to take, or fully to take, any security contemplated by the Finance Documents or otherwise agreed to be taken in respect of the Chargor's or any other person's obligations under the Finance Documents;
- 6.3.6 any failure to realise or fully to realise the value of, or any release, discharge, exchange or substitution of, any security taken or agreed to be taken in respect of the Chargor's or any other person's obligations under the Finance Documents; or
- 6.3.7 any other act, event or omission which, but for this clause 6.3, might operate to discharge, impair or otherwise affect any of the obligations of the Chargor or any other person or any of the rights, powers or remedies conferred upon the Lender by the Finance Documents or by law.

## **7 Negative pledge and disposal restrictions**

### **7.1 Negative pledge**

Save as permitted by the Facility Agreements, the Chargor will not, without the prior written consent of the Lender, create, purport to create, or permit to subsist (in favour of any person other than the Lender) any Security Interest over any of the Security Assets now or in the future, or agree or attempt to do so, or increase or extend any liability of the Chargor secured on any of the Security Assets.

### **7.2 Disposal of fixed charge assets**

Save as permitted by the Facility Agreements, the Chargor will not, without the prior written consent of the Lender (whether by a single transaction or number of related or unrelated transactions, and whether at the same time or over a period of time) sell, transfer, lease out, lend or otherwise dispose of any of the Security Assets charged by clause 3.1 or following the crystallisation of the floating charge created by clause 3.3 the Floating Charge Assets charged by clause 3.3 or any interests therein or the right to receive or to be paid the proceeds arising from their disposal or agree or attempt to do so.



### **7.3 Disposal of Floating Charge Assets**

The Chargor will not dispose of any of the Floating Charge Assets charged by clause 3.3 other than in the ordinary course of and for the purposes of, carrying on its trading business whilst the floating charge remains uncrystallised.

## **8 Representations and warranties**

### **8.1 Duration and to whom made**

The representations and warranties made by the Chargor in this clause 8 will remain in force and will be deemed repeated on each day falling during the Security Period and are given to the Lender.

### **8.2 Matters represented – Mortgaged Property**

Except as disclosed in writing to the Lender or in the Certificate of Title on or prior to the date of this Deed or on or prior to the date the Mortgaged Property becomes subject to a fixed charge hereunder:

- 8.2.1 the Chargor is the legal and beneficial owner of the Mortgaged Property, and has good and marketable title to the Mortgaged Property;
- 8.2.2 planning permission has been obtained or is deemed to have been granted in accordance with statute for the purposes of the Planning Acts and has been complied with in respect to any development and the existing use of the Mortgaged Property, and the Planning Acts and all relevant building regulations or previously relevant building bye-laws have been complied with in respect of all developments, alterations and improvements to the Mortgaged Property and they have also been complied with in respect of the use of the Mortgaged Property;
- 8.2.3 there are no covenants, agreements, stipulations, reservations, conditions, interests, rights or other matters whatsoever affecting the Mortgaged Property which materially adversely affect or are likely to materially adversely affect the value of the Mortgaged Property or the ability of the Chargor to perform its obligations owed to the Lender;
- 8.2.4 nothing has arisen or has been created or is subsisting which would be an overriding interest over the Mortgaged Property which materially adversely affects or is likely to materially adversely affect the value of the Mortgaged Property or the ability of the Chargor to perform its obligations owed to the Lender;
- 8.2.5 no facilities necessary for the enjoyment and use of the Mortgaged Property are enjoyed by the Mortgaged Property on terms entitling any person to terminate or curtail its or their use which materially adversely affects or is likely to materially adversely affect the value of the Mortgaged Property or the ability of the Chargor to perform its obligations owed to the Lender;
- 8.2.6 the Chargor has received no notice of any adverse claims by any person in respect of the ownership of the Mortgaged Property or any interest therein, nor

has any acknowledgement been given to any person in respect thereof which has not been disclosed to the Lender;

8.2.7 nothing has arisen, or has been created, which would be an overriding interest in any Mortgaged Property;

8.2.8 the Mortgaged Property will be free from any tenancies or licences, other than those tenancies or licences permitted under the Facility Agreements;

8.2.9

(a) all written information supplied by the Chargor or on its behalf for the purpose of each Valuation and Certificate of Title was true and accurate in all material respects as at its date or as at the date (if any) on which it was stated to be given;

(b) the information referred to in clause 8.2.9(a) was, as at its date or as at the date (if any) on which it was stated to be given, complete and the Chargor did not omit to supply any information which, if disclosed, would adversely affect the Valuation or Certificate of Title; and

(c) in the case of the first Valuation or Certificate of Title only, nothing has occurred since the date the information referred to in clause 8.2.9(a) was supplied and the date of this Deed which would adversely affect such Valuation or Certificate of Title;

8.2.10 the Chargor has disclosed to the Lender full details of all inspections, investigations, studies, Environmental Audits and other analyses commissioned by it in relation to environment matters in respect of the Mortgaged Property and any adjoining land;

8.2.11 the Chargor is, and has at all times been, in compliance with all applicable Environmental Law; and

8.2.12 the Chargor has obtained and is, and has at all times been, in compliance with all Environmental Licences.

### **8.3 Matters represented – Security Assets**

8.3.1 There are no covenants, agreements, stipulations, reservations, conditions, interests, rights or other matters whatsoever affecting the Security Assets which materially adversely affect or are likely to materially adversely affect the Security Assets or the ability of the Chargor to perform its obligations owed to the Lender.

8.3.2 No facilities necessary for the enjoyment and use of the Security Assets are enjoyed by the Security Assets on terms entitling any person to terminate or curtail its or their use which materially adversely affects or is likely to materially adversely affect the Security Assets or the ability of the Chargor to perform its obligations owed to the Lender.

8.3.3 The Chargor has received no notice of any adverse claims by any person in respect of the ownership of the Security Assets or any interest therein, nor has

any acknowledgement been given to any person in respect thereof which has not been disclosed to the Lender.

#### **8.4 Security created**

Subject to registration with the registrar of companies (if applicable), at the Land Registry or at the Land Charges Registry as appropriate, this Deed creates those Security Interests it purports to create ranking as set out above and is not liable to be avoided or otherwise set aside on the liquidation or administration of the Chargor or otherwise.

### **9 General undertakings**

#### **9.1 Duration and benefit**

The undertakings in this clause 9:

9.1.1 shall remain in force during the Security Period; and

9.1.2 and are given to the Lender.

#### **9.2 Not to jeopardise the Security**

The Chargor will not do or allow to be done anything which could reasonably be expected materially to decrease the value of the Security to the Lender (other than fair wear and tear arising from the use of the Security Assets in the ordinary course of business).

#### **9.3 Maintenance**

The Chargor will keep all plant, machinery, Fixtures, fittings, vehicles, computers and other equipment included in the Security Assets in a good state of repair and in good working order and condition and when necessary replace the same by items of similar quality and value.

#### **9.4 Information and access**

The Chargor will, at the request of the Lender, promptly provide the Lender with such information as the Lender may reasonably require about the Security Assets and the Chargor's compliance with the terms of this Deed and the Chargor will permit the Lender, its representatives, professional advisers and contractors, free access at all reasonable times and on reasonable notice:

9.4.1 to view the Security Assets (without becoming liable as mortgagee in possession); and

9.4.2 to inspect and take copies and extracts from such books, accounts and records of the Chargor as relate to the Security Assets.

#### **9.5 Law**

The Chargor will comply with all applicable laws, regulations and authorisations affecting the Security Assets.

## **10 Mortgaged Property**

The Chargor undertakes to the Lender at all times during the Security Period, except as required for the purposes of a Development or expressly permitted under the Facility Agreements:

### **10.1 Repair**

to keep the Mortgaged Property in good and substantial repair and condition;

### **10.2 Outgoings**

to pay punctually all Taxes, rents, rates, duties, assessments and other outgoings payable in respect of the Mortgaged Property;

### **10.3 Covenants**

to perform and observe all covenants (positive and restrictive), conditions and stipulations from time to time affecting the Mortgaged Property or the use or enjoyment of it;

### **10.4 Development**

(within the meaning of that expression in the Planning Acts and being development for which the permission of the local planning authority is required) not without the prior written consent of the Lender to carry out or permit any development of the Mortgaged Property, or remove any of the Fixtures on the Mortgaged Property (except in connection with the renewal or replacement of them);

### **10.5 User**

to use the Mortgaged Property only for such purpose or purposes as may for the time being be authorised as the permitted use or user thereof under or by virtue of the Planning Acts;

### **10.6 Planning**

10.6.1 to comply with any conditions attached to any planning permissions relating to or affecting the Mortgaged Property;

10.6.2 not without the prior written consent of the Lender to make any application for planning permission or implement any planning permission obtained or enter or agree to enter into any agreement or undertaking under the Planning Acts in each case in respect of the Mortgaged Property;

### **10.7 Notices**

to pass onto the Lender immediately upon receipt a copy of any notice or proposal for a notice or order served on the Chargor by any public or local or any other authority in respect of the Mortgaged Property or any part thereof and to give notice to the Lender immediately on becoming aware of any other matter which is likely to affect adversely the value of the Mortgaged Property, and in each case if the Lender so requires or approves and at the Chargor's cost to make such representations in respect of such notice or order as the Lender may require;

## **10.8 Information**

at the request of the Lender promptly to provide the Lender with such documents or information relating to the Mortgaged Property or its development as the Lender may reasonably require;

## **10.9 Compliance with leases**

where the Mortgaged Property is leasehold or subject to any lease, agreement for lease, tenancy or licence:

10.9.1 to observe and perform all the covenants, stipulations and obligations contained in any lease, agreement for lease, tenancy or licence affecting the Mortgaged Property of which the Chargor is the lessee, tenant or licensee; and

10.9.2 to comply with all covenants on the part of the lessor or licensor contained in the lease, agreement for lease, tenancy or licence affecting the Mortgaged Property of which the Chargor is the lessor or licensor;

## **10.10 Environmental matters**

10.10.1 to obtain and maintain all licences required by it under Environmental Law and comply in all material respects with all Environmental Law applicable to it; and

10.10.2 to ensure that no Dangerous Substances are used, disposed of, generated, stored, transported, deposited, buried or emitted at, on, from or under any premises (whether or not owned, leased, occupied or controlled by it) in circumstances where this might result in a liability of the Lender;

## **10.11 Leases**

10.11.1 save as permitted by the Facility Agreements, not without the previous consent in writing of the Lender to grant or agree to grant (whether in exercise or independently of any statutory power) any lease or tenancy of the Mortgaged Property or any part thereof or accept a surrender of any lease or tenancy or confer upon any person any contractual licence or right to occupy the Mortgaged Property and provided, on request by the Lender, it notifies the Lender of all leases, tenancies, licences or rights to occupy granted or surrendered by it and if so reasonably requested by the Lender provided it sends a copy thereof to the Lender forthwith upon request;

10.11.2 to enforce and not waive or release the covenants, conditions, agreements and obligations contained in or imposed by any agreement or document relating to the Mortgaged Property or any guarantee in respect of the obligations of the tenants, lessees, licensees or other parties thereunder which materially affects or is reasonably likely to materially affect the value of the Mortgaged Property;

10.11.3 not without the prior written consent of the Lender to accept or agree to accept the surrender or alteration of any agreement or document relating to the Mortgaged Property which materially affects or is reasonably likely to materially affect the value of the Mortgaged Property and observe and perform all the

covenants, conditions, agreements and obligations on its part in all material respects; and

10.11.4 to deliver to the Lender within 14 days of demand full particulars of all agreements and documents relating to the Mortgaged Property.

#### 10.12 Commonhold

The Chargor shall not convert, or permit the conversion of, any freehold estate of any of the Mortgaged Property to a freehold estate in commonhold land under Part 1 of the Commonhold and Leasehold Reform Act 2002.

### 11 Insurance

#### 11.1 Insured Risks

Except where insured by the lessor of any Mortgaged Property, the Chargor will insure all of the Security Assets (which are of an insurable nature) against:

11.1.1 the Insured Risks;

11.1.2 loss of rents payable by the tenants or other occupiers of the Mortgaged Property for a period of three years or such other period as may be agreed with the Lender;

11.1.3 third party and public liability; and

11.1.4 any other risks normally insured against by persons carrying on the same class of business as that carried on by it.

#### 11.2 Replacement value

Any Insurance must be in a sum or sums not less than the replacement value of the Security Assets. For this purpose, **replacement value** means the total cost of rebuilding, reinstating or replacing those Security Assets in the event of their being completely destroyed, together with any relevant architects' and surveyors' fees.

#### 11.3 Insurance company

Any Insurances required under this clause must be with an insurance company or underwriters acceptable to the Lender.

#### 11.4 Application

Subject to the provisions of any lease or prior charge of all or part of the Security Assets, all monies received or receivable under any Insurances must be applied:

11.4.1 in replacing, restoring or reinstating the Security Assets destroyed or damaged or in any other manner which the Lender may agree; or

11.4.2 if the Lender so directs and the terms of the relevant insurances allow in or towards satisfaction of the Secured Liabilities.

#### 11.5 **Co-insurance**

The Chargor will procure that a note of the Lender's interest as co-insured (composite) is endorsed upon all Insurances maintained by the Chargor and that the Lender is named first loss payee (other than in relation to insurance against third parties and public liability risks).

#### 11.6 **Provisions of Insurances**

The Chargor will procure that the relevant Insurances contain provisions that:

- 11.6.1 they will not be terminated, invalidated or otherwise allowed to lapse for failure to pay any premium or otherwise unless 30 days' notice is given to the Lender;
- 11.6.2 they will not be vitiated or avoided as against the Lender in the event or as a result of any misrepresentation, act, neglect or failure to make disclosure on the point of any issued party or any circumstances beyond the control of an issued party; and
- 11.6.3 a waiver of the rights of subrogation of the insurer as against the Chargor, the Lender and the tenants of any Mortgaged Property.

#### 11.7 **Avoidance of policy**

The Chargor will not do or permit anything to be done which may make the Insurances void or voidable.

#### 11.8 **Premiums**

The Chargor will promptly pay all premiums and do all other things necessary to keep the Insurances in force.

#### 11.9 **Return of policy**

The Chargor will, immediately at the request of the Lender, produce to the Lender the policy, certificate or cover note relating to any of the Insurances and the receipt for the payment of the last premium and will if the Lender requests deposit all Insurances with the Lender.

#### 12 **Deposit of title deeds**

The Chargor will deposit all deeds and documents of title relating to the Security Assets with the Lender and such other documents relating to the Security Assets as the Lender may require from time to time, for the duration of the Security Period, except to the extent that any such Security Assets are released by the Lender pursuant to the terms of the Facility Agreements.

#### 13 **Power to remedy**

In the case of default by the Chargor in repairing or keeping in repair or insuring the Security Assets or any part thereof or in observing or performing any of the covenants or stipulations affecting the same, the Chargor will permit the Lender or its agents and contractors to enter on the Security Assets and to comply with or object to any notice

served on the Chargor in respect of the Security Assets and to effect such repairs or insurance or generally do such things or pay all such costs, charges and expenses as the Lender may consider are necessary or desirable to prevent or remedy any breach of covenant or stipulation or to comply with or object to any notice. The Chargor will indemnify and keep the Lender indemnified against all losses, costs, charges and expenses reasonably incurred in connection with the exercise of the powers contained in this clause 13.

## **14 Enforcement of Security**

### **14.1 When Security becomes enforceable**

The Security shall be immediately enforceable if an Event of Default occurs. After the Security has become enforceable, the Lender may in its absolute discretion enforce all or any part of such Security at the times, in the manner, and on the terms as it shall think fit and take possession of or hold or dispose of all or any part of the Security.

### **14.2 Exercise of powers**

At any time after the Security becomes immediately enforceable, the Lender may, without notice to the Chargor or prior authorisation from any court, in its absolute discretion whether or not it has appointed a Receiver, exercise all or any of the powers, authorities and discretions conferred by the Law of Property Act 1925 (as varied or extended by this Deed) on mortgagees and by this Deed on any Receiver or otherwise conferred by law on mortgagees or Receivers.

### **14.3 Right of appropriation**

To the extent that any of the Security Assets constitutes Financial Collateral and this Deed and the obligations of the Chargor hereunder constitute a Security Financial Collateral Arrangement the Lender shall have the right, at any time after this Deed has become enforceable, to appropriate all or any part of such financial collateral in or towards payment and/or discharge of the Secured Liabilities in such order as the Lender in its absolute discretion may from time to time determine. For this purpose each of the Chargor and the Lender agrees that the value of such Financial Collateral so appropriated shall be (a) in the case of cash, the amount standing to the credit of each of the Account(s), together with any accrued but unposted interest, at the time the right of appropriation is exercised; and (b) in the case of Securities, the market price of such Securities at the time the right of appropriation is exercised as determined by the Lender by reference to any recognised market index or by such other process as the Lender may select, including, without limitation, independent valuation. In each case, each of the Chargor and the Lender agrees that the method of valuation provided for in this clause 14 shall constitute a commercially reasonable method of valuation for the purpose of the Financial Collateral Regulations.

### **14.4 Possession**

If the Lender, any Receiver or any delegate of any such person takes possession of the Security Assets, it or he may at any time relinquish such possession.



**14.5 No liability as mortgagee in possession**

The Lender will not be liable to account as a mortgagee in possession in respect of all or any part of the Security Assets or be liable for any loss upon realisation or for any neglect, default or omission in connection with the Security Assets to which a mortgagee in possession might otherwise be liable.

**14.6 Power of sale**

The power of sale under this Deed may be exercised notwithstanding that the Lender or the Receiver may have previously waived or refrained from exercising that power; and no demand or notice of sale made or given under this Deed will be waived by the acceptance of any payment on account of the Secured Liabilities, or by any negotiations between the Lender and the Chargor or any other party who is acting as agent for the Chargor or on behalf of it.

**14.7 Receiver's liability**

All the provisions of clause 14.5 will apply, mutatis mutandis, in respect of the liability of any Receiver and delegate of the Receiver or the Lender or any officer, employee or agent of the Lender, any Receiver or any delegate.

**15 Extension and variation of the Law of Property Act 1925**

**15.1 Extension of powers**

The power of sale or other disposal conferred on the Lender and on any Receiver by this Deed will operate as a variation and extension of the statutory power of sale under Section 101 of the Law of Property Act 1925 and such power will arise (and the Secured Liabilities will be deemed due and payable for that purpose) on the execution of this Deed.

**15.2 Restrictions**

The restrictions contained in Sections 93 and 103 of the Law of Property Act 1925 will not apply to this Deed or to the exercise by the Lender of its right to consolidate all or any of the Security with any other security in existence at any time or to its power of sale, which powers may be exercised by the Lender without notice to the Chargor.

**15.3 Power of leasing**

The statutory powers of leasing may be exercised by the Lender at any time and the Lender and any Receiver may make any lease or agreement for lease, accept surrenders of leases and grant options on such terms as it will think fit, without the need to comply with any restrictions imposed by Sections 99 and 100 of the Law of Property Act 1925.

**15.4 Non-application**

The following provisions of the Law of Property (Miscellaneous Provisions) Act 1994 will not apply to clause 3 being:

- 15.4.1 the words 'other than any charges, encumbrances or rights which that person does not and would not reasonably be expected to know about' in Section 3(1);

15.4.2 the words 'except to the extent that' and all words thereafter in Section 3(2); and

15.4.3 Section 6(2).

## **15.5 Application**

Section 109(8) of the Law of Property Act 1925 will not apply, and all monies received by the Lender or any Receiver in the exercise of any powers conferred by this Deed will be applied in the following order:

15.5.1 in the payment of:

(a) all costs, charges, liabilities and expenses incurred by the Lender or any Receiver in the exercise of those powers or incidental to any Receiver's appointment, together with interest at the applicable rate set out in clause 2.2 (both before and after judgment) from the date those amounts became due until the date they are irrevocably paid in full; and

(b) any Receiver's remuneration;

15.5.2 in or towards discharge of all liabilities having priority to the Secured Liabilities;

15.5.3 in or towards the satisfaction of the Secured Liabilities in such order as the Lender determines; and

15.5.4 in the payment of any surplus to the Chargor or other person entitled to it.

## **15.6 Application of sums received**

The Chargor will have no rights in respect of the application by the Lender of any sums received, recovered or realised by the Lender under this Deed.

## **16 Appointment of Receiver**

### **16.1 Appointment and removal**

At any time after the Security becomes enforceable, or if requested to do so by the Chargor, the Lender may by deed or otherwise (acting through an authorised officer of the Lender), without prior notice to the Chargor:

16.1.1 appoint one or more persons to be a Receiver of the whole or any part of the Security Assets or an Administrator of the Chargor;

16.1.2 remove (so far as it is lawfully able) any Receiver or an Administrator so appointed; and

16.1.3 appoint another person(s) as an additional or replacement Receiver(s) or Administrator(s).

### **16.2 Capacity of Receivers**

Each person appointed to be a Receiver under this Deed will be:

- 16.2.1 entitled to act individually or together with any other person appointed or substituted as Receiver;
- 16.2.2 for all purposes will be deemed to be the agent of the Chargor which will be solely responsible for his acts, defaults and liabilities and for the payment of his remuneration and no Receiver will at any time act as agent for the Lender; and
- 16.2.3 entitled to remuneration for his services at a rate to be fixed by the Lender from time to time (without being limited to the maximum rate specified by the Law of Property Act 1925).

**16.3 Statutory powers of appointment**

The powers of a Receiver will be in addition to all statutory and other powers of the Lender under the Law of Property Act 1925 (as extended by this Deed), an administrative receiver under the Insolvency Act 1986 or otherwise and such powers will remain exercisable from time to time by the Lender in respect of any part of the Security Assets.

**17 Powers of Receiver**

**17.1 Powers**

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

**18 Protection of purchasers**

**18.1 Consideration**

The receipt of the Lender or any Receiver will be conclusive discharge to a purchaser and, in making any sale or disposal of any of the Security Assets or making any acquisition, the Lender or any Receiver may do so for such consideration, in such manner and on such terms as it thinks fit.

**18.2 Protection of purchaser**

No purchaser or other person dealing with the Lender or any Receiver will be bound to inquire whether the right of the Lender or such Receiver to exercise any of its powers has arisen or become exercisable or be concerned with any propriety or regularity on the part of the Lender or such Receiver in such dealings.

**19 Power of attorney**

**19.1 Appointment and powers**

The Chargor by way of security irrevocably appoints the Lender and every Receiver or Administrator and any delegate or sub-delegate severally to be its attorney and in its name, on its behalf and as its act and deed to execute, deliver and perfect all documents and do all things which:

19.1.1 the Chargor ought to have done by this Deed (including the execution and delivery of any deeds, charges, legal mortgages, assignments or other security and any transfers of the Security Assets);

19.1.2 enable the Lender and any Receiver or Administrator or any delegate or sub-delegate to exercise, or delegate the exercise of, any of the rights, powers and authorities conferred on them by or pursuant to this Deed or by law (including the exercise of any right of a legal or beneficial owner of the Security Assets).

## 19.2 Ratification

The Chargor will ratify and confirm all things lawfully done and all documents executed by any attorney in the exercise or purported exercise of all or any of his powers.

## 20 Effectiveness of Security

### 20.1 Continuing Security

The Security will remain in full force and effect as a continuing security for the Secured Liabilities during the Security Period.

### 20.2 Cumulative rights

The Security and the Collateral Rights will be cumulative, in addition to and independent of every other security which the Lender may at any time hold for the Secured Liabilities or any other obligations or any rights, powers and remedies provided by law. No prior security held by the Lender over the whole or any part of the Security Assets will merge into the Security.

### 20.3 No prejudice

Neither the Security nor the Collateral Rights will be prejudiced by any time or indulgence granted to the Chargor or any other person or by any other thing which might otherwise prejudice the Security or any Collateral Right.

### 20.4 Remedies and waivers

No failure on the part of the Lender to exercise, or any delay on its part in exercising, any Collateral Right will operate as a waiver thereof, nor will any single or partial exercise of any Collateral Right preclude any further or other exercise of that or any other Collateral Right.

### 20.5 No liability

None of the Lender, any Receiver or any delegate or sub-delegate will be liable by reason of:

20.5.1 taking any action permitted by this Deed; or

20.5.2 any neglect or default in connection with the Security Assets; or

20.5.3 taking possession of or realising all or any part of the Security Assets

except in the case of negligence or wilful default or fraud upon its part.

**20.6 Partial invalidity**

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Deed nor of such provision under the laws of any other jurisdiction will in any way be affected or impaired thereby and, if any part of the Security is invalid, unenforceable or ineffective for any reason, that will not affect or impair any other part of the Security.

**20.7 Other security**

The Lender will not be obliged to resort to any guarantees, indemnities, Security Interests or other means of payment now or hereafter held by or available to it before enforcing this Deed and no action taken or omitted by the Lender in connection with any such guarantee, indemnity, Security Interests or other means of payment will discharge, reduce, prejudice or affect the liability of the Chargor or the Secured Liabilities nor will the Lender be obliged to account for any money or other property received or recovered in consequence of any enforcement or realisation of any such guarantees, indemnities, Security Interests or other means of payment.

**20.8 Variation**

No variation of the terms of this Deed will be valid unless it is in writing and executed as a deed by the Chargor and confirmed in writing by the Lender.

**21 Release of Security**

Upon the expiry of the Security Period and the Lender not being under any further actual or contingent obligation to make advances or provide other financial accommodation to the Chargor, the Lender will, at the request and cost of the Chargor, release and cancel the Security and procure the reassignment to the Chargor of the property and assets assigned to the Lender pursuant to this Deed and without recourse to, or any representation or warranty by, the Lender or any of its nominees.

**22 Subsequent Security Interests**

If the Lender at any time receives or is deemed to have received notice of any subsequent Security Interest affecting all or any part of the Security Assets or any assignment or transfer of the Security Assets which is prohibited by the terms of this Deed, all payments thereafter by or on behalf of the Chargor to the Lender will be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Liabilities as at the time when the Lender received such notice.

**23 Assignment**

**23.1 Right of Lender to assign**

The Lender may at any time assign or otherwise transfer all or any part of its rights under this Deed, but only in circumstances where it may assign or otherwise transfer its rights under the Facility Agreements.

## **23.2 Restriction on Chargor**

The Chargor may not assign or transfer any of its rights or obligations under this Deed.

## **23.3 Confidentiality**

The Lender may give such information relating to the Chargor and the Secured Liabilities as it thinks fit to any person proposing to take an assignment and/or transfer from the Lender and/or to enter into contractual relations with the Lender with respect to this Deed.

## **24 Expenses, stamp taxes and indemnity**

### **24.1 Expenses**

The Chargor will, from time to time on demand of the Lender, reimburse the Lender on a full indemnity basis for all the costs and expenses (including legal fees) together with any VAT thereon properly incurred by it or by any Receiver in connection with:

24.1.1 the negotiation, preparation and execution of this Deed and the completion of the transactions and perfection of the security contemplated in this Deed; or

24.1.2 the exercise, preservation and/or enforcement of any of the Collateral Rights or the security contemplated by this Deed or any proceedings instituted by or against the Lender or any Receiver as a consequence of taking or holding the security or of enforcing the Collateral Rights,

and such expenses will carry interest until so reimbursed at the rate referred to in clause 2.2.

### **24.2 Stamp taxes**

The Chargor will pay all stamp, stamp duty land tax, registration and other Tax to which this Deed, the Security or any judgment given in connection with it is or at any time may be subject and will, from time to time, indemnify the Lender on demand against any liabilities, costs, claims and expenses resulting from any failure to pay or delay in paying any such Tax.

### **24.3 Indemnity**

The Chargor will, notwithstanding any release or discharge of all or any part of the Security, indemnify the Lender, its agents, attorneys and any Receiver against any action, proceeding, claims, losses, liabilities and costs which it may sustain as a consequence of any breach by the Chargor of the provisions of this Deed, the exercise or purported exercise of any of the rights and powers conferred on them by this Deed or otherwise relating to the Security Assets.

## **25 Payments free of deduction**

All payments to be made under this Deed will be made free and clear of and without deduction or withholding whatsoever for or on account of any Tax except to the extent that the Chargor is required by law to make such payment subject to the deduction or withholding of any Tax. If any Tax or amount in respect of Tax is required to be deducted from any amounts payable or paid by the Chargor, the Chargor will pay such additional

amounts as may be necessary to ensure that after the making of the deduction or withholding which is required the relevant recipient receives and retains (free from any liability in respect of any such deduction or withholding) a net amount equal to the full amount which it would have received and retained had no such deduction or withholding been made.

## **26 Discretion and delegation**

### **26.1 Discretion**

Any power or discretion which may be exercised or any determination which may be made hereunder by the Lender or any Receiver may be exercised or made in its absolute and unfettered discretion without any obligation to give reasons.

### **26.2 Delegation**

Each of the Lender and any Receiver will have full power to delegate (either generally or specifically) the powers, authorities and discretions conferred on it by this Deed (including the power of attorney) on such terms and conditions as it sees fit, which delegation may include power to sub-delegate and will not preclude either the subsequent exercise of such power, authority or discretion by the Lender or the Receiver itself or any subsequent delegation or revocation thereof.

## **27 Perpetuity period**

The perpetuity period under the rule against perpetuities, if applicable to this Deed, will be the period of 125 years from the date of this Deed (as specified in section 5(1) of the Perpetuities and Accumulations Act 2009).

## **28 Counterparts**

This Deed may be executed in counterparts, all of which when taken together will constitute a single deed.

## **29 Reorganisation**

This Deed will remain binding on the Chargor notwithstanding any change in the constitution of the Lender or its absorption by, or amalgamation with, or the acquisition of all or part of its undertaking by, any other person, or any reconstruction or reorganisation of any kind. The Security will remain valid and effective in all respects in favour of the Lender and for any assignee, transferee or other successor in title of the Lender.

## **30 Set off**

The Lender may set off any matured obligation due from the Chargor under this Deed against any matured obligation owed by the Lender to the Chargor (whether actual or contingent, present or future), regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Lender may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

**31 Payment of monies**

**31.1 Date for payment**

Where neither the Facility Agreements nor this Deed specified the due date for payment of any monies owed by the Chargor to the Lender such monies will be due and payable to the Lender by the Chargor on demand.

**31.2 Currency**

The Chargor's liability under this Deed is to discharge the Secured Liabilities in Sterling. If at any time the Lender receives a payment (including by set-off) referable to any of the Secured Liabilities from any source in a currency other than Sterling, then such payment will take effect as a payment to the Lender of the amount in Sterling which the Lender is able to purchase (after deduction of any relevant costs) with the amount of the payment so received in accordance with its usual practice.

**31.3 Currency indemnity**

If a payment is made under a court order or in satisfaction of a claim or proof and is treated by clause 31.2 as a payment of an amount which falls short of the relevant liability of the Chargor expressed in Sterling, the Chargor as a separate and independent obligation will on demand from time to time indemnify the Lender against such shortfall and pay interest on such shortfall from the date of such payment to the date on which the shortfall is paid.

**31.4 Certificates**

A certificate signed by an official of the Lender as to the amount due or owing from the Chargor will be conclusive evidence against the Chargor, except in the case of manifest error.

**32 Notices**

Clause 45 of the Members' Agreement shall apply to any notices or other communication pursuant to or in connection with this Agreement.

**33 Governing law**

This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by, and be construed in accordance with, the laws of England.

**This Deed** has been executed as a deed by the parties and is delivered and takes effect on the date at the beginning of this Deed.



**Schedule 1**

**Mortgaged Property**

85 Market Street, Edenfield, Bury with Land Registry title number LA464491

**Signatories**

**Chargor**

**EXECUTED** as a deed, but not delivered until )

the first date specified on page 1 by )

**HILBRE PROJECTS LLP** )

acting by )

on behalf of A Member

Duly authorised by )

**WIRRAL PARTNERSHIP HOMES** )

**(DEVELOPMENTS) LIMITED** to sign on its behalf )

as Member of **HILBRE PROJECTS LLP** )

on behalf of B Member

Duly authorised by )

**STARFISH COMMERCIAL LIMITED** )

to sign on its behalf as Member of )

**HILBRE PROJECTS LLP** )

**Lender**

signed by )

for and on behalf of )

**WIRRAL PARTNERSHIP HOMES** )

**(DEVELOPMENTS) LIMITED** )

acting by Director