



Registration of a Charge

Company name: **BELLWAY HOMES LIMITED**

Company number: **00670176**



X6XSQWKQ

Received for Electronic Filing: **17/01/2018**

Details of Charge

Date of creation: **10/01/2018**

Charge code: **0067 0176 0472**

Persons entitled: **ICG-LONGBOW DEBT INVESTMENTS NO.4 S.A.R.L.**

Brief description: **FREEHOLD PROPERTY SHOWN EDGED RED ON PLAN 1 OF LEGAL MORTGAGE, BEING PART OF THE LAND ON THE SOUTHWEST SIDE OF STATION ROAD PANNAL HARROGATE. TITLE NUMBERS: NYK188958 & NYK269519. FOR FURTHER DETAILS PLEASE SEE LEGAL MORTGAGE.**

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

Certified by: **FREETHS LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 670176

Charge code: 0067 0176 0472

The Registrar of Companies for England and Wales hereby certifies that a charge dated 10th January 2018 and created by BELLWAY HOMES LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 17th January 2018 .

Given at Companies House, Cardiff on 19th January 2018

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

10 January

2018

BELLWAY HOMES LIMITED
as Company

(1)

And

ICG-LONGBOW DEBT INVESTMENTS No.4
S.A.R.L.
as Lender

(2)

LEGAL MORTGAGE

Land on the Southwest side of Station Road Pannal

CONTENTS

1	DEFINITIONS AND INTERPRETATION	1
2	COVENANT TO PAY	5
3	INTEREST	5
4	SECURITY	6
5	FURTHER ASSURANCE	6
6	DEPOSIT OF DOCUMENTS AND TITLE DEEDS	6
7	NEGATIVE PLEDGE	6
8	REPRESENTATIONS AND WARRANTIES	7
9	UNDERTAKINGS	7
10	COSTS AND LENDER'S PERFORMANCE OF COVENANTS	11
11	DEFAULT	12
12	STATUTORY POWER OF SALE	12
13	RECEIVER	13
14	PROTECTION OF THIRD PARTIES	17
15	NO LIABILITY AS MORTGAGEE IN POSSESSION	17
16	[POWER OF ATTORNEY	17
17	WORKS AGREEMENTS	18
18	CUMULATIVE AND CONTINUING SECURITY	18
19	AVOIDANCE OF PAYMENTS	18
20	PRIOR CHARGES	19
21	PAYMENTS AND WITHHOLDING TAXES	19
22	CURRENCY	19
23	ASSIGNMENT	20
24	WAIVERS	20
25	SEVERABILITY	20
26	LAND REGISTRY, RELEASES AND CONSENT TO DISPOSALS	20

27	NOTICES	21
28	GOVERNING LAW.....	22
29	ENFORCEMENT.....	22
30	COUNTERPARTS.....	23
31	THIRD PARTY RIGHTS	23
	SCHEDULE THE CHARGED PROPERTY	24



DATE OF LEGAL MORTGAGE

10 January

2018

PARTIES

- (1) **BELLWAY HOMES LIMITED** incorporated and registered in England and Wales with company number 670176 whose registered office is at Seaton Burn House, Dudley Lane, Seaton Burn, Newcastle upon Tyne NE13 6BE (the "**Company**"); and
- (2) **ICG-LONGBOW DEBT INVESTMENTS No.4 S.A.R.L.** (incorporated in Luxembourg) care of 2 Boulevard Konrad Adenauer, L1115, Luxembourg, Luxembourg (the "**Lender**").

INTRODUCTION

- A The Forward Investments Pannal LLP and the Company have entered into an agreement for the sale and purchase of (inter alia) the Charged Property (as defined below) pursuant to which the Company will make a payment of £6,100,000.00 by way of deferred consideration to the Forward Investments Pannal LLP subject to and upon the terms and conditions contained in the Sale Agreement (as defined below).
- B As a condition precedent to and pursuant to the provisions of the Sale Agreement the Company has agreed to enter into this Mortgage for the purpose of providing security to the Lender for the Secured Liabilities.

IT IS AGREED THAT:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Mortgage:

"Affordable Housing" shall have the same meaning as in the Sale Agreement

"Authority" means any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other organisation.

"Charged Property" means the whole or any part of the means all the property short particulars of which are set out in the Schedule (including, without limitation, all Fixtures on such property) which is mortgaged or charged to the Lender pursuant to this Mortgage and which is not the subject of a Release.

"Consent" means a written consent from the Lender confirming the Lender's consent to the grant of easements contained within the Transfer Deed which is used by the Company to transfer individual dwellings to third party purchasers

"Costs" means all costs, charges or expenses of whatsoever nature (including, without limitation, legal fees) including, without limitation, disbursements and any Value Added Tax to be charged on such costs, charges, expenses and disbursements.

"Default Rate" means the rate which is 4 per cent. per annum above the base rate of Barclays Bank plc from time to time.

"Deferred Consideration" means £6,100,000.00

"Disposal" means any transfer or a lease for any term or similar disposal

"Dwellings" means any dwelling house or apartment including its curtilage constructed or to be constructed on the Property or on any part or parts thereof

"Environment" means all of the air, water and land including air within buildings and other natural or manmade structures above or below ground.

"Environmental Law" means any applicable law or regulation which relates to:

- (a) the pollution or protection of the Environment;
- (b) harm to or the protection of human health;
- (c) the conditions of the workplace; or
- (d) any emission or substance capable of causing harm to any living organism or the Environment.

"Environmental Permits" means any permit and other Authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business conducted on or from the Charged Property

"Event of Default" means any event or circumstance whereby the Company does not comply with any provision of the Finance Documents.

"Finance Documents" means this Mortgage and clause 23.3] of the Sale Agreement.

"Fixtures" means all assets of whatsoever nature, apart from land and buildings, forming part of any freehold or leasehold property owned by the Company and deemed by law to be immovable property.

"Insolvency Act" means the Insolvency Act 1986.

"Laws" means any European Community legislation (including any regulation or directive), the common law, United Kingdom legislation (including subordinate regulation and any order or regulations made under such legislation), by law or order of any court or administrative tribunal which is in force in the United Kingdom.

"LPA" means the Law of Property Act 1925.

"Permitted Disposal" means all or any of:

- (e) the disposal of any part of the Charged Property required for service media, electricity sub stations, pumping stations, gas governor stations or other similar installations to a local or other authority or other statutory undertaking, service company or other relevant entity;

- (f) the disposal of any part of the Charged Property to the relevant highway authority for the purpose of adoption of any roads and/or footpaths and/or cycleways to be constructed on the Charged Property;
- (g) the disposal of any part of the Charged Property comprising common or retained parts of any apartment block;
- (h) the disposal of any part of the Charged Property to a local authority or other statutory body for use as public open space or any other public amenity area pursuant to an agreement under section 106 of the Town and Country Planning Act 1990 or otherwise,

in each case in a form first approved by the Lender's Solicitors such approval not to be unreasonably withheld or delayed.

"Plan 1" and "Plan 2" mean the plans annexed hereto and marked accordingly.

"Planning Acts" means the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning and Compensation Act 1991, the Local Government Planning and Land Act 1980 and the Ancient Monuments and Archaeological Areas Act 1979.

"Property Insurance" means the insurance referred to in clause 9.3 (*Property Insurance*).

"Receiver" means any receiver appointed pursuant to this Mortgage.

"Registered Provider" means a private registered provider within the meaning of the Housing and Regeneration Act 2008 which is a charitable body.

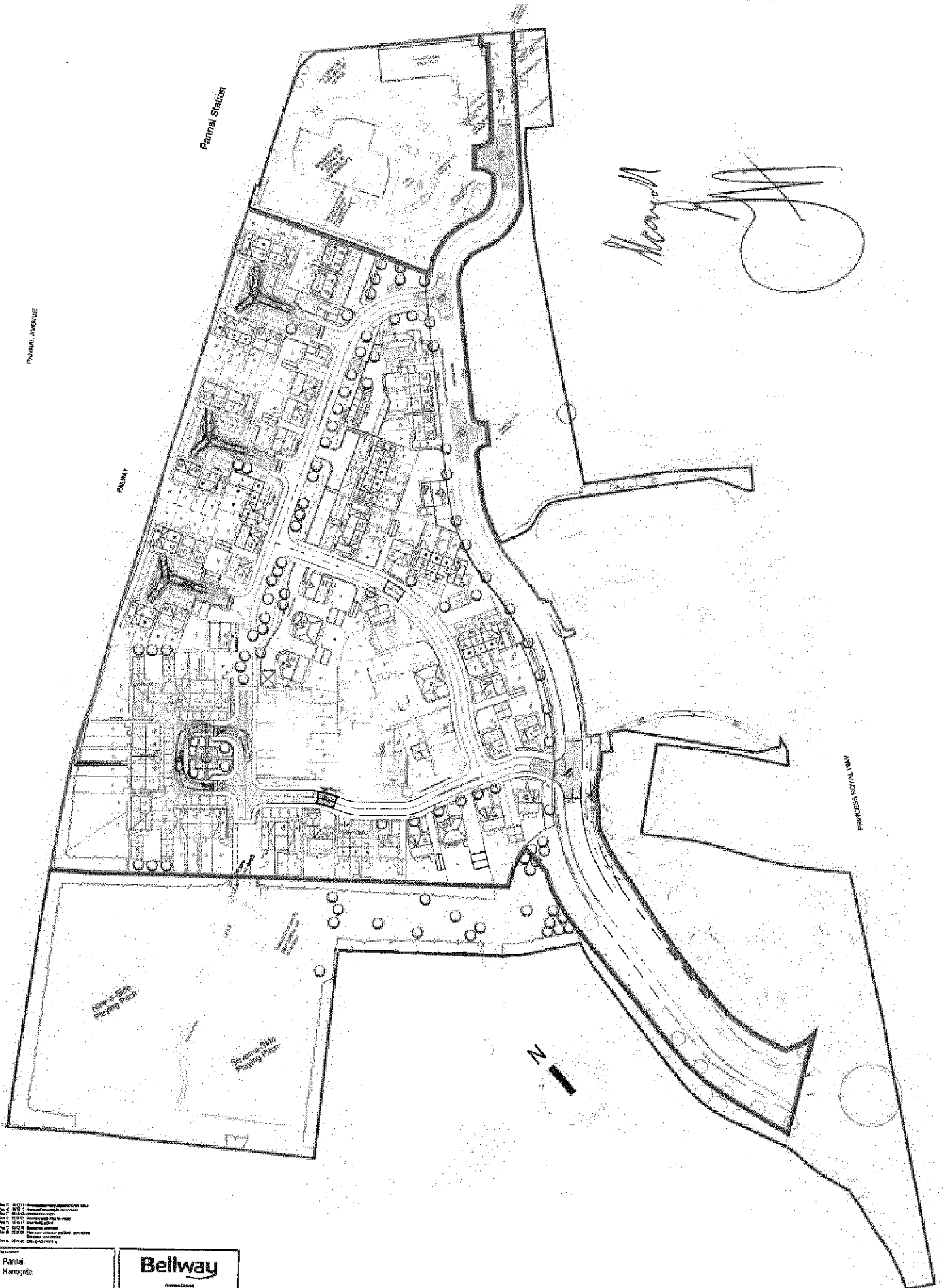
"Release" a Land Registry form DS3 or form DS1 or such other form as shall be appropriate to release (when dated) the Charged Property or any interest in the Charged Property or any part of parts of the Charged Property from this Legal Charge together with a Land Registry form RX4 to the relevant part or parts of the Charged Property from the restriction which is noted at clause 21.6 below;

Releasable Dwellings mean (subject to the prior approval of the Lender to the form of transfer thereof in accordance with Clause 26.4) any Dwellings within the area shown edged in red on Plan 2 or any revised plan as shall be approved by the Lender (acting reasonably having regard to the need to maintain a prudent loan to value ratio) to include the site of any Affordable Unit or Units for disposal to a Registered Provider.

"Rights" means all the Company's rights, title and interest from time to time over or in respect of the whole or any part of the Charged Property.

"Sale Agreement" means the Sale Agreement dated 5th December 2016 and made between the Company and the Forward Investments Pannal LLP.

"Satisfactory Planning Permission" has the same meaning as in the Sale Agreement



Dec 14	44,421.9	Adjusted inventory balance to 7.01 (LHA)
Dec 15	44,712.13	Inventory balance to 7.01 (LHA)
Dec 17	44,712.13	Inventory balance to 7.01 (LHA)
Dec 18	44,712.13	Inventory balance to 7.01 (LHA)
Dec 19	44,712.13	Inventory balance to 7.01 (LHA)
Dec 20	44,712.13	Inventory balance to 7.01 (LHA)
Dec 21	44,712.13	Inventory balance to 7.01 (LHA)
Dec 22	44,712.13	Inventory balance to 7.01 (LHA)
Dec 23	44,712.13	Inventory balance to 7.01 (LHA)
Dec 24	44,712.13	Inventory balance to 7.01 (LHA)
Dec 25	44,712.13	Inventory balance to 7.01 (LHA)
Dec 26	44,712.13	Inventory balance to 7.01 (LHA)
Dec 27	44,712.13	Inventory balance to 7.01 (LHA)
Dec 28	44,712.13	Inventory balance to 7.01 (LHA)
Dec 29	44,712.13	Inventory balance to 7.01 (LHA)
Dec 30	44,712.13	Inventory balance to 7.01 (LHA)
Dec 31	44,712.13	Inventory balance to 7.01 (LHA)

Page 1 of 1

Rangug.
Mammals

1987, 1992).

CyberTip

Plan :

#####

[illegible]

Bellway

WORKING GROUP
 a member of the Bureau (the Vice-President of the Bureau)

2. English Dept. Meeting: April 14, 2010

2019年12月15日 星期一
 2019年12月15日 星期一
 2019年12月15日 星期一

PREFACE

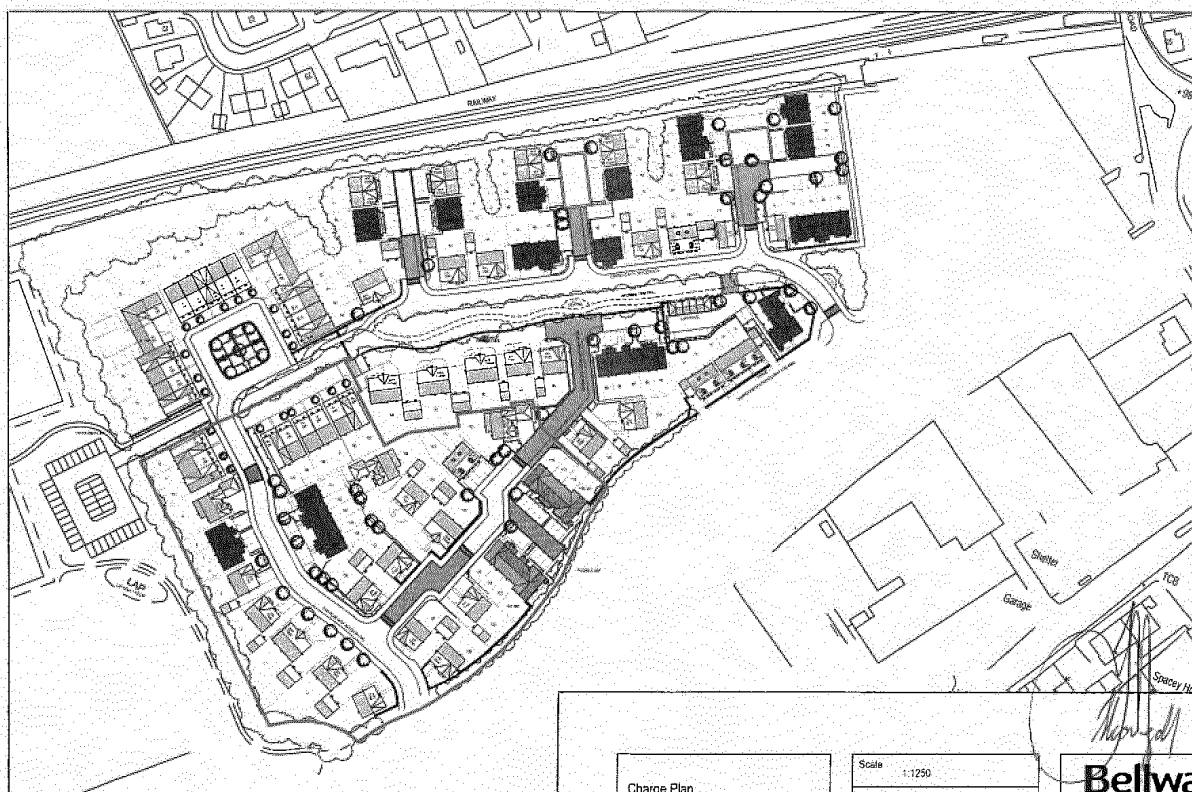
1. Name	Dr. A.
---------	--------

200 300	200 300
---------	---------

100

OFFICIAL USE ONLY

Figure 6



Charge Plan
Pannel, Harrogate

Scale 1:1250
Date Nov 18

Drawing No. PAN-001 Rev

Bellway

Wharfedale Division
is a member of the Bellway Plc Group of Companies
2 Dughaan Close, Wharfedale, West Yorkshire
LS21 7ES
Tel 01937 563 131 Fax 01937 565 147
www.bellway.co.uk

Plan 1

"Secured Liabilities" means the Deferred Consideration together with interest for late payment in accordance with the Sale Agreement

"Security Documents" means any document entered into by any person from time to time creating any Security Interest, directly or indirectly, for the obligations of the Company under the Finance Documents including, without limitation, this Mortgage.

"Security Interest" means any mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"Tax" means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

"Works Agreement" means all or any of the following as the case may be an agreement in respect of and affecting the Charged Property (whether or not also affecting other property) pursuant to the Local Government Miscellaneous Provisions) Act 1982 Section 33 and/or the Local Government Act 1972 Section 111 and/or the Highways Act 1980 Section(s) 38 and/or 278 and/or the Water Industry Act 1991 Section 104 or any provision to similar intent or an agreement with a water undertaker or a drainage undertaker (within the meaning of the Water Industry Act 1991) or the Environment Agency or an Internal Drainage Board (within the meaning of the Water Resources Act 1991 or the Land Drainage Act 1991) or other appropriate authority as to water supply or drainage of surface and/or foul water from the Property or an agreement with any competent authority or body relating to other services.

1.2 Interpretation

(a) In this Mortgage:

- (i) the contents page and clause headings are included for convenience only and do not affect the construction of this Mortgage;
- (ii) words denoting the singular include the plural and vice versa; and
- (iii) words denoting one gender include each gender and all genders.

(b) In this Mortgage, unless the context otherwise requires, references to:

- (i) persons include references to natural persons, firms, partnerships, companies, corporations, associations, organisations and trusts (in each case whether or not having a separate legal personality);
- (ii) documents, instruments and agreements (including, without limitation, this Mortgage and any document referred to in this Mortgage) are references to such documents, instruments and agreements as modified, amended, varied, supplemented or novated from time to time;

- (iii) receivers are references to receivers of whatsoever nature including, without limitation, receivers and managers and administrative receivers;
- (iv) the terms the "**Lender**" and the "**Receiver**" include, where the context so admits, references to any delegate of any such person;
- (v) a party to this Mortgage include references to its successors, transferees and assigns;
- (vi) recitals, clauses and schedules are references to recitals to this Mortgage, clauses of this Mortgage and schedules to this Mortgage; and references to this Mortgage include its schedules;
- (vii) paragraphs are references to paragraphs of the schedule in which the references appear;
- (viii) statutory provisions (where the context so admits and unless otherwise expressly provided) are construed as references to those provisions as respectively amended, consolidated, extended or re-enacted from time to time, and to any orders regulations instruments or other subordinate legislation made under the relevant statute; and
- (ix) a time of day is a reference to London time.

1.3 Sale Agreement defined terms

Unless otherwise defined in this Mortgage, terms defined in the Sale Agreement bear the same meaning in this Mortgage.

1.4 Conflict with Sale Agreement

If there is any conflict between the provisions of this Mortgage and the provisions of the Sale Agreement, the provisions of the Sale Agreement shall prevail.

2 COVENANT TO PAY

The Company shall on demand pay to the Lender or discharge, as the case may be, all the Secured Liabilities when the Secured Liabilities become due.

3 INTEREST

The Company shall pay to the Lender in respect of interest comprised in the Secured Liabilities (after as well as before any demand made or judgment obtained or the liquidation or administration of the Company) such interest at the rates and upon the terms from time to time agreed with the Lender upon such days as the Lender may from time to time determine and such interest shall be compounded in the event of it not being punctually paid with quarterly rests in accordance with the usual practice of the Lender but without prejudice to the right of the Lender to require payment of such interest when due.

- (e) do, cause or permit to be done anything which may in the opinion of the Lender, in any way depreciate, jeopardise or otherwise prejudice the value to the Lender (whether monetary or otherwise) of the whole or any part of the Charged Property.

8 REPRESENTATIONS AND WARRANTIES

8.1 General

The Company makes the representations and warranties set out in this clause to the Lender.

8.2 Ownership of the Charged Property

It is absolutely, solely and beneficially entitled to all the Charged Property as from the date it or any part of it falls to be charged under this Mortgage and the rights of the Company in respect of the Charged Property are free from any Security Interest of any kind.

8.3 No disposal

It has not sold or agreed to sell or otherwise disposed of, or agreed to dispose of, the benefit of all or any of the Company's right, title and interest in and to the Charged Property SAVE THAT the Company shall be entitled to deal with the Charged Property as envisaged by Clause 26 below

8.4 Times when representations made

The representations and warranties set forth in this clause are given and made on and as of the date of this Mortgage, shall survive the execution of this Mortgage and are continuing representations and warranties which are deemed to be repeated during the continuance of the security constituted by this Mortgage.

9 UNDERTAKINGS

The Company gives each of the undertakings contained in this clause to the Lender.

9.1 Duration

The undertakings in this clause shall remain in force during the continuance of the security constituted by this Mortgage.

9.2 To comply with statutes

The Company shall comply with all requirements of any Authority, all obligations under any statute and all byelaws and regulations relating to the whole or any part of the Charged Property.

9.3 Property Insurance

- 9.3.1 The Company shall insure and keep insured any buildings, structures and/or service media constructed on the Charged Property after the date hereof with reputable and responsible insurers previously approved by the Lender:

- (a) in such manner and to such extent as is reasonable and customary for an enterprise engaged in the same or a similar business and in the same or similar localities including, without limitation, insurance to cover loss or damage arising by fire, civil commotion, explosion, aircraft, flood, storm, tempest, burst pipes and public liability; and
- (b) in the full reinstatement cost of the Charged Property (being not less than the Deferred Consideration including, without limitation:
 - (i) architects', surveyors' and all other professional fees, demolition and shoring up costs; and
 - (ii) Value Added Tax chargeable on the cost of such reinstatement and liable to arise out of any self supply charge.

9.4 General obligations regarding insurance

The Company shall:

- (a) effect the Property Insurance in the name of the Company and shall use reasonable endeavours to procure that the interest of the Lender are noted on the policy;
- (b) duly and punctually pay all premiums and any other moneys necessary for maintaining the Property Insurance in full force and effect;
- (c) ensure that every policy of insurance relating to the Property Insurance contains a first loss payee clause and a standard mortgagee clause, whereby such insurance will not be invalidated, vitiated or avoided as against a mortgagee in the event of any misrepresentation, act, neglect or failure to disclose on the part of the insured;
- (d) produce to the Lender on request copies of all policies and all receipts for the current premiums with respect to the Property Insurance; and
- (e) immediately give notice to the Lender of any occurrence which gives rise to a claim under any policy of insurance relating to the Property Insurance.

If the Company at any time fails to perform any of its obligations contained in this clause, the Lender may effect or renew such insurance as the Lender thinks fit and the Company shall reimburse the Lender for the Costs thereby incurred on demand. Such Costs will bear interest in accordance with clause 3 (*Interest*) from the date of payment by the Lender until the date of reimbursement.

9.5 Insurance monies

- (a) Subject to the terms of the Sale Agreement, the Company shall apply any monies received by virtue of any insurance relating to the whole or any part of the Charged Property in making good, or in recouping expenditure incurred in making good, any loss or damage
- (b) This clause applies whether or not this Mortgage has become enforceable.

9.6 To repair

The Company shall at all times keep in good and substantial repair and condition, all buildings, erections and structures erected after the date hereof on and in the Charged Property and where it is uneconomic to repair any part of the Charged Property, replace such part by another similar asset of equal or greater quality and value.

9.7 To allow entry

The Company shall allow, and shall procure that any other person occupying the whole or any part of the Charged Property shall allow, the Lender and its agents, with or without surveyors, workmen or others authorised by it upon prior notice (except in an emergency) to enter the Charged Property in order to view the Charged Property, to carry out any repairs on the Charged Property which the Lender considers necessary or to do anything the Lender is entitled to do pursuant to clause 10.2 (*Lender's performance of covenants*) subject to the Lender complying with the Company's reasonable health and safety requirements

9.8 Alterations

The Company shall not:

- (a) commit any waste, or in any manner lessen the value of the Charged Property;
- (b) carry out any works on the Charged Property that would or are likely in the Lender's reasonable opinion to reduce, depreciate, jeopardise or otherwise prejudice the value to the Lender of the whole or any part of the Charged Property

It being accepted by the Company and the Lender that the development of the Property in accordance with the Satisfactory Planning Permission shall not be a breach of this clause 9.8

9.9 Title

The Company shall:

- (a) comply with, enforce and not waive, release or vary (or agree so to do) any restrictive or other covenants or obligations affecting the Charged Property;
- (b) pay all rents, rates, Taxes and outgoings however arising payable in respect of the whole or any part of the Charged Property owed by it or by the owner or occupier of the whole or any part of the Charged Property and comply with all restrictive and other covenants and obligations affecting the Charged Property;
- (c) if the Lender or the Receiver pays any such sum, reimburse the Lender or the Receiver in full, on demand, the amount of such sum together with interest at the Default Rate calculated in accordance with clause 3 (*Interest*) from the date of payment by the Lender or the Receiver until the date of reimbursement;

- (d) enforce all restrictive or other covenants and obligations owed to it by any other party; and
- (e) not waive, release or vary (or agree so to do) any obligation owed to it by any third party in respect of the Charged Land.

9.10 No creation of easements etc.

The Company shall not (otherwise than in accordance with Clause 26) grant, create, or permit to be acquired, any easement, right or privilege relating to or affecting the whole or any part of the Charged Property.

9.11 Leasing

The Company shall not (otherwise than in accordance with Clause 26):

- (a) exercise any statutory or other power of leasing, agreeing to lease or accepting surrenders of leases otherwise available to the Company;
- (b) grant or agree to grant or create any lease of any description or contractual right to occupy or use the whole or any part of the Charged Property; or
- (c) grant any licence or permission to assign, underlet or part with, or share occupation or possession, of the whole or any part of the Charged Property.

9.12 To manage

The Company shall manage the Charged Property in accordance with the principles of good estate management and in any manner that the Lender may in its discretion require.

9.13 Planning

The Company shall:

- (a) comply with all the provisions of the Planning Acts;
- (b) comply with any conditions attached to any consent under the Planning Acts relating to or affecting the Charged Property;
- (c) save as permitted under the Sale Agreement and the transfer giving effect to the Sale Agreement not carry out any development (as defined in the Planning Acts) or redevelopment on or of the Charged Property;
- (d) except with the prior written consent of the Lender, not change the use of the whole or any part of the Charged Property;
- (e) except with the prior written consent of the Lender, not make any application for any consent under the Planning Acts or implement any planning permission other than the planning permission referred to in the Sale Agreement or obtained pursuant to the provisions of the Sale Agreement

9.14 Compulsory purchase

The Company shall:

- (a) except with the prior written consent of the Lender, not consent to, or enter into any negotiations with any Authority with regard to, the acquisition of the whole or any part of the Charged Property;
- (b) if so requested by the Lender, permit the Lender or its agent or anyone engaged by the Lender to conduct such negotiations or give such consent on the Company's behalf; and
- (c) if a notice is given to the Company by an Authority that such Authority intends to acquire the whole or any part of the Charged Property and such notice contains any condition, not, at any time after the date of such notice, do or omit or suffer to be done or omitted any act or thing which may be in breach of such condition.

9.15 To give notice

The Company shall, forthwith after receipt of any notice, order, direction, designation, resolution, proposal or other matter given or made by any Authority (whether or not under the Planning Acts) and relating to the Charged Property or the area in which the Charged Property is situated (a "**notice**");

- (a) give full written particulars to the Lender of such notice;
- (b) if required by the Lender forthwith, and at the Company's cost, take all necessary steps to comply with such notice; and
- (c) at the request of the Lender, and at the Company's cost, make or join with the Lender in making such objection or representation against, in respect of, or relating to, such notice as the Lender may in its discretion require.

9.16 Environment

The Company shall:

- (a) comply with all Environmental Laws;
- (b) obtain, maintain and ensure compliance with all requisite Environmental Permits; and
- (c) implement procedures to monitor compliance with and to prevent liability under any Environmental Law.

10 COSTS AND LENDER'S PERFORMANCE OF COVENANTS

10.1 Costs undertaking

The Company shall on demand pay to the Lender or the Receiver, as the case may be, and discharge all Costs payable by it pursuant to this Mortgage on a full and unlimited indemnity basis, together with interest at the Default Rate calculated in accordance with clause 3 (*Interest*) from the date the relevant Cost was expended,

incurred or suffered (whichever is the earlier) by the Lender or the Receiver, as the case may be, until full discharge of such Cost.

10.2 Lender's performance of covenants

If the Company fails to perform any of the undertakings contained in clause 9.6 (*To repair*) to clause 9.16 (*Environment*) (inclusive), the Lender may perform any such covenant at the Company's expense and the Company shall reimburse the Lender for the Costs of such performance on demand. Nothing in this Mortgage shall oblige the Lender to perform any covenant of the Company.

11 DEFAULT

11.1 Enforcement

This Mortgage will become enforceable on the occurrence of any Event of Default or if the Company requests the Lender to appoint a receiver over the whole or any part of its undertaking or assets.

11.2 Consequences of default

On and at any time after the occurrence of an Event of Default, the Lender in its absolute discretion may by written notice to the Company:

- (a) declare the Secured Liabilities to be immediately due and payable, together with all accrued interest thereon and any other sums then owed by the Company under any Finance Document to which it is a party and, upon that declaration, such sums shall become immediately due and payable without demand or notice of any kind, all of which are hereby expressly waived by the Company; or
- (b) declare the Secured Liabilities to be due and payable on demand of the Lender; and/or
- (c) declare the security constituted by the Finance Documents to be enforceable.

12 STATUTORY POWER OF SALE

12.1 For the purposes of all powers implied by statute, and in particular the power of sale under Section 101 of the LPA (Powers incident to estate or interest in a mortgage), the Secured Liabilities will be deemed to have become due when the security created by this Mortgage becomes enforceable and Section 103 of the LPA (Regulation of exercise of power of sale) and Section 93 of the LPA (Restriction on consolidation of mortgages) will not apply.

12.2 The statutory powers of leasing conferred on the Lender are extended so as to authorise the Lender to lease, make arrangements for leases, accept surrender of leases and grant options on such terms and conditions as the Lender may in its discretion think fit. The Lender is not obliged to comply with any of the provisions of Section 99 (Leasing powers of mortgagor and mortgagee in possession) and Section 100 (Powers of mortgagor and mortgagee in possession to accept surrenders of leases) of the LPA.

- 12.3 Each of the Lender and the Receiver may exercise such person's statutory power of sale in respect of the whole or any part of the Charged Property.

13 RECEIVER

13.1 Appointment of Receiver

- (a) At any time after the security constituted by this Mortgage has become enforceable, whether or not the Lender has entered into or taken possession of the whole or any part of the Charged Property pursuant to this Mortgage:
- (i) the Lender may, by writing under the hand of any authorised officer of the Lender, appoint any person to be a receiver and/or an administrator of the Charged Property and such person shall, with effect from the date of such appointment, be a **"Receiver"**;
 - (ii) subject to the Insolvency Act the Lender may, from time to time, in similar manner, remove the Receiver and appoint another in his place; and
 - (iii) the Lender may, either at the time of appointment or at any time thereafter, fix the remuneration of the Receiver.

None of the restrictions imposed by the LPA in relation to the appointment of receivers, the giving of notice or otherwise shall apply.

- (b) The Receiver may from time to time delegate, by power of attorney or otherwise, to any person any of his powers and discretions, whether arising by statute, the provisions of this Mortgage or otherwise, upon such terms and for such periods of time as he may in his discretion think fit and may from time to time terminate any such delegation. The Lender shall not be liable to the Company for any loss or damage arising from any such delegate's act, default, neglect or misconduct of any nature whatsoever.

13.2 Powers of Receiver

The Receiver has all the powers to do or abstain from doing anything which the Company could do or abstain from doing in relation to the Charged Property including, without limitation the powers conferred by Section 109 of the LPA (Appointment, powers, remuneration and duties of receivers) and, in the case of a Receiver who is an administrative receiver, the powers conferred by Section 29 of the Insolvency Act (Definitions) and Schedule 1 to the Insolvency Act (Powers of administrator or administrative receiver), and in particular the Receiver may:

- (a) carry on, manage or concur in carrying on managing the whole or any part of the business of the Company as he may in his discretion think fit;
- (b) in each case as he may in his discretion think fit:
 - (i) manage, insure, repair, decorate, maintain, alter, improve, renew or add to the Charged Property or concur in so doing;

- (ii) commence or complete any building operations on the Charged Property; and
 - (iii) apply for and maintain any planning permissions, building regulations, approvals and any other permissions, consents or licences;
- (c) sell, exchange, convert into money and realise the Charged Property or concur in so doing by public auction or private contract and generally in such manner and on such terms as he may in his discretion think fit. Without prejudice to the generality of the foregoing, he may do any of these things for any valuable consideration, including, without limitation, cash, shares, stock, debentures or other obligations. Any such consideration may be payable in a lump sum or by instalments spread over such period as he may in his discretion think fit;
- (d) in each such case in such manner and generally on such terms as he may in his discretion think fit, with all the powers of an absolute beneficial owner:
 - (i) let, hire or lease (with or without premium) and accept surrenders of leases or tenancies or concur in so doing;
 - (ii) grant rights, options or easements over and otherwise deal with or dispose of, and exercise all rights, powers and discretions incidental to, the ownership of the Charged Property; and
 - (iii) exchange or concur in exchanging the Charged Property.

The Receiver may exercise any such power by effecting such transaction in the name or on behalf of the Company or otherwise;

- (e) without any further consent by, or notice to, the Company, exercise on its behalf, in respect of any rent, all the powers and provisions conferred on a landlord or a tenant by any legislation in force relating to such rent;
- (f) make allowances to, and re-arrangements with, any person occupying the whole or any part of the Charged Property from whom any rent and any profits may be receivable, and negotiate and agree, or refer to arbitration, any revision of rent under any leases in respect of which the rental may fall to be reviewed and accept service of, or serve, any notice received or required or deemed desirable in connection with any such review or with the exercise of any option;
- (g) for the purpose of exercising any of the powers, authorities or discretions conferred on him by or pursuant to this Mortgage or of defraying any Costs (including, without limitation, his remuneration) which are incurred by him in the exercise of such powers, authorities or discretions or for any other purpose, to raise and borrow money or incur any other liability either unsecured or secured on the Charged Property, either in priority to the security constituted by this Mortgage or otherwise, and generally on such terms as he may in his discretion think fit. No person lending such money is to be concerned to enquire as to the propriety or purpose of the exercise of such power or as to the application of any money so raised or borrowed;

- (h) make, or require the directors of the Company to make, such calls upon the shareholders of the Company in respect of any uncalled capital of the Company as the Receiver may in his discretion require and enforce payment of any call so made by action (in the name of the Company or the Receiver as the Receiver may in his discretion think fit) or otherwise;
- (i) settle or compromise any claim by, adjust any account with, refer to arbitration any dispute with, and deal with any question or demand from, any person who is, or claims to be, a creditor of the Company, as he may in his discretion think fit;
- (j) settle or compromise any claim, adjust any account, refer to arbitration any dispute and deal with any question or demand relating in any way to the Charged Property, as he may in his discretion think fit;
- (k) bring, prosecute, enforce, defend and abandon all such actions, suits and proceedings in relation to the Charged Property as he may in his discretion think fit;
- (l) promote the formation of any Subsidiary of the Company with a view to such Subsidiary purchasing, leasing, licensing or otherwise acquiring an interest in the Charged Property;
- (m) arrange for the purchase, lease, licence or acquisition of an interest in the Charged Property by any such Subsidiary for any valuable consideration, including, without limitation, cash, shares, debentures, loan stock, convertible loan stock or other securities, profits or a sum calculated by reference to profits, turnover, royalties, licence fees or otherwise, whether or not secured on the undertaking or assets of such Subsidiary and whether or not such consideration is payable or receivable in a lump sum or at any time or any number of times by instalments spread over such period, as the Receiver may in his discretion think fit;
- (n) arrange for such Subsidiary to trade or cease to trade as the Receiver may in his discretion think fit;
- (o) appoint and discharge any manager, officer, agent, professional adviser, employee and any other person, upon such terms as he may in his discretion think fit;
- (p) give valid receipts for all monies and execute all assurances and things which he may in his discretion think proper or desirable for realising the Charged Property;
- (q) conduct and complete all investigations, studies, sampling and testing and all remedial, removal and other actions, whether required under Environmental Law or by the Lender or otherwise and comply with all lawful orders and directives of all Authorities regarding Environmental Law; and
- (r) do all such other acts and things as the Receiver may in his discretion consider to be incidental or conducive to any of the matters or powers set out in this Mortgage or otherwise incidental or conducive to the preservation, improvement or realisation of the Charged Property.

13.3 Receiver as agent of the Company

The Receiver is at all times and for all purposes the agent of the Company. Subject to the provisions of the Insolvency Act, the Company is solely responsible for all the Receiver's acts, defaults, neglect and misconduct of any nature whatsoever and for his remuneration and Costs, to the exclusion of liability on the part of the Lender.

13.4 No obligation

The Receiver is not obliged to exercise any of the powers set out in this clause.

13.5 Several power

Where more than one Receiver is appointed, each Receiver has the power to act severally unless the Lender specifies otherwise in the appointment of such Receiver.

13.6 Powers exercisable by the Lender

- (a) The Lender may exercise all powers granted to the Receiver by this Mortgage, whether as attorney of the Company or otherwise.
- (b) The powers of the Receiver set out above are in addition to, and without prejudice to, all statutory and other powers of the Lender as provided in clause 12 (*Statutory Power of Sale*) or otherwise and so that, inter alia, such powers are and remain exercisable by the Lender in respect of that part of the Charged Property in respect of which no appointment of a Receiver by the Lender is from time to time subsisting.

13.7 Application of proceeds

The provisions of Sections 99 to 109 inclusive of the LPA are varied and extended to the extent that all monies received by the Receiver be applied in the following order:

- (a) in full payment of his remuneration and the Costs of realisation including, without limitation, all Costs of, or incidental to, any exercise of any power referred to in this Mortgage, including, without limitation, all outgoings paid by the Receiver;
- (b) providing for the matters specified in paragraphs (i) to (iii) inclusive of Section 109(8) of the LPA (Appointment, powers, remuneration and duties of receiver);
- (c) in or towards satisfaction of any debts or other imposts which are by statute made payable in preference to the Secured Liabilities to the extent to which such debts or imposts are made so payable;
- (d) if so required by the Lender in its discretion, in or towards satisfaction of the Secured Liabilities; and
- (e) to the person entitled to any surplus.

17 WORKS AGREEMENTS

The Lender shall, at the request of the Company within 15 working days of request consent to and join in any Works Agreement as are required to procure the adoption dedication or transfer of any land required under the Works Agreement or for the provision of infrastructure on the Charged Property or for the implementation of the Satisfactory Planning Permission such Works Agreement to be in a form first approved by the Lender's Solicitors such approval not to be unreasonably withheld or delayed and the Company and its successors in title shall indemnify and keep the Lender indemnified against all actions, proceedings, claims, demands, losses, costs, expenses, damages and liabilities whatsoever arising from complying with a request of the Company pursuant to this clause 17 and entering into any such Works Agreement;

18 CUMULATIVE AND CONTINUING SECURITY

- 18.1 This Mortgage is a continuing security to the Lender regardless of any intermediate payment or discharge of the whole or any part of the Secured Liabilities and will not be prejudiced or affected by any act, omission or circumstance which, but for this clause, might affect or diminish its effectiveness.
- 18.2 The security constituted by this Mortgage is in addition to, is not in substitution for, is without prejudice to, and does not merge with, any rights whatsoever which the Lender may have, whether in respect of the Secured Liabilities or otherwise, including, without limitation, any rights arising under any other Security Interest, any bill, note, guarantee, contract or applicable rule of law.
- 18.3 Any receipt, release or discharge of the security constituted by, or of any liability arising under, this Mortgage shall not release or discharge the Company from any liability which may exist independently of this Mortgage to the Lender.
- 18.4 Where the security constituted by this Mortgage initially takes effect as a collateral or further security to any other Security Interest held by the Lender then, notwithstanding any receipt, release or discharge given in respect of such other Security Interest, this Mortgage shall take effect as an independent security for any monies, liabilities or other sums secured by such other Security Interest.

19 AVOIDANCE OF PAYMENTS

- 19.1 No assurance, security or payment which may be avoided under the law or subject to an order of the court made under any law relating to bankruptcy, insolvency, administration or winding-up, including, without limitation, the Insolvency Act, and no release, settlement or discharge given or made by the Lender on the faith of any such assurance, security or payment, prejudices or affects the right of the Lender:
 - (a) to recover any monies from the Company (including, without limitation, any monies which it is compelled to refund under Chapter X (Malpractice before and during liquidation; penalisation of companies and company officers; investigations and prosecutions) of the Insolvency Act and any Costs payable by it incurred in connection with such process); or
 - (b) to enforce the security constituted by this Mortgage to the full extent of the Secured Liabilities.

19.2 The Lender may at its discretion retain the security so created as security for the Secured Liabilities for a period of one month plus any statutory period within which any such assurance, security or payment can be avoided or invalidated notwithstanding any release, settlement, discharge or arrangement given or made by the Lender.

19.3 If at any time within the period referred to in clause 19.2 any person takes any step whatsoever relating to (i) the winding-up or administration of the Company, or (ii) any arrangement with the creditors of the Company, the Lender may retain the whole or any part of the security constituted by this Mortgage for such further period as the Lender may in its discretion think fit. Such security will be deemed to have been held and remained held by the Lender as security for the payment to the Lender of the Secured Liabilities.

20 PRIOR CHARGES

20.1 If there subsists any prior Security Interest against the Charged Property and either, any step is taken to exercise any power or remedy conferred by such Security Interest or the Lender or the Receiver exercises any power of sale pursuant to this Mortgage, the Lender may redeem such prior Security Interest or procure the transfer of such Security Interest to itself and may settle and pass the accounts of the person entitled to such Security Interest. Any accounts so settled and passed are conclusive and binding on the Company.

20.2 The Company shall reimburse the Lender for any Costs incurred by the Lender in exercise of its rights under this clause.

21 PAYMENTS AND WITHHOLDING TAXES

The Company shall pay and discharge the Secured Liabilities without any set-off, counterclaim, restriction or condition, without regard to any equities between the Company and the Lender and free and clear of, and without deduction or withholding for, or on account of, any Taxes, except to the extent that the Company is required by law to deduct or withhold any Taxes on any amounts payable under this Mortgage, in which case it shall pay to the Lender such additional amount as may be necessary in order to ensure that the net amount received by the Lender after the required deduction or withholding (including, without limitation, any required deduction or withholding on such additional amount) be equal to the amount that the Lender would have received had no such deduction or withholding been made. Any additional amount paid under this clause shall be treated as agreed compensation and not as interest.

22 CURRENCY

22.1 All monies received or held by the Lender or any Receiver in respect of the Secured Liabilities may, from time to time after demand has been made, be converted into such other currency as the Lender in its absolute discretion considers necessary or desirable to cover the obligations and liabilities actual or contingent of the Company in that other currency at the Lender's prevailing spot rate of exchange for purchasing that other currency with the existing currency.

22.2 If and to the extent that the Company fails to pay the amount due on demand the Lender may in its absolute discretion without notice to the Company purchase at any

time thereafter so much of any currency as the Lender considers necessary or desirable to cover the obligations and liabilities of the Company in such currency hereby secured at the Lender's prevailing spot rate of exchange for purchasing such currency with sterling and the Company hereby agrees to indemnify the Lender against the full sterling cost incurred by the Lender for such purchase.

22.3 Neither the Lender nor any Receiver shall be liable to the Company for any loss resulting from any fluctuation in exchange rates before or after the exercise of the foregoing powers.

22.4 No payment to the Lender (whether under any judgment or court order or otherwise) shall discharge the obligation or liability of the Company in respect of which it was made unless and until the Lender shall have received payment in full in the currency in which such obligation or liability was incurred and to the extent that the amount of any such payment shall, on actual conversion into such currency, fall short of such obligation or liability actual or contingent expressed in that currency the Lender shall have a further separate cause of action against the Company, shall be entitled to enforce the security constituted by this Mortgage to recover the amount of the shortfall and such amount will bear interest in accordance with clause 3 (*Interest*) from the date of payment by the Lender until the date of reimbursement.

23 ASSIGNMENT

Neither the Lender nor the Company may assign, transfer, novate or dispose of any of or any interest in, its rights and obligations under this Mortgage, save as provided in the Sale Agreement.

24 WAIVERS

No failure or delay or other relaxation or indulgence on the part of the Lender to exercise any power, right or remedy shall operate as a waiver thereof or shall any single or partial exercise or waiver of any power, right or remedy preclude its further exercise or the exercise of any other power, right or remedy.

25 SEVERABILITY

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

26 LAND REGISTRY, RELEASES AND CONSENT TO DISPOSALS

26.1 The Company hereby consents to the entry of the following restriction in the Proprietorship Register of any registered land forming part of the Charged Property:

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, is to be registered without a certificate signed by the proprietor for the time being of the charge dated [?] in favour of ICG-Longbow Debt Investments No.4 S.A.R.L. referred to in the charges register (or their conveyancer)".

- 26.2 The Company authorises the Lender to make an application on Form RX1 (or such other form as may be prescribed from time to time) to enter this restriction against the relevant registered estate.
- 26.3 Immediately upon the payment of the whole of the Deferred Consideration due and the discharge of any other Secured Liabilities the Lender will give to the Company a Release to release the Charged Property and the restriction created pursuant to Clause 26.1 (together with any relevant Land Registry form(s))
- 26.4 Within ten (10) working days of the receipt of a written request to do so or if later the date of approval by the Lender (acting reasonably) of the form of transfer applicable to the Releasable Dwellings the Lender shall provide to the Company ten (10) executed forms DS3 and ten (10) signed forms RX4 and a Consent in relation to the Releasable Dwellings which the Lender authorises the Company (acting in good faith at all times) to release a form DS3 and form RX4 and a copy of the Consent on completion of the disposal of a Releasable Dwelling on arm's length terms to a third party donee of such Releasable Dwelling (or its solicitors).
- 26.5 The procedure outlined in clause 26.4 may be repeated once provided that the number of form DS3 and RX4's requested at any particular time are required by the Company having regard to
- (a) the build programme and projected completion dates of the sale of Releasable Dwellings (including Affordable Units, as applicable) within the Charged Property; and
 - (b) the date on which the Deferred Consideration is due to be paid.
- 26.6 In the event that Land Registry forms DS3 and/or RX4 are subsequently replaced by an equivalent, then the Lender shall provide to the Company the same number of executed or (as appropriate) signed Land Registry form equivalents within 10 working days following a request made by the Company (less any forms DS3 and/or RX4 supplied by the Lender to the Company under this clause 26.5 which have at the date of such request been provided to a donee and remain valid) and in such circumstances the provisions of clauses 26.4 and **Error! Reference source not found.** (mutatis mutandis) shall apply in relation to such Land Registry form equivalents.
- 26.7 The Lender shall also provide the Company within 10 working days following a request made by the Company an executed form DS3 and a signed form RX4 or (where applicable) Land Registry equivalents in like terms to 26.4 and 26.6 (mutatis mutandis) in respect of any Permitted Disposal.
- 26.8 In respect of any Permitted Disposal the Lender shall provide to the Company within 10 working days following a request made by the Company a signed/executed Consent in relation to such dealing which will ensure that such dealing can be registered at the Land Registry.

27 NOTICES

27.1 Communications in writing

Any communication to be made under or in connection with this Mortgage shall be made in writing and, unless otherwise stated, may be made by fax or letter.

27.2 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Mortgage is:

- (a) in the case of the Company, that identified with its name below; and
- (b) in the case of the Lender, that identified with its name below,

or any substitute address, fax number or department or officer as the Party may notify to the other by not less than five Business Days' Notice.

27.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with this Mortgage will only be effective:
 - (i) if by way of fax, when received in legible form; or
 - (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under clause 27.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Lender will be effective only when actually received by the Lender and then only if it is expressly marked for the attention of the department or officer identified with the Lender's signature below (or any substitute department or officer as the Lender shall specify for this purpose).

28 GOVERNING LAW

This Mortgage and any non-contractual obligations arising out of or in connection with it are governed by English law.

29 ENFORCEMENT

29.1 Jurisdiction of English courts

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Mortgage (including a dispute regarding the existence, validity or termination of this Mortgage) or any non-contractual obligation arising out of or in connection with this Mortgage (a "**Dispute**").

- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This clause is for the benefit of the Secured Parties only. As a result, the Secured Parties shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

30 COUNTERPARTS

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

31 THIRD PARTY RIGHTS

Unless expressly provided in this Mortgage, no term of this Mortgage is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

This Mortgage has been executed and delivered as a deed on the date stated at the beginning of this Mortgage.

SCHEDULE

The Charged Property

Short description of property	Title number (if any)
Freehold property shown edged red on Plan 1 being part of the Land on the Southwest Side of Station Road Pannal Harrogate	NYK188958 and NYK269519

EXECUTION PAGE

The Company

EXECUTED and DELIVERED as a DEED)
for and on behalf of **BELLWAY HOMES**)
LIMITED
by:)

.....
Director

.....
Director/Secretary

Notice Details:

Address:

Fax No:

Telephone No:

Attention:

The Lender

Executed as a deed by **ICG-LONGBOW**
DEBT INVESTMENTS NO.4 S.A.R.L a
company incorporated in Luxembourg by [Authorised signatory]
persons who in accordance
with the laws of that territory are
acting under the authority of the company

.....
[Authorised signatory]

Notice Details:

Address:

Fax No:

Telephone No:

Attention:

DATED

10 January

2018

BELLWAY HOMES LIMITED

as Company

(1)

And

ICG-LONGBOW DEBT INVESTMENTS No.4

S.A.R.L.

as Lender

(2)

LEGAL MORTGAGE

Land on the Southwest side of Station Road Pannal

CONTENTS

<u>1</u>	<u>DEFINITIONS AND INTERPRETATION</u>	1
<u>2</u>	<u>COVENANT TO PAY</u>	5
<u>3</u>	<u>INTEREST</u>	5
<u>4</u>	<u>SECURITY</u>	6
<u>5</u>	<u>FURTHER ASSURANCE</u>	6
<u>6</u>	<u>DEPOSIT OF DOCUMENTS AND TITLE DEEDS</u>	6
<u>7</u>	<u>NEGATIVE PLEDGE</u>	6
<u>8</u>	<u>REPRESENTATIONS AND WARRANTIES</u>	7
<u>9</u>	<u>UNDERTAKINGS</u>	7
<u>10</u>	<u>COSTS AND LENDER'S PERFORMANCE OF COVENANTS</u>	11
<u>11</u>	<u>DEFAULT</u>	12
<u>12</u>	<u>STATUTORY POWER OF SALE</u>	12
<u>13</u>	<u>RECEIVER</u>	13
<u>14</u>	<u>PROTECTION OF THIRD PARTIES</u>	17
<u>15</u>	<u>NO LIABILITY AS MORTGAGEE IN POSSESSION</u>	17
<u>16</u>	<u>POWER OF ATTORNEY</u>	17
<u>17</u>	<u>WORKS AGREEMENTS</u>	18
<u>18</u>	<u>CUMULATIVE AND CONTINUING SECURITY</u>	18
<u>19</u>	<u>AVOIDANCE OF PAYMENTS</u>	18
<u>20</u>	<u>PRIOR CHARGES</u>	19
<u>21</u>	<u>PAYMENTS AND WITHHOLDING TAXES</u>	19
<u>22</u>	<u>CURRENCY</u>	19
<u>23</u>	<u>ASSIGNMENT</u>	20
<u>24</u>	<u>WAIVERS</u>	20
<u>25</u>	<u>SEVERABILITY</u>	20
<u>26</u>	<u>LAND REGISTRY, RELEASES AND CONSENT TO DISPOSALS</u>	20

<u>27</u>	<u>NOTICES</u>	21
<u>28</u>	<u>GOVERNING LAW</u>	22
<u>29</u>	<u>ENFORCEMENT</u>	22
<u>30</u>	<u>COUNTERPARTS</u>	23
<u>31</u>	<u>THIRD PARTY RIGHTS</u>	23
	<u>SCHEDULE THE CHARGED PROPERTY</u>	24

DATE OF LEGAL MORTGAGE

10 January 2018

PARTIES

- (1) **BELLWAY HOMES LIMITED** incorporated and registered in England and Wales with company number 670176 whose registered office is at Seaton Burn House, Dudley Lane, Seaton Burn, Newcastle upon Tyne NE13 6BE (the "**Company**"); and
- (2) **ICG-LONGBOW DEBT INVESTMENTS No.4 S.A.R.L.** (incorporated in Luxembourg) care of 2 Boulevard Konrad Adenauer, L1115, Luxembourg, Luxembourg (the "**Lender**").

INTRODUCTION

- A The Forward Investments Pannal LLP and the Company have entered into an agreement for the sale and purchase of (inter alia) the Charged Property (as defined below) pursuant to which the Company will make a payment of £6,100,000.00 by way of deferred consideration to the Forward Investments Pannal LLP subject to and upon the terms and conditions contained in the Sale Agreement (as defined below).
- B As a condition precedent to and pursuant to the provisions of the Sale Agreement the Company has agreed to enter into this Mortgage for the purpose of providing security to the Lender for the Secured Liabilities.

IT IS AGREED THAT:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Mortgage:

"Affordable Housing" shall have the same meaning as in the Sale Agreement

"Authority" means any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other organisation.

"Charged Property" means the whole or any part of the means all the property short particulars of which are set out in the Schedule (including, without limitation, all Fixtures on such property) which is mortgaged or charged to the Lender pursuant to this Mortgage and which is not the subject of a Release.

"Consent" means a written consent from the Lender confirming the Lender's consent to the grant of easements contained within the Transfer Deed which is used by the Company to transfer individual dwellings to third party purchasers

"Costs" means all costs, charges or expenses of whatsoever nature (including, without limitation, legal fees) including, without limitation, disbursements and any Value Added Tax to be charged on such costs, charges, expenses and disbursements.

"Default Rate" means the rate which is 4 per cent. per annum above the base rate of Barclays Bank plc from time to time.

"Deferred Consideration" means £6,100,000.00

"Disposal" means any transfer or a lease for any term or similar disposal

"Dwellings" means any dwelling house or apartment including its curtilage constructed or to be constructed on the Property or on any part or parts thereof

"Environment" means all of the air, water and land including air within buildings and other natural or manmade structures above or below ground.

"Environmental Law" means any applicable law or regulation which relates to:

- (a) the pollution or protection of the Environment;
- (b) harm to or the protection of human health;
- (c) the conditions of the workplace; or
- (d) any emission or substance capable of causing harm to any living organism or the Environment.

"Environmental Permits" means any permit and other Authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business conducted on or from the Charged Property

"Event of Default" means any event or circumstance whereby the Company does not comply with any provision of the Finance Documents.

"Finance Documents" means this Mortgage and clause 23.3] of the Sale Agreement.

"Fixtures" means all assets of whatsoever nature, apart from land and buildings, forming part of any freehold or leasehold property owned by the Company and deemed by law to be immovable property.

"Insolvency Act" means the Insolvency Act 1986.

"Laws" means any European Community legislation (including any regulation or directive), the common law, United Kingdom legislation (including subordinate regulation and any order or regulations made under such legislation), by law or order of any court or administrative tribunal which is in force in the United Kingdom.

"LPA" means the Law of Property Act 1925.

"Permitted Disposal" means all or any of:

- (e) the disposal of any part of the Charged Property required for service media, electricity sub stations, pumping stations, gas governor stations or other similar installations to a local or other authority or other statutory undertaking, service company or other relevant entity;

- (f) the disposal of any part of the Charged Property to the relevant highway authority for the purpose of adoption of any roads and/or footpaths and/or cycleways to be constructed on the Charged Property;
- (g) the disposal of any part of the Charged Property comprising common or retained parts of any apartment block;
- (h) the disposal of any part of the Charged Property to a local authority or other statutory body for use as public open space or any other public amenity area pursuant to an agreement under section 106 of the Town and Country Planning Act 1990 or otherwise,

in each case in a form first approved by the Lender's Solicitors such approval not to be unreasonably withheld or delayed.

"Plan 1" and "Plan 2" mean the plans annexed hereto and marked accordingly.

"Planning Acts" means the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning and Compensation Act 1991, the Local Government Planning and Land Act 1980 and the Ancient Monuments and Archaeological Areas Act 1979.

"Property Insurance" means the insurance referred to in clause 9.3 (*Property Insurance*).

"Receiver" means any receiver appointed pursuant to this Mortgage.

"Registered Provider" means a private registered provider within the meaning of the Housing and Regeneration Act 2008 which is a charitable body.

"Release" a Land Registry form DS3 or form DS1 or such other form as shall be appropriate to release (when dated) the Charged Property or any interest in the Charged Property or any part of parts of the Charged Property from this Legal Charge together with a Land Registry form RX4 to the relevant part or parts of the Charged Property from the restriction which is noted at clause 21.6 below;

Releasable Dwellings mean (subject to the prior approval of the Lender to the form of transfer thereof in accordance with Clause 26.4) any Dwellings within the area shown edged in red on Plan 2 or any revised plan as shall be approved by the Lender (acting reasonably having regard to the need to maintain a prudent loan to value ratio) to include the site of any Affordable Unit or Units for disposal to a Registered Provider.

"Rights" means all the Company's rights, title and interest from time to time over or in respect of the whole or any part of the Charged Property.

"Sale Agreement" means the Sale Agreement dated 5th December 2016 and made between the Company and the Forward Investments Pannal LLP.

"Satisfactory Planning Permission" has the same meaning as in the Sale Agreement

"Secured Liabilities" means the Deferred Consideration together with interest for late payment in accordance with the Sale Agreement

"Security Documents" means any document entered into by any person from time to time creating any Security Interest, directly or indirectly, for the obligations of the Company under the Finance Documents including, without limitation, this Mortgage.

"Security Interest" means any mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"Tax" means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

"Works Agreement" means all or any of the following as the case may be an agreement in respect of and affecting the Charged Property (whether or not also affecting other property) pursuant to the Local Government Miscellaneous Provisions) Act 1982 Section 33 and/or the Local Government Act 1972 Section 111 and/or the Highways Act 1980 Section(s) 38 and/or 278 and/or the Water Industry Act 1991 Section 104 or any provision to similar intent or an agreement with a water undertaker or a drainage undertaker (within the meaning of the Water Industry Act 1991) or the Environment Agency or an Internal Drainage Board (within the meaning of the Water Resources Act 1991 or the Land Drainage Act 1991) or other appropriate authority as to water supply or drainage of surface and/or foul water from the Property or an agreement with any competent authority or body relating to other services.

1.2 Interpretation

(a) In this Mortgage:

- (i) the contents page and clause headings are included for convenience only and do not affect the construction of this Mortgage;
- (ii) words denoting the singular include the plural and vice versa; and
- (iii) words denoting one gender include each gender and all genders.

(b) In this Mortgage, unless the context otherwise requires, references to:

- (i) persons include references to natural persons, firms, partnerships, companies, corporations, associations, organisations and trusts (in each case whether or not having a separate legal personality);
- (ii) documents, instruments and agreements (including, without limitation, this Mortgage and any document referred to in this Mortgage) are references to such documents, instruments and agreements as modified, amended, varied, supplemented or novated from time to time;

- (iii) receivers are references to receivers of whatsoever nature including, without limitation, receivers and managers and administrative receivers;
- (iv) the terms the "**Lender**" and the "**Receiver**" include, where the context so admits, references to any delegate of any such person;
- (v) a party to this Mortgage include references to its successors, transferees and assigns;
- (vi) recitals, clauses and schedules are references to recitals to this Mortgage, clauses of this Mortgage and schedules to this Mortgage; and references to this Mortgage include its schedules;
- (vii) paragraphs are references to paragraphs of the schedule in which the references appear;
- (viii) statutory provisions (where the context so admits and unless otherwise expressly provided) are construed as references to those provisions as respectively amended, consolidated, extended or re-enacted from time to time, and to any orders regulations instruments or other subordinate legislation made under the relevant statute; and
- (ix) a time of day is a reference to London time.

1.3 Sale Agreement defined terms

Unless otherwise defined in this Mortgage, terms defined in the Sale Agreement bear the same meaning in this Mortgage.

1.4 Conflict with Sale Agreement

If there is any conflict between the provisions of this Mortgage and the provisions of the Sale Agreement, the provisions of the Sale Agreement shall prevail.

2 COVENANT TO PAY

The Company shall on demand pay to the Lender or discharge, as the case may be, all the Secured Liabilities when the Secured Liabilities become due.

3 INTEREST

The Company shall pay to the Lender in respect of interest comprised in the Secured Liabilities (after as well as before any demand made or judgment obtained or the liquidation or administration of the Company) such interest at the rates and upon the terms from time to time agreed with the Lender upon such days as the Lender may from time to time determine and such interest shall be compounded in the event of it not being punctually paid with quarterly rests in accordance with the usual practice of the Lender but without prejudice to the right of the Lender to require payment of such interest when due.

4 SECURITY

By way of continuing security in favour of the Lender for the payment and discharge of the Secured Liabilities, the Company with full title guarantee hereby charges to the Lender by way of first fixed charge by way of legal mortgage, the Charged Property and all Rights relating to the Charged Property in existence at the date of this Mortgage.

5 FURTHER ASSURANCE

The Company shall:

- (a) forthwith, at any time if so required by the Lender, at its own expense execute and deliver to the Lender such further legal or other mortgages, charges, assignments, securities, authorities and documents as the Lender may in its discretion require of the whole or such part of the Charged Property as the Lender may specify, in such form as the Lender may in its discretion require, to secure the payment or discharge of the Secured Liabilities, including, without limitation, in order to vest the whole or such part of the Charged Property in the Lender, the nominee of the Lender or in any purchaser from the Lender or the Receiver;
- (b) pending the execution and delivery of any such assignments, hold such Charged Property upon trust for the Lender subject to the provisions of this Mortgage; and
- (c) pending the execution and delivery of any such mortgages, charges, or other security, hold such Charged Property subject to the provisions of this Mortgage.

6 DEPOSIT OF DOCUMENTS AND TITLE DEEDS

To the extent relevant the Company shall deposit with the Lender (and the Lender during the continuance of this security may hold and retain) all deeds and documents of title relating to the Charged Property.

7 NEGATIVE PLEDGE

Save as otherwise provided in Clause 26 below, the Company shall not:

- (a) create, purport to create or allow to subsist, any Security Interest over the whole or any part of the Charged Property;
- (b) convey, assign, transfer, or agree to convey, assign or transfer the whole or any part of the Charged Property;
- (c) permit or agree to any variation of the rights attaching to the whole or any part of the Charged Property;
- (d) grant or agree to grant any occupational lease, licence or other right to occupy or use the Charged Property; or

- (e) do, cause or permit to be done anything which may in the opinion of the Lender, in any way depreciate, jeopardise or otherwise prejudice the value to the Lender (whether monetary or otherwise) of the whole or any part of the Charged Property.

8 REPRESENTATIONS AND WARRANTIES

8.1 General

The Company makes the representations and warranties set out in this clause to the Lender.

8.2 Ownership of the Charged Property

It is absolutely, solely and beneficially entitled to all the Charged Property as from the date it or any part of it falls to be charged under this Mortgage and the rights of the Company in respect of the Charged Property are free from any Security Interest of any kind.

8.3 No disposal

It has not sold or agreed to sell or otherwise disposed of, or agreed to dispose of, the benefit of all or any of the Company's right, title and interest in and to the Charged Property SAVE THAT the Company shall be entitled to deal with the Charged Property as envisaged by Clause 26 below

8.4 Times when representations made

The representations and warranties set forth in this clause are given and made on and as of the date of this Mortgage, shall survive the execution of this Mortgage and are continuing representations and warranties which are deemed to be repeated during the continuance of the security constituted by this Mortgage.

9 UNDERTAKINGS

The Company gives each of the undertakings contained in this clause to the Lender.

9.1 Duration

The undertakings in this clause shall remain in force during the continuance of the security constituted by this Mortgage.

9.2 To comply with statutes

The Company shall comply with all requirements of any Authority, all obligations under any statute and all byelaws and regulations relating to the whole or any part of the Charged Property.

9.3 Property Insurance

- 9.3.1 The Company shall insure and keep insured any buildings, structures and/or service media constructed on the Charged Property after the date hereof with reputable and responsible insurers previously approved by the Lender:

- (a) in such manner and to such extent as is reasonable and customary for an enterprise engaged in the same or a similar business and in the same or similar localities including, without limitation, insurance to cover loss or damage arising by fire, civil commotion, explosion, aircraft, flood, storm, tempest, burst pipes and public liability; and
- (b) in the full reinstatement cost of the Charged Property (being not less than the Deferred Consideration including, without limitation:
 - (i) architects', surveyors' and all other professional fees, demolition and shoring up costs; and
 - (ii) Value Added Tax chargeable on the cost of such reinstatement and liable to arise out of any self supply charge.

9.4 **General obligations regarding insurance**

The Company shall:

- (a) effect the Property Insurance in the name of the Company and shall use reasonable endeavours to procure that the interest of the Lender are noted on the policy;
- (b) duly and punctually pay all premiums and any other moneys necessary for maintaining the Property Insurance in full force and effect;
- (c) ensure that every policy of insurance relating to the Property Insurance contains a first loss payee clause and a standard mortgagee clause, whereby such insurance will not be invalidated, vitiated or avoided as against a mortgagee in the event of any misrepresentation, act, neglect or failure to disclose on the part of the insured;
- (d) produce to the Lender on request copies of all policies and all receipts for the current premiums with respect to the Property Insurance; and
- (e) immediately give notice to the Lender of any occurrence which gives rise to a claim under any policy of insurance relating to the Property Insurance.

If the Company at any time fails to perform any of its obligations contained in this clause, the Lender may effect or renew such insurance as the Lender thinks fit and the Company shall reimburse the Lender for the Costs thereby incurred on demand. Such Costs will bear interest in accordance with clause 3 (*Interest*) from the date of payment by the Lender until the date of reimbursement.

9.5 **Insurance monies**

- (a) Subject to the terms of the Sale Agreement, the Company shall apply any monies received by virtue of any insurance relating to the whole or any part of the Charged Property in making good, or in recouping expenditure incurred in making good, any loss or damage
- (b) This clause applies whether or not this Mortgage has become enforceable.

9.6 To repair

The Company shall at all times keep in good and substantial repair and condition, all buildings, erections and structures erected after the date hereof on and in the Charged Property and where it is uneconomic to repair any part of the Charged Property, replace such part by another similar asset of equal or greater quality and value.

9.7 To allow entry

The Company shall allow, and shall procure that any other person occupying the whole or any part of the Charged Property shall allow, the Lender and its agents, with or without surveyors, workmen or others authorised by it upon prior notice (except in an emergency) to enter the Charged Property in order to view the Charged Property, to carry out any repairs on the Charged Property which the Lender considers necessary or to do anything the Lender is entitled to do pursuant to clause 10.2 (*Lender's performance of covenants*) subject to the Lender complying with the Company's reasonable health and safety requirements

9.8 Alterations

The Company shall not:

- (a) commit any waste, or in any manner lessen the value of the Charged Property;
- (b) carry out any works on the Charged Property that would or are likely in the Lender's reasonable opinion to reduce, depreciate, jeopardise or otherwise prejudice the value to the Lender of the whole or any part of the Charged Property

It being accepted by the Company and the Lender that the development of the Property in accordance with the Satisfactory Planning Permission shall not be a breach of this clause 9.8

9.9 Title

The Company shall:

- (a) comply with, enforce and not waive, release or vary (or agree so to do) any restrictive or other covenants or obligations affecting the Charged Property;
- (b) pay all rents, rates, Taxes and outgoings however arising payable in respect of the whole or any part of the Charged Property owed by it or by the owner or occupier of the whole or any part of the Charged Property and comply with all restrictive and other covenants and obligations affecting the Charged Property;
- (c) if the Lender or the Receiver pays any such sum, reimburse the Lender or the Receiver in full, on demand, the amount of such sum together with interest at the Default Rate calculated in accordance with clause 3 (*Interest*) from the date of payment by the Lender or the Receiver until the date of reimbursement;

- (d) enforce all restrictive or other covenants and obligations owed to it by any other party; and
- (e) not waive, release or vary (or agree so to do) any obligation owed to it by any third party in respect of the Charged Land.

9.10 No creation of easements etc.

The Company shall not (otherwise than in accordance with Clause 26) grant, create, or permit to be acquired, any easement, right or privilege relating to or affecting the whole or any part of the Charged Property.

9.11 Leasing

The Company shall not (otherwise than in accordance with Clause 26):

- (a) exercise any statutory or other power of leasing, agreeing to lease or accepting surrenders of leases otherwise available to the Company;
- (b) grant or agree to grant or create any lease of any description or contractual right to occupy or use the whole or any part of the Charged Property; or
- (c) grant any licence or permission to assign, underlet or part with, or share occupation or possession, of the whole or any part of the Charged Property.

9.12 To manage

The Company shall manage the Charged Property in accordance with the principles of good estate management and in any manner that the Lender may in its discretion require.

9.13 Planning

The Company shall:

- (a) comply with all the provisions of the Planning Acts;
- (b) comply with any conditions attached to any consent under the Planning Acts relating to or affecting the Charged Property;
- (c) save as permitted under the Sale Agreement and the transfer giving effect to the Sale Agreement not carry out any development (as defined in the Planning Acts) or redevelopment on or of the Charged Property;
- (d) except with the prior written consent of the Lender, not change the use of the whole or any part of the Charged Property;
- (e) except with the prior written consent of the Lender, not make any application for any consent under the Planning Acts or implement any planning permission other than the planning permission referred to in the Sale Agreement or obtained pursuant to the provisions of the Sale Agreement

9.14 Compulsory purchase

The Company shall:

- (a) except with the prior written consent of the Lender, not consent to, or enter into any negotiations with any Authority with regard to, the acquisition of the whole or any part of the Charged Property;
- (b) if so requested by the Lender, permit the Lender or its agent or anyone engaged by the Lender to conduct such negotiations or give such consent on the Company's behalf; and
- (c) if a notice is given to the Company by an Authority that such Authority intends to acquire the whole or any part of the Charged Property and such notice contains any condition, not, at any time after the date of such notice, do or omit or suffer to be done or omitted any act or thing which may be in breach of such condition.

9.15 To give notice

The Company shall, forthwith after receipt of any notice, order, direction, designation, resolution, proposal or other matter given or made by any Authority (whether or not under the Planning Acts) and relating to the Charged Property or the area in which the Charged Property is situated (a "**notice**");

- (a) give full written particulars to the Lender of such notice;
- (b) if required by the Lender forthwith, and at the Company's cost, take all necessary steps to comply with such notice; and
- (c) at the request of the Lender, and at the Company's cost, make or join with the Lender in making such objection or representation against, in respect of, or relating to, such notice as the Lender may in its discretion require.

9.16 Environment

The Company shall:

- (a) comply with all Environmental Laws;
- (b) obtain, maintain and ensure compliance with all requisite Environmental Permits; and
- (c) implement procedures to monitor compliance with and to prevent liability under any Environmental Law.

10 COSTS AND LENDER'S PERFORMANCE OF COVENANTS

10.1 Costs undertaking

The Company shall on demand pay to the Lender or the Receiver, as the case may be, and discharge all Costs payable by it pursuant to this Mortgage on a full and unlimited indemnity basis, together with interest at the Default Rate calculated in accordance with clause 3 (*Interest*) from the date the relevant Cost was expended,

incurred or suffered (whichever is the earlier) by the Lender or the Receiver, as the case may be, until full discharge of such Cost.

10.2 Lender's performance of covenants

If the Company fails to perform any of the undertakings contained in clause 9.6 (*To repair*) to clause 9.16 (*Environment*) (inclusive), the Lender may perform any such covenant at the Company's expense and the Company shall reimburse the Lender for the Costs of such performance on demand. Nothing in this Mortgage shall oblige the Lender to perform any covenant of the Company.

11 DEFAULT

11.1 Enforcement

This Mortgage will become enforceable on the occurrence of any Event of Default or if the Company requests the Lender to appoint a receiver over the whole or any part of its undertaking or assets.

11.2 Consequences of default

On and at any time after the occurrence of an Event of Default, the Lender in its absolute discretion may by written notice to the Company:

- (a) declare the Secured Liabilities to be immediately due and payable, together with all accrued interest thereon and any other sums then owed by the Company under any Finance Document to which it is a party and, upon that declaration, such sums shall become immediately due and payable without demand or notice of any kind, all of which are hereby expressly waived by the Company; or
- (b) declare the Secured Liabilities to be due and payable on demand of the Lender; and/or
- (c) declare the security constituted by the Finance Documents to be enforceable.

12 STATUTORY POWER OF SALE

12.1 For the purposes of all powers implied by statute, and in particular the power of sale under Section 101 of the LPA (Powers incident to estate or interest in a mortgage), the Secured Liabilities will be deemed to have become due when the security created by this Mortgage becomes enforceable and Section 103 of the LPA (Regulation of exercise of power of sale) and Section 93 of the LPA (Restriction on consolidation of mortgages) will not apply.

12.2 The statutory powers of leasing conferred on the Lender are extended so as to authorise the Lender to lease, make arrangements for leases, accept surrender of leases and grant options on such terms and conditions as the Lender may in its discretion think fit. The Lender is not obliged to comply with any of the provisions of Section 99 (Leasing powers of mortgagor and mortgagee in possession) and Section 100 (Powers of mortgagor and mortgagee in possession to accept surrenders of leases) of the LPA.

- 12.3 Each of the Lender and the Receiver may exercise such person's statutory power of sale in respect of the whole or any part of the Charged Property.

13 RECEIVER

13.1 Appointment of Receiver

- (a) At any time after the security constituted by this Mortgage has become enforceable, whether or not the Lender has entered into or taken possession of the whole or any part of the Charged Property pursuant to this Mortgage:
- (i) the Lender may, by writing under the hand of any authorised officer of the Lender, appoint any person to be a receiver and/or an administrator of the Charged Property and such person shall, with effect from the date of such appointment, be a **"Receiver"**;
 - (ii) subject to the Insolvency Act the Lender may, from time to time, in similar manner, remove the Receiver and appoint another in his place; and
 - (iii) the Lender may, either at the time of appointment or at any time thereafter, fix the remuneration of the Receiver.

None of the restrictions imposed by the LPA in relation to the appointment of receivers, the giving of notice or otherwise shall apply.

- (b) The Receiver may from time to time delegate, by power of attorney or otherwise, to any person any of his powers and discretions, whether arising by statute, the provisions of this Mortgage or otherwise, upon such terms and for such periods of time as he may in his discretion think fit and may from time to time terminate any such delegation. The Lender shall not be liable to the Company for any loss or damage arising from any such delegate's act, default, neglect or misconduct of any nature whatsoever.

13.2 Powers of Receiver

The Receiver has all the powers to do or abstain from doing anything which the Company could do or abstain from doing in relation to the Charged Property including, without limitation the powers conferred by Section 109 of the LPA (Appointment, powers, remuneration and duties of receivers) and, in the case of a Receiver who is an administrative receiver, the powers conferred by Section 29 of the Insolvency Act (Definitions) and Schedule 1 to the Insolvency Act (Powers of administrator or administrative receiver), and in particular the Receiver may:

- (a) carry on, manage or concur in carrying on managing the whole or any part of the business of the Company as he may in his discretion think fit;
- (b) in each case as he may in his discretion think fit:
 - (i) manage, insure, repair, decorate, maintain, alter, improve, renew or add to the Charged Property or concur in so doing;

- (ii) commence or complete any building operations on the Charged Property; and
 - (iii) apply for and maintain any planning permissions, building regulations, approvals and any other permissions, consents or licences;
- (c) sell, exchange, convert into money and realise the Charged Property or concur in so doing by public auction or private contract and generally in such manner and on such terms as he may in his discretion think fit. Without prejudice to the generality of the foregoing, he may do any of these things for any valuable consideration, including, without limitation, cash, shares, stock, debentures or other obligations. Any such consideration may be payable in a lump sum or by instalments spread over such period as he may in his discretion think fit;
- (d) in each such case in such manner and generally on such terms as he may in his discretion think fit, with all the powers of an absolute beneficial owner:
 - (i) let, hire or lease (with or without premium) and accept surrenders of leases or tenancies or concur in so doing;
 - (ii) grant rights, options or easements over and otherwise deal with or dispose of, and exercise all rights, powers and discretions incidental to, the ownership of the Charged Property; and
 - (iii) exchange or concur in exchanging the Charged Property.

The Receiver may exercise any such power by effecting such transaction in the name or on behalf of the Company or otherwise;

- (e) without any further consent by, or notice to, the Company, exercise on its behalf, in respect of any rent, all the powers and provisions conferred on a landlord or a tenant by any legislation in force relating to such rent;
- (f) make allowances to, and re-arrangements with, any person occupying the whole or any part of the Charged Property from whom any rent and any profits may be receivable, and negotiate and agree, or refer to arbitration, any revision of rent under any leases in respect of which the rental may fall to be reviewed and accept service of, or serve, any notice received or required or deemed desirable in connection with any such review or with the exercise of any option;
- (g) for the purpose of exercising any of the powers, authorities or discretions conferred on him by or pursuant to this Mortgage or of defraying any Costs (including, without limitation, his remuneration) which are incurred by him in the exercise of such powers, authorities or discretions or for any other purpose, to raise and borrow money or incur any other liability either unsecured or secured on the Charged Property, either in priority to the security constituted by this Mortgage or otherwise, and generally on such terms as he may in his discretion think fit. No person lending such money is to be concerned to enquire as to the propriety or purpose of the exercise of such power or as to the application of any money so raised or borrowed;

- (h) make, or require the directors of the Company to make, such calls upon the shareholders of the Company in respect of any uncalled capital of the Company as the Receiver may in his discretion require and enforce payment of any call so made by action (in the name of the Company or the Receiver as the Receiver may in his discretion think fit) or otherwise;
- (i) settle or compromise any claim by, adjust any account with, refer to arbitration any dispute with, and deal with any question or demand from, any person who is, or claims to be, a creditor of the Company, as he may in his discretion think fit;
- (j) settle or compromise any claim, adjust any account, refer to arbitration any dispute and deal with any question or demand relating in any way to the Charged Property, as he may in his discretion think fit;
- (k) bring, prosecute, enforce, defend and abandon all such actions, suits and proceedings in relation to the Charged Property as he may in his discretion think fit;
- (l) promote the formation of any Subsidiary of the Company with a view to such Subsidiary purchasing, leasing, licensing or otherwise acquiring an interest in the Charged Property;
- (m) arrange for the purchase, lease, licence or acquisition of an interest in the Charged Property by any such Subsidiary for any valuable consideration, including, without limitation, cash, shares, debentures, loan stock, convertible loan stock or other securities, profits or a sum calculated by reference to profits, turnover, royalties, licence fees or otherwise, whether or not secured on the undertaking or assets of such Subsidiary and whether or not such consideration is payable or receivable in a lump sum or at any time or any number of times by instalments spread over such period, as the Receiver may in his discretion think fit;
- (n) arrange for such Subsidiary to trade or cease to trade as the Receiver may in his discretion think fit;
- (o) appoint and discharge any manager, officer, agent, professional adviser, employee and any other person, upon such terms as he may in his discretion think fit;
- (p) give valid receipts for all monies and execute all assurances and things which he may in his discretion think proper or desirable for realising the Charged Property;
- (q) conduct and complete all investigations, studies, sampling and testing and all remedial, removal and other actions, whether required under Environmental Law or by the Lender or otherwise and comply with all lawful orders and directives of all Authorities regarding Environmental Law; and
- (r) do all such other acts and things as the Receiver may in his discretion consider to be incidental or conducive to any of the matters or powers set out in this Mortgage or otherwise incidental or conducive to the preservation, improvement or realisation of the Charged Property.

13.3 Receiver as agent of the Company

The Receiver is at all times and for all purposes the agent of the Company. Subject to the provisions of the Insolvency Act, the Company is solely responsible for all the Receiver's acts, defaults, neglect and misconduct of any nature whatsoever and for his remuneration and Costs, to the exclusion of liability on the part of the Lender.

13.4 No obligation

The Receiver is not obliged to exercise any of the powers set out in this clause.

13.5 Several power

Where more than one Receiver is appointed, each Receiver has the power to act severally unless the Lender specifies otherwise in the appointment of such Receiver.

13.6 Powers exercisable by the Lender

- (a) The Lender may exercise all powers granted to the Receiver by this Mortgage, whether as attorney of the Company or otherwise.
- (b) The powers of the Receiver set out above are in addition to, and without prejudice to, all statutory and other powers of the Lender as provided in clause 12 (*Statutory Power of Sale*) or otherwise and so that, inter alia, such powers are and remain exercisable by the Lender in respect of that part of the Charged Property in respect of which no appointment of a Receiver by the Lender is from time to time subsisting.

13.7 Application of proceeds

The provisions of Sections 99 to 109 inclusive of the LPA are varied and extended to the extent that all monies received by the Receiver be applied in the following order:

- (a) in full payment of his remuneration and the Costs of realisation including, without limitation, all Costs of, or incidental to, any exercise of any power referred to in this Mortgage, including, without limitation, all outgoings paid by the Receiver;
- (b) providing for the matters specified in paragraphs (i) to (iii) inclusive of Section 109(8) of the LPA (Appointment, powers, remuneration and duties of receiver);
- (c) in or towards satisfaction of any debts or other imposts which are by statute made payable in preference to the Secured Liabilities to the extent to which such debts or imposts are made so payable;
- (d) if so required by the Lender in its discretion, in or towards satisfaction of the Secured Liabilities; and
- (e) to the person entitled to any surplus.

14 PROTECTION OF THIRD PARTIES

- 14.1 Any person (including, without limitation, any purchaser, mortgagor or mortgagee) (in this clause a "**purchaser**") dealing with the Lender may assume without inquiry that:
- (a) some part of the Secured Liabilities has become due;
 - (b) a demand for such Secured Liabilities has been duly made; and
 - (c) such Secured Liabilities have become due within the meaning of Section 101 of the LPA (Powers incident to estate or interest in a mortgage).
- 14.2 No purchaser dealing with the Receiver or the Lender is to be concerned to enquire whether any power exercised or purported to be exercised by the Receiver or the Lender has become exercisable, or as to the propriety or regularity of any sale by, or other dealing with, the Receiver or the Lender. Any such sale or dealing is deemed to be within the powers conferred by this Mortgage and to be valid and effective accordingly. All the protection to purchasers contained in Section 104 (Conveyance on sale) and Section 107 (Mortgagee's receipt, discharges etc.) of the LPA and Section 42(3) of the Insolvency Act (Prohibition upon enquiry into administrative receiver's powers) apply to any purchaser.

15 NO LIABILITY AS MORTGAGEE IN POSSESSION

15.1 Mortgagee's liability

Neither the Lender nor the Receiver is:

- (a) liable to account as mortgagee in possession in respect of the Charged Property; or
- (b) liable for any loss upon realisation or exercise of any power, authority or right of the Lender or the Receiver arising under this Mortgage, or for any act, default, neglect, or misconduct of any nature whatsoever.

15.2 Possession

If the Lender or the Receiver enters into possession of the Charged Property, such person may at any time go out of possession at the discretion of such person.

16 POWER OF ATTORNEY

- 16.1 The Company irrevocably appoints, by way of security the Lender, each person deriving title from the Lender and the Receiver, jointly and severally to be its attorney (with full power to appoint substitutes and to sub-delegate) for it, in its name, on its behalf and as its act and deed or otherwise to sign or execute any deed or document or do any act or thing which the Company is, or may become, obliged to sign, execute or do pursuant to this Mortgage
- 16.2 Without prejudice to the generality of the foregoing, the Company unconditionally undertakes to the Lender, and separately to the Receiver and to each person deriving title from the Lender or the Receiver, that it shall ratify and confirm anything done or purported to be done by any attorney appointed pursuant to this clause.

17 WORKS AGREEMENTS

The Lender shall, at the request of the Company within 15 working days of request consent to and join in any Works Agreement as are required to procure the adoption dedication or transfer of any land required under the Works Agreement or for the provision of infrastructure on the Charged Property or for the implementation of the Satisfactory Planning Permission such Works Agreement to be in a form first approved by the Lender's Solicitors such approval not to be unreasonably withheld or delayed and the Company and its successors in title shall indemnify and keep the Lender indemnified against all actions, proceedings, claims, demands, losses, costs, expenses, damages and liabilities whatsoever arising from complying with a request of the Company pursuant to this clause 17 and entering into any such Works Agreement;

18 CUMULATIVE AND CONTINUING SECURITY

- 18.1 This Mortgage is a continuing security to the Lender regardless of any intermediate payment or discharge of the whole or any part of the Secured Liabilities and will not be prejudiced or affected by any act, omission or circumstance which, but for this clause, might affect or diminish its effectiveness.
- 18.2 The security constituted by this Mortgage is in addition to, is not in substitution for, is without prejudice to, and does not merge with, any rights whatsoever which the Lender may have, whether in respect of the Secured Liabilities or otherwise, including, without limitation, any rights arising under any other Security Interest, any bill, note, guarantee, contract or applicable rule of law.
- 18.3 Any receipt, release or discharge of the security constituted by, or of any liability arising under, this Mortgage shall not release or discharge the Company from any liability which may exist independently of this Mortgage to the Lender.
- 18.4 Where the security constituted by this Mortgage initially takes effect as a collateral or further security to any other Security Interest held by the Lender then, notwithstanding any receipt, release or discharge given in respect of such other Security Interest, this Mortgage shall take effect as an independent security for any monies, liabilities or other sums secured by such other Security Interest.

19 AVOIDANCE OF PAYMENTS

- 19.1 No assurance, security or payment which may be avoided under the law or subject to an order of the court made under any law relating to bankruptcy, insolvency, administration or winding-up, including, without limitation, the Insolvency Act, and no release, settlement or discharge given or made by the Lender on the faith of any such assurance, security or payment, prejudices or affects the right of the Lender:
 - (a) to recover any monies from the Company (including, without limitation, any monies which it is compelled to refund under Chapter X (Malpractice before and during liquidation; penalisation of companies and company officers; investigations and prosecutions) of the Insolvency Act and any Costs payable by it incurred in connection with such process); or
 - (b) to enforce the security constituted by this Mortgage to the full extent of the Secured Liabilities.

- 19.2 The Lender may at its discretion retain the security so created as security for the Secured Liabilities for a period of one month plus any statutory period within which any such assurance, security or payment can be avoided or invalidated notwithstanding any release, settlement, discharge or arrangement given or made by the Lender.
- 19.3 If at any time within the period referred to in clause 19.2 any person takes any step whatsoever relating to (i) the winding-up or administration of the Company, or (ii) any arrangement with the creditors of the Company, the Lender may retain the whole or any part of the security constituted by this Mortgage for such further period as the Lender may in its discretion think fit. Such security will be deemed to have been held and remained held by the Lender as security for the payment to the Lender of the Secured Liabilities.

20 PRIOR CHARGES

- 20.1 If there subsists any prior Security Interest against the Charged Property and either, any step is taken to exercise any power or remedy conferred by such Security Interest or the Lender or the Receiver exercises any power of sale pursuant to this Mortgage, the Lender may redeem such prior Security Interest or procure the transfer of such Security Interest to itself and may settle and pass the accounts of the person entitled to such Security Interest. Any accounts so settled and passed are conclusive and binding on the Company.
- 20.2 The Company shall reimburse the Lender for any Costs incurred by the Lender in exercise of its rights under this clause.

21 PAYMENTS AND WITHHOLDING TAXES

The Company shall pay and discharge the Secured Liabilities without any set-off, counterclaim, restriction or condition, without regard to any equities between the Company and the Lender and free and clear of, and without deduction or withholding for, or on account of, any Taxes, except to the extent that the Company is required by law to deduct or withhold any Taxes on any amounts payable under this Mortgage, in which case it shall pay to the Lender such additional amount as may be necessary in order to ensure that the net amount received by the Lender after the required deduction or withholding (including, without limitation, any required deduction or withholding on such additional amount) be equal to the amount that the Lender would have received had no such deduction or withholding been made. Any additional amount paid under this clause shall be treated as agreed compensation and not as interest.

22 CURRENCY

- 22.1 All monies received or held by the Lender or any Receiver in respect of the Secured Liabilities may, from time to time after demand has been made, be converted into such other currency as the Lender in its absolute discretion considers necessary or desirable to cover the obligations and liabilities actual or contingent of the Company in that other currency at the Lender's prevailing spot rate of exchange for purchasing that other currency with the existing currency.
- 22.2 If and to the extent that the Company fails to pay the amount due on demand the Lender may in its absolute discretion without notice to the Company purchase at any

time thereafter so much of any currency as the Lender considers necessary or desirable to cover the obligations and liabilities of the Company in such currency hereby secured at the Lender's prevailing spot rate of exchange for purchasing such currency with sterling and the Company hereby agrees to indemnify the Lender against the full sterling cost incurred by the Lender for such purchase.

22.3 Neither the Lender nor any Receiver shall be liable to the Company for any loss resulting from any fluctuation in exchange rates before or after the exercise of the foregoing powers.

22.4 No payment to the Lender (whether under any judgment or court order or otherwise) shall discharge the obligation or liability of the Company in respect of which it was made unless and until the Lender shall have received payment in full in the currency in which such obligation or liability was incurred and to the extent that the amount of any such payment shall, on actual conversion into such currency, fall short of such obligation or liability actual or contingent expressed in that currency the Lender shall have a further separate cause of action against the Company, shall be entitled to enforce the security constituted by this Mortgage to recover the amount of the shortfall and such amount will bear interest in accordance with clause 3 (*Interest*) from the date of payment by the Lender until the date of reimbursement.

23 ASSIGNMENT

Neither the Lender nor the Company may assign, transfer, novate or dispose of any of or any interest in, its rights and obligations under this Mortgage, save as provided in the Sale Agreement.

24 WAIVERS

No failure or delay or other relaxation or indulgence on the part of the Lender to exercise any power, right or remedy shall operate as a waiver thereof or shall any single or partial exercise or waiver of any power, right or remedy preclude its further exercise or the exercise of any other power, right or remedy.

25 SEVERABILITY

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

26 LAND REGISTRY, RELEASES AND CONSENT TO DISPOSALS

26.1 The Company hereby consents to the entry of the following restriction in the Proprietorship Register of any registered land forming part of the Charged Property:

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, is to be registered without a certificate signed by the proprietor for the time being of the charge dated [?] in favour of ICG-Longbow Debt Investments No.4 S.A.R.L. referred to in the charges register (or their conveyancer)".

- 26.2 The Company authorises the Lender to make an application on Form RX1 (or such other form as may be prescribed from time to time) to enter this restriction against the relevant registered estate.
- 26.3 Immediately upon the payment of the whole of the Deferred Consideration due and the discharge of any other Secured Liabilities the Lender will give to the Company a Release to release the Charged Property and the restriction created pursuant to Clause 26.1 (together with any relevant Land Registry form(s))
- 26.4 Within ten (10) working days of the receipt of a written request to do so or if later the date of approval by the Lender (acting reasonably) of the form of transfer applicable to the Releasable Dwellings the Lender shall provide to the Company ten (10) executed forms DS3 and ten (10) signed forms RX4 and a Consent in relation to the Releasable Dwellings which the Lender authorises the Company (acting in good faith at all times) to release a form DS3 and form RX4 and a copy of the Consent on completion of the disposal of a Releasable Dwelling on arm's length terms to a third party donee of such Releasable Dwelling (or its solicitors).
- 26.5 The procedure outlined in clause 26.4 may be repeated once provided that the number of form DS3 and RX4's requested at any particular time are required by the Company having regard to
- (a) the build programme and projected completion dates of the sale of Releasable Dwellings (including Affordable Units, as applicable) within the Charged Property; and
 - (b) the date on which the Deferred Consideration is due to be paid.
- 26.6 In the event that Land Registry forms DS3 and/or RX4 are subsequently replaced by an equivalent, then the Lender shall provide to the Company the same number of executed or (as appropriate) signed Land Registry form equivalents within 10 working days following a request made by the Company (less any forms DS3 and/or RX4 supplied by the Lender to the Company under this clause 26.5 which have at the date of such request been provided to a donee and remain valid) and in such circumstances the provisions of clauses 26.4 and **Error! Reference source not found.** (mutatis mutandis) shall apply in relation to such Land Registry form equivalents.
- 26.7 The Lender shall also provide the Company within 10 working days following a request made by the Company an executed form DS3 and a signed form RX4 or (where applicable) Land Registry equivalents in like terms to 26.4 and 26.6 (mutatis mutandis) in respect of any Permitted Disposal.
- 26.8 In respect of any Permitted Disposal the Lender shall provide to the Company within 10 working days following a request made by the Company a signed/executed Consent in relation to such dealing which will ensure that such dealing can be registered at the Land Registry.

27 NOTICES

27.1 Communications in writing

Any communication to be made under or in connection with this Mortgage shall be made in writing and, unless otherwise stated, may be made by fax or letter.

27.2 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Mortgage is:

- (a) in the case of the Company, that identified with its name below; and
- (b) in the case of the Lender, that identified with its name below,

or any substitute address, fax number or department or officer as the Party may notify to the other by not less than five Business Days' Notice.

27.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with this Mortgage will only be effective:
 - (i) if by way of fax, when received in legible form; or
 - (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under clause 27.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Lender will be effective only when actually received by the Lender and then only if it is expressly marked for the attention of the department or officer identified with the Lender's signature below (or any substitute department or officer as the Lender shall specify for this purpose).

28 GOVERNING LAW

This Mortgage and any non-contractual obligations arising out of or in connection with it are governed by English law.

29 ENFORCEMENT

29.1 Jurisdiction of English courts

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Mortgage (including a dispute regarding the existence, validity or termination of this Mortgage) or any non-contractual obligation arising out of or in connection with this Mortgage (a "**Dispute**").

- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This clause is for the benefit of the Secured Parties only. As a result, the Secured Parties shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

30 COUNTERPARTS

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

31 THIRD PARTY RIGHTS

Unless expressly provided in this Mortgage, no term of this Mortgage is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

This Mortgage has been executed and delivered as a deed on the date stated at the beginning of this Mortgage.

SCHEDULE

The Charged Property

Short description of property	Title number (if any)
Freehold property shown edged red on Plan 1 being part of the Land on the Southwest Side of Station Road Pannal Harrogate	NYK188958 and NYK269519

EXECUTION PAGE

The Company

EXECUTED and DELIVERED as a DEED)
for and on behalf of **BELLWAY HOMES**)
LIMITED
by:)

.....
Director

.....
Director/Secretary

Notice Details:

Address:

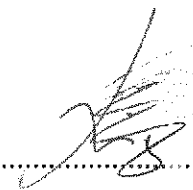
Fax No:

Telephone No:

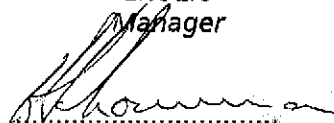
Attention:

The Lender

Executed as a deed by **ICG-LONGBOW
DEBT INVESTMENTS NO.4 S.A.R.L** a
company incorporated in Luxembourg by
persons who in accordance
with the laws of that territory are
acting under the authority of the company

.....


[Authorised signatory]
Eric Lie
Manager

.....


Herman SCHOMMARZ

[Authorised signatory]

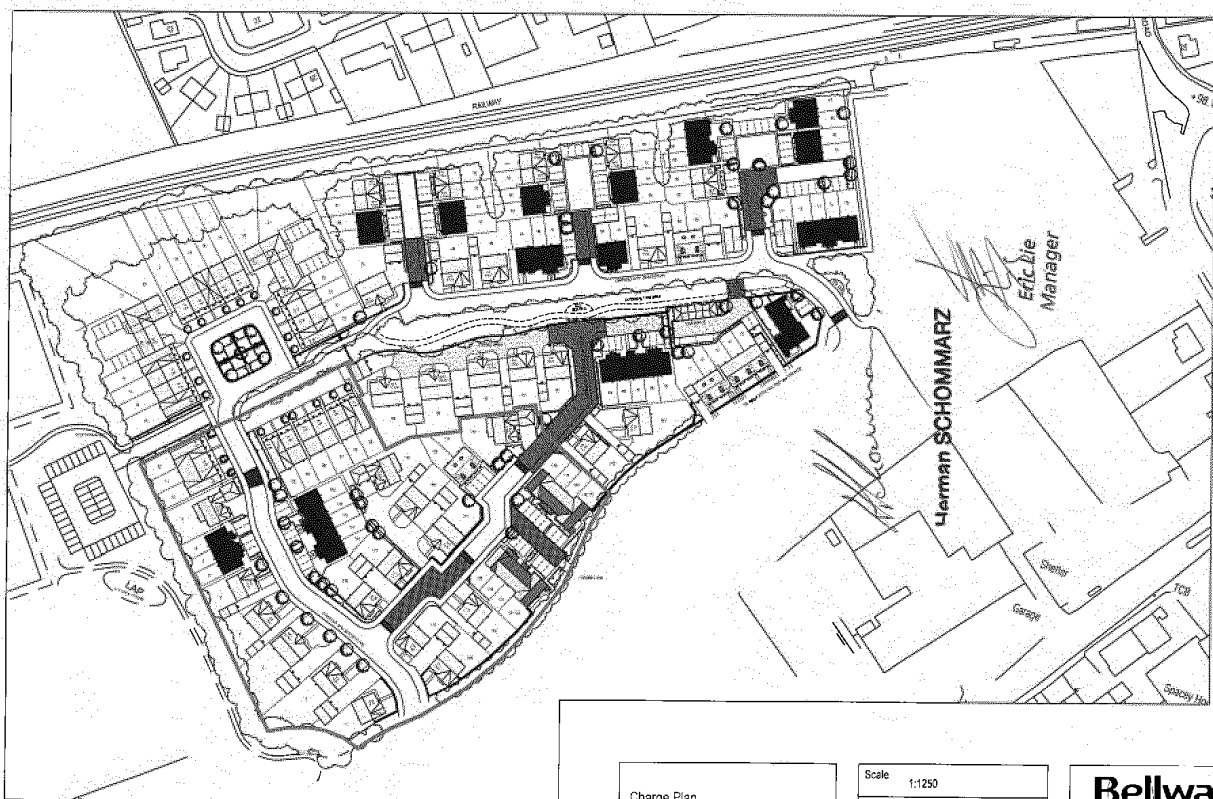
Notice Details:

Address:

Fax No:

Telephone No:

Attention:



Charge Plan
Pannel, Harrogate

Scale 1:1250

Date Nov 16

Drawing No. PAN-001 Rev

Bellway

(Private Division)
a member of the Bellway PLC Group of Companies
2 Doughty Close, Watlington, West Yorkshire LS20 7BZ
Tel 01937 555 831 Fax 01937 555 147
www.bellway.co.uk