



**Registration of a Charge**

Company name: **BELLWAY HOMES LIMITED**

Company number: **00670176**



X716QF4A

Received for Electronic Filing: **07/03/2018**

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**Details of Charge**

Date of creation: **02/03/2018**

Charge code: **0067 0176 0478**

Persons entitled: **NHS PROPERTY SERVICES LIMITED**

Brief description: **PARTS OF THE FREEHOLD PROPERTY AT ST GEORGE'S HOSPITAL, SUTTONS LANE, HORNCURCH, ESSEX, RM12 6RS REGISTERED AT THE LAND REGISTRY WITH ABSOLUTE TITLE UNDER TITLE NUMBER EGL346640 AND SHOWN EDGED RED AND HATCHED YELLOW AND SHOWN EDGED AND HATCHED BLUE ON THE PLAN TO THE CHARGE**

**Contains fixed charge(s).**

**Contains negative pledge.**

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**Authentication of Form**

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

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**Authentication of Instrument**

Certification statement: **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:

**CAROLINE RHODES**



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

Company number: 670176

Charge code: 0067 0176 0478

The Registrar of Companies for England and Wales hereby certifies that a charge dated 2nd March 2018 and created by BELLWAY HOMES LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 7th March 2018 .

Given at Companies House, Cardiff on 9th March 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 2 March 2018

**BELLWAY HOMES LIMITED**  
**AND**  
**NHS PROPERTY SERVICES LIMITED**

**LEGAL MORTGAGE OVER PROPERTY**

We certify that this document is a true copy of

the original this 6 day of March 2018

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## Contents

Item	Page
1	DEFINITIONS AND INTERPRETATION ..... 1
2	COVENANT TO PAY ..... 5
3	GRANT OF SECURITY ..... 5
4	PERFECTION OF SECURITY ..... 5
5	LIABILITY OF THE BORROWER..... 6
6	REPRESENTATIONS AND WARRANTIES ..... 6
7	GENERAL COVENANTS..... 7
8	PROPERTY COVENANTS ..... 9
9	POWERS OF THE LENDER..... 12
10	WHEN SECURITY BECOMES ENFORCEABLE..... 13
11	ENFORCEMENT OF SECURITY ..... 13
12	RECEIVERS ..... 15
13	POWERS OF RECEIVER ..... 16
14	DELEGATION ..... 18
15	APPLICATION OF PROCEEDS ..... 18
16	COSTS AND INDEMNITY ..... 19
17	FURTHER ASSURANCE..... 20
18	POWER OF ATTORNEY ..... 20
19	RELEASE ..... 20
20	ASSIGNMENT AND TRANSFER ..... 21
21	SET-OFF..... 21
22	AMENDMENTS, WAIVERS AND CONSENTS ..... 21
23	SEVERANCE..... 21
24	COUNTERPARTS ..... 22
25	THIRD PARTY RIGHTS ..... 22
26	FURTHER PROVISIONS ..... 22
27	NOTICES ..... 23
28	GOVERNING LAW AND JURISDICTION ..... 24
	SCHEDULE 1 - PROPERTY ..... 25

THIS DEED is dated 2 March 2018

**BETWEEN**

- (1) **BELLWAY HOMES LIMITED** incorporated and registered in England and Wales with company number 00670176 whose registered office is at Seaton Burn House, Dudley Lane, Seaton Burn, Newcastle upon Tyne, NE13 6BE (the **Borrower**); and
- (2) **NHS PROPERTY SERVICES LIMITED** incorporated and registered in England and Wales with company number 07888110 whose registered office is at 99 Gresham Street, London, EC2V 7NG (the **Lender**).

**WHEREAS**

- (A) Pursuant to the Agreement for Sale, the Lender has agreed to sell the Property to the Borrower on the terms contained therein.
- (B) The Lender has agreed to allow the Borrower to defer payment of part of the Purchase Price (as defined within the Agreement for Sale) in accordance with the terms of the Sale Agreement.
- (C) Under this deed, the Borrower provides security to the Lender for the payment of the Deferred Payments due pursuant to the terms of the Agreement for Sale.

**IT IS AGREED as follows:**

**1 DEFINITIONS AND INTERPRETATION**

**1.1 DEFINITIONS**

The following definitions apply in this deed:

**Affordable Housing:** has the same meaning as in Annex 2 of the National Planning Policy Framework

**Affordable Housing Unit:** a house, flat or any other structure (whether or not construction of that house, flat or other structure has been commenced or completed) which is required by a planning permission or planning obligation to be used for Affordable Housing.

**Agreement for Sale** means a deed of agreement for the sale of the Property dated 9 February 2018 made between the Lender and the Borrower.

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**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Charged Property:** all the assets, property and undertaking for the time being subject to any Security created by this deed (and references to the Charged Property shall include references to any part of it).

**Deferred Payments:** means the sums payable by the Borrower pursuant to clause 14 of the Agreement for Sale, being the 'Deferred Payments' (as defined in the Agreement for Sale) together with any interest which shall accrue thereon.

**Delegate:** any person appointed by the Lender or any Receiver under clause 14 and any person appointed as attorney of the Lender, Receiver or Delegate.

**Development Agreement** means any agreement pursuant to the Town and Country Planning Act 1990 the Highways Act 1980 the Water Industry Act 1991 or lease wayleave or other agreement relating to infrastructure or utilities required to be exchanged or completed in order to facilitate the development of the Property and the Retained Strip (as defined in the Agreement for Sale)

**Environment:** the natural and man-made environment including all or any of the following media, namely air, water and land (including air within buildings and other natural or man-made structures above or below the ground) and any living organisms (including man) or systems supported by those media.

**Environmental Law:** all applicable laws, statutes, regulations, secondary legislation, bye-laws, common law, directives, treaties and other measures, judgments and decisions of any court or tribunal, codes of practice and guidance notes in so far as they relate to or apply to the Environment.

**Environmental Licence:** any authorisation, permit or licence necessary under Environmental Law in respect of any of the Charged Property.

**Event of Default:** means the failure of the Borrower to pay the Deferred Payments in accordance with the terms of the Agreement for Sale or to pay any sums due under this deed.

**Insurance Policy:** each contract or policy of insurance effected or maintained by the Borrower from time to time in respect of the Property.

**LPA 1925:** the Law of Property Act 1925.

**Material Adverse Effect:** means a material adverse effect on:

- (a) the assets or financial condition of the Borrower; or
- (b) the ability of the Borrower to perform its obligations under the Agreement for Sale; or
- (c) the validity or enforceability of, or the effectiveness or ranking of this deed; or
- (d) the rights or remedies of the Lender under the Agreement for Sale or this deed; or
- (e) the value of the Charged Property.

**Plan** the plan attached to this deed.

**Planning Agreement** means any agreement or obligation or undertaking required to be made pursuant to the following or similar legislation:

- (a) section 106 and section 106A of the Town and Country Planning Act 1990 Act;
- (b) sections 38, 184 and/or 278 of the Highways Act 1980;
- (c) section 98 or 104 of the Water Industry Act 1991;
- (d) section 111 of the Local Government Act 1972;
- (e) section 33 of the Local Government (Miscellaneous Provisions) Act 1982;
- (f) the Electricity Act 1989;
- (g) the Gas Act 1980,

or any other statutory provision whereby the Property is bound by obligations enforceable by any third party including other statutory undertakers.

**Property:** the freehold property owned by the Borrower described in Schedule 1.

**Receiver:** a receiver or a receiver and manager of any or all of the Charged Property.

**Secured Liabilities:** the First Deferred Payment (as defined in the Agreement for Sale) and the Second Deferred Payment (as defined in the Agreement for Sale) and all present and future monies, obligations and liabilities of the Borrower to the Lender falling due under this deed, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity, under or in connection with this deed (including, without limitation, those arising under clause 26.3.2), together with all interest (including, without limitation, default interest) accruing in respect of those Deferred Payments monies, obligations or liabilities.

**Security:** any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect.

**Security Period:** the period starting on the date of this deed and ending on the date on which the Lender is satisfied that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding.

**Valuation:** any valuation relating to the Property supplied to the Lender by the Borrower (or on its behalf).

**VAT:** value added tax or any equivalent tax chargeable in the UK or elsewhere.

## 1.2 INTERPRETATION

In this deed:

- 1.2.1 clause, Schedule and paragraph headings shall not affect the interpretation of this deed;
- 1.2.2 a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality);
- 1.2.3 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- 1.2.4 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- 1.2.5 a reference to a party shall include that party's successors, permitted assigns and permitted transferees and this deed shall be binding on, and enure to the benefit of, the parties to this deed and their respective personal representatives, successors, permitted assigns and permitted transferees;
- 1.2.6 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- 1.2.7 a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 1.2.8 a reference to **writing** or **written** does not include fax nor email;
- 1.2.9 an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- 1.2.10 a reference to **this deed** (or any provision of it) or to any other agreement or document referred to in this deed is a reference to this deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this deed) from time to time;



- 1.2.11 unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this deed and a reference to a paragraph is to a paragraph of the relevant Schedule;
- 1.2.12 any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 1.2.13 a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and **amend** and **amended** shall be construed accordingly);
- 1.2.14 a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;
- 1.2.15 a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- 1.2.16 a reference to **continuing** in relation to an Event of Default means an Event of Default that has not been remedied or waived;
- 1.2.17 a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it; and
- 1.2.18 a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

### 1.3 CLAWBACK

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

### 1.4 NATURE OF SECURITY OVER REAL PROPERTY

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

- 1.4.1 all buildings and fixtures and fittings (including trade and tenant's fixtures and fittings) and fixed plant and machinery that are situated on or form part of the Property at any time;
- 1.4.2 the proceeds of the sale of any part of the Property and any other monies paid or payable in respect of or in connection with the Property;
- 1.4.3 the benefit of any covenants for title given, or entered into, by any predecessor in title of the Borrower in respect of the Property and any monies paid or payable in respect of those covenants; and
- 1.4.4 all rights under any licence, agreement for sale or agreement for lease in respect of the Property.

### 1.5 PERPETUITY PERIOD

If the rule against perpetuities applies to any trust created by this deed, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).

### 1.6 SCHEDULES

The Schedules form part of this deed and shall have effect as if set out in full in the body of this deed. Any reference to this deed includes the Schedules.

## **2 COVENANT TO PAY**

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

## **3 GRANT OF SECURITY**

### **3.1 LEGAL MORTGAGE AND FIXED CHARGES**

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee charges to the Lender:

3.1.1 by way of first legal mortgage, the Property; and

3.1.2 by way of first fixed charge:

- (a) all its rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premiums in connection with each Insurance Policy to the extent not effectively assigned under clause 3.2;
- (b) the benefit of all other contracts, guarantees, appointments and warranties relating to any construction works that have been carried on the Charged Property which are in its favour or of which it has the Charged Property (including, in each case, but without limitation, the right to demand and receive all monies whatever payable to or for its benefit under or arising from any of them, all remedies provided for in any of them or available at law or in equity in relation to any of them, the right to compel performance of any of them and all other rights, interests and benefits whatever accruing to or for its benefit arising from any of them) provided that the foregoing provisions of this clause 3.1.2(b) shall not apply to any contracts, guarantees, appointments or other documents that either preclude absolutely, or require consent of a third party, to the creation of the Security contemplated by this clause 3.1.2(b).

### **3.2 ASSIGNMENT**

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee assigns to the Lender absolutely, subject to a proviso for reassignment on irrevocable discharge in full of the Secured Liabilities, all its rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premiums in connection with each Insurance Policy; provided that nothing in this clause 3.2 shall constitute the Lender as mortgagee in possession.

## **4 PERFECTION OF SECURITY**

### **4.1 REGISTRATION OF LEGAL MORTGAGE AT THE LAND REGISTRY**

The Borrower consents to an application being made by the Lender to the Land Registrar for the following restriction in Form P to be registered against its title to the Property:

"No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the proprietor for the time being of the charge dated 2 March 2018 [DATE] in favour of NHS Property Services Limited referred to in the charges register or their conveyancer or without a certificate signed by the conveyancer for the time being of the proprietor of

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the registered estate that the provisions of clause 7.1 of the charge dated <sup>2 March 2018</sup> ~~[DATE]~~ in favour of NHS Property Services Limited referred to in the charges register do not apply to the disposition".

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#### 4.2 CAUTIONS AGAINST FIRST REGISTRATION AND NOTICES

Whether or not title to the Property is registered at the Land Registry, if any caution against first registration or any notice (whether agreed or unilateral) is registered against the Borrower's title to the Property, the Borrower shall immediately provide the Lender with full particulars of the circumstances relating to such caution or notice. If such caution or notice was registered to protect a purported interest the creation of which is not permitted under this deed, the Borrower shall immediately, and at its own expense, take such steps as the Lender may require to ensure that the caution or notice, as applicable, is withdrawn or cancelled.

#### 4.3 FIRST REGISTRATION

If title to the Property is not registered at the Land Registry, the Borrower shall ensure that no person (other than itself) shall be registered under the Land Registration Act 2002 as the proprietor of all or any part of the Property, without the prior written consent of the Lender.

### 5 LIABILITY OF THE BORROWER

#### 5.1 LIABILITY NOT DISCHARGED

The Borrower's liability under this deed in respect of any of the Secured Liabilities shall not be discharged, prejudiced or affected by:

- 5.1.1 any security, guarantee, indemnity, remedy or other right held by, or available to, the Lender that is, or becomes, wholly or partially illegal, void or unenforceable on any ground;
- 5.1.2 the Lender renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or
- 5.1.3 any other act or omission that, but for this clause 5.1 might have discharged, or otherwise prejudiced or affected, the liability of the Borrower.

#### 5.2 IMMEDIATE RECOURSE

The Borrower waives any right it may have to require the Lender to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this deed against the Borrower.

### 6 REPRESENTATIONS AND WARRANTIES

#### 6.1 TIMES FOR MAKING REPRESENTATIONS AND WARRANTIES

The Borrower makes the representations and warranties set out in this clause 6 to the Lender on the date of this deed and the representations and warranties contained in 6.1 to 6.5 are deemed to be repeated on each day of the Security Period with reference to the facts and circumstances existing at the time of repetition.

#### 6.2 OWNERSHIP OF CHARGED PROPERTY

6.2.1 Subject to registration of the transfer of the Property to the Borrower under the Land Registration Act 2002, the Borrower is the sole legal and beneficial owner of the Charged Property and has good and marketable title to the Property.

6.2.2 The Borrower shall use all reasonable endeavours to do all that is necessary to procure that it is registered as the legal owner of the Charged Property as soon as reasonably possible.

### 6.3 NO SECURITY

The Charged Property is free from any Security other than the Security created by this deed.

### 6.4 AVOIDANCE OF SECURITY

No Security expressed to be created under this deed is liable to be avoided, or otherwise set aside, on the liquidation or administration of the Borrower or otherwise.

### 6.5 ENFORCEABLE SECURITY

This deed constitutes and will constitute the legal, valid, binding and enforceable obligations of the Borrower and is and will continue to be effective security over all and every part of the Charged Property in accordance with its terms.

## 7 GENERAL COVENANTS

### 7.1 NEGATIVE PLEDGE AND DISPOSAL RESTRICTIONS

Save in respect of dispositions set out in clause 7.3 below and clause 14 of the Agreement for Sale (being dispositions to which this clause 7.1 does not apply for the purposes of the certification of the restriction in clause 4), the Borrower shall not at any time, except with the prior written consent of the Lender:

7.1.1 create, purport to create or permit to subsist any Security on, or in relation to, any Charged Property other than any Security created by this deed;

7.1.2 sell, assign, transfer, part with possession of or otherwise dispose of in any manner (or purport to do so) all or any part of, or any interest in, the Charged Property; or

7.1.3 create or grant (or purport to create or grant) any other interest in the Charged Property in favour of a third party.

### 7.2 DISPOSAL RESTRICTIONS CONTINUED

7.2.1 The Borrower covenants that it will not permit its conveyancer to provide the certification referred to in the restriction at clause 4.1 except in respect of a disposition which that conveyancer can certify does not require the Lender's consent pursuant to clause 7.3 below or clause 14 of the Agreement for Sale.

7.2.2 In the event that the Borrower's conveyancer erroneously provides the certification referred to in the restriction at clause 4.1 otherwise than in respect of a disposition which that conveyancer can certify does not require the Lender's consent pursuant to clause 7.3 below or clause 14 of the Agreement for Sale, the Borrower shall fully indemnify the Lender against all costs and losses arising as a result of such erroneous certification.

### 7.3 DISPOSAL RESTRICTIONS EXCEPTIONS

The Borrower may, without the consent of the Lender:

- 7.3.1 grant easements or rights, transfer, let or dedicate any part of the Charged Property to a local or other public authority pursuant to a requirement in Planning Agreement;
- 7.3.2 grant easements or rights, transfer, let or dedicate of any part of the Charged Property to a highways authority to comply with highways requirements or in connection with the adoption or dedication of public highway;
- 7.3.3 grant easements or rights, transfer, let or dedicate of any part of the Charged Property to a utilities company for an electricity substation, gas governor, sewage or water pumping station, electronic communications exchange, or other similar matters for the provision of electricity, gas, water, foul water and surface drainage, telephonic signals, electronic communications;
- 7.3.4 dispose of an Affordable Housing Unit or land for the construction of them to a local authority, private registered provider (which has the same meaning as in section 80 of the Housing and Regeneration Act 2008) or other similar person or body providing Affordable Housing as agreed with the local authority or with the Homes and Communities Agency; and
- 7.3.5 grant a licence to enter upon the Property and to carry out works or business necessary for the facilitation of development on the Property of a residential estate with ancillary uses.

#### 7.4 PRESERVATION OF CHARGED PROPERTY

The Borrower shall not do, or permit to be done, any act or thing that would or might depreciate, jeopardise or otherwise prejudice the security held by the Lender or materially diminish the value of any of the Charged Property or the effectiveness of the security created by this deed PROVIDED THAT the residential development of the Property in accordance with planning permission shall not be a breach of this clause.

#### 7.5 COMPLIANCE WITH LAWS AND REGULATIONS

- 7.5.1 The Borrower shall not, without the Lender's prior written consent, knowingly use or permit the Charged Property to be used in any way contrary to law.
- 7.5.2 The Borrower shall comply with the requirements of any law or regulation or Planning Agreement relating to or affecting the Charged Property or the use of it or any part of it;

#### 7.6 ENFORCEMENT OF RIGHTS

The Borrower shall use its reasonable endeavours to:

- 7.6.1 procure the prompt observance and performance by the relevant counterparty to any agreement or arrangement with the Borrower and forming part of the Charged Property of the covenants and other obligations imposed on such counterparty; and
- 7.6.2 enforce any rights and institute, continue or defend any proceedings relating to any of the Charged Property that the Lender may reasonably require from time to time.

#### 7.7 NOTICE OF MISREPRESENTATIONS AND BREACHES

The Borrower shall, promptly on becoming aware of any of the same, give the Lender notice in writing of:

- 7.7.1 any representation or warranty set out in this deed that is incorrect or misleading in any material respect when made or deemed to be repeated; and
- 7.7.2 any breach of any covenant set out in this deed.

## **7.8 NOTICES TO BE GIVEN BY THE BORROWER**

- 7.8.1 The Borrower shall within five Business Days of the execution of this deed give notice to the relevant insurers of the assignment of the Borrower's rights and interest in and under each Insurance Policy (including the proceeds of any claims under that Insurance Policy) under clause 8 and shall use all reasonable endeavours to ensure that each addressee of such notice promptly provides an acknowledgement of that notice to the Lender; and
- 7.8.2 The Borrower shall obtain the Lender's prior approval of the form of any notice or acknowledgement to be used under this clause 7.

## **8 PROPERTY COVENANTS**

### **8.1 INSURANCE**

- 8.1.1 The Borrower shall insure and keep insured the Charged Property against:
- (a) loss or damage by fire or terrorist acts, including any third party liability arising from such acts;
  - (b) other risks, perils and contingencies that would be insured against by reasonably prudent persons carrying on the same class of business as the Borrower; and
  - (c) any other risk, perils and contingencies as the Lender may reasonably require, PROVIDED THAT they are with normal contractors "All Risks" policies.
- 8.1.2 Any such insurance must be with an insurance company or underwriters and on such terms as are reasonably acceptable to the Lender and must include property owners' public liability and third party liability insurance and be for not less than the replacement value of the relevant Charged Property (meaning in the case of any premises on the Property, the total cost of entirely rebuilding, reinstating or replacing the premises in the event of their being destroyed, together with architects', surveyors', engineers' and other professional fees and charges for shoring or propping up, demolition, site clearance and reinstatement with adequate allowance for inflation) and loss of rents payable by the tenants or other occupiers of the Property for a period of at least three years, including provision for increases in rent during the period of insurance.
- 8.1.3 The Borrower shall, if requested by the Lender, produce to the Lender each policy, certificate or cover note relating to any insurance required by clause 8.1.1.
- 8.1.4 The Borrower shall, if requested by the Lender, procure that a note of the Lender's interest is endorsed on each Insurance Policy (other than public liability and third party liability insurances) maintained by it or any person on its behalf in accordance with clause 8.1.1 but without the Lender having any liability for any premium in relation to those Insurance Policies unless it has expressly and specifically requested to be made liable in respect of any increase in premium or unpaid premium in respect of any Insurance Policy.
- 8.1.5 The Borrower shall ensure that each Insurance Policy contains:
- (a) a loss payee clause under which the Lender is named as first loss payee (other than in respect of any claim under any public liability and third party liability insurances);
  - (b) terms ensuring that it cannot be avoided or vitiated as against the Lender by reason of the act or default of any other insured party or any misrepresentation, non-disclosure or failure to make a fair presentation of risk by any other insured party;
  - (c) a waiver of each insurer's rights of subrogation against the Borrower, the Lender and the tenants of the Property other than any such rights arising in connection

with any fraud or criminal offence committed by any of those persons in respect of the Property or any Insurance Policy; and

- (d) terms ensuring that no insurer can repudiate, rescind or cancel it, treat it as avoided in whole or in part nor treat it as expired due to non-payment of premium without giving at least 30 days' prior written notice to the Lender.

## 8.2 INSURANCE PREMIUMS

The Borrower shall:

- 8.2.1 promptly pay all premiums in respect of each Insurance Policy and do all other things necessary to keep that policy in full force and effect; and
- 8.2.2 (if the Lender so requires) give to the Lender copies of the receipts for all premiums and other payments necessary for effecting and keeping up each Insurance Policy.

## 8.3 NO INVALIDATION OF INSURANCE

The Borrower shall not do or omit to do, or permit to be done or omitted, any act or thing that may invalidate or otherwise prejudice any Insurance Policy.

## 8.4 PROCEEDS FROM INSURANCE POLICIES

- 8.4.1 Where the security constituted by this deed has not become enforceable, all monies payable under any Insurance Policy at any time shall be applied in (at the discretion of the Borrower) making good the damage giving rise to the insurance claim or recouping expenditure in respect of the loss or damage for which those monies are received or in, or towards, discharge or reduction of the Secured Liabilities.
- 8.4.2 Where the security constituted by this deed has become enforceable, all monies payable under any Insurance Policy at any time shall:
  - (a) be paid immediately to the Lender;
  - (b) if they are not paid directly to the Lender by the insurers, be held, pending such payment, by the Borrower as trustee of the same for the benefit of the Lender; and
  - (c) at the option of the Lender, be applied in making good or recouping expenditure in respect of the loss or damage for which those monies are received or in, or towards, discharge or reduction of the Secured Liabilities.

## 8.5 LEASES AND LICENCES AFFECTING THE PROPERTY

Subject to clause 7.3 above and clause 14 of the Agreement for Sale, the Borrower shall not, without the prior written consent of the Lender (which consent, in the case of clause 8.5.4, is not to be unreasonably withheld or delayed in circumstances in which the Borrower may not unreasonably withhold or delay its consent):

- 8.5.1 grant any licence or tenancy affecting the whole or any part of the Property, or exercise the statutory powers of leasing or of accepting surrenders under section 99 or section 100 of the LPA 1925 (or agree to grant any such licence or tenancy, or agree to exercise the statutory powers of leasing or of accepting surrenders under section 99 or section 100 of the LPA 1925);
- 8.5.2 save for exchanging contracts for (but for the avoidance of doubt, not completing otherwise than as permitted by clause 14 of the Agreement for Sale) the sale of dwellings

constructed as part of the development of the Property, in any other way dispose of, accept the surrender of, surrender or create any legal or equitable estate or interest in the whole or any part of the Property (or agree to dispose of, accept the surrender of, surrender or create any legal or equitable estate or interest in the whole or any part of the Property);

8.5.3 let any person into occupation of or share occupation of the whole or any part of the Property; or

8.5.4 grant any consent or licence under any lease or licence affecting the Property.

## 8.6 NO RESTRICTIVE OBLIGATIONS

Subject to clause 7.3, save for exchanging contracts for (but for the avoidance of doubt, not completing otherwise than as permitted by clause 14 of the Agreement for Sale) the sale of dwellings constructed as part of the development of the Property, the Borrower shall not, without the prior written consent of the Lender, enter into any onerous or restrictive obligations affecting the whole or any part of the Property or create or permit to arise any overriding interest, easement or right whatever in or over the whole or any part of the Property.

## 8.7 PROPRIETARY RIGHTS

Subject to clause 7.3, the Borrower shall use reasonable endeavours to procure that no person shall become entitled to assert any proprietary or other like right or interest over the whole or any part of the Property, without the prior written consent of the Lender.

## 8.8 COMPLIANCE WITH AND ENFORCEMENT OF COVENANTS

The Borrower shall to the extent it is aware of them:

8.8.1 observe and perform all covenants, stipulations and conditions to which the Property, or the use of it, is or may be subject and (if the Lender so requires) produce to the Lender evidence sufficient to satisfy the Lender that those covenants, stipulations and conditions have been observed and performed; and

8.8.2 diligently enforce all covenants, stipulations and conditions benefiting the Property and shall not (and shall not agree to) waive, release or vary any of the same.

## 8.9 NOTICES OR CLAIMS RELATING TO THE PROPERTY

8.9.1 The Borrower shall:

(a) Give full particulars to the Lender of any notice, order, direction, designation, resolution, application, requirement or proposal given or made by any public or local body or authority (a Notice) that specifically applies to the Property, or to the locality in which it is situated, within seven days after becoming aware of the relevant Notice; and

(b) (if the Lender reasonably so requires) immediately, and at the cost of the Borrower, take all reasonable and necessary steps to comply with an Notice, and make, or join with the Lender in making, any objections or representations in respect of that Notice that the Lender thinks fit

8.9.2 The Borrower shall give full particulars to the Lender of any claim, notice or other communication served on it in respect of any modification, suspension or revocation of any Environmental Licence or any alleged breach of any Environmental Law, in each case relating to the Property.

## 8.10 PAYMENT OF OUTGOINGS



The Borrower shall pay (or procure payment of the same) when due all charges, rates, taxes, duties, assessments and other outgoings relating to or imposed on the Property or on its occupier.

#### **8.11 ENVIRONMENT**

The Borrower shall in respect of the Property:

8.11.1 comply with all the requirements of Environmental Law; and

8.11.2 obtain and comply with all Environmental Licences

where failure to do so would be reasonably likely to have a Material Adverse Effect or result in any liability or loss of Security for the Lender.

#### **8.12 INSPECTION**

The Borrower shall permit the Lender, any Receiver and any person appointed by either of them to enter on and inspect the Property on reasonable prior notice subject to compliance with all health and safety requirements.

#### **8.13 VAT OPTION TO TAX**

The Borrower shall not, without the prior written consent of the Lender:

8.13.1 exercise any VAT option to tax in relation to the Property; or

8.13.2 revoke any VAT option to tax exercised, and disclosed to the Lender in writing, before the date of this deed.

### **9 POWERS OF THE LENDER**

#### **9.1 POWER TO REMEDY**

9.1.1 The Lender shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Borrower of any of its obligations contained in this deed.

9.1.2 The Borrower irrevocably authorises the Lender and its agents to do all things that are necessary or desirable for that purpose.

9.1.3 Any monies expended by the Lender in remedying a breach by the Borrower of its obligations contained in this deed shall be reimbursed by the Borrower to the Lender on a full indemnity basis and shall carry interest in accordance with clause 16.

9.1.4 In remedying any breach in accordance with this clause 9.1 the Lender, its agents and their respective officers, agents and employees shall be entitled to enter onto the Property and to take any action as the Lender may reasonably consider necessary or desirable including, without limitation, carrying out any repairs, other works or development.

#### **9.2 EXERCISE OF RIGHTS**

The rights of the Lender under clause 9.1 are without prejudice to any other rights of the Lender under this deed. The exercise of any rights of the Lender under this deed shall not make the Lender liable to account as a mortgagee in possession.

#### **9.3 LENDER HAS RECEIVER'S POWERS**

To the extent permitted by law, any right, power or discretion conferred by this deed on a Receiver may, after the security constituted by this deed has become enforceable, be exercised by the Lender in relation to any of the Charged Property whether or not it has taken possession of any Charged Property and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

#### **9.4 CONVERSION OF CURRENCY**

9.4.1 For the purpose of, or pending, the discharge of any of the Secured Liabilities, the Lender may convert any monies received, recovered or realised by it under this deed (including the proceeds of any previous conversion under this clause 9.4) from their existing currencies of denomination into any other currencies of denomination that the Lender may think fit.

9.4.2 Any such conversion shall be effected at the then prevailing spot selling rate of exchange for such other currency against the existing currency.

9.4.3 Each reference in this clause 9.4 to a currency extends to funds of that currency and, for the avoidance of doubt, funds of one currency may be converted into different funds of the same currency.

#### **9.5 NEW ACCOUNTS**

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

9.5.2 If the Lender does not open a new account immediately on receipt of the notice, or deemed notice, referred to in clause 9.5.1, then, unless the Lender gives express written notice to the contrary to the Borrower, all payments made by the Borrower to the Lender shall be treated as having been credited to a new account of the Borrower and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt or deemed receipt of the relevant notice by the Lender.

#### **9.6 INDULGENCE**

The Lender may, at its discretion, grant time or other indulgence, or make any other arrangement, variation or release with any person not being a party to this deed (whether or not any person is jointly liable with the Borrower) in respect of any of the Secured Liabilities or of any other security for them without prejudice either to this deed or to the liability of the Borrower for the Secured Liabilities.

### **10 WHEN SECURITY BECOMES ENFORCEABLE**

#### **10.1 SECURITY BECOMES ENFORCEABLE ON EVENT OF DEFAULT**

The security constituted by this deed shall become immediately enforceable if an Event of Default occurs.

#### **10.2 DISCRETION**

After the security constituted by this deed has become enforceable, the Lender may, in its absolute discretion, enforce all or any part of that security at the times, in the manner and on the terms it thinks fit, and take possession of and hold or dispose of all or any part of the Charged Property.

### **11 ENFORCEMENT OF SECURITY**

#### **11.1 ENFORCEMENT POWERS**

11.1.1 The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this deed) shall, as between the Lender and a purchaser from the Lender, arise on and be exercisable at any time after the execution of this deed, but the Lender shall not exercise such power of sale or other powers until the security constituted by this deed has become enforceable under clause 10.1.

11.1.2 Section 103 of the LPA 1925 does not apply to the security constituted by this deed.

## 11.2 EXTENSION OF STATUTORY POWERS OF LEASING

The statutory powers of leasing and accepting surrenders conferred on mortgagees under the LPA 1925 and by any other statute are extended so as to authorise the Lender and any Receiver, at any time after the security constituted by this deed has become enforceable, whether in its own name or in that of the Borrower, to:

11.2.1 grant a lease or agreement for lease;

11.2.2 accept surrenders of leases; or

11.2.3 grant any option in respect of the whole or any part of the Property with whatever rights relating to other parts of it,

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

## 11.3 PRIOR SECURITY

11.3.1 At any time after the security constituted by this deed has become enforceable, or after any powers conferred by any Security having priority to this deed shall have become exercisable, the Lender may:

(a) redeem that or any other prior Security;

(b) procure the transfer of that Security to itself; and

(c) settle and pass any account of the holder of any prior Security.

11.3.2 The settlement and passing of any such account shall be, in the absence of any manifest error, conclusive and binding on the Borrower. All monies paid by the Lender to an encumbrancer in settlement of any of those accounts shall be, as from its payment by the Lender, due from the Borrower to the Lender on current account and shall bear interest at the Contract Rate specified in the Agreement for Sale and be secured as part of the Secured Liabilities.

## 11.4 PROTECTION OF THIRD PARTIES

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

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

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

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

## **11.5 PRIVILEGES**

Each Receiver and the Lender is entitled to all the rights, powers, privileges and immunities conferred by the LPA 1925 on mortgagees and receivers.

## **11.6 NO LIABILITY AS MORTGAGEE IN POSSESSION**

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

## **11.7 RELINQUISHING POSSESSION**

If the Lender, any Receiver or Delegate enters into or takes possession of the Charged Property, it or he may at any time relinquish possession.

## **11.8 CONCLUSIVE DISCHARGE TO PURCHASERS**

The receipt of the Lender or any Receiver or Delegate shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Charged Property or in making any acquisition in the exercise of their respective powers, the Lender, every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it or he thinks fit.

# **12 RECEIVERS**

## **12.1 APPOINTMENT**

At any time after the security constituted by this deed has become enforceable, or at the request of the Borrower, the Lender may, without further notice, appoint by way of deed, or otherwise in writing, any one or more person or persons to be a Receiver of all or any part of the Charged Property.

## **12.2 REMOVAL**

The Lender may, without further notice (subject to section 45 of the Insolvency Act 1986), from time to time, by way of deed, or otherwise in writing, remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

## **12.3 REMUNERATION**

The Lender may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the LPA 1925 and the remuneration of the Receiver shall be a debt secured by this deed, to the extent not otherwise discharged.

## **12.4 POWER OF APPOINTMENT ADDITIONAL TO STATUTORY POWERS**

The power to appoint a Receiver conferred by this deed shall be in addition to all statutory and other powers of the Lender under the Insolvency Act 1986, the LPA 1925 or otherwise, and shall be exercisable without the restrictions contained in sections 103 and 109 of the LPA 1925 or otherwise.

## **12.5 POWER OF APPOINTMENT EXERCISABLE DESPITE PRIOR APPOINTMENTS**

The power to appoint a Receiver (whether conferred by this deed or by statute) shall be, and remain, exercisable by the Lender despite any prior appointment in respect of all or any part of the Charged Property.

## **12.6 AGENT OF THE BORROWER**

Any Receiver appointed by the Lender under this deed shall be the agent of the Borrower and the Borrower shall be solely responsible for the contracts, engagements, acts, omissions, defaults, losses and remuneration of that Receiver and for liabilities incurred by that Receiver. The agency of each Receiver shall continue until the Borrower goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Lender.

## **13 POWERS OF RECEIVER**

### **13.1 POWERS ADDITIONAL TO STATUTORY POWERS**

13.1.1 Any Receiver appointed by the Lender under this deed shall, in addition to the powers conferred on him by statute, have the powers set out in clause 13.1 to clause 13.20 inclusive.

13.1.2 If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him states otherwise) exercise all of the powers conferred on a Receiver under this deed individually and to the exclusion of any other Receiver.

13.1.3 Any exercise by a Receiver of any of the powers given by clause 13 may be on behalf of the Borrower, the directors of the Borrower or himself.

### **13.2 REPAIR AND DEVELOP THE PROPERTY**

A Receiver may undertake or complete any works of repair, alteration, building or development on the Property and may apply for and maintain any planning permission, development consent, building regulation approval or any other permission, consent or licence to carry out any of the same.

### **13.3 GRANT OR ACCEPT SURRENDERS OF LEASES**

A Receiver may grant, or accept, surrenders of any leases or tenancies affecting the Property on any terms and subject to any conditions that he thinks fit.

### **13.4 EMPLOY PERSONNEL AND ADVISERS**

A Receiver may provide services and employ, or engage, any managers, officers, servants, contractors, workmen, agents, other personnel and professional advisers on any terms and subject to any conditions that he thinks fit. A Receiver may discharge any such person or any such person appointed by the Borrower.

### **13.5 MAKE AND REVOKE VAT OPTIONS TO TAX**

A Receiver may make, exercise or revoke any VAT option to tax that he thinks fit.

### **13.6 CHARGE FOR REMUNERATION**

A Receiver may charge and receive any sum by way of remuneration (in addition to all costs, charges and expenses incurred by him) that the Lender may prescribe or agree with him.

### **13.7 REALISE CHARGED PROPERTY**

A Receiver may collect and get in the Charged Property or any part of it in respect of which he is appointed and make any demands and take any proceedings as may seem expedient for that purpose, and take possession of the Charged Property with like rights.

### 13.8 MANAGE OR RECONSTRUCT THE BORROWER'S BUSINESS

A Receiver may carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying the business of the Borrower carried out at the Property.

### 13.9 DISPOSE OF CHARGED PROPERTY

A Receiver may grant options and licences over all or any part of the Charged Property, grant any other interest or right over, sell, assign or lease (or concur in granting options and licences over all or any part of the Charged Property, granting any other interest or right over, selling, assigning or leasing) all or any of the Charged Property in respect of which he is appointed for such consideration and in such manner (including, without limitation, by public auction or private sale) and generally on any terms and conditions that he thinks fit. A Receiver may promote, or concur in promoting, a company to purchase the Charged Property to be disposed of by him.

### 13.10 SEVER FIXTURES AND FITTINGS

A Receiver may sever and sell separately any fixtures or fittings from the Property without the consent of the Borrower.

### 13.11 GIVE VALID RECEIPTS

A Receiver may give valid receipts for all monies and execute all assurances and things that may be proper or desirable for realising any of the Charged Property.

### 13.12 MAKE SETTLEMENTS

A Receiver may make any arrangement, settlement or compromise between the Borrower and any other person that he may think expedient.

### 13.13 BRING PROCEEDINGS

A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to any of the Charged Property that he thinks fit.

### 13.14 INSURE

A Receiver may, if he thinks fit, but without prejudice to the indemnity in clause 16.2, effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the Borrower under this deed.

### 13.15 POWERS UNDER LPA 1925

A Receiver may exercise all powers provided for in the LPA 1925 in the same way as if he had been duly appointed under the LPA 1925 and exercise all powers provided for an administrative receiver in Schedule 1 to the Insolvency Act 1986.

### 13.16 BORROW

A Receiver may, for any of the purposes authorised by this clause 13, raise money by borrowing from the Lender (or from any other person) either unsecured or on the security of all or any of the Charged Property in respect of which he is appointed on any terms that he thinks fit (including, if the Lender consents, terms under which that Security ranks in priority to this deed).

### 13.17 REDEEM PRIOR SECURITY

A Receiver may redeem any prior Security and settle and pass the accounts to which the Security relates. Any accounts so settled and passed shall be, in the absence of any manifest error,

conclusive and binding on the Borrower, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.

#### **13.18 DELEGATION**

A Receiver may delegate his powers in accordance with this deed.

#### **13.19 ABSOLUTE BENEFICIAL OWNER**

A Receiver may, in relation to any of the Charged Property, exercise all powers, authorisations and rights he would be capable of exercising, and do all those acts and things, as an absolute beneficial owner could exercise or do in the ownership and management of all or any part of the Charged Property.

#### **13.20 INCIDENTAL POWERS**

A Receiver may do any other acts and things that he:

13.20.1 may consider desirable or necessary for realising any of the Charged Property;

13.20.2 may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this deed or law; or

13.20.3 lawfully may or can do as agent for the Borrower.

### **14 DELEGATION**

#### **14.1 DELEGATION**

The Lender or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this deed (including the power of attorney granted under clause 18.1).

#### **14.2 TERMS**

The Lender and each Receiver may make a delegation on the terms and conditions (including the power to sub-delegate) that it thinks fit.

#### **14.3 LIABILITY**

Neither the Lender nor any Receiver shall be in any way liable or responsible to the Borrower for any loss or liability arising from any act, default, omission or misconduct on the part of any Delegate.

### **15 APPLICATION OF PROCEEDS**

#### **15.1 ORDER OF APPLICATION OF PROCEEDS**

All monies received by the Lender, a Receiver or a Delegate under this deed after the security constituted by this deed has become enforceable (other than sums received under any Insurance Policy), shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied in the following order of priority:

15.1.1 in or towards payment of or provision for all costs, charges and expenses incurred by or on behalf of the Lender (and any Receiver, Delegate, attorney or agent appointed by it) under or in connection with this deed and of all remuneration due to any Receiver under or in connection with this deed;

15.1.2 in or towards payment of or provision for the Secured Liabilities in any order and manner that the Lender determines; and

15.1.3 in payment of the surplus (if any) to the Borrower or other person entitled to it.

## 15.2 APPROPRIATION

Neither the Lender, any Receiver nor any Delegate shall be bound (whether by virtue of section 109(8) of the LPA 1925, which is varied accordingly, or otherwise) to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Secured Liabilities.

## 15.3 SUSPENSE ACCOUNT

All monies received by the Lender, a Receiver or a Delegate under this deed (other than sums received under any Insurance Policy that are not going to be applied in or towards discharge of the Secured Liabilities):

15.3.1 may, at the discretion of the Lender, Receiver or Delegate, be credited to any suspense or securities realised account;

15.3.2 shall bear interest, if any, at the rate agreed in writing between the Lender and the Borrower; and

15.3.3 may be held in that account for so long as the Lender, Receiver or Delegate thinks fit.

## 16 COSTS AND INDEMNITY

### 16.1 COSTS

The Borrower shall, within five Business Days of demand, pay to, or reimburse, the Lender and any Receiver, on a full indemnity basis, all costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal, printing and out-of-pocket expenses) incurred by the Lender, any Receiver or any Delegate in connection with:

16.1.1 preserving or enforcing (or attempting to do so) any of the Lender's, a Receiver's or a Delegate's rights under this deed; or

16.1.2 taking proceedings for, or recovering, any of the Secured Liabilities,

together with interest, which shall accrue and be payable (without the need for any demand for payment being made) from the date on which the relevant cost, charge, expense, tax or liability arose until full discharge of that cost, charge, expense, tax or liability (whether before or after judgment, liquidation, winding-up or administration of the Borrower) at the rate and in the manner specified in the Agreement for Sale.

### 16.2 INDEMNITY

16.2.1 The Borrower shall indemnify the Lender, each Receiver and each Delegate, and their respective employees and agents against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by any of them arising out of or in connection with:

(a) the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this deed or by law in respect of the Charged Property;



- (b) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the security constituted by this deed; or
- (c) any default or delay by the Borrower in performing any of its obligations under this deed.

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

## **17 FURTHER ASSURANCE**

### **FURTHER ASSURANCE**

17.1 The Borrower shall, at its own expense, take whatever action the Lender or any Receiver may reasonably require for:

- 17.1.1 creating, perfecting or protecting the security intended to be created by this deed;
- 17.1.2 facilitating the realisation of any of the Charged Property; or
- 17.1.3 facilitating the exercise of any right, power, authority or discretion exercisable by the Lender or any Receiver in respect of any of the Charged Property,

17.2 including, without limitation (if the Lender or Receiver thinks it expedient) the execution of any transfer, conveyance, assignment or assurance of all or any of the assets forming part of (or intended to form part of) the Charged Property (whether to the Lender or to its nominee) and the giving of any notice, order or direction and the making of any registration.

## **18 POWER OF ATTORNEY**

### **18.1 APPOINTMENT OF ATTORNEYS**

By way of security, the Borrower irrevocably appoints the Lender, every Receiver and every Delegate separately to be the attorney of the Borrower and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things that:

- 18.1.1 the Borrower is required to execute and do under this deed; or
- 18.1.2 any attorney deems proper or desirable in exercising any of the rights, powers, authorities and discretions conferred by this deed or by law on the Lender, any Receiver or any Delegate.

### **18.2 RATIFICATION OF ACTS OF ATTORNEYS**

The Borrower ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in clause 18.1.

## **19 RELEASE**

### **RELEASE**

19.1 Subject to clause 26.3, on the expiry of the Security Period (but not otherwise), the Lender shall, at the request and cost of the Borrower, take whatever action is necessary to:

- 19.1.1 release the Charged Property from the security constituted by this deed; and
- 19.1.2 reassign the Charged Property to the Borrower.

19.2 Subject to clauses 26.3 and 19.3, upon completion of a registerable disposition of a type falling within the list of dispositions at clause 7.3, the Lender shall, within 15 Working Days of request (which may be made in advance of completion of that registerable disposition) of and at the cost of the Borrower, take whatever action is necessary to release such part of the Charged Property as is disposed within that registerable disposition of a type falling within the list of dispositions at clause 7.3 from the security constituted by this deed.

19.3 For the avoidance of doubt, if the registerable disposition referred to in clause 19.2 is:

19.3.1 the grant of a lease, then only such leasehold estate as is disposed of shall be released, with the freehold estate remaining subject to the security constituted by this deed;

19.3.2 the grant of an easement or other interest in the Charged Property, then only the interest which is disposed of shall be released, with the freehold estate remaining subject to the security constituted by this deed.

## **20 ASSIGNMENT AND TRANSFER**

Neither the Borrower nor the Lender may assign any of its rights, or transfer any of its rights or obligations, under this deed.

## **21 SET-OFF**

### **EXCLUSION OF BORROWER'S RIGHT OF SET-OFF**

All payments made by the Borrower to the Lender under this deed shall be made in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **22 AMENDMENTS, WAIVERS AND CONSENTS**

### **22.1 AMENDMENTS**

No amendment of this deed shall be effective unless it is in writing and signed by, or on behalf of, each party (or its authorised representative).

### **22.2 WAIVERS AND CONSENTS**

22.2.1 A waiver of any right or remedy under this deed or by law, or any consent given under this deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

22.2.2 A failure or delay by a party to exercise any right or remedy provided under this deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this deed. No single or partial exercise of any right or remedy provided under this deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this deed by the Lender shall be effective unless it is in writing.

### **22.3 RIGHTS AND REMEDIES**

The rights and remedies provided under this deed are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

## **23 SEVERANCE**

If any provision (or part of a provision) of this deed is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of this deed.

## **24 COUNTERPARTS**

### **24.1 COUNTERPARTS**

24.1.1 This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.

24.1.2 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

## **25 THIRD PARTY RIGHTS**

### **25.1 THIRD PARTY RIGHTS**

25.1.1 Except as expressly provided elsewhere in this deed, a person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this deed. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

25.1.2 The rights of the parties to rescind or agree any amendment or waiver under this deed are not subject to the consent of any other person.

## **26 FURTHER PROVISIONS**

### **26.1 INDEPENDENT SECURITY**

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

### **26.2 CONTINUING SECURITY**

The security constituted by this deed shall remain in full force and effect as a continuing security for the Secured Liabilities, despite any settlement of account, or intermediate payment, or other matter or thing, unless and until the Lender discharges this deed in writing.

### **26.3 DISCHARGE CONDITIONAL**

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

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

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

#### 26.4 CERTIFICATES

A certificate or determination by the Lender as to any amount for the time being due to it from the Borrower under this deed shall be, in the absence of any manifest error, conclusive evidence of the amount due.

#### 26.5 CONSOLIDATION

The restriction on the right of consolidation contained in section 93 of the LPA 1925 shall not apply to this deed.

#### 26.6 DEVELOPMENT AGREEMENTS

The Lender acknowledges that the arrangements herein for discharge of the Secured Liabilities may necessitate the Lender in its capacity as lender entering into Development Agreements relating to the residential commercial and ancillary development of the Property and the Lender covenants with the Borrower that upon written request from the Borrower and upon being supplied with the said agreement or agreements the Lender will join in the same to give its consent to the terms of the said agreement or agreements and to those terms being binding on the Lender and on any successors in title to the Lender Provided That the Transferee covenants to indemnify the Transferor against the performance of, the cost of complying with, and all liability arising out of, the terms of such a Development Agreement.

### 27 NOTICES

#### 27.1 DELIVERY

Any notice or other communication given to a party under or in connection with this deed shall be:

27.1.1 in writing;

27.1.2 delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by fax; and

27.1.3 sent to:

(a) the Borrower at:

Seaton Burn House  
Dudley Lane  
Seaton Burn  
Newcastle upon Tyne, NE13 6BE

Attention: General Counsel and Company Secretary

(b) the Lender at:

1st Floor, 99 Gresham Street, London, EC2V 7NG

marked for the attention of: Head of Investment Management; and to

Bevan Brittan LLP, Kings Orchard, 1 Queen Street, Bristol, BS2 0HQ,  
marked for the attention of "Rob Harrison" and quoting the reference: RH /  
100332.1539;

or to any other address or fax number as is notified in writing by one party to the other from time to time.

#### 27.2 RECEIPT BY BORROWER

Any notice or other communication that the Lender gives to the Borrower shall be deemed to have been received:

27.2.1 if delivered by hand, at the time it is left at the relevant address;

27.2.2 if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; and

27.2.3 if sent by fax, when received in legible form.

A notice or other communication given as described in clause 27.2.1 or clause 27.2.3 on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

### **27.3 RECEIPT BY LENDER**

Any notice or other communication given to the Lender shall be deemed to have been received only on actual receipt.

### **27.4 SERVICE OF PROCEEDINGS**

This clause 27 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

### **27.5 NO NOTICE BY EMAIL**

A notice or other communication given under or in connection with this deed is not valid if sent by email.

## **28 GOVERNING LAW AND JURISDICTION**

### **28.1 GOVERNING LAW**

This deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

### **28.2 JURISDICTION**

Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this deed or its subject matter or formation. Nothing in this clause shall limit the right of the Lender to take proceedings against the Borrower in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

### **28.3 OTHER SERVICE**

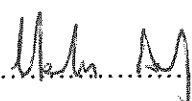
The Borrower irrevocably consents to any process in any legal action or proceedings under clause 28.2 being served on it in accordance with the provisions of this deed relating to service of notices. Nothing contained in this deed shall affect the right to serve process in any other manner permitted by law.

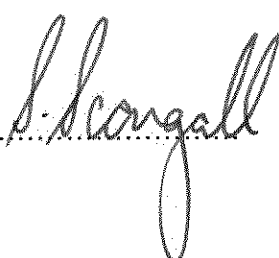
This agreement has been entered into as a deed on the date stated at the beginning of it.


### **SCHEDULE 1 - PROPERTY**

Parts of the freehold property at St George's Hospital, Suttons Lane, Hornchurch, Essex, RM12 6RS registered at the Land Registry with absolute title under title number EGL346640 and shown edged and hatched yellow and shown edged and hatched blue on the Plan.

**EXECUTED** as a Deed by **BELLWAY HOMES LIMITED** acting by two directors or a director and its secretary:

Director ..... 

Director/Secretary ..... 

Executed as a deed by **NHS PROPERTY SERVICES LIMITED** acting by  a director, in the presence of: **Director**

.....

Signature of witness

Witness name:.....

Witness address:.....

.....

Witness occupation:

.....

Executed as a deed by **BELLWAY HOMES LIMITED** acting by ..... a  
director, in the presence of: ..... **Director**

Signature of witness

Witness name: .....

Witness address: .....

Witness occupation: .....

Executed as a deed by **NHS PROPERTY SERVICES LIMITED** acting by **JOHN WESTWOOD**, a director, in the presence of: ..... **Director**

Signature of witness

Witness name: Mira Khan

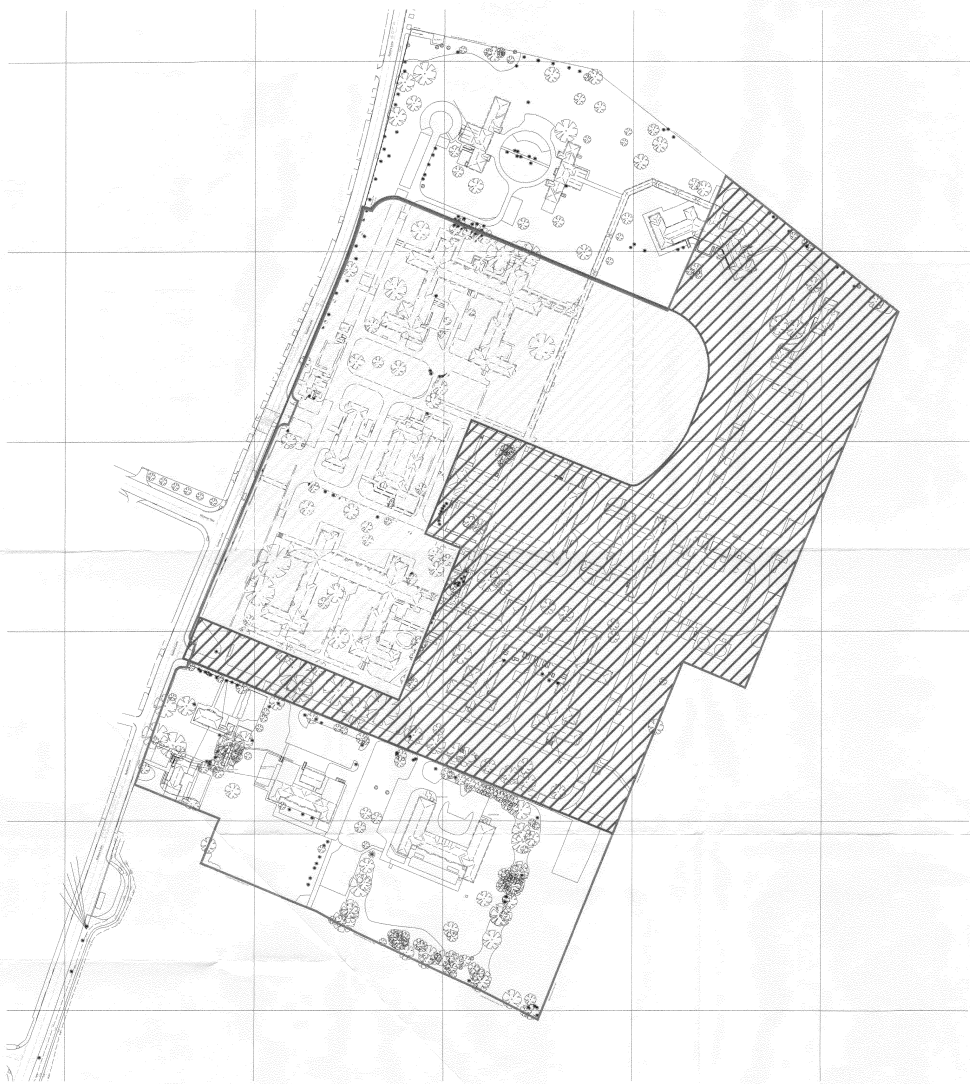
Witness address: 99 Gresham Street  
London EC2V 7NG

Witness occupation:




National Transaction Coordinator



PLAN



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Figured dimensions only are to be taken from this drawing. All dimensions are to be checked on site before any work is put in hand.

-  Site boundary
-  TBA
-  TBA

00	Draft Issue	NM	15/Jan/18	RC
Revision	Description	Drawn	Date	Checked

**SCOTT BROWNRIGG**

35 Catherine's Court  
45-47 Portsmouth Road  
Guildford GU2 4DQ  
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F +44 (0)1483 575533  
W scottbrownrigg.com

Client's Name  
Bellway Homes

Job Title  
St. George's Hospital, Hornchurch

Drawing title  
Charge plan

Scale  
1 : 1000 @ A1

Job No. 17524 Drawing No. MP-00-GA-510 Revision 00

Information