



Registration of a Charge

Company name: **KIER LIVING LIMITED**

Company number: **00775505**



X7GFTMC8

Received for Electronic Filing: **12/10/2018**

Details of Charge

Date of creation: **11/10/2018**

Charge code: **0077 5505 0051**

Persons entitled: **CLARKE WILLMOTT TRUST CORPORATION LIMITED
ABBEEY MANOR DEVELOPMENTS LIMITED
EDWARD NICHOLAS BRABAZON CLIVE-PONSONBY-FANE**

Brief description: **LAND AT BUNFORD HOLLOW ROUNDABOUT YEOVIL SOMERSET (ALSO
KNOWN AS BUNFORD HEIGHTS TO THE WEST OF WATERCOMBE LANE
YEOVIL SOMERSET)**

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: **DEBI HASKINS CLARKE WILLMOTT LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 775505

Charge code: 0077 5505 0051

The Registrar of Companies for England and Wales hereby certifies that a charge dated 11th October 2018 and created by KIER LIVING LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 12th October 2018 .

Given at Companies House, Cardiff on 16th October 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

H.M. LAND REGISTRY
LAND REGISTRATION ACT 2002

ADMINISTRATIVE AREA: SOUTH SOMERSET

TITLE NO(s): WS53695

PROPERTY: Land at Bunford Hollow Roundabout, Yeovil, Somerset (also known as Bunford Heights to the north of West Coker Road and to the west of Watercombe Lane, Yeovil, Somerset)

THIS LEGAL CHARGE is made on 11 OCTOBER 2018
between

- (1) **KIER LIVING LIMITED** (company number 00775505) whose registered office is at Tempsford Hall, Sandy, Bedfordshire, SG19 2BD (the **Chargor**)
- (2) **CLARKE WILLMOTT TRUST CORPORATION LIMITED** (company number 05664930) whose registered office is at 1 Georges Square, Bath Street, Bristol BS1 6BA (the **Chargee**) as bare trustee for **ABBEY MANOR DEVELOPMENTS LTD** (company number 01499944) whose registered office address is The Abbey, Preston Road, Yeovil, Somerset, BA20 2EN and **EDWARD NICHOLAS BRABAZON CLIVE-PONSONBY-FANE** of Flat 4, 88 High Street, Ramsgate, Kent, CT11 9RX or their lawful assigns (the **Beneficiary**)

WHEREAS:

- (A) The Chargor has purchased the Charged Property pursuant to the Contract and under the Transfer.
- (B) Upon completion of the Transfer, the sum of One Million Three Hundred and Eighty-Five Thousand Six Hundred and Twenty-Five Pounds £1,385,625, being part of the purchase price payable by the Chargor to the Seller for the Charged Property pursuant to the Contract, has been left outstanding and is due for payment by the Chargor to the Seller pursuant to the Contract on the Deferred Payment Date.
- (C) The Chargor has agreed to grant this Legal Charge to the Chargee as security for the Buyer's obligation to pay the Deferred Payment to the Seller.
- (D) It is intended by the parties to this document that it takes effect as a deed.

IT IS AGREED as follows:

1. Definitions

In this Legal Charge:

- 1.1 **Affordable Housing** has the same meaning as in Annex 2 of the National Planning Policy Framework;
- 1.2 **Affordable Housing Unit** means a house, flat or any other structure (whether or not construction of that house, flat or other structure has been commenced or completed) at the Charged Property which is required by a planning permission or Planning Agreement to be used for Affordable Housing;
- 1.3 **Approved and Approval** mean approval not to be unreasonably withheld or delayed
- 1.4 **Base Rate** means the base rate from time to time at Lloyds Bank plc or such other clearing bank nominated by the Chargee at any time or, if the clearing banks cease at any time to publish a base lending rate, such comparable rate of interest as the Chargee may reasonably determine;
- 1.5 **Charged Property** means the land at Bunford Hollow Roundabout, Yeovil, Somerset (also known as Bunford Heights to the north of West Coker Road and to the west of Watercombe Lane, Yeovil, Somerset) being the whole of the land comprised in the Transfer registered at the Land Registry at the date of this Legal Charge under title number WS53695;
- 1.6 **Contract** means a contract for the sale and purchase of the Charged Property dated 1 November 2017 made between (1) Abbey Manor Developments Ltd (as seller) (2) the Chargor (as buyer) and (3) Edward Nicholas Brabazon Clive-Ponsonby-Fane (as landowner);
- 1.7 **Default Rate** means an interest rate 4% over and above the Base Rate;
- 1.8 **Deferred Payment** means the Deferred Payment defined in and payable to the Seller in accordance with the Contract, comprising a sum of One Million Three Hundred and Eighty-Five Thousand Six Hundred and Twenty-Five Pounds (£1,385,625) due on the Deferred Payment Date;
- 1.9 **Deferred Payment Date** has the same meaning as is given to such term in the Contract (being the date on which the Deferred Payment is due pursuant to the Contract);
- 1.10 **Development** means the development permitted by outline planning permission granted on 9 November 2015 by South Somerset District Council under reference number 13/01869/OUT (as amended by the non-material amendment approved by a letter from the LPA dated 23 February 2016 under reference number 16/00067/NMA) and by any reserved matters approval granted pursuant to that permission;

- 1.11 **Encumbrance** means any mortgage, pledge, lien, charge, assignment, hypothecation, security interest, title retention, preferential right or trust arrangement or agreement the effect of which is the creation of security;
- 1.12 **Event of Default** means each event specified in clause 8 below;
- 1.13 **Interest** means any interest due in respect of the Deferred Payment pursuant to the Contract;
- 1.14 **Permitted Disposal** means one or more of the following:
- 1.14.1 any disposal (or agreement to grant the same) of any part of the Charged Property to a service authority or utility company to provide water, drainage, gas, electricity, communication services or for the siting of an electricity substation gas governor or other similar service facility or the grant of any easements or rights wholly for the benefit of the same;
 - 1.14.2 any disposal of any part of the Charged Property to a local authority or other statutory body pursuant to any Planning Agreement;
 - 1.14.3 any grant of easements or rights, transfer, lease or deed of dedication to a highway or other authority for the purpose of adoption of any road and footpath and cycle ways and drainage to be constructed on the Charged Property;
 - 1.14.4 any disposal of a Residential Unit authorised under clause 4.2.3 of this Charge; and
 - 1.14.5 the grant of any easement over any part of the Charged Property for the benefit of any Residential Units or Affordable Housing Units where required for the sale and beneficial use of those Residential Units or Affordable Housing Units.
- 1.15 **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 (Consequential Provisions) Act 1990 and the Planning and Compensation Act 1991 and any re-enactment, variation or modification of any or all of them and any subordinate legislation made (before or after this agreement) under any such enactments together with all other statutes governing or controlling the use or development of land and property;
- 1.16 **Planning Agreement** means an agreement or undertaking pursuant to Section 106 of the Town and Country Planning Act 1990 or under Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 Section 38 and/or 278 of the Highways Act 1980 Section 104 of the Water Industry Act 1991 or any provision or provisions to similar intent or an agreement with the local water undertaker or other appropriate authority or body as to the water supply to or drainage of surface water and effluent from the Charged Property or an agreement with any competent

authority or body relating to other services which has been Approved by the Chargee;

- 1.17 **Receiver** has the meaning given to it in clause 10 below;
- 1.18 **Registered Provider** means a registered social landlord or any other provider of social housing;
- 1.19 **Residential Unit:** a house, flat or any other structure (whether or not construction of that house, flat or other structure has been commenced or completed) on the Charged Property which comprises part of the Development and is intended to be developed by the Chargor on the Charged Property for residential use:
- 1.19.1 including any ancillary land and facilities for use in connection with that house, flat or other structure including (but not limited to) any parking space and garage; and
- 1.19.2 including any Affordable Housing Unit.
- 1.20 **Secured Liabilities** means the obligation of the Chargor to pay (a) the Deferred Payment to the Seller (whether directly to the Seller or to the Seller's conveyancer) (b) the Interest due on the Deferred Payment to the Seller under the Contract (if any) and (c) all reasonable and proper costs charges and expenses properly incurred directly by the Chargee in accordance with this Legal Charge as a result of an Event of Default (if any);
- 1.21 **Security Period** means the period beginning on the date of this Legal Charge and ending on the date on which all the Secured Liabilities which have arisen have been unconditionally and irrevocably paid and discharged in full or the security created by this Legal Charge has been unconditionally and irrevocably released and discharged;
- 1.22 **Seller** means Abbey Manor Developments Ltd (company number 01499944) whose registered office is at The Abbey, Preston Road, Yeovil, Somerset BA20 2EN;
- 1.23 **Taxes** means all present and future forms of taxation, duties, imposts and levies, including (but without limitation) income tax (including income tax or amounts equivalent to or in respect of income tax required to be deducted or withheld from or accounted for in respect of any payment), capital gains tax, capital transfer tax, inheritance tax, value added tax, stamp duty reserve tax and any other taxation, duties, charges, imposts, levies or withholdings corresponding with, similar to or replaced by or replacing any of them and shall also include any interest, penalty, surcharge or fine in connection with or relating to any of them;
- 1.24 **Transfer** means a transfer of the Charged Property dated 11 OCTOBER 2018 made between (1) Edward Nicholas Brabazon Clive-Ponsonby-Fane, (2) Abbey Manor Developments Ltd and (3) the Chargor (as transferee); and

- 1.25 **Working Day** means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

2. **Interpretation**

In this Legal Charge, unless the contrary intention appears:

- 2.1 headings are for convenience of reference only;
- 2.2 references to the Chargor and the Chargee and the Beneficiary shall, where applicable, be deemed to include their respective successors and assigns;
- 2.3 references to the Charged Property includes the whole or any part of the Charged Property;
- 2.4 the term "assets" includes property, rights and assets of every description;
- 2.5 all covenants and obligations shall (where more than one person gives or becomes bound by them) be treated as joint and several;
- 2.6 all covenants of commission or omission shall also require the relevant covenantor to permit or prevent that commission or omission; and
- 2.7 unless otherwise defined in this Legal Charge or the context otherwise requires, terms defined in the Contract have the same meaning when used in this Legal Charge.

3. **Covenant to pay**

The Chargor covenants with the Chargee that it will pay or discharge:

- 3.1 the relevant Deferred Payment to the Seller on the Deferred Payment Date in accordance with the Contract; and
- 3.2 the other Secured Liabilities (if any) to the Seller or the Chargee (as appropriate) when due under the Contract or this Legal Charge (as appropriate).

4. **Security**

4.1 **Fixed charge**

The Chargor, as security for the payment of all Secured Liabilities, charges the whole of the Charged Property in favour of the Chargee by way of a first fixed legal charge. The charge created by this clause 4.1 shall not create a lien on the Charged Property.

4.2 **Release of the Charge and other obligations**

- 4.2.1 The Chargee covenants with the Chargor that, if and when no further Secured Liabilities are due to the Seller or the Chargee

(as appropriate) and the Chargor has paid all Secured Liabilities, the Chargee will forthwith at the request of the Chargor take whatever action as is necessary to release the Charged Property from the charge created by this Legal Charge.

4.2.2 The Chargee agrees that it will accept for the purposes of clause 4.2.1 that the Chargor has paid all of the Secured Liabilities referred to in paragraphs (a) and (b) of the definition of Secured Liabilities upon receipt by the Chargee of either:

4.2.2.1 confirmation from the Seller of receipt by the Seller or its conveyancer of the Deferred Payment and any Interest (if any) due under the Contract in respect of the Deferred Payment; or

4.2.2.2 reasonable written evidence from the Chargor that it has paid all of the Secured Liabilities referred to in paragraphs (a) and (b) of the definition of Secured Liabilities in accordance with the Contract.

4.2.3 The Chargee:

4.2.3.1 acknowledges the provisions in clause 12.5 of the Contract which provide that, prior to the payment of the Deferred Payment under the Contract, there may be released from the charge created by this Legal Charge such part or parts of the Charged Property comprising up to 40 Residential Units (which proposed release is consented to therein by the Beneficiary (as seller and as landowner under the Contract)); and

4.2.3.2 hereby agrees to execute and deliver to the Chargor any Land Registry DS3 form (or any other appropriate form) and/or deed of release required by the Chargor to effect the proper release of such part or parts of the Charged Property in relation to the provisions referred to in clause 4.2.3.1 within 10 Working Days of receipt of a request for the same from the Chargor or the Seller or the Landowner. If the Chargee has failed to execute and deliver the said forms and deed in accordance with this clause, the Chargee hereby irrevocably appoints the Chargor as attorney for the Chargee to execute and deliver any documents in the name and on behalf of the Chargee which the Chargee has failed to execute and deliver in accordance with this clause within 10 Working Days of request.

4.2.4 The Seller and Landowner shall procure that the Chargee executes and delivers all such HM Land Registry forms

(including DS3 and DS1 forms) and deed of release as may be required in accordance with clauses 4.2.3.2, 12.3 and 12.4.

4.3 Restrictions on dealing

The Chargor shall not without the prior written Approval of the Chargee create any Encumbrance which has priority to this Legal Charge in respect of the Charged Property (save for any Encumbrance in favour of the Chargee and save that the Chargor may enter into floating charges over its entire undertaking as part of its normal business operations without such Approval).

5. Continuance of security

5.1 Continuing security

The security constituted by this Legal Charge is continuing and extends to the ultimate balance of each of the Secured Liabilities regardless of any intermediate payment or discharge in part of them.

5.2 Additional security

The security given by this Legal Charge shall be in addition to and shall not be affected by any other Encumbrance held by the Chargee now or in the future for all or any of the Secured Liabilities.

6. Representations and warranties

6.1 Duration

The Chargor represents and warrants to the Chargee (each which representation and warranty shall continue during the Security Period) as set out in the following sub-clauses of this clause 6.

6.2 Status

The Chargor:

6.2.1 is a limited liability company which has been duly incorporated in accordance with the laws of its place of incorporation as stated to the Chargee and is validly existing under those laws; and

6.2.2 has the power and authority to own its assets and carry on its business as it is being conducted.

6.3 Powers and authority

This Legal Charge is within the Chargor's powers and its execution, delivery and performance have been duly authorised.

6.4 Legal validity

This Legal Charge constitutes the Chargor's legal, valid and binding obligation enforceable in accordance with its terms and effectively creates a first priority security interest over the Charged Property free of prior or pari passu interests and is not liable to be avoided or otherwise set aside on the liquidation or administration of the Chargor or otherwise.

6.5 Non-conflict

The entry into and performance of the transactions contemplated by this Legal Charge do not and will not:

6.5.1 conflict with any law or regulation having the force of law; or

6.5.2 conflict with the Chargor's constitutional documents; or

6.5.3 conflict with any document which is binding on the Chargor or any of its assets.

6.6 Adverse claims

The Chargor has received no notice of any adverse claim by, nor has any acknowledgement been given to, any person in respect of the ownership of the Charged Property, or any interest in it.

7. Covenants and undertakings

7.1 Duration and covenant

The Chargor gives the covenants and undertakings as set out in the following sub-clauses of this clause 7 each of which together with the covenants and undertakings contained elsewhere in this Legal Charge:

7.1.1 shall remain in force throughout the Security Period; and

7.1.2 are given by the Chargor to the Chargee.

7.2 Performance

The Chargor shall comply at all times with the terms of this Legal Charge.

7.3 Taxes and outgoings

The Chargor shall pay when due all Taxes, rates, duties, charges, assessments and outgoings (whether parliamentary, parochial, local or of any other description) payable in respect of the whole or any part of the Charged Property other than any payable by the Beneficiary or the transferor under the Transfer arising from the transactions effected by the Contract and/the Transfer.

7.4 Statutes

The Chargor shall promptly perform and observe all the Chargor's obligations under any present or future statute, regulation, order or notice made affecting the Charged Property.

7.5 Disposals etc.

Save in relation to Permitted Disposals, not to part with dispose of or in any other manner whatsoever deal with the Charged Property without the Chargee's prior written Approval and in particular not to exercise the statutory or other powers of granting leases and accepting or agreeing to accept surrenders of leases nor to part with possession of nor grant any licence or right to occupy the Charged Property.

7.6 Alterations

The Chargor shall be permitted without the prior written consent of the Chargee:

- 7.6.1 to carry out site set-up works on the Charged Property and use the Charged Property for a compound and/or site office with ancillary buildings/portacabins;
- 7.6.2 to demolish or permit any buildings or other structures on the Charged Property to be demolished;
- 7.6.3 to carry out the Development and any other residential development in substantially similar form on the Charged Property within the meaning of section 55 Town and Country Planning Act 1990; and/or
- 7.6.4 to carry out or permit any other alterations to be carried out to the Charged Property.

8. When security becomes enforceable

8.1 Events of default

If (whether or not caused by any reason whatsoever outside the control of the Chargor or any other person) any of the events set out in the following sub-clauses in this clause 8 occurs (each of which is an Event of Default) this security shall immediately become enforceable.

8.2 Non-payment

The Chargor does not pay any of the Deferred Payment or the Interest within 5 Working Days of the Deferred Payment Date.

8.3 **Insolvency**

The Chargor is, or is deemed for the purposes of any law to be, unable to pay its debts as they fall due or to be insolvent, or admits inability to pay its debts as they fall due.

8.4 **Insolvency proceedings**

Any of the following occurs:

8.4.1 a composition, or arrangement with any creditors of the Chargor is made; or

8.4.2 an order is made for the winding-up or administration of the Chargor

other than for the purpose of a scheme for solvent amalgamation or reconstruction.

8.5 **Appointment of receivers and managers**

Any receiver, administrative receiver or manager is appointed of the Chargor or any part of the assets the subject of this Charge.

9. **Enforcement of security**

For the purposes of all powers implied by statute, the Deferred Payment shall be deemed to become due and payable on the Deferred Payment Date.

10. **Receiver**

10.1 **Appointment of receiver**

10.1.1 In this clause 10:

10.1.1.1 **Receiver** means any one or more qualified persons appointed as receiver or manager by the Chargee under this Legal Charge or pursuant to any statute; and

10.1.1.2 **qualified person** means a person who, under the Insolvency Act 1986, is qualified to act as a receiver of the property of any chargor with respect to which he is appointed (but does not include an administrative receiver).

10.1.2 At any time after the occurrence of an Event of Default, the Chargee may without further notice appoint under seal or in writing under its hand any one or more qualified persons to be a receiver or receiver and manager of all or any part of the Charged Property in like manner in every respect as if the

Chargee had become entitled under the Law of Property Act 1925 to exercise its power of sale.

10.2 Removal and remuneration

The Chargee may from time to time by writing under its hand:

10.2.1 remove any Receiver appointed by it;

and may whenever it deems it expedient,

10.2.2 appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated; and

10.2.3 from time to time fix the remuneration of any Receiver.

10.3 Agent of the Chargor

Every Receiver duly appointed by the Chargee under this Legal Charge shall be deemed to be the agent of the Chargor so far as the law permits and shall be deemed to be in the same position as a receiver duly appointed by a mortgagee under the Law of Property Act 1925.

10.4 Company's responsibility

The Chargor alone shall be responsible for the Receiver's proper contracts, engagements, acts, omissions, defaults and losses and for proper liabilities incurred by him and the Chargee shall not incur any liability for him (either to the Chargor or to any other person) by reason of the Chargee making his appointment as Receiver or for any other reason subject to the legal reservations and perfection requirements.

10.5 Joint and several powers

If more than one Receiver is appointed under this Legal Charge, the Receiver may act jointly or jointly and severally.

10.6 Powers of receiver

Every Receiver shall have:

10.6.1 and be entitled to exercise all powers conferred upon receivers by the Insolvency Act 1986 as if he had been duly appointed as receiver under that Act; and

10.6.2 without limiting any of the above general powers, power to do the things set out in clauses 10.7 to 10.12 inclusive (in each case on whatever terms and in whatever manner in his absolute discretion he thinks fit).

10.7 Take possession

The power to take immediate possession of, get in and collect all or any part of the Charged Property.

10.8 Sell assets

The power to sell, exchange or otherwise realise all or any part of the Charged Property by whatever manner and on whatever terms.

10.9 Compromise

The power to settle, adjust, refer to arbitration, compromise or otherwise arrange any claims, accounts, disputes or other demands with or by any person who is or claims to be a creditor of the Chargor in respect of the whole or any part of the Charged Property.

10.10 Legal actions

The power to bring, prosecute, enforce, defend, abandon or otherwise deal with all actions, suits and proceedings in relation to taking possession of and collecting the income from the whole or any part of the Charged Property.

10.11 Receipts

The power to give valid receipts for all moneys and execute all assurances and other things which may be proper or desirable for realising the Charged Property.

10.12 General powers

In the name of the Chargor, the power to do all other acts desirable or necessary for realising all or any part of the Charged Property or incidental or conducive to any of the powers conferred on a Receiver by virtue of this Legal Charge and (in relation to all or any part of the Charged Property) to exercise all powers as he would be capable of exercising if he were the absolute beneficial owner.

11. Application of proceeds

11.1 Order of application

After this security shall have become enforceable but subject to the payment of any claims having priority to this security, any moneys received by the Chargee or by any Receiver under this Legal Charge shall be applied by the Chargee for the following purposes (but without prejudice to the right of the Chargee to recover any shortfall from the Chargor):

11.1.1 in satisfaction of or provision for all proper and reasonable costs, charges and expenses incurred and payments made by

the Chargee or any Receiver and of all remuneration due together with interest (as well after as before judgement and payable on demand) at the Default Rate from the due date until the date they are unconditionally and irrevocably paid and discharged in full;

11.1.2 in or towards payment of all or any part of the Secured Liabilities then due and payable; and

11.1.3 in payment of the surplus (if any) to the Chargor or other person so entitled.

12. Chargee's obligations

12.1 The Chargee will, within 10 Working Days of written request from the Chargor, consent to or join in:

12.1.1 any Planning Agreement required in connection with the Chargor's development of the Charged Property; and/or

12.1.2 any disposition (including a sale, transfer, easement, lease, licence agreement, wayleave or dedication agreement) reasonably required by the Chargor in connection with the construction, maintenance, management, siting and/or adoption of roads sewers and service installations and ancillary infrastructure intended to serve the Chargor's development of the Charged Property and/or any Permitted Disposal;

Provided that in each case the Chargee is joined as a party only for the purpose of consenting to such arrangement and on the basis that the Chargee is not required to observe and perform any covenants or other obligations or incur any liability until such time (if any) as the Chargee is in possession of all or any part of the Charged Property.

12.2 As security for the performance of the Chargee's obligations under this clause 12, the Chargee hereby irrevocably appoints the Chargor as attorney for the Chargee to execute and deliver any documents in the name and on behalf of the Chargee which the Chargee has failed to execute and deliver in accordance with this clause within 10 Working Days of request.

12.3 The Chargee will release this Legal Charge and will release the Charged Property (whether as a whole or in part(s)) from this Legal Charge in accordance with the requirements of the Contract.

12.4 Without prejudice to clause 12.3, if and when no further Secured Liabilities are due to the Chargee and the Chargor has paid all Secured Liabilities, the Chargee will at the request and cost of the Chargor take whatever action is necessary to release the Charged Property from this Legal Charge.

- 12.5 The Chargor shall indemnify the Chargee against all liabilities and costs properly incurred by the Chargee as a result of any breach by the Chargor of the terms of any Planning Agreements and/or other agreements that is entered into by the Chargee pursuant to clause 12.1 above.

13. Protection of receiver and Chargee

Every Receiver and the Chargee shall be entitled to all the rights, powers, privileges and immunities conferred by the Law of Property Act 1925 on mortgagees and receivers (as appropriate) but so that Section 103 of that Act shall not apply.

14. Protection of third parties

No purchaser, mortgagee, tenant or other person dealing with the Chargee or the Receivers or their respective agents shall be concerned to enquire:

- 14.1 whether the Secured Liabilities have become payable; or
- 14.2 whether any power which the Chargee or the Receivers are purporting to exercise has become exercisable; or
- 14.3 whether any money remains due on this Legal Charge; or
- 14.4 to see to the application of any money paid to the Chargee or to the Receivers.

15. Costs and charges

- 15.1 All reasonable costs and charges properly incurred and all proper payments made (including any Value Added Tax) by the Chargee or any Receiver in the lawful exercise of their respective powers under this Legal Charge occasioned by any act, neglect or default of the Chargor, shall carry interest (as well after as before judgement) at the Base Rate from the date when they are incurred or become payable until the date of unconditional and irrevocable payment and discharge of them in full.
- 15.2 The amount of all such costs, charges and payments, Value Added Tax and interest referred to in clause 15.1 and all remuneration payable under this Legal Charge shall be payable by the Chargor within 10 Working Days of written demand.
- 15.3 For the avoidance of doubt, the Chargor shall not in any way be liable for any costs incurred by the Beneficiary in relation to or in connection with the terms of this Legal Charge.

16. Taxes

If the Chargor is compelled by law to make payment subject to any Taxes and the Chargee does not actually receive for its or their own

benefit on the due date a net amount equal to the full amount provided for under this Legal Charge, the Chargor shall pay all necessary additional amounts to ensure receipt by the Chargee of the full amount.

17. Indemnity

- 17.1 The Chargee and every Receiver appointed by the Chargee under this Legal Charge shall be entitled to be indemnified out of the Charged Property for all liabilities and expenses properly incurred by them in the execution of any of their powers under this Legal Charge.
- 17.2 The Chargee and any Receiver may retain and pay all sums referred to in clause 17.1 out of any money received by them under this Legal Charge.

18. Delegation by Chargee

- 18.1 The Chargee may at any time and from time to time delegate by power of attorney or in any other manner to any person or persons all or any of the powers, authorities and discretions which are for the time being exercisable by the Chargee under this Legal Charge concerning the whole or any part of the Charged Property.
- 18.2 A delegation may be made upon whatever terms (including power to sub-delegate) and subject to whatever regulations as the Chargee thinks fit (but subject to the terms of this Legal Charge).

19. Further assurance

- 19.1 The Chargor shall execute and do all such assurances, acts and things at its own expense:
 - 19.1.1 as the Chargee may properly require for perfecting or protecting this security over the whole or any part of the Charged Property or for facilitating the realisation of the whole or any part of the Charged Property; and
 - 19.1.2 in the proper exercise of all powers, authorities and discretions vested by this Legal Charge in the Chargee or any Receiver of the whole or any part of the Charged Property or in any delegate or sub delegate.
- 19.2 In particular, the Chargor shall execute all transfers, conveyances, assignments and assurances of the whole or any part of the Charged Property whether to the Chargee or to its nominees and give all notices, orders and directions and make all registrations which the Chargee may properly require in relation to the exercise of any of the powers granted to the Chargee in this Legal Charge.

20. Waivers, remedies cumulative and consents

- 20.1 The rights of the Chargee under this Legal Charge:

20.1.1 may be exercised as often as necessary and permissible under this Legal Charge;

20.1.2 are cumulative and not exclusive of its rights under general law; and

20.1.3 may be waived only in writing and specifically.

20.2 Delay or indulgence in the exercise or non-exercise of any right is not a waiver of that right.

21. **Stamp duties**

The Chargor shall pay and, on demand, indemnify the Chargee against any liability it incurs for any stamp duty, Land Registry and similar fee, filing and registration fee and other transaction tax which is or becomes payable concerning the entry into, performance or enforcement of this Legal Charge.

22. **Notices**

22.1 **Form of notices**

Any notice served under this Legal Charge is to be:

22.1.1 in writing;

22.1.2 signed by an officer of the party serving the notice or by its solicitors;

22.1.3 delivered by hand, first class post, pre-paid or recorded delivery or fax at the address of the party on whom it is served set out above or such other address which they may notify in writing to the other parties at any time.

22.2 **Time of receipt**

If a notice is received after 4.00 pm on a Working Day, or on a day which is not a Working Day, it is to be treated as having been received on the next Working Day.

23. **Deemed receipt**

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

23.1 if delivered by hand, at the time of delivery;

23.2 if sent by post, on the second Working Day after posting; or

23.3 if sent by fax, at the time of transmission.

24. **Contracts (Rights of Third Parties) Act 1999**

The parties to this Legal Charge do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

25. **Governing law**

This Legal Charge shall be governed by and construed in accordance with English law.

IN WITNESS of which this legal charge has been executed as a deed by the Chargee and the Chargor and has been delivered on the date which appears first on page 1.

EXECUTED as a DEED by)

CLARKE WILLMOTT TRUST)

CORPORATION LIMITED)

(as bare trustees for the Beneficiary))

acting by a Director)

Director

in the presence of:

Signature of witness:

Name of witness:

Address of witness:


EXECUTED as a DEED by)

KIER LIVING LIMITED)

acting by a Director)

Director

in the presence of:

Signature of witness: 

Name of witness: **ASHLEY BOWER**

Address of witness: **KIER LIVING
HAWTHORNE HOUSE
EMPEROR WAY
EXETER
EX1 3QS.**