

MR01

Particulars of a charge

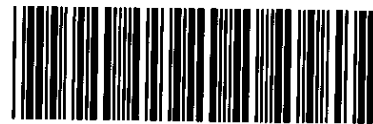
5855/23



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COMPANIES HOUSE

☒ **What this form is for**
You may use this form to register
a charge created or evidenced by
an instrument.

☐ **What this form is NOT for**
You may not use this form to
register a charge where the
instrument. Use form MR08.

This form **must be delivered to the Registrar for registration within 21 days** beginning with the day after the date of creation of the charge. If delivered outside of the 21 days it will be rejected unless it is accompanied by a court order extending the time for delivery.



You **must** enclose a certified copy of the instrument with this form. This will be scanned and placed on the public record. **Do not send the original.**

1 Company details

Company number 1 6 4 5 4 4 5

Company name in full O&H PROPERTIES LIMITED

34 For official use

→ **Filling in this form**
Please complete in typescript or in
bold black capitals.

All fields are mandatory unless
specified or indicated by *

2 Charge creation date

Charge creation date d 2 d 9 m 0 m 8 y 2 y 0 y 1 y 7

3 Names of persons, security agents or trustees entitled to the charge

Please show the names of each of the persons, security agents or trustees
entitled to the charge.

Name CALA MANAGEMENT LIMITED (COMPANY NUMBER SCO13655)

CALA HOMES LIMITED (COMPANY NUMBER SCO74857)

Name

Name

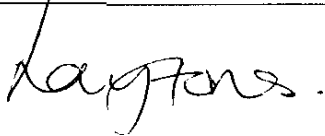
Name

If there are more than four names, please supply any four of these names then
tick the statement below.

☐ I confirm that there are more than four persons, security agents or
trustees entitled to the charge.

MR01

Particulars of a charge

4	Brief description Please give a short description of any land, ship, aircraft or intellectual property registered or required to be registered in the UK subject to a charge (which is not a floating charge) or fixed security included in the instrument. Brief description 204 West Lake Avenue, Hampton Vale, Peterborough PE7 8LN	Please submit only a short description. If there are a number of plots of land, aircraft and/or ships, you should simply describe some of them in the text field and add a statement along the lines of, "for more details please refer to the instrument". Please limit the description to the available space.
5	Other charge or fixed security Does the instrument include a charge (which is not a floating charge) or fixed security over any tangible or intangible or (in Scotland) corporeal or incorporeal property not described above? Please tick the appropriate box. ☐ Yes ☒ No	
6	Floating charge Is the instrument expressed to contain a floating charge? Please tick the appropriate box. ☐ Yes Continue ☒ No Go to Section 7 Is the floating charge expressed to cover all the property and undertaking of the company? ☐ Yes	
7	Negative Pledge Do any of the terms of the charge prohibit or restrict the company from creating further security that will rank equally with or ahead of the charge? Please tick the appropriate box. ☒ Yes ☐ No	
8	Trustee statement¹ You may tick the box if the company named in Section 1 is acting as trustee of the property or undertaking which is the subject of the charge. ☐	¹ This statement may be filed after the registration of the charge (use form MR06).
9	Signature Please sign the form here. Signature X  X This form must be signed by a person with an interest in the charge.	

MR01

Particulars of a charge



Presenter information

You do not have to give any contact information, but if you do, it will help Companies House if there is a query on the form. The contact information you give will be visible to searchers of the public record.

Contact name SARAH CLARKE

Company name LAYTONS SOLICITORS LLP

Address RANGER HOUSE

WALNUT TREE CLOSE

Post town GUILDFORD

County/Region SURREY

Postcode G U 1 4 U L

Country UK

DX 2410 GUILDFORD

Telephone 01483 407000



Certificate

We will send your certificate to the presenter's address if given above or to the company's Registered Office if you have left the presenter's information blank.



Checklist

We may return forms completed incorrectly or with information missing.

Please make sure you have remembered the following:

- ☐ The company name and number match the information held on the public Register.
- ☐ You have included a certified copy of the instrument with this form.
- ☐ You have entered the date on which the charge was created.
- ☐ You have shown the names of persons entitled to the charge.
- ☐ You have ticked any appropriate boxes in Sections 3, 5, 6, 7 & 8.
- ☐ You have given a description in Section 4, if appropriate.
- ☐ You have signed the form.
- ☐ You have enclosed the correct fee.
- ☐ Please do not send the original instrument; it must be a certified copy.



Important information

Please note that all information on this form will appear on the public record.



How to pay

A fee of £23 is payable to Companies House in respect of each mortgage or charge filed on paper.

Make cheques or postal orders payable to 'Companies House.'



Where to send

You may return this form to any Companies House address. However, for expediency, we advise you to return it to the appropriate address below:

For companies registered in England and Wales:

The Registrar of Companies, Companies House,
Crown Way, Cardiff, Wales, CF14 3UZ.
DX 33050 Cardiff.

For companies registered in Scotland:

The Registrar of Companies, Companies House,
Fourth floor, Edinburgh Quay 2,
139 Fountainbridge, Edinburgh, Scotland, EH3 9FF.
DX ED235 Edinburgh 1
or LP - 4 Edinburgh 2 (Legal Post).

For companies registered in Northern Ireland:

The Registrar of Companies, Companies House,
Second Floor, The Linenhall, 32-38 Linenhall Street,
Belfast, Northern Ireland, BT2 8BG.
DX 481 N.R. Belfast 1.



Further information

For further information, please see the guidance notes on the website at www.gov.uk/companieshouse or email enquiries@companieshouse.gov.uk

This form is available in an alternative format. Please visit the forms page on the website at www.gov.uk/companieshouse



FILE COPY

CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 1645445

Charge code: 0164 5445 0034

The Registrar of Companies for England and Wales hereby certifies that a charge dated 29th August 2017 and created by O&H PROPERTIES LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 30th August 2017.

M

Given at Companies House, Cardiff on 4th September 2017



Companies House



**THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES**

DATED 29 AUGUST 2017

O&H PROPERTIES LIMITED
(as Mortgagor)

- and -

CALA HOMES LIMITED
(as Security Trustee)

- and -

CALA HOMES LIMITED
(as Project Manager)

- and -

CALA MANAGEMENT LIMITED
(as Developer)

CERTIFIED TO BE A TRUE
COPY OF THE ORIGINAL
hagans

LEGAL MORTGAGE

204 West Lake Avenue, Hampton Vale, Peterborough PE7 8LN

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INDEX

1.	DEFINITIONS AND INTERPRETATION.....	1
2.	COVENANT TO PAY AND TRUST	5
3.	SECURITY	5
4.	APPLICATION TO LAND REGISTRY	6
5.	REPRESENTATIONS AND WARRANTIES	6
6.	MORTGAGOR'S COVENANTS.....	8
7.	ROLE OF SECURITY TRUSTEE	10
8.	PRESERVATION OF SECURITY	13
9.	ENFORCEMENT.....	14
10.	APPLICATION OF PROCEEDS.....	21
11.	EXPENSES AND INDEMNITY.....	21
12.	FURTHER ASSURANCE	22
13.	POWER OF ATTORNEY.....	22
14.	ASSIGNMENT	22
15.	MISCELLANEOUS	23
16.	LAW AND JURISDICTION.....	25
17.	NOTICES.....	25
18.	RIGHTS OF THIRD PARTIES	26
	SCHEDULE.....	27
	DESCRIPTION OF THE PROPERTY.....	27
	EXECUTION PAGE	28

THIS LEGAL MORTGAGE is made on the day of 20

BETWEEN:-

1. **O&H PROPERTIES LIMITED**, a company incorporated under the laws of England and Wales, (company registration number 01645445) whose registered office is at 25-28 Old Burlington Street, London W1S 3AN (the **"Mortgagor"**);
2. **CALA HOMES LIMITED**, a company incorporated under the laws of Scotland, (company registration number SC074857) whose registered office is at Johnstone House, 52-54 Rose Street, Aberdeen AB10 1HA as security trustee for the Secured Parties (the **"Security Trustee"**);
3. **CALA HOMES LIMITED**, a company incorporated under the laws of Scotland, (company registration number SC074857) whose registered office is at Johnstone House, 52-54 Rose Street, Aberdeen AB10 1HA as project manager (the **"Project Manager"**); and
4. **CALA MANAGEMENT LIMITED**, a company incorporated under the laws of Scotland, (company registration number SC013655) whose registered office is at Adam House, 5 Mid New Cultins, Edinburgh EH11 4DU as developer (the **"Developer"**);

WHEREAS:-

- (A) This Deed is entered into pursuant to the collaboration agreement dated 23 December 2014 between (1) O&H Properties Limited, (2) the Project Manager (3) the Developer and (4) CALA Group Limited.
- (B) It is intended that this Deed takes effect as a deed notwithstanding the fact that a party may only execute this Deed under hand.

NOW THIS DEED WITNESSES:-

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following expressions have the following meanings:-

"Act" means the Law of Property Act 1925.

"Administrator" means an administrator appointed pursuant to Schedule B1 to the Insolvency Act 1986.

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for general business in London.

"Delegate" means any delegate, agent, attorney or co-trustee appointed by the Security Trustee.

"Development Agreement" means the development agreement entered into or to be entered into between (1) the Developer and (2) the Mortgagor in respect of the development of the Property on the terms more fully set out therein.

"Enforcement Event" means an event specified in Clause 9.1.3 of this Deed.

"Financial Collateral" bears the meaning ascribed thereto in the Regulations.

"Insolvency Event" has the meaning given to it in the Management Agreement.

"Insurances" means all contracts and policies of insurance taken out by or on behalf of the Mortgagor or (to the extent of its interest) in which the Mortgagor has an interest in relation to the Property.

"Management Agreement" means the project management agreement entered into on 9 January 2015 between (1) the Mortgagor, (2) the Project Manager and (3) Cala Group Limited in respect of management services to be provided in respect of the Property on the terms more fully set out therein.

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

- (a) the business, operations, property, financial condition or prospects of the Mortgagor (including, but not limited to, the Property and/or the completion of any permitted disposal of the Property or residential units constructed or to be constructed thereon); or
- (b) the ability of the Project Manager or the Developer to comply with its obligations and liabilities under the Transaction Documents; or
- (c) the ability of the Mortgagor to comply with its obligations and liabilities under the Transaction Documents; or
- (d) the validity or enforceability of, or the effectiveness or ranking of any Security Interest granted or purported to be granted pursuant to this Deed; or
- (e) the rights or remedies of any Secured Party under this Deed.

"Party" means a party to this Deed.

"Permitted Security Interest" means any Security Interest created by this Deed or otherwise created with the prior written consent of the Security Trustee.

"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, the Planning and Compensation Act 1991, the Planning and Compulsory Purchase Act 2004 and the Planning Act 2008 and all regulations and orders made or confirmed under any of them.

"Property" means the freehold property details of which are set out in the Schedule hereto (as the same may from time to time be supplemented and/or amended) together with all buildings fixtures and fittings (including trade fixtures and fittings) and fixed plant and machinery from time to time thereon belonging to the Mortgagor.

"Receiver" includes any person or persons appointed by the Security Trustee (and any additional person or persons appointed or substituted) as receiver, manager, or receiver and manager of all or any part of the Security Assets.

"Regulations" means the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226) bringing into effect the Financial Collateral Arrangements Directive (2002/47/EC).

"Sale Contract" means any agreement from time to time entered into by the Mortgagor or in which the Mortgagor has an interest relating to the disposal of all or any part of the Property including, but not limited to, a Unit.

"Secured Liabilities" means all present and future payment obligations and liabilities whether actual or contingent and whether owed jointly or severally and whether as principal or surety or in any other capacity whatsoever of the Mortgagor to each Secured Party under each Transaction Document and all interest, commission, fees and all legal and other charges and expenses which the Secured Parties may charge the Mortgagor or incur in relation to it or any of the Transaction Documents or the Security Assets in each case in accordance with the terms of the Transaction Documents.

"Secured Party" means the Security Trustee, the Project Manager, the Developer, a Receiver or any Delegate.

"Security Assets" means all the assets of the Mortgagor the subject of any security created by this Deed and references to the Security Assets include references to any part of them.

"Security Financial Collateral Arrangement" bears the meaning ascribed thereto in the Regulations.

"Security Interest" means a mortgage, charge, pledge, lien, hypothecation, right of set-off, assignment by way of security, title retention or other security interest securing any obligation of any person or any other agreement or arrangement having the same effect.

"Security Period" means the period commencing on the date of this Deed and ending on the date upon which the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full.

"Settlement Sum" means all sums which would be due to the Project Manager and/or the Developer on termination of the engagement of the Project Manager/Developer under the Project Management Agreement/Development Agreement (as set out in such agreements).

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

"Termination Right" means a right arising under the Development Agreement or the Management Agreement for the Developer or the Project Manager (as the case may be) to terminate its engagement under the Development Agreement or the Management Agreement.

"Transaction Documents" means this Deed, the Management Agreement, the Development Agreement and any other document designated as such by any Secured Party and the Mortgagor.

"Unit" has the meaning given to it in the Management Agreement.

"VAT" or **"Value Added Tax"** means value added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature.

1.2 Interpretation

In this Deed:-

- 1.2.1 Clause headings are inserted for convenience only and shall not affect the construction of this Deed and unless otherwise specified, all references to Clauses and to Schedules are to clauses of and schedules to this Deed;
- 1.2.2 unless the context otherwise requires, words denoting the singular number shall include the plural and vice versa;
- 1.2.3 references to a person include references to bodies corporate and unincorporate and include its successors and permitted transferees and assigns whether direct or indirect;
- 1.2.4 references to assets include property, rights and assets of every description both present and future;
- 1.2.5 references to each of the "Mortgagor", the "Security Trustee", the "Project Manager", the "Developer" and each "Secured Party" shall be construed so as to include their respective successors in title, permitted assigns and permitted transferees;
- 1.2.6 references to a Transaction Document or any other agreement or instrument shall be construed as a reference to that Transaction Document or other agreement or instrument as amended, novated, supplemented, extended or restated from time to time;
- 1.2.7 references to any statute or other legislative provision shall include any statutory or legislative modification or re-enactment thereof, or any substitution therefor;
- 1.2.8 references to a "mortgage" includes a transfer or assignment by way of mortgage;
- 1.2.9 an Enforcement Event is "continuing" if it has not been waived by the Security Trustee or remedied within any grace period expressly provided for within the definition of Enforcement Event set out in the relevant sub-clause of Clause 9.1.3; and
- 1.2.10 the terms of the Transaction Documents (other than this Deed) and of any side letters between any parties in relation to any Transaction Documents are incorporated into this Deed to the extent required to ensure that any purported disposition of the Security Assets contained in this Deed is a valid disposition in accordance with Section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

1.3 Management Agreement and Development Agreement to prevail

In the event of a conflict between the terms of the Management Agreement, the Development Agreement and the terms of this Deed, the terms of the Management Agreement and the Development Agreement shall prevail.

2. COVENANT TO PAY AND TRUST

- 2.1 The Mortgagor covenants with the Security Trustee (for itself and on behalf of the other Secured Parties) to pay and discharge the Secured Liabilities in the manner provided for in the Transaction Documents.
- 2.2 The Security Trustee hereby declares itself a trustee of the security constituted or to be constituted pursuant to this Deed and all rights, benefits, interest, covenants, undertakings and warranties given in its favour under this Deed and the property from time to time representing or subject to the same on trust for itself and the other Secured Parties upon and subject to the terms and conditions contained in Clause 7 (*Role of Security Trustee*) of this Deed.

3. SECURITY

The Mortgagor, with full title guarantee and to the intent that the security hereby created shall rank as a continuing security for the payment and discharge of the Secured Liabilities:

3.1 Mortgage

charges in favour of the Security Trustee (for itself and on behalf of the other Secured Parties) by way of first legal mortgage, all its estate and interest in the Property;

3.2 First Fixed Charge

charges in favour of the Security Trustee (for itself and on behalf of the other Secured Parties) by way of first fixed charge:

- 3.2.1 (to the extent that it is not the subject of an effective mortgage under Clause 3.1 above) the Property;

- 3.2.2 all deeds, documents, contracts and agreements from time to time relating to the Property (including, but not limited to, each Sale Contract), the benefit of any covenants for title given or entered into by any predecessor in title to the Mortgagor to the Property, all proceeds in relation to the disposal of the Property, the benefit of any other disposal of the Property;

- 3.2.3 the benefit of all licences, consents and authorisations (statutory or otherwise) held in connection with the use of any Security Assets specified in any other sub-clause of this Clause and the right to recover and receive compensation which may be payable to it in respect of them;

3.3 Assignment

assigns absolutely in favour of the Security Trustee (for itself and on behalf of the other Secured Parties) by way of first-ranking security:-

- 3.3.1 (to the extent that the same may lawfully be assigned) all and any rights (whether in contract, tort or otherwise) which the Mortgagor has or may hereafter have against any third party (including without prejudice to the generality of the foregoing any professional advisers) arising from or in relation to any building, construction,

alteration, refurbishment or other works to the Property or any part thereof or any defect therein;

3.3.2 the benefit of all guarantees, sureties and other covenants and liabilities on the part of third parties in favour of the Mortgagor and the Mortgagor's predecessors in title so far as it has title to assign the same (and each of them) under any lease or tenancy of the Property and any part or parts thereof granted as well before as after the date hereof and all rights arising thereunder;

3.3.3 the benefit of each Sale Contract and all other contracts, agreements, rights, securities, covenants, guarantees, bonds and indemnities of any nature now and at any time enjoyed or held by the Mortgagor in relation to the Property.

4. APPLICATION TO LAND REGISTRY

4.1 In the case of any part of the Security Assets consisting of land for the time being registered at the Land Registry the Mortgagor and the Security Trustee hereby jointly apply to the Chief Land Registrar to enter a restriction in the Proprietorship Register of the relevant title (the "**Register**") in the following terms:-

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the registered charge dated _____ in favour of CALA Homes Limited (as security trustee) referred to in the charges register or, if appropriate, signed on such proprietor's behalf by its secretary or conveyancer."

4.2 The Security Trustee is under an obligation to make further advances to the Mortgagor and an application is made to the Chief Land Registrar for a note to that effect to be entered in the Register.

5. REPRESENTATIONS AND WARRANTIES

The Mortgagor makes the representations and warranties set out in this Clause 5 to the Security Trustee (for itself and on behalf of the other Secured Parties).

5.1 General

5.1.1 it is a limited liability company, duly incorporated and validly existing under the laws of England and Wales;

5.1.2 it has the power to own its assets and carry on its business, as it is being conducted;

5.1.3 it has the power to enter into, perform and deliver, and has taken all necessary action to authorise the entry into, performance and delivery of each of the Transaction Documents and the transactions contemplated by each of the Transaction Documents;

5.1.4 each of the Transaction Documents constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms;

5.1.5 the entry into and performance by it of, and the transactions contemplated by, each of the Transaction Documents do not and will not:-

- 5.1.5.1 conflict with any law or regulation or judicial or official order having jurisdiction over it or any of its assets; or
- 5.1.5.2 conflict with its memorandum or articles of association; or
- 5.1.5.3 conflict with any document which is binding upon it or any of its assets;
- 5.1.6 subject to due registration of this Deed at the Land Registry and pursuant to Section 859A of the Companies Act 2006 (which registrations, for the avoidance of doubt, shall be carried out by the Secured Parties' solicitors), all authorisations, approvals, consents, licences, exemptions, registrations, recordings, filings and notarisations necessary to ensure the validity, legality, enforceability or priority of the Mortgagor's liabilities and obligations, or the rights of the Secured Parties, under the Transaction Documents have been obtained or effected and are in full force and effect;
- 5.2 **The Security Assets**
- 5.2.1 The Mortgagor is the sole legal and beneficial owner of the Property and the other Security Assets.
- 5.2.2 The Security Assets are free from any Security Interest other than Permitted Security Interests
- 5.3 **Security**
- This Deed creates those Security Interests it purports to create and is not liable to be avoided or otherwise set aside on the liquidation or administration of the Mortgagor or otherwise.
- 5.4 **Times for making representations and warranties**
- The representations and warranties set out in Clauses 5.1 (*General*), 5.2 (*The Security Assets*) and 5.3 (*Security*) are made on the date of this Deed and are deemed to be repeated by the Mortgagor on each date during the Security Period with reference to the facts and circumstances then existing.
- 5.5 **Secured Party representations and warranties**
- Each of the Security Trustee, the Project Manager and the Developer makes the following representations and warranties to the Mortgagor on the date of this Deed:-
- 5.5.1 it is a limited liability company, duly incorporated and validly existing under the laws of its jurisdiction of incorporation;
- 5.5.2 it has the power to own its assets and carry on its business, as it is being conducted;
- 5.5.3 it has the power to enter into, perform and deliver, and has taken all necessary action to authorise the entry into, performance and delivery of each of the Transaction Documents to which it is a party and the transactions contemplated by each of the Transaction Documents to which it is a party;
- 5.5.4 each of the Transaction Documents to which it is a party constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms; and

5.5.5 the entry into and performance by it of, and the transactions contemplated by, each of the Transaction Documents to which it is a party do not and will not:-

5.5.5.1 conflict with any law or regulation or judicial or official order having jurisdiction over it or any of its assets; or

5.5.5.2 conflict with its memorandum or articles of association; or

5.5.5.3 conflict with any document which is binding upon it or any of its assets.

6. MORTGAGOR'S COVENANTS

The covenants set out in this Clause 6 remain in force throughout the Security Period in favour of the Security Trustee (for itself and on behalf of the other Secured Parties) and any Receiver appointed by the Security Trustee.

6.1 Performance

The Mortgagor shall observe and perform all the terms and conditions of the Transaction Documents relating to the Secured Liabilities and the Security Assets and all other material conditions and obligations relating to any Security Asset. Neither the Security Trustee nor any Receiver shall be required in any manner to perform or fulfil any obligations of the Mortgagor in respect of any Security Asset, or to make any payment, or to make any enquiry as to the nature or sufficiency of any payment received by it, or to present or file any claim or take any other action to collect or enforce any of the Security Assets.

6.2 Inspection of the Property

The Security Trustee shall be entitled from time to time (at any time when the Developer no longer has the benefit of the licence to remain on the Property as granted by the Development Agreement or is otherwise unlawfully prevented by the Mortgagor from entering the Property) to enter any part of the Property to examine its condition (such entry to be made with or without workmen, surveyor(s) plant and materials and without rendering the Security Trustee liable as mortgagee in possession) and to take such steps as may be reasonably required by the Security Trustee to ensure that the value of the Property, and/or the cost or viability of any development carried out thereon in accordance with the provisions of this Deed, is not adversely affected as a result of the act or omission of the Mortgagor or any person under its control. Any monies expended by the Security Trustee for that purpose shall be paid to the Security Trustee on the Security Trustee's first written demand together with interest thereon calculated at the rate specified in Clause 15.1 (*Default Interest*) from the date of such demand until the date of actual payment (whether before or after judgment) and shall be deemed to be an expense properly incurred in relation to the security constituted by this Deed.

6.3 Insurance

6.3.1 The Mortgagor shall apply all moneys which may be received by virtue of any Insurances (and shall stand possessed of all moneys which may be received by the Mortgagor by virtue of any policy of insurance of the whole or any part of the Property not effected or maintained in pursuance of the obligations of the Mortgagor hereunder

upon trust to apply the same) in accordance with the provisions of the Transaction Documents.

- 6.3.2 Notwithstanding the generality of Clause 12 (Further Assurance), the Mortgagor shall, forthwith upon request by the Security Trustee at any time after the occurrence of an Enforcement Event, execute and deliver to the insurers of the Property a notice of the assignment made pursuant to the relevant sub-clause above and it will use best endeavours to ensure that the insurers forthwith execute and deliver to the Security Trustee an acknowledgement thereof, with such notice and acknowledgement to be in such form as the Security Trustee shall require.

6.4 Statutory And Other Requirements

- 6.4.1 The Mortgagor shall comply or procure compliance with all statutes and all orders, rules, regulations, bye-laws and other instruments affecting the Property or its use (save where the Project Manager or Developer are liable to do the same under the Transaction Documents) and shall produce to the Security Trustee within seven (7) days of receipt by the Mortgagor any order, direction, permission, notice or other matter whatsoever affecting or likely to affect the Property (or any part of it) and served upon the Mortgagor by any authority or third party and shall supply copies to the Security Trustee upon request.

- 6.4.2 The Mortgagor covenants to provide to the Security Trustee or its advisers such assistance as it may reasonably require to register the charges contained in this Deed against the registered title of any registered land or charge hereby affected.

- 6.4.3 The Mortgagor shall observe and perform all its obligations under any laws, regulations, covenants and stipulations from time to time affecting the Property.

- 6.4.4 The Mortgagor will maintain its centre of main interests in England and Wales for the purposes of the EC Regulation on Insolvency Proceedings 2000.

6.5 Use of the Property

- 6.5.1 The Mortgagor shall not, without the prior written consent of the Security Trustee, use or permit or cause the Property to be used other than as permitted pursuant to the Development Agreement and/or the Management Agreement.

- 6.5.2 The statutory powers of leasing conferred on mortgagors shall not be exercised by the Mortgagor nor shall the Mortgagor part with possession of the Property or any part thereof nor confer any licence or right to use or occupy the Property upon any third party but shall permit the Project Manager to manage the Property in accordance with its obligations under the Management Agreement and permit viewings to enable the Project Manager to market the Property for sale pursuant to its obligations in the Management Agreement.

6.6 Deposit of documents of title

If the Security Trustee so requires at any time after the occurrence of an Enforcement Event, the Mortgagor shall deposit with the Security Trustee all documents of title or evidence of ownership in relation to all or any part of the Property.

6.7 Negative Pledge

Save as otherwise permitted or anticipated pursuant to any Transaction Document (other than this Deed) or with the prior written consent of the Security Trustee, the Mortgagor further covenants with the Security Trustee that throughout the Security Period it shall not:-

- 6.7.1 create, incur or permit to exist any Security Interest in, over or affecting the Security Assets (other than a Permitted Security Interest);
- 6.7.2 sell, assign, lend, transfer or otherwise dispose of the whole or any part of the Security Assets or any interest therein (whether by one transaction or a series of transactions and whether related or not);
- 6.7.3 grant to, or allow to be acquired by, any third party any right, licence or interest whatsoever in or over the Security Assets, nor exercise any of the powers of leasing or of agreeing to lease or of accepting surrenders conferred on mortgagors by the Act or release or vary or agree to release or vary any terms of, nor grant any licences or consents; or
- 6.7.4 otherwise do or cause or permit to be done anything which has or is reasonably likely to in any way depreciate, jeopardise or otherwise prejudice the value to the Security Trustee and/or the other Secured Parties of the whole or any part of the Property.

7. ROLE OF SECURITY TRUSTEE

7.1 Appointment of the Project Manager and the Developer

- 7.1.1 Each of the Project Manager and the Developer appoints the Security Trustee to act as its security trustee under and in connection with the Transaction Document to which it is a party.
- 7.1.2 Each of the Project Manager and the Developer irrevocably authorises the Security Trustee by itself or by such person(s) as it may nominate:-
 - 7.1.2.1 to exercise the rights, powers, authorities and discretions specifically given to the Security Trustee under or in connection with the Transaction Documents together with any other incidental rights, powers, authorities and discretions; and
 - 7.1.2.2 to enforce the security constituted by this Deed on its behalf, subject always to the terms of the Transaction Documents.
- 7.1.3 The powers conferred upon the Security Trustee by this Deed shall be in addition to any powers which may from time to time be vested in trustees by the general law.

7.2 Trust

- 7.2.1 The Security Trustee declares itself trustee of the security constituted or to be constituted by this Deed and all rights, benefits, interest, covenants, undertakings and warranties given in its favour under this Deed and the property from time to time representing or subject to the same on trust for the Secured Parties upon and subject

to the terms and conditions contained in the Transaction Documents and according to their respective interests.

7.3 Duties of the Security Trustee

7.3.1 The Security Trustee shall not be bound to give notice to any person of the execution of any documents comprised or referred to in the Transaction Documents or of any other matter in any way relating to the Transaction Documents or to take any steps to ascertain whether any Enforcement Event has happened or whether any party has breached any of its obligations under any Transaction Document or whether any right, power, discretion or remedy has or may become exercisable by the Security Trustee.

7.3.2 If the Security Trustee receives notice from a Party referring to this Deed, describing an Enforcement Event and stating that the circumstance described is an Enforcement Event, it shall promptly notify the other Secured Parties.

7.3.3 The Security Trustee's duties under this Deed are solely mechanical and administrative in nature.

7.3.4 Nothing in the Transaction Documents constitutes a partnership between any Party and the Security Trustee.

7.3.5 Section 1 of the Trustee Act 2000 shall not apply to any function of the Security Trustee under or in connection with the Transaction Documents provided that nothing in this Deed shall exempt the Security Trustee from any liability for gross negligence or wilful misconduct.

7.3.6 Any consent or approval given by the Security Trustee for the purposes of the Transaction Documents may be given on such terms and subject to such conditions (if any) as the Security Trustee thinks fit.

7.4 Rights and discretions of the Security Trustee

7.4.1 The Security Trustee may rely on:

7.4.1.1 any representation, notice or document believed by it to be genuine, correct and appropriately authorised; and

7.4.1.2 any statement made by a director, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify.

7.4.2 The Security Trustee may assume (unless it has received notice to the contrary in its capacity as security trustee for itself and on behalf of the other Secured Parties) that:

7.4.2.1 no Enforcement Event has occurred (unless they have actual knowledge of a failure by the Mortgagor to pay any of the Secured Liabilities in accordance with the terms of the Transaction Documents; and

7.4.2.2 any right, power, authority or discretion vested in any Party has not been exercised.

- 7.4.3 The Security Trustee may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts.
- 7.4.4 The Security Trustee may act in relation to this Deed through its personnel and agents.
- 7.4.5 Notwithstanding any other provision of any Transaction Document to the contrary, the Security Trustee is not obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty or a duty of confidentiality.
- 7.4.6 The Security Trustee shall exercise any right, power, authority or discretion vested in it as Security Trustee in such manner as it considers to be in the best interests of the Secured Parties pursuant to the Transaction Documents.
- 7.5 **Responsibility for documentation**
- 7.5.1 The Security Trustee is not responsible for:
- 7.5.1.1 the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Security Trustee or any other person given in or in connection with any Transaction Document; or
- 7.5.1.2 the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Transaction Document.
- 7.6 **Exclusion of liability**
- 7.6.1 Without limiting Clause 7.6.2 below, the Security Trustee will not be liable to the other Secured Parties for any action taken by it under or in connection with this Deed, unless directly caused by its gross negligence or wilful misconduct.
- 7.6.2 No Party (other than the Security Trustee) may take any proceedings against any officer, employee or agent of the Security Trustee in respect of any claim it might have against the Security Trustee or in respect of any act or omission of any kind by that officer, employee or agent in relation to this Deed and any officer, employee or agent of the Security Trustee may rely on this Clause subject to Clause 18 (*Rights of Third Parties*) and the provision of the Contracts (Rights of Third Parties) Act 1999.
- 7.6.3 The Security Trustee will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Transaction Documents to be paid by the Security Trustee to the other Secured Parties if the Security Trustee has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Security Trustee for that purpose.
- 7.7 **This Deed**
- 7.7.1 Without prejudice to Clause 7.5 (Responsibility for documentation), the Security Trustee in its capacity as Security Trustee under this Deed shall not be liable for any failure, omission, or defect in perfecting the security constituted by this Deed or any security created thereby including, without limitation, any failure to: (i) register the

same in accordance with the provisions of any of the documents of title of the Mortgagor to the property forming part of the Security Assets; (ii) make any recordings or filings in connection therewith; (iii) effect or procure registration of or otherwise protect any security created by or pursuant to this Deed under the Land Registration Acts 1925-2002 or any other registration laws in any jurisdiction; (iv) give notice to any person of the execution of this Deed; or (v) obtain any licence, consent or other authorisation for the creation of such security.

- 7.7.2 The Security Trustee in its capacity as trustee or otherwise may accept without enquiry such title as the Mortgagor may have to the Security Assets.

7.8 Enforcement

- 7.8.1 The Project Manager and the Developer shall not have any independent power to enforce this Deed or to exercise any rights, discretions or powers or to grant any consents or releases under or pursuant to this Deed or otherwise have direct recourse to the security constituted by this Deed except through the Security Trustee.

7.9 Benefit of this Clause

This Clause 7 shall be for the benefit of the Secured Parties only and the Mortgagor shall have no right or benefit under this Clause 7.

8. PRESERVATION OF SECURITY

8.1 Continuing Security

The Mortgagor declares and agrees that:-

- 8.1.1 the security created by and covenants and provisions contained in this Deed shall be held by the Security Trustee as a continuing security and shall not be satisfied by any intermediate payment or satisfaction of any part of the Secured Liabilities and shall remain in full force and effect until the Secured Liabilities hereby secured have been unconditionally and irrevocably paid and discharged in full;
- 8.1.2 the Security Trustee shall not be bound to enforce any guarantee or other security or proceed or take any other steps against any other person before enforcing this Deed; and
- 8.1.3 this Deed shall be in addition to, and not in substitution for, any other rights which the Security Trustee may now or hereafter have under or by virtue of any other agreement now or hereafter held by the Security Trustee or to which the Security Trustee may be entitled.

8.2 Avoidance of Payments

- 8.2.1 Any settlement, discharge or release under this Deed between the Security Trustee and the Mortgagor shall be conditional upon no security or payment to the Security Trustee by the Mortgagor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any provision or enactment relating to bankruptcy, insolvency, administration or liquidation for the time being in force, and if such condition is not satisfied, the Security Trustee shall be entitled to recover from the

Mortgagor on demand the value of such security or the amount of any such payment as if such settlement, discharge or release had not occurred.

- 8.2.2 If the Security Trustee has reasonable grounds for believing that any security or payment given or made pursuant to this Deed may be avoided or invalidated after the Secured Liabilities shall have been paid in full, it shall be at liberty to retain the security created by this Deed as security for the Secured Liabilities for a period of one month plus such statutory period within which any security or payment given or made pursuant to this Deed may be avoided or invalidated after the Secured Liabilities shall have been paid in full, notwithstanding any release, settlement, discharge or arrangement given or made with the Security Trustee on or as a consequence of such termination of liability. If at any time within such period after such termination a petition shall be presented to a competent court for an order for the bankruptcy, insolvency, winding up or similar process of the Mortgagor or the appointment of an administrator in respect of the Mortgagor or the Mortgagor shall commence to be wound up voluntarily, the Security Trustee shall be at liberty and notwithstanding as before mentioned to continue to retain such security or any part thereof for and during such further period as the Security Trustee shall determine (acting reasonably). The Mortgagor agrees that such security shall be deemed to have been and to have remained held by the Security Trustee as and by way of security for the payment to the Security Trustee of all or any sums which may become due and owing to the Security Trustee in respect of the Secured Liabilities.

8.3 Subsequent Charges

The Security Trustee shall, in the event of its receiving or being deemed to have received notice that the Mortgagor has created any further or subsequent mortgage, charge, lien or encumbrance over or has disposed of any Security Asset or any part thereof, be entitled to open a new account or accounts with the Mortgagor in the Security Trustee's books. If the Security Trustee does not in fact open such new account or accounts, it shall nevertheless be treated as if it had done so at the time of receipt or deemed receipt of such notice. As from that time all payments made by the Mortgagor to the Security Trustee shall be credited or be treated as having been credited to the new account(s) and shall not operate to reduce the amount due from the Mortgagor to the Security Trustee at the time when the Security Trustee received or was deemed to have received such notice.

9. ENFORCEMENT

9.1 Enforceability of Security

- 9.1.1 Upon the occurrence of an Enforcement Event, the security constituted by this Deed shall become immediately enforceable, subject to the provisions of Clause 9.1.2, and the power of sale and other powers conferred on mortgagees by the Act as varied or amended by this Deed shall be immediately exercisable upon and at any time thereafter. After the security constituted by this Deed has become enforceable, the Security Trustee may in its discretion enforce all or any part of such security in such manner as the Security Trustee sees fit PROVIDED THAT the Security Trustee shall do so in accordance with the terms of this Deed.

- 9.1.2 Upon the occurrence of an Enforcement Event, the Security Trustee shall not seek to exercise its power of sale or any other mortgagee power referred to in clause 9.1.1

above (save that it shall not be prevented from taking any action necessary to complete any Sale Contract which has already been entered into), without first having served notice on the Mortgagor in writing specifying its intention to do so and detailing any Enforcement Event which is continuing and specifying the amount of the Settlement Sum and allowing the Mortgagor 10 Business Days from the date of such notice:

- 9.1.2.1 to remedy any such Enforcement Event which is continuing and which is capable of remedy; or
- 9.1.2.2 at the option of the Mortgagor (which option shall be notified to the Security Trustee within 5 Business Days of receipt by the Mortgagor of the notice from the Security Trustee referred to above in this clause 9.1.2), to irrevocably and unconditionally pay to the Security Trustee in cleared funds an amount equal to the Settlement Sum which amount the Security Trustee agrees will represent full and final settlement of the Secured Liabilities

Provided That if the Mortgagor disputes the amount of the Settlement Sum as notified to it by the Security Trustee it shall when serving the above mentioned notice on the Security Trustee confirming that it opts to pay the Settlement Sum set out in such notice the Settlement Sum amount which the Mortgagor considers to be payable and if the Security Trustee does not agree the sum put forward by the Mortgagor within 5 Business Days then either the Mortgagor or the Security Trustee may refer the matter for determination by arbitration in London by a single arbitrator whose identity shall be agreed between the Security Trustee and the Mortgagor or, in the absence of such agreement within 5 Business Days who shall be appointed by the President of the Law Society of England and Wales (or other official appointed by such President) on the application of either the Mortgagor or the Security Trustee, such arbitration to be in accordance with and subject to the provisions of the Arbitration Act 1996 or any statutory modification or re-enactment thereof, and pending the decision of the arbitrator (or if earlier, settlement of the dispute between the parties) the Security Trustee shall not seek to exercise its power of sale or any other mortgagee power referred to in clause 9.1.1 above (Provided Always that the Security Trustee shall not at any time be prevented from (i) taking any action required to continue/complete the Works (as defined in the Development Agreement) and/or (ii) disposing of any Unit in accordance with the Marketing Plan (as defined in the Management Agreement) where the Mortgagor has failed to comply with the provisions of clause 6 of the Management Agreement and/or (iii) providing services to completed Units).

9.1.3 Each of the following events or circumstances is an Enforcement Event:-

- 9.1.3.1 failure by the Mortgagor to pay any of the Secured Liabilities when due unless:-
 - (a) the failure to pay is caused by administrative or technical difficulties affecting the transfer of the funds due from the Mortgagor; and
 - (b) the Mortgagor issued the appropriate transfer payment instructions in sufficient time to permit the transfer and payment of the sum due to be made on its due date; and

(c) in any event, the relevant Secured Party receives such sum from the Mortgagor within five Business Days of the due date;

9.1.3.2 if the Mortgagor is in breach of any provision of the Transaction Documents (other than a provision of the type referred to in Clause 9.1.3.1) and (in the case of a breach of the Management Agreement and/or Development Agreement) such breach would entitle the Project Manager/Developer to exercise a Termination Right;

9.1.3.3 if any representation or warranty which is made, deemed to be made or repeated by the Mortgagor in this Deed is or becomes untrue in any material respect where the facts and/or circumstances giving rise to such untrue representation or warranty have or are reasonably likely to have a Material Adverse Effect unless such circumstances are capable of remedy and are remedied within five Business Days of the Mortgagor becoming aware of the untrue representation or warranty; or

9.1.3.4 any provision of this Deed ceases in any respect to be in full force and effect or to be continuing or is or is purported to be determined or disputed or becomes invalid, illegal or unenforceable or any part of the security constituted by this Deed is in jeopardy; or

9.1.3.5 the engagement of the Project Manager or Developer under the Project Management Agreement or Development Agreement is terminated (in accordance with the relevant provisions for termination or applicable law) as a result of a breach by the Mortgagor of its terms or is repudiated, cancelled or frustrated as a result of the Mortgagor's act or omission; or

9.1.3.6 if an Insolvency Event occurs; or

9.1.3.7 if anything analogous to an Insolvency Event occurs under the laws of any applicable jurisdiction.

9.1.4 Without prejudice to the other provisions of this Deed, to the extent that any of the Security Assets constitute Financial Collateral and this Deed and the obligations of the Mortgagor hereunder constitute a Security Financial Collateral Arrangement, the Security Trustee shall have the right, at any time after this Deed has become enforceable, to appropriate all or any part of those Security Assets in or towards the discharge of the Secured Liabilities. The Parties hereto agree that the value of any Security Assets appropriated in accordance with this Clause 9.1.4 shall be the market price of such Security Assets at the time the right of appropriation is exercised as determined by the Security Trustee by reference to such method or source of valuation as the Security Trustee may select (including independent valuation). The Parties hereto agree that the methods or sources of valuation selected by the Security Trustee in accordance with this Clause 9.1.4 shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.

9.2 Exclusion of Certain Provisions of the Act

For the purposes of all powers implied by statute the Secured Liabilities shall be deemed to have become due and payable on the date hereof and Section 103 of the Act (restricting the power of sale) and Section 93 of the Act (restricting the right of

consolidation) shall not apply to this Deed. The statutory powers of leasing conferred on the Security Trustee shall be extended so as to authorise the Security Trustee to lease, make agreements for leases, accept surrenders of leases and grant options as the Security Trustee shall think fit and without the need to comply with any of the provisions of Sections 99 and 100 of the Act.

9.3 Redemption of Prior Charges

At any time after the security constituted by this Deed shall have become enforceable, the Security Trustee may redeem any prior Security Interest against all or any of the Security Assets or procure the transfer thereof to itself and may settle or pass the accounts of any holder of such Security Interest and any accounts so settled and passed shall be conclusive and binding on the Mortgagor. All principal monies, interest, costs, charges and expenses of and incidental to the redemption and transfer shall be Secured Liabilities.

9.4 Appointment of Receiver or Administrator

At the request of the Mortgagor or at any time after the security constituted by this Deed becomes enforceable the Security Trustee may:-

9.4.1 without further notice appoint by writing one or more persons to be a Receiver of the Security Assets or any part thereof; or

9.4.2 apply to a court of competent jurisdiction to appoint any person or persons to be an Administrator of the Mortgagor,

in each case, upon such terms as to remuneration and otherwise as it shall think fit and shall agree with such Receiver or Administrator and may from time to time remove any Receiver or Administrator so appointed and appoint another in his stead. A Receiver or Administrator so appointed shall give notice of his appointment (inter alia) to the Mortgagor and shall be deemed to act as the agent of the Mortgagor in the exercise of the powers granted hereunder or by statute or otherwise and the Mortgagor shall be responsible for such Receiver's or Administrator's acts and defaults and for his remuneration, costs, charges and expenses to the exclusion of liability on the part of the Security Trustee.

9.5 Joint Receivers

Where more than one person is appointed as a Receiver the powers of such persons may be exercised either jointly or individually by any one of such persons.

9.6 Receiver's Powers

A Receiver appointed in accordance with Clause 9.4 hereof (and the Security Trustee if it goes into possession as mortgagee) shall have all the powers conferred on a Receiver by the Act and all such powers as are set out in Schedule 1 to the Insolvency Act 1986 notwithstanding that such Receiver may not be an administrative receiver and in addition shall have power to:-

9.6.1 take possession of and get in all or any of the Security Assets and for this purpose to make demands and take proceedings as he may think fit in respect thereof in such manner as he thinks fit;

- 9.6.2 carry on or concur in carrying on such of the business of the Mortgagor (and for this purpose to borrow money on the security of any Security Asset in priority to this charge or otherwise as he may consider expedient and carrying interest at such rate as he may consider necessary) and manage, conduct, amalgamate, develop and reconstruct the same (and concur in so doing) in such manner and to such extent as he may think fit;
- 9.6.3 *make and effect all repairs and maintain, renew, increase or surrender insurances and do all such other acts and things which the Mortgagor might do in the ordinary course of its or their business for the protection and/or for the improvement of any Security Assets;*
- 9.6.4 sell by public auction or private contract, grant licences or options or otherwise assign any of the Security Assets in such manner and on such terms as he shall think proper; lease and accept surrenders of leases of any of the Property and with respect thereto make provision for and effect rent reviews (or concur in so doing); any such sale, lease, licence, option, surrender or assignment may be for cash, loan capital, debentures, shares, stock, securities or other consideration and be payable immediately or by instalments deferred and spread over such period as he shall think fit and may be on terms whereby the total amount of the consideration is to be ascertained by reference to the turnover or profits of the purchaser;
- 9.6.5 without any further consent by or notice to, as the case may be, the Mortgagor, exercise on its or their behalf all the powers and provisions conferred on a landlord or a tenant pursuant to any legislation from time to time in force relating to rents in respect of any part of the Property but without any obligation to exercise any of such powers and without any liability in respect of powers so exercised or omitted to be exercised;
- 9.6.6 purchase any additional land adjacent to or in the vicinity of the Property for the purpose of enhancing the value of such property or facilitating the disposal thereof and for such purposes borrow monies from the Secured Parties on such terms as the Receiver may think fit;
- 9.6.7 *do any repairs and make any structural or other alterations, improvements or additions in or to the Property and purchase or otherwise acquire any materials, articles or things and do anything else in connection therewith which the Receiver may think desirable for the purpose of making productive or increasing the letting or market value thereof;*
- 9.6.8 institute, arrange, carry on and conduct services of lighting, heating and cleansing and all other services which may be deemed proper for the efficient use or management of the Property;
- 9.6.9 reconstruct, alter, improve, decorate, furnish and maintain the whole or any part of the buildings on the Property;
- 9.6.10 sell all or any of the fixtures (other than tenants' trade fixtures) either as a part of and/or together with or separately and detached from the Property;
- 9.6.11 perform, treat as repudiated, rescind or vary any contract or agreement for or which relates in any way to any development, improvement, reconstruction or repair of the Property or any part thereof or which is in any other way connected therewith;
- 9.6.12 without prejudice to the generality of any of the foregoing powers carry out, continue and/or perform any development of any part of the Property and to enter into a

building contract or appointment or any other contract or agreement for or relating to any development for any such purposes as aforesaid to purchase such materials and other articles and things as he may think fit to discontinue such development or any part thereof and to repudiate and rescind any building contract or any such contract or agreement as aforesaid;

- 9.6.13 in connection with any development obtain planning permissions, bye law consents and any other permissions and/or approvals, enter into agreements under the Highways Act 1980 and any other agreements requisite for the development, to enter into and arrange bonds and in particular road bonds and indemnities in connection therewith and to dedicate any part of the Property as a public highway or grant any other rights over under or relating to the Property;
- 9.6.14 promote the formation of companies with a view to the same purchasing, leasing, licensing, managing or otherwise acquiring interests in all or any of the Property or otherwise, arrange for such companies to trade or cease to trade and to purchase, lease, license or otherwise acquire all or any of the Property on such terms and conditions whether or not including payment by instalments secured or unsecured as he may think fit;
- 9.6.15 effect any policy or policies of insurance for any purpose in connection with the receivership and without prejudice to the generality of the foregoing particularly to support and underwrite any indemnity given by the Mortgagor hereunder;
- 9.6.16 make any arrangement or compromise or disclaim, alter, enter into or cancel any contract or liability which he shall think expedient;
- 9.6.17 sign any document execute any deed and do all such other acts and things as he may in his absolute discretion consider to be incidental or conducive to any of the matters and powers aforesaid or to the realisation of the security constituted by this Deed;
- 9.6.18 present or, as the case may be, defend a petition for the winding up of the Mortgagor;
- 9.6.19 employ or engage, upon such terms (as to remuneration or otherwise) as he may think proper, such professional advisers, managers, servants and agents as he considers necessary including without limiting the generality of the foregoing architects, estate agents, quantity surveyors, solicitors, valuers auctioneers, surveyors and accountants;
- 9.6.20 bring or defend any action or legal proceedings or discontinue the same on behalf of the Mortgagor;
- 9.6.21 exercise any option or right of election available at law to the Mortgagor or the Security Trustee or a Receiver that the supplies made in respect of any lease or tenancy hereby charged shall be chargeable or taxable for Value Added Tax purposes at the standard or any other applicable rate of tax;
- 9.6.22 obtain, renew, extend, amend or otherwise deal with such permissions, consents and/or licences for the benefit of or otherwise connected with or ancillary to all or part of the Security Assets or its use or development of the Mortgagor's business;
- 9.6.23 do all such other acts and things as may be considered to be expedient for the protection of the Security Assets or to be incidental or conducive to any of the above matters and powers or any other act or thing which he could do if he were absolutely

entitled to the Security Assets and which the Receiver may lawfully do as agent for the Mortgagor;

- 9.6.24 use the name of the Mortgagor for all or any of the above purposes with full power to convey, transfer or assign the whole or any part of the Security Assets sold in the name of the Mortgagor.

9.7 Protection of Third Parties

No person or persons (including a purchaser) dealing with the Security Trustee or any Receiver or Administrator shall be concerned to enquire whether any event has happened upon which any of the powers herein contained may have arisen or be exercisable or otherwise as to the propriety or regularity of any exercise thereof or of any act purporting or intended to be in exercise thereof or whether any monies remain owing upon the security of this Deed and all the protection of the Act shall apply to any person purchasing from or dealing with the Security Trustee or any Receiver or Administrator.

9.8 Delegation

The Security Trustee and any Receiver or Administrator may at any time and from time to time delegate by power of attorney or in any other manner to any person any right, power or discretion exercisable by the Security Trustee under this Deed. Any such delegation may be made upon such terms and conditions (including power to sub-delegate) and subject to any regulations which the Security Trustee or such Receiver or Administrator (as the case may be) may think fit. Neither the Security Trustee nor any Receiver or Administrator will be in any way liable or responsible to the Mortgagor for any loss or damage arising from any act, default, omission or misconduct on the part of any such delegate or sub-delegate.

9.9 Security Trustee's Liability

Neither the Security Trustee nor any Receiver nor any of their respective agents, managers, officers, employees, delegates or advisers shall in any circumstances be liable to the Mortgagor for any claim, demand, liability, loss, damage, cost or expense from any exercise, purported exercise or non-exercise by the Security Trustee or any Receiver of any power, authority, right or discretion conferred upon it in relation to any Security Asset or any part thereof by or pursuant to this Deed or by the Act or the Insolvency Act 1986.

9.10 Vacation of Possession

If the Security Trustee or any Receiver or Administrator appointed by the Security Trustee or any such delegate as aforesaid shall enter into possession of the Property or any part thereof it or he may from time to time at pleasure go out of such possession.

9.11 No mortgagee in Possession

- 9.11.1 Neither the Security Trustee nor any Receiver or Administrator shall by reason of the taking of possession of the whole or any part of the Security Assets by any of them be liable to account as mortgagee-in-possession or for anything except actual receipts or be liable for any loss upon realisation or for any default or omission for which a mortgagee-in-possession might be liable.

- 9.11.2 For the avoidance of doubt, neither the Developer nor the Project Manager shall be liable as a mortgage in possession solely by virtue of it performing any of its obligations, or taking the benefit of any of its rights, under any Transaction Document to which it is respectively a party.

10. APPLICATION OF PROCEEDS

Subject to claims having priority to the charges created by this Deed and to any applicable statutory requirement as to the payment of preferential debts, all monies received under the powers conferred by this Deed shall be applied in the following order:-

- 10.1 in payment of all costs charges and expenses relating to the exercise of all or any of the powers aforesaid and of all other outgoings payable by the Receiver or Administrator (or as the case may be by the Security Trustee);
- 10.2 (if applicable) in payment of remuneration to the Receiver or Administrator at such rate as may be agreed between him and the Security Trustee;
- 10.3 in or towards payment pro rata of any sums due but unpaid under the Transaction Documents; and
- 10.4 the surplus (if any) shall be paid to the Mortgagor or to whomsoever else may be entitled thereto in priority to the Mortgagor, save that the Security Trustee may credit any monies received under this Deed to a suspense account for so long and in such manner as the Security Trustee may from time to time determine (acting reasonably) and the Receiver or Administrator may retain the same for such period as he and the Security Trustee consider expedient.

11. EXPENSES AND INDEMNITY

- 11.1 The Mortgagor covenants with the Security Trustee that it shall within three Business Days of demand reimburse or pay to the Security Trustee or any Receiver or Administrator and each agent, attorney, manager or other person appointed by the Security Trustee under this Deed (on the basis of a full indemnity) the amount of all costs (including legal costs), charges and expenses incurred or sustained by the Security Trustee or the Receiver or Administrator (including, for the avoidance of doubt, any such costs, charges and expenses arising from any act or omission of, or proceedings involving, any third person) in connection with:-
- 11.1.1 the investigation of title to or any survey, inspection or valuation of the Property obtained by the Security Trustee under or in connection with this Deed at any time after the security constituted by this Deed has become enforceable, and the preparation, registration or perfecting of this Deed (or any of the charges contained in it), or any other document entered into between the Mortgagor and the Security Trustee PROVIDED THAT the Mortgagor shall promptly on demand pay the Security Trustee the amount of all costs, fees and expenses (including legal fees) and Taxes thereon incurred by the Security Trustee or for which the Security Trustee may become liable in connection with any survey, inspection or valuation obtained in connection with any Insurance in respect of the Security Assets; and/or

- 11.1.2 the exercise, or the attempted or purported exercise, by or on behalf of the Security Trustee or any Receiver or Administrator of any of the powers of the Security Trustee, any Receiver or Administrator or any agent or attorney; and/or
- 11.1.3 the enforcement, preservation or attempted preservation of the Security Trustee's rights under this Deed or any other action taken by or on behalf of the Security Trustee with a view to or in connection with the recovery by the Security Trustee of the Secured Liabilities from the Mortgagor or any other person; and/or
- 11.1.4 the carrying out of any other act or matter which the Security Trustee, any Receiver or Administrator or agent or attorney may consider to be necessary or desirable for the preservation, improvement or benefit of the Security Assets.
- 11.2 The Mortgagor shall within three Business Days of demand pay any stamp, documentary and other similar duties and taxes to which this Deed or any related documents may be subject or give rise and shall fully indemnify the Security Trustee from and against any losses or liabilities which it may incur as a result of any delay or omission by the Mortgagor to pay any such duties or taxes.

12. FURTHER ASSURANCE

The Mortgagor hereby covenants that it and all other necessary parties (if any) immediately on demand at the Mortgagor's expense will execute and do all such assurances acts and things as the Security Trustee or any Receiver may reasonably and properly require for:-

- 12.1.1 perfecting, preserving or protecting the security created (or intended to be created) by this Deed or any of the rights of the Security Trustee or any Receiver under this Deed; or
- 12.1.2 facilitating the appropriation or realisation of any Security Asset or any part thereof and enforcing the security constituted by this Deed in either case on or at any time after the same shall have become enforceable; or
- 12.1.3 the exercise of any power, authority or discretion vested in the Security Trustee or any Receiver under this Deed.

13. POWER OF ATTORNEY

Following any Enforcement Event, the Mortgagor, by way of security, irrevocably and severally appoints the Security Trustee, each Receiver or Administrator and any of their delegates or sub-delegates to be its attorney to take any action after the security constituted by this Deed has become enforceable which the Mortgagor is obliged to take under this Deed, including, without limitation, under Clause 12 (*Further Assurance*). The Mortgagor ratifies and confirms whatever any attorney does or purports to do pursuant to its appointment under this Clause and the exercise by the Security Trustee (or a Receiver or Administrator) of such power shall be conclusive evidence of its right to exercise the same.

14. ASSIGNMENT

- 14.1 This Deed shall be binding upon and shall enure to the benefit of the each of the Secured Parties and the Mortgagor and their respective successors and, in the case of

each Secured Party, its assigns and transferees and references in this Deed to any of them shall be construed accordingly.

- 14.2 The Mortgagor and each Secured Party may assign or transfer all or any part of its rights and/or obligations hereunder to any permitted assignee or transferee of its rights and/or obligations under the Management Agreement and/or the Development Agreement (as the case may be) but not otherwise.

15. MISCELLANEOUS

15.1 Default Interest

- 15.1.1 If the Mortgagor defaults in the payment or repayment on the due date of any sum from time to time due under this Deed, interest will accrue on the amount in respect of which default has been made from the date of default until actual payment (both before and after judgment) at the rate of 4 (four) per cent. per annum above the base rate of the Bank of England as varied from time to time.

- 15.1.2 All payments of interest shall accrue from day to day and shall be calculated on the basis of the actual number of days elapsed and a year of 365 days.

15.2 Giving of Time

Each Secured Party shall be at liberty from time to time to give time for payment of any liability of the Mortgagor to that Secured Party as that Secured Party shall in its discretion think fit without in any manner releasing the Mortgagor or affecting the security hereby made.

15.3 Discharge

Subject to Clause 8.2 (*Avoidance of Payments*) above, when the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full (or if earlier, when the Settlement Sum has been paid in accordance with clause 9.1.2.2 of this Deed) and following a written request therefor from the Mortgagor, the Security Trustee will forthwith release the security created by this Deed. Upon completion of any disposal of a Unit in accordance with the provisions of the Management Agreement the Security Trustee will forthwith release such Unit from the security created by this Deed (or in the case of the grant of a lease of a Unit) issue written consent to the grant of such lease.

15.4 Perpetuity Period

If applicable, the perpetuity period under the rule against perpetuities shall be 125 years from the date of this Deed.

15.5 Tax gross-up

All payments to be made by the Mortgagor to a Secured Party under this Deed shall be made without set-off and free and clear of and without withholding or deduction for or on account of taxes, save as may be required by law or regulation, in which case in which case the Mortgagor shall:-

- 15.5.1 ensure that the withholding or deduction does not exceed the minimum amount legally required;
- 15.5.2 forthwith pay to that Secured Party such additional amount as is necessary to ensure that the net full amount received by that Secured Party after the required withholding or deduction is equal to the amount that we would have received had no such withholding or deduction been made;
- 15.5.3 pay to the relevant taxation or other authorities within the period for payment permitted by applicable law the full amount of the deduction or withholding; and
- 15.5.4 furnish to that Secured Party, within the period for payment permitted by the relevant law, either:-
 - 15.5.4.1 an official receipt of the relevant taxation authorities involved in respect of all amounts so deducted or withheld; or
 - 15.5.4.2 if such receipts are not issued by the taxation authorities concerned on payment to them of amounts so deducted or withheld, a certificate of deduction or equivalent evidence of the relevant deduction or withholding.

15.6 Set-off

A Secured Party may set off any matured obligation due from the Mortgagor under this Deed against any matured obligation owed by that Secured Party to the Mortgagor.

15.7 Certificates and Determinations

Any certification or determination by a Secured Party of a rate or amount under this Deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

15.8 Partial Invalidity

Each of the provisions of this Deed is severable. If any such provision is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction the legality, validity or enforceability in that jurisdiction of the remaining provisions of this Deed or, in any other jurisdiction, of that provision or any other provisions of this Deed, shall not in any way be affected or impaired thereby.

15.9 Remedies and Waivers

- 15.9.1 No omission to exercise or delay in exercising on the part of a Secured Party any right, power or remedy provided by law or under this Deed shall constitute a waiver of such right, power or remedy or any other right, power or remedy or impair such right, power or remedy. No single or partial exercise of any such right, power or remedy shall preclude or impair any other or further exercise thereof or the exercise of any other right, power or remedy provided by law or under this Deed.
- 15.9.2 Any waiver of any right, power or remedy under this Deed, or any consent or approval given by a Secured Party hereunder, shall only be effective if given in writing and may be given subject to any conditions which the grantor may think fit. Unless otherwise

expressly stated, any waiver shall be effective only in the instance and only for the purpose for which it is given.

15.9.3 No variation of this Deed shall be of any effect unless it is agreed in writing and executed by or on behalf of each Party.

15.9.4 Unless specifically provided otherwise, rights arising under this Deed are cumulative and do not exclude any other rights provided by law or otherwise.

15.10 **Counterparts**

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

16. LAW AND JURISDICTION

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

16.2 In relation to any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed), and for the exclusive benefit of the Secured Parties, the Mortgagor hereby irrevocably and unconditionally submits to the jurisdiction of the English courts.

17. NOTICES

17.1 Any notice or other communication to be given by one Party to the other under, or in connection with the matters contemplated by this Deed shall be sent:

17.1.1 if to the Mortgagor, to:

O&H Properties Limited
25-28 Old Burlington Street,
London
W1S 3AN

Attention: Eli Shahmoon;

17.1.2 if to the Security Trustee, to:

CALA Homes Limited
Adam House
5 Mid New Cultins
Edinburgh
EH11 4DU

Attention: The Company Secretary;

17.1.3 if to the Project Manager, to:

CALA Homes Limited

Adam House
5 Mid New Cultins
Edinburgh
EH11 4DU

Attention: The Company Secretary;

17.1.4 if to the Developer, to:

CALA Management Limited
Adam House
5 Mid New Cultins
Edinburgh
EH11 4DU

Attention: The Company Secretary,

or in any case to such other address, in the United Kingdom and/or marked for such other attention as may from time to time be specified by the relevant Party to the other, by notice given in accordance with this Clause 17, for the purpose of this Clause 17.1.

17.2 Any notice or other communication to be given by one Party to another, under, or in connection with the matters contemplated by, this Deed shall be in writing and shall be given by letter delivered by hand or sent by special delivery post or, and shall be deemed to have been received:

17.2.1 in the case of delivery by hand or by email prior to 5 pm London time on a Business Day, when delivered and in any other case at 9am London Time on the Business Day following the day of delivery; or

17.2.2 in the case of special delivery, on the second Business Day following the day of posting.

18. RIGHTS OF THIRD PARTIES

Unless expressly provided to the contrary in this Deed, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed.

IN WITNESS whereof the parties hereto have caused this Deed to be duly executed and delivered (in the case of the Mortgagor, as its deed) on the day and year first before written.

SCHEDULE

DESCRIPTION OF THE PROPERTY

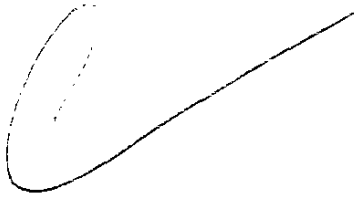
The freehold property known as 204 West Lake Avenue, Hampton Vale, Peterborough PE7 8LN being the property registered at The Land Registry with absolute title under title number CB287980.

EXECUTION PAGE

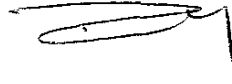
MORTGAGOR

EXECUTED as a DEED
by O&H PROPERTIES LIMITED
acting by a director
in the presence of:-

)
)
)
)



Signature of witness:



Name of witness:

Name: Rebecca Edney
Address: 25-28 Old Burlington Street
London W1S 3AN
Occupation: Secretary

Address of witness:

SECURITY TRUSTEE

SIGNED
By CALA HOMES LIMITED
as security trustee
acting by a director
in the presence of:-

)
)
)
)
)

Signature of witness:

Name of witness:

Address of witness:

PROJECT MANAGER

SIGNED
By CALA HOMES LIMITED
as project manager
acting by a director
in the presence of:-

)
)
)
)
)

Signature of witness:

Name of witness:

Address of witness:

SCHEDULE

DESCRIPTION OF THE PROPERTY

The freehold property known as 204 West Lake Avenue, Hampton Vale, Peterborough PE7 8LN being the property registered at The Land Registry with absolute title under title number CB287980.

EXECUTION PAGE

MORTGAGOR

EXECUTED as a DEED
by O&H PROPERTIES LIMITED
acting by a director
in the presence of:-

)
)
)
)

Signature of witness:

Name of witness:

Address of witness:

SECURITY TRUSTEE

SIGNED
By CALA HOMES LIMITED
as security trustee
acting by a director
in the presence of:-

)
)
)
)

Signature of witness:

Name of witness:

Address of witness:

J Marshall
Jane Marshall
28 Bluebell way
Hatfield
Herts

PROJECT MANAGER

SIGNED
By CALA HOMES LIMITED
as project manager
acting by a director
in the presence of:-

)
)
)
)

Signature of witness:

Name of witness:

Address of witness:

J Marshall
Jane Marshall
28 Bluebell way
Hatfield Herts

DEVELOPER

SIGNED

By **CALA MANAGEMENT LIMITED**
as developer
acting by a director
in the presence of:-

)
)
)
)
)



Signature of witness:



Name of witness:

Jane Marshall.

Address of witness:

28 Bluebell way
Hatfield.
Herts.