



**Registration of a Charge**

Company name: **EASTBOURNE HOUSING INVESTMENT COMPANY LIMITED**

Company number: **09571387**



X7KT6VZ6

Received for Electronic Filing: **14/12/2018**

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**Details of Charge**

Date of creation: **14/12/2018**

Charge code: **0957 1387 0019**

Persons entitled: **EASTBOURNE BOROUGH COUNCIL**

Brief description: **THE LEASEHOLD PROPERTY AT 39 HEATHER CLOSE, EASTBOURNE BN23 8DF REGISTERED AT HM LAND REGISTRY WITH ABSOLUTE TITLE UNDER TITLE NUMBER ESX46581 OWNED OR TO BE ACQUIRED IN THE FUTURE BY THE BORROWER.**

**Contains negative pledge.**

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**Authentication of Form**

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

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**Authentication of Instrument**

Certification statement: **I CERTIFY THAT THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **JANE MCCARTHY-PENMAN**



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

Company number: 9571387

Charge code: 0957 1387 0019

The Registrar of Companies for England and Wales hereby certifies that a charge dated 14th December 2018 and created by EASTBOURNE HOUSING INVESTMENT COMPANY LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 14th December 2018 .

Given at Companies House, Cardiff on 17th December 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**

**LEGAL CHARGE**

DATED 14<sup>th</sup> December 2018

**(1) EASTBOURNE HOUSING INVESTMENT COMPANY LIMITED**

**(2) EASTBOURNE BOROUGH COUNCIL**

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**LEGAL CHARGE**

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**In relation to the leasehold property at 39 Heather Close Eastbourne BN23 8DF**



**BETWEEN:-**

- (1) **Eastbourne Borough Council** of 1 Grove Road, Eastbourne, East Sussex, BN21 4TW (the **Lender**); and
- (1) **Eastbourne Housing Investment Company Limited** a company incorporated in England and Wales with registration number 9571387 whose registered office is at 1 Grove Road, Eastbourne, East Sussex, BN21 4TW (the **Borrower**).

**BACKGROUND**

- (A) The Lender has agreed under the Agreement to provide the Borrower with the Loan on a secured basis.
- (B) The Borrower is or will become in the future the owner of the Property.
- (C) This charge provides security which the Borrower has agreed to give the Lender for the Loan.
- (D) The Loan will be repaid in accordance with the Agreement.

**AGREED TERMS**

**1 DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

The definitions and rules of interpretation in this clause apply in this charge.

<b>"Agreement"</b>	means the Loan Agreement dated on or around the date of this deed between the Borrower and the Lender for the provision of the loan secured by this charge.
<b>"Business Day"</b>	means a day other than a Saturday, Sunday or public holiday in England when commercial banks in London are open for business.
<b>"Event of Default"</b>	means any breach by the Borrower of its obligation to (if applicable) transfer the Properties to the Lender or its nominee in accordance with Clause 4 of the Agreement (but only insofar as the Lender has complied with all its obligations in connection with such transfer in accordance with the terms of the Agreement)
<b>"Loan"</b>	means the sums comprising the "Loan" referred to in the Loan Agreement.
<b>"LPA 1925"</b>	means the Law of Property Act 1925.
<b>"Permitted Security"</b>	means any Security arising under:

(a) the Legal Charge;

(b) any liens arising by operation of law and in the ordinary course of the Borrower's business and not as a result of any default or omission by the Borrower;

(c) any normal title retention arrangements included in a supplier's standard conditions of supply of goods acquired by the Borrower in the ordinary course of trade;

(d) any netting or set-off arrangement entered into by the Borrower in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances; and

(f) Security created or outstanding with the Lender's prior written consent

**"Property"**

means the leasehold property at 39 Heather Close Eastbourne BN23 8DF registered at HM Land Registry with absolute title under title number ESX46581 owned or to be acquired in the future by the Borrower

**"Receiver"**

means a receiver and/or manager of the Property.

**"Repayment Dates"**

means the repayment dates referred to in Clause 2 of the Agreement.

**"Secured Liabilities"**

means all sums owed by the Borrower to the Lender in repayment of the Loan in accordance with the terms of the Agreement.

**"Security"**

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

**"Security Period"**

means the period starting on the date of this charge and ending on the date on which all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding.

## 1.2 Interpretation

In this legal charge:

- 1.2.1 a reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force for the time being, taking account of any amendment or re-enactment or extension and includes any former statute, statutory provision or subordinate legislation which it amends or re-enacts;

- 1.2.2 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- 1.2.3 unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular;
- 1.2.4 a reference to a Clause or Schedule is to a Clause of, or Schedule to, this charge and references to paragraphs are to paragraphs of the relevant Schedule, unless the context otherwise requires;
- 1.2.5 a reference to this charge (or any provision of it) or any other document shall be construed as a reference to this legal charge, that provision or that document as it is in force for the time being and as amended in accordance with its terms or with the agreement of the relevant parties;
- 1.2.6 a reference to a person shall include a reference to an individual, firm, company, partnership, corporation, unincorporated body of persons, or any state or any agency of any person;
- 1.2.7 any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 1.2.8 a reference to an amendment includes a novation, re-enactment, supplement or variation (and amended shall be construed accordingly); and
- 1.2.9 clause, Schedule and paragraph headings shall not affect the interpretation of this charge.

### **1.3 Clawback**

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

### **1.4 Nature of security over real property**

A reference in this charge to a charge or charge of, or over, the Property includes:

- 1.4.1 all buildings which are situated on, or form part of, the Property at any time;
- 1.4.2 the proceeds of sale of any part of the Property and any other monies paid or payable in respect of or in connection with the Property (but excluding all monies payable to the Borrower in connection with the transfer of the Properties in accordance with Clause 2 and 4 of the Agreement which for the avoidance of doubt shall remain payable to the Borrower in accordance with the terms of the Agreement and belong exclusively to the Borrower once paid);
- 1.4.3 the benefit of any covenants for title given, or entered into, by any predecessor in title of the Borrower in respect of the Property and any monies paid or payable in respect of those covenants; and
- 1.4.4 all rights under any licence, agreement for sale or agreement for lease in respect of the Property.

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

For the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the Agreement and of any side letters between any parties in relation to the Agreement are incorporated into this charge.

**1.6 Third party rights**

A third party (being any person other than the Borrower, the Lender and its permitted successors and assigns) has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce, or to enjoy the benefit of, any term of this charge.

**1.7 Schedules**

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

**2 LOAN**

The Lender provides to the Borrower, the Loan, on the terms and subject to the conditions of this charge.

**3 COVENANT TO PAY**

The Borrower shall pay to the Lender and discharge the Secured Liabilities on the Repayment Dates.

**4 GRANT OF SECURITY**

4.1 As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower charges the Property, with full title guarantee, to the Lender by way of first fixed legal charge.

4.2 So long as the Loan is outstanding, the Borrower covenants with the Lender that it shall not, without the prior written consent of the Lender:

4.2.1 create, or allow to subsist, any Security (other than Security which is Permitted Security) on or over any of its assets; or

4.2.2 take, or omit to take, any action which may impair the ranking of the Legal Charge set out in this charge.

**5 PERFECTION OF SECURITY**

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

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the proprietor for the time being of the charge dated [DATE] in favour of Eastbourne Borough Council referred to in the charges register or their conveyancer."

**6 LIABILITY OF THE BORROWER**

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



- 6.1.1 any security, guarantee, indemnity, remedy or other right held by, or available to, the Lender that is or becomes wholly or partially illegal, void or unenforceable on any ground;
  - 6.1.2 the Lender renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or
  - 6.1.3 any other act or omission, which but for this clause might have discharged or otherwise prejudiced or affected the liability of the Borrower.
- 6.2 The Borrower waives any right it may have to require the Lender to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this charge against the Borrower.

## **7 WHEN SECURITY BECOMES ENFORCEABLE**

The security constituted by this charge shall be immediately enforceable if an Event of Default occurs.

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

## **8 ENFORCEMENT OF SECURITY**

### **8.1 Enforcement of security**

- 8.1.1 The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this charge) shall, as between the Lender and a purchaser from the Lender, arise on and be exercisable at any time after the execution of this charge, but the Lender shall not exercise such power of sale or other powers until an Event of Default occurs whereupon it shall become immediately exercisable.
- 8.1.2 Section 103 of the LPA 1925 (restricting the power of sale) does not apply to the security constituted by this charge.

### **8.2 Extension of statutory powers of leasing**

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

- 8.2.1 grant any lease or agreement for lease;
- 8.2.2 accept surrenders for leases; or
- 8.2.3 grant any option of the whole or any part of the Property with whatever rights relating to other parts of it,

whether or not at a premium and containing such covenants on the part of the Borrower and on such terms and conditions (including payment of money to a lessee or tenant on a

surrender) as the Lender or Receiver thinks fit, without the need to comply with any of the restrictions imposed by sections 99 and 100 of the LPA 1925.

### **8.3 Protection of third parties**

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

- 8.3.1 whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;
- 8.3.2 whether any power of the Lender or Receiver is purporting to exercise, has become exercisable or is properly exercisable; or
- 8.3.3 how any money paid to the Lender or Receiver is to be applied.

### **8.4 No liability as chargee in possession**

Neither the Lender or the Receiver shall be liable to account as chargee in possession in respect of all or any of the Property, nor shall either of them be liable for any loss on realisation of, or for any neglect or default of any nature in connection with, all or any of the Property for which a chargee in possession might be liable as such

### **8.5 Relinquishing possession**

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

### **8.6 Conclusive discharge to purchasers**

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

## **9 RECEIVERS**

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

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

The Lender may fix the remuneration of the Receiver without the restrictions contained in section 109 of the LPA 1925 and the remuneration of the Receiver shall be a debt secured by this charge, which shall be due and payable immediately on its being paid by the Lender.

The power to appoint a Receiver conferred by this charge shall be in addition to all statutory and others powers of the Lender under the Insolvency Act 1986, the LPA 1925 or

otherwise and shall be exercisable without the restrictions contained in sections 103 and 109 of the LPA 1925 or otherwise.

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

Any Receiver appointed under this charge shall be the agent of the Borrower and the Borrower shall be solely responsible for the contracts, engagements, acts, omissions, defaults, losses and remuneration of that Receiver and for liabilities incurred by that Receiver. The agency of the Receiver shall continue until the Borrower becomes bankrupt.

## **10 APPLICATION OF PROCEEDS**

### **10.1 Order of application**

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

- 10.1.1 in or towards payment of, or provision for, all costs, charges and expenses incurred by or on behalf of the Lender (and any Receiver appointed by it) under or in connection with this charge and all remuneration due to any Receiver under or in connection with this charge;
- 10.1.2 in or towards payment of, or provision for, the Secured Liabilities in such order and manner as the Lender determines; and
- 10.1.3 in payment of the surplus (if any) to the Borrower or other person entitled to it.

### **10.2 Appropriation**

Neither the Lender or the Receiver shall be bound (whether by virtue of section 109(8) of the LPA 1925, which is varied accordingly, or otherwise) to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Secured Liabilities.

## **11 INDEMNITY**

The Borrower shall indemnify the Lender and the Receiver on a full indemnity basis in respect of all costs incurred or suffered by any of them in or as a result of:

- 11.1 enforcing the security constituted by this charge; or
- 11.2 any default or delay by the Borrower in performing any of its obligations under this charge.

Any representative of the Lender or the Receiver may enforce the terms of this Clause 17 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

## **12 RELEASE**

Subject to *Clause 14.3*, on the expiry of the Security Period (but not otherwise), the Lender shall, at the request and cost of the Borrower, take whatever action is necessary to release the Property from the security constituted by this charge.

### **13 ASSIGNMENT AND TRANSFER**

#### **13.1 Assignment by the Lender**

The Lender may assign or transfer the whole or any part of the Lender's rights and/or obligations under this charge to any person or body.

#### **13.2 Assignment by the Borrower**

The Borrower may not assign any of its rights, or transfer any of its obligations, under this charge or enter into any transaction which would result in any of those rights or obligations passing to another person.

### **14 CONTINUING SECURITY**

#### **14.1 Independent security**

This charge shall be in addition to, and independent of, every other security or guarantee which the Lender may hold for any of the Secured Liabilities at any time. No prior security held by the Lender over the whole or any part of the Property shall merge in the security created by this charge.

#### **14.2 Continuing security**

This charge shall remain in full force and effect as a continuing security for the Secured Liabilities unless and until the Lender discharges this charge in writing.

#### **14.3 Discharge conditional**

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

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

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

#### **14.4 Certificates**

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

#### **14.5 Rights cumulative**

The rights and powers of the Lender conferred by this charge are cumulative, may be exercised as often as the Lender considers appropriate, and are in addition to its rights and powers under the general law.

**14.6 Waivers**

Any waiver or variation of any right by the Lender (whether arising under this charge or under the general law) shall only be effective if it is in writing and signed by the Lender and applies only in the circumstances for which it was given, and shall not prevent the Lender from subsequently relying on the relevant provision.

**14.7 Further exercise of rights**

No act or course of conduct or negotiation by or on behalf of the Lender shall, in any way, preclude the Lender from exercising any right or power under this charge or constitute a suspension or variation of any such right or power.

**14.8 Delay**

No delay or failure to exercise any right or power under this charge shall operate as a waiver.

**14.9 Single or partial exercise**

No single or partial exercise of any right under this deed shall prevent any other or further exercise of that or any other right.

**14.10 Consolidation**

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

**14.11 Partial invalidity**

The invalidity, unenforceability or illegality of any provision (or part of a provision) of this charge under the laws of any jurisdiction shall not affect the validity, enforceability or legality of the other provisions. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with any modifications necessary to give effect to the commercial intention of the parties.

**14.12 Counterparts**

This charge may be executed and delivered in any number of counterparts, each of which is an original and which together have the same effect as if each party had signed the same document.

**15 NOTICES**

**15.1 Service**

Each notice or other communication required to be given under, or in connection with, this charge shall be:

15.1.1 In writing, delivered personally or sent by pre-paid first-class letter; and

15.1.2 sent:

(a) to the Borrower at its registered office.

Attention: Jane McCarthy-Penman

Company Secretary

Eastbourne Housing Investment Company Limited

(b) to the Lender at:

Eastbourne Borough Council,

1 Grove Road,

Eastbourne,

East Sussex BN21 4TW

Attention: Lawyer to the Council, Legal Services

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

## 15.2 Receipt by Borrower

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

15.2.1 if given by hand, at the time of actual delivery; and

15.2.2 if posted, on the second Business Day after the day it was sent by pre-paid first-class post.

A notice or other communication given as described in Clause 16.2.1 on a day which is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

## 15.3 Receipt by Lender

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

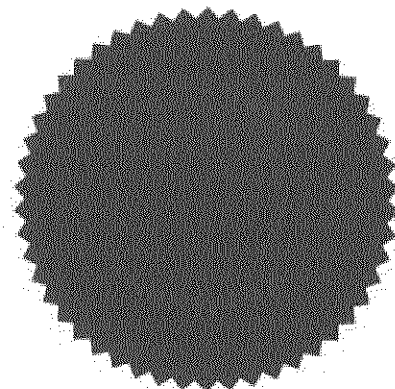
## 16 GOVERNING LAW

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

**EXECUTED AS A DEED** by the parties on the date which first appears in this Deed.

EXECUTED as a Deed (but not  
delivered until dated)  
by affixing the Common Seal of  
**EASTBOURNE BOROUGH COUNCIL**  
in the presence of:-

)  
)  
)



187/18

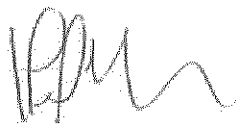
  
.....  
Authorised Signatory

CATHERINE KNIGHT  
.....  
Print Name

ASSISTANT DIRECTOR - LEGAL + DEMOCRATIC SERVICES  
.....  
Print Title

**EXECUTED** as a Deed (but not )  
delivered until dated) by **EASTBOURNE** )  
**HOUSING INVESTMENT COMPANY LIMITED** )  
acting by a director in the presence of a witness:

Signature of Director:



Name of Director:

IAN FITZPATRICK

Signature of Witness:



Name:

JMCWORTHY-PENMAN

Occupation:

COMPANY SECRETARY

Address:

1 GROVE ROAD, EASTBOURNE