



**Registration of a Charge**

Company name: **APEX AIRSPACE DEVELOPMENT LIMITED**

Company number: **09912714**

Received for Electronic Filing: **21/12/2018**



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**Details of Charge**

Date of creation: **21/12/2018**

Charge code: **0991 2714 0002**

Persons entitled: **HOMES AND COMMUNITIES AGENCY**

Brief description:

**Contains fixed charge(s).**

**Contains floating charge(s) (floating charge covers all the property or undertaking of the company).**

**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 SAVE FOR MATERIAL REDACTED PURSUANT TO S. 859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION**

**FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL  
INSTRUMENT.**

Certified by:

**SARAH GREENWOOD**



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

Company number: 9912714

Charge code: 0991 2714 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 21st December 2018 and created by APEX AIRSPACE DEVELOPMENT LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 21st December 2018 .

Given at Companies House, Cardiff on 28th 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

**DATED** 21 December **2018**

**APEX AIRSPACE DEVELOPMENT LIMITED**

**as Chargor (1)**

**HOMES AND COMMUNITIES AGENCY  
as Chargee (2)**

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**DEBENTURE**

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THIS DEBENTURE is dated 21 December 2018, and made between

- (1) **APEX AIRSPACE DEVELOPMENT LIMITED**, a company registered in England and Wales, with company number 09912714 whose registered office is at 111 Baker Street, London, United Kingdom, W1U 6SG as the chargor (the "**Chargor**"); and
- (2) **HOMES AND COMMUNITIES AGENCY** (trading as Home England) of Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH (the "**Chargee**").

THIS DEED WITNESSES as follows:

1 **Interpretation**

1.1 Definitions

In this Deed the following words and expressions shall have the following meanings:

"**Affiliate**" means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company;

"**Book Debts**" means all present and future book and other debts and monetary claims due or owing to the Chargor, and the benefit of all security, guarantees and other rights of any nature enjoyed or held by the Chargor in relation to any of them;

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

"**Charged Contracts**" means in relation to the Chargor, those contracts (if any) brief particulars of which are set out in Schedule 4 (*Charged Contracts*);

"**Charged Property**" means all property, assets, rights and revenues of the Chargor from time to time comprised within the security constituted by this Deed (and references to the Charged Property shall include references to any part of it);

"**Delegate**" means any delegate, agent, attorney or co-trustee appointed by the Chargee;

**"Designated Account"** means the accounts (if any) listed in Schedule 5 (*Bank Accounts*) and any account replacing any of those accounts which is subsequently nominated by the Chargee as a designated account for the purposes of this Deed;

**"Distributions"** means all dividends, interest and other income paid or payable in respect of the Securities or Specified Shares;

**"Encumbrance"** 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;

**"Environment"** means humans, animals, plants and all other living organisms including the ecological systems of which they form part and the following media:

- a) air (including, without limitation, the air within natural or man-made structures, whether above or below ground);
- b) water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers); and
- c) land (including, without limitation, land under water);

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

- a) the pollution or the protection of the Environment;
- b) the conditions of the workplace; or
- c) the generation, handling, storage, use, release or spillage of any substance which, alone or in combination with any other, is capable of causing harm to the Environment, including, without limitation, any waste;

**"Equipment"** means all present and future equipment, plant, machinery, tools, vehicles, furniture, fittings, installations and apparatus and other tangible moveable property for the time being owned by the Chargor, including any part of it and all spare parts, replacements, modifications and additions;

**"Event of Default"** means any event of default set out in clause 14 of the Facility Agreement;

**"Facility Agreement"** means a facility agreement dated on or about the date of this Deed between the Chargor and the Chargee;

**"Finance Documents"** has the meaning set out in the Facility Agreement;

**"Holding Company"** means, in relation to a person, any other person in respect of which it is a Subsidiary;

**"Insurances"** means all contracts or policies of insurance of whatever nature which from time to time are taken out or maintained by or on behalf of the Chargor or (to the extent of its relevant interest) in which the Chargor has an interest;

**"Insurance Proceeds"** means the proceeds of any insurance claim received by the Chargor (after deduction of (a) any reasonable expenses incurred in relation to the relevant claim and payable by the Chargor to any person which is not an Affiliate and (b) amounts paid to meet third party claims), together with the benefit of all bonuses, profits, returns of premium and other benefits of whatever nature arising by virtue of the Chargor's ownership of any Insurances and all the Chargor's interest in any of the foregoing;

**"LPA"** means Law of Property Act 1925;

**"Permitted Security"** means the security created by this Deed and any other security permitted under the Facility Agreement;

**"Programme Document"** means:

- (a) the Facility Agreement; and
- (b) each Finance Document;

**"Properties"** means all freehold and leasehold properties (whether registered or unregistered) and all commonhold properties, now or in the future (and from time to time) owned by the Chargor, or in which the Chargor holds an interest (including (but not limited to) the properties which are briefly described in Schedule 1 (*Property*)) together with any buildings, structures and fixtures thereon including trade and tenant fixtures and **"Property"** means any of them;

**"Receiver"** means any one or more receivers and managers or (if the Chargee so specifies in the relevant appointment) receivers appointed by the Chargee pursuant to this Deed in respect of the Charged Property of the Chargor;

**"Repeating Representations"** means the representations set out in clauses 3.1 to 3.4 (inclusive) of the Facility Agreement;

**"Secured Liabilities"** means all the money and liabilities now or hereafter due owing or incurred to the Chargee by the Chargor under the terms of the Programme Documents (including, without limitation, under any amendments, supplements or restatements of any of the Programme Documents or in relation to any new or increased advances or utilisations) in any manner whatsoever, in any currency or currencies (whether present or future, actual or contingent) and whether owed by the Chargor as principal or surety or incurred solely or jointly with another, together with all interest accruing thereon and all costs charges and expenses incurred by the Chargee in connection therewith and **Secured Liability** means any one of these obligations;

**"Secured Party"** means the Chargee, a Receiver or Delegate;

**"Securities"** means all shares and securities and investments of any kind which are issued by any person from time to time held by the Chargor or for the Chargor's account (other than the Specified Shares);

**"Security Period"** means the period beginning on and from the date of this Deed and ending on the date on which the Secured Liabilities are irrevocably and unconditionally discharged in full;

**"Specified Bank Balances"** means all monies (including interest) from time to time standing to the credit of the accounts (if any) specified in Schedule 5 (*Bank accounts*) as such accounts may be re-designated and/or renumbered from time to time;

**"Specified Shares"** means the securities (if any) specified in Schedule 6 (*Specified Shares*);

**"Subsidiary"** means an entity of which a person has direct or indirect control or owns directly or indirectly more than 50 per cent. of the voting capital or similar right of ownership and control for this purpose means the power to direct the management

and the policies of the entity whether through the ownership of voting capital, by contract or otherwise; and

"VAT" means:

- (a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
- (b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere.

## 1.2 Interpretation

1.2.1 Unless a contrary indication appears, in this Deed the provisions of clause 1.2 (*Interpretation*) of the Facility Agreement apply to this Deed as though they were set out in full in this Deed, except that references to 'this Agreement' will be construed as references to this Deed.

1.2.2 Unless a contrary indication appears, a reference in this Deed to:

- (i) any "Party", any "Secured Party", the "Chargee", the "Chargor" or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents;
- (ii) "disposal" includes a sale, transfer, assignment, grant, lease, surrender, licence, declaration of trust or other disposal, whether voluntary or involuntary, and "dispose" will be construed accordingly;
- (iii) references to an "Event of Default" and an "Event of Default has occurred" means in each case an Event of Default that is continuing;
- (iv) a Default or an Event of Default is "continuing" if it has not been remedied or waived;
- (v) "guarantee" means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation,

direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;

- (vi) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality) and, where permitted by this Deed, that person's successors in title and assigns;
- (vii) references to "**security**" shall be construed as a reference to any mortgage, standard security, pledge, hypothecation, title retention, lien, charge, assignment by way of security or other arrangement howsoever described having the same or a similar effect;
- (viii) a provision of law is a reference to such provision as amended or re-enacted;
- (ix) references to "**this Deed**" or to a provision of this Deed, or any other document are references to it as amended, varied, novated, supplemented, extended or restated from time to time (however fundamentally and even if any of the same increases the obligations of the Chargor or provides for further advances);
- (x) a "**Finance Document**" or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
- (xi) the terms of the documents under which the Secured Liabilities arise and of any side letters between the Chargor and the Chargee relating to the Secured Liabilities are incorporated in this Deed to the extent required for any purported disposition of the Charged Property to be a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989;

- (xii) references to this Deed include its Schedules;
- (xiii) references to a clause or Schedule are (unless otherwise stated) to a clause of, or a Schedule to, this Deed;
- (xiv) references in a Schedule or part of a Schedule to a paragraph are (unless otherwise stated) to a paragraph of that Schedule or that part of that Schedule;
- (xv) Section, clause and Schedule headings are for ease of reference only;
- (xvi) use of the singular shall include the plural and vice versa; and
- (xvii) any term or phrase defined in the Companies Act 2006 or the Insolvency Act 1986 (as the same may be amended from time to time) shall bear the same meaning in this Deed.

1.2.3 Each undertaking of the Chargor (other than a payment obligation) contained in this Deed must be complied with at all times during the Security Period and is given by the Chargor for the benefit of the Chargee (as security trustee for the Secured Parties).

1.2.4 The Parties intend that this document shall take effect as a deed notwithstanding the fact that a Party may only execute this document under hand.

### 1.3 Clawback

If the Chargee considers (acting reasonably) that an amount paid by the Chargor in respect of the Secured Liabilities is capable of being avoided or otherwise set aside on the liquidation or administration of the Chargor or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this Deed.

### 1.4 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 other Finance Documents under which the Secured Liabilities arise and of any side letters between any parties in relation to the Facility Agreement are incorporated into this Deed to the extent required for any purported disposition of

the Charged Property contained in this Deed to be a valid disposition in accordance with Section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

#### 1.5 Perpetuity Period

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

#### 1.6 Definitions in the Facility Agreement

Unless a contrary indication appears each term used in this Deed which is defined in the Facility Agreement shall have the same meaning as in the Facility Agreement.

#### 1.7 Delivery

The Parties intend this Deed to be delivered on the first date specified on page 1 of this Deed.

### 2 Covenant to pay

- 2.1 The Chargor with full title guarantee in favour of the Chargee as a primary obligor and not merely as surety covenants in favour of the Chargee that it will pay, discharge and perform the Secured Liabilities on demand or at any time after the due date for payment and in the manner provided in the Finance Documents.

### 3 Security

- 3.1 The Chargor with full title guarantee in favour of the Chargee and as continuing security for the payment, discharge and performance of the Secured Liabilities:

3.1.1 charges by way of first legal mortgage all Properties vested in the Chargor;

3.1.2 charges by way of first fixed charge:

- (i) all other Properties which in the future become vested in the Chargor together with any other rights, title or interest of the Chargor in such Properties wherever situated;
- (ii) the Equipment;

- (iii) the Securities;
- (iv) all goodwill, Distributions and uncalled share capital of the Chargor;
- (v) all Book Debts;
- (vi) the benefit of all security and guarantees and other rights now or in the future available to it;
- (vii) all monies from time to time standing to the credit of the Chargor's accounts with any bank, financial institution or other person (including each Designated Account);
- (viii) the benefit of any hedging arrangements, futures transactions or treasury instruments;
- (ix) to the extent that the Insurances and/or the Insurance Proceeds are incapable for any reason of being assigned under clause 3.1.3(i) but are capable of being effectively charged, the Insurances owned or in favour of the Chargor and all Insurance Proceeds either now or in the future held by or payable to the Chargor or in which it otherwise has an interest (to the extent of such interest);
- (x) to the extent that they do not fall within any other provision of this clause 3.1.2, and are not effectively assigned under clause 3.1.3(iv), the Charged Contracts together with all of the Chargor's rights under any other agreement document or contract to which it is a party;
- (xi) all of the Specified Bank Balances; and
- (xii) the Specified Shares;

3.1.3 assigns and agrees to assign absolutely, the benefit of all of its rights, claims, title and interest in relation to the Charged Property including without limitation:

- (i) all Insurances and Insurance Proceeds present or future in relation to the Charged Property;
- (ii) all rental and other income receivable in respect of the Charged Property and all debts and claims which are due or owing to the Chargor now or in the future under or in connection with any lease, agreement or licence relating to the Charged Property and in each case the right to make demand for and receive the same;
- (iii) all authorisations held or utilised by the Chargor in connection with its business or the use of its assets and/or the Charged Property; and
- (iv) the Charged Contracts together with all of the Chargor's rights under any other document or contract to which it is a party;

3.1.4 charges by way of floating charge all its property, assets, rights and revenues whatsoever and wheresoever present or future to the extent not otherwise effectively mortgaged, charged or assigned by clauses 3.1.1 to 3.1.3 (inclusive) above.

3.2 The floating charge created under this Deed:

3.2.1 is a qualifying floating charge for the purposes of paragraph 14 of Schedule B1 to the Insolvency Act 1986; and

3.2.2 if (without the prior written consent of the Chargee):

- (i) (save for any Permitted Security) the Chargor creates any Security over or otherwise encumbers any Charged Property; or
- (ii) any person levies any distress, execution, sequestration, expropriation, attachment or other process against any Charged Property; or
- (iii) a resolution is passed or a petition is presented for the winding up, dissolution, administration or re-organisation of the Chargor, other than a winding up petition which is frivolous or vexatious and is

discharged, stayed or dismissed within 14 days of commencement; or

- (iv) a receiver, an administrative receiver or a receiver and manager is appointed over any Charged Property or any person entitled to do so gives notice of its intention to appoint a receiver, an administrative receiver or a receiver and manager over any Charged Property or files such a notice with the court; or
- (v) an Administrator is appointed (or the Chargee receives notice of an intention to appoint an Administrator pursuant to paragraphs 15 or 26 of Schedule B1 to the Insolvency Act 1986) in respect of the Chargor; or
- (vi) the Chargor disposes of any Charged Property other than as expressly permitted under the Finance Documents.

the floating charge created by the Chargor under clause 3.1.4 shall with immediate effect and without notice automatically convert into a fixed charge over all of the Charged Property of the Chargor; and

3.2.3 shall automatically and without notice operate as a fixed charge instantly upon the occurrence of an Event of Default.

3.3 The Chargee may at any time by notice in writing to the Chargor convert the floating charge created under this Deed into a fixed charge as regards such assets as it shall specify in the notice:

3.3.1 if it considers it necessary to do so in order to protect or preserve the security over the Charged Property created by this Deed; or

3.3.2 if an Event of Default has occurred;

and by way of further assurance the Chargor will promptly execute a fixed charge over such assets in such form as the Chargee shall require.

3.4 Any asset acquired by the Chargor after any crystallisation of the floating charge created under this Deed which, but for such crystallisation, would be subject to a

floating charge shall (unless the Chargee confirms in writing to the contrary) be charged to the Chargee by way of first fixed charge.

- 3.5 The parties acknowledge that the Chargee may make further advances under the Facility Agreement. The mortgages and charges created by this Deed together secure any such further advances made by the Chargee.

#### **4 Provisions relating to assignment**

- 4.1 The Chargor shall promptly upon receiving a request from the Chargee give notice of each charge or assignment of the assets listed in clause 3.1.3 by sending a notice in the form set out in Schedule 7 (*Notices*) (to the extent a notice has not previously been sent in accordance with the conditions precedent to utilisation of the Facility).
- 4.2 The Chargor shall use its reasonable endeavours to procure that each party on whom a notice is served pursuant to clause 4 returns a signed acknowledgement to the Chargee as soon as reasonably practicable (and in any event within 14 days of the Chargor receiving a request to serve notice under clause 4.1 above) in the form of acknowledgement set out in Schedule 7 (*Notices*).
- 4.3 Whilst no Event of Default exists and subject to the provisions of the Facility Agreement, the Chargee shall permit the Chargor to exercise its rights under any of the Charged Contracts without prior consent from the Chargee provided that such exercise would not result in an Event of Default. Following an Event of Default, the Chargee may notify the counterparty to any Charged Contract that the Chargor is no longer entitled to deal with that counterparty and that the counterparty must, with effect from the date of that notice, pay any amounts to which the Chargor is entitled to such account as the Chargee may direct.
- 4.4 Following an Event of Default, the Chargee may notify any bank, financial institution or other person to whom a notice has previously been sent that the Chargee's Consent (as defined in such notice) is withdrawn and that the Chargor may not withdraw any monies from the Designated Account without the Chargee's prior written consent.

## **5 Continuing security**

- 5.1 The security constituted by this Deed shall operate as a continuing security and shall extend to the ultimate balance of the Secured Liabilities regardless of any intermediate payment or discharge of any of the Secured Liabilities or any other matter whatsoever.
- 5.2 In the event that the security constituted by this Deed ceases to be a continuing security for whatever reason then the Chargee may at that time open or be deemed to have opened a new account or accounts and to credit all or any money arising from the enforcement of the security constituted by this Deed or receivable hereunder to such new account(s) and such events shall not operate to reduce the amount of the Secured Liabilities nor shall the liability of the Chargor be reduced or affected by any subsequent transactions, receipts or payments.
- 5.3 If the Chargee receives notice of any subsequent Encumbrance, or other interest, affecting all or part of the Charged Property (other than, in each case, Permitted Security), the Chargee may open a new account for the Chargor in the Chargee's books. Without prejudice to the Chargee's right to combine accounts, no money paid to the credit of the Chargor in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.
- 5.4 If the Chargee does not open a new account immediately on receipt of notice under clause 5.3 then, unless the Chargee gives express written notice to the contrary to the Chargor, all payments made by the Chargor to the Chargee shall be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt of the relevant notice by the Chargee.

## **6 Further assurance**

- 6.1 The Chargor agrees that it shall promptly upon the request of the Chargee execute and deliver at its own cost and expense any deed or document and do any act or thing or take any action required by the Chargee in order to confirm or establish the validity and enforceability of or otherwise in connection with the creation, perfection, enhancement or protection of the security intended to be created or conferred on the Chargee by or pursuant to this Deed (including without limitation) any further legal or other mortgages, charges or assignments and/or notices in favour of the Chargee,

the waiver of any landlord's rights to levy distress against or enforce any similar or replacement remedy against any of the Charged Property and any instructions, instruments, transfers, renunciations and/or proxies in favour of the Chargee or such other person as the Chargee may direct together with any and all filings or registrations or notices or instructions or other steps required by the Chargee.

- 6.2 The Chargor will obtain (in form and content satisfactory to the Chargee) prior to or contemporaneously with completion of this deed any consents necessary to enable the relevant assets of the Chargor purported to be so charged or assigned to be the subject of an effective fixed charge or assignment pursuant to clause 3 and, immediately upon obtaining any such consent, the asset concerned shall become subject to such security and the Chargor shall promptly deliver a copy of each consent to the Chargee.

## **7 Preservation of rights**

- 7.1 The security constituted by this Deed and the obligations of the Chargor contained herein and the rights and powers and remedies conferred on the Chargee by the Programme Documents shall be in addition to and shall not be merged with nor in any way be prejudiced or affected by any security or guarantee or judgment or order, right of recourse or other right whatsoever (whether contractual, legal or otherwise) now or at any time hereafter held by any Secured Party or any other person nor by:

- 7.1.1 any time, waiver, indulgence, consent or concession which any Secured Party may grant to or the terms of any composition or agreement that any Secured Party may enter into with the Chargor; or
- 7.1.2 any release or intermediate payment or discharge of the Secured Liabilities; or
- 7.1.3 any amendment, novation, supplement, extension or replacement (however fundamental and whether more or less onerous) of the Secured Liabilities; or
- 7.1.4 any legal limitation, disability, incapacity or lack of legal personality or power or authority on the part of the Chargor; or

- 7.1.5 any unenforceability, illegality or invalidity of the Secured Liabilities or any obligations owed by the Chargor; or
- 7.1.6 any liquidation, winding up, dissolution, amalgamation, reconstruction, reorganisation, bankruptcy, administration or voluntary arrangement of the Chargor or the appointment of any Receiver or liquidator or trustee in bankruptcy in respect of the property or business or assets of the Chargor (or the equivalent of such proceedings, appointments or matters in any jurisdiction) or the occurrence of any other circumstances affecting the liability of the Chargor.
- 7.2 If any payment or discharge or security or any arrangement made in connection with the Secured Liabilities is avoided or reduced for whatever reason (including without limitation under any laws relating to liquidation or administration or bankruptcy) the liability of the Chargor and the security created by this Deed shall continue as if there had been no payment, discharge, avoidance or reduction or arrangement and the Chargee shall be entitled to recover the value or amount of the security or payment as if the payment discharge or reduction had not occurred.
- 7.3 Any release, discharge or settlement between the Chargor and any Secured Party shall be deemed conditional on no payment or security received by any Secured Party in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded pursuant to any law relating to insolvency, bankruptcy, winding-up, administration, receivership or otherwise. Despite any such release, discharge or settlement:
- 7.3.1 the Chargee or its nominee may retain this Deed and the security created by or pursuant to it, including all certificates and documents relating to the whole or any part of the Charged Property, for such period as the Chargee deems necessary to provide the Chargee with security against any such avoidance, reduction or order for refund; and
- 7.3.2 the Chargee may recover the value or amount of such security or payment from the Chargor subsequently as if such release, discharge or settlement had not occurred.
- 7.4 The Chargee shall not be obliged to account to the Chargor or to any other person for anything other than its own actual receipts which have not been distributed or

paid to the person entitled (or whom the Chargee, acting reasonably, believes to be entitled) in accordance with the requirements of the Deed.

## **8 Indemnities and Exclusion of Liability**

- 8.1 The Chargor shall promptly on demand pay the Chargee and any Receiver and/or Delegate the amount of all costs and expenses, (including legal and third party fees, VAT and disbursements) properly incurred by it in connection with the negotiation, preparation, printing, execution, syndication and perfection of this Deed and any other documents referred to in this Deed.
- 8.2 If the Chargor requests an amendment, waiver or consent, the Chargor shall, within three Business Days of demand, reimburse the Chargee and any Receiver and/or Delegate for the amount of all costs and expenses (including legal fees and other third party fees, VAT and disbursements) properly incurred by it in responding to evaluating, negotiating or complying with that request or requirement.
- 8.3 The Chargor shall promptly indemnify and keep indemnified (on a full indemnity basis) the Chargee and every Receiver and/or Delegate against any cost (including, but not limited to, legal costs), loss or liability incurred by any of them as a result of:
- 8.3.1 any failure by the Chargor to comply with its obligations under clause 8.1;
  - 8.3.2 acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
  - 8.3.3 the taking, holding, protection, preservation or enforcement or attempted preservation or attempted enforcement (in circumstances where the security constituted by this Deed has become enforceable) of the security constituted by this Deed;
  - 8.3.4 the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Chargee and each Receiver and Delegate by this Deed or by law;
  - 8.3.5 any default by the Chargor in the performance of any of the obligations expressed to be assumed by it in this Deed;

- 8.3.6 instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Deed;
- 8.3.7 acting as Chargee, Receiver or Delegate under this Deed or which otherwise relates to any of the Charged Property (otherwise, in each case, than by reason of the relevant Chargee's, Receiver's or Delegate's gross negligence or wilful misconduct); or
- 8.3.8 any losses, costs, charges and expenses reasonably incurred in connection with the exercise by the Chargee of the powers contained in clause 11.
- 8.4 The Chargee and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this clause 8 and shall have a lien on the security created by this Deed and the proceeds of the enforcement of that security for all moneys payable to it.
- 8.5 Neither the Secured Parties, Chargee or any Receiver or any Delegate will be liable to the Chargor for any expense, loss, liability or damage incurred by the Chargor arising out of the exercise by such party of its rights or powers or any attempt or failure to exercise those rights or powers, except for any expense, loss, liability or damage arising from its gross negligence, fraud or wilful misconduct.
- 8.6 The Chargee may act in relation to this Deed through its personnel and agents.

## **9 Undertakings**

- 9.1 The Chargor covenants with the Chargee in the terms set out in clause 3.6.1 (*Covenants*) of the Facility Agreement and in Schedule 2 (*Undertakings*) of this Deed.
- 9.2 The Chargor will not do or allow to be done anything which could reasonably be expected materially to decrease the value of the Security to the Chargee.
- 9.3 The Chargor will at the request of the Chargee, promptly provide the Chargee with such information as the Chargee may reasonably require about the Charged Property and the Chargor's compliance with the terms of this deed and the Chargor will permit the Chargee, its representatives and professional advisers free access at

all reasonable times and on reasonable notice to inspect and take copies and extracts from such books, accounts and records of the Chargor as relate to the Charged Property.

9.4 The Chargor will comply with all applicable laws and regulations affecting the Charged Property.

9.5 The Chargor consents to an application being made by the Chargee to the Land Registrar for the following restriction to be registered against its title to each Property:

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a written consent signed by the proprietor for the time being of the charge dated [insert date of Legal Charge] in favour of Homes and Communities Agency (trading as Homes England) of Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH referred to in the charges register or, if appropriate, signed on such proprietor's behalf by an authorised officer or its conveyancer".

## **10 Representations**

10.1 The Chargor represents and warrants to the Chargee on the date of this Deed:

10.1.1 the Chargor is the legal and beneficial owner of the Charged Property;

10.1.2 there are no agreements, stipulations, reservations, conditions, interests, rights or other matters whatsoever affecting the Charged Property which materially adversely affect or are likely to materially adversely affect the value of the Charged Property or the ability of the Chargor to perform its obligations owed to the Chargee;

10.1.3 the Chargor has received no notice of any adverse claims by any person in respect of the ownership of the Charged Property or any interest therein, nor has any acknowledgement been given to any person in respect thereof which has not been disclosed to the Chargee;

10.1.4 subject to registration at Companies House or the Financial Services Authority as appropriate, this deed creates those Encumbrances it purports to create, ranking as set out above and is not liable to be avoided

or otherwise set aside on the liquidation or administration of the Chargor or otherwise.

**11 Power to remedy**

- 11.1 In the case of default by the Chargor in observing or performing any of the covenants or stipulations affecting the Charged Property, the Chargor will permit the Chargee or its agents to do such things or pay all such costs, charges and expenses as the Chargee may consider are necessary or desirable to prevent or remedy any breach of covenant or stipulation or to comply with or object to any notice served on the Chargor in respect of the Charged Property.

**12 Interest**

- 12.1 The Chargor agrees to pay interest to the Chargee on any money demanded of it under this Deed accruing due to a Secured Party on a daily basis, from day to day, from the date of first demand until payment is made in full (as well after as before judgment or any liquidation or bankruptcy) at the rate of interest which is the default rate of interest agreed to be payable in respect of the Secured Liabilities as calculated in accordance with the Finance Documents.

**13 Amounts payable**

- 13.1 All payments by the Chargor under this Deed shall be made:
- 13.1.1 without set off, retention or counterclaim; and
  - 13.1.2 free and clear of withholding or deduction of any taxes except to the extent that the Chargor is required by law to make such withholding or deduction in which case the Chargor shall pay such amount as will result in the receipt by the Chargee of the sums that would have been receivable by it in the absence of such withholding or deduction in respect of the Secured Liabilities under this Deed.
- 13.2 The obligations of the Chargor to make payments under this Deed are in the currency of the Secured Liabilities and shall not be discharged or satisfied by the receipt by the Chargee of any monies expressed or converted into any other currency and to the extent there is any shortfall between amounts due under this Deed in one currency and receipt by the Chargee in another currency then the

Chargee shall be entitled to recover the amount of any shortfall from the Chargor and to sell any currency received for the currency due and the Chargor shall promptly, and in any event within five Business Days of written demand, indemnify the Chargee against the full cost incurred in relation to such sale. The Chargee shall not have any liability to the Chargor in respect of any loss arising from any fluctuation in exchange rates after such sale.

- 13.3 The Chargee may (but is not obliged to) set off any obligation in respect of the Secured Liabilities which is due and payable by the Chargor against any obligation (contingent or otherwise) owed by the Chargee to the Chargor and apply any money held for the account of the Chargor in such order as it shall deem in its absolute discretion appropriate.
- 13.4 Any amount due from the Chargor under the terms of this Deed but unpaid, including without limitation any interest, may, at the option of the Chargee, be added to the Secured Liabilities and compounded in accordance with the usual practice of the Chargee.

#### **14 Enforcement**

- 14.1 Upon the occurrence of an Event of Default all of the Secured Liabilities shall immediately become due and payable and the Chargee may, without notice to the Chargor, enforce all or any part of the security constituted by this Deed at such times, in the manner and on such terms as it thinks fit including (without limitation) the appointment of a Receiver to all or any part of the Charged Property.
- 14.2 Section 103 LPA shall not apply to this Deed and the power of sale under section 101 LPA and all other powers conferred on the Chargee and any Receiver by this Deed shall operate as a variation and extension of the statutory powers of sale and other powers under the LPA and such powers shall arise (and the Secured Liabilities shall be deemed due and payable for these purposes) on the execution of this Deed.
- 14.3 The restrictions contained in section 93 LPA shall not apply to this Deed but the Chargee shall have the same right to consolidate this Deed and the money covenanted to be paid with any other security.
- 14.4 The statutory powers of leasing may be exercised by the Chargee at any time and the Chargee and any Receiver may make any lease or agreement for lease, accept

surrenders of leases and grant options on such terms as it shall think fit, without the need to comply with any restrictions imposed by sections 99 or 100 LPA.

- 14.5 The protection given to purchasers and persons dealing with a Receiver in the LPA will apply to purchasers and any other persons dealing with the Chargee or any Receiver and no purchaser or other person dealing with the Chargee or any Receiver will be bound to see or inquire whether the right of the Chargee or any Receiver to exercise any of its or his powers has arisen or become exercisable nor be concerned with any propriety or regularity on the part of the Chargee or any Receiver in such exercise or dealings or whether any amount remains secured by this Deed.
- 14.6 The powers conferred by this Deed on the Chargee are in addition to and not in substitution for the powers conferred on mortgagees and mortgagees in possession under the LPA, the Insolvency Act 1986 or otherwise by law and in the case of any conflict between the powers contained in any such Act and those conferred by this Deed the terms of this Deed will prevail.

## **15 Receivers**

- 15.1 At any time after having been requested to do so by the Chargor or after the occurrence of an Event of Default or this Deed having become enforceable and save to the extent prohibited by section 72A Insolvency Act 1986 the Chargee may in writing by deed or otherwise and without prior notice to the Chargor appoint one or more persons to be a Receiver of the whole or any part of the Charged Property and the Chargee may, from time to time, in similar manner, remove a Receiver and appoint another or others in substitution thereof.
- 15.2 Each person appointed to be a Receiver pursuant to this Deed will be:
- 15.2.1 entitled to act independently or jointly with any other person appointed as a Receiver except to the extent that the Chargee may specify to the contrary in the appointment;
  - 15.2.2 for all purposes deemed the agent of the Chargor who shall be solely responsible for his acts, defaults and liabilities and for the payment of his remuneration and at no time shall a Receiver act as agent for the Chargee; and

15.2.3 entitled to remuneration at a rate to be fixed by the Chargee from time to time (without being limited to any maximum rate).

15.3 The powers of appointment of a Receiver shall be in addition to all statutory and other powers of appointment of the Chargee under the LPA (as extended by this Deed) or otherwise and such powers shall remain exercisable from time to time by the Chargee in respect of any part of the Charged Property.

15.4 Any Receiver shall have and be entitled to exercise, in relation to the Charged Property all rights and powers as the Chargee shall see fit as though the Chargee was absolute owner of the Charged Property, including (without limitation) the rights and powers set out in Schedule 3 (*Powers of Receivers*).

15.5 The receipt of the Chargee or any Receiver shall be conclusive discharge to any purchaser and, in making any disposal of any of the Charged Property the Chargee or any Receiver may do so for such consideration, in such manner and on such terms as the Chargee or any Receiver thinks fit.

15.6 Neither the Chargee nor any Receiver nor any officer, employee or agent of the Chargee or any Receiver shall be deemed to be or in any way liable to account as mortgagee in possession in respect of all or any Charged Property or be liable in any way to the Chargor or any other person for the manner of exercise or non-exercise of any powers or rights of the Chargee or any Receiver or for any act or default or omission of any nature whatsoever except for any gross negligence, fraud or wilful misconduct.

15.7 Any liberty or power which may be exercised or any determination which may be made under this Deed by the Chargee or any Receiver may be exercised or made in the Chargee's or any Receiver's absolute and unfettered discretion without any obligation to give reasons.

## **16 Appropriations and application of proceeds**

16.1 The Chargee may apply or refrain from applying any money or property received by it in or towards payment or discharge of any liability in respect of the Secured Liabilities in such order or manner as it sees fit or determines and hold any money received by it in an interest bearing suspense account or on account of the Chargor's liabilities under this Deed.

- 16.2 If the Chargee (or any Receiver) enforces the security constituted by this Deed at a time when no amount in respect of the Secured Liabilities is due and payable, or when the amount due and payable is not ascertained, the Chargee (or any Receiver) may pay the proceeds of any recoveries effected by it into an interest bearing suspense account. The Chargee may withdraw amounts standing to the credit of such suspense account for application in or towards discharge of the Secured Liabilities.
- 16.3 Until the Secured Liabilities have been irrevocably paid in full, the Chargee may refrain from applying or enforcing (or attempting to enforce) any other security, monies or rights held or received by the Chargee or may apply and enforce the same in such manner and order as the Chargee sees fit (whether against the Secured Liabilities or otherwise) and the Chargor shall not be entitled to the benefit of such other security.
- 16.4 The Chargee may in its discretion grant time or other indulgence or make any other arrangement, variation or release with any person or persons not party hereto (whether or not such person or persons are jointly liable with the Chargor) in respect of any of the Secured Liabilities or of any other security therefor without prejudice either to this Deed or to the liability of the Chargor for the Secured Liabilities.

**17 Immediate recourse**

- 17.1 The Chargee shall not be obliged to proceed first against, or enforce any rights or security or claim payment from any person before claiming any benefit under this Deed and the Chargor hereby waives any contrary right it may have whether arising under law or otherwise.

**18 Assignment and delegation**

- 18.1 This Guarantee is freely assignable or transferable by the Chargee to any person to whom the Funding Agreement is assigned in accordance with Clause 19 (Assignment) of the Funding Agreement and the Chargee may disclose to any potential assignee, transferee or participant such confidential information about the Chargor and this Deed as it shall deem appropriate in accordance with Schedule 8 (*Confidentiality, Freedom of Information, Data Protection, Intellectual Property, Public Relations and Publicity*) of the Facility Agreement.

18.2 The Chargor may not assign or transfer any of its rights or obligations under this Deed.

18.3 The Chargee and any Receiver may from time to time employ professional advisors and delegate by power of attorney or otherwise to any person any of the powers and discretions of the Chargee or any Receiver whether arising by statute, the provisions of this Deed or otherwise upon such terms and for such periods of time as they may think fit (disclosing such confidential information about the Chargor or this Deed as the Chargee or any Receiver sees fit) and may at any time determine any such employment or delegation. At no time will either the Chargee or any Receiver be liable to the Chargor for any loss or damage arising from any act, default, omission or misconduct of any person except for any loss or damage arising from its gross negligence, fraud or wilful misconduct.

## **19 Discharge of security**

If the Chargee is satisfied that all the Secured Liabilities have been irrevocably and unconditionally paid or discharged in full and the Secured Parties have no further actual or contingent obligation to advance funds to the Borrower pursuant to the terms of the Facility Agreement, the Chargee shall at the request and cost of the Chargor take whatever action is necessary to release, reassign or discharge (as appropriate) Charged Property from the security created by this Deed subject to clause 1.3(Clawback).

## **20 Discretion and delegation**

### **20.1 Discretion**

Any liberty or power which may be exercised or any determination which may be made hereunder by the Chargee or any Receiver may, be exercised or made in its absolute and unfettered discretion without any obligation to give reasons.

### **20.2 Delegation**

Each of the Chargee and any Receiver will have full power to delegate (either generally or specifically) the powers, authorities and discretions conferred on it by this deed (including the power of attorney) on such terms and conditions as it sees fit which delegation may include power to sub-delegate and will not preclude either the

subsequent exercise of such power, authority or discretion by the Chargee or the Receiver itself or any subsequent delegation or revocation thereof.

**21 Miscellaneous**

- 21.1 If, at any time, any provision of this Deed shall be determined to be or becomes illegal, invalid or unenforceable all other terms and provisions of this Deed shall nevertheless be valid, legal and enforceable to the fullest extent permitted by law.
- 21.2 No failure or delay on the part of the Chargee to exercise any right, remedy or power under this Deed or in respect of the Secured Liabilities shall operate as a waiver or constitute an election to affirm this Deed, nor shall any partial or defective exercise preclude or impair any other exercise of that or any other right, remedy or power. The rights, remedies and powers provided in this Deed are cumulative and not exclusive of any rights, remedies or powers provided by law.
- 21.3 No failure by the Chargee to give any notice which it is required to give in respect of the Chargor shall affect or impair the liability of the Chargor to any Secured Party under this Deed.
- 21.4 At any time after an Event of Default has occurred or this Deed has become enforceable, the Chargee may redeem or take a transfer of any security ranking in priority to the security constituted by this Deed. The Chargee may agree the accounts of the holder of any such prior security which agreement shall be binding and conclusive on the Chargor. Any amount paid in connection with such transfer shall be payable on demand by the Chargor to the Chargee.
- 21.5 The powers which this Deed confers on the Chargee are cumulative, without prejudice to its powers under general law, and may be exercised as often as the Chargee thinks appropriate.
- 21.6 A person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 21.7 This Deed may be executed in two or more counterparts each of which shall constitute an original but which, when taken together, shall constitute one agreement.

- 21.8 Any certificate signed as correct by the Chargee, showing the amount due under this Deed and any determination by the Chargee under this Deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.
- 21.9 All consents, notices and demands required in connection with this Deed must be in writing. The Chargee may deliver a notice or demand to the Chargor at its registered office or at the contact details last known by the Chargee. A notice or demand signed by an official of the Chargee will be effective at the time of personal delivery; or, if by fax, at the time of sending (if sent before 6pm on a Business Day, otherwise on the next Business Day) or on the second Business Day after posting. A notice from the Chargor to the Chargee will be effective on actual receipt.
- 21.10 This Deed is designated as a Finance Document under the Facility Agreement.
- 21.11 The Chargor has entered into this Deed in consideration of the Chargee agreeing to provide (or continue to provide) finance facilities to the Borrower on the terms agreed in the Finance Documents.
- 21.12 If there is any conflict between the provisions of this Deed and the provisions of the Facility Agreement, the Facility Agreement shall prevail.
- 21.13 If any party is not bound by this Deed (or any part of it) for any reason, this does not affect the obligations of each other Party under this Deed (or under the relevant part).
- 21.14 This Deed is in addition to, and does not operate so as in any way to prejudice or affect, or be prejudiced or affected by, any other Security or guarantee which the Chargee may now or at any time after the date of this Deed hold for or in respect of the Secured Liabilities.
- 21.15 The Chargor hereby certifies that its creation of this deed in favour of the Chargee does not contravene any of the provisions of the Companies Act 2006 or its memorandum and articles of association or rules or, in the case of a limited liability partnership or limited partnership, the partnership deed constituting the Chargor.
- 21.16 This deed will remain binding on the Chargor notwithstanding any change in the constitution of the Chargee or its absorption by, or amalgamation with, or the acquisition of all or part of its undertaking by, any other person, or any reconstruction or reorganisation of any kind. The security granted by this deed will remain valid and

effective in all respects in favour of the Chargee and for any assignee, transferee or other successor in title of the Chargee.

## **22 Power of attorney**

22.1 As further security for the performance of the Chargor's obligations under this Deed, the Chargor hereby irrevocably appoints each of the Chargee (whether or not a Receiver has been appointed) and also (as a separate appointment) any Receiver jointly and severally to be its attorney with full power of delegation in its names and on its behalf:

22.1.1 to sign, execute, seal, complete and deliver any document, deed, agreement, instrument or act which the Chargee or any Receiver may require for perfecting the title of the Chargee to the Charged Property or for vesting the same in the Chargee, its nominees or any purchaser or generally for the purposes set out in this Deed;

22.1.2 to sign, execute, seal, complete and deliver any further deed or document required pursuant to clause 6.1; and

22.1.3 otherwise generally to sign, seal, execute and deliver all deeds, assurances, agreements and documents and to do all acts and things which may be required for the full exercise of all or any of the powers conferred on the Chargee or a Receiver under this Deed or which may be deemed expedient by the Chargee or a Receiver in connection with any disposal of the Charged Property, realisation or getting in of the Charged Property or any part of it or in connection with any other exercise of any power under this Deed.

## **23 Governing law and jurisdiction**

23.1 This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of England and Wales.

23.2 The Chargor irrevocably:

23.2.1 agrees that the courts of England have exclusive jurisdiction to settle 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) (a "Dispute"); and

23.2.2 agrees that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly the Chargor will not argue to the contrary.

23.3 This clause 23 is for the benefit of the Chargee only. As a result, the Chargee shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Chargee may take concurrent proceedings in any number of jurisdictions.

## **24 Communications**

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

24.1.1 in the case of each Party that is a party to the Facility Agreement, those given for it in clause 25 (*Notices*) of the Facility Agreement; and

24.1.2 in the case of each Receiver and each Delegate, those notified in writing to the Chargee (whether in that capacity or in any other capacity) by such Receiver or Delegate (or by the Chargee on its behalf) as soon as practicable after its appointment,

or any substitute address or department or officer as the relevant person may notify to the Chargee (or as the Chargee may notify to the other Parties, if a change is made by the Chargee) by not less than five Business Days' notice.

## **25 Separate and Independent Obligations**

25.1 The security created by the Chargor by or in connection with any Finance Document is separate from and independent of the security created or intended to be created by the Chargor by or in connection with any other Finance Document.

IN WITNESS WHEREOF this Deed has been executed as a deed by the Chargor and signed by the Chargee and is intended to be and is hereby delivered on the date first above written.

## Schedule 1 – Property

Deliberately blank.

## **Schedule 2 – Undertakings**

### **Part 1 – Securities**

#### **1 Title to Shares**

1.1 The Chargor shall on the execution of this Deed, deliver to the Chargee, or as the Chargee may direct:

1.1.1 all share certificates and other documents of title or evidence of ownership of the Securities and Specified Shares;

1.1.2 all stock transfer forms relating to the Securities and Specified Shares duly completed and executed by or on behalf of the Chargor, but with the name of the transferee, the consideration and the date left blank;

1.1.3 any other documents (in each case duly executed by or on behalf of the Chargor) that the Chargee may request to enable it, or any of its nominees, or any purchaser or transferee, to be registered as the owner of, or otherwise obtain legal title to, or to perfect its security interest in any of the Securities and Specified Shares,

so that the Chargee may, at any time after the security created by this Deed has become enforceable in accordance with its terms and without notice to the Chargor, complete and present those stock transfer forms and any other documents to the Issuers of the Charged Property for registration.

#### **2 Dividends and voting rights pre enforcement**

2.1 Unless and until the security constituted by this Deed becomes enforceable or the Chargee directs otherwise:

2.1.1 the Chargor may continue to exercise all voting and other rights attaching to the Securities or the Specified Shares provided that it shall not do so in any way that would breach any provision of the Facility Agreement or this Deed;

2.1.2 save as permitted under the Facility Agreement, the Chargor shall not declare, make or pay any dividend, charge, fee or other distribution (or

interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of its share or membership capital (or any class of its share or membership capital); and

- 2.1.3 save as permitted under the Facility Agreement, any dividends and other distributions paid or payable in respect of the Securities or the Specified Shares shall be held on trust for the Chargee (as agent and trustee for the Secured Parties) and immediately paid into the Deposit Account (as defined in the Facility Agreement) or, if received by the Chargee, shall be retained by the Chargee (as agent and trustee for the Secured Parties).

### **3 Dividends and voting rights post enforcement**

- 3.1 After the security constituted by this Deed has become enforceable:

- 3.1.1 all dividends and other distributions paid in respect of the Securities or the Specified Shares and received by the Chargor shall be held on trust for the Chargee and immediately paid into a Designated Account or, if received by the Chargee, shall be retained by the Chargee;
- 3.1.2 all voting and other rights and powers attaching to the Securities and the Specified Shares shall be exercised by, or at the direction of, the Chargee and the Chargor shall, and shall procure that its nominees shall, comply with any directions the Chargee may, in its absolute discretion, give concerning the exercise of those rights and powers;
- 3.1.3 the Chargee may, in the name of the Chargor and without any further consent or authority from the Chargor and irrespective of any direction given by the Chargor, complete all instruments of transfer held by it in relation to the Charged Property in favour of itself or such other person as it may select and have the Securities and the Specified Shares transferred into its name or the name of its nominee or, as applicable, into an account in its own name or the name of its nominee; and
- 3.1.4 in addition to any other power created under this Deed, the Chargee may exercise or refrain from exercising (or direct its nominee to exercise or refrain from exercising) all the powers and rights conferred on or exercisable by the legal or beneficial owner of the Securities or Specified

Shares (in the name of the Chargor and without any further consent or authority from the Chargor and irrespective of any direction given by the Chargor).

**4 Calls on Securities**

The Chargor shall duly and promptly pay all calls, instalments and other monies which may be payable from time to time in respect of the Securities or the Specified Shares. The Chargor acknowledges that the Chargee shall not be under any liability in respect of any such calls, instalments or other monies.

**5 No alteration of Securities**

5.1 The Chargor shall not, without the prior written consent of the Chargee, amend, or agree to the amendment of, the memorandum or articles of association or any other constitutional documents of any issuer of Securities or the Specified Shares that is not a public company, or the rights or liabilities attaching to any of the Securities or the Specified Shares.

5.2 The Chargor will remain the sole beneficial owner of the Specified Shares and of any other Securities acquired by it, or in which it has acquired a beneficial interest, after the date of this Deed.

5.3 The Chargor shall not, without the prior written consent of the Chargee, nominate any other person or persons to enjoy or exercise any rights as the registered holder of the Securities or Specified Shares (save where the Securities or Specified Shares have been registered in the name of the Chargee or its nominee pursuant to the provisions of this Deed) and it will remain the legal owner of the Securities and Specified Shares.

5.4 The Chargor shall not, without the prior written consent of the Chargee enter into a single transaction or a series of transactions (whether related or not) to dispose of the whole or any part of any the Securities and / or the Specified Shares.

**6 Preservation of Securities**

6.1 The Chargor shall ensure (insofar as it is able by the exercise of all voting rights, powers of control and other means available to it to do so) that no issuer that is not a public company shall:

- 6.1.1 consolidate or subdivide any of its Securities or Specified Shares, or reduce or re-organise its share capital in any way;
- 6.1.2 issue any new shares or stock; or
- 6.1.3 refuse to register any transfer of any of its Securities or Specified Shares which may be lodged for registration by, or on behalf of, the Chargee or it in accordance with this Deed.

## **7 Securities information**

- 7.1 The Chargor shall send to the Chargee copies of all notices, circulars, reports, accounts and other documents, which are sent to holders of any Securities or Specified Shares promptly following receipt.
- 7.2 For so long as no Event of Default has occurred the Chargor shall be entitled to:
  - 7.2.1 receive and retain any Distributions paid to it; and
  - 7.2.2 exercise and control the exercise of all voting and other rights relating to Securities and Specified Shares forming part of the Charged Property.
- 7.3 The entitlement of the Chargor under clause 7.2 may at any time be terminated upon and to the extent of any notice by the Chargee to the Chargor evidencing the Chargee's intention thenceforth to itself receive and retain any Distributions payable and/or direct the exercise of such rights and/or register any transfer of Securities or Specified Shares for the purpose of preserving the value of the security constituted by this Deed. Any Distributions paid to the Chargor following the giving of such notice shall be held in trust by the Chargor (and otherwise separated from its assets) on behalf of the Chargee.

## **Part 2 - Equipment covenants**

### **1 Maintenance of Equipment**

The Chargor shall:

- 1.1.1 maintain the Equipment in good and serviceable condition (except for expected wear and tear);

1.1.2 not permit any Equipment to be:

- (i) used or handled, other than by properly qualified and trained persons; or
- (ii) to be overloaded or used for any purpose for which it is not designed or reasonably suitable.

**2 Payment of Equipment taxes**

The Chargor shall promptly pay all taxes, fees, licence duties, registration charges, insurance premiums and other outgoings in respect of the Equipment and, on demand, produce evidence of payment to the Chargee.

**Part 3 – Charged Contracts Covenants**

**Performance under contracts**

- 1 Save as permitted under the Facility Agreement, the Chargor will perform all of its obligations under the Charged Contracts in a diligent and timely manner and not make or agree to make any amendments or modifications to the Charged Contracts without the prior consent of the Chargee (such consent not to be unreasonably withheld).
- 2 The Chargor will not waive any of its rights under the Charged Contracts, nor exercise any rights to terminate any of the Charged Contracts except, in any case, with the prior written consent of the Chargee.
- 3 The Chargor will immediately inform the Chargee of any material disputes or material notices received relating to the Charged Contracts.

### **Schedule 3 – Powers of Receivers**

- 1 All the powers to do or abstain from doing anything which the Chargor could do or abstain from doing in relation to the Charged Property including, without limitation the powers conferred by section 109 LPA and Schedule 1 to the Insolvency Act 1986 and with all the powers of an absolute beneficial owner and in particular a receiver may:
  - 1.1 carry on, manage or concur in carrying on managing the whole or any part of the business of the Chargor as he may in his discretion think fit;
  - 1.2 manage, insure, repair, decorate, maintain, alter, improve, overhaul, renew or add to the Charged Property or concur in so doing as he may in his discretion think fit;
  - 1.3 commence or complete any building operations on the Properties as he may in his discretion think fit;
  - 1.4 apply for and maintain any planning permissions, building regulations, approvals and any other permissions, consents or licences as he may in his discretion think fit,
  - 1.5 in each case in such manner and generally on such terms as he may in his discretion think fit, (exercising any such power by effecting such transaction in the name of or on behalf of the Chargor or otherwise):
    - 1.5.1 let, hire or lease (with or without premium) and accept surrenders of leases or tenancies or concur in so doing;
    - 1.5.2 grant rights, options or easements over and otherwise deal with or dispose of, and exercise all rights, powers and discretions incidental to, the ownership of the Charged Property;
    - 1.5.3 exchange or concur in exchanging the Charged Property; and
    - 1.5.4 sell, exchange, convert into money and realise the Charged Property or concur in so doing whether by public auction or private contract or otherwise and generally in such manner and on such

terms as he may in his discretion think fit for any valuable consideration and any such consideration may be payable in a lump sum or by instalments spread over such period as he may in his discretion think fit;

- 1.6 for the purpose of exercising any of the powers, authorities or discretions conferred on him by or pursuant to this Deed or of defraying any costs which are incurred in the exercise of such powers, authorities or discretions or for any other purpose, raise and borrow money or incur any other liability either unsecured or secured on the Charged Property, either in priority to the security constituted by this Deed or otherwise, and generally on such terms as he may in his discretion think fit. No person lending such money is to be concerned to enquire as to the propriety or purpose of the exercise of such power or as to the application of any money so raised or borrowed;
- 1.7 make, or require the directors of the Chargor to make, such calls upon the shareholders of the Chargor in respect of any uncalled capital of the Chargor as the Receiver may in his discretion require and enforce payment of any call so made by action (in the name of the Chargor or a Receiver may in his discretion think fit) or otherwise;
- 1.8 settle or compromise any claim by, adjust any account with, refer to arbitration any dispute and deal with any question or demand relating in any way to the Charged Property, as he may in his discretion think fit;
- 1.9 bring, prosecute, enforce, defend and abandon all such action, suits and proceedings in relation to the Charged Property as he may in his discretion think fit;
- 1.10 promote the formation of any subsidiary of the Chargor with a view to such subsidiary purchasing, leasing, licensing or otherwise acquiring an interest in the Charged Property;
- 1.11 arrange for the purchase, lease, licence or acquisition or an interest in the Charged Property by any such subsidiary for any valuable consideration or a sum calculated by reference to profits, turnover, royalties, licence fees or otherwise, whether or not secured on the undertaking or assets of such subsidiary and whether or not such consideration is payable or receivable in a

lump sum or at any time or any number of times by instalments spread over such period, as a receiver may in his discretion think fit;

- 1.12 arrange for such subsidiary to trade or cease to trade as the receiver may in his discretion think fit;
- 1.13 appoint and discharge any manager, officer, agent, professional advisor, employee and any other person, upon such terms as he may in his discretion think fit;
- 1.14 give valid receipts for all monies and execute all assurances and things which he may in his discretion think proper or desirable for selling, leasing, converting, realising or otherwise dealing with the Charged Property;
- 1.15 conduct and complete all investigations, studies, sampling and testing and all remedial, removal and other action, whether required under Environmental Law or by the Chargee or otherwise and comply with all lawful orders and directives of all authorities regarding Environmental Law; and
- 1.16 do all such other acts and things as a receiver may in his discretion consider to be incidental or conducive to any of the matters or powers set out in this Deed or otherwise incidental or conducive to the preservation, improvement or realisation of the Charged Property.

#### **Schedule 4 – Charged Contracts**

- 1. Any guarantees, collateral warranties and other contracts (not already mentioned above) entered into by or from which the Chargor may benefit which relate to the Works as defined in the Facility Agreement.

**Schedule 5 – Bank accounts**

Name or designation of bank account	Number of bank account	Sort Code
Deposit Account		
Operating Account		

**Schedule 6 – Specified Shares**

<b>Number of Shares</b>	<b>Class of Shares</b>
1 share in APEX AD1 LTD (CN: 11530590)	Ordinary
1 share in APEX AD2 LTD (CN: 11530679)	Ordinary
1 share in APEX MALCOLM WAY LIMITED (CN: 11475520)	Ordinary
1 share in APEX MARION COURT LIMITED (CN: 11111542)	Ordinary
1 share in APEX WOOD STREET LIMITED (CN: 11475527)	Ordinary

## Schedule 7 – Notices

### Part 1 – Notice to insurer

(For attachment by way of endorsement to the Insurances)

To: [name and address of insurer]

Dated: [date]

Dear Sirs,

**Re: The policies of insurance referred to in the Schedule below (the "Policies")**

We, Apex Airspace Development Limited (the "**Chargor**"), give you notice that, by a debenture dated [date] (the "**Debenture**") and made by (amongst others) ourselves in favour of the Homes and Communities Agency (the "**Chargee**"), we have charged by way of fixed charge and assigned to the Chargee, as first priority charge and assignee, all of the Policies as are capable of being charged and/or assigned by law.

The assets charged and assigned include all our right, title and interest in and to the Policies (including, but not limited to, the benefit of all sums assured by the Policies and all bonuses, profits, returns of premium and other benefits of whatever nature arising by virtue of our ownership of the Policies and all interest on any of the secured money).

We irrevocably and unconditionally authorise and request you:

1. to note the Chargee's interest as composite insured and first loss payee of the proceeds of such Policies; and
2. to give the acknowledgement, undertakings and agreements required by the Chargee and to act on the instructions of the Chargee without any further reference to or authorisation from us.

Please sign the enclosed copy of this notice and deliver it to the Chargee at Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington, WA3 7H (with a further copy sent to us).

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

Yours faithfully,

For and on behalf of Apex Airspace Development Limited

By:.....

**The Schedule**

The Policies

**\* To be completed by the Chargor and approved by the Chargee and to include all relevant policies with the named insurer**

Policy number	Name and address of insurer	Name and address of broker	Brief description of assets insured	Date of expiry of policy #
1. [number]				
2. [number]				
3. [number]				
4. [number]				
5. [number]				

# not required if policies are annually renewable

Dated: [date]

**[to be included on copy notice]**

To: [ ]

Copy to: APEX AIRSPACE DEVELOPMENT LIMITED

We [name of insurer] acknowledge receipt of the above notice. We:

1. agree to note your interest as composite insured and first loss payee of the proceeds of such Policies;

2. undertake to disclose to you, promptly following request, without any reference to or further authority from the Chargor, such information relating to the Policies as you may at any time reasonably request;
3. confirm that we have not received any notice of any previous assignment or charge by the Chargor of or over any of its rights, title, interests or benefits referred to in the notice;
4. agree to provide you with at least 30 days' written notice of our intention to cancel or decline renewal of any of the Policies; and
5. agree to provide you with at least 30 days' written notice of any request made, or notification given, by the Chargor to us, to cancel the Policies, or to allow the Policies to lapse.

Terms defined in the notice apply to this endorsement, which is governed by English law together with any non-contractual obligations arising out of or in connection with it.

Signed: .....

for and on behalf of *[name of insurer]*

Dated: *[date]*

#### Part 2 – Notice to counterparties of Charged Contracts

To: *[name and address of counterparty]*

Dated: *[date]*

Dear Sirs,

Re: *[here identify relevant Charged Contract]* **[the "Contract"]** made between (1)

Apex Airspace Development Limited **(the "Chargor")** and (2) *[here insert name of counterparty]*

We, the Chargor, give you notice that, by a debenture dated *[date]* (the "**Debenture**") and made by (amongst others) ourselves in favour of [ ] (the "**Chargee**") we have charged by way of fixed charge and assigned to the Chargee, as first priority charge and assignee, all of our rights, title and interest in the Contract.

We further irrevocably and unconditionally:

1. notify you that we may not agree to amend, modify or terminate the Contract without the prior written consent of the Chargee;
2. confirm that, subject to paragraph 1 above, you may continue to deal with us in relation to the Contract until you receive written notice to the contrary from the Chargee, but authorise and instruct you that, after you have received such notice, we will cease to have any right to deal with you in relation to the Contract except in accordance with the instructions of the Chargee and therefore from that time you may deal directly with the Chargee;
3. authorise and instruct you to disclose information in relation to the Contract to the Chargee promptly on request, without any enquiry by you as to the justification for such disclosure or reference to or further authority from us;
4. authorise and instruct you to pay or release all monies to which we are entitled under the Contract directly into [*designated bank account*] tbc or, if the Chargee so instructs you, into such other account as the Chargee shall specify;
5. authorise and instruct you that, whenever you serve any notice upon us under the Contract, you should supply a copy of such notice to the Chargee at Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington, WA3 7QH (or as otherwise notified to you by it from time to time);
6. notify you that the provisions of this notice may only be revoked with the written consent of the Chargee; and
7. confirm that you have not received any notice of any previous assignment or charge by us of any of our rights, title and/or interest in the Contract.

Please sign the copy of this notice and deliver it to the Chargee (with a further copy to us).

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

Yours faithfully,

For and on behalf of APEX AIRSPACE DEVELOPMENT LIMITED:

By:.....

[to be included on copy notice]

To: [ ]

Copy to: Apex Airspace Development Limited

We [name of counterparty] acknowledge receipt of the above notice. We:

1. accept the instructions and authorisations set out in the notice and undertake to act in accordance with such instructions and authorisations; and
2. confirm that we have not received notice that the Chargor has assigned any of its rights, title or interest in under the Contract to a third party or created any other interest (whether by way of security or otherwise) in the Contract in favour of a third party.

Terms defined in the notice apply to this endorsement, which is governed by English law together with any non-contractual obligations arising out of or in connection with it.

Signed: .....

for and on behalf of [name of counterparty]

Dated: [date]

### Part 3 – Notice of Account Charge

To: [ ]

[ ]

Date:

#### **Notice of charge**

We hereby give notice that by a charge dated [●] made between Apex Airspace Development Limited (the **Chargor**) (1) and the Homes and Communities Agency (the **Chargee**) (2) (the **Charge**), the Chargor charged to the Chargee all its rights, title and interest present and future over the following account[s] opened by it with you:

Account	Account number	Sort code`
[Disposal Proceeds Account]	[            ]	[ ] ]

(the **Account[s]**) as security for the obligations more particularly referred to in the Charge.

The Chargor hereby gives you notice that pursuant to the Charge, it has, with full title guarantee, charged to the Chargee all its rights, title and interest in and to all amounts standing to the credit of the Account[s] including from time to time together with all entitlements to any interest and other rights and benefits accruing to or arising in connection therewith (the **Account Funds**).

In connection therewith and by way of security for its obligations to the Chargee the Chargor hereby irrevocably and unconditionally instructs and authorises you (notwithstanding any previous instructions whatsoever which it may have given you to the contrary):

- 1 to disclose to the Chargee without any reference to or further authority from the Chargor and without any enquiry by you as to the justification for such disclosure, such information relating to the Account Funds and the debt represented thereby as the Chargee may, at any time and from time to time, request you to disclose to it;
- 2 to comply with the terms of any written notice, statement or instructions in any way relating or purporting to relate to the Account Funds or the debt represented thereby which you receive at any time and from time to time from the Chargee or without any reference to or further authority from the Chargor and without any enquiry by you as to the jurisdiction for such notice, statement or instructions or the validity thereof;
- 3 subject to paragraph 2 above, to operate the Account[s] and make any payments from or withdrawals from the Account[s] only in accordance with all proper instructions authorised jointly by one authorised signatory of the Chargor (a **Category A Signatory**) and two authorised signatories of the Chargee (the Chargee signatories, together, a **Category B Signatory**) pursuant to the mandates held by you; and

- 4 subject to paragraph 2 above, to accept all instructions jointly given by one Category A Signatory and the Category B Signatory in connection with any payments from or withdrawals from the Account[s], at any time and from time to time, and to comply with all such instructions without any reference to or further authority from the Chargor or the Chargee and without any enquiry by you as to the jurisdiction for such notice, statement or instructions or the validity thereof.

At any time following the Chargee exercising its rights in relation to the Chargor pursuant to Clause 14.4 (Acceleration) of the facility agreement dated [ ] made between, amongst others, the Chargor (1) and the Chargee (2), the Chargee may give notice to you pursuant to paragraph 2 above, that the instructions in paragraphs 3 and 4 above shall be solely exercisable by two Category B Signatories.

In respect of any notice or instructions received from the Chargee pursuant to paragraph 2 above, we agree that you are not bound to enquire whether such rights of the Chargee have arisen.

The instructions and authorisations which are contained in this letter will remain in full force and effect until the Chargee gives you notice in writing revoking them. The instructions and authorisations given by the Chargor are irrevocable.

In consideration of your accepting the instructions and authorisations which are contained in this letter the Chargor will at all times indemnify you and keep you indemnified from and against all actions, suits, proceedings, claims, demands, liabilities, damages, costs, expenses, losses and charges whatsoever in relation to or arising out of your acting on or complying with such instructions and authorisations and the Chargor will pay or reimburse to you on demand the amount of all losses, costs and expenses whatsoever suffered or incurred from time to time by you under or by reason or in consequence of you acting or complying with such instructions and authorisations.

This letter will be governed by, and construed in accordance with, English law.

Would you please acknowledge receipt of this letter and your acceptance of the instructions and authorisations contained in it by sending a letter addressed to us and to the Chargee in the form attached hereto.

Yours faithfully

.....  
Authorised Signatory

for and on behalf of

**Apex Airspace Development Limited**

**Annexure - Notice of Account Bank**

To: [ ]  
[ ]

Date:

**Notice of authority to release funds**

We hereby confirm that in accordance with clause [INSERT] of the Debenture dated [INSERT] made between Apex Airspace Development Limited (the **Chargor**) (1) and the Homes and Communities Agency (the **Chargee**) (2) (the **Charge**) the Chargor and the Chargee authorise the release of [£INSERT SUM] from the Account Funds on or within 10 working days of [INSERT DATE] to be made to [INSERT DETAILS OF PAYEE] into the following manner [by direct credit to the following account INSERT ACCOUNT DETAILS / by cheque made payable to [INSERT PAYEE].

Yours faithfully

**Category A Signatory:**

.....  
Authorised Signatory  
for and on behalf of  
Apex Airspace Development Limited

**Category B Signatory:**

.....  
Authorised Signatory  
for and on behalf of  
the Chargee

.....  
Authorised Signatory  
for and on behalf of  
the Chargee

## **Form of Acknowledgement of the Account Bank to the Chargee**

To: The Homes and Communities Agency

Dated:

Dear Sirs

### **Acknowledgement of notice**

Account number[s] [ ] (the **Account[s]**)

We hereby acknowledge receipt of a letter (a copy of which is attached hereto) dated [ ] and addressed to us by Apex Airspace Development Limited ("the Letter") and hereby accept the instructions and authorisations contained therein and undertake to act in accordance and comply with the terms thereof.

We hereby acknowledge and confirm to each of the Chargor and the Chargee that we will not, until such time we receive contrary notice from the Chargee, accept any instructions in connection with any payments from or withdrawals from the Account[s] unless given jointly by a Category A Signatory and the Category B Signatory substantially in the form set out in the Annexure to this Letter.

We hereby acknowledge and confirm to each of the Chargor and the Chargee that we have not, as at the date hereof, received any notice that any third party has or will have any right or interest whatsoever in or has made or will be making any claim or demand or taking any action whatsoever against the Account Funds or the debt represented thereby or any part thereof.

We hereby acknowledge and confirm to each of the Chargor and the Chargee that we will not make any claim or demand or exercise any rights of counterclaim, rights of set-off or any other equities whatsoever against the Chargor in respect of the Account Funds or the debt represented thereby or any part thereof.

We agree that in the event of us receiving notice at any time that any person or entity other than the Chargor or the Chargee claims to have or claims it will acquire any right or interest whatsoever in the Account Funds or any part thereof we will as soon as is reasonably practical give written notice of the terms thereof to both the Chargee and the Chargor.

We hereby acknowledge and confirm to each of the Chargor and the Chargee that any personal details provided to us by the Chargee will be used only for the purpose of completing our internal 'know your customer' process and such details will not be released externally to the Chargor or to any third party save for when we are required to do so by law.

We have made the acknowledgements and confirmations and have given the undertakings set out in this letter in the knowledge that they are required by the Chargee in connection

with the security which has been constituted by the Chargor in favour of the Chargee under the Charge.

The expressions defined or used in your letter mentioned in the opening paragraph hereof will, unless the context otherwise requires, have the same meanings in this letter.

This letter will be governed by, and construed in accordance, with English law.

Yours faithfully

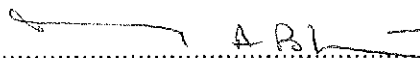
.....

Duly authorised signatory  
for and on behalf of  
Metro Bank PLC

**EXECUTION PAGE**

**The Chargor**

Executed as a deed by **APEX AIRSPACE** )  
**DEVELOPMENT LIMITED** acting by a )  
director in the presence of: )



Director's signature

ARSHAD BHATTI

Director's name

Witness' signature:



Witness' name (BLOCK CAPITALS):

ROSE HERRIES

Witness' address:

Winckworth Sherwood LLP  
DX 156810 London Bridge 6  
Minerva House  
5 Montague Close  
London SE1 9BB

Witness' occupation:

**The Chargee**

the common seal of )

**HOMES AND COMMUNITIES AGENCY** )

Is hereunto affixed in the presence of: )

Authorised Signature:

Print Name:

Winnipeg, Manitoba  
Canada R3B 1X6  
Tel: (204) 786-1234  
Fax: (204) 786-5678  
E-mail: info@winnipeg.ca