



Registration of a Charge

Company Name: **HERON HOMES LTD**

Company Number: **10297326**



Received for filing in Electronic Format on the: **13/04/2022**

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Details of Charge

Date of creation: **07/04/2022**

Charge code: **1029 7326 0002**

Persons entitled: **GEO. NOBLET (PLANT HIRE) LIMITED**

Brief description: **LAND ON THE NORTH-EAST SIDE OF BRANDY HOUSE BROW, BLACKBURN, BB2 3EY AND LAND ON THE SOUTH AND SOUTH-WEST SIDES OF HASLINGDEN ROAD, BLACKBURN, BEING THE LAND COMPRISED IN THREE REGISTERED TITLE NUMBERS, LA409361, LA384898 AND LA436592.**

Contains fixed charge(s).

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

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

Certified by: **BRABNERS LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 10297326

Charge code: 1029 7326 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 7th April 2022 and created by HERON HOMES LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 13th April 2022 .

Given at Companies House, Cardiff on 22nd April 2022

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

7 April

2022

HERON HOMES LTD

AND

GEO. NOBLET (PLANT HIRE) LIMITED (IN LIQUIDATION)

LEGAL CHARGE

Brabners

55 King Street, Manchester, M2 4LQ
0161 836 8800

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This deed is dated 7 April 2022.

Parties

- (1) **HERON HOMES LTD** incorporated and registered in England and Wales with company number 10297326 whose registered office is at Cinnamon House Cinnamon Park, Crab Lane, Warrington, Cheshire, England, WA2 8EL (**Borrower**); and
- (2) **GEO. NOBLET (PLANT HIRE) LIMITED (in liquidation)** incorporated and registered in England and Wales with company number 01015854 whose registered office is at 340, Deansgate, Manchester, M3 4LY acting by the Liquidators (**Lender**).

BACKGROUND

- (A) The Borrower has agreed, under the Settlement Agreement, to provide the Lender with security for the payment of the Settlement Sum.
- (B) The Borrower owns the Property.
- (C) Under this deed, the Borrower provides security to the Lender for the Settlement Sum as defined in the Settlement Agreement.

Agreed terms

1. Definitions and interpretation

1.1 Definitions

Terms defined in the Settlement Agreement shall, unless otherwise defined in this deed, have the same meaning in this deed. In addition, the following definitions apply in this deed:

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

Costs: such costs as more particularly described at clause 14.1.

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

Environmental Law: all applicable laws, statutes, regulations, secondary legislation, bye-laws, common law, directives, treaties and other measures, judgments and

decisions of any court or tribunal, codes of practice and guidance notes in so far as they relate to or apply to the Environment.

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

Event of Default: (a) the Borrower fails to pay the Principal when due; or

(b) the Borrower commits any material breach of any of the covenants or any other provisions of this deed or the Settlement Agreement and either such breach is in the opinion of the Lender acting reasonably not capable of remedy or such breach is in the opinion of the Lender acting reasonably capable of remedy and is not remedied within 21 days after the date of notice by the Lender requiring such remedy;

Provided That in respect of (a), an Event of Default shall not be deemed to have occurred where the Borrower has given instructions to its banks or solicitors to make the relevant payment and the payment concerned fails to arrive on the due date as a result of a transmission error by the relevant bank provided that the relevant payment is received by the Lender within one Business Day of the date for payment in any event.

Liquidators: Paul Stanley and Dean Watson of Begbies Traynor, 340 Deansgate, Manchester, M3 4LY, as the joint liquidators of the Lender, acting as liquidators of the Lender under the powers conferred on them by the Insolvency Act 1986 without personal liability.

LPA 1925: the Law of Property Act 1925.

Principal: the Settlement Sum as defined in clause 3.1 of the Settlement Agreement.

Payment Dates: the dates specified in clause 3.1.1 – 3.1.10 (inclusive) of the Settlement Agreement.

Permitted Disposal: any transfer lease or other disposal other than a charge on terms which does not affect good and marketable title to the land remaining the subject of this charge and being:

(a) of an individual dwelling together with any garden garage parking space or forecourt enjoyed with the dwelling in accordance with a planning permission authorising development of the Property and any variations to it;

(b) of such land as required in accordance with a Planning Agreement for affordable housing to a registered provider of affordable housing either with completed dwellings on each plot or an obligation on the Borrower to construct such dwellings and in each case any garden garage car parking space or forecourt enjoyed with the dwelling;

(c) of any constructed common areas and any garden garage parking spaces forecourt or amenity areas to a management company subject to a covenant to use the same for such purpose;

(d) of the site of an electricity substation gas governor pumping station balancing pond or the like and the grant of any easements or wayleaves to a Regulatory Body;

(e) of any community or recreational land as authorised by a planning permission and any variations to it for the purpose only of managing or maintaining such land or facilities thereon;

(f) pursuant to the obligations contained in the planning permission authorising development of the Property;

(g) to a local or statutory authority of land for use as open space or on which any road footpath or verge are to be constructed subject to a covenant to use it only for such purpose.

Planning Agreement: means any agreement to be entered into in respect of the Property pursuant to section 106 of the Town and Country Planning Act 1990.

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

Receiver: a receiver or receiver and manager appointed by the Lender under clause 11.

Regulatory Body: means the local county highway and planning authorities the district and county councils gas water electricity cable television and telecommunications companies and any other authority company utility body corporation or organisation concerned with the grant of planning permission and the control of development or the adoption of roads and drainage systems or open space or the provision of services or the protection of wildlife heritage ecology and the environment and "Regulatory Body" means any one of them as the context may admit.

Secured Liabilities: means all the Principal, the Costs and any interest that may now or at any time be due or owing to the Lender under this deed whether present or future or actual or contingent.

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

Security Period: the period starting on the date of this deed and ending on the date on which the Principal has been unconditionally and irrevocably paid and discharged in full.

Settlement Agreement: the settlement agreement dated
between the Borrower, the Lender and the Liquidators for the payment of the Settlement Sum (as defined in the Settlement Agreement) in settlement of a claim issued by the Lender against the Borrower.

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

Works Agreement: means any agreement with supporting bonds (if required by the Regulatory Body) under:

(a) Section 38 or Section 278 of the Highways Act 1980 or Section 111 of the Local Government Act 1972 or similar agreement for the construction maintenance and

adoption of roads and the connection of the same to the public highway or any other works to the public highway; and/or

(b) Section 98 and/or Section 102 and/or Section 104 and/or 116 and/or Section 185 of the Water Industry Act 1991 or similar agreement relating to the provision maintenance and adoption of drainage systems; and/or

(c) any agreement with a Regulatory Body for the installation of service systems and for the provision and supply of services including any deeds of easements required by a Regulatory Body; and/or

(d) any other agreement with a Regulatory Body for the carrying out and/or diversion of works and the maintenance cleansing and adoption of the same; and/or

(e) any deeds of easement or similar required in connection with any such agreement.

1.2 Interpretation

In this deed:

- (a) clause, Schedule and paragraph headings shall not affect the interpretation of this deed;
- (b) a **person** includes an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality);
- (c) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- (d) unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- (e) a reference to a party shall include that party's successors, permitted assigns and permitted transferees and this deed shall be binding on, and enure to the benefit of, the parties to this deed and their respective personal representatives, successors, permitted assigns and permitted transferees;
- (f) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- (g) a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- (h) a reference to **writing** or **written** excludes fax and email;
- (i) an obligation on a party not to do something includes an obligation not to allow that thing to be done;

- (j) a reference to **this deed** (or any provision of it) or to any other agreement or document referred to in this deed is a reference to this deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this deed) from time to time;
- (k) unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this deed and a reference to a paragraph is to a paragraph of the relevant Schedule;
- (l) 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;
- (m) a reference to **continuing** in relation to an Event of Default means an Event of Default that has not been remedied or waived;
- (n) a reference to "Property" shall be a reference to the Property from time to time subject to the charge created by this deed.

1.3 Nature of security over real property

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

- (a) all buildings and fixtures and fittings and fixed plant and machinery belonging to the Borrower that are situated on or form part of the Property at any time;
- (b) the proceeds of the sale of any part of the Property and any other monies paid or payable in respect of or in connection with the Property;
- (c) 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
- (d) all rights under any licence, agreement for sale or agreement for lease in respect of the Property.

2. Covenant to pay

The Borrower covenants with the Lender to pay the Principal to the Lender on the Payment Dates or, if earlier, immediately on demand under clause 9.1 if an Event of Default occurs.

3. Grant of security

3.1 Legal mortgage and fixed charges

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

by way of a first legal mortgage, the Property.

4. Perfection of security

4.1 Registration of legal mortgage at the Land Registry

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

"No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the proprietor for the time being of the charge dated [DATE] in favour of Geo Noblet (Plant Hire) Ltd (in liquidation) referred to in the charges register or their conveyancer."

- 4.2 The Lender confirms that in respect of any Permitted Disposal it will (if requested) deliver to the Borrower Form RX3 and/or Form RX4 (as appropriate) in relation to any part of the Property comprised in a Permitted Disposal such form to be delivered to the Borrower with the Form DS3 referred to in clause 17.1 or (if later) as soon as practicable after such request.

5. Liability of the Borrower

5.1 Liability not discharged

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

- (a) 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;
- (b) 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
- (c) any other act or omission that, but for this clause 5.1, might have discharged, or otherwise prejudiced or affected, the liability of the Borrower.

5.2 Immediate recourse

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

6. General covenants

6.1 Negative pledge and disposal restrictions

Save for any Permitted Disposal or Works Agreement, the Borrower shall not at any time, except with the prior written consent of the Lender:

- (a) create, purport to create or permit to subsist any Security on, or in relation to, any Property other than any Security created by this deed;
- (b) sell, assign, transfer, part with possession of, or otherwise dispose of in any manner (or purport to do so), all or any part of, or any interest in, the Property; or
- (c) create or grant (or purport to create or grant) any interest in the Property in favour of a third party.

6.2 Preservation of the Property

The Borrower shall not do, or permit to be done, any act or thing that would or might depreciate, jeopardise or otherwise prejudice the security held by the Lender or materially diminish the value of any of the Property or the effectiveness of the security created by this deed Provided that the development of the Property for residential purposes in accordance any planning permission authorising development of the Property and any variation to it shall not be regarded as a breach of this obligation.

6.3 Compliance with laws and regulations

- (a) The Borrower shall not, without the Lender's prior written consent, use or permit the Property to be used in any way contrary to law.
- (b) The Borrower shall:
 - (i) comply with the requirements of any law or regulation relating to or affecting the Property or the use of them or any part of them;
 - (ii) obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Property or their use or that are necessary to preserve, maintain or renew the Property; and
 - (iii) promptly effect any maintenance, modifications, alterations or repairs that are required by any law or regulation to be effected on or in connection with the Property.

7. Property covenants

7.1 Leases and licences affecting the Property

The Borrower shall not, save by way of a Permitted Disposal, without the prior written consent of the Lender which consent is not to be unreasonably withheld or delayed:

- (a) grant any licence or tenancy affecting the whole or any part of the Property, or exercise the statutory powers of leasing or of accepting surrenders under section 99 or section 100 of the LPA 1925 (or agree to grant any such licence or tenancy, or agree to exercise the statutory powers of leasing or of accepting surrenders under section 99 or section 100 of the LPA 1925);
- (b) in any other way dispose of, accept the surrender of, surrender or create any legal or equitable estate or interest in the whole or any part of the Property (or agree to dispose of, accept the surrender of, surrender or create any legal or equitable estate or interest in the whole or any part of the Property);
- (c) let any person into occupation, or share occupation, of the whole or any part of the Property; or
- (d) grant any consent or licence under any lease or licence affecting the Property.

7.2 No restrictive obligations

The Borrower shall not, without the prior written consent of the Lender (which shall not be unreasonably withheld or delayed), enter into any onerous or restrictive obligations affecting the whole or any part of the Property or create or permit to arise any overriding interest, easement or right whatever in or over the whole or any part of the Property save the grant of such easements as may be required for the provision of services to and from the Property and the dwellings to be constructed on it or in relation to Permitted Disposal on terms which do not affect the good and marketable nature of the land secured by this charge.

7.3 Proprietary rights

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

7.4 Compliance with and enforcement of covenants

The Borrower shall:

- (a) observe and perform all covenants, stipulations and conditions to which the Property, or the use of it, is or may be subject and (if the Lender so requires) produce to the Lender evidence sufficient to satisfy the Lender that those covenants, stipulations and conditions have been observed and performed; and
- (b) diligently enforce all covenants, stipulations and conditions benefiting the Property and shall not (and shall not agree to) waive, release or vary any of the same.

7.5 Notices or claims relating to the Property

- (a) The Borrower shall give full particulars to the Lender of any notice, order, direction, designation, resolution, application, requirement or proposal given or made by any public or local body or authority (a **Notice**) that specifically applies to the Property, or to the locality in which it is situated, within seven days after becoming aware of the relevant Notice.
- (b) The Borrower shall give full particulars to the Lender of any claim, notice or other communication served on it in respect of any modification, suspension or revocation of any Environmental Licence or any alleged breach of any Environmental Law, in each case relating to the Property.

7.6 Payment of outgoings

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

7.7 Environment

The Borrower shall in respect of the Property:

- (a) Comply in all material respects with all the requirements of Environmental Law; and
- (b) obtain and comply in all material respects with all Environmental Licences.

7.8 Inspection

The Borrower shall permit the Lender, any Receiver and any person appointed by either of them to enter on and inspect the Property on reasonable prior notice during normal business hours.

- 7.9 The Lender covenants with the Borrower to execute as chargee to give consent only and without liability or assuming any obligations on its behalf and within 10 Business Days of the delivery of the document to its solicitors any Planning Agreement and/or Works Agreement reasonably required by the Borrower to enable it to develop the Property for residential purposes subject to the approval in writing by the Lender of the Planning Agreement and/or Works Agreement (such consent and approval not to be unreasonably withheld or delayed) subject to the Borrower paying the costs reasonably and properly incurred by the Lender in executing the documents any such Planning Agreement and/or Works Agreement.

8. Powers of the Lender

8.1 Power to remedy

- (a) The Lender shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Borrower of any of its obligations contained in this deed.
- (b) The Borrower irrevocably authorises the Lender and its agents to do all things that are reasonably necessary or desirable for that purpose.
- (c) Any monies properly expended by the Lender in remedying a breach by the Borrower of its obligations contained in this deed shall be reimbursed by the Borrower to the Lender on a full indemnity basis and shall carry interest in accordance with clause 14.1.
- (d) In remedying any breach in accordance with this clause 8.1, the Lender, its agents and their respective officers, agents and employees shall be entitled to enter onto the Property and to take any action as the Lender may reasonably consider necessary or desirable including, without limitation, carrying out any repairs, other works or development.

8.2 Exercise of rights

- (a) The rights of the Lender under clause 8.1 are without prejudice to any other rights of the Lender under this deed.
- (b) The exercise of any rights of the Lender under this deed shall not make the Lender liable to account as a mortgagee in possession.

8.3 Lender has Receiver's powers

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

8.4 Indulgence

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

9. When security becomes enforceable

9.1 Security becomes enforceable on Event of Default

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

9.2 Discretion

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

10. Enforcement of security

10.1 Enforcement powers

- (a) The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this deed) shall, as between the Lender and a purchaser from the Lender, arise on and be exercisable at any time after the execution of his deed, but the Lender shall not exercise such power of sale or other powers until the security created by this deed has become enforceable under clause 9.1.
- (b) Section 103 of the LPA 1925 does not apply to the security constituted by this deed.

10.2 Extension of statutory powers of leasing

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

- (a) grant a lease or agreement for lease; or
- (b) accept surrenders of leases;

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

10.3 Protection of third parties

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

- (a) whether the Principal has become due or payable, or remain unpaid or undischarged;
- (b) whether any power the Lender or a Receiver is purporting to exercise has become exercisable or is being properly exercised; or
- (c) how any money paid to the Lender or any Receiver is to be applied.

10.4 Privileges

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

10.5 Exclusion of liability

Neither the Lender nor any Receiver, shall be liable to the Borrower or any other person:

- (a) (by reason of entering into possession of the Property, or for any other reason) to account as mortgagee in possession in respect of the Property;
- (b) for any loss on realisation, or for any act, default or omission for which a mortgagee in possession might be liable; or
- (c) for any expense, loss or liability:
 - (i) relating to the enforcement of, or any failure to enforce or delay in enforcing, any security constituted by or pursuant to this deed;
 - (ii) relating to an exercise of rights, or by any failure to exercise or delay in exercising, rights under this deed; or
 - (iii) arising in any other way in connection with this deed,

except that this does not exempt the Lender or any Receiver from liability for losses caused by the gross negligence, fraud or wilful misconduct of the Lender or the relevant Receiver .

10.6 Relinquishing possession

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

10.7 Conclusive discharge to purchasers

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

11. Receivers

11.1 Appointment

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

11.2 Removal

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

11.3 Remuneration

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

11.4 Power of appointment additional to statutory powers

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

11.5 Power of appointment exercisable despite prior appointments

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

11.6 Agent of the Borrower

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

12. Powers of Receiver

12.1 Powers additional to statutory powers

- (a) Any Receiver appointed by the Lender under this deed shall, in addition to the rights, powers and discretions conferred on him/her by statute, have the rights, powers and discretions set out in clause 12.2 to clause 12.16.
- (b) A Receiver has all the rights, powers and discretions conferred on a receiver (or a receiver and manager) under the LPA 1925, and shall have those rights, powers and discretions conferred on an administrative receiver under the Insolvency Act 1986 whether he is an administrative receiver or not.
- (c) If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him/her states otherwise)

exercise all of the powers conferred on a Receiver under this deed individually and to the exclusion of any other Receiver.

- (d) Any exercise by a Receiver of any of the powers given by clause 12 may be on behalf of the Borrower, the directors of the Borrower or himself/herself.

12.2 Repair and develop the Property

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

12.3 Grant or accept surrenders of leases

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

12.4 Employ personnel and advisers

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

12.5 Make and revoke VAT options to tax

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

12.6 Charge for remuneration

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

12.7 Take possession

A Receiver may take immediate possession of, get in and realise the Property.

12.8 Manage or reconstruct the Borrower's business

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

12.9 Dispose of the Property

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

12.10 Sever fixtures and fittings

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

12.11 Give valid receipts

A Receiver may give a valid receipt for all monies and execute all assurances and things that may be proper or desirable for realising the Property.

12.12 Make settlements

A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claim, account, dispute, question or demand with or by any person who claims to be a creditor of the Borrower or relating in any way to the Property.

12.13 Bring legal action

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

12.14 Insure

A Receiver may, if he thinks fit, effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the Borrower under this deed.

12.15 Absolute beneficial owner

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

12.16 Incidental powers

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

- (a) may consider desirable or necessary for realising the Property;
- (b) may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this deed or law; or

- (c) lawfully may or can do as agent for the Borrower.

13. Application of proceeds

13.1 Order of application of proceeds

All monies received or recovered by the Lender or a Receiver under this deed or in connection with the realisation or enforcement of all or part of the security constituted by this deed 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 (but without prejudice to the Lender's right to recover any shortfall from the Borrower):

- (a) in or towards payment of all costs, liabilities, charges and expenses incurred by or on behalf of the Lender (and any Receiver, , attorney or agent appointed by it) under or in connection with this deed and of all remuneration due to any Receiver under or in connection with this deed;
- (b) in or towards payment of the Principal in any order and manner that the Lender determines; and
- (c) in payment of the surplus (if any) to the Borrower or other person entitled to it.

13.2 Appropriation

Neither the Lender nor any 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 the Principal.

14. Costs and indemnity

14.1 Costs

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

- (a) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Lender's or a Receiver's rights under this deed;
- (b) any amendment, extension, waiver, consent or suspension of rights (or any proposal for any of these) under or in connection with this deed;
- (c) any release of any security constituted by this deed; or
- (d) taking proceedings for, or recovering, any of the Principal,

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

15. Further assurance

15.1 Further assurance

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

- (a) creating, perfecting or protecting the security created or intended to be created by this deed;
- (b) facilitating the realisation of the Property; or
- (c) facilitating the exercise of any right, power, authority or discretion exercisable by the Lender or any Receiver in respect of the Property,

including, without limitation the execution of any mortgage, transfer, conveyance, assignment or assurance of all or any of the assets forming part of (or intended to form part of) the Property (whether to the Lender or to its nominee) and the giving of any notice, order or direction and the making of any filing or registration which, in any such case, the Lender may consider necessary or desirable.

16. Power of attorney

16.1 Appointment of attorneys

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

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

16.2 By way of security the Lender irrevocably appoints the Borrower to be the attorney of the Lender and in its name and on its behalf and as its act and deed solely to execute any documents and do any acts and things which the Lender is required to do under clause 4.2, 7.9 and 17.1 and fails to do within 10 Business Days of written request by the Borrower.

16.3 Ratification of acts of attorneys

The Borrower and the Lender each ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in clause ~~16.1~~ and clause 16.2

17. Release

17.1 Release

- (a) The Lender agrees that during the subsistence of this deed the Lender will at the request of the Borrower release any part of the Property comprised in a Permitted Disposal from this deed in accordance with the provisions of this clause 17.
- (b) Within 3 Business Days of receipt of a request submitted to the Lender by the Borrower or its solicitor, the Lender shall execute and deliver to the Borrower or its solicitor an original duly completed Form DS3 in respect of the relevant Permitted Disposal.
- (c) Within 5 Business Days of the end of the Security Period, the Lender shall at the request of the Borrower or its solicitor take whatever action is necessary to release the Property from the security created by this deed and the Lender shall execute and deliver to the Borrower its solicitor an original duly completed Form DS1 in respect of the security created by this deed.

18. Assignment and transfer

18.1 Assignment by Lender

- (a) At any time, without the consent of the Borrower, the Lender may assign any of its rights or transfer any of its rights and obligations under this deed to any person to whom it is also entitled to assign the Settlement Agreement..
- (b) The Lender may not disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Borrower or the Property.

18.2 Assignment by Borrower

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

19. Amendments, waivers and consents

19.1 Amendments

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

19.2 Waivers and consents

- (a) A waiver of any right or remedy under this deed or by law, or any consent given under this deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any subsequent right or remedy. It only applies to the circumstances in relation to which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.
- (b) A failure by the Lender to exercise or delay by it in exercising any right or remedy provided under this deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this deed. No single or partial exercise of any right or remedy provided under this deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this deed by the Lender shall be effective unless it is in writing.

19.3 Rights and remedies

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

20. Partial invalidity

If, at any time, any provision of this deed is or becomes invalid, illegal or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

21. Counterparts

21.1 Counterparts

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

22. Third party rights

22.1 Third party rights

Except as expressly provided elsewhere in this deed, a person who is not a party to this deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this deed.

23. Further provisions

23.1 Independent security

The security constituted by this deed shall be in addition to, and independent of, any other security or guarantee that the Lender may hold for the Principal at any time.

23.2 Continuing security

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

23.3 Consolidation

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

24. Notices

24.1 Delivery

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

- (a) in writing;
- (b) delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by fax; and
- (c) sent to:
 - (i) the Borrower at:
Cinnamon House Cinnamon Park, Crab Lane, Warrington, Cheshire,
England, WA2 8EL
Attention: Peter Kiely
 - (ii) the Lender at:
340, Deansgate, Manchester, M3 4LY
Attention: Paul Stanley and Dean Watson

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

24.2 Receipt by Borrower

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

- (a) if delivered by hand, at the time it is left at the relevant address;
- (b) if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; and
- (c) if sent by fax, when received in legible form.

A notice or other communication given as described in clause 24.2(a) or clause 24.2(c) on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

24.3 Receipt by Lender

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

24.4 Service of proceedings

This clause 24 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

25. Governing law and jurisdiction


This deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales and each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this deed or its subject matter or formation.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Schedule 1 Property

Land on the north-east side of Brandy House Brow, Blackburn, BB2 3EY and land on the south and south-west sides of Haslingden Road, Blackburn, being the land comprised in three registered title numbers, LA409361, LA384898 and LA436592.

Executed as deed by HERON HOMES LTD acting by
PETER ANDREW JASON KIELY a director, in the presence
of:

.....


Signature Of Witness

.....
Rebecca Perry

Name of witness

.....
14 Dalton Court

.....
B.B.B.O.G.

Address of witness

.....
P.A.

Occupation

.....


Director

Executed as deed by GEO. NOBLET LIMITED (IN
LIQUIDATION) acting its liquidator under powers conferred
by the Insolvency Act 1986 in the presence of:

.....

Signature Of Witness

.....

Name of witness

.....

.....

Address of witness

.....

Occupation

.....

Without Personal Liability

Liquidator