



Registration of a Charge

Company name: **CALA MANAGEMENT LIMITED**

Company number: **SC013655**

Received for Electronic Filing: **10/01/2020**



X8WD8FGB

Details of Charge

Date of creation: **03/01/2020**

Charge code: **SC01 3655 0488**

Persons entitled: **HILLIER NURSERIES LIMITED**

Brief description: **PART OF THE FREEHOLD PROPERTY KNOWN AS LAND AT ANDLERS
ASH FARM ROAD, LISS, HAMPSHIRE, GU33 6LJ AS SET OUT ON PAGE
24 OF THE LEGAL MORTGAGE AND SHOWN SHADED GREEN ON THE
PLAN ATTACHED TO THE LEGAL MORTGAGE**

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:

ANNABEL EVANS



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 13655

Charge code: SC01 3655 0488

The Registrar of Companies for Scotland hereby certifies that a charge dated 3rd January 2020 and created by CALA MANAGEMENT LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 10th January 2020 .

Given at Companies House, Edinburgh on 13th January 2020

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 3 JANUARY 2020
2011

CALA MANAGEMENT LIMITED

- and -

HILLIER NURSERIES LIMITED

LEGAL MORTGAGE
relating to land at Andlers Ash Farm Road,
Liss, Hampshire GU33 6L

Wedlake Bell

71 Queen Victoria Street
London
EC4V 4AY

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CAL/0055/00744/WB1-19825920-2

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THIS LEGAL MORTGAGE is made on the 3 day of JANUARY 2020

BETWEEN:-

1. **CALA MANAGEMENT LIMITED**, a company incorporated in Scotland, (company registration number SC013655) whose registered office is at Adam House, 5 Mid New Cultins, Edinburgh EH11 4DU (the "**Mortgagor**"); and
2. **HILLIER NURSERIES LIMITED** (company registration number 01260468) whose registered office is at Ampfield House, Ampfield, Romsey, Hampshire, SO51 9PA (the "**Mortgagee**").

WHEREAS:-

- 3 JANUARY 2020
- (A) The Mortgagee (1) the Mortgagor (2) and CALA Group Limited (3) have entered into an agreement dated 1 JANUARY 2018 (the "**Agreement**") pursuant to which the Mortgagee has agreed to sell, and the Mortgagor has agreed to buy, the Property (as defined below).
- (B) In the Agreement the Mortgagor agreed to enter into this Deed upon completion of the transfer of the Property by it, by way of security for its liability to pay the Deferred Payment to the Mortgagee under the terms of the Agreement.

NOW THIS DEED WITNESSES:-

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

Terms defined in the Agreement shall, unless the context otherwise requires, have the same meanings when used in this Deed (including the Recitals). In addition, the following expressions have the following meanings:-

"**Act**" means the Law of Property Act 1925.

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

"**Affordable Housing**" means residential units (or the land upon which such units and ancillary areas are to be constructed pursuant to the Planning Permission) for letting or shared ownership or shared equity purchase or discounted low cost housing to be made available by a Registered Provider to persons who are unable to compete for similar property in the open market place;

"**Conduits**" means all media for the passage of foul and surface water gas electricity and other substances telecommunications data or energy and any ancillary or supporting apparatus attached to or relating to them and any enclosures for them.

"**Deferred Payment**" has the meaning given to it in the Agreement.

"**Development**" means the development of the Property in accordance with the Planning Permission.

"**Enforcement Event**" means any event which is listed in Clause 9.1.2.

"**Environment**" means 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" means 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" means any authorisation, permit or licence necessary under Environmental Law in respect of any of the Property

"Homes England" means Homes England (being the successor body to the Homes and Communities Agency created pursuant to the Housing and Regeneration Act 2008) exercising statutory functions in relation to the funding and regulation of affordable housing and includes any successor body exercising similar functions.

"Insurance Policy" means each contract or policy of insurance effected or maintained by the Mortgagor from time to time in respect of the Property.

"Interest" means the interest rate as defined by the Agreement

"Permitted Disposal" means one or more of the following in respect of the Property or any part thereof (and whether by the proprietor of the registered estate or the proprietor of any registered charge):

- (a) the grant of a lease or transfer of any electricity sub-station, gas governor or any other land required for the provision of services or infrastructure in relation to the Development; or
- (b) the lease, transfer or surrender of any land to the local highways authority to comply with highway requirements relating to the Development; or
- (c) a disposal or vesting under compulsory purchase or other statutory procedures; or
- (d) the granting of any easement or wayleave or right in or over any part of the Property comprising the site of or services to an electricity substation, gas governor or like apparatus in connection with the provision of any ancillary services or facilities to the Property as part of its development permitted or required by a Planning Permission provided that there is no adverse effect on the value of the Property or any Development; or
- (e) the transfer, grant of a lease or other disposal of any Affordable Housing and/or Affordable Housing Land on the Property to a Registered Provider.

"Permitted Security Interest" means:

- (a) the grant of rights and easements to the purchasers and/or the tenants of the dwellings constructed on the Retained Land and/or the grant of rights and easements to the purchasers and/or tenants of any Affordable Housing that is constructed and/or is to be constructed on the Retained Land;
- (b) the Security Interests constituted by this Deed;
- (c) any Security Interest granted in favour of any party providing funding to the Mortgagor in relation to the acquisition or development of the Property and/or the Retained Land (provided that such charge ranks behind the security created by this Deed); and
- (d) any other security or interest in the nature of security to which the Mortgagee has consented in writing.

"Plan 1" means the plan annexed hereto and marked "Plan 1" and appended to Schedule 1 showing the extent of the land charged pursuant to the provisions of this Legal Mortgage.

"Planning Acts" means the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning (Consequential Provisions) Act 1990, the Planning and Compensation Act 1991, the Planning and Compulsory Purchase Act 2004 and the Planning Act 2008 and all regulations and orders made or confirmed under any of them.

"Planning Agreement" means all or any of the following as the case may be: an agreement undertaking or other instrument in respect of and affecting the Property (whether or not also affecting other property) pursuant to Section 106 of the Town and Country Planning Act 1990, Section 111 of the Local Government Act 1972 and/or Section 37 and/or 38 and/or Section 278 of the Highways Act 1980 and/or Section 104 of the Water Industry Act 1991 or any provision to similar intent or an agreement with a water undertaker or a drainage undertaker (within the meaning of the Water Industry Act 1991) or the Environment Agency or an Internal Drainage Board (within the meaning of the Water Resources Act 1991 or the Land Drainage Act 1991 respectively) or other appropriate authority as to water supply or drainage of surface and/or foul water from the Property or an agreement with any competent authority or body relating to other services

"Planning Permission" means the planning permission to be obtained by the Mortgagor in accordance with the terms of the Agreement and any Planning Agreement relating to any such planning permission (in each case as varied or superseded from time to time).

"Property" means the freehold property details of which are set out in Schedule 1 hereto (as the same may from time to time be supplemented and/or amended) together with all buildings fixtures and fittings (including trade fixtures and fittings) and fixed plant and machinery from time to time thereon belonging to the Mortgagor.

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

"Registered Provider" means:-

- (a) a housing association or registered social landlord registered in accordance with the Housing and Regeneration Act 2008; or
- (b) such other company or body as is:-
 - (i) a company or body approved by Homes England as a qualified recipient of social housing grant; and
 - (ii) subject to Homes England control in respect of Affordable Housing;

"Reserved Rights" means the rights, easements and privileges set out in Schedule 3 for the benefit of the Property and of the Mortgagee the owners of any parts of the Property all relevant public highway drainage and planning authorities and undertakings responsible for the supply of water gas electricity communication media and similar services and all persons authorised by any of them acting reasonably.

"Retained Land" means the land shown edged red on Plan 1 (excluding the Property) except the land comprising the Property being part of the land at Andlers Ash Farm Road, Liss, Hampshire GU33 6LJ and registered at the Land Registry under freehold title number

SH25563 together with all buildings fixtures and fittings (including trade fixtures and fittings) and fixed plant and machinery from time to time thereon belonging to the Mortgagor.

"Rights" means the rights, easements and privileges set out in Schedule 2 for the benefit of the Retained Land and of the Mortgagor the owners of any parts of the Retained Land all relevant public highway drainage and planning authorities and undertakings responsible for the supply of water gas electricity communication media and similar services and all persons authorised by any of them acting reasonably.

"Secured Liabilities" means the liability of the Mortgagor to pay the Deferred Payment to the Mortgagee under the Agreement together with any Interest incurred.

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

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

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

"Transaction Documents" means the Agreement and this Deed.

"Unenforceable" means void, voidable, invalid, unenforceable or otherwise irrecoverable (whether or not known to the Mortgagee or the Mortgagor) and **"Unenforceability"** will be construed accordingly.

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

1.2 Interpretation

In this Deed:-

- 1.2.1 Clause headings are inserted for convenience only and shall not affect the construction of this Deed and unless otherwise specified, all references to Clauses and to Schedules are to clauses of and schedules to this Deed;
- 1.2.2 unless the context otherwise requires, words denoting the singular number shall include the plural and vice versa;
- 1.2.3 references to a person include references to bodies corporate and unincorporate and include its successors and permitted transferees and assigns whether direct or indirect;
- 1.2.4 references to assets include property, rights and assets of every description both present and future;
- 1.2.5 references to the each of the "Mortgagor" and the "Mortgagee" shall be construed so as to include their respective successors in title, permitted assigns and permitted transferees;
- 1.2.6 agreements and obligations made or assumed by the Mortgagee in this Deed shall be binding on and enforceable against the personal representatives of each person comprised in the Mortgagee;

- 1.2.7 references to a Transaction Document or any other agreement or instrument shall be construed as a reference to that Transaction Document or other agreement or instrument as amended, novated, supplemented, extended or restated from time to time;
- 1.2.8 references to any statute or other legislative provision shall include any statutory or legislative modification or re-enactment thereof, or any substitution therefor;
- 1.2.9 references to a "mortgage" includes a transfer or assignment by way of mortgage;
- 1.2.10 the terms of the Agreement and of any side letters between any parties in relation to any Transaction Documents are incorporated into this Deed to the extent required to ensure that any purported disposition of the Property contained in this Deed is a valid disposition in accordance with Section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989;
- 1.2.11 references to the "Property" and the "Retained Land" includes each and every part thereof;
- 1.2.12 an Enforcement Event is "continuing" if it has not been remedied or waived; and
- 1.2.13 where any party to this deed comprises more than one person then the obligations of that party as set out in this Deed or arising from it shall be joint and several with the other person and both shall be equally liable for any breach of the terms of this Deed.

2. COVENANT TO PAY

The Mortgagor covenants with the Mortgagee to pay and discharge the Secured Liabilities on demand after they become due pursuant to clause 2.1.2 of the Agreement.

3. SECURITY

The Mortgagor, with full title guarantee and to the intent that the security hereby created shall rank as a continuing security for the payment and discharge of the Secured Liabilities charges in favour of the Mortgagee by way of first legal mortgage:

- 3.1 all its estate and interest in the Property; and
- 3.2 by way of first fixed charge:
 - (i) all its rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premiums in connection with each Insurance Policy, the Rental Income and the benefit of any guarantee or security in respect of the Rental Income;
 - (ii) the benefit of all other contracts, guarantees, appointments and warranties relating to the Property and other documents to which the Mortgagor is a party or which are in its favour or of which it has the benefit relating to any letting, development, sale, purchase, use or the operation of the Property or otherwise relating to the Property (including, in each case, but without limitation, the right to demand and receive all monies whatever payable to or for its benefit under or arising from any of them, all remedies provided for in any of them or available at law or in equity in relation to any of them, the right to compel performance of any

of them and all other rights, interests and benefits whatever accruing to or for its benefit arising from any of them); and

- (iii) all authorisations (statutory or otherwise) held or required in connection with the Mortgagor's business carried on at the Property or the use of any Property, and all rights in connection with them.

4. APPLICATION TO LAND REGISTRY

The Mortgagor and the Mortgagee hereby jointly apply to the Chief Land Registrar to enter a restriction in the Proprietorship Register of the title to the Property in the following terms (or such other terms as the HM Land Registry may require):-

"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 certificate signed by Hillier Nurseries Limited of Ampfield House Ampfield Romsey Hampshire SO51 9PA or a conveyancer that the provisions of the registered charge have been complied with or that they do not apply to the disposition."

For the avoidance of doubt, it is agreed that the Mortgagee shall not withhold any such consent in the case of a Permitted Disposal and/or other document required to ensure that the restriction is not carried forward to the title of the land or interest disposed of pursuant to the permitted disposal and in the event that the Mortgagee fails to procure the giving of written consent within 10 Working Days of it receiving a written request to do so then the conveyancer of the Mortgagor is authorised on behalf of the Mortgagee to sign the necessary consent to meet the terms of the above restriction and/or any other document aforementioned document.

5. REPRESENTATIONS AND WARRANTIES

The Mortgagor makes the representations and warranties set out in this Clause 5 to the Mortgagee.

5.1 General

- 5.1.1 It is a limited liability company, duly incorporated and validly existing under the laws of Scotland;
- 5.1.2 It has the power to own its assets and carry on its business, as it is being conducted;
- 5.1.3 It has the power to enter into, perform and deliver, and has taken all necessary action to authorise the entry into, performance and delivery of each of the Transaction Documents and the transactions contemplated by each of the Transaction Documents;
- 5.1.4 each of the Transaction Documents constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms;
- 5.1.5 the entry into and performance by it of, and the transactions contemplated by, each of the Transaction Documents do not and will not:-
 - (a) conflict with any law or regulation or judicial or official order; or

- (b) conflict with its memorandum or articles of association; or
- (c) conflict with any document which is binding upon it or any of its assets;

5.2 The Property

- 5.2.1 The Mortgagor is the beneficial owner of the Property and upon registration of the transfer of the Property to the Mortgagor at the Land Registry will be the legal owner of the Property.
- 5.2.2 The Property is free from any Security Interest other than Permitted Security Interests.
- 5.2.3 Subject to sub-clause 5.4 and save as arising pursuant to any Permitted Disposal or otherwise as permitted under clause 6.6 (Negative Pledge), there are no leases to which the Property is subject.
- 5.2.4 Subject to sub-clause 5.4, there is no breach of any law or regulation which materially adversely affects or might so affect the Property or its value.
- 5.2.5 Subject to sub-clause 5.4 and save as arising pursuant to any Permitted Disposal or otherwise as permitted under clause 6.6 (Negative Pledge), there are no covenants, agreements, stipulations, reservations, conditions, interests, rights or other matters whatsoever which materially adversely affect the Property.
- 5.2.6 The Mortgagor has not received or acknowledged notice of any materially adverse claim by any person in respect of the Property or any interest whatsoever in the Property.
- 5.2.7 Subject to sub-clause 5.4 and save as arising pursuant to any Permitted Disposal or otherwise as permitted under clause 6.6 (Negative Pledge), nothing has arisen or has been created or is subsisting which would be an overriding interest over the Property.

5.3 Security

This Deed creates those Security Interests it purports to create and is not liable to be avoided or otherwise set aside on the liquidation or administration of the Mortgagor or otherwise.

5.4 Miscellaneous

It is hereby agreed that the Mortgagor shall not be deemed to be in breach of sub-clauses 5.2.3, 5.2.4, 5.2.5, and 5.2.7 to the extent that the Mortgagee is aware of, or should reasonably be aware of, any of the matters referred to therein which relate to the period prior to completion of the Transfer.

5.5 Times for making representations and warranties

The representations and warranties set out in Clause 5 (*Representations and Warranties*) are made on the date of this Deed and are deemed to be repeated by the Mortgagor on each date during the Security Period with reference to the facts and circumstances then existing.

6. MORTGAGOR'S COVENANTS

The covenants set out in this Clause 6 remain in force throughout the Security Period in favour of the Mortgagee and any Receiver appointed by the Mortgagee.

6.1 Not adversely affecting the value of the Property etc

- 6.1.1 The Mortgagor shall not do anything which would adversely affect the Property or the value of the Property PROVIDED THAT the carrying out of the Development in accordance with the Planning Permission and the making of Permitted Disposals shall not be deemed to be in breach of this sub-clause 6.1.1.
- 6.1.2 The Mortgagor shall not enter into onerous or restrictive obligations affecting the whole or any part of the Property or create or permit to arise any overriding interest or any easement or right in or over the whole or any part of the Property save as reasonably required in the course of the development of the Property or in relation to any Permitted Disposal
- 6.1.3 Other than the carrying out of the Development in accordance with the Planning Permission, the Mortgagor shall not carry out any works on the Property or use the Property for any other purpose.
- 6.1.4 The Mortgagor must supply to the Mortgagee, within 10 Working Days of receipt, copies of any notice, order or proposal received by the Mortgagor from any competent authority or from any landlord or tenant affecting any of the Property in any material respect, and, at the cost of the Mortgagee, either punctually comply with the notice or order or, if so requested by the Mortgagee (acting reasonably) make or join with the Mortgagee in making such objections or representations or taking such other steps as the Mortgagee (acting reasonably may think fit.
- 6.1.5 The Mortgagor shall use reasonable endeavours to procure that no person (other than to the extent permitted or pursuant to a Permitted Disposal) shall become entitled to assert any proprietary or other like right or interest over the whole or any part of the Property
- 6.1.6 The Mortgagor 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 Mortgagee (acting reasonably) so requires) produce to the Mortgagee evidence sufficient to satisfy the Mortgagee that those covenants, stipulations and conditions have been observed and performed; and
 - (b) use reasonable endeavours to 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 unless with the consent of the Mortgagee which shall not be unreasonably withheld or delayed.
- 6.1.7 For the purpose of ascertaining due observance and performance by the Mortgagor of its obligations under this Deed, the Mortgagee and/or those authorised by it (acting reasonably) shall be entitled from time to time and upon reasonable prior written notice to the Mortgagor and at reasonable times of the

day and on working days only to enter any part of the Mortgaged Property without rendering the Mortgagee liable as mortgagee in possession. For the purposes of any entry of any part of the Mortgaged Property by the Mortgagee and/or anyone authorised by it pursuant to this sub-clause 6.1.3 during any time that the Development is being carried out, the Mortgagee shall comply, or it shall use reasonable endeavours to procure that each such person complies (as applicable), with all applicable site safety procedures relevant to the Development.

6.2 Insurance

6.2.1 The Mortgagor shall insure and keep insured or cause to be insured and kept insured the Property and Development (with a reputable insurance company and with the Mortgagee's interest noted unless the policy contains an indemnity in favour of the Mortgagee which is equivalent to having the Mortgagee's interest noted) against all risks which a prudent owner of the Property would insure against including but not limited to property owners' public liability and third party liability.

6.2.2 The Mortgagor shall:-

- (a) deliver to the Mortgagee within 10 days of written demand a copy or reasonable evidence of any policy or policies effected under this Clause 6.2 and the Mortgagor shall comply with all the terms of the same;
- (b) duly pay or cause to be paid on the due date the premiums and other sums of money payable in respect of any policy or policies effected under this Clause 6.2 and within 10 days of written request shall produce to the Mortgagee (i) a copy of any receipt issued in respect of the same or (ii) such other evidence of payment of the same as may be reasonably required by the Mortgagee;
- (c) not do, or allow to be done, or omit to do, anything on the Property which would prejudicially affect any insurance policy or policies effected under this Clause 6.2; and
- (d) notify the Mortgagee in writing as soon as possible of any event which might give rise to a claim under any insurance policy or policies effected under this Clause 6.2.

6.2.3 The Mortgagor shall apply all moneys which may be received by virtue of any such policy or policies (save for any insurance for loss of rent) (and shall stand possessed of all moneys which may be received by the Mortgagor by virtue of any policy of insurance of the whole or any part of the Property not effected or maintained in pursuance of the obligations of the Mortgagor hereunder upon trust to apply the same) in making good the loss or damage in respect of which the same may have been received.

6.2.4 Notices or claims relating to the Property

- (a) The Mortgagor shall:
 - (i) give full particulars to the Mortgagee of any notice, order, direction, designation, resolution, application requirement or proposals 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; and

- (ii) (if the Mortgagee (acting reasonably) so requires) immediately, and at the cost of the Mortgagor, take all reasonable and necessary steps to comply with any Notice, and make, or join with the Mortgagee in making any objections or representations in respect of that Notice that the Mortgagee (acting reasonably) thinks fit.

- (b) The Mortgagor shall give full particulars to the Mortgagee 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.

6.2.5 Environment

The Mortgagor shall in respect of the Property:

- (a) comply with all the requirements of Environmental Law; and
- (b) obtain and comply with any requisite Environmental Licences.

6.3 Mortgagor's Failure

- 6.3.1 On becoming aware of any Enforcement Event the Mortgagor must immediately give the Mortgagee notice in writing of that occurrence.
- 6.3.2 If default shall be made by the Mortgagor in respect of its obligations under Clause 6.2 or there is a breach of any other covenants on the part of the Mortgagor herein contained it shall be lawful for (but not obligatory upon) the Mortgagee to maintain or insure and keep maintained or insured all or any part of the Property in accordance with the requirements of Clause 6.2 or to perform such other covenants and for such purposes to enter upon the Property (without thereby becoming liable as mortgagee in possession) and any monies reasonably and properly expended for that purpose shall be paid to the Mortgagee on the Mortgagee's first written demand and shall be deemed to be an expense properly incurred in relation to the security constituted by this Deed.

6.4 Statutory And Other Requirements

- 6.4.1 The Mortgagor covenants to register the charge contained in this Deed against the registered title of any registered land or charge hereby affected.

6.5 Document delivery and other steps to perfect security

- 6.5.1 The Mortgagor must take all such other action as is available to it as may be necessary or as may reasonably be requested by the Mortgagee to create, perfect, protect or maintain the security created, or purported to be created, by or pursuant to this Deed following an Enforcement Event which is continuing or to vest title to the Property in the Mortgagee or its nominee or any purchaser, or to facilitate the realisation of any of the Property under this deed or the exercise of

any of the rights, powers and remedies of the Mortgagee provided by or pursuant to this Deed or by law.

6.6 Planning

- 6.6.1 The Mortgagor shall not, without the prior written consent of the Mortgagee (not to be unreasonably withheld or delayed), make nor permit to be made any application for planning permission in respect of any development of the Property or any part thereof within the meaning of the Planning Acts other than development comprising residential units and ancillary areas or otherwise relating to residential units on the Property.
- 6.6.2 Other than in accordance with the Planning Permission and save as set out in Clause 6.5.1, the Mortgagor shall not undertake or carry out any development of the Property or any part thereof, nor suffer or knowingly permit the same to be undertaken or carried out without the prior written consent of the Mortgagee and the necessary planning permission prescribed in the Planning Acts having been first obtained and approved by the Mortgagee (such approval not to be unreasonably withheld or delayed).

6.7 Negative Pledge

The Mortgagor further covenants with the Mortgagee that throughout the Security Period it shall not:-

- 6.7.1 create, incur or permit to exist any Security Interest in, over or affecting the Property (other than a Permitted Security Interest);
- 6.7.2 sell, assign, lend, transfer, grant any option in respect of or otherwise dispose of the whole or any part of the Property or any interest therein whether by one transaction or a series of transactions and whether related or not (other than by way of a Permitted Disposal); or
- 6.7.3 grant to, or allow to be acquired by, any third party any right, licence or interest whatsoever in or over the Property, nor exercise any of the powers of leasing or of agreeing to lease or of accepting surrenders conferred on mortgagors by the Act (other than with the prior written consent of the Mortgagee (which shall not be unreasonably withheld or delayed) or (other than by way of a Permitted Disposal) and/or a licence of the type normally granted to a contractor in relation to the development of the Property.

7. PRESERVATION OF SECURITY

7.1 Continuing Security

The Mortgagor declares and agrees that:-

- 7.2 the security created by and covenants and provisions contained in this Deed shall be held by the Mortgagee as a continuing security and shall not be satisfied by any intermediate payment or satisfaction of any part of the Secured Liabilities and shall remain in full force and effect until the end of the Security Period;
- 7.3 the Mortgagee shall not be bound to enforce any guarantee or other security or proceed or take any other steps against any other person before enforcing this Deed; and

- 7.4 this Deed shall be in addition to, and not in substitution for, any other rights which the Mortgagee may now or hereafter have under or by virtue of any guarantee or other security or agreement or any lien or by operation of law or under any collateral or other security now or hereafter held by the Mortgagee or to which the Mortgagee may be entitled.

8. POWERS OF THE MORTGAGEE

8.1 Power to remedy

- (a) The Mortgagee shall be entitled (but shall not be obliged) to remedy at any time a breach by the Mortgagor of any of its obligations contained in this Deed
- (b) The Mortgagor irrevocably authorises the Mortgagee and its agents to do all things that are necessary or desirable for that purpose.
- (c) Any monies reasonably and properly expended by the Mortgagee in remedying a breach by the Mortgagor of its obligations contained in this Deed shall be reimbursed by the Mortgagor to the Mortgagee 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 was demanded by the Mortgagor in writing until full discharge of that cost, charge, expense, tax or liability (whether before or after judgment, liquidation, winding-up or administration of the Mortgagor).
- (d) In remedying any breach in accordance with this clause 8.1, the Mortgagee, its agents and their respective officers, agents and employees shall be entitled to enter onto the Property and to take any action as the Mortgagee (acting reasonably) may reasonably consider necessary including, without limitation, carrying out any repairs or other works.

9. ENFORCEMENT

9.1 Enforceability of Security

9.1.1 Upon the occurrence of an Enforcement Event which is continuing, the security constituted by this Deed shall become immediately enforceable and the power of sale and other powers conferred on mortgagees by the Act as varied or amended by this Deed shall be immediately exercisable upon and at any time thereafter. After the security constituted by this Deed has become enforceable, the Mortgagee may in its discretion enforce all or any part of such security in such manner as the Mortgagee sees fit.

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

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

- (iii) in any event, the Mortgagee receives such sum from the Mortgagor within five Working Days of the due date; or
- (b) if the Mortgagor is in material breach of any provision of this Deed (other than a provision of the type referred to in Clause 8.1.2(a) unless the breach is capable of remedy and is remedied within a reasonable period of the Mortgagee giving notice in writing to the Mortgagor; or
- (c) any representation or warranty given by the Mortgagor to the Mortgagee is or becomes incorrect; or
- (d) any judgment or order made against the Mortgagor or any surety by any court is not complied with or set aside within 14 days; or
- (e) if an administration order or a winding-up order is made in relation to the Mortgagor or a receiver or manager or administrative receiver is appointed in respect of all or any part of the Mortgagor's business or the Mortgagor enters into liquidation.

9.2 Exclusion of Certain Provisions of the Act

For the purposes of all powers implied by statute the Secured Liabilities shall be deemed to have become due and payable on the date hereof and Section 103 of the Act (restricting the power of sale) and Section 93 of the Act (restricting the right of consolidation) shall not apply to this Deed. The statutory powers of leasing conferred on the Mortgagee shall be extended so as to authorise the Mortgagee to lease, make agreements for leases, accept surrenders of leases and grant options as the Mortgagee shall think fit and without the need to comply with any of the provisions of Sections 99 and 100 of the Act.

9.3 Redemption of Prior Charges

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

9.4 Appointment of Receiver or Administrator

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

- 9.4.1 without further notice appoint by writing one or more persons to be a Receiver of the Property or any part thereof; or
- 9.4.2 apply to a court of competent jurisdiction to appoint any person or persons to be an Administrator of the Mortgagor,

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

such Receiver's or Administrator's acts and defaults and for his remuneration, costs, charges and expenses to the exclusion of liability on the part of the Mortgagee.

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

9.5 Joint Receivers

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

9.6 Receiver's Powers

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

- 9.6.1 take possession of and get in all or any part of the Property and for this purpose to make demands and take proceedings as he may think fit in respect thereof in such manner as he thinks fit;
- 9.6.2 carry on or concur in carrying on such of the business of the Mortgagor insofar as it relates to the Property (and for this purpose to borrow money on the security of the Property in priority to this charge or otherwise as he may consider expedient and carrying interest at such rate as he may consider necessary) and manage, conduct, amalgamate, develop and reconstruct the same (and concur in so doing) in such manner and to such extent as he may think fit;
- 9.6.3 make and effect all repairs and maintain, renew, increase or surrender insurances and do all such other acts and things which the Mortgagor might do in the ordinary course of its or their business for the protection and/or for the improvement of the Property;
- 9.6.4 sell by public auction or private contract, grant licences or options or otherwise assign any part of the Property in such manner and on such terms as he shall think proper; lease and accept surrenders of leases of any part of the Property and with respect thereto make provision for and effect rent reviews (or concur in so doing); any such sale, lease, licence, option, surrender or assignment may be for cash, loan capital, debentures, shares, stock, securities or other consideration and be payable immediately or by instalments deferred and spread over such period as he shall think fit and may be on terms whereby the total amount of the consideration is to be ascertained by reference to the turnover or profits of the purchaser;
- 9.6.5 without any further consent by or notice to, as the case may be, the Mortgagor, exercise on its or their behalf all the powers and provisions conferred on a landlord or a tenant pursuant to any legislation from time to time in force relating to rents in respect of any part of the Property but without any obligation to exercise

any of such powers and without any liability in respect of powers so exercised or omitted to be exercised;

- 9.6.6 purchase any additional land adjacent to or in the vicinity of the Property for the purpose of enhancing the value of such property or facilitating the disposal thereof and for such purposes borrow further monies from the Mortgagee on such terms as the Receiver may think fit;
- 9.6.7 make allowances to and re-arrangements with any lessees, tenants of the Property or other persons from whom any rents and profits may be receivable and to negotiate and agree or refer to arbitration any revision of rent under any Leases in respect of which the rental may fall to be reviewed and to accept service of or serve any notice received or required or deemed desirable in connection with any such review or with the exercise of any options;
- 9.6.8 do any repairs and make any structural or other alterations, improvements or additions in or to the Property and purchase or otherwise acquire any materials, articles or things and do anything else in connection therewith which the Receiver may think desirable for the purpose of making productive or increasing the letting or market value thereof;
- 9.6.9 institute, arrange, carry on and conduct services of lighting, heating and cleansing and all other services which may be deemed proper for the efficient use or management of the Property;
- 9.6.10 reconstruct, alter, improve, decorate, furnish and maintain the whole or any part of the buildings on the Property;
- 9.6.11 sell all or any of the fixtures (other than tenants' trade fixtures) either as a part of and/or together with or separately and detached from the Property;
- 9.6.12 perform, treat as repudiated, rescind or vary any contract or agreement for or which relates in any way to any development, improvement, reconstruction or repair of the Property or any part thereof or which is in any other way connected therewith;
- 9.6.13 without prejudice to the generality of any of the foregoing powers carry out, continue and/or perform any development of any part of the Property and to enter into a building contract or appointment or any other contract or agreement for or relating to any development for any such purposes as aforesaid to purchase such materials and other articles and things as he may think fit to discontinue such development or any part thereof and to repudiate and rescind any building contract or any such contract or agreement as aforesaid;
- 9.6.14 in connection with any development obtain planning permissions, bye law consents and any other permissions and/or approvals, enter into agreements under the Highways Acts and any other agreements requisite for the development, to enter into and arrange bonds and in particular road bonds and indemnities in connection therewith and to dedicate any part of the Property as a public highway or grant any other rights over under or relating to the Property;
- 9.6.15 promote the formation of companies with a view to the same purchasing, leasing, licensing, managing or otherwise acquiring interests in all or any part of the Property or otherwise, arrange for such companies to trade or cease to trade and

to purchase, lease, license or otherwise acquire all or any part of the Property on such terms and conditions whether or not including payment by instalments secured or unsecured as he may think fit;

- 9.6.16 effect any policy or policies of insurance for any purpose in connection with the receivership and without prejudice to the generality of the foregoing particularly to support and underwrite any indemnity given by the Mortgagor hereunder;
- 9.6.17 make any arrangement or compromise or disclaim, alter, enter into or cancel any contract or liability which he shall think expedient;
- 9.6.18 sign any document execute any deed and do all such other acts and things as he may in his absolute discretion consider to be incidental or conducive to any of the matters and powers aforesaid or to the realisation of the security constituted by this Deed;
- 9.6.19 employ or engage, upon such terms (as to remuneration or otherwise) as he may think proper, such professional advisers, managers, servants and agents as he considers necessary including without limiting the generality of the foregoing architects, estate agents, quantity surveyors, solicitors, valuers auctioneers, surveyors and accountants;
- 9.6.20 bring or defend any action or legal proceedings or discontinue the same on behalf of the Mortgagor;
- 9.6.21 exercise any option or right of election available at law to the Mortgagor or the Mortgagee or a Receiver that the supplies made in respect of any lease or tenancy hereby charged shall be chargeable or taxable for Value Added Tax purposes at the standard or any other applicable rate of tax;
- 9.6.22 obtain, renew, extend, amend or otherwise deal with such permissions, consents and/or licences for the benefit of or otherwise connected with or ancillary to all or part of the Property or its use or development;
- 9.6.23 do all such other acts and things as may be considered to be expedient for the protection of the Property or to be incidental or conducive to any of the above matters and powers or any other act or thing which he could do if he were absolutely entitled to the Property and which the Receiver may lawfully do as agent for the Mortgagor;
- 9.6.24 use the name of the Mortgagor for all or any of the above purposes with full power to convey, transfer or assign the whole or any part of the Property sold in the name of the Mortgagor.

9.7 Protection of Third Parties

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

9.8 Delegation

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

9.9 Mortgagee's Liability

Neither the Mortgagee nor any Receiver nor any of their respective agents, managers, officers, employees, delegates or advisers shall in any circumstances be liable to the Mortgagor for any claim, demand, liability, loss, damage, cost or expense from any exercise, purported exercise or non-exercise by the Mortgagee or any Receiver of any power, authority, right or discretion conferred upon it in relation to the Property or any part thereof by or pursuant to this Deed or by the Act or the Insolvency Act 1986 unless the same is caused by its gross negligence or wilful default.

9.10 Vacation of Possession

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

9.11 Not Mortgagee in Possession

Neither the Mortgagee nor any Receiver or Administrator shall by reason of the taking of possession of the whole or any part of the Property by any of them be liable to account as mortgagee-in-possession or for anything except actual receipts or be liable for any loss upon realisation or for any default or omission for which a mortgagee-in-possession might be liable unless, in the case of the Mortgagee, the same is caused by its gross negligence or wilful default.

9.12 Disposals of the Property and the Retained Land after the occurrence of an Enforcement Event

9.12.1 The Mortgagor and the Mortgagee acknowledge that the Mortgagor (and all those authorised by them) will require certain rights over the Property in order to enable the Retained Land to be developed and used and the Mortgagee shall, notwithstanding the occurrence of any Enforcement Event or any disposal of the Property or any part thereof, permit the continuous and uninterrupted exercise of (and if required by the Mortgagor enter in to a formal deed of grant) and on any such disposal except and reserve or procure the exception and reservation of the Rights for the benefit of the Retained Land and the Mortgagor and its successors in title and covenants from the disponee by deed (in a form approved by the Mortgagor such approval not to be unreasonably withheld or delayed) directly with the Mortgagor or its successors in title as to payments to be made as set out in Schedule 2 (and as to the entering into by the disponee of any agreements deeds or other documents required by any utilities suppliers and/or any Planning Agreement as reasonably required and in a form approved by the relevant party (acting reasonably)).

- 9.12.2 The Mortgagor and the Mortgagee acknowledge that the Mortgagee (and all those authorised by them) will require certain rights over the Retained Land in order to enable the Property to be developed and used and the Mortgagor shall, notwithstanding the occurrence of any Enforcement Event or any disposal of the Retained Land or any part thereof, permit the continuous and uninterrupted exercise of (and if required by the Mortgagee enter in to a formal deed of grant) and on any such disposal except and reserve or procure the exception and reservation of the Reserved Rights for the benefit of the Property and the Mortgagee and its successors in title and covenants from the disponee by deed (in a form approved by the Mortgagee such approval not to be unreasonably withheld or delayed) directly with the Mortgagee or its successors in title as to payments to be made as set out in Schedule 3.
- 9.12.3 Notwithstanding any other provision of this Deed, neither the Mortgagee or any Receiver or Administrator or any delegate of any of the same may exercise any power of sale or power to grant any lease or any other power or authority referred to in this Deed without including provision for the immediate grant or as the case may be exception and reservation of the Rights or enter in to any other arrangement which would interfere in any way with the continuous and uninterrupted use and enjoyment of the Rights.

9.13 Disposals of the Retained Land before the occurrence of an Enforcement Event

In the event of a disposal of any part of the Retained Land which takes place or will take place before the Deferred Payment has been paid in full and this Legal Charge has been released in full the Mortgagee will consent to the grant and/or exception and reservation of rights and covenants over/affecting the Property in connection with any such disposal, provided that such rights and/or exceptions and reservations and covenants relating to the exercise of the rights or payments to be made in relation thereto are in all material respects in the same form (*mutatis mutandis*) as those contained in Schedule 2 or otherwise in terms appropriate to the disposal of a Housing Unit and/or Affordable Housing Land and/or Affordable Housing Unit and the Mortgagee will provide a letter of consent in such reasonable form as the Mortgagor shall request (acting reasonably) within ten Working Days of a written request from the Mortgagor to do so such request to be accompanied by a copy of the document which effects or will effect the disposal with relevant plans and if not provided the Mortgagor is hereby authorised to issue such consent on behalf of the Mortgagee.

9.14 Planning Agreements

If required by the Mortgagor and upon written request (and at the cost of the Mortgagor) the Mortgagee shall enter into any Planning Agreement as mortgagee in respect of the Property or any part of it which is required in order for the Mortgagor to commence and progress the construction of the Development and which shall first be approved by the Mortgagee (such approval not to be unreasonably withheld or delayed) and it is hereby agreed that the Mortgagor shall use reasonable endeavours when negotiating any such Planning Agreements to ensure such agreements contain suitable mortgagee protection provisions (so that the Mortgagee has no liability under any such Planning Agreement unless it becomes a mortgagee in possession). The Mortgagor shall indemnify the Mortgagee in respect of all liabilities arising out of obligations imposed on the Mortgagee in the said Planning Agreements. It is further agreed that if there are no suitable mortgagee protection provisions in a Planning Agreement then where such an agreement imposes obligations on

the Mortgagor/Mortgagee over and above those already imposed by the Planning Permission then in such circumstances, the Mortgagee may (acting reasonably) require the Mortgagor to provide further security against the said obligations before the Mortgagee enters into the relevant Planning Agreement.

- 9.15 The Mortgagee shall as soon as reasonably practicable after the date on which it enforces the security created by this Legal Charge use its reasonable endeavours, acting reasonably and in good faith, to agree with the Mortgagor as soon as reasonably practicable the apportionment of responsibility for the planning conditions set out in the Planning Permission and any financial contributions and other planning obligations imposed by any Planning Agreement to the extent and within timescales reasonably required to allow the Mortgagor to:

- 9.15.1 implement any Planning Permission relating to the Retained Land; and/or
- 9.15.2 carry out any Development pursuant to any such Planning Permission; and/or
- 9.15.3 allow Dwellings on the Retained Land to be occupied and used; and/or
- 9.15.4 dispose of any Dwellings on the Property and/or the Retained Land; and/or
- 9.15.5 avoid enforcement action by the local planning authority in relation to any part of the Property and/or the Retained Land,

such apportionment to be on the basis that the Mortgagor has responsibility for obligations relating to the Retained Land and the Mortgagee shall take responsibility for obligations relating to the Property, and, where obligations relate to both the Retained Land and the Property such apportionment to be fair and reasonable in all the circumstances.

- 9.16 Once the apportionment of planning obligations has been agreed pursuant to paragraph 8.15 above or determined by an independent expert in accordance with clause 26 of the Agreement the parties will work together, acting reasonably and in good faith, to comply with and discharge all such obligations as have been allocated to it pursuant to paragraph 8.15 so as not to prevent the Mortgagor from carrying out any Development or disposing of or occupying or using any Dwellings on the Retained Land.

10. APPLICATION OF PROCEEDS

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

- 10.1 in payment of all costs charges and expenses relating to the exercise of all or any of the powers aforesaid and of all other outgoings payable by the Receiver or Administrator (or as the case may be by the Mortgagee);
- 10.2 (if applicable) in payment of remuneration to the Receiver or Administrator at such rate as may be agreed between him and the Mortgagee;
- 10.3 in or towards payment of the Secured Liabilities; and
- 10.4 the surplus (if any) shall be paid to the Mortgagor or to whomsoever else may be entitled thereto in priority to the Mortgagor,

save that the Mortgagee may credit any monies received under this Deed to a suspense account for so long and in such manner as the Mortgagee may from time to time determine

and the Receiver or Administrator may retain the same for such period as he and the Mortgagee consider expedient PROVIDED THAT if such monies received under this Deed are sufficient to discharge the Secured Liabilities in full, they shall be promptly so applied.

11. EXPENSES AND INDEMNITY

11.1 The Mortgagor shall promptly on demand pay the Mortgagee the amount of all proper costs, fees and expenses (including legal fees) and Taxes thereon incurred by the Mortgagee or for which the Mortgagee may become liable in connection with:-

11.1.1 any consent or waiver required from the Mortgagee in relation to this Deed; and/or

11.1.2 any settlement, discharge or release of this Deed.

11.2 The Mortgagor must, within 3 Working Days of demand by the Mortgagee, pay to the Mortgagee all reasonable and proper costs incurred by or on behalf of the Mortgagee (acting reasonably) arising at any time as a result of or in connection with:

11.2.1 the occurrence of an Enforcement Event; or

11.2.2 the preservation and/or enforcement of any of the rights of the Mortgagee under this Deed.

11.3 The Mortgagor further covenants with the Mortgagee that it shall within three Working Days of demand reimburse or pay to the Mortgagee or any Receiver or Administrator and each agent, attorney, manager or other person appointed by the Mortgagee under this Deed (on the basis of a full indemnity) the amount of all costs (including legal costs), charges and expenses incurred or sustained by the Mortgagee or the Receiver or Administrator (including, for the avoidance of doubt, any such costs, charges and expenses arising from any act or omission of, or proceedings involving, any third person) in connection with the enforcement, preservation or attempted preservation of the Mortgagee's rights under this Deed or any other action taken by or on behalf of the Mortgagee with a view to or in connection with the recovery by the Mortgagee of the Secured Liabilities from the Mortgagor or any other person;

11.4 The Mortgagor shall within three Working Days of demand pay any stamp, documentary and other similar duties and taxes to which this Deed or any related documents may be subject or give rise and shall fully indemnify the Mortgagee from and against any losses or liabilities which it may incur as a result of any delay or omission by the Mortgagor to pay any such duties or taxes.

12. INDEMNITY

12.1 The Mortgagor shall indemnify the Mortgagee and each Receiver, and their respective employees and agents against all Costs suffered or incurred by any of them arising out of or in connection with:

- (i) the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this Deed or by law in respect of the Property;
- (ii) holding, protecting, perfecting, preserving or enforcing (or lawfully attempting to do so) the security constituted by this Deed; or
- (iii) any default or delay by the Mortgagor in performing any of its obligations under this Deed;

save costs arising out of anything done by the Mortgagee, Receiver and/or their respective employees and agents which is fraudulent grossly negligent or arises from wilful default.

13. FURTHER ASSURANCE

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

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

14. POWER OF ATTORNEY

The Mortgagor, by way of security, irrevocably and severally appoints the Mortgagee, each Receiver or Administrator and any of their delegates or sub-delegates to be its attorney at any time after the security constituted by this Deed becomes enforceable to take any action which the Mortgagor is obliged to take under this Deed, including, without limitation, under Clause 11 (*Further Assurance*). The Mortgagor ratifies and confirms whatever any attorney does or purports to do pursuant to its appointment under this Clause and the exercise by the Mortgagee (or a Receiver or Administrator) of such power shall be conclusive evidence of its right to exercise the same.

15. ASSIGNMENT

- 15.1 This Deed shall be binding upon and shall enure to the benefit of the Mortgagee and the Mortgagor and their respective successors and assigns as permitted by this Deed.
- 15.2 The Mortgagor may not assign or transfer all or any part of its rights and/or obligations under this Deed other than to its funders.
- 15.3 The Mortgagee may not assign or transfer all or any part of its rights and/or obligations under this Deed.

16. MISCELLANEOUS

16.1 Giving of Time

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

16.2 No other Registered Proprietor

Other than directly as a result of any Permitted Disposal, during the Security Period no person other than the Mortgagor shall be registered under the Land Registration Act 2002 as proprietor of the Property or any part thereof without the prior written consent of the

Mortgagee and the costs incurred by the Mortgagee of lodging from time to time a caution against the registration of the Property shall be deemed to be an expense properly incurred by the Mortgagee in relation to this Deed.

16.3 Discharge

- 16.3.1 At the end of the Security Period the Mortgagee will forthwith release the security created by this Deed.
- 16.3.2 The Mortgagee shall promptly provide to the Mortgagor a duly executed Form DS3 (or other appropriate form) and a deed of release to release from the security created by this Deed any part of the Property which is the subject of a Permitted Disposal or otherwise provide the necessary written consent (as applicable) and shall at the Mortgagor's reasonable request enter into any agreement/deed relating to a Permitted Disposal as reasonably required.
- 16.3.3 The Mortgagee undertakes to the Mortgagor that the Mortgagee shall comply with the obligations set out in clause 4 of the Agreement.

16.4 Certificates and Determinations

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

16.5 Partial Invalidity

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

16.6 Remedies and Waivers

- 16.6.1 No omission to exercise or delay in exercising on the part of the Mortgagee any right, power or remedy provided by law or under this Deed shall constitute a waiver of such right, power or remedy or any other right, power or remedy or impair such right, power or remedy. No single or partial exercise of any such right, power or remedy shall preclude or impair any other or further exercise thereof or the exercise of any other right, power or remedy provided by law or under this Deed.
- 16.6.2 Any waiver of any right, power or remedy under this Deed, or any consent or approval given by the Mortgagee hereunder, shall only be effective if given in writing and may be given subject to any conditions which the grantor may think fit. Unless otherwise expressly stated, any waiver shall be effective only in the instance and only for the purpose for which it is given.
- 16.6.3 No variation of this Deed shall be of any effect unless it is agreed in writing and executed by or on behalf of each party.
- 16.6.4 Unless specifically provided otherwise, rights arising under this Deed are cumulative and do not exclude any other rights provided by law or otherwise.

16.7 Counterparts

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

17. LAW AND JURISDICTION

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

17.2 In relation to any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) the parties hereby irrevocably and unconditionally submit to the jurisdiction of the English courts and waive any objection to proceedings with respect to this Deed in such courts on the grounds of venue or inconvenient forum.

18. NOTICES

Clause 29 (*Notices*) of the Agreement shall apply and extend to this Deed as if it were set out herein but with the references in those clauses to "this contract" and "the Seller" and "the Buyer" (howsoever described) being replaced respectively by references to "this Deed, "the Mortgagee" and "the Mortgagor" (where appropriate).

19. RIGHTS OF THIRD PARTIES

Unless expressly provided to the contrary 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.

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

SCHEDULE 1

DESCRIPTION OF THE PROPERTY

Part of the freehold property known as land at Andlers Ash Farm Road, Liss, Hampshire GU33 6LJ and registered at the Land Registry under title number SH25563 and shown shaded green on the plan appended to this Schedule 1.

SCHEDULE 2

"RIGHTS"

1. The right of free passage and running of all services including but not limited to water, soil, gas, electricity and telecommunications through all Conduits serving the Retained Land which now or in the future pass though over or under the Property and the right to enter onto the Property (other than the site of any completed or proposed dwelling and its curtilage) upon giving 48 hours' prior written notice (save in the case of emergency) with all necessary workmen, vehicles, plant, machinery, materials and apparatus for the purpose of constructing connecting, enlarging, relocating, inspecting, maintaining, cleaning, reinstating, renewing and repairing any such Conduits;
2. The right to enter upon the Property (with or without workmen vehicles plant equipment and machinery) and to carry out works as reasonably required in order to implement a Planning Permission insofar as it relates to works to be carried out on the Retained Land and/or works which accord with the Planning Permission and if not carried out would prevent commencement of works on or occupation of the Retained Land or any part thereof or building constructed thereon and/or to comply with any Planning Agreement;
3. The right of access with or without vehicles over such part of the Property as reasonably required to access the Retained Land and carry out any works thereupon/use the Retained Land
4. The right of support and protection for the Retained Land as existing at the date hereof;
5. PROVIDED THAT the Mortgagor shall ensure that the persons exercising the rights set out in paragraphs 1 to 3 (inclusive) above shall:-
 - 5.1 restrict such access to those parts of the Property as shall not form the site of any buildings or their curtilage (save where the prior written approval of the owner and occupier of any buildings and/or the curtilage thereof shall have been obtained);
 - 5.2 not adversely affect any building on the Property or the use and enjoyment of it or its curtilage (save where the prior written approval of the owner and occupier of any buildings and/or the curtilage thereof shall have been obtained);
 - 5.3 keep to a practicable minimum any damage or inconvenience thereby caused to the Property and any occupier thereof;
 - 5.4 make good any physical damage to the Property as soon as reasonably practicable to the reasonable satisfaction of the Mortgagee; and
 - 5.5 comply with any reasonable requirements of the Mortgagee,
6. and PROVIDED FURTHER THAT:
 - 6.1 the Mortgagee and others so entitled may divert alter or stop-up such Conduits on the Property subject to providing the Mortgagor reasonable notice in advance in writing to that effect and to providing alternative Conduits equally commodious and of at least as good a standard as the Conduits at that time passing in through under or over the relevant parts of the Property and serving the Retained Land; and
 - 6.2 the Mortgagor shall pay within 10 Working Days of written demand a fair and reasonable (according to user) contribution to the cost (if any) reasonably incurred or to be incurred by

the owner for the time being of the Property in maintaining, repairing and renewing any Conduits serving the Retained Land and located within the Property.

SCHEDULE 3

"RESERVED RIGHTS"

1. The right of free passage and running of all services including but not limited to water, soil, gas, electricity and telecommunications through all Conduits serving the Property which now or in the future pass through over or under the Retained Land and the right to enter onto the unbuilt parts of the Retained Land upon giving 48 hours' prior written notice (save in the case of emergency) with all necessary workmen materials and apparatus for the purpose of constructing connecting, enlarging, relocating, inspecting, maintaining, cleaning, reinstating, renewing and repairing any such Conduits;
2. The right to enter upon the Retained Land (with or without workmen vehicles plant equipment and machinery) and to carry out works as reasonably required in order to implement a Planning Permission insofar as it relates to works to be carried out on the Property and/or works which accord with the Planning Permission and if not carried out would prevent commencement of works on or occupation of the Property or any part thereof or building constructed thereon and/or to comply with any Planning Agreement;
3. The right of support and protection for the Property as existing at the date hereof;
4. PROVIDED THAT the Mortgagee shall ensure that the persons exercising the rights set out in paragraphs 1 to 4 (inclusive) above shall:-
 - 4.1 restrict such access to those parts of the Retained Land as shall not form the site of any buildings or their curtilage (save where the prior written approval of the owner and occupier of any buildings and/or the curtilage thereof shall have been obtained);
 - 4.2 not adversely affect any building on the Retained Land or the use and enjoyment of it or its curtilage (save where the prior written approval of the owner and occupier of any buildings and/or the curtilage thereof shall have been obtained);
 - 4.3 keep to a practicable minimum any damage or inconvenience thereby caused to the Retained Land and any occupier thereof;
 - 4.4 make good any physical damage to the Retained Land as soon as reasonably practicable to the reasonable satisfaction of the Mortgagor; and
 - 4.5 comply with any reasonable requirements of the Mortgagor,
5. and PROVIDED FURTHER THAT:
 - 5.1 the Mortgagor and others so entitled may divert alter or stop-up such Conduits on the Retained Land subject to providing the Mortgagee reasonable notice in advance in writing to that effect and to providing alternative Conduits equally commodious and of at least as good a standard as the Conduits at that time passing in through under or over the relevant parts of the Retained Land and serving the Property or (as the case may be) an access road which is equally appropriate to serve the Property and complies with Planning Permission; and
 - 5.2 the Mortgagee shall pay within 10 Working Days of written demand a fair and reasonable (according to user) contribution to the cost (if any) reasonably incurred or to be incurred by the owner for the time being of the Retained Land in maintaining, repairing and renewing any Conduits serving the Property and located within the Retained Land.

SIGNED and delivered as a DEED)

by **A. WAGSTAFF**)

Attorney: 

and **S. BENNETT**)


Attorney: 

as Attorneys and in the name of)

CALA MANAGEMENT LIMITED)

In exercise of a power of attorney)

In the presence of:)

Signature: 

Name: **FREDDIE WEBBER**

Address: **157 ELM ROAD
KINGSTON, KT2 0TH**

Occupation: **CHARTERED SURVEYOR**



PLAN 1



[Handwritten signature]