



Registration of a Charge

Company name: **CALA MANAGEMENT LIMITED**

Company number: **SC013655**



X8WT3E2G

Received for Electronic Filing: **16/01/2020**

Details of Charge

Date of creation: **08/01/2020**

Charge code: **SC01 3655 0489**

Persons entitled: **H G HODGES & SON LIMITED
THURN LIMITED
VICTOR GEOFFREY FLAVELL MATTS
MARTIN PETER GREEN**

Brief description: **THE FREEHOLD PROPERTY KNOWN AS LAND AT LONG MARSTON
AERODROME, CAMPDEN ROAD, LOWER QUINTON, STRATFORD UPON
AVON (AND BEING THE PROPOSED CURTILAGE OF 266 DWELLINGS)
AND SHOWN EDGED RED AND EDGED BLUE ON PLAN 1 (WHICH IS
APPENDED AT ANNEXURE 1 OF THE LEGAL MORTGAGE) BEING PART
OF THE LAND REGISTERED AT THE LAND REGISTRY WITH TITLE
NUMBERS WK339500, WK462633 AND WK468748.**

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

Certified by: **THOMAS STOFER**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 13655

Charge code: SC01 3655 0489

The Registrar of Companies for Scotland hereby certifies that a charge dated 8th January 2020 and created by CALA MANAGEMENT LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 16th January 2020 .

Given at Companies House, Edinburgh on 17th 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 8 JANUARY

2020
2019

CALA MANAGEMENT LIMITED

- and -

**H G HODGES & SON LIMITED, THURN LIMITED and
VICTOR GEOFFREY FLAVELL MATTS and MARTIN PETER GREEN
as trustees for the time being of the Hodges Family Settlement**

LEGAL MORTGAGE

relating to land situated at
the former Long Marston Aerodrome Campden Road
Lower Quinton Stratford upon Avon CV37 8LL

Wedlake Bell

71 Queen Victoria Street
London
EC4V 4AY

Direct Dial +44 (0)20 7395 3067
Direct Fax +44 (0)20 7395 3100
Direct Email mleyshon@wedlakebell.com

I N D E X

1.	DEFINITIONS AND INTERPRETATION	2
2.	COVENANT TO PAY	8
3.	SECURITY	8
4.	APPLICATION TO LAND REGISTRY	8
5.	REPRESENTATIONS AND WARRANTIES	9
6.	MORTGAGOR'S COVENANTS	10
7.	PRESERVATION OF SECURITY	13
8.	ENFORCEMENT	14
9.	APPLICATION OF PROCEEDS	21
10.	EXPENSES AND INDEMNITY	22
11.	FURTHER ASSURANCE	22
12.	POWER OF ATTORNEY	22
13.	ASSIGNMENT	23
14.	MISCELLANEOUS	23
15.	LAW AND JURISDICTION	24
16.	NOTICES	25
17.	RIGHTS OF THIRD PARTIES	25
18.	TRUSTEES	25
	SCHEDULE 1	26
	DESCRIPTION OF THE PROPERTY	26
	SCHEDULE 2	27
	"RIGHTS"	27
	SCHEDULE 3	29
	"RESERVED RIGHTS"	29

THIS LEGAL MORTGAGE is made on the 8 day of JANUARY 2020
2019

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. **H G HODGES & SON LIMITED** (company number 00613228) whose registered office is at Estate Office, Long Marston Airfield, Campden Road, Lower Quinton, Stratford upon Avon, Warwickshire CV37 8LL **THURN LIMITED** (company number 7558682) whose registered office is at Number Ten Elm Court Arden Street Stratford upon Avon Warwickshire CV36 7PA **VICTOR GEOFFREY FLAVELL MATTS** and **MARTIN PETER GREEN** being the trustees for the time being of the **Hodges Family Settlement** of Number Ten Elm Court Arden Street Stratford upon Avon CV36 6PA (together the "Mortgagee").

WHEREAS:-

- (A) The Mortgagee and the Mortgagor have entered into an Option dated 4th May 2017 as varied by supplemental agreements dated 7 September 2018, 12 March 2019 and as 18 DECEMBER amended and restated by deed dated [] 2019 (the "Option") pursuant to which the Mortgagee has agreed to sell, and the Mortgagor has agreed to buy, the Property and the Retained Land (each as defined below) subject to the Option being exercised by the Mortgagor. WB
UP
- (B) In the Option the Mortgagor agreed to enter into this Deed upon completion of the transfer of the Property to it, by way of security for, inter alia, its liability to pay the Deferred Payments to the Mortgagee under the Option.
- (C) It is intended that this Deed takes effect as a deed notwithstanding the fact that a party may only execute this Deed under hand.

NOW THIS DEED WITNESSES:-

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Terms defined in the Option 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:-

"Access Road" means any road(s) to be constructed on the Retained Land in accordance with the Planning Permission and directly abutting the Property which are necessary to provide access and egress to and from the Property to the highway known as Campden Road together with any pavements and crossovers visibility splays and verges bordering any such access road and signage and lighting systems.

"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 drainage, water supply 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 Payments" means the Second Instalment and the Third Instalment of the Price payable by the Mortgagor to the Mortgagee pursuant to clauses 7.1.3 and 7.1.4 of the Option.

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

"Enforcement Event" means any event which is listed in Clause 8.1.2.

"Homes England" means the Homes and Communities Agency (trading as Homes England) or any successor body exercising similar statutory functions in relation to the funding and regulation of Affordable Housing.

"Overage Deed" means an overage deed of even date to this Deed and made between (1) Victor Geoffrey Flavell Matts and Martin Peter Green as Trustees of the Hodges Family Trust, (2) Thurn Limited and (3), H G Hodges & Son Limited and (4) CALA Management Limited.

"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 to a local authority to comply with any requirements of a Planning Agreement; or
- (c) a charge or mortgage over the Retained Land or any part thereof (provided that where required, the chargee or mortgagee agrees to enter into any documents required by clause 6.7.1 on the same terms as the Mortgagor but in its capacity as charge or mortgagee only and provided further that such documents include mortgagee protection provisions in a form approved by the chargee or mortgagee acting reasonably); or
- (d) a disposal or vesting under compulsory purchase or other statutory procedures; or

- (e) 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
- (f) the transfer, grant of a lease or other disposal of any Affordable Housing on Phase 2 and/or Phase 3 to a Registered Provider; or
- (g) a disposal of the type set out in paragraph (h) of the definition of Retained Land Permitted Disposal.

"Permitted Security Interest" means:

- (a) a lien arising by operation of law and in the ordinary course of trading securing obligations not more than 30 days overdue;
- (b) any Security Interest arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to the Mortgagor in the ordinary course of trading and on the supplier's standard or usual terms and not arising as a result of any default or omission by the Mortgagor;
- (c) the Security Interests constituted by this Deed;
- (d) 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);
- (e) any other security or interest in the nature of security to which the Mortgagee has consented in writing; and
- (f) the second charge (ranking behind the security created by this Deed) over the Property (or part thereof) in favour of Homes England.

"Phase 2" means the area shown edged red on Plan 1.

"Phase 3" means the area shown edged blue on Plan 1.

"Plan 1" means the plan annexed hereto and marked "Plan 1" and appended at Annexure 1 showing the extent of the land charged pursuant to the provisions of this Legal Mortgage which is shown edged red and edged blue on such plan.

"Plan 2" means the plan annexed hereto showing the extent of the Retained Land appended at Annexure 2.

"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 the Section 106 Agreement and any agreement (including a unilateral agreement) under section 106 of the Town and Country Planning Act 1990 or section 111 of the Local Government Act 1972 or any agreement under any other enactment having the same or similar effect including (without limitation) highways agreements pursuant to sections 38 or 278 of the Highways Act 1980 and sewers agreements pursuant to section 104 of the Water Industry Act 1991.

"Planning Permission" means the outline planning permission issued on 28 February 2017 pursuant to the planning application made by the Mortgagor with reference 14/03579/OUT and reserved matters approval reference 17/03/258/REM dated 14 March 2019 or such other planning permission as may have been obtained by the Mortgagor with the consent of the Mortgagee in accordance with the terms of this Deed (where required) and any Section 106 Agreement relating to any such planning permission.

"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:-
- (c) a company or body approved by the Homes and Communities Agency ("HCA" and so that references to HCA shall include any successor or replacement body) as a qualified recipient of social housing grant; and
- (d) subject to HCA 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 land at Long Marston Airfield Campden Road Lower Quinton Stratford Upon Avon forming part of the land registered at the Land Registry with Title Numbers WK468748 and WK339500 and the whole of the land registered at the Land Registry with Title Numbers WK399800, WK417185, WK421659 and WK421935 edged green on Plan 2 (but excluding any areas shown edged red and edged blue until such time as they are no longer subject to the security created by this Deed) and being immediately adjacent to the Property 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.

"Retained Land Permitted Disposal" means any of the following:

- (a) a transfer or lease of a Dwelling or Dwellings and/or buildings or units for commercial or other non-residential uses (or land on which such buildings or units are to be constructed for commercial or other non residential purposes) in each case on the Retained Land and with or without ancillary areas subject to in the case of commercial uses the provisions of clauses 3.2 and 3.3 (as applicable) of the Overage Deed having been complied with by the Mortgagor;
- (b) A transfer or lease of any land to an Approved Developer as permitted by clause 3.4 of the Option;
- (c) the grant of a lease or transfer to a statutory undertaker or other utilities provider or relevant authority acting in its capacity as such of land forming part of the Retained Land required for any electricity sub-station, gas governor or any other land required for the provision of services or infrastructure;
- (d) the transfer lease or dedication of any land comprised in the Retained Land to the local authority or any other public authority (or to a party as directed by the local authority or any other public authority) to comply with highway requirements or to comply with any Planning Agreement;
- (e) a transfer of the freehold reversion to a Dwelling or Dwellings and/or buildings or units for commercial or other uses, in each case on the Retained Land and with or without ancillary areas and/or granting of a headlease reversionary to a Dwelling or Dwellings and/or other buildings or units as aforesaid with or without ancillary areas;
- (f) a transfer or lease of Affordable Housing and/or land on which Affordable Housing and/or ancillary areas is to be constructed;
- (g) a lease or a licence of any car parking spaces granted ancillary to the disposal of a residential unit or commercial/non-commercial unit or building on the Retained Land;
- (h) the grant of any rights over the Property or the remainder of the Retained Land as set out in any transfer or lease or other disposal as referred to in paragraphs (a) to (g) inclusive above.

"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.

"Section 106 Agreement" means Agreement dated 28th February 2017 and made between Victor Geoffrey Flavell Matts and Martin Peter Green (1) Colin Niall Thomas Campbell and Paul Anthony Spencer as the Executors of the late Nestyn Thurna Hodges (deceased) (2) Thurn Limited (3) H G Hodges & Son Limited (4) Christopher William Holmes and Joyce Pauline Holmes (5) National Westminster Bank plc (6) CALA Management Limited (7) Stratford on Avon District Council (8) and The Warwickshire County Council (9) (as varied or superseded from time to time).

"Secured Liabilities" means the liability of the Mortgagor to pay the Deferred Payments to the Mortgagee under the Option and interest on the Deferred Payment from the date on which payment is due pursuant to the Option to the date of payment calculated at the rate prescribed in the Option.

"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 Option 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 Option 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 7 of the Option.

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, all its estate and interest in the Property.

4. APPLICATION TO LAND REGISTRY

- 4.1 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 Land Registry may require):-

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a certificate signed by either the proprietors for the time being of the registered charge dated 8 JANUARY 2020 in favour of HG Hodges & Son Limited, Thurn Limited and Victor Geoffrey Flavell Matts and Martin Peter Green referred to in the charges register or their conveyancer Ladders Solicitors (ref VM) of Number Ten Elm Court Arden Street Stratford upon Avon Warwickshire CV37 6PA that the provisions of the registered charge have been complied with or that they do not apply to the disposition."

8 JANUARY
2020
WOB WR

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 in the event that the Mortgagee fails to procure the giving of written consent within 10 Working Days of it and Ladders Solicitors (ref VM) 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.

- 4.2 The Mortgagee and Mortgagor hereby jointly apply to the Chief Land Registrar to enter a restriction in the Proprietorship Register of the title to the Retained Land in the following terms:-

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a certificate signed by a conveyancer that the provisions of clause 6.7.2 of the registered charge have been complied with or do not apply to the disposition."

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 when the transfer of the Property to the Mortgagor is registered at HM 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 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.
- 6.1.3 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 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.

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.

6.3 Mortgagor's Failure

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 shall comply or procure compliance with all statutes and all orders, rules, regulations, bye-laws and other instruments affecting the Property or its use and shall produce to the Mortgagee within seven (7) days of receipt by the Mortgagor any order, direction, permission, notice or other matter whatsoever affecting or likely to affect the Property (or any part of it) and served upon the Mortgagor by any authority or third party and shall supply copies to the Mortgagee upon request.
- 6.4.2 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 Planning

- 6.5.1 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. The Mortgagee shall be deemed to have given its consent if the Mortgagor does not receive a substantive response from the Mortgagee within 10 Working Days of receipt by the Mortgagee of a written request for consent accompanied by sufficient information to enable the Mortgagee to determine whether or not to give its consent.
- 6.5.2 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 and to be deemed to have been given if the Mortgagor does not receive a substantive response from the Mortgagee within 10 Working Days of receipt by the Mortgagee of a written request for consent accompanied by sufficient information to enable the Mortgagee to determine whether or not to give its consent).

6.6 Negative Pledge

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

- 6.6.1 create, incur or permit to exist any Security Interest in, over or affecting the Property (other than a Permitted Security Interest);

- 6.6.2 sell, assign, lend, transfer 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 with the prior written consent of the Mortgagee (which shall not be unreasonably withheld or delayed) or by way of a Permitted Disposal); or
- 6.6.3 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 by way of a Permitted Disposal).

6.7 Planning Agreements and Dispositions

- 6.7.1 the Mortgagor covenants with the Mortgagee that (following the occurrence of an Enforcement Event and any subsequent disposal of the Property) it shall (at the cost of the Mortgagee) enter into any Planning Agreement or any deed of grant, wayleave or adoption agreement for roads or Conduits required for the Property to be developed (albeit such Planning Agreement or adoption agreement may relate to the Retained Land (and/or roads or Conduits within the Retained Land)) provided that any such agreements are in a form approved by the Mortgagor (acting reasonably) and the Mortgagor is indemnified by the Mortgagee against all costs, expenses or other liabilities arising thereunder;
- 6.7.2 the Mortgagor covenants with the Mortgagee that it shall not dispose of any part of the Retained Land without such disponente covenanting to comply with this clause 6.7 (other than by way of Permitted Disposal or Retained Land Permitted Disposal or the grant of a Permitted Security Interest Provided Always that in the case of a Retained Land Permitted Disposal of the type referred to in paragraph (b) of the definition of Retained Land Permitted Disposal which includes the site of Estate Roads or Access Roads (as defined in the Transfer of the Property and the Retained Land to the Mortgagor) the disponente shall be required to covenant with the provisions of this clause 6.7 to the extent it relates to Estate Roads or Access Roads within the land to be acquired by the disponente).

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. ENFORCEMENT

8.1 Enforceability of Security

8.1.1 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.

8.1.2 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) 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.

8.2 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.

8.3 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.

8.4 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:-

- 8.4.1 without further notice appoint by writing one or more persons to be a Receiver of the Property or any part thereof; or
- 8.4.2 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.

8.5 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.

8.6 Receiver's Powers

A Receiver appointed in accordance with Clause 8.4 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:-

- 8.6.1 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;

- 8.6.2 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;
- 8.6.3 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;
- 8.6.4 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;
- 8.6.5 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;
- 8.6.6 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;
- 8.6.7 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;
- 8.6.8 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;
- 8.6.9 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;

- 8.6.10 reconstruct, alter, improve, decorate, furnish and maintain the whole or any part of the buildings on the Property;
- 8.6.11 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;
- 8.6.12 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;
- 8.6.13 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;
- 8.6.14 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;
- 8.6.15 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;
- 8.6.16 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;
- 8.6.17 make any arrangement or compromise or disclaim, alter, enter into or cancel any contract or liability which he shall think expedient;
- 8.6.18 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;
- 8.6.19 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;

- 8.6.20 bring or defend any action or legal proceedings or discontinue the same on behalf of the Mortgagor;
- 8.6.21 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;
- 8.6.22 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;
- 8.6.23 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;
- 8.6.24 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.

8.7 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.

8.8 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.

8.9 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.

8.10 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.

8.11 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.

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

8.12.1 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 disponent 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 disponent 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) provided that the provisions of this clause 8.12.1 shall not apply to any disponent pursuant to a Permitted Disposal.

8.12.2 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 disponent 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 (and as to the entering into by the disponent 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) provided that the

provisions of this clause 8.12.1 shall not apply to any disponent pursuant to a Permitted Disposal.

8.12.3 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.

8.13 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 Payments have 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 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.

8.14 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 and/or Section 106 Agreement 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.

8.15 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:

- 8.15.1 implement any Planning Permission relating to the Retained Land; and/or
- 8.15.2 carry out any Development pursuant to any such Planning Permission; and/or
- 8.15.3 allow Dwellings on the Retained Land to be occupied and used; and/or
- 8.15.4 dispose of any Dwellings on the Property and/or the Retained Land; and/or
- 8.15.5 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.

- 8.16 Once the apportionment of planning obligations has been agreed pursuant to clause 8.15 above or determined by an independent expert in accordance with clause 15 of the Option 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 clause 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.

9. 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:-

- 9.1 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);
- 9.2 (if applicable) in payment of remuneration to the Receiver or Administrator at such rate as may be agreed between him and the Mortgagee;
- 9.3 in or towards payment of the Secured Liabilities; and
- 9.4 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.

10. EXPENSES AND INDEMNITY

- 10.1 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:-
- 10.1.1 any consent or waiver required from the Mortgagee in relation to this Deed; and/or
 - 10.1.2 any settlement, discharge or release of this Deed.
- 10.2 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;
- 10.3 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.

11. 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:-

- 11.1 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
- 11.2 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
- 11.3 the exercise of any power, authority or discretion vested in the Mortgagee or any Receiver under this Deed.

12. 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.

13. ASSIGNMENT

- 13.1 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.
- 13.2 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.
- 13.3 The Mortgagee may not assign or transfer all or any part of its rights and/or obligations under this Deed.

14. MISCELLANEOUS

14.1 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.

14.2 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.

14.3 Discharge

- 14.3.1 At the end of the Security Period the Mortgagee will forthwith release the security created by this Deed.
- 14.3.2 The Mortgagee shall promptly provide to the Mortgagor a duly executed Form DS3 (or other appropriate form) and a deed of partial 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.
- 14.3.3 The Mortgagee undertakes to the Mortgagor that the Mortgagee shall comply with the obligations set out in clause 7 of the Option.

14.4 Perpetuity Period

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

14.5 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.

14.6 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.

14.7 Remedies and Waivers

14.7.1 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.

14.7.2 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.

14.7.3 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.

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

14.8 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.

15. LAW AND JURISDICTION

15.1 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.

15.2 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.

16. NOTICES

Clause 17 (*Notices*) of the Option 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).

17. 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.

18. TRUSTEES

The liability of Victor Geoffrey Flavell Matts and Martin Peter Green ("the Trustees") in respect of any breach of the Mortgagee's covenants or any of them is to be limited in amount to the assets in the Trust and nothing contained in this Deed entitles the Mortgagor to pursue, exercise or enforce any right or remedy in respect of any breach of the Mortgagee's covenants or any of them against the personal estate, property, effects or assets of any of the Trustees save to the extent that the breach arises from any wilful or reckless breach of duty or trust by the Trustees or either of them.

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

the freehold property known as land at Long Marston Aerodrome, Campden Road, Lower Quinton, Stratford Upon Avon (and being the proposed curtilage of 266 dwellings) and shown edged red and edged blue on Plan 1 (which is appended at Annexure 1) being part of the land registered at the Land Registry with Title Numbers WK339500, WK462633 and WK468748.

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 (including for the avoidance of doubt to lay and construct new 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 though 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 (including for the avoidance of doubt to lay and construct new Conduits);
2. Pending adoption of the Access Road or the relevant part thereof full and free right and liberty to go pass and repass at all times and for all purposes with or without vehicles and on foot over and along the roads footpaths pathways and other areas comprised in the Access Road for the purposes of access to and egress from the Retained Land and a full and free right to the passage of services to and from the Retained Land through any Conduits constructed or laid under the Property and serving the Retained Land;
3. If the Mortgagor fails to achieve completion of the Access Road to an adoptable standard and completion of the Conduits to a capacity capable of supplying sufficient capacity for the development of the Property as permitted by the Planning Permission ("the Works") within a reasonable period following the occurrence of an Enforcement Event the Mortgagee shall be entitled upon giving 24 hours' prior written notice (save in the case of emergency) but not obliged to enter upon the area of the Access Road with or without plant machinery and equipment as reasonably required to carry out and complete the said Works and the reasonable and proper costs, fees and expenses of such Works shall be recoverable by the Mortgagor and payable by the Mortgagee within 10 Working Days of receipt of written demand by the Mortgagee;
4. 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;
5. The right of support and protection for the Property as existing at the date hereof;

6. PROVIDED THAT the Mortgagee shall ensure that the persons exercising the rights set out in paragraphs 1 to 4 (inclusive) above shall:-
- 6.1 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);
- 6.2 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);
- 6.3 keep to a practicable minimum any damage or inconvenience thereby caused to the Retained Land and any occupier thereof;
- 6.4 make good any physical damage to the Retained Land as soon as reasonably practicable to the reasonable satisfaction of the Mortgagor; and
- 6.5 comply with any reasonable requirements of the Mortgagor,
7. and PROVIDED FURTHER THAT:
- 7.1 the Mortgagor and others so entitled may divert alter or stop-up such Conduits on the Retained Land or the site of the Access Road 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
- 7.2 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 and in maintaining repairing renewing and lighting the Access Road.

EXECUTED as a DEED

for and on behalf of

CALA MANAGEMENT LIMITED

acting by its attorneys

Daniel Preston and

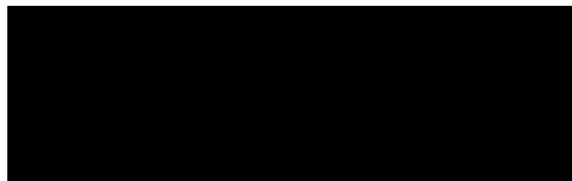
ROSEMARY T. HARRISON

pursuant to a power of attorney

dated 11 February 2019



Attorney



Attorney


In the presence of:

In the presence of:

Witness signature:



Witness signature:



Name: JAMES SIMPSON-STERN

Name: JAMES SIMPSON-STERN

Address: CALA HOUSE
ARLESTON WAY
SOUTHOLL
B90 4LM

Address: CALA HOUSE
ARLESTON WAY
SOUTHOLL
B90 4LM

Occupation: SENIOR LAND BUYER

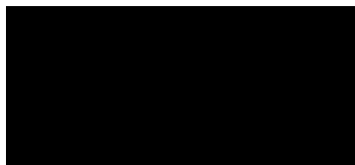
Occupation: SENIOR LAND BUYER

EXECUTED as a DEED by)
CALA MANAGEMENT LIMITED)
acting by two directors or a director)
and the company secretary)

Director

Director/Secretary

EXECUTED as a DEED
by H G HODGES & SON LIMITED
acting by
a director in the presence of:-



Witness Signature ..



Witness Name (printed) ..SUNMANI DULKA....

AddressLodders Solicitors LLP.....
Number Ten, Elm Court, Arden Street
Stratford upon Avon CV37 6PA.....

OccupationSOLICITOR.....

EXECUTED as a DEED
by THURN LIMITED
acting by
a director in the presence of:-



Witness Signature ...

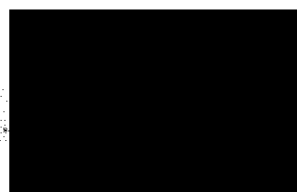



Witness Name (printed) ..SUNMANI DULKA.....

AddressLodders Solicitors LLP.....
Number Ten, Elm Court, Arden Street
Stratford upon Avon CV37 6PA.....

OccupationSOLICITOR.....

EXECUTED as a DEED
by VICTOR GEOFFREY FLAVELL MATTS
in the presence of:-



Witness Signature . 

Witness Name (printed) . SUMAN DUTTA

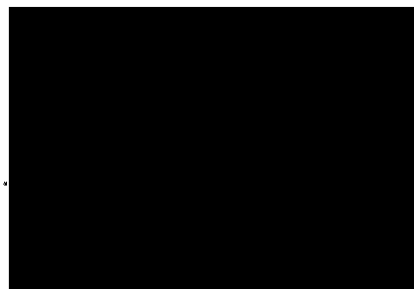
Address ... Ladders Solicitors LLP

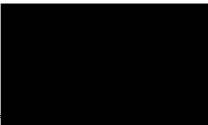
Number Ten, Elm Court, Arden Street

..... Stratford upon Avon CV37 6PA

Occupation ... SOLICITOR

EXECUTED as a DEED
by MARTIN PETER GREEN
in the presence of:-



Witness Signature . 

Witness Name (printed) ... James Milham

Address ... C/o Ladders

..... Stratford upon Avon

Occupation ... Solicitor

Annexure 1

Plan 1



All dimensions to be checked on site prior to the commencement of construction and any discrepancy should be reported to the Site Manager.
This drawing may not be reproduced in any part or form without written consent.
All copyrights reserved.
Sub-Contractors MUST ensure that they have the latest issue drawing before they commence work on site.

KEY

- Land to be released on payment of first deferred payment - 133
- Phase 3 - 133
- NOTE: NATURALLY CHARGED AREA IS SHOWN EDGED BLUE AND EDGED RED

Rev	Date	Description	Int
E	17.09.19	Retained land added	RSM
D	09.08.19	Plan amended	RSM
C	08.08.19	Key Updated	RSM
B	07.08.19	Area added	RSM
A	09.07.19	Boundary and PFI amended	RSM



Long Marston Airfield
Stratford-Upon-Avon

Legal Charge Plan

STATUS INFORMATION

Scale	Date	Drawn	Rev
1:250@A1	July 19	RSM	E
Drawing No.			ML00286-100/02

Annexure 2

Plan 2



All dimensions to be checked on site prior to the commencement of construction and any discrepancy should be reported to the Site Manager.

This drawing may not be reproduced in any part or form without written consent.

All copyrights reserved.

Sub-Contractors MUST ensure that they have the latest issue drawing before they commence work on site.

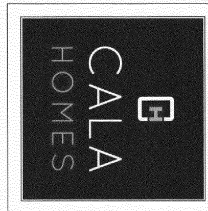
KEY

Land to be released on payment of first deferred payment - 133

Phase 3 - 133

NOTE:
INITIALLY CHANGED AREA IS SHOWN EDGED BLUE AND EDGED RED

Rev	Date	Description	Int.
E 1/7/19		Revised area added	RSM
D 06/08/19		Plan amended	RSM
C 06/08/19		Key Updated	RSM
B 07/08/19		Base Land area added	RSM
A 09/07/19		Boundary and PFI amended	RSM



Long Marston Airfield
Stratford-Upon-Avon

Legal Change Plan

Site INFORMATION

Scale	Date	Drawn	Rev
1:2500@A1	July 19	RSM	E
Drawn By			
Drawn To			
ML00286-100/02			