



**Registration of a Charge**

Company Name: **CALA MANAGEMENT LIMITED**

Company Number: **SC013655**



Received for filing in Electronic Format on the: **05/01/2022**

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**Details of Charge**

Date of creation: **17/12/2021**

Charge code: **SC01 3655 0514**

Persons entitled: **RYDON HOMES LIMITED AND GLEESON STRATEGIC LAND LIMITED**

Brief description: **PROPERTY MEANS SUCH PARTS OF THE ESTATE (BEING THE LAND EDGED BLUE) AS ARE SHOWN COLORED BLUE ON THE PLAN ATTACHED TO THE LEGAL CHARGE.**

**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: **GATELEY PLC**



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

Company number: 13655

Charge code: SC01 3655 0514

The Registrar of Companies for Scotland hereby certifies that a charge dated 17th December 2021 and created by CALA MANAGEMENT LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 5th January 2022 .

Given at Companies House, Edinburgh on 5th January 2022

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



Companies House



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

Dated

17 December

2021

CALA MANAGEMENT LIMITED (1)

and

RYDON HOMES LIMITED

And

GLEESON STRATEGIC LAND LIMITED (2)

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CHARGE (OF PART) BY WAY OF LEGAL  
MORTGAGE

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This Deed is made on

17 December

2021

Between

- (1) **CALA MANAGEMENT LIMITED** (Company Registration Number SC013655) whose registered office is at Adam House, 5 Mid New Cultins, Edinburgh, EH11 4DU (the "Borrower"); and
- (2) **RYDON HOMES LIMITED** incorporated and registered in England and Wales with company number 04773137 whose registered office is at Rydon House Station Road Forest Row East Sussex RH18 5DW ("Rydon") and
- (3) **GLEESON STRATEGIC LAND LIMITED** incorporated and registered in England and Wales with company number 05181745 whose registered office is at 6 Europa Court Sheffield Business Park Sheffield S9 1XE ("Gleeson")
- (4) (together the "Lender")

Whereas

- (A) The Borrower purchased the Somerset Property, the Hazelgrove Property and the Perilli Property on the date of this Deed with the benefit of the Planning Permission
- (B) The Borrower has agreed to charge the Property as security to the Lender as set out in this Deed to secure the payment and discharge of the Deferred Consideration.

It is agreed

## 1 Definitions and interpretation

### 1.1 Definitions

In this Deed:

**Affordable Unit** means any Unit to be constructed at the Property pursuant to the Planning Permission which are designated affordable in accordance with the Section 106 Agreement in force in respect of the Property from time to time pursuant to the Planning Permission.

**Bellway Land Transfer** means the transfer of the land shown coloured pink on the Plan to Bellway Homes Limited (and which for the avoidance of doubt is excluded from this charge).

**Borrower's Solicitors** means Gateley Legal of The Blade, Abbey Square, Reading RG1 3BE (ref: 1273181.011).

**Business Day** means a day (other than a Saturday or Sunday or any day which falls between 23 December and 1 January) on which banks are open for general business in London.

**Contract** means an agreement dated 30 April 2021 between Rydon Homes Limited (1) Gleeson Strategic Land Limited (2) and the Borrower (3) for the sale and purchase of the Estate as varied by a supplemental deed dated [9/12/21].



**Deferred Consideration** means Deferred Sum 1 and Deferred Sum 2 as more particularly defined in the Contract and which are outstanding and owing from the Borrower to the Lender under the Contract.

**Deferred Sum 1** means the part of the Deferred Consideration payable on the First Payment Date pursuant to the terms of the Contract.

**Deferred Sum 2** means the part of the Deferred Consideration payable on the Second Payment Date pursuant to the terms of the Contract.

**Delegate** means any person appointed by the Lender or any Receiver and any person appointed as attorney of the Lender, Receiver or Delegate

**Disposal** includes any sale or transfer or assent or a lease for a term in excess of 21 years and **Dispose** shall be interpreted accordingly.

**Estate** means the land shown edged ~~green~~<sup>blue</sup> on the Plan including the Property

**Estate Roads** means the roads, footpaths and cycle ways as shall from time to time have been constructed on the Estate pursuant to the Planning Permission

**Event of Default** means any or circumstance specified in clause 8.

**Exempt Land** any part or parts of the Property which is the subject of:

- (a) any Disposal of part of the Property to a competent authority including pursuant to any planning obligation or Works Agreement;
- (b) any Disposal to a competent authority of any part of the Property upon which service media have been or are to be installed together with ancillary areas and rights;
- (c) any Disposal to any competent authority of any substation site, gas governor site, pumping station site, balancing pond or any other part of the Property required by such competent authority to service or drain the Property or any part or parts thereof;
- (d) the grant of any easement and/or the entering into of any covenant for or relating to access or service media for the benefit of the Estate whether or not also benefitting other land;
- (e) any Disposal of an Affordable Unit or land on which an Affordable Unit is to be constructed or is partially constructed at the time of the said disposal to a Registered Provider pursuant to the Section 106 Agreement;
- (f) the Disposal of any part of the Property as common parts, open space, amenity land or similar to the local authority, a management company or similar;
- (g) the Disposal of the freehold reversion of any building or Unit on the Property which Unit has been the subject of a previous Disposal in respect of which this legal charge has been released pursuant to clause 6.2;
- (h) any Disposal pursuant to a Compulsory Purchase Order;
- (i) the grant of any easements or rights in respect of any of the above said Disposals and/or in respect of any Disposal of a Unit or Units;

- (j) up to and including the first 40 Disposals for value to a bona fide third party buyer or lessee of a single physically completed Unit (whether constructed or in the course of construction) prior to the Second Payment Date;
- (k) the grant of easements in the Bellway Land Transfer

**Finance Document** means this Deed and the Contract.

**First Payment Date** means <sup>17/12/22</sup> ~~[42 months from completion]~~ or such earlier date as the Borrower may specify to the Lender with 7 days' notice.

**Hazelgrove Option Agreement** means the option agreement dated 26 June 2015 made between James Stuart Hazelgrove (1) and Rydon Homes Limited (2) together with any documents or deed supplemental to it.

**Hazelgrove Property** means land being motor Racing Track and Land to the North of Water Lane, Angmering being the land registered under Title Number WSX218654.

**Interest** means interest at the rate of 4% above the base rate of Bank of Scotland plc from time to time in place accruing on a daily basis and compounded every three months and payable both before and after any demand or judgement (or in the event the base rate of Bank of Scotland plc ceases to be available such other high street clearing bank as the Borrower and the Lender may agree (acting reasonably and without delay)

**Lenders Solicitors** means for Rydon Rydon Group Limited Rydon House Station Road Forest Row East Sussex RH18 5DW (ref: NM) and for Gleeson Gowing WLG (UK) LLP of Two Snow Hill Birmingham B4 6WR (ref MC)

**Party** means a party to this Deed.

**Payment Date** means either the First Payment Date or the Second Payment Date as the case may be.

**Perilli Property** means:

- (a) Land lying to the East of Dappers Lane, Angmering, West Sussex being part of the land registered at the Land Registry under Title Number WSX254818; and
- (b) St Denys South, Dappers Lane, Angmering, West Sussex being part of the registered at the Land Registry under Title Number WSX362431 and part of the land registered at the Land Registry under Title Number WSX363829.

**Permitted Development** means the development of the Estate (including the Property) permitted by the Planning Permission

**Plan** means the plan annexed hereto

**Planning Permission** means the outline planning permission granted by Arun District Council with reference number A/40/18/OUT and dated 27 August 2019 together with the Section 106 Agreement together with reserved matters approval to be obtained by or on behalf of the Borrower for the mixed use development of the Estate in each case as may be varied from time to time or any other planning permission implemented by the Borrower prior to the Second Payment Date on the Estate

**Property** means such parts of the Estate as are shown edged red on the Plan but excluding any such part(s) of the Property as are subsequently released from this legal charge

**Receiver** means any receiver, manager or administrative receiver appointed by the Lender in respect of the Borrower or any of the Property.

**Registered Provider** means any one of the following:

- (a) a body which meets the definition of 'housing association' as defined in section 1(1) of the Housing Associations Act 1985;
- (b) an independent housing organisation listed as a provider of social housing on the register maintained by the Regulator of Social Housing under section 111 of the Housing and Regeneration Act 2008;
- (c) a registered social landlord registered with the Welsh Ministers under section 1 of the Housing Act 1996;

**Second Payment Date** means <sup>17/12/2023</sup> ~~[24 months after completion]~~ or such earlier date as the Borrower may specify to the Lender with 7 days' notice.

**Section 106 Agreement** means the agreement dated 27 August 2019 made between Arun District Council (1), West Sussex County Council (2), James Stuart Hazelgrove and Steven Lindsay Cloran and Graham Robert Fuller (3), Clement Charles Fitzroy Somerset and Sophie Elizabeth Pinnegar (4), Daryle Fedele Perilli and Sonja Browning-Page (5) and Rydon Homes Limited (6) as the same may be varied from time to time in connection with the Estate or any other agreement entered into by the Borrower pursuant to Section 106 of the Town and Country Planning Act in respect of a Planning Permission.

**Secured Obligations** means the Borrower's obligation to pay all unpaid parts of the Deferred Consideration and a reference to a Secured Obligation shall be construed as a reference to Deferred Sum 1 or Deferred Sum 2 accordingly (as the case may be).

**Security** means a fixed mortgage or charge.

**Security Period** means the period beginning on the date of this Deed and ending on the date on which the Lender is satisfied that the Secured Obligations have been irrevocably and unconditionally satisfied in full and all facilities made available by the Lender to the Borrower have been cancelled

**Service Media** means all drains, sewers, watercourses, gullies, channels, media, culverts, outflows, soakaways, cesspools, septic tanks, pipes, flues, cables, wires, conductors and other media for the supply or removal of sewage, water, electricity, telephones, telecommunications and all other services and utilities and all structures, machinery and equipment ancillary to those media (and such expression shall include any replacing renewing reconstructing relaying improving and upgrading thereof).

**Services** means foul water drainage, surface water drainage, water, gas, electricity, telephones, telecoms and all other services and utilities.

**Somerset Option Agreement** means the option agreement dated 26 June 2015 made between John Fitzroy Pechell Somerset (1) and Dr Adam Werne Payner and Raglan Horatio Andrew Harold Tribe (2) and Clement Charles Fitzroy Somerset (3) and Rydon Homes Limited (4) together with any documents or deed supplemental to it.



**Somerset Property** means land at Ecclesden Farm, Water Lane, Angmering being part of the land registered under Title Number WSX387225 and the land at Ecclesden Farm, Water Lane, Angmering being the land registered under Title Number WSX387226 being part of the land defined by the Somerset Option Agreement

**Units** means:

- (a) a single dwelling (or the intended site of a single dwelling) including any curtilage together with associated private driveways, garage, parking or access (being a house, flat, maisonette, bungalow or other construction intended for residential use) erected or to be erected on some part of the Property; and/or
- (b) a single commercial unit (or the intended site of a single commercial unit) including any curtilage together with associated driveway, garage, parking or access erected or to be erected on some part of the Property;

and **Unit** shall be interpreted accordingly.

**Works Agreement** means any agreement that is made under one or more of Sections 38 and/or 278 Highways Act 1980 and Section 104 Water Industry Act 1991 or under the Gas Act 1980 or the Water Act 1989 or any statutory provision with a similar purpose or any agreement or easement or wayleave with a local water authority, the Environment Agency, an Internal Drainage Board or other appropriate authority about water supply to and drainage of foul and surface water and effluent from the Property or any other agreement with a competent authority or body relating to other services for the benefit of or access to and from the Estate

## 1.2 Interpretation

- (a) Unless a contrary indication appears, a reference in this Deed to:
  - (i) the Lender, the Borrower, any Party or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
  - (ii) assets includes present and future properties, revenues and rights of every description (including any right to receive such revenues);
  - (iii) a Finance Document or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented or restated (however fundamentally);
  - (iv) guarantee means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in, or loan to, any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
  - (v) indebtedness includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
  - (vi) a person includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust joint venture, consortium

or partnership (whether or not having separate legal personality) of two or more of the foregoing or any other entity or body of any description;

- (vii) a regulation includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but if not having the force of law, then being a type with which persons to which it applies customarily comply) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation; and
- (viii) a provision of law is a reference to a provision, of any treaty, legislation, regulation, decree, order or by-law and any secondary legislation enacted under a power given by that provision, as amended, applied or re-enacted or replaced (whether with or without modification) whether before or after the date of this Agreement.

- (b) Clause and schedule headings are for ease of reference only.
- (c) Any word importing the singular shall include the plural and vice versa.
- (d) An Event of Default is continuing if it has not been remedied or waived to the satisfaction of the Lender in each case.

### **1.3 Third party rights**

- (a) Unless expressly provided to the contrary in any Finance Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed or any other Finance Document issued or entered into under or in connection with it but this does not affect any right or remedy of a third party which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.
- (b) Unless expressly provided to the contrary in any Finance Document the consent of any person who is not a Party is not required to rescind or vary this Deed or any other Finance Document entered into under or in connection with it.

### **1.4 Incorporated terms**

The terms of the Finance Documents and of any side letters relating to the Finance Documents and the Secured Obligations are incorporated into this Deed to the extent required for any purported disposition of any Property contained in this Deed to be a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

## **2 Covenant to pay**

The Borrower covenants with the Lender:-

- 2.1 to pay and discharge the Secured Obligations when they become due for payment and discharge in accordance with the terms of the Contract
- 2.2 To pay Interest on any amount which is not paid under this Deed from the due date until the date on which such amount is unconditionally and irrevocably paid and discharged in full

### **3 Charging provisions**

#### **3.1 General**

All Security created by the Borrower under clauses 3.2 and 3.3 (inclusive) is granted to the Lender, is a continuing security for the payment and discharge of the Secured Obligations, granted with full title guarantee and granted in respect of all the right, title and interest (if any), present and future, of the Borrower in and to the Property.

#### **3.2 First legal mortgage**

The Borrower charges by way of first legal mortgage the Property.

#### **3.3 Extent of Security**

It is agreed that this legal charge is intended to be the sole security which is held by the Lender over the Property for the Secured Obligations and that the Lender will not take or exercise any other security (including any lien) over the Property unless the Lender and the Borrower expressly agree otherwise in writing.

### **4 Negative pledge**

The Borrower shall not create or permit to subsist any Security over any of the Property without the prior written consent of the Lender. Save as otherwise permitted by clause 5 the Borrower shall not sell, transfer or otherwise Dispose of any of the Property on terms whereby they are or may be leased to or re-acquired by it or enter into any other preferential arrangement having a similar effect.

### **5 Restrictions on disposals**

5.1 Save as otherwise permitted by clause 5.2 the Borrower shall not enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to Dispose of the Property or any part of the Property.

5.2 Without prejudice to the generality of clause 5.1 the Lender agrees with the Borrower within 10 working days of a written request by the Borrower to release any Exempt Land from the security constituted by this Deed (and Legal Charge) including a release from the restriction referred to in clause 7.1 (in respect of the Exempt Land only).

5.3 The Lender will if so requested by and at the reasonable and proper cost of the Borrower in order to facilitate the Permitted Development enter into any relevant Works Agreement (as mortgagee only) and return to the Borrower such Works Agreement and/or consent to entering into (as Lender) any relevant Works Agreement within 10 Working Days following receipt of any such Works Agreement Provided That the Borrower shall indemnify the Lender from and against all costs, expenses and liabilities arising under any such Works Agreement.

5.4 If the Lender fails to comply with its obligations in clause 5.3 the Lender hereby irrevocably appoints the Borrower its attorney by way of security to execute the relevant Works Agreement.

5.5 Without prejudice to the foregoing on the Second Payment Date and upon receipt by the Lender's Solicitors of Deferred Sum 2 the Lender shall release the Property from this legal charge and the Lender will procure that the Lender's Solicitors forthwith (and any event within 5 Working Days of receipt of Deferred Payment 2) provide the Buyer's Solicitors with a duly completed Land Registry Form DS1 and RX4 in respect of the remainder of the Property

5.6 For the purpose of the obligations on the Lender arising pursuant to this clause 5:

- (a) the Lender's Solicitors are irrevocably instructed and authorised to act on behalf of Lender to deal with all such matters and requests; and
- (b) If the Lender fails to execute any release or issue any certificate or consent to deal with the restriction referred to in clause 7.1 or to complete any relevant HM Land Registry forms to remove the restriction from the Proprietorship Register of the Property in accordance with its obligations in this clause 5, the Lender hereby irrevocably appoints the Borrower its attorney by way of security to execute the relevant Release.

## **6 Further assurance**

6.1 The Borrower shall promptly do all such acts and execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Lender may reasonably specify (and in such form as the Lender may reasonably require) in favour of the Lender or its nominee(s) to create, perfect, protect and maintain the security created or intended to be created under or evidenced by this Deed or for the exercise of any rights, powers and remedies of the Lender provided by or pursuant to this Deed or by law and/or (if an Event of Default is continuing) to facilitate the realisation of the assets which are, or are intended to be, the subject of the security created by or under this Deed.

6.2 The Borrower shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any security conferred or intended to be conferred on the Lender by or pursuant to this Deed.

Any document required to be executed by the Borrower under clauses 5.6 and this clause 5.6(b) will be prepared at the cost of the Borrower.

## **7 Borrower's Covenants**

7.1 The Borrower shall promptly advise the Lender in writing on becoming aware of the occurrence of any Event of Default.

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

- (a) creating, perfecting or protecting the security intended to be created by this Deed;
- (b) after the security constituted by this Deed has become enforceable, facilitating the realisation of any of the Property; or
- (c) facilitating the exercise of any right, power, authority or discretion exercisable by the Lender and/or any Receiver in respect of any of the Property,

including, without limitation, if the Lender thinks it necessary (acting reasonably), the execution of any transfer, conveyance, assignment or assurance of all or any of the assets forming part of, or intended to form part of, the Property (whether to the Lender or to his nominee) and the giving of any notice, order or direction and the making of any registration.

7.3 The Borrower shall not do, or permit to be done, any act or thing which would or might depreciate, jeopardise or otherwise prejudice the security held by the Lender or materially diminish the value of any of the Property or the effectiveness of the security created by this

Deed SAVE THAT the carrying out of the Permitted Development at the Property shall not be a breach of this covenant.

7.4 The Borrower:

- (a) shall not, without the prior written consent of the Lender use or permit the Property to be used in any way contrary to law; and
- (b) shall comply with the requirements of any law and regulation relating to or affecting the Property or the use of it or any part of it.

7.5 The Borrower shall not, save as permitted by this Deed, without the prior written consent of the Lender, enter into any onerous or restrictive obligations affecting the whole or any part of the Property or create or permit to arise any overriding interest, easement or right whatever in or over the whole or any part of the Property SAVE THAT the carrying out of the Permitted Development at the Property shall not be a breach of this covenant AND SAVE FURTHER THAT the granting of easements or wayleaves in respect of infrastructure required to serve the Permitted Development and / or the granting of easements and rights in respect of the disposal of Units shall not be a breach of this covenant.

7.6 Save as permitted by this Deed, the Borrower shall procure that no person shall become entitled to assert any proprietary or other like right or interest over the whole or any part of the Property, without the written consent of the Lender.

7.7 The Borrower shall:

- (a) observe and perform all covenants, stipulations and conditions to which the Property, or the use of it, is or may be subject; and
- (b) diligently enforce all covenants, stipulations and conditions benefiting the Property and shall not and shall not agree to) waive, release or vary any of the same.

7.8 The Borrower shall:

- (a) give full particulars to the Lender of any notice, order, direction, designation, resolution, application, requirement or proposal given or made by any public or local body or authority (a "Notice") that specifically applies to the Property, or to the locality in which it is situated, within seven days after becoming aware of the relevant Notice; and
- (b) (if the Lender so requires) immediately, and at the cost of the Borrower, take all reasonable and necessary steps to comply with any Notice and make, or join with the Lender in making, such objections or representations in respect of any such Notice.

**8 Land Registry**

8.1 In relation to the Property, the Borrower authorises and consents to an application being made on Form RX1 (or such other form as may be prescribed from time to time) to the Chief Land Registrar for registration of the following restriction against the relevant registered estate.

*"No transfer or lease of the registered estate by the proprietor of the registered estate or by the proprietor of any registered Charges not being a Charge registered before the date of this restriction is to be registered without a written consent signed by the proprietor for the time*

17/12/21

being of the charge dated 17/12/21 in favour of Rydon Homes Limited and Gleeson Strategic Land Limited or their conveyancer.

**9 Events of Default**

**9.1 Non-payment**

The Borrower does not pay within 20 Business Days of a Payment Date the relevant Secured Obligation PROVIDED THAT the Lender has made a demand for payment.

**9.2 Breach of Obligations**

The Borrower has not remedied to the satisfaction of the Lender in all material respects any substantial breach of its obligations in this Deed after the expiry of written notice from the Lender and served on the Borrower allowing a reasonable time in which to remedy such breach

**9.3 Default**

A default by the Borrower to pay the Deferred Consideration in accordance with the terms of this Contract and/or any default under this Deed

**9.4 Insolvency**

- (a) The Borrower is unable or admits its inability to pay its debts as they fall due, suspends making payments of any of its debts or commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness. The value of the assets of the Borrower is less than its liabilities (taking into account contingent and prospective liabilities). A moratorium is declared in respect of any indebtedness of the Borrower or
- (b) A trustee in bankruptcy or similar officer is appointed in respect of the Borrower or
- (c) the Borrower or any surety ceases or threatens to cease to carry on, or disposes or threatens to dispose of, its business or a material part of its business; or
- (d) the Borrower or any surety makes a proposal for a voluntary arrangement under Part I of the Insolvency Act 1986 or enters, or seeks to enter, into any other form of composition or arrangement with its creditors whether in whole or in part; or
- (e) the Borrower or any surety becomes subject to a notice of an intended appointment of an administrator or an application is made to any court or any meeting of directors or members is called with a view to the Borrower or any surety entering into administration; or
- (f) a petition is presented in any court or a meeting is convened for the purpose of considering a resolution for the winding up of the Borrower or any surety (except in the case of a reconstruction or amalgamation that has the previous approval in writing of the Lender); or
- (g) the Borrower is removed from the Register of Companies.

## **10 Enforcement of security**

### **10.1 When security is enforceable**

The security constituted by this legal charge shall become enforceable immediately at any time after an Event of Default and the power of sale and other powers conferred by section 101 LPA, as varied or amended by this legal charge, shall be exercisable. After the security constituted by this legal charge has become enforceable, the Lender may in its absolute discretion enforce all or any part of the security constituted by this legal charge in such manner as it sees fit.

### **10.2 Acts of enforcement**

The Lender may, at its absolute discretion, at any time after the Security created by or under this Deed is enforceable:

- (a) enforce all or any part of the security created by or under this Deed in any manner it sees fit;
- (b) exercise its rights and powers conferred upon mortgagees by the Law of Property Act 1925, as varied and extended by this Deed, and rights and powers conferred on a Receiver by this Deed, whether or not it has taken possession or appointed a Receiver to any of the Property;
- (c) appoint a Receiver to all or any part of the Property; or
- (d) exercise its power of sale under section 101 of the Law of Property Act 1925 (as amended by this Deed).

### **10.3 Statutory powers - general**

- (a) For the purposes of all powers implied by statute, the Secured Obligations are deemed to have become due and payable on the date of this Deed.
- (b) Section 103 of the Law of Property Act 1925 and section 93 of the Law of Property Act 1925 do not apply to the security constituted by or under this Deed.
- (c) The statutory powers of leasing conferred on the Lender are extended so that, without the need to comply with any provision of section 99 or section 100 of the Law of Property Act 1925, the Lender is empowered to lease and make agreements for lease at a premium or otherwise, accept surrenders of leases and grant options or vary or reduce any sum payable under any leases or tenancy agreements as it may think fit.
- (d) Each Receiver and the Lender is entitled to all the rights, powers, privileges and immunities conferred by the Law of Property Act 1925 and the Insolvency Act 1986 on mortgagees and Receivers when such Receivers have been duly appointed under the relevant Act.

### **10.4 Contingencies**

If the Lender enforces the security constituted by or under this Deed at a time when no amounts are due to it under the Finance Documents but at a time when amounts may or will become so due, the Lender (or the Receiver) may pay the proceeds of any recoveries effected by it into an interest bearing suspense account.

#### **10.5 Mortgagee in possession - no liability**

Neither the Lender nor any Receiver will be liable, by reason of entering into possession of a Secured Asset, to account as mortgagee in possession or for any loss on realisation or for any default or omission for which a mortgagee in possession might otherwise be liable.

#### **10.6 Redemption of prior mortgages**

At any time after the security created by or under this Deed has become enforceable, the Lender may, at the sole cost of the Borrower (payable to the Lender on demand) redeem any prior form of security over any Secured Asset and/or procure the transfer of that security to itself and/or settle and pass the accounts of any prior mortgagee, chargee or encumbrancer which once so settled and passed shall be conclusive and binding on the Borrower.

### **11 Receiver**

#### **11.1 Appointment of Receiver**

- (a) At any time after any security created by or under this Deed is enforceable, the Lender may appoint a Receiver to all or any part of the Property in accordance with clause 10.2 (Acts of enforcement). At any time, if so requested in writing by the Borrower, without further notice, the Lender may appoint a Receiver to all or any part of the Property as if the Lender had become entitled under the Law of Property Act 1925 to exercise the power of sale conferred under the Law of Property Act 1925.
- (b) Any Receiver appointed under this Deed shall be the agent of the Borrower and the Borrower shall be solely responsible for his acts or defaults and for his remuneration and liable on any contracts or engagements made or entered into by him and in no circumstances whatsoever shall the Lender be in any way responsible for any misconduct, negligence or default of the Receiver.

#### **11.2 Removal**

The Lender may by written notice remove from time to time any Receiver appointed by it and, whenever it may deem appropriate, appoint a new Receiver in the place of any Receiver whose appointment has terminated.

#### **11.3 Powers of Receiver**

##### **(a) General**

- (i) In addition to those conferred by the Law of Property Act 1925 on any Receiver appointed under that Act, each Receiver has, and is entitled to exercise, all of the rights, powers and discretions set out in this clause 11.3.
- (ii) If there is more than one Receiver holding office at the same time, unless the document appointing him states otherwise, each Receiver may exercise all of the powers conferred on a Receiver under this Deed or under the Insolvency Act 1986 individually and to the exclusion of any other Receivers.
- (iii) A Receiver may, in the name of the Borrower do all other acts and things which he may consider expedient for realising any Secured Asset and exercise in relation to any Secured Asset all the powers, authorities and things which he would be capable of exercising if he were its absolute beneficial owner.



(b) **Borrow money**

A Receiver may raise and borrow money (either unsecured or on the security of any Secured Asset, either in priority to the security constituted by this Deed or otherwise) on any terms and for whatever purpose which he thinks fit. No person lending that money need enquire as to the propriety or purpose of the exercise of that power or to check the application of any money so raised or borrowed.

(c) **Carry on business**

A Receiver may carry on the business of the Borrower as he thinks fit and, for the avoidance of doubt, a Receiver may apply for such authorisations as he considers in his absolute discretion appropriate.

(d) **Compromise**

A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person who is or claims to be a creditor of the Borrower or relating in any way to any Secured Asset.

(e) **Delegation**

A Receiver may delegate his powers in accordance with clause 12 (Delegation).

(f) **Employees**

For the purposes of this Deed, a Receiver as he thinks appropriate, on behalf of the Borrower or for itself as Receiver, may appoint and discharge managers, officers, agents, accountants, servants, workmen and others upon such terms as to remuneration or otherwise as he may think proper and discharge any such persons appointed by the Borrower.

(g) **Leases**

A Receiver may let any Secured Asset for any term and at any rent (with or without a premium) which he thinks proper and may accept a surrender of any lease or tenancy of any Property on any terms which he thinks fit (including the payment of money to a lessee or tenant on a surrender).

(h) **Legal actions**

A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings or submit to arbitration or any form of alternative dispute resolution in the name of the Borrower in relation to any Secured Asset as he considers expedient.

(i) **Possession**

A Receiver may take immediate possession of, get in and collect any Secured Asset.

(j) **Protection of assets**

A Receiver may, in each case as he may think fit make and effect all repairs and insurances and do all other acts which the Borrower might do in the ordinary conduct of its business be they for the protection or for the improvement of the Property commence and/or complete any building operations on the Property or other Secured

Asset and apply for and maintain any planning permission, building regulation approval or any other permission, consent or licence.

**(k) Receipts**

A Receiver may give valid receipts for all monies and execute all assurances and things which may be expedient for realising any Secured Asset.

**(l) Sale of assets**

A Receiver may sell, exchange, convert into monies and realise any Secured Asset by public auction or private contract in any manner and on any terms which he thinks proper. The consideration for any such transaction may consist of cash, debenture or other obligations, shares, stock or other valuable consideration and any such consideration may be payable in a lump sum or by instalments spread over such period as he thinks fit. Fixtures and any plant and machinery annexed to any part of the Property may be severed and sold separately from the property containing them without the consent of the Borrower.

**(m) Subsidiaries**

A Receiver may form a subsidiary of the Borrower and transfer to that subsidiary any Secured Asset.

**(n) Deal with Property**

A Receiver may, without restriction sell, let or lease, or concur in selling, letting or leasing, or vary the terms of, determine, surrender or accept surrenders of, leases or tenancies of, or grant options and licences over or otherwise dispose of or deal with, all or any part of the Property without being responsible for loss or damage, and so that any such sale, lease or disposition may be made for cash payable by instalments, loan stock or other debt obligations or for shares or securities of another company or other valuable consideration. The Receiver may form and promote, or concur in forming and promoting, a company or companies to purchase, lease, licence or otherwise acquire interests in all or any 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 of the Property on such terms and conditions whether or not including payment by instalments secured or unsecured as he may think fit.

**(o) Security**

A Receiver may redeem any prior security and settle and pass the accounts of the person entitled to the prior security so that any accounts so settled and passed shall (subject to any manifest error) be conclusive and binding on the Borrower and the money so paid shall be deemed to be an expense properly incurred by the Receiver.

**(p) Land**

The Receiver may purchase or acquire any land and purchase, acquire or grant any interest in or right over land. A Receiver may implement or continue the development of (and obtain all consents required in connection therewith) and/or complete any buildings or structures on, any real property comprised in the Property and do all acts and things incidental to the Property.

**(q) Incidental matters**

A Receiver may do all other acts and things including without limitation, signing and executing all documents and deeds as may be considered by the Receiver to be incidental or conducive to any of the matters or powers listed here or granted by law or otherwise incidental or conducive to the preservation, improvement or realisation of the Property and to use the name of the Borrower for all the purposes set out in this clause 11.

**11.4 Remuneration**

The Lender may from time to time fix the remuneration of any Receiver appointed by it.

**12 Power of Attorney**

By way of security, the Borrower irrevocably appoints the Lender, every Receiver and every Delegate separately to be the attorney of the Borrower and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things that the Borrower is required to execute and do under this Deed, where the Borrower has failed to do any such actions following receipt of reasonable notice from the Lender

**13 Delegation**

13.1 The Lender and any Receiver may delegate by power of attorney or in any other manner all or any of the powers, authorities and discretions which are for the time being exercisable by the Lender and the Receiver (as appropriate) under this Deed to any person or persons as it shall think fit. Any such delegation may be made upon such terms and conditions (including the power to sub-delegate) as the Lender and Receiver (as appropriate) may think fit.

13.2 The Lender and any Receiver will not be liable or responsible to the Borrower or any other person for any losses, liabilities or expenses arising from any act, default, omission or misconduct on the part of any delegate.

**14 Application of monies**

14.1 Sections 109(6) and (8) (Appointment, powers, remuneration and duties of receiver) of the Law of Property Act 1925 shall not apply to a Receiver appointed under this Deed. All monies received by the Lender or any Receiver under this Deed and applied in discharge of the Secured Obligations shall be applied to the Secured Obligations in such order as the Lender may determine. The Lender and any Receiver may place any money received, recovered or realised pursuant to this Deed in an interest bearing suspense account and it may retain the same for such period as it considers expedient without having any obligation to apply the same or any part of it in or towards discharge of the Secured Obligations.

**15 Remedies and waivers**

No failure to exercise, nor any delay in exercising, on the part of the Lender or any Receiver, any right or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provided by law. A waiver given or consent granted by the Lender under this Deed will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

**16 Protection of third parties**

- 16.1 No person (including a purchaser) dealing with the Lender or a Receiver or its or his agents has an obligation to enquire of the Lender, Receiver or others whether the Secured Obligations have become payable, whether any power purported to be exercised has become exercisable, whether any Secured Obligations or other monies remain outstanding, how any monies paid to the Lender or to the Receiver shall be applied, or the status, propriety or validity of the acts of the Receiver the Lender.
- 16.2 The receipt of the Lender or any Receiver shall be an absolute and a conclusive discharge to a purchaser and shall relieve him of any obligation to see to the application of any monies paid to or by the direction of the Lender or any Receiver.
- 16.3 In clauses 16.1 and 16.2 **purchaser** includes any person acquiring, for money or monies worth, any lease of, or Security over, or any other interest or right whatsoever in relation to, the Property or any of them.

**17 Additional security**

The Security created by or under this Deed is in addition to and is not in any way prejudiced by any guarantee or security now or subsequently held by the Lender.

**18 Settlements conditional**

- 18.1 If the Lender (acting reasonably) believes that any amount paid by the Borrower or any other person in respect of the Secured Obligations is capable of being avoided or set aside for any reason, then for the purposes of this Deed, such amount shall not be considered to have been paid.
- 18.2 Any settlement, discharge or release between the Borrower and the Lender shall be conditional upon no security or payment to or for the Lender by the Borrower or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any law relating to bankruptcy, insolvency or liquidation or otherwise.

**19 Subsequent Security**

If the Lender receives notice of any other subsequent security or other interest affecting all or any of the Property it may open a new account or accounts for the Lender in its books. If it does not do so then, unless it gives express written notice to the contrary to the Borrower, as from the time of receipt of such notice by the Lender, all payments made by the Borrower to the Lender shall be treated as having been credited to a new account of the Borrower and not as having been applied in reduction of the Secured Obligations.

**20 Set-off**

The Lender may, set off any matured obligation due from the Borrower (to the extent beneficially owned by the Lender) against any matured obligation owed by the Lender to the Borrower, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Lender may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

**21 Notices**

Any communication or notice under or in connection with this Deed shall be made in writing and shall be made by letter and shall be sufficiently served if it is served in any manner in

which a notice may be served or a mortgagor under section 196 of the Law of Property Act 1925 or if it is sent by ordinary prepaid post addressed to the Borrower at its last known address and a notice so served shall be deemed to have been served on the working day following that on which the letter containing such notice shall have been posted. A notice under this Deed is not validly served if sent by email.

## **22 Invalidity**

If at any time, any provision of a Finance Document is or becomes illegal, invalid or unenforceable in any respect, neither the legality, validity or enforceability of the remaining provisions will in any way be affected or impaired.

## **23 Assignment**

- (a) The Lender may assign or otherwise transfer all or any part of its rights under this Deed or any security created by or under it.
- (b) The Borrower may not or otherwise transfer all or any part of its rights under this Deed or any security created by or under it.

## **24 Releases**

Upon the expiry of the Security Period, the Lender shall, at the request and cost of the Borrower, take whatever action is necessary to release and reassign to the Borrower its rights arising under this Deed the Property from the security created by and under this Deed, and return all documents or deeds of title delivered to it under this Deed.

## **25 Certificates and determinations**

Any certificate or determination by the Lender of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

## **26 Borrower's Indemnity**

- (a) The Borrower shall (within 3 Business Days of demand by the Lender) indemnify the Lender and every Receiver and delegate (each an **Indemnified Person**) against any cost, loss or liability together with any associated VAT incurred by any of them as a result of:
  - (i) the taking, holding, protection or enforcement of this Deed;
  - (ii) the exercise of any of the rights, powers, discretions and remedies vested in the Lender and each Receiver and delegate by the Finance Documents or by law; and
  - (iii) any default by the Borrower in the performance of any of the obligations expressed to be assumed by it in the Finance Documents.
- (b) The Borrower shall indemnify the Lender against any and all costs, losses, liabilities or expenses together with any associated VAT incurred by the Lender arising (directly or indirectly) out of or in connection with:
  - (i) any breach or potential breach of or liability (whether civil and/or criminal) under any Environmental Law;

- (ii) any responsibility on the part of the Lender in respect of any clean-up, repair or other corrective action; or
- (iii) the business or any real property of the Borrower.
- (c) The Lender may indemnify itself out in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this clause and shall have a lien on this Deed and the proceeds of the enforcement of this Deed for all monies payable to it.

## **27 Exclusion of liability**

### **27.1 No liability**

- (a) The Lender will not be liable for any action taken by it (or any omission to take action) under or in connection with this Deed unless directly caused by its gross negligence or wilful misconduct.
- (b) Neither the Lender nor any Receiver shall be liable in respect of all or any part of the Property or for any loss or damage which arises out of the exercise or the attempted or purported exercise of, or the failure to exercise any of, their respective powers unless such loss or damage is caused by its gross negligence or wilful acts of default and recklessness.

### **27.2 Officers and agents**

The Borrower may not take proceedings against any officer, employee or agent of the Lender in respect of any claim it might have against the Lender or in respect of any act or omission of any kind by that officer, employee or agent in relation to this Deed and any officer, employee or agent of the Lender may rely on this clause.

## **28 Rights**

In the event that the Lender or any Receiver enters into possession of the Property or the relevant part of the Property or any part thereof as mortgagee in possession there shall be granted to the Lender or Receiver and their successors in title the owners and occupiers for the time being of the Property and their agents and contractors and all persons authorised therein fee simple:

- 28.1 A right of way at all times and for all purposes with or without vehicles over the Estate Roads and until the Estate Roads have been constructed over such unbuilt parts of the Estate as form the route of the intended Estate Roads or as reasonably necessary.
- 28.2 The right to enter such parts of the Estate upon giving reasonable prior notice (except in emergency) with or without workmen agents surveyors plant machinery equipment and materials for the purposes of:
  - (a) constructing enlarging or increasing the capacity of and thereafter using any Service Media on the Estate and connecting to and thereafter using any Service Media on the Estate and inspecting cleansing maintaining repairing replacing renewing reconstructing relaying improving and upgrading any Service Media on the Estate; and
  - (b) constructing maintaining and repairing the Estate Roads in accordance with the Planning Permission should the Borrower not have done so.

PROVIDED THAT any damage occasioned by the exercise of such right shall be made good to the reasonable satisfaction of the Borrower.

**29 Counterparts**

This Deed may be executed in any number of counterparts, and by each party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument.

**30 Governing Law**

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

**This Deed** has been entered into as a deed on the date given at the beginning of this Deed.

SIGNATORIES TO THE DEED

Executed as a deed by )  
**CALA MANAGEMENT LIMITED** )  
acting by a director *NICHOLAS BROWN*  
in the presence of

[Redacted Signature]

Signature of witness

Name *EDWARD VASS*

Address [Redacted]

[Redacted Address]

Executed as a deed by )  
**RYDON HOMES LIMITED** )  
acting by two Directors or Director and )  
Secretary )

.....

.....

Executed as a deed by )  
**GLEESON STRATEGIC LAND LIMITED** )  
acting by two Directors or Director and )  
Secretary )

.....

.....





Dated

17 December

2021

CALA MANAGEMENT LIMITED (1)

and

RYDON HOMES LIMITED

And

GLEESON STRATEGIC LAND LIMITED (2)

---

CHARGE (OF PART) BY WAY OF LEGAL  
MORTGAGE

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- (j) up to and including the first 40 Disposals for value to a bona fide third party buyer or lessee of a single physically completed Unit (whether constructed or in the course of construction) prior to the Second Payment Date;
- (k) the grant of easements in the Bellway Land Transfer

**Finance Document** means this Deed and the Contract.

**First Payment Date** means [~~12 months from completion~~ <sup>17 December 2022</sup>] or such earlier date as the Borrower may specify to the Lender with 7 days' notice.

**Hazelgrove Option Agreement** means the option agreement dated 26 June 2015 made between James Stuart Hazelgrove (1) and Rydon Homes Limited (2) together with any documents or deed supplemental to it.

**Hazelgrove Property** means land being motor Racing Track and Land to the North of Water Lane, Angmering being the land registered under Title Number WSX218654.

**Interest** means interest at the rate of 4% above the base rate of Bank of Scotland plc from time to time in place accruing on a daily basis and compounded every three months and payable both before and after any demand or judgement (or in the event the base rate of Bank of Scotland plc ceases to be available such other high street clearing bank as the Borrower and the Lender may agree (acting reasonably and without delay)

**Lenders Solicitors** means for Rydon Rydon Group Limited Rydon House Station Road Forest Row East Sussex RH18 5DW (ref: NM) and for Gleeson Gowling WLG (UK) LLP of Two Snow Hill Birmingham B4 6WR (ref MC)

**Party** means a party to this Deed.

**Payment Date** means either the First Payment Date or the Second Payment Date as the case may be.

**Perilli Property** means:

- (a) Land lying to the East of Dappers Lane, Angmering, West Sussex being part of the land registered at the Land Registry under Title Number WSX254818; and
- (b) St Denys South, Dappers Lane, Angmering, West Sussex being part of the registered at the Land Registry under Title Number WSX362431 and part of the land registered at the Land Registry under Title Number WSX363829.

**Permitted Development** means the development of the Estate (including the Property) permitted by the Planning Permission

**Plan** means the plan annexed hereto

**Planning Permission** means the outline planning permission granted by Arun District Council with reference number A/40/18/OUT and dated 27 August 2019 together with the Section 106 Agreement together with reserved matters approval to be obtained by or on behalf of the Borrower for the mixed use development of the Estate in each case as may be varied from time to time or any other planning permission implemented by the Borrower prior to the Second Payment Date on the Estate

**Property** means such parts of the Estate as are shown <sup>crowned blue</sup> edged-red on the Plan but excluding any such part(s) of the Property as are subsequently released from this legal charge

**Receiver** means any receiver, manager or administrative receiver appointed by the Lender in respect of the Borrower or any of the Property.

**Registered Provider** means any one of the following.

- (a) a body which meets the definition of 'housing association' as defined in section 1(1) of the Housing Associations Act 1985
- (b) an independent housing organisation listed as a provider of social housing on the register maintained by the Regulator of Social Housing under section 111 of the Housing and Regeneration Act 2008
- (c) a registered social landlord registered with the Welsh Ministers under section 1 of the Housing Act 1996;

**Second Payment Date** means <sup>17 December 2023</sup> [24 months after completion] or such earlier date as the Borrower may specify to the Lender with 7 days' notice.

**Section 106 Agreement** means the agreement dated 27 August 2019 made between Arun District Council (1), West Sussex County Council (2), James Stuart Hazelgrove and Steven Lindsay Cloran and Graham Robert Fuller (3), Clement Charles Fitzroy Somerset and Sophie Elizabeth Pinnegar (4), Daryle Fedele Perilli and Sonja Browning-Page (5) and Rydon Homes Limited (6) as the same may be varied from time to time in connection with the Estate or any other agreement entered into by the Borrower pursuant to Section 106 of the Town and Country Planning Act in respect of a Planning Permission.

**Secured Obligations** means the Borrower's obligation to pay all unpaid parts of the Deferred Consideration and a reference to a Secured Obligation shall be construed as a reference to Deferred Sum 1 or Deferred Sum 2 accordingly (as the case may be).

**Security** means a fixed mortgage or charge.

**Security Period** means the period beginning on the date of this Deed and ending on the date on which the Lender is satisfied that the Secured Obligations have been irrevocably and unconditionally satisfied in full and all facilities made available by the Lender to the Borrower have been cancelled

**Service Media** means all drains, sewers, watercourses, gullies, channels, media, culverts, outflows, soakaways, cesspools, septic tanks, pipes, flues, cables, wires, conductors and other media for the supply or removal of sewage, water, electricity, telephones, telecommunications and all other services and utilities and all structures, machinery and equipment ancillary to those media (and such expression shall include any replacing renewing reconstructing relaying improving and upgrading thereof).

**Services** means foul water drainage, surface water drainage, water, gas, electricity, telephones, telecoms and all other services and utilities.

**Somerset Option Agreement** means the option agreement dated 26 June 2015 made between John Fitzroy Pechell Somerset (1) and Dr Adam Werne Payner and Raglan Horatio

Andrew Harold Tribe (2) and Clement Charles Fitzroy Somerset (3) and Rydon Homes Limited (4) together with any documents or deed supplemental to it.

**Somerset Property** means land at Ecclesden Farm, Water Lane, Angmering being part of the land registered under Title Number WSX387225 and the land at Ecclesden Farm, Water Lane, Angmering being the land registered under Title Number WSX387226 being part of the land defined by the Somerset Option Agreement

**Units** means:

- (a) a single dwelling (or the intended site of a single dwelling) including any curtilage together with associated private driveways, garage, parking or access (being a house, flat, maisonette, bungalow or other construction intended for residential use) erected or to be erected on some part of the Property; and/or
- (b) a single commercial unit (or the intended site of a single commercial unit) including any curtilage together with associated driveway, garage, parking or access erected or to be erected on some part of the Property;

and Unit shall be interpreted accordingly.

**Works Agreement** means any agreement that is made under one or more of Sections 38 and/or 278 Highways Act 1980 and Section 104 Water Industry Act 1991 or under the Gas Act 1980 or the Water Act 1989 or any statutory provision with a similar purpose or any agreement or easement or wayleave with a local water authority, the Environment Agency, an Internal Drainage Board or other appropriate authority about water supply to and drainage of foul and surface water and effluent from the Property or any other agreement with a competent authority or body relating to other services for the benefit of or access to and from the Estate

## 1.2 Interpretation

- (a) Unless a contrary indication appears, a reference in this Deed to
  - (i) the Lender, the Borrower, any Party or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
  - (ii) assets includes present and future properties, revenues and rights of every description (including any right to receive such revenues);
  - (iii) a Finance Document or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented or restated (however fundamentally);
  - (iv) guarantee means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent to purchase or assume any indebtedness of any person or to make an investment in, or loan to, any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
  - (v) indebtedness includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;

- (vi) a person includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust joint venture, consortium or partnership (whether or not having separate legal personality) of two or more of the foregoing or any other entity or body of any description;
  - (vii) a regulation includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but if not having the force of law, then being a type with which persons to which it applies customarily comply) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation; and
  - (viii) a provision of law is a reference to a provision, of any treaty, legislation, regulation, decree, order or by-law and any secondary legislation enacted under a power given by that provision, as amended, applied or re-enacted or replaced (whether with or without modification) whether before or after the date of this Agreement.
- (b) Clause and schedule headings are for ease of reference only.
  - (c) Any word importing the singular shall include the plural and vice versa.
  - (d) An Event of Default is continuing if it has not been remedied or waived to the satisfaction of the Lender in each case.

### **1.3 Third party rights**

- (a) Unless expressly provided to the contrary in any Finance Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed or any other Finance Document issued or entered into under or in connection with it but this does not affect any right or remedy of a third party which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.
- (b) Unless expressly provided to the contrary in any Finance Document the consent of any person who is not a Party is not required to rescind or vary this Deed or any other Finance Document entered into under or in connection with it.

### **1.4 Incorporated terms**

The terms of the Finance Documents and of any side letters relating to the Finance Documents and the Secured Obligations are incorporated into this Deed to the extent required for any purported disposition of any Property contained in this Deed to be a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

## **2 Covenant to pay**

The Borrower covenants with the Lender:-

- 2.1 to pay and discharge the Secured Obligations when they become due for payment and discharge in accordance with the terms of the Contract
- 2.2 To pay Interest on any amount which is not paid under this Deed from the due date until the date on which such amount is unconditionally and irrevocably paid and discharged in full

### **3 Charging provisions**

#### **3.1 General**

All Security created by the Borrower under clauses 3.2 and 3.3 (inclusive) is granted to the Lender, is a continuing security for the payment and discharge of the Secured Obligations, granted with full title guarantee and granted in respect of all the right, title and interest (if any), present and future, of the Borrower in and to the Property.

#### **3.2 First legal mortgage**

The Borrower charges by way of first legal mortgage the Property.

#### **3.3 Extent of Security**

It is agreed that this legal charge is intended to be the sole security which is held by the Lender over the Property for the Secured Obligations and that the Lender will not take or exercise any other security (including any lien) over the Property unless the Lender and the Borrower expressly agree otherwise in writing.

### **4 Negative pledge**

The Borrower shall not create or permit to subsist any Security over any of the Property without the prior written consent of the Lender. Save as otherwise permitted by clause 5 the Borrower shall not sell, transfer or otherwise Dispose of any of the Property on terms whereby they are or may be leased to or re-acquired by it or enter into any other preferential arrangement having a similar effect.

### **5 Restrictions on disposals**

5.1 Save as otherwise permitted by clause 5.2 the Borrower shall not enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to Dispose of the Property or any part of the Property.

5.2 Without prejudice to the generality of clause 5.1 the Lender agrees with the Borrower within 10 working days of a written request by the Borrower to release any Exempt Land from the security constituted by this Deed (and Legal Charge) including a release from the restriction referred to in clause 7.1 (in respect of the Exempt Land only).

5.3 The Lender will if so requested by and at the reasonable and proper cost of the Borrower in order to facilitate the Permitted Development enter into any relevant Works Agreement (as mortgagee only) and return to the Borrower such Works Agreement and/or consent to entering into (as Lender) any relevant Works Agreement within 10 Working Days following receipt of any such Works Agreement Provided That the Borrower shall indemnify the Lender from and against all costs, expenses and liabilities arising under any such Works Agreement.

5.4 If the Lender fails to comply with its obligations in clause 5.3 the Lender hereby irrevocably appoints the Borrower its attorney by way of security to execute the relevant Works Agreement.

5.5 Without prejudice to the foregoing on the Second Payment Date and upon receipt by the Lender's Solicitors of Deferred Sum 2 the Lender shall release the Property from this legal charge and the Lender will procure that the Lender's Solicitors forthwith (and any event within 5 Working Days of receipt of Deferred Payment 2) provide the Buyer's Solicitors with a duly completed Land Registry Form DS1 and RX4 in respect of the remainder of the Property.



5.6 For the purpose of the obligations on the Lender arising pursuant to this clause 5:

- (a) the Lender's Solicitors are irrevocably instructed and authorised to act on behalf of Lender to deal with all such matters and requests; and
- (b) If the Lender fails to execute any release or issue any certificate or consent to deal with the restriction referred to in clause 7.1 or to complete any relevant HM Land Registry forms to remove the restriction from the Proprietorship Register of the Property in accordance with its obligations in this clause 5, the Lender hereby irrevocably appoints the Borrower its attorney by way of security to execute the relevant Release.

## **6 Further assurance**

- 6.1 The Borrower shall promptly do all such acts and execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Lender may reasonably specify (and in such form as the Lender may reasonably require) in favour of the Lender or its nominee(s) to create, perfect, protect and maintain the security created or intended to be created under or evidenced by this Deed or for the exercise of any rights, powers and remedies of the Lender provided by or pursuant to this Deed or by law and/or (if an Event of Default is continuing) to facilitate the realisation of the assets which are, or are intended to be, the subject of the security created by or under this Deed.
- 6.2 The Borrower shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any security conferred or intended to be conferred on the Lender by or pursuant to this Deed.
- 6.3 Any document required to be executed by the Borrower under clauses 5.6 and this clause 5.6(b) will be prepared at the cost of the Borrower.

## **7 Borrower's Covenants**

- 7.1 The Borrower shall promptly advise the Lender in writing on becoming aware of the occurrence of any Event of Default.
- 7.2 The Borrower shall, at its own expense, take whatever action the Lender and/or any Receiver may reasonably require for:
  - (a) creating, perfecting or protecting the security intended to be created by this Deed;
  - (b) after the security constituted by this Deed has become enforceable, facilitating the realisation of any of the Property; or
  - (c) facilitating the exercise of any right, power, authority or discretion exercisable by the Lender and/or any Receiver in respect of any of the Property.

including, without limitation, if the Lender thinks it necessary (acting reasonably), the execution of any transfer, conveyance, assignment or assurance of all or any of the assets forming part of, or intended to form part of, the Property (whether to the Lender or to his nominee) and the giving of any notice, order or direction and the making of any registration.

- 7.3 The Borrower shall not do or permit to be done, any act or thing which would or might depreciate, jeopardise or otherwise prejudice the security held by the Lender or materially diminish the value of any of the Property or the effectiveness of the security created by this Deed SAVE THAT the carrying out of the Permitted Development at the Property shall not be a breach of this covenant.
- 7.4 The Borrower:
- (a) shall not, without the prior written consent of the Lender use or permit the Property to be used in any way contrary to law, and
  - (b) shall comply with the requirements of any law and regulation relating to or affecting the Property or the use of it or any part of it.
- 7.5 The Borrower shall not, save as permitted by this Deed, without the prior written consent of the Lender, enter into any onerous or restrictive obligations affecting the whole or any part of the Property or create or permit to arise any overriding interest, easement or right whatever in or over the whole or any part of the Property SAVE THAT the carrying out of the Permitted Development at the Property shall not be a breach of this covenant AND SAVE FURTHER THAT the granting of easements or wayleaves in respect of infrastructure required to serve the Permitted Development and / or the granting of easements and rights in respect of the disposal of Units shall not be a breach of this covenant.
- 7.6 Save as permitted by this Deed, the Borrower shall procure that no person shall become entitled to assert any proprietary or other like right or interest over the whole or any part of the Property, without the written consent of the Lender.
- 7.7 The Borrower shall:
- (a) observe and perform all covenants, stipulations and conditions to which the Property, or the use of it, is or may be subject; and
  - (b) diligently enforce all covenants, stipulations and conditions benefiting the Property and shall not and shall not agree to) waive, release or vary any of the same.
- 7.8 The Borrower shall:
- (a) give full particulars to the Lender of any notice, order, direction, designation, resolution, application, requirement or proposal given or made by any public or local body or authority (a "Notice") that specifically applies to the Property, or to the locality in which it is situated, within seven days after becoming aware of the relevant Notice; and
  - (b) (if the Lender so requires) immediately, and at the cost of the Borrower, take all reasonable and necessary steps to comply with any Notice and make, or join with the Lender in making, such objections or representations in respect of any such Notice.

## **8 Land Registry**

- 8.1 In relation to the Property, the Borrower authorises and consents to an application being made on Form RX1 (or such other form as may be prescribed from time to time) to the Chief Land Registrar for registration of the following restriction against the relevant registered estate.

*"No transfer or lease of the registered estate by the proprietor of the registered estate or by the proprietor of any registered Charges not being a Charge registered before the date of this restriction is to be registered without a written consent signed by the proprietor for the time being of the charge dated 2 in favour of Rydon Homes Limited and Gleeson Strategic Land Limited or their conveyancer"*

## **9 Events of Default**

### **9.1 Non-payment**

The Borrower does not pay within 20 Business Days of a Payment Date the relevant Secured Obligation PROVIDED THAT the Lender has made a demand for payment.

### **9.2 Breach of Obligations**

The Borrower has not remedied to the satisfaction of the Lender in all material respects any substantial breach of its obligations in this Deed after the expiry of written notice from the Lender and served on the Borrower allowing a reasonable time in which to remedy such breach

### **9.3 Default**

A default by the Borrower to pay the Deferred Consideration in accordance with the terms of this Contract and/or any default under this Deed

### **9.4 Insolvency**

- (a) The Borrower is unable or admits its inability to pay its debts as they fall due, suspends making payments of any of its debts or commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness. The value of the assets of the Borrower is less than its liabilities (taking into account contingent and prospective liabilities). A moratorium is declared in respect of any indebtedness of the Borrower or
- (b) A trustee in bankruptcy or similar officer is appointed in respect of the Borrower or
- (c) the Borrower or any surety ceases or threatens to cease to carry on, or disposes or threatens to dispose of, its business or a material part of its business; or
- (d) the Borrower or any surety makes a proposal for a voluntary arrangement under Part I of the Insolvency Act 1986 or enters, or seeks to enter, into any other form of composition or arrangement with its creditors whether in whole or in part; or
- (e) the Borrower or any surety becomes subject to a notice of an intended appointment of an administrator or an application is made to any court or any meeting of directors or members is called with a view to the Borrower or any surety entering into administration; or
- (f) a petition is presented in any court or a meeting is convened for the purpose of considering a resolution for the winding up of the Borrower or any surety (except in the case of a reconstruction or amalgamation that has the previous approval in writing of the Lender); or
- (g) the Borrower is removed from the Register of Companies.

## **10 Enforcement of security**

### **10.1 When security is enforceable**

The security constituted by this legal charge shall become enforceable immediately at any time after an Event of Default and the power of sale and other powers conferred by section 101 LPA, as varied or amended by this legal charge, shall be exercisable. After the security constituted by this legal charge has become enforceable, the Lender may in its absolute discretion enforce all or any part of the security constituted by this legal charge in such manner as it sees fit.

### **10.2 Acts of enforcement**

The Lender may, at its absolute discretion, at any time after the Security created by or under this Deed is enforceable:

- (a) enforce all or any part of the security created by or under this Deed in any manner it sees fit;
- (b) exercise its rights and powers conferred upon mortgagees by the Law of Property Act 1925, as varied and extended by this Deed, and rights and powers conferred on a Receiver by this Deed, whether or not it has taken possession or appointed a Receiver to any of the Property;
- (c) appoint a Receiver to all or any part of the Property; or
- (d) exercise its power of sale under section 101 of the Law of Property Act 1925 (as amended by this Deed).

### **10.3 Statutory powers - general**

- (a) For the purposes of all powers implied by statute, the Secured Obligations are deemed to have become due and payable on the date of this Deed.
- (b) Section 103 of the Law of Property Act 1925 and section 93 of the Law of Property Act 1925 do not apply to the security constituted by or under this Deed.
- (c) The statutory powers of leasing conferred on the Lender are extended so that, without the need to comply with any provision of section 99 or section 100 of the Law of Property Act 1925, the Lender is empowered to lease and make agreements for lease at a premium or otherwise, accept surrenders of leases and grant options or vary or reduce any sum payable under any leases or tenancy agreements as it may think fit.
- (d) Each Receiver and the Lender is entitled to all the rights, powers, privileges and immunities conferred by the Law of Property Act 1925 and the Insolvency Act 1986 on mortgagees and Receivers when such Receivers have been duly appointed under the relevant Act.

### **10.4 Contingencies**

If the Lender enforces the security constituted by or under this Deed at a time when no amounts are due to it under the Finance Documents but at a time when amounts may or will

become so due, the Lender (or the Receiver) may pay the proceeds of any recoveries effected by it into an interest bearing suspense account.

#### **10.5 Mortgagee in possession - no liability**

Neither the Lender nor any Receiver will be liable, by reason of entering into possession of a Secured Asset, to account as mortgagee in possession or for any loss on realisation or for any default or omission for which a mortgagee in possession might otherwise be liable.

#### **10.6 Redemption of prior mortgages**

At any time after the security created by or under this Deed has become enforceable, the Lender may, at the sole cost of the Borrower (payable to the Lender on demand) redeem any prior form of security over any Secured Asset and/or procure the transfer of that security to itself and/or settle and pass the accounts of any prior mortgagee, chargee or encumbrancer which once so settled and passed shall be conclusive and binding on the Borrower.

### **11 Receiver**

#### **11.1 Appointment of Receiver**

- (a) At any time after any security created by or under this Deed is enforceable, the Lender may appoint a Receiver to all or any part of the Property in accordance with clause 10.2 (Acts of enforcement). At any time, if so requested in writing by the Borrower, without further notice, the Lender may appoint a Receiver to all or any part of the Property as if the Lender had become entitled under the Law of Property Act 1925 to exercise the power of sale conferred under the Law of Property Act 1925
- (b) Any Receiver appointed under this Deed shall be the agent of the Borrower and the Borrower shall be solely responsible for his acts or defaults and for his remuneration and liable on any contracts or engagements made or entered into by him and in no circumstances whatsoever shall the Lender be in any way responsible for any misconduct, negligence or default of the Receiver.

#### **11.2 Removal**

The Lender may by written notice remove from time to time any Receiver appointed by it and, whenever it may deem appropriate, appoint a new Receiver in the place of any Receiver whose appointment has terminated.

#### **11.3 Powers of Receiver**

##### **(a) General**

- (i) In addition to those conferred by the Law of Property Act 1925 on any Receiver appointed under that Act, each Receiver has, and is entitled to exercise, all of the rights, powers and discretions set out in this clause 11.3
- (ii) If there is more than one Receiver holding office at the same time, unless the document appointing him states otherwise, each Receiver may exercise all of the powers conferred on a Receiver under this Deed or under the Insolvency Act 1986 individually and to the exclusion of any other Receivers.
- (iii) A Receiver may, in the name of the Borrower do all other acts and things which he may consider expedient for realising any Secured Asset and

exercise in relation to any Secured Asset all the powers, authorities and things which he would be capable of exercising if he were its absolute beneficial owner.

**(b) Borrow money**

A Receiver may raise and borrow money (either unsecured or on the security of any Secured Asset, either in priority to the security constituted by this Deed or otherwise) on any terms and for whatever purpose which he thinks fit. No person lending that money need enquire as to the propriety or purpose of the exercise of that power or to check the application of any money so raised or borrowed.

**(c) Carry on business**

A Receiver may carry on the business of the Borrower as he thinks fit and, for the avoidance of doubt, a Receiver may apply for such authorisations as he considers in his absolute discretion appropriate.

**(d) Compromise**

A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person who is or claims to be a creditor of the Borrower or relating in any way to any Secured Asset.

**(e) Delegation**

A Receiver may delegate his powers in accordance with clause 12 (Delegation).

**(f) Employees**

For the purposes of this Deed, a Receiver as he thinks appropriate, on behalf of the Borrower or for itself as Receiver, may appoint and discharge managers, officers, agents, accountants, servants, workmen and others upon such terms as to remuneration or otherwise as he may think proper and discharge any such persons appointed by the Borrower.

**(g) Leases**

A Receiver may let any Secured Asset for any term and at any rent (with or without a premium) which he thinks proper and may accept a surrender of any lease or tenancy of any Property on any terms which he thinks fit (including the payment of money to a lessee or tenant on a surrender).

**(h) Legal actions**

A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings or submit to arbitration or any form of alternative dispute resolution in the name of the Borrower in relation to any Secured Asset as he considers expedient.

**(i) Possession**

A Receiver may take immediate possession of, get in and collect any Secured Asset.

**(j) Protection of assets**

A Receiver may, in each case as he may think fit make and effect all repairs and insurances and do all other acts which the Borrower might do in the ordinary conduct of its business be they for the protection or for the improvement of the Property commence and/or complete any building operations on the Property or other Secured Asset and apply for and maintain any planning permission, building regulation approval or any other permission, consent or licence.

**(k) Receipts**

A Receiver may give valid receipts for all monies and execute all assurances and things which may be expedient for realising any Secured Asset.

**(l) Sale of assets**

A Receiver may sell, exchange, convert into monies and realise any Secured Asset by public auction or private contract in any manner and on any terms which he thinks proper. The consideration for any such transaction may consist of cash, debenture or other obligations, shares, stock or other valuable consideration and any such consideration may be payable in a lump sum or by instalments spread over such period as he thinks fit. Fixtures and any plant and machinery annexed to any part of the Property may be severed and sold separately from the property containing them without the consent of the Borrower.

**(m) Subsidiaries**

A Receiver may form a subsidiary of the Borrower and transfer to that subsidiary any Secured Asset.

**(n) Deal with Property**

A Receiver may, without restriction sell, let or lease, or concur in selling, letting or leasing, or vary the terms of, determine, surrender or accept surrenders of, leases or tenancies of, or grant options and licences over or otherwise dispose of or deal with, all or any part of the Property without being responsible for loss or damage, and so that any such sale, lease or disposition may be made for cash payable by instalments, loan stock or other debt obligations or for shares or securities of another company or other valuable consideration. The Receiver may form and promote, or concur in forming and promoting, a company or companies to purchase, lease, licence or otherwise acquire interests in all or any 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 of the Property on such terms and conditions whether or not including payment by instalments secured or unsecured as he may think fit.

**(o) Security**

A Receiver may redeem any prior security and settle and pass the accounts of the person entitled to the prior security so that any accounts so settled and passed shall (subject to any manifest error) be conclusive and binding on the Borrower and the money so paid shall be deemed to be an expense properly incurred by the Receiver.

**(p) Land**

The Receiver may purchase or acquire any land and purchase, acquire or grant any interest in or right over land. A Receiver may implement or continue the development

of (and obtain all consents required in connection therewith) and/or complete any buildings or structures on, any real property comprised in the Property and do all acts and things incidental to the Property.

**(q) Incidental matters**

A Receiver may do all other acts and things including without limitation, signing and executing all documents and deeds as may be considered by the Receiver to be incidental or conducive to any of the matters or powers listed here or granted by law or otherwise incidental or conducive to the preservation, improvement or realisation of the Property and to use the name of the Borrower for all the purposes set out in this clause 11.

**11.4 Remuneration**

The Lender may from time to time fix the remuneration of any Receiver appointed by it.

**12 Power of Attorney**

By way of security, the Borrower irrevocably appoints the Lender, every Receiver and every Delegate separately to be the attorney of the Borrower and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things that the Borrower is required to execute and do under this Deed, where the Borrower has failed to do any such actions following receipt of reasonable notice from the Lender.

**13 Delegation**

13.1 The Lender and any Receiver may delegate by power of attorney or in any other manner all or any of the powers, authorities and discretions which are for the time being exercisable by the Lender and the Receiver (as appropriate) under this Deed to any person or persons as it shall think fit. Any such delegation may be made upon such terms and conditions (including the power to sub-delegate) as the Lender and Receiver (as appropriate) may think fit.

13.2 The Lender and any Receiver will not be liable or responsible to the Borrower or any other person for any losses, liabilities or expenses arising from any act, default, omission or misconduct on the part of any delegate.

**14 Application of monies**

14.1 Sections 109(6) and (8) (Appointment, powers, remuneration and duties of receiver) of the Law of Property Act 1925 shall not apply to a Receiver appointed under this Deed. All monies received by the Lender or any Receiver under this Deed and applied in discharge of the Secured Obligations shall be applied to the Secured Obligations in such order as the Lender may determine. The Lender and any Receiver may place any money received, recovered or realised pursuant to this Deed in an interest bearing suspense account and it may retain the same for such period as it considers expedient without having any obligation to apply the same or any part of it in or towards discharge of the Secured Obligations.

**15 Remedies and waivers**

No failure to exercise, nor any delay in exercising, on the part of the Lender or any Receiver, any right or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provided by law. A waiver given or consent granted by



the Lender under this Deed will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

## **16 Protection of third parties**

16.1 No person (including a purchaser) dealing with the Lender or a Receiver or its or his agents has an obligation to enquire of the Lender, Receiver or others whether the Secured Obligations have become payable, whether any power purported to be exercised has become exercisable, whether any Secured Obligations or other monies remain outstanding, how any monies paid to the Lender or to the Receiver shall be applied, or the status, propriety or validity of the acts of the Receiver the Lender.

16.2 The receipt of the Lender or any Receiver shall be an absolute and a conclusive discharge to a purchaser and shall relieve him of any obligation to see to the application of any monies paid to or by the direction of the Lender or any Receiver.

16.3 In clauses 16.1 and 16.2 **purchaser** includes any person acquiring, for money or monies worth, any lease of, or Security over, or any other interest or right whatsoever in relation to, the Property or any of them.

## **17 Additional security**

The Security created by or under this Deed is in addition to and is not in any way prejudiced by any guarantee or security now or subsequently held by the Lender.

## **18 Settlements conditional**

18.1 If the Lender (acting reasonably) believes that any amount paid by the Borrower or any other person in respect of the Secured Obligations is capable of being avoided or set aside for any reason, then for the purposes of this Deed, such amount shall not be considered to have been paid.

18.2 Any settlement, discharge or release between the Borrower and the Lender shall be conditional upon no security or payment to or for the Lender by the Borrower or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any law relating to bankruptcy, insolvency or liquidation or otherwise.

## **19 Subsequent Security**

If the Lender receives notice of any other subsequent security or other interest affecting all or any of the Property it may open a new account or accounts for the Lender in its books. If it does not do so then, unless it gives express written notice to the contrary to the Borrower, as from the time of receipt of such notice by the Lender, all payments made by the Borrower to the Lender shall be treated as having been credited to a new account of the Borrower and not as having been applied in reduction of the Secured Obligations.

## **20 Set-off**

The Lender may, set off any matured obligation due from the Borrower (to the extent beneficially owned by the Lender) against any matured obligation owed by the Lender to the Borrower, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Lender may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

## **21 Notices**

Any communication or notice under or in connection with this Deed shall be made in writing and shall be made by letter and shall be sufficiently served if it is served in any manner in which a notice may be served on a mortgagor under section 196 of the Law of Property Act 1925 or if it is sent by ordinary prepaid post addressed to the Borrower at its last known address and a notice so served shall be deemed to have been served on the working day following that on which the letter containing such notice shall have been posted. A notice under this Deed is not validly served if sent by email.

## **22 Invalidity**

If at any time, any provision of a Finance Document is or becomes illegal, invalid or unenforceable in any respect, neither the legality, validity or enforceability of the remaining provisions will in any way be affected or impaired.

## **23 Assignment**

- (a) The Lender may assign or otherwise transfer all or any part of its rights under this Deed or any security created by or under it.
- (b) The Borrower may not or otherwise transfer all or any part of its rights under this Deed or any security created by or under it.

## **24 Releases**

Upon the expiry of the Security Period, the Lender shall, at the request and cost of the Borrower, take whatever action is necessary to release and reassign to the Borrower its rights arising under this Deed the Property from the security created by and under this Deed, and return all documents or deeds of title delivered to it under this Deed.

## **25 Certificates and determinations**

Any certificate or determination by the Lender of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

## **26 Borrower's Indemnity**

- (a) The Borrower shall (within 3 Business Days of demand by the Lender) indemnify the Lender and every Receiver and delegate (each an **Indemnified Person**) against any cost, loss or liability together with any associated VAT incurred by any of them as a result of:
  - (i) the taking, holding, protection or enforcement of this Deed;
  - (ii) the exercise of any of the rights, powers, discretions and remedies vested in the Lender and each Receiver and delegate by the Finance Documents or by law, and
  - (iii) any default by the Borrower in the performance of any of the obligations expressed to be assumed by it in the Finance Documents.

- (b) The Borrower shall indemnify the Lender against any and all costs, losses, liabilities or expenses together with any associated VAT incurred by the Lender arising (directly or indirectly) out of or in connection with:
  - (i) any breach or potential breach of or liability (whether civil and/or criminal) under any Environmental Law
  - (ii) any responsibility on the part of the Lender in respect of any clean-up, repair or other corrective action, or
  - (iii) the business or any real property of the Borrower.
- (c) The Lender may indemnify itself out in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this clause and shall have a lien on this Deed and the proceeds of the enforcement of this Deed for all monies payable to it.

## **27 Exclusion of liability**

### **27.1 No liability**

- (a) The Lender will not be liable for any action taken by it (or any omission to take action) under or in connection with this Deed unless directly caused by its gross negligence or wilful misconduct.
- (b) Neither the Lender nor any Receiver shall be liable in respect of all or any part of the Property or for any loss or damage which arises out of the exercise or the attempted or purported exercise of, or the failure to exercise any of, their respective powers unless such loss or damage is caused by its gross negligence or wilful acts of default and recklessness.

### **27.2 Officers and agents**

The Borrower may not take proceedings against any officer, employee or agent of the Lender in respect of any claim it might have against the Lender or in respect of any act or omission of any kind by that officer, employee or agent in relation to this Deed and any officer, employee or agent of the Lender may rely on this clause.

## **28 Rights**

In the event that the Lender or any Receiver enters into possession of the Property or the relevant part of the Property or any part thereof as mortgagee in possession there shall be granted to the Lender or Receiver and their successors in title the owners and occupiers for the time being of the Property and their agents and contractors and all persons authorised therein fee simple.

- 28.1 A right of way at all times and for all purposes with or without vehicles over the Estate Roads and until the Estate Roads have been constructed over such unbuilt parts of the Estate as form the route of the intended Estate Roads or as reasonably necessary.
- 28.2 The right to enter such parts of the Estate upon giving reasonable prior notice (except in emergency) with or without workmen, agents, surveyors, plant, machinery, equipment and materials for the purposes of:
  - (a) constructing, enlarging or increasing the capacity of and thereafter using any Service Media on the Estate and connecting to and thereafter using any Service Media on the

Estate and inspecting cleansing maintaining repairing replacing renewing reconstructing relaying improving and upgrading any Service Media on the Estate; and

- (b) constructing maintaining and repairing the Estate Roads in accordance with the Planning Permission should the Borrower not have done so.

PROVIDED THAT any damage occasioned by the exercise of such right shall be made good to the reasonable satisfaction of the Borrower.

**29 Counterparts**

This Deed may be executed in any number of counterparts, and by each party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument.

**30 Governing Law**

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

This Deed has been entered into as a deed on the date given at the beginning of this Deed.

**SIGNATORIES TO THE DEED**

Executed as a deed by  
**CALA MANAGEMENT LIMITED**  
acting by a director  
in the presence of

)  
)  
)

Signature of witness

Name .....

Address .....

Executed as a deed by  
**RYDON HOMES LIMITED**  
acting by two Directors or Director and  
Secretary

WB/  
)  
)  
CW/AM

Executed as a deed by  
**GLEESON STRATEGIC LAND LIMITED**  
acting by ~~two Directors or Director and~~  
~~Secretary~~ **IN THE PRESENCE**  
**OF :**

)  
)  
)

WITNESS SIGNATURE

WITNESS NAME :

WITNESS ADDRESS :

M. Norton