

Dated

2018

THE SEAMAN PARTNERSHIP LIMITED

SAABON LIMITED

W. STIRLAND LIMITED

CONSULTANT'S DEED OF WARRANTY
in favour of a developer of a
development at Southern Gate, Block B,
Chichester, PO19 8SG

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Memorandum

Date of this Deed

Developer

Saabon Limited (No. 08182897) whose registered office is at The Music Rooms Tanbridge Park Horsham West Sussex RH12 1SU

Consultant

The Seaman Partnership Limited (No 06015319) whose registered office is at Martins Barn, Birdham Road, Chichester, PO20 7BX

Contractor

W. Stirland Limited (No. 0486441), registered office Redmoor Estate, Birdham, West Sussex PO20 7HT

Beneficiary

Saabon Limited (No. 08182897) whose registered office is at The Music Rooms Tanbridge Park Horsham West Sussex RH12 1SU

Consultant's profession

Architect

Development

The development of a Commercial Unit containing 3 offices over 3 floors

Site

Southern Gate, Chichester, PO19 8SG

Date of Appointment

5th July 2017

Date of Building Contract

26th August 2017

Beneficiary's interest

Clause 2: (Professional indemnity insurance)

- (a) Limit of indemnity: not less than £5,000,000.00 for any occurrence or series of occurrences arising out of each and every event,
- (b) Limit of indemnity for pollution, contamination and date recognition not less than £1,000,000 in the aggregate for each year of insurance.

Parties

- (1) The Consultant
- (2) The Beneficiary
- (3) The Contractor

Whereas

- (A) The Contractor and the Consultant have entered into an appointment (**Appointment**) under which the Consultant has agreed to perform certain services (**Services**) and to perform certain other obligations in connection with the Development (which expression includes the Site and the works (**Works**) constructed or to be constructed on or adjacent to the Site or either of them as the case requires).
- (B) The Developer and the Contractor have entered into a building contract (**Building Contract**) under which the Contractor has agreed to design or complete the design of and to construct the Works.

It is agreed in consideration of the sum of £1.00 paid by the Beneficiary, receipt of which the Consultant acknowledges, as follows:

1 Duty of care

The Consultant warrants to the Beneficiary that it has performed and/or subject to the terms of the Appointment shall perform the Services and its other obligations under the Appointment, and that in doing so it has used and/or shall use the skill and care reasonably to be expected of suitably qualified and experienced consultants undertaking duties similar to the Services in relation to projects similar to the Development. Provided that the Consultant shall have no greater liability or liability for a longer duration than it would have if the Beneficiary had been named as a joint client under the Appointment and provided that the Consultant shall not be entitled to rely upon any rights of set off or counterclaim under the Appointment.

2 Professional indemnity insurance

- 2.1 The Consultant warrants to the Beneficiary that there is in force a policy of professional indemnity insurance conforming to the relevant requirements specified in the Memorandum. The Consultant agrees to maintain such insurance at all times until 12 years after the practical completion of the Development under the Building Contract (or if sooner until 12 years after the termination of the employment of the Consultant under the Appointment), provided such insurance is available on commercially reasonable terms having regard (inter alia) to premiums required and policy terms obtainable.
- 2.2 If for any period such insurance is not available on commercially reasonable terms, the Consultant shall forthwith inform the Beneficiary, and shall obtain in respect of such period such reduced level of professional indemnity insurance as is available and as would be fair and reasonable in the circumstances for the Consultant to obtain.
- 2.3 Whenever reasonably required to do so by the Beneficiary, the Consultant shall provide to the Beneficiary documentary evidence in the form of a broker's certificate that the insurance required under this Deed is being maintained.

3 Substitution provisions

- 3.1 The Consultant warrants to the Beneficiary that the Consultant shall not terminate or treat as terminated the Appointment, or discontinue the performance of any of the Services, without first giving to the Beneficiary not less than 28 days' prior notice of the Consultant's intention to do so, specifying the grounds for so doing.
- 3.2 If the Beneficiary serves on the Consultant a notice in accordance with clause 3.3, the Consultant shall not terminate or treat as terminated the Appointment or discontinue the performance of any of the Services, but service of such notice shall not prejudice any other right or remedy the Consultant may have under the Appointment or may acquire by reason of any breach of the obligations of the Beneficiary or its appointee under this clause 3.
- 3.3 Unless the employment of the Consultant shall have terminated previously (and whether or not the Consultant shall have served notice on the Beneficiary pursuant to clause 3.1), if the Beneficiary serves upon the Consultant a notice to do so, the Consultant shall thereafter accept the instructions of the Beneficiary or its appointee to the exclusion of the Contractor under the Appointment.
- 3.4 As against the Contractor and the Beneficiary the Consultant shall be entitled and obliged to rely upon and to comply with such notice served by the Beneficiary under clause 3.3, and shall not make any enquiry into the entitlement of the Beneficiary as against the Contractor to serve such notice.
- 3.5 As from the date of service of notice under clause 3.3, the Beneficiary or its appointee shall assume all the rights and perform all the obligations of the Contractor under the Appointment, provided that this shall not affect or derogate from any right of action the Contractor may have against the Consultant in respect of any breach of duty of the Consultant under or in connection with the Appointment happening prior to the date of service of notice by the Beneficiary under clause 3.3.
- 3.6 Within 21 days after serving notice under clause 3.3, the Beneficiary shall pay to the Consultant an amount equal to the fees and disbursements then owing to the Consultant under the Appointment.
- 3.7 If the employment of the Consultant under the Appointment is terminated before service of any notice under clause 3.3, then if required to do so by notice served by the Beneficiary not later than 12 weeks after the date of such termination, the Consultant shall enter into a new agreement with the Beneficiary or its appointee on the same terms as the Appointment but with such revisions as the Beneficiary and or the Consultant shall reasonably require to reflect altered circumstances. Forthwith upon the execution of such new agreement, the Beneficiary shall pay to the Consultant an amount equal to the fees and disbursements (excluding cancellation fees) then owing to the Consultant under the Appointment.
- 3.8 Upon payment by the Beneficiary in accordance with clause 3.6 or 3.7 of an amount equal to the fees and disbursements owed by the Contractor, the Consultant shall assign to the Beneficiary all the Consultant's rights against the Contractor in respect of such unpaid fees and disbursements, and shall pay to the Beneficiary any of the same subsequently received by the Consultant from the Contractor.
- 3.9 The Beneficiary guarantees to the Consultant the performance of the obligations of any appointee of the Beneficiary nominated under clause 3.3 or 3.7.

3.10 Where the Consultant has given rights in relation to the Appointment similar to those contained in this clause 3 to any other person then if both the Beneficiary and any such other person serve notice under clause 3.2 or clause 3.3 or its equivalent the notice served by the Beneficiary shall prevail over any notice served by any other person.

3.11 The Contractor agrees to the foregoing provisions of this clause 3 and agrees to be bound by them.

4 Deeds of warranty

4.1 The Consultant shall, as the Beneficiary may at any time or times require, promptly execute and deliver a deed or deeds of warranty in favour of Purchasers and/or Tenants, in the terms of this Deed, mutatis mutandis, but excluding the terms of clause 3 (Substitution provisions) and of this clause 4.

4.2 If the Consultant and/or the Contractor fails to execute and deliver any deed pursuant to clause 4.1 within 28 days of the Beneficiary's request, the Beneficiary may execute such deed on behalf of the party in default and the Consultant and the Contractor each hereby appoints the Beneficiary as its attorney for the purpose of executing any such deed. The Consultant and the Contractor each agrees to ratify and confirm any act done by the Beneficiary pursuant to this power of attorney and agrees that this power is irrevocable pursuant to section 4 of the Powers of Attorney Act 1971.

5 Assignment

5.1 The Beneficiary may assign all of its rights under this Deed:

- (a) to any Mortgagee and by way of re-assignment on redemption; and
- (b) by absolute assignment to any Group Company of the Beneficiary; and
- (c) by absolute assignment on two other occasions only.

5.2 If the interest of the Beneficiary in the Development is as trustee, it may also assign its rights under this Deed to another trustee of the same trust.

5.3 In this Deed references to the Beneficiary include where the context admits its permitted assignees, but not so as to permit more than two assignments under clause 5.1(c).

5.4 The Consultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with clause 5.1 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed, (whenever happening) by reason that such person is an assignee and not a named promisee hereunder.

6 Copyright

6.1 The Consultant grants to the Beneficiary an irrevocable, non-exclusive royalty-free licence to use and reproduce any drawings, calculations, specifications and/or other documents produced by the Consultant under the Appointment and any designs contained in them (**Documents**) for any purpose connected with the Development (other than by the reproduction of any such designs in any extension to the Development) and to grant sub-licences in the terms of this licence, but copyright in the Documents shall remain vested in the Consultant. The Consultant will not be liable for any use of the Documents for any purposes other than those for which the same are or were produced. The Beneficiary shall on written

request and upon paying a reasonable copying charge, be entitled to be supplied by the Consultant with full and proper copies of the Documents.

- 6.2 The Consultant warrants to the Beneficiary that the use of the Documents for the purposes of the Development will not infringe the rights of any third person.

7 Extraneous rights

- 7.1 This Deed shall not negate or diminish any duty or liability otherwise owed by the Consultant to the Beneficiary.

- 7.2 No approval or inspection of the Development or of any designs or specifications and no testing of any work or materials by or on behalf of the Beneficiary and no omission to inspect or test shall negate or diminish any duty or liability of the Consultant arising under this Deed.

8 Contracts (Rights of Third Parties) Act 1999

This Deed is not intended to confer any rights on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

9 Expiry of warranty

No proceedings shall be commenced against the Consultant under this Deed more than 12 years after the practical completion of the Development under the Building Contract (or, if earlier, more than 12 years after the employment of the Consultant under the Appointment is terminated).

10 Service of notice

Any notice to be served under this Deed must be in writing and must be served by hand or by recorded delivery, and in the case of a corporation must be served at its registered office for the time being. In any other case notice may be served at any address for the time being of the person to be served. Service shall take effect, if given by hand, on the date of delivery. If given by post, it shall take effect 2 days after posting, excluding Saturdays, Sundays and statutory holidays.

11 Governing law and interpretation

- 11.1 The law of this Deed is English law and the English courts shall have jurisdiction with regard to all matters arising under it.

- 11.2 The Memorandum is part of this Deed and the definitions given in the Memorandum and in the Recitals apply to this Deed.

- 11.3 In this Deed:

(a) **Group Company** means any subsidiary company or holding company of the Beneficiary, or another subsidiary or holding company of such company, as **subsidiary** and **holding company** are defined in s1159, Companies Act 2006, (as amended);

(b) **Mortgagee** means a person having or acquiring a mortgage or charge over the Development or any part of it;

- (c) **Purchaser** means a person having or acquiring a freehold interest in the Development or any part of it, or a purchaser for a capital consideration of a leasehold interest; and
- (d) **Tenant** means a person having or acquiring a leasehold interest in the Development or any part of it (other than a Purchaser).

11.4 In this Deed:

- (a) **Development** includes part of the Development;
- (b) **person** includes a firm and any entity having legal capacity;
- (c) any term importing gender shall include any gender;
- (d) any term importing the singular includes the plural and vice versa; and
- (e) any reference to any clause or schedule or appendix is a reference to such clause or schedule or appendix of or to this Deed.

11.5 .

11.6 Clause headings do not form part of or affect the interpretation of this Deed.

Executed and delivered as a deed:

Executed as a deed by
The Seaman Partnership Limited
by the signature of a director and
the secretary or of two directors

) Dina Raman.
) Director

) D.L. SEAMAN.
) Print name


.....
Director/Secretary

JANE BURLEY
Print name

Executed as a deed by
Saabon Limited
by the signature of a director and
the secretary or of two directors

)
) Director

)
) Print name

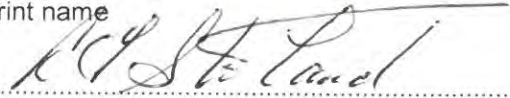
.....
Director/Secretary

.....
Print name

Executed as a deed by
W. Stirland Limited
by the signature of a director and
the secretary or of two directors

) 
) Director

) W. Stirland
) Print name


.....
Director/Secretary

W. STIRLAND
Print name

Dated

2018

THE SEAMAN PARTNERSHIP LIMITED

SAABON LIMITED

W. STIRLAND LIMITED

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in favour of a developer of a
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Memorandum

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Consultant **The Seaman Partnership Limited** (No 06015319) whose registered office is at Martins Barn, Birdham Road, Chichester, PO20 7BX

Contractor **W. Stirland Limited** (No. 0486441), registered office Redmoor Estate, Birdham, West Sussex PO20 7HT

Beneficiary **Saabon Limited** (No. 08182897) whose registered office is at The Music Rooms Tanbridge Park Horsham West Sussex RH12 1SU

Consultant's profession Architect

Development The development of a Commercial Unit containing 3 offices over 3 floors

Site Southern Gate, Chichester, PO19 8SG

Date of Appointment 5th July 2017

Date of Building Contract 26th August 2017

Beneficiary's interest

- Clause 2:** (Professional indemnity insurance)
- (a) Limit of indemnity: not less than £5,000,000.00 for any occurrence or series of occurrences arising out of each and every event,
 - (b) Limit of indemnity for pollution, contamination and date recognition not less than £1,000,000 in the aggregate for each year of insurance.

Parties

- (1) The Consultant
- (2) The Beneficiary
- (3) The Contractor

Whereas

- (A) The Contractor and the Consultant have entered into an appointment (**Appointment**) under which the Consultant has agreed to perform certain services (**Services**) and to perform certain other obligations in connection with the Development (which expression includes the Site and the works (**Works**) constructed or to be constructed on or adjacent to the Site or either of them as the case requires).
- (B) The Developer and the Contractor have entered into a building contract (**Building Contract**) under which the Contractor has agreed to design or complete the design of and to construct the Works.

It is agreed in consideration of the sum of £1.00 paid by the Beneficiary, receipt of which the Consultant acknowledges, as follows:

1 Duty of care

The Consultant warrants to the Beneficiary that it has performed and/or subject to the terms of the Appointment shall perform the Services and its other obligations under the Appointment, and that in doing so it has used and/or shall use the skill and care reasonably to be expected of suitably qualified and experienced consultants undertaking duties similar to the Services in relation to projects similar to the Development. Provided that the Consultant shall have no greater liability or liability for a longer duration than it would have if the Beneficiary had been named as a joint client under the Appointment and provided that the Consultant shall not be entitled to rely upon any rights of set off or counterclaim under the Appointment.

2 Professional indemnity insurance

- 2.1 The Consultant warrants to the Beneficiary that there is in force a policy of professional indemnity insurance conforming to the relevant requirements specified in the Memorandum. The Consultant agrees to maintain such insurance at all times until 12 years after the practical completion of the Development under the Building Contract (or if sooner until 12 years after the termination of the employment of the Consultant under the Appointment), provided such insurance is available on commercially reasonable terms having regard (inter alia) to premiums required and policy terms obtainable.
- 2.2 If for any period such insurance is not available on commercially reasonable terms, the Consultant shall forthwith inform the Beneficiary, and shall obtain in respect of such period such reduced level of professional indemnity insurance as is available and as would be fair and reasonable in the circumstances for the Consultant to obtain.
- 2.3 Whenever reasonably required to do so by the Beneficiary, the Consultant shall provide to the Beneficiary documentary evidence in the form of a broker's certificate that the insurance required under this Deed is being maintained.

3 Substitution provisions

- 3.1 The Consultant warrants to the Beneficiary that the Consultant shall not terminate or treat as terminated the Appointment, or discontinue the performance of any of the Services, without first giving to the Beneficiary not less than 28 days' prior notice of the Consultant's intention to do so, specifying the grounds for so doing.
- 3.2 If the Beneficiary serves on the Consultant a notice in accordance with clause 3.3, the Consultant shall not terminate or treat as terminated the Appointment or discontinue the performance of any of the Services, but service of such notice shall not prejudice any other right or remedy the Consultant may have under the Appointment or may acquire by reason of any breach of the obligations of the Beneficiary or its appointee under this clause 3.
- 3.3 Unless the employment of the Consultant shall have terminated previously (and whether or not the Consultant shall have served notice on the Beneficiary pursuant to clause 3.1), if the Beneficiary serves upon the Consultant a notice to do so, the Consultant shall thereafter accept the instructions of the Beneficiary or its appointee to the exclusion of the Contractor under the Appointment.
- 3.4 As against the Contractor and the Beneficiary the Consultant shall be entitled and obliged to rely upon and to comply with such notice served by the Beneficiary under clause 3.3, and shall not make any enquiry into the entitlement of the Beneficiary as against the Contractor to serve such notice.
- 3.5 As from the date of service of notice under clause 3.3, the Beneficiary or its appointee shall assume all the rights and perform all the obligations of the Contractor under the Appointment, provided that this shall not affect or derogate from any right of action the Contractor may have against the Consultant in respect of any breach of duty of the Consultant under or in connection with the Appointment happening prior to the date of service of notice by the Beneficiary under clause 3.3.
- 3.6 Within 21 days after serving notice under clause 3.3, the Beneficiary shall pay to the Consultant an amount equal to the fees and disbursements then owing to the Consultant under the Appointment.
- 3.7 If the employment of the Consultant under the Appointment is terminated before service of any notice under clause 3.3, then if required to do so by notice served by the Beneficiary not later than 12 weeks after the date of such termination, the Consultant shall enter into a new agreement with the Beneficiary or its appointee on the same terms as the Appointment but with such revisions as the Beneficiary and or the Consultant shall reasonably require to reflect altered circumstances. Forthwith upon the execution of such new agreement, the Beneficiary shall pay to the Consultant an amount equal to the fees and disbursements (excluding cancellation fees) then owing to the Consultant under the Appointment.
- 3.8 Upon payment by the Beneficiary in accordance with clause 3.6 or 3.7 of an amount equal to the fees and disbursements owed by the Contractor, the Consultant shall assign to the Beneficiary all the Consultant's rights against the Contractor in respect of such unpaid fees and disbursements, and shall pay to the Beneficiary any of the same subsequently received by the Consultant from the Contractor.
- 3.9 The Beneficiary guarantees to the Consultant the performance of the obligations of any appointee of the Beneficiary nominated under clause 3.3 or 3.7.

- 3.10 Where the Consultant has given rights in relation to the Appointment similar to those contained in this clause 3 to any other person then if both the Beneficiary and any such other person serve notice under clause 3.2 or clause 3.3 or its equivalent the notice served by the Beneficiary shall prevail over any notice served by any other person.
- 3.11 The Contractor agrees to the foregoing provisions of this clause 3 and agrees to be bound by them.

4 Deeds of warranty

- 4.1 The Consultant shall, as the Beneficiary may at any time or times require, promptly execute and deliver a deed or deeds of warranty in favour of Purchasers and/or Tenants, in the terms of this Deed, mutatis mutandis, but excluding the terms of clause 3 (Substitution provisions) and of this clause 4.
- 4.2 If the Consultant and/or the Contractor fails to execute and deliver any deed pursuant to clause 4.1 within 28 days of the Beneficiary's request, the Beneficiary may execute such deed on behalf of the party in default and the Consultant and the Contractor each hereby appoints the Beneficiary as its attorney for the purpose of executing any such deed. The Consultant and the Contractor each agrees to ratify and confirm any act done by the Beneficiary pursuant to this power of attorney and agrees that this power is irrevocable pursuant to section 4 of the Powers of Attorney Act 1971.

5 Assignment

- 5.1 The Beneficiary may assign all of its rights under this Deed:
- (a) to any Mortgagee and by way of re-assignment on redemption; and
 - (b) by absolute assignment to any Group Company of the Beneficiary; and
 - (c) by absolute assignment on two other occasions only.
- 5.2 If the interest of the Beneficiary in the Development is as trustee, it may also assign its rights under this Deed to another trustee of the same trust.
- 5.3 In this Deed references to the Beneficiary include where the context admits its permitted assignees, but not so as to permit more than two assignments under clause 5.1(c).
- 5.4 The Consultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with clause 5.1 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed, (whenever happening) by reason that such person is an assignee and not a named promisee hereunder.

6 Copyright

- 6.1 The Consultant grants to the Beneficiary an irrevocable, non-exclusive royalty-free licence to use and reproduce any drawings, calculations, specifications and/or other documents produced by the Consultant under the Appointment and any designs contained in them (**Documents**) for any purpose connected with the Development (other than by the reproduction of any such designs in any extension to the Development) and to grant sub-licences in the terms of this licence, but copyright in the Documents shall remain vested in the Consultant. The Consultant will not be liable for any use of the Documents for any purposes other than those for which the same are or were produced. The Beneficiary shall on written

request and upon paying a reasonable copying charge, be entitled to be supplied by the Consultant with full and proper copies of the Documents.

- 6.2 The Consultant warrants to the Beneficiary that the use of the Documents for the purposes of the Development will not infringe the rights of any third person.

7 Extraneous rights

- 7.1 This Deed shall not negate or diminish any duty or liability otherwise owed by the Consultant to the Beneficiary.
- 7.2 No approval or inspection of the Development or of any designs or specifications and no testing of any work or materials by or on behalf of the Beneficiary and no omission to inspect or test shall negate or diminish any duty or liability of the Consultant arising under this Deed.

8 Contracts (Rights of Third Parties) Act 1999

This Deed is not intended to confer any rights on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

9 Expiry of warranty

No proceedings shall be commenced against the Consultant under this Deed more than 12 years after the practical completion of the Development under the Building Contract (or, if earlier, more than 12 years after the employment of the Consultant under the Appointment is terminated).

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Any notice to be served under this Deed must be in writing and must be served by hand or by recorded delivery, and in the case of a corporation must be served at its registered office for the time being. In any other case notice may be served at any address for the time being of the person to be served. Service shall take effect, if given by hand, on the date of delivery. If given by post, it shall take effect 2 days after posting, excluding Saturdays, Sundays and statutory holidays.

11 Governing law and interpretation

- 11.1 The law of this Deed is English law and the English courts shall have jurisdiction with regard to all matters arising under it.
- 11.2 The Memorandum is part of this Deed and the definitions given in the Memorandum and in the Recitals apply to this Deed.
- 11.3 In this Deed:
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 - (b) **Mortgagee** means a person having or acquiring a mortgage or charge over the Development or any part of it;

- (c) **Purchaser** means a person having or acquiring a freehold interest in the Development or any part of it, or a purchaser for a capital consideration of a leasehold interest; and
- (d) **Tenant** means a person having or acquiring a leasehold interest in the Development or any part of it (other than a Purchaser).

11.4 In this Deed:

- (a) **Development** includes part of the Development;
- (b) **person** includes a firm and any entity having legal capacity;
- (c) any term importing gender shall include any gender;
- (d) any term importing the singular includes the plural and vice versa; and
- (e) any reference to any clause or schedule or appendix is a reference to such clause or schedule or appendix of or to this Deed.

11.5 .

11.6 Clause headings do not form part of or affect the interpretation of this Deed.

Executed and delivered as a deed:

Executed as a deed by
The Seaman Partnership Limited
by the signature of a director and
the secretary or of two directors

) David Seaman,
.....

) Director

) D. L. SEAMAN.
.....

) Print name

JANE BURLEY
.....

~~Director~~/Secretary


.....

Print name

Executed as a deed by
Saabon Limited
by the signature of a director and
the secretary or of two directors

)

) Director

)

)

) Print name

.....
Director/Secretary

.....
Print name

Executed as a deed by
W. Stirland Limited
by the signature of a director and
the secretary or of two directors

) RFSE
.....

) Director

) W Stirland
.....

) Print name


.....

Director/Secretary

W STIRLAND
.....

Print name

Dated

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SAABON LIMITED

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The Consultant warrants to the Beneficiary that it has performed and/or subject to the terms of the Appointment shall perform the Services and its other obligations under the Appointment, and that in doing so it has used and/or shall use the skill and care reasonably to be expected of suitably qualified and experienced consultants undertaking duties similar to the Services in relation to projects similar to the Development. Provided that the Consultant shall have no greater liability or liability for a longer duration than it would have if the Beneficiary had been named as a joint client under the Appointment and provided that the Consultant shall not be entitled to rely upon any rights of set off or counterclaim under the Appointment.

2 Professional indemnity insurance

- 2.1 The Consultant warrants to the Beneficiary that there is in force a policy of professional indemnity insurance conforming to the relevant requirements specified in the Memorandum. The Consultant agrees to maintain such insurance at all times until 12 years after the practical completion of the Development under the Building Contract (or if sooner until 12 years after the termination of the employment of the Consultant under the Appointment), provided such insurance is available on commercially reasonable terms having regard (inter alia) to premiums required and policy terms obtainable.
- 2.2 If for any period such insurance is not available on commercially reasonable terms, the Consultant shall forthwith inform the Beneficiary, and shall obtain in respect of such period such reduced level of professional indemnity insurance as is available and as would be fair and reasonable in the circumstances for the Consultant to obtain.
- 2.3 Whenever reasonably required to do so by the Beneficiary, the Consultant shall provide to the Beneficiary documentary evidence in the form of a broker's certificate that the insurance required under this Deed is being maintained.

3 Substitution provisions

- 3.1 The Consultant warrants to the Beneficiary that the Consultant shall not terminate or treat as terminated the Appointment, or discontinue the performance of any of the Services, without first giving to the Beneficiary not less than 28 days' prior notice of the Consultant's intention to do so, specifying the grounds for so doing.
- 3.2 If the Beneficiary serves on the Consultant a notice in accordance with clause 3.3, the Consultant shall not terminate or treat as terminated the Appointment or discontinue the performance of any of the Services, but service of such notice shall not prejudice any other right or remedy the Consultant may have under the Appointment or may acquire by reason of any breach of the obligations of the Beneficiary or its appointee under this clause 3.
- 3.3 Unless the employment of the Consultant shall have terminated previously (and whether or not the Consultant shall have served notice on the Beneficiary pursuant to clause 3.1), if the Beneficiary serves upon the Consultant a notice to do so, the Consultant shall thereafter accept the instructions of the Beneficiary or its appointee to the exclusion of the Contractor under the Appointment.
- 3.4 As against the Contractor and the Beneficiary the Consultant shall be entitled and obliged to rely upon and to comply with such notice served by the Beneficiary under clause 3.3, and shall not make any enquiry into the entitlement of the Beneficiary as against the Contractor to serve such notice.
- 3.5 As from the date of service of notice under clause 3.3, the Beneficiary or its appointee shall assume all the rights and perform all the obligations of the Contractor under the Appointment, provided that this shall not affect or derogate from any right of action the Contractor may have against the Consultant in respect of any breach of duty of the Consultant under or in connection with the Appointment happening prior to the date of service of notice by the Beneficiary under clause 3.3.
- 3.6 Within 21 days after serving notice under clause 3.3, the Beneficiary shall pay to the Consultant an amount equal to the fees and disbursements then owing to the Consultant under the Appointment.
- 3.7 If the employment of the Consultant under the Appointment is terminated before service of any notice under clause 3.3, then if required to do so by notice served by the Beneficiary not later than 12 weeks after the date of such termination, the Consultant shall enter into a new agreement with the Beneficiary or its appointee on the same terms as the Appointment but with such revisions as the Beneficiary and or the Consultant shall reasonably require to reflect altered circumstances. Forthwith upon the execution of such new agreement, the Beneficiary shall pay to the Consultant an amount equal to the fees and disbursements (excluding cancellation fees) then owing to the Consultant under the Appointment.
- 3.8 Upon payment by the Beneficiary in accordance with clause 3.6 or 3.7 of an amount equal to the fees and disbursements owed by the Contractor, the Consultant shall assign to the Beneficiary all the Consultant's rights against the Contractor in respect of such unpaid fees and disbursements, and shall pay to the Beneficiary any of the same subsequently received by the Consultant from the Contractor.
- 3.9 The Beneficiary guarantees to the Consultant the performance of the obligations of any appointee of the Beneficiary nominated under clause 3.3 or 3.7.

3.10 Where the Consultant has given rights in relation to the Appointment similar to those contained in this clause 3 to any other person then if both the Beneficiary and any such other person serve notice under clause 3.2 or clause 3.3 or its equivalent the notice served by the Beneficiary shall prevail over any notice served by any other person.

3.11 The Contractor agrees to the foregoing provisions of this clause 3 and agrees to be bound by them.

4 Deeds of warranty

4.1 The Consultant shall, as the Beneficiary may at any time or times require, promptly execute and deliver a deed or deeds of warranty in favour of Purchasers and/or Tenants, in the terms of this Deed, mutatis mutandis, but excluding the terms of clause 3 (Substitution provisions) and of this clause 4.

4.2 If the Consultant and/or the Contractor fails to execute and deliver any deed pursuant to clause 4.1 within 28 days of the Beneficiary's request, the Beneficiary may execute such deed on behalf of the party in default and the Consultant and the Contractor each hereby appoints the Beneficiary as its attorney for the purpose of executing any such deed. The Consultant and the Contractor each agrees to ratify and confirm any act done by the Beneficiary pursuant to this power of attorney and agrees that this power is irrevocable pursuant to section 4 of the Powers of Attorney Act 1971.

5 Assignment

5.1 The Beneficiary may assign all of its rights under this Deed:

- (a) to any Mortgagee and by way of re-assignment on redemption; and
- (b) by absolute assignment to any Group Company of the Beneficiary; and
- (c) by absolute assignment on two other occasions only.

5.2 If the interest of the Beneficiary in the Development is as trustee, it may also assign its rights under this Deed to another trustee of the same trust.

5.3 In this Deed references to the Beneficiary include where the context admits its permitted assignees, but not so as to permit more than two assignments under clause 5.1(c).

5.4 The Consultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with clause 5.1 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed, (whenever happening) by reason that such person is an assignee and not a named promisee hereunder.

6 Copyright

6.1 The Consultant grants to the Beneficiary an irrevocable, non-exclusive royalty-free licence to use and reproduce any drawings, calculations, specifications and/or other documents produced by the Consultant under the Appointment and any designs contained in them (**Documents**) for any purpose connected with the Development (other than by the reproduction of any such designs in any extension to the Development) and to grant sub-licences in the terms of this licence, but copyright in the Documents shall remain vested in the Consultant. The Consultant will not be liable for any use of the Documents for any purposes other than those for which the same are or were produced. The Beneficiary shall on written

request and upon paying a reasonable copying charge, be entitled to be supplied by the Consultant with full and proper copies of the Documents.

- 6.2 The Consultant warrants to the Beneficiary that the use of the Documents for the purposes of the Development will not infringe the rights of any third person.

7 Extraneous rights

- 7.1 This Deed shall not negate or diminish any duty or liability otherwise owed by the Consultant to the Beneficiary.
- 7.2 No approval or inspection of the Development or of any designs or specifications and no testing of any work or materials by or on behalf of the Beneficiary and no omission to inspect or test shall negate or diminish any duty or liability of the Consultant arising under this Deed.

8 Contracts (Rights of Third Parties) Act 1999

This Deed is not intended to confer any rights on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

9 Expiry of warranty

No proceedings shall be commenced against the Consultant under this Deed more than 12 years after the practical completion of the Development under the Building Contract (or, if earlier, more than 12 years after the employment of the Consultant under the Appointment is terminated).

10 Service of notice

Any notice to be served under this Deed must be in writing and must be served by hand or by recorded delivery, and in the case of a corporation must be served at its registered office for the time being. In any other case notice may be served at any address for the time being of the person to be served. Service shall take effect, if given by hand, on the date of delivery. If given by post, it shall take effect 2 days after posting, excluding Saturdays, Sundays and statutory holidays.

11 Governing law and interpretation

- 11.1 The law of this Deed is English law and the English courts shall have jurisdiction with regard to all matters arising under it.
- 11.2 The Memorandum is part of this Deed and the definitions given in the Memorandum and in the Recitals apply to this Deed.
- 11.3 In this Deed:
- (a) **Group Company** means any subsidiary company or holding company of the Beneficiary, or another subsidiary or holding company of such company, as **subsidiary** and **holding company** are defined in s1159, Companies Act 2006, (as amended);
 - (b) **Mortgagee** means a person having or acquiring a mortgage or charge over the Development or any part of it;

- (c) **Purchaser** means a person having or acquiring a freehold interest in the Development or any part of it, or a purchaser for a capital consideration of a leasehold interest; and
- (d) **Tenant** means a person having or acquiring a leasehold interest in the Development or any part of it (other than a Purchaser).

11.4 In this Deed:

- (a) **Development** includes part of the Development;
- (b) **person** includes a firm and any entity having legal capacity;
- (c) any term importing gender shall include any gender;
- (d) any term importing the singular includes the plural and vice versa; and
- (e) any reference to any clause or schedule or appendix is a reference to such clause or schedule or appendix of or to this Deed.

11.5

11.6 Clause headings do not form part of or affect the interpretation of this Deed.

Executed and delivered as a deed:

Executed as a deed by
The Seaman Partnership Limited
by the signature of a director and
the secretary or of two directors

) David Suman
) Director
)
) D.L. SRAMAN.
) Print name
)
) 
) Director/Secretary

JANE BURLEY
Print name

Executed as a deed by
Saabon Limited
by the signature of a director and
the secretary or of two directors

)
) Director
)
)
) Print name
)
)
) Director/Secretary

Print name

Executed as a deed by
W. Stirland Limited
by the signature of a director and
the secretary or of two directors

) 
) Director
) R Stirland
) Print name
) 
) Director/Secretary

R STIRLAND
Print name