[Date]

(1) **[CONTRACTOR]**

and

(2) **[BENEFICIARY]**

and

(3) **[DEVELOPER]**

CONTRACTOR'S DEED OF WARRANTY
in favour of a [mortgagee] [purchaser] [tenant]
relating to a development at [●]

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THIS DEED OF WARRANTY is dated [●] and made between:

(1) the Contractor;

(2) the Beneficiary;

(3) [the Developer],

(whose names and addresses are set out in the schedule (**Project Data**)).

BACKGROUND

(A) The Developer and the Contractor have entered into a construction contract (**Construction Contract**), under which the Contractor has agreed to carry out and complete the works (**Works**) required for the purposes of the Development (which expression includes the Site and the Works or either of them as the case requires).

TERMS AGREED

IT IS AGREED in consideration of the sum of £1 paid by the Beneficiary, receipt of which the Contractor acknowledges, as follows:

1. **Definitions and interpretation**

1.1 In this Deed the following words shall have the following meanings:

Development	includes part of the Development;
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);
Mortgagee	means a person having or acquiring a mortgage or charge over the Development, or providing finance in respect of the Developer, or any part of it;
person	includes a firm and any entity having legal capacity;
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;
Tenant	means a person having or acquiring a leasehold interest in the Development or any part of it (other than a Purchaser).

1.2 Any term importing gender shall gender any gender.

1.3 Any term importing the singular includes the plural and vice versa.

1.4 Any reference to any clause or schedule is a reference to such clause or Schedule of or to this Deed.

1.5 Clause headings do not form part of nor affect the interpretation of this Deed.

2. **Construction obligations**

2.1 The Contractor warrants to the Beneficiary that the Contractor has carried out and completed or will carry out and complete the Works with all due diligence, in accordance with and subject to the terms of the Construction Contract, and has observed and performed and will observe and perform all of its duties and obligations expressed in or arising out of the Construction Contract and (without qualification to or derogation from the foregoing) has exercised and will exercise all reasonable skill and care and diligence in and about the construction of the Works.

2.2 [Without derogation from clause 2.1, to the extent that under the Construction Contract the Contractor takes responsibility for the design of the Works or for the selection of goods, materials, plant or equipment for incorporation in the Works the Contractor warrants that the same have been or will be designed or selected with all reasonable skill and care.]

3. **[Professional indemnity insurance**

3.1 The Contractor warrants to the Beneficiary that there is in force a policy of professional indemnity insurance covering the liabilities of the Contractor under the Construction Contract and under this Deed for negligent design or specification, or negligent performance of other professional or managerial services, conforming to the relevant requirements specified in the Project Data. The Contractor agrees to maintain such insurance at all times until 12 years after the practical completion of the Development under the Construction Contract (or if sooner until 12 years after the termination of the employment of the Contractor under the Construction Contract), provided such insurance is available on commercially reasonable terms having regard (inter alia) to premiums required and policy terms obtainable.

3.2 If for any period such insurance is not available on commercially reasonable terms, the Contractor 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 Contractor to obtain.

3.3 Whenever reasonably required to do so by the Beneficiary, the Contractor shall provide to the Beneficiary documentary evidence that the insurance required under this Deed is being maintained.]

4. **[Substitution provisions]**

4.1 [The Contractor shall not:

(a) terminate its employment;

(b) treat its employment as having been terminated; or

(c) suspend the carrying out of the Works,

under the Construction Contract (Discontinue) without giving the Beneficiary not less than 28 days' notice of the Contractor's intention to Discontinue, specifying the grounds for the discontinuance.

4.2 If the Beneficiary gives the Contractor notice requiring it to accept the instructions of the Beneficiary or its appointee under the Construction Contract, to the exclusion of the Developer (**Step-in Notice**), the Contractor:

(a) shall not Discontinue; and

(b) shall comply with the Step-in Notice.

4.3 A Step-in Notice may be served, whether or not the Contractor has previously served notice under clause 4.1, but not after the notice period under clause 4.1 has expired.

4.4 As against the Developer and the Beneficiary the Contractor shall be entitled and obliged to rely upon and to comply with any Step-in Notice, and shall not make any enquiry into the entitlement of the Beneficiary as against the Developer to serve the Step-in Notice.

4.5 As from the date of service of a Step-in Notice (**Step-in Date**), the Beneficiary or its appointee shall assume all the rights and perform all the obligations of the Developer under the Construction Contract, provided that this shall not affect or derogate from any right of action the Developer may have against the Contractor in respect of any breach of duty of the Contractor under or in connection with the Construction Contract happening before the Step-in Notice.

4.6 Within 21 days after the Step-in Date, the Beneficiary shall pay to the Contractor an amount equal to the sum (if any) due and payable to the Contractor under the Construction Contract.

4.7 Service of a Step-in Notice does not affect the right of the Contractor to Discontinue on account of any breach of duty of the Beneficiary or its appointee after the Step-in Date.

4.8 If the employment of the Contractor under the Construction Contract is terminated before service of any Step-in Notice, then if required to do so by notice served by the Beneficiary not later than 12 weeks after the date of such termination, the Contractor shall enter into a new construction contract with the Beneficiary or its appointee on the same terms as the Construction Contract but with such revisions as the Beneficiary shall reasonably require to reflect altered circumstances. Forthwith upon the execution of such new agreement, the Beneficiary shall pay to the Contractor an amount equal to the sum (if any) due and payable (excluding cancellation fees) to the Contractor under the Construction Contract.

4.9 The Beneficiary guarantees to the Contractor the performance of the obligations of any appointee of the Beneficiary nominated under clause 4.2 or 4.8.

4.10 If, before the service of any Step-in Notice under this Deed, any other person exercises any similar right to step into the Construction Contract to the exclusion of the Developer, in accordance with any other agreement entered into pursuant to any term of the Construction Contract, this clause 4 shall cease to have effect.

4.11 The Developer agrees to the provisions of this clause 4.]

[***Note: clause 4 shall be included in the warranties in favour of a Mortgagee and/or a Purchaser if the Developer shall so require.***]

5. **[Deeds of warranty**

5.1 The Contractor 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 4 and of this clause 5.

5.2 If the Contractor fails to execute and deliver any such deed pursuant to clause 5.1 within seven days of the Beneficiary's written request the Beneficiary may execute such deed on the Contractor's behalf and the Contractor hereby appoints the Beneficiary as the Contractor's attorney for the purpose of executing any such deed. The Contractor 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.]

[***Note: clause 5 is not applicable to warranties in favour of Tenants.***]

6. **Assignment**

6.1 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.

6.2 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.

6.3 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 6.1(c).

7. **[Copyright]**

7.1 [The Contractor 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 or on behalf of the Contractor for the purposes of the Works 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 Contractor.

7.2 The Contractor will not be liable for any use of the Documents for any purposes other than those for which the same are or were produced.

7.3 The Beneficiary shall on written request and upon paying a reasonable copying charge, be entitled to be supplied by the Contractor with full and proper copies of the Documents.

7.4 The Contractor 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.]

8. **Extraneous rights**

8.1 This Deed shall not negate or diminish any duty or liability otherwise owed by the Contractor to the Beneficiary.

8.2 No approval or inspection of the Works 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 Contractor arising under this Deed.

9. **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.

10. **Expiry of warranty**

No proceedings shall be commenced against the Contractor 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 Contractor under the Construction Contract is terminated).

11. **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 two days after posting, excluding Saturdays, Sundays and statutory holidays.

12. **Governing law**

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

12.2 The Project Data are part of this Deed and the definitions given in the Project Data and in the Background apply to this Deed.

IN WITNESS WHEREOF this document has been executed and delivered as a Deed.

THE SCHEDULE

Project Data

Date of this Deed	[●]
Developer	[●] (incorporated and registered in England and Wales with Company Number [●]) whose registered office is situate at [●]
Contractor	[●] (incorporated and registered in England and Wales with Company Number [●]) whose registered office is situate at [●]
Beneficiary	[●] (incorporated and registered in England and Wales with Company Number [●]) whose registered office is situate at [●]
Development	[●]
Site	[●]
Date of Construction Contract	[●]
Form of Construction Contract	[Traditional] [Design & Build]
Beneficiary's interest	[Mortgagee] [Purchaser of [[●] forming part of] the Development] [Tenant of [[●] forming part of] the Development] [●]
Clause 3: (Professional Indemnity Insurance)	(a) Limit of indemnity: not less than £[●],000,000.00 for any occurrence or series of occurrences arising out of each and every event, provided that such limit of indemnity may be in the aggregate for each year of insurance in respect of claims for pollution, contamination and date recognition. (b) Excess: not exceeding £[●],000.00.

SIGNATURE PAGE

EXECUTED as a deed [and delivered by]	)	
for and on behalf of	)	……
[**THE CONTRACTOR**]	)	Director
acting by a director	)	
	)	

in the presence of:

……
Name

……
Address

……
Occupation

EXECUTED as a deed [and delivered by]	)	
for and on behalf of	)	……
[**THE BENEFICIARY**]	)	Director
acting by a director	)	
	)	

in the presence of:

……
Name

……
Address

……
Occupation

EXECUTED as a deed [and delivered by]	)	
for and on behalf of	)	……
[**THE DEVELOPER**]	)	Director
acting by a director	)	
	)	

in the presence of:

……
Name

……
Address

……
Occupation