



**Registration of a Charge**

Company name: **P.C. HARRINGTON HOLDINGS LIMITED**

Company number: **02655872**



X47HGFMH

Received for Electronic Filing: **15/05/2015**

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**Details of Charge**

Date of creation: **14/05/2015**

Charge code: **0265 5872 0021**

Persons entitled: **P. C. HARRINGTON CONTRACTORS LIMITED (IN ADMINISTRATION)**

Brief description: **LAND ON THE SOUTH WEST SIDE OF GRANGE MILL LANE, SHEFFIELD (TITLE NUMBER: SYK571208) LAND ON THE SOUTH WEST SIDE OF GRANGE MILL LANE, KIMBERWORTH (TITLE NUMBER: SYK263216) LAND ON THE WEST SIDE OF GRANGE MILL LANE, SHEFFIELD (TITLE NUMBER: SYK567187)**

**Contains fixed charge(s).**

**Contains negative pledge.**

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**Authentication of Form**

This form was authorised by: **a person with an interest in the registration of the charge.**

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**Authentication of Instrument**

Certification statement: **I CERTIFY THAT THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by:

**SARAH WEBSTER FOR AND ON BEHALF OF LUPTON FAWCETT  
DENISON TILL**



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

Company number: 2655872

Charge code: 0265 5872 0021

The Registrar of Companies for England and Wales hereby certifies that a charge dated 14th May 2015 and created by P.C. HARRINGTON HOLDINGS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 15th May 2015 .

Given at Companies House, Cardiff on 18th May 2015

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

PRIVATE & CONFIDENTIAL

**lupton fawcett**  
*denison till*  
the law of advantage

Dated

14 May

2015

(4) P.C. HARRINGTON HOLDINGS LIMITED

and

(5) P.C. HARRINGTON CONTRACTORS LIMITED (IN ADMINISTRATION)

## LEGAL MORTGAGE OVER PROPERTY FROM A COMPANY SECURING SPECIFIC MONIES (OWN LIABILITIES)

Lupton Fawcett Denison Till  
Yorkshire House  
East Parade  
Leeds  
LS1 5BD  
Tel: 0113 280 2000  
[www.lf-dt.com](http://www.lf-dt.com)

I hereby certify this to be a true copy of the original document.  
Where documents contain a photograph I confirm that this is a  
true likeness of the individual concerned.

Print Name WEBSTER

Signed Shedder

Dated 15.05.2015

Lupton Fawcett Denison Till  
Registered address:  
Yorkshire House, East Parade, Leeds, LS1 5BD  
Tel: 0113 280 2000

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**THIS DEED** is made on

14 May

2015

**BETWEEN:**

- 1 P.C. Harrington Holdings Limited incorporated and registered in England and Wales with company number 02655872 whose registered office is at 171-173 Gray's Inn Road, London, WC1X 8UE (the "**Chargor**"); and
- 2 P.C. Harrington Contractors Limited (in administration) (acting by the Administrators) incorporated and registered in England and Wales whose registered office is at KPMG LLP, 1 The Embankment, Neville Street, Leeds, LS1 4DW (the "**Chargee**").

**WHEREAS:**

- (A) The Chargee has agreed, under the Asset Sale Agreement, to provide the Chargor with loan facilities on a secured basis.
- (B) The Chargor owns the Property.
- (C) This deed provides security which the Chargor has agreed to give the Chargee for the loan facilities made or to be made available under the Asset Sale Agreement.
- (D) The Administrators were appointed joint administrators of the Chargee on 5 May 2015 by the directors of the Chargee under paragraph 22 of Schedule B1 to the Insolvency Act 1986.

**THIS DEED WITNESSES** as follows:

**1 Definitions and interpretation**

**1.1 Definitions**

The following definitions apply in this deed:

<b>"Administrators"</b>	Howard Smith and Jonathan Charles Marston as joint administrators of P.C. Harrington Contractors Limited both of KPMG LLP, 1 The Embankment, Neville Street, Leeds, LS1 4DW.
<b>"Asset Sale Agreement"</b>	the asset sale agreement of even date between the Chargee and the Chargor for the sale of certain assets pursuant to which the Chargee agrees to provide loan facilities secured by this deed.
<b>"Business Day"</b>	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
<b>"Certificate of Title"</b>	any report on or certificate of title relating to the Property supplied to the Chargee by the Chargor (or on its behalf).
<b>"Charged Property"</b>	all the assets, property and undertaking for the time being subject to any Security created by this deed (and references to the Charged Property shall include references to any part of it).
<b>"Charge Holder"</b>	Endless LLP.
<b>"Charge Holder's Security"</b>	The charges granted by the Chargee to the Charge Holder as more particularly described in the documents referred to in Schedule 3.
<b>"Environmental Law"</b>	all applicable laws, statutes, regulations, secondary legislation, bye-laws, common law, directives, treaties and other measures, judgments and decisions of any court or tribunal, codes of practice and guidance notes in so far as they relate to or apply to the Environment.



<b>"Environmental Licence"</b>	any authorisation, permit or licence necessary under Environmental Law in respect of any of the Charged Property.
<b>"Event of Default"</b>	has the meaning given to that expression as set out in Schedule 2.
<b>"Insurance Policy"</b>	each contract or policy of insurance effected or maintained by the Chargor from time to time in respect of the Property.
<b>"Interest Rate"</b>	interest calculated on a daily basis at a rate of 2 percent per annum above the base lending rate from time to time of The Royal Bank of Scotland.
<b>"LPA 1925"</b>	the Law of Property Act 1925.
<b>"Property"</b>	the freehold property (whether registered or unregistered) owned by the Chargor described in Schedule 1.
<b>"Receiver"</b>	a receiver or a receiver and manager of any or all of the Charged Property.
<b>"Rent"</b>	All amounts payable to or for the benefit of the Chargor by way of rent, licence fee, service charge, dilapidations, ground rent and rent charge in respect of any part of the Property and other monies payable to or for the benefit of the Borrower in respect of occupation or usage of any part of the Property, including (without limitation) for display of advertisements on licence or otherwise.
<b>"Secured Liabilities"</b>	all present and future monies, obligations and liabilities of the Chargor to the Chargee, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other

capacity under or in connection with the Asset Sale Agreement of this deed together with interest accruing in respect of those monies, obligations or liabilities.

**"Security"**

any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect.

**"Security Period"**

the period starting on the date of this deed and ending on the date on which the Chargee is satisfied that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding.

**"Valuation"**

any valuation relating to the Property supplied to the Chargee by the Chargor (or on its behalf).

**"VAT"**

value added tax.

**1.2 Interpretation**

In this deed:

- 1.2.1 clause, Schedule and paragraph headings shall not affect the interpretation of this deed;
- 1.2.2 a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality) and that person's personal representatives, successors, permitted assigns and permitted transferees;
- 1.2.3 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;

- 1.2.4 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- 1.2.5 a reference to a party shall include that party's successors, permitted assigns and permitted transferees;
- 1.2.6 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- 1.2.7 a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 1.2.8 a reference to **writing** or **written** includes fax but not e-mail;
- 1.2.9 an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- 1.2.10 a reference to **this deed** (or any provision of it) or to any other agreement or document referred to in this deed is a reference to this deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this deed) from time to time;
- 1.2.11 unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this deed and a reference to a paragraph is to a paragraph of the relevant Schedule;
- 1.2.12 any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 1.2.13 a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and **amended** shall be construed accordingly);
- 1.2.14 a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;

1.2.15 a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;

1.2.16 a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it; and

1.2.17 a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

### 1.3 **Clawback**

If the Chargee considers that an amount paid by the Chargor in respect of the Secured Liabilities is capable of being avoided or otherwise set aside on the liquidation or administration of the Chargor or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this deed.

### 1.4 **Nature of security over real property**

A reference in this deed to a **charge or mortgage of or over the Property** includes:

1.4.1 all buildings and fixtures and fittings (including trade and tenant's fixtures and fittings) and fixed plant and machinery that are situated on or form part of the Property at any time;

1.4.2 the proceeds of the sale of any part of the Property and any other monies paid or payable in respect of or in connection with the Property;

1.4.3 the benefit of any covenants for title given, or entered into, by any predecessor in title of the Chargor in respect of the Property and any monies paid or payable in respect of those covenants; and

1.4.4 all rights under any licence, agreement for sale or agreement for lease in respect of the Property.

## **1.5 Law of Property (Miscellaneous Provisions) Act 1989**

For the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the Asset Sale Agreement and of any side letters between any parties in relation to the Asset Sale Agreement are incorporated into this deed.

## **1.6 Perpetuity period**

If the rule against perpetuities applies to any trust created by this deed, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).

## **1.7 Schedules**

The Schedules form part of this deed and shall have effect as if set out in full in the body of this deed. Any reference to this deed includes the Schedules.

## **2 Covenant to pay**

The Chargor shall, on demand, pay to the Chargee and discharge the Secured Liabilities when they become due.

## **3 Grant of security**

### **3.1 Legal mortgage and fixed charges**

As a continuing security for the payment and discharge of the Secured Liabilities, the Chargor with full title guarantee charges to the Chargee:

3.1.1 by way of first legal mortgage, the Property; and

3.1.2 by way of first fixed charge:

- 3.1.2.1 all its rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premiums in connection with each Insurance Policy, the Rent and the benefit of any guarantee or security in respect of the Rent, to the extent not effectively assigned under clause 3.2;
- 3.1.2.2 the benefit of all other contracts, guarantees, appointments and warranties relating to the Charged Property and other documents to which the Chargor is a party or which are in its favour or of which it has the benefit relating to any letting, development, sale, purchase, use or the operation of the Charged Property or otherwise relating to the Charged Property (including, in each case, but without limitation, the right to demand and receive all monies whatever payable to or for its benefit under or arising from any of them, all remedies provided for in any of them or available at law or in equity in relation to any of them, the right to compel performance of any of them and all other rights, interests and benefits whatever accruing to or for its benefit arising from any of them); and
- 3.1.2.3 all authorisations (statutory or otherwise) held or required in connection with the Chargor's business carried on at the Property or the use of any Charged Property, and all rights in connection with them.

## 3.2 **Assignment**

As a continuing security for the payment and discharge of the Secured Liabilities, the Chargor with full title guarantee assigns to the Chargee absolutely, subject to a proviso for reassignment on irrevocable discharge in full of the Secured Liabilities:

- 3.2.1 all its rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premiums in connection with each Insurance Policy;
- 3.2.2 the Rent and the benefit of any guarantee or security in respect of the Rent;

provided that nothing in this clause 3.2 shall constitute the Chargee as mortgagee in possession.

#### **4 Perfection of security**

##### **4.1 Registration of legal mortgage at the Land Registry**

The Chargor consents to an application being made by the Chargee to the Land Registrar for the following restriction in Form P to be registered against its title to the Property:

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the charge dated [ ] in favour of P.C. Harrington Contractors Limited (in administration) referred to in the charges register or their conveyancer."

##### **4.2 Cautions against first registration and notices**

Whether or not title to the Property is registered at the Land Registry, if any caution against first registration or any notice (whether agreed or unilateral) is registered against the Chargor's title to the Property, the Chargor shall immediately provide the Chargee with full particulars of the circumstances relating to such caution or notice. If such caution or notice was registered to protect a purported interest the creation of which is not permitted under this deed, the Chargor shall immediately, and at its own expense, take such steps as the Chargee may require to ensure that the caution or notice, as applicable, is withdrawn or cancelled.

#### **5 Liability of the Chargor**

##### **5.1 Liability not discharged**

The Chargor's liability under this deed in respect of any of the Secured Liabilities shall not be discharged, prejudiced or affected by:

- 5.1.1 any security, guarantee, indemnity, remedy or other right held by, or available to, the Chargee that is, or becomes, wholly or partially illegal, void or unenforceable on any ground;
- 5.1.2 the Chargee renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or
- 5.1.3 any other act or omission that, but for this clause 5.1, might have discharged, or otherwise prejudiced or affected, the liability of the Chargor.

## **5.2 Immediate recourse**

The Chargor waives any right it may have to require the Chargee to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this deed against the Chargor.

## **6 Representations and warranties**

### **6.1 Times for making representations and warranties**

The Chargor makes the representations and warranties set out in this clause 6 to the Chargee on the date of this deed and the representations and warranties contained in this clause 6 are deemed to be repeated on each day of the Security Period with reference to the facts and circumstances existing of the time of repetition.

### **6.2 Ownership of Charged Property**

The Chargor is the sole legal and beneficial owner of the Charged Property and has good and marketable title to the Property.

### **6.3 No Security**



The Charged Property is free from any Security other than the Security created by this deed.

**6.4 No adverse claims**

The Chargor has not received, or acknowledged notice of, any adverse claim by any person in respect of the Charged Property or any interest in it.

**6.5 No adverse covenants**

There are no covenants, agreements, reservations, conditions, interests, rights or other matters whatever that materially and adversely affect the Charged Property.

**6.6 No breach of laws**

There is no breach of any law or regulation that materially and adversely affects the Charged Property.

**6.7 No interference in enjoyment**

No facility necessary for the enjoyment and use of the Charged Property is subject to terms entitling any person to terminate or curtail its use.

**6.8 No overriding interests**

Nothing has arisen, has been created or is subsisting that would be an overriding interest in the Property.

**6.9 No prohibitions or breaches**

There is no prohibition on the Chargor assigning its rights in any of the Charged Property referred to in clause 3.2 and the entry into of this deed by the Chargor does not and will not constitute a breach of any policy, agreement, document, instrument or obligation binding on the Chargor or its assets.

#### **6.10 Environmental compliance**

The Chargor has, at all times, complied in all material respects with all applicable Environmental Law and Environmental Licences.

#### **6.11 Information for Valuations and Certificates of Title**

6.11.1 All written information supplied by the Chargor or on its behalf for the purpose of each Valuation and Certificate of Title was true and accurate in all material respects at its date or at the date (if any) on which it was stated to be given.

6.11.2 The information referred to in clause 6.11.1 was, at its date or at the date (if any) on which it was stated to be given, complete and the Chargor did not omit to supply any information that, if disclosed, would adversely affect the Valuation or Certificate of Title.

6.11.3 In the case of the first Valuation and Certificate of Title only, nothing has occurred since the date the information referred to in clause 6.11.1 was supplied and the date of this deed which would adversely affect such Valuation or Certificate of Title.

#### **6.12 Avoidance of security**

No Security expressed to be created under this deed is liable to be avoided, or otherwise set aside, on the liquidation or administration of the Chargor or otherwise.

#### **6.13 Enforceable security**

This deed constitutes and will constitute the legal, valid, binding and enforceable obligations of the Chargor and is and will continue to be effective security over all and every part of the Charged Property in accordance with its terms.

### **7 General covenants**

#### **7.1 Negative pledge and disposal restrictions**

The Chargor shall not at any time, except with the prior written consent of the Chargee:

- 7.1.1 create, purport to create or permit to subsist any Security on, or in relation to, any Charged Property other than any Security created by this deed;
- 7.1.2 sell, assign, transfer, part with possession of or otherwise dispose of in any manner (or purport to do so) all or any part of, or any interest in, the Charged Property; or
- 7.1.3 create or grant (or purport to create or grant) any interest in the Charged Property in favour of a third party.

## **7.2 Preservation of Charged Property**

The Chargor shall not do, or permit to be done, any act or thing that would or might depreciate, jeopardise or otherwise prejudice the security held by the Chargee or materially diminish the value of any of the Charged Property or the effectiveness of the security created by this deed.

## **7.3 Compliance with laws and regulations**

- 7.3.1 The Chargor shall not, without the Chargee's prior written consent, use or permit the Charged Property to be used in any way contrary to law.
- 7.3.2 The Chargor shall:
  - 7.3.2.1 comply with the requirements of any law or regulation relating to or affecting the Charged Property or the use of it or any part of it;
  - 7.3.2.2 obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Charged Property or its use or that are necessary to preserve, maintain or renew any Charged Property; and

- 7.3.2.3 promptly effect any maintenance, modifications, alterations or repairs to be effected on or in connection with the Charged Property that are required to be made by it under any law or regulation.

#### **7.4 Enforcement of rights**

The Chargor shall use its best endeavours to:

- 7.4.1 procure the prompt observance and performance by the relevant counterparty to any agreement or arrangement with the Chargor and forming part of the Charged Property of the covenants and other obligations imposed on such counterparty; and
- 7.4.2 enforce any rights and institute, continue or defend any proceedings relating to any of the Charged Property that the Chargee may require from time to time.

#### **7.5 Notice of misrepresentations and breaches**

The Chargor shall, promptly on becoming aware of any of the same, give the Chargee notice in writing of:

- 7.5.1 any representation or warranty set out in this deed that is incorrect or misleading in any material respect when made or deemed to be repeated; and
- 7.5.2 any breach of any covenant set out in this deed.

#### **7.6 Title documents**

The Chargor shall, on the execution of this deed, deposit with the Chargee and the Chargee shall, for the duration of this deed, be entitled to hold:

- 7.6.1 all deeds and documents of title relating to the Charged Property that are in the possession or control of the Chargor (and if these are not within the possession and/or control of the Chargor, the Chargor undertakes to obtain possession of all these deeds and documents of title); and

7.6.2 each Insurance Policy.

## **7.7 Notices to be given by the Chargor**

7.7.1 The Chargor shall within five days of the execution of this deed:

7.7.1.1 give notice to the relevant insurers of the assignment of the Chargor's rights and interest in and under each Insurance Policy (including the proceeds of any claims under that Insurance Policy) under clause 3.2.1 and procure that each addressee of such notice promptly provides an acknowledgement of that notice to the Chargee;

7.7.2 The Chargor shall obtain the Chargee's prior approval of the form of any notice or acknowledgement to be used under this clause 7.7.

## **7.8 Chargor's waiver of set-off**

The Chargor waives any present or future right of set-off it may have in respect of the Secured Liabilities (including sums payable by the Chargor under this deed).

## **8 Property covenants**

### **8.1 Repair and maintenance**

8.1.1 The Chargor shall keep all premises, and fixtures and fittings on the Property, in:

8.1.1.1 good and substantial repair and condition and shall keep all premises adequately and properly painted and decorated and replace any fixtures and fittings which have become worn out or otherwise unfit for use with others of a like nature and equal value; and

8.1.1.2 such repair and condition as to enable the Property to be let in accordance with all applicable laws and regulations.

- 8.1.2 For the purpose of clause 8.1.1.2, a law or regulation is applicable if it is either in force or it is expected to come into force and a prudent property owner in the same business as the Chargor would ensure that the premises, and fixtures and fittings on the Property, were in such repair and condition in anticipation of that law or regulation coming into force.

## **8.2 No alterations**

- 8.2.1 The Chargor shall not, without the prior written consent of the Chargee:

8.2.1.1 pull down or remove the whole or any part of any building forming part of the Property nor permit the same to occur; or

8.2.1.2 make or permit to be made any material alterations to the Property or sever or remove or permit to be severed or removed any of its fixtures or fittings (except to make any necessary repairs or renew or replace the same in accordance with clause 8.1).

- 8.2.2 The Chargor shall promptly give notice to the Chargee if the premises or fixtures or fittings forming part of the Property are destroyed or damaged.

## **8.3 Development restrictions**

The Chargor shall not, without the prior written consent of the Chargee:

- 8.3.1 make or, in so far as it is able, permit others to make any application for planning permission or development consent in respect of the Property; or

- 8.3.2 carry out or permit or suffer to be carried out on the Property any development (as defined in each of the Town and Country Planning Act 1990 and the Planning Act 2008) or change or permit or suffer to be changed the use of the Property.

## **8.4 Insurance**

8.4.1 The Chargor shall insure and keep insured [(or where, in the case of any leasehold property, insurance is the responsibility of the landlord under the terms of the lease, either procure that the landlord insures and keeps insured or, if and to the extent that the landlord does not do so, itself insure and keep insured)] the Charged Property against:

8.4.1.1 loss or damage by fire or terrorist acts;

8.4.1.2 other risks, perils and contingencies that would be insured against by reasonably prudent persons carrying on the same class of business as the Chargor; and

8.4.1.3 any other risk, perils and contingencies as the Chargee may reasonably require.

8.4.2 Any such insurance must be with an insurance company or underwriters and on such terms as are reasonably acceptable to the Chargee and must be for not less than the replacement value of the relevant Charged Property (meaning in the case of any premises on the Property, the total cost of entirely rebuilding, reinstating or replacing the premises in the event of their being destroyed, together with architects', surveyors', engineers' and other professional fees and charges for demolition and reinstatement) and loss of rents payable by the tenants or other occupiers of the Property for a period of at least three years.

8.4.3 The Chargor shall, if requested by the Chargee, produce to the Chargee each policy, certificate or cover note relating to any insurance required by clause 8.4.1.

8.4.4 The Chargor shall, if requested by the Chargee, procure that a note of the Chargee's interest is endorsed upon each Insurance Policy maintained by it or any person on its behalf in accordance with clause 8.4.1 and the Chargee is named as first loss payee and that the terms of each such Insurance Policy require the insurer not to invalidate the policy as against the Chargee by reason of the act or default of any other joint or named insured and not to cancel it without giving at least 30 days' prior written notice to the Chargee.

## **8.5 Insurance premiums**

The Chargor shall:

- 8.5.1 promptly pay all premiums in respect of each Insurance Policy and do all other things necessary to keep that policy in full force and effect; and
- 8.5.2 (if the Chargee so requires) give to the Chargee copies of the receipts for all premiums and other payments necessary for effecting and keeping up each Insurance Policy.

## **8.6 No invalidation of insurance**

The Chargor shall not do or omit to do, or permit to be done or omitted, any act or thing that may invalidate or otherwise prejudice any Insurance Policy.

## **8.7 Proceeds from Insurance Policies**

All monies payable under any Insurance Policy at any time (whether or not the security constituted by this deed has become enforceable) shall:

- 8.7.1 be paid immediately to the Chargee;
- 8.7.2 if they are not paid directly to the Chargee by the insurers, be held, pending such payment, by the Chargor as trustee of the same for the benefit of the Chargee; and
- 8.7.3 at the option of the Chargee, be applied in making good or recouping expenditure in respect of the loss or damage for which those monies are received or in, or towards, discharge or reduction of the Secured Liabilities

## **8.8 Leases and licences affecting the Property**



The Chargor shall not, without the prior written consent of the Chargee (which consent, in the case of clause 8.8.4, is not to be unreasonably withheld or delayed in circumstances in which the Chargor may not unreasonably withhold or delay its consent):

8.8.1 grant any licence or tenancy affecting the whole or any part of the Property, or exercise the statutory powers of leasing or of accepting surrenders under section 99 or section 100 of the LPA 1925 (or agree to grant any such licence or tenancy, or agree to exercise the statutory powers of leasing or of accepting surrenders under section 99 or section 100 of the LPA 1925);

8.8.2 in any other way dispose of, accept the surrender of, surrender or create any legal or equitable estate or interest in the whole or any part of the Property (or agree to dispose of, accept the surrender of, surrender or create any legal or equitable estate or interest in the whole or any part of the Property);

8.8.3 let any person into occupation of or share occupation of the whole or any part of the Property; or

8.8.4 grant any consent or licence under any lease or licence affecting the Property.

#### **8.9 No restrictive obligations**

The Chargor shall not, without the prior written consent of the Chargee, 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.

#### **8.10 Proprietary rights**

The Chargor 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 prior written consent of the Chargee.

#### **8.11 Compliance with and enforcement of covenants**

The Chargor shall:

8.11.1 observe and perform all covenants, stipulations and conditions to which the Property, or the use of it, is or may be subject and (if the Chargee so requires) produce to the Chargee evidence sufficient to satisfy the Chargee that those covenants, stipulations and conditions have been observed and performed; and

8.11.2 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.

**8.12 Notices or claims relating to the Property**

8.12.1 The Chargor shall:

8.12.1.1 give full particulars to the Chargee 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

8.12.1.2 (if the Chargee so requires) immediately, and at the cost of the Chargor, take all reasonable and necessary steps to comply with any Notice, and make, or join with the Chargee in making, any objections or representations in respect of that Notice that the Chargee thinks fit.

8.12.2 The Chargor shall give full particulars to the Chargee of any claim, notice or other communication served on it in respect of any modification, suspension or revocation of any Environmental Licence or any alleged breach of any Environmental Law, in each case relating to the Property.

**8.13 Payment of outgoings**

The Chargor shall:

8.13.1 pay (or procure payment of the same) when due all charges, rates, taxes, duties, assessments and other outgoings relating to or imposed upon the Property or on its occupier.

**8.14 Rent reviews**

8.14.1 The Chargor shall, if the Property is subject to occupational leases or licences, implement any upwards rent review provisions and shall not, without the prior written consent of the Chargee, agree to any change in rent to less than the open market rental value of the relevant part of the Property.

**8.15 Environment**

The Chargor shall in respect of the Property:

8.15.1 comply in all material respects with all the requirements of Environmental Law; and

8.15.2 obtain and comply in all material respects with all Environmental Licences.

**8.16 Conduct of business on Property**

The Chargor shall carry on its trade and business on those parts (if any) of the Property as are used for the purposes of trade or business in accordance with the standards of good management from time to time current in such trade or business.

**8.17 Inspection**

The Chargor shall permit the Chargee and any Receiver and any person appointed by either of them to enter on and inspect the Property on reasonable prior notice.

**8.18 VAT option to tax**

The Chargor shall not, without the prior written consent of the Chargee:

8.18.1 exercise any VAT option to tax in relation to the Property; or

8.18.2 revoke any VAT option to tax exercised, and disclosed to the Chargee in writing, before the date of this deed.

## **9 Powers of the Chargee**

### **9.1 Power to remedy**

9.1.1 The Chargee shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Chargor of any of its obligations contained in this deed.

9.1.2 The Chargor irrevocably authorises the Chargee and its agents to do all things that are necessary or desirable for that purpose.

9.1.3 Any monies expended by the Chargee in remedying a breach by the Chargor of its obligations contained in this deed shall be reimbursed by the Chargor to the Chargee on a full indemnity basis and shall carry interest in accordance with clause 16.1.

9.1.4 In remedying any breach in accordance with this clause 9.1, the Chargee, its agents and their respective officers, agents and employees shall be entitled to enter onto the Property and to take any action as the Chargee may reasonably consider necessary or desirable including, without limitation, carrying out any repairs, other works or development.

### **9.2 Exercise of rights**

The rights of the Chargee under clause 9.1 are without prejudice to any other rights of the Chargee under this deed. The exercise of any rights of the Chargee under this deed shall not make the Chargee liable to account as a mortgagee in possession.

### **9.3 Chargee has Receiver's powers**

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

#### **9.4 Conversion of currency**

9.4.1 For the purpose of, or pending, the discharge of any of the Secured Liabilities, the Chargee may convert any monies received, recovered or realised by it under this deed (including the proceeds of any previous conversion under this clause 9.4) from their existing currencies of denomination into any other currencies of denomination that the Chargee may think fit.

9.4.2 Any such conversion shall be effected at then prevailing spot selling rate of exchange for such other currency against the existing currency.

9.4.3 Each reference in this clause 9.4 to a currency extends to funds of that currency and, for the avoidance of doubt, funds of one currency may be converted into different funds of the same currency.

#### **9.5 New accounts**

9.5.1 If the Chargee receives, or is deemed to have received, notice of any subsequent Security or other interest, affecting all or part of the Charged Property, the Chargee may open a new account for the Chargor in the Chargee's books. Without prejudice to the Chargee's right to combine accounts, no money paid to the credit of the Chargor in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.

9.5.2 If the Chargee does not open a new account immediately on receipt of the notice, or deemed notice, referred to in clause 9.5.1, then, unless the Chargee gives express written notice to the contrary to the Chargor, all payments made by the Chargor to the Chargee shall be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the

Secured Liabilities, as from the time of receipt or deemed receipt of the relevant notice by the Chargee.

## **9.6 Chargee's set-off rights**

If the Chargee has more than one account for the Chargor in its books, the Chargee may at any time after:

9.6.1 the security constituted by this deed has become enforceable; or

9.6.2 the Chargee has received, or is deemed to have received, notice of any subsequent Security or other interest affecting all or any part of the Charged Property,

transfer, without prior notice, all or any part of the balance standing to the credit of any account to any other account that may be in debit. After making any such transfer, the Chargee shall notify the Chargor of that transfer.

## **9.7 Indulgence**

The Chargee may, at its discretion, grant time or other indulgence, or make any other arrangement, variation or release with any person not being a party to this deed (whether or not any person is jointly liable with the Chargor) in respect of any of the Secured Liabilities or of any other security for them without prejudice either to this deed or to the liability of the Chargor for the Secured Liabilities.

## **10 When security becomes enforceable**

### **10.1 Security becomes enforceable on Event of Default**

The security constituted by this deed shall be immediately enforceable if an Event of Default occurs.

### **10.2 Discretion**

After the security constituted by this deed has become enforceable, the Chargee may, in its absolute discretion, enforce all or any part of that security at the times, in the manner and on the terms it thinks fit, and take possession of and hold or dispose of all or any part of the Charged Property.

## **11 Enforcement of security**

### **11.1 Enforcement powers**

11.1.1 The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this deed) shall, as between the Chargee and a purchaser from the Chargee, arise on and be exercisable at any time after the execution of this deed, but the Chargee shall not exercise such power of sale or other powers until the security constituted by this deed has become enforceable under clause 10.1.

11.1.2 Section 103 of the LPA 1925 does not apply to the security constituted by this deed.

### **11.2 Extension of statutory powers of leasing**

The statutory powers of leasing and accepting surrenders conferred on mortgagees under the LPA 1925 and by any other statute are extended so as to authorise the Chargee and any Receiver, at any time after the security constituted by this deed has become enforceable, whether in its own name or in that of the Chargor, to:

11.2.1 grant a lease or agreement for lease;

11.2.2 accept surrenders of leases; or

11.2.3 grant any option in respect of the whole or any part of the Property with whatever rights relating to other parts of it,

whether or not at a premium and containing such covenants on the part of the Chargor and on such terms and conditions (including the payment of money to a lessee or tenant

on a surrender) as the Chargee or Receiver thinks fit, without the need to comply with any of the restrictions imposed by sections 99 and 100 of the LPA 1925.

### **11.3 Prior Security**

11.3.1 At any time after the security constituted by this deed has become enforceable, or after any powers conferred by any Security having priority to this deed shall have become exercisable, the Chargee may:

11.3.1.1 redeem that or any other prior Security;

11.3.1.2 procure the transfer of that Security to itself; and

11.3.1.3 settle any account of the holder of any prior Security.

11.3.2 The settlement of any such account shall be, in the absence of any manifest error, conclusive and binding on the Chargor. All monies paid by the Chargee to an encumbrancer in settlement of such an account shall be, as from its payment by the Chargee, due from the Chargor to the Chargee on current account and shall bear interest at the Interest Rate specified in the Asset Sale Agreement and be secured as part of the Secured Liabilities.

### **11.4 Protection of third parties**

No purchaser, mortgagee or other person dealing with the Chargee, any Receiver or Delegate shall be concerned to enquire:

11.4.1 whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;

11.4.2 whether any power the Chargee, a Receiver or Delegate is purporting to exercise has become exercisable or is properly exercisable; or

11.4.3 how any money paid to the Chargee, any Receiver or any Delegate is to be applied.



### **11.5 Privileges**

Each Receiver and the Chargee is entitled to all the rights, powers, privileges and immunities conferred by the LPA 1925 on mortgagees and receivers.

### **11.6 No liability as mortgagee in possession**

Neither the Chargee, any Receiver nor any Delegate shall be liable to account as mortgagee in possession in respect of all or any of the Charged Property, nor shall any of them be liable for any loss on realisation of, or for any neglect or default of any nature in connection with, all or any of the Charged Property for which a mortgagee in possession might be liable as such.

### **11.7 Relinquishing possession**

If the Chargee, any Receiver or Delegate enters into or takes possession of the Charged Property, it or he may at any time relinquish possession.

### **11.8 Conclusive discharge to purchasers**

The receipt of the Chargee or any Receiver or Delegate shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Charged Property or in making any acquisition in the exercise of their respective powers, the Chargee, every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it or he thinks fit.

## **12 Receivers**

### **12.1 Appointment**

At any time after the security constituted by this deed has become enforceable, or at the request of the Chargor, the Chargee may, without further notice, appoint by way of deed, or otherwise in writing, any one or more person or persons to be a Receiver of all or any part of the Charged Property.

## **12.2 Removal**

The Chargee may, without further notice (subject to section 45 of the Insolvency Act 1986), from time to time, by way of deed, or otherwise in writing, remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

## **12.3 Remuneration**

The Chargee may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the LPA 1925 and the remuneration of the Receiver shall be a debt secured by this deed, to the extent not otherwise discharged.

## **12.4 Power of appointment additional to statutory powers**

The power to appoint a Receiver conferred by this deed shall be in addition to all statutory and other powers of the Chargee under the Insolvency Act 1986, the LPA 1925 or otherwise, and shall be exercisable without the restrictions contained in sections 103 and 109 of the LPA 1925 or otherwise.

## **12.5 Power of appointment exercisable despite prior appointments**

The power to appoint a Receiver (whether conferred by this deed or by statute) shall be, and remain, exercisable by the Chargee despite any prior appointment in respect of all or any part of the Charged Property.

## **12.6 Agent of the Chargor**

Any Receiver appointed by the Chargee under this deed shall be the agent of the Chargor and the Chargor shall be solely responsible for the contracts, engagements, acts, omissions, defaults, losses and remuneration of that Receiver and for liabilities incurred by that Receiver. The agency of each Receiver shall continue until the Chargor goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Chargee.

## **13 Powers of Receiver**

### **13.1 Powers additional to statutory powers**

13.1.1 Any Receiver appointed by the Chargee under this deed shall, in addition to the powers conferred on him by statute, have the powers set out in clause 13.2 to clause 13.20.

13.1.2 If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him states otherwise) exercise all of the powers conferred on a Receiver under this deed individually and to the exclusion of any other Receiver.

13.1.3 Any exercise by a Receiver of any of the powers given by clause 13 may be on behalf of the Chargor, the directors of the Chargor or himself.

### **13.2 Repair and develop the Property**

A Receiver may undertake or complete any works of repair, alteration, building or development on the Property and may apply for and maintain any planning permission, development consent, building regulation approval or any other permission, consent or licence to carry out any of the same.

### **13.3 Grant or accept surrenders of leases**

A Receiver may grant, or accept, surrenders of any leases or tenancies affecting the Property on any terms and subject to any conditions that he thinks fit.

### **13.4 Employ personnel and advisers**

A Receiver may provide services and employ, or engage, any managers, officers, servants, contractors, workmen, agents, other personnel and professional advisers on any terms, and subject to any conditions, that he thinks fit. A Receiver may discharge any such person or any such person appointed by the Chargor.

**13.5 Make and revoke VAT options to tax**

A Receiver may exercise or revoke any VAT option to tax that he thinks fit.

**13.6 Charge for remuneration**

A Receiver may charge and receive any sum by way of remuneration (in addition to all costs, charges and expenses incurred by him) that the Chargee may prescribe or agree with him.

**13.7 Realise Charged Property**

A Receiver may collect and get in the Charged Property or any part of it in respect of which he is appointed and make any demands and take any proceedings as may seem expedient for that purpose, and take possession of the Charged Property with like rights.

**13.8 Manage or reconstruct the Chargor's business**

A Receiver may carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying the business of the Chargor carried out at the Property.

**13.9 Dispose of Charged Property**

A Receiver may grant options and licences over all or any part of the Charged Property, grant any other interest or right over, sell, assign or lease (or concur in granting options and licences over all or any part of the Charged Property, granting any other interest or right over, selling, assigning or leasing) all or any of the Charged Property in respect of which he is appointed for such consideration and in such manner (including, without limitation, by public auction or private sale) and generally on any terms and conditions that he thinks fit. A Receiver may promote, or concur in promoting, a company to purchase the Charged Property to be disposed of by him.

**13.10 Sever fixtures and fittings**

A Receiver may sever and sell separately any fixtures or fittings from the Property without the consent of the Chargor.

**13.11 Give valid receipts**

A Receiver may give valid receipts for all monies and execute all assurances and things that may be proper or desirable for realising any of the Charged Property.

**13.12 Make settlements**

A Receiver may make any arrangement, settlement or compromise between the Chargor and any other person that he may think expedient.

**13.13 Bring proceedings**

A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to any of the Charged Property that he thinks fit.

**13.14 Insure**

A Receiver may, if he thinks fit, but without prejudice to the indemnity in clause 16.2, effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the Chargor under this deed.

**13.15 Powers under LPA 1925**

A Receiver may exercise all powers provided for in the LPA 1925 in the same way as if he had been duly appointed under the LPA 1925 and exercise all powers provided for an administrative receiver in Schedule 1 to the Insolvency Act 1986.

**13.16 Borrow**

A Receiver may, for any of the purposes authorised by this clause 13, raise money by borrowing from the Chargee (or from any other person) either unsecured or on the security of all or any of the Charged Property in respect of which he is appointed on any terms that

he thinks fit (including, if the Chargee consents, terms under which that Security ranks in priority to this deed).

**13.17 Redeem prior Security**

A Receiver may redeem any prior Security and settle the accounts to which the Security relates. Any accounts so settled shall be, in the absence of any manifest error, conclusive and binding on the Chargor, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.

**13.18 Delegation**

A Receiver may delegate his powers in accordance with this deed.

**13.19 Absolute beneficial owner**

A Receiver may, in relation to any of the Charged Property, exercise all powers, authorisations and rights he would be capable of exercising, and do all those acts and things, as an absolute beneficial owner could exercise or do in the ownership and management of the Charged Property or any part of the Charged Property.

**13.20 Incidental powers**

A Receiver may do any other acts and things:

13.20.1 that he may consider desirable or necessary for realising any of the Charged Property;

13.20.2 that he may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this deed or law; or

13.20.3 that he lawfully may or can do as agent for the Chargor.

## **14 Delegation**

### **14.1 Delegation**

The Chargee or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this deed (including the power of attorney granted under clause 18.1).

### **14.2 Terms**

The Chargee and each Receiver may make a delegation on the terms and conditions (including the power to sub-delegate) that it thinks fit.

### **14.3 Liability**

Neither the Chargee nor any Receiver shall be in any way liable or responsible to the Chargor for any loss or liability arising from any act, default, omission or misconduct on the part of any Delegate.

## **15 Application of proceeds**

### **15.1 Order of application of proceeds**

All monies received by the Chargee, a Receiver or a Delegate under this deed after the security constituted by this deed has become enforceable (other than sums received under any Insurance Policy), shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied in the following order of priority:

15.1.1 in or towards payment of or provision for all costs, charges and expenses incurred by or on behalf of the Chargee (and any Receiver, Delegate, attorney or agent appointed by it) under or in connection with this deed and of all remuneration due to any Receiver under or in connection with this deed;

15.1.2 in or towards payment of or provision for the Secured Liabilities in any order and manner that the Chargee determines; and

15.1.3 in payment of the surplus (if any) to the Chargor or other person entitled to it.

## **15.2 Appropriation**

Neither the Chargee, any Receiver nor any Delegate shall be bound (whether by virtue of section 109(8) of the LPA 1925, which is varied accordingly, or otherwise) to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Secured Liabilities.

## **15.3 Suspense account**

All monies received by the Chargee, a Receiver or a Delegate under this deed (other than sums received under any Insurance Policy that are not going to be applied in or towards discharge of the Secured Liabilities):

15.3.1 may, at the discretion of the Chargee, Receiver or Delegate, be credited to any suspense or securities realised account;

15.3.2 shall bear interest, if any, at the rate agreed in writing between the Chargee and the Chargor; and

15.3.3 may be held in that account for so long as the Chargee, Receiver or Delegate thinks fit.

## **16 Costs and indemnity**

### **16.1 Costs**

The Chargor shall, promptly on demand, pay to, or reimburse, the Chargee and any Receiver, on a full indemnity basis, all costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal, printing and out-of-pocket expenses) incurred by the Chargee, any Receiver or any Delegate in connection with:

16.1.1 this deed or the Charged Property;



16.1.2 taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Chargee's, a Receiver's or a Delegate's rights under this deed; or

16.1.3 taking proceedings for, or recovering, any of the Secured Liabilities,

16.2 together with interest, which shall accrue and be payable (without the need for any demand for payment being made) from the date on which the relevant cost or expense arose until full discharge of that cost or expense (whether before or after judgment, liquidation, winding-up or administration of the Chargor) at the rate and in the manner specified in the Agreement.**Indemnity**

16.2.1 The Chargor shall indemnify the Chargee, each Receiver and each Delegate, and their respective employees and agents against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by any of them arising out of or in connection with:

16.2.1.1 the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this deed or by law in respect of the Charged Property;

16.2.1.2 taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the security constituted by this deed; or

16.2.1.3 any default or delay by the Chargor in performing any of its obligations under this deed.

16.2.2 Any past or present employee or agent may enforce the terms of this clause 16.2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

## **17 Further assurance**

The Chargor shall, at its own expense, take whatever action the Chargee or any Receiver may reasonably require for:

17.1.1 creating, perfecting or protecting the security intended to be created by this deed;

17.1.2 facilitating the realisation of any of the Charged Property; or

17.1.3 facilitating the exercise of any right, power, authority or discretion exercisable by the Chargee or any Receiver in respect of any of the Charged Property,

17.2 including, without limitation (if the Chargee or Receiver thinks it expedient) 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 Charged Property (whether to the Chargee or to its nominee) and the giving of any notice, order or direction and the making of any registration.

## **18 Power of attorney**

### **18.1 Appointment of attorneys**

By way of security, the Chargor irrevocably appoints the Chargee, every Receiver and every Delegate separately to be the attorney of the Chargor and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things that:

18.1.1 the Chargor is required to execute and do under this deed; or

18.1.2 any attorney deems proper or desirable in exercising any of the rights, powers, authorities and discretions conferred by this deed or by law on the Chargee, any Receiver or any Delegate.

### **18.2 Ratification of acts of attorneys**

The Chargor ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in clause 18.1.

## **19 Release**

Subject to clause 26.3, on the expiry of the Security Period (but not otherwise), the Chargee shall, at the request and cost of the Chargor, take whatever action is necessary to:

19.1.1 release the Charged Property from the security constituted by this deed; and

19.1.2 reassign the Charged Property to the Chargor.

## **20 Assignment and transfer**

### **20.1 Assignment by Chargee**

20.1.1 At any time, without the consent of the Chargor, the Chargee may assign or transfer any or all of its rights and obligations under this deed.

20.1.2 The Chargee may disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Chargor, the Charged Property and this deed that the Chargee considers appropriate.

### **20.2 Assignment by Chargor**

The Chargor may not assign any of its rights, or transfer any of its rights or obligations, under this deed.

## **21 Set-off**

### **21.1 Chargee's right of set-off**

The Chargee may at any time set off any liability of the Chargor to the Chargee against any liability of the Chargee to the Chargor, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this deed. If the liabilities to be set off are expressed in different currencies, the Chargee may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Chargee of its rights under this clause 21.1 shall not limit or affect any other rights or remedies available to it under this deed or otherwise.

#### **21.2 No obligation to set off**

The Chargee is not obliged to exercise its rights under clause 21.1. If, however, it does exercise those rights it must promptly notify the Chargor of the set-off that has been made.

### **22 Amendments, waivers and consents**

#### **22.1 Amendments**

No amendment of this deed shall be effective unless it is in writing and signed by, or on behalf of, each party (or its authorised representative).

#### **22.2 Waivers and consents**

22.2.1 A waiver of any right or remedy under this deed or by law, or any consent given under this deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

22.2.2 A failure to exercise or a delay in exercising any right or remedy provided under this deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this deed. No single or partial exercise of any right or remedy provided under this deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this deed by the Chargee shall be effective unless it is in writing.

### **22.3 Rights and remedies**

The rights and remedies provided under this deed are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

### **23 Severance**

If any provision (or part of a provision) of this deed is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of this deed.

### **24 Counterparts**

24.1.1 This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.

24.1.2 Transmission of an executed counterpart of this deed (but for the avoidance of doubt not just a signature page) by fax or e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this deed. If either method of delivery is adopted, without prejudice to the validity of the deed thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

### **25 Third party rights**

25.1.1 Except as expressly provided elsewhere in this deed, a person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this deed. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

## **26 Further provisions**

### **26.1 Independent security**

The security constituted by this deed shall be in addition to, and independent of, any other security or guarantee that the Chargee may hold for any of the Secured Liabilities at any time. No prior security held by the Chargee over the whole or any part of the Charged Property shall merge in the security created by this deed.

### **26.2 Continuing security**

The security constituted by this deed shall remain in full force and effect as a continuing security for the Secured Liabilities, despite any settlement of account, or intermediate payment, or other matter or thing, unless and until the Chargee discharges this deed in writing.

### **26.3 Discharge conditional**

Any release, discharge or settlement between the Chargor and the Chargee shall be deemed conditional on no payment or security received by the Chargee in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded under any law relating to insolvency, bankruptcy, winding-up, administration, receivership or otherwise. Despite any such release, discharge or settlement:

26.3.1 the Chargee or its nominee may retain this deed and the security created by or under it, including all certificates and documents relating to the whole or any part of the Charged Property, for any period that the Chargee deems necessary to provide the Chargee with security against any such avoidance, reduction or order for refund; and

26.3.2 the Chargee may recover the value or amount of such security or payment from the Chargor subsequently as if the release, discharge or settlement had not occurred.

### **26.4 Certificates**

A certificate or determination by the Chargee as to any amount for the time being due to it from the Chargor under this deed [and the Facility Agreement] shall be, in the absence of any manifest error, conclusive evidence of the amount due.

**26.5 Consolidation**

The restriction on the right of consolidation contained in section 93 of the LPA 1925 shall not apply to this deed.

**27 Notices**

**27.1 Delivery**

Any notice or other communication given to a party under or in connection with this deed shall be:

27.1.1 in writing;

27.1.2 delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by fax; and

27.1.3 sent to:

27.1.3.1 the Chargor at:

P.C. Harrington Holdings Limited, 171-173 Gray's Inn Road, London,  
WC1X 8UE

Fax: To be provided

Attention: Patrick Christopher Harrington

27.1.3.2 the Chargee at:

C/o Lupton Fawcett Denison Till, Yorkshire House, East Parade, Leeds,  
LS1 5BD

Fax: 0113 2456782

Attention: David Smyllie

or to any other address or fax number as is notified in writing by one party to the other from time to time.

## **27.2 Receipt by Chargor**

Any notice or other communication that the Chargee gives to the Chargor shall be deemed to have been received:

27.2.1 if delivered by hand, at the time it is left at the relevant address;

27.2.2 if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; and

27.2.3 if sent by fax, when received in legible form.

A notice or other communication given as described in clause 27.2.1 or clause 27.2.3 on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

## **27.3 Receipt by Chargee**

Any notice or other communication given to the Chargee shall be deemed to have been received only on actual receipt.

## **27.4 Service of proceedings**

This clause 27 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.



## **28 Governing law and jurisdiction**

### **28.1 Governing law**

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

### **28.2 Jurisdiction**

Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim arising out of or in connection with this deed or its subject matter or formation (including non-contractual disputes or claims). Nothing in this clause shall limit the right of the Chargee to take proceedings against the Chargor in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

### **28.3 Other service**

The Chargor irrevocably consents to any process in any legal action or proceedings under clause 28.2 being served on it in accordance with the provisions of this deed relating to service of notices. Nothing contained in this deed shall affect the right to serve process in any other manner permitted by law.

This agreement has been entered into as a deed on the date stated at the beginning of it.

**SCHEDULE 1**  
**PROPERTY**

<b><u>Title Number</u></b>	<b><u>Description</u></b>
SYK571208	Land on the south west side of Grange Mill Lane, Sheffield
SYK263216	Land on the south west side of Grange Mill Lane, Kimberworth
SYK567187	Land on the south west side of Grange Mill Lane, Sheffield

## **SCHEDULE 2**



### **EVENTS OF DEFAULT**

1. The Chargor fails to pay the Secured Liabilities with accrued interest at the Interest Rate;
2. The Chargor fails to comply with any provision of this deed or the Asset Sale Agreement and (if the Chargee considers, acting reasonably, that the default is capable of remedy) such default is not remedied within 14 days of the earlier of:
  - a. the Chargee notifying the Chargor of the default and the remedy required; and
  - b. the Chargor becomes aware of the default.

**SCHEDULE 3**  
**CHARGE HOLDER'S SECURITY**

- 1      A composite guarantee and debenture dated 16 April 2015 made between the Charge Holder and the Chargee and others.
  
- 2      A chattel mortgage dated 16 April 2015 made between the Chargee and the Charge Holder.

**EXECUTED** as a **DEED** by P.C. Harrington Holdings  
Limited acting by two directors or a director and its  
secretary

  
) Director  
)   
) Director/Secretary

**EXECUTED** as a **DEED** by Howard Smith for and on  
behalf of P.C. Harrington Contractors Limited (in  
administration) as its agent and without personal liability

)  
) Administrator  
)