



Registration of a Charge

Company name: **FAILSWORTH SITE LIMITED**

Company number: **09460128**



X55H7GOY

Received for Electronic Filing: **22/04/2016**

Details of Charge

Date of creation: **08/04/2016**

Charge code: **0946 0128 0001**

Persons entitled: **BANK LEUMI (JERSEY) LIMITED**

Brief description: **FREEHOLD PROPERTY KNOWN AS LAND AND BUILDINGS ON THE NORTH EAST SIDE OF RIDGEFIELD STREET, FAILSWORTH, REGISTERED AT LAND REGISTRY WITH TITLE ABSOLUTE UNDER TITLE NUMBER GM528563**

Contains fixed charge(s).

Contains floating charge(s) (floating charge covers all the property or undertaking of the company).

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

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

Certified by: **SQUIRE PATTON BOGGS (UK) LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 9460128

Charge code: 0946 0128 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 8th April 2016 and created by FAILSWORTH SITE LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 22nd April 2016 .

Given at Companies House, Cardiff on 25th April 2016

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



Companies House



**THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES**

Dated 8 April 2016

FAILSWORTH SITE LIMITED
and
BANK LEUMI (JERSEY) LIMITED

LEGAL MORTGAGE

Contents

Clause	Page
1 Definitions and interpretation	1
2 Covenant to pay	6
3 Charging provisions.....	6
4 Representations	8
5 Negative pledge	8
6 Restrictions on disposals	9
7 Further assurance	9
8 Land Registry	9
9 Future property.....	10
10 Notices of assignments and charges	10
11 Appropriations	11
12 Deferral of Chargors' rights	11
13 Undertakings	11
14 Power to remedy	16
15 Security power of attorney	16
16 Enforcement of security.....	16
17 Receiver	18
18 Delegation	22
19 Application of monies	22
20 Amendments, waivers and consents	23
21 Protection of third parties	23
22 Additional security	23
23 Settlements conditional	23
24 Subsequent Security	24
25 Set-off.....	24
26 Notices	24
27 Invalidity	25
28 Assignment.....	25
29 Releases	25
30 Currency clauses.....	25
31 Certificates and determinations.....	26
32 Indemnity.....	26
33 Exclusion of liability	26
34 Fees, costs and expenses	27
35 Governing law	27
36 Enforcement	28
1 The Chargor(s) and Obligor(s)	29
Part 1 - The Chargor(s)	29
Part 2 - The Obligor(s).....	29
2 Properties	30
3 Relevant Policies.....	31
Part 1 - Form of notice of assignment.....	31
Part 2 - Form of acknowledgement	33

This legal mortgage is dated 8 April 2016 and made by way of deed by:

- (1) The entity listed in part 1 of schedule 1 (the **Chargor**); in favour of
- (2) **Bank Leumi (Jersey) Limited** (incorporated and registered in Jersey with company number 55751) (the **Bank**).

It is agreed

1 Definitions and interpretation

1.1 Definitions

In this Deed:

Act means the Companies Act 2006

Authorisation means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration, or any other similar permission

Business Day means a day on which banks are open for general business in London and Jersey (not being a Saturday, a Sunday or a Jewish High Holy Day)

Direction has the meaning given to it in clause 13.1(d) (Planning directions)

Enforcement Event means any one of the following:

- (a) the Bank has demanded repayment of any or all of the amounts outstanding under any Facility Document and the amount demanded has not been paid on or prior to the date specified for repayment in that demand
- (b) an event has occurred under any Facility Document giving the Bank the right to call for repayment or prepayment of any amount outstanding under that Facility Document and/or the right to enforce any Security or
- (c) the relevant Chargor has requested that the Bank enforce all or any of its rights under this Deed

Environmental Law means any applicable law or regulation which relates to:

- (a) the pollution or protection of the environment
- (b) harm to or the protection of human health
- (c) the conditions of the workplace or
- (d) any emission or substance capable of causing harm to any living organism or the environment

Facility Document means each facility letter, facility agreement or other document pursuant to which credit and/or other facilities may be made available to any Chargor or Obligor by the Bank

Finance Documents means each Facility Document and each other document or agreement defined as such in a Facility Document

Fixtures means, in respect of any Secured Property, all fixtures and fittings (including trade fixtures and fittings) and fixed plant and machinery now or at any time after the date of this Deed on that Secured Property

Floating Charge Assets means all the assets and undertaking from time to time subject to the floating charge created under clause 3.5 (Floating charge)

Group has the meaning given to it in the Facility Documents

Insurance Policies means, in respect of a Chargor, all policies of insurance relating to the Secured Property present and future in which it has an interest

Jewish High Holy Day means Jewish New Year (Rosh Hashanah) and the Day of Atonement (Yom Kippur)

LIBOR has the meaning given to it in the relevant Facility Document

Obligor means each entity listed in part 2 of schedule 1 (The Chargor(s) and Obligor(s))

Occupational Lease means, in respect of a Chargor, a lease of a Secured Property in respect of which it is landlord

Officer means, in relation to a person, any officer, employee or agent of that person

Participating Member State means any member state of the European Union that has the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union

Party means a party to this Deed

Planning Acts means the Town and Country Planning Acts 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning (Consequential Provisions) Act 1990, the Planning and Compensation Act 1991, the Planning and Compulsory Purchase Act 2004 and any regulations or subordinate legislation made under any of the foregoing and any other statute or regulation governing or controlling the use or development of land and buildings

Premises means any building on a Secured Property

Properties mean the properties listed in schedule 2 (Properties)

Receiver means any receiver, manager or administrative receiver appointed by the Bank in respect of any Chargor or any of the Secured Assets

Relevant Policies means all Insurance Policies (other than policies in respect of third party liability) together with all monies payable in respect of those policies

Rights means any Security or other right, privilege, power, immunity or benefit or any interest or remedy, of any kind, whether it is personal or proprietary whether arising by set-off, counterclaim, subrogation, indemnity, proof in liquidation or otherwise and whether from contribution or otherwise

Secured Assets means in respect of any Chargor, all of its assets and undertaking the subject of or expressed to be the subject of, any Security created by, under or supplemental to this Deed, in favour of the Bank

Secured Obligations means in respect of any Chargor, all monies and liabilities now or after the date of this Deed due, owing or incurred by that Chargor to the Bank whatsoever, in any manner and in any currency or currencies and whether present or future, actual or contingent, whether incurred solely or jointly with any other person and whether as principal or surety, together with all interest accruing on such monies and liabilities and all costs, charges and expenses incurred by the Bank, except for any obligation which, if it were included here, would constitute unlawful financial assistance, or its equivalent in any other jurisdiction

Secured Property means at any time the Properties and all other freehold, leasehold or commonhold property which is subject to any Security created by, under or supplemental to, this Deed

Security means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect

Security Period means the period beginning on the date of this Deed and ending on the date on which the Bank is satisfied that the Secured Obligations have been irrevocably and unconditionally satisfied in full and the Bank has no further obligation, liability or commitment to any Chargor or Obligor (as the case may be)

Subsidiary means a subsidiary undertaking within the meaning of section 1162 of the Act and any company which would be a subsidiary undertaking within the meaning of section 1162 of the Act but for any Security subsisting over the shares in that company from time to time

Tax means all forms of taxation and statutory, governmental, state, federal, provincial, local, government or municipal charges, duties, imposts, contributions, levies, withholdings or liabilities wherever chargeable and whether of the UK or any other jurisdiction and any penalty, fine, surcharge, interest, charges or costs relating to them

VAT means value added tax as provided for in the Value Added Tax Act 1994 and any other Tax of a similar nature

1.2 Interpretation

- (a) Headings and sub-headings are for ease of reference only and do not affect the interpretation of this Deed.
- (b) Unless a contrary indication appears, a reference in this Deed to:
 - (i) a clause, sub-clause, appendix and schedule are to clauses and sub-clauses of and appendices and schedules to, this Deed;
 - (ii) this Deed (or any provision of it) or any other document shall be construed as reference to this Deed, that provision or that document as it is in force for the time being and as amended, varied, replaced or supplemented from time to time in accordance with its terms, or with the agreement of the relevant parties;

- (iii) **the Bank, any Chargor, any Obligor, any Party or any other person** shall be construed so as to include its successors in title, permitted assigns and permitted transferees and includes any individual person, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality) or any other entity or body of any description;
- (iv) **assets** includes present and future properties, revenues and rights of every description (including any right to receive such revenues);
- (v) an Enforcement Event is **continuing** if it has not been waived, in both cases, to the satisfaction of the Bank;
- (vi) **dispose** includes any sale, lease, licence, transfer or loan;
- (vii) **equivalent** means in relation to a currency (the first currency) means the amount of a second currency that may be purchased with the first currency at the Bank's spot rate of exchange at or about 11.00am on a particular day;
- (viii) **euro and €** shall be construed as a reference to the single currency of Participating Member States;
- (ix) **guarantee** means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
- (x) **Indebtedness** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (xi) a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but if not having the force of law, then being a type with which persons to which it applies customarily comply) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
- (xii) **sterling and £** shall be construed as a reference to the lawful currency of the United Kingdom;
- (xiii) **writing or written** includes faxes but not email;
- (xiv) **to including or in particular (or, in each case, cognate expressions)** does not limit words and expressions with which it is used;
- (xv) **the Insolvency Act 1989** includes any amendments made to that Act by the Limited Liability Partnerships Regulations 2001 (SI 2001/1090);

- (xvi) a provision of law is a reference to a provision, of any treaty, legislation, regulation, decree, order or by-law and any secondary legislation enacted under a power given by that provision, as amended, applied or re-enacted or replaced (whether with or without modification) whether before or after the date of this Deed;
- (xvii) a time of day is a reference to London time;
- (xviii) any word importing the singular shall include the plural and vice versa; and
- (xix) a term defined in this Deed has the same meaning when used in any notices, acknowledgements or other documents issued under or in connection with this Deed.

1.3 Third party rights

- (a) Unless expressly provided to the contrary in any Finance Document, a person who is not a Party other than an Officer of the Bank has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed or any other Finance Document issued or entered into under or in connection with it.
- (b) Unless expressly provided to the contrary in any Finance Document the consent of any person who is not a Party is not required to rescind or vary this Deed or any other Finance Document entered into under or in connection with it.

1.4 Deed

This Deed is intended to take effect as a deed notwithstanding the fact that the Bank may execute this Deed under hand.

1.5 Administration

- (a) Any reference in this Deed, or any other Finance Document entered into under or in connection with it, to the making of an administration order shall be treated as including a reference to the appointment of an administrator under paragraph 14 (by the holder of a qualifying floating charge in respect of a Chargor's assets) or 22 (by a Chargor or the directors or members of a Chargor) of Schedule B1 to the Insolvency Act 1986 or any steps taken toward such order or appointment.
- (b) Any reference in this Deed or any other Finance Document entered into under or in connection with it, to making an application for an administration order by petition shall be treated as including a reference to making an administration application to the court under Schedule B1 to the Insolvency Act 1986, appointing an administrator under paragraph 14 or 22 of that Schedule, or giving notice under paragraph 15 or 26 of that Schedule of intention to appoint an administrator or any steps taken towards such application or notice.

1.6 Incorporated terms

The terms of the Finance Documents and of any side letters relating to the Finance Documents and the Secured Obligations are incorporated into this Deed to the extent required for any purported disposition of any Secured Assets contained in this Deed to be a

valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

2 Covenant to pay

- 2.1 Each Chargor covenants with the Bank that it will on demand pay and discharge the Secured Obligations from time to time when they fall due for payment and discharge.
- 2.2 Interest on any sum due pursuant to this Deed but unpaid shall accrue from the due date up to the date of actual payment (both before and after judgment) at the rate that is 5% above three-month LIBOR from time to time, such interest to be compounded at such intervals as the Bank thinks fit.

3 Charging provisions

3.1 General

All Security created by a Chargor under clauses 3.2 to 3.5 inclusive is:

- (a) granted in favour of the Bank;
- (b) a continuing security for the payment and discharge of the Secured Obligations and shall remain in full force and effect regardless of any intermediate payment or discharge by any Chargor or any other person of the whole or any part of the Secured Obligations;
- (c) granted with full title guarantee;
- (d) in addition to any other Security which the Bank may hold at any time for the Secured Obligations (or any of them) and may be enforced without first having recourse to any other rights of the Bank; and
- (e) granted in respect of all the right, title and interest (if any), present and future, of that Chargor in and to the relevant Secured Asset.

3.2 Legal mortgages

Each Chargor charges by way of legal mortgage the Properties and all Premises and Fixtures on each of the Properties.

3.3 Assignments

- (a) Each Chargor assigns the Relevant Policies to which is a party.
- (b) Each Chargor shall remain liable to perform all its obligations under the Relevant Policies.

3.4 Fixed charges

Each Chargor charges by way of fixed charge:

- (a) all interests and estates in any freehold, leasehold or commonhold property now or subsequently owned by it (other than any freehold, leasehold or commonhold property effectively charged by way of legal mortgage under clause 3.2) and, in each case, the Premises and Fixtures on each such property;

- (b) the proceeds of sale of its Secured Property and all licences to enter on or use any Secured Property;
- (c) the benefit of all other agreements, instruments and rights relating to its Secured Property; and
- (d) to the extent that any assignment in clause 3.3 is ineffective as an assignment, the assets referred to in that clause.

3.5 Floating charge

Each Chargor charges by way of floating charge all its assets and undertaking wherever located both present and future other than any assets effectively charged by way of legal mortgage or fixed charge or assigned under clauses 3.2, 3.3 or 3.4.

3.6 Qualifying floating charge

This Deed contains a qualifying floating charge and paragraph 14 of Schedule B1 of the Insolvency Act 1986 applies to the floating charge created by or under this Deed.

3.7 Conversion of floating charge to a fixed charge

The Bank may at any time by notice in writing to any Chargor convert the floating charge created under clause 3.5 into a fixed charge as regards any Floating Charge Asset as it shall specify in the notice if:

- (a) an Enforcement Event is continuing; or
- (b) in the opinion of the Bank that Floating Charge Asset is in danger of being seized or any legal process or execution is being enforced against that Floating Charge Asset.

3.8 Automatic conversion of floating charge to a fixed charge

If (unless permitted in writing by the Bank or expressly permitted under the terms of any Finance Document):

- (a) a Chargor creates or attempts to create any Security over any of its Floating Charge Assets;
- (b) any person levies or attempts to levy any distress, attachment, execution or other legal process against any Floating Charge Asset; or
- (c) any corporate action, legal proceedings or other procedures or steps are taken for the winding up, dissolution, administration or reorganisation of any Chargor,

the floating charge created by this Deed will automatically and immediately without notice be converted into a fixed charge over the relevant assets or, in the circumstances described in clause 3.8(c), over all of the Floating Charge Assets.

3.9 Small company moratorium

Notwithstanding any other provision of this Deed, where a Chargor is an eligible company or limited liability partnership within the meaning of paragraphs 2 to 4 (inclusive) of Schedule A1 to the Insolvency Act 1986, then the obtaining of a moratorium, including any preliminary decision, or investigation in terms of paragraph 43 of Schedule A1 to the Insolvency Act 1986

shall not cause the floating charge created by this Deed to crystallise into a fixed charge, nor cause restrictions which would not otherwise apply to be imposed on the disposal of its property and assets by that Chargor.

4 Representations

Each Chargor makes the representations and warranties set out in this clause 4 to the Bank on the date of this Deed and on each day of the Security Period.

- 4.1 It is a private limited liability corporation duly incorporated and validly existing under the laws of the jurisdiction of its incorporation with the power to own its assets and carry on its business as it is being conducted.
- 4.2 The obligations expressed to be assumed by it in each Finance Document to which it is a party are legal, valid, binding and enforceable obligations.
- 4.3 Without limiting the generality of clause 4.2, this Deed creates Security of the type which this Deed purports to create and over the assets which it is expressed to create Security and that Security is valid and effective and is not liable to be set aside on its insolvency, bankruptcy, liquidation or administration or otherwise.
- 4.4 The entry into and performance by it of, and the transactions contemplated by, the Finance Documents, and the granting of the Security, do not and will not conflict with any law or regulation, or judicial or official order, applicable to it, its constitutional documents or any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument.
- 4.5 It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Finance Documents to which it is or will be a party and the transactions contemplated by those Finance Documents.
- 4.6 No limit on its powers will be exceeded as a result of the borrowing, granting of Security or giving of guarantees or indemnities contemplated by the Finance Documents to which it is a party.
- 4.7 All Authorisations required to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party have been obtained or effected and are in full force and effect.
- 4.8 It is the sole legal and beneficial owner of the assets over which it purports to grant Security and such assets are free from any Security granted in favour of any person other than the Bank and from any third party right or claim.

5 Negative pledge

- 5.1 No Chargor shall create or permit to subsist any Security over any of its assets.
- 5.2 No Chargor shall:
 - (a) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by it, a Chargor or any other member of the Group;
 - (b) sell, transfer or otherwise dispose of any of its receivables on recourse terms;

(c) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or

(d) enter into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising financial indebtedness or of financing the acquisition of an asset.

5.3 Clauses 5.1 and 5.2 do not apply to any Security created by or pursuant to this Deed or any Security or arrangement which is permitted by the Bank in writing or expressly permitted under the terms of any Finance Document.

6 Restrictions on disposals

6.1 No Chargor shall enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any Secured Assets.

6.2 Clause 6.1 does not apply to any disposal which is permitted by the Bank in writing or expressly permitted under the terms of any Finance Document.

7 Further assurance

7.1 Each Chargor shall promptly do all such acts and execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Bank may reasonably specify (and in such form as the Bank may reasonably require) in favour of the Bank or its nominee(s):

(a) to create, perfect, protect and maintain the Security created or intended to be created under or evidenced by this Deed or for the exercise of any rights, powers and remedies of the Bank provided by or pursuant to this Deed or by law;

(b) to confer on the Bank Security over any property and assets of that Chargor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to this Deed; and/or

(c) (if an Enforcement Event is continuing) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Security created by or under this Deed.

7.2 Each Chargor shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Bank by or pursuant to this Deed.

7.3 Any document required to be executed by a Chargor under this clause 7 will be prepared at the cost of that Chargor.

8 Land Registry

8.1 Application for restriction

(a) Each Chargor consents to an application being made to the Land Registry for registration of the following restriction in the Proprietorship Register of each property situated in England and Wales forming part of the Secured Property title to which is registered or is required to be registered at the Land Registry (including any

unregistered properties subject to compulsory first registration at the date of this Deed);

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the proprietor for the time being of the charge dated [the date of this Deed] in favour of Bank Leumi (UK) plc referred to in the charges register or their conveyancer."

- (b) Each Chargor confirms that so far as any of the Secured Property is unregistered, such land is not affected by any disclosable overriding interests within the meaning of the Land Registration Act 2002 or the Land Registration Rules 2003.

8.2 Tacking and further advances

Where the Bank is, subject to the terms of the Finance Documents, under an obligation to make further advances to any Chargor or Obligor, this security has been made for securing such further advances and the Bank and each Chargor by this Deed consent to an application being made to the Land Registry to enter a note of such obligation on the Charges Register of any registered land (and any unregistered properties subject to compulsory first registration at the date of this Deed) forming part of the Secured Property.

9 Future property

If a Chargor acquires (or intends to acquire) any freehold or leasehold or other interest in property after the date of this Deed it must:

- (a) notify the Bank immediately of such acquisition or its intention to acquire such property;
- (b) immediately on request by the Bank and at the cost of that Chargor, execute and deliver to the Bank, a legal mortgage in favour of the Bank of such property in such form as the Bank may require;
- (c) obtain such consents as are required for the Security referred to in this clause 9;
- (d) if the title to such freehold or leasehold property is registered at the Land registry or required to be so registered, to give the Land Registry written notice of the Security; and
- (e) if applicable, ensure that the Security is correctly noted in the register of title against that title at the Land Registry.

10 Notices of assignments and charges

- (a) Each Chargor which is an Insured party under a Relevant Policy shall give notice in the form specified in part 1 (Form of notice of assignment) of schedule 3 to each insurer under each Relevant Policy that the Chargor has assigned to the Bank all its right, title and interest in that Relevant Policy.
- (b) The relevant Chargor shall give the notices referred to in clause 10(a) promptly upon being requested to do so by the Bank.
- (c) If requested to do so by the Bank, the relevant Chargor shall use reasonable endeavours to procure that the recipient of each such notice acknowledges that

notice in substantially the form specified in part 2 (Form of acknowledgement) of schedule 3 within 5 Business Days of that notice being given.

11 Appropriations

Until all amounts which may be or become payable by the Chargors to the Bank have been irrevocably paid in full, the Bank may:

- (a) refrain from applying or enforcing any other moneys, Security or rights held or received by the Bank in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Chargor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from any Chargor or on account of any Chargor's liability under this Deed.

12 Deferral of Chargors' rights

Unless the Bank otherwise directs, no Chargor will exercise any rights including any Rights and any right of set off which it may have by reason of performance by it of its obligations to the Bank or by reason of any amount being payable, or liability arising, under this Deed:

- (a) to be indemnified by a Chargor;
- (b) to claim any contribution from any other guarantor or surety of any Chargor's obligations to the Bank;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Bank or of any other guarantee or Security taken by the Bank;
- (d) to bring legal or other proceedings for an order requiring any Chargor to make any payment, or perform any obligation, in respect of which any Chargor has given a guarantee, undertaking or indemnity or any Security whether pursuant to this Deed or otherwise;
- (e) to exercise any right of set-off against any Chargor; and/or
- (f) to claim or prove as a creditor of any Chargor in competition with the Bank.

If a Chargor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Bank by the Chargors to be repaid in full on trust for the Bank and shall promptly pay or transfer the same to the Bank for application towards the Secured Obligations.

13 Undertakings

Each Chargor undertakes to the Bank in accordance with this clause 13. The undertakings in this clause 13 shall remain in force during the Security Period.

13.1 Real property

(a) Access

It will permit the Bank and such person or persons as the Bank shall nominate at all reasonable times and on reasonable notice to enter on any part of its Secured Property.

(b) Repair

(i) It shall keep its Secured Property in good and substantial repair and condition and decorative order.

(ii) It shall repair any defect or damage to any of its Secured Property promptly and if it fails to do so the Bank may, but shall not be obliged to, do so.

(c) Planning

It shall not do or allow or omit to be done anything which may infringe or contravene the Planning Acts affecting its Secured Property, nor make any application for the grant of planning permission within the meaning of the Planning Acts without the prior written consent of the Bank.

(d) Planning directions

(i) Within 5 Business Days of receipt by it of any notice or order (**Direction**) served on or issued to it by any local or other authority (whether under the Planning Acts or otherwise) in respect of any part of its Secured Property, it shall give full particulars of the Direction to the Bank and, if so requested by the Bank, produce the Direction or a copy of it to the Bank.

(ii) It shall advise the Bank of all steps taken or proposed to be taken by it from time to time to comply with the terms of the Direction.

(iii) It shall take all necessary steps to comply with the Direction.

(iv) It shall at the request of the Bank (but at the cost of the Chargor) make or join with the Bank in making such objections, representations against, appealing against or in respect of any proposal contained in the Direction as the Bank shall deem expedient in order to protect the Bank's interests.

(e) Development

(i) It shall not carry out any development (as defined in the Planning Acts) on any part of its Secured Property without the prior written consent of the Bank.

(ii) It shall not change the use of any part of its Secured Property without the prior written consent of the Bank.

(f) Deposit of title deeds

It shall deposit with the Bank all deeds and documents to title relating to its Secured Property.

(g) Outgoings

It will punctually pay and indemnify the Bank and any Receiver against all present and future rents, rates, taxes, assessments and outgoings of whatsoever nature imposed on or payable in respect of its Secured Property or any part of it or payable by the owner or occupier of it.

(h) Investigation of title

On request by the Bank, it shall grant the Bank or its advisers (at the cost of the Chargor) all facilities within its power to enable the Bank or its advisers or delegates to carry out such investigations of title to and enquiries into its Secured Property or other Secured Assets as may be carried out by a prudent mortgagee or chargee.

(i) Notices

It will deliver to the Bank promptly a certified true copy of any statutory or other notice (including any notice issued under the Regulatory Reform (Fire Safety) Order 2005 and all regulations, guidance, measures and notices issued under it), in respect of the Secured Property.

13.2 Leases

(a) Lease and covenant compliance

It shall:

- (i) perform all the terms on its part contained in any lease or agreement for lease under which it holds an interest in a Secured Property or to which any of its Secured Property is subject;
- (ii) properly perform (and indemnify the Bank and each Receiver for any breach of) any covenants and stipulations of whatsoever nature affecting any of its Secured Property;
- (iii) not make any election or take any other action so as to alter the treatment of any Occupational Lease for the purposes of VAT;
- (iv) not, without the prior written consent of the Bank, serve notice on any former tenant under any Occupational Lease under section 17(2) of the Landlord and Tenant (Covenants) Act 1995 or on any guarantor of any such former tenant under section 17(3) of that act; and
- (v) immediately notify the Bank of any notice received by it under section 146 of the Law of Property Act 1925 or any proceedings commenced or steps taken against it for the forfeiture of any lease under which it holds an interest in a Secured Property.

(b) Landlord's consent

If under the terms of any lease under which it holds an interest in any Secured Property, a Chargor is not permitted to charge its interest in such Secured Property without the consent of the landlord;

- (i) it undertakes promptly to make an application for landlord's consent to the creation of the fixed charge contained in clause 3.4 (Fixed charges) and any charge to be created under clause 7 (Further assurance), shall use all reasonable endeavours to obtain such consent as soon as possible and shall keep the Bank informed of the progress of its negotiations with such landlord;
 - (ii) subject to clause 13.2(b)(iii):
 - (A) no breach of any representation in the Finance Documents shall occur by virtue of the relevant Chargor's failure to have obtained such landlord's consent; and
 - (B) If the landlord indicates in writing that it proposes to commence, or commences an action of forfeiture of the lease, the Bank shall release from such fixed charge, the relevant Chargor's interest in the lease;
 - (iii) clause 13.2(b)(ii) shall only apply where the relevant Chargor has complied with its obligations under clause 13.2(b)(i), but the landlord has not given the consent requested of it;
 - (iv) upon receipt by the Bank of evidence in writing of the consent of the landlord to the creation and existence of the fixed charge over the Chargor's interest in such lease, clause 13.2(b)(ii) shall cease to apply in respect of the relevant Secured Property.
- (c) **No variation to lease**
- It shall not without the prior written consent of the Bank alter or vary or agree to alter or vary the terms of any lease under which it holds any Secured Property or any lease to which any Secured Property is subject.
- (d) **No surrender or termination**
- It shall not without the prior written consent of the Bank surrender or otherwise terminate any lease under which it holds a Secured Property or terminate, forfeit or accept a surrender of any lease to which any Secured Property is subject.
- (e) **Compliance by tenants**
- It shall use reasonable endeavours to procure that each tenant under an Occupational Lease complies with the terms of that Occupational Lease.
- (f) **Lease or right to occupy**
- It will not without the prior written consent of the Bank:
- (i) grant any lease or tenancy or exercise any other power of leasing of the whole or part of any Secured Property; or
 - (ii) grant any person any contractual licence or the right to occupy any Secured Property or part with possession of it.

(g) Forfeiture

It shall not do or permit anything which may render any lease or agreement for lease under which it holds an interest in a Secured Property, or to which the Secured Property is subject, liable to forfeiture or otherwise determinable.

(h) Managing Agents

It will not, in respect of any Property or part thereof, appoint any management company or managing agent nor change any management company or managing agent previously appointed and approved by the Bank without the prior written consent of the Bank.

13.3 Insurance

- (a) It shall effect and maintain such insurances as it is required to effect and maintain from time to time by the terms of the Finance Documents or if the Finance Documents are silent, it shall effect and maintain, in a form and amount and with an insurance company or underwriters acceptable to the Bank, such insurance on and in respect of its business and its assets as the Bank considers a prudent company carrying on the same or substantially similar business as that Chargor would effect.
- (b) It shall promptly pay all premiums and do all other things necessary to keep all of the policies of insurance in which it has an interest in full force and effect.
- (c) It shall ensure that:

 - (i) the name of the Bank be noted on each policy of insurance as mortgagee and first loss payee;
 - (ii) each policy of insurance shall contain a standard mortgagee clause whereby, among other things, the insurance shall not be vitiated or avoided as against a mortgagee notwithstanding that it could otherwise be so against any Chargor; and
 - (iii) each policy of insurance shall contain a provision to the effect that the insurance shall not be invalidated as against the Bank for non-payment of any premium due without the insurer first giving to the Bank not less than 14 days' written notice.
- (d) It shall not do or permit to be done anything to render the insurance void or voidable.
- (e) If a Chargor shall be in default of effecting or maintaining insurances or in producing any such policy or receipt to the Bank on demand, the Bank may take out or renew such insurances in any sum which the Bank may think expedient and all monies expended and costs incurred by the Bank under this provision shall be for the account of any such Chargor.
- (f) Subject to any statutory or contractual restriction arising before the date of this Deed, at the option of the Bank any proceeds of insurance shall be applied towards the repayment of the Secured Obligations.
- (g) Subject to clause 13.3(f) above with the prior written consent of the Bank, all proceeds of insurance shall be applied towards replacing or reinstating the property or assets in respect of which the proceeds are received.

- (h) It shall procure that there is given to the Bank copies of the insurances in which it has an interest, and such other information in connection with them as the Bank may reasonably require. It will notify the Bank in writing of all renewals, material variations and cancellations of policies made or, to its knowledge of it, threatened or pending.

13.4 General

It shall not do or cause or permit to be done anything which may in any way materially depreciate, jeopardise or otherwise prejudice the value to the Bank of the Security created by or under this Deed.

14 Power to remedy

- 14.1 If a Chargor fails to comply with any of the undertakings set out in clause 13 (Undertakings), it shall allow and irrevocably authorises the Bank and/or such persons as it shall nominate to take such action on its behalf as shall be necessary to ensure that it complies with those undertakings.

- 14.2 If a Chargor fails to perform any obligation or other covenant affecting the Secured Property or other Secured Asset, each Chargor shall permit the Bank or its agents and contractors:

- (a) to enter on the Secured Property;
- (b) to comply with or object to any notice served on any Chargor relating to the Secured Property or other Secured Asset; and
- (c) to take any action the Bank may reasonably consider expedient to prevent or remedy any breach of any such term or to comply with or object to any such notice.

- 14.3 Each Chargor shall on demand (or by such later time as the Bank may have specified in such demand) indemnify the Bank against any cost, loss or liability incurred by it in taking any of the steps referred to in this clause 14.

15 Security power of attorney

Each Chargor, by way of security, irrevocably and severally appoints the Bank, each Receiver and any of their delegates or sub-delegates to be its attorney to take any action which the Chargor is obliged to take under this Deed including the giving of notices to third parties of the creation of any Security pursuant to this Deed. Each Chargor ratifies and confirms whatever any attorney does or purports to do pursuant to its appointment under this clause 15.

16 Enforcement of security

16.1 When security is enforceable

On the occurrence of an Enforcement Event which is continuing, the Security created by and under this Deed is immediately enforceable.

16.2 Acts of enforcement

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

- (a) enforce all or any part of the Security created by or under this Deed in any manner it sees fit;
- (b) exercise its rights and powers conferred upon mortgagees by the Law of Property Act 1925, as varied and extended by this Deed, and rights and powers conferred on a Receiver by this Deed, whether or not it has taken possession or appointed a Receiver to any of the Secured Assets;
- (c) appoint a Receiver to all or any part of the Secured Assets;
- (d) appoint an administrator in respect of any Chargor and take any steps to do so;
- (e) exercise its power of sale under section 101 of the Law of Property Act 1925 (as amended by this Deed); or
- (f) if permitted by law, appoint an administrative receiver in respect of any Chargor.

16.3 Right of appropriation

To the extent that the Security created by this Deed constitutes a "security financial collateral arrangement" and the Secured Assets constitute "financial collateral" for the purpose of the Financial Collateral Arrangements (No 2) Regulations 2003 (Regulations), the Bank shall have the right on giving prior notice to the relevant Chargor, at any time after the relevant Security becomes enforceable, to appropriate all or any part of those Secured Assets in or towards discharge of the Secured Obligations. The Parties agree that the value of the appropriated Secured Assets shall be, in the case of cash, the amount of cash appropriated and, in the case of Subsidiary Shares and Investments, determined by the Bank by reference to any publicly available market price and, in the absence of which, by such other means as the Bank (acting reasonably) may select including, without limitation, an independent valuation. For the purpose of Regulation 18(1) of the Regulations, each Chargor agrees that any such determination by the Bank will constitute a valuation "in a commercially reasonable manner".

16.4 Statutory powers - general

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

16.5 Contingencies

If the Bank enforces the Security constituted by or under this Deed at a time when no amounts are due to the Bank but at a time when amounts may or will become so due, the

Bank (or the Receiver) may pay the proceeds of any recoveries effected by it into an interest bearing suspense account.

16.6 Mortgagee in possession - no liability

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

16.7 Redemption of prior mortgages

At any time after the Security created by or under this Deed has become enforceable, the Bank may, at the sole cost of the Chargors (payable to the Bank on demand):

- (a) redeem any prior form of Security over any Secured Asset; and/or
- (b) procure the transfer of that Security to itself; and/or
- (c) settle and pass the accounts of any prior mortgagee, chargee or encumbrancer which once so settled and passed shall be conclusive and binding on the Chargors.

17 Receiver

17.1 Appointment of Receiver

- (a) At any time:
 - (i) after any Security created by or under this Deed is enforceable, the Bank may appoint a Receiver to all or any part of the Secured Assets in accordance with clause 16.2(c) (Acts of enforcement).
 - (ii) If so requested in writing by any Chargor, without further notice, the Bank may appoint a Receiver to all or any part of the Secured Assets as if the Bank had become entitled under the Law of Property Act 1925 to exercise the power of sale conferred under the Law of Property Act 1925.
- (b) Any Receiver appointed under this Deed shall be the agent of the relevant Chargor and that Chargor shall be solely responsible for his acts or defaults and for his remuneration and liable on any contracts or engagements made or entered into by him and in no circumstances whatsoever shall the Bank be in any way responsible for any misconduct, negligence or default of the Receiver.
- (c) Where a Chargor is an eligible company or limited liability partnership within the meaning of paragraphs 2 to 4 (inclusive) of Schedule A1 to the Insolvency Act 1986:
 - (i) obtaining a moratorium; or
 - (ii) anything done with a view to obtaining a moratorium including any preliminary decision or investigation in terms of paragraph 43 of Schedule A1 to the Insolvency Act 1986,

shall not be grounds for appointment of a Receiver.

17.2 Removal

The Bank may by written notice remove from time to time any Receiver appointed by it (subject to the provisions of section 45 of the Insolvency Act 1986 in the case of an administrative receiver) and, whenever it may deem appropriate, appoint a new Receiver in the place of any Receiver whose appointment has terminated.

17.3 Powers of Receiver

(a) General

- (i) In addition to those conferred by the Law of Property Act 1925 on any Receiver appointed under that Act, each Receiver has, and is entitled to exercise, all of the rights, powers and discretions set out in this clause 17.3.
- (ii) If there is more than one Receiver holding office at the same time, unless the document appointing him states otherwise, each Receiver may exercise all of the powers conferred on a Receiver under this Deed or under the Insolvency Act 1986 individually and to the exclusion of any other Receivers.
- (iii) A Receiver of a Chargor has all the rights, powers and discretions of an administrative receiver under the Insolvency Act 1986.
- (iv) A Receiver may, in the name of any Chargor:
 - (A) do all other acts and things which he may consider expedient for realising any Secured Asset; and
 - (B) exercise in relation to any Secured Asset all the powers, authorities and things which he would be capable of exercising if he were its absolute beneficial owner.

(b) Borrow money

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

(c) Carry on business

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

(d) Compromise

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

(e) Delegation

A Receiver may delegate his powers in accordance with clause 18 (Delegation).

(f) Employees

For the purposes of this Deed, a Receiver as he thinks appropriate, on behalf of the relevant Chargor or for itself as Receiver, may:

- (i) appoint and discharge managers, officers, agents, accountants, servants, workmen and others upon such terms as to remuneration or otherwise as he may think proper; and
- (ii) discharge any such persons appointed by the relevant Chargor.

(g) Leases

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

(h) Legal actions

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

(i) Possession

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

(j) Protection of assets

A Receiver may, in each case as he may think fit:

- (i) make and effect all repairs and insurances and do all other acts which the relevant Chargor might do in the ordinary conduct of its business be they for the protection or for the improvement of the Secured Assets;
- (ii) commence and/or complete any building operations on the Secured Property or other Secured Asset; and
- (iii) apply for and maintain any planning permission, building regulation approval or any other permission, consent or licence.

(k) Receipts

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

(l) **Sale of assets**

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

(m) **Subsidiaries**

A Receiver may form a Subsidiary of the relevant Chargor and transfer to that Subsidiary any Secured Asset.

(n) **Deal with Secured Assets**

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

(o) **Voting rights**

A Receiver may exercise all voting and other rights attaching to stocks, shares and other securities owned by the relevant Chargor and comprised in the Secured Assets in such manner as he may think fit.

(p) **Security**

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

(q) **Acquire land**

The Receiver may purchase or acquire any land and purchase, acquire or grant any interest in or right over land.

(r) **Development**

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

(s) **Landlord's obligations**

A Receiver may on behalf of a Chargor and without consent of or notice to that Chargor exercise all the powers conferred on a landlord or a tenant by the Landlord and Tenants Acts, the Rents Acts and Housing Acts or any other legislation from time to time in force in any relevant jurisdiction relating to rents or agriculture in respect of any part of the Secured Property.

(t) **Uncalled capital**

A Receiver may make calls conditionally or unconditionally on the members of any relevant Chargor in respect of uncalled capital.

(u) **Incidental matters**

A Receiver may do all other acts and things including without limitation, signing and executing all documents and deeds as may be considered by the Receiver to be incidental or conducive to any of the matters or powers listed here or granted by law or otherwise incidental or conducive to the preservation, improvement or realisation of the Secured Assets and to use the name of the relevant Chargor for all the purposes set out in this clause 17.

17.4 Remuneration

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

18 Delegation

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

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

19 Application of monies

19.1 Sections 109(6) and (8) (Appointment, powers, remuneration and duties of receiver) of the Law of Property Act 1925 shall not apply to a Receiver appointed under this Deed.

19.2 All monies received by the Bank or any Receiver under this Deed shall be applied to the Secured Obligations in such order as the Bank may determine.

19.3 The Bank and any Receiver may place any money received, recovered or realised pursuant to this Deed in an interest bearing suspense account and it may retain the same for such

period as it considers expedient without having any obligation to apply the same or any part of it in or towards discharge of the Secured Obligations.

20 Amendments, waivers and consents

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

21 Protection of third parties

- 21.1 No person (including a purchaser) dealing with the Bank or a Receiver or its or his agents has an obligation to enquire of the Bank, Receiver or others:
- (a) whether the Secured Obligations have become payable;
 - (b) whether any power purported to be exercised has become exercisable;
 - (c) whether any Secured Obligations or other monies remain outstanding;
 - (d) how any monies paid to the Bank or to the Receiver shall be applied; or
 - (e) the status, propriety or validity of the acts of the Receiver or Bank.
- 21.2 The receipt by the Bank or any Receiver shall be an absolute and a conclusive discharge to a purchaser and shall relieve him of any obligation to see to the application of any monies paid to or by the direction of the Bank or any Receiver.
- 21.3 In clauses 21.1 and 21.2, **purchaser** includes any person acquiring, for money or monies worth, any lease of, or Security over, or any other interest or right whatsoever in relation to, the Secured Assets or any of them.

22 Additional security

The Security created by or under this Deed is in addition to and shall not affect nor be affected by or merge with any other judgment, guarantee or Security right or remedy obtained or held by the Bank from time to time for the discharge and performance of the Secured Obligations.

23 Settlements conditional

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

- 23.2 Any settlement, discharge or release between a Chargor and the Bank shall be conditional upon no Security or payment to or for the Bank by that Chargor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any law relating to bankruptcy, insolvency or liquidation or otherwise.

24 Subsequent Security

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

25 Set-off

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

26 Notices

- 26.1 Each notice or other communication under, or in connection with, this Deed shall be:

- (a) in English;
- (b) in writing, delivered personally or sent by pre-paid first-class letter or fax; and
- (c) sent: to the relevant Chargor at the address and fax number identified with its signature below; and to the Bank at:

Bank Leumi (Jersey) Limited

PO Box 510, 2 Hill Street, St Helier, Jersey

Attention: David Cooper

Fax number: +44 (0) 1534 617446

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

- 26.2 Any notice or other communication given by the Bank shall be deemed to have been received:

- (a) if sent by fax, when received in legible form;
- (b) if given by hand, at the time of actual delivery; and
- (c) if posted, 2 Business Days after the day on which it was sent by pre-paid first class post.

- 26.3 Any notice or other communication given to the Bank shall be deemed to have been received only on actual receipt and then only if it is expressly marked for the attention of the department or officer specified above (or any substitute department or officer as the Bank

shall specify for this purpose). A notice or other communication given on a day which is not a Business Day, or after normal business hours in the place of receipt, shall be deemed to have been received on the next Business Day.

27 Invalidity

The invalidity, unenforceability or illegality of any provision (or part of a provision) of this Deed under the laws of any jurisdiction shall not affect the validity, enforceability or legality of the other provisions. If any invalid, unenforceable or illegal provision would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with whatever modification as is necessary to give effect to the commercial intention of the parties.

28 Assignment

28.1 The Bank may assign or otherwise transfer all or any part of its rights under this Deed or any Security created by or under it.

28.2 No Chargor may assign or otherwise transfer any of its rights or obligations under this Deed.

29 Releases

Upon the expiry of the Security Period, the Bank shall, at the request and cost of the Chargors, take whatever action is necessary to release and reassign to each relevant Chargor:

(a) its rights arising under this Deed;

(b) the Secured Assets from the Security created by and under this Deed,

and return all documents or deeds of title delivered to it under this Deed.

30 Currency clauses

30.1 Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:

(a) any reference in this Deed to, and any obligations arising under this Deed in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Bank; and

(b) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Bank (acting reasonably).

30.2 If a change in any currency of a country occurs, this Deed will, to the extent the Bank (acting reasonably specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the London interbank market and otherwise to reflect the change in currency.

30.3 If a payment is made to the Bank under this Deed in a currency (**Payment Currency**) other than the currency in which it is expressed to be payable (**Contractual Currency**), the Bank may convert that payment into the Contractual Currency at the rate at which it (acting reasonably and in good faith) is able to purchase the Contractual Currency with the Payment Currency on or around the date of receipt of the payment and to the extent that the converted

amount of the payment falls short of the amount due and payable the Chargors will remain liable for such shortfall.

31 Certificates and determinations

- 31.1 The Bank shall maintain, in accordance with its usual practice, records evidencing the amounts owed to it by each Chargor and each Obligor. For the purpose of any litigation or arbitration proceedings arising out of or in connection with this Deed, entries in those records are prima facie evidence of the existence and amount of the relevant Chargor's obligations as recorded in them and any certificate, determination or notification by the Bank of a rate or any amount payable under this Deed is, prima facie evidence of the matter to which it relates
- 31.2 Any certification or determination by the Bank of a rate or amount under this Deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

32 Indemnity

Chargors' Indemnity

- (a) Each Chargor shall promptly indemnify the Bank (and the Bank's Officers and employees) and each Receiver and Delegate (each an **Indemnified Person**) against any cost, loss or liability together with any associated VAT incurred by any of them as a result of:
- (i) the taking, holding, protection or enforcement of this Deed;
 - (ii) the exercise of any of the rights, powers, discretions and remedies vested in the Bank and each Receiver and Delegate by this Deed or by law; and
 - (iii) any default by any Chargor in the performance of any of the obligations expressed to be assumed by it in this Deed.
- (b) Each Chargor shall indemnify the Bank against any and all costs, losses, liabilities or expenses together with any associated VAT incurred by the Bank arising (directly or indirectly) out of or in connection with:
- (i) any breach or potential breach of or liability (whether civil and/or criminal) under any Environmental Law;
 - (ii) any responsibility on the part of the Bank in respect of any clean-up, repair or other corrective action; or
 - (iii) the business or any real property of any Chargor.
- (c) The Bank may indemnify itself out in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this clause and shall have a lien on this Deed and the proceeds of the enforcement of this Deed for all monies payable to it.

33 Exclusion of liability

33.1 No liability

Neither the Bank nor any Receiver shall be liable in respect of all or any part of the Secured Assets or for any loss or damage which arises out of the exercise or the attempted or

purported exercise of, or the failure to exercise any of, their respective powers unless such loss or damage is caused by its gross negligence or wilful acts of default and recklessness.

33.2 Officers and agents

No Chargor may take proceedings against any Officer, employee or agent of the Bank in respect of any claim it might have against the Bank or in respect of any act or omission of any kind by that Officer, employee or agent in relation to this Deed and any Officer, employee or agent of the Bank may rely on this clause.

34 Fees, costs and expenses

34.1 Transaction expenses

The Chargors shall promptly on demand pay the Bank the amount of all costs, fees and expenses (including legal fees) together with any associated Tax including VAT incurred by it in connection with the negotiation, preparation, printing, execution and perfection of this Deed.

34.2 Amendment costs

If a Chargor requests an amendment, waiver or consent of this Deed, the relevant Chargor shall, within 3 Business Days of demand, reimburse the Bank for the amount of all costs and expenses (including legal fees) together with any associated Tax including VAT reasonably incurred by the Bank in responding to, evaluating, negotiating or complying with the request or requirement.

34.3 Enforcement and preservation costs

The Chargors shall, within 3 Business Days of demand, pay to the Bank the amount of all costs, fees and expenses (including legal fees) together with any associated Tax including VAT incurred by the Bank in connection with the enforcement of or the preservation of any rights under this Deed and any proceedings instituted by or against the Bank as a consequence of taking or holding the Security created or expressed to be created in favour of the Bank under this Deed or enforcing these rights.

34.4 Counterparts

This Deed or any Finance Document entered into under or in connection with this Deed may be executed in any number of counterparts, and by each party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument. Delivery of a counterpart of this Deed or any such Finance Document entered into under or in connection with this Deed by e-mail attachment or telecopy shall be an effective mode of delivery.

35 Governing law

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

36 Enforcement

Jurisdiction of English courts

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (a **Dispute**).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This clause 36 is for the benefit of the Bank. As a result, the Bank shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Bank may take concurrent proceedings in any number of jurisdictions.

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

Schedule 1

The Chargor(s) and Obligor(s)

Part 1 - The Chargor(s)

Name	Jurisdiction of Incorporation	Registered number
Fallsworth Site Limited	England and Wales	9460128

Part 2 - The Obligor(s)

Name	Jurisdiction of Incorporation	Registered number
Fallsworth Site Limited	England and Wales	9460128
Camrose Limited	Jersey	69713

Schedule 2

Properties

Registered Land

Chargor	Country and district (or address or description and London borough)	Title number
Failsworth Site Limited	Freehold property known as land and buildings on the North East Side of Ridgefield Street, Failsworth registered at the Land Registry with title absolute	GM 528563

Unregistered Land

Schedule 3

Relevant Policies

Part 1 - Form of notice of assignment

To: [insured]

Dated: ♦

Dear Sirs

The insurance policies described in the attached schedule (Relevant Policies)

We hereby notify you that we have assigned to Bank Leumi (Jersey) Limited (the **Bank**) all our right, title and interest in and to the Relevant Policies.

We hereby irrevocably and unconditionally authorise and instruct you:

- 1 without notice or reference to or further authority from us and without enquiring as to the justification or the validity of those instructions, to comply only with any instructions from time to time received by you from the Bank relating to the Relevant Policies (or any of them); and
- 2 to pay all sums payable by you under the Relevant Policies (or any of them) directly to the Bank at:

Bank: ♦

Account number: ♦

Sort code: ♦

or such other account as the Bank may specify from time to time.

Please sign and return the acknowledgement attached to one enclosed copy of this notice to the Bank and the other copy to us.

The provisions of this notice (and any non-contractual obligations arising out of or in connection with it) are governed by English law.

Yours faithfully

.....
for and on behalf of

♦

Schedule

Date of policy	Insured	Policy type	Policy number
♦	♦	♦	♦

[Attach form of acknowledgment]

Part 2 - Form of acknowledgement

To: Bank Leumi (Jersey) Limited,
PO Box 510, 2 Hill Street
St Helier, Jersey

To: [name of Chargor] (Chargor)
[address]

We acknowledge receipt of the notice of assignment (**Notice**) of which the above is a duplicate. Terms defined in the Notice shall have the same meaning when used in this acknowledgement. We confirm that:

- (a) there has been no amendment, waiver or release of any rights or interests in any Relevant Policy since the date of such policy;
- (b) we have noted the Bank's interest as mortgagee and first loss payee on each Relevant Policy;
- (c) we will not agree to any amendment, waiver or release of any provision of any Relevant Policy without the prior written consent of the Bank;
- (d) we shall act in accordance with the Notice;
- (e) as at the date of this acknowledgement we have not received any notice of assignment or charge of the Chargor's interest in any Relevant Policy or the proceeds of any Relevant Policy in favour of any other person; and
- (f) we do not have and have not claimed or exercised any right or claim against the Chargor or exercised or attempted to exercise any right of set-off, counterclaim or other right relating to any Relevant Policy.

The provisions of this acknowledgement (and any non-contractual obligations arising out of or in connection with it) are governed by English law.

.....
for and on behalf of
[insurance company]

SIGNATURES TO THE LEGAL MORTGAGE

Chargors

Executed as a deed by **FAILSWORTH SITE**)
LIMITED) Director
)
acting by two directors or by a director and its)
secretary)
Director/Secretary

Address: Block C - Unit 4 Kestrel Road, Trafford Park, Manchester, M17 1SF

Facsimile: ♦

Attention: ♦

OR

Executed as a deed by **FAILSWORTH SITE**)
LIMITED)
) Director ✓
acting by a director in the presence of

Signature of witness

Name

Address ...

Address: Block C - Unit 4 Kestrel Road, Trafford Park, Manchester, M17 1SF

Facsimile: ♦

Attention: ♦

Bank

Signed on behalf of
Bank Leumi (Jersey) Limited
By:

SIGNATURES TO THE LEGAL MORTGAGE

Chargors

Executed as a deed by **FAILSWORTH SITE LIMITED**)
) Director
)
acting by two directors or by a director and its)
secretary)
) Director/Secretary

Address: Block C - Unit 4 Kestrel Road, Trafford Park, Manchester, M17 1SF

Facsimile: ♦

Attention: ♦

OR

Executed as a deed by **FAILSWORTH SITE LIMITED**)
) Director
)
acting by a director in the presence of

.....
Signature of witness

Name

Address

.....

Address: Block C - Unit 4 Kestrel Road, Trafford Park, Manchester, M17 1SF

Facsimile: ♦

Attention: ♦

Bank

Signed on behalf of
Bank Leumi (Jersey) Limited
By: 