



Registration of a Charge

Company name: **WILLIAM SINCLAIR HORTICULTURE LIMITED**

Company number: **00007633**



X33Y9UU3

Received for Electronic Filing: **18/03/2014**

Details of Charge

Date of creation: **18/03/2014**

Charge code: **0000 7633 0018**

Persons entitled: **MICHAEL JOHN AIREY
CAROLINE ISOBEL MURRAY
ERIC O'HERN**

Brief description: **A SECURITY AGREEMENT DATED 18 MARCH 2014 IN RELATION TO
LAND AND BUILDINGS AT FIRTH ROAD, LINCOLN BEING THE WHOLE
OF THE PROPERTY REGISTERED AT THE LAND REGISTRY UNDER
TITLE NUMBER LL27223**

Contains fixed charge(s).

Notification of addition to or amendment of charge.

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 THE ELECTRONIC COPY INSTRUMENT
DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION
IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **ANDREW & CO LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 7633

Charge code: 0000 7633 0018

The Registrar of Companies for England and Wales hereby certifies that a charge dated 18th March 2014 and created by WILLIAM SINCLAIR HORTICULTURE LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 18th March 2014 .

Given at Companies House, Cardiff on 18th March 2014



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

SECURITY AGREEMENT

DATED 18th MARCH 2014

BETWEEN

WILLIAM SINCLAIR HORTICULTURE LIMITED

- and -

MICHAEL JOHN AIREY, CAROLINE ISOBEL MURRAY and ERIC O'HERN
(the trustees for the time being of the William Sinclair Holdings Pension Fund)

H:\CHUNTER\WILLIAM SINCLAIR HOLDINGS PLC PENSION FUND W2987\PROPERTY MATTERS RE FIRTH RD & BEEVOR
ST LINCOLN \SECURITY AGREEMENT 17-03-14.DOC

*the only way to be a
true copy of the original*

ANDREW & CO. LLP
SOLICITORS
1 FLAVIAN ROAD
LINCOLN
LN2 4GR

18/3/2014

CONTENTS

Clause	Page
1. Interpretation	1
2. Creation of Security	6
3. Representations – general.....	7
4. Covenants	10
5. Default.....	16
6. When Security becomes enforceable	17
7. Enforcement of Security.....	18
8. Receiver.....	19
9. Powers of Receiver	20
10. Application of proceeds	22
11. Expenses and indemnity.....	22
12. Delegation	23
13. Further assurances	23
14. Covenant to pay.....	23
15. Power of attorney	23
16. Preservation of Security	24
17. Changes to the Parties	26
18. Amendments	26
19. Release where oversecured	27
20. Substitution of Property	27
21. Severability	28
22. Counterparts	28
23. Notices.....	28
24. Language	29
25. Governing Law.....	29
26. Enforcement	29
 Schedules	
1. Companies.....	31
2. Real Property	32
3. Forms of Letter for Occupational Tenants	33
4. Amendment and release criteria.....	35
5. Conditions Precedent to Substitution	39
 Signatories.....	 40

THIS DEED is dated

18TH MARCH

2014

between:

- (1) WILLIAM SINCLAIR HORTICULTURE LIMITED (Registered number 00007633) whose registered office is at Firth Road Lincoln (the **Chargor**); and
- (2) MICHAEL JOHN AIREY, CAROLINE ISOBEL MURRAY and ERIC O'HERN as trustees for the time being of the William Sinclair Holdings Pension Fund (each a **Trustee** and together the **Trustees**) care of Firth Road Lincoln LN6 7AH

IT IS AGREED as follows:

1. INTERPRETATION

1.1 Definitions

In this Deed:

Act means the Law of Property Act 1925.

Business Day means a day (other than a Saturday or a Sunday) on which banks are open for general business in London.

Certificate of Title means any certificate of title on the Mortgaged Property addressed to and provided at the request of the Trustees before the date of this Deed.

Company means each or any of the companies listed in Schedule 1 (Companies) and **Companies** shall mean all of them¹.

Deemed Value has the meaning given to it in Schedule 4 (Amendment and Release Criteria).

Deficit-Reduction Contributions has the meaning given to it in Schedule 4 (Amendment and Release Criteria).

Eligible Valuation has the meaning given to it in Schedule 4 (Amendment and Release Criteria).

Environmental Approval means any authorization required by any Environmental Law.

Environmental Claim means any claim by any person in connection with:

- (a) a breach, or alleged breach, of an Environmental Law;
- (b) any accident, fire, explosion or other event of any type involving an emission or substance which is capable of causing harm to any living organism or the environment; or
- (c) any other environmental contamination.

Environmental Law means any law or regulation concerning:

¹ In the case of a multi-employer scheme.

- (a) the protection of health and safety;
- (b) the environment; or
- (c) any emission or substance which is capable of causing harm to any living organism or the environment.

Event of Default means an event specified as such in Clause 5 (Default).

Fixtures means all fixtures and fittings and fixed plant and machinery on the Mortgaged Property.

Implementation Date has the meaning given to it in Clause 18 (Amendments).

Insolvency Event means:

- (a) an 'insolvency event' as defined in section 121 of the Pensions Act 2004 or regulations made from time to time thereunder; or
- (b) the receipt by the Pension Protection Fund of an application or notification from the Trustees or the Pensions Regulator that an employer is unlikely to continue as a going concern, which is purported to be made in accordance with section 129 of the Pensions Act 2004 or regulations made from time to time thereunder.

Insured Property Assets means the Premises and all the Chargor's other assets of an insurable nature in the Premises.

Material Adverse Effect means a material adverse effect on:

- (a) the ability of the Chargor to perform its payment obligations under this Deed;
- (b) the validity or enforceability of, or the effectiveness or ranking of this Deed;
- (c) any right or remedy of the Trustees under this Deed.

Mortgaged Property means all freehold or leasehold property included in the definition of **Security Assets**.

Party means a party to this Deed.

Pension Protection Fund means the Board of the Pension Protection Fund as established under Part 2 of the Pensions Act 2004.

Premises means all buildings and erections included in the definition of **Mortgaged Property**.

Proposal Date has the meaning given to it in Clause 18 (Amendments).

Proposals has the meaning given to it in Clause 18 (Amendments).

Receiver means an administrative receiver, receiver and manager or a receiver, in each case, appointed under this Deed.

Release Request has the meaning given to it in Clause 19 (Release where oversecured).

Rental Income means the aggregate of all amounts paid or payable to or for the account of the Chargor in connection with the letting of any part of the Mortgaged Property, including each of the following amounts:

- (a) rent, licence fees and equivalent amounts paid or payable;
- (b) any sum received or receivable from any deposit held as security for performance of a tenant's obligations;
- (c) a sum equal to any apportionment of rent allowed in favour of the Chargor;
- (d) any other moneys paid or payable in respect of occupation and/or usage of a Security Asset and any fixture and fitting on a Security Asset including any fixture or fitting on a Security Asset for display or advertisement, on licence or otherwise;
- (e) any sum paid or payable under any policy of insurance in respect of loss of rent or interest on rent;
- (f) any sum paid or payable, or the value of any consideration given, for the surrender or variation of any lease;
- (g) any sum paid or payable by any guarantor of any occupational tenant under any lease; and
- (h) any interest paid or payable on, and any damages, compensation or settlement paid or payable in respect of, any sum referred to above less any related fees and expenses incurred (which have not been reimbursed by another person) by the Chargor.

Reservations means:

- (a) the principle that equitable remedies are remedies which may be granted or refused at the discretion of the court and damages may be regarded as an adequate remedy;
- (b) the limitation on enforcement as a result of laws relating to bankruptcy, insolvency, liquidation, reorganisation, court schemes, moratoria, administration and other laws affecting the rights of creditors generally;
- (c) the statutory time-barring of claims;
- (d) defences of set off or counterclaim;
- (e) rules against penalties and similar principles;
- (f) the fact that security which is described as fixed security may in fact be floating security;
- (g) the possibility that an undertaking to assume liability for, or indemnify a person against, non-payment of stamp duty may be void;
- (h) the fact that a court may refuse to give effect to a purported contractual obligation to pay costs imposed upon another person in respect of costs of an unsuccessful litigation brought against that person or may not award by way of costs all of the expenditure incurred by a successful litigant in proceedings brought before that court or that a court may stay proceedings if concurrent proceedings based on the same

grounds and between the same parties have previously been brought before another court;

- (i) steps for perfection not required by the terms of this Deed to be taken,

and any other reservations or qualifications of law contained in any legal opinion delivered to the Companies, the Trustees or the Chargor in respect of this Deed.

Scheme means the William Sinclair Holdings Pension Fund².

Secured Liabilities means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally and in any capacity whatsoever) of each Company to make payments to the Scheme up to a maximum amount of £5,000,000.³

Security Assets means all assets of the Chargor the subject of any Security Interest created by this Deed and any Supplemental Security Agreement.

Security Interest means any mortgage, pledge, lien, charge, assignment, hypothecation or security interest 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 all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full.

Subsidiary means:

- (a) a subsidiary within the meaning of section 1159 of the Companies Act 2006; and
(b) unless the context otherwise requires, a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006.

Substitute Property means a freehold or leasehold property approved by the Trustees pursuant to Clause 20 (Substitution of Property) in their absolute discretion and in relation to which the conditions set out in Schedule 5 (Conditions precedent to substitution) have been satisfied.

Supplemental Security Agreement means a security agreement supplemental to this Deed executed by the Chargor in favour of the Trustees containing a charge by way of legal mortgage over a Substitute Property.

Valuation means a valuation of the Chargor's interest in the Mortgaged Property by the Valuer, addressed to the Trustees and prepared on the basis of the market value defined in the then current Statements of Asset Valuation Practice and Guidance Notes issued by the Royal Institution of Chartered Surveyors.

Valuer means Mark Thompson of BNP Paribas Real Estate UK or any other surveyor or valuer appointed by the Trustees.

² References to the "Scheme" will need to be amended appropriately where the document relates to one section only of a sectionalised scheme.

³ Choose one of the five options for the chargor's maximum liability under the security agreement. In the case of a non-associated scheme/section, only the first option (a fixed monetary cap) may be used.

1.2 Construction

- (a) In this Deed unless the contrary intention appears, a reference to:
- (i) **assets** includes present and future properties, revenues and rights of every description and includes uncalled capital;
 - (ii) an **authorisation** includes an authorisation, consent, approval, resolution, licence, exemption, filing, registration or notarisation;
 - (iii) **disposal** means a sale, transfer, grant, lease or other disposal, whether voluntary or involuntary, and **dispose** will be construed accordingly;
 - (iv) **this Security** means any Security Interests created by this Deed and any Supplemental Security Agreement;
 - (v) a **person** includes any individual, company, corporation, unincorporated association or body (including a partnership, trust, joint venture or consortium), government, state, agency, organisation or other entity whether or not having separate legal personality;
 - (vi) 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, being of a type with which persons to which it applies are accustomed to comply) or any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
 - (vii) a **currency** is a reference to the lawful currency for the time being of the relevant country;
 - (viii) a **provision of law** is a reference to that provision as extended, applied, amended or re-enacted and includes any subordinate legislation;
 - (ix) a Clause, a Subclause, a Paragraph, a Subparagraph or a Schedule is a reference to a clause, subclause, paragraph or subparagraph of, or a schedule to, this Deed;
 - (x) a Party or any other person includes its successors in title, permitted assigns and permitted transferees and this Deed shall be binding on and enforceable by the successors in office of the Trustees as trustees of the Scheme; and
 - (xi) a **time of day** is a reference to London time.
- (b) Unless the contrary intention appears, a reference to a **month** or **months** is a reference to a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month or the calendar month in which it is to end, except that:
- (i) if the numerically corresponding day is not a Business Day, the period will end on the next Business Day in that month (if there is one) or the preceding Business Day (if there is not);
 - (ii) if there is no numerically corresponding day in that month, that period will end on the last Business Day in that month; and

- (iii) notwithstanding Subparagraph (i) above, a period which commences on the last Business Day of a month will end on the last Business Day in the next month or the calendar month in which it is to end, as appropriate.
- (c) Unless expressly provided to the contrary in this Deed, a person who is not a party to this Deed may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999 and, notwithstanding any term of this Deed, no consent of any third party is required for any variation (including any release or compromise of any liability) or termination of this Deed.
- (d) The headings in this Deed do not affect its interpretation.
- (e) Any covenant of the Chargor under this Deed (other than a payment obligation) remains in force during the Security Period.
- (f) If the Trustees consider that an amount paid to them under this Deed is capable of being avoided or otherwise set aside on the liquidation or administration of the payer or otherwise, then that amount will not be considered to have been irrevocably paid for the purposes of this Deed.
- (g) Unless the context otherwise requires, a reference to a Security Asset includes the proceeds of sale of that Security Asset.
- (h) It is intended by the Parties that this document takes effect as a deed notwithstanding the fact that a Party may only execute this document under hand.

2. CREATION OF SECURITY

2.1 General

- (a) All the security created under this Deed:
 - (i) is created in favour of the Trustees;
 - (ii) is created over present and future assets of the Chargor;
 - (iii) is security for the payment of all the Secured Liabilities; and
 - (iv) is made with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994.
- (b) If the rights of the Chargor under a document cannot be secured without the consent of a party to that document:
 - (i) the Chargor must notify the Trustees promptly;
 - (ii) this Security will secure all amounts which the Chargor may receive, or has received, under that document but exclude the document itself; and
 - (iii) unless the Trustees otherwise require, the Chargor must use reasonable endeavours to obtain the consent of the relevant party to that document being secured under this Deed.

2.2 Land

- (a) The Chargor charges and agrees to charge:

- (i) by way of a first legal mortgage the real property specified in Schedule 2 (Real Property)⁴;
 - (ii) all claims under and all proceeds of all policies of insurance in respect of the Security Assets which are at any time held by or written in favour of the Chargor or in which the Chargor from time to time has an interest; and
 - (ii) to the extent that the Rental Income is not effectively assigned under clause 2.3 (Rental Income), by way of first fixed charge, all Rental Income.
- (b) A reference in this Subclause to a mortgage or charge of any freehold, leasehold or other immovable property includes:
 - (i) all buildings, fixtures, fittings and fixed plant and machinery on that property; and
 - (ii) the benefit of any covenants for title given or entered into by any predecessor in title of the Chargor in respect of that property or any moneys paid or payable in respect of those covenants.

2.3 Rental Income

The Chargor assigns absolutely, subject to a proviso for re-assignment on redemption, all of its rights in respect of all Rental Income.

3. REPRESENTATIONS – GENERAL

3.1 Representations

The representations set out in this Clause are made by the Chargor to the Trustees.

3.2 Status⁵

- (a) It is a limited liability company, duly incorporated and validly existing under the laws of its jurisdiction of incorporation.
- (b) It and each of its Subsidiaries has the power to own its assets and carry on its business as it is being conducted.

3.3 Powers and authority

It has the power to enter into, perform and deliver, and has taken all necessary action to authorise the entry into, performance and delivery of, this Deed and the transactions contemplated by this Deed.

3.4 Legal validity

Subject to the Reservations, the obligations expressed to be assumed by it in this Deed are legal, binding, valid and enforceable obligations.

⁴ Use this formulation when the Chargor is charging specific property.

⁵ This clause will require appropriate amendment where the Chargor is not a limited liability company.

3.5 Non-conflict

The entry into and performance by it of, and the transactions contemplated by, this Deed do not conflict with:

- (a) any law or regulation applicable to it;
- (b) its or any of its Subsidiaries' constitutional documents; or
- (c) any document which is binding upon it or any of its Subsidiaries or any of its or its Subsidiaries' assets.

3.6 Insolvency

No:

- (a) corporate action, legal proceeding or other procedure or step described in Clause 5.5 (Insolvency proceedings);
- (b) creditors' process described in Clause 5.6 (Creditors' process),

has been taken or threatened in relation to the Chargor and none of the circumstances described in Clause 5.4 (Insolvency) applies to the Chargor.

3.7 No default

No event or circumstance is outstanding which constitutes a default under any document which is binding on it or any of its Subsidiaries or any of its or its Subsidiaries' assets to an extent or in a manner which has or is reasonably likely to have a Material Adverse Effect.

3.8 Authorisations

All authorisations required by it in connection with the entry into, performance, validity and enforceability of, and the transactions contemplated by, this Deed have been obtained or effected (as appropriate) and are in full force and effect.

3.9 Litigation

No litigation, arbitration or administrative proceedings are current or, to its knowledge, pending or threatened, against it or its Subsidiaries which have or, if adversely determined, are reasonably likely to have a Material Adverse Effect.

3.10 Nature of security

- (a) This Deed creates those Security Interests it purports to create and is not liable to be amended or otherwise set aside on the liquidation or administration of the Chargor or otherwise.
- (b) The security created by this Deed constitutes a first priority Security Interest of the type described over the Security Assets and the Security Assets are not subject to any prior or pari passu Security Interest.

3.11 Information for Certificate of Title

- (a) The information provided to the lawyers who prepared any Certificate of Title for the purpose of that Certificate of Title was true in all material respects at the date it was expressed to be given;
- (b) the information referred to in Paragraph (a) above was at the date it was expressed to be given complete and did not omit any information which, if disclosed would make that information untrue or misleading in any material respect; and
- (c) as at the date of this Deed, nothing has occurred since the date of any information referred to in Paragraph (a) above which renders that information untrue or misleading in any respect and which, if disclosed, would make that information untrue or misleading in any material respect.

3.12 Title

Except as disclosed in any Certificate of Title:

- (a) it is the sole legal and beneficial owner of the Mortgaged Property and the Rental Income;
- (b) no breach of any law or regulation is outstanding which affects or might affect materially the value of the Mortgaged Property;
- (c) there are no covenants, agreements, stipulations, reservations, conditions, interest, rights or other matters whatsoever affecting the Mortgaged Property;
- (d) nothing has arisen or has been created or is subsisting which would be an overriding interest, or an unregistered interest which overrides first registration or registered dispositions, over the Mortgaged Property;
- (e) no facilities necessary for the enjoyment and use of the Mortgaged Property are enjoyed by the Mortgaged Property on terms entitling any person to terminate or curtail its use;
- (f) it has received no notice of any adverse claims by any person in respect of the ownership of the Mortgaged Property or any interest in it, nor has any acknowledgement been given to any person in respect of the Mortgaged Property; and
- (g) the Mortgaged Property is held by it free from any Security Interest or any tenancies or licences.

3.13 Valuation

- (a) All information supplied by it or on its behalf to the Valuer for the purposes of each Valuation was true and accurate as at its date or (if appropriate) as at the date (if any) at which it is stated to be given;
- (b) any financial projections contained in the information referred to in Paragraph (a) above have been prepared as at their date, on the basis of recent historical information and assumptions believed by it to be fair and reasonable;

- (c) it has not omitted to supply any information which, if disclosed, would reasonably be expected to adversely affect the Valuation; and
- (d) nothing has occurred since the date information referred to in Paragraph (a) above was supplied which, if it had occurred prior to the Valuation, would adversely affect the Valuation.

3.14 Environmental matters

- (a) The Chargor is in compliance with clause 4.6 (Environmental matters) and no circumstances have occurred which would prevent such compliance in a manner or to an extent which has or is reasonably likely to have a Material Adverse Effect.
- (b) No Environmental Claim has been commenced or is threatened against the Chargor.
- (c) No dangerous substance has been used, disposed of, generated, stored, dumped, released, deposited, buried or emitted at, on, from or under the Mortgaged Property.

3.15 Times for making representations

- (a) The representations set out in this Deed (including in this Clause) are made on the date of this Deed.
- (b) Unless a representation is expressed to be given at a specific date, each representation under this Deed is deemed to be repeated by the Chargor on each date during the Security Period.
- (c) When a representation is repeated, it is applied to the circumstances existing at the time of repetition.

4. COVENANTS

4.1 General

The Chargor agrees to be bound by the covenants set out in this Clause so long as any Secured Liabilities are outstanding.

4.2 Notification of breach

The Chargor must notify the Trustees of any breach of any of the provisions of this Deed promptly upon becoming aware of its occurrence.

4.3 Authorisations

The Chargor must promptly obtain, maintain and comply with the terms of any authorisation required under any law or regulation to enable it to perform its obligations under, or for the validity or enforceability of, this Deed.

4.4 Compliance with laws

The Chargor must comply in all respects with all laws to which it is subject where failure to do so has or is reasonably likely to have a Material Adverse Effect.

4.5 Disposals and negative pledge

The Chargor must not:

- (a) create or permit to subsist any Security Interest on any Security Asset (other than this Security); or
- (b) sell, transfer, licence, lease or otherwise dispose of any Security Asset.

4.6 Environmental matters

- (a) The Chargor must:
 - (i) obtain all Environmental Approvals required to be obtained by it;
 - (ii) comply in all material respects with any Environmental Approval or Environmental Law applicable to it;
 - (iii) ensure that the Trustees do not incur any liability by reason of any breach by the Chargor of any Environmental Law or Environmental Approval; and
 - (iv) promptly upon becoming aware notify the Trustees of:
 - (A) any Environmental Claim current or, to its knowledge, pending or threatened; or
 - (B) any circumstances reasonably likely to result in an Environmental Claim.
- (b) The Chargor must indemnify each Trustee against any loss or liability which:
 - (i) that Trustee incurs as a result of any actual or alleged breach of any Environmental Law or Environmental Approval by any person; and
 - (ii) which would not have arisen if this Deed had not been entered into,
 unless it is caused by that Trustee's gross negligence or wilful misconduct.

4.7 Repair

The Chargor must keep:

- (a) the Premises in good and substantial repair and condition and adequately and properly painted and decorated; and
- (b) the Fixtures and all plant and machinery owned by it and which are in or on the Premises in a good state of repair and in good working order and condition.

4.8 Insurance

- (a) The Chargor must insure the Insured Property Assets against:
 - (i) loss or damage by fire;
 - (ii) other risks normally insured against by persons carrying on the same class of business as that carried on by it; and
 - (iii) any other risks which the Trustees may reasonably require.

- (b) Any insurance must be in a sum or sums not less than the replacement value of the Insured Property Assets. For this purpose, **replacement value** means the total cost of entirely rebuilding, reinstating or replacing those Insured Property Assets in the event of their being completely destroyed, together with architects' and surveyors' fees.
- (c) Any insurance required under this Clause must be:
 - (i) in an amount and form acceptable to the Trustees; and
 - (ii) with an insurance company or underwriter that is acceptable to the Trustees.
- (d) If the Trustees give notice to the Chargor that the insurance company or underwriter has ceased to be acceptable to them, the Chargor shall put in place replacement insurances in accordance with this Clause with an insurance company or underwriter that is acceptable to the Trustees by the date which is the earlier of the date of the expiry of the relevant policy and the date falling 60 days after the date of the notice from the Trustees.
- (e) All moneys received or receivable under any insurance in respect of the Insured Property Assets must be applied:
 - (i) in replacing, restoring or reinstating the Insured Property Assets destroyed or damaged or in any other manner which the Trustees may agree; or
 - (ii) after an Event of Default has occurred, if the Trustees so direct and the terms of the relevant insurances allow, in or towards satisfaction of the Secured Liabilities.
- (f) The Chargor must procure that the Trustees are named as co-insured on all insurance policies in respect of the Insured Property Assets and are named as first loss payee in respect of all claims under such insurance policies.
- (g) The Chargor must ensure that each insurance policy contains:
 - (i) a standard mortgagee clause under which the insurance will not be vitiated or avoided as against the Trustees as a result of any misrepresentation, act or neglect or failure to disclose on the part of any insured party or any circumstances beyond the control of an insured party; and
 - (ii) terms providing that it will not, so far as the Trustees are concerned, be invalidated for failure to pay any premium due without the insurer giving to the Trustees not less than 14 days' notice in writing.
- (h) The Chargor must not do or permit anything to be done which may make void or voidable any policy of insurance in connection with any Insured Property Asset.
- (i) The Chargor must promptly pay all premiums and do all other things necessary to keep each policy of insurance in respect of the Insured Property Assets in force.
- (j) The Chargor must, immediately on demand by the Trustees, produce to the Trustees the policy, certificate or cover note relating to any insurance policy in respect of the Insured Property Assets and the receipt for the payment of any premium for any such insurance policy as the Trustees may request.

4.9 Valuations

- (a) The Chargor must, on or before the date of this Deed, provide a Valuation to the Trustees.
- (b) The Trustees may request any additional Valuation at any time.
- (c) The Chargor must on demand by the Trustees pay the costs of any Valuation requested by the Trustees:
 - (i) annually; or
 - (ii) at any time when an Event of Default is outstanding.
- (d) The Chargor must supply to the Trustees a copy of any valuation of any Security Asset it obtains, promptly upon obtaining it.

4.10 No structural alterations

The Chargor shall ensure that neither it nor any other person makes any structural alteration to the Mortgaged Property which materially and adversely affects the value of the Mortgaged Property without the prior written consent of the Trustees.

4.11 Title covenants

The Chargor shall procure that all material covenants, stipulations and conditions now or at any time:

- (a) affecting the Mortgaged Property or its use or enjoyment (so far as the same subsist and are capable of being enforced) shall be observed and performed; and
- (b) benefiting the Mortgaged Property shall be diligently enforced and such obligations shall not be waived, varied or released, or any agreement made to do the same.

4.12 Pay outgoings

The Chargor shall:

- (a) pay or procure to be paid all rates, rents, outgoings and other sums payable out of or in respect of the Mortgaged Property; and
- (b) indemnify, or procure the indemnification of, the Trustees on demand against all existing and future rents, taxes, duties, fees, renewal fees, charges, assessments, impositions and outgoings whatsoever,

whether imposed by deed or by statute or otherwise and whether in the nature of capital or revenue and even though of a wholly novel character which now or at any time during the continuance of this Security are payable in respect of the Mortgaged Property or any part of it.

4.13 Compliance with leases

The Chargor must:

- (a) perform all the terms on its part contained in any lease comprised in the Mortgaged Property; and

- (b) not do or allow to be done any act as a result of which any lease comprised in the Mortgaged Property may become liable to forfeiture or otherwise be terminated.

4.14 Compliance with applicable laws and regulations

The Chargor must perform all its obligations under any law or regulation in any way related to or affecting the Mortgaged Property.

4.15 Notices

The Chargor must, within 14 days after the receipt by the Chargor of any application, requirement, order or notice served or given by any public or local or any other authority with respect to the Mortgaged Property (or any part of it):

- (a) deliver a copy to the Trustees; and
- (b) inform the Trustees of the steps taken or proposed to be taken to comply with the relevant requirement.

4.16 Leases

The Chargor must not without the consent of the Trustees (such consent not to be unreasonably withheld or delayed) grant or agree to grant (whether in exercise or independently of any statutory power) any lease or tenancy of the Mortgaged Property or any part of it or accept a surrender of any lease or tenancy or confer upon any person any contractual licence or right to occupy the Mortgaged Property.

4.17 H.M. Land Registry

The Chargor consents to a restriction in the following terms being entered into on the Register of Title relating to any Mortgaged Property registered at H.M. Land Registry:

"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 security agreement referred to in the charges register dated [] in favour of MICHAEL JOHN AIREY, CAROLINE ISOBEL MURRAY and ERIC O'HERN or their conveyancer."

4.18 Deposit of title deeds

The Chargor must deposit with the Trustees all deeds and documents of title relating to the Mortgaged Property and all local land charges, land charges and Land Registry search certificates and similar documents received by or on behalf of the Chargor.

4.19 Access

The Chargor must permit the Trustees and any person nominated by them at all reasonable times to enter any part of the Mortgaged Property and view the state of it.

4.20 Commonhold

The Chargor shall not convert any freehold estate comprised in the Mortgaged Property to a freehold estate in commonhold under Part 1 of the Commonhold and Leasehold Reform Act 2002.

4.21 Investigation of title

The Chargor must grant the Trustees or their lawyers on request all facilities within the power of the Chargor to enable the Trustees or their lawyers (at the expense of the Chargor) to:

- (a) carry out investigations of title to the Mortgaged Property; and
- (b) make such enquiries in relation to any part of the Mortgaged Property as a prudent mortgagee might carry out.

4.22 Report on title

The Chargor must, as soon as practicable after a request by the Trustees, provide the Trustees with a report on title of the Chargor to the Mortgaged Property concerning those items which may properly be sought to be covered by a prudent mortgagee in a lawyer's report of this nature.

4.23 Power to remedy

If the Chargor fails to perform any covenant in this Clause affecting the Mortgaged Property, the Chargor must allow the Trustees or their agents and contractors:

- (a) to enter any part of the Mortgaged Property;
- (b) to comply with or object to any notice served on the Chargor in respect of the Mortgaged Property; and
- (c) to take any action as the Trustees may reasonably consider necessary or desirable to prevent or remedy any breach of any such term or to comply with or object to any such notice.

The Chargor must immediately on request by the Trustees pay the costs and expenses of the Trustees or their agents and contractors incurred in connection with any action taken by them under this Subclause.

4.24 Notices to tenants

The Chargor must:

- (a) immediately serve a notice of assignment, substantially in the form of Part 1 of Schedule 3 (Forms of letter for occupational tenants), on each tenant of the Mortgaged Property; and
- (b) use its best endeavours to ensure that each such tenant acknowledges that notice, substantially in the form of Part 2 of Schedule 3 (Forms of letter for occupational tenants).

4.25 Notifiable events

The Chargor shall promptly notify the Trustees upon becoming aware that any event has occurred in respect of a Company or the Chargor which would (or would if that Company or the Chargor were an employer in relation to the Scheme within the meaning set out in Section 318 of the Pensions Act 2004 and regulations made thereunder) require notification to the

Pensions Regulator in accordance with section 69 of the Pensions Act 2004 and any regulations and directions made thereunder.

5. DEFAULT

5.1 Events of Default

Each of the events set out in this Clause is an Event of Default.

5.2 Breach of this Deed

The Chargor does not comply with any term of this Deed unless the non-compliance:

- (a) is capable of remedy; and
- (b) is remedied within fourteen days of the earlier of the Trustees giving notice and the Chargor becoming aware of the non-compliance.

5.3 Misrepresentation

A representation made or repeated by the Chargor in this Deed is incorrect or misleading in any material respect when made or deemed to be repeated, unless the circumstances giving rise to the misrepresentation:

- (a) are capable of remedy; and
- (b) are remedied within fourteen days of the earlier of the Trustees giving notice and the Chargor becoming aware of the circumstances giving rise to the misrepresentation.

5.4 Insolvency

An Insolvency Event occurs in respect of a Company or the Chargor.

5.5 Insolvency proceedings

- (a) Except as provided below, any of the following occurs in respect of a Company or the Chargor:
 - (i) any step is taken with a view to a moratorium or a composition, assignment or similar arrangement with any of its creditors;
 - (ii) a meeting of its shareholders, directors or other officers is convened for the purpose of considering any resolution for, to petition for or to file documents with a court or any registrar for, its winding-up, administration or dissolution or any such resolution is passed;
 - (iii) any person presents a petition, or files documents with a court or any registrar, for its winding-up, administration, dissolution or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise);
 - (iv) any Security Interest is enforced over any of its assets;
 - (v) an order for its winding-up, administration or dissolution is made;

- (vi) any liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer is appointed in respect of it or any of its assets;
 - (vii) its shareholders, directors or other officers request the appointment of, or give notice of their intention to appoint, a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer; or
 - (viii) any other analogous step or procedure is taken in any jurisdiction.
- (b) Paragraph (a) above does not apply to a petition for winding-up presented by a creditor which is being contested in good faith and with due diligence and is discharged or struck out within 14 days.

5.6 Creditors' process

Any attachment, sequestration, distress, execution or analogous event affects any assets of a Company or the Chargor, and is not discharged within 14 days.

5.7 Cessation of business

A Company or the Chargor ceases, or threatens to cease, to carry on business.

5.8 Effectiveness of this Deed

- (a) It is or becomes unlawful for the Chargor to perform any of its obligations under this Deed.
- (b) This Deed is not effective in accordance with its terms or is alleged by the Chargor to be ineffective in accordance with its terms for any reason.
- (c) The Chargor repudiates this Deed or evidences an intention to repudiate this Deed.

5.9 Material adverse change

Any event or series of events occurs which, in the opinion of the Trustees, has or is reasonably likely to have a Material Adverse Effect.

6. WHEN SECURITY BECOMES ENFORCEABLE

6.1 Event of Default

This Security will become immediately enforceable if an Event of Default occurs.

6.2 Discretion

After this Security has become enforceable, the Trustees may in their absolute discretion enforce all or any part of this Security in any manner they see fit.

6.3 Power of sale

The power of sale and other powers conferred by Section 101 of the Act, as amended by this Deed, will be immediately exercisable at any time after this Security has become enforceable.

7. ENFORCEMENT OF SECURITY

7.1 General

- (a) For the purposes of all powers implied by statute, the Secured Liabilities are deemed to have become due and payable on the date of this Deed.
- (b) Section 103 of the Act (restricting the power of sale) and Section 93 of the Act (restricting the right of consolidation) do not apply to this Security.
- (c) The statutory powers of leasing conferred on the Trustees are extended so as to authorise the Trustees to lease, make agreements for leases, accept surrenders of leases and grant options as the Trustees may think fit and without the need to comply with any provision of section 99 or 100 of the Act.

7.2 No liability as mortgagee in possession

No Trustee or any Receiver will be liable, by reason of entering into possession of a Security 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 be liable.

7.3 Privileges

Each Receiver and the Trustees are entitled to all the rights, powers, privileges and immunities conferred by the Act on mortgagees and receivers duly appointed under the Act, except that Section 103 of the Act does not apply.

7.4 Protection of third parties

No person (including a purchaser) dealing with the Trustees or a Receiver or its or his agents will be concerned to enquire:

- (a) whether the Secured Liabilities have become payable;
- (b) whether any power which the Trustees or a Receiver is/are purporting to exercise has become exercisable or is being properly exercised;
- (c) whether any money remains due in respect of the Secured Liabilities; or
- (d) how any money paid to the Trustees or to that Receiver is to be applied.

7.5 Redemption of prior mortgages

- (a) At any time after this Security has become enforceable, the Trustees may:
 - (i) redeem any prior Security Interest against any Security Asset; and/or
 - (ii) procure the transfer of that Security Interest to themselves; and/or
 - (iii) settle and pass the accounts of the prior mortgagee, chargee or encumbrancer; any accounts so settled and passed will be, in the absence of manifest error, conclusive and binding on the Chargor.

- (b) The Chargor must pay to the Trustees, immediately on demand, the costs and expenses incurred by the Trustees in connection with any such redemption and/or transfer, including the payment of any principal or interest.

8. RECEIVER

8.1 Appointment of Receiver

- (a) Except as provided below, the Trustees may appoint any one or more persons to be a Receiver of all or any part of the Security Assets if:
 - (i) this Security has become enforceable; or
 - (ii) the Chargor so requests the Trustees in writing at any time.
- (b) Any appointment under Paragraph (a) above may be by deed, under seal or in writing under its hand.
- (c) Except as provided below, any restriction imposed by law on the right of a mortgagee to appoint a Receiver (including under section 109(1) of the Act) does not apply to this Deed.
- (d) The Trustees are not entitled to appoint a Receiver solely as a result of the obtaining of a moratorium (or anything done with a view to obtaining a moratorium) under section 1A of the Insolvency Act 1986.

8.2 Removal

The Trustees may by writing (subject to any requirement for an order of the court in the case of an administrative receiver) remove any Receiver appointed by them and may, whenever they think fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

8.3 Remuneration

The Trustees may fix the remuneration of any Receiver appointed by them and the maximum rate specified in Section 109(6) of the Act will not apply.

8.4 Agent of the Chargor

- (a) A Receiver will be deemed to be the agent of the Chargor for all purposes and accordingly will be deemed to be in the same position as a Receiver duly appointed by a mortgagee under the Act. The Chargor alone is responsible for the contracts, engagements, acts, omissions, defaults and losses of a Receiver and for liabilities incurred by a Receiver.
- (b) No Trustee will incur any liability (either to the Chargor or to any other person) by reason of the appointment of a Receiver or for any other reason.

8.5 Relationship with Trustees

To the fullest extent allowed by law, any right, power or discretion conferred by this Deed (either expressly or impliedly) or by law on a Receiver may after this Security becomes enforceable be exercised by the Trustees in relation to any Security Asset without first appointing a Receiver and notwithstanding the appointment of a Receiver.

9. POWERS OF RECEIVER

9.1 General

- (a) A Receiver has all of the rights, powers and discretions set out below in this Clause in addition to those conferred on it by any law; this includes:
 - (i) in the case of an administrative receiver, all the rights, powers and discretions conferred on an administrative receiver under the Insolvency Act 1986; and
 - (ii) otherwise, all the rights, powers and discretions conferred on a receiver (or a receiver and manager) under the Act and the Insolvency Act 1986.
- (b) 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.

9.2 Possession

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

9.3 Carry on business

A Receiver may carry on any business of the Chargor in any manner he thinks fit.

9.4 Employees

- (a) A Receiver may appoint and discharge managers, officers, agents, accountants, servants, workmen and others for the purposes of this Deed upon such terms as to remuneration or otherwise as he thinks fit.
- (b) A Receiver may discharge any person appointed by the Chargor.

9.5 Borrow money

A Receiver may raise and borrow money either unsecured or on the security of any Security Asset either in priority to this Security or otherwise and generally on any terms and for whatever purpose which he thinks fit.

9.6 Sale of assets

- (a) A Receiver may sell, exchange, convert into money and realise any Security Asset by public auction or private contract and generally in any manner and on any terms which he thinks fit.
- (b) The consideration for any such transaction may consist of cash, debentures 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 any period which he thinks fit.
- (c) Fixtures, other than landlord's fixtures, may be severed and sold separately from the property containing them without the consent of the Chargor.

9.7 Leases

A Receiver may let any Security Asset for any term and at any rent (with or without a premium) which he thinks fit and may accept a surrender of any lease or tenancy of any

Security Asset on any terms which he thinks fit (including the payment of money to a lessee or tenant on a surrender).

9.8 Compromise

A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claim, account, dispute, question or demand with or by any person who is or claims to be a creditor of the Chargor or relating in any way to any Security Asset.

9.9 Legal actions

A Receiver may bring, prosecute, enforce, defend and abandon any action, suit or proceedings in relation to any Security Asset which he thinks fit.

9.10 Receipts

A Receiver may give a valid receipt for any moneys and execute any assurance or thing which may be proper or desirable for realising any Security Asset.

9.11 Subsidiaries

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

9.12 Delegation

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

9.13 Lending

A Receiver may lend money or advance credit to any customer of the Chargor.

9.14 Protection of assets

A Receiver may:

- (a) effect any repair or insurance and do any other act which the Chargor might do in the ordinary conduct of its business to protect or improve any Security Asset;
- (b) commence and/or complete any building operation; and
- (c) apply for and maintain any planning permission, building regulation approval or any other authorisation,

in each case as he thinks fit.

9.15 Other powers

A Receiver may:

- (a) do all other acts and things which he may consider desirable or necessary for realising any Security Asset or incidental or conducive to any of the rights, powers or discretions conferred on a Receiver under or by virtue of this Deed or law;

- (b) exercise in relation to any Security Asset all the powers, authorities and things which he would be capable of exercising if he were the absolute beneficial owner of that Security Asset; and
- (c) use the name of the Chargor for any of the above purposes.

10. APPLICATION OF PROCEEDS

Any moneys received by the Trustees or any Receiver after this Security has become enforceable must be applied in the following order of priority:

- (a) in or towards payment of or provision for all costs and expenses incurred by the Trustees or any Receiver under or in connection with this Deed and of all remuneration due to any Receiver under or in connection with this Deed;
- (b) in or towards payment of or provision for the Secured Liabilities; and
- (c) in payment of the surplus (if any) to the Chargor or other person entitled to it.

This Clause is subject to the payment of any claims having priority over this Security. This Clause does not prejudice the right of the Trustees to recover any shortfall from the Chargor.

11. EXPENSES AND INDEMNITY

11.1 Amendment costs

If the Chargor requests an amendment, waiver or consent, the Chargor shall, within three Business Days of demand, reimburse the Trustees for the amount of all costs and expenses (including legal fees) reasonably incurred by the Trustees in responding to, evaluating, negotiating or complying with that request or requirement.

11.2 Enforcement and preservation costs

The Chargor shall, within three Business Days of demand, pay to the Trustees the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement of or the preservation of any rights under this Security and any proceedings instituted by or against the Trustees as a consequence of taking, holding or enforcing this Security.

11.3 Stamp taxes

The Chargor shall pay and, within three Business Days of demand, indemnify the Trustees against any cost, loss or liability that the Trustees incur in relation to all stamp duty, registration and other similar taxes payable in respect of this Deed.

11.4 Chargor default

The Chargor shall, within three Business Days of demand, indemnify the Trustees against any cost, loss or liability incurred by it as a result of:

- (a) the occurrence of any Event of Default in relation to the Chargor;
- (b) investigating any event which it reasonably believes is an Event of Default in relation to the Chargor;

- (c) the use or occupation by any person of the Security Assets (including any Environmental Claim); or
- (d) any default by the Chargor in the performance of any of the obligations expressed to be assumed by it in this Deed.

12. DELEGATION

12.1 Power of Attorney

The Trustees or any Receiver may delegate by power of attorney or in any other manner to any person any right, power or discretion exercisable by them or it under this Deed.

12.2 Terms

Any such delegation may be made upon any terms (including power to sub-delegate) which the Trustees or any Receiver may think fit.

12.3 Liability

Neither the Trustees nor any Receiver will 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 or sub-delegate.

13. FURTHER ASSURANCES

The Chargor must, at its own expense, take whatever action the Trustees or a Receiver may require for:

- (a) creating, perfecting or protecting any security intended to be created by this Deed; or
- (b) facilitating the realisation of any Security Asset, or the exercise of any right, power or discretion exercisable, by the Trustees or any Receiver or any of its delegates or sub-delegates in respect of any Security Asset.

This includes:

- (i) the execution of any transfer, conveyance, assignment or assurance of any property, whether to a Trustee or to its nominee; or
- (ii) the giving of any notice, order or direction and the making of any registration,

which, in any such case, the Trustees may think expedient.

14. COVENANT TO PAY

The Chargor must pay or discharge the Secured Liabilities when due.

15. POWER OF ATTORNEY

The Chargor, by way of security, irrevocably and severally appoints the Trustees, each Receiver and any of its delegates or sub-delegates to be its attorney to take any action which the Chargor is obliged to take under this Deed. The Chargor ratifies and confirms whatever any attorney does or purports to do under its appointment under this Clause.

16. PRESERVATION OF SECURITY

16.1 Continuing security

This Security is continuing and will extend to the ultimate balance of the Secured Liabilities regardless of any intermediate payment or discharge in whole or in part.

16.2 Reinstatement

- (a) If any discharge, release or arrangement is made by the Trustees in whole or in part on the faith of any payment, security or other disposition which is avoided or must be restored on insolvency, liquidation, administration or otherwise without limitation, then the liability of the Chargor under this Deed will continue as if the discharge or arrangement had not occurred.
- (b) The Trustees may concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration.

16.3 Waiver of defences

The obligations of the Chargor under this Deed will not be affected by any act, omission or thing which, but for this provision, would reduce, release or prejudice any of its obligations under this Deed (whether or not known to the Chargor or any Trustee). This includes:

- (a) any time or waiver granted to, or composition with, any person;
- (b) the release of any person under the terms of any composition or arrangement;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any person;
- (d) any non-presentation or non-observance of any formality or other requirement in respect of any instruments or any failure to realise the full value of any security;
- (e) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any person;
- (f) any amendment, novation, supplement, extension or reinstatement (however fundamental and of whatsoever nature) of this Deed or any other document or security; or
- (g) any unenforceability, illegality, invalidity or non-provability of any obligation of any person under this Deed or any other document or security.

16.4 Chargor intent

Without prejudice to the generality of Clause 16.3 (Waiver of defences) the Chargor expressly confirms that it intends that this Security shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Secured Liabilities.

16.5 Immediate recourse

The Chargor waives any right it may have of first requiring any Trustee to proceed against or enforce any other rights or security or claim payment from any person before claiming from the Chargor under this Deed. This waiver applies irrespective of any law to the contrary.

16.6 Appropriations

Each Trustee may at any time during the Security Period without affecting the liability of the Chargor under this Deed:

- (a)
 - (i) refrain from applying or enforcing any other moneys, security or rights held or received by that Trustee in respect of those amounts; or
 - (ii) apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise); and
- (b) hold in an interest bearing suspense account any moneys received from the Chargor or on account of the liability of the Chargor under this Deed.

16.7 Non-competition

Unless:

- (a) the Security Period has expired; or
- (b) the Trustees otherwise direct,

the Chargor will not, after a claim has been made under this Deed or by virtue of any payment or performance by it under this Deed:

- (i) be subrogated to any rights, security or moneys held, received or receivable by any Trustee;
- (ii) be entitled to any right of contribution or indemnity in respect of any payment made or moneys received on account of the Chargor's liability under this Deed;
- (iii) bring legal or other proceedings for an order requiring the Company to make any payment, or perform any obligation, in respect of any Secured Liability;
- (iv) claim, rank, prove or vote as a creditor of any Company or its estate in competition with any Trustee; or
- (v) receive, claim or have the benefit of any payment, distribution or security from or on account of any Company, or exercise any right of set-off as against any Company.

The Chargor must hold in trust for and immediately pay or transfer to the Trustees any payment or distribution or benefit of security received by it contrary to this Clause or in accordance with any directions given by the Trustees under this Clause as directed by the Trustees.

16.8 Additional security

This Security is in addition to and is not in any way prejudiced by any other security now or subsequently held by the Trustees.

17. CHANGES TO THE PARTIES

17.1 Assignments and transfers by the Chargor

The Chargor may not assign or transfer any of its rights and obligations under this Deed other than with the prior written consent of the Trustees.

17.2 Assignments and transfers by Trustees

The Chargor acknowledges that the rights and obligations of the Trustees under this Deed may be transferred to the Pension Protection Fund as a result of the operation of Section 161 of and Schedule 6 to the Pensions Act 2004.

18. AMENDMENTS

- (a) At any time while this Deed remains in force the Chargor may submit to the Trustees written proposals (the **Proposals**) to:
- (i) amend the definition of 'Secured Liabilities' in Subclause 1.1 (Definitions) so that the maximum liability of the Chargor under this Deed is:
 - (A) a fixed amount; or
 - (B) the lowest non-negative amount which, when added to the assets of the Scheme, would result in the Scheme being funded to at least a specified percentage level on the date on which any liability under this Deed arises, calculated on the basis set out in section 179 of the Pensions Act 2004, were a valuation to be conducted as at that date; or
 - (C) the lower of (I) the lowest non-negative amount which, when added to the assets of the Scheme, would result in the Scheme being funded to at least a specified percentage level on the date on which any liability under this Deed arises, calculated on the basis set out in section 179 of the Pensions Act 2004, were a valuation to be conducted as at that date and (II) a fixed amount; or
 - (D) an amount equal to the entire aggregate liability, on the date on which any liability under this Deed arises, of every employer (within the meaning set out in Section 318 of the Pensions Act 2004 and regulations made thereunder) in relation to the Scheme, were a debt under Section 75(2) of the Pensions Act 1995 to have become due on that date; or
 - (E) equal to the lower of (I) an amount equal to the entire aggregate liability, on the date on which any liability under this Deed arises, of every employer (within the meaning set out in Section 318 of the Pensions Act 2004 and regulations made thereunder) in relation to the Scheme, were a debt under Section 75(2) of the Pensions Act 1995 to have become due on that date and (II) a fixed amount; or
 - (ii) release the obligations of the Chargor under this Deed in full.
- (b) The Proposals may include the matters set out in Paragraph 2 of Schedule 4 (Amendment and Release Criteria) and shall in all cases specify a date (the **Implementation Date**) with effect from which, if approved by the Trustees, the Proposals are to be implemented. The

Implementation Date shall be not less than 30 and not more than 45 Business Days after the date on which the Trustees receive the Proposals (the **Proposal Date**).

- (c) The Trustees' consent to the Proposals must not be unreasonably withheld or delayed if the Trustees (acting in good faith) are satisfied that the Proposals satisfy the criteria set out in Paragraph 3 of Schedule 4 (Amendment and Release Criteria).
- (d) If the Trustees are satisfied that the Proposals satisfy the criteria set out in Paragraph 3 of Schedule 4 (Amendment and Release Criteria) then the Chargor and the Trustees shall implement the Proposals so that they are effective from the Implementation Date.

19. RELEASE WHERE OVERSECURED⁶

- (a) The Chargor may, at any time, submit to the Trustees a request (the **Release Request**) that some or all of the Security Assets be released from this Security.
- (b) The Chargor must, at the same time that it submits a Release Request to the Trustees, also provide the Trustees with:
 - (i) an Eligible Valuation in respect of:
 - (A) the assets and liabilities of the Scheme; and
 - (B) the Security Assets; and
 - (ii) evidence of the amount of Deficit-Reduction Contributions made since the date of the most recent Eligible Valuation of the assets and liabilities of the Scheme.
- (c) The Trustees must consent to a Release Request if (but only to the extent that) the value of the Security Assets as at the date of that Release Request (as set out in the relevant Eligible Valuation) exceeds the Deemed Value of this Security at that time.
- (d) If the Trustees are satisfied that the value of the Security Assets (as set out in the relevant Eligible Valuation) as at the date of the Release Request exceeds the Deemed Value of this Security at that time then the Chargor and the Trustees shall take whatever action is necessary to release the Security Assets from this Security to the extent that the value of the Security Assets as at the date of the Release Request exceeds the Deemed Value of this Security.
- (e) At the end of the Security Period, the Trustees must, at the request and cost of the Chargor, take whatever action is necessary to release the Security Assets from this Security.

20. SUBSTITUTION OF PROPERTY

- (a) The Chargor may, at any time, submit to the Trustee a request that there be substituted for any property forming part of the Mortgaged Property another property of not materially less value (the **Substitute Property**).
- (b) The Chargor shall supply such information in relation to the proposed Substitute Property as the Trustees shall request for the purpose of considering the Chargor's request. If the Trustees in their absolute discretion consent to the proposed substitution then, subject to receipt by the Trustees of the documents and other items listed in Schedule 5 (Conditions precedent to

⁶ The mechanics in Clause 19 are intended to be used where the Chargor believes that the value of the assets the subject of security under this Deed exceed the 'Secured Liabilities' and wishes to release the excess assets. Clause 18 is where the Chargor wishes to change the definition of 'Secured Liabilities' or remove the security in its entirety even if the value of the charged assets does not exceed the Secured Liabilities.

substitution) in form and substance satisfactory to the Trustees, the Substitute Property will become part of the Mortgaged Property and the property for which the Substitute Property is to be substituted shall be released from this Security.

21. SEVERABILITY

If a term of this Deed is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect:

- (a) the legality, validity or enforceability in that jurisdiction of any other term of this Deed; or
- (b) the legality, validity or enforceability in other jurisdictions of that or any other term of this Deed.

22. COUNTERPARTS

This Deed may be executed in any number of counterparts. This has the same effect as if the signatures on the counterparts were on a single copy of this Deed.

23. NOTICES

23.1 In writing

- (a) Any communication in connection with this Deed must be in writing and, unless otherwise stated, may be given in person, by post or fax.
- (b) Unless it is agreed to the contrary, any consent or agreement required under this Deed must be given in writing.

23.2 Contact details

- (a) The contact details of the Chargor for this purpose are:

Address: Firth Road Lincoln LN6 7AH
Fax number: [FAX]
E-mail: peter.williams@william-sinclair.co.uk
Attention: Peter Williams

- (b) The contact details of the Trustees are:

Address: Firth Road Lincoln LN6 7AH
Fax number: [FAX]
E-mail: mjairey@aol.com
Attention: Michael Airey

23.3 Effectiveness

- (a) Except as provided below, any communication in connection with this Deed will be deemed to be given as follows:
 - (i) if delivered in person, at the time of delivery;
 - (ii) if posted, five days after being deposited in the post, postage prepaid, in a correctly addressed envelope; and

(iii) if by fax, when received in legible form.

- (b) A communication given under Paragraph (a) above but received on a non-working day or after business hours in the place of receipt will only be deemed to be given on the next working day in that place.

24. LANGUAGE

Any notice given in connection with this Deed must be in English.

25. GOVERNING LAW

This Deed is governed by English law.

26. ENFORCEMENT

26.1 Jurisdiction

- (a) The English courts have non-exclusive jurisdiction to settle any dispute in connection with this Deed.
- (b) The English courts are the most appropriate and convenient courts to settle any such dispute.
- (c) This Clause is for the benefit of the Trustees only. To the extent allowed by law, a Trustee may take:
- (i) proceedings in any other court; and
 - (ii) concurrent proceedings in any number of jurisdictions.

26.2 Service of process

- (a) If any person appointed as process agent is unable for any reason to act as agent for service of process, the Chargor must promptly appoint another agent on terms acceptable to the Trustees. Failing this, the Trustees may appoint another agent for this purpose.
- (b) The Chargor agrees that failure by a process agent to notify it of any process will not invalidate the relevant proceedings.
- (c) This Clause does not affect any other method of service allowed by law.

26.3 Waiver of immunity

The Chargor irrevocably and unconditionally:

- (a) agrees not to claim any immunity from proceedings brought by a Trustee against it in relation to this Deed and to ensure that no such claim is made on its behalf;
- (b) consents generally to the giving of any relief or the issue of any process in connection with those proceedings; and
- (c) waives all rights of immunity in respect of it or its assets.

This Deed has been entered into on the date stated at the beginning of this Deed.

SCHEDULE 1

COMPANIES

Company name	Registration number	Address
William Sinclair Holdings plc	01392876	Firth Road Lincoln LN6 7AH
William Sinclair Horticulture Limited	00007633	Firth Road Lincoln LN6 7AH

SCHEDULE 2

REAL PROPERTY

Land and buildings at Firth Road Lincoln being the whole of the property registered at the Land Registry under Title Number LL27223

SCHEDULE 3
FORMS OF LETTER FOR OCCUPATIONAL TENANTS

PART 1

NOTICE TO OCCUPATIONAL TENANT

[On the letterhead of the Chargor]

To: [Occupational tenant]

[Date]

Dear Sirs,

Re: [Property]

**Security Document dated [●] between [Chargor]
and [●] and [●] as trustees of the [● pension scheme] (the Security Document)**

We refer to the lease dated [●] and made between [●] and [●] (the **Lease**).

This letter constitutes notice to you that under the Security Document we have assigned by way of security to [●] and [●] as trustees of the [● pension scheme] (the **Trustees**) all our rights under the Lease.

[We irrevocably instruct and authorise you to continue to pay any rent payable by you under the Lease to our account at [●], Account No. [●], Sort Code [●] (the **Rent Account**).]

The instructions in this letter apply until you receive notice from the Trustees to the contrary and notwithstanding any previous instructions given by us.

The instructions in this letter may not be revoked or amended without the prior written consent of the Trustees.

This letter is governed by English law.

Please confirm your agreement to the above by signing the attached acknowledgement and returning it to the Trustees at [●] with a copy to ourselves.

Yours faithfully,

For
[CHARGOR]

PART 2

ACKNOWLEDGEMENT OF OCCUPATIONAL TENANT

To: [●] and [●] as trustees of the [● pension scheme]

Attention: [●]

[Date]

Dear Sirs,

Re: [Property]

**Security Document dated [●] between [Chargor]
and [●] and [●] as trustees of the [● pension scheme] (the Security Document)**

We confirm receipt from [Chargor] (the Chargor) of a notice dated [●] (the Notice) in relation to the Lease (as defined in the Notice).

We accept the instructions contained in the Notice.

We confirm that we:

- (a) have not received any notice that any third party has or will have any right or interest in, or has made or will be making any claim or demand or taking any action in respect of, the rights of the Chargor under or in respect of the Lease (as defined in the Notice); and
- (b) must pay all rent and all other monies payable by us under the Lease into the Rent Account (as defined in the Notice); and
- (c) must continue to pay those monies into the Rent Account until we receive your written instructions to the contrary.

This letter is governed by English law.

Yours faithfully,

.....

For

[]

SCHEDULE 4

AMENDMENT AND RELEASE CRITERIA

1. Definitions

In this Schedule:

C_0 means the amount of any Eligible Deficit-Reduction Contributions as at a Reference Date.

C_1 means the amount of any Eligible Deficit-Reduction Contributions as at an Implementation Date.

Deemed Value as at a Measurement Date means:

- (d) in respect of a Pension Protection Fund Recognised Arrangement which provides for security to be granted in favour of the Trustees, the amount set opposite the description of that arrangement in the table below or the value of the assets which are subject to that security as set out in the most recent Eligible Valuation of those assets, if lower:

Description of arrangement	Deemed Value
Security where the liability of the chargor under that security is expressed to be limited to a fixed amount.	The fixed amount specified as the limit on the liability of the chargor.
Security where the liability of the chargor under that security is expressed to be limited to either (A) the lowest non-negative amount which, when added to the assets of the Scheme, would result in the Scheme being funded to at least a specified percentage level (as calculated under section 179 of the Pensions Act 2004) on the date on which any liability under that security arose were a valuation to be conducted on that date, or to (B) the lower of the amount referred to in (A) and a fixed amount ("F").	The lowest non-negative amount which, when added to the assets of the Scheme, would result in the Scheme being funded to at least that percentage level (as calculated under section 179 of the Pensions Act 2004) on the Measurement Date, based on the assets and liabilities of the Scheme as set out in the most recent Eligible Valuation prior to the Measurement Date and adding any Eligible Deficit-Reduction Contributions as at that Measurement Date or, where (B) applies, the lower of such amount and F.
Security where the liability of the chargor under that security is expressed to be limited to either (A) an amount equal to the entire aggregate liability, on the date on which any liability under that security arose, of every employer (within the meaning set out in Section 318 of the Pensions Act 2004 and regulations made thereunder) in relation to the Scheme, were a debt under Section 75(2) of the Pensions Act 1995 to have become due on that date, or to (B) the lower of the	The lowest non-negative amount which, when added to the assets of the Scheme, would result in the Scheme being at least 125 per cent. funded (as calculated under section 179 of the Pensions Act 2004) on the Measurement Date, based on the assets and liabilities of the Scheme as set out in the most recent Eligible Valuation prior to the Measurement Date and adding any Eligible Deficit-Reduction Contributions as at that Measurement

amount referred to in (A) and a fixed Date; or, where (B) applies, the lower amount ("G"). of such amount and G.

- (e) in respect of a Pension Protection Fund Recognised Arrangement which is a letter of credit or a bank guarantee issued by a Regulated Entity, the face amount of that letter of credit or bank guarantee.

Deficit-Reduction Contributions means deficit-reduction contributions made to the Scheme calculated on the basis specified by the Pension Protection Fund in its most recently published policies.

Eligible Deficit-Reduction Contributions as at a Measurement Date means any Deficit-Reduction Contributions made or to be made to the Scheme between:

- (a) the date of the most recent Eligible Valuation prior to the Measurement Date; and
- (b) the Measurement Date, provided that:
 - (i) the Eligible Deficit-Reduction Contributions as at a Reference Date shall only include Deficit-Reduction Contributions which were validly certified to the Pension Protection Fund in accordance with its policies no later than 6 days after that Reference Date; and
 - (ii) the Eligible Deficit-Reduction Contributions as at an Implementation Date shall comprise all Deficit-Reduction Contributions certified by the Scheme Actuary pursuant to Paragraph 2(b) below.

Eligible Valuation means:

- (a) in relation to the assets or liabilities of the Scheme, either:
 - (i) a valuation of those assets and liabilities carried out on the basis set out in section 179 of the Pensions Act 2004 and which has been provided to the Pension Protection Fund in accordance with section 179 of the Pensions Act 2004; or
 - (ii) a statement provided to the Trustees by the Scheme Actuary, setting out prudent approximations as to the asset and liability figures which would have resulted if the Scheme Actuary had conducted a valuation on the basis set out in section 179 of the Pensions Act 2004 as at a specific date; and
- (b) in relation to an asset charged in favour of the Trustees, a valuation of that asset which complies with all requirements published by the Pension Protection Fund (whether in relation to the date or method of the valuation or otherwise) for the recognition of security over such an asset for the purposes of calculating the risk-based levy in accordance with Part 2 of the Pensions Act 2004 and which has been certified to the Pension Protection Fund in accordance with those requirements,

and references to "the most recent Eligible Valuation prior to" a date shall mean the Eligible Valuation which was so provided or certified on or prior to, and whose effective date is closest to, that date.

L₀ means the total liabilities of the Scheme as set out in the most recent Eligible Valuation prior to a Reference Date.

L₁ means the total liabilities of the Scheme as set out in the most recent Eligible Valuation prior to an Implementation Date.

Measurement Date means the date on which any of the variables in this Schedule is measured.

N₀ means the aggregate Deemed Value as at a Reference Date of all Pension Protection Fund Recognised Arrangements in respect of which the Scheme benefited as at that Reference Date.

N₁ means the aggregate Deemed Value immediately prior to an Implementation Date of all Pension Protection Fund Recognised Arrangements in respect of which the Scheme benefited immediately prior to that Implementation Date.

N₂ means the aggregate Deemed Value as at an Implementation Date of all Pension Protection Fund Recognised Arrangements in respect of which the Scheme will benefit on and following that Implementation Date.

Pension Protection Fund Recognised Arrangement means an arrangement constituted by an agreement in Pension Protection Fund Standard Form which satisfies all criteria specified by the Pension Protection Fund for recognition as a contingent asset for the purposes of calculating the risk-based levy in accordance with Part 2 of the Pensions Act 2004 and which has been the subject of a valid certification to the Pension Protection Fund in Pension Protection Fund Standard Form which either:

- (a) provides for security to be granted in favour of the Trustees over assets owned by the Companies or a third party; or
- (b) is a bank guarantee or letter of credit issued by a Regulated Entity.

Pension Protection Fund Standard Form means, in relation to an agreement or a certificate, the standard form of that agreement or certificate most recently published by the Pension Protection Fund prior to the date on which that agreement was entered into or that certificate was given.

Reference Date means the 1 April immediately preceding any Proposal Date.

Regulated Entity means an entity which satisfies all criteria specified by the Pension Protection Fund for the issuer of a letter of credit or bank guarantee which will be recognised as a contingent asset for the purposes of calculating the risk-based levy in accordance with Part 2 of the Pensions Act 2004.

S₀ means the assets of the Scheme as set out in the most recent Eligible Valuation prior to a Reference Date.

S₁ means the assets of the Scheme as set out in the most recent Eligible Valuation prior to an Implementation Date.

Scheme Actuary means the actuary to the Scheme.

2. Content of Proposals

- (a) In addition to the matters referred to in Paragraph (a) of Clause 18 (Amendments), the Proposals may include details of any new Pension Protection Fund Recognised Arrangement(s) that are proposed to come into force on or prior to the relevant Implementation Date.
- (b) As part of the Proposals, the Chargor may require the Trustees to take into account any contributions made or to be made to the Scheme between:
 - (i) the date of the most recent Eligible Valuation prior to the relevant Implementation Date; and
 - (ii) the relevant Implementation Date.

In such circumstances the Trustees shall obtain, at the Chargor's expense and prior to the relevant Implementation Date, a statement from the Scheme Actuary as to the amount of such contributions which qualify as Deficit-Reduction Contributions. Without prejudice to Paragraph 3 below, the Trustees shall not be required to implement the Proposals unless all the contributions on which such statement is based are actually received in full by the Scheme no later than the relevant Implementation Date.

3. Criteria

- (a) The Trustees' consent to any Proposals may not be unreasonably withheld or delayed where such Proposals satisfy the following requirements:

$$N_2 \geq N_1$$

OR

$$\frac{S_1 + C_1 + N_2}{L_1} \geq \frac{S_0 + C_0 + N_0}{L_0}$$

OR

$$\frac{S_1 + C_1 + N_2}{L_1} \geq 1.04$$

- (b) For the avoidance of doubt, where the criteria set out in Paragraph 3(a) above would be satisfied if the Deemed Value of this Deed on and following the relevant Implementation Date were zero, then acceptable Proposals may include the release of the Chargor from its obligations under this Deed in full with effect from the relevant Implementation Date (without prejudice to any accrued liabilities).

SCHEDULE 5

CONDITIONS PRECEDENT TO SUBSTITUTION

1. A Supplemental Security Agreement in relation to the Substitute Property.
2. A legal opinion in relation to the Supplemental Security Agreement.
3. A Certificate of Title in relation to the Substitute Property.
4. A Valuation in relation to the Substitute Property.

SIGNATORIES

Chargor

EXECUTED AS A DEED by)
WILLIAM SINCLAIR HORTICULTURE LIMITED)
acting by)

Director

Director/Secretary

Trustees

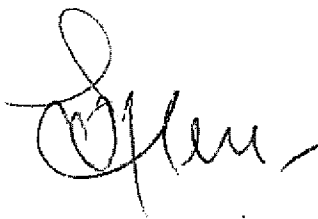
MICHAEL JOHN AIREY
as trustee for the time being of the
William Sinclair Holdings Pension Fund

By:

CAROLINE ISOBEL MURRAY
as trustee for the time being of the
William Sinclair Holdings Pension Fund

By:

ERIC O'HERN
as trustee for the time being of the
William Sinclair Holdings Pension Fund



By:



AILEEN FARRAR
Customer Service Supervisor

HMD/HMD/91218/120002/UKM/25867676.7

10, QUINTIN CLOSE
BRACEBRIDGE HEATH
LINCOLN
LN4 2LW

THE BOARD OF THE PENSION PROTECTION FUND

FORM OF CONTINGENT ASSET

TYPE B(ii)EW: SECURITY OVER LAND IN ENGLAND AND WALES

VERSION: 3.0 (DECEMBER 2009)

NOTE:

Please refer to the Pension Protection Fund guidance on contingent assets and other documentation on the Pension Protection Fund website www.pensionprotectionfund.org.uk. However, it is your responsibility to obtain legal advice before using the Pension Protection Fund's standard documentation – you should not rely on the guidance note or on other documentation published by the Pension Protection Fund. The Board accepts no responsibility to trustees/managers or any other person for the efficacy of the standard documentation or for any legal effects that such documentation may have if used in any circumstances.

If the secured property is located in Scotland or Northern Ireland, please use standard form document B(iii)S or B(iii)NI respectively in place of this document.

This cover page should be deleted before using the document.