



**Registration of a Charge**

Company Name: **GIST LIMITED**

Company Number: **00502669**



Received for filing in Electronic Format on the: **11/10/2022**

XBEEDHMP

**Details of Charge**

Date of creation: **30/09/2022**

Charge code: **0050 2669 0002**

Persons entitled: **STORESHIELD LIMITED**

Brief description: **PURSUANT TO CLAUSE 3.1 OF THE CHARGE, THE COMPANY CHARGED CERTAIN PROPERTIES, INCLUDING TITLE NUMBERS LL146260, LL254369 AND LL120729. SEE SCHEDULE 1 OF THE CHARGE FOR FURTHER DETAILS OF THE PROPERTIES CHARGED.**

**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: **TRAVERS SMITH LLP**



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

Company number: 502669

Charge code: 0050 2669 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 30th September 2022 and created by GIST LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 11th October 2022 .

Given at Companies House, Cardiff on 14th October 2022

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**

**EXECUTION VERSION**

**DATED 30 September 2022**

**(1) GIST LIMITED**

**as the Chargor**

**in favour of**

**(2) STORESHIELD LIMITED**

**as the Secured Party**

**DEBENTURE**

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THIS DEBENTURE is dated 30 September 2022 and made between:

- (1) **GIST LIMITED**, a limited liability company incorporated in England and Wales with registered number 00502669 whose registered office is at Force, 43 Church Street West, Woking Surrey, England GU21 6HT (the "**Chargor**") in favour of
- (2) **STORESHIELD LIMITED**, a limited liability company incorporated in England and Wales with registered number 01120283 whose registered office is at Forge, 43 Church Street West, Woking, Surrey, England, GU21 6HT as secured party (the "**Secured Party**").

IT IS AGREED as follows:

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

"**Acquisition Agreement**" means the acquisition agreement relating to the sale and purchase of the share capital of Gist Limited dated 21 July 2022 and entered into between, amongst others, the Secured Party as seller and the Purchaser.

"**Acquisition Agreement Breach**" means:

- (a) any failure by the Purchaser to pay an amount on its due date under or pursuant to clause 9 (*Profit Share Consideration*) of the Acquisition Agreement;
- (b) any failure by the Purchaser to pay an amount on its due date under or pursuant to clause 8 (*Deferred Consideration*) of the Acquisition Agreement; or
- (c) any breach by the Purchaser of clause 10.4 of the Acquisition Agreement or any breach by the Purchaser or a Group Company of clause 10.5 of the Acquisition Agreement.

"**Bristol Property**" means the leasehold land being Land Adjoining Thornbury Industrial Estate, Midland Way, Thornbury, Bristol, currently registered at HM Land Registry with title number GR333656.

"**Charged Property**" means all the Real Property of the Chargor which from time to time is the subject of the security created or expressed to be created in favour of the Secured Party by or pursuant to this Debenture.

"**Charges**" means all or any of the Security created or expressed to be created by or pursuant to Clause 3 (*Fixed Charges*) of this Debenture.

"**Collateral Rights**" means all rights, powers and remedies of the Secured Party provided by or pursuant to this Debenture or by law.

"**Debenture Breach**" means any breach by the Chargor of Clause 6 (*Negative pledge and disposals*) of this Debenture.

**"Enforcement Event"** means:

- (a) an Acquisition Agreement Breach;
- (b) a Debenture Breach; or
- (c) any Insolvency Event in respect of the Chargor or the Purchaser.

**"Insolvency Event"** in relation to an entity means that the entity:

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official;
- (e) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition is instituted or presented by a person or entity not described in paragraph (d) above and:
  - (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or
  - (ii) is not dismissed, discharged, stayed or restrained in each case within 14 days of the institution or presentation thereof;
- (f) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (g) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets (other than, for so long as it is required by law or regulation not to be publicly disclosed, any such appointment which is to be made, or is made, by a person or entity described in paragraph (d) above);

- (h) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 14 days thereafter;
- (i) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) to (h) above; or
- (j) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

"**LPA**" means the Law of Property Act 1925.

"**Party**" means a party to this Debenture.

"**Purchaser**" means Marks and Spencer (A2B) Limited, incorporated in England and Wales with registered number 14228803 whose registered office is at Waterside House, 35 North Wharf Road, London, England, W2 1NW as purchaser under the Acquisition Agreement.

"**Real Property**" means:

- (a) the freehold and leasehold property in England and Wales specified in Schedule 1 (*Details of Real Property*)); and
- (b) any buildings, fixtures, fittings, fixed plant or machinery from time to time situated on or forming part of such freehold or leasehold property,

and includes all Related Rights.

"**Receiver**" means a receiver or receiver and manager or (where permitted by law) administrative receiver of the whole or any part of the Charged Property and that term will include any appointee made under a joint and/or several appointment.

"**Related Rights**" means, in relation to any asset:

- (a) the proceeds of sale of any part of that asset;
- (b) all rights under any licence, agreement for sale or agreement for lease in respect of that asset;
- (c) all rights, benefits, claims, contracts, warranties, remedies, security, indemnities or covenants for title in respect of that asset; and
- (d) any monies and proceeds paid or payable in respect of that asset.

"**Secured Obligations**" means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of each of the Purchaser and the Purchaser's Guarantor to the Secured Party

under clause 8 (*Deferred consideration*), clause 9 (*Profit share consideration*) and clause 10 (*General provisions relating to Freehold Assets*) (including, in each case, any accrued interest) and clause 28.2 of the Acquisition Agreement, together with any costs and expenses incurred by a Secured Party in enforcing the Security created or intended to be created by or pursuant to this Debenture.

**"Secured Parties"** means the Secured Party and any Receiver.

**"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.

**"Transaction Documents"** has the meaning given to that term in the Acquisition Agreement.

## 1.2 Interpretation

Terms defined in the Acquisition Agreement shall, unless otherwise defined in this Debenture, have the same meaning when used in this Debenture and in addition:

**1.2.1** any reference to the **"Secured Party"**, the **"Chargor"**, the **"Secured Parties"** or any other person shall be construed so as to include its or their successors and any permitted assigns and transferees in accordance with their respective interests;

**1.2.2** a **"person"** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);

**1.2.3** a **"regulation"** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;

**1.2.4** an Enforcement Event is **"continuing"** if it has not been waived provided that the Secured Party shall not unreasonably withhold its consent to any waiver of an Enforcement Event in circumstances where the relevant Chargor, the Purchaser or the Purchaser's Guarantor has remedied the relevant Enforcement Event;

**1.2.5** a provision of law is a reference to that provision as amended or re-enacted from time to time;

**1.2.6** a time of day is a reference to London time; and

**1.2.7** (unless otherwise stated) references in this Debenture to any Clause or Schedule shall be to a clause or schedule contained in this Debenture.



### **1.3 Third party rights**

**1.3.1** Unless expressly provided to the contrary in this Debenture a person who is not a party hereto has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Debenture.

**1.3.2** Notwithstanding any term of this Debenture, the consent of any person who is not a party hereto is not required to rescind or vary this Debenture at any time.

### **1.4 Disposition of property**

The terms of the Acquisition Agreement and of any other agreement or instrument (including side letters) between the Parties in relation to the Acquisition Agreement are incorporated into this Debenture to the extent required to ensure that any purported disposition or any agreement for the disposition of the Real Property contained in this Debenture is a valid disposition in accordance with Section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

### **1.5 Deed**

It is intended that this Debenture takes effect as a deed notwithstanding the fact that a Party may only execute this document under hand.

## **2. PAYMENT OF SECURED OBLIGATIONS**

### **2.1 Covenant to pay**

The Chargor hereby covenants with the Secured Party (as trustee for the Secured Parties) that it shall pay and discharge any or all of the Secured Obligations as and when they fall due.

### **2.2 Limited Recourse**

Notwithstanding the terms of any other provision of this Debenture, the Secured Party shall have no recourse against the Chargor or its assets, whether by way of court proceedings, a winding up application or otherwise, in respect of its obligations and liabilities under this Debenture except by enforcement of its Security over the Charged Property, and the liability of the Chargor under this Debenture shall extend only to and shall not exceed the proceeds of any such enforcement.

## **3. FIXED CHARGES**

### **3.1 Fixed charges**

The Chargor hereby charges with full title guarantee in favour of the Secured Party as trustee for the Secured Parties as security for the payment and discharge of the Secured Obligations, by way of first fixed charge (which, so far as it relates to freehold or leasehold property in England and Wales vested in the Chargor at the date of this Debenture and

listed in Schedule 1 (*Details of Real Property*), shall be a charge by way of legal mortgage) all the Chargor's right, title and interest from time to time in and to the Real Property (subject in the case of the Bristol Property to obtaining any necessary consent to such mortgage or fixed charge from any third party) both present and future.

#### **4. PERFECTION OF SECURITY**

##### **4.1 Application to the Land Registry**

The Chargor consents to an application being made to the Chief Land Registrar to enter the following restriction in the Proprietorship Register of any property which is, or is required to be, registered and which forms part of the Real Property:

*"No disposition of the registered estate (other than a charge) 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 Storeshield Limited or their conveyancer that the provisions of clauses, 8, 9 and 10 of the sale and purchase agreement dated 21 July 2022 and made between (1) Storeshield Limited and (2) Marks and Spencer (A2B) Limited have been complied with or that they do not apply to the disposition."*

#### **5. FURTHER ASSURANCE**

##### **5.1 Necessary action**

The Chargor shall at its own expense take all such action as the Secured Party may reasonably require (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection, confirmation or maintenance of any security created or intended to be created in favour of the Secured Party, any Receiver or administrator by or pursuant to this Debenture.

##### **5.2 Consent of third parties**

Immediately upon obtaining any consents necessary to enable the Bristol Property to be the subject of an effective charge by way of legal mortgage pursuant to Clause 3 (*Fixed Charges*) the Bristol Property shall become subject to such Security and the Chargor shall promptly deliver a copy of each consent to the Secured Party.

##### **5.3 Implied covenants for title**

The obligations of the Chargor under this Debenture shall be in addition to the covenants for title deemed to be included in this Debenture by virtue of Part 1 of the Law of Property (Miscellaneous Provisions) Act 1994.

##### **5.4 Value of security**

The Chargor shall not do or cause or permit to be done anything which may in any way depreciate, jeopardise or otherwise prejudice the value of the security created or intended to be created by this Debenture.

## **6. NEGATIVE PLEDGE AND DISPOSALS**

### **6.1 Security**

The Chargor shall not (and shall not agree to) at any time during the subsistence of this Debenture, create or permit to subsist any Security over all or any part of the Charged Property other than as expressly permitted by the Acquisition Agreement.

### **6.2 No disposal of interests**

The Chargor shall not (and shall not agree to) at any time during the subsistence of this Debenture, except as expressly permitted pursuant to the Acquisition Agreement and/or the Transaction Documents:

- 6.2.1** execute any conveyance, transfer, lease or assignment of, or other right to use or occupy, all or any part of the Charged Property; or
- 6.2.2** create any legal or equitable estate or other interest in, or over, or otherwise relating to, all or any part of the Charged Property; or
- 6.2.3** (a) grant or vary, or accept any surrender, or cancellation or disposal of, any lease, tenancy, licence, consent or other right to occupy in relation to any of the Charged Property or (b) allow or grant any person any licence or right to use or occupy or to become entitled to assert any proprietary interest in, or right over, the Charged Property, which may, in each case, adversely affect the validity, enforceability or value of any of the Charged Property or the ability of the Secured Party to exercise any of the Collateral Rights.

## **7. ACCELERATION AND ENFORCEMENT OF SECURITY**

### **7.1 Acceleration**

**7.1.1** At any time an Enforcement Event is continuing, the Secured Party may, by notice to the Chargor, declare that the Secured Obligations have become immediately due and payable, whereupon they shall become immediately due and payable.

**7.1.2** For the purposes of this Clause 7.1, the amounts due and payable shall include, without limitation: (i) the Outstanding Deferred Consideration Amount, (ii) the outstanding balance (if any) Profit Share Fallback Consideration Amount, and (iii) the Interest on the Profit Share Sale Consideration Amount less any Annual Interest Payments (in each case pursuant to the Acquisition Agreement as if the Freehold Sale Long Stop Date had taken place immediately prior to the Enforcement Event). Notwithstanding this or any other clause of this Debenture the total of the Secured Obligations shall not at any time exceed the sum of the Maximum Deferred Consideration Amount and the Maximum Profit Share Consideration Amount and any interest accrued thereon, together with any

default interest and any costs and expenses incurred by a Secured Party in enforcing the Security created or intended to be created by or pursuant to this Debenture.

## **7.2 Enforcement**

At any time after the occurrence of an Enforcement Event, or if the Chargor requests the Secured Party to exercise any of its powers under this Debenture, or if a petition or application is presented for the making of an administration order in relation to the Chargor, or if any person who is entitled to do so gives written notice of its intention to appoint an administrator of the Chargor or files such a notice with the court, the security created by or pursuant to this Debenture is immediately enforceable and the Secured Party may, without notice to the Chargor or prior authorisation from any court, in its absolute discretion:

**7.2.1** enforce all or any part of that security (at the times, in the manner and on the terms it thinks fit) and take possession of and hold or dispose of all or any part of the Charged Property and the Secured Party (or its nominee(s)) shall have an immediate and absolute power of sale or other disposition over the Charged Property; and

**7.2.2** whether or not it has appointed a Receiver, exercise all or any of the powers, authorities and discretions conferred by the LPA (as varied or extended by this Debenture) on mortgagees and by this Debenture on any Receiver or otherwise conferred by law on mortgagees or Receivers.

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

Neither the Secured Party nor any of its nominees nor any Receiver shall be liable to account as a mortgagee in possession in respect of all or any part of the Charged Property or be liable for any loss upon realisation or for any default or omission in connection with the Charged Property to which a mortgagee in possession might otherwise be liable.

## **7.4 Right of appropriation**

To the extent that any of the Charged Property constitutes "financial collateral" and this Debenture and the obligations of the Chargor hereunder constitute a "security financial collateral arrangement" (in each case as defined in, and for the purposes of, the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No. 3226) (the "**Regulations**")) the Secured Party shall have the right after an Enforcement Event to appropriate all or any part of such financial collateral in or towards discharge of the Secured Obligations. For this purpose, the parties agree that the value of such financial collateral so appropriated shall be (a) if it is listed or traded on a recognised exchange, its value will be taken as being the value at which it could have been sold on the exchange on the date of appropriation is; and (b) in any other case, its value will be such amount as the Secured Party reasonably determines having taken into account advice obtained by it from an independent commercial property adviser, investment bank or accountancy firm of national standing

selected by it. In each case, the Parties agree that the method of valuation provided for in this Debenture shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.

## **7.5 Effect of moratorium**

**7.5.1** The Secured Party shall not be entitled to exercise its rights under Clause 7.2 (*Enforcement*) or Clause 9.1 (*Appointment and removal*) (other than Clause 9.1.5) where the right arises as a result of an Insolvency Event occurring solely due to any person obtaining or taking steps to obtain a moratorium pursuant to Part A1 of the Insolvency Act 1986.

**7.5.2** Clause 7.5.1 above does not apply in respect of a "security financial collateral arrangement", as defined in Clause 7.4 (*Right of appropriation*) above.

## **8. EXTENSION AND VARIATION OF THE LPA**

### **8.1 Extension of powers**

The power of sale or other disposal conferred on the Secured Party, its nominee(s) and any Receiver by this Debenture shall operate as a variation and extension of the statutory power of sale under Section 101 of the LPA and such power shall arise (and the Secured Obligations shall be deemed due and payable for that purpose) on execution of this Debenture.

### **8.2 Restrictions**

The restrictions contained in Sections 93 and 103 of the LPA shall not apply to this Debenture or to the exercise by the Secured Party of its right to consolidate all or any of the Charges with any other Security in existence at any time or to its power of sale, which powers may be exercised by the Secured Party without notice to the Chargor on or at any time after the occurrence of an Enforcement Event.

### **8.3 Power of leasing**

The statutory powers of leasing may be exercised by the Secured Party at any time on or after the occurrence of an Enforcement Event and the Secured Party and any Receiver may make any lease or agreement for lease, accept surrenders of leases and grant options on such terms as it shall think fit, without the need to comply with any restrictions imposed by Sections 99 and 100 of the LPA.

### **8.4 Transfer of Security**

**8.4.1** At any time after the occurrence of an Enforcement Event, the Secured Party may:

- (a) redeem any prior Security against any Charged Property; and/or
- (b) procure the transfer of any such Security to itself; and/or

- (c) settle and pass the accounts of the prior mortgagee or chargee; any accounts so settled and passed will be, in the absence of manifest error, conclusive and binding on the Chargor.

**8.4.2** The Chargor shall pay to the Secured Party immediately on demand the costs and expenses incurred by the Secured Party in taking any action contemplated by Clause 8.4.1, including the payment of any principal or interest.

## **8.5 Suspense account**

If the Charges are enforced at a time when no amount is due under the Acquisition Agreement but at a time when amounts may or will become due, the Secured Party (or any Receiver) may pay the proceeds of any recoveries effected by it into a suspense account.

## **9. APPOINTMENT OF RECEIVER OR ADMINISTRATOR**

### **9.1 Appointment and removal**

After the occurrence of an Enforcement Event, or if a petition or application is presented for the making of an administration order in relation to the Chargor, or if any person who is entitled to do so gives written notice of its intention to appoint an administrator of the Chargor or files such a notice with the court or if requested to do so by the Chargor, the Secured Party may by deed or otherwise (acting through an authorised officer of the Secured Party), without prior notice to the Chargor:

- 9.1.1** appoint one or more persons to be a Receiver of the whole or any part of the Charged Property;
- 9.1.2** appoint two or more Receivers of separate parts of the Charged Property;
- 9.1.3** remove (so far as it is lawfully able) any Receiver so appointed;
- 9.1.4** appoint another person(s) as an additional or replacement Receiver(s); and
- 9.1.5** appoint one or more persons to be an administrator of the Chargor.

### **9.2 Capacity of Receivers**

Each person appointed to be a Receiver pursuant to Clause 9.1 (*Appointment and removal*) shall be:

- 9.2.1** entitled to act individually or together with any other person appointed or substituted as Receiver;
- 9.2.2** for all purposes deemed to be the agent of the Chargor which shall be solely responsible for their acts, defaults and liabilities and for the payment of their remuneration and no Receiver shall at any time act as agent for the Secured Party; and

- 9.2.3** entitled to remuneration for their services at a rate to be fixed by the Secured Party from time to time (without being limited to the maximum rate specified by the LPA).

### **9.3 Statutory powers of appointment**

The powers of appointment of a Receiver shall be in addition to all statutory and other powers of appointment of the Secured Party under the LPA (as extended by this Debenture) or otherwise and such powers shall remain exercisable from time to time by the Secured Party in respect of any part of the Charged Property. Except as provided in Clause 7.5 (*Effect of moratorium*), any restriction imposed by law on the right of a mortgagee to appoint a receiver (including under section 109(1) of the LPA) does not apply to this Debenture.

## **10. POWERS OF RECEIVER**

Every Receiver shall (subject to any restrictions in the instrument appointing them but notwithstanding any winding-up or dissolution of the Chargor) have and be entitled to exercise, in relation to the Charged Property (and any assets of the Chargor which, when got in, would be Charged Property) in respect of which the Receiver was appointed, and as varied and extended by the provisions of this Debenture (in the name of or on behalf of the Chargor or in their own name and, in each case, at the cost of the Chargor):

- 10.1.1** all the powers conferred by the LPA on mortgagors and on mortgagees in possession and on receivers appointed under the LPA;
- 10.1.2** all the powers of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986 (whether or not the Receiver is an administrative receiver);
- 10.1.3** all the powers and rights of an absolute owner and power to do or omit to do anything which the Chargor itself could do or omit to do; and
- 10.1.4** the power to do all things (including bringing or defending proceedings in the name or on behalf of the Chargor) which seem to the Receiver to be incidental or conducive to (a) any of the functions, powers, authorities or discretions conferred on or vested in them or (b) the exercise of the Collateral Rights (including realisation of all or any part of the Charged Property) or (c) bringing to their hands any assets of the Chargor forming part of, or which when got in would be, Charged Property.

## **11. APPLICATION OF MONIES**

All monies received or recovered by the Secured Party, its nominee(s) or any Receiver pursuant to this Debenture or the powers conferred by it shall (subject to the claims of any person having prior rights thereto and by way of variation of the provisions of the LPA) be applied first in the payment of the costs, charges and expenses incurred and payments made by the Receiver, the payment of their remuneration and the discharge of any

liabilities incurred by the Receiver in, or incidental to, the exercise of any of their powers, and thereafter shall be applied by the Secured Party (notwithstanding any purported appropriation by the Chargor):

**11.1.1** in or towards satisfaction of the Secured Obligations; and

**11.1.2** if the Chargor, the Purchaser or the Purchaser's Guarantor is under no further actual or contingent liability under the Acquisition Agreement, in payment or distribution to any person to whom the Secured Party is obliged to pay or distribute in priority to the Chargor; and

**11.1.3** the balance, if any, in payment or distribution to the Chargor.

## **12. PROTECTION OF PURCHASERS**

### **12.1 Consideration**

The receipt of the Secured Party, its nominee(s) or any Receiver shall be conclusive discharge to a purchaser and, in making any sale or disposal of any of the Charged Property or making any acquisition, the Secured Party, its nominee(s) or any Receiver may do so for such consideration, in such manner and on such terms as it thinks fit.

### **12.2 Protection of purchasers**

No purchaser or other person dealing with the Secured Party, its nominee(s) or any Receiver shall be bound to inquire whether the right of the Secured Party, such nominee(s) or such Receiver to exercise any of its powers has arisen or become exercisable or be concerned with any propriety or regularity on the part of the Secured Party, such nominee(s) or such Receiver in such dealings.

## **13. POWER OF ATTORNEY**

### **13.1 Appointment and powers**

The Chargor by way of security irrevocably appoints the Secured Party and any Receiver severally to be its attorney and in its name, on its behalf and as its act and deed to execute, deliver and perfect all documents and do all things which the attorney may consider to be required or desirable for:

**13.1.1** carrying out any obligation imposed on the Chargor by this Debenture (including the completion, execution and delivery of any, deeds, charges, assignments or other security and any transfers of the Charged Property); and

**13.1.2** enabling the Secured Party and any Receiver to exercise, or delegate the exercise of, any of the rights, powers, authorities and discretions conferred on them by or pursuant to this Debenture or by law (including the exercise of any right of a legal or beneficial owner of the Charged Property) and (without prejudice to the generality of the foregoing) to execute as a deed or under hand and deliver and otherwise perfect any deed, assurance, agreement,



instrument or act which it may reasonably deem proper in or for the purpose of exercising any of such rights, powers, authorities and discretions.

### **13.2 Exercise of power of attorney**

The Secured Party may only exercise the power of attorney granted pursuant to Clause 13.1 (*Appointment and powers*) following:

- 13.2.1** the occurrence of an Enforcement Event; or
- 13.2.2** the failure by the Chargor to comply with any further assurance or perfection of security obligations required by the terms of this Debenture within ten Business Days of such further assurance or perfection of security obligation arising.

### **13.3 Ratification**

The Chargor shall ratify and confirm all things done and all documents executed by any attorney in the exercise or purported exercise of all or any of their powers.

### **13.4 Secured Party's power to remedy breaches**

If at any time the Chargor fails to perform any of the covenants contained in this Debenture it shall be lawful for the Secured Party, but the Secured Party shall have no obligation, to take such action on behalf of the Chargor (including, without limitation, the payment of money) as may in the Secured Party's reasonable opinion be required to ensure that such covenants are performed. Any losses, costs, charges and expenses incurred by the Secured Party in taking such action shall be reimbursed by the Chargor on demand.

## **14. EFFECTIVENESS OF SECURITY**

### **14.1 Continuing security**

**14.1.1** The Charges shall remain in full force and effect as a continuing security for the Secured Obligations unless and until the Secured Obligations have been irrevocably and unconditionally discharged in full.

**14.1.2** No part of the security from time to time intended to be constituted by this Debenture will be considered satisfied or discharged by any intermediate payment, discharge or satisfaction of the whole or any part of the Secured Obligations.

### **14.2 Cumulative rights**

The Charges and the Collateral Rights shall be cumulative, in addition to and independent of every other security which the Secured Party or any Secured Party may at any time hold for the Secured Obligations or any other obligations or any rights, powers and remedies provided by law. No prior security held by the Secured Party (whether in its capacity as

trustee or otherwise) or any of the other Secured Parties over the whole or any part of the Charged Property shall merge into the security constituted by this Debenture.

#### **14.3 Remedies and waivers**

No failure on the part of the Secured Party to exercise, or any delay on its part in exercising, any Collateral Right shall operate as a waiver of that Collateral Right, nor shall any single or partial exercise of any Collateral Right preclude any further or other exercise of that or any other Collateral Right.

#### **14.4 No liability**

None of the Secured Party, its nominee(s) or any Receiver shall be liable by reason of (a) taking any action permitted by this Debenture or (b) any neglect or default in connection with the Charged Property or (c) taking possession of or realising all or any part of the Charged Property.

#### **14.5 Partial invalidity**

If, at any time, any provision of this Debenture is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Debenture nor of such provision under the laws of any other jurisdiction shall in any way be affected or impaired thereby and, if any part of the security intended to be created by or pursuant to this Debenture is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the security.

#### **14.6 Waiver of defences**

Neither the obligations of the Chargor under this Debenture nor the Charges will be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under any of the Charges (without limitation and whether or not known to it or any Secured Party) including:

- 14.6.1** any time, waiver or consent granted to, or composition with, any person; or
- 14.6.2** the release of any person under the terms of any composition or arrangement with any creditor of any member of the Group; or
- 14.6.3** 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 or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security; or
- 14.6.4** any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any person; or

- 14.6.5** any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case however fundamental and of whatsoever nature) or replacement of the Acquisition Agreement or this Debenture or any other document or security or of the Secured Obligations (including, without limitation, any increase to the Secured Obligations as may be agreed by Purchaser from time to time); or
- 14.6.6** any unenforceability, illegality or invalidity of any obligation of any person under the Acquisition Agreement or this Debenture or any other document or security or of the Secured Obligations; or
- 14.6.7** any insolvency or similar proceedings.

#### **14.7 Immediate recourse**

The Chargor waives any right it may have of first requiring any Secured Party (or the Secured Party or agent on its behalf) to proceed against the Chargor or any other person or enforce any other rights or security or claim payment from any person before claiming from the Chargor under this Debenture. This waiver applies irrespective of any law or any provision of this Debenture to the contrary.

#### **14.8 Deferral of rights**

Until such time as the Secured Obligations have been discharged in full, the Chargor will not exercise any rights which it may have by reason of performance by it of its obligations under this Debenture:

- 14.8.1** to be indemnified by the Purchaser or the Purchaser's Guarantor;
- 14.8.2** to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Secured Party under the Acquisition Agreement or of any other guarantee or security taken pursuant to, or in connection with, this Debenture by the Secured Party;
- 14.8.3** to exercise any right of set-off against the Purchaser or the Purchaser's Guarantor; and/or
- 14.8.4** to claim or prove as a creditor of the Purchaser or the Purchaser's Guarantor in competition with any Secured Party.

### **15. RELEASE OF SECURITY**

#### **15.1 Redemption of security**

Upon the Secured Obligations being irrevocably and unconditionally discharged in full and none of the Secured Parties being under any further actual or contingent obligation to make advances or provide other financial accommodation to the Chargor or any other person under the Acquisition Agreement or this Debenture, the Secured Party shall, at the request and cost of the Chargor, release and cancel the security constituted by this

Debenture and procure the reassignment to the Chargor of the property and assets assigned to the Secured Party pursuant to this Debenture, in each case subject to Clause 15.2 (*Avoidance of payments*) and without recourse to, or any representation or warranty by, the Secured Party or any of its nominees.

## **15.2 Avoidance of payments**

If the Secured Party considers that any amount paid or credited to it is capable of being avoided or reduced by virtue of any bankruptcy, insolvency, liquidation or similar laws the liability of the Chargor under, and the security created by, this Debenture shall continue and such amount shall not be considered to have been irrevocably paid.

## **16. SET-OFF**

**16.1** The Chargor authorises the Secured Party (but the Secured Party shall not be obliged to exercise such right) to set off against the Secured Obligations any amount or other obligation (contingent or otherwise) owing by the Secured Party to the Chargor and apply any credit balance to which the Chargor is entitled on any account with the Secured Party in accordance with Clause 11 (*Application of monies*) (notwithstanding any specified maturity of any deposit standing to the credit of any such account).

**16.2** Without prejudice to any right of set-off the Secured Party may have under the Acquisition Agreement or otherwise, if any time deposit matures on any account the Chargor has with the Secured Party prior to the release of all of the Charged Property pursuant to Clause 15.1 (*Redemption of security*) when:

**16.2.1** an Enforcement Event has occurred; and

**16.2.2** no Secured Obligation is due and payable,

that time deposit will automatically be renewed for any further maturity which the Secured Party considers appropriate.

## **17. SUBSEQUENT SECURITY INTERESTS**

If the Secured Party (acting in its capacity as trustee or otherwise) or any of the other Secured Parties at any time receives or is deemed to have received notice of any subsequent Security affecting all or any part of the Charged Property or any assignment or transfer of the Charged Property which is prohibited by the terms of this Debenture or the Acquisition Agreement, all payments made thereafter by or on behalf of the Chargor to the Secured Party (whether in its capacity as trustee or otherwise) or any of the other Secured Parties shall be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Obligations as at the time when the Secured Party received such notice.

## **18. NOTICES**

The provisions of clause 25 (*Notices*) of the Acquisition Agreement shall apply to this Debenture.

**19. COUNTERPARTS**

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

**20. GOVERNING LAW**

This Debenture and all matters including non-contractual obligations arising out of or in connection with it are governed by English law.

**21. JURISDICTION OF ENGLISH COURTS**

**21.1** The courts of England have exclusive jurisdiction to settle any dispute arising out of, or connected with this Debenture (including a dispute regarding the existence, validity or termination of this Debenture or the consequences of its nullity or any non-contractual obligations arising out of or in connection with this Debenture) (a "**Dispute**").

**21.2** The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes between them and, accordingly, that they will not argue to the contrary.

**21.3** Notwithstanding Clauses 21.1 and 21.2 above, the Secured Party shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law the Secured Party may take concurrent proceedings in any number of jurisdictions.

**THIS DEBENTURE** has been signed on behalf of the Secured Party and executed as a deed by the Chargor and is delivered by it on the date specified above.

**SCHEDULE 1**  
**DETAILS OF REAL PROPERTY**

**Part I - Registered Land**

(Freehold or leasehold property (if any) in England and Wales of which the  
Chargor is registered as the proprietor at the Land Registry)

	Address of Property	Title Number	Freehold / leasehold	Date / Parties to lease
1.	Land and buildings on the south side of Wardentree Lane, Pinchbeck, Spalding  Land to the South of Wardentree Lane, Spalding  Gist Ltd, Wardentree Lane, Pinchbeck, Spalding, PE11 3UG	LL146260  LL254369  LL120729	Freehold	-
2.	Land lying to the South West of Industry Road, Carlton  Land on the South West side of Industry Road, Barnsley  Land on the North East Side of Industry Road, Barnsley  Land and buildings on the South East Side of Carlton Road, Barnsley S71 3LN  Fersina House, Industry Road, Carlton, Barnsley S70 3NH  B O C Ltd, Industry Road, Barnsley S71 3LJ	SYK187148  SYK231112  SYK246828  SYK32687  SYK338719  SYK477731	Freehold	-
3.	B O C Distribution, Quakers Coppice, Crewe, CW1 6FB	CH159558	Freehold	-
4.	Land on the South West side of Oare Road, Faversham  Land lying to the north east of Bysing Wood Road, Faversham ME13 7TZ	K83268  K818576  K207485  K561827  K580360		-
5.	B O C Ltd, Three Cherry Trees Lane, Hemel Hempstead Industrial Estate, Hemel	HD276304	Freehold	-

	Hempstead HP2 7PZ	HD341082		
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	Address of Property	Title Number	Freehold / leasehold	Date / Parties to lease
	<p>Kodak Ltd, Swallowdale Lane, Hemel Hempstead Industrial Estate, Hemel Hempstead HP2 7EJ</p> <p>Land on the North West side of Swallowdale Lane, Hemel Hempstead Industrial Estate, Hemel Hempstead</p> <p>Land on the South East side of Eastman Way, Hemel Hempstead</p>	<p>HD370314</p> <p>HD395544</p>		
6.	<p>B O C Ltd, Enterprise Way, Thatcham RG19 4BQ</p> <p>Land on the North East side of Enterprise Way and south side of London Road, Thatcham</p>	<p>BK232095</p> <p>BK246050</p>		
7.	<p>Land on the North Side of Short Way, Thornbury, Bristol, BS35 3UT</p> <p>Land adjoining Thornbury Industrial Estate, Midland Way, Thornbury Bristol</p>	<p>AV221588</p> <p>GR333656</p>	Leasehold	



**SIGNATURES**

**The Chargor**

**EXECUTED as a DEED**

**by GIST LIMITED**

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Director **MICHAEL CHAMBERS**



Director/Secretary **KEITH RUSSELL**

**The Secured Party**

**EXECUTED as a DEED**

**by STORESHIELD LIMITED**

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.....  
Director

.....  
Director/Secretary

**SIGNATURES**

**The Chargor**

EXECUTED as a DEED )  
by GIST LIMITED )

.....  
Director

.....  
Director/Secretary

**The Secured Party**

EXECUTED as a DEED )  
by STORESHIELD LIMITED )

[Redacted Signature]

Director BEN PATTERSON

[Redacted Signature]

~~Director~~/Secretary SUE KELLY