

MR01

Particulars of a charge

435185/13

IRIS Laserform

A fee is payable with this form  
Please see 'How to pay' on the  
last page


You can use the WebFiling service to file this form online  
Please go to [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

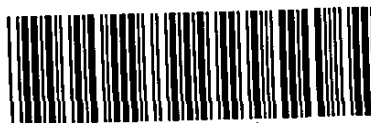
✓ **What this form is for**  
You may use this form to register  
a charge created or evidenced by  
an instrument

✗ **What this form is NOT for**  
You may not use this form to  
register a charge where there is no  
instrument Use form MR08

For further information, please  
refer to our guidance at  
[www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

This form **must be delivered to the Registrar for registration within 21 days** beginning with the day after the date of creation of the charge delivered outside of the 21 days it will be rejected unless it is accompanied by a court order extending the time for delivery

 You **must** enclose a certified copy of the instrument with this form This must be scanned and placed on the public record



\*A2MXB80W\*

A02

10/12/2013

#189

COMPANIES HOUSE

For official use

1

Company details

Company number 2 2 2 3 8 3 5  
Company name in full DURHAM HIRE AND SALES LIMITED

7

→ **Filing in this form**  
Please complete in typescript or in  
bold black capitals

All fields are mandatory unless  
specified or indicated by \*

2

Charge creation date

Charge creation date d0 d6 m1 m2 y2 y0 y1 y3

3

Names of persons, security agents or trustees entitled to the charge

Please show the names of each of the persons, security agents or trustees  
entitled to the charge

Name THE TYNE AND WEAR ENTERPRISE TRUST LIMITED

Name

Name

Name

If there are more than four names, please supply any four of these names then  
tick the statement below

☐ I confirm that there are more than four persons, security agents or  
trustees entitled to the charge

MR01

Particulars of a charge

4

**Description**

Please give a short description of any land (including buildings), ship, aircraft or intellectual property registered (or required to be registered) in the UK which is subject to this fixed charge or fixed security

**Continuation page**

Please use a continuation page if you need to enter more details

Description

5

**Fixed charge or fixed security**

Does the instrument include a fixed charge or fixed security over any tangible or intangible (or in Scotland) corporeal or incorporeal property not described above? Please tick the appropriate box

☒ **Yes**

☐ **No**

6

**Floating charge**

Is the instrument expressed to contain a floating charge? Please tick the appropriate box

☒ **Yes** Continue

☐ **No** Go to **Section 7**

Is the floating charge expressed to cover all the property and undertaking of the company?

☒ **Yes**

7

**Negative Pledge**

Do any of the terms of the charge prohibit or restrict the chargor from creating any further security that will rank equally with or ahead of the charge? Please tick the appropriate box

☒ **Yes**

☐ **No**

MR01

Particulars of a charge

8

**Trustee statement ①**

You may tick the box if the company named in Section 1 is acting as trustee of the property or undertaking which is the subject of the charge

☐

① This statement may be filed after the registration of the charge (use form MR06)

9

**Signature**

Please sign the form here

Signature

Signature

X

*Bond Dickinson*

X

This form must be signed by a person with an interest in the charge

# MR01

## Particulars of a charge



### Presenter information

We will send the certificate to the address entered below. All details given here will be available on the public record. You do not have to show any details here but, if none are given, we will send the certificate to the company's Registered Office address.

Contact name

Company name

Bond Dickinson LLP

Address St Ann's Wharf

112 Quayside

Post town Newcastle upon Tyne

County/Region

Postcode

N E 1 3 D X

Country

DX 61191 Newcastle upon Tyne

Telephone 0845 415 0000



### Certificate

We will send your certificate to the presenter's address if given above or to the company's Registered Office if you have left the presenter's information blank.



### Checklist

**We may return forms completed incorrectly or with information missing.**

**Please make sure you have remembered the following:**

- ☐ The company name and number match the information held on the public Register
- ☐ You have included a certified copy of the instrument with this form
- ☐ You have entered the date on which the charge was created
- ☐ You have shown the names of persons entitled to the charge
- ☐ You have ticked any appropriate boxes in Sections 3, 5, 6, 7 & 8
- ☐ You have given a description in Section 4, if appropriate
- ☐ You have signed the form
- ☐ You have enclosed the correct fee
- ☐ Please do not send the original instrument, it must be a certified copy



### Important information

**Please note that all information on this form will appear on the public record.**



### How to pay

**A fee of £13 is payable to Companies House in respect of each mortgage or charge filed on paper.**

Make cheques or postal orders payable to 'Companies House'



### Where to send

**You may return this form to any Companies House address. However, for expediency, we advise you to return it to the appropriate address below.**

#### For companies registered in England and Wales.

The Registrar of Companies, Companies House,  
Crown Way, Cardiff, Wales, CF14 3UZ  
DX 33050 Cardiff

#### For companies registered in Scotland:

The Registrar of Companies, Companies House,  
Fourth floor, Edinburgh Quay 2,  
139 Fountainbridge, Edinburgh, Scotland, EH3 9FF  
DX ED235 Edinburgh 1  
or LP - 4 Edinburgh 2 (Legal Post)

#### For companies registered in Northern Ireland

The Registrar of Companies, Companies House,  
Second Floor, The Linenhall, 32-38 Linenhall Street,  
Belfast, Northern Ireland, BT2 8BG  
DX 481 N R Belfast 1



### Further information

For further information, please see the guidance notes on the website at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk) or email [enquiries@companieshouse.gov.uk](mailto:enquiries@companieshouse.gov.uk)

**This form is available in an alternative format. Please visit the forms page on the website at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)**



**FILE COPY**

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

Company number: 2223835

Charge code: 0222 3835 0007

The Registrar of Companies for England and Wales hereby certifies that a charge dated 6th December 2013 and created by DURHAM HIRE & SALES LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 10th December 2013.

*SX*

Given at Companies House, Cardiff on 12th December 2013



**Companies House**



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

Bond Dickinson

[www.bonddickinson.com](http://www.bonddickinson.com)

9/12/13  
BOND DICKINSON LLP  
BOND DICKINSON  
DOCUMENT  
TRUE COPY OF THE ORIGINAL  
WE CERTIFY THAT THIS IS A

Dated 6 DECEMBER 2013

Debenture

Durham Hire and Sales Limited

in favour of

The Tyne and Wear Enterprise Trust Limited

## CONTENTS

1	Interpretation	2
2	Secured Liabilities	4
3	Security	4
4	Floating Charge	5
5	Restrictions	5
6	Insurance	6
7	Undertakings By The Company	7
8	Powers Of The Lender	9
9	Receivers And Administrators	10
10	Protection Of Purchasers And Power Of Attorney	11
11	Appropriation, Set-Off And Restriction	12
12	Protection Of Security	12
13	Further Assurance	12
14	Arrangements With The Company And Others	12
15	Currency	13
16	Payments To Be Made Without Deduction	13
17	Certificates	13
18	Merger Or Amalgamation	13
19	Prior Charges	14
20	Notices	14
21	Representations And Warranties	14
22	Law And Jurisdiction	15
23	Assignment And Transfer	15
24	Indemnity	16
25	Waiver	16
26	Severance	16
27	Miscellaneous	16
	Schedule	17

## DEBENTURE

Dated 6 DECEMBER 2013

made by DURHAM HIRE AND SALES LIMITED (CN 02223835) (the "Company") whose registered office is at Osborne Business Centre, Grove Terrace, Durham DH7 8JT,

in favour of THE TYNE AND WEAR ENTERPRISE TRUST LIMITED (CN 01602705) of First Floor, Media 5, The Media Exchange, Coquet Street, Ouseburn Valley, Newcastle upon Tyne NE1 2QB (the "Lender")

### 1 INTERPRETATION

1.1 In this deed the following expressions have the following meanings -

"Administrator"	an administrator appointed under the Insolvency Act 1986,
"Business"	the business or businesses and operations carried on by the Company from time to time,
"Business Day"	a day (not being a Saturday or a Sunday) on which clearing banks are open for general banking business in the City of London,
"Charged Property"	the assets and undertaking charged or assigned by clause 3,
"Encumbrance"	includes any mortgage, charge (fixed or floating), pledge, lien and any other arrangement or interest (whether by way of assignment, trust, title retention or otherwise) which has the effect of creating security or payment priority,
"Environment"	the natural and man-made environment and all or any of air, water and land, including air within buildings and air within other natural or man-made structures above or below ground,
"Environmental Law"	all laws, regulations, directives, statutes, subordinate legislation, common law and other national and local laws, judgments, orders, instructions or awards of any court or competent authority and all codes of practice and guidance notes which relate to the Environment or human health or the health of animals or plants,
"Expenses"	(a) all expenses (on a full indemnity basis) incurred by an Administrator of the Company in carrying out his statutory functions and that Administrator's remuneration, and (b) all expenses (on a full indemnity basis) including legal and valuation fees, from time to time paid or incurred by the Lender or any Receiver at any time in connection with the Charged Property or the Obligations or in taking, perfecting or enforcing this deed or in exercising any right or power under this deed or otherwise together with VAT upon such expenses where appropriate and Interest from the date they are incurred,
"Interest"	interest at the rate or rates agreed between the Lender and the Company,
"Lease"	any letting, underlease or sub-lease and any tenancy, licence or other agreement for possession or occupation,
"Licences"	all licences, consents, certificates, registrations, permits or other similar matters required in connection with the Company's property,



	assets, undertaking and the Business,
"Obligations"	the obligations and liabilities to the Lender covenanted to be discharged or paid under clause 2,
"Planning Acts"	any legislation, directions, notices, bye-laws from time to time in force relating to town and country planning, building and construction,
"Receiver"	any person appointed as receiver, administrative receiver, manager or receiver and manager,
"Relevant Currency"	in relation to each of the Obligations and Expenses the currency in which it is from time to time expressed,
"Rents"	all rents, profits, income, fees and other sums at any time payable to the Company by any lessee, tenant, licensee or other occupier of the Charged Property except any sums payable in respect of services or insurance provided by the Company,
"Subsidiary Undertaking"	has the meaning given by section 1162 of the Companies Act 2006,
"Tax"	any form of taxation, levy, duty, charge, contribution or impost (including any applicable fine, penalty, surcharge or interest) imposed by any local, municipal, governmental, state, federal or other fiscal, revenue, customs and/or excise authority, body or official anywhere in the world, and
"VAT"	value added tax or any other tax on added value or on turnover for the time being in force

1 2 In this deed, each reference to -

- 1 2 1 "Charged Property", "Expenses" or "Obligations" includes a reference to any part of them or it,
- 1 2 2 "Company" includes a reference to any person deriving title through the Company,
- 1 2 3 "Lender" includes a reference to any person who claims any title or interest through the Lender or any person to whom the business of the Lender is transferred,
- 1 2 4 any document (including this deed) or a provision of such document includes a reference to such document or provision as supplemented, varied or replaced from time to time,
- 1 2 5 "freehold" property includes a reference to property registered (or in the process of registration) as a freehold estate in commonhold land (whether in commonhold units or common parts),
- 1 2 6 a statutory provision includes a reference to any modification, consolidation or re-enactment of the provision from time to time in force and all subordinate instruments, order or regulations made under it,
- 1 2 7 the singular includes the plural and vice versa,
- 1 2 8 a person includes a body corporate, unincorporated association, government, state, partnership or trust (in each case, whether or not having separate legal personality),

1 2 9 "dispose" includes charging, selling, leasing, assigning or transferring or agreeing to do any of the same, granting an option or similar right, creating a trust or other equitable interest or sharing or parting with possession or occupation

1 3 General words shall not be given a restrictive interpretation by reason of their being preceded or followed by words indicating a particular class of acts, matters or things

1 4 Headings in this deed are for convenience only and shall not affect its interpretation

## **2 SECURED LIABILITIES**

The Company covenants to -

2 1 discharge on demand from time to time all its obligations and liabilities to the Lender of any kind and in any currency (whether present or future, actual or contingent and whether as principal or surety or incurred alone or jointly with another and whether the Lender shall have been an original party to the relevant transaction or not),

2 2 pay to the Lender on demand from time to time the Expenses, and

2 3 pay to the Lender on demand from time to time Interest on the obligations and liabilities to the Lender covenanted to be discharged and/or paid by the Company under clauses 2 1 and 2 2 from the date on which the Company has agreed to pay Interest on them or, if there is no such agreement, from the date on which they become due

In the case of any of the Obligations which is not (but for this clause 2) due for discharge on demand, the Lender shall not make demand before the due date

## **3 SECURITY**

As a continuing security for the discharge and payment of the Obligations and with full title guarantee, the Company -

3 1 charges to the Lender by way of legal mortgage all the freehold and leasehold property now vested in or charged to the Company, including the property (if any) specified in the Schedule,

3 2 charges to the Lender by way of fixed charge all estates and interests in any other freehold and leasehold property now and in the future vested in or charged to the Company,

3 3 assigns to the Lender the benefit of all covenants, rights, claims and guarantees relating to the Company's present and future freehold and leasehold property or that property's construction, use or title and the benefits of all easements serving or relating to such property, subject to reassignment on redemption,

3 4 charges to the Lender by way of fixed charge all rights and interests in and claims under all policies of insurance and assurance now or in the future held, to be held or insuring to the Company's benefit and all rights and claims to which the Company is now or may in the future be entitled under any contracts,

3 5 charges to the Lender by way of fixed charge all the plant, machinery, fixtures, fittings, vehicles, computers and equipment now and in the future belonging to the Company (including those assets (if any) specified in the Schedule) and assigns to the Lender all right, title and interest of the Company under any agreements (present or future) relating to the purchase, lease or hire purchase of the same, subject to reassignment on redemption,

3 6 charges to the Lender by way of fixed charge all the goodwill and uncalled capital of the Company present and future,

- 3 7 charges to the Lender by way of fixed charge all shares, stock and other securities (whether certificated or uncertificated, represented as units or balance in an account within any clearing or settlement system) now and in the future belonging to the Company,
- 3 8 charges to the Lender by way of fixed charge all intellectual property rights now and in the future belonging to the Company,
- 3 9 charges to the Lender by way of fixed charge all book and other debts now and in the future owing to the Company and the benefit of all the Company's present and future rights and claims against third parties relating to them and capable of being satisfied by the payment of money (except as charged by clause 3 4),
- 3 10 charges to the Lender by way of fixed charge all present and future bank accounts, cash at bank and credit balances of the Company with the Lender, any bank or any other person and all rights relating to or attaching to them,
- 3 11 charges to the Lender by way of fixed charge all negotiable instruments at any time drawn, issued or endorsed in favour of, or held by or on behalf of, the Company including any such instruments which at any time have been deposited with the Lender (whether or not endorsed to the Lender), and
- 3 12 charges to the Lender by way of floating charge all the undertaking and all property, assets and rights of the Company present and future wherever situate not from time to time subject to a mortgage, fixed charge or assignment under this deed

#### **4 FLOATING CHARGE**

- 4 1 Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created by this deed
- 4 2 The Lender may at any time by written notice to the Company convert the floating charge created by this deed into a fixed charge as regards any of the Charged Property specified in the notice and the floating charge created by this deed will, without notice from the Lender, automatically be converted with immediate effect into a fixed charge -
  - 4 2 1 in respect of any Charged Property which becomes subject to a fixed charge in favour of any other person,
  - 4 2 2 in respect of any Charged Property charged under clause 3 12 if and when the Company ceases to carry on business as a going concern,
  - 4 2 3 in respect of any Charged Property which is subject to any step by any third party to levy any distress, attachment, execution or other legal process on it, and
  - 4 2 4 in respect of all the Charged Property on the making of an order for the compulsory winding up of the Company, on the convening of a meeting for the passing of a resolution for the voluntary winding up of the Company or taking of any step (including the making of an application or the giving of any notice) by the Company or any other person for the appointment of an administrator in respect of the Company
- 4 3 Any mortgage, fixed charge or other fixed security created by the Company in favour of the Lender will have priority over the floating charge created by clause 3 12, unless the Lender states otherwise on or after its creation

#### **5 RESTRICTIONS**

- 5 1 The Company will not without the Lender's prior written consent -

- 5 1 1 create or permit to arise or continue any Encumbrance affecting the Charged Property or increase or extend any liability of the Company secured on any of the Charged Property,
  - 5 1 2 dispose of the Charged Property charged by clauses 3 1 to 3 8 inclusive and clauses 3 10 and 3 11 or, following crystallisation of the floating charge created by clause 3 12, the Charged Property charged by clause 3 12,
  - 5 1 3 dispose of the Company's book and other debts or credit balances including realising its book and other debts by means of discounting, factoring or similar arrangement,
  - 5 1 4 compromise, compound, vary, discharge, postpone or release any of its book or other debts or waive its rights of action in connection with any such debts,
  - 5 1 5 nominate another person to enjoy or exercise any specified rights of the Company as member of another company or nominate another person to enjoy information rights (as that expression is defined in section 146 of the Companies Act 2006) in respect of any shares or securities charged under this deed,
  - 5 1 6 dispose of the Charged Property charged by clause 3 12 other than in the ordinary course of, and for the purposes of, carrying on its business while the floating charge remains uncrystallised, or
  - 5 1 7 grant or accept a surrender of any Lease, or part with or share possession or occupation of, its freehold and leasehold property or any part of it nor vary any Lease or reduce any sum payable under any such Lease nor enter into any onerous or restrictive obligations affecting its freehold and leasehold property or any part of it
- 5 2 The Company applies to the Chief Land Registrar to enter a restriction on the Register of Title of all present and future registered freehold and leasehold property of the Company in the following terms "no disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction is to be registered without a written consent signed by the proprietor for the time being of the charge dated [date] in favour of THE TYNE AND WEAR ENTERPRISE TRUST LIMITED referred to in the charges register or their conveyancer"

## 6 **INSURANCE**

- 6 1 The Company will to the Lender's reasonable satisfaction keep comprehensively insured for its full reinstatement cost plus VAT (due allowance being made for inflation during the period of insurance and reinstatement) all of the Charged Property which is of an insurable nature in such name and in such offices as the Lender shall in writing approve and on such terms, for such amounts and of such types as would be effected by prudent companies carrying on business similar to the Company (including in respect of environmental pollution, subsidence and terrorism), and with the Lender as co-insured in respect of such Charged Property
- 6 2 If any part of the Charged Property is subject to a Lease, then the Company will also insure for three years loss of rent
- 6 3 The Company will punctually pay when due all premiums payable in respect of any insurance of the Charged Property and, if required by the Lender, will deliver to the Lender evidence satisfactory to the Lender of payment of such premiums together with a copy of the insurance policies
- 6 4 Subject to the provisions of any Lease of the Charged Property (and without prejudice to any obligation in the policy of insurance or to any other obligation having priority to the obligation imposed by this deed), the Company shall hold in trust for the Lender all monies received by it under any insurance of the Charged Property and at the Lender's option will apply the same in making good the relevant loss or damage or in or towards discharge of the Obligations and in the meantime will pay all such monies into such account as the Lender may specify

6 5 The Company covenants -

- 6 5 1 to comply with the recommendations and requirements of the insurers, and
  - 6 5 2 not to do or allow to be done anything on the Charged Property which might prejudicially affect any insurance policy
- 6 6 If the Company is required under any Lease to insure the Charged Property or to reimburse the landlord any insurance premiums -
- 6 6 1 if the Company fully complies with such requirements, the Company will be deemed to have complied with clauses 6 1 and 6 2 if such insurance, whether by the Company or by the landlord, extends to cover at least the risks required by the Lender in at least the amounts specified in such clauses, and
  - 6 6 2 the Company will on request from the Lender from time to time produce satisfactory evidence of such insurance
- 6 7 If the Company defaults in its obligations under this clause 6 or at any time after the Lender has demanded repayment of the Obligations or if the Company does not ensure that any landlord insures the Charged Property (where applicable) in accordance with clause 6 6, the Lender or any Receiver may effect insurance as specified in this clause 6 without becoming liable to account as mortgagee in possession and the cost of so doing shall be an Expense
- 6 8 The Company shall notify the Lender as soon as possible after an event has occurred which is likely to lead to a claim being made under any insurance policy relating to the Charged Property
- 6 9 The Company covenants with the Lender to comply with the requirements and recommendations of the insurers

**7 UNDERTAKINGS BY THE COMPANY**

The Company undertakes with the Lender -

- 7 1 to send to the Lender not later than six months after the close of each financial year of the Company or, if earlier, when the same are issued to the Company's shareholders a copy of the directors' report and audited accounts (consolidated if appropriate) of the Company and its Subsidiary Undertakings (if any) and also from time to time to furnish to the Lender such other information regarding the assets and liabilities of the Company and its Subsidiary Undertakings (if any) as the Lender may reasonably require,
- 7 2 to permit the Lender and its representatives from time to time to inspect its books of account and other books and documents and those of its Subsidiary Undertakings,
- 7 3 not to redeem or purchase its own shares or pay an abnormal amount by way of dividend,
- 7 4 punctually to pay all rents, rates, Taxes, duties, assessments and other outgoings payable in respect of the Company's assets and property and on demand to produce to the Lender the receipt for every such payment,
- 7 5 to observe and perform all covenants (positive and restrictive), conditions, permissions and stipulations from time to time affecting the Company's freehold and leasehold property,
- 7 6 to keep all buildings, gates, fences, drains, roads, pathways and other works on its property in good and substantial repair and all fixtures and fixed plant and equipment in working order and not to permit its property to suffer depreciation by neglect,

- 7 7 to permit the Lender and its representatives to enter and view the state and condition of the Charged Property and on default by the Company to effect repairs (without the Lender becoming liable to account as mortgagee in possession),
- 7 8 to comply with all applicable laws and regulations (including, without limitation, all environmental laws, legislation relating to public health, control and handling of hazardous substances or waste, fire precautions, health and safety at work, product safety and the Planning Acts),
- 7 9 not to remove or sever any fixed plant or fixture (except for the purpose of renewal or replacement by a fixture of equal or greater value),
- 7 10 not to make any change of use or carry out any structural or material alteration to any of its freehold and leasehold property or any part of it or do or permit to be done anything which is a "development" within the meaning of the Planning Acts without the prior written consent of the Lender,
- 7 11 where the Charged Property comprises or is or become subject to any Lease, observe and comply with its obligations under and enforce the due observance and performance of all other persons under such Lease and promptly (as landlord) implement all rent reviews,
- 7 12 to inform the Lender immediately on becoming contractually obliged to complete the purchase of any estate or interest in any freehold or leasehold property after the date of this deed,
- 7 13 within 14 days of receiving any order, notice, proposal, demand or other requirement affecting the Charged Property from any competent authority (including any landlord) to give full particulars to the Lender and deliver to the Lender copies of such documents as it may require,
- 7 14 to comply with any requirements or recommendations of any fire officer or other inspector,
- 7 15 in the case of an advance to provide for the construction of any building, proceed with and continue the construction of the building in a proper manner and with due diligence and to the full satisfaction of the Lender and complete and fit out the same within such time as the Lender shall require,
- 7 16 to collect in the ordinary course of business and in a proper and efficient manner all monies which it receives in respect of any policies of insurance, fees, royalties, income or book or other debts or any other of the rights and claims charged or assigned under clause 3,
- 7 17 to enforce the prompt payment of Rents and to ensure that any tenant, licensee or occupier of any of its property complies with all the terms of any Lease,
- 7 18 to promptly serve all notices and take all action necessary to ensure that all rent reviews imposed by any Lease relating to its property are quickly resolved and to achieve for the Company the best rent reasonably obtainable,
- 7 19 upon request of the Lender from time to time to inform the Lender in writing who is in occupation of each part of its property and upon what terms,
- 7 20 if any Charged Property is leasehold, immediately upon acquiring any extended Lease or the freehold or an interest in the freehold -
- 7 20 1 to deliver the relevant title deeds to such additional interest to the Lender, and
- 7 20 2 if required by the Lender, to execute as a deed at the Company's cost a legal charge in favour of the Lender in such form as the Lender may require over such additional interest as security for the Obligations,
- 7 21 to carry on the Business in a proper and efficient manner and not make any significant alteration to the same,

- 7 22 to preserve and maintain all intellectual property rights owned or used by the Company,
- 7 23 to maintain the Company's centre of main interest (COMI) for the purposes of the EU Regulation on Insolvency Proceedings 2000 in the United Kingdom,
- 7 24 to take out, renew and maintain all Licences,
- 7 25 to notify the Lender immediately if -
  - 7 25 1 any creditor executes diligence against the Company or if any distress or execution is levied or enforced against the Company or any third party debt order or freezing order is made or served on the Company, or
  - 7 25 2 any steps (including the making of any application or the giving of any notice) are taken by any person (including the Company) in relation to the administration, receivership, winding up or dissolution of the Company,
- 7 26 to not allow any person other than itself to be registered under the Land Registration Act 2002 as proprietor of any of its properties (or any part of its properties) or create or permit to arise any overriding interest as specified in Schedule 1 or Schedule 3 to the Land Registration Act 2002 affecting any such properties,
- 7 27 without the prior written consent of the Lender not to do or allow to be done or omit to do on the Charged Property anything which might lead either to the Company incurring any liabilities or committing any offence under the Environmental Protection Act 1990 or incurring any other liability as a result of the pollution of the Charged Property or to the Charged Property being entered upon any registers of land which may have been put to a contaminative use under that Act and further to send copies to the Lender of any notice received in connection with environmental matters relating to the Charged Property, and
- 7 28 generally not to do or cause or permit to be done anything to lessen the value or marketability of the Charged Property

## 8 **POWERS OF THE LENDER**

- 8 1 The Lender may without restriction grant or accept surrenders of Leases of the Charged Property or any part of it and grant or vary or reduce any sum payable under any Lease
- 8 2 Section 103 of the Law of Property Act 1925 shall not apply and the Lender may exercise its power of sale and other powers under that or any other Act or this deed at any time after the date of this deed
- 8 3 At any time after the Lender has demanded payment of any of the Obligations or any step or proceeding has been taken for the appointment of an Administrator, liquidator or provisional liquidator or with a view to seeking a moratorium or a voluntary arrangement in respect of the Company or if requested by the Company, the Lender may appoint by writing, insofar as permitted by law, any person or persons to be a Receiver of all or any of the Charged Property or an Administrator or Administrators and the security created by this deed shall in any of such events become immediately enforceable
- 8 4 The Lender may, to the extent permitted by law, remove a Receiver or Receivers from all or any of the Charged Property of which he or they is or are the Receivers, fix and pay the fees of a Receiver and substitute any Receiver, but any Receiver shall be the agent of the Company and the Company shall be solely responsible for the Receiver's acts, defaults and remuneration
- 8 5 Once a Receiver is appointed, the Lender will not be precluded from making any subsequent appointment of a Receiver over any Charged Property, whether or not any Receiver previously appointed continues to act

- 8 6 At any time after a demand for repayment of the Obligations, all or any of the powers conferred by clause 9 1 may be exercised by the Lender, whether as the Company's attorney or not, without first appointing a Receiver or notwithstanding any such appointment
- 8 7 The Lender will not be liable to account to the Company as mortgagee in possession for any money not actually received by the Lender and if the Lender or any Receiver takes possession of the Charged Property it or he may at any time relinquish such possession (whether it or he relinquishes such possession in whole or in part)
- 8 8 If the Company is in default of any of its obligations under this deed, the Lender or any Receiver may perform such obligation and take such action as is necessary to make good the default without becoming liable to account as a mortgagee in possession and the cost of so doing shall be an Expense
- 8 9 Section 93(1) of the Law of Property Act 1925 shall not apply to this deed
- 8 10 To the extent that any Charged Property constitutes Financial Collateral (as defined in the Financial Collateral Arrangements (No 2) Regulations 2003 (the "Regulations")) and is subject to a Security Financial Collateral Arrangement (as defined in the Regulations) created by or pursuant to this deed, the Lender shall have the right, at any time after this deed becomes enforceable, to appropriate all or any part of that Charged Property in or towards the payment or discharge of the Obligations. The value of any Charged Property appropriated in accordance with this clause 8 10 shall be the price of that Charged Property at the time the right of appropriation is exercised as listed on any recognised market index or determined by such other method as the Lender may select (including independent valuation). The Company agrees that the method of valuation provided for in this clause 8 10 is commercially reasonable for the purpose of regulation 18 of the Regulations. To the extent that any Charged Property constitutes Financial Collateral, the Company agrees that such Charged Property shall be held or redesignated so as to be under the control of the Lender for all purposes of the Regulations

## **9 RECEIVERS AND ADMINISTRATORS**

- 9 1 Any Receiver appointed by the Lender shall be a receiver and manager and shall, to the maximum extent possible, have the powers specified in Schedule 1 to the Insolvency Act 1986 and the following powers exercisable upon such terms and conditions as he thinks fit -
- 9 1 1 to take possession of and generally to manage the Charged Property,
- 9 1 2 to enter into, carry into effect, complete, deliver, perform, repudiate, rescind or vary any deed, contract or arrangement to which the Company is or is to be a party,
- 9 1 3 to carry out on any freehold or leasehold property of the Company or on any other property which it may in his opinion be necessary or desirable to work upon, any new works or complete any unfinished works of building, reconstruction, maintenance, furnishing of equipment and to apply for and obtain all planning permissions, building regulation approvals and other permissions, consents or licences as may be necessary or desirable for such purposes and to effect and/or carry out any development, building or other works,
- 9 1 4 to purchase or acquire any land or other property and purchase, acquire, grant or release any interest in or right over land or other property and enter into, take or release the benefit of covenants (positive or restrictive) binding on or benefiting the freehold or leasehold property of the Company or any part of it,
- 9 1 5 to sell, lease, licence, surrender or accept surrenders of any Leases deal with or dispose of the Charged Property without restriction including power to dispose of any fixtures separately from the land,
- 9 1 6 to complete any transaction by executing deeds or documents in the name of or on behalf of the Company,



- 9 1 7 to insure the Charged Property and any works and effect indemnity insurance or other similar insurance and obtain bonds or give commitments, guarantees, indemnities and security,
- 9 1 8 to call up any uncalled capital of the Company with all the powers conferred by the Articles of Association of the Company in relation to calls,
- 9 1 9 to engage, rely on the advice of and dismiss advisers, consultants, officers, managers, agents, workmen and others,
- 9 1 10 to purchase materials, tools, equipment, goods or supplies,
- 9 1 11 to bring, continue or defend any claim, dispute, action or legal proceedings and enter into any arrangement or compromise,
- 9 1 12 to redeem any security and to borrow or raise any money and secure the payment of any money in priority to the Obligations for the purpose of the exercise of his powers and/or defraying any costs or liabilities incurred by him in such exercise,
- 9 1 13 to make any elections for VAT purposes, and
- 9 1 14 to do any other acts which he may consider to be incidental or conducive to any of his powers or to the realisation of the Charged Property

9 2 In the case of joint Receivers and Administrators any power may be exercised jointly or severally

9 3 Any moneys received under the powers conferred by this deed will, subject to the payment or repayment of any prior claims, be paid or applied in the following order of priority -

- 9 3 1 in or towards satisfaction of all costs, charges and expenses incurred and payments made by the Lender and/or the Receiver or Administrator including the remuneration of any Receiver or Administrator,
- 9 3 2 in or towards satisfaction of the Obligations in whatever order the Lender may require,
- 9 3 3 as to the surplus (if any) to the person(s) entitled to it

provided that the Receiver or Administrator may retain any moneys in his hands for so long as he thinks fit and the Lender may, without prejudice to any other rights it may have at any time and from time to time place and keep for such time as the Lender may think fit any moneys received, recovered or realised under or by virtue of this deed to or at a separate or suspense account to the credit either of the Company or of the Lender as the Lender thinks fit without any intermediate obligation on the Lender's part to apply such moneys or any part of such moneys in or towards the discharge of the Obligations

9 4 Subject to clause 9 3, any moneys received or realised by the Lender from the Company or a Receiver under this deed or any Administrator may be applied by the Lender to any item of account or liability or transaction in such order or manner as the Lender may determine

## **10 PROTECTION OF PURCHASERS AND POWER OF ATTORNEY**

- 10 1 No purchaser or other person shall be obliged or concerned to see or enquire whether the right of the Lender, any Receiver or any Administrator to exercise any of the powers conferred by this deed has arisen or become exercisable nor be concerned with notice to the contrary or with the propriety of the exercise or purported exercise of such powers
- 10 2 The receipt of the Lender, any Receiver or any Administrator shall be an absolute discharge and the payer shall not be obliged to see the application of the monies paid to either of them

10 3 Neither the Lender nor any Receiver shall be liable to the Company in respect of any loss or damage arising out of the exercise or the attempted, purported or failure to exercise any of their respective powers or arising out of any valuation or report relating to the Charged Property

10 4 The Company by way of security irrevocably appoints the Lender and any Receiver or Administrator severally to be the attorney for the Company (with full power of substitution and delegation) in the Company's name and on the Company's behalf and as the Company's act and deed to sign or execute all such deeds, instruments and documents and do all such acts and things as may be required by the Lender or any Receiver or Administrator pursuant to this deed or the exercise of any of their powers

## **11 APPROPRIATION, SET-OFF AND RESTRICTION**

11 1 Subject to clause 11 2, the Lender may apply all payments received in respect of the Obligations in or towards discharge of such part of the Obligations as the Lender decides

11 2 The Lender may open a new account upon the Lender receiving actual or constructive notice of any charge or interest affecting the Charged Property and whether or not the Lender opens any such account no payment received by the Lender after receiving such notice shall (if followed by any payment out of or debit to the relevant account) be appropriated towards or have the effect of discharging the Obligations outstanding at the time of receiving such notice

11 3 The Lender shall be entitled at any time or times without notice (both before and after demand) to set off any liability of the Company to the Lender against any liability of the Lender to the Company (in either case whether actual or contingent, present or future and irrespective of currency or place of payment) and may for such purpose convert or exchange any currency

## **12 PROTECTION OF SECURITY**

12 1 This deed shall be a continuing security and shall extend to cover the ultimate balance due from the Company to the Lender notwithstanding that there may have been at any time a balance to the credit of the Company on any account of the Company or any other matter or thing

12 2 This deed is in addition to any other rights or security, present or future, held by the Lender from the Company or any other person for the Obligations and shall not merge with or prejudice or be prejudiced by any such rights or security or any other contractual or legal rights of the Lender. Such rights or security may be enforced in whatever order the Lender decides

12 3 No security or payment which may be avoided or adjusted under any law relating to insolvency or similar legislation binding on the Company in whatever jurisdiction and no release, settlement or discharge given or made by the Lender on the faith of any such security or payment shall prejudice or affect the right of the Lender to recover from the Company (including the right to recover any monies refunded under the Insolvency Act 1986 and any costs payable by it or incurred in connection with any such process) or to enforce the security created by or pursuant to this deed to the full extent of the Obligations. Any such release, settlement or discharge will be deemed to have been made upon the condition that it will become entirely void if the security or payment on the faith of which it was made or given is at any time avoided (in whole or in part)

## **13 FURTHER ASSURANCE**

The Company will at its own cost at the Lender's or any Receiver's request execute any deed or document and take any action required by the Lender or any Receiver to perfect or protect this security or its priority or further to secure on the Charged Property the Obligations or for facilitating the realisation of the Charged Property or the exercise of any rights or powers of the Lender or any Receiver or for establishing the nature or extent of the Charged Property

## **14 ARRANGEMENTS WITH THE COMPANY AND OTHERS**

The Lender may without releasing or affecting the security created by this deed do any of the following -

- 14 1 allow to the Company or any other person any time or indulgence,
- 14 2 grant to the Company or any other person any new or increased facility and increase any rate of interest or charge,
- 14 3 enter into, renew, vary or end any agreement or arrangement with or liability of the Company or any other person,
- 14 4 renew, vary, refrain from enforcing or release any present or future security or guarantee which the Lender holds from the Company or any other person, and
- 14 5 compound with the Company or any other person

## **15 CURRENCY**

- 15 1 The Company's liability under this deed is to discharge the Obligations in the Relevant Currency
- 15 2 If at any time the Lender receives a payment (including by set-off) referable to any of the Obligations from any source in a currency other than the Relevant Currency, then -
  - 15 2 1 such payment shall take effect as a payment to the Lender of the amount in the Relevant Currency which the Lender is able to purchase (after deduction of any relevant costs) with the amount of the payment so received in accordance with its usual practice, and
  - 15 2 2 if such payment is made under a court order and is treated by clause 15 2 1 as a payment of an amount which falls short of the relevant liability of the Company expressed in the Relevant Currency, the Company as a separate and independent obligation shall on demand from time to time indemnify the Lender against such shortfall and pay interest on such shortfall from the date of such payment to the date on which the shortfall is paid

## **16 PAYMENTS TO BE MADE WITHOUT DEDUCTION**

- 16 1 All sums payable by the Company shall be paid in the Relevant Currency in immediately available funds and shall be paid to the credit of such account as the Lender may designate. All such payments shall be made in full without set-off of any sum owing by the Lender to the Company or counter-claim and free and clear of any deduction of or withholding for or on account of any Tax or for any other reason, except to the extent that any such deduction or withholding is required by law
- 16 2 If at any time the Company is required by law to make any deduction or withholding from any payment due from the Company to the Lender, the Company shall simultaneously pay to the Lender whatever additional amount is necessary to ensure that the Lender receives and retains a net sum equal to the payment it would have received had no deduction or withholding been made

## **17 CERTIFICATES**

A certificate signed by an authorised employee of the Lender as to the amount due or owing from the Company shall be conclusive evidence against the Company, except in the case of obvious error

## **18 MERGER OR AMALGAMATION**

The Obligations shall include all liabilities of the Company to the Lender notwithstanding any change to the name, style or constitution of the Lender and/or the Lender's absorption by or in or amalgamation with any other person or the acquisition of all or part of its undertaking by any other person and all sums in respect of advances and other facilities from such other person

## **19 PRIOR CHARGES**

If there is any Encumbrance which ranks in priority to the security created by this deed and the person with the benefit of such Encumbrance does anything to enforce it, the Lender, any Administrator or any Receiver may repay the monies owed under that Encumbrance or arrange for it to be transferred to the Lender and the costs of doing so shall be an Expense

## **20 NOTICES**

### **20 1 Communications in writing**

Any communication to be made under or in connection with this deed shall be made in writing and, unless otherwise stated, may be made by fax or letter

### **20 2 Addresses**

20 2 1 The address and fax number of the Lender for any communication or document to be made or delivered under or in connection with this deed is as specified on page 1 of this deed and its fax number is 0191 244 4001 or any substitute address or fax number as the Lender may notify to the Company by not less than five Business Days' notice

20 2 2 The address of the Company for any communication or document to be made or delivered under or in connection with this deed shall be its registered office at the time such communication or document is made or delivered. The fax number of the Company for any such communication or document is Osborne Business Centre, Grove Terrace, Durham DH7 8JT and 0845 456 3442 or the fax number most recently provided to the Lender by the Company

20 2 3 The address for service on the Lender in the case of registered land is Portman House, Portland Road, Newcastle upon Tyne NE2 1AQ

### **20 3 Delivery**

20 3 1 Any communication or document made or delivered by one person to another under or in connection with this deed will only be effective -

(a) if by way of fax, when received in legible form, or

(b) if by way of letter, when it has been left at the relevant address or three Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under clause 20 2 (Addresses), if addressed to that department or officer

20 3 2 Any communication or document to be made or delivered to the Lender will be effective only when actually received by the Lender and then only if it is expressly marked for the attention of the department or officer identified with the Lender's signature below (or any substitute department or officer as the Lender shall specify for this purpose)

## **21 REPRESENTATIONS AND WARRANTIES**

The Company represents and warrants to the Lender that -

21 1 it has the appropriate power and authority to carry on the Business, own its assets and property and enter into and comply with the Obligations,

21 2 it is duly constituted and validly existing under the laws of the country in which it is incorporated,

- 21 3 the obligations expressed as being assumed by it under this deed are and will remain legal and valid obligations which are enforceable against it,
- 21 4 there has been no breach of any document which has or might have a material adverse effect on the Business or the Charged Property,
- 21 5 none of the provisions, covenants and obligations contained in this deed contravenes any of the provisions of its Memorandum or Articles of Association or other constitutional documents nor will this deed or its performance infringe any law or obligation binding upon it,
- 21 6 it has complied with every formality and obtained every licence or consent and satisfied every other requirement (statutory or otherwise) which may be necessary to procure the effectiveness of this deed,
- 21 7 the Charged Property is not subject to any Encumbrance other than the charges contained in this deed, and
- 21 8 all information given by the Company to the Lender in connection with the Charged Property was when given and is now true, accurate and comprehensive in all material respects

## **22 LAW AND JURISDICTION**

- 22 1 This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales
- 22 2 The Company agrees for the exclusive benefit of the Lender that the courts of England and Wales shall have exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes or claims (including any non-contractual disputes or claims) which may arise out of or in connection with this deed, its subject matter or formation (or any documents entered into in accordance with its provisions) (in this clause 22, "Proceedings") and, for such purposes, irrevocably submits to the jurisdiction of the courts of England and Wales
- 22 3 The Company irrevocably waives any objection which it might at any time have to the courts of England and Wales being nominated as a forum to hear, determine and settle any Proceedings and agrees not to claim that the courts of England and Wales are not a convenient or appropriate forum
- 22 4 The Company agrees that the process by which any Proceedings are begun or any document relating to Proceedings may be served in accordance with clause 20
- 22 5 The submission to the jurisdiction of the courts of England and Wales shall not limit the right of the Lender to take Proceedings against the Company in any other court of competent jurisdiction and the taking of Proceedings in one or more jurisdictions shall not preclude the taking of proceedings in any other jurisdiction, whether concurrently or not
- 22 6 A judgment in any proceedings against the Company in any court referred to in this clause 22 shall be conclusive and binding upon the Company and may be enforced in the courts of any other jurisdiction

## **23 ASSIGNMENT AND TRANSFER**

- 23 1 The successors in title of the parties shall have the benefit of and be subject to this deed
- 23 2 The Lender may at any time dispose of or deal in any manner with or without notice to any other person all or any part of its rights, beneficial interests or benefits under this deed
- 23 3 The Company shall not charge, dispose of or deal in any manner with any one or more of its rights, beneficial interests and/or obligations under this deed

- 23 4 The Lender may give such information relating to the Company, its affairs or this deed as it thinks fit to any of its associated companies and to any third party proposing to take an assignment and/or transfer from the Lender and/or to enter into contractual relations with the Lender with respect to this deed

**24 INDEMNITY**

The Company will indemnify the Lender on demand against any loss or expense (including legal fees) sustained or incurred as a result either of a failure by the Company to perform any of its obligations under this deed or of any representation or warranty made in this deed having been incorrect when made

**25 WAIVER**

- 25 1 No failure to exercise or any delay in exercising any right or remedy under this deed shall operate as a waiver of it or of any other right or remedy under it No single or partial exercise of any such right or remedy shall prevent any further or other exercise of it or the exercise of any other right or remedy
- 25 2 Any waiver given by the Lender must be in writing and expressly stated by an authorised employee of the Lender to be a waiver Such waiver will only apply to the specific events or circumstances to which it is stated to relate, and not to any other events or circumstances, past or future

**26 SEVERANCE**

- 26 1 If any provision of this deed shall be found by any court or authority of competent jurisdiction to be invalid or unenforceable, such provision shall be severed from the remainder of this deed which remain in full force and effect to the extent permitted by law
- 26 2 If any provision of this deed is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were reduced in application, the provision in question shall apply with such modification as may be necessary to make it valid

**27 MISCELLANEOUS**

- 27 1 Interest will be calculated both before and after judgment on the basis agreed with the Company, or if none has been agreed, on a daily basis and on the basis of a 365 day year or according to the usual practice of the Lender and be compounded according to the usual practice of the Lender or, if there is no such practice, quarterly
- 27 2 The charges contained in this deed are made for securing further advances but the Lender is under no obligation to make any such further advance
- 27 3 The Company agrees that the Lender may from time to time seek from any person having dealings with the Company such information about the Company and its affairs as the Lender may think fit and authorises and requests any such person to provide that information to the Lender and agrees to provide such further authority for this purpose as the Lender may from time to time require

IN WITNESS whereof this deed was duly signed as a deed and delivered on the date which first appears on page 1

**SCHEDULE**

**Freehold and leasehold property specifically charged by clause 3.1**

**Registered Land**

Administrative Area

Title Number

Class of Title

Property Description

**Unregistered Land**

The freehold/leasehold property known as [       ] comprised in the following documents -

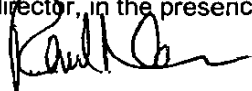
<b>Date</b>	<b>Documents</b>	<b>Parties</b>

(Assets to be charged under clause 3 5)

Located at

NOTICE TO COMPANY : THIS IS AN IMPORTANT DOCUMENT. YOU SHOULD TAKE INDEPENDENT  
LEGAL ADVICE BEFORE SIGNING AND SIGN ONLY IF YOU WANT TO BE LEGALLY BOUND

EXECUTED AS A DEED by DURHAM HIRE  
AND SALES LIMITED acting by NEIL CARR,  
a director, in the presence of -



)  
)  
)  
)



Signature of witness

Name PAUL NEWMAN

Address 11 TOLL HOUSE ROAD, CROSSGATE MOOR, DURHAM, DH1 4HU

Occupation COMPANY DIRECTOR

Pursuant to a resolution of the board of directors,  
a certified copy of which is attached

SIGNED duly authorised for and on behalf of  
THE TYNE AND WEAR ENTERPRISE  
TRUST LIMITED

)  
)  
)

