



Registration of a Charge

Company name: **FRANKI FOUNDATIONS UK LIMITED**

Company number: **02897887**



X540S8YO

Received for Electronic Filing: **01/04/2016**

Details of Charge

Date of creation: **30/03/2016**

Charge code: **0289 7887 0004**

Persons entitled: **KBC BANK NV, LONDON BRANCH**

Brief description: **THE PROPERTY KNOWN AS WANGFIELD NURSERIES, WANGFIELD LANE, CURDRIDGE, SOUTHAMPTON SO32 2DA AND REGISTERED AT THE LAND REGISTRY UNDER TITLE NUMBERS HP514425 AND HP604630.**

Contains fixed charge(s).

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

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC**

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

Certified by:

GATELEY PLC



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 2897887

Charge code: 0289 7887 0004

The Registrar of Companies for England and Wales hereby certifies that a charge dated 30th March 2016 and created by FRANKI FOUNDATIONS UK LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 1st April 2016 .

Given at Companies House, Cardiff on 4th April 2016

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



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

DATED 30 March 2016

- (1) FRANKI FOUNDATIONS UK LIMITED
- (2) KBC BANK NV, LONDON BRANCH

DEBENTURE

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DATE 30 March

2016

PARTIES

- (1) **FRANKI FOUNDATIONS UK LIMITED** a company incorporated and registered in England and Wales (registered number 02897887) whose registered office is at 76 Powder Mill Lane, The Questor Estate, Dartford, Kent, DA1 1JA, United Kingdom (the **Chargor**); and
- (2) **KBC BANK NV, LONDON BRANCH** a limited liability company (*naamloze vennootschap*) incorporated in Belgium and registered in the Crossroads Bank for Enterprises under number 0462.920.226, whose registered office is at Havenlaan 2, 1080 Brussels, Belgium, acting through its London Branch at 111 Old Broad Street, London EC2N 1BR, United Kingdom, registered in England and Wales under number BR004567 (the **Chargee**).

IT IS AGREED

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this debenture, the following definitions apply:

Administrator

any person appointed to be an administrator of the Chargor pursuant to paragraph 14 of Schedule B1 Insolvency Act;

Assets

present and future properties, revenues and rights of every description;

Business Day

any day (other than a Saturday, Sunday or public holiday) during which banks in London are open for normal business;

Charged Assets

all Assets from time to time charged or intended to be charged by or pursuant to this debenture (and references to the Charged Assets include any part of them);

Default Rate

means the rate of interest from time to time applicable in accordance with the Chargee's published charges for unarranged borrowing;

Delegate

any delegate, agent, attorney or trustee appointed by the Chargee;

Environmental Claim

any claim, order, notice or other communication received by the Chargor alleging failure to comply with any Environmental Law or alleging liability under it, any indication that any charge is or may be imposed under any Environmental Law on the Charged Assets or any indication given to the Chargor that the Charged Assets are or may be listed in any register of contaminated land or similar register;

Environmental Law

all laws, directions and regulations and all codes of practice, circulars and guidance notes issued by any competent authority or agency (whether in the United Kingdom or elsewhere and whether or not having the force of law) concerning the protection of the environment or human health, including the conservation of natural resources, the production, storage, transportation, treatment, recycling or disposal of any waste or any noxious, offensive or dangerous substance or the liability of any person, whether civil or criminal, for any damage to or pollution of the environment or its rectification or any related matters;

Environmental Permit

any permit, licence, authorisation, consent or other approval required by any Environmental Law;

Equipment

all present and future equipment, plant, machinery, tools, vehicles, furniture, fittings, installations, apparatus and other tangible moveable property for the time being owned by the Chargor, including all spare parts, replacements, modifications and additions;

Insurances

any policies of insurance in which the Chargor has an interest from time to time;

Intellectual Property

all intellectual property rights or equivalent, including patents, trade marks, service marks, business names, domain names, rights in get-up and goodwill, copyright and neighbouring and related rights, moral rights, rights in designs and to inventions, database rights, know-how, trade secrets, confidential information and any other proprietary knowledge and/or information of whatever nature and howsoever arising, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals and claim protection from such rights and all similar or equivalent rights which subsist or may in future subsist in any part of the world;

Insolvency Act

the Insolvency Act 1986;

LPA

the Law of Property Act 1925;

Party

a party to this debenture;

Property

the Assets referred to in clauses 3.1.1 and 3.1.2;

Receivables

all present and future book and other debts and all other amounts recoverable or receivable by, or due or owing to, the Chargor from other persons (whether actual or contingent and howsoever arising), all proceeds of those debts and other amounts and all rights of any nature held by the Chargor in relation to them;

Receiver

any receiver, manager or receiver and manager appointed by the Chargee under this debenture;

Secured Liabilities

all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or as principal debtor, guarantor, surety or in any other capacity) of the Chargor to the Chargee, including (i) all interest (including default interest), fees, costs, charges and expenses which the Chargee may charge or incur and (ii) any amounts which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowability of the same in any insolvency or other proceedings;

Securities

all present and future stocks, shares, loan capital, debentures, bonds, warrants or other securities (whether or not marketable) held by the Chargor (at law or in equity) together with all dividends, distributions and other Assets paid or payable on such Securities (as the case may be), together with all shares or other Assets accruing to or offered or otherwise derived from or incidental to such Securities; and

Security Interest

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.

1.2 In this debenture, a reference to:

- 1.2.1 a provision of law includes a reference to that provision as replaced, modified or re-enacted from time to time and any subordinate legislation made under that statutory provision from time to time, in each case whether before or after the date of this debenture;
- 1.2.2 a person includes any individual, firm, company, corporation, government, state or agency of state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
- 1.2.3 this debenture or any provision of this debenture or any other agreement, document or instrument is to this debenture, that provision or that agreement, document or instrument as amended, novated, supplemented, extended or restated;
- 1.2.4 a "Party", the "Chargor" or the "Chargee" will be construed so as to include its successors in title, permitted assigns and permitted transferees; and
- 1.2.5 the "Charged Assets" means all or any part of them and the "Property" means all or any part of it including land and buildings.
- 1.3 The schedule forms part of this debenture and has the same effect as if expressly set out in the body of this debenture and will be interpreted and construed as though it were set out in this debenture.
- 1.4 The contents table and headings in this debenture are for convenience only and do not affect the interpretation or construction of this debenture.
- 1.5 Words importing the singular include the plural and vice versa and words importing a gender include every gender.
- 1.6 The words "other", "include", "including" and "in particular" do not limit the generality of any preceding words and any words which follow them will not be construed as being limited in scope to the same class as the preceding words where a wider construction is possible.
- 1.7 For the purposes of section 2 Law of Property (Miscellaneous Provisions) Act 1989, the terms of any facility or loan agreements, security documents, finance documents and of any side letters between any parties in relation to any of them are incorporated into this debenture.
- 2. **COVENANT TO PAY**
- 2.1 The Chargor covenants with the Chargee that it shall pay or discharge on demand the Secured Liabilities when they fall due.
- 2.2 Any amount which is not paid under this debenture when due will bear interest (both before and after judgment and payable on demand) from the due date (or, in the case of costs, fees or expenses incurred, from the date they are so incurred) until the date that amount is unconditionally and irrevocably paid and discharged in full on a daily basis at the Default Rate. Such default interest will be calculated on the basis of the actual number of days elapsed and a year of 365 days and will be compounded at monthly intervals.
- 3. **CHARGES**
- 3.1 As a continuing security for the payment of the Secured Liabilities, the Chargor, with full title guarantee, charges, and agrees to charge, in favour of the Chargee the following Assets which are at any time owned by the Chargor or which it is from time to time interested:
 - 3.1.1 by way of **first legal mortgage** all the freehold and leasehold property (if any) now vested in or charged to the Chargor including without limitation any property specified in the schedule, together with all buildings, fixtures and fittings (including trade fixtures and fittings) at any time on or attached to such property;
 - 3.1.2 by way of **first fixed charge** all other present and future interests (not being charged by clause 3.1.1) in any freehold or leasehold property vested in or charged to the Chargor, the buildings and fixtures and fittings (including trade fixtures and fittings) at any time on or attached to such property;
 - 3.1.3 by way of **first fixed charge** all proceeds of sale derived from the Property or any buildings, fixtures or fittings (including trade fixtures and fittings) at any time on or

attached to the Property, the benefit of all covenants given in respect of the Property or any of those buildings, fixtures or fittings and all licences to enter upon or use land and the benefit of all other agreements relating to land;

- 3.1.4 by way of **first fixed charge** all Equipment;
- 3.1.5 by way of **first fixed charge** all Securities;
- 3.1.6 by way of **first fixed charge** all Intellectual Property; and
- 3.1.7 by way of **first fixed charge** all the goodwill and uncalled capital of the Chargor.
- 3.2 As a continuing security for the payment of the Secured Liabilities, the Chargor, with full title guarantee, assigns and agrees to assign absolutely (subject to a proviso for reassignment on payment in full of the Secured Liabilities) in favour of the Chargee all the rights, title, interest and benefit of the Chargor in and to the Insurances (together with all proceeds of such Insurances).
- 3.3 As further continuing security for the payment of the Secured Liabilities, the Chargor charges with full title guarantee in favour of the Chargee by way of **first floating charge** all its Assets and undertaking both present and future not effectively mortgaged, charged or assigned pursuant to the provisions of clause 3.1 or 3.2.
- 4. **CONVERSION OF FLOATING CHARGE**
 - 4.1 Paragraph 14 of schedule B1 Insolvency Act applies to any floating charge created by or pursuant to this debenture (and each such floating charge is a qualifying floating charge for the purposes of the Insolvency Act).
 - 4.2 The Chargee may, by written notice to the Chargor, convert the floating charge created by this debenture into a fixed charge as regards all or any of the Chargor's Assets specified in the notice at any time the Chargee, in its reasonable opinion, considers those Assets to be in danger of being seized or sold under any form of distress, attachment, execution or other legal process or to be otherwise in jeopardy.
 - 4.3 The floating charge created by the Chargor under this debenture will (in addition to the circumstances in which the same will occur under general law) automatically be converted into a fixed charge in relation to the Assets subject to that floating charge if:
 - 4.3.1 without the Chargee's prior written consent, the Chargor creates or attempts to create any Security Interest over all or any of the Charged Assets; or
 - 4.3.2 any person levies or attempts to levy any distress, execution, attachment or other process against all or any of the Charged Assets or if any person presents a petition to wind up or applies for an administration order in respect of the Chargor.
- 5. **NEGATIVE PLEDGE**

The Chargor undertakes to the Chargee that, during the continuance of the security created by this debenture, it must not without the prior written consent of the Chargee create, purport to create or permit to subsist any Security Interest over the Charged Assets.
- 6. **UNDERTAKINGS**

The Chargor undertakes to the Chargee that it must:

 - 6.1 keep the Property in a good state of repair (sufficient as to enable the Property to be let in accordance with all applicable laws and regulations), not carry out any development at any Property and keep all Equipment in good working order and condition;
 - 6.2 duly and punctually pay all rates, rents, taxes, charges and other outgoings due by it in respect of the Charged Assets;
 - 6.3 permit the Chargee or its representatives to have, on reasonable notice, access during normal office hours to the Property and to inspect and take copies of its accounts and records;
 - 6.4 in relation to the Charged Assets comply with all its obligations under law, statute or regulation and under any permit, approval, licence or consent;

- 6.5 observe and perform all covenants and stipulations from time to time affecting the Charged Assets, or the manner of use or the enjoyment of them and not enter into any onerous or restrictive obligations affecting the Charged Assets;
- 6.6 keep all Charged Assets comprehensively insured for their full replacement value in an amount and form and with an insurance company or underwriters acceptable to the Chargee, provided that if the Chargor fails to comply with the terms of this clause 6.6, the Chargee may, at the Chargor's expense, effect any insurance and generally do the things and take the action as the Chargee considers necessary or desirable to prevent or remedy any breach of this clause 6.6; and
- 6.7 procure that the Chargee's interest is expressly named under each of the insurance policies (other than public liability and third party liability insurances); and
- 6.8 in respect of any freehold or leasehold land specified in the schedule, apply to the Chief Land Registrar for the registration of a Restriction against the registered titles in the following terms:
"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the charge dated 2016 in favour of KBC Bank NV, London Branch referred to in the charges register."

7. ENFORCEMENT OF SECURITY

- 7.1 The security constituted by this debenture shall become immediately enforceable at any time if any Secured Liabilities are not paid when they fall due for payment and the Chargee may, in its absolute discretion, enforce all or any part of the security constituted by this debenture in such manner as it sees fit.
- 7.2 The power of sale and other powers conferred by section 101 LPA (as varied or extended by this debenture) will arise on and be exercisable without further notice at any time after the execution of this debenture. Sections 93 and 103 LPA do not apply to the security constituted by this debenture.
- 7.3 At any time after the security created under this debenture has become enforceable, the Chargee may, at the sole cost of the Chargor (payable to the Chargee on demand) redeem any prior Security Interest over any Charged Asset and/or procure the transfer of that Security Interest to itself and/or settle and pass the accounts of any prior mortgagee, chargee or encumbrancer which once so settled and passed will be conclusive and binding on the Chargor. All money paid by the Chargee to such prior mortgagee, chargee or encumbrancer in accordance with such accounts will form part of the Secured Liabilities.
- 7.4 At any time after the security constituted by this debenture becomes enforceable, or if so requested by the Chargor by written notice at any time, the Chargee (or any Delegate on its behalf) may:
 - 7.4.1 without further notice appoint any person (or persons) to be a Receiver;
 - 7.4.2 without further notice appoint any person (or persons) to be an Administrator in respect of the Chargee; and/or
 - 7.4.3 exercise in respect of the Charged Assets all or any of the powers and remedies given to mortgagees by the LPA, including the power to take possession of, receive the benefit of, or sell any of the Charged Assets.
- 7.5 At any time after the security constituted by this debenture becomes enforceable the Chargee (or its nominee) may (without consent or authority from the Chargor) exercise in the name of the Chargor any voting rights attached to the Securities and any other powers or rights exercisable by the registered holder or bearer of the Securities and all dividends, distributions, interest and other monies declared, payable, paid or made in respect of the Securities received by or on behalf of the Chargor will be held on trust for the Chargee (or its nominee) and may be applied as though they were the proceeds of sale.
- 7.6 The Chargee may remove from time to time any Receiver appointed by it and, whenever it may deem appropriate, appoint a new Receiver in the place of any Receiver whose appointment has terminated.

- 7.7 If at any time and by virtue of any such appointment there is more than one Receiver, those persons will have power to act individually (unless the contrary is stated in the deeds or other instruments appointing them).
- 7.8 An Administrator will have all the powers given to him under the Insolvency Act.
- 7.9 Any Receiver will (in addition to the powers conferred by the LPA and (notwithstanding that he is not an administrative receiver) schedule 1 to the Insolvency Act but without any of the restrictions imposed upon the exercise of those powers by those statutes) have the following powers:
- 7.9.1 the same powers to do, or to omit to do, in the name of and on behalf of the Chargor, anything which the Chargor itself could have done or omitted to do with the Charged Assets were they not the subject of this debenture and the Chargor were not in insolvency proceedings;
 - 7.9.2 to take possession of, collect and get in the Charged Assets and/or income in respect of which he was appointed;
 - 7.9.3 to manage the Charged Assets and the business of the Chargor;
 - 7.9.4 to redeem any Security Interest and to borrow or raise any money and secure the payment of any money in priority to the Secured Liabilities for the purpose of the exercise of his powers and/or defraying any costs or liabilities incurred by him in such exercise;
 - 7.9.5 to alter, improve, develop, complete, construct, modify, refurbish or repair any building or land and to complete or undertake or concur in the completion or undertaking (with or without modification) of any project in which the Chargor is concerned or interested prior to his appointment, being a project for the alteration, improvement, development, completion, construction, modification, refurbishment or repair of any Property;
 - 7.9.6 to sell or concur in selling, leasing or otherwise disposing of the Charged Assets in respect of which he was appointed without the need to observe any restriction imposed by section 103 or 109 LPA and, for that purpose, to enter into covenants and other contractual obligations in the name of, and so as to bind, the Chargor;
 - 7.9.7 to lease, make agreements for leases, accept surrenders of leases and grant options as the Chargee thinks fit and without the need to comply with any of the provisions of sections 99 and 100 LPA;
 - 7.9.8 to take any proceedings, in the name of the Chargor or otherwise, as he thinks fit in respect of the Charged Assets and/or income in respect of which he was appointed, including proceedings for recovery of rental income or other money in arrears at the date of his appointment;
 - 7.9.9 to enter into or make any agreement, arrangement or compromise as he thinks fit;
 - 7.9.10 to insure, and renew any insurances in respect of, the Charged Assets as he thinks fit;
 - 7.9.11 to appoint and employ such managers, officers and workmen and engage such professional advisers as he thinks fit, including power to employ his partners and firm;
 - 7.9.12 to operate any rent review clause in respect of any Property in respect of which he was appointed and to apply for any new or extended lease; and
 - 7.9.13 to do all other things as may seem to him to be incidental or conducive to any other power vested in him in the realisation of the security constituted by this debenture.
- 7.10 In making any disposal in the exercise of their respective powers, the Receiver, the Chargee or any Delegate may accept, as consideration for that disposal, cash, shares, loan capital or other Assets on such terms (including the method of calculation and timing of payment) as the Receiver, the Chargee or any Delegate may agree. Any contract for any such disposal by the

Receiver, the Chargee or any Delegate may contain conditions excluding or restricting the personal liability of that Receiver, the Chargee or that Delegate.

- 7.11 Any Receiver will be the agent of the Chargor and the Chargor will be solely responsible for his acts and defaults and for his remuneration.
- 7.12 Any Receiver will be entitled to remuneration for his services at a rate to be fixed by agreement between him and the Chargee (or failing agreement to be fixed by the Chargee) without the restrictions contained in section 109 LPA.
- 7.13 Only money actually paid by a Receiver to the Chargee in satisfaction or discharge of the Secured Liabilities will be capable of being applied by the Chargee in satisfaction of the Secured Liabilities.
- 7.14 Neither the Chargee nor any Receiver or Delegate will be liable in respect of the Charged Assets or for any loss or damage which arises out of the exercise or the attempted or purported exercise of, or the failure to exercise any of, their respective powers, unless the loss or damage is caused by its gross negligence or wilful misconduct.
- 7.15 Neither the Chargee nor any Receiver or Delegate is obliged to take any particular action to collect the Receivables and neither will be liable to the Chargor for the manner in which it collects or fails to collect any Receivable.
- 7.16 Without prejudice to the generality of clause 7.14, entry into possession of the Charged Assets will not render the Chargee or the Receiver or any Delegate liable to account as mortgagee in possession. If and whenever the Chargee or any Receiver or Delegate enters into possession of the Charged Assets, it will be entitled, at any time at its discretion, to go out of possession.
- 7.17 All or any of the powers which are conferred by this debenture on a Receiver may be exercised by the Chargee or any Delegate without first appointing a Receiver or notwithstanding the appointment of any Receiver.
- 7.18 Except to the extent provided by law, none of the powers described in clauses 7.8 to 7.17 will be affected by an insolvency event in relation to the Chargor.
- 7.19 No purchaser from or other person dealing with the Chargee or with any Receiver or Delegate will be obliged or concerned:
 - 7.19.1 to enquire whether the right of the Chargee to appoint a Receiver or Delegate or the right of the Chargee or any Receiver or Delegate to exercise any of the powers conferred by this debenture in relation to the Charged Assets have arisen or become exercisable by the Chargee or by any such Receiver or Delegate; nor
 - 7.19.2 with notice to the contrary, or with the propriety of the exercise or purported exercise of any of those powers.

The title of such a purchaser and the position of such a person will not be impeachable by reference to any of the above matters.

8. CONTINUING SECURITY AND CHARGEES PROTECTIONS

- 8.1 This debenture will remain in full force and effect as a continuing security until the Chargee has certified in writing that the Secured Liabilities have been discharged in full. The Chargee may make one or more demands under this debenture.
- 8.2 The Chargor's obligations under this debenture will not be affected by any time, waiver or consent granted to, or composition with the Chargor or any other person.
- 8.3 This debenture will be in addition to, and without prejudice to and will not merge with, any other right, remedy, guarantee or Security Interest which the Chargee may at any time hold in respect of any of the Secured Liabilities and this debenture may be enforced without the Chargee first having:
 - 8.3.1 recourse to any other right, remedy, guarantee or Security Interest held or available to it;
 - 8.3.2 to take action or obtain judgment in any court against the Chargor or any other person;

- 8.3.3 to make or file any claim in a bankruptcy, liquidation, administration or insolvency of the Chargor or any other person; or
 - 8.3.4 to make demand, enforce or seek to enforce any claim, right or remedy against the Chargor or any other person.
- 9. FURTHER ASSURANCE AND POWER OF ATTORNEY**
- 9.1 The Chargor must promptly do all acts or execute all documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Chargee may reasonably specify (and in the form the Chargee may reasonably require) in favour of the Chargee or its nominee:
 - 9.1.1 to create, perfect, protect or maintain the Security created or intended to be created under or evidenced by this debenture (which may include the execution of a mortgage, charge, assignment or other Security Interest over all or any of the Charged Assets) or for the exercise of any rights, powers and remedies of the Chargee provided by law; and
 - 9.1.2 to facilitate the realisation of the Charged Assets.
 - 9.2 The Chargor must take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security Interest conferred or intended to be conferred on the Chargee by or pursuant to this debenture.
 - 9.3 Any document required to be executed by the Chargor pursuant to this clause 9 will be prepared at the cost of the Chargor.
 - 9.4 The Chargor by way of security irrevocably appoints the Chargee and any Receiver or Delegate (in writing under hand signed by an officer of the Chargee or any Receiver or Delegate) severally to be its agents and attorneys in its name and on its behalf to:
 - 9.4.1 do all things which the Chargor may be required to do under this debenture;
 - 9.4.2 sign, execute, deliver and otherwise perfect any Security Interest required to be signed or executed pursuant to the terms of this debenture; and
 - 9.4.3 sign, execute, deliver and complete any deeds, instruments or other documents and to do all acts and things which may be required by the Chargee or any Receiver or Delegate in the exercise of any of their powers under this debenture, or to perfect or vest in the Chargee, any Receiver, any Delegate, its nominees or any purchaser, title to any Charged Assets or which they may deem expedient in connection with the getting in, disposal or realisation of any Charged Assets.
 - 9.5 Each agent and attorney may appoint a substitute or delegate his authority. The Chargor ratifies and confirms (and agrees to ratify and confirm) anything which an attorney does under the power of attorney conferred by clause 9.4.
- 10. NOTICE OF SUBSEQUENT SECURITY – NEW ACCOUNTS**
- 10.1 If the Chargee receives notice (whether actual or otherwise) of any subsequent Security Interest affecting the Charged Assets, it may open a new account or accounts for the Chargor in its books.
 - 10.2 If the Chargee does not open a new account immediately on receipt of notice under clause 10.1, then (unless the Chargee gives express written notice to the contrary to the Chargor) all payments made by the Chargor to the Chargee will be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt of the relevant notice by the Chargee.
- 11. PAYMENTS**
- 11.1 Subject to clause 11.2, all payments to be made by the Chargor in respect of this debenture, will be made in immediately available funds to the credit of any account as the Chargee may designate. All payments will be made free and clear of, and without any deduction for, or on account of, any set-off or counterclaim or, except to the extent required by law, any deduction on account of any taxes.

- 11.2 If the Chargor is required by law to withhold or deduct any taxes from any sum payable under this debenture to the Chargee, the sum so payable by the Chargor will be increased so as to result in the receipt by the Chargee of a net amount equal to the full amount expressed to be payable under this debenture.
- 11.3 The Chargee may set-off any matured obligation due from the Chargor under this debenture against any matured obligation owed by the Chargee to the Chargor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Chargee may convert either obligation at a market rate of exchange reasonably determined by the Chargee.
- 11.4 Any demand, notification or certificate given by the Chargee specifying amounts due and payable under or in connection with any of the provisions of this debenture will, in the absence of manifest error, be conclusive and binding on the Chargor.
- 11.5 Any release, discharge or settlement between the Chargor and the Chargee will be deemed conditional upon no payment or Security Interest received or held by the Chargee in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded pursuant to any law relating to insolvency, bankruptcy, winding-up, administration or receivership. Notwithstanding any release, discharge or settlement, the Chargee will be entitled to recover the value or amount of such Security Interest or payment from the Chargor or to enforce this debenture as if that release, discharge or settlement had not occurred.
- 11.6 The Chargee may apply or refrain from applying all payments received for the Secured Liabilities as it thinks fit. All money received, recovered or realised by the Chargee under this debenture may at the discretion of the Chargee be credited to any suspense account for so long as the Chargee determines (with interest accruing at the rate, if any, as the Chargee may determine for the account of the Chargor).
12. **COSTS, EXPENSES AND INDEMNITIES**
- 12.1 The Chargor must reimburse the Chargee, any Receiver, any Delegate and any Administrator for all costs and expenses, including legal fees (and any value added or similar tax thereon), incurred in connection with the enforcement, attempted enforcement or preservation of any of their respective rights under this debenture, or any of the documents referred to in this debenture.
- 12.2 The Chargor must on demand indemnify the Chargee and any Receiver, Administrator or Delegate and any of its and their officers and employees (each, an **Indemnified Party**) in respect of all costs, losses (including consequential losses), actions, claims, expenses, demands or liabilities whether in contract, tort, or otherwise and whether arising at common law, in equity or by statute which may be incurred by or made against any of them at any time relating to or arising directly or indirectly out of:
- 12.2.1 the exercise or purported exercise of the powers contained in this debenture;
 - 12.2.2 a claim of any kind made or asserted against any Indemnified Party which would not have arisen if this debenture had not been executed and/or registered;
 - 12.2.3 the creation, imposition, recording or registration of any Security Interest over any Charged Asset securing the reimbursement to or recovery by any third party (including any regulatory authority or government agency) of any costs expenses or other sums incurred in consequence of a breach contravention or violation of any Environmental Law or the release discharge or emission of any harmful or hazardous material and the redemption, removal, vacation or discharge of any such Security Interest;
 - 12.2.4 the making of any Environmental Claim against any Indemnified Party or the Chargor in respect of any Charged Asset and/or any business operations or activities on any Charged Asset;
 - 12.2.5 any liability or potential liability upon any Indemnified Party to remedy clean-up or make good any breach contravention or violation of any Environmental Law by the Chargor or any harm actual or potential to the environment caused directly or indirectly by any release emission or discharge of any harmful or hazardous material from in or to the Charged Assets; or

- 12.2.6 a breach by the Chargor of any of its obligations under this debenture unless, in the case of clauses 12.2.1 and 12.2.2, it was caused by the negligence or wilful misconduct of the Indemnified Party.
- 12.3 No Indemnified Party will in any way be liable or responsible to the Chargor for any loss or liability of any kind arising from any act or omission by it of any kind (whether as mortgagee in possession or otherwise) in relation to the Charged Assets, except to the extent caused by its own negligence or wilful misconduct.
- 12.4 The Chargor must pay all present and future stamp, registration and similar taxes or charges which may be payable, or determined to be payable, in connection with the execution, delivery, performance or enforcement of this debenture or any judgment given in connection with this debenture.
- 13. THIRD PARTY RIGHTS**
- 13.1 Subject to clauses 13.2 and 13.3, a person who is not a Party will have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce or rely upon a provision of this debenture. No Party may hold itself out as trustee of any rights under this debenture for the benefit of any third party unless specifically provided for in this debenture. This clause 13.1 does not affect any right or remedy of any person which exists, or is available, otherwise than pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 13.2 Any person to whom the benefit of any provision of this debenture is assigned in accordance with the terms of this debenture is entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this debenture which confers (expressly or impliedly) any benefit on any such person.
- 13.3 Any Receiver or Delegate may, subject to the Contracts (Rights of Third Parties) Act 1999, rely on any clause of this debenture which expressly confers rights on it.
- 13.4 The Chargee and the Chargor may, by agreement in writing, rescind or vary any of the provisions of this debenture or waive or settle any right or claim under it in any way without the consent of any third party.
- 14. NOTICES**
- Any notice given under this debenture must be in writing signed by, or on behalf of, the person giving it. Any notice must be delivered by hand or by prepaid recorded delivery first class post to the Party due to receive it at:
- 14.1.1 in the case of the Chargor its registered office for the time being marked for the attention of Nicholas Jackson; and
- 14.1.2 in the case of the Chargee, 111 Old Broad Street, London, EC2N 1BR, United Kingdom marked for the attention of London Loans Administration,
- or to any other address for service in the United Kingdom as that Party may from time to time notify to the other. In the absence of evidence of earlier receipt, a notice served in accordance with this clause 14 will be deemed to have been received, if delivered by hand, at the time of actual delivery to the address referred to in this clause 14 or, if delivered by prepaid first class recorded delivery post, two Business Days from the date of posting.
- 15. GENERAL**
- 15.1 The Chargee may assign or transfer all or any of its rights under this debenture. The Chargor may not assign, transfer, charge, make the subject of a trust or deal in any other manner with this debenture or any of its rights under this debenture or purport to do any of the same without the prior written consent of the Chargee.
- 15.2 No variation to this debenture will be effective unless made in writing and signed by or on behalf of all the Parties. A waiver given or consent granted by the Chargee under this debenture will be effective only if given in writing and then only in the instance and for the purpose for which it is given.
- 15.3 Each provision of this debenture is severable and distinct from the others. If at any time any provision of this debenture is or becomes unlawful, invalid or unenforceable to any extent or

in any circumstances for any reason, it will to that extent or in those circumstances be deemed not to form part of this debenture but (except to that extent or in those circumstances in the case of that provision) the legality, validity and enforceability of that and all other provisions of this debenture will not be affected in any way.

- 15.4 If any provision of this debenture is found to be illegal, invalid or unenforceable in accordance with clause 15.3 but would be legal, valid or enforceable if some part of the provision were deleted, the provision in question will apply with those modifications as may be necessary to make it legal, valid or enforceable.
- 15.5 Failure or delay in exercising a right or remedy provided by this debenture or by law does not constitute a waiver of that (or any other) right or remedy. No single or partial exercise, or non-exercise or non-enforcement of any right or remedy provided by this debenture or by law prevents or restricts any further or other exercise or enforcement of that (or any other) right or remedy.
- 15.6 The Chargee's rights and remedies contained in this debenture are cumulative and not exclusive of any rights or remedies provided by law.
- 15.7 This debenture may be executed in any number of counterparts each of which when executed and delivered will be an original. All the counterparts together will constitute one and the same document.

16. GOVERNING LAW AND JURISDICTION

- 16.1 This debenture (including any associated non-contractual disputes or claims) is governed by the laws of England and Wales.
- 16.2 The parties agree to submit to the non-exclusive jurisdiction of the English Courts in relation to any claim or matter (whether contractual or non-contractual) arising under this agreement. This clause 16.2 is for the benefit of the Chargee only.

THE CHARGOR has executed this debenture as a deed and delivered it on the date first set out above.


SCHEDULE

Property

The property known as Wangfield Nurseries, Wangfield Lane, Curdridge, Southampton SO32 2DA and registered at the Land Registry under title numbers HP514425 and HP604630.

CHARGOR

EXECUTED as a **DEED** by **FRANKI**)
FOUNDATIONS UK LIMITED acting by a)
director in the presence of:)

.....
Director

Witness Signature

Witness Name *MR NICK JACKSON*
(in BLOCK CAPITALS)

Address

Occupation *ACCOUNTANT*

CHARGE

SIGNED by

..... and)
)	Authorised Signatory
.....)	
duly authorised signatories on behalf of)
KBC BANK NV, LONDON BRANCH:)	Authorised Signatory
)	