



Registration of a Charge

Company name: **THE MIDCOUNTIES CO-OPERATIVE DEVELOPMENTS LIMITED**
Company number: **03072883**



X96W4BA0

Received for Electronic Filing: **10/06/2020**

Details of Charge

Date of creation: **04/06/2020**
Charge code: **0307 2883 0015**
Persons entitled: **THE MIDCOUNTIES CO-OPERATIVE PENSION TRUSTEE LIMITED (AS TRUSTEE)**
Brief description: **THE FREEHOLD LAND KNOWN AS 117-119 SEYMOUR ROAD, GLOUCESTER GL1 5QD WITH TITLE NUMBER GR195941 AS MORE PARTICULARLY DESCRIBED IN SCHEDULE 1 OF THE INSTRUMENT. FOR FURTHER DETAILS OF THE LAND CHARGED, REFER TO THE LEGAL CHARGE**
Contains fixed charge(s).
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:

KATE CLARKE



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 3072883

Charge code: 0307 2883 0015

The Registrar of Companies for England and Wales hereby certifies that a charge dated 4th June 2020 and created by THE MIDCOUNTRIES CO-OPERATIVE DEVELOPMENTS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 10th June 2020 .

Given at Companies House, Cardiff on 11th June 2020

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**

We certify this document as a true copy of the original,
save for material redacted pursuant to section 859G
Companies Act 2006

Eversheds Sutherland (International) LLP
.....
Eversheds Sutherland (International) LLP

Date: 9 June 2020

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Dated: *4 June* 2020

- (1) THE MIDCOUNTIES CO-OPERATIVE DEVELOPMENTS LIMITED
- (2) THE MIDCOUNTIES CO-OPERATIVE PENSION TRUSTEE LIMITED

Legal charge

relating to the property listed at Schedule 1 herein.

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This Deed is made on

4 June

2020

between:

- (1) **THE MIDCOUNTIES CO-OPERATIVE DEVELOPMENTS LIMITED**, a limited company incorporated in England and Wales with registered number 03072883 (the "**Charging Company**"); and
- (2) **THE MIDCOUNTIES CO-OPERATIVE PENSION TRUSTEE LIMITED** (registered company number 06470728) as trustee for the Scheme (the "**Trustee**").

1. **INTERPRETATION**

1.1 **Expressly defined terms**

In this Deed the following words and phrases have the specified meanings:

"Associated Rights" means, in relation to any asset, all proceeds of sale of such asset, all rights, powers, benefits, covenants, warranties, guarantees or Security given or implied in respect of such asset, all rights under any agreement for sale, agreement for lease or licence of or in respect of such asset, and any monies and proceeds paid or payable in respect of such asset and the benefit of all Authorisations applicable to such asset.

"Authorisation" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

"Business Day" means a day, other than a Saturday or a Sunday, on which banks are open for general business in London or, for the purpose of Clause 19 (*Communications*), in the principal financial centre in the jurisdiction in which the relevant communication is delivered.

"COMI" means centre of main interests (as that term is used in Article 3(1) of the EC Regulation).

"Companies Act" means the Companies Act 2006.

"Debtor" The Midcounties Co-Operative Limited (registered number IP19025R)

"Default Rate" means two per cent per annum above the highest rate of interest ordinarily applicable to any part of the Secured Obligations from time to time.

"Deficit" means the amount, if any, by which the Scheme's technical provisions exceed the Scheme's assets calculated in accordance with section 222 of the Pensions Act 2004.

"Delegate" means any delegate, agent, attorney or trustee appointed by the Trustee.

"Discharge Date" means the earlier of:

- (a) the date on which the Trustee confirms to the Charging Company that all the Secured Obligations have been unconditionally and irrevocably paid and discharged in full; or
- (b) the date of calculation at which there is no Deficit.

"EC Regulation" means The Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings.

"Enforcement Party" means any of the Trustee, a Receiver or a Delegate.

"Establishment" means, in relation to the Charging Company, an establishment as that term is defined in relation to a debtor in Article 2(h) of the EC Regulation.

"Event of Default" means the occurrence of any of the events or circumstances set out in Schedule 4 (*Events of default*).

"Expenses" means all fees, discounts, commissions and other banking charges, legal and professional fees and unpaid interest and all other expenses and costs, on a full indemnity basis, together with Value Added Tax, incurred in connection with:

- (a) the Secured Assets;
- (b) the preparation, negotiation and creation of this Deed;
- (c) taking, perfecting, enforcing or exercising any power under this Deed; or
- (d) any breach of any provision of and the protection, realisation or enforcement of this Deed.

"Finance Documents" means such agreements, instruments, deeds or documents (including this Deed and any deed or agreement regulating priorities) as have been or are to be entered into in connection with or pursuant to the Secured Obligations or which have been designated as Finance Documents by the Parties and **"Finance Document"** shall mean any one of them.

"Fixtures" means any fixtures (but excluding landlord's fixtures), fittings, fixed plant or machinery from time to time situated on or forming part of any Property.

"Group" means the Holding Company and each of its Subsidiaries (including the Charging Company) for the time being.

"Holding Company" means in relation to the Charging Company, any other company or corporation in respect of which it is a Subsidiary for the time being.

"Insolvency Act" means the Insolvency Act 1986.

"Insurance Proceeds" means the proceeds of any insurance claim received by the Charging Company (after deduction of (a) any reasonable expenses incurred in relation to the relevant claim and payable by the Charging Company to any person which is not a member of the Group and (b) amounts paid to meet third party claims), together with the benefit of all bonuses, profits, returns of premium and other benefits of whatever nature, arising in any case by virtue of the Charging Company's ownership of any Insurances and all interest in any of the foregoing.

"Insurances" means all contracts or policies of insurance of whatever nature relating to the Secured Assets which, from time to time, are taken out or maintained by or on behalf of the Charging Company or (to the extent of its relevant interest) in which the Charging Company has an interest.

"LPA" means the Law of Property Act 1925.

"Material Adverse Effect" means a material adverse effect on:

- (a) the ability of the Charging Company to perform the payment obligations under this Legal Charge;
- (b) the validity or enforceability of this Deed; or
- (c) any right or remedy of the Trustee under this Deed.

"Party" means a party to this Deed.

"Property" means the Real Property owned by the Charging Company or in which the Charging Company has a right, title or interest, particulars of which are set out in Schedule 1 (*Details of the Property*). Any reference to **"Property"** also includes a reference to each separate part or parts of such Real Property.

"Quarter Day" means the last day of March, June, September and December in each calendar year.

"Real Property" means (a) any freehold, leasehold or immovable property, wherever situated, and (b) any buildings, fixtures, fittings, fixed plant or machinery from time to time situated on or forming part of that freehold, leasehold or immovable property.

"Receiver" means any one or more receivers and managers or (if the Trustee so specifies in the relevant appointment) receivers appointed by the Trustee pursuant to this Deed in respect of the Charging Company or in respect of the Secured Assets or any of them.

"Rental Income" means the aggregate of all amounts paid or payable to or for the account of the Charging Company or its Subsidiaries in connection with the letting of any part of the Property, including each of the following amounts:

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

"Scheme" means The Midcounties Co-Operative Pension Scheme (previously called the Oxford Swindon and Gloucester Co-Operative Society Limited Employees' Pension Scheme) established by a trust deed dated 3 December 1932 as subsequently amended.

"Secured Assets" means the assets the subject of any Security created by this Deed.

"Secured Obligations" means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of the Charging Company or the Debtor to the Trustee, whatever their nature or basis and including without limitation any obligation of the Debtor to make payments to the Scheme, in any currency or currencies, and however they are described, together with all costs, charges and expenses incurred by the Trustee in connection with the protection, preservation or enforcement of its rights under the Finance Documents or any other document evidencing or securing any such liabilities PROVIDED THAT **"Secured Obligations"** shall not include any obligation or liability to the extent that if it were so included this Deed (or any part of it) would give rise to financial assistance within the

meaning of section 677(1) of the Companies Act unless such financial assistance is not prohibited by virtue of the provisions of sections 678, 679, 681 and 682 of the Companies Act.

"Security" means any assignment by way of security, mortgage, charge, pledge, lien or other security interest securing any obligation of any person and any other agreement or arrangement having a similar effect.

"Security Documents" means this Deed together with any other agreement, instrument, deed or document entered into by the Charging Company creating or expressed to create any Security over all or any part of its assets in respect of the Secured Obligations.

"Security Period" means the period beginning on the date of this Deed and ending on the Discharge Date.

"Subsidiary" means a subsidiary undertaking within the meaning of section 1162 of the Companies Act or a subsidiary within the meaning of section 100 and section 101 of the Co-Operative and Community Benefit Societies Act 2014.

"Tax" means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

"Third Parties Act" means the Contracts (Rights of Third Parties) Act 1999.

1.2 Construction

In this Deed:

1.2.1 unless a contrary indication appears, a reference to:

- 1.2.1.1 **"assets"** includes present and future properties, revenues, rights and interests of every kind and reference to an **"asset"** includes any part or parts of such asset;
- 1.2.1.2 **"guarantee"** includes any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to pay any deposit on behalf of, or make an investment in, or loan to, any person or to purchase assets of any person, where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
- 1.2.1.3 **"indebtedness"** includes any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.2.1.4 **"person"** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
- 1.2.1.5 **"regulation"** includes any regulation, rule, official directive, request or guideline (in each case, whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- 1.2.1.6 **"set-off"** includes analogous rights and obligations in jurisdictions other than England and Wales; and

1.2.1.7 the "**Charging Company**", the "**Debtor**", the "**Trustee**" or any "**Party**", shall be construed so as to include its successors in title, permitted assigns and permitted transferees;

1.2.2 where something (or a list of things) is introduced by the word "**including**", or by the phrase "**in particular**", or is followed by the phrase "**or otherwise**", the intention is to state an example (or examples) and not to be exhaustive (and the same applies when other similar words or phrases are used);

1.2.3 unless this Deed expressly states otherwise or the context requires otherwise, (a) each reference in this Deed to any provision of any statute or of any subordinate legislation means, at any time, the relevant provision as in force at that time (even if it has been amended or re-enacted since the date of this Deed) and (b) each reference in this Deed to any provision of any statute at any time includes any subordinate legislation made pursuant to or in respect of such provisions as in force at such time (whether made before or after the date of this Deed and whether amended or re-enacted since the date of this Deed);

1.2.4 each reference to this Deed (or to any other agreement, instrument or deed) means, at any time, this Deed (or as applicable such other agreement, instrument or deed) as amended, novated, supplemented, extended, or restated, at that time, provided that the relevant amendment, novation, supplement, extension, substitution or restatement does not breach any term of this Deed or of any of the Finance Documents;;

1.2.5 the index and Clause and Schedule headings are for ease of reference only;

1.2.6 an Event of Default is "**continuing**" if it has not been waived in writing by the Trustee or remedied; and

1.2.7 references to any Security "**created by this Deed**" are to be deemed to include such Security created, constituted, given, made or extended by, under or pursuant to this Deed.

1.3 **Third Party Rights**

No person has any right under the Third Parties Act to enforce or enjoy the benefit of any term of this Deed, other than an Enforcement Party, which may do so, or any other person, to the extent that this Deed expressly provides for it to do so. No consent of any person who is not a Party is required to rescind or vary this Deed at any time. This Clause 1.3 does not affect any right or remedy of any person which exists, or is available, otherwise than pursuant to the Third Parties Act.

2. **COVENANT TO PAY**

2.1 **Covenant**

The Charging Company covenants with the Trustee that it will pay and discharge the Secured Obligations on demand and in the manner provided in the Finance Documents.

2.2 **Limited Recourse**

Notwithstanding any other provision of the Finance Documents, it is expressly agreed that:

2.2.1 the sole recourse of the Trustee to the Charging Company under this deed is to the Charging Company's interest in the Secured Assets; and

2.2.2 the liability of the Charging Company to the Trustee pursuant to or otherwise in connection with the Finance Documents shall be:

2.2.2.1 limited in aggregate to an amount equal to that recovered as a result of enforcement of this deed with respect to the Secured Assets; and

2.2.2.2 satisfied only from the proceeds of sale or other disposal or realisation of the Secured Assets pursuant to this deed.

2.3 **Default interest**

Any amount which is not paid under this Deed on the due date shall bear interest (both before and after judgment) payable on demand at the Default Rate from time to time from the due date until the date of actual unconditional and irrevocable payment and discharge of such amount in full save to the extent that interest at such rate on such amount and for such period is charged pursuant to the Finance Documents relevant to that liability and itself constitutes part of the Secured Obligations.

3. **SECURITY**

3.1 **Mortgage and charges**

The Charging Company, as a continuing security for the payment, discharge and performance of the Secured Obligations, charges in favour of the Trustee the following assets:

3.1.1 **First legal mortgage on the Property** - by way of first legal mortgage, the Property;

3.1.2 **First fixed charge on the Property** - to the extent that the Property is not subject to a valid legal mortgage pursuant to Clause 3.1.1, by way of first fixed charge, such Property;

3.1.3 **First fixed charge on other interests** - to the extent that the Associated Rights (or any part of them) are not capable of being effectively assigned, but are capable of being effectively charged, by way of first fixed charge all Associated Rights of the Charging Company in relation to the Property and any other rights, title or interest of the Charging Company in the Property;

3.1.4 **First fixed charge in respect of chattels located on Property** - by way of first fixed charge, all such buildings and other erections or structures, plant and machinery which are, now or in the future, located on the Property, but which, in any such case, (a) are not affixed to, nor form part of, the Property, (b) are not of a kind regularly disposed of in the ordinary course of business and (c) do not form part of the Charging Company's stock-in-trade or work-in-progress; and

3.1.5 **First fixed charge on Insurance Proceeds** - to the extent that the Insurance Proceeds (or any part of them) are not capable of being effectively assigned, but are capable of being effectively charged, by way of first fixed charge, such Insurance Proceeds.

3.2 **Assignments by way of Security**

As further continuing security for the payment of the Secured Obligations, the Charging Company assigns absolutely to the Trustee all (if any) its rights, title and interest in and to:

3.2.1 the Insurance Proceeds;

3.2.2 the Associated Rights of the Charging Company in relation to the Property; and

3.2.3 all Rental Income.

3.3 Continuing security

The provisions of this Deed will apply at all times (a) regardless of the date on which any of the Secured Obligations was incurred and (b) in respect of the full amount of the Secured Obligations at the relevant time even if, at some other time, the amount of the Secured Obligations has been less than the amount at the relevant time or there has been no part of the Secured Obligations outstanding.

3.4 Arrangements with the Debtor and others

The Trustee may without the consent of or notice to the Charging Company and without releasing or affecting the security created by this Legal Charge:

- 3.4.1 allow to the Debtor or any other person any time or indulgence;
- 3.4.2 enter into renew vary or end any agreement or arrangement with or liability of the Debtor or any other person;
- 3.4.3 review vary refrain from enforcing or release any present or future security or guarantee which the Trustee holds from the Debtor or any other person.

3.5 Full title guarantee and implied covenants

All the Security created by this Deed is made with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994.

4. FURTHER ASSURANCE

The Charging Company shall:

- 4.1 promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Trustee may reasonably specify (and in such form as the Trustee may reasonably require) in favour of the Trustee or its nominee(s) (a) to perfect the Security created or intended to be created or evidenced by this Deed or for the exercise of any rights, powers and remedies of the Trustee provided by or pursuant to this Deed and/or (b) to facilitate the realisation of the assets which are, or are intended to be, the subject of this Deed;
- 4.2 take all such action as is available to it (including making all filings and registrations and the payment of all fees and Taxes) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Trustee by or pursuant to this Deed; and
- 4.3 pay all Expenses due to the Trustee promptly after demand.

5. LAND REGISTRATION MATTERS

5.1 Land Registry - application for restriction

- 5.1.1 Without prejudice to the generality of Clause 4 (*Further assurance*), the Charging Company will apply to the Land Registrar to enter on the register against the title number of or to be allocated to the Property a restriction 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 [*date of this Deed*] in favour of The Midcounties Co-Operative Pension Trustee Limited referred to in the charges register, or its conveyancer"

and, where applicable, notice of an obligation to make further advances.

5.1.2 The Charging Company shall submit the relevant applications no later than the date of submission of the initial application for registration of the Security created by this Deed (or, in the case of The Land Registry form CH2, where applicable, promptly following its later receipt of such form duly completed by the Trustee), and pay all fees costs and expenses properly incurred in connection with the applications.

5.1.3 The Trustee, in its absolute discretion, may make any of the applications referred to in this Clause 5.1 in place of the Charging Company. In such a case, the Charging Company consents to the entry of the relevant restriction and will pay all fees, costs and expenses properly incurred in connection with the application.

5.2 **Exempt information document**

5.2.1 The Charging Company will, at its own expense, do whatever the Trustee may reasonably require in connection with (a) any application by the Trustee to have this Deed designated an exempt information document under Land Registration Rules 2003 rule 136 and (b) any person's application under Land Registration Rules 2003 rule 137 for disclosure of this Deed following its designation as an exempt information document.

5.2.2 The Charging Company shall notify the Trustee in writing (a) before making any application to have this Deed designated an exempt information document under Land Registration Rules 2003 rule 136, (b) as soon as it receives notice of any person's application under Land Registration Rules 2003 rule 137 for disclosure of this Deed following its designation as an exempt information document and (c) before making any application under Land Registration Rules 2003 rule 138 for removal of any such designation.

5.3 **Delivery of deed to Land Registry**

The Charging Company submitting this Deed or any counterpart to The Land Registry shall on each occasion also submit a certified copy of this Deed and request the return of the original and upon the return of the original it shall deliver such original to the Trustee.

6. **NEGATIVE PLEDGE AND DISPOSAL RESTRICTIONS**

6.1 During the Security Period the Charging Company shall not:

6.1.1 create, extend, or permit to subsist, any Security over any of the Secured Assets; or

6.1.2 without the prior consent (consent not to be unreasonably withheld or delayed) of the Trustee (a) execute, or agree to grant, vary, or accept any surrender of, any conveyance, transfer, lease or assignment, or any other right of occupation or use, of the Secured Assets, (b) create any legal or equitable estate, or other interest, in, over, or relating to, the Secured Assets or (c) otherwise dispose of its interest (whether legal or beneficial) in the Secured Assets.

7. **REPRESENTATIONS AND WARRANTIES**

The Charging Company represents and warrants to the Trustee on the date of this Deed as follows.

7.1 **Owner** – The Charging Company is the sole legal and beneficial owner of the Property.

7.2 **Status** – It is a limited liability company, duly incorporated and validly existing under the laws of England and Wales and it has the power to own its assets and carry on its business and other activities as they are being conducted.

- 7.3 **Binding obligations** - The obligations expressed to be assumed by it in this Deed are, and at all relevant times have been, legal, valid, binding and enforceable obligations (subject to the principle that equitable remedies are discretionary and subject to any applicable insolvency laws).
- 7.4 **Non-conflict with other obligations** - The entry into and performance by it of, and the transactions contemplated by, this Deed do not and will not conflict with or result in any breach of (a) any law or regulation applicable to it, (b) its constitutional documents or (c) any agreement or instrument binding upon any of its assets.
- 7.5 **Power and authority** - It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Deed and the transactions contemplated by this Deed.
- 7.6 **Validity and admissibility in evidence** - All Authorisations required (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in this Deed, and (b) to make this Deed admissible in evidence in England and Wales, have been obtained or effected and are in full force and effect.
- 7.7 **Commercial benefit** - It enters into this Deed in good faith and for the purposes of the promotion of the success of its business and it has given due consideration to the terms and conditions of the documents evidencing the Secured Obligations and of this Deed and has satisfied itself that there are reasonable grounds for believing that by executing this Deed it will derive commercial benefit.
- 7.8 **Priority of Security** - The Security created by this Deed constitutes first priority Security over the assets which are expressed to be subject to such Security and those assets are not subject to any other Security.
- 7.9 **No Event of Default** - No Event of Default has occurred or is continuing or might reasonably be expected to result from the execution of this Deed or from effect being given to its provisions and no person who holds any Security over any asset of the Charging Company has enforced or given notice of its intention to enforce such Security.
- 7.10 **Centre of main interests** - For the purposes of the EC Regulation its COMI is situated in England and Wales.
- 7.11 **Repeated representations** -

Each of the representations and warranties set out in this Clause 7 (other than those at Clause 7.7 (*Commercial benefit*) which are not repeated) shall be deemed to be repeated on each day upon which any monies comprised in the Secured Obligations fall due for payment or are paid and on each Quarter Day which falls during the Security Period.

8. **UNDERTAKINGS**

Throughout the Security Period, the Charging Company undertakes to the Trustee in the terms of the following provisions of this Clause 8.

- 8.1 **Perform** - It will at all times comply with the terms (express or implied) of this Deed and the Finance Documents.
- 8.2 **Not jeopardise Security** - It will not do or omit to do anything or allow anything to be done or omitted which may in any way depreciate, jeopardise or otherwise prejudice the value to the Trustee of the Security created by this Deed or the priority of its ranking as expressed in this Deed.
- 8.3 **Maintenance** - It will keep the Secured Assets in a good and tenable state of repair, working order and condition. Where the Secured Assets include any item of plant or machinery which becomes incapable of economic repair, it will replace such asset with an asset which is a comparable modern equivalent or which is otherwise approved by the Trustee.

- 8.4 **Observe laws** - It will not do or omit to do or allow anything to be done in relation to the Secured Assets which would infringe any laws affecting (whether directly or indirectly) the Secured Assets and will comply with all notices, orders, injunctions and mandatory proposals served on it, issued or made, by any local or other authority or governmental agency, or its landlords, relating to any of the Secured Assets or its use of them and will serve within any relevant time limit any counter-notice necessary or desirable to preserve the value of any such Secured Assets.
- 8.5 **Proceedings** - At its own cost and expense, it will use its reasonable endeavours to enforce, institute, continue or defend all proceedings affecting the Secured Assets, their state or condition or continued use or value so as to preserve to the fullest extent the value to the Trustee of the Security created by this Deed.
- 8.6 **Access** - It will (at the risk and cost of the Charging Company) permit the Trustee and its professional advisers, agents and contractors and, where required by the Trustee, independent valuers free access at all reasonable times and on reasonable notice and for all reasonable purposes (including carrying out physical inspections, valuations and/or the preparation or making of inventories and/or schedules and/or other records or copies) to the premises, assets, books, accounts and records of the Charging Company and will provide and will procure that any occupiers of such premises provide reasonable assistance to the Trustee and such other persons in connection with the access obligations imposed by this Clause 8.6.
- 8.7 **Property** - It will comply with the provisions of Schedule 2 (*Property undertakings*).
- 8.8 **Chattels** - If so requested by the Trustee, it will place and maintain on each chattel the value of which exceeds £25,000 and which is subject to a fixed charge pursuant to Clause 3.1.4 of this Deed, in a conspicuous place, an identification marking in the following terms and not conceal, alter or remove such marking or permit it to be concealed, altered or removed:
- "Notice of Charge - This [*specify the chattel*] and additions and ancillary equipment are subject to a first fixed charge in favour of The Midcounties Co-Operative Pension Limited".
- 8.9 **Notice of Assignment** - It will, promptly, upon receiving a request to that effect from the Trustee, give notice of each charge or assignment of all (if any) its rights, title and interest in and to the Insurance Proceeds, any Associated Rights and the Rental Income by sending a duly completed notice (in such form as the Trustee may agree or require) to each of the other relevant parties.
- 8.10 **Centre of main interests** - It will not move its COMI, nor have any Establishment, outside England and Wales.
- 8.11 **Deposit of documents** - It will promptly, at the Trustee's request, deposit with the Trustee (or as the Trustee directs) (a) all deeds and documents of title relating to the Property, including counterpart leases, licences and any other deeds or documents necessary or desirable to assist the Trustee to enforce the Security created by this Deed, (b) the Insurances and (c) all such other documents relating to the Secured Assets as the Trustee may from time to time reasonably require.
- 8.12 **Retention of documents** - The Trustee may retain any document delivered to it pursuant to Clause 8.11 (*Deposit of documents*) or otherwise until the Discharge Date and if, for any reason, the Trustee ceases to hold any such document before such time, the Trustee may, by notice to the Charging Company, require that the relevant document be redelivered to it and the Charging Company shall immediately comply (or procure compliance) with such notice.
- 8.13 **Power to remedy** - If the Charging Company fails to comply with any of the covenants and undertakings set out or referred to in Clauses 8.1 (*Perform*) to 8.11 (*Deposit of documents*) inclusive and Schedule 2 (*Property undertakings*), it will allow (and irrevocably authorises) the Trustee and/or such persons as the Trustee nominates to take on behalf of the Charging Company such action (including the making of payments) as is

necessary to protect any relevant assets against the consequences of such failure to comply and/or to ensure compliance with such covenants and undertakings.

- 8.14 **Indemnity** - It will indemnify the Trustee and will keep the Trustee indemnified against all costs, Taxes, losses and liabilities incurred by the Trustee as a result of any default by the Charging Company in the performance of any of the obligations expressed to be assumed by it in this Deed and in connection with the exercise by the Trustee of its rights contained in Clause 8.13 (*Power to remedy*). All sums the subject of this indemnity will be payable by the Charging Company to the Trustee promptly after demand.

- 8.15 **Valuation** - The Trustee shall be permitted to request:

- (a) A desktop valuation of the Property on the second anniversary of the date of this Deed and every two years thereafter; and
- (b) A full valuation of the Property upon the occurrence of an Event of Default that is continuing.

Each such valuation of the Property shall be at the reasonable cost of the Charging Company.

9. **ENFORCEABILITY**

For the purposes of all powers implied by the LPA or any other applicable legislation, the Secured Obligations shall be deemed to have become due and payable and this Deed will become immediately enforceable and the powers of the Trustee and any Receiver will become exercisable on the date of this Deed, but, as between the Trustee and the Charging Company, the power of the Trustee to enforce the Security created by this Deed shall be exercisable only upon the occurrence of an Event of Default and for so long as it is continuing (unless there has been a request from the Charging Company to the Trustee for the appointment of a Receiver in which case it will be exercisable at any time following the making of such request).

10. **ENFORCEMENT OF SECURITY**

- 10.1 At any time after the Trustee's power of sale has become exercisable, the Trustee may, without further notice, (a) appoint one or more than one person to be Receiver in respect of the Secured Assets or any of them and, if more than one person is appointed as Receiver, such appointees may act jointly and severally or individually, (b) take possession of the Secured Assets, and/or (c) in its absolute discretion enforce all or any part of the Security created by this Deed in such other lawful manner as it thinks fit. The Trustee may remove any person from appointment as Receiver and may appoint another person as Receiver. The Trustee may also appoint an additional Receiver.
- 10.2 The Receiver will, so far as the law permits, be the agent of the Charging Company and the Charging Company alone will be responsible for the acts or defaults of the Receiver and will be liable on any contracts or obligations made or entered into by the Receiver. The Trustee will not be responsible for any misconduct, negligence or default of the Receiver. The powers of the Receiver will continue in full force and effect following any liquidation of the Charging Company.
- 10.3 The remuneration of the Receiver may be fixed by the Trustee but will be payable by the Charging Company. The amount of the remuneration will form part of the Secured Obligations.
- 10.4 The Receiver will have the power on behalf and at the cost of the Charging Company (a) to do or omit to do anything which he considers appropriate in relation to the Secured Assets and (b) to exercise all or any of the powers conferred on the Receiver or the Trustee under this Deed or conferred upon administrative receivers by the Insolvency Act (even if he is not an administrative receiver), or upon receivers by the LPA or any other statutory provision (even if he is not appointed under the LPA or such other statutory provision) but so that if there is any ambiguity or conflict between the powers contained

in such legislation and those contained in this Deed, those contained in this Deed shall prevail.

- 10.5 Without prejudice to the general powers set out in Clause 10.4, a Receiver will also have the powers and discretions set out in Schedule 3 (*Receiver's specific powers*).
- 10.6 The Trustee or any Receiver may sever any Fixtures from the Property and sell them apart from the Property without taking possession of the Property and apply the net proceeds of such sale in or towards satisfaction of the Secured Obligations.
- 10.7 If the Trustee or the Receiver obtains possession of the Property, the Trustee or the Receiver may use and remove, store or sell any chattels on the Property, whether or not forming part of the Secured Assets, without being under any liability to the Charging Company other than to account for their net proceeds of the sale. All costs, losses and liabilities incurred by the Trustee or the Receiver in connection with the removal, storage and sale of such chattels will form part of the Secured Obligations.
- 10.8 If (notwithstanding any representation or warranty to the contrary contained in this Deed) there shall be any Security affecting the Secured Assets or any of them which ranks in priority to the Security created by this Deed and the holder of such prior Security takes any steps to enforce such Security, the Trustee or any Receiver may, at its option, take a transfer of, or repay the indebtedness secured by, such Security.
- 10.9 The Trustee may, at any time after this Deed has become enforceable pursuant to Clause 9 (*Enforceability*), exercise, to the fullest extent permitted by law, all or any of the powers, authorities and discretions conferred on a Receiver by this Deed, whether as attorney of the Charging Company or otherwise and whether or not a Receiver has been appointed.
- 10.10 The Trustee may, in writing, either in its appointment of a Receiver or by subsequent notice to that Receiver, restrict the right of such Receiver to exercise all or any of the powers conferred on a Receiver by this Deed.

11. PAYMENTS, ACCOUNTS AND APPLICATION OF PROCEEDS

- 11.1 **Right of appropriation** - Subject to the provisions of Clause 11.7 (*Recoveries by Receiver*), the Trustee is entitled to appropriate money and/or assets to the Secured Obligations in such manner or order as it thinks fit and any such appropriation shall override any appropriation by the Charging Company.
- 11.2 **No set-off by Charging Company** - The Charging Company shall not exercise any right of set-off or counterclaim it might have in respect of any payment due to the Trustee under this Deed.
- 11.3 **Trustee's rights of set-off** - The Trustee may, at any time after this Deed has become enforceable, and without notice (a) combined or consolidate all or any of the Charging Company's then existing accounts with, and liabilities to, the Trustee, and/or (b) set-off any obligation owed by the Trustee to the Charging Company (whether or not matured at such time), in or towards satisfaction of any of the Secured Obligations, and if any amount is in a different currency from the amount against which it is to be set-off, the Trustee may convert either amount (or both) at any reasonable time and at any reasonable rate. The Trustee shall notify the Charging Company in writing that any such transaction has taken place.
- 11.4 **Suspense Account** - The Trustee may, at any time, credit to a suspense account any money received by it under this Deed, to be held for so long as and on such terms as the Trustee may determine pending its application towards discharging the Secured Obligations.
- 11.5 **New account** - If the Trustee receives notice of a subsequent mortgage or charge relating to the Secured Assets, it will be entitled to close any account and to open a new account in respect of the closed account. If the Trustee does not open such new account,

it will in any event be treated as if it had done so at the time when it received such notice.

11.6 **Calculations** - The Trustee's calculation of any amount payable by the Charging Company under this Deed at any time will be conclusive (unless it has made an obvious mistake).

11.7 **Recoveries by Receiver** - The proceeds arising from the exercise of the powers of the Receiver will, subject to any claims ranking in priority to the Secured Obligations, be applied by or at the direction of the Receiver in or towards discharging or satisfying the following amounts in the following order of priority: (a) the costs, charges and expenses of and incidental to the Receiver's appointment and the payment of his remuneration; (b) any costs, charges, expenses and liabilities of or incurred by any Enforcement Party in the exercise of any of its powers including all rents, Taxes, rates and outgoings whatever affecting the Secured Assets, all premiums on Insurances properly payable under this Deed or any applicable legislation, the cost of executing necessary or proper repairs to the Secured Assets, and the payment of annual sums or other payments, and the interest on all principal sums, having priority to the Secured Obligations; (c) the remaining Secured Obligations, in accordance with the provisions of the Finance Documents; and (d) the claims of those persons entitled to any surplus.

12. **PROTECTION OF THIRD PARTIES**

12.1 **No duty to enquire** - A buyer from, or other person dealing with, any Enforcement Party will not be concerned to enquire whether any of the powers which such Enforcement Party has exercised or purported to exercise has arisen or become exercisable and may assume that it is acting in accordance with this Deed.

12.2 **Receipt conclusive** - The receipt of the Trustee or any Receiver shall be an absolute and conclusive discharge to a purchaser of the Secured Assets and shall relieve him of any obligation to see to the application of any monies paid to or by the direction of the Trustee or any Receiver.

13. **PROTECTION OF TRUSTEE**

13.1 **Trustee's receipts** - The Trustee shall not be obliged to account to the Charging Company, nor to any other person, for anything other than its own actual receipts which have not been distributed or paid to the person entitled (or whom the Trustee, acting reasonably, believes to be entitled) in accordance with the requirements of this Deed.

13.2 **Exclusion of liability** -

13.2.1 No Enforcement Party will be liable to the Charging Company for any expense, loss, liability or damage incurred by the Charging Company arising out of the exercise by such Enforcement Party of its rights or powers or any attempt or failure to exercise those rights or powers, except for any expense, loss, liability or damage arising from its gross negligence, fraud or wilful misconduct.

13.2.2 The Charging Company may not take any proceedings against any officer, employee or agent of any Enforcement Party in respect of any claim it might have against such Enforcement Party or in respect of any act or omission of any kind by that officer, employee or agent in relation to this Deed.

13.2.3 Any officer, employee or agent of any Enforcement Party may rely on this Clause 13 under the Third Parties Act.

13.3 **Effect of possession** - If the Trustee or any Receiver enters into possession of the Secured Assets, or any of them, this will not oblige either the Trustee or the Receiver to account as mortgagee in possession, and if at any time the Trustee enters into possession of the Secured Assets, or any of them, it may at any time at its discretion go out of such possession.

14. **Charging Company's indemnity** - The Charging Company agrees with the Trustee to indemnify each Enforcement Party on demand against any costs, Taxes, losses, liabilities or damage incurred by it in respect of (a) the taking, holding, protection or enforcement of the Security created by this Deed, (b) any exercise of the rights, powers, discretions or remedies of, or vested in, any Enforcement Party or any attempt or failure to exercise those rights, powers, discretions or remedies and (c) anything done or omitted to be done in the exercise or purported exercise of the powers under this Deed or under any appointment duly made under the provisions of this Deed.

15. **PROTECTION OF SECURITY**

15.1 **Waiver of defences**

The obligations of the Charging Company under this Deed and the security created under this Deed will not be affected by any act, omission, matter or thing which, but for this Clause 15.1, would reduce, release or prejudice any of its obligations under this Deed (without limitation and whether or not known to it or the Trustee) including:

- 15.1.1 any time, waiver or consent granted to, or composition with, the Charging Company or other person;
- 15.1.2 the release of the Charging Company or any other person under the terms of any composition or arrangement with any creditor of the Charging Company;
- 15.1.3 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the Charging Company or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- 15.1.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Charging Company or any other person;
- 15.1.5 any amendment, novation, supplement, extension restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including, without limitation, any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- 15.1.6 any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- 15.1.7 any insolvency or similar proceedings.

15.2 **Variations to the Debt Documents**

Without prejudice to the generality of Clause 15.1 (*Waiver of defences*), the Charging Company expressly confirms that it intends that this Deed shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

15.3 **Immediate recourse**

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

15.4 Appropriations

Until all amounts which may be or become payable by the Debtor or any other person under or in connection with the Finance Documents have been irrevocably paid in full, the Trustee may:

- 15.4.1 refrain from applying or enforcing any other moneys, security or rights held or received by the Trustee in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Debtor shall not be entitled to the benefit of the same; and
- 15.4.2 hold in an interest-bearing suspense account any moneys received from the Charging Company or on account of its liability under this Deed.

15.5 Deferral of rights

Until all amounts which may be or become payable by the Debtor under or in connection with the Finance Documents have been irrevocably paid in full and unless the Trustee otherwise directs, the Charging Company will not exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Deed:

- 15.5.1 to be indemnified by the Debtor;
- 15.5.2 to claim any contribution from any other guarantor of the Debtor's obligations under the Finance Documents;
- 15.5.3 to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Trustee under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by the Trustee;
- 15.5.4 to bring legal or other proceedings for an order requiring the Debtor to make any payment, or perform any obligation, in respect of which the Charging Company has granted security, undertakings or an indemnity under this Deed;
- 15.5.5 to exercise any right of set-off against the Debtor; and/or
- 15.5.6 to claim or prove as a creditor of any Debtor in competition with the Trustee.

15.6 Trust

If the Charging Company receives any benefit, payment or distribution in relation to the rights referred to in Clause 15.5 (*Deferral of rights*), it shall hold that benefit, payment or distribution (to the extent necessary to enable all amounts which may be or become payable to the Trustees by the Debtor under or in connection with the Finance Documents to be repaid in full) on trust for the Trustee and shall promptly pay or transfer the same to the Trustee or as the Trustee may direct for application in accordance with the Finance Documents.

16. POWER OF ATTORNEY

- 16.1 The Charging Company irrevocably and by way of security appoints the Trustee and each Receiver and any person nominated for the purpose by the Trustee or a Receiver (in writing, under hand, signed by an officer of the Trustee or by such Receiver) severally to

- be the attorney of the Charging Company (with full power of substitution and delegation) for the purposes set out in Clause 16.2.
- 16.2 The power of attorney granted in Clause 16.1 allows the attorney, in the name of the Charging Company, on its behalf, as its act and deed and at its expense to perfect the Security created by the Charging Company under this Deed and to execute and deliver (using the Charging Company's seal where appropriate) any document or do any act or thing which the Charging Company may, ought or has agreed to execute or do under this Deed or which the attorney may in its absolute discretion consider appropriate in connection with the exercise of any of the rights, powers, authorities or discretions of the Trustee or the Receiver under, or otherwise for the purposes of, this Deed.
- 16.3 The Charging Company covenants with the Trustee to ratify and confirm all acts or things made, done or executed by any attorney exercising or purporting to exercise the powers conferred in accordance with this Clause 14.
17. **APPLICATION, VARIATION AND EXTENSION OF STATUTORY PROVISIONS**
- 17.1 The covenants set out in sections 2 to 5 of the Law of Property (Miscellaneous Provisions) Act 1994 shall extend to bind the Charging Company only if, in any case, the relevant covenant imposes upon the Charging Company a burden, liability or obligation that would not otherwise arise under this Deed.
- 17.2 For the purposes only of section 101 of the LPA, (but otherwise subject to the provisions of Clause 9 (*Enforceability*)), the conditions set out in that section as to when the powers conferred on a mortgagee by that section arise, do not apply and the Secured Obligations become due and the statutory power of sale and other powers of enforcement arise immediately following the execution of this Deed. The Trustee and any Receiver may exercise the statutory power of sale conferred by the LPA free from the restrictions imposed by section 103 of the LPA, which shall not apply to this Deed.
- 17.3 The power of sale and the other powers conferred by the LPA or otherwise are extended and varied to authorise the Trustee in its absolute discretion to do all or any of the things or exercise all or any of the powers which a Receiver is empowered to do or exercise under this Deed.
- 17.4 The restriction on the consolidation of mortgages in section 93 of the LPA does not apply to this Deed nor to any Security given to the Trustee pursuant to this Deed. Section 109(1) of the LPA shall not apply to this Deed. Sections 105, 107(2), 109(6) and 109(8) of the LPA will not apply to the Trustee, nor to a Receiver appointed under this Deed.
- 17.5 The statutory and other powers of leasing, letting, entering into agreements for leases or lettings and accepting or agreeing to accept surrenders of leases or tenancies shall not be exercisable by the Charging Company in relation to the Secured Assets or any part of them. The restrictions on the powers of the Trustee or the Receiver to grant leases or to accept the surrender of leases in sections 99 and 100 of the LPA do not apply to this Deed.
18. **OTHER MISCELLANEOUS PROVISIONS**
- 18.1 Except where expressly stated to the contrary, the powers, rights and remedies provided in this Deed are in addition to (and not instead of) powers, rights and remedies under law.
- 18.2 If an Enforcement Party fails to exercise any power, right or remedy under this Deed or delays its exercise of any power, right or remedy, this does not mean that it waives that power, right or remedy. If an Enforcement Party exercises, or partly exercises, a power, right or remedy once, this does not mean that it cannot exercise such power, right or remedy again, fully or in part.
- 18.3 The Trustee may decide when and how to apply any payments and distributions received for its own account under this Deed, and also, as between the Trustee and the Charging

- Company, whether and, if so, when, how and to what extent (a) to exercise its rights under this Deed and (b) to exercise any other right it might have in respect of the Charging Company (or otherwise) without, in any case, the Charging Company having the right to control or restrict the Trustee's exercise of this discretion.
- 18.4 No provision of this Deed will interfere with the Trustee's right to arrange its affairs as it may in its absolute discretion decide (nor oblige it to disclose any information relating to its affairs), except as expressly stated.
- 18.5 The Charging Company authorises the holder of any prior or subsequent Security to provide to the Trustee, and the Trustee to receive from such holder, details of the state of account between such holder and the Charging Company.
- 18.6 The Charging Company shall not assign, novate or otherwise deal with its rights or obligations under or interests in this Deed, except with the prior written consent of the Trustee.
- 18.7 The Trustee may at any time assign, novate or otherwise deal with any rights or obligations under or interests in this Deed.
- 18.8 The Trustee may disclose any information about the Charging Company, the Secured Assets and/or this Deed to any person to whom it proposes to assign, novate or transfer (or has assigned, novated or transferred) any rights or obligations under or interests in this Deed, or with whom it proposes to enter into (or has entered into) any other dealings in relation to any such rights, obligations or interests and any person to whom the benefit of all such rights has been transferred, subject to such obligations, may enforce this Deed in the same way as if it had been an original party to this Deed.
- 18.9 If, at any time, there has been a release, settlement or discharge of the Charging Company's obligations under this Deed and, as a consequence of any insolvency proceedings (or analogous proceedings) or for any other reason, (a) any payment made to any person in respect of any of the Secured Obligations is required to be repaid and/or (b) any such payment or any Security (or other right) held by the Trustee in respect of any of the Secured Obligations (whether under this Deed or otherwise) is void, is set aside or is otherwise affected, then the Charging Company's obligations under this Deed shall continue in effect as if there had been no such release, settlement or discharge and as if the relevant payment had not been made and/or (as applicable) the relevant Security (or other right) had not been held by the Trustee; and accordingly (but without limiting the Trustee's other rights under this Deed) the Trustee shall be entitled to recover from the Charging Company the value which the Trustee has placed upon such Security or the amount of any such payment as if such payment, settlement or discharge had not occurred.
- 18.10 If the Trustee, acting reasonably, considers that any amount paid by the Charging Company in respect of the Secured Obligations is capable of being avoided or ordered to be refunded or reduced for the reasons set out in Clause 18.9, then for the purposes of this Deed such amount shall not be considered to have been irrevocably paid.
- 18.11 To the extent that the Charging Company may be entitled in any jurisdiction to claim for itself or its assets immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process of any kind wherever it might originate, or to the extent that in any such jurisdiction there may be attributed to the Charging Company or its assets such immunity (whether or not claimed), it irrevocably agrees not to claim and irrevocably waives such immunity to the fullest extent permitted by the laws of such jurisdiction.
- 18.12 On the Discharge Date (but subject to Clauses 18.9 and 18.10) the Trustee shall, at the request and cost of the Charging Company, execute and do all deeds, acts and things as may be necessary to release the Secured Assets from the Security created by this Deed.

19. **COMMUNICATIONS**

19.1 **Addresses** - The address (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Deed are:

- 19.1.1 in the case of the Charging Company and the Trustee those given for each of them, respectively, in the signature pages of this Deed; and
- 19.1.2 in the case of each Receiver and each Delegate, those notified in writing to the Trustee by such Receiver or Delegate as soon as practicable after its respective appointment,

or any substitute address, or department or officer as the relevant person may notify to the Trustee (or as the Trustee may notify to the Charging Company, if a change is made by the Trustee) by not less than five Business Days' notice.

19.2 **Delivery** -

- 19.2.1 Any communication or document made or delivered by one person to another under or in connection with this Deed will only be effective 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, in any case, if a particular department or officer is specified as part of its address details provided under Clause 19.1 (*Addresses*), if addressed to that department or officer.
- 19.2.2 Any communication or document to be made or delivered to the Trustee will be effective only when actually received by the Trustee and then only if it is expressly marked for the attention of the department or officer identified in accordance with Clause 19.1 (*Addresses*).

19.3 **Notification of address** - Promptly upon receipt of notification of an address or change of address pursuant to Clause 19.1 (*Addresses*) or changing its own address, the Trustee shall notify the Charging Company.

19.4 **Communications in writing** - Any communication to be made under or in connection with the Security Documents shall be made in writing and, unless otherwise stated, shall be made by letter.

19.5 **English language**

- 19.5.1 Any notice given under or in connection with any Security Document must be in English.
- 19.5.2 All other documents provided under or in connection with any Security Document must be in English or, if not in English, and if so required by the Trustee, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

20. **THIS DEED**

20.1 The Charging Company has entered into this Deed in consideration of the Trustee's obligations to the Charging Company and the Debtor under or in connection with the Finance Documents.

20.2 If the Parties execute this Deed in separate counterparts, this Deed will take effect as if they had all executed a single copy.

20.3 This Deed is intended to be a deed even if either Party's execution is not in accordance with the formalities required for the execution of deeds.

- 20.4 If, at any time, any provision of this Deed is or is found to have been illegal, invalid or unenforceable in any respect under the law of any jurisdiction, this does not affect the legality, validity or enforceability of the other provisions of this Deed, nor the legality, validity or enforceability of the affected provision under the law of any other jurisdiction.
- 20.5 If either Party is not bound by this Deed (or any part of it) for any reason, this does not affect the obligations of the other Party under this Deed (or under the relevant part).
- 20.6 This Deed is in addition to, and does not operate so as in any way to prejudice or affect, or be prejudiced or affected by, any other Security or guarantee which the Trustee may now or at any time after the date of this Deed hold for or in respect of the Secured Obligations.
- 20.7 This Deed is a Finance Document.
- 20.8 This Deed and every counterpart is the property of the Trustee.

21. **GOVERNING LAW**

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

22. **JURISDICTION**

22.1 **Jurisdiction of English courts**

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

This document is executed as a deed and delivered on the date stated at the beginning of this Deed.

SCHEDULE 1

Real Property

Address/description of the property	Title Number	Freehold/Leasehold
Land at the back of the Butchers Shop, High Street, Mitcheldean, GL17 0HN	GR366408	Leasehold
117-119 Seymour Road, Gloucester (GL1 5QD)	GR195941	Freehold
43/45 High Street, Dorchester-on-Thames, (OX10 7HN)	ON200690	Freehold
74 Rose Hill, Oxford (OX4 4HS)	ON7957	Freehold
2/3 Rodbourne Road, Swindon, (SN2 2AG)	WT165990	Freehold
87 Groundwell Road, Swindon, SN1 2LY	WT167237	Freehold
39 to 41 (odd) North Court Road, Abingdon OX14 1PJ	ON200680	Freehold
4 Market Place, Deddington, Banbury OX15 0SB	ON137376	Freehold
Oxford Swindon & Gloucester Co-operative Society L, Shipton Road, Milton under Wychwood, Chipping Norton OX7 6JH	ON202267	Freehold

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SCHEDULE 2

Property Undertakings

Definitions and interpretation applicable to Schedule 2

1. Expressly defined terms

In this Schedule, the following words and phrases have the specified meanings:

"Adverse Property Effect" means, in the reasonable opinion of the Trustee, a material and adverse effect on (a) the value or marketability of the Property, (b) the ability of the Charging Company to use the Property for the purposes for which it is currently used or (c) the validity or enforceability of, or the effectiveness or ranking of the Security created or purported to be created by, this Deed in relation to the Property or the rights or remedies of the Trustee under this Deed.

"Granted Lease" means any lease, agreement for lease, tenancy, contractual licence or other document which gives a person who is not the Charging Company the right to occupy, use or enjoy the Property.

"Planning Acts" means the Town and Country Planning Acts 1990 and the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning (Consequential Provisions) Act 1990, the Planning and Compensation Act 1991 and any order, regulations or permission made or granted under or by virtue of such Acts or any of them.

Property Undertakings

1. NO CHANGES TO THE PROPERTY

It will not, without the prior written consent of the Trustee such consent not to be unreasonably withheld or delayed:

- 1.1 make any application for the grant of planning permission, listed building consent or conservation area consent, within the meaning of the Planning Acts;
- 1.2 demolish all or any part of the Property;
- 1.3 destroy or remove from the Property, except in the ordinary course of its business as currently carried on, any other of the Secured Assets now or at any time after the date of this Deed located in or on the Property;
- 1.4 make any additions or structural or other material alteration to the Property;
- 1.5 create or permit to arise any overriding interest, easement or right over the Property;
- 1.6 enter into negotiations with any competent agency of local or national government with a view to the compulsory acquisition of the Property nor consent to such acquisition;
- 1.7 enter into any agreement under section 106 of the Town and Country Planning Act 1990, section 33 of the Local Government (Miscellaneous Provisions) Act 1982 or any other agreement with any local government, planning or regulatory authority to build roads or carry out other works on the Property;
- 1.8 change the use of the Property or do or suffer to be done anything in relation to the Property which constitutes development (as that expression is defined in the Town and Country Planning Act 1990),

if, in any case, such action would have an Adverse Property Effect.

2. COMPLY WITH COVENANTS

It will observe and perform all covenants, agreements, restrictions, stipulations and conditions from time to time affecting its interest in the Property or the mode of user or the enjoyment of it if failure to do so would have an Adverse Property Effect, and will promptly pay all present and future tax, rates, assessments and outgoings of any kind imposed upon or payable in respect of the Property, or by the owner or occupier of the Property.

3. COMPLY WITH AUTHORISATIONS

It will observe and comply with the terms of all Authorisations relating to the Property if failure to do so would have an Adverse Property Effect.

4. REPAIR

If, following any inspection of the Property by the Trustee or any of its professional advisors, the Trustee considers that the Property is suffering any defect or want of repair the Trustee may serve a notice specifying the relevant defect or want of repair, failure to remedy which would have an Adverse Property Effect, the Trustee may serve a notice specifying the relevant defect or want of repair, and the Charging Company shall without delay promptly remedy such defect or want of repair.

5. DISPOSALS OF FIXTURES

It will not, otherwise than in the ordinary course of maintenance or replacement, sever or dispose of any Fixtures which are now, or which at any time after the date of this Deed may be, affixed to the Property.

6. GRANTED LEASES

6.1 It will not grant any Granted Lease or otherwise part with or share possession of the Property except where the prior written consent of the Trustee has been obtained.

6.2 In respect of any Granted Lease, it will:

6.2.1 not exercise any right of re-entry, nor accept the surrender of the whole or any part of the premises comprised in such Granted Lease nor vary the terms of such Granted Lease, nor exercise any landlord's break clause contained in such Granted Lease, without in any such case having first obtained the written consent of the Trustee; and

6.2.2 not agree to any reduction in, nor capitalisation of, the rent payable under such Granted Lease, without in any such case having first obtained the written consent of the Trustee.

6.3 In respect of any Granted Lease, it will use all reasonable endeavours to procure the payment by such tenant, lessee, licensee or grantee to whom any Granted Lease has been granted of the rents or other fees or monies reserved by and the observance and performance of the covenants, stipulations and conditions contained in such Granted Lease and itself observe and perform the covenants, stipulations and conditions on the part of the Charging Company to be observed and performed under such Granted Lease.

7. INSURANCE

It will insure and keep insured the Property with a reputable independent United Kingdom insurance company or United Kingdom underwriter previously approved by the Trustee in writing:

- 7.1 either with the Trustee named as co-insured on all insurance policies in respect of the Property or the Charging Company shall procure that all insurance policies contain a provision that if a party other than the policyholder has an interest in the property insured under the policy that interest is automatically noted and covered under that policy. The Charging Company shall be named as first loss payee for any claims under such insurance policies up to £250,000 with the Trustee being named as first loss payee for any claims in excess of that sum;
- 7.2 against such further risks and contingencies as the Trustee from time to time reasonably requires having regard to the nature and extent of cover recommended by insurance brokers appointed or approved by the Trustee and the requirements of the Financial Services Authority (or any other regulatory authority) applicable to Trustees in relation to capital adequacy costs;
- 7.3 in a value equal to the full cost of reinstatement from time to time including proper provision for cost inflation over any period that might be required for planning and negotiation and the reconstruction period plus the cost of demolition and debris removal and architects', surveyors' and all other professional fees and the cost of complying with local authority and other statutory requirements;
- 7.4 upon terms to include three years' loss of rent from the Property as a result of its destruction or damage to it in consequence of any insured risk or, in the case of any unoccupied part of the Property, an amount specified by the Trustee to be equal to its estimate of three years' interest that would be payable on the Secured Obligations for any period during which the Secured Obligations are or are expected to be outstanding;
- 7.5 upon terms that the relevant insurance company or underwriters confirm in favour of the Trustee that the insurance cover will not be altered or cancelled without prior reference to the Trustee; and
- 7.6 otherwise in such form and upon such terms as the Trustee agrees (such agreement not to be unreasonably withheld or delayed).

8. APPLICATION OF INSURANCE PROCEEDS

It will promptly apply the proceeds of insurance arising from damage to, or destruction of, the Property in repairing or reinstating it or (if an Event of Default has arisen which is continuing) as the Trustee otherwise directs.

SCHEDULE 3

Receiver's specific powers

Each Receiver will have full power and authority:

1. to enter upon, and to take possession of, the Secured Assets;
2. to collect and get in all rents, fees, charges or other income of the Secured Assets;
3. generally to manage the Secured Assets and to manage or carry on, reconstruct, amalgamate, diversify or concur in carrying on the business of the Charging Company carried on from the Property, or any part of it as he may think fit;
4. without restriction, to sell, charge, grant, vary the terms or accept surrenders of, leases or tenancies of, licences to occupy, or options or franchises over or otherwise deal with and dispose of the Secured Assets or any property acquired in exercise of its powers under this Deed;
5. to purchase or acquire any land or other assets and purchase, acquire or grant any interest in or right over land or other assets;
6. to take a lease or tenancy of any property required or convenient for the exercise of the Receiver's powers under this Deed;
7. to exercise on behalf of the Charging Company and without the consent of or notice to the Charging Company all the powers conferred on a landlord or a tenant by any legislation from time to time in force in any relevant jurisdiction relating to leasehold property, landlord and tenant, rents, housing or agriculture in respect of the Property;
8. for the purpose of exercising any of the rights, powers, authorities and discretions conferred on the Receiver by or pursuant to this Deed and/or for defraying any costs, losses or liabilities which may be incurred by him in their exercise or for any other purpose, to raise or borrow moneys from the Trustee or others or incur any other liability on such terms, whether secured or unsecured, as he may think fit, and whether to rank in priority to this Deed or not;
9. to appoint and discharge employees, officers, consultants, advisers, managers, agents, solicitors, accountants or other professionally qualified persons, workmen and others for any of the purposes of this Deed or to guard or protect the Secured Assets upon such terms as to remuneration or otherwise as he may think fit and to discharge any such persons appointed by the Charging Company prior to his appointment;
10. in the name of the Charging Company, to bring, prosecute, enforce, defend and discontinue all such actions, suits and proceedings, in relation to the Charging Company, the Secured Assets or any business carried on from the Property, as in any case he thinks fit;
11. to settle, adjust, refer to arbitration or expert determination, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person or body who is or claims to be a creditor of the Charging Company or relating in any way to the Secured Assets;
12. to give valid receipts for all moneys and execute all assurances and things which may be proper or desirable for realising the Secured Assets;
13. to obtain Authorisations for and to carry out on the Property any new works or complete any unfinished works of development, building, reconstruction, maintenance, repair, renewal, improvement, furnishing or equipment;

14. to enter into, vary, cancel or waive any of the provisions of any contracts which he shall in any case think expedient in the interests of the Charging Company or the Trustee;
15. to purchase materials, tools, equipment, goods or supplies on such terms and at such price as the Receiver in the Receiver's absolute determination thinks fit;
16. to insure the Secured Assets, any assets acquired by the Receiver in the exercise of his powers, and any business or works, and effect indemnity insurance or other similar insurance, in every case in such amounts, against such risks and with such offices as the Receiver thinks fit, and obtain bonds and give guarantees and Security to any bondsmen;
17. to remove, store, sell or otherwise deal with any chattels located at the Property;
18. to promote or establish any company or to acquire shares in any company (whether as a Subsidiary of the Charging Company or otherwise) to facilitate the exercise of his powers under this Deed, to transfer to any such company all or any of the Secured Assets or other assets acquired by the Receiver in the exercise of his powers and to exercise or cause to be exercised all voting and other rights attaching to, and to charge, sell or otherwise transfer any shares in any such company;
19. to carry into effect and complete any transaction;
20. to redeem any prior Security (or procure the transfer of such Security to an Enforcement Party) and settle and pass the accounts of the person entitled to the prior Security so that any accounts so settled and passed shall (subject to any manifest error) be conclusive and binding on the Charging Company and the money so paid shall be deemed to be an expense properly incurred by the Receiver; and
21. either in the name of the Charging Company or in the name of the Receiver to execute documents and do all other acts or things which the Receiver may consider to be incidental or conducive to any of the Receiver's powers or to the realisation or use of the Secured Assets.

SCHEDULE 4

Events of default

Each of the events and circumstances set out in this Schedule 4 is an Event of Default.

1. the Charging Company or the Debtor fails to pay the Secured Obligations when they fall due (including, without limitation, if the Charging Company or the Debtor fails to pay any contribution or other payment due to the Trustee in respect of the Scheme) and does not remedy such breach within twenty eight days after receipt of a written notice from the Trustee or the Charging Company becoming aware of the non-compliance;
2. there is any breach by the Charging Company of the representations and warranties at Clause 7 (*Representations and warranties*) or the undertakings at Clause 8 (*Undertakings*) (as extended in any case by the provisions of Schedule 2 (*Property undertakings*));
3. the Charging Company or the Debtor fails to comply with, or it becomes unlawful to any extent for the Charging Company to perform, any of its obligations under this Deed or any of the Finance Documents;
4. any person other than the Trustee rescinds or repudiates this Deed or and of the Finance Documents or purports to do so or shows an intention to do so;
5. an order is made for the compulsory purchase of the Property;
6. any person takes possession of or exercises or attempts to exercise any power of sale in relation to the Secured Assets;
7. an event of default or acceleration of re-payment (however such event is described) occurs under any document under which the Secured Obligations arise, or any facility or commitment comprised in the documents evidencing the Secured Obligations is cancelled;
8. there is an event of default (however such event is described) under any other Security over or affecting the Secured Assets or any other assets of the Charging Company or steps are taken to enforce any such Security;
9. the Charging Company or the Debtor is unable or admits inability to pay its debts as they fall due (or is deemed or declared to be unable to pay its debts under any applicable law) or the value of the assets of the Charging Company or the Debtor (as applicable) is less than its liabilities (taking into account contingent and prospective liabilities);
10. in respect of the Charging Company or the Debtor, any of the following occurs or any person takes or threatens to take any steps which in the reasonable opinion of the Trustee might give rise to:
 - 10.1 any suspension or re-scheduling of its payments, a moratorium of any of its indebtedness, its dissolution or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise), or the making of any composition, compromise, assignment or arrangement with any of its creditors; or
 - 10.2 the appointment of an administrator, liquidator, administrative receiver, receiver or receiver and manager or any similar officer in respect of it or any of its assets, or, in any case, an analogous procedure in any jurisdiction (but this paragraph 10.2 does not apply to any winding-up petition which is proved to the satisfaction of the Trustee to be an abuse of process or to have no real prospect of success and which is, in any event, discharged within 21 days of its presentation and before it is advertised); or
11. the Charging Company asks the Trustee to appoint a Receiver.

12. the Charging Company or the Debtor ceases, or threatens to cease, to carry on business;
or
13. any event or series of events occurs which, in the opinion of the Trustee, has or is reasonably likely to have a Material Adverse Effect.

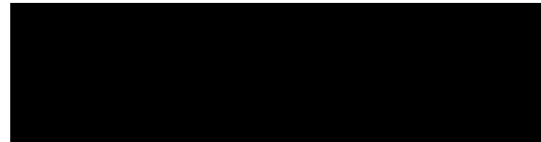
EXECUTION

THE CHARGING COMPANY

Executed as a deed by)
THE MIDCOUNTIES CO-OPERATIVE)
DEVELOPMENTS LIMITED,)
acting by one director and its secretary



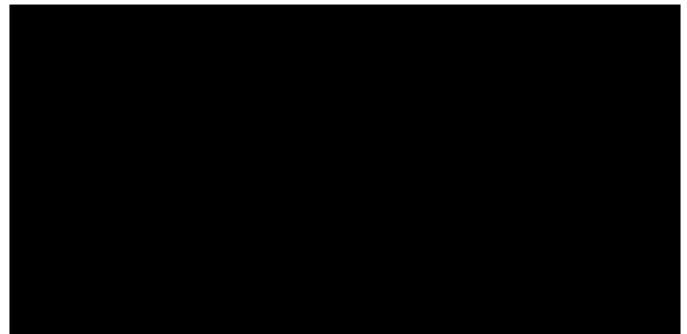
Signature of director



Signature of secretary

THE TRUSTEE

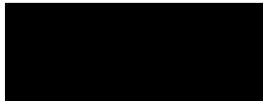
Executed as a deed by **THE MIDCOUNTIES**
CO-OPERATIVE PENSION TRUSTEE LIMITED,
acting by a director



Director

In the presence of:

Witness Signature:



Witness Name: **Mr DOHERTY**

Witness Address:



Witness Occupation:

