



**Registration of a Charge**

Company name: **ESH HOLDINGS LIMITED**

Company number: **03724890**



X8CANC60

Received for Electronic Filing: **21/08/2019**

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**Details of Charge**

Date of creation: **15/08/2019**

Charge code: **0372 4890 0020**

Persons entitled: **NUCLEUS COMMERCIAL FINANCE LIMITED**

Brief description: **LEASEHOLD LAND BEING SITE 76/80, NELSON PARK INDUSTRIAL ESTATE, CRAMLINGTON, REGISTERED AT HM LAND REGISTRY UNDER TITLE NUMBER ND165066**

**Contains fixed charge(s).**

**Contains negative pledge.**

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**Authentication of Form**

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

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**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: 3724890

Charge code: 0372 4890 0020

The Registrar of Companies for England and Wales hereby certifies that a charge dated 15th August 2019 and created by ESH HOLDINGS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 21st August 2019 .

Given at Companies House, Cardiff on 22nd August 2019

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 15 August 2019

- (1) ESH HOLDINGS LIMITED
- (2) NUCLEUS COMMERCIAL FINANCE LIMITED

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**LEGAL CHARGE**  
over Site 76/80, Nelson Park Industrial Estate

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DATE

15 August

2019

**PARTIES**

- (1) **ESH HOLDINGS LIMITED** a company incorporated and registered in England and Wales (registered number 03724890) whose registered office is at Esh House, Bowburn North Industrial Estate, Bowburn, Durham, DH6 5PF (the **Chargor**); and
- (2) **NUCLEUS COMMERCIAL FINANCE LIMITED** a company incorporated and registered in England and Wales (registered number 07829566) whose registered office is at 2 Gees Court, London, United Kingdom, W1U 1JA (the **Chargee**).

**IT IS AGREED**

**1. DEFINITIONS AND INTERPRETATION**

**1.1** In this charge the following definitions apply:

**Assets**

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

**Business**

any business, trade, operations or activities conducted on or from the Property;

**Business Day**

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

**Claim**

any action, proceeding, right, claim or demand of any nature, whether actual or contingent or otherwise;

**Clients**

Esh Construction Limited (company number 02529939) and Deerness Fencing & Landscaping Limited (company number 01951003);

**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 Property; or any indication given to the Chargor that the Property is 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;

**Guarantee**

the guarantee dated on or around the date of this charge given by the Chargor to the Chargee in respect of the obligations of the Clients to the Chargee as varied, supplemented, amended and/or restated from time to time;

**Indemnified Party**

- (a) the Chargee;
- (b) any Receiver, and/or
- (c) any Delegate,

and any of their officers and employees;

**Losses**

any loss, cost, damage, award, charge, penalty, fine, expense or any other liability which any of the Indemnified Parties have incurred or suffered, or may, directly or indirectly, incur or suffer, including legal costs and any value added tax or similar tax on any of those;

**LPA**

the Law of Property Act 1925;

**NPF**

Nucleus Property Finance<sup>1</sup> Limited;

**Party**

a party to this charge;

**Planning Acts**

the Town and Country Planning Act 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, the Planning and Compulsory Purchase Act 2004, the Planning Act 2008, the Localism Act 2011, the Growth and Infrastructure Act 2013 and any other legislation from time to time regulating the use or development of land;

**Priority Deed**

the deed of waiver and priorities made between (1) the Chargee, (2) NPF, (3) Lloyds Bank plc, (4) the Clients and (5) the Guarantors (as defined therein) which include the Chargor dated on or around the date of this charge as varied, supplemented, amended and/or restated from time to time;

**Property**

the property described in the schedule together with the benefit of all rights, easements and privileges in relation to that property, the Rental Income and all other Assets from time to time charged or intended to be charged by or under this charge;

**Property Report**

the report on title in relation to the Property dated on or about the date of this Deed issued by the Chargor's solicitors;

**Receiver**

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

**Rental Income**

the aggregate of all amounts paid or payable to or for the account of the Chargor in connection with the letting, licence or grant of other rights of use or occupation of any part of the Property;

**Secured Liabilities**

all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or as principal, guarantor, surety or in any other capacity) of the Chargor to the Chargee including (i) those owing under the Guarantee; (ii) all interest (including default interest), fees, costs, charges and expenses which the Chargee may

charge or incur; and (iii) 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;

**Security Interest**

a mortgage, charge, pledge, lien, hypothecation or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect; and

**Third Parties Act**

the Contracts (Rights of Third Parties) Act 1999;

**Valuation**

a valuation of the market value of the Property by the Valuer and Initial Valuation means the Valuation of the Valuer dated 28 May 2019; and

**Valuer**

Lambert Smith Hampton or any other valuer appointed by the Chargee to value the Property.

**1.2 In this charge, 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 charge;

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 charge or any provision of this charge or any other agreement, document or instrument is to this charge, 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 "Property" means all or any part of it including land and buildings.

**1.3 The schedule forms part of this charge and has the same effect as if expressly set out in the body of this charge and will be interpreted and construed as though it were set out in this charge.**

**1.4 Words importing the singular include the plural and vice versa and words importing a gender include every gender.**

**1.5 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.**

**1.6 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 charge.**

**2. COVENANT TO PAY**

**2.1 The Chargor covenants with the Chargee that it will pay or discharge on demand the Secured Liabilities when they fall due.**

**2.2 Any amount which is not paid under this charge 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 a rate of 1.7% per month. 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

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 in which it is from time to time interested:

- 3.1 by way of **first legal mortgage**, the Property, together with all buildings, fixtures and fittings (including trade fixtures and fittings) at any time on or attached to the Property;
- 3.2 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;
- 3.3 by way of **first fixed charge** the Rental Income;
- 3.4 by way of **first fixed charge** all goodwill in any business conducted at the Property; and
- 3.5 by way of **first fixed charge** any insurance policies in respect of the Property, the proceeds of any such policy and any refund of premium in relation to any such policy.

### 4. NEGATIVE PLEDGE

The Chargor will not, without the prior written consent of the Chargee, create, purport to create or permit to subsist any Security Interest over the Property.

### 5. REPRESENTATIONS AND WARRANTIES

#### 5.1 The Chargor represents and warrants to the Chargee that:

- 5.1.1 all information supplied by it or on its behalf to the Valuer for the purposes of each Valuation was true and accurate as at its date or (if appropriate) as at the date (if any) at which it is stated to be given;
- 5.1.2 any financial projections contained in the information referred to in paragraph 5.1.1 above have been prepared as at their date, on the basis of recent historical information and on the basis of reasonable assumptions;
- 5.1.3 it has not omitted to supply any information to the Valuer which, if disclosed, would adversely affect the Valuation;
- 5.1.4 as at the date of this Deed, nothing has occurred since the date the information referred to in paragraph 5.1.1 above was supplied which, if it had occurred prior to the Initial Valuation, would have adversely affected the Initial Valuation;
- 5.1.5 the Chargor:
  - (a) is the legal and beneficial owner of that Property; and
  - (b) has good marketable title to the Property,in each case free from Security (other than those permitted under the Priority Deed) and restrictions and onerous covenants (other than those set out in the Property Report in relation to that Property);
- 5.1.6 from the date of this Deed except as disclosed in the Property Report:
  - (a) no breach of any law, regulation or covenant is outstanding which adversely affects or might reasonably be expected to adversely affect the value, saleability or use of the Property;
  - (b) there is no covenant, agreement, stipulation, reservation, condition, interest, right, easement or other matter whatsoever adversely affecting the Property;
  - (c) nothing has arisen or has been created or is outstanding which would be an overriding interest, or an unregistered interest which overrides first registration or a registered disposition, over the Property;

- (d) all facilities necessary for the enjoyment and use of the Property (including those necessary for the carrying on of its business at the property) are enjoyed by the Property;
  - (e) none of the facilities referred to in paragraph (d) above are enjoyed on terms:
    - (i) entitling any person to terminate or curtail its use of the Property; or
    - (ii) which conflict with or restrict its use of the Property;
  - (f) the Chargor has not received any notice of any adverse claim by any person in respect of its ownership of the Property or any interest in it which might reasonably be expected to be determined in favour of that person, nor has any acknowledgment been given to any such person in respect of its Property; and
  - (g) the Property is held by the Chargor free from any lease or licence (other than those entered into in accordance with the Deed;
- 5.1.7 all deeds and documents necessary to show good and marketable title to the Chargor's interests in the Property will from the date of this Deed be:
- (a) in possession of the Chargee;
  - (b) held to the order of the Chargee by a firm of solicitors approved by the Chargee for that purpose;
- 5.1.8 the information supplied by it or on its behalf to the lawyers who prepared the Property Report for the purpose that Property Report was true and accurate as at the date of the Property Report or (if appropriate) as at the date (if any) at which it is stated to be given;
- 5.1.9 the information referred to in clause 5.1.8 above was at the date it was expressed to be given complete and did not omit any information which, if disclosed would make that information untrue or misleading in any material respect;
- 5.1.10 as at the date of this Deed, nothing has occurred since the date of any information referred to in clause 5.1.8 above which, if disclosed, would make that information untrue or misleading in any material respect;
- 5.1.11 it has complied with all Environmental Laws and Environmental Permits applicable to the Property;
- 5.1.12 there has been no discharge, spillage, release or emission of any prescribed, dangerous, noxious or offensive substance or any controlled waste on, into or from the Property or any adjoining premises and no such substances or any controlled waste have been stored or disposed of on the Property or, so far as the Chargor is aware, in any adjoining premises except in accordance with the requirements of the applicable Environmental Laws; and
- 5.1.13 it is not in breach of and has not incurred or become subject to any civil or criminal liability under any Environmental Laws or the terms of any Environmental Permit and it has not done anything or omitted to do anything which could result in any liability being imposed on the Chargee under any Environmental Law.
- 5.2 The Chargor makes the representations and warranties set out in clause 5.1 on the date of this charge and they are deemed to be repeated on each day during the continuance of the security created by this charge.
- 6. UNDERTAKINGS**
- The Chargor 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);

- 6.2 duly and punctually pay all rates, rents, taxes, charges and other outgoings due by it in respect of the Property;
- 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 records and accounts maintained in connection with it;
- 6.4 in relation to the Property, comply with all its obligations under law, statute or regulation and under any permit, approval, licence or consent and, if requested by the Chargee, produce to the Chargee, within 14 days of receipt of the same, every material notice, order or proposal given or made in relation to the Property by any competent authority and either comply with the same or make the objections and representations against them as the Chargee may require or approve;
- 6.5 observe and perform all covenants and stipulations from time to time affecting the Property, or the manner of use or the enjoyment of the Property and not enter into any onerous or restrictive obligations affecting the Property;
- 6.6 carry on any Business in accordance with the standards of good management from time to time current in that type of trade or business;
- 6.7 enforce its rights and perform its obligations as landlord under any lease or agreement for lease of the Property;
- 6.8 observe and perform all the lessee's covenants in any lease under which it holds the Property;
- 6.9 not, except with the prior written consent of the Chargee:
  - 6.9.1 dispose, part with or share possession or occupation of the Property;
  - 6.9.2 enter into any lease or agreement for lease or otherwise confer on any person any lease or other right or licence to occupy the Property or grant any licence to assign or sub-let the Property;
  - 6.9.3 vary, forfeit, determine, accept or agree to accept the surrender of any lease, agreement for lease or licence in relation to the Property;
  - 6.9.4 agree any rent review of any lease of the Property;
  - 6.9.5 surrender or agree to surrender any leasehold interest held by it in relation to the Property or allow that interest to be forfeited;
  - 6.9.6 create or permit to arise on the Property any interest having overriding effect; or
  - 6.9.7 permit any person to become entitled to any right, easement, covenant or other matter which might adversely affect the use, value or marketability of the Property.
- 6.10 comply with all Environmental Laws and obtain, maintain and comply with all Environmental Permits applicable to the Property and, on request, provide the Chargee with copies of any Environmental Permits;
- 6.11 notify the Chargee of any Environmental Claim made or threatened against the Chargor and any condition imposed under any Environmental Permit or Environmental Law which requires the Chargor to incur any capital expenditure or materially alter the nature or manner of conduct of the Business or which could, in the Chargee's opinion, materially reduce the value of the Property;
- 6.12 keep the Chargee informed of any steps taken or intended to be taken by the Chargor in respect of any of the matters referred to in clause 6.11 and give notice to the Chargee as soon as practicable of any new or additional requirements under any Environmental Law imposed on the Chargor or the Property;
- 6.13 not carry out any development within the meaning of the Planning Acts in or upon the Property without first obtaining the permissions required under or by virtue of the Planning Acts and, in the case of any development involving a substantial change in the structure or a change of use of the Property, without first obtaining the written consent of the Chargee;

- 6.14 in respect of the Property, 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 2019 in favour of Nucleus Commercial Finance Limited referred to in the charges register"*
- 6.15 keep the Property comprehensively insured for 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 6.15 or clause 6.16, 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 6.15 or clause 6.16;
- 6.16 procure that the Chargee is co-insured and first loss payee under each of the insurance policies (other than public liability and third party liability insurances) but without liability on the part of the Chargee for any premium in relation to those insurance policies;
- 6.17 hold the proceeds of any insurance on trust for the Chargee to be applied as the Chargee sees fit;
- 6.18 the Chargor must grant the Chargee or its lawyers on request all facilities within the power of the Chargor to enable the Chargee or its lawyers to:
- 6.18.1 carry out investigations of title to the Property; and
  - 6.18.2 make such enquiries in relation to any part of the Property as a prudent mortgagee might carry out;
- 6.19 if the Chargor fails to perform any obligations under this Deed, the Chargor must allow the Chargee or its agents and contractors:
- 6.19.1 to enter any part of the Property;
  - 6.19.2 to comply with or object to any notice served on the Chargor in respect of the Property; and
  - 6.19.3 to take any action that the Chargee may reasonably consider necessary or desirable to prevent or remedy any breach of any such term or to comply with or object to any such notice;
- 6.20 the Chargor must immediately on request by the Chargee pay the costs and expenses of the Chargee or its agents and contractors incurred in connection with any action taken by it under this clause; and
- 6.21 the Chargee shall not be obliged to account as mortgagee in possession as a result of any action taken under this clause.
- 7. ENFORCEMENT OF SECURITY**
- 7.1 The security created by this charge becomes immediately enforceable any time after the Chargee has made demand under or pursuant to the Guarantee and the Chargee may, in its absolute discretion, enforce all or any part of it as it sees fit.
- 7.2 The power of sale and other powers section 101 LPA confers (as varied or extended by this charge) will arise on and be exercisable without further notice immediately after this charge is executed. Sections 93 and 103 LPA do not apply to the security created by this charge.
- 7.3 When the security created by this charge has become enforceable, the Chargee may, at the sole cost of the Chargor (payable to the Chargee on demand):
- 7.3.1 redeem any prior Security Interest over the Property; and/or
  - 7.3.2 procure the transfer of that Security Interest to itself; and/or
  - 7.3.3 settle and pass the accounts of any prior mortgagee, chargee or encumbrancer which, once so settled and passed, will be final and binding on the Chargor.

- All money the Chargee pays to that prior mortgagee, chargee or encumbrancer under those accounts will form part of the Secured Liabilities.
- 7.4 When the security created by this charge becomes enforceable, or if the Chargor so requests by written notice at any time, the Chargee (or any Delegate on its behalf) may:
- 7.4.1 appoint any person to be a Receiver of the Property;
  - 7.4.2 exercise all or any of the powers and remedies of a mortgagee in respect of the Property.
- 7.5 The Chargee may remove any Receiver appointed by it and appoint a new Receiver in his place. If there is more than one Receiver, they will have power to act individually (unless the deeds or other instruments appointing them say otherwise).
- 7.6 A Receiver will have the following powers, as well as the powers conferred by the LPA and, although he is not an administrative receiver, by schedule 1 to the Insolvency Act 1986 (but without any of the restrictions imposed on the exercise of those powers by those statutes):
- 7.6.1 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 Property if they were not the subject of this charge;
  - 7.6.2 to take possession of, collect and get in the Property and/or income in respect of which he was appointed;
  - 7.6.3 to manage the Property and the Business;
  - 7.6.4 to redeem any Security Interest;
  - 7.6.5 to borrow or raise any money and secure the payment of any money in priority to the Secured Liabilities for the exercise of his powers and/or defraying any costs or liabilities incurred by him in such exercise;
  - 7.6.6 to alter, develop, complete, construct, refurbish or repair the Property;
  - 7.6.7 to complete or agree to the completion or undertaking (with or without modification) of any project in which the Chargor is interested before his appointment, being a project for the alteration, development, completion, construction, refurbishment or repair of the Property;
  - 7.6.8 to sell or agree to dispose of the Property without being limited by any restriction section 103 or 109 LPA imposes and, for that purpose, to enter into covenants and other contractual obligations in the name of, and to bind, the Chargor;
  - 7.6.9 to lease, make agreements for leases, accept surrenders of leases and grant options as the Chargee considers suitable and without the need to comply with any of the terms of sections 99 and 100 LPA;
  - 7.6.10 to take any proceedings, in the name of the Chargor or otherwise, as he considers suitable, in respect of the Property including proceedings for recovery of arrears on his appointment;
  - 7.6.11 to insure, and renew any insurances over, the Property as he considers suitable or as the Chargee directs;
  - 7.6.12 to appoint and employ managers, officers and workmen and engage professional advisers as he considers suitable, including power to employ his partners and firm;
  - 7.6.13 to operate any rent review clause for the Property and to apply for any new or extended lease; and
  - 7.6.14 to agree any arrangement or compromise he considers suitable and to do all other things incidental or conducive to any other power vested in him to realise the Property.
- 7.7 In making any disposal, the Receiver, the Chargee or any Delegate may accept, as consideration, cash, shares, loan capital or other Assets on any terms he may agree. Any

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

- 7.8 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.
- 7.9 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 limits contained in section 109 LPA.
- 7.10 Only money actually paid by a Receiver to the Chargee in satisfaction or discharge of the Secured Liabilities may be applied by the Chargee in satisfaction of the Secured Liabilities.
- 7.11 Neither the Chargee nor any Receiver or Delegate will be liable;
  - 7.11.1 in respect of the Property; or
  - 7.11.2 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.
- 7.12 Neither the Chargee nor any Receiver or Delegate must take any particular action in relation to the Property. Neither will be liable to any Chargor for the manner in which he deals with or fails to deal with the Property.
- 7.13 Without prejudice to the generality of clause 7.11, entry into possession of the Property will not make the Chargee, the Receiver or any Delegate liable to account as mortgagee in possession. If the Chargee or any Receiver or Delegate enters into possession of the Property, he may, at any time at his discretion go out of possession.
- 7.14 All or any of the powers which are conferred by this charge on a Receiver may be exercised by the Chargee or any Delegate without first appointing a Receiver or despite the appointment of any Receiver.
- 7.15 Except to the extent provided by law, an insolvency event for any Chargor will not affect any of the powers described in clauses 7.6 to 7.14.
- 7.16 No person dealing with the Chargee or with any Receiver or Delegate need:
  - 7.16.1 enquire whether the right:
    - (a) of the Chargee to appoint a Receiver or Delegate; or
    - (b) of any person to exercise any of the powers conferred by this chargehas arisen or become exercisable by the Chargee or by any Receiver or Delegate;
  - 7.16.2 be concerned 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 buyer 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 charge 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 charge.
- 8.2 The Chargor's obligations under this charge will not be affected by any time, waiver or consent granted to, or composition with the Chargor or any other person.
- 8.3 This charge 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 charge 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, other Security Interests or 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 Interest created or intended to be created under or evidenced by this charge or for the exercise of any rights, powers and remedies of the Chargee provided by law;
  - 9.1.2 to ensure the Chargee is named as co-insured on any insurance policy relating to the Property; and/or
  - 9.1.3 to facilitate the realisation of the Property.
- 9.2 Any document required to be executed by the Chargor under clause 9.1 will be prepared at the cost of the Chargor.
- 9.3 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:
  - 9.3.1 do all things which the Chargor may be required to do under this charge;
  - 9.3.2 sign, execute, deliver and otherwise perfect any document or Security Interest required to be signed or executed under the terms of this charge; and
  - 9.3.3 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 charge, or to perfect or vest in the Chargee, any Receiver, any Delegate, its nominees or any purchaser, title to the Property or which they may deem expedient in connection with the getting in, disposal, or realisation of the Property.
- 9.4 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 9.3.

## **10. PAYMENTS**

- 10.1 Subject to clause 10.2, all payments to be made by the Chargor in respect of this charge, 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.
- 10.2 If the Chargor is required by law to withhold or deduct any taxes from any sum payable under this charge 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 charge.
- 10.3 The Chargee may set-off any matured obligation due from the Chargor under this charge 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.

- 10.4 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 charge will, in the absence of manifest error, be conclusive and binding on the Chargor.
- 10.5 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 under 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 charge as if that release, discharge or settlement had not occurred.
- 10.6 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 charge 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).
- 11. COSTS, EXPENSES AND INDEMNITIES**
- 11.1 The Chargor must reimburse the Chargee, any Receiver and any Delegate, on demand, for all Losses incurred in connection with the enforcement, attempted enforcement or preservation of any of their rights under:
- 11.1.1 this charge; or
- 11.1.2 any of the documents referred to in this charge.
- 11.2 The Chargor must, on demand, indemnify the Indemnified Parties for all Claims and Losses which may be incurred by, or made against any of them, at any time relating to or arising, directly or indirectly, out of:
- 11.2.1 the exercise, or purported exercise, of the powers contained in this charge;
- 11.2.2 a claim of any kind made or asserted against any Indemnified Party which would not have arisen if this charge had not been executed and/or registered;
- 11.2.3 the creation, imposition, recording or registration of any Security Interest over the Property securing the repayment to or recovery by any third party of any costs, expenses or other sums incurred because of:
- (a) a breach, contravention or violation of any Environmental Law; or
- (b) the release, discharge or emission of any harmful or hazardous material; and
- (c) the redemption, removal, vacation or discharge of any such Security Interest;
- 11.2.4 any Environmental Claim against any Indemnified Party or the Chargor in respect of the Property and/or the Business;
- 11.2.5 any liability, or potential liability, upon any Indemnified Party to cure, clean-up or make good:
- (a) any breach, contravention or violation of any Environmental Law by the Chargor; or
- (b) 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 Property; or
- 11.2.6 a breach by the Chargor of any of its obligations under this charge
- unless, in the case of clauses 11.2.1 and 11.2.2, it was caused by the negligence or wilful misconduct of the Indemnified Party.
- 11.3 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 (whether as mortgagee in



possession or otherwise) in relation to the Property, except to the extent caused by its own negligence or wilful misconduct.

- 11.4 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 charge or any judgment given in connection with this charge.

## **12. THIRD PARTY RIGHTS**

- 12.1 Subject to clauses 12.2 and 12.3, a person who is not a Party will have no rights under the Third Parties Act to enforce or rely on a provision of this charge. No Party may hold itself out as trustee of any rights under this charge for the benefit of any third party unless specifically provided for in this charge. This clause 12.1 does not affect any right or remedy of any person which exists, or is available, otherwise than under the Third Parties Act.
- 12.2 Any person to whom the benefit of any term of this charge is assigned under the terms of this charge may under the Third Parties Act enforce any term of this charge which confers (expressly or impliedly) any benefit on any such person.
- 12.3 Any Receiver or Delegate may, subject to the Third Parties Act, rely on any clause of this charge which expressly confers rights on it.
- 12.4 The Chargee and the Chargor may, by agreement in writing, rescind, terminate or vary any of the terms in this charge or waive or settle any right or claim under it in any way without the consent of any third party.

## **13. NOTICES**

Any notice given under this charge 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:

- 13.1 in the case of the Chargor, its registered office for the time being marked for the attention of the directors; and
- 13.2 in the case of the Chargee, its registered office for the time being marked for the attention of the directors,

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 13 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 13 or, if delivered by prepaid first class recorded delivery post, two Business Days from the date of posting. If, however, deemed receipt under this clause 13 would otherwise occur on a day which is not a Business Day or after 5.00 pm on a Business Day, the relevant notice shall be deemed to have been received at 9.00 am on the next Business Day.

## **14. GENERAL**

- 14.1 If the Chargee receives notice (whether actual or otherwise) of any subsequent Security Interest affecting the Property, it may open a new account or accounts for the Chargor in its books.
- 14.2 If the Chargee does not open a new account immediately on receipt of notice under clause 14.1, 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.
- 14.3 The Chargee may assign or transfer all or any of its rights under this charge. The Chargor may not assign, transfer, charge, make the subject of a trust or deal in any other manner with this charge or any of its rights under this charge or purport to do any of the same without the prior written consent of the Chargee.
- 14.4 No variation to this charge 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

charge will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

- 14.5 Each provision of this charge is severable and distinct from the others. If at any time any provision of this charge 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 charge 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 charge will not be affected in any way.
- 14.6 If any provision of this charge is found to be illegal, invalid or unenforceable in accordance with clause 14.5 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.
- 14.7 Failure or delay in exercising a right or remedy provided by this charge 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 charge or by law prevents or restricts any further or other exercise or enforcement of that (or any other) right or remedy.
- 14.8 The Chargee's rights and remedies contained in this charge are cumulative and not exclusive of any rights or remedies provided by law.
- 14.9 This charge 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.
15. **GOVERNING LAW AND JURISDICTION**
- 15.1 This charge (including any associated non-contractual disputes or claims) is governed by the laws of England and Wales.
- 15.2 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 charge. This clause 15.2 is for the benefit of the Chargee only.

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

**SCHEDULE**  
**The Property**

Leasehold land being Site 76/80, Nelson Park Industrial Estate, Cramlington, registered at HM Land Registry under title number ND165066

**CHARGOR**

EXECUTED as a DEED by ESH )  
HOLDINGS LIMITED acting by a director in )  
the presence of: )

Director

Witness Signature

Witness Name

(in BLOCK CAPITALS)

ZOE DITCH

Address

Muckle LLP  
Time Central, 32 Gallowgate  
Newcastle upon Tyne, NE14BF

Occupation

Solicitor

**CHARGE**

SIGNED by a director on behalf of )  
NUCLEUS COMMERCIAL FINANCE )  
LIMITED: )

Director

OR:

SIGNED by DAVIO BARLEY as attorney )  
for NUCLEUS COMMERCIAL FINANCE )  
LIMITED under a power of attorney dated )

Attorney for  
Nucleus Commercial Finance Limited

21 February 2019