

# MR01

## Particulars of a charge



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


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

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

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

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

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

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

SATURDAY



RCS 17/08/2013 #122  
COMPANIES HOUSE

### 1 Company details

Company number 6 2 9 5 4 9 9

Company name in full ABERCORN ESTATES LIMITED

0003 For official use

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

All fields are mandatory unless  
specified or indicated by \*

### 2 Charge creation date

Charge creation date d0 d2 m0 m8 y2 y0 y1 y3

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

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

Name Close Brothers Limited

Name

Name

Name

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

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

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Description

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

Continuation page

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

Description

✓ All the freehold land known as 49-51 (odd numbers) Balls Pond Road, London N1 4BW as the same is registered at the Land Registry with title absolute under title number NGL372503

5

Fixed charge or fixed security

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

☒ Yes

☐ No

6

Floating charge

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

☒ Yes Continue

☐ No Go to Section 7

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

☐ Yes

7

Negative Pledge

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

☒ Yes

☐ No

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**Trustee statement ①**

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

☐

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

9

**Signature**

Please sign the form here

Signature

Signature

X DCA Piper UK LLP X

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

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Particulars of a charge



**Presenter information**

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

Contact name Helen Cairns

Company name DLA Piper UK LLP

Address 3 Noble Street

London

REF 74555/120309

Post town

County/Region

Postcode E C 2 V 7 E E

Country

DX DX: 33866 Finsbury Square

Telephone 08700 111 111



**Certificate**

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



**Checklist**

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

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

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



**Important information**

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



**How to pay**

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

Make cheques or postal orders payable to 'Companies House'



**Where to send**

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

**For companies registered in England and Wales:**  
The Registrar of Companies, Companies House,  
Crown Way, Cardiff, Wales, CF14 3UZ  
DX 33050 Cardiff

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

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



**Further information**

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

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



**FILE COPY**

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

Company number: 6295499

Charge code: 0629 5499 0003

The Registrar of Companies for England and Wales hereby certifies that a charge dated 2nd August 2013 and created by ABERCORN ESTATES LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 17th August 2013.



Given at Companies House, Cardiff on 21st August 2013



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

|

DATED

2 August

2013

(1) ENGLISH ROSE ESTATES LIMITED

- and -

(2) ABERCORN ESTATES LIMITED

- and -

(3) CLOSE BROTHERS LIMITED

**THIRD PARTY LEGAL  
CHARGE**

relating to  
49-51 Balls Pond Road, London



WE HEREBY CERTIFY THIS TO BE A TRUE COPY  
OF THE ORIGINAL

DATE 21/8/13

SIGNED DLA  
DLA PIPER UK LLP

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THIS LEGAL CHARGE is made on

2 August

2013

**BETWEEN:**

- (1) **ENGLISH ROSE ESTATES LIMITED** (registered in England under company number 04342560) whose registered office is at 70 Charlotte Street, London W1T 4QG ("**Borrower**"),
- (2) **ABERCORN ESTATES LIMITED** (registered in England under company number 6295499) whose registered office is at 70 Charlotte Street, London W1T 4QG ("**Mortgagor**"), and
- (3) **CLOSE BROTHERS LIMITED** of 10 Crown Place, London EC2A 4FT ("**Lender**")

**BACKGROUND:**

The Lender has agreed to grant or continue loan facilities or other banking facilities or accommodation to the Borrower upon having the repayment thereof secured on the terms and conditions set out in this Charge

**WITNESSES** as follows

**1. DEFINITIONS AND INTERPRETATION**

Unless the context otherwise requires or unless otherwise defined in this Charge words and expressions shall have the same respective meanings that are ascribed to them in the Facility Agreement but in case of conflict the terms of the Facility Agreement shall prevail

**1.1 Definitions**

In this Charge

"**Agreement**" means all and any agreements relating to the Property including those described in part 3 of the schedule (if any)

"**Agreement for Lease**" means all present and future agreements contracts options or undertakings for or in relation to the creation of any estate interest or right in or over the Property (including without limitation in relation to any lease licence tenancy or right to occupy whether on a fixed term or periodic basis)

"**Associated Companies**" means any company which is a member of the same group of companies as the Lender

"**Business**" means business (if any) carried on by the Mortgagor at the Property

"**Charge**" means this legal charge and includes any instrument supplemental to or which is expressed to be collateral or entered into pursuant to or in accordance with the terms of this legal charge

"**Charged Property**" means the property assets debts rights and undertaking charged to the Lender by this Charge and includes any part of or interest therein



**"Default Rate"** means three per cent per annum above the highest rate of interest payable by the Borrower to the Lender at the relevant time

**"Encumbrance"** means any mortgage charge pledge lien assignment hypothecation security interest preferential right or trust arrangement or other encumbrance security agreement or arrangement of any kind or any right conferring a priority of payment

**"Enforcement Event"** means any of the events or circumstances described in clause 13

**"Environmental Claim"** means any notice or claim from any person (including without limitation any regulatory authority or government agency) alleging any breach contravention or violation of any Environmental Law by the Mortgagor or the existence of any liability arising from any such breach contravention or violation including without limitation liability to conduct pay for or for damages in respect of any investigation or audit clean-up remediation administrative cost or charge or expense damage to the environment or any natural resource property loss or damage personal injury or any penalty attaching or relating to the presence emission release or leak of any harmful or hazardous material in or to the environment

**"Environmental Laws"** means all laws directions regulations codes of practice guidance notes circulars (in the case of guidance notes and circulars being those with the force of law) and the like concerning the protection of the environment human health or working conditions including without limitation 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 the rectification thereof or any related matters

**"Environmental Licence"** means any permit licence authorisation consent or other approval required by any Environmental Law

**"Expenses"** means all interest commission fees and legal and other costs charges and expenses which the Lender or any Receiver may charge or incur in relation to the Borrower or the Mortgagor or this Charge and the preparation negotiation and creation of this Charge and/or in relation to the Charged Property and/or breach of any provision of and the protection realisation or enforcement of this Charge in each case on a full indemnity basis

**"Facility Agreement"** means all and any facility agreements entered into between the Lender and the Borrower and any variation amendment substitution or extension thereof or supplement thereto from time to time in force

**"Insured Risks"** means loss or damage by or in consequence of fire storm lightning earthquake explosion riot civil commotion malicious damage terrorism aircraft and other aerial devices or articles dropped therefrom tempest flood bursting and overflowing of water tanks apparatus or pipes and damage by or resulting from vehicular impact and such other risks as the Lender shall require including demolition and site clearance costs and expenses architects surveyors and other professional fees and all other incidental expenses and loss of rents payable by the tenants or other occupiers of the Property for a period of three years or for such longer period as the Lender shall from time to time require

**"Lease"** means where the Property is leasehold the lease under which the Mortgagor holds the Property and any instrument supplemental to it or which is expressed to be collateral to it or entered into pursuant to or in accordance with its terms

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

**"Planning Acts"** means the Town and Country Planning Act 1990 the Planning (Listed Buildings and Conservation Areas) Act 1990 the Planning (Hazardous Substances) Act 1990 the Planning (Consequential Provisions) Act 1990 and the Planning and Compensation Act 1991 and all regulations and orders made or confirmed under any of them

**"Prior Charge(s)"** means the Encumbrances existing at the date of this Charge (if any) details of which are set out in part 2 of the schedule

**"Property"** means the freehold leasehold or immovable property referred to in part 1 of the schedule and any part or parts of it and including all rights attached or appurtenant to it and all buildings fixtures fittings plant and machinery from time to time situate on it

**"Receiver"** means an administrative receiver receiver and/or manager and any substitute for any such person and whether appointed under this Charge or pursuant to any statute or otherwise

**"Rental Income"** means the gross rents licence fees and other monies receivable now or hereafter at any time by the Mortgagor in respect of or arising out of any lease of the Property or any agreement for lease or otherwise without limitation derived by the Mortgagor from the Property or otherwise paid to or received by the Mortgagor in respect of the Property (including without limitation all mesne profits) but save for insurance rents or service charges or the like

**"Secured Liabilities"** means all monies obligations and liabilities whatsoever whether for principal interest or otherwise which may now or at any time in the future be due owing or incurred by the Borrower or the Mortgagor to the Lender or its Associated Companies including those under the Facility Agreement whether present or future actual or contingent and whether alone severally or jointly as principal guarantor surety or otherwise and in whatever name or style and whether on any current or other account or in any other manner whatsoever and including but without limitation all Expenses and so that interest shall be computed and compounded according to the usual practice of the Lender as well after as before any demand or judgment

## 1.2 Interpretation

### In this Charge

- 1 2 1 references to clauses and schedules are to be construed as references to the clauses of and schedules to this Charge
- 1 2 2 references to any provisions of this Charge or to any other document or agreement are to be construed as references to those provisions or that document or agreement as is in force for the time being and as amended varied supplemented substituted or novated from time to time
- 1 2 3 words importing the singular are to include the plural and vice versa
- 1 2 4 references to a person are to be construed to include references to a corporation firm company partnership joint venture unincorporated body of persons individual or any state or any agency of a state whether or not a separate legal entity
- 1 2 5 references to any person are to be construed to include that person's assigns or transferees or successors in title whether direct or indirect

- 1 2 6 references to any statutory provision are to be construed as references to that statutory provision as amended supplemented re-enacted or replaced from time to time (whether before or after the date of this Charge) and are to include any orders regulations instruments or other subordinate legislation made under or deriving validity from that statutory provision
- 1 2 7 clause headings are for ease of reference only and are not to affect the interpretation of this Charge
- 1 2 8 where the Borrower and/or the Mortgagor consists of two or more parties
- 1 2 8 1 such expression shall in this Charge mean and include such two or more parties and each of them or (as the case may require) any of them
- 1 2 8 2 all covenants charges agreements and undertakings expressed or implied on the part of the Borrower and the Mortgagor in this Charge shall be deemed to be joint and several covenants charges agreements and undertakings by such parties
- 1 2 8 3 each shall be bound even if any other of them intended or expressed to be bound by this Charge shall not be so bound and
- 1 2 8 4 the Lender may release or discharge any one or more of them from all or any liability or obligation under this Charge or may make any arrangement or composition with any such person without thereby releasing any other or others of them or otherwise prejudicing any of its rights under this Charge or otherwise
- 1 2 9 the phrase "the Lender" includes its Associated Companies where the context so requires

## **2. COVENANT TO PAY**

- 2 1 The Borrower covenants with the Lender that the Borrower will pay to the Lender or discharge all Secured Liabilities on the due date or dates for payment or discharge or in the absence of an agreed or specified due date immediately on demand by the Lender
- 2 2 The Mortgagor covenants with the Lender that the Mortgagor will pay to the Lender or discharge all Secured Liabilities due, owing or incurred to the Lender by the Borrower or for which the Mortgagor shall be liable on the due date or dates for payment or discharge or, in the absence of an agreed or specified due date, immediately on demand by the Lender
- 2 3 If the Borrower or the Mortgagor fails to discharge any Secured Liability when due the Borrower or the Mortgagor shall pay to the Lender on demand interest on such Secured Liability at the Default Rate in the case of Expenses from the date on which the relevant Expense was incurred and in the case of any other Secured Liability from the date on which the Secured Liability became due until payment or discharge (both before and after judgment) which interest shall accrue from day to day and may be compounded in accordance with the usual practice of the Lender to the extent that it shall remain unpaid

### 3. SECURITY

- 3 1 The Mortgagor charges to the Lender with full title guarantee as continuing security for the payment and discharge of the Secured Liabilities
- 3 1 1 by way of first legal mortgage the Property
- 3 1 2 by way of assignment the Rental Income and the benefit to the Mortgagor of all other rights and claims to which the Mortgagor is now or may in future become entitled in relation to the Property including but not limited to all rights and claims of the Mortgagor against all persons who now are or have been or may become lessees sub-lessees licensees or occupiers of the Property and all guarantors and sureties for the obligations of such persons
- 3 1 3 by way of assignment
- 3 1 3 1 the benefit of all guarantees warranties and representations given or made by and any rights or remedies against all or any professional advisers or contractors now or at any time engaged by the Mortgagor in relation to the Property and the manufacturers suppliers or installers of all plant machinery fixtures fittings and other items now or from time to time in the buildings erected or to be erected on the Property and any other person firm or company now or from time to time under contract with or under a duty to the Mortgagor and the benefit of all sums recovered in any proceedings against all or any of such persons
- 3 1 3 2 the benefit of all Agreements all the proceeds of any claim award or judgment arising out of any Agreement and all sums paid or payable to the Mortgagor under or in respect of any Agreement
- 3 1 3 3 all right title and interest of the Mortgagor in and to all payments made under any and all present and future insurance policies in respect of the Charged Property
- 3 1 4 by way of assignment the goodwill of the Business and the benefit of all present and future licences and permits held in connection with the Business
- 3 1 5 by way of fixed charge all funds standing to the credit of the Mortgagor from time to time on any account with the Lender including all receipts from time to time paid into an account in accordance with clause 3 5
- 3 1 6 by way of floating charge all moveable plant machinery implements utensils furniture and equipment now or from time to time placed on or used in or about the Property
- 3 2 The Lender may by notice in writing to the Mortgagor convert the floating charge contained in clause 3 1 6 into a fixed charge as regards any Charged Property specified in such notice at any time after this Charge becomes enforceable
- 3 3 If without the prior written consent of the Lender the Mortgagor charges pledges or otherwise encumbers (whether by way of fixed or floating security) any of the Charged Property subject to a floating charge under this Charge or attempts to do so or if any person levies or attempts to levy any distress execution sequestration or other process against any of the Charged

Property the charge hereby created shall automatically without notice operate and have effect as a fixed charge instantly such event occurs

- 3 4 The security created by this Charge shall rank subject only to the Prior Charges (if any) The charges created by clauses 3 1 1 to 3 1 5 shall constitute first fixed charges The charge created by clause 3 1 6 shall be a first floating charge unless and until it is converted into a fixed charge pursuant to clause 3 2 or 3.2 or by operation of law
- 3 5 The Mortgagor shall at any time on written demand by the Lender procure that the Rental Income shall be paid directly to its account with the Lender (or such other account as the Lender may from time to time direct) and the Mortgagor shall forthwith upon any such demand so instruct its lessees and occupiers of the Property by notice in writing Following any such demand and until such payment the Mortgagor shall hold all Rental Income on trust for the Lender
- 3 6 The Mortgagor shall promptly on demand and at its own cost execute and do all such assurances acts and things including without limitation execute all transfers conveyances assignments and assurances of the Charged Property and give all notices orders and directions which the Lender may require for perfecting or protecting this Charge or the priority of this Charge or for facilitating the realisation of the Charged Property or the exercise of any of the rights vested in the Lender or any Receiver

#### **4. FURTHER ADVANCES**

This Charge is intended to secure further advances and in the case of registered land the Lender and the Mortgagor hereby apply to the Registrar at HM Land Registry for a note to be entered on the charges register of the title number relating to the Property that the Lender is under an obligation to make further advances

#### **5. DISCHARGE**

If the Borrower and the Mortgagor shall pay to the Lender the Secured Liabilities in accordance with the covenants contained in this Charge the Lender at the request and cost of the Borrower and/or the Mortgagor will duly discharge this Charge and re-assign the Agreements

#### **6. RESTRICTIONS**

The Mortgagor shall not without the prior written consent of the Lender

- 6 1 create or permit to subsist or arise any Encumbrance or any right or option on the Charged Property or any part thereof other than the Prior Charge Subject as aforesaid any mortgage of or charge on the Charged Property created by the Mortgagor (otherwise than in favour of the Lender) shall be expressed to be subject to this Charge
- 6 2 sell convey assign or transfer the Charged Property or any interest therein or otherwise part with or dispose of any Charged Property or assign or otherwise dispose of any monies payable to the Mortgagor in relation to the Charged Property or agree to do any of the foregoing
- 6 3 exercise any of the powers of leasing or agreeing to lease vested in or conferred on mortgagors by common law or by statute or accept the surrender of any lease underlease or tenancy or agree to do any of the foregoing

- 6 4 part with or share possession or occupation of the Property or any part of it or grant any tenancy or licence to occupy the Property or agree to do any of the foregoing
- 6 5 compound release exchange set off grant time or indulgence in respect of or otherwise deal with any of the Rental Income or the debts or policies charged to the Lender under this Charge or do anything whereby the recovery of the same may be impeded delayed or prevented and the Mortgagor shall enforce its rights in respect of the same

## **7. DEPOSIT OF TITLE DEEDS**

The Mortgagor shall deposit with the Lender and during the continuance of this security the Lender shall be entitled to hold all deeds and documents of title relating to the Property and (if required by the Lender) all policies of insurance in relation to the Property

## **8. REPRESENTATION AND WARRANTIES**

The Mortgagor represents and warrants to the Lender (and such representations and warranties shall be deemed to be repeated on each day until all Secured Liabilities are fully and unconditionally paid or discharged) that save as disclosed in any certificate of title or report on title provided to the Lender by solicitors in respect of the Property

- 8 1 it is the legal and beneficial owner of the Property
- 8 2 there subsists no breach of any law or regulation which materially and adversely affects the Property
- 8 3 there are no covenants agreements stipulations reservations conditions interests rights or other matters whatsoever which materially and adversely affect the Property
- 8 4 nothing has arisen or has been created or is subsisting which would be an overriding interest over the Property
- 8 5 no facility necessary for the enjoyment and use of the Property is enjoyed on terms entitling any person to terminate or curtail its use
- 8 6 it has not received notice of any adverse claim by any person in respect of the ownership of the Property or any interest in it nor has any acknowledgement been given to any person in respect of the Property and
- 8 7 to the best of its knowledge no waste or noxious offensive or dangerous substance has been used disposed of produced stored or deposited under on or in or emitted from the Property

## **9. COVENANTS BY THE BORROWER AND THE MORTGAGOR**

The Mortgagor and the Borrower covenant jointly and severally with the Lender at all times during the continuance of this security

### **9.1 Repair**

To keep the buildings installations and structures (whether fully built or in course of construction) and all fixtures and fittings therein or thereon and other erections from time to time upon the Property in good and substantial repair and condition and fully protected from damage or deterioration as a result of weather or malicious damage or any other cause and to

replace any fixtures and fittings which have become worn out or otherwise unfit for use by others of a like nature and equal value

## **9.2 Insurance**

- 9 2 1 To keep the buildings installations and structures and all fixtures and fittings therein or thereon and other erections from time to time upon the Property insured against loss or damage by the Insured Risks in their full replacement value for the time being in such office or offices and on such terms as the Lender shall approve and including a lender protection clause whereby the insurance effected will not be vitiated or avoidable as against a mortgagee in the event of any misrepresentation act neglect or failure to disclose on the part of the Mortgagor or the insured party (if not the Mortgagor) (subject to the payment of any increased premium required by the insurer) with the Lender named as co-insured and co-payee (or if the Lender agrees with the Lender's interest noted on the policy) provided that where the insurance on the Property is effected by a prior chargee or some other third party the Lender shall not require the Mortgagor to effect separate insurance on the Property so long as such insurance complies with the provisions of this clause and is on terms satisfactory to the Lender
- 9 2 2 To maintain in such office or offices as the Lender shall approve such insurance in respect of employers' liability public liability and liability under the Defective Premises Act 1972 as the Lender shall require
- 9 2 3 Punctually to pay all premiums (and other monies) in respect of such insurances and on demand to deliver to the Lender the policy or policies of all such insurances and the receipt for every such payment and all monies received under any policy or policies of insurance whether maintained or effected by the Mortgagor the Lender or by a third party and whether or not in pursuance of the Mortgagor's obligations under this Charge shall be applied at the Lender's option either in making good the loss or damage to the Property (any deficiency being made good by the Mortgagor) or towards the discharge of the Secured Liabilities and any such monies received by the Mortgagor shall be held by the Mortgagor on trust for the Lender accordingly
- 9 2 4 To comply with the terms and conditions of any policy of insurance on the Property or otherwise contemplated by this clause and not to do or omit to do anything whereby any such insurance may become void or voidable wholly or in part

## **9.3 Outgoings**

To pay when due all rents rent charges (if any) rates taxes charges duties assessments impositions and other outgoings whatsoever charged assessed levied or imposed upon the Property or upon the owner or occupier thereof or payable in respect of the Property

## **9.4 Covenants and stipulations**

To perform and observe all covenants restrictions stipulations provisions regulations and conditions affecting the Property or the use or enjoyment of it

## **9.5 Alterations**

Not without the previous written consent of the Lender to demolish pull down remove or permit or suffer to be demolished pulled down or removed any building installation or structure for the time being upon the Property or except in connection with the renewal or replacement thereof any fixtures or erect or make or suffer to be erected or made on the Property any building installation structure or alteration or a change of use thereof within the meaning of the Planning Acts or otherwise commit any waste upon or destroy or injure in any manner or by any means lessen or suffer to be lessened the value of the Property

## **9.6 Planning**

9 6 1 To comply in all respects with the Planning Acts and all licences consents permissions or conditions granted or imposed thereunder

9 6 2 Not to make any application for planning permission without the prior consent of the Lender and not to enter into or agree to enter into any agreement under section 106 of the Town and Country Planning Act 1990 or section 33 of the Local Government (Miscellaneous Provisions) Act 1982 or section 38 of the Highways Act 1980 or any similar Act

9 6 3 To comply with the requirements of any valid enforcement or other notice or order (whether issued under the Planning Acts or any other statute) within such time as may be specified therein or if no time is specified within such period as may be required by the Lender and to pay to the Lender in reduction of the Secured Liabilities any compensation received as a result of any such notice or order

## **9.7 Right of entry**

To permit representatives of the Lender with or without workmen or others to enter the Property at all reasonable times to view the state of repair and condition of the Property

## **9.8 Notices**

Within four days of receipt to produce to the Lender a copy of any notice order direction permission or proposal affecting the Property or its use or value and to comply immediately with the terms thereof or if the Lender so requires or approves and at the Mortgagor's cost to make such objections representations against or in respect of such notice order proposal permission or consent as aforesaid as the Lender may require

## **9.9 Information**

On request to produce to or provide for the Lender such documents or information relating to the Property or its development as the Lender may require

## **9.10 Statutes**

To comply (in all material respects) with all obligations imposed under any present or future statute regulation order or instrument or under any bye-laws regulations or requirements of any competent authority or approvals licences or consents relative to the Property or its use or enjoyment



### **9.11 Licences and Permits**

To comply with all orders regulations and notices made by any relevant authority concerning the Property and the Business and apply for and use the Mortgagor's best endeavours to obtain whenever necessary proper renewals or regrants of the licences and registrations held in respect of the Property or the Business and not to surrender abandon or transfer to any person any such licences and registrations or remove them to any other premises or do or permit any act or thing whereby the renewal of any such licences or registrations may be refused or discontinued or whereby the Business or the Property may be prejudicially affected and shall upon demand by the Lender deliver to the Lender or as the Lender shall direct the licences and registration certificates and give do and execute all notices acts instruments and things necessary or convenient for transferring them to the Lender or its nominee

### **9.12 Leases**

Where the Property is leasehold or subject to any lease agreement for lease or tenancy (referred to below as the "occupational lease")

- 9 12 1 to perform and observe all covenants and conditions contained in the Lease to be performed and observed by the lessee and contained in any occupational lease to be observed by the lessor
- 9 12 2 to enforce the due observance and performance of all obligations of all other parties to the Lease and any occupational lease
- 9 12 3 not to waive release or vary any of the terms of the Lease or any occupational lease nor exercise any power to determine or extend the same or grant any consent or licence or conclude any rent review under the same without in each case the consent of the Lender which consent is not to be unreasonably withheld or delayed in circumstances in which the Mortgagor may not unreasonably withhold or delay its consent
- 9 12 4 if the Mortgagor shall receive any notice served under section 146 of the LPA or any proceedings shall be commenced for forfeiture of the Lease or any superior lease or the landlord or any superior landlord shall attempt to re-enter under the provisions of the Lease or any superior lease the Mortgagor shall give immediate notice of such event in writing to the Lender and at the request of the Lender and at the expense of the Mortgagor take such steps as the Lender may require
- 9 12 5 not to serve any notice on any former tenant under any occupational lease under section 17(2) of the Landlord and Tenant (Covenants) Act 1995 or on any guarantor of any such former tenant under section 17(3) of that Act without the prior consent of the Lender

### **9.13 Agreements**

To notify the Lender forthwith if a third party is in breach of the terms of any of the Agreements and/or if notice is given to terminate any of them or it is alleged or appears that any of them may be avoided or repudiated or be or become invalid or unenforceable and in any such case the Mortgagor shall at its own cost take such action or institute such proceedings or execute such documents as the Lender may require

#### **9.14 Indemnity**

To keep the Lender (and any Receiver appointed by the Lender) fully and effectively indemnified from and against all actions proceedings costs charges claims demands expenses and liabilities (including value added tax and any other taxes and/or legal and other professional fees) whatsoever in respect of any breach or non-observance or non-performance of any covenants obligations warranties or undertakings on the part of the Borrower or the Mortgagor contained in this Charge or the making good of any such breach or non-observance or non-performance

#### **9.15 Value added tax**

The Mortgagor warrants that it has not made and covenants that it will not make an election pursuant to paragraph 2 of schedule 10 to the Value Added Tax Act 1994 in relation to land and/or buildings comprising the Property without the prior written consent of the Lender such consent not to be unreasonably withheld or delayed

#### **9.16 Prior Charges**

Duly and punctually to pay all sums payable in respect of the Prior Charge (subject to any applicable agreement or arrangement as to priorities) and from time to time to produce to the Lender on demand the receipts for every such payment

### **10. ENVIRONMENTAL MATTERS**

10 1 The Mortgagor covenants with the Lender that during the continuance of this security the Mortgagor shall at all times acquire and maintain all relevant Environmental Licences required by its ownership use or occupation of the Property and for the conduct of the Business and will comply with all terms and conditions relating thereto and with all other applicable Environmental Laws and will not knowingly do or permit an act or omission whereby any such Environmental Licence would be liable to be varied or revoked

10 2 Promptly upon receipt of the same to notify the Lender of any Environmental Claim

10 3 The Mortgagor will keep the Lender (and every Receiver attorney manager agent and other person duly appointed by the Lender hereunder) fully and effectually indemnified from and against all liabilities losses (including consequential losses) costs charges and expenses caused wholly or partly directly or indirectly by

10 3 1 the creation imposition recording or registration of any mortgage charge encumbrance or security interest over the Property securing the reimbursement to or recovery by any third party (including without limitation any regulatory authority or government agency) of any costs expenses or other sums incurred in consequence of a breach contravention or violation of any Environmental Law or the release discharge or emission of any harmful or hazardous material and the redemption removal vacation or discharge of any such mortgage charge encumbrance or other security interest

10 3 2 the making of any Environmental Claim against the Lender and/or any Receiver or other such person(s) or the Mortgagor in respect of the Property and/or any business operations or activities thereon

10 3 3 any liability or potential liability upon the Lender and/or any Receiver or other such person(s) to remedy clean up or make good any breach contravention or

violation of any Environmental Law by the Mortgagor or any harm actual or potential to the environment caused directly or indirectly by any release emission or discharge of any harmful or hazardous material from in or to the Property and/or

10 3 4 by reason of any breach of clause 10 1 above

## 11. DEVELOPMENT

Where the Property is to be the subject of any building works or operations the following provisions of this clause shall apply

11 1 In this clause 11 the following expressions shall have the following meanings

**"Approved Documents"** means the drawings plans elevations sections calculations and specifications relating to the Development approved by the Lender and any modifications additions or variations thereof which may be made from time to time in accordance with the terms of this Charge

**"Architect"** means such person firm or company as may be appointed by the Mortgagor (with the Lender's prior written approval) to be the architect for the purposes of the Development or to perform any of the functions of an architect for the purposes of the Development

**"Building Contract"** means the contract for carrying out the Development to be entered into by the Mortgagor with the Building Contractor with the prior written approval of the Lender as the same may with the prior written approval of the Lender be amended from time to time and shall include any letter of intent to be exchanged in relation thereto

**"Building Contractor"** means such person firm or company appointed by the Mortgagor (with the prior written approval of the Lender) who shall enter into the Building Contract to carry out the works specified therein

**"Contractual Completion Date"** means such date as may (with the prior written approval of the Lender) be specified in the Building Contract as the date upon which the Development shall be completed in all respects or such later date as may be agreed between the Lender and the Mortgagor (or in default of agreement as determined by the Project Supervisor) as may be reasonable following any delay during the course of the Development arising from events or conditions certified by the Architect as entitling the Building Contractor to an extension of time for completion of the works specified under the Building Contract

**"Cost Over-Run(s)"** means any amount or amounts in excess of the Maximum Commitment required to be expended to complete the Development and to ensure that the Property is fit for such use as is specified in and in conformity with the Approved Documents and the Relevant Consents

**"Development"** means the development reconstruction and refurbishment of the Property in accordance with the Approved Documents

**"Development Cash Flow Forecast"** means a forecast detailing the Development Costs as the same may be amended by the Mortgagor from time to time with the prior written approval of the Lender

**"Development Costs"** means the aggregate of all costs incurred or to be incurred by the Mortgagor in carrying out the Development

**"Maximum Commitment"** means such amount as the Lender may agree to advance to the Borrower towards the cost of completing the Development

**"Planning Consent"** means the consent or consents (including any listed building consent) to carry out the Development given under the Planning Acts

**"Professional Team"** means the Architect and the Quantity Surveyor and such other person firm or company as shall with the prior written approval of the Lender be appointed or engaged in a consultative capacity in connection with the carrying out of the Development

**"Project Supervisor"** means such chartered building or quantity surveyor or firm of surveyors as the Lender may from time to time appoint for the purposes of this Charge

**"Quantity Surveyor"** means such person firm or company as may be appointed by the Mortgagor (with the Lender's prior written approval) to be the quantity surveyor for the purposes of the Development or to perform any of the functions of a quantity surveyor for the purposes of the Development

**"Relevant Consents"** means the Planning Consent and all other necessary planning permissions listed building consents and permits approval of details building regulation approvals certificate and other consents from all competent authorities any fire officer and statutory undertakers required for or in connection with the Development

**"Warranty Deed"** means a deed of warranty in favour of the Lender in respect of (inter alia) their duty of care to be in such form and with such content as the Lender may require

- 11 2 In relation to the Development the Mortgagor further covenants with the Lender that the Mortgagor shall
- 11 2 1 comply in all material respects with its obligations under the Building Contract and terms of engagement of the Professional Team and notify the Lender in writing forthwith of any breach of any contracts or agreements relating to the Development (whether by the Mortgagor or by any other party) or any other event which may prevent any of such agreements from being performed substantially in accordance with their terms
- 11 2 2 commence and proceed diligently with the carrying out of the Development in accordance with the Approved Documents and the Relevant Consents in a good and workmanlike manner in accordance with best modern practice with new sound and proper materials being in accordance with the relevant British Standards and Codes of Practice and procure that the Development is completed by the Contractual Completion Date
- 11 2 3 endeavour to ensure the Development Costs are incurred substantially in accordance with the Development Cash Flow Forecast
- 11 2 4 not make any variation alteration or addition to the Approved Documents without the prior written consent of the Lender and in applying for such consent the Mortgagor shall forward to the Lender detailed assessments setting out the effect of the proposed variation alteration or addition on the costs and value of the

Development any modification to the Development Cash Flow Forecast and the timing of completion of the Development

- 11 2 5 not make any variation alteration or addition to the Planning Consent without the prior written consent of the Lender
- 11 2 6 not make any variation alteration or addition to the Building Contract or the terms of engagement of any member of the Professional Team or terminate any such contracts or engagements without the prior written consent of the Lender and to procure that each member of the Professional Team and the Building Contractor executes a Warranty Deed in favour of the Lender
- 11 2 7 procure that the Development is undertaken strictly in accordance with the Relevant Consents
- 11 2 8 use its best endeavours to ensure that the Building Contractor and the members of the Professional Team comply with their obligations under the relevant contract of engagement and in particular (but without prejudice to the generality of the foregoing) their respective obligations to maintain professional indemnity insurances in accordance with the said contracts
- 11 2 9 procure that on each and every occasion upon which a Cost Over-Run occurs or is anticipated the Mortgagor has sufficient funds to meet the same as they fall due
- 11 2 10 ensure that at all times during the course of carrying out the Development there is in effect such insurance as agreed with the Lender and that any policy so effected shall be in at least the joint names of the Lender and the Building Contractor and subject to such additional provisions as the Lender may require
- 11 2 11 ensure that all premiums and other payments payable in connection with the effecting and maintaining of any of the insurance policies referred to in clause 11 2 10 are duly paid so far as the same is within the Mortgagor's power to pay or procure the payment of the same
- 11 2 12 hold project meetings on a regular basis as often as may be appropriate but not less than once in every calendar month and in any event shortly before the date of the proposed issue of any Certificate or Statement of Practical Completion of the Development to give not less than seven days' prior written notice to the Lender of any such meeting whether on or off the Property and to allow the Project Supervisor to be present at and participate in the discussion at such meetings and to ensure that due consideration is paid to all observations made by the Project Supervisor at or otherwise in connection with any such meeting and to deliver to the Project Supervisor a copy of the minutes of each and every such meeting
- 11 2 13 ensure that the Project Supervisor be granted access to the Property at all times during usual working days and hours and be permitted to attend all site meetings
- 11 2 14 procure that all claims and invoices relating to the Development Costs are submitted to the Project Supervisor for consideration and approval in accordance with the terms of this Charge
- 11 2 15 notify the Lender forthwith if and whenever it becomes apparent to the Mortgagor that the progress of carrying out the Development is being or is likely to be delayed and give details of the material circumstances including the cause

or causes of the delay the revised best estimate for completion and any relevant events and to use its reasonable endeavours to keep such delay to a minimum

- 11 2 16     notify the Lender in writing of any dispute which has arisen between the Mortgagor and the Building Contractor or any member of the Professional Team in relation to the Building Contract or any other contract or agreement relating to the Development and to consult with the Lender as to the steps which might be taken to resolve such dispute
- 11 2 17     procure that the Lender and the Project Supervisor are provided without charge with a copy of the Certificate of Practical Completion of the Development issued by the Architect and of all written instructions issued by the Architect during the course of carrying out the Development and with a complete set of drawings and specifications and guarantees relating to the Development following completion thereof on an "as built" basis
- 11 3     If the Development is not carried out in accordance with this clause 11 the Lender may (but shall not be under any obligation so to do) serve a written notice on the Mortgagor advising it of such failure and the Mortgagor shall have such period as may be reasonable in the circumstances to remedy the same failing which
  - 11 3 1     the Mortgagor shall if required by written notice from the Lender within seven days assign to the Lender (or as it may direct) all the benefit and interest of the Mortgagor in the Building Contract sub-contracts appointments of the Professional Team and such other contracts or agreements as the Mortgagor may have relating to such Development and will take or procure such action as is necessary or desirable to provide the Lender or the nominee of the Lender as aforesaid with privity of contract with such parties or contractors with whom the Mortgagor may have privity of contract and take all such other steps as the Lender may require to enable the Lender to procure the completion of the Development and
  - 11 3 2     the Mortgagor shall permit the Lender at the Mortgagor's cost to complete or procure the completion of the said building works

in both cases with power for the Lender and any persons authorised by the Lender to enter upon the Property for any of the above purposes without thereby becoming a mortgagee in possession

## **12. POWER TO REMEDY**

If the Borrower or the Mortgagor fails to perform or observe any covenant or condition in its part contained in this Charge it shall be lawful for but not obligatory upon the Lender in order to make good such failure in whole or in part and at the Borrower's and/or Mortgagor's cost but without thereby becoming mortgagee in possession

- 12 1     to enter upon the Property and effect such repairs and other works thereon as the Lender considers necessary
- 12 2     to take such steps give such notices execute such works and do such things as the Lender considers necessary to comply with any requirements of or any notice order direction permission or proposal given served or made under the Planning Acts or otherwise affecting or likely to affect the Property or its value

12 3 to insure and keep insured the Property in such amount and in such manner as the Lender considers necessary

12 4 to admit settle liquidate compound or contest in such manner as the Lender thinks fit any claim or liabilities in relation to the Property whether or not the Lender is expressly indemnified in this Charge against the same and to make such payments and expend or debit on account such monies as the Lender considers necessary in that behalf

### **13. ENFORCEMENT EVENTS**

If any of the following events shall occur then the Secured Liabilities shall become immediately due and payable at any time on demand by the Lender and the Lender shall cease to be under any further obligation to the Borrower or the Mortgagor

13 1 the Borrower or the Mortgagor fails to pay any of the Secured Liabilities when due or

13 2 the Borrower or the Mortgagor commits any breach of any of the covenants or any other provisions of this Charge or

13 3 any representation or warranty made or deemed to be made or repeated by the Borrower or the Mortgagor in or pursuant to this Charge is or proves to have been untrue or incorrect in any material respect when made or when deemed to be repeated with reference to the facts and circumstances existing at such time or

13 4 any Encumbrance on or over the Business assets rights or revenues of the Borrower or the Mortgagor becomes enforceable or

13 5 an encumbrancer takes possession or a receiver or administrative receiver or manager or sequestrator is appointed of the whole or any part of the undertaking assets rights or revenues of the Borrower or the Mortgagor or a distress or other process is levied or enforced upon any of the assets rights or revenues of the Borrower or the Mortgagor or

13 6 the Borrower or the Mortgagor (being a corporation) is or is adjudicated or found to be insolvent or suspends payment of its debts or is (or is deemed to be) unable to or admits inability to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or

13 7 the Borrower or the Mortgagor proposes or enters into any composition or other arrangement for the benefit of its creditors generally or proceedings are commenced in relation to the Borrower or the Mortgagor under any law regulation or procedure relating to reconstruction or adjustment of debts or

13 8 a petition is presented by any person for an administration order in relation to the Borrower or the Mortgagor or

13 9 any petition is presented by any person or any order is made by any competent court or any resolution is passed by the Borrower or the Mortgagor for its winding-up or dissolution or for the appointment of a liquidator of the Borrower or the Mortgagor or

13 10 if the Lender reasonably considers the security hereby created is in jeopardy or

13 11 if the Borrower (being an individual) commits an act of bankruptcy or appears unable to pay its debts within the meaning of section 268 of the Insolvency Act 1986

#### **14. ENFORCEMENT**

Sections 103 and 109 of the LPA shall not apply to this Charge and the statutory powers of sale and appointing a Receiver under sections 101 and 109 of the LPA (as varied and extended under this Charge) shall arise on the execution of this Charge and shall become immediately exercisable without the restrictions contained in the LPA as to the giving of notice or otherwise at any time after the Lender shall have demanded payment of any of the Secured Liabilities or after any breach by the Borrower or the Mortgagor of any of the provisions of this Charge or the occurrence of an Enforcement Event

#### **15. APPOINTMENT AND POWERS OF A RECEIVER**

- 15 1 At any time after the Lender shall have demanded payment of any of the Secured Liabilities or after any breach by the Borrower or the Mortgagor of any of the provisions of this Charge or the occurrence of an Enforcement Event or if requested by the Mortgagor the Lender may appoint by writing any person or persons (whether an officer of the Lender or not) to be a Receiver of all or any part of the Charged Property and where more than one Receiver is appointed they may be given power to act either jointly or severally
- 15 2 The Lender may from time to time determine the remuneration of the Receiver and may remove the Receiver and appoint another in his place
- 15 3 The Receiver shall (so far as the law permits) be the agent of the Mortgagor (who shall alone be personally liable for his acts defaults omissions and remuneration) and shall have and be entitled to exercise all powers conferred by the LPA and the Insolvency Act 1986 in the same way as if the Receiver had been duly appointed thereunder and in particular by way of addition to but without limiting any general powers referred to above (and without prejudice to any of the Lender's powers) the Receiver shall have power in the name of the Mortgagor or otherwise to do the following things namely
- 15 3 1 to take possession of collect and get in all or any part of the Charged Property and for that purpose to take any proceedings as he shall think fit
- 15 3 2 to commence and/or complete any building operations on the Property and to apply for and obtain any planning permissions building regulation approvals and any other permissions consents or licences in each case as he may in his absolute discretion think fit
- 15 3 3 for the purpose of exercising any of the rights powers authorities and discretions conferred on him by or pursuant to this Charge or for any other purpose to borrow monies from the Lender or others on the security of the Charged Property or otherwise on such terms as he may in his absolute discretion think fit
- 15 3 4 to provide such facilities and services for tenants and generally to manage the Property in such a manner as he shall think fit
- 15 3 5 if the Property is leasehold to vary the terms of or surrender any lease and/or to take a new lease of it or of any part of it on such terms as he shall think fit and so that any such new lease shall ipso facto become charged to the Lender on the terms of this Charge so far as applicable and to execute a formal legal charge over any such new lease in favour of the Lender in such form as the Lender may require



- 15 3 6      to sell transfer assign let or lease or concur in selling letting or leasing the Property or any part of it and the grant of any rights over the Property (either by public auction or private contract or otherwise) on such terms and conditions and for such consideration including without limitation shares securities (of any other company) or other investments payable at such time or times as he may in his absolute discretion think fit
- 15 3 7      to vary the terms of (including operation of rent reviews) terminate grant renewals of or accept surrenders of leases or tenancies of the Property or any part of it in such manner and for such terms with or without a premium or other compensation or consideration including the payment of money to a lessee or tenant on a surrender with such rights relating to other parts of the Property and containing such covenants on the part of the Mortgagor or otherwise and generally on such terms and conditions as in his absolute discretion he shall think fit
- 15 3 8      to make any arrangements or compromise which the Lender or he shall think fit whether in relation to any lease of the Property or to any covenants conditions or restrictions relating to the Property or without limitation otherwise
- 15 3 9      to make and effect all repairs and improvements to the Property
- 15 3 10     to enter into bonds covenants commitments guarantees indemnities and like matters and to make all payments needed to effect maintain or satisfy the same in relation to the Property
- 15 3 11     to settle adjust refer to arbitration compromise and arrange any claims accounts disputes questions and demands with or by any person who is or claims to be a creditor of the Mortgagor or relating in any way to the Charged Property
- 15 3 12     to effect such insurances of or in connection with the Charged Property as he shall in his absolute discretion think fit
- 15 3 13     to appoint managers officers contractors and agents for the aforesaid purposes upon such terms as to remuneration or otherwise as he may determine
- 15 3 14     to take any proceedings in relation to the Charged Property or any part thereof in the name of the Mortgagor or otherwise as may seem expedient including proceedings for the collection of rents in arrear at the date of his appointment
- 15 3 15     to manage the Business as agent for the Mortgagor in such manner as may be considered expedient and appoint managers agents officers security personnel and employees for such purpose and to dismiss the same and to continue to pay the salaries wages and other employment expenses of any employees of the Mortgagor and to dismiss such employees where appropriate in each case as agent for the Mortgagor
- 15 3 16     to do all such other acts and things as may be considered to be incidental or conducive to any of the matters or powers aforesaid and which he lawfully may or can do

Provided nevertheless that the Receiver shall not be authorised to exercise any of the above powers if and insofar and so long as the Lender shall in writing exclude the same whether in or at the time of his appointment or subsequently

15 4 Any monies received by the Receiver in the exercise of his powers under this Charge and under general law shall be (so far as the law permits) applied by him as follows

15 4 1 in payment of the costs charges and expenses of and incidental to his appointment and the exercise of all or any of his powers

15 4 2 in payment of his remuneration

15 4 3 in payment to the Lender of monies whether for principal interest or otherwise in arrear or accruing due under this Charge

and any balance shall be paid to the person or persons entitled to it

## **16. LENDER'S LIABILITY**

16 1 In no circumstances shall the Lender be liable to account to the Borrower or the Mortgagor as a mortgagee in possession or otherwise for any monies not actually received unconditionally and irrevocably by the Lender

16 2 In no circumstances shall the Lender be liable to the Borrower or the Mortgagor or any other person for any costs charges losses damages liabilities or expenses arising from or connected with any realisation of the Charged Property or from any act default omission or misconduct of the Lender its officers employees or agents in relation to the Charged Property or in connection with this Charge

## **17. PROTECTION OF THIRD PARTIES**

Any purchaser or any other person dealing with the Lender or any Receiver shall not be concerned to enquire whether the Secured Liabilities have become payable or whether any power which it or he is purporting to exercise has become exercisable or whether any money is due under this Charge or as to the application of any money paid raised or borrowed or as to the propriety or regularity of any sale by or other dealing with the Lender or such Receiver All the protection to purchasers contained in sections 104 and 107 of the LPA shall apply to any person purchasing from or dealing with the Lender or any Receiver

## **18. POWERS OF LEASING**

The statutory powers of sale leasing and accepting surrenders exercisable by the Lender are hereby extended so as to authorise the Lender whether in the name of the Lender or in that of the Mortgagor to grant a lease or leases of the whole or any part or parts of the Property with such rights relating to other parts of it and containing such covenants on the part of the Mortgagor and generally on such terms and conditions (including the payment of money to a lessee or tenant on a surrender) and whether or not at a premium as the Lender (in its absolute discretion) shall think fit and without the need to observe any of the provisions of sections 99 and 100 of the LPA

## **19. POWER OF ATTORNEY**

19 1 Each of the Borrower and the Mortgagor hereby irrevocably appoints the Lender and the Receiver jointly and also severally the attorney and attorneys of the Borrower and the Mortgagor for the Borrower and the Mortgagor and in the name and on behalf of the Borrower and the Mortgagor and as the act and deed of the Borrower and the Mortgagor or otherwise to sign and deliver execute as a deed and otherwise perfect any deed assurance agreement instrument or act which may be required or may be deemed proper for any of the

purposes referred to in or otherwise in connection with this Charge The Borrower and the Mortgagor each ratifies and confirms and agrees to ratify and confirm whatever any attorney appointed under this clause properly does or purports to do in the exercise of all or any of the powers authorities and discretions granted or referred to in this Charge

- 19 2 The power of attorney hereby granted is irrevocable and for value as part of the security constituted by this Charge

## **20. LENDER'S RIGHTS**

- 20 1 All powers of the Receiver may be exercised by the Lender whether as attorney of the Mortgagor or otherwise and without rendering the Lender mortgagee in possession

- 20 2 The Mortgagor agrees that at any time after this Charge becomes enforceable

20 2 1 upon any sale or other disposition in exercise of the powers contained or implied by this Charge the Lender may sever any fixtures from the Property and sell the same 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 Liabilities

20 2 2 it shall be lawful for the Lender to enter into any arrangement or accept any composition in relation to the debts hereby charged without the concurrence of the Mortgagor and any such arrangement or composition shall be binding on the Mortgagor

- 20 3 The Lender shall on receiving notice that the Mortgagor has encumbered or disposed of the Charged Property or any part of it or any interest in it be entitled to close any account or accounts of the Borrower and/or the Mortgagor and to open a new account or accounts with the Borrower and/or the Mortgagor and (without prejudice to any right of the Lender to combine accounts) no money paid into or carried to the credit of any such new account shall be appropriated towards or have the effect of discharging any part of the amount due to the Lender on any such closed account If the Lender does not open a new account or accounts immediately on receipt of such notice it shall nevertheless be treated as if it had done so at the time when it received such notice and as from that time all payments made by the Borrower and/or the Mortgagor to the Lender shall be credited or be treated as having been credited to such new account or accounts and shall not operate to reduce the amount due from the Borrower and/or the Mortgagor to the Lender when it received such notice

## **20 4**

20 4 1 In the event of the Lender or any Receiver taking possession of the Property or if the Lender proposes to exercise its power of sale over the Property the Lender or any Receiver is hereby authorised as agent of the Mortgagor to remove warehouse store sell or otherwise deal with any moveable plant and machinery implements utensils furniture goods and equipment and neither the Lender nor any Receiver shall be liable for any loss or damage occasioned by the Mortgagor

20 4 2 The Mortgagor hereby grants the Lender and any Receiver an irrevocable payment free licence to use any such moveable plant and machinery implements utensils furniture goods and equipment for all purposes connected with the Property or the Business for so long as they may require

20 4 3 The Borrower and the Mortgagor shall jointly and severally indemnify the Lender and any Receiver against all expenses incurred by the Lender or any Receiver in

relation to such moveable plant and machinery implements utensils furniture goods and equipment including expenses of sale removal and storage and against all liability to any third party in respect thereof and the net proceeds of sale thereof may be applied by the Lender in or towards satisfaction of the Secured Liabilities. The Lender or its Receiver shall not be liable to the Borrower or the Mortgagor for any act or omission by any person appointed by it or him to effect such sale or for any failure by any such person to obtain a proper price provided only that such appointment shall have been made by the Lender or such receiver in good faith

## **21. COSTS AND EXPENSES**

21 1 The Borrower and the Mortgagor shall on demand and on a full indemnity basis pay to the Lender

21 1 1 the amount of all costs and expenses (including legal and out-of-pocket expenses and any value added tax on such costs and expenses) which the Lender and any Receiver appointed by the Lender incurs in connection with

21 1 1 1 the preparation negotiation execution and delivery of this Charge and any related document

21 1 1 2 any stamping or registration of this Charge

21 1 1 3 any actual or proposed amendment of or waiver or consent under or in connection with this Charge

21 1 1 4 any discharge or release of this Charge

21 1 1 5 the preservation or exercise (or attempted preservation or exercise) of any rights under or in connection with and the enforcement (or attempted enforcement) of this Charge and any related document

21 1 1 6 obtaining payment of the Secured Liabilities

21 1 1 7 dealing with or obtaining advice about any other matter or question arising out of or in connection with this Charge and any related document

21 1 2 all other monies paid by the Lender in perfecting or otherwise in connection with this Charge or in respect of the Charged Property including without limitation all monies expended by the Lender under clause 12 4 and all monies advanced or paid by the Lender to any Receiver for the purposes set out in clause 15 3 3

21 2 Such costs expenses and other monies shall be recoverable from the Borrower or the Mortgagor as a debt and may be debited to any account of the Borrower or the Mortgagor and shall bear interest accordingly at the Default Rate and shall be charged on the Charged Property

## **22. CONTINUING SECURITY**

22 1 This Charge shall be a continuing security to the Lender notwithstanding any settlement of account or other matter or thing whatsoever and shall be in addition to and shall not prejudice or affect or be prejudiced or affected by any security relating to the Charged Property or to

any other property or any other security which the Lender may now or at any time in the future hold in respect of the Secured Liabilities or any of them and shall continue in full force and effect as a continuing security until discharged

22 2 Section 93 of the LPA shall not apply to this Charge

### **23. SET-OFF**

23 1 The Lender may without notice to the Borrower or the Mortgagor apply any credit balance (whether or not then due and in whatever currency) which is at any time held by the Lender for the account of either the Borrower or the Mortgagor in or towards satisfaction of the Secured Liabilities or any of them

23 2 For the purposes of exercising any rights either under this clause or any rights under the general law the Lender may convert or translate all or any part of such a credit balance into another currency applying a rate which in the Lender's opinion fairly reflects prevailing rates of exchange

23 3 The Lender is not obliged to exercise any of its rights under this clause which shall be without prejudice and in addition to any rights under the general law

23 4 In this clause "**rights under the general law**" means any right of set-off combination or consolidation of accounts lien or similar right which the Lender has under any applicable law

### **24. NOTICES**

24 1 Every notice demand or other communication under this Charge shall be in writing and may be delivered personally or by letter despatched as follows

24 1 1 if to the Lender to its address specified at the head of this Charge

24 1 2 if to the Borrower or the Mortgagor to their respective addresses specified at the head of this Charge or their registered or principal offices for the time being or to such other addresses as may be notified in accordance with this clause by the relevant party to the other party for such purpose

24 2 Every notice demand or other communication shall be deemed to have been received (if sent by post) 24 hours after despatch and (if delivered personally or despatched by facsimile) at the time of delivery during normal business hours in the place of intended receipt on a working day in that place and otherwise at the opening of business in that place on the next succeeding such working day

24 3 Any notices demands or other communication as aforesaid to be given by the Lender may be made by a manager of the Lender or by any person or firm acting as solicitor or solicitors for the Lender

### **25. TRANSFERS**

25 1 This Charge is freely assignable or transferable by the Lender

25 2 The Borrower and the Mortgagor may not assign or transfer any of its obligations under this Charge or enter into any transaction which would result in any of those obligations passing to another person

- 25 3 The Lender may disclose to any person related to the Lender and/or any person to whom it is proposing to transfer or assign or has transferred or assigned this Charge any information about the Borrower or the Mortgagor

## **26. MISCELLANEOUS**

- 26 1 No delay or omission on the part of the Lender in exercising any right or remedy under this Charge shall impair that right or remedy or operate as or be taken to be a waiver of it nor shall any single partial or defective exercise of any such right or remedy preclude any other or further exercise under this Charge of that or any other right or remedy
- 26 2 The Lender's rights under this Charge are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Lender deems expedient
- 26 3 Any waiver by the Lender of any terms of this Charge or any consent or approval given by the Lender under it shall only be effective if given in writing and then only for the purpose and upon the terms and conditions if any on which it is given
- 26 4 If at any time any one or more of the provisions of this Charge is or becomes illegal invalid or unenforceable in any respect under any law of any jurisdiction neither the legality validity and enforceability of the remaining provisions of this Charge nor the legality validity or enforceability of such provision under the law of any other jurisdiction shall be in any way affected or impaired as a result
- 26 5 Any certificate or determination of the Lender as to the amount of the Secured Liabilities shall in the absence of manifest error be conclusive and binding on the Borrower and the Mortgagor
- 26 6 The Borrower and the Mortgagor each certify that this Charge does not contravene any of the provisions of their respective memorandum and articles of association
- 26 7 Nothing contained in clauses 3 1 2 to 3 1 6 shall constitute the Lender as a mortgagee in possession

## **27. LAW AND JURISDICTION**

- 27 1 This Charge is governed by and shall be construed in accordance with English law
- 27 2 The Borrower and the Mortgagor irrevocably agrees for the benefit of the Lender that the courts of England shall have jurisdiction to hear and determine any suit action or proceeding and to settle any dispute which may arise out of or in connection with this Charge and for such purposes hereby irrevocably submits to the jurisdiction of such courts
- 27 3 Nothing contained in this clause shall limit the right of the Lender to take proceedings against the Borrower or the Mortgagor in any other court of competent jurisdiction nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction whether concurrently or not (unless precluded by applicable law)
- 27 4 The Borrower and the Mortgagor each irrevocably waive any objection which they may have now or in the future to the courts of England being nominated for the purpose of this clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum

**28. REGISTERED LAND**

The Mortgagor hereby applies to the District Land Registrar for a restriction in the following terms to be entered on the register of the Mortgagor's title to the Property

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction is to be registered without a written consent signed by the proprietor for the time being of the charge dated *X 2 August 2013* *X* in favour of Close Brothers Limited referred to in of the charges register"

## **SCHEDULE**

### **Part 1: Property**

All that freehold land known as 49-51 (odd numbers) Balls Pond Road, London N1 4BW as is registered at the Land Registry with title number NGL372503

### **Part 2: Prior Charges**

A legal charge dated 13 March 2009 in favour of Pearce Properties Limited

### **Part 3: Agreements**

None



EXECUTED as a deed (but not delivered until )  
the date hereof) by **ENGLISH ROSE** )  
**ESTATES LIMITED** acting by two directors )  
or a director and its secretary )

Director

Director/~~Secretary~~

EXECUTED as a deed (but not delivered until )  
the date hereof) by **ABERCORN ESTATES** )  
**LIMITED** acting by two directors or a director )  
and its secretary )

Director

~~Director~~/Secretary

SIGNED by **GARY PADDISON** on behalf of )  
the **LENDER** )