



**Registration of a Charge**

Company Name: **PLANKS CLOTHING LTD**

Company Number: **07086504**



Received for filing in Electronic Format on the: **12/01/2022**

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**Details of Charge**

Date of creation: **22/12/2021**

Charge code: **0708 6504 0003**

Persons entitled: **BCH DEVELOPMENTS LTD**

Brief description:

**Contains fixed charge(s).**

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

**Authentication of Form**

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

**Authentication of Instrument**

Certification statement: **I CERTIFY THAT THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **LAUREN CROSBIE**



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

Company number: 7086504

Charge code: 0708 6504 0003

The Registrar of Companies for England and Wales hereby certifies that a charge dated 22nd December 2021 and created by PLANKS CLOTHING LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 12th January 2022 .

Given at Companies House, Cardiff on 13th January 2022

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**



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22/12/ 2021

## Debenture

between

**01 Planks Clothing Limited**

and

**02 B.C.H. Developments Limited**

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**THIS DEED** is dated

22/12/2021

## **PARTIES**

- (1) **PLANKS CLOTHING LIMITED** incorporated and registered in England and Wales with company number 07086504 whose registered office is at Suite 6 Basil Chambers, 65 High Street, Manchester, England, M4 1FS (**Company**);
- (2) **B.C.H. DEVELOPMENTS LIMITED** incorporated and registered in England and Wales with company number 01983575 whose registered office is at Lea Head Manor, Aston, Market Drayton, Shropshire, TF9 4JA (**Lender**).

## **BACKGROUND**

- (A) The Lender has agreed to provide loan capital to the Company in the form of loan which is to be secured by this Deed.
- (B) Under this Deed, the Company provides security Lender for the Secured Liabilities (as defined below).

## **AGREED TERMS**

### **1 Definitions and Interpretation**

#### **1.1 Definitions**

The following definitions apply in this deed:

#### **Administrator**

an administrator appointed to manage the affairs, business and property of the Companies under clause 12.9.

#### **Book Debts**

all present and future book and other debts, and monetary claims due or owing to the Companies and the benefit of all security, guarantees and other rights of any nature enjoyed or held by the Companies in relation to any of them.

#### **Business Day**

a day (other than a Saturday or Sunday) on which commercial banks are open for general business in London.

#### **Delegate**

any person appointed by the Lender or any Receiver under clause 17 and any person appointed as attorney of the Lender, Receiver or Delegate.

#### **Environment**

the natural and man-made environment including all or any of the following media, namely air, water and land (including air within buildings and other natural or man-made structures above or below the ground) and any living organisms (including man) or systems supported by those media.

#### **Environmental Law**

all applicable laws, statutes, regulations, secondary legislation, bye-laws, common law, directives, treaties and other measures, judgments and decisions of any court or tribunal, codes of practice and guidance notes in so far as they relate to or apply to the Environment.

#### **Equipment**

all present and future equipment, plant, machinery, tools, vehicles, furniture, fittings, installations and apparatus and other tangible moveable property for the time being owned by

each Company, including any part of it and all spare parts, replacements, modifications and additions.

**Existing Security**

(1) the debenture dated the 26 October 2018 in favour of Bibby Financial Services Limited (company number: 03530461) by the Company and (2) the debenture dated the 12 May 2017 in favour of Crowd2Fund Limited (company number: 08472687) by the Company.

**Financial Collateral**

has the meaning given to that expression in the Financial Collateral Regulations.

**Financial Collateral Regulations**

the Financial Collateral Arrangements (No 2) Regulations 2003 (*SI 2003/3226*).

**Insurance Policy**

each contract and policy of insurance effected or maintained by each Company from time to time in respect of its assets or business (including, without limitation, any insurances relating to the Properties or the Equipment).

**Intellectual Property**

each Company's present and future patents, trade marks, service marks, trade names, designs, copyrights, inventions, topographical or similar rights, confidential information and know-how and any interest in any of these rights, whether or not registered, including all applications and rights to apply for registration and all fees, royalties and other rights derived from, or incidental to, these rights.

**Investments**

all present and future certificated stocks, shares, loan capital, securities, bonds and investments (whether or not marketable) for the time being owned (at law or in equity) by each Company, including all rights accruing or incidental to those investments from time to time, and, for the avoidance of doubt, including the entire issued share capital of the Company's Subsidiaries from time to time.

**LPA 1925**

Law of Property Act 1925.

**Properties**

all freehold and leasehold properties (whether registered or unregistered) and all commonhold properties, now or in the future (and from time to time) owned by each Company, or in which each Company holds an interest and **Property** means any of them.

**Receiver**

a receiver, receiver and manager or administrative receiver of any or all of the Secured Assets appointed by the Lender under clause 15.

**Secured Assets**

all the assets, property and undertaking for the time being subject to the Security Interests created by, or under, this Deed.

**Secured Liabilities** means all monies, obligations and liabilities whether principal, interest or otherwise which may now or at any time in the future be due or owing or incurred by the Company to the Lender (whether actual or contingent and whether incurred alone or jointly with another as principal, guarantor, surety or otherwise and in whatever name or style) together with interest, charges and other expenses.

**Security Financial Collateral Arrangement**

has the meaning given to that expression in the Financial Collateral Regulations.

**Security Interest**

any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect.

**Security Period**

the period starting on the date of this Deed and ending on the date on which the Lender is satisfied that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding.

**Subsidiaries**

a subsidiary as defined in section 1159 of the Companies Act 2006 and for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), a company shall be treated as a member of another company even if its shares in that other company are registered in the name of:

- (a) another person (or its nominee), by way of security or in connection with the taking of security; or
- (b) its nominee.

1.2 **Interpretation**

In this deed any reference to:

- 1.2.1 statutes, statutory provisions and other legislation shall include all amendments, substitutions, modifications and re-enactments for the time being in force;
- 1.2.2 this Deed and to any provisions of it or to any other document referred to in this Deed shall be construed as references to it in force for the time being and as amended, varied, supplemented, restated, substituted or novated from time to time;
- 1.2.3 words in the singular also include the plural, and words in the plural shall include the singular;
- 1.2.4 Clauses are to Clauses of this Deed;
- 1.2.5 a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, or any state or any agency of any person;
- 1.2.6 an **amendment** includes a novation, re-enactment, supplement or variation (and **amended** shall be construed accordingly);
- 1.2.7 to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;
- 1.2.8 to the **Company** or the **Lender** shall include its successors, permitted transferees and permitted assigns; and
- 1.2.9 clause headings shall not affect the interpretation of this Deed.

## 1.3 A reference in this Deed to a charge or mortgage of or over any Property includes:

- 1.3.1 all buildings and fixtures and fittings (including trade and tenant's fixtures and fittings) that are situated on or form part of that Property at any time;
- 1.3.2 the proceeds of the sale of any part of that Property and any other monies paid or payable in respect of or in connection with that Property;

- 1.3.3 the benefit of any covenants for title given, or entered into, by any predecessor in title of the Company in respect of that Property, and any monies paid or payable in respect of those covenants; and
- 1.3.4 all rights under any licence, agreement for sale or agreement for lease in respect of that Property.
- 1.4 For the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the Loan Agreement and of any side letters between any parties in relation to the Loan Agreement are incorporated into this Deed.
- 1.5 A third party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce, or to enjoy the benefit of, any term of this Deed.
- 1.6 If the rule against perpetuities applies to any trust created by this Deed, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).

## **2 Covenant to Pay**

The Company covenants with the Lender that it will on demand pay and discharge the Secured Liabilities when due to the Lender.

## **3 Grant of security**

- 3.1 As a continuing security for the payment and discharge of the Secured Liabilities under clause 2 above, subject to the Existing Security the Company with full title guarantee:
  - 3.1.1 charges to the Lender by way of legal mortgage, all of the Properties vested in or charged in the Company together with all buildings and fixtures thereon;
  - 3.1.2 charges by way of fixed charge:
    - (a) all Properties acquired by the Company in the future;
    - (b) all present and future interests of the Company not effectively mortgaged or charged under the preceding provisions of this clause 3 in, or over, freehold or leasehold property;
    - (c) all present and future rights, licences, guarantees, rents, deposits, contracts, covenants and warranties relating to each Property;
    - (d) all licences, consents and authorisations (statutory or otherwise) held or required in connection with the Company's business or the use of any Secured Asset, and all rights in connection with them;
    - (e) all its present and future goodwill;
    - (f) all its uncalled capital;
    - (g) all the Equipment;
    - (h) all the Intellectual Property;
    - (i) all the Book Debts;
    - (j) all the Investments;
    - (k) all monies from time to time standing to the credit of its accounts with any bank, financial institution or other person;



- (l) all its rights in respect of each Insurance Policy, including all claims, the proceeds of all claims and all returns of premiums in connection with each Insurance Policy, to the extent not effectively assigned under clause 3.1.3(a); and
  - (m) all its rights in respect of all other agreements, instruments and rights relating to the Secured Assets, to the extent not effectively assigned under clause 3.1.3(b);
- 3.1.3 assigns to the Lender absolutely, subject to a proviso for reassignment on irrevocable discharge in full of the Secured Liabilities all its rights:
  - (a) in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premium in connection with each Insurance Policy; and
  - (b) the benefit of all other agreements, instruments and rights relating to the Secured Assets; and
- 3.1.4 charges to the Lender, by way of floating charge, all the undertaking, property, assets and rights of the Company at any time not effectively mortgaged, charged or assigned under clause 3.1.1 to clause 3.1.3 inclusive.
- 3.1.5 Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created by clause 3.1.4.
- 3.2 The floating charge created by clause 3.1.4 shall automatically and immediately (without notice) be converted into a fixed charge over the assets subject to that floating charge if:
  - 3.2.1 the Company:
    - (a) creates, or attempt to create, without the prior written consent of the Lender, a Security Interest or a trust in favour of another person over all or any part of the Secured Assets; or
    - (b) disposes, or attempts to dispose of, all or any part of the Secured Assets (other than Secured Assets that are only subject to the floating charge while it remains uncrystallised);
  - 3.2.2 any person levies (or attempts to levy) any distress, attachment, execution or other process against all or any part of the Secured Assets; or
  - 3.2.3 a resolution is passed or an order is made for the winding-up, dissolution, administration or re-organisation of the Company.
- 3.3 The Lender may, in its sole discretion, by written notice to the Company, convert the floating charge created under this Deed into a fixed charge as regards any part of the Secured Assets specified by the Lender in that notice if the Lender considers those assets to be in danger of being seized or sold under any form of distress, attachment, execution or other legal process or to be otherwise in jeopardy.
- 3.4 Any asset acquired by the Company after any crystallisation of the floating charge created under this Deed that, but for that crystallisation, would be subject to a floating charge under this Deed, shall (unless the Lender confirms otherwise to the Company in writing) be charged to the Lender by way of fixed charge.

#### **4 Liability of the Company**

- 4.1 The Company's liability under this Deed in respect of any of the Secured Liabilities shall not be discharged, prejudiced or affected by:
  - 4.1.1 any security, guarantee, indemnity, remedy or other right held by, or available to, the Lender that is, or becomes, wholly or partially illegal, void or unenforceable on any ground;

- 4.1.2 the Lender renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person (including, without limitation, the Company); or
  - 4.1.3 any other act or omission that, but for this clause 4.1, might have discharged, or otherwise prejudiced or affected, the liability of the Company.
- 4.2 The Company waives any right it may have to require the Lender to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this Deed against the Company.

## **5 Representations and warranties**

- 5.1 The Company makes the representations and warranties set out in this clause 5 to the Lender.
- 5.2 The Company is the legal and beneficial owner of the Secured Assets.
- 5.3 The Secured Assets are free from any Security Interest other than the Security Interests created by this Deed and any Existing Security.
- 5.4 There are no covenants, agreements, reservations, conditions, interests, rights or other matters whatsoever that materially and adversely affect the Secured Assets.
- 5.5 There is no breach of any law or regulation by any Company that materially and adversely affects the Secured Assets.
- 5.6 No facility necessary for the enjoyment and use of the Secured Assets is subject to terms entitling any person to terminate or curtail its use in circumstances where such termination or curtailment would materially and adversely affect the Secured Assets.
- 5.7 As far as the Company is aware, having made all diligent enquiries, nothing has arisen, has been created or is subsisting, that would be an overriding interest in any Property.
- 5.8 There is no prohibition on assignment in any Insurance Policy and the entry into this Deed by the Company does not, and will not, constitute a breach of any Insurance Policy or any other agreement or instrument binding on the Company or its assets.
- 5.9 The Company has, at all times, complied in all material respects with all applicable Environmental Law.
- 5.10 Subject to certain legal reservations and principles of law, this Deed constitutes and will constitute the legal, valid, binding and enforceable obligations of the Company, and is and will continue to be effective security over all and every part of the Secured Assets in accordance with its terms.
- 5.11 The representations and warranties set out in clauses 5.2 to 5.10 inclusive are made by the Company on the date of this Deed and the representations and warranties contained in clauses 5.2 to 5.10 are deemed to be repeated on each day of the Security Period with reference to the facts and circumstances existing at the time of repetition.

## **6 General covenants**

- 6.1 The Company shall not at any time, except with the prior written consent of the Lender:
  - 6.1.1 create, purport to create or permit to subsist any Security Interest on, or in relation to, any Secured Asset other than any Security Interest created by this Deed and any Existing Security;
  - 6.1.2 sell, assign, transfer, part with possession of, or otherwise dispose of in any manner (or purport to do so), all or any part of, or any interest in, the Secured Assets (except, in the

ordinary course of business, Secured Assets that are only subject to an uncrystallised floating charge); or

- 6.1.3 create or grant (or purport to create or grant) any interest in the Secured Assets in favour of a third party.
- 6.2 The Company shall not do, or permit to be done, any act or thing that would or might depreciate, jeopardise or otherwise prejudice the security held by the Lender, or materially diminish the value of any of the Secured Assets or the effectiveness of the security created by this Deed.
- 6.3 **Compliance with laws and regulations**
  - 6.3.1 The Company shall not use or permit the Secured Assets to be used in any way contrary to law.
  - 6.3.2 Where to not do so in the opinion of the Lender (acting reasonably) might depreciate, jeopardise or otherwise prejudice the security held by the Lender, or materially diminish the value of any of the Secured Assets or the effectiveness and/or enforceability of the security created by this Deed, the Company shall:
    - (a) comply with the requirements of any law and regulation relating to or affecting the Secured Assets or the use of it or any part of them;
    - (b) obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Secured Assets or their use or that are necessary to preserve, maintain or renew any Secured Asset; and
    - (c) promptly effect any maintenance, modifications, alterations or repairs that are required by any law or regulation to be effected on or in connection with the Secured Assets.
- 6.4 The Company shall use all reasonable endeavours to:
  - 6.4.1 procure the prompt observance and performance of the covenants and other obligations imposed on the Company's counterparties (including each insurer in respect of an Insurance Policy); where to not do so in the opinion of the Lender (acting reasonably) might depreciate, jeopardise or otherwise prejudice the security held by the Lender or materially diminish the value of any of the Secured Assets or the effectiveness and/or enforceability of the security created by this Deed; and
  - 6.4.2 enforce any rights and institute, continue or defend any proceedings relating to any of the Secured Assets which the Lender may reasonably require from time to time.
- 6.5 The Company shall, promptly on becoming aware of any of the same, give the Lender notice in writing of:
  - 6.5.1 any representation or warranty set out in this Deed that is incorrect or misleading in any material respect when made or deemed to be repeated; and
  - 6.5.2 any breach of any covenant set out in this Deed.
- 6.6 The Company shall, as so required by the Lender, deposit with the Lender and the Lender shall, for the duration of this Deed be entitled to hold:
  - 6.6.1 all deeds and documents of title relating to the Secured Assets that are in the possession or control of the Company (and if these are not within the possession or control of the Company, the Company undertakes to obtain possession of all these deeds and documents of title);
  - 6.6.2 all Insurance Policies and any other insurance policies relating to any of the Secured Assets that the Company is entitled to possess; and

- 6.6.3 all deeds and documents of title (if any) relating to the Book Debts as the Lender may specify from time to time.

## 6.7 Insurance

The Company shall:

- 6.7.1 promptly pay all premiums in respect of each Insurance Policy maintained by it and do all other things necessary to keep that policy in full force and effect; and
- 6.7.2 (if the Lender so requires and subject to the right of any prior charge holder) produce to, or deposit with, the Lender the receipts for all premiums and other payments necessary for effecting and keeping up each Insurance Policy maintained by it.
- 6.8 The Company shall not do or omit to do, or permit to be done or omitted, any act or thing that may invalidate or otherwise prejudice any Insurance Policy maintained by it.
- 6.9 All monies received or receivable by the Company under any Insurance Policy maintained by it (including all monies received or receivable by it under any Insurance Policy) at any time (whether or not the security constituted by this Deed has become enforceable) shall:
  - 6.9.1 if they are not paid directly to the Lender by the insurers, be held by the Company as trustee of the same for the benefit of the Lender (and the Company shall account for them to the Lender); and
  - 6.9.2 be applied in making good or recouping expenditure in respect of the loss or damage for which those monies are received or, after the security constituted by this Deed has become enforceable and if the Lender so directs, in or towards discharge or reduction of the Secured Liabilities.
- 6.10 The Company shall, if requested by the Lender:
  - 6.10.1 give notice (in a form satisfactory to the Lender) to each insurer that it has assigned its rights and interest in and under each Insurance Policy under clause 3.1.3(a), and shall use reasonable endeavours to procure that each addressee of any such notice promptly provides within five Business Days to the Lender an acknowledgement of the notice of the Lender's interest; and
  - 6.10.2 give notice (in a form satisfactory to the Lender) to any bank, financial institution or other person (excluding the Lender) with whom it has an account that it has charged to the Lender its rights and interests under that account under clause 3.1.2(k) and shall use reasonable endeavours to procure that each addressee of any such notice promptly provides within five (5) Business Days to the Lender an acknowledgement of the notice of the Lender's interest.

The Company shall obtain the Lender's prior approval of the form of any notice or acknowledgement to be used under this clause 6.10.

## 6.11 The Company shall:

- 6.11.1 give the Lender such information concerning the location, condition, use and operation of the Secured Assets as the Lender may require;
- 6.11.2 permit any persons designated by the Lender and any Receiver to enter on its premises and inspect and examine any Secured Asset, and the records relating to that Secured Asset, at all reasonable times and on reasonable prior notice; and
- 6.11.3 promptly notify the Lender in writing of any action, claim or demand made by or against it in connection with any Secured Asset or of any fact, matter or circumstance which may, with the passage of time, give rise to such an action, claim or demand, together

with, in each case, the Company's proposals for settling, liquidating, compounding or contesting any such action, claim or demand and shall, subject to the Lender's prior approval, implement those proposals at its own expense.

- 6.12 The Company shall promptly pay all taxes, fees, licence duties, registration charges, insurance premiums and other outgoings in respect of the Secured Assets and, on demand, produce evidence of payment to the Lender.

## **7 Property covenants**

- 7.1 The Company shall keep all buildings and all fixtures on each Property in good and substantial repair and condition.

- 7.2 The Company shall not, without the prior written consent of the Lender:

- 7.2.1 pull down or remove the whole, or any part of, any building forming part of any Property or permit the same to occur;
- 7.2.2 make or permit any material alterations to any Property, or sever or remove, or permit to be severed or removed, any of its fixtures; or
- 7.2.3 remove or make any material alterations to any of the Equipment belonging to, or in use by, the Company on any Property (except to effect necessary repairs or replace them with new or improved models or substitutes).

- 7.3 The Company shall carry on its trade and business on those parts (if any) of the Properties as are used for the purposes of trade or business in accordance with the standards of good management from time to time current in that trade or business.

- 7.4 The Company shall:

- 7.4.1 give full particulars to the Lender of any notice, order, direction, designation, resolution or proposal given or made by any planning authority or other public body or authority (**Planning Notice**) that specifically applies to any Property, or to the locality in which it is situated, within seven (7) days after becoming aware of the relevant Planning Notice; and
- 7.4.2 (if the Lender so requires) immediately, and at the cost of the Company, take all reasonable and necessary steps to comply with any Planning Notice, and make, or join with the Lender in making, any objections or representations in respect of that Planning Notice that the Lender may desire.

- 7.5 The Company shall:

- 7.5.1 observe and perform all covenants, stipulations and conditions to which each Property, or the use of it, is or may be subjected, and (if the Lender so requires) produce evidence sufficient to satisfy the Lender that those covenants, stipulations and conditions have been observed and performed;
- 7.5.2 diligently enforce all covenants, stipulations and conditions benefiting each Property and shall not (and shall not agree to) waive release or vary any of the same; and
- 7.5.3 (without prejudice to the generality of the foregoing) where a Property, or part of it, is held under a lease, duly and punctually pay all rents due from time to time, and perform and observe all the tenant's covenants and conditions.

- 7.6 The Company shall:

- 7.6.1 where a Property, or part of it, is held under a lease, duly and punctually pay all rents due from time to time; and

- 
- 7.6.2 pay (or procure payment of the same) when due all charges, rates, taxes, duties, assessments and other outgoings relating to or imposed on each Property or on its occupier.
- 7.7 The Company shall not, without the prior written consent of the Lender:
- 7.7.1 grant, or agree to grant, any licence or tenancy affecting the whole or any part of any Property, or exercise, or agree to exercise, the statutory powers of leasing or of accepting surrenders under sections 99 or 100 of the Law of Property Act 1925; or
- 7.7.2 in any other way dispose of, surrender or create, or agree to dispose of surrender or create, any legal or equitable estate or interest in the whole or any part of any Property.
- 7.8 If the title to any Property is not registered at the Land Registry, the Company shall procure that no person (other than itself) shall be registered under the Land Registration Act 2002 as proprietor of all or any part of any Property without the prior written consent of the Lender. The Company shall be liable for the costs and expenses of the Lender in lodging cautions against the registration of the title to the whole or any part of any Property from time to time.
- 7.9 The Company shall not, without the prior written consent of the Lender:
- 7.9.1 make or, insofar as it is able, permit others to make any application for planning permission or development consent in respect of the Property; or
- 7.9.2 carry out, or permit, or suffer to be carried out on any Property any development as defined in the Town and Country Planning Act 1990 and the Planning Act 2008, or change or permit or suffer to be changed the use of any Property.
- 7.10 The Company shall:
- 7.10.1 comply with all the requirements of Environmental Law both in the conduct of its general business and in the management, possession or occupation of each Property; and
- 7.10.2 obtain and comply with all authorisations, permits and other types of licences necessary under Environmental Law.
- 7.11 The Company shall not, without the prior written consent of the Lender, enter into any onerous or restrictive obligations affecting the whole or any part of any Property, or create or permit to arise any overriding interest, easement or right whatever in or over the whole or any part of any Property.
- 7.12 The Company shall procure that no person shall become entitled to assert any proprietary or other like right or interest over the whole or any part of any Property without the prior written consent of the Lender.
- 7.13 The Company shall permit the Lender, any Receiver and any person appointed by either of them to enter on and inspect any Property on reasonable prior notice.
- 7.14 The Company shall inform the Lender promptly of any acquisition by the Company, or contract made by the Company to acquire, any freehold, leasehold or other interest in any property.
- 7.15 The Company shall not, without the prior written consent of the Lender:
- 7.15.1 exercise any VAT option to tax in relation to any Property; or
- 7.15.2 revoke any VAT option to tax exercised, and disclosed to the Lender, before the date of this Deed.

- 7.16 The Company consents to an application being made by the Lender to the Land Registrar for the following restriction in Form P to be registered against its title to each Property at HM Land Registry:

*“No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction is to be registered without a written consent signed by the proprietor for the time being of the charge dated [DATE] in favour of [NAME OF COMPANY] referred to in the charges register.”*

## **8 Investments covenants**

### **8.1 Nominations**

- 8.1.1 The Company shall terminate with immediate effect all nominations it may have made (including, without limitation, any nomination made under section 145 or section 146 of the Companies Act 2006) in respect of any Investments and, pending that termination, procure that any person so nominated:

- (a) does not exercise any rights in respect of any Investments without the prior written approval of the Lender; and
- (b) immediately on receipt by it, forward to the Lender all communications or other information received by it in respect of any Investments for which it has been so nominated.

- 8.1.2 The Company shall not, during the Security Period, exercise any rights (including, without limitation, any rights under sections 145 and 146 of the Companies Act 2006) to nominate any person in respect of any of the Investments.

### **8.2 Additional registration obligations**

The Company shall:

- 8.2.1 obtain all consents, waivers, approvals and permissions that are necessary, under the articles of association of any issuer that is not a public company or otherwise, for the transfer of the Investments to the Lender or its nominee, or to a purchaser on enforcement of this Deed; and
- 8.2.2 procure the amendment of the share transfer provisions (including, but not limited to, deletion of any pre-emption provisions) of the articles of association of each issuer that is not a public company in any manner that the Lender may require in order to permit such a transfer.

### **8.3 Dividends and voting rights before enforcement**

- 8.3.1 Before the security constituted by this Deed becomes enforceable, the Company may retain and apply for its own use all dividends, interest and other monies paid or payable in respect of the Investments and, if any are paid or payable to the Lender or any of its nominees, the Lender will hold all those dividends, interest and other monies received by it for the Company and will pay them to the Company promptly on request.
- 8.3.2 Before the security constituted by this Deed becomes enforceable, the Company may exercise all voting and other rights and powers in respect of the Investments or, if any of the same are exercisable by the Lender of any of its nominees, to direct in writing the exercise of those voting and other rights and powers provided that:
  - (a) it shall not do so in any way that would breach any provision of this Deed or for any purpose inconsistent with this Deed; and

- (b) the exercise of, or the failure to exercise, those voting rights or other rights and powers would not, in the Lender's opinion, have an adverse effect on the value of the Investments or otherwise prejudice the Lender's security under this Deed.

8.3.3 The Company shall indemnify the Lender against any loss or liability incurred by the Lender (or its nominee) as a consequence of the Lender (or its nominee) acting in respect of the Investments at the direction of the Company.

8.3.4 The Lender shall not, by exercising or not exercising any voting rights or otherwise, be construed as permitting or agreeing to any variation or other change in the rights attaching to or conferred by any of the Investments that the Lender considers prejudicial to, or impairing the value of, the security created by this Deed.

#### **8.4 Dividends and voting rights after enforcement**

After the security constituted by this Deed has become enforceable:

8.4.1 all dividends and other distributions paid in respect of the Investments and received by the Company shall be held by the Company on trust for the Lender or, if received by the Lender, shall be retained by the Lender; and

8.4.2 all voting and other rights and powers attaching to the Investments shall be exercised by, or at the direction of, the Lender and the Company shall, and shall procure that its nominees shall, comply with any directions the Lender may give, in its absolute discretion, concerning the exercise of those rights and powers.

#### **8.5 Calls on Investments**

The Company shall promptly pay all calls, instalments and other payments that may be or become due and payable in respect of all or any of the Investments. The Company acknowledges that the Lender shall not be under any liability in respect of any such calls, instalments or other payments.

8.6 No alteration of constitutional documents or rights attaching to Investments  
The Company shall not, without the prior written consent of the Lender, amend, or agree to the amendment of:

8.6.1 the memorandum or articles of association, or any other constitutional documents, of the Company or of any of the Company's Subsidiaries; or

8.6.2 the rights or liabilities attaching to any of the Investments.

#### **8.7 Preservation of Investments**

The Company shall ensure (as far as it is able to by the exercise of all voting rights, powers of control and other means available to it) that any issuer that is not a public company shall not without the prior written consent of the Lender:

8.7.1 consolidate or subdivide any of its Investments, or reduce or re-organise its share capital in any way;

8.7.2 issue any new shares or stock; or

8.7.3 refuse to register any transfer of any of its Investments that may be lodged for registration by, or on behalf of, the Lender or any Company in accordance with this Deed.

### **9 Equipment covenants**

9.1 The Company shall:



- 9.1.1 maintain the Equipment in good and serviceable condition (except for expected fair wear and tear) in compliance with all relevant manuals, handbooks, manufacturer's instructions and recommendations and maintenance or servicing schedules;
- 9.1.2 at its own expense, renew and replace any parts of the Equipment when they become obsolete, worn out or damaged with parts of a similar quality and of equal or greater value; and
- 9.1.3 not permit any Equipment to be:
  - (a) used or handled other than by properly qualified and trained persons; or
  - (b) overloaded or used for any purpose for which it is not designed or reasonably suitable.
- 9.2 The Company shall promptly pay all taxes, fees, licence duties, registration charges, insurance premiums and other outgoings in respect of the Equipment and, on demand, produce evidence of such payment to the Lender.
- 9.3 The Company:
  - 9.3.1 shall, if so requested by the Lender, affix to and maintain on each item of Equipment in a conspicuous place, a clearly legible identification plate containing the following wording:
 

*"NOTICE OF CHARGE*

*This [DESCRIBE ITEM] and all additions to it [and ancillary equipment] are subject to a fixed charge dated [DATE] in favour of B.C.H Developments Limited."*
  - 9.3.2 shall not, and shall not permit any person to, conceal, obscure, alter or remove any plate affixed in accordance with clause 9.3.1.

## **10 Book Debts covenants**

The Company shall not (except with the prior written consent of the Lender) release, exchange, compound, set-off, grant time or indulgence in respect of, or in any other manner deal with, all or any of the Book Debts.

## **11 Intellectual Property covenants**

- 11.1 The Company shall take all necessary action to safeguard and maintain present and future rights in, or relating to, the Intellectual Property which is, becomes or is likely to become material to a Company's business including (without limitation) by observing all covenants and stipulations relating to those rights, and by paying all applicable renewal fees, licence fees and other outgoings.
- 11.2 The Company shall use all reasonable efforts to register applications for the registration of any Intellectual Property which is, becomes or is likely to become material to a Company's business, and shall keep the Lender informed of all matters relating to each such registration.
- 11.3 The Company shall not permit any Intellectual Property which is, becomes or is likely to become material to a Company's business to be abandoned, cancelled or to lapse.

## **12 Powers of the Lender**

### **12.1 Power to remedy**

- 12.1.1 The Lender shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Company of any of its obligations contained in this Deed.

12.1.2 The Company irrevocably authorises the Lender and its agents to do all things that are necessary or desirable for that purpose.

12.1.3 Any monies expended by the Lender in remedying a breach by the Company of its obligations contained in this Deed shall be reimbursed by the Company to the Lender on a full indemnity basis and shall carry interest in accordance with clause 19.1.

## 12.2 Exercise of rights

The rights of the Lender under clause 12.1 are without prejudice to any other rights of the Lender under this Deed. The exercise of any rights of the Lender under this Deed shall not make the Lender liable to account as a mortgagee in possession.

## 12.3 Power to dispose of chattels

12.3.1 At any time after the security constituted by this Deed has become enforceable, the Lender or any Receiver may, as agent for the Company, dispose of any chattels or produce found on any Property.

12.3.2 Without prejudice to any obligation to account for the proceeds of any disposal made under clause 12.3.1, the Company shall indemnify the Lender and any Receiver against any liability arising from any disposal made under clause 12.3.1.

## 12.4 Lender has Receiver's powers

To the extent permitted by law, any right, power or discretion conferred by this Deed on a Receiver may, after the security constituted by this Deed has become enforceable, be exercised by the Lender in relation to any of the Secured Assets whether or not it has taken possession of any Secured Assets and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

## 12.5 Conversion of currency

12.5.1 For the purpose of, or pending the discharge of, any of the Secured Liabilities, the Lender may convert any monies received, recovered or realised by it under this Deed (including the proceeds of any previous conversion under this clause 12.5) from their existing currencies of denomination into any other currencies of denomination that the Lender may think fit.

12.5.2 Any such conversion shall be effected at the Bank of England's then prevailing spot selling rate of exchange for such other currency against the existing currency.

12.5.3 Each reference in this clause 12.5 to a currency extends to funds of that currency and, for the avoidance of doubt, funds of one currency may be converted into different funds of the same currency.

## 12.6 New accounts

12.6.1 If the Lender receives, or is deemed to have received, notice of any subsequent Security Interest, or other interest, affecting all or part of the Secured Assets (other than any Existing Security), the Lender may open a new account for the Company in the Lender's books. Without prejudice to the Lender's right to combine accounts, no money paid to the credit of the Company in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.

12.6.2 If the Lender does not open a new account immediately on receipt of the notice, or deemed notice, under clause 12.6.1, then, unless the Lender gives express written notice to the contrary to the Company, all payments made by the Company to the Lender shall be treated as having been credited to a new account of the Company and not as having

been applied in reduction of the Secured Liabilities, as from the time of receipt of the relevant notice by the Lender.

#### 12.7 **Lender's set-off rights**

If the Lender has more than one account for the Company in its books, the Lender may at any time after:

12.7.1 the security constituted by this Deed has become enforceable; or

12.7.2 the Lender has received, or is deemed to have received, notice of any subsequent Security Interest or other interest affecting all or any part of the Secured Assets (other than any Existing Security),

transfer, without prior notice, all or any part of the balance standing to the credit of any account to any other account that may be in debit. After making any such transfer, the Lender shall notify the Company of that transfer.

#### 12.8 **Indulgence**

The Lender may, at its discretion, grant time or other indulgence, or make any other arrangement, variation or release with any person not being a party to this Deed (whether or not any such person is jointly liable with the Company) in respect of any of the Secured Liabilities, or of any other security for them without prejudice either to this Deed or to the liability of the Company for the Secured Liabilities.

#### 12.9 **Appointment of an Administrator**

12.9.1 The Lender may, without notice to the Company, appoint any one or more persons to be an Administrator of the Company under Paragraph 14 of Schedule B1 of the Insolvency Act 1986 if the security constituted by this Deed becomes enforceable.

12.9.2 Any appointment under this clause 12.9 shall:

(a) be in writing signed by a duly authorised signatory of the Lender; and

(b) take effect, in accordance with paragraph 19 of Schedule B1 of the Insolvency Act 1986.

12.9.3 The Lender may apply to the court for an order removing an Administrator from office and may by notice in writing in accordance with this clause 12.9 appoint a replacement for any Administrator who has died, resigned, been removed or who has vacated office upon ceasing to be qualified.

### 13 **When security becomes enforceable**

13.1 The security constituted by this Deed shall be immediately enforceable if the Company defaults in the performance of its obligations under the Loan Agreement or this Deed.

13.2 After the security constituted by this Deed has become enforceable, the Lender may, in its absolute discretion, enforce all or any part of that security at the times, in the manner and on the terms it thinks fit, and take possession of and hold or dispose of all or any part of the Secured Assets.

### 14 **Enforcement of security**

#### 14.1 **Enforcement powers**

14.1.1 The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this Deed) shall, as between the Lender and a purchaser from the Lender,

arise on and be exercisable at any time after the execution of this Deed, but the Lender shall not exercise such power of sale or other powers until the security constituted by this Deed has become enforceable under clause 13.1.

14.1.2 Section 103 of the LPA 1925 does not apply to the security constituted by this Deed.

#### 14.2 **Extension of statutory powers of leasing**

The statutory powers of leasing and accepting surrenders conferred on mortgagees under the LPA 1925 and by any other statute are extended so as to authorise the Lender and any Receiver, at any time after the security constituted by this Deed has become enforceable, whether in its own name or in that of the Company, to:

14.2.1 grant a lease or agreement to lease;

14.2.2 accept surrenders of leases; or

14.2.3 grant any option of the whole or any part of the Secured Assets with whatever rights relating to other parts of it,

whether or not at a premium and containing such covenants on the part of the Company, and on such terms and conditions (including the payment of money to a lessee or tenant on a surrender) as the Lender or Receiver thinks fit without the need to comply with any of the restrictions imposed by sections 99 and 100 of the LPA 1925.

#### 14.3 **Access on enforcement**

14.3.1 At any time after the Lender has demanded payment of the Secured Liabilities when due and payment is not made or if any Company defaults in the performance of its obligations under this Deed, the Company will allow the Lender or its Receiver, without further notice or demand, immediately to exercise all its rights, powers and remedies in particular (and without limitation) to take possession of any Secured Asset and for that purpose to enter on any premises where a Secured Asset is situated (or where the Lender or a Receiver reasonably believes a Secured Asset to be situated) without incurring any liability to the Company for, or by any reason of, that entry.

14.3.2 At all times, the Company must use its best endeavours to allow the Lender or its Receiver access to any premises for the purpose of clause 14.3.1 (including obtaining any necessary consents or permits of other persons) and ensure that its employees and officers do the same.

14.4 At any time after the security constituted by this Deed has become enforceable, or after any powers conferred by any Security Interest having priority to this Deed shall have become exercisable, the Lender may:

14.4.1 redeem that or any other prior Security Interest;

14.4.2 procure the transfer of that Security Interest to it; and

14.4.3 settle and pass any account of the holder of any prior Security Interest.

Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Company. All monies paid by the Lender to an encumbrancer in settlement of any of those accounts shall, as from its payment by the Lender, be due from the Company to the Lender on current account and be secured as part of the Secured Liabilities.

14.5 No purchaser, mortgagee or other person dealing with the Lender, any Receiver or Delegate shall be concerned to enquire:

- 14.5.1 whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;
- 14.5.2 whether any power the Lender, a Receiver or Delegate is purporting to exercise has become exercisable or is properly exercisable; or
- 14.5.3 how any money paid to the Lender, any Receiver or any Delegate is to be applied.
- 14.6 Each Receiver and the Lender is entitled to all the rights, powers, privileges and immunities conferred by the LPA 1925 on mortgagees and receivers.
- 14.7 Neither the Lender, any Receiver, any Delegate nor any Administrator shall be liable to account as mortgagee in possession in respect of all or any of the Secured Assets, nor shall any of them be liable for any loss on realisation of, or for any neglect or default of any nature in connection with, all or any of the Secured Assets for which a mortgagee in possession might be liable as such.
- 14.8 The receipt of the Lender or any Receiver or Delegate shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Secured Assets or in making any acquisition in the exercise of their respective powers, the Lender, every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it or he thinks fit.
- 14.9 **Right of appropriation**
  - 14.9.1 To the extent that:
    - (a) the Secured Assets constitute Financial Collateral; and
    - (b) this Deed and the obligations of the Company under it constitute a Security Financial Collateral Arrangement,

the Lender shall have the right, at any time after the security constituted by this Deed has become enforceable, to appropriate all or any of those Secured Assets in or towards the payment or discharge of the Secured Liabilities in any order that the Lender may, in its absolute discretion, determine.
  - 14.9.2 The value of any Secured Assets appropriated in accordance with this clause shall be the price of those Secured Assets at the time the right of appropriation is exercised as listed on any recognised market index, or determined by any other method that the Lender may select (including independent valuation).
  - 14.9.3 The Company agrees that the methods of valuation provided for in this clause are commercially reasonable for the purposes of the Financial Collateral Regulations.

## 15 Receiver

- 15.1 At any time after the security constituted by this Deed has become enforceable, or at the request of the Company, the Lender may, without further notice, appoint by way of deed, or otherwise in writing, any one or more persons to be a Receiver of all or any part of the Secured Assets.
- 15.2 The Lender may, without further notice (subject to section 45 of the Insolvency Act 1986), from time to time, by way of deed, or otherwise in writing, remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.
- 15.3 The Lender may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the LPA 1925, and the remuneration of the Receiver shall be a debt

secured by this Deed, which shall be due and payable immediately on its being paid by the Lender.

- 15.4 The power to appoint a Receiver conferred by this Deed shall be in addition to all statutory and other powers of the Lender under the Insolvency Act 1986, the LPA 1925 or otherwise, and shall be exercisable without the restrictions contained in sections 103 and 109 of the LPA 1925 or otherwise.
- 15.5 The power to appoint a Receiver (whether conferred by this Deed or by statute) shall be, and remain, exercisable by the Lender despite any prior appointment in respect of all or any part of the Secured Assets.
- 15.6 Any Receiver appointed by the Lender under this Deed shall be the agent of the Company and the Company shall be solely responsible for the contracts, engagements, acts, omissions, defaults, losses and remuneration of that Receiver and for liabilities incurred by that Receiver. The agency of each Receiver shall continue until the Company goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Lender.

## **16 Powers of Receiver**

### **16.1 General**

- 16.1.1 Any Receiver appointed by the Lender under this Deed shall, in addition to the powers conferred on him by statute, have the powers set out in clause 16.2 to clause 16.23.
- 16.1.2 If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him states otherwise) exercise all of the powers conferred on a Receiver under this Deed individually and to the exclusion of any other Receiver.
- 16.1.3 Any exercise by a Receiver of any of the powers given by clause 16 may be on behalf of any Company, the directors of that Company (in the case of the power contained in clause 16.16) or himself.
- 16.2 A Receiver may undertake or complete any works of repair, building or development on the Properties and may apply for and maintain any planning permission, development consent, building regulation approval or any other permission, consent or licence to carry out any of the same.
- 16.3 A Receiver may grant, or accept surrenders of, any leases or tenancies affecting any Property and may grant any other interest or right over any Property on any terms, and subject to any conditions, that he thinks fit.
- 16.4 A Receiver may provide services and employ, or engage any managers, officers, servants, contractors, workmen, agents, other personnel and professional advisers on any terms, and subject to any conditions, that he thinks fit. A Receiver may discharge any such person or any such person appointed by any Company.
- 16.5 A Receiver may make, exercise or revoke any value added tax option to tax as he thinks fit.
- 16.6 A Receiver may charge and receive any sum by way of remuneration (in addition to all costs, charges and expenses incurred by him) that the Lender may prescribe or agree with him.
- 16.7 A Receiver may collect and get in the Secured Assets or any part of them in respect of which he is appointed, and make any demands and take any proceedings as may seem expedient for that purpose, and take possession of the Secured Assets with like rights.
- 16.8 A Receiver may carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying the business of the Company.

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- 16.9 A Receiver may sell, exchange, convert into money and realise all or any of the Secured Assets in respect of which he is appointed in any manner (including, without limitation, by public auction or private sale) and generally on any terms and conditions as he thinks fit. Any sale may be for any consideration that the Receiver thinks fit and a Receiver may promote, or concur in promoting, a company to purchase the Secured Assets to be sold.
- 16.10 A Receiver may sever and sell separately any fixtures or fittings from any Property without the consent of the Company.
- 16.11 A Receiver may sell and assign all or any of the Book Debts in respect of which he is appointed in any manner, and generally on any terms and conditions, that he thinks fit.
- 16.12 A Receiver may give valid receipt for all monies and execute all assurances and things that may be proper or desirable for realising any of the Secured Assets.
- 16.13 A Receiver may make any arrangement, settlement or compromise between the Company and any other person that he may think expedient.
- 16.14 A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to any of the Secured Assets as he thinks fit.
- 16.15 A Receiver may make substitutions of, or improvements to, the Equipment as he may think expedient.
- 16.16 A Receiver may make calls conditionally or unconditionally on the members of the Company in respect of uncalled capital with (for that purpose and for the purpose of enforcing payments of any calls so made) the same powers as are conferred by the articles of association of the Company on its directors in respect of calls authorised to be made by them.
- 16.17 A Receiver may, if he thinks fit, but without prejudice to the indemnity in clause 19, effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the Company under this Deed.
- 16.18 A Receiver may exercise all powers provided for in the LPA 1925 in the same way as if he had been duly appointed under the LPA 1925, and exercise all powers provided for an administrative receiver in Schedule 1 to the Insolvency Act 1986.
- 16.19 A Receiver may, for any of the purposes authorised by this clause 16, raise money by borrowing from the Lender (or from any other person) either unsecured or on the security of all or any of the Secured Assets in respect of which he is appointed on any terms that he thinks fit (including, if the Lender consents, terms under which that security ranks in priority to this Deed).
- 16.20 A Receiver may redeem any prior Security Interest and settle and pass the accounts to which the Security Interest relates. Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Company, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.
- 16.21 A Receiver may delegate his powers in accordance with this Deed.
- 16.22 A Receiver may, in relation to any of the Secured Assets, exercise all powers, authorisations and rights he would be capable of exercising, and do all those acts and things, as an absolute beneficial owner could exercise or do in the ownership and management of the Secured Assets or any part of the Secured Assets.
- 16.23 A Receiver may do any other acts and things:
- 16.23.1 that he may consider desirable or necessary for realising any of the Secured Assets;
- 16.23.2 that he may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this Deed or law; and

16.23.3 that he lawfully may or can do as agent for the Company.

## **17 Delegation**

- 17.1 The Lender or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this Deed (including the power of attorney granted under clause 21.1).
- 17.2 The Lender and each Receiver may make a delegation on the terms and conditions (including the power to sub-delegate) that it thinks fit.
- 17.3 Neither the Lender nor any Receiver shall be in any way liable or responsible to the Company for any loss or liability arising from any act, default, omission or misconduct on the part of any Delegate, save for wilful default, gross misconduct or gross negligence.

## **18 Application of proceeds**

- 18.1 All monies received by the Lender, a Receiver or a Delegate under this Deed, after the security constituted by this Deed has become enforceable, shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied in the following order of priority:
  - 18.1.1 in or towards payment of or provision for all costs, charges and expenses incurred by or on behalf of the Lender (and any Receiver, Delegate, attorney or agent appointed by it) under or in connection with this Deed, and of all remuneration due to any Receiver under or in connection with this Deed;
  - 18.1.2 in or towards payment of or provision for the Secured Liabilities; and
  - 18.1.3 in payment of the surplus (if any) to the Company or other person entitled to it.
- 18.2 Neither the Lender, any Receiver nor any Delegate shall be bound (whether by virtue of section 109(8) of the LPA 1925, which is varied accordingly, or otherwise) to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Secured Liabilities.
- 18.3 All monies received by the Lender, a Receiver or a Delegate under this Deed:
  - 18.3.1 may, at the discretion of the Lender, Receiver or Delegate, be credited to any suspense or securities realised account; and
  - 18.3.2 may be held in that account for so long as the Lender, Receiver or Delegate reasonably considers to be necessary.

## **19 Costs and indemnity**

- 19.1 The Company shall pay to, or reimburse, the Lender and any Receiver on demand, on a full indemnity basis, all costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal, printing and out-of-pocket expenses) incurred by the Lender, any Receiver or any Delegate in connection with:
  - 19.1.1 this Deed or the Secured Assets;
  - 19.1.2 taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Lender's, a Receiver's or a Delegate's rights under this Deed;
  - 19.1.3 taking proceedings for, or recovering, any of the Secured Liabilities.
- 19.2 The Company shall indemnify the Lender, each Receiver and each Delegate, and their respective employees and agents, on a full indemnity basis against any cost, charge, expense, tax, loss, liability or damage incurred by any of them as a result of:



- 19.2.1 the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this Deed or by law in respect of the Secured Assets;
- 19.2.2 taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the security constituted by this Deed; or
- 19.2.3 any default or delay by the Company in performing any of its obligations under this Deed.

Any past or present employee or agent may enforce the terms of this clause 19.2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

- 19.3 Clause 19.2 shall not apply where the cost, charge, expense, tax, loss, liability or damage arose as a result of the gross negligence or wilful misconduct of the relevant Lender, Receiver and/or Delegate.

## **20 Further assurance**

- 20.1 The Company shall, at its own expense, take whatever action the Lender or any Receiver may reasonably require for:
  - 20.1.1 creating, perfecting or protecting the security intended to be created by this Deed;
  - 20.1.2 facilitating the realisation of any Secured Asset (provided that any realisation shall not occur until such time as the security constituted by this Deed has become enforceable); or
  - 20.1.3 facilitating the exercise of any right, power, authority or discretion exercisable by the Lender or any Receiver in respect of any Secured Asset,

including, without limitation (if the Lender or Receiver thinks it expedient) the execution of any transfer, conveyance, assignment or assurance of all or any of the assets forming part of (or intended to form part of) the Secured Assets (whether to the Lender or to its nominee) and the giving of any notice, order or direction and the making of any registration.

## **21 Power of attorney**

- 21.1 By way of security, the Company irrevocably appoints the Lender, every Receiver and every Delegate separately to be the attorney of the Company and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things that:
  - 21.1.1 the Company is required to execute and do under this Deed but which it has failed to do; or
  - 21.1.2 any attorney deems necessary in exercising any of the rights, powers, authorities and discretions conferred by this Deed or by law on the Lender, any Receiver or any Delegate.
- 21.2 The Company ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in clause 21.1.

## **22 Release**

- 22.1 On the expiry of the Security Period (but not otherwise), the Lender shall, at the request and cost of the Company, take whatever action is necessary to:
  - 22.1.1 release the Secured Assets from the security constituted by this Deed; and
  - 22.1.2 reassign the Secured Assets to the Company.

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**23 Assignment and transfer**

- 23.1 At any time, without the consent of the Company, the Lender may assign or transfer the whole or any part of the Lender's rights and/or obligations under this Deed.
- 23.2 The Lender may disclose to any actual or proposed assignee or transferee any information about the Company, the Secured Assets and this Deed that the Lender reasonably considers appropriate.
- 23.3 The Company may not assign any of its rights, or transfer any of its obligations, under this Deed, or enter into any transaction that would result in any of those rights or obligations passing to another person.

**24 Miscellaneous**

- 24.1 The Lender may without discharging or in any way affecting the security created by this Deed or any remedy of the Lender grant time or other indulgence or abstain from exercising or enforcing any remedies, securities, guarantees or other rights which it may now or in the future have from or against the Company and may make any arrangement, variation or release with any person or persons without prejudice either to this Deed or the liability of the Company for the Secured Liabilities.
- 24.2 The provisions of this Deed shall be severable and if at any time any one or more such provisions is or becomes invalid illegal or unenforceable the validity, legality and enforceability of the remaining provisions shall not in any way be impaired as a result.
- 24.3 The rights and remedies of the Lender provided by this Deed are cumulative and are not exclusive of any rights, powers or remedies provided by law and may be exercised from time to time and as often as the Lender may deem expedient.
- 24.4 This Deed is in addition to any other security now or in the future held by the Lender for the Secured Liabilities and shall not merge with or prejudice such other security or any contractual or legal rights of the Lender.
- 24.5 This Deed may be executed in more than one counterpart each of which shall be deemed to constitute an original.

**25 Notices**

- 25.1 Any notice or other communication to the Company in connection with this Deed:
  - 25.1.1 shall be in writing; and
  - 25.1.2 shall be left at the Company's registered or principal office for the time being or a place of business of the Company last known to the Lender or sent to such address by first class post.
- 25.2 Any such demand, notice or other communication will if given or made in accordance with this Clause, be deemed to have been duly given or made as follows:
  - 25.2.1 if sent by prepaid first class post on the second Business Day after the date of posting;  
or
  - 25.2.2 if delivered by hand on delivery at the address provided for in this Deed,  
  
provided however that if it is delivered by hand on a day which is not a Business Day or after 4.00 p.m. on a Business Day it will instead be deemed to have been given or made on the next Business Day.

**26 Governing law and jurisdiction**

This Deed shall be governed by and construed in accordance with the laws of England and Wales and the Company submits to the non-exclusive jurisdiction of the courts of England and Wales.

This deed has been entered into on the date stated at the beginning of it.