



**Registration of a Charge**

Company name: **DARLINGTON ARENA LIMITED**

Company number: **07663383**



X8287ZVF

Received for Electronic Filing: **29/03/2019**

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**Details of Charge**

Date of creation: **27/03/2019**

Charge code: **0766 3383 0007**

Persons entitled: **DARLINGTON BOROUGH COUNCIL**

Brief description: **BY WAY OF LEGAL MORTGAGE, THE PROPERTY KNOWN AS LAND AND BUILDINGS 'THE NEW STADIUM', NEASHAM ROAD, HURWORTH MOOR, DARLINGTON, DL2 1DL REGISTERED AT THE LAND REGISTRY UNDER TITLE NUMBER DU241170.**

**Contains fixed charge(s).**

**Contains negative pledge.**

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**Authentication of Form**

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

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**Authentication of Instrument**

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION**

**FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL  
INSTRUMENT.**

Certified by:

**ZOE DITCH OF MUCKLE LLP**



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

Company number: 7663383

Charge code: 0766 3383 0007

The Registrar of Companies for England and Wales hereby certifies that a charge dated 27th March 2019 and created by DARLINGTON ARENA LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 29th March 2019 .

Given at Companies House, Cardiff on 1st April 2019

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



**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

DATED 27 March 2019

**DARLINGTON ARENA LIMITED**

and

**DARLINGTON BOROUGH COUNCIL**

**LEGAL MORTGAGE OVER PROPERTY FROM A  
COMPANY SECURING SPECIFIC MONIES (OWN  
LIABILITIES)**

Certified a true and correct copy  
of the original document

Signed... [Signature]

Printed... 28c Dittu

Muckle LLP

Newcastle upon Tyne

Date... 28 March 2019

## CONTENTS

1	DEFINITIONS AND INTERPRETATION .....	1
2	COVENANT TO PAY .....	5
3	GRANT OF SECURITY .....	5
4	PERFECTION OF SECURITY .....	6
5	LIABILITY OF THE BORROWER .....	6
6	REPRESENTATIONS AND WARRANTIES .....	7
7	GENERAL COVENANTS .....	8
8	PROPERTY COVENANTS .....	9
9	RENTAL INCOME COVENANTS .....	13
10	POWERS OF THE LENDER .....	13
11	WHEN SECURITY BECOMES ENFORCEABLE .....	15
12	ENFORCEMENT OF SECURITY .....	15
13	RECEIVERS .....	17
14	POWERS OF RECEIVER .....	17
15	DELEGATION .....	20
16	APPLICATION OF PROCEEDS .....	20
17	COSTS AND INDEMNITY .....	21
18	FURTHER ASSURANCE .....	22
19	POWER OF ATTORNEY .....	22
20	RELEASE .....	22
21	ASSIGNMENT AND TRANSFER .....	23
22	SET-OFF .....	23
23	AMENDMENTS, WAIVERS AND CONSENTS .....	23
24	SEVERANCE .....	24
25	COUNTERPARTS .....	24
26	THIRD PARTY RIGHTS .....	24
27	FURTHER PROVISIONS .....	24
28	NOTICES .....	25
29	GOVERNING LAW AND JURISDICTION .....	26
	Schedule 1 Property .....	28

THIS DEED is dated **27 March** 2019

**BETWEEN:-**

- 1) **DARLINGTON ARENA LIMITED** incorporated and registered in England and Wales with company number 07663383 whose registered office is at Northern Echo Arena, Neasham Road, Darlington, DL2 1DL ("**Borrower**")
- 2) **DARLINGTON BOROUGH COUNCIL** of Town Hall, Darlington, DL1 5QT ("**Lender**").

**BACKGROUND**

- A The Lender has agreed, under the Guarantee Agreement, to guarantee certain liabilities of the Borrower pursuant to the Facility Agreement and the Borrower has agreed to indemnify the Lender or otherwise reimburse the Lender in respect of sums paid by the Lender and costs incurred or to be incurred by the Lender pursuant to the Guarantee Agreement and to give the Lender security in respect of that obligation.
- B The Borrower owns the Property.
- C Under this deed, the Borrower provides security to the Lender for the liabilities incurred or to be incurred by the Lender for the benefit of the Borrower under the Guarantee Agreement.

**Agreed terms**

**1 DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

The following definitions apply in this deed:

**Business Day** means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Charged Property** means all the assets, property and undertaking for the time being subject to any Security created by this deed (and references to the Charged Property shall include references to any part of it).

**Delegate** means any person appointed by the Lender or any Receiver under clause 15 and any person appointed as attorney of the Lender, Receiver or Delegate.

**Environment** means 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** means 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.

**Environmental Licence** means any authorisation, permit or licence necessary under Environmental Law in respect of any of the Charged Property.

**Event of Default** has the meaning given to that expression in the Facility Agreement.]

**Facility Agreement** means the £2,020,000 (two million, one hundred and fifty thousand pounds sterling) facility agreement dated ...27 March... 2019 and made between the Borrower (1) and Hargreaves Darlington Limited (2) in the form annexed at Schedule 3.

**Guarantee Agreement** means the guarantee and indemnity dated ...27 March... 2019 and made between Hargreaves Darlington Limited (1) and the Lender (2) for the provision of the Lender's guarantee of the Borrower's liabilities contained in the Facility Agreement in the form annexed at Schedule 2.

**Insurance Policy** means each contract or policy of insurance effected or maintained by the Borrower from time to time in respect of the Property.

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

**Opinion** means the form of legal opinion provided by the Lender to the Borrower and to Hargreaves Darlington Limited in the form annexed at Schedule 3

**Permitted Letting** means any lease granted to a bona fide third party for a term of no more than 5 years, that is excluded from the provisions of sections 24 to 28 of the Landlord and Tenant Act 1954 and that reserves a rent which is not less than the full open market rental value at the date of the letting.

**Permitted Security** means a legal charge dated ...27 March... 2019 and made between the Borrower (1) and Hargreaves Darlington Limited (2) creating security over the Property.

**Property** means the freehold registered property owned by the Borrower described in Schedule 1.

**Receiver** means a receiver or a receiver and manager of any or all of the Charged Property.

**Rental Income** means all amounts paid or payable to or for the account of the Borrower in connection with the letting, licence or grant of other rights of use or occupation of all or any part of the Property.

**Secured Liabilities** means all present and future monies, obligations and liabilities incurred or to be incurred by the Lender whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity, under or in connection with the Guarantee Agreement, or the Opinion or this deed (including, without limitation, those arising under clause 2 and 27.3.2 of this deed) together with all interest (including, without limitation, default interest) accruing in respect of those monies, obligations or liabilities).

**Security** means 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** means the period starting on the date of this deed and ending on the date on which:

- (a) the Lender (acting reasonably) 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.

**Valuation** means any valuation relating to the Property supplied to the Lender by the Borrower (or on its behalf).

**VAT** means value added tax or any equivalent tax chargeable in the UK or elsewhere.

## **1.2 Interpretation**

### **1.2.1 In this deed:**

- (a) clause, Schedule and paragraph headings shall not affect the interpretation of this deed;
- (b) a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality);
- (c) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- (d) unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- (e) a reference to a party shall include that party's successors, permitted assigns and permitted transferees and this deed shall be binding on, and enure to the benefit of, the parties to this deed and their respective personal representatives, successors, permitted assigns and permitted transferees;
- (f) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- (g) a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- (h) a reference to **writing** or **written** includes neither fax nor email;
- (i) an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- (j) a reference to **this deed** (or any provision of it) or to any other agreement or document referred to in this deed is a reference to this deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this deed) from time to time;
- (k) unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this deed and a reference to a paragraph is to a paragraph of the relevant Schedule;
- (l) any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- (m) a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and **amend** and **amended** shall be construed accordingly);
- (n) a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;



- (o) a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- (p) a reference to **continuing** in relation to an Event of Default means an Event of Default that has not been remedied or waived;
- (q) a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it; and
- (r) a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

### 1.3 **Clawback**

If the Lender considers that an amount paid by the Borrower in respect of the Secured Liabilities is capable of being avoided or otherwise set aside on the liquidation or administration of the Borrower or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this deed.

### 1.4 **Nature of security over real property**

A reference in this deed to a **charge or mortgage of or over the Property** includes:

- 1.4.1 all buildings and fixtures and fittings (including trade and tenant's fixtures and fittings) and fixed plant and machinery that are situated on or form part of the Property at any time;
- 1.4.2 the proceeds of the sale of any part of the Property and any other monies paid or payable in respect of or in connection with the Property;
- 1.4.3 the benefit of any covenants for title given, or entered into, by any predecessor in title of the Borrower in respect of the Property and any monies paid or payable in respect of those covenants; and
- 1.4.4 all rights under any licence, agreement for sale or agreement for lease in respect of the Property.

### 1.5 **Law of Property (Miscellaneous Provisions) Act 1989**

For the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the Guarantee Agreement and of any side letters between any parties in relation to the Guarantee Agreement are incorporated into this deed.

### 1.6 **Perpetuity period**

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).

### 1.7 **Schedules**

The Schedules form part of this deed and shall have effect as if set out in full in the body of this deed. Any reference to this deed includes the Schedules.

## **2 COVENANT TO PAY**

- 2.1 In consideration of the Lender entering into the Guarantee Agreement the Borrower agrees to reimburse the Lender on demand in respect of sums paid by the Lender pursuant to the Guarantee Agreement (other than interest payable pursuant to clause 4 of the Guarantee Agreement) with further interest accruing in respect of those monies, obligations or liabilities at a rate of 4.84% per annum or if greater in accordance with the "Communication from the Commission on the revision of the method for setting the reference and discount rates" (19.01.2008, OJ C 14) and to indemnify and keep indemnified the Lender against liabilities it may incur to any party as a result of reliance on the Opinion subject to a maximum of £2.1m.
- 2.2 The Borrower shall, on demand, pay to the Lender and discharge the Secured Liabilities whenever they become due either under this agreement or the Facility Agreement

## **3 GRANT OF SECURITY**

### **3.1 Legal mortgage and fixed charges**

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee charges to the Lender:

3.1.1 by way of first legal mortgage, the Property; and

3.1.2 by way of first fixed charge:

- (a) all its rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premiums in connection with each Insurance Policy,
- (b) the Rental Income and the benefit of any guarantee or security in respect of the Rental Income to the extent not effectively assigned under clause 3.2; TB
- (c) the benefit of all other contracts, guarantees, appointments and warranties relating to the Charged Property and other documents to which the Borrower is a party or which are in its favour or of which it has the benefit relating to any letting, development, sale, purchase, use or the operation of the Charged Property or otherwise relating to the Charged Property (including, in each case, but without limitation, the right to demand and receive all monies whatever payable to or for its benefit under or arising from any of them, all remedies provided for in any of them or available at law or in equity in relation to any of them, the right to compel performance of any of them and all other rights, interests and benefits whatever accruing to or for its benefit arising from any of them); and
- (d) all authorisations (statutory or otherwise) held or required in connection with the Borrower's business carried on at the Property or the use of any Charged Property, and all rights in connection with them

### **3.2 Assignment**

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee assigns to the Lender absolutely, subject to a proviso for reassignment on irrevocable discharge in full of the Secured Liabilities:

- 3.2.1 all its rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premiums in connection with each Insurance Policy; and
- 3.2.2 the Rental Income and the benefit of any guarantee or security in respect of the Rental Income

provided that nothing in this *clause* 3.2 shall constitute the Lender as mortgagee in possession.

#### **4 PERFECTION OF SECURITY**

##### **4.1 Registration of legal mortgage at the Land Registry**

The Borrower 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 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 ~~27 March 2019~~ in favour of Darlington Borough Council referred to in the charges register or their conveyancer."

##### **4.2 Cautions against first registration and notices**

Whether or not title to the Property is registered at the Land Registry, if any caution against first registration or any notice (whether agreed or unilateral) is registered against the Borrower's title to the Property, the Borrower shall immediately provide the Lender with full particulars of the circumstances relating to such caution or notice. If such caution or notice was registered to protect a purported interest the creation of which is not permitted under this deed, the Borrower shall immediately, and at its own expense, take such steps as the Lender may require to ensure that the caution or notice, as applicable, is withdrawn or cancelled.

#### **5 LIABILITY OF THE BORROWER**

##### **5.1 Liability not discharged**

The Borrower's liability under this deed in respect of any of the Secured Liabilities shall not be discharged, prejudiced or affected by:

- 5.1.1 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;
- 5.1.2 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; or
- 5.1.3 any other act or omission that, but for this clause 5.1.3, might have discharged, or otherwise prejudiced or affected, the liability of the Borrower.

##### **5.2 Immediate recourse**

The Borrower 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 Borrower.

## **6 REPRESENTATIONS AND WARRANTIES**

### **6.1 Times for making representations and warranties**

The Borrower makes the representations and warranties set out in this *clause* 6 to the Lender on the date of this deed insofar as they are aware at the date of this deed.

### **6.2 Ownership of Charged Property**

The Borrower is the sole legal and beneficial owner of the Charged Property.

### **6.3 No Security**

The Charged Property is free from any Security other than the Permitted Security and the Security created by this deed and any security set out or referred to in HM Land Registry title number DU241170 or set out or referred to in registry maintained at Companies House or other registry open for public inspection or otherwise disclosed to the Lender before the date of this deed.

### **6.4 No adverse claims**

The Borrower has not received, or acknowledged notice of, any adverse claim by any person in respect of the Charged Property or any interest in it.

### **6.5 No adverse covenants**

There are no covenants, agreements, reservations, conditions, interests, rights or other matters whatever that materially and adversely affect the Charged Property. Save as set out in the HM Land Registry title number DU241170 or other registers open to public inspection or otherwise disclosed to the Lender prior to the date of this deed.

### **6.6 No overriding interests**

Nothing has arisen, has been created or is subsisting that would be an overriding interest in the Property.

### **6.7 No prohibitions or breaches**

There is no prohibition on the Borrower assigning its rights in any of the Charged Property referred to in *clause* 3.2 and the entry into of this deed by the Borrower does not and will not constitute a breach of any policy, agreement, document, instrument or obligation binding on the Borrower or its assets.

### **6.8 Environmental compliance**

The Borrower has not been notified of any breach of Environmental Law and Environmental Licences.

### **6.9 Avoidance of security**

No Security expressed to be created under this deed is liable to be avoided, or otherwise set aside, on the liquidation or administration of the Borrower or otherwise.

#### **6.10 Enforceable security**

This deed constitutes and will constitute the legal, valid, binding and enforceable obligations of the Borrower and is and will continue to be effective security over all and every part of the Charged Property in accordance with its terms.

### **7 GENERAL COVENANTS**

#### **7.1 Negative pledge and disposal restrictions**

7.1.1 The Borrower shall not at any time, except with the prior written consent of the Lender:

- (a) create, purport to create or permit to subsist any Security on, or in relation to, any Charged Property other than any Security created by this deed and other than the Permitted Security;
- (b) 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 Charged Property; or
- (c) create or grant (or purport to create or grant) any interest in the Charged Property in favour of a third party (other than by means of the Permitted Security).

#### **7.2 Preservation of Charged Property**

The Borrower 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 Charged Property or the effectiveness of the security created by this deed.

#### **7.3 Compliance with laws and regulations**

7.3.1 The Borrower shall not, without the Lender's prior written consent, use or permit the Charged Property to be used in any way contrary to law.

7.3.2 The Borrower shall use its reasonable endeavours to :

- (a) comply with the requirements of any law or regulation relating to or affecting the Charged Property or the use of it or any part of it;
- (b) obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Charged Property or its use or that are necessary to preserve, maintain or renew any Charged Property; and
- (c) promptly effect any maintenance, modifications, alterations or repairs to be effected on or in connection with the Charged Property that are required to be made by it under any law or regulation.

#### **7.4 Enforcement of rights**

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The Borrower shall use its reasonable endeavours to:

- 7.4.1 procure the prompt observance and performance by the relevant counterparty to any agreement or arrangement with the Borrower and forming part of the Charged Property of the covenants and other obligations imposed on such counterparty; and
- 7.4.2 enforce any rights and institute, continue or defend any proceedings relating to any of the Charged Property that the Lender may require from time to time.

#### **7.5 Notice of misrepresentations and breaches**

The Borrower shall, promptly on becoming aware of any of the same, give the Lender notice in writing of:

- 7.5.1 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
- 7.5.2 any breach of any covenant set out in this deed.

#### **7.6 Notices to be given by the Borrower**

The Borrower shall within five days give notice to the relevant insurers of the assignment of the Borrower's rights and interest in and under each Insurance Policy (including the proceeds of any claims under that Insurance Policy) under *clause 3.2.1*.

### **8 PROPERTY COVENANTS**

#### **8.1 Repair and maintenance**

The Borrower shall keep all premises, and fixtures and fittings on the Property in no worse state of repair and condition as at the date hereof

#### **8.2 No alterations**

8.2.1 The Borrower shall not, without the prior written consent of the Lender (such consent not to be unreasonably withheld or delayed):

- (a) pull down or remove the whole or any part of any building forming part of the Property nor permit the same to occur; or
- (b) make or permit to be made any material alterations to the Property or sever or remove or permit to be severed or removed any of its fixtures or fittings (except to make any necessary repairs or renew or replace the same in accordance with *clause 8.1*).

8.2.2 The Borrower shall promptly give notice to the Lender if the premises or fixtures or fittings forming part of the Property are destroyed or damaged so as to render them unfit for use.

#### **8.3 Development restrictions**

The Borrower shall not, without the prior written consent of the Lender (such consent not to be unreasonably withheld or delayed) carry out or permit or suffer to be carried out on the Property any development (as defined in each of the Town and Country Planning Act 1990

and the Planning Act 2008) or change or permit or suffer to be changed the use of the Property.

#### **8.4 Insurance**

**8.4.1 The Borrower shall insure and keep insured**

- (a) loss or damage by fire or terrorist acts, including any third party liability arising from such acts;**
- (b) other risks, perils and contingencies that would be insured against by reasonably prudent persons carrying on the same class of business as the Borrower; and**
- (c) any other risk, perils and contingencies as the Lender may reasonably require and notify them to the Borrower.**

**8.4.2 Any such insurance must be with an insurance company or underwriters and on such terms as are reasonably acceptable to the Lender and must include property owners' public liability and third party liability insurance and be for not less than the amount which the Borrower reasonably determines to be the replacement value of the relevant Charged Property (meaning in the case of any premises on the Property, the total cost of entirely rebuilding, reinstating or replacing the premises in the event of their being destroyed, together with architects', surveyors', engineers' and other professional fees and charges for shoring or propping up, demolition, site clearance and reinstatement with adequate allowance for inflation) and loss of rents payable by the tenants or other occupiers of the Property for a period of at least three years, including provision for increases in rent during the period of insurance.**

**8.4.3 The Borrower shall, if requested by the Lender, produce to the Lender each policy, certificate or cover note relating to any insurance required by clause 8.4.1.**

**8.4.4 The Borrower shall, if requested by the Lender use reasonable endeavours to, procure that a note of the Lender's interest is endorsed on each Insurance Policy (other than public liability and third party liability insurances) maintained by it or any person on its behalf in accordance with clause 8.4 but without the Lender having any liability for any premium in relation to those Insurance Policies unless it has expressly and specifically requested to be made liable in respect of any increase in premium or unpaid premium in respect of any Insurance Policy.**

**8.4.5 The Borrower shall use reasonable endeavours to ensure that each Insurance Policy:**

- (a) contains terms ensuring that it cannot be avoided or vitiated as against the Lender by reason of the act or default of any other insured party or any misrepresentation, non-disclosure or failure to make a fair presentation of risk by any other insured party;**
- (b) contains a waiver of each insurer's rights of subrogation against the Borrower, the Lender and the tenants of the Property other than any such rights arising in connection with any fraud or criminal offence committed by any of those persons in respect of the Property or any Insurance Policy; and**
- (c) contains terms ensuring that no insurer can repudiate, rescind or cancel it, treat it as avoided in whole or in part nor treat it as expired due to non-**

payment of premium without giving at least 30 days' prior written notice to the Lender.

## **8.5 Insurance premiums**

### **8.5.1 The Borrower shall:**

- (a) promptly pay all premiums in respect of each Insurance Policy and do all other things necessary to keep that policy in full force and effect; and
- (b) (if the Lender so requires) give to the Lender copies of the receipts for all premiums and other payments necessary for effecting and keeping up each Insurance Policy.

## **8.6 No invalidation of insurance**

The Borrower 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.

## **8.7 Proceeds from Insurance Policies**

All monies payable under any Insurance Policy at any time (whether or not the security constituted by this deed has become enforceable) shall 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.

## **8.8 Leases and licences affecting the Property**

The Borrower shall not, without the prior written consent of the Lender (which consent is not to be unreasonably withheld or delayed):

- 8.8.1 grant any licence or tenancy (other than a Permitted Letting) affecting the whole or any part of the Property, or exercise the statutory powers of leasing or of accepting surrenders under section 99 or section 100 of the LPA 1925 (or agree to grant any such licence or tenancy, or agree to exercise the statutory powers of leasing or of accepting surrenders under section 99 or section 100 of the LPA 1925);
- 8.8.2 in any other way dispose of, accept the surrender of, surrender or create any legal or equitable estate or interest in the whole or any part of the Property (or agree to dispose of, accept the surrender of, surrender or create any legal or equitable estate or interest in the whole or any part of the Property);
- 8.8.3 let any person into occupation of or share occupation of the whole or any part of the Property; or
- 8.8.4 grant any consent or licence under any lease or licence affecting the Property

PROVIDED for the avoidance of doubt nothing in this clause 8.5 or any other provisions of this deed shall require the Borrower to obtain the consent of the Lender to the granting of licences and consent to third parties entering onto the Property in accordance with the Borrower's normal business as a rugby club including, but not limited to, licences to enter the Property in order to spectate at rugby matches and otherwise use facilities at the Property..

## **8.9 No restrictive obligations**

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The Borrower shall not, without the prior written consent of the Lender, (such consent not to be unreasonably withheld or delayed) enter into any onerous or restrictive obligations affecting the whole or any part of the Property or create or permit to arise any overriding interest, easement or right whatever in or over the whole or any part of the Property.

#### **8.10 Proprietary rights**

The Borrower shall use reasonable endeavours to procure that no person shall become entitled to assert any proprietary or other like right or interest over the whole or any part of the Property, without the prior written consent of the Lender such consent not to be unreasonably withheld or delayed.

#### **8.11 Compliance with and enforcement of covenants**

The Borrower shall:

- 8.11.1 observe and perform all covenants, stipulations and conditions to which the Property, or the use of it, is or may be subject and (if the Lender so reasonably requires) produce to the Lender evidence sufficient to satisfy the Lender that those covenants, stipulations and conditions have been observed and performed; and
- 8.11.2 use reasonable endeavours to diligently enforce all covenants, stipulations and conditions benefiting the Property and shall not (and shall not agree to) waive, release or vary any of the same.

#### **8.12 Notices or claims relating to the Property**

8.12.1 The Borrower shall:

- (a) give full particulars to the Lender of any notice, order, direction, designation, resolution, application, requirement or proposal given or made by any public or local body or authority (a Notice) that specifically applies to the Property, or to the locality in which it is situated, within seven days after becoming aware of the relevant Notice; and
- (b) (if the Lender so requires) immediately, and at the cost of the Borrower, take all reasonable and necessary steps to comply with any Notice, and make, or join with the Lender in making, any objections or representations in respect of that Notice that the Lender thinks fit.

8.12.2 The Borrower shall give full particulars to the Lender of any claim, notice or other communication served on it in respect of any modification, suspension or revocation of any Environmental Licence or any alleged breach of any Environmental Law, in each case relating to the Property.

#### **8.13 Payment of outgoings**

The Borrower shall pay (or procure payment of the same) when due all charges, rates, taxes, duties, assessments and other outgoings relating to or imposed on the Property or on its occupier.

#### **8.14 Rent reviews**

The Borrower shall, if the Property is subject to occupational leases or licences, implement any upward rent review provisions and shall not, without the prior written consent of the

Lender, agree to any change in rent to less than the open market rental value of the relevant part of the Property, save to the extent the Borrower is required to do so by such licences or leases.

#### **8.15 Environment**

The Borrower shall in respect of the Property:

8.15.1 comply in all material respects with all the requirements of Environmental Law; and

8.15.2 obtain and comply in all material respects with all Environmental Licences.

#### **8.16 Conduct of business on Property**

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

#### **8.17 Inspection**

The Borrower shall permit the Lender, any Receiver and any person appointed by either of them to enter on and inspect the Property on reasonable prior notice.

#### **8.18 VAT option to tax**

The Borrower shall not, without the prior written consent of the Lender such consent not to be unreasonably withheld or delayed:

8.18.1 exercise any VAT option to tax in relation to the Property; or

8.18.2 revoke any VAT option to tax exercised, and disclosed to the Lender in writing, before the date of this deed.

### **9 RENTAL INCOME COVENANTS**

#### **9.1 Notice of assignment of Rental Income**

The Borrower shall, promptly following the occurrence of an Event of Default, give notice to the relevant tenant, guarantor or surety of the assignment under *clause 3.2* of the Borrower's rights and interest to the Rental Income and each guarantee or security in respect of the Rental Income.

### **10 POWERS OF THE LENDER**

#### **10.1 Power to remedy**

10.1.1 The Lender shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Borrower of any of its obligations contained in this deed.

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

10.1.3 Any monies reasonably expended by the Lender in remedying a breach by the Borrower of its obligations contained in this deed shall be reimbursed by the Borrower to the Lender on a full indemnity basis.

- 10.1.4 In remedying any breach in accordance with this *clause 10* the Lender, its agents and their respective officers, agents and employees shall be entitled to enter onto the Property and to take any action as the Lender may reasonably consider necessary or desirable including, without limitation, carrying out any repairs, other works or development.

## 10.2 Exercise of rights

The rights of the Lender under *clause 10* 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.

## 10.3 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 Charged Property whether or not it has taken possession of any Charged Property and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

## 10.4 Conversion of currency

- 10.4.1 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 10.4.1* from their existing currencies of denomination into any other currencies of denomination that the Lender may think fit.
- 10.4.2 realised by it under this deed (including the proceeds of any previous conversion her currency against the existing currency of such regulated financial institution as the Lender shall reasonably determine.
- 10.4.3 Each reference in this *clause 10.4.3* 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.

## 10.5 New accounts

- 10.5.1 If the Lender receives, or is deemed to have received, notice of any subsequent Security or other interest, affecting all or part of the Charged Property, the Lender may open a new account for the Borrower in the Lender's books. Without prejudice to the Lender's right to combine accounts, no money paid to the credit of the Borrower in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.
- 10.5.2 If the Lender does not open a new account immediately on receipt of the notice, or deemed notice, referred to in *clause 10.5.1*, then, unless the Lender gives express written notice to the contrary to the Borrower, all payments made by the Borrower to the Lender shall be treated as having been credited to a new account of the Borrower and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt or deemed receipt of the relevant notice by the Lender.

## 10.6 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 person is jointly liable with the Borrower) 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 Borrower for the Secured Liabilities.

## **11 WHEN SECURITY BECOMES ENFORCEABLE**

### **11.1 Security becomes enforceable on Event of Default**

The security constituted by this deed shall become enforceable upon the occurrence of an Event of Default.

### **11.2 Discretion**

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 Charged Property.

## **12 ENFORCEMENT OF SECURITY**

### **12.1 Enforcement powers**

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 11*.

### **12.2 Section 103 of the LPA 1925 does not apply to the security constituted by this deed.**

### **12.3 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 Borrower, to:

12.3.1 grant a lease or agreement for lease;

12.3.2 accept surrenders of leases; or

12.3.3 grant any option in respect of the whole or any part of the Property with whatever rights relating to other parts of it,

whether or not at a premium and containing such covenants on the part of the Borrower 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.

### **12.4 Prior Security**

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

- (a) redeem that or any other prior Security;
- (b) procure the transfer of that Security to itself; and
- (c) settle and pass any account of the holder of any prior Security.

**12.4.2** The settlement and passing of any such account shall be, in the absence of any manifest error, conclusive and binding on the Borrower. All monies paid by the Lender to an encumbrancer in settlement of any of those accounts shall be, as from its payment by the Lender, due from the Borrower to the Lender on current account and shall bear interest at a rate equal to the highest interest rate payable in respect of the Secured Liabilities and be secured as part of the Secured Liabilities.

## **12.5 Protection of third parties**

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

- 12.5.1** whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;
- 12.5.2** whether any power the Lender, a Receiver or Delegate is purporting to exercise has become exercisable or is properly exercisable; or
- 12.5.3** how any money paid to the Lender, any Receiver or any Delegate is to be applied.

## **12.6 Privileges**

Each Receiver and the Lender is entitled to all the rights, powers, privileges and immunities conferred by the LPA 1925 on mortgagees and receivers.

## **12.7 No liability as mortgagee in possession**

Neither the Lender, any Receiver nor any Delegate shall be liable, by reason of entering into possession of the Charged Property or for any other reason, to account as mortgagee in possession in respect of all or any of the Charged Property, nor shall any of them be liable for any loss on realisation of, or for any act, neglect or default of any nature in connection with, all or any of the Charged Property for which a mortgagee in possession might be liable as such.

## **12.8 Relinquishing possession**

If the Lender, any Receiver or Delegate enters into or takes possession of the Charged Property, it or he may at any time relinquish possession.

## **12.9 Conclusive discharge to purchasers**

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 Charged Property 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.

## **13 RECEIVERS**

### **13.1 Appointment**

At any time after the security constituted by this deed has become enforceable, or at the request of the Borrower, the Lender may, without further notice, appoint by way of deed, or otherwise in writing, any one or more person or persons to be a Receiver of all or any part of the Charged Property.

### **13.2 Removal**

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.

### **13.3 Remuneration**

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, to the extent not otherwise discharged.

### **13.4 Power of appointment additional to statutory powers**

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.

### **13.5 Power of appointment exercisable despite prior appointments**

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 Charged Property.

### **13.6 Agent of the Borrower**

Any Receiver appointed by the Lender under this deed shall be the agent of the Borrower and the Borrower 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 Borrower goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Lender.

## **14 POWERS OF RECEIVER**

### **14.1 Powers additional to statutory powers**

**14.1.1** 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 14.2 to clause 14.20*.

14.1.2 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.

14.1.3 Any exercise by a Receiver of any of the powers given by *clause 14* may be on behalf of the Borrower, the directors of the Borrower or himself.

#### **14.2 Repair and develop the Property**

A Receiver may undertake or complete any works of repair, alteration, building or development on the Property 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.

#### **14.3 Grant or accept surrenders of leases**

A Receiver may grant, or accept, surrenders of any leases or tenancies affecting the Property on any terms and subject to any conditions that he thinks fit.

#### **14.4 Employ personnel and advisers**

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 the Borrower.

#### **14.5 Make and revoke VAT options to tax**

A Receiver may make, exercise or revoke any VAT option to tax that he thinks fit.

#### **14.6 Charge for remuneration**

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.

#### **14.7 Realise Charged Property**

A Receiver may collect and get in the Charged Property or any part of it 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 Charged Property with like rights.

#### **14.8 Manage or reconstruct the Borrower's business**

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 Borrower carried out at the Property.

#### **14.9 Dispose of Charged Property**

A Receiver may grant options and licences over all or any part of the Charged Property, grant any other interest or right over, sell, assign or lease (or concur in granting options and licences over all or any part of the Charged Property, granting any other interest or right over, selling, assigning or leasing) all or any of the Charged Property in respect of which he is appointed for such consideration and in such manner (including, without limitation, by public

auction or private sale) and generally on any terms and conditions that he thinks fit. A Receiver may promote, or concur in promoting, a company to purchase the Charged Property to be disposed of by him.

**14.10 Sever fixtures and fittings**

A Receiver may sever and sell separately any fixtures or fittings from the Property without the consent of the Borrower.

**14.11 Give valid receipts**

A Receiver may give valid receipts for all monies and execute all assurances and things that may be proper or desirable for realising any of the Charged Property.

**14.12 Make settlements**

A Receiver may make any arrangement, settlement or compromise between the Borrower and any other person that he may think expedient.

**14.13 Bring proceedings**

A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to any of the Charged Property that he thinks fit.

**14.14 Insure**

A Receiver may, if he thinks fit, but without prejudice to the indemnity in *clause 17.2*, 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 Borrower under this deed.

**14.15 Powers under LPA 1925**

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.

**14.16 Borrow**

A Receiver may, for any of the purposes authorised by this *clause 14*, raise money by borrowing from the Lender (or from any other person) either unsecured or on the security of all or any of the Charged Property 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).

**14.17 Redeem prior Security**

A Receiver may redeem any prior Security and settle and pass the accounts to which the Security relates. Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Borrower, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.

**14.18 Delegation**

A Receiver may delegate his powers in accordance with this deed.



#### **14.19 Absolute beneficial owner**

A Receiver may, in relation to any of the Charged Property, 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 all or any part of the Charged Property.

#### **14.20 Incidental powers**

A Receiver may do any other acts and things that he:

14.20.1 may consider desirable or necessary for realising any of the Charged Property;

14.20.2 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; or

14.20.3 lawfully may or can do as agent for the Borrower.

### **15 DELEGATION**

#### **15.1 Delegation**

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 19.1*).

#### **15.2 Terms**

The Lender and each Receiver may make a delegation on the terms and conditions (including the power to sub-delegate) that it thinks fit.

#### **15.3 Liability**

Neither the Lender nor any Receiver shall be in any way liable or responsible to the Borrower for any loss or liability arising from any act, default, omission or misconduct on the part of any Delegate.

### **16 APPLICATION OF PROCEEDS**

#### **16.1 Order of application of proceeds**

16.1.1 All monies received by the Lender, a Receiver or a Delegate under this deed after the security constituted by this deed has become enforceable (other than sums received under any Insurance Policy), 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:

- (a) 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;
- (b) in or towards payment of or provision for the Secured Liabilities in any order and manner that the Lender determines; and

(c) in payment of the surplus (if any) to the Borrower or other person entitled to it.

## **16.2 Appropriation**

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.

## **16.3 Suspense account**

All monies received by the Lender, a Receiver or a Delegate under this deed (other than sums received under any Insurance Policy that are not going to be applied in or towards discharge of the Secured Liabilities):

16.3.1 may, at the discretion of the Lender, Receiver or Delegate, be credited to any suspense or securities realised account;

16.3.2 shall bear interest, if any, at the rate agreed in writing between the Lender and the Borrower; and

16.3.3 may be held in that account for so long as the Lender, Receiver or Delegate thinks fit.

## **17 COSTS AND INDEMNITY**

### **17.1 Costs**

The Borrower shall, within five Business Days of demand, pay to, or reimburse, the Lender and any Receiver, 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:

17.1.1 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; or

17.1.2 taking proceedings for, or recovering, any of the Secured Liabilities.

### **17.2 Indemnity**

17.2.1 The Borrower shall indemnify the Lender, each Receiver and each Delegate, and their respective employees and agents against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by any of them arising out of or in connection with:

(a) 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 Charged Property;

(b) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the security constituted by this deed; or

- (c) any default or delay by the Borrower in performing any of its obligations under this deed.

17.2.2 Any past or present employee or agent may enforce the terms of this *clause 17.2* subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

## **18 FURTHER ASSURANCE**

### **18.1 Further assurance**

18.1.1 The Borrower shall, at its own expense, take whatever action the Lender or any Receiver may reasonably require for:

- (a) creating, perfecting or protecting the security intended to be created by this deed;
- (b) facilitating the realisation of any of the Charged Property; or
- (c) facilitating the exercise of any right, power, authority or discretion exercisable by the Lender or any Receiver in respect of any of the Charged Property,

18.2 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 Charged Property (whether to the Lender or to its nominee) and the giving of any notice, order or direction and the making of any registration.

## **19 POWER OF ATTORNEY**

### **19.1 Appointment of attorneys**

19.1.1 By way of security, the Borrower irrevocably appoints the Lender, every Receiver and every Delegate separately to be the attorney of the Borrower and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things that:

- (a) the Borrower is required to execute and do under this deed; or
- (b) any attorney deems proper or desirable 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.

### **19.2 Ratification of acts of attorneys**

The Borrower 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 19.1*.

## **20 RELEASE**

### **20.1 Release**

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On the expiry of the Security Period (but not otherwise), the Lender shall, at the request and reasonable cost of the Borrower, take whatever action is necessary to:

20.1.1 release the Charged Property from the security constituted by this deed; and

20.1.2 re-assign the Charged Property to the Borrower.

## **21 ASSIGNMENT AND TRANSFER**

### **21.1 Assignment by Lender**

21.1.1 At any time, without the consent of the Borrower, the Lender may assign or transfer any or all of its rights and obligations under this deed.

21.1.2 The Lender may disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Borrower, the Charged Property and this deed that the Lender considers appropriate.

### **21.2 Assignment by Borrower**

The Borrower may not assign any of its rights, or transfer any of its rights or obligations, under this deed.

## **22 SET-OFF**

### **22.1 Lender's right of set-off**

The Lender may at any time set off any liability of the Borrower to the Lender against any liability of the Lender to the Borrower, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this deed. If the liabilities to be set off are expressed in different currencies, the Lender may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Lender of its rights under this *clause 22.1* shall not limit or affect any other rights or remedies available to it under this deed or otherwise.

### **22.2 No obligation to set off**

The Lender is not obliged to exercise its rights under *clause 22.1*. If, however, it does exercise those rights it must promptly notify the Borrower of the set-off that has been made.

### **22.3 Exclusion of Borrower's right of set-off**

All payments made by the Borrower to the Lender under this deed shall be made in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **23 AMENDMENTS, WAIVERS AND CONSENTS**

### **23.1 Amendments**

No amendment of this deed shall be effective unless it is in writing and signed by, or on behalf of, each party (or its authorised representative).

### **23.2 Waivers and consents**

23.2.1 A waiver of any right or remedy under this deed or by law, or any consent given under this deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

23.2.2 A failure or delay by a party to exercise any right or remedy provided under this deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this deed. No single or partial exercise of any right or remedy provided under this deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this deed by the Lender shall be effective unless it is in writing.

### **23.3 Rights and remedies**

The rights and remedies provided under this deed are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

## **24 SEVERANCE**

If any provision (or part of a provision) of this deed is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of this deed.

## **25 COUNTERPARTS**

### **25.1 Counterparts**

25.1.1 This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.

25.1.2 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

## **26 THIRD PARTY RIGHTS**

### **26.1 Third party rights**

26.1.1 Except as expressly provided elsewhere in this deed, a person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this deed. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

26.1.2 The rights of the parties to rescind or agree any amendment or waiver under this deed are not subject to the consent of any other person.

## **27 FURTHER PROVISIONS**

### **27.1 Independent security**

The security constituted by this deed shall be in addition to, and independent of, any other security or guarantee that the Lender may hold for any of the Secured Liabilities at any time. No prior security held by the Lender over the whole or any part of the Charged Property shall merge in the security created by this deed.

#### **27.2 Continuing security**

The security constituted by this deed shall remain in full force and effect as a continuing security for the Secured Liabilities, despite any settlement of account, or intermediate payment, or other matter or thing, unless and until the Lender discharges this deed in writing.

#### **27.3 Discharge conditional**

Any release, discharge or settlement between the Borrower and the Lender shall be deemed conditional on no payment or security received by the Lender in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded under any law relating to insolvency, bankruptcy, winding-up, administration, receivership or otherwise. Despite any such release, discharge or settlement:

27.3.1 the Lender or its nominee may retain this deed and the security created by or under it, including all certificates and documents relating to the whole or any part of the Charged Property, for any period that the Lender deems necessary to provide the Lender with security against any such avoidance, reduction or order for refund; and

27.3.2 the Lender may recover the value or amount of such security or payment from the Borrower subsequently as if the release, discharge or settlement had not occurred.

#### **27.4 Certificates**

A certificate or determination by the Lender as to any amount for the time being due to it from the Borrower under this deed and the Facility Agreement shall be, in the absence of any manifest error, conclusive evidence of the amount due.

#### **27.5 Consolidation**

The restriction on the right of consolidation contained in section 93 of the LPA 1925 shall not apply to this deed.

### **28 NOTICES**

#### **28.1 Delivery**

28.2 Any notice or other communication given to a party under or in connection with this deed shall be:

28.2.1 in writing;

28.2.2 delivered by hand, by pre-paid first-class post or other next working day delivery service; and

28.2.3 sent to:

(a) the Lender at:

Darlington Borough Council whose registered office is at Town Hall,  
Darlington, DL1 5QT

(b) the Borrower at:

Darlington Arena Limited at Northern Echo Darlington Arena, Neasham  
Road, Darlington, DL2 1DL

or to any other address as is notified in writing by one party to the others from time  
to time.

### **28.3 Receipt by Borrower**

Any notice or other communication that the Lender gives to the Borrower shall be deemed to  
have been received:

28.3.1 if delivered by hand, at the time it is left at the relevant address;

28.3.2 if posted by pre-paid first-class post or other next working day delivery service, on  
the second Business Day after posting; and

28.3.3 if sent by fax, when received in legible form.

A notice or other communication given as described in *clause 28.3.1* or *clause 28.3.3* on a  
day that is not a Business Day, or after normal business hours, in the place it is received,  
shall be deemed to have been received on the next Business Day.

### **28.4 Receipt by Lender**

Any notice or other communication given to the Lender shall be deemed to have been  
received only on actual receipt.

### **28.5 Service of proceedings**

This *clause 28.5* does not apply to the service of any proceedings or other documents in any  
legal action or, where applicable, any arbitration or other method of dispute resolution.

### **28.6 No notice by email**

A notice or other communication given under or in connection with this deed is not valid if sent  
by email.

## **29 GOVERNING LAW AND JURISDICTION**

### **29.1 Governing law**

This deed and any dispute or claim (including non-contractual disputes or claims) arising out  
of or in connection with it or its subject matter or formation shall be governed by and  
construed in accordance with the law of England and Wales.

### **29.2 Jurisdiction**

Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this deed or its subject matter or formation. Nothing in this clause shall limit the right of the Lender to take proceedings against the Borrower in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

### **29.3 Other service**

The Borrower irrevocably consents to any process in any legal action or proceedings under *clause 29.2* being served on it in accordance with the provisions of this deed relating to service of notices. Nothing contained in this deed shall affect the right to serve process in any other manner permitted by law.

**THIS DEED** has been entered into on the date stated at the beginning of it.

A faint, circular stamp or logo is visible on the left side of the page, partially obscured by the text. It appears to be a circular seal with some illegible text or a design inside.



**SCHEDULE 1**  
**PROPERTY**

Land and buildings known as 'The New Stadium', Neasham Road, Hurworth Moor, Darlington, DL2 1DL registered at HM Land Registry under title number DU241170

**SCHEDULE 2**  
**THE GUARANTEE AGREEMENT**

DATED \_\_\_\_\_ 2019

DARLINGTON BOROUGH COUNCIL  
and  
HARGREAVES DARLINGTON LIMITED

GUARANTEE AND INDEMNITY

## **CONTENTS**

<b>1</b>	<b>DEFINITIONS AND INTERPRETATION .....</b>	<b>1</b>
<b>2</b>	<b>GUARANTEE AND INDEMNITY .....</b>	<b>3</b>
<b>3</b>	<b>LENDER PROTECTIONS .....</b>	<b>3</b>
<b>4</b>	<b>INTEREST .....</b>	<b>5</b>
<b>5</b>	<b>COSTS.....</b>	<b>5</b>
<b>6</b>	<b>REPRESENTATIONS AND WARRANTIES.....</b>	<b>5</b>
<b>7</b>	<b>ACCOUNTS.....</b>	<b>6</b>
<b>8</b>	<b>DISCHARGE CONDITIONAL .....</b>	<b>6</b>
<b>9</b>	<b>PAYMENTS .....</b>	<b>6</b>
<b>10</b>	<b>TRANSFER.....</b>	<b>7</b>
<b>11</b>	<b>LENDER'S RIGHT OF SET-OFF.....</b>	<b>7</b>
<b>12</b>	<b>EVIDENCE OF AMOUNTS AND CERTIFICATES.....</b>	<b>7</b>
<b>13</b>	<b>REMEDIES, WAIVERS, AMENDMENTS AND CONSENTS .....</b>	<b>7</b>
<b>14</b>	<b>SEVERANCE.....</b>	<b>8</b>
<b>15</b>	<b>THIRD PARTY RIGHTS .....</b>	<b>8</b>
<b>16</b>	<b>COUNTERPARTS .....</b>	<b>8</b>
<b>17</b>	<b>NOTICES .....</b>	<b>8</b>
<b>18</b>	<b>TERMINATION .....</b>	<b>9</b>
<b>19</b>	<b>GOVERNING LAW .....</b>	<b>9</b>
<b>20</b>	<b>JURISDICTION.....</b>	<b>9</b>
	<b>Schedule 1 Representations and warranties .....</b>	<b>10</b>

THIS DEED is dated \_\_\_\_\_ 2019

**BETWEEN:-**

- 1) **DARLINGTON BOROUGH COUNCIL** of Town Hall, Darlington, DL1 5QT ("Guarantor")
- 2) **HARGREAVES DARLINGTON LIMITED** incorporated and registered in England and Wales with company number 11811272 whose registered office is at West Terrace, Esh Winning, Durham DH7 9PT ("Lender").

**BACKGROUND**

- A. The Lender has agreed to provide the Borrower with facilities on the terms set out in the Facility Agreement.
- B. As a condition precedent to the availability of facilities under the Facility Agreement and for the benefit of the Borrower, the Guarantor has agreed to enter into this guarantee for the purpose of providing credit support to the Lender for the Borrower's obligations under the Facility Agreement.

**Agreed terms**

**1 DEFINITIONS AND INTERPRETATION**

The definitions and rules of interpretation in this clause apply in this guarantee.

**Borrower** means Darlington Arena Limited incorporated and registered in England and Wales with company number 07663383 whose registered office is at Northern Echo, Darlington Arena, Neasham Road, Darlington, Durham, DL2 1DL

**Business Day** means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Delegate** means any person appointed by the Lender or any Receiver pursuant to the Legal Charge and any person appointed as attorney of the Lender, Receiver or Delegate.

**Facility Agreement** means the facility agreement made between the Borrower and the Lender, dated \_\_\_\_\_ and annexed to this agreement at Schedule 2.

**Guaranteed Obligations** means the Principal Advance together with any interest due, owing or incurred under the Facility Agreement (including, without limitation, under any amendment, supplement or restatement of the Facility Agreement as approved by the Guarantor in writing) by the Borrower to the Lender limited to the sum of £2,100,000.

**Guarantee Period** means the period starting on the date of this guarantee and ending on the date on which the Principal Advance together with any accrued interest due by the Borrower to the Lender pursuant to the Facility Agreement have been paid in full.

**Hargreaves Group** means Hargreaves Services PLC (04952885) and each of its subsidiaries.

**Legal Charge** means the legal charge dated on or around the date hereof granted by the Borrower in favour of the Lender over the property registered at Land Registry under title numbers DU241170.

**Principal Advance** means the principal sum of £2,020,000 to be advanced by the Lender to the Borrower pursuant to the Facility Agreement.

**Rights** means any Security or other right or benefit whether arising by set-off, counterclaim, subrogation, indemnity, proof in liquidation or otherwise and whether from contribution or otherwise.

**Receiver** means a receiver or a receiver and manager of any or all of the property charged under the Legal Charge.

**Security** means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person, or any other agreement having a similar effect.

**Warranties** means the representations and warranties set out in the *Schedule 1*.

#### **Interpretation**

- 1.1.1 **Clause and Schedule headings shall not affect the interpretation of this guarantee;**
- 1.1.2 **a reference to a person shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality) and that person's personal representatives, successors, permitted assigns and permitted transferees;**
- 1.1.3 **unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;**
- 1.1.4 **unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;**
- 1.1.5 **a reference to Lender shall include the Lender's successors, permitted assigns and permitted transferees;**
- 1.1.6 **a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;**
- 1.1.7 **a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;**
- 1.1.8 **a reference to writing or written includes fax and e-mail;**
- 1.1.9 **a reference to this guarantee (or any provision of it) or to any other agreement or document referred to in this guarantee is a reference to this guarantee, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this guarantee) from time to time;**
- 1.1.10 **unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this guarantee and a reference to a paragraph is to a paragraph of the relevant Schedule;**
- 1.1.11 **any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;**

- 1.1.12 a reference to an amendment includes a novation, re-enactment, supplement or variation (and amended shall be construed accordingly);
- 1.1.13 a reference to assets includes present and future properties, undertakings, revenues, rights and benefits of every description;
- 1.1.14 a reference to an authorisation includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- 1.1.15 a reference to determines or determined means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it; and
- 1.1.16 a reference to a regulation includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

## 2 GUARANTEE AND INDEMNITY

- 2.1 In consideration of the Lender entering into the Facility Agreement, the Guarantor guarantees to the Lender, whenever the Borrower does not pay the Guaranteed Obligations when due, to pay on demand the Guaranteed Obligations where such demand is issued within the Guarantee Period.
- 2.2 Such demand shall be sent by recorded delivery post to the Guarantor at the address stated in this agreement marked for the attention of Luke Swinhoe and by email to both [Luke.Swinhoe@darlington.gov.uk](mailto:Luke.Swinhoe@darlington.gov.uk) and [Ian.Williams@darlington.gov.uk](mailto:Ian.Williams@darlington.gov.uk).
- 2.3 The Guarantor as principal obligor and as a separate and independent obligation and liability from its obligations and liabilities under clause 2.1 agrees to indemnify and keep indemnified the Lender in full and on demand from and against all and any losses, costs, claims, liabilities, damages, demands and expenses suffered or incurred by the Lender arising out of, or in connection with, the Guaranteed Obligations not being recoverable for any reason or any failure of the Borrower to perform or discharge any of its obligations or liabilities in respect of the Guaranteed Obligations provided the Guarantor's total liability to the Lender shall not exceed in aggregate £2,100,000 and shall not continue beyond the Guarantee Period.

## 3 LENDER PROTECTIONS

- 3.1 This guarantee is and shall at all times during the Guarantee Period be a continuing security and shall cover the ultimate balance from time to time owing to the Lender by the Borrower in respect of the Guaranteed Obligations (subject always to the maximum aggregate liability of £2,100,000 referred to at clause 2.2 above and subject to a demand on the guarantee being issued during the Guarantee Period).
- 3.2 The liability of the Guarantor under this guarantee shall not be reduced, discharged or otherwise adversely affected by:
  - 3.2.1 any intermediate payment, settlement of account or discharge in whole or in part of the Guaranteed Obligations;
  - 3.2.2 any variation, extension, discharge, compromise, dealing with, exchange or renewal of any right or remedy which the Lender may now or after the date of this guarantee have from or against any of the Borrower and any other person in connection with the Guaranteed Obligations;

- 3.2.3 any act or omission by the Lender or any other person in taking up, perfecting or enforcing any Security, indemnity, or guarantee from or against the Borrower or any other person;
- 3.2.4 any termination, amendment, variation, novation, replacement or supplement of or to any of the Guaranteed Obligations including without limitation any change in the purpose of, any increase in or extension of the Guaranteed Obligations and any addition of new Guaranteed Obligations;
- 3.2.5 any grant of time, indulgence, waiver or concession to the Borrower or any other person;
- 3.2.6 any insolvency, bankruptcy, liquidation, administration, winding up, incapacity, limitation, disability, the discharge by operation of law, or any change in the constitution, name or style of the Borrower, Lender, or any other person;
- 3.2.7 any invalidity, illegality, unenforceability, irregularity or frustration of any actual or purported obligation of, or Security held from, the Borrower or any other person in connection with the Guaranteed Obligations;
- 3.2.8 any claim or enforcement of payment from the Borrower or any other person; or
- 3.2.9 any act or omission which would not have discharged or affected the liability of the Guarantor had it been a principal debtor instead of a guarantor; or
- 3.2.10 any other act or omission except an express written release of the Guarantor by the Lender.

The Lender shall not be obliged, before taking steps to enforce any of its rights and remedies under this Guarantee, to:

- 3.2.11 take any action or obtain judgment in any court against the Borrower or any other person;
  - 3.2.12 make or file any claim in a bankruptcy, liquidation, administration or insolvency of the Borrower or any other person; or
  - 3.2.13 make, demand, enforce or seek to enforce any claim, right or remedy against the Borrower or any other person.
- 3.3 Save as to the first legal charge granted by the Borrower to the Guarantor over the property registered at Land Registry under title number DU241170 in respect of the Guarantor's obligations to the Lender of the Guaranteed Obligations (and as the case may be interest thereon), the validity of which the Lender acknowledges, the Guarantor warrants to the Lender that it has not taken or received, and shall not take, exercise or receive the benefit of any Rights from or against the Borrower, its liquidator, an administrator, co-guarantor or any other person in connection with any liability of, or payment by, the Guarantor under this guarantee but:
- 3.3.1 if any of the Rights is taken, exercised or received by the Guarantor, those Rights and all monies at any time received or held in respect of those Rights shall be held by the Guarantor on trust for the Lender for application in or towards the discharge of the Guaranteed Obligations under this guarantee; and



- 3.3.2 on demand by the Lender, the Guarantor shall promptly transfer, assign or pay to the Lender all other Rights and all monies from time to time held on trust by the Guarantor under this *clause* 3.3

This guarantee is in addition to and shall not affect nor be affected by or merge with any other judgment, Security, right or remedy obtained or held by the Lender from time to time for the discharge and performance of the Borrower of the obligations under the Facility Agreement.

#### **4 INTEREST**

- 4.1 The Guarantor shall pay interest to the Lender after as well as before judgment at the annual rate which is 2% above the base rate of the Bank of England on all sums demanded under this guarantee from the date 7 (seven) days after the date of demand by the Lender or, if earlier, the date on which the relevant damages, losses, costs or expenses arose in respect of which the demand has been made, until, but excluding, the date of actual payment.
- 4.2 Interest under *clause* 4.1 shall accrue on a day-to-day basis calculated by the Lender on such terms as the Lender may from time to time reasonably determine and shall be compounded on the last Business Day of each month.

#### **5 COSTS**

- 5.1 The Guarantor shall, within seven Business Days of demand (provided that such demand is made after the Lender has issued a demand in respect of the Guaranteed Obligations) pay to, or reimburse, the Lender and any Receiver, 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:
- 5.1.1 any dispute arising between the Guarantor and the Lender in respect of a demand under this guarantee issued by the Lender;
- 5.1.2 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 guarantee;
- 5.1.3 taking proceedings for, or recovering, any of the Guaranteed Obligations; or
- 5.1.4 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 the Legal Charge;
- 5.2 For the avoidance of doubt:
- 5.2.1 the Guarantor shall not be liable for any costs incurred by the Lender in connection with any notice served on the Borrower by the Lender pursuant to the Facility Agreement and served prior to the Lender issuing a demand in respect of the Guaranteed Obligations; and
- 5.2.2 the Guarantor's obligation in clause 5.1 forms a separate and independent obligation and the Guarantor's total liability referred to at clause 2.2 does not apply to the obligation in clause 5.1.

#### **6 REPRESENTATIONS AND WARRANTIES**

The Guarantor represents and warrants that the Warranties are true and correct on the date of this guarantee.

## **7 ACCOUNTS**

- 7.1 The Lender may place to the credit of a suspense account any monies received under or in connection with this guarantee in order to preserve the rights of the Lender to prove for the full amount of all its claims against the Borrower or any other person in respect of the Guaranteed Obligations.
- 7.2 The Lender may at any time and from time to time apply all or any monies held in any suspense account in or towards satisfaction of any of the monies, obligations and liabilities that are the subject of this guarantee as the Lender, in its absolute discretion, may conclusively determine.
- 7.3 If this guarantee ceases for any reason whatsoever to be continuing, the Lender may open a new account or accounts in the name of the Borrower.
- 7.4 If the Lender does not open a new account or accounts in accordance with clause 7.3, it shall nevertheless be treated as if it had done so at the time that this guarantee ceased to be continuing whether by termination, calling in or otherwise, in relation to the Borrower.
- 7.5 As from the time of opening or deemed opening of a new account or accounts, all payments made to the Lender by or on behalf of the Borrower shall be credited or be treated as having been credited to the new account or accounts and shall not operate to reduce the amount for which this guarantee is available at that time, nor shall the liability of the Guarantor under this guarantee in any manner be reduced or affected by any subsequent transactions, receipts or payments.

## **8 DISCHARGE CONDITIONAL**

- 8.1 Any release, discharge or settlement between the Guarantor and the Lender in relation to this guarantee shall be conditional on no right, Security, disposition or payment to the Lender by the Guarantor, the Borrower or any other person in respect of the Guaranteed Obligations being avoided, set aside or ordered to be refunded under any enactment or law relating to breach of duty by any person, bankruptcy, liquidation, administration, protection from creditors generally or insolvency or for any other reason.
- 8.2 If any right, Security, disposition or payment referred to in clause 8.1 is avoided, set aside or ordered to be refunded, the Lender shall be entitled subsequently to enforce this guarantee against the Guarantor as if such release, discharge or settlement had not occurred and any such right, Security, disposition or payment had not been given or made.

## **9 PAYMENTS**

- 9.1 All sums payable by the Guarantor under this guarantee shall be paid in full to the Lender in the currency in which the Guaranteed Obligations are payable:
- 9.1.1 without any set-off, condition or counterclaim whatsoever; and
- 9.1.2 free and clear of any deductions or withholdings whatsoever except as may be required by law or regulation which is binding on the Guarantor.

If any deduction or withholding is required by any law or regulation to be made by the Guarantor, the amount of the payment due from the Guarantor shall be increased to an amount which (after making any deduction or withholding) leaves an amount equal to the payment which would have been due if no deduction or withholding had been required.

The Guarantor shall promptly deliver or procure delivery to the Lender of all receipts issued to it evidencing each deduction or withholding which it has made.

The Guarantor shall not and may not direct the application by the Lender of any sums received by the Lender from the Guarantor under any of the terms of this guarantee.

## **10 TRANSFER**

10.1 The Guarantor may not assign any of its rights and may not transfer any of its obligations under this guarantee or enter into any transaction which would result in any of those rights or obligations passing to another person.

10.2 The Lender may assign any of its rights and may transfer any of its obligations under this guarantee or enter into any transaction which would result in any of those rights or obligations passing to another person provided that the assignee or transferee is a member of the Hargreaves Group.

## **11 LENDER'S RIGHT OF SET-OFF**

11.1 The Lender may at any time set off any liability of the Guarantor to the Lender against any liability of the Lender to the Guarantor, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this guarantee. If the liabilities to be set off are expressed in different currencies, the Lender may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Lender of its rights under this clause 11.1 shall not limit or affect any other rights or remedies available to it under this guarantee or otherwise.

11.2 The Lender is not obliged to exercise its rights under clause 11.1 If, however, it does exercise those rights it must promptly notify the Guarantor of the set-off that has been made.

## **12 EVIDENCE OF AMOUNTS AND CERTIFICATES**

Any certificate, determination or notification by the Lender as to a rate or any amount payable under this guarantee is (in the absence of manifest error) conclusive evidence of the matter to which it relates and shall contain reasonable details of the basis of determination.

## **13 REMEDIES, WAIVERS, AMENDMENTS AND CONSENTS**

13.1 No amendment of this guarantee shall be effective unless it is in writing and signed by, or on behalf of, each party (or its authorised representative).

13.2 A waiver of any right or remedy under this guarantee or by law, or any consent given under this guarantee, is only effective if given in writing and signed by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

13.3 A failure or delay by a party to exercise any right or remedy provided under this guarantee or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this guarantee. No single or partial exercise of any right or remedy provided under this guarantee or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this guarantee by the Lender shall be effective unless it is in writing and signed.

- 13.4 The rights and remedies provided under this guarantee are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

#### 14 SEVERANCE

If any provision (or part of a provision) of this guarantee is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of this guarantee.

#### 15 THIRD PARTY RIGHTS

A person who is not a party to this guarantee shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this guarantee. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

#### 16 COUNTERPARTS

- 16.1 This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.

- 16.2 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

#### 17 NOTICES

- 17.1 A notice given to a party under or in connection with this agreement shall be in writing and sent to the party at the address or DX number or email address given in this agreement.

- 17.2 The following table sets out methods by which a notice may be sent and, if sent by that method, the corresponding deemed delivery date and time:

Delivery method	Deemed delivery date and time
Delivery by hand.	On signature of a delivery receipt or at the time the notice is left at the address.
Document exchange (DX).	9.00 am on the second Business Day after being put into the DX.
Email	24 hours after transmission

- 17.3 For the purpose of clause 17.2 and calculating deemed receipt:

17.3.1 all references to time are to local time in the place of deemed receipt; and

17.3.2 if deemed receipt would occur in the place of deemed receipt on a Saturday or Sunday or a public holiday when banks are not open for business, deemed receipt is deemed to take place at 9.00 am on the day when business next starts in the place of receipt.

- 17.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**18 TERMINATION**

- 18.1 Without prejudice to prior obligations this agreement shall be terminable at the instance of the Guarantor on the expiry of one year and three months from the date it is entered into by service of not less than three months' notice in writing by the Guarantor to the Lender, such notice to be sent by post to the Lender's registered address marked for the attention of David Anderson and by email to both [david.anderson@hsgplc.co.uk](mailto:david.anderson@hsgplc.co.uk) and [andrew.robertson@hsgplc.co.uk](mailto:andrew.robertson@hsgplc.co.uk).
- 18.2 Upon termination of this agreement the Guarantor shall be entitled to discharge its obligations under this agreement at any time upon payment to the Lender of the Guaranteed Obligations and the Lender shall provide such details as required to enable the Guarantor to pay to it the Guaranteed Obligations due upon which the Lender will surrender and release this Guarantee.

**19 GOVERNING LAW**

- 19.1 This guarantee and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with, the law of England and Wales.
- 19.2 The Guarantor irrevocably consents to any process in any proceedings under clause 20 being served on it in accordance with the provisions of this guarantee relating to service of notices. Nothing contained in this guarantee shall affect the right to serve process in any other manner permitted by law.

**20 JURISDICTION**

Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this guarantee or its subject matter or formation. Nothing in this clause shall limit the right of the Lender to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

**THIS DEED** has been entered into on the date stated at the beginning of it.

**SCHEDULE 1**  
**REPRESENTATIONS AND WARRANTIES**

**1 Powers**

The Guarantor has the power to execute, deliver and perform its obligations under this guarantee and the transactions contemplated by them.

**2 Non-contravention**

The execution, delivery and performance of the obligations in, and transactions contemplated by, this guarantee does not and will not contravene any of the Guarantor's constitutional documents, any agreement or instrument binding on the Guarantor or its assets, or any applicable law or regulation.

**3 Authorisations**

The Guarantor has taken all necessary action and obtained all required or desirable consents to enable it to execute, deliver and perform its obligations under this guarantee and to make this guarantee admissible in evidence in its jurisdiction of incorporation. Any such authorisations are in full force and effect.

**4 Binding obligations**

The Guarantor's obligations under this guarantee are, subject to any general principles of law limiting obligations, legal, valid, binding and enforceable.

**5 Assets not immune to action**

None of the Guarantor's assets is entitled to immunity on any grounds from any legal action or proceeding (including, without limitation, suit, attachment prior to judgment, execution or other enforcement).

**6 Governing Law**

The choice of English Law as the governing law of this guarantee will be recognised and enforced in the Guarantor's jurisdiction of incorporation and any judgement obtained in England in relation to this guarantee will be recognized and enforced in that jurisdiction.

## **Schedule 2 - Facility Agreement**

**EXECUTED** (but not delivered until the date )  
hereof) **AS A DEED** by affixing its **COMMON** )  
**SEAL of DARLINGTON BOROUGH COUNCIL** )  
hereunto in the presence of:- )

**Name:**

**Signature:**

**Job Title:**

**EXECUTED as a DEED** (but )  
not until the date hereof) by )  
**HARGREAVES** )  
**DARLINGTON LIMITED** acting )  
by a director in the presence )  
of:- )

**Director:**

**Witness Signature:**

**Witness Name:**

**Witness Address:**

**Witness Occupation:**



**SCHEDULE 3**  
**THE FACILITY AGREEMENT**

DATED \_\_\_\_\_ 2019

**DARLINGTON ARENA LIMITED**  
**and**  
**HARGREAVES DARLINGTON LIMITED**

**FACILITY AGREEMENT**

## CONTENTS

1	DEFINITIONS AND INTERPRETATION .....	1
2	THE FACILITY .....	3
3	PURPOSE .....	3
4	CONDITIONS PRECEDENT .....	4
5	DRAWING.....	4
6	INTEREST .....	4
7	REPAYMENT.....	4
8	COSTS.....	5
9	PAYMENTS .....	5
10	REPRESENTATIONS AND WARRANTIES.....	5
11	COVENANTS.....	7
12	EVENTS OF DEFAULT .....	7
13	CALCULATIONS, ACCOUNTS AND CERTIFICATES .....	9
14	AMENDMENTS, WAIVERS AND CONSENTS AND REMEDIES .....	9
15	SEVERANCE.....	9
16	ASSIGNMENT AND TRANSFER .....	9
17	COUNTERPARTS .....	10
18	THIRD PARTY RIGHTS .....	10
19	NOTICES .....	10
20	GOVERNING LAW AND JURISDICTION .....	11

THIS AGREEMENT is dated

2019

BETWEEN:-

- (1) **DARLINGTON ARENA LIMITED** incorporated and registered in England and Wales with company number 07663383 whose registered office is at Northern Echo Arena, Neasham Road, Darlington, DL2 1DL ("Borrower"); and
- (2) **HARGREAVES DARLINGTON LIMITED** incorporated and registered in England and Wales with company number 11811272 whose registered office is at West Terrace, Esh Winning, Durham, DH7 9PT ("Lender").

## BACKGROUND

The Lender has agreed to provide the Borrower with a secured term loan facility of up to £2,020,000, which is to be guaranteed by Darlington Borough Council.

### Agreed terms

## 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

The following definitions apply in this agreement.

**Business Day** means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Deed of Priority** means the agreement between the (1) Borrower, (2) Lender and (3) Darlington Borough Council.

**Event of Default** means any event or circumstance listed in *clause 12.1 to clause 12.12*

**Facility** means the term loan facility made available under this agreement.

**Finance Document** means this agreement, the Guarantee, the Legal Charge and any other document designated as such by the Lender and the Borrower.

**Guarantee** means the guarantee between (1) Darlington Borough Council and (2) the Lender and annexed to this agreement at Schedule 3.

**Indebtedness** means any obligation to pay or repay money, present or future, whether actual or contingent, sole or joint and any guarantee or indemnity of any of those obligations.

**Legal Charge** means the legal mortgage over the Property made between (1) the Borrower and (2) the Lender and annexed to this agreement at Schedule 4.

**Lender Repayment Notice** means notice in writing served by the Lender to the Borrower at any time after 31 July 2019 requesting repayment on the date falling 3 calendar months after the date of the notice of all or any part of a Loan then outstanding.

**Loan** means the principal amount of a loan made or to be made by the Lender to the Borrower under this agreement or (as the context requires) the principal amount outstanding for the time being of that loan.

**Potential Event of Default** means any event or circumstance specified in *clause 12.1 to clause 12.12* that would, on the giving of notice, expiry of any grace period or making of any

determination under the Finance Documents, or satisfaction of any other condition (or any combination thereof), become an Event of Default.

**Property** means the freehold property known as The New Stadium, Neasham Road, Hurworth Moor, Darlington, DL2 1DL registered at the Land Registry with title number DU241170.

**Repayment Date** means 31 December 2019 or such date as specified in a Lender Repayment Notice.

**Security** means 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 Document** means the Legal Charge, executed or to be executed by the Borrower.

**Sterling and £** means the lawful currency of the UK.

**Utilisation Request** means a notice substantially in the form set out in Schedule 2.

## 1.2 Interpretation

In this agreement:

- 1.2.1 clause, Schedule and paragraph headings shall not affect the interpretation of this agreement;
- 1.2.2 a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality);
- 1.2.3 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- 1.2.4 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- 1.2.5 a reference to a party shall include that party's successors, permitted assigns and permitted transferees and this agreement shall be binding on, and enure to the benefit of, the parties to this agreement and their respective personal representatives, successors, permitted assigns and permitted transferees;
- 1.2.6 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- 1.2.7 a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 1.2.8 a reference to a time of day is to London time;
- 1.2.9 a reference to writing or written includes fax and email.
- 1.2.10 an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- 1.2.11 a reference to a Finance Document (or any provision of it) or to any other agreement or document referred to in any Finance Document is a reference to a Finance

Document, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this agreement) from time to time;

- 1.2.12 unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this agreement and a reference to a paragraph is to a paragraph of the relevant Schedule;
- 1.2.13 any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 1.2.14 a reference to a document in **agreed form** is to that document in the form agreed by the Lender and the Borrower and initialled by or on their behalf for identification;
- 1.2.15 a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and **amended** shall be construed accordingly);
- 1.2.16 a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;
- 1.2.17 a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- 1.2.18 a reference to a **certified copy** of a document means a copy certified to be a true, complete and up-to-date copy of the original document, in writing and signed by a director or the secretary of the party delivering the document;
- 1.2.19 a reference to **continuing** in relation to an Event of Default means an Event of Default that has not been remedied or waived;
- 1.2.20 a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the discretion of the person making it;
- 1.2.21 a reference to a **disposal of any asset**, undertaking or business includes a sale, lease, licence, transfer, loan or other disposal by a person of that asset, undertaking or business (whether by a voluntary or involuntary single transaction or series of transactions); and
- 1.2.22 a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

### 1.3 Schedules

The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.

## 2 THE FACILITY

- 2.1 The Lender grants to the Borrower a secured Sterling term loan facility of a total principal amount not exceeding £2,020,000 on the terms, and subject to the conditions, of this agreement.

## 3 PURPOSE

- 3.1 The Borrower shall use all money borrowed under this agreement as follows:

- 3.1.1 **first**, for repaying and discharging in full its existing lending from Hargreaves Land Limited and Paul Mackings Consulting Limited;
  - 3.1.2 **second**, for repaying and discharging in full its existing secured lending from SW Centre Property Limited; and
  - 3.1.3 **third**, towards its general working capital requirements.
- 3.2 The Lender is not obliged to monitor or verify how any amount advanced under this agreement is used.
- 4 **CONDITIONS PRECEDENT**
  - 4.1 The Borrower may not give notice to draw a Loan unless the Lender has received all the documents and evidence specified in 0 in form and substance satisfactory to the Lender. The Lender shall notify the Borrower promptly upon being so satisfied.
  - 4.2 The conditions specified in this clause 4 are inserted solely for the Lender's benefit. The Lender may waive them, in whole or in part and with or without conditions, without prejudicing the Lender's right to require subsequent fulfilment of such conditions.
- 5 **DRAWING**
  - 5.1 The Borrower may draw down a Loan by delivery to the Lender of a duly completed Utilisation Request not later than:
    - 5.1.1 7 days prior to the proposed draw down date in respect of the first draw down to be made under this agreement; and
    - 5.1.2 30 days prior to the proposed draw down date in respect of each subsequent draw down (following the first draw down) to be made under this agreement.
- 6 **INTEREST**
  - 6.1 The Borrower shall pay interest on a Loan at the rate of 4% per annum above the prevailing base rate of the Bank of England at any time.
  - 6.2 Interest shall accrue daily. All accrued interest shall be payable on the Repayment Date.
  - 6.3 If the Borrower fails to make any payment due under this agreement on the due date for payment, interest on the unpaid amount shall accrue daily, from the date of non-payment to the date of actual payment (both before and after judgment), at 4% per annum above the interest rate detailed in clause 6.1.
- 7 **REPAYMENT**
  - 7.1 Subject to clause 7.2, the Borrower shall repay the Loans in full on the Repayment Date.
  - 7.2 If the Lender delivers to the Borrower a Lender Repayment Notice, the Borrower shall repay such outstanding Loan as specified in the Lender Repayment Notice and all other sums due in respect of it on the date specified in the Lender Repayment Notice.
  - 7.3 The Borrower may elect, in its sole discretion, to repay a Loan early. In the event that the Borrower wishes to repay a Loan early, it shall send a notice ("Borrower Repayment Notice") to the Lender specifying the date of the repayment and the amount that shall be repaid, to include the principal amount of that Loan and interest due and payable.

- 7.4 Upon receipt of a Borrower Repayment Notice under clause 7.3 of this agreement the Lender will have 5 Business Days to confirm the amount due and payable by the Borrower in the Borrower Repayment Notice. In the event that the amount is not agreed, the Lender shall issue a notice pursuant to clause 13.2 of this agreement.

## **8 COSTS**

- 8.1 The Borrower shall pay, within five Business Days of demand, all reasonable costs and expenses (together with any value added tax on them) that the Lender incurs in connection with the amendment, extension, alteration, preservation and enforcement of the Loans and/or the Finance Documents. Each party shall pay their own costs and expenses incurred in connection with the preparation and negotiation of the Finance Documents.
- 8.2 The Borrower shall pay any stamp duty, documentary and other similar duties and taxes to which the Finance Documents may be subject, or give rise and shall indemnify the Lender against any losses or liabilities that it may incur as a result of any delay or omission by the Borrower in paying any such duties or taxes.

## **9 PAYMENTS**

- 9.1 All payments made by the Borrower under the Finance Documents shall be in Sterling and in immediately available cleared funds to the Lender at such account of the Lender as the Lender may notify the Borrower from time to time.

- 9.2 If any payment becomes due on a day that is not a Business Day, the due date of such payment will be extended to the next succeeding Business Day, or, if that Business Day falls in the following calendar month, such due date shall be the immediately preceding Business Day.

- 9.3 All payments made by the Borrower under the Finance Documents shall be made in full, without set-off, counterclaim or condition, and free and clear of, and without any deduction or withholding, provided that, if the Borrower is required by law or regulation to make such deduction or withholding, it shall:

9.3.1 ensure that the deduction or withholding does not exceed the minimum amount legally required;

9.3.2 pay to the relevant taxation or other authorities, as appropriate, the full amount of the deduction or withholding;

9.3.3 furnish to the Lender, within the period for payment permitted by the relevant law, either:

(a) an official receipt of the relevant taxation authorities concerned on payment to them of amounts so deducted or withheld; or

(b) if such receipts are not issued by the taxation authorities concerned on payment to them of amounts so deducted or withheld, a certificate of deduction or equivalent evidence of the relevant deduction or withholding; and

9.3.4 pay to the Lender such additional amount as is necessary to ensure that the net full amount received by the Lender after the required deduction or withholding is equal to the amount that the Lender would have received had no such deduction or withholding been made.

## **10 REPRESENTATIONS AND WARRANTIES**

The Borrower represents and warrants to the Lender on the date of this agreement:



- 10.1 It:
- 10.1.1 is a duly incorporated limited liability company validly existing under the laws of its jurisdiction of incorporation;
  - 10.1.2 has the power to own its assets and carry on its business as it is being conducted;
  - 10.1.3 has the power to enter into, deliver and perform, and has taken all necessary action to authorise its entry into, delivery and performance of, the Finance Documents and the transactions contemplated by them; and
  - 10.1.4 no limit on its powers will be exceeded as a result of the borrowing or grant of security contemplated by the Finance Documents.
- 10.2 The entry into and performance by it of, and the transactions contemplated by, the Finance Documents, do not and will not contravene or conflict with:
- 10.2.1 its constitutional documents;
  - 10.2.2 any agreement or instrument binding on it or its assets or constitute a default or termination event (however described) under any such agreement or instrument; or
  - 10.2.3 any law or regulation or judicial or official order, applicable to it.
- 10.3 It has obtained all required authorisations to enable it to enter into, exercise its rights and comply with its obligations in the Finance Documents and to make them admissible in evidence in its jurisdiction of incorporation. All such authorisations are in full force and effect.
- 10.4 Its obligations under the Finance Documents are legal, valid, binding and enforceable in accordance with their terms.
- 10.5 It is not necessary to file, record or enrol any Finance Document (other than the registration of the Security Document under the Companies Act 2006 and, in the case of real property registration at HM Land Registry) with any court or other authority or pay any stamp duty, registration or similar taxes relating to any Finance Document or the transactions contemplated any Finance Document.
- 10.6 No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination thereof, would constitute) a default or termination event (howsoever described) under any other agreement or instrument which is binding on the Borrower or to which any of its assets is subject which has or is reasonably likely to have a material adverse effect on its business, assets or condition or ability to perform its obligations under the Finance Documents.
- 10.7 No litigation, arbitration or administrative proceedings are taking place, pending or, to the Borrower's knowledge, threatened against it, any of its directors or any of its assets, which might reasonably be expected to have a material adverse effect on its business, assets or condition, or its ability to perform its obligations under the Finance Documents.
- 10.8 The information, in written or electronic format, supplied by, or on its behalf, to the Lender in connection with the Facility and the Finance Documents was, at the time it was supplied or at the date it was stated to be given (as the case may be):
- 10.8.1 if it was factual information, complete, true and accurate in all material respects;

10.8.2 If it was a financial projection or forecast, prepared on the basis of recent historical information and on the basis of reasonable assumptions and was fair and made on reasonable grounds; and

10.8.3 not misleading in any material respect, nor rendered misleading by a failure to disclose other information,

except to the extent that it was amended, superseded or updated by more recent information supplied by, or on behalf of, the Borrower to the Lender.

10.9 The Security Document creates (or once entered into, will create):

10.9.1 valid, legally binding and enforceable Security for the obligations expressed to be secured by it; and

10.9.2 subject to registration under section 859A of the Companies Act 2006 and, in the case of real property registration at HM Land Registry, perfected Security over the assets expressed to be subject to security in it,

in favour of the Lender, having the priority and ranking expressed to be created in the Security Document and ranking ahead of all (if any) Security and rights of third parties except those preferred by law or as set out in the Deed of Priority.

## 11 COVENANTS

The Borrower covenants with the Lender that, as from the date of this agreement until all its liabilities under the Finance Documents have been discharged:

11.1 It will deliver to the Lender promptly such financial or other information as the Lender may, from time to time, reasonably request relating to the Borrower or its business.

11.2 It will promptly, after becoming aware of them, notify the Lender of any litigation, arbitration or administrative proceedings or claim of the kind described in *clause 10.7*.

11.3 It will promptly obtain all consents or authorisations under any law or regulation (and do all that is needed to maintain them in full force and effect) to enable it to perform its obligations under the Finance Documents and to ensure the legality, validity, enforceability and admissibility in evidence of the Finance Documents in its jurisdiction of incorporation.

11.4 It will comply, in all respect, with all laws, if failure to do so has or is reasonably likely to have a material adverse effect on its business, assets or condition, or its ability to perform its obligations under the Finance Documents.

11.5 It will notify the Lender of any Potential Event of Default or Event of Default (and the steps, if any, being taken to remedy it) promptly on becoming aware of its occurrence.

## 12 EVENTS OF DEFAULT

Each of the events or circumstances set out in this *clause 12* (other than *clause 12.13*) is an Event of Default.

12.1 The Borrower fails to pay any sum payable by it under any Finance Document, unless its failure to pay is caused solely by an administrative error or technical problem and payment is made within three Business Days of its due date.

- 12.2 The Borrower fails (other than by failing to pay), to comply with any material provision of any Finance Document and (if the Lender considers, acting reasonably, that the default is capable of remedy), such default is not remedied within 10 Business Days of the earlier of:
- 12.2.1 the Lender notifying the Borrower of the default and the remedy required;
  - 12.2.2 the Borrower becoming aware of the default.
- 12.3 Any representation, warranty or statement made, repeated or deemed made by the Borrower in, or pursuant to, any Finance Document is (or proves to have been) incomplete, untrue, incorrect or misleading when made, repeated or deemed made.
- 12.4 The Borrower stops or suspends payment of any of its debts, or is unable to, or admits its inability to, pay its debts as they fall due.
- 12.5 The value of the Borrower's assets is less than its liabilities (taking into account contingent and prospective liabilities).
- 12.6 A moratorium is declared in respect of any Indebtedness of the Borrower.
- 12.7 Any action, proceedings, procedure or step is taken for:
- 12.7.1 the suspension of payments, a moratorium of any Indebtedness, winding up, dissolution, administration or reorganisation (using a voluntary arrangement, scheme of arrangement or otherwise) of the Borrower; or
  - 12.7.2 the composition, compromise, assignment or arrangement with any creditor; or
  - 12.7.3 the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Borrower or any of its assets; or
  - 12.7.4 the enforcement of any Security over any assets of the Borrower; or
  - 12.7.5 the termination of the Guarantee by Darlington Borough Council.
- 12.8 The Borrower commences negotiations, or enters into any composition, compromise, assignment or arrangement, with one or more of its creditors with a view to rescheduling any of its Indebtedness (because of actual or anticipated financial difficulties).
- 12.9 A distress, attachment, execution, expropriation, sequestration or another analogous legal process is levied, enforced or sued out on, or against, the Borrower's assets.
- 12.10 Any provision of any Finance Document is or becomes, for any reason, invalid, unlawful, unenforceable, terminated, disputed or ceases to be effective or to have full force and effect.
- 12.11 The Borrower repudiates or evidences an intention to repudiate any Finance Document.
- 12.12 The Borrower suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a substantial part of its business.
- 12.13 At any time after an Event of Default has occurred which is continuing, the Lender may, by notice to the Borrower:
- 12.13.1 cancel all outstanding obligations of the Lender under this agreement whereupon they shall immediately be cancelled; and/or

12.13.2 declare that the Loans (and all accrued interest and all other amounts outstanding under the Finance Documents) are immediately due and payable, whereupon they shall become immediately due and payable; and/or

12.13.3 declare that the Loans be payable on demand, whereupon it shall become immediately payable on demand by the Lender; and/or

12.13.4 enforce the Security Document or the Guarantee.

### **13 CALCULATIONS, ACCOUNTS AND CERTIFICATES**

13.1 Any interest, commission or fee under any Finance Document shall accrue on a day-to-day basis, calculated according to the number of actual days elapsed and a year of 365 days.

13.2 If the Lender issues any certificate, determination or notification of a rate or any amount payable under a Finance Document, it shall be (in the absence of manifest error) conclusive evidence of the matter to which it relates.

### **14 AMENDMENTS, WAIVERS AND CONSENTS AND REMEDIES**

14.1 No amendment of any Finance Document shall be effective unless it is in writing and signed by, or on behalf of, each party to it (or its authorised representative).

14.2<sup>1</sup> A waiver of any right or remedy under any Finance Document or by law, or any consent given under any Finance Document, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

14.3 A failure or delay by a party to exercise any right or remedy provided under any Finance Document or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm any Finance Document. No single or partial exercise of any right or remedy provided under any Finance Document or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm any Finance Document by the Lender shall be effective unless it is in writing.

14.4 The rights and remedies provided under the Finance Documents are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

### **15 SEVERANCE**

If any provision (or part of a provision) of any Finance Document is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of the relevant Finance Documents.

### **16 ASSIGNMENT AND TRANSFER**

16.1 The Lender may assign any of its rights under the Finance Documents or transfer all its rights or obligations by novation with the consent of the Borrower.

16.2 The Borrower may assign any of its rights under the Finance Documents or transfer all its rights or obligations by novation with the consent of the Lender.

**17 COUNTERPARTS**

Each Finance Document may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute one agreement.

**18 THIRD PARTY RIGHTS**

18.1 Subject to clause 16, a person who is not a party to this agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

18.2 The rights of the parties to rescind or agree any amendment or waiver under this agreement are not subject to the consent of any other person.

**19 NOTICES**

19.1 Any notice or other communication given to a party under or in connection with, any Finance Document shall be:

19.1.1 in writing;

19.1.2 delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by email; and

19.1.3 sent to:

(a) the Borrower at:

Northern Echo Arena, Neasham Road, Darlington, DL2 1DL

Email: lee.rust@mowdenpark.com

Attention: Lee Rust

(b) the Lender at:

West Terrace, Esh Winning, Durham DH7 9PT

Email: david.anderson@hsgplc.co.uk

Attention: David Anderson

or to any other address or fax number as is notified in writing by one party to the other from time to time.

19.2 Any notice or other communication that the Lender gives to the Borrower under or in connection with, any Finance Document shall be deemed to have been received:

19.2.1 if delivered by hand, at the time it is left at the relevant address;

19.2.2 if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; and

19.2.3 if sent by email, 24 hours after transmission

19.3 A notice or other communication given as described in *clause 19.2.1* or *clause 19.2.3* on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

19.4 Any notice or other communication given to the Lender shall be deemed to have been received only on actual receipt.

## 20 GOVERNING LAW AND JURISDICTION

20.1 This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

20.2 Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) that arises out of, or in connection with this agreement or its subject matter or formation

20.3 The Borrower irrevocably consents to any process in any legal action or proceedings under *clause 20.2* being served on it in accordance with the provisions of this agreement relating to service of notices. Nothing contained in this agreement shall affect the right to serve process in any other manner permitted by law.

THIS AGREEMENT has been entered into on the date stated at the beginning of it.

**SCHEDULE 1  
CONDITIONS PRECEDENT**

**1 Constitutional Documents**

- 1.1 A copy of the constitutional documents of the Borrower.
- 1.2 A copy of the resolutions duly passed by the Borrower's board of directors:
  - 1.2.1 approving the entry into, and terms of, and transactions contemplated by, the Finance Documents and resolving that it execute, deliver and perform the Finance Documents;
  - 1.2.2 authorising a specified person or persons to execute the Finance Documents on its behalf, to give notices and take all other action in connection with the Finance Documents;
  - 1.2.3 confirming no limit on the powers of the Borrower or its directors to borrow money, would be exceeded by its entry into or performance of its obligations under the Finance Documents; and
  - 1.2.4 confirming that entry into the Finance Documents is in the commercial interests of the Borrower (stating the reasons for such conclusion).

**2 Finance Documents**

- 2.1 This agreement, duly executed by the Borrower.
- 2.2 The Security Document duly executed by the Borrower.
- 2.3 The Guarantee, duly executed by the Lender and Darlington Borough Council.
- 2.4 The Deed of Priority, duly executed by the Lender, Borrower and Darlington Borough Council.
- 2.5 Each notice required to be sent under the Security Document substantially in the form set out in the Security Document.

**3 Other documents and evidence**

- 3.1 Evidence that all outstanding Security granted by the Borrower and its group companies in favour of SW Centre Property Limited has been, or will be, discharged by the date of this agreement.
- 3.2 A copy of any other authorisation, document, opinion or assurance which the Lender considers necessary for the entry into, and performance of, the transactions contemplated by the Finance Documents, or for the Finance Documents to be valid and enforceable.
- 3.3 A copy of the approval and/or resolution of Darlington Borough Council approving the entry into of the Guarantee.

**SCHEDULE 2  
UTILISATION REQUEST**

**TO: Hargreaves Darlington Limited**  
**West Terrace**  
**Esh Winning**  
**Durham**  
**DH7 9PT**

Date: [...]

Dear Sirs

**Drawdown pursuant to Loan Facility Agreement dated [...] 2019 ("Agreement")**

Defined terms in the Agreement bear the same meaning in this Utilisation Request.

We wish to draw a Loan under the Agreement as follows:

1. Amount to be advanced by the Lender: £[••]
2. The bank account into which proceeds are to be paid is:

Bank : [••]

Account Name: [••]

SORT CODE: [••]

ACCOUNT NUMBER: [••]

We confirm that this Utilisation Request is irrevocable.

Yours faithfully

---

**Darlington Arena Limited**



**SCHEDULE 3  
GUARANTEE**

**SCHEDULE 4  
LEGAL CHARGE**

Signed by **LEE TREVOR RUST** a director for and on behalf of **DARLINGTON ARENA LIMITED** .....  
in the presence of: Director

Witness Signature: .....

Witness Name: .....

Witness Address: .....

.....

Witness Occupation: .....

Signed by ..... a director for and on behalf of .....  
**HARGREAVES DARLINGTON LIMITED** Director  
in the presence of:

Witness Signature: .....

Witness Name: .....

Witness Address: .....

.....

Witness Occupation: .....



EXECUTED (but not delivered until the date )  
hereof) AS A DEED by affixing its COMMON )  
SEAL of DARLINGTON BOROUGH )  
COUNCIL hereunto in the presence of:- )

Name:

Signature:

Job Title:

EXECUTED as a DEED and delivered (but not )  
until the date hereof) by DARLINGTON )  
ARENA LIMITED acting by ~~two directors or~~ )  
one director and the company secretary: )  
*in the presence of:*



Director:

Director/Secretary:

Witness: NICOLA NUTLEY

Signature: 

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