

# MR01

## Particulars of a charge

036231/26



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

You can use the WebFiling  
Please go to [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)



RCS 18/09/2013 #128  
COMPANIES HOUSE  
A12 13/09/2013 #321  
COMPANIES HOUSE

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

☒ **What this form is NOT for**  
You may not use this form to  
register a charge where the  
instrument Use form MR0

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

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

### 1 Company details

Company number 08131355  
Company name in full NCM REAL RETURNS NOMINEE LIMITED

For official use  
2  
→ Filing in this form  
Please complete in typescript or in  
bold black capitals  
All fields are mandatory unless  
specified or indicated by \*

### 2 Charge creation date

Charge creation date 06/09/2013

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

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

Name LLOYDS TSB BANK PLC

Name

Name

Name

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

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

MR01

Particulars of a charge

4

Description

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

Continuation page

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

Description

175 LONG LANE  
ADDISCOMBE  
CROYDON  
SURREY  
CR0 7TE

TITLE NUMBERS SGL550642 (FREEHOLD)  
AND  
SGL587940 (FREEHOLD)

5

Fixed charge or fixed security

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

☒ Yes

☐ No

6

Floating charge

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

☒ Yes Continue

☐ No Go to **Section 7**

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

☐ Yes

7

Negative Pledge

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

☒ Yes

☐ No

# MR01

## Particulars of a charge

8

### Trustee statement <sup>①</sup>

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

☐

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

9

### Signature

Please sign the form here

Signature

Signature

X

*Will Brilimont Ltd*

X

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

# MRO1

## Particulars of a charge



### Presenter information

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

Contact name **CHRIS JOHNSTON**

Company name **HILL DICKINSON LLP**

Address **50 FOUNTAIN STREET**

Post town **MANCHESTER**

County/Region **GREATER MANCHESTER**

Postcode **M 2 2 A S**

Country **ENGLAND**

DX **14487 MANCHESTER 2**

Telephone **0161 817 7243**



### Certificate

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



### Checklist

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

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

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



### Important information

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



### How to pay

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

Make cheques or postal orders payable to 'Companies House'



### Where to send

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

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

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

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



### Further information

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

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

## PROFORMA

|                            |  |
|----------------------------|--|
| Company Number             | 08131355   |
| Company Name               | NCM REAL RETURNS NOMINEE LIMITED                           |
| Contact Name/ Organisation | KATHY HOLUBA/HILL DICKINSON LLP                            |
| Address                    | NO 1 ST PAUL'S SQUARE<br>LIVERPOOL<br>MERSEYSIDE<br>L3 9SJ |

**The following details will need to be added to, amended or deleted from the Form MR01/LLMR01/MR08/LLMR08**

Particulars of the charge to be added, amended or deleted (please tick as appropriate)

- ☐ Company /LLP number
- ☐ Company/LLP name
- ☐ Date of creation of charge
- ☐ Persons entitled to the charge
- ☐ Description of property
- ☐ Fixed charge tick box (applies only to MR01/LLMR01)
- ☒ Floating charge tick box (applies only to MR01/LLMR01)
- ☐ Negative pledge tick box (applies only to MR01/LLMR01)
- ☐ Nature of the charge  
(applies only to MR08/LL MR08)
- ☐ Obligations secured by the charge  
(applies only to MR08/LL MR08)

- **The following details will need to be added to, amended or deleted from the Form MR02/LLMR02/MR09/LLMR09**

Particulars of the charge to be added, amended or deleted (please tick as appropriate)

- ☐ Company /LLP number
- ☐ Company/LLP name
- ☐ Date of creation of charge
- ☐ Date that property or undertaking was acquired

- ☐ Persons entitled to the charge
- ☐ Description of property
- ☐ Fixed charge tick box (applies only to MR02/LLMR02)
- ☐ Floating charge tick box (applies only to MR02/LLMR02)
- ☐ Negative pledge tick box (applies only to MR02/LLMR02)
- ☐ Nature of the charge  
(applies only to MR09/LL MR09)
- ☐ Obligations secured by the charge  
(applies only to MR09/LL MR09)

- **The following details will need to be added to, amended or deleted from the Form MR03/MR10/LLMR03/LLMR10**

Particulars of the charge to be added, amended or deleted (please tick as appropriate)

- ☐ Company /LLP number
- ☐ Company/LLP name
- ☐ Date of creation of charge
- ☐ Date of resolution or determination
- ☐ Date of covering instrument
- ☐ Names of trustees for debenture holders
- ☐ Description of property.
- ☐ Fixed charge tick box (applies only to MR03/LLMR03)
- ☐ Floating charge tick box (applies only to MR03/LLMR03)
- ☐ Negative pledge tick box (applies only to MR03/LLMR03)
- ☐ Nature of the charge  
(applies only to MR10/LL MR10)
- ☐ Obligations secured by the charge  
(applies only to MR10/LL MR10)

**Please give the instructions in the box below)**

At box 6 of the MR01 the box marked "No" should be ticked



**FILE COPY**

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

Company number: 8131355

Charge code: 0813 1355 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 6th September 2013 and created by NCM REAL RETURNS NOMINEE LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 18th September 2013

Given at Companies House, Cardiff on 18th September 2013



10





2983274/SHTO3 E2E/1

We certify that, save for materially redacted  
pursuant to s859G of the Companies  
Act 2006, this copy instrument is  
a correct copy of the original instrument

... *Hill Dickinson LLP* ...  
Hill Dickinson LLP

Date ... 12/09/2013 .....

## Mortgage of freehold or leasehold property to secure third party liabilities

(individual(s) or company or limited liability partnership. NB no floating charge)

To be presented for registration at Companies House against any Mortgagor who is a company or a  
limited liability partnership within 21 days of dating.

To

Lloyds TSB Bank plc

## Table of Contents

| Clause | Heading   |    |
|--------|---|----|
| 1.     | DEFINITIONS AND INTERPRETATION                          | 5  |
| 2.     | CHARGES AND ASSIGNMENTS                                 | 9  |
| 3.     | PREVENTING FURTHER CUSTOMER'S LIABILITIES BEING SECURED | 11 |
| 4.     | COSTS AND EXPENSES                                      | 11 |
| 5.     | UNENFORCEABILITY OF CUSTOMER'S LIABILITIES              | 12 |
| 6.     | RESTRICTIONS AND WARRANTIES                             | 13 |
| 7.     | FURTHER ASSURANCE                                       | 14 |
| 8.     | DEALINGS WITH CHATTELS                                  | 15 |
| 9.     | BANK'S POWERS OF SALE AND LEASING                       | 15 |
| 10.    | MORTGAGOR'S POWERS OF LEASING AND LICENSING             | 15 |
| 11.    | APPOINTMENT AND POWERS OF A RECEIVER                    | 16 |
| 12.    | PROTECTION OF THIRD PARTIES                             | 18 |
| 13.    | COVENANTS   | 19 |
| 14.    | REPAIR AND INSURANCE                                    | 21 |
| 15.    | MORTGAGED LICENCES                                      | 22 |
| 16.    | ENVIRONMENTAL OBLIGATIONS                               | 23 |
| 17.    | POWER OF ATTORNEY                                       | 24 |
| 18.    | INDEMNITY   | 24 |
| 19.    | PARTNERSHIP   | 25 |
| 20.    | CONTINUING SECURITY                                     | 25 |
| 21.    | CONCLUSIVE EVIDENCE                                     | 26 |
| 22.    | DEALINGS BY THE BANK WITH THE CUSTOMER AND OTHERS       | 26 |
| 23.    | OPENING OR CONTINUANCE OF NEW OR EXISTING ACCOUNTS      | 26 |
| 24.    | SUSPENSE ACCOUNT  | 26 |
| 25.    | SECURITY NOT TO BE AVOIDED BY CERTAIN EVENTS            | 27 |
| 26.    | CLAIMS OF THE MORTGAGOR AGAINST THE CUSTOMER AND OTHERS | 27 |
| 27.    | SECURITY HELD BY THE MORTGAGOR                          | 28 |
| 28.    | OTHER SECURITIES OR RIGHTS                              | 28 |
| 29.    | NOTICES AND DEMANDS                                     | 28 |
| 30.    | CURRENCY CONVERSION                                     | 30 |
| 31.    | PAYMENTS  | 30 |
| 32.    | NON-MERGER, ETC.  | 30 |
| 33.    | TRANSFERS BY THE BANK OR THE MORTGAGOR                  | 30 |
| 34.    | RESTRICTION ON LIABILITY OF THE BANK                    | 30 |
| 35.    | MISCELLANEOUS   | 31 |
| 36.    | UNLAWFULNESS AND PARTIAL INVALIDITY                     | 32 |
| 37.    | PRIOR MORTGAGE(S)                                       | 32 |
| 38.    | NO PERSONAL LIABILITY OF MORTGAGOR                      | 32 |
| 39.    | NO RELIANCE ON THE BANK                                 | 32 |
| 40.    | CONSUMER CREDIT ACT 1974                                | 33 |

Clause 6.2 contains a request to HM Chief Land Registrar to note a restriction in the Proprietorship Register.

THIS MORTGAGE DEED is made on the

| (day) | day of | (month)   | (year) |
|-------|--------|-----------|--------|
| 6     |        | SEPTEMBER | 2013   |

BETWEEN

Newcombe Estates Company Limited (Company Number 00086894)  
14 Buckingham Street, London, WC2N 6DF

*Refers*  
NCM Real Reforms Nominee Limited (Company Number 08131355)  
C/O Newcombe Capital Management LLP, 14 Buckingham Street, London, WC2N 6DF  
(the "Mortgagor")

AND Lloyds TSB Bank plc (Company number 2065) ("the Bank")

Address for communications with the Bank under this Mortgage is Pendeford Securities Centre, Dept. ,  
Pendeford Business Park, Wobaston Road, Wolverhampton, WV9 5HZ or at such other address as the Bank may  
from time to time notify to the Mortgagor in writing for this purpose.

This mortgage is executed by the Mortgagor in consideration of the Bank providing or continuing to provide  
facilities, products or services or giving time or releasing any security or releasing any person from any obligation  
in respect of facilities, products, or services provided to or at the request of

In the case of a Limited Company:

NCM Long Lane Croydon LP, 14 Buckingham Street, London, WC2N 6DF (the "Customer")

Form of charge filed at HM Land Registry under reference MD964N

|     |                      |    |
|-----|----------------------|----|
| 41. | LAW AND JURISDICTION | 34 |
|     | THE FIRST SCHEDULE   | 35 |
|     | THE SECOND SCHEDULE  | 35 |
|     | THE THIRD SCHEDULE   | 36 |



## 1. DEFINITIONS AND INTERPRETATION

In this Mortgage, so far as the context admits, the following words and expressions shall have the following meanings.

"Agricultural Land" means agricultural land within the meaning of the Agriculture Act 1947;

"Chattels" means all stock, goods, moveable plant, machinery, implements, utensils furniture and equipment now or from time to time placed on or used in or about (but not forming part of) the Mortgaged Property;

"Customer" includes, where more than one person is named as the Customer, any one or more of such persons;

"Customer's Liabilities" means:

- (a) all money and liabilities whether actual or contingent (including further advances made hereafter by the Bank) which now are or at any time hereafter may be due, owing or incurred from or by the Customer to the Bank anywhere or for which the Customer may be or become liable to the Bank in any manner whatsoever without limitation (and in any case) whether alone or jointly with any other person and in whatever style, name or form and whether as principal or surety and notwithstanding that the same may at any earlier time have been due, owing or incurred to some other person and have subsequently become due, owing or incurred to the Bank as a result of a transfer, assignment or other transaction or by operation of law) including, (without prejudice to the generality of the foregoing):
  - (i) in the case of the death, bankruptcy, administration, liquidation or dissolution of the Customer all money and liabilities (whether actual or contingent) which would at any time have been owing to the Bank by the Customer if such death or dissolution had occurred or such bankruptcy, administration or liquidation had commenced on the date of discontinuance and notwithstanding such death, bankruptcy, administration, liquidation or dissolution; and
  - (ii) in the event of the discontinuance of this Mortgage all cheques, drafts or other orders or receipts for money signed, bills accepted, promissory notes made and negotiable instruments or securities drawn by or for the account of the Customer on the Bank or its agents and purporting to be dated on or before the date of discontinuance, although presented to or paid by the Bank or its agents after the date of discontinuance and all liabilities of the Customer to the Bank at such date whether actual or contingent and whether payable forthwith or at some future time or times and also all credits then established by the Bank for the Customer;
- (b) interest on all such money and liabilities to the date of payment at such rate or rates as may from time to time be agreed between the Bank and the Customer or, in the absence of such agreement, at the rate, in the case of an amount denominated in Sterling, of two percentage points per annum above the Bank's base rate for the time being in force (or its equivalent or substitute rate for the time being) or, in the case of an amount denominated in any currency or currency unit other than Sterling, at the rate of two percentage points per annum above the cost to the Bank (as conclusively determined by the Bank) of funding sums comparable to and in the currency or currency unit of such amount in the London Interbank Market (or such other market as the Bank may select) for such consecutive periods (including overnight deposits) as the Bank may in its absolute discretion from time to time select; and
- (c) commission and other banking charges and legal, administrative and other costs, charges and expenses (on a full and unqualified indemnity basis) incurred by the Bank in enforcing or endeavouring to enforce payment of such money and liabilities whether by the Customer or others and in relation to preparing, preserving defending or enforcing any security held by or offered to the Bank for such money and liabilities, together with interest computed as provided in paragraph (b) above on each such sum from the date that the same was incurred or fell due;

**"Enfranchising Legislation"** means any legislation conferring upon a tenant or tenants of property (whether individually or collectively with other tenants of that or other properties) the right to acquire a new lease of that property or to acquire, or require a nominee to acquire, the freehold or any intermediate reversionary interest in that property including (without limitation) the Leasehold Reform Act 1967 the Leasehold Reform, Housing and Urban Development Act 1993 and the Commonhold and Leasehold Reform Act 2002 but does not include Part II of the Landlord and Tenant Act 1954;

**"Environmental Law"** means all laws (statutory, common law or otherwise) including, without limitation, circulars, guidance notes and codes of practice from time to time regulating the control and prevention of pollution to land water or atmosphere and/or the carrying on of any process or activity on premises and any emissions from and all waste produced by such process or activity and any chemicals or substances relating to the same whether relating to health and safety, the work place, the environment or the provision of energy (including without limitation the Health and Safety at Work etc Act 1974, the Control of Pollution Act 1974, the Environmental Protection Act 1990, the Environment Act 1995, the Water Industry Act 1991, the Water Resources Act 1991, the Statutory Water Companies Act 1991, the Water Consolidation (Consequential Provisions) Act 1991, the Water Act 2003, the Clean Air Act 1993, the Alkali, etc, Works Regulation Act 1906, the Planning (Hazardous Substances) Act 1990, the Public Health Acts and the Radioactive Substances Act 1993 and any European Union directives or regulations regulating the same) from time to time in force and any instrument, plan, regulation, permission, authorisation, order or direction made or issued thereunder or deriving validity therefrom;

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

**"Insolvency Event"** in relation to the Mortgagor or the Customer means each of the following:

- (a) a meeting is convened for the purpose of considering a resolution to wind up the Mortgagor or the Customer,
- (b) such a resolution as is mentioned in paragraph (a) is passed;
- (c) a meeting of the directors or members of the Mortgagor or the Customer (or where the Mortgagor or Customer is a partnership or acting on behalf of a partnership the partners in any such partnership) is convened for the purpose of considering a resolution to seek a winding up order, an administration order or the appointment of an administrator;
- (d) such a resolution as is mentioned in paragraph (c) is passed,
- (e) a petition for a winding up or for bankruptcy or an application for an administration order is made by the Mortgagor or the Customer or their directors or members (or where the Mortgagor or Customer is a partnership or acting on behalf of a partnership the partners in any such partnership) or is presented against the Mortgagor or the Customer;
- (f) such an order as is mentioned in paragraph (e) is made,
- (g) a notice of appointment of or notice of intention to appoint an administrator is issued by the Mortgagor or the Customer or their directors or members (or where the Mortgagor or Customer is a partnership or acting on behalf of a partnership the partners in any such partnership) or by the holder of a qualifying floating charge or a proposal is made for, or the Mortgagor or the Customer becomes subject to, any voluntary arrangement;
- (h) a receiver (administrative or otherwise) is appointed over all or part of the Mortgagor's or the Customer's assets;
- (i) the Mortgagor or the Customer takes part in any action (including entering negotiations) with a view to readjustment, rescheduling, forgiveness or deferral of any part of the Mortgagor's or the Customer's indebtedness,
- (j) the Mortgagor or the Customer proposes or makes any general assignment, composition or arrangement with or for the benefit of all or some of the Mortgagor's or the Customer's creditors,
- (k) the Mortgagor or the Customer suspends or threatens to suspend making payments to all or some of the Mortgagor's or the Customer's creditors;

(l) any action is taken in any jurisdiction which is similar or analogous to any of the foregoing, or

(m) the Bank has reasonable grounds for believing that any of the foregoing is imminent,

**"Intellectual Property Rights"** means:

- (a) all present and future copyrights, patents, designs, trademarks, service marks, brand names, inventions, design rights, know-how, formulas, confidential information, trade secrets, computer software programmes, computer systems and all other intellectual property rights whatsoever without any limitation, whether registered or unregistered, in all or any part of the world, in which the Mortgagor is legally, beneficially or otherwise interested;
- (b) the benefit of any pending applications for the same and all benefits deriving therefrom and thereunder including but not limited to royalties, fees, profit sharing agreements and income arising therefrom and all licences in respect of or relating to any intellectual property rights, whether such licences are granted to the Mortgagor or granted by the Mortgagor, and
- (c) every item of physical material of any description or type whatever in or in respect of which intellectual property rights may subsist and in respect of each such item the original copy or version or variant owned by, produced by or delivered to or obtained by the Mortgagor and any rejected and surplus materials associated or connected with or forming part of the foregoing which shall include, without limitation, any and all manuals and translations thereof, log books, designs, sketches, algorithms, calculations, diagrams, computations, source codes, models, prototypes, apparatus, computer programmes, photographs, books and other records in any medium, electronic data and any other material of any description whatever in which intellectual property may be incorporated,

**"Mortgaged Assets"** means the Mortgaged Property and all of the other assets, rights and properties assigned, mortgaged or charged under or pursuant to this Mortgage, and such expression shall include all or any part thereof;

**"Mortgaged Licences"** means all present and future licences, permits, consents and authorisations (if any) (including Environmental Licences to the extent they are capable of being charged) held in connection with any business at any time carried on by the Mortgagor at the Mortgaged Property;

**"Mortgaged Property"** means the property, assets, rights and interests charged by clause 2.1 and such expression shall include all or any part thereof;

**"Planning Acts"** means all legislation from time to time regulating the development, use, safety and control of property including without limitation the Town and Country Planning Act 1990 and any instrument, plan, regulation, permission and direction made or issued thereunder or deriving validity therefrom;

**"Notice of Discontinuance"** means a notice served in accordance with sub-clauses 3.1 and 29.6,

**"Prior Mortgage(s)"** means the prior mortgage(s) or charge(s) (if any) mentioned in the Second Schedule;

**"Secured Obligations"** means

- (a) the Customer's Liabilities; and
- (b) all other money and liabilities expressed to be secured hereby (including, without limitation, any expenses and charges arising out of or in connection with the acts or matters referred to in clauses 4, 8, 14, 15, 16, 18, and 37), and all other obligations and liabilities of the Mortgagor under this Mortgage,

not exceeding the limit on the amount recoverable specified in the Third Schedule (if any); and

**"Value Added Tax"** includes any other form of sales or turnover tax.

1.2 In this Mortgage:

- (a) the expressions the “Bank” “Customer” and “Mortgagor” where the context admits include their respective successors in title and/or assigns, whether immediate or derivative. Any appointment or removal under clause 11 or consents under this Mortgage may be made or given in writing executed by any such successors or assigns of the Bank, and the Mortgagor hereby irrevocably appoints each of such successors and assigns to be its attorney in the terms and for the purposes set out in clause 17;
- (b) unless the context requires otherwise:
- (i) the singular shall include the plural and vice versa;
  - (ii) any reference to a person shall include an individual, a company, corporation, limited liability partnership or other body corporate, a joint venture, society or unincorporated association, organisation or body of persons (including a trust, and a partnership) and any government, state, government or state agency or international organisation (whether or not a legal entity). References to a person also including that person’s successors and assigns whether immediate or derivative,
  - (iii) the expression “this Mortgage” shall mean this mortgage and shall extend to every separate and independent stipulation contained herein;
  - (iv) any right, entitlement or power which may be exercised or any determination which may be made by the Bank under or in connection with this Mortgage may be exercised or made in the absolute and unfettered discretion of the Bank which shall not be under any obligation to give reasons therefore;
  - (v) references to any statutory provision (which for this purpose means any Act of Parliament, statutory instrument or regulation or European directive or regulation or other European legislation) shall include a reference to any modification re-enactment or replacement thereof for the time being in force, all regulations made thereunder from time to time and any analogous provision or rule under any applicable foreign law,
  - (vi) for the avoidance of any doubt, the rights, powers and discretions conferred upon the Bank by or pursuant to this Mortgage shall (unless otherwise expressly stated) apply and be exercisable regardless of whether a demand has been made by the Bank for the payment of the Secured Obligations or any of them and regardless of whether the power of sale or other powers and remedies conferred on mortgagees by the Law of Property Act 1925 or this Mortgage shall have arisen or become exercisable;
  - (vii) if at any time the value of the Customer’s Liabilities is adjusted pursuant to or as a result of any law, regulation or other governmental provision or requirement, then any limit on the amount of the Secured Obligations set out in the Third Schedule shall be automatically adjusted on the same basis;
  - (viii) references to “discontinuance” shall mean discontinuance of this Mortgage effected by a Notice of Discontinuance and discontinuance or determination of this Mortgage or any part thereof by any other means whatsoever (whether or not involving notice to the Bank) including (without prejudice to the generality of the foregoing) the administration, liquidation or dissolution of the Customer or the Mortgagor;
  - (ix) “the date of discontinuance” shall for the purposes of this Mortgage be treated as whichever shall be the earlier of:
    - (a) the date upon which the Bank receives actual notice (rather than notice given in any official publication or by newspaper) of such discontinuance; and
    - (b) the date upon which a Notice of Discontinuance becomes effective; and



- (x) references to clauses, sub-clauses and schedules shall be references to clauses, sub-clauses and schedules of this Mortgage;
  - (c) if for any reason whatsoever this Mortgage shall not be, or shall cease to be, a valid and effective charge over or assignment of the Mortgaged Assets (as the case may be) then this Mortgage shall take effect as a charge over or assignment of the beneficial interest of the Mortgagor in the Mortgaged Assets;
  - (d) if there are two or more parties comprised in the expression the "Mortgagor" then:
    - (i) any reference to the "Mortgagor" shall where the context permits include all or any one or more of such parties,
    - (ii) all covenants and agreements herein contained or implied on the part of the Mortgagor shall be deemed to be joint and several covenants on the part of such parties;
    - (iii) if for any reason whatsoever this Mortgage shall not be, or shall cease to be, binding on and effective against one or more of such parties, then this Mortgage shall take effect as a charge over or assignment of the beneficial interest of the other such party or parties in the Mortgaged Assets and over such other estate, right, title or interest in the Mortgaged Assets as such other party or parties may have;
    - (iv) any demand made under this Mortgage shall be deemed to have been duly made if made on any one or more of such parties; and
    - (v) if any one or more of such parties is not bound by the provisions of this Mortgage (whether by reason of lack of capacity or improper execution of this Mortgage or for any other reason whatsoever) the remaining party or parties shall be and remain bound by the provisions of this Mortgage as if such other party or parties had never been party hereto,
  - (e) except where expressly otherwise stated or where the context requires otherwise, each provision of this Mortgage shall apply both before and after any demand for payment under this Mortgage both before and after the date of discontinuance.
- 1 3 The clause headings and marginal notes shall be ignored in construing this Mortgage.
- 1 4 The perpetuity period applicable to any trust constituted by this Mortgage shall be eighty years.
- 2. CHARGES AND ASSIGNMENTS**
- 2 1. The Mortgagor with full title guarantee:
- (a) charges by way of legal mortgage the property specified in the First Schedule and all buildings and fixtures (including trade fixtures) from time to time on any such property as a continuing security for the payment to the Bank of the Secured Obligations;
  - (b) charges by way of fixed charge as a continuing security for the payment to the Bank of the Secured Obligations any fixed plant and machinery from time to time on any such property as is referred to in clause 2 1(a) and which is not included within the charge in clause 2.1 (a); and
  - (c) (where any property referred to in clause 2.1 (a) is leasehold) charges by way of fixed charge as a continuing security for the payment to the Bank of the Secured Obligations any present or future right or interest conferred upon the Mortgagor in relation thereto by virtue of any Enfranchising Legislation including any rights arising against any nominee purchaser pursuant thereto.
- 2 2. The Mortgagor with full title guarantee assigns to the Bank all amounts now or hereafter owing to the Mortgagor by way of.

- (a) rent (but excluding ground rent, service charge and any sums payable in respect of any services provided to any tenant or payable in respect of insurance premiums) by any tenant (whether present or future) of the Mortgaged Property;
- (b) licence fee by any licensee (whether present or future) of the Mortgaged Property;
- (c) service charge and sums payable in respect of services provided to any tenant or payable in respect of insurance premiums by any tenant (whether present or future) of the Mortgaged Property;
- (d) rent deposit and purchase deposit; and
- (e) any other amounts (including without limitation ground rents, rent charges and dilapidations) payable by any tenant licensee or occupier (in any case whether present or future) of the Mortgaged Property,

and in each case the proceeds thereof and all rights to recover such amounts, and subject to re-assignment on payment of the Secured Obligations.

- 2.3. The Mortgagor with full title guarantee assigns to the Bank the goodwill of the business (if any) now or at any time hereafter carried on by the Mortgagor at the Mortgaged Property and the full benefit of the Mortgaged Licences (if any) and also the full right to recover and receive all compensation which may at any time become payable to the Mortgagor by virtue of the Licensing Act 2003 or any other statutory enactment subject to re-assignment upon payment of all the Secured Obligations.

#### 2.4

- (a) The Mortgagor with full title guarantee hereby assigns to the Bank the benefit of all guarantees or covenants by any surety or sureties of any of the lessee's obligations under any existing lease or underlease of the Mortgaged Property, subject to re-assignment upon payment of all the Secured Obligations
- (b) The Mortgagor shall at any time if and when required by the Bank execute to the Bank or as the Bank shall direct an assignment or assignments of the benefit of all guarantees or covenants by any surety or sureties of any of the lessee's obligations under any lease or underlease of the Mortgaged Property hereafter granted to secure the Secured Obligations, such assignments to be prepared by or on behalf of the Bank at the cost of the Mortgagor and to contain all such clauses for the benefit of the Bank as the Bank may require.

- 2.5. Where the Mortgagor (by virtue of an estate or interest in the Mortgaged Property) is entitled to a share or shares in any company connected with the Mortgaged Property;

- (a) the Mortgagor with full title guarantee charges by way of fixed charge such share or shares and all rights, benefits and advantages at any time arising in respect of the same (hereinafter called the "Share(s)") as a continuing security for the payment to the Bank of the Secured Obligations; and
- (b) subject to the rights of the holder(s) for the time being of any Prior Mortgage(s), the Mortgagor shall (if the Bank so requires) transfer the Share(s) to the Bank or as the Bank shall direct and shall deposit the certificate(s) relating to the Share(s) with the Bank.

- 2.6. The Mortgagor with full title guarantee assigns to the Bank the Intellectual Property Rights that arise in connection with the business (if any) now or at any time hereafter carried on by the Mortgagor at the Mortgaged Property, subject to re-assignment on payment of all the Secured Obligations

- 2.7. If there are two or more parties comprised in the expression the "Mortgagor" each of such parties with full title guarantee hereby charges and assigns all such party's estate, rights, title and interest in the Mortgaged Assets to secure payment of the Secured Obligations.

- 2.8 The security hereby constituted shall extend to all beneficial interests of the Mortgagor in the Mortgaged Assets and to any proceeds of sale or other realisation thereof or of any part thereof.

- 2.9. If a limit on the amount recoverable under this Mortgage has been inserted in the Third Schedule:

- (a) such limit shall not in any way prejudice or affect any right of the Bank independently of this Mortgage to recover the total sum due to the Bank; and
  - (b) if the Secured Obligations exceed the said limit the Bank may conclusively determine what part of the Secured Obligations (not exceeding the said limit) shall be deemed secured by this Mortgage and what part or parts thereof shall be deemed not so secured
- 2.10. The Mortgagor represents and warrants that, at the date that the Mortgagor executes this Mortgage, the Mortgagor has made full disclosure in writing to the Bank of
  - (a) any information relating to each part of the Mortgaged Assets and each right held by any other person in relation to any part of the Mortgaged Assets which, in each case, would be material to the Bank in relation to the appropriateness or adequacy of any part of the Mortgaged Assets as security for the Secured Obligations; and
  - (b) each matter in respect of which the Bank has requested information from the Mortgagor in connection with this Mortgage.
- 2.11. It shall not be necessary for the Bank, before demanding payment of the Secured Obligations or enforcing this Mortgage, to make demand on or seek to obtain payment from the Customer or any other person.
- 3. **PREVENTING FURTHER CUSTOMER'S LIABILITIES BEING SECURED**
- 3.1 The Mortgagor may give written notice to the Bank to prevent further Customer's Liabilities being secured by this Mortgage. The Mortgagor or the Customer (or any of their respective personal representative(s), trustee(s) in bankruptcy, receiver(s) appointed under the Mental Health Act 1983, deputies appointed under the Mental Capacity Act 2005 liquidator(s) or administrator(s) of the Mortgagor or the Customer) may also give the Bank written notice of the death, bankruptcy, mental incapacity, liquidation, administration or dissolution of the Mortgagor or the Customer, which notice (subject to clause 19) shall have the same effect as a notice given by the Mortgagor as above. Any such notice shall only be valid and become effective when the provisions of sub-clause 29.6 are met.
- 3.2. When any Notice of Discontinuance becomes effective under the terms of sub-clause 29.6, or where there is discontinuance by any other means there shall continue to be secured by and recoverable under this Mortgage
  - (a) the Secured Obligations which at the date of discontinuance were (whether actually or contingently) secured by this Mortgage,
  - (b) all money and liabilities (whether actual or contingent) which become due, owing or incurred by the Customer to the Bank after that date by reason of agreements, events, transactions or any other fact or matter whatsoever without limitation occurring or arising on or before that date (as well as those referred to in paragraph (a)(ii) of the definition of "Customer's Liabilities"); and
  - (c) any interest, commission and banking charges and legal and other costs charges and expenses which accrue or are incurred after that date and which form part of the Secured Obligations
- 4. **COSTS AND EXPENSES**
- 4.1. The Mortgagor agrees to pay to the Bank on demand all legal and other costs, charges and expenses (on a full and unqualified indemnity basis) incurred by the Bank (whether before or after the power of sale has arisen under this Mortgage or the date of discontinuance):
  - (a) in enforcing or reasonably endeavouring to enforce this Mortgage or otherwise in relation to this Mortgage or the Mortgaged Assets (including any acts necessary to release the Mortgaged Assets from this security);
  - (b) in resisting or reasonably endeavouring to resist any claims or defences made against the Bank by the Customer in connection with any liabilities or alleged liabilities to the Bank of the Customer or any money or benefits received by or any preference or alleged preference given to the Bank by the Customer, and

- (c) in connection with effecting any appointment of any receiver or administrator or in dealing with any appointment of, or notice of intention or application to appoint, any receiver or administrator by any party including the Mortgagor and without prejudice to any other right or process of recovering such costs.
- 4.2 If any payment made by or on behalf of the Bank under this Mortgage includes an amount in respect of Value Added Tax, or if any payment due to the Bank under this Mortgage shall be in reimbursement of any expenditure by or on behalf of the Bank which includes an amount in respect of Value Added Tax, then such an amount shall be payable by the Mortgagors to the Bank on demand
- 4.3. Without prejudice to the generality of clauses 4 and 11, the Mortgagor shall pay to the Bank all costs incurred or suffered by the Bank (on a full and unqualified indemnity basis) and any receiver appointed by the Bank shall be entitled to recover as a receivership expense, all costs incurred or suffered by him
  - (a) in connection with any application under Part III of the Insolvency Act 1986, and
  - (b) in defending proceedings brought by any third party impugning the Bank's title to this security or the enforcement or exercise of the rights and remedies of the Bank or any such receiver under this Mortgage
- 4.4. The Mortgagor agrees to pay on demand any fees charged by the Bank for the time spent by the Bank's officials, employees or agents in dealing with any matter relating to this Mortgage. Such fees shall be payable at such rate as may be specified by the Bank.
- 4.5. The Mortgagor agrees to pay to the Bank on demand interest on each sum referred to in this clause 4 (except interest provided for by this sub-clause 4.5) and on all costs awarded to the Bank or agreed to be paid to the Bank in any proceedings brought by the Mortgagor against the Bank from the date of the award or agreement, such interest to be at the higher of:
  - (a) in the case of an amount denominated in Sterling, the rate of two percentage points per annum above the Bank's base rate for the time being in force (or its equivalent or substitute rate for the time being) or in the case of an amount denominated in any currency or currency unit other than Sterling, at the rate of two percentage points per annum above the cost to the Bank (as conclusively determined by the Bank) of funding sums comparable to and in the currency or currency unit of such amount in the London Interbank Market (or such other market as the Bank may select) for such consecutive periods (including overnight deposits) as the Bank may in its absolute discretion from time to time select; or
  - (b) the rate payable by the Customer or which, but for any such matter or event as is mentioned in clause 5, would have been payable by the Customer.
- 4.6. Without prejudice to the right of the Bank to require payment of such interest, all such interest shall be compounded both before and after any demand or judgment and shall be paid (in the case of interest charged by reference to the Bank's base rate) on the Bank's usual charging dates in each year and (in the case of interest charged by reference to the cost of funding in the London Interbank Market or other market) at the end of each such period as is selected by the Bank pursuant to sub-clause 4.5(a) or at three monthly intervals whichever is the shorter.
- 4.7 All amounts referred to in this clause 4 shall, pending payment, be secured hereby.

#### 5. UNENFORCEABILITY OF CUSTOMER'S LIABILITIES

Any money and liabilities which, but for the circumstances set out in this clause 5, would form all or part of the Customer's Liabilities and which cannot be recovered or cannot for the time being be recovered by the Bank from the Customer for any reason whatsoever including (without prejudice to the generality of the foregoing).

- (a) any legal disability or incapacity of the Customer,
- (b) any invalidity or illegality affecting any of such money or liabilities;
- (c) any want of authority in any person purporting to act on behalf of the Customer;
- (d) any provision of bankruptcy or insolvency law;

- (e) the death, mental incapacity, bankruptcy, administration, liquidation or dissolution of the Customer or the inability of the Bank to make effective demand on the Customer as a result of such death, mental incapacity, bankruptcy, administration, liquidation or dissolution of the Customer;
- (f) the passage of time under any relevant Limitation Act,
- (g) any moratorium or any statute, decree or requirement of any governmental or other authority in any territory;
- (h) any inability of the Customer to acquire or effect payment in the currency or currency unit in which any such money or liabilities are denominated or to effect payment in the place where any such money or liabilities are or are expressed to be payable;
- (i) the making, implementation or effect of any arrangement whereby, notwithstanding that security taken by the Bank from the Customer, any Mortgagor or any surety may be ranked ahead of security held by any third party, the Bank is obliged to account for any money received from or in respect of the Bank's security to such a third party or to share any such money with such a third party,
- (j) any event of force majeure or any event frustrating payment of such money or liabilities; or
- (k) any other event or circumstance (apart from payment or express release of the Customer's Liabilities) which would constitute or afford a legal or equitable discharge or release of, or defence to, a guarantor or indemnifier,

shall nevertheless be secured by and recoverable under this Mortgage (subject to any limit specified in the Third Schedule), whether any such reason or circumstance shall have been made known to the Bank before or after such money or liabilities were incurred.

## 6 RESTRICTIONS AND WARRANTIES

6.1. The Mortgagor shall not without the prior written consent of the Bank:

- (a) sell, assign, license, sub-license or otherwise dispose of or deal in any other way with the Mortgaged Assets subject as provided in clause 6.5(a),
- (b) create or permit to subsist or arise any mortgage, debenture, hypothecation, charge, assignment by way of security, pledge or lien or any other encumbrance or security whatsoever over all or any part of the Mortgaged Assets or over the Chattels (other than the Prior Mortgages(s) and a lien over any Chattels arising by operation of law in the ordinary course of the Mortgagor's business as conducted during the 12 months preceding the date when the lien first came into existence), or
- (c) enter into any contractual or other agreement or arrangement which has or may have an economic effect similar or analogous to any such encumbrance or security as would be prohibited by sub-clause 6.1(b).

6.2 The Mortgagor hereby requests the Chief Land Registrar to register the following restriction on the Proprietorship Register of any registered land forming part of the Mortgaged Property:

### "RESTRICTION

No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a written consent signed by the proprietor for the time being of the charge dated \_\_\_\_\_ in favour of Lloyds TSB Bank plc referred to in the Charges Register"

6.3. The Mortgagor represents and warrants to the Bank, and so that each such representation and warranty shall be deemed to be repeated on each day during the continuance of this security, that, except to the extent disclosed by the Mortgagor to the Bank in writing prior to the date hereof:

- (a) the Mortgagor has not made any election pursuant to paragraph 2 of schedule 10 to the Value Added Tax Act 1994 in relation to or affecting any part of the Mortgaged Property;

- (b) so far as the Mortgagor is aware after making due and careful enquiry the charges and assignments contained in clause 2 do not infringe any intellectual property rights whether registered or unregistered whatsoever;
- (c) no circumstances have occurred during the Mortgagor's ownership of the Mortgaged Property and, so far as the Mortgagor is aware after making due and careful enquiry no circumstances occurred before the Mortgagor's ownership of the Mortgaged Property, which have led or could lead to a competent authority or a third party taking any action or making a claim under any Environmental Law (including the requirement to clean up or remedy in any other way any contaminated part of the environment or the revocation, suspension, variation or non-renewal of any Environmental Licence) or which have led or could lead to the Mortgagor having to take action to avert the possibility of any such action or claim; and
- (d) the Mortgagor is solely and beneficially interested in the Mortgaged Assets.

6 4. The Mortgagor shall not make or revoke such an election as is referred to in sub-clause 6.3(a) in relation to any part of the Mortgaged Property without the Bank's prior written consent or unless the Bank requests the Mortgagor to do so, in which case the Mortgagor shall immediately make or revoke (as the case may be) such an election in relation to any part of the Mortgaged Property that the Bank considers appropriate and give valid notification of it to H M Revenue and Customs

6 5.

- (a) Sub-clause 6.1(a) shall not prevent the Mortgagor without such consent as is referred to in that clause collecting the rents, fees, service charges, sums, deposits or other amounts referred to in sub-clause 2.2 or the proceeds thereof in the ordinary course of business and paying the same into the Mortgagor's account(s) with the Bank in accordance with sub-clause 6.5(b). Where the Bank makes a payment at the request of the Mortgagor which is debited to any account with the Bank which is for the time being in credit, the Bank shall be taken to have given any necessary consent for the purposes of clause 6 1(a) to such payment unless such payment was made as a result of some mistake of fact on the part of the Bank
- (b) The Mortgagor shall pay into its account or accounts with the Bank the rents, fees, service charges, sums, deposits and other amounts referred to in sub-clause 2 2 and the proceeds thereof provided that (where relevant) the Bank shall be deemed to receive the rentals and other amounts referred to in sub-clause 2 2 and such proceeds pursuant to the assignment contained therein and not pursuant to the charges over the Mortgaged Property or as mortgagee in possession.
- (c) The Mortgagor declares that all such proceeds received or obtained by the Mortgagor or on the Mortgagor's behalf but which are not so paid or transferred into that account or accounts shall be received and held by the Mortgagor on trust for the Bank.

## 7. FURTHER ASSURANCE

7.1. The Mortgagor shall at any time if and when required by the Bank execute and deliver to the Bank or as the Bank shall direct such further legal or other assignments, mortgages, securities, charges, agreements and other legal documentation as the Bank shall require of and on all or any of the Mortgaged Assets to secure payment of the Secured Obligations. Such assignments, mortgages, securities, charges agreements or other legal documentation shall be prepared by or on behalf of the Bank at the cost of the Mortgagor and shall contain all such clauses for the benefit of the Bank as the Bank may require including without limitation if so required by the Bank, in the case of a mortgage or charge on the Mortgaged Property or the proceeds of sale thereof, any such clauses as are contained in any of the Bank's standard forms of mortgage from time to time.

7.2. The Mortgagor shall at any time if and when required by the Bank and at the Mortgagor's cost give notice to such parties as the Bank may require of the assignments, mortgages and charges hereby effected and any such further legal or other assignments, mortgages, securities, charges, agreements and other legal documentation, and shall take, do or execute such steps, acts, deeds, documents and things as the Bank may consider necessary or desirable to give effect to and procure the perfection, of the security intended to be granted by this Mortgage or any such further legal or other assignments, mortgages, securities, charges, agreements or other legal documentation.

**DEALINGS WITH CHATTELS**

If the Bank or any receiver appointed by the Bank takes possession of the Mortgaged Property

- (a) the Bank or any receiver appointed by the Bank is hereby authorised as agent for the Mortgagor if it or he elects so to do to remove, warehouse, store or sell any Chattels which the Mortgagor shall fail or refuse to remove from the Mortgaged Property within seven days of being requested so to do by notice from the Bank or any receiver appointed by the Bank, and neither the Bank nor any such receiver shall be liable for any loss or damage occasioned to the Mortgagor;
- (b) the Mortgagor shall indemnify the Bank and any receiver appointed by the Bank against all expenses incurred by the Bank or any such receiver in relation to such Chattels including expenses of removal and storage and against all liability to any third party in respect thereof, and such expenses and liabilities shall be paid by the Mortgagor on demand with interest computed and payable as provided in sub-clauses 4.5 and 4.6 from the time or respective times of the same having been paid or incurred by the Bank or the receiver as the case may be and, until payment, shall be secured hereby;
- (c) the Bank or any receiver appointed by it, as the case may be, shall account to the Mortgagor for the proceeds of any such sale after deducting any such expenses and conditionally upon the Mortgagor procuring the release of the Bank and such receiver from all liability for any charges or expenses in respect of future storage of any such Chattels;
- (d) the Bank or any receiver appointed by it, as the case may be, shall not be liable to the Mortgagor for any act or omission by any person appointed by it or him to effect such sale or for any failure by any such person to obtain a proper price provided only that such appointment shall have been made by the Bank or such receiver in good faith; and
- (e) the Mortgagor shall not sell or otherwise dispose of the Chattels or encumber them in any way nor remove them from the Mortgaged Property unless requested to do so pursuant to sub-clause 8(a).

**BANK'S POWERS OF SALE AND LEASING**

- (a) The powers and remedies conferred on mortgagees by the Law of Property Act 1925 shall apply to this Mortgage but without the restriction on the exercise of the power of sale imposed by section 103 of that Act, and the statutory powers of leasing conferred on the Bank shall be extended so as to authorise the Bank to lease and make agreements for leases at a premium or otherwise and to accept surrenders of leases and grant options as the Bank shall think expedient, without the need to observe any of the provisions of sections 99 and 100 of the said Act
- (b) The Bank in exercising its statutory power of sale and any receiver appointed by the Bank in exercising his powers under this Mortgage shall be at liberty to sell at such price and on such terms and conditions as it or he in its or his sole discretion thinks fit and shall not be under any duty or obligation to obtain the best or any particular price.
- (c) Neither the Bank nor any such receiver shall be liable to the Mortgagor or any other person for any loss, damage, cost, expense or liability which the Mortgagor or any such person may suffer or incur as a direct or indirect result of the Bank exercising its statutory power of sale, as hereby varied or extended, or such receiver exercising his powers under this Mortgage

In favour of a purchaser the Secured Obligations shall be deemed to have become due on the day on which demand for payment thereof is made by the Bank, and the statutory power of sale as hereby varied or extended shall be exercisable from and after that date, which date (without prejudice to the equitable right to redeem) shall be the redemption date.

**MORTGAGOR'S POWERS OF LEASING AND LICENSING**

The Mortgagor shall not, without the prior written consent of the Bank, in relation to any of the Mortgaged Property.

- (a) exercise the statutory powers and any other powers of leasing, letting, entering into agreements for leases or lettings and accepting or agreeing to accept surrenders of leases; or
- (b) part with possession of the Mortgaged Property or grant any lease, tenancy, licence, right or interest to occupy the Mortgaged Property; or
- (c) amend or confer upon any person any lease, tenancy, licence, right or interest to occupy the same or any part thereof or grant any licence or permission to assign, underlet or part with possession of the same or any part thereof.

## 11. APPOINTMENT AND POWERS OF A RECEIVER

- 11.1. At any time after the Bank shall have demanded payment of any of the Secured Obligations or the Mortgagor shall have requested it so to do or an Insolvency Event shall have occurred (upon the happening of which the security created by this Mortgage shall be immediately enforceable), the Bank shall have power in writing under the hand of any official of the Bank authorised by the Bank from time to time or any person authorised by any such official in writing to appoint such person or persons as the Bank thinks fit to be a receiver or joint receivers or several receivers or joint and several receivers of the Mortgaged Assets to act, in the case of two or more receivers, jointly, severally or jointly and severally in relation to any part of the Mortgaged Assets, and to the extent permitted by law similarly to remove any such receiver and to appoint another or others in his place
- 11.2. If the Bank excludes any part of the Mortgaged Assets from the appointment of any receiver, the Bank may subsequently extend that appointment (or that of any receiver replacing such receiver) to such excluded part of the Mortgaged Assets.
- 11.3. Any such receiver at the cost of the Mortgagor may in the name or on behalf of the Mortgagor or at his option in the name of the Bank (but only with the specific approval in writing of the Bank) or at his option in his own name (and in any case notwithstanding any bankruptcy, death, mental incapacity, administration or liquidation of the Mortgagor) do or omit to do anything which the Mortgagor could do or omit to do in relation to the Mortgaged Assets or the Chattels or any of them and (in addition) may exercise in relation thereto all or any of the powers specified in Schedule 1 to the Insolvency Act 1986 (notwithstanding that the receiver may not be an administrative receiver and notwithstanding that the Mortgagor may not be a company), and in particular (but without prejudice to the generality of the foregoing) any such receiver may:
  - (a) deal with, take possession of, cultivate, collect and get in the Mortgaged Assets or the Chattels;
  - (b) carry on, manage, develop or diversify or concur in carrying on, managing, developing or diversifying any business of the Mortgagor at any time carried on by the Mortgagor at the Mortgaged Property, and for any of those purposes receive, retain or use any Chattels and any proceeds, books or records of such business and carry out or complete (with or without modification) on the Mortgaged Property any works of demolition, building, repair, construction, furnishing or any project or development in which the Mortgagor was engaged,
  - (c) raise or borrow any money from or incur any other liability to the Bank or any other person and on such terms as to interest or otherwise and with or without security as such receiver may think expedient, and so that any such security may, with the prior consent of the Bank, be or include a charge on the Mortgaged Assets ranking either in priority to or pari passu with or after the security hereby created;
  - (d) forthwith and without the restriction imposed by Section 103 of the Law of Property Act 1925 sell, realise, dispose of or concur in selling, realising or disposing of (but where necessary with the leave of the Court) and without the need to observe any of the provisions of Sections 99 and 100 of the said Act let or concur in letting or surrender or concur in surrendering or accept surrenders of leases or tenancies of all or any part of the Mortgaged Assets;
  - (e) carry any sale, exchange, realisation, disposal, lease, tenancy or surrender of the Mortgaged Assets into effect by conveying, transferring, assigning, leasing, letting, surrendering or accepting surrenders in the name and on behalf of the Mortgagor (or other the estate owner), and so that covenants and contractual obligations may be granted in the name of and so as to bind the Mortgagor (or other the estate owner) so far



as such receiver may consider it necessary, appropriate or expedient for the exercise of the powers conferred by this Mortgage so to do. Any such sale, exchange, realisation, disposal, lease or tenancy may be for cash, debentures or other obligations, shares, stock or other valuable consideration and may be payable in a lump sum or by instalments spread over such period as such receiver shall think fit, and so that any consideration received or receivable shall forthwith be and become charged with the payment of the Secured Obligations. Plant, machinery and other fixtures may be severed and sold separately from the premises containing them without the consent of the Mortgagor being obtained thereto;

- (f) obtain (by way of application or otherwise) any approval, permission, consent and licence (including any Environmental Licence, planning permission and building regulation approval) enter into and perform contracts and arrangements, purchase materials and incur any type of obligation;
- (g)
  - (i) promote the formation of a subsidiary or subsidiaries of the Mortgagor with a view to such subsidiary or subsidiaries purchasing, leasing, licensing or otherwise acquiring interests in or the use of the Mortgaged Assets and the Chattels or with a view to such subsidiary or subsidiaries engaging employees or providing management or other services in connection therewith or for any other purpose or function which may be regarded as necessary or appropriate by such receiver from time to time;
  - (ii) arrange for such subsidiary or subsidiaries to trade or cease to trade as such receiver may think fit from time to time; and
  - (iii) arrange for the purchase, lease, licence or acquisition of the Mortgaged Assets and the Chattels by such subsidiary or subsidiaries on a basis whereby the consideration may be cash, shares, debentures, loan stock, convertible loan stock or other securities, shares of profits or sums calculated by reference to profits or turnover or royalties or licence fees or otherwise howsoever and whether or not secured on the assets of the subsidiary or subsidiaries and whether or not such consideration is payable or receivable in a lump sum or by instalments spread over such period as such receiver may think fit,
- (h) take any proceedings in relation to the Mortgaged Assets in the name of the Mortgagor or otherwise as may seem expedient including (without prejudice to the generality of the foregoing) proceedings for the collection of rent in arrears at the date of his appointment;
- (i) enter into any agreement or make any arrangement or compromise as such receiver shall think expedient in respect of the Mortgaged Assets or the Chattels,
- (j) exercise the Mortgagor's rights under any rent review clause in respect of the Mortgaged Property or grant or apply for any new or extended tenancy thereof,
- (k) exercise all or any of the powers conferred by clause 8 and repair, renew or improve any Chattels used by such receiver for the purposes of any business of the Mortgagor at any time carried on at the Mortgaged Property;
- (l) insure the Mortgaged Assets and the Chattels and/or maintain or renew any insurances of the same on such terms as such receiver shall think fit or as the Bank shall from time to time direct;
- (m) appoint managers, agents, officers and employees for any of the aforesaid purposes at such salaries and for such periods as such receiver may determine and dismiss any of the same;
- (n) adopt any contracts of employment entered into between the Mortgagor and any employees of the Mortgagor with such variations to the contracts as such receiver may think fit, and dismiss any such employees,

- (o) cause the Mortgagor to grant such powers of attorney or appoint agents for any of the aforesaid purposes as such receiver may from time to time think expedient;
  - (p) do all such things as may be thought necessary for the management of the affairs, business and property of the Mortgagor;
  - (q) grant, vary and release easements and other rights over the Mortgaged Property and impose, vary or release covenants affecting the Mortgaged Property and agree that the Mortgaged Property may be subject to any easements or covenants;
  - (r) purchase any freehold and leasehold properties and other capital assets if such receiver considers it would be conducive to realisation of the Bank's security to do so; and
  - (s) do all such other acts and things as may from time to time be considered by such receiver to be incidental or conducive to any of the matters or powers aforesaid or otherwise incidental or conducive to the realisation of the Bank's security or the exercise of his functions as receiver.
- 11.4. Sub-section 109(8) of the Law of Property Act 1925 shall not apply and all money received by such receiver shall (subject in relation to each paragraph below to any claims having priority to the matter therein described) be applied.
- (a) first in payment of his remuneration and the costs of realisation including all costs and expenses of or incidental to any exercise of any power hereby conferred,
  - (b) secondly (if such receiver thinks fit, but not otherwise) in or towards payment of all or any of the matters referred to in paragraphs (i), (ii), (iii) and (iv) of Sub-section 109(8) of the Law of Property Act 1925 as he in his absolute discretion shall decide; and
  - (c) thirdly in or towards satisfaction of the Secured Obligations.
- 11.5. Any such receiver shall at all times and for all purposes be deemed to be the agent of the Mortgagor, which alone shall be responsible for his acts or defaults and for his remuneration.
- 11.6. Any such receiver shall be entitled to remuneration for his services and the services of his firm at a rate or rates or in an amount or amounts as may from time to time be agreed between the Bank and such receiver or (in default of agreement) as may be appropriate to the work and responsibilities involved upon the basis of charging from time to time adopted by such receiver in accordance with the current practice of such receiver or his firm and without in either such case being limited by the maximum rate specified in Section 109(6) of the Law of Property Act 1925
- 11.7. If the Bank shall appoint more than one receiver the powers given to a receiver hereby and by statute shall be exercisable by all or any one or more of such receivers, and any reference in this Mortgage to "receiver" shall be construed accordingly
- 11.8. The powers conferred by this clause 11 shall be in addition to all powers given by statute to the Bank or to any such receiver.
- 11.9. Only money actually paid by such receiver to the Bank shall be capable of being applied by the Bank in or towards satisfaction of the Secured Obligations.
12. **PROTECTION OF THIRD PARTIES**
- 12.1. No person (each a "Third Party", including any insurer, assurer, purchaser or security holder) dealing with the Bank or any receiver appointed by it or their respective employees and agents need enquire:
- (a) whether any right, exercised or purported to be exercised by the Bank, such receiver or their respective employees and agents, has become exercisable, or
  - (b) whether any of the Secured Obligations are due or remain outstanding; or
  - (c) as to the propriety or regularity of anything done (including any sale, dealing or application of money paid, raised or borrowed) by the Bank, such receiver or their respective employees and agents

12.2. Each of those things shall (as between that Third Party on the one hand and the Bank or any receiver appointed by it or their respective employees or agents on the other hand) be deemed to be exercisable, due, outstanding, proper, regular and within the terms of this Mortgage (as the case may be) and be fully valid and effective.

12.3. All the protections to purchasers contained in Sections 104 and 107 of the Law of Property Act 1925 and to persons contained in Section 42(3) of the Insolvency Act 1986 apply to each Third Party.

12.4. The Bank, any receiver appointed by it and their respective employees and agents may give receipts to any Third Party. The Mortgagor agrees that each receipt shall be an absolute and conclusive discharge to such Third Party and shall relieve such Third Party of any obligations to see to the application of any assets paid or transferred to or by the direction of the Bank, such receiver, employee or agent.

### 13. COVENANTS

The Mortgagor shall:

- (a) cultivate and manage any Agricultural Land in a good and proper and husbandlike manner;
- (b) pay the rent and other outgoings reserved or payable under any lease under which the Mortgaged Property is held by the Mortgagor and any rent-charge or other outgoing charged upon the Mortgaged Property, and produce to the Bank on demand any receipt for such payment and further perform and observe all covenants, regulations and agreements on the part of the lessee and conditions contained in any such lease;
- (c) comply with all covenants, restrictions, requirements, provisions, conditions, laws and regulations affecting the Mortgaged Property (including the use and enjoyment of it);
- (d) comply with all relevant licences, consents, permissions and conditions from time to time granted or imposed by the Planning Acts and not without the prior written consent of the Bank give any undertaking to or enter into any agreement with any relevant planning authority affecting the Mortgaged Property;
- (e) not make or consent to the making of any application for planning permission or any other application under the Planning Acts affecting the Mortgaged Property unless either the Bank has consented in writing to such application being made or a copy of the proposed application has been sent to the Bank at least one month before the date of the application and the Bank has raised no objection to the making of the application;
- (f) forthwith upon receipt of any permission, notice, order, proposal or recommendation given or issued by any competent planning authority to the owner or occupier of the Mortgaged Property or any notice under Section 146 of the Law of Property Act 1925 or otherwise from any superior landlord of the Mortgaged Property, forward the same or a true copy thereof to the Bank;
- (g) not demolish or remove any part of the Mortgaged Property nor sever or remove from the Mortgaged Property any trade or other fixtures or fixed plant and machinery for the time being thereon except for the purpose of renewing or replacing the same by trade or other fixtures or fixed plant and machinery of equal or greater value;
- (h) permit the Bank or its agents at any time to enter upon the Mortgaged Property for the purpose of establishing whether or not the Mortgagor is complying fully with the Mortgagor's obligations under this Mortgage or inspecting the Mortgaged Assets;
- (i) not do or cause or permit to be done or omit to do anything which may in any way depreciate, jeopardise or otherwise prejudice the value to the Bank or marketability of the security hereby created by this Mortgage or of the Mortgaged Property;
- (j) not (without the prior written consent of the Bank) incur any expenditure or liabilities of an exceptional or unusual nature (including without limitation any expense in carrying out any development pursuant to a planning permission unless a copy of the relevant planning permission has been sent to the Bank at least one month before the date of commencement of such development and the Bank has raised no objection to such development);

- (k) notify the Bank immediately on the occurrence of an Insolvency Event;
- (l) where the Mortgaged Property is held under a lease.
  - (i) notify the Bank forthwith if the Mortgaged Property becomes subject to an Estate Management Scheme pursuant to Chapter IV of Part I of the Leasehold Reform, Housing and Urban Development Act 1993, and provide a copy of the scheme deed as approved by the relevant leasehold valuation tribunal;
  - (ii) notify the Bank before exercising (whether individually or collectively with others) any right conferred upon the Mortgagor in relation to the Mortgaged Property by Enfranchising Legislation, and supply to the Bank such information as it may reasonably require in relation to the exercise of such right;
  - (iii) not without the prior written consent of the Bank agree the terms of any new lease of the Mortgaged Property (with or without any further property) to be granted to the Mortgagor pursuant to any Enfranchising Legislation or otherwise,
  - (iv) if as a result of the exercise of any rights conferred by Enfranchising Legislation or otherwise the freehold interest or any intermediate reversionary interest in the Mortgaged Property becomes vested in a third party on behalf of the Mortgagor (with or without others), forthwith supply to the Bank particulars of such third party and (where such third party is a body corporate) details of any shares therein to be issued to the Mortgagor and deliver the share certificate in respect thereof to the Bank when received; and
  - (v) at its own cost take such further action as the Bank may require in relation to the security granted by this Mortgage;
- (m) where the Mortgaged Property is or (without prejudice to clause 10) becomes subject to any tenancy.
  - (i) forthwith notify the Bank on receipt of (and provide to the Bank a copy of) any notices received from any tenant of the Mortgaged Property pursuant to the provisions of any Enfranchising Legislation,
  - (ii) not serve upon any tenant of the Mortgaged Property a notice pursuant to the provisions of any Enfranchising Legislation unless the Bank has consented in writing thereto;
  - (iii) serve such notices in such form and take such other steps as the Bank may reasonably require following the exercise by any tenant of the Mortgaged Property of any rights arising under Enfranchising Legislation;
  - (iv) not enter into any agreement to grant a new lease to any tenant of the Mortgaged Property pursuant to or in consequence of the operation of any Enfranchising Legislation unless the Bank has consented in writing thereto, and
  - (v) not enter into any agreement pursuant to or in consequence of the operation of any Enfranchising Legislation to transfer to any person or persons the Mortgagor's interest in the Mortgaged Property subject to this Mortgage unless the Bank has consented in writing thereto and (if such consent be given or deemed be given as herein after provided) to provide to the Bank such information in respect of any such transfer and its terms (including the identity of the transferees) as the Bank may reasonably require,

Provided that in all cases in this sub clause (m) where the Bank's consent in writing is required before the Mortgagor may take further action the Bank's consent to such action shall be deemed to be granted if the Bank has not raised any objection to such action within one month of the date of the relevant request to the Bank for such consent Provided that the Mortgagor must at all times use its best endeavours (and at no cost to the Bank) to obtain the maximum compensation permitted under the relevant

Enfranchising Legislation from any person or persons exercising any rights under such legislation.

- (n) if any notice (whether agreed or unilateral) is registered against the title of all or part of the Mortgaged Property, give to the Bank full particulars of the circumstances relating to such registration and, if such notice shall have been registered in order to protect a purported interest the creation of which is contrary to the obligations of the Mortgagor under this Mortgage, immediately at the Mortgagors expense take such steps as the Bank requires to ensure that the notice is withdrawn or cancelled;
- (o) if the Bank so requires, deposit with the Bank, and the Bank during the continuance of this Mortgage shall be entitled to hold and retain (unless held by the holders for the time being of a Prior Mortgage) all deeds and documents of title relating to the Mortgaged Property.

#### 14. REPAIR AND INSURANCE

##### 14.1. The Mortgagor shall:

- (a) keep the Mortgaged Assets in a good state of repair;
- (b) insure and keep insured the Mortgaged Assets with reputable insurers and on terms (for the time being) approved by the Bank (making such amendments thereto as the Bank may from time to time require) against loss or damage by fire and by terrorist damage and such other risks and contingencies as may from time to time be required by the Bank in their full reinstatement value for the time being in the joint names of the Mortgagor and the Bank or with the interest of the Bank endorsed on the policy or policies or noted as the Bank may require;
- (c) (unless deposited with the holder(s) for the time being of the Prior Mortgage(s), or unless the insurance to which such policy or policies relate and which was approved by the Bank was effected by a landlord with the respective interests of the Mortgagor and the Bank endorsed or noted thereon) deposit the relevant policy or policies with the Bank,
- (d) duly pay all premiums and sums payable in relation to such insurance and produce the receipts therefor to the Bank within seven days of their becoming due and payable; and
- (e) ensure that the relevant policy or policies remain valid at all times.

##### 14.2.

- (a) If default shall at any time be made by the Mortgagor in keeping the Mortgaged Assets, or any part thereof in a good state of repair or in effecting or keeping up any such insurance or in paying any rent or other outgoings or dilapidations or in producing to the Bank any such policy or receipt, or, where the Mortgaged Property is or includes Agricultural Land, in cultivating or managing the same or any part thereof in a good and proper and husbandlike manner, it shall be lawful for but not obligatory on the Bank (as the case may require) to repair and maintain or cultivate and manage the same with power to enter the Mortgaged Property for that purpose or to pay such rent and other outgoings and dilapidations or to effect or renew any such insurance as aforesaid as the Bank shall think fit, and any sums paid by the Bank for any such purpose shall be repayable by the Mortgagor to the Bank on demand with interest computed and payable as provided in sub-clauses 4.5 and 4.6 from the date of payment by the Bank as aforesaid and, pending payment, shall be secured hereby.
- (b) All money which may at any time be received or receivable under any such policies of insurance (or any other insurances covering any of the Mortgaged Assets) shall be held in trust for the Bank and (at the Bank's option) the Mortgagor shall pay such money to the Bank or shall apply the same in replacing, restoring or reinstating the buildings, fixtures and assets destroyed or damaged.

14.3. Any sum paid by the Bank to the lessor of any lease under which the Mortgaged Property is held (or under any superior lease) in settlement of any claim made by the lessor for any rent or other outgoings or dilapidations reserved or payable or alleged to be reserved or payable under the lease shall be deemed to be a payment properly made under the terms of clause 14.2 (a) (whether or not actually due to the lessor and whether or not disputed by the Mortgagor) provided that such payment

was made by the Bank in good faith for the purpose of avoiding, compromising or terminating any proceedings for forfeiture or otherwise for the purpose of preserving or enforcing the security hereby created.

14.4. The Mortgagor authorises the Bank in the Mortgagor's name and on the Mortgagor's behalf to make any claim against the insurer under any part of any insurance policy relating to the Mortgaged Assets and to admit, compromise or settle such claim or any liability relating to any such claim or any potential claim.

14 5 The Mortgagor also authorises the Bank to receive any amounts payable or received in respect of any insurance policy or claim under any insurance policy relating to the Mortgaged Assets and give a good discharge to the insurer in respect of such amounts.

15. **MORTGAGED LICENCES**

15.1. The Mortgagor shall at its own expense obtain and maintain all licences, permits, consents and authorisations required in connection with any business at any time carried on at the Mortgaged Property

15.2. If any Mortgaged Licences are held in connection with any business at any time carried on at the Mortgaged Property, the following shall apply:

- (a) the Mortgagor shall at its own expense conform to all orders, regulations and notices made by the licensing authority, the licensing justices or any other authority concerning the Mortgaged Assets and the said business and apply for and use its best endeavours to obtain whenever necessary proper renewals or regrants of the Mortgaged Licences, and shall not surrender, abandon or transfer to any person any of the Mortgaged Licences or remove the same or any of them to any other premises or do or permit any act or thing whereby the renewal of any such licences may be refused or discontinued or whereby the said business or the goodwill thereof or the letting or sale of the Mortgaged Property may be prejudicially affected, and shall upon demand by or on behalf of the Bank deliver to the Bank or as the Bank shall direct the Mortgaged Licences and give, do and execute all notices, acts instruments and things necessary or convenient for transferring the same or any of them or vesting the same in the Bank or its nominee or nominees or withdrawing from the books of H M. Revenue and Customs the entry of the Mortgagor as carrying on the business carried on upon the Mortgaged Property,
- (b) all money received by the Bank as compensation awarded in respect of the refusal of the licensing authority, the licensing justices or any other authority concerning the Mortgaged Assets to renew the Mortgaged Licences or any of them shall be applied first in payment of the costs incurred by the Bank under this Mortgage, secondly in or towards satisfaction of the other Secured Obligations, and subject thereto shall be held in trust for the Mortgagor;
- (c) the Mortgagor shall forthwith upon the receipt of any order, direction or notice from the licensing authority, licensing justices or any other authority affecting the Mortgaged Assets forward the same or a true copy thereof to the Bank;
- (d) the Mortgagor further covenants with the Bank in the manner following.
  - (i) the Mortgagor shall pay all charges which may be imposed in respect of the Mortgaged Licences or any of them by virtue of the Licensing Act 2003, the Licensing Act 1988 or any other statutory enactment, and in default the Bank or any receiver may pay all such costs charges and expenses;
  - (ii) the Mortgagor shall from time to time at the request of the Bank endeavour to procure the transfer of any of the Mortgaged Licences which may be held by nominees on behalf of or in trust for the Mortgagor to such other person or persons as the Bank may approve or appoint, and shall not permit the transfer of such licences to any person or persons not approved by the Bank,
  - (iii) the Mortgagor shall keep the Mortgaged Licences and every renewal or regrant thereof and any new licences granted in respect of the Mortgaged Assets insured against forfeiture or refusal to renew in the name of the Bank for a sum and in an office to be approved by the Bank in writing, and shall deposit the relevant policy or policies with the Bank and shall duly pay all

premiums and sums of money payable for this purpose and produce the receipts therefor to the Bank within seven days of their becoming due and payable, and in case of the Mortgagor making default in that behalf the Bank may pay all premiums and sums of money for effecting or keeping in force the said insurance. If any other policies of insurance cover the Mortgaged Licences and/or their renewal or regrant as aforesaid, the Mortgagor shall hold any sums received under such policies in trust for the Bank and shall pay the same to the Bank on demand;

- (iv) if the Mortgaged Licences or any of them shall at any time be vested in a nominee of the Mortgagor, the Mortgagor shall procure that all covenants by the Mortgagor herein contained shall be performed and fulfilled by any such nominee, and
  - (v) all sums, costs and expenses paid or incurred by the Bank under the powers conferred by this clause shall be paid by the Mortgagor to the Bank on demand with interest computed and payable as provided in sub-clauses 4.5 and 4.6 from the time or respective times of the same having been paid or incurred by the Bank or the receiver as the case may be and, pending payment, shall be secured hereby;
- (e) without limiting the generality of clause 17, the power of attorney contained in that clause shall authorise the attorney or attorneys for and in the name of the Mortgagor or otherwise:
- (i) to assign and transfer the Mortgaged Licences to any purchaser or purchasers of the Mortgaged Assets or to such other person or persons as the Bank shall direct;
  - (ii) to attend before the relevant authorities and to sign all such notices and other documents and to do all such other acts and things for and in the name, place and stead and on behalf of the Mortgagor or otherwise in order to obtain protection for or the transfer of the Mortgaged Licences to such purchaser or purchasers or other person or persons as aforesaid and to appeal against any refusal by any authority in respect of any grant or transfer or any renewal of any of the Mortgaged Licences or any order, regulation or direction made by any authority in respect of the Mortgaged Licences;
  - (iii) to sign all necessary notices and make all necessary applications for the purpose of obtaining the renewal, grant or regrant of any of the Mortgaged Licences; and
  - (iv) generally to execute all such instruments and to give or sign all such notices as the attorney shall think fit as fully and effectually to all intents and purposes whatsoever as the Mortgagor could do personally

#### 16. ENVIRONMENTAL OBLIGATIONS

The Mortgagor shall:

- (a) obtain all Environmental Licences applicable to the Mortgaged Assets, and any business of the Mortgagor carried on at the Mortgaged Property and comply with the terms and conditions of the same;
- (b) comply with all Environmental Laws applicable to the Mortgaged Assets and any business of the Mortgagor carried on at the Mortgaged Property, and not permit a contravention of the same;
- (c) notify the Bank of the receipt of and content of all claims, notices or other communications in respect of any alleged breach of any Environmental Law or the terms and conditions of any Environmental Licence which may have a material adverse effect on the market value of the Mortgaged Assets or on the value of any business carried on by the Mortgagor at the Mortgaged Property, and shall forthwith take such steps as the Bank may direct to remedy or stop such alleged breach,

- (d) promptly pay all fees and other charges in respect of any Environmental Licence, applicable to the Mortgaged Assets and any business of the Mortgagor carried on at the Mortgaged Property,
- (e) forthwith notify the Bank of the receipt of and the contents of any notices or other communication varying or suspending any Environmental Licence relating to the Mortgaged Assets and any business of the Mortgagor carried on at the Mortgaged Property, and forthwith take such steps as the Bank may direct to reinstate in full force and effect any Environmental Licence so varied or suspended;
- (f) forthwith supply the Bank with copies of any environmental reports, audits or studies undertaken in relation to the Mortgaged Assets and any business of the Mortgagor carried on at the Mortgaged Property; and
- (g) pay on demand the costs and expenses (including Value Added Tax) incurred by the Bank in commissioning environmental audits (which the Bank shall be entitled to do whenever it thinks fit) and shall permit the Bank and its agents full and free access to all the Mortgaged Assets for the purposes of such environmental audits. (Such costs and expenses shall bear interest from the date of demand computed and payable as provided in sub-clauses 4.5 and 4.6 and, pending payment, shall be secured hereby)

## 17. POWER OF ATTORNEY

17 1. For the purpose of securing the payment of the Secured Obligations and for securing any proprietary interest which the Bank has in any of the Mortgaged Assets, the Mortgagor irrevocably appoints the Bank and the persons deriving title under it, and its and their substitutes and any receiver or receivers appointed under this Mortgage (the "Attorney") jointly and also severally to be the Mortgagor's true and lawful attorney. For the purposes aforesaid, the Attorney shall have the right to do anything which the Mortgagor may lawfully do and all the rights and powers which may lawfully be given to an attorney including, without prejudice to the generality of the foregoing:

- (a) the right to do anything to procure or carry out the performance of the Mortgagor's obligations under this Mortgage and anything to facilitate the exercise of the Bank's rights under this Mortgage;
- (b) the right to act in the name of the Mortgagor;
- (c) the right to delegate and sub-delegate any or all of the rights of the Attorney,
- (d) the right to sign, execute, seal, deliver and otherwise perfect:
  - (i) any documents or instruments which the Bank or any receiver may require for perfecting the title of the Bank to the Mortgaged Assets or for vesting the same in the Bank, its nominees or any purchaser; and
  - (ii) any further security documentation referred to in clause 7

17 2 The Mortgagor ratifies and shall ratify everything done or purported to be done by the Attorney.

## 18. INDEMNITY

18.1. The Mortgagor hereby agrees to indemnify the Bank and any receiver appointed by it and their respective employees and agents (as a separate covenant with each such person indemnified) against:

- (a) all existing and future rents, rates, taxes, duties, charges, assessments and outgoings now or at any time payable in respect of the Mortgaged Assets or by the owner or occupier thereof; and
- (b) all costs, claims, demands, expenses, charges, assessments, impositions, fines and sums and the consequences of any proceedings or prosecutions arising directly or indirectly from or in connection with any breach by the Mortgagor of any law or of any provision in this Mortgage,

in each case, whether imposed by statute or otherwise and whether of the nature of capital or revenue and even though of a wholly novel character. If any such sums shall be paid by the Bank or any such receiver or any of their respective employees or agents, the same shall be paid by the



Mortgagor on demand with interest computed and payable as provided in sub-clauses 4.5 and 4.6 from the time or respective times of the same having been paid or incurred and, pending payment, shall be secured hereby, but the Bank shall not be deemed to have taken possession of the Mortgaged Assets by reason of such payment.

18.2. The Mortgagor hereby agrees to indemnify the Bank and any receiver appointed by it and their respective employees and agents (as a separate covenant with each such person indemnified) against all loss incurred in connection with:

- (a) any statement made by the Mortgagor or on the Mortgagor's behalf in connection with this Mortgage, the Mortgaged Assets or the business of the Mortgagor being untrue or misleading,
- (b) the Bank entering into any obligation with any person (whether or not the Mortgagor) at the request of the Mortgagor (or any person purporting to be the Mortgagor);
- (c) any actual or proposed amendment, supplement, waiver, consent or release in relation to this Mortgage;
- (d) any stamping or registration of this Mortgage or the security constituted by it, and
- (e) any failure to register this Mortgage in respect of any Mortgaged Assets where such registration is required in order to preserve the effectiveness or priority of the security created by this Mortgage,

whether or not any fault (including negligence) can be attributed to the Bank or any receiver appointed by it or their respective employees and agents

18.3. This indemnity does not and shall not extend to any loss to the extent that:

- (a) in the case of any loss incurred by the Bank or its employees or agents it arises from the Bank or its employees or agents acting other than in good faith; or
- (b) in the case of any loss incurred by the receiver or his employees or agents it arises from the receiver or his employees or agents acting other than in good faith; or
- (c) there is a prohibition against an indemnity extending to that loss under any law relating to this indemnity.

## 19. PARTNERSHIP

19.1. If the Customer is a partnership this Mortgage shall (unless the Bank otherwise determines) continue to apply to all Customer's Liabilities due, owing or incurred on behalf of the partnership notwithstanding.

- (a) the removal, death or retirement of any partner or partners;
- (b) the admission of a new partner or partners; or

any dissolution of the partnership occurring as a result of any such event.

19.2. Where under sub-clause 19.1 this Mortgage is continued, it shall apply, in addition to all monies and liabilities due, owing or incurred from or by the old partnership to the Bank, to all monies and liabilities due owing or incurred to the Bank from or by the new partnership as though there had been no change in the partnership or from or by any former partner of the old partnership who carries on the business of the old partnership as a sole trader.

## 20. CONTINUING SECURITY

This Mortgage shall continue to bind the Mortgagor as a continuing security notwithstanding that the Customer's Liabilities may from time to time be reduced to nil and notwithstanding any change in the name, style, constitution or otherwise of the Customer

**21. CONCLUSIVE EVIDENCE**

A certificate by an official of the Bank as to the amount of the Customer's Liabilities or Secured Obligations shall (save for manifest error) be binding and conclusive on the Mortgagor in any legal proceedings both in relation to the existence of the liability and as to the amount thereof.

**22. DEALINGS BY THE BANK WITH THE CUSTOMER AND OTHERS**

**22.1** The Bank may without any consent from the Mortgagor and without affecting this Mortgage, do all or any of the following:

- (a) grant, renew, vary, increase, extend, release or determine any facilities, products or services given or to be given to the Customer or any other person or the terms and conditions relating thereto and agree with the Customer or any such person as to the application thereof;
- (b) hold, renew, modify or release or omit to take, perfect, maintain or enforce any security or guarantee or right (including without limitation any rights as to the making, collection, allocation or application of recoveries in respect of any security or guarantee) now or hereafter held from or against the Customer or any other person in respect of any of the Customer's Liabilities, and/or
- (c) grant time or indulgence to or settle with or grant any waiver or concession to the Customer or any other person.

**22.2.** This Mortgage shall not be affected or discharged by anything which would not have discharged or affected it if the Mortgagor had been a principal debtor to the Bank. In particular, but without limitation, the Bank may release any surety of any of the Customer's Liabilities and may discharge any security held by the Bank as security for the liabilities of any such surety or the Customer, notwithstanding that the Mortgagor may have a claim for contribution against such surety or the Customer and notwithstanding that the Mortgagor may claim to be subrogated to the Bank's rights under such security.

**23. OPENING OR CONTINUANCE OF NEW OR EXISTING ACCOUNTS**

**23.1.** The Bank may at any time open and continue any new account(s) or continue any existing account(s) with the Customer and no money paid from time to time into any such new or existing account(s) by or on behalf of the Customer shall be appropriated towards or have the effect of reducing or affecting any of the Customer's Liabilities.

**23.2.** If the Bank does not open a new account for the Customer on the date of discontinuance or on the date the Bank receives notice of any subsequent assignment, mortgage, security, charge or other interest affecting the Mortgaged Assets it shall nevertheless be treated as if it had done so on such date, and, as from that date all payments made to the Bank in respect of the Customer's Liabilities shall be credited or treated as having been credited to the new account and shall not operate to reduce or affect the amount of the Customer's Liabilities owing at such date.

**24. SUSPENSE ACCOUNT**

**24.1.** The Bank may at any time place and keep to the credit of a separate or suspense account any money received under or by virtue of this Mortgage for so long and in such manner as the Bank may determine, without any obligation to apply the same or any part thereof in or towards the discharge of any of the Customer's Liabilities.

**24.2.** In calculating the amount for which a Mortgagor may be liable under this Mortgage, the Bank shall not charge interest on so much of the Customer's Liabilities as is equal to the credit balance from time to time on such separate account.

**24.3.** Notwithstanding any such payment, in the event of any proceedings relating to the Customer in or analogous to bankruptcy, administration, liquidation, composition or arrangement, the Bank may prove for or claim (as the case may be) and agree to accept any dividend or composition in respect of the whole or any part of the Customer's Liabilities and other sums in the same manner as if such money had not been received.

## 25 SECURITY NOT TO BE AVOIDED BY CERTAIN EVENTS

### 25.1.

- (a) No assurance, security or payment which may be avoided or invalidated or for which the Bank may have to account in whole or in part to any third party under any applicable law ("Applicable Law") of any jurisdiction (including, without prejudice to the generality of the foregoing, sections 175, 176A, 234, 238, 239, 241, 242, 243, 245, 339, 340, 342 and 423 of the Insolvency Act 1986 and section 754 of the Companies Act 2006) and no release, settlement, discharge, cancellation or arrangement including, but not limited to, a release, settlement, discharge, cancellation or arrangement of or in relation to this Mortgage, which may have been given or made on the faith of any such assurance, security or payment, shall prejudice or affect the right of the Bank to recover under this Mortgage as if such assurance, security, payment, release, settlement, discharge, cancellation or arrangement (as the case may be) had never been granted, given or made.
- (b) Any such release, settlement, discharge, cancellation or arrangement shall as between the Bank and a Mortgagor be deemed to have been given or made upon the express condition that it shall become and be voidable or invalidated at the instance of the Bank if the assurance, security or payment on the faith of which it was made or given shall at any time thereafter be avoided or invalidated or be subject to an accounting to any other person under any Applicable Law or otherwise, to the intent and so that the Bank shall become and be entitled at any time after any such avoidance, invalidation or accounting to exercise all or any of the rights in this Mortgage expressly conferred upon the Bank and/or all or any other rights which by virtue and as a consequence of this Mortgage the Bank would have been entitled to exercise but for such release, settlement, discharge, cancellation or arrangement

### 25.2.

- (a) The Bank shall be entitled to retain this Mortgage for a period of two months plus any statutory period during which any assurance, security or payment such as is referred to in sub-clause 25.1(a) may be avoided or invalidated (or such longer period as the Bank shall consider reasonable in the light of the provisions of any Applicable Law) after (as the case may be) the creation of such assurance or security or after the payment of all sums that are or may become due to the Bank from the Customer, notwithstanding any release, settlement, discharge, cancellation or arrangement given or made by the Bank.
- (b) If at any time within such period or prior to such repayment, either a bankruptcy petition shall be presented against the Customer or an application shall be presented to a competent Court for an administration order or for an order for the winding-up of the Customer or the Customer shall commence to be wound-up voluntarily or a notice of appointment of or notice of intention to appoint an administrator is issued by or in respect of the Customer (or any step is taken under any Applicable Law which is analogous to any of the foregoing), then the Bank shall be entitled to continue to retain this Mortgage for and during such further period as the Bank may determine, in which event this Mortgage shall be deemed to have continued to have been held by the Bank as security for the payment to the Bank of all the Secured Obligations (including any sums which the Bank is ordered to repay pursuant to any order of the Court or as a consequence of any Applicable Law).

## 26. CLAIMS OF THE MORTGAGOR AGAINST THE CUSTOMER AND OTHERS

Until all the Customer's Liabilities shall have been paid or discharged in full, notwithstanding payment in whole or in part of the Secured Obligations or any release, settlement, discharge, cancellation or arrangement falling within sub-clause 25.1(b), the Mortgagor shall not by virtue of any such payment or by any other means or on any other ground (save as hereinafter provided):

- (a) claim any set-off or counter-claim against the Customer in respect of any liability of the Mortgagor to the Customer;
- (b) make any claim or enforce any right against the Customer or prove in competition with the Bank in respect of any such claim or right;

- (c) accept repayment from the Customer of any amounts owed by the Customer to the Mortgagor;
- (d) be entitled to claim or have the benefit of any proof against or dividend, composition or payment by the Customer or in the bankruptcy, voluntary arrangement, administration or liquidation of the Customer;
- (e) be entitled to claim or have the benefit of any security or guarantee now or hereafter held by the Bank for any of the Customer's Liabilities or to have any share therein; or
- (f) claim or enforce any right of contribution against any surety of the Customer;

**PROVIDED that:**

- (i) sub-clauses 26(a), (b) and (c) shall only apply after the date that demand has been made on the Mortgagor under this Mortgage or the power of sale has arisen under this Mortgage or after the date of discontinuance (whichever is the earlier), and
- (ii) if the Mortgagor shall have any right of proof or claim in the bankruptcy, voluntary arrangement, administration or liquidation of the Customer, the Mortgagor shall if the Bank so requires exercise such right of proof or claim on behalf of the Bank and hold any dividend or other money received in respect thereof upon trust for the Bank to the extent of the Secured Obligations, and the Mortgagor shall in like manner hold upon trust for the Bank to the extent of the Secured Obligations any money which the Mortgagor may receive or recover from any surety by virtue of any right of contribution and any money which the Mortgagor may receive but should not have received by reason of any of sub-clauses 26(a) to (f) inclusive.

**27. SECURITY HELD BY THE MORTGAGOR**

- 27.1. The Mortgagor confirms that it has not taken and undertakes that it will not take any security from the Customer or from any surety in respect of this Mortgage without the prior written consent of the Bank.
- 27.2. Without prejudice to clause 27.1 any security now or hereafter held by or for any Mortgagor from the Customer or any surety shall be held in trust for the Bank as security for the Secured Obligations, and the Mortgagor shall upon request by the Bank forthwith deposit such security with the Bank or assign the same to the Bank and/or do whatever else the Bank may consider necessary or desirable in order to permit the Bank to benefit from such security to the extent of the Secured Obligations

**28. OTHER SECURITIES OR RIGHTS**

- 28.1. This Mortgage is in addition to and is not to prejudice or be prejudiced by any other guarantee or security or other rights which is or are now or may hereafter be held by the Bank for or in relation to any of the Secured Obligations, whether from the Mortgagor or otherwise, nor shall any recoveries, or arrangements for allocation or application of the same, pursuant to the any other guarantee or security or rights relating to the Secured Obligations affect the Bank's right to claim payment under this Mortgage.
- 28.2. It shall not be necessary for the Bank before enforcing this Mortgage to resort to or seek to enforce any guarantee or other security or other rights whether from or against the Customer or any other person
- 28.3. It is hereby agreed that it shall not be a condition precedent or subsequent to this Mortgage that the Bank shall take any security from the Customer or any surety or any guarantee from any intended surety, nor shall any liability under this Mortgage be affected by any failure by the Bank to take any such security or guarantee or by the illegality or invalidity of any such security or guarantee

**29. NOTICES AND DEMANDS**

- 29.1. Without prejudice to clause 1 2 (d)(iv) any notice or demand by the Bank under this Mortgage to or on any Mortgagor shall be deemed to have been sufficiently given or made if sent to that Mortgagor:

- (a) by hand or prepaid letter post to the Mortgagor's address stated herein or the Mortgagor's address last known to the Bank or in respect of a Mortgagor which is a company or limited liability partnership, its registered office, or
    - (b) by facsimile to the Mortgagor's last known facsimile number relating to any such address or office
  - 29.2. Without prejudice to clause 12(d)(iv) any such notice or demand given or made under sub-clause 29.1 shall be deemed to have been served on that Mortgagor:
    - (a) at the time of delivery to the address referred to in sub-clause 29.1(a), if sent by hand;
    - (b) at the earlier of the time of delivery or 10.00 am on the day after posting (or, if the day after posting be a Sunday or any other day upon which no delivery of letters is scheduled to be made, at the earlier of the time of delivery or 10.00 am on the next succeeding day on which delivery of letters is scheduled to be made), if sent by prepaid letter post;
    - (c) at the time of transmission, if sent by facsimile (and a facsimile shall be deemed to have been transmitted if it appears to the sender to have been transmitted from a machine which is apparently in working order), or
    - (d) on the expiry of 72 hours from the time of despatch in any other case.
  - 29.3 In the case of the death of the Mortgagor, and until the Bank receives notice in writing of the grant of probate of the will or the grant of letters of administration in respect of the estate of the Mortgagor, any notice or demand by the Bank sent by any of the methods as aforesaid shall for all purposes be deemed a sufficient notice to or demand on the personal representatives of the Mortgagor
  - 29.4. Service of any claim form may be made on the Mortgagor in the manner described in sub-clause 29.1(a), in the event of a claim being issued in relation to this Mortgage, and shall be deemed to constitute good service
  - 29.5. Any notice or communication from the Mortgagor to the Bank under the terms of this Mortgage shall be in writing and delivered by hand or sent by recorded delivery to the Bank at the Bank's address stated herein (or at such other address as may be notified in writing by the Bank to the Mortgagor for this purpose) and will be effective only when actually received by the Bank. Any notice or communication must also be marked for the attention of such official (if any) as the Bank may for the time being have notified to the Mortgagor in writing.
  - 29.6. In order to be valid:
    - (a) a Notice of Discontinuance must be actually received by the Bank at the address of its branch, office or department mentioned under its name on the first page of this Mortgage (or such other address as the Bank may notify to the Mortgagor in writing for this purpose),
    - (b) where the Bank administers a facility, product or service to the Customer from or at a branch, office or department other than one located at the address mentioned in sub-clause 29.6(a) for a Notice of Discontinuance to be valid in respect of such facility, product or service, a copy must also be received at the address of such other branch, office or department (or, if there is more than one such branch, office or department, at the address of all of them) PROVIDED THAT, in any event, each such other branch, office or department shall be deemed to have received a copy of the Notice of Discontinuance no later than thirty days after the date of its receipt at the address mentioned in sub-clause 29.6(a), and
    - (c) the Notice of Discontinuance (or copy, where sub-clause 29.6(b) applies) must be contained in an envelope addressed as described in this clause and such envelope must not contain any other documentation other than the Notice of Discontinuance (or such copy). Any envelope must also be marked for the attention of such official (if any) as the Bank may for the time being have notified to the Mortgagor in writing.
- A Notice of Discontinuance shall not become effective until the first working day after receipt (or, deemed receipt) of the Notice of Discontinuance (or copy where clause 29.6(b) applies).

30 **CURRENCY CONVERSION**

The Bank may, at its sole discretion and with or without notice to the Mortgagor, elect to convert all or any part of any sum received by the Bank pursuant to this Mortgage (in whole or in part) into the currency or currency unit or currencies or currency units of the whole or any part of the Secured Obligations (deducting from the proceeds of the conversion any currency premium or other expense), and the rate of exchange shall be the Bank's spot rate for selling the currency or currency unit or currencies or currency units of the Secured Obligations or relevant part thereof for the currency or currency unit of the sum received by the Bank under this Mortgage at or about 11 00 am in London on the date that the Bank exercises its right of conversion under this Mortgage. The Bank may take any such action as may be necessary for this purpose, including without limitation opening additional accounts.

31. **PAYMENTS**

31.1. If at any time the currency in which all or any part of the Secured Obligations are denominated is, or is due to be or has been converted into the euro or any other currency as a result of a change in law or by agreement between the Bank and the relevant obligor, then the Bank may in its sole discretion direct that all or any of the Secured Obligations shall be paid in the euro or such other currency or currency unit.

31.2. The Bank may apply, allocate or appropriate the whole or any part of any payment made by the Mortgagor under this Mortgage or any money received by the Bank under any guarantee, indemnity or third party security or from any trustee in bankruptcy, liquidator, receiver or administrator of the Mortgagor or from the proceeds of realisation of any part of the Mortgaged Assets or any part thereof to such part or parts of the Secured Obligations (or as the Bank may otherwise be entitled to apply, allocate or appropriate such money) as the Bank may in its sole discretion think fit to the entire exclusion of any right of the Mortgagor to do so.

32. **NON-MERGER, ETC.**

32.1. Nothing herein contained shall operate so as to merge or otherwise prejudice or affect any bill, note, guarantee, mortgage or other security or any contractual or other right which the Bank may at any time have for any of the Secured Obligations or any right or remedy of the Bank thereunder. Any receipt, release or discharge of the security provided by, or of any liability arising under, this Mortgage shall not release or discharge the Mortgagor from any liability to the Bank for the same or any other money which may exist independently of this Mortgage, nor shall it release or discharge the Mortgagor from any liability to the Bank under clause 4 and clause 18.

32.2. Where this Mortgage initially takes effect as a collateral or further security then notwithstanding any receipt, release or discharge endorsed on or given in respect of the money and liabilities owing under the principal security to which this Mortgage operates as a collateral or further security, this Mortgage shall, be an independent security for the Secured Obligations.

33. **TRANSFERS BY THE BANK OR THE MORTGAGOR**

33.1. The Bank may freely and separately assign or transfer any of its rights under the Mortgage or otherwise grant an interest in any such rights to any person or persons. On request by the Bank, the Mortgagor shall immediately execute and deliver to the Bank any form of instrument required by the Bank to confirm or facilitate any such assignment or transfer or grant of interest.

33.2. The Mortgagor shall not assign or transfer any of the Mortgagor's rights or obligations under this Mortgage or enter into any transaction or arrangement which would result in any of those rights or obligations passing to or being held in trust for or for the benefit of another person.

34 **RESTRICTION ON LIABILITY OF THE BANK**

Except to the extent that any such exclusion is prohibited or rendered invalid by law, neither the Bank nor any receiver appointed by it nor their respective employees and agents shall

- (a) be liable to account as a mortgagee in possession for any sums other than actual receipts,
- (b) be liable for any loss upon realisation of, or for any action, neglect or default of any nature whatsoever in connection with, any part of the Mortgaged Assets for which a mortgagee in possession might as such otherwise be liable;

- (c) be under any duty of care or other obligation of whatsoever description to the Mortgagor in relation to or in connection with the exercise of any right conferred upon the Bank, any receiver appointed by it and their respective employees and agents; or
- (d) be under any liability to the Mortgagor as a result of, or in consequence of, the exercise, or attempted or purported exercise, or failure to exercise, any of their respective rights

## 35. MISCELLANEOUS

- 35.1 Any amendment of or supplement to any part of this Mortgage shall only be effective and binding on the Bank and the Mortgagor if made in writing and signed by both the Bank and the Mortgagor. References to "this security", or to "this Mortgage" include each such amendment and supplement.
- 35.2 The Mortgagor and the Bank shall from time to time amend the provisions of this Mortgage if the Bank notifies the Mortgagor that any amendments are required to ensure that this Mortgage reflects the market practice prevailing at the relevant time following the introduction or extension of economic and monetary union and/or the euro in all or any part of the European Union.
- 35.3 The Bank and the Mortgagor agree that the occurrence or non-occurrence of European economic and monetary union, any event or events associated with European economic and monetary union and/or the introduction of any new currency in all or any part of the European Union shall not result in the discharge, cancellation, rescission or termination in whole or in part of this Mortgage or give any party hereto the right to cancel, rescind, terminate or vary this Mortgage in whole or in part.
- 35.4 Any waiver, consent, receipt, settlement or release given by the Bank in relation to this Mortgage shall only be effective if given in writing and then only for the purpose for and upon any terms on which it is given.
- 35.5 For the purpose of exercising, assigning or transferring its rights under this Mortgage, the Bank may disclose to any person any information relating to the Mortgagor which the Bank has at any time.
- 35.6 The restriction on the right of consolidating mortgages contained in Section 93 of the Law of Property Act 1925 shall not apply to this Mortgage or any further or other security entered into pursuant to this Mortgage
- 35.7 Any change in the constitution of the Bank or its absorption of or amalgamation with any other person shall not in any way prejudice or affect its or their rights under this Mortgage, and the expression "Bank" shall include any such other person
- 35.8 Unless and until the Bank shall have made demand for payment of any of the Secured Obligations or one of the other events mentioned in sub-clause 11.1 shall have occurred, the Bank shall not be entitled (except for the purposes mentioned in sub-clauses 13(h), 14 2(a) and 16(g)) to enter upon the Mortgaged Property or to obtain possession thereof.
- 35.9 The Bank shall be entitled to debit any account for the time being of the Mortgagor with the Bank with any sum falling due to the Bank under this Mortgage.
- 35.10 This document shall at all times be the property of the Bank.
- 35.11 Where the expression "Mortgagor" is or includes an individual then, notwithstanding anything else herein contained:
  - (a) the definition of Mortgaged Assets, the definition of assets, rights or properties comprised within Mortgaged Assets and the charges herein created shall not include or extend to any item belonging to the Mortgagor (or any party comprised in the expression the "Mortgagor") or in which the Mortgagor (or such party) may have an interest being an item which would or would be deemed to be a "personal chattel" within the Bills of Sale Act 1878 if and to the extent that the inclusion of the item would lead to this Mortgage being a bill of sale to which the Bills of Sale Acts 1878 and 1882 apply, and
  - (b) the powers expressed to be conferred by this Mortgage on a receiver or on the Bank, and the other provisions of this Mortgage, shall not be of any effect insofar as (but only insofar as) they would otherwise cause this Mortgage to be such a bill of sale

- 35.12. The Bank or its nominee shall only exercise the rights attached to any shares subject to this Mortgage in accordance with the Mortgagor's instructions, except where the Bank or its nominee is exercising such right for the purpose of preserving the value of the security hereby created or of realising it.

**36. UNLAWFULNESS AND PARTIAL INVALIDITY**

- 36.1. If (but for this sub-clause 36.1) it would for any reason be unlawful for the Mortgagor to grant security in respect of any particular liability of the Customer to the Bank, then (notwithstanding anything herein contained) this Mortgage shall not (to the extent that it would be so unlawful) extend to such liability, but without in any way limiting the scope or effectiveness of this Mortgage as regards the rest of the Secured Obligations.

- 36.2. Each of the provisions of this Mortgage shall be severable and distinct from one another and if at any time any one or more of such provisions is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

**37. PRIOR MORTGAGE(S)**

- 37.1. Any sale in exercise of the statutory or other powers and remedies may be made either subject to or discharged from all or any of the Prior Mortgage(s), and the Bank or any receiver appointed by it may settle and pass the accounts of any person or persons in whom all or any of the Prior Mortgage(s) may for the time being be vested, and any account so settled and passed shall as between the Bank or any such receiver and the Mortgagor be deemed to be properly settled and passed, and shall be binding on the Mortgagor accordingly.

- 37.2. If the person or persons entitled to the benefit of all or any of the Prior Mortgage(s) shall call in the money thereby secured or shall take any step to enforce all or any of the Prior Mortgage(s), the Bank or any receiver appointed by it may thereupon pay off all or any of the Prior Mortgage(s) and take a transfer of the benefit thereof, and the money so expended by the Bank or any such receiver and all costs of and incidental to the transaction incurred by the Bank or any such receiver shall be secured hereby and shall bear interest computed and payable as provided in sub-clauses 4.5 and 4.6 from the date of the same having been expended.

- 37.3. The Mortgagor shall pay all sums when due and comply with all of the obligations under the Prior Mortgage(s).

- 37.4. The Mortgagor shall not (without obtaining the Bank's prior written consent) increase the principal amount secured by the Prior Mortgage(s) in priority to this Mortgage.

**38. NO PERSONAL LIABILITY OF MORTGAGOR**

Notwithstanding anything herein contained the Mortgagor shall not incur any personal liability under this Mortgage for the payment of any of the Customer's Liabilities provided that where the Mortgagor comprises two or more persons and any of such persons is, or is included in the definition of, the Customer, then this clause shall not affect the personal liability of such person.

**39. NO RELIANCE ON THE BANK**

- (a) The Mortgagor acknowledges to and agrees with the Bank that, in entering into this Mortgage:

- (i) the Mortgagor has not relied on any oral or written statement, representation, advice, opinion or information made or given to the Mortgagor in good faith by the Bank or anybody on the Bank's behalf, and the Bank shall have no liability to the Mortgagor if the Mortgagor has in fact so done,

- (ii) the Mortgagor has made, independently of the Bank, the Mortgagor's own assessment of the viability and profitability of any purchase, project or purpose for which the Customer has incurred the Customer's Liabilities, and the Bank shall have no liability to the Mortgagor if in fact the Mortgagor has not so done;



- (iii) there are no arrangements, collateral or relating to this Mortgage, which have not been recorded in writing and signed on behalf of the Bank and the Mortgagor; and
  - (iv) the Mortgagor has made, without reliance on the Bank, the Mortgagor's own independent investigation of the Customer and its affairs and financial condition and of any other relevant person and assessment of the creditworthiness of the Customer or any other relevant person, and the Bank shall have no liability to the Mortgagor if in fact the Mortgagor has not so done.
- (b) The Mortgagor agrees with the Bank that the Bank did not have prior to the date of this Mortgage, does not have and will not have any duty to the Mortgagor:
  - (i) in respect of the application by the Customer of the money hereby secured;
  - (ii) in respect of the effectiveness, appropriateness or adequacy of the security constituted by this Mortgage or of any other security for the Customer's Liabilities;
  - (iii) to preserve the goodwill of any business carried on by the Mortgagor or the Customer by running, or procuring the running of, such businesses or otherwise, either before or after the enforcement of this Mortgage or before or after the enforcement of any security held by the Bank from the Customer; or
  - (iv) to provide the Mortgagor with any information relating to the Customer or any other relevant person.
- (c) The validity and enforceability of this Mortgage and the recoverability of the Secured Obligations shall not be affected or impaired by
  - (i) any other security or any guarantee taken by the Bank from the Mortgagor or any third party,
  - (ii) any such other security or guarantee proving to be inadequate;
  - (iii) the failure of the Bank to take, perfect or enforce any such other security or guarantee, or
  - (iv) the release by the Bank of any such other security or guarantee.
- (d) The Mortgagor agrees with the Bank for itself and as trustee for its officials, employees and agents that neither the Bank nor its officials, employees or agents shall have any liability to the Mortgagor in respect of any act or omission by the Bank, its officials, employees or agents done or made in good faith.

40

#### CONSUMER CREDIT ACT 1974

Notwithstanding anything herein contained:

- (a) this Mortgage shall not extend or apply to any borrowing regulated by the Consumer Credit Act 1974 (hereinafter called "the CCA") unless:
  - (i) it is expressly agreed between the Mortgagor and the Bank (otherwise than by this Mortgage) that the regulated borrowing should be secured by this Mortgage; or
  - (ii) such regulated borrowing is by way of overdraft on current account and is therefore excluded from Part V of the CCA (except Section 56 thereof);
- (b) if this Mortgage does extend and apply to any regulated borrowing by reason of sub-clause 40(a)(i), and there is a conflict between the terms applicable to the regulated borrowing and the provisions of this Mortgage, then (in so far as this Mortgage relates to the regulated borrowing) the terms applicable to the regulated borrowing shall prevail.

41. **LAW AND JURISDICTION**

- 41.1. This Mortgage and any dispute (whether contractual or non-contractual, including, without limitation, claims in tort, for breach of statutory duty or on any other basis) arising out of or in connection with it or its subject matter ("Dispute") shall be governed by and construed in accordance with the law of England and Wales.
- 41.2. The parties to this Mortgage irrevocably agree, for the sole benefit of the Bank, that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any Dispute. Nothing in this clause shall limit the right of the Bank to take proceedings against the Mortgagor 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.

IN WITNESS whereof the Mortgagor has executed this Mortgage as a deed and has delivered it upon its being dated

THE FIRST SCHEDULE

THE MORTGAGED PROPERTY

The property known as or being

The Property is Freehold

175 Long Lane

Addiscombe

Croydon

Surrey

CR0 7TE

Including the entirety of the property comprised in the document(s) particulars of which are set out below.

| Date | Description (Conveyance, Lease, Assignment, Assent etc) | Parties |
|------|---|---------|
|------|---|---------|

|  |  |  |
|--|--|--|
|  |  |  |
|--|--|--|

Title No(s).

Administrative Area

SL550642 AND  
SL587940

THE SECOND SCHEDULE

THE PRIOR MORTGAGE(S)

| Date of prior mortgage(s) or Charge(s) | Parties |
|--|---------|
|--|---------|

|  |  |
|--|--|
|  |  |
|--|--|

### THE THIRD SCHEDULE

#### THE LIMIT ON THE AMOUNT RECOVERABLE

The amount recoverable under this Mortgage shall not exceed the aggregate of the following amounts:

- (a) such part of the money and liabilities referred to in paragraph (a) of the definition of "Customer's Liabilities" as does not exceed:

Amount in figures  
(in relevant currency)

£2200000 00

and

Amount in words  
(in relevant currency)

TWO MILLION TWO HUNDRED THOUSAND POUNDS

- (b) such part of the interest referred to in paragraph (b) of the definition of "Customer's Liabilities" as is attributable to the money and liabilities referred to in (a) above; and
- (c) the commission and other banking charges and legal, administrative and other costs charges and expenses and interest referred to in paragraph (c) of the definition of "Customer's Liabilities"; and
- (d) all legal and other costs charges and expenses (on a full and unqualified indemnity basis) incurred by the Bank in recovering payment of any of the Secured Obligations and all moneys expended and liabilities incurred by the Bank pursuant to this Mortgage.

If no amount has been inserted in paragraph (a) above, there shall be no limit on the amount recoverable under this Mortgage.

**IMPORTANT NOTICE**

YOU SHOULD CONSULT A SOLICITOR BEFORE SIGNING THIS LEGAL DOCUMENT  
BY SIGNING THIS DOCUMENT YOU PROVIDE THE MORTGAGED ASSETS SPECIFIED AS SECURITY FOR THE  
LIABILITIES OF THE BANK'S CUSTOMER.  
THE SECURITY WILL BE LIMITED TO THE AGGREGATE OF THE AMOUNTS (IF ANY) SPECIFIED IN THE  
THIRD SCHEDULE TO THIS MORTGAGE IF NO AMOUNT IS SPECIFIED IN PARAGRAPH (a) OF THE THIRD  
SCHEDULE, THE SECURITY WILL BE UNLIMITED.  
YOUR PROPERTY MAY BE SOLD AND THE PROCEEDS APPLIED IN REPAYMENT OF THE CUSTOMER'S  
LIABILITIES.  
SIGN ONLY IF YOU WANT TO BE LEGALLY BOUND BY ITS TERMS.

Signed as a deed by

Name

Newcombe Estates Company Limited

Signature



In my presence and after the contents had been  
explained to him/her

Witness' name

*Claire Elizabeth White*  
SOLICITOR

Witness' Signature

  
SOLICITOR

Witness' Address

*14 Buckingham Street  
London  
WC2N 6DF*

Signed as a deed by

Name

*Rehms*  
NCM Real ~~Reforms~~ Nominee Limited 

Signature



In my presence and after the contents had  
been explained to him/her

Witness' name

*Claire Elizabeth White*  
SOLICITOR

Witness' Signature

  
SOLICITOR

Witness' Address

*14 Buckingham Street  
London  
WC2N 6DF*

Signed as a deed by

Name

Signature

In my presence and after the contents had been explained to him/her

Witness' name

 SOLICITOR

Witness' Signature



Witness' Address

Signed as a deed by

Name

Signature

In my presence and after the contents had been explained to him/her

Witness' name

SOLICITOR

Witness' Signature



Witness' Address





NB:- NOT TO BE USED FOR REGISTERED LAND

Date (day, month, year)

|  |  |  |  |  |  |  |  |
|--|--|--|--|--|--|--|--|
|  |  |  |  |  |  |  |  |
|--|--|--|--|--|--|--|--|

Signed as a deed by

|  |
|--|
|  |
|--|

The within-named LLOYDS TSB BANK PLC (hereinafter called the "Bank") hereby releases ALL AND SINGULAR the assets, property and rights now comprised in or mortgaged, charged or assigned by the within-written Mortgage from the security herein contained, to the intent that the same shall henceforth be held free from the said security and from all claims and demands under the within-written Mortgage

PROVIDED THAT this release shall not discharge the within-written Mortgagor from any liability to the Bank remaining to be paid or any other security held by the Bank.

IN WITNESS whereof the Bank has executed this instrument as a deed and has delivered it upon its being dated

Signature

|  |
|--|
|  |
|--|

As attorney for and on behalf of Lloyds TSB Bank plc, in the presence of:

Witness' name

|  |
|--|
|  |
|--|

Witness' signature

|  |
|--|
|  |
|--|