



Registration of a Charge

Company Name: **PINNACLE WEST LIMITED**

Company Number: **09995813**



XBYG9XMZ

Received for filing in Electronic Format on the: **02/03/2023**

Details of Charge

Date of creation: **27/02/2023**

Charge code: **0999 5813 0002**

Persons entitled: **PENINSULA FINANCE PLC**

Brief description: **BY WAY OF LEGAL MORTGAGE OF ALL INTEREST IN THE PROPERTY KNOWN AS HARDWICK NURSERY, RIDGE ROAD, PLYMPTON, PLYMOUTH, PL7 1UF REGISTERED AT THE LAND REGISTRY UNDER TITLE NUMBER DN687647.**

Contains fixed charge(s).

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

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

Certified by: **LUCY FOSTER**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 9995813

Charge code: 0999 5813 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 27th February 2023 and created by PINNACLE WEST LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 2nd March 2023 .

Given at Companies House, Cardiff on 3rd March 2023

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



Companies House



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

DATED 27TH FEBRUARY 2022²³

PINNACLE WEST LIMITED

- and -

PENINSULA FINANCE PLC

FIRST LEGAL MORTGAGE

of property at Hardwick Nursery, Ridge Road, Plympton, Plymouth PL7 1UF

(BUSINESS PROPERTY)

If the Mortgagor is a company, register this at Companies House
within 21 days of execution

FORM OF CHARGE FILED AT H M LAND REGISTRY UNDER REFERENCE
MD773L

INDEX

Clause No	Description	Page No
1.	Definitions	1
2.	Agreement by the Mortgagor to pay the Mortgagee	2
3.	Security	3
4.	Further advances	4
5.	Covenants by the Mortgagor	4
6.	Rental Income covenants	7
7.	Warranties by the Mortgagor	7
8.	Power to remedy	8
9.	Immediate recourse	8
10.	Enforcement of legal mortgage and power of sale	8
11.	Appointment of receiver and enforcement	9
12.	Power to deal with chattels	13
13.	Continuing security etc	13
14.	Indemnity	13
15.	Service of notices	14
16.	Power of Attorney and covenant for further assurance	15
17.	Indulgence	15
18.	Consolidation	15
19.	Set off	16
20.	Disclosure	15
21.	Joint and Several Covenants	16
22.	Exclusion of liability	16
23.	Restriction at the Land Registry	16
24.	Choice of law and jurisdiction	16
25.	Construction	17
26.	Miscellaneous	17
27.	Notice of subsequent charge	18

LAND REGISTRATION ACT 2002

HM LAND REGISTRY

ADMINISTRATIVE AREA : City of Plymouth

TITLE NUMBER : DN687647

THIS DEED OF LEGAL MORTGAGE is made on 27TH FEBRUARY 2022²³

BETWEEN

- (1) The Mortgagor : PINNACLE WEST LIMITED registered in England and Wales with company number 09995813 whose registered office is at 6 Houndiscombe Road, Plymouth, Devon, United Kingdom, PL4 6HH; and
- (2) The Mortgagee : PENINSULA FINANCE PLC (registered in England and Wales with company number 4385846) whose registered office is at Studio 5-11, 5 Millbay Road, Plymouth, Devon PL1 3LF;

BACKGROUND

- 0.1 Subject to this Deed being executed the Mortgagee has agreed to provide finance to the Mortgagor.
- 0.2 The Mortgagor is the registered proprietor of premises being the land described in the Schedule below ("the Property").
- 0.3 The Mortgagor has agreed to grant a legal mortgage to the Mortgagee over the Property as security in the manner provided in this Deed.

OPERATIVE PROVISIONS

1. Definitions

In this Deed the following words and expressions shall have the following meanings for all purposes:

- Charged Property** : means all the assets, property and undertaking for the time being subject to any Security created by this Deed (and references to Charged Property shall include references to any part of it).
- Insurance Policy** : means each contract or policy of insurance effected or maintained by the Mortgagor from time to time in respect of the Property.
- Interest** : means interest at the rate from time to time agreed in writing between the Mortgagor and the Mortgagee in relation to the Secured Obligations.

Property	: means the land and buildings on it described in the Schedule below.
Receiver	: means a receiver or receiver and manager appointed by the Mortgagee under or in relation to this Deed.
Rental Income	: means all amounts paid or payable to or for the account of the Mortgagor in connection with the letting, licence or grant of other rights of use or occupation of all or any part of the Property.
Secured Expenses	: means all legal and other costs, charges, damages and expenses (including any value added tax and on a full indemnity basis) at any time incurred by the Mortgagee or any Receiver in relation to this Deed or the Property or the Secured Obligations or in protecting, defending, preserving, enforcing or exercising or attempting to enforce or exercise any security or power under this Deed and/or in ensuring compliance with any of the obligations of the Mortgagor under this Deed together with Interest on such amounts from the date they are incurred until payment.
Secured Obligations	: means all indebtedness, monies, obligations and liabilities which are now or at any time in the future are or become due, owing or incurred by the Mortgagor to the Mortgagee of any kind whether incurred alone or jointly with another and whether as principal, surety or guarantor, actual or contingent and all Secured Expenses and (without prejudice to any other agreement for the payment of interest) Interest on all such amounts from the date of demand until payment.
Security	: means any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect.

2. Agreement by the Mortgagor to pay the Mortgagee

- 2.1 The Mortgagor agrees to pay to the Mortgagee the Secured Obligations and each part thereof at the time or times agreed between the Mortgagor and the Mortgagee from time to time in writing. If no specific times for payment are agreed in writing the Mortgagor agrees to pay the Secured Obligations to the Mortgagee on demand.
- 2.2 If repayment of only part of the Secured Obligations is demanded then further demands may also be made by the Mortgagee for the balance of the Secured Obligations.

3. Security

3.1 As a continuing security for its covenant in Clause 2 the Mortgagor as beneficial owner, and with full title guarantee, charges in favour of the Mortgagee:

3.1.1 by way of legal mortgage the Property; and

3.1.2 by way of fixed charge:

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

3.2 As a continuing security for the payment and discharge of the Secured Obligations, the Mortgagor with full title guarantee assigns to the Mortgagee absolutely, subject to a proviso for reassignment on irrevocable discharge in full of the Secured Obligations:

3.2.1 all its rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premiums in connection with each Insurance Policy; and

3.2.2 the Rental Income and the benefit of any guarantee or security in respect of the Rental Income,

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

3.3 If the Mortgagor shall on any day which is at least one month after the date of this Legal Mortgage pay to the Mortgagee all Secured Obligations in accordance with the covenants contained in this Deed (whether certain or contingent and whether or not accrued due) then the Mortgagee will at the request and cost of the Mortgagor discharge its Security created by this Deed.

4. Further advances

The Mortgagee covenants with the Mortgagor that it shall perform its obligations to make advances (including any obligation to make available further advances).

5. Covenants by the Mortgagor

5.1 The Mortgagor shall not at any time, except with the prior written consent of the Mortgagee:

5.1.1 create, purport to create or permit to subsist any Security on, or in relation to, any Charged Property other than any Security created by this deed;

5.1.2 sell, assign, transfer, part with possession of or otherwise dispose of in any manner (or purport to do so) all or any part of, or any interest in, the Charged Property; or

5.1.3 create or grant (or purport to create or grant) any interest in the Charged Property in favour of a third party.

5.2 The Mortgagor will observe and perform all covenants obligations restrictions and agreements affecting the Property or title to it including (but not limited to):

5.2.1 in the case of registered land all such matters as are contained or referred to in the register of title; and

5.2.2 in the case of leasehold title all such matters as are contained or referred to in the Lease under which the Property is held and any superior lease. In the case of leasehold title the Mortgagor will not surrender or vary the Lease under which the Property is held and any superior lease.

5.3.1 The Mortgagor will insure and keep insured the Property in its full reinstatement value and with an insurer authorized to operate in the United

Kingdom and approved by the Mortgagee against risks approved by the Mortgagee (which shall include fire theft subsidence heave flood loss of profit and business interruption insurance) making a note of the interest of the Mortgagee on the policy together with a loss payee clause in favour of the Mortgagee. Any approval by the Mortgagee shall not be taken to be an acceptance by the Mortgagee that the cover is adequate.

- 5.3.2 The Mortgagor will pay promptly all premiums and perform all other acts necessary to keep such policy on foot and not cause or permit or suffer the policy to become void voidable or unenforceable or anything which may entitle the insurer to withhold suspend or reduce payments under the policy; to produce the policy and all endorsements and evidence of payment of all premiums to the Mortgagee on demand.
- 5.3.3 The Mortgagor will hold all insurance monies received on trust for the Mortgagee and apply the same in repair or replacement of the Property or in or towards payment of the liabilities of the Mortgagor to the Mortgagee.
- 5.4 The Mortgagor will not permit any distress or levy of execution on the property or any part of it.
- 5.5 The Mortgagor will not grant any lease tenancy licence or similar of the Property or any part of it without having obtained the prior written consent of the Mortgagee. The statutory powers of leasing and accepting surrenders of leases conferred on the Mortgagor as mortgagor in possession are excluded.
- 5.6 The Mortgagor will notify the Mortgagee immediately of any notice or requirement or demand served or issued in respect of the Property or any activity on it and to supply full details of it to the Mortgagee and not to respond to any such notice without the prior consent of the Mortgagee.
- 5.7 The Mortgagor will promptly pay all outgoings in respect of the Property.
- 5.8 The Mortgagor will notify the Mortgagee of any writ or summons served on or issued against the Mortgagor in respect of the Property or any business carried on at the property or otherwise.
- 5.9 The Mortgagor will observe the provisions of the Town and Country Planning Act 1990 and the Planning and Compensation Act 1990 and any amendment or replacement of them and all regulations made under them, and all planning and building regulations by laws and other requirements of any other planning authority or similar.
- 5.10 The Mortgagor will put and keep the Property and all plant and machinery on it in good and substantial repair and condition to the satisfaction of the Mortgagee.
- 5.11 The Mortgagor will not undertake the following without the prior written consent of the Mortgagee (such consent not to be unreasonably withheld where the alteration or addition is an improvement to the Property which does not reduce its value, and where the Mortgagor supplies to the Mortgagee such information as it may reasonably require):

5.11.1 to carry out any structural alterations or additions to the Property;

- 5.11.2 to conduct or permit any demolition or waste of the Property or any part of it or any change of user;
- 5.11.3 to allow any item brought onto the Property (including goods acquired under a hire purchase or lease agreement or similar) to be affixed to the Property or to become a fixture. If the Mortgagor shall allow any such item to be brought onto the Property and it shall be affixed to the Property or become a fixture then ownership of that item shall vest in the Mortgagee and the Mortgagor must immediately notify the Mortgagee in writing of that fact, but the Mortgagee shall not be liable for any loss or damage to that item or any loss or damage arising from that item or its use and the Mortgagor will indemnify the Mortgagee in respect of any claim for such.
- 5.12 The Mortgagor will conduct any business currently carried on at the Property in a prudent and businesslike manner; and will not cease or diminish such business; and will obtain and maintain all necessary licences to conduct such business.
- 5.13 The Mortgagor will comply with all legislation for the time being in force (including circulars guidance notes and codes of practice) regulating the Property or any business carried on at the Property or the carrying on of any process or activity on the Property and any emissions from and all waste produced by such process or activity whether covering the protection of human health, the workplace, the environment or the provision of energy. Such legislation shall include without limitation the Health and Safety at Work Etc. Act 1974, The Control of Pollution Act 1974, the Environmental Protection Act 1990, the Water Acts 1945 - 1989, Clean Air Acts 1956 and 1968, the Planning Hazardous Substances Act 1990, the Public Health Acts, the Food Act 1990 and any European Community legislation, and any other instrument, plan, regulation, permission or direction made or issued under such legislation or deriving validity from such legislation.
- 5.14 The Mortgagor shall not, without the prior written consent of the Mortgagee:
- (a) exercise any VAT option to tax in relation to the Property; or
 - (b) revoke any VAT option to tax exercised, and disclosed to the Mortgagee in writing, before the date of this Deed.

6 Rental Income covenants

- 6.1 The Mortgagor shall not deal with the Rental Income except by getting it in and realising it in the ordinary and usual course of its business and shall, immediately on receipt, pay all Rental Income into such account ('Rent Account') as the Mortgagee may direct from time to time. The Mortgagor shall, pending that payment into the Rent Account, hold all Rental Income on trust for the Mortgagee.
- 6.2 The Mortgagor agrees with the Mortgagee that any monies received by the Mortgagee under clause 6.1 shall not constitute the Mortgagee as mortgagee in possession of the Property.

- 6.3 The Mortgagor agrees with the Mortgagee that it shall not be entitled to receive, utilise, transfer or withdraw any credit balance from time to time on the Rent Account except with the prior written consent of the Mortgagee.
- 6.4 The Mortgagor shall, promptly following the occurrence of a default, give notice to the relevant tenant, guarantor or surety of the assignment under clause 3.2 of the Mortgagor's rights and interest to the Rental Income and each guarantee or security in respect of the Rental Income and procure that each addressee of such notice promptly provides an acknowledgement of that notice to the Mortgagee.

7. Warranties by the Mortgagor

The Mortgagor warrants to the Mortgagee as follows:

- 7.1 that the Property is free from prior encumbrances (including but not limited to any mortgage or charge);
- 7.2 that (if the Mortgagor is a company) the Mortgagor does not know of any act or omission or event which had it been brought to the notice of the Mortgagee prior to the date of this Deed ought reasonably to have been considered by the Mortgagor as likely to affect the decision of the Mortgagee as to the provision of financial accommodation to the Mortgagor;
- 7.3 that the Mortgagor will notify the Mortgagee of any change in control of the Mortgagor ("control" having the meaning given in Section 840 of the Income and Corporation Taxes Act 1988) or of issue of any further shares in the Mortgagor or of any change in the directors of the Mortgagor or of any proposal for any such thing;
- 7.4 that the Mortgagor and (if the Mortgagor is a company) no director secretary shadow director manager or shareholder of the Mortgagor has been convicted of a criminal offence (other than a motoring offence not resulting in imprisonment);
- 7.5 that nothing has arisen, has been created or is subsisting that would be an overriding interest in the Property.

8 Powers to remedy

- 8.1 The Mortgagee shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Mortgagor of any of its obligations contained in this Deed.
- 8.2 The Mortgagor irrevocably authorises the Mortgagee and its agents to do all things that are necessary or desirable for that purpose.
- 8.3 Any monies expended by the Mortgagee in remedying a breach by the Mortgagor of its obligations contained in this Deed shall be reimbursed by the Mortgagor to the Mortgagee on a full indemnity basis and shall be payable immediately on demand.
- 8.4 In remedying any breach in accordance with this clause 8, the Mortgagee, its agents and their respective officers, agents and employees shall be entitled to

enter onto the Property and to take any action as the Mortgagee may reasonably consider necessary or desirable including, without limitation, carrying out any repairs, other works or development.

8.5 The rights of the Mortgagee under clause 8 are without prejudice to any other rights of the Mortgagee under this Deed. The exercise of any rights of the Mortgagee under this deed shall not make the Mortgagee liable to account as a mortgagee in possession.

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

9 Immediate recourse

The Mortgagor waives any right it may have to require the Mortgagee to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this Deed against the Mortgagor.

10. Enforcement of legal mortgage and power of sale

10.1 Without limitation or prejudice to any prior event causing such, the mortgage under clause 3 above shall be enforceable, and the power of sale and other powers conferred by section 101 of the Law of Property Act 1925, as varied or extended by this Deed each arise on the date of this Deed and, shall be immediately exercisable at any time after a notice demanding payment of and/or discharge and/or provision for any monies secured by this Deed shall have been served by the Mortgagee on the Mortgagor or a Receiver has been appointed under this Deed. Section 103 of the Law of Property Act 1925 shall not apply to this Deed and any such sale may be made on such terms as the Mortgagee or any Receiver appointed under this Deed may think fit.

10.2 In addition to the powers conferred on it by the Law of Property Act 1925 the Mortgagee and any Receiver shall have an unrestricted power to:

- (a) grant a lease or agreement for lease;
- (b) accept surrenders of leases;
- (c) grant any option in respect of the whole or any part of the Property with whatever rights relating to other parts of it,

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

11. Appointment of receiver and enforcement

- 11.1 (a) At any time after the Mortgagee shall have demanded repayment of any money or liability secured by this Deed or at any time after the mortgage under Clause 3 shall have become enforceable the Mortgagee may in writing appoint such person or persons as the Mortgagee thinks fit to be a Receiver or Joint Receivers or Several Receivers or Joint and Several Receivers of the Property and all of the other assets rights and properties assigned mortgaged or charged and or pursuant to this Mortgage hereinafter referred to as the Mortgaged Assets to act in the case of two or more Receivers jointly and severally or jointly and severally in relation to any part of the Mortgaged Assets to the extent permitted by law similarly to remove any such Receiver and to appoint another or others in its place.
- (b) If the Mortgagee excludes any part of the Mortgaged Assets from the appointment of a Receiver, the Mortgagee may subsequently extend that appointment (or that of any Receiver replacing such Receiver) to such excluded part of the Mortgaged Assets.
- 11.2 Any such Receiver may in the name or on behalf and at the cost of the Mortgagor or at his option in the name of the Mortgagee (but only with the specific approval in writing of the Mortgagee) 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 furniture stock goods movable plant machinery implements utensils and equipment now or from time to time placed on or used in or about (but not forming part of the Property) hereinafter referred to as 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 or include 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 Mortgagee 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 Mortgagee, 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 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) apply for and obtain 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) 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;
- (h) 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;
- (i) 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;
- (j) exercise all or any of the powers conferred by clause 10 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;
- (k) insure the Mortgaged Assets and the Chattels and maintain or renew any insurance of the same in such a manner as such Receiver shall think fit or as the Mortgagee shall from time to time direct;

- (l) 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;
- (m) adopt any contracts of employment entered into between the Mortgagor and any employees of the Mortgagor with such variations to the contract as such Receiver may think fit and dismiss any such employees;
- (n) 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;
- (o) do all such things as may be thought necessary for the management of the affairs, business and property of the Mortgagor;
- (p) grant, vary and release covenants 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 easements and covenants;
- (q) purchase any freehold and leasehold properties and other capital assets if such Receiver considers it would be conducive to realisation of the Mortgagee's security to do so; and
- (r) do all such other 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 Mortgagee's security or the exercise of his functions as Receiver.

11.3 Sub-section 109(8) of the Law of Property Act 1925 shall not apply and all money received by such Receiver shall 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;
- (c) thirdly (subject to the rights (if any) of the holder(s) for the time being of the Prior Mortgage(s) and when so required) in or towards satisfaction of the Secured Obligations.

11.4 Any such Receiver shall be deemed to be the agent of the Mortgagor who alone shall be responsible for his acts or defaults and for his remuneration.

11.5 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 Mortgagee 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.

- 11.6 If the Mortgagee 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.
- 11.7 The powers conferred by this clause 11 shall be in addition to all powers given by statute to the Mortgagee or to any such Receiver.
- 11.8 Only money actually paid by such Receiver to the Mortgagee shall be capable of being applied by the Mortgagee in or towards satisfaction of the Secured Obligations.
- 11.9 Where the expression "Mortgagor" is or includes an individual, the powers conferred on a Receiver by this clause 11 shall have effect only in so far as such power would not give rise to a bill of sale.

12. Power to deal with chattels

The Mortgagor appoints the Mortgagee and any Receiver appointed by the Mortgagee to be the agent of the Mortgagor to deal with all moveable plant, machinery, implements, utensils, furniture, chattels, goods and equipment now or at any time after the date of this Deed from time to time placed on or used in or about the Property or in connection with the Property as the Mortgagee or such Receiver thinks fit but that the power given under this Clause 12 is not and shall not be deemed to be a charge over the said assets and is limited in its scope and effect to ensure that it does not fall within the definition of a bill of sale as defined by the Bills of Sale Acts 1878 and 1882.

13. Continuing security etc.

- 13.1 This security shall be a continuing security and shall not be considered satisfied, redeemed or discharged by any intermediate payment or satisfaction of the whole or any part of the monies owing or incurred by the Mortgagor to the Mortgagee.
- 13.2 The security created by this Deed is in addition to any other security or securities which the Mortgagee now holds or may from time to time acquire from the Mortgagor or any other person and shall not in any way prejudice any of those securities.
- 13.3 All rights remedies and powers of the Mortgagee under this Deed will be in addition to and shall not limit those conferred on the Mortgagee by any other deed or agreement or implied by law.
- 13.4 Any money received (by the Mortgagee or any Receiver) under or in connection with the security of this Deed may be placed to the credit of a suspense account (with or without interest) for so long as the Mortgagee or any Receiver shall think fit with a view to preserving the right of the Mortgagee to prove against the Mortgagor for all monies and liabilities owing.

14. Indemnity

- 14.1 The Mortgagor will indemnify and keep indemnified the Mortgagee against any loss that it may suffer as a result of any breach of obligation covenant or warranty by the Mortgagor including all claims actions charges damages proceedings and other liabilities; and further will indemnify the Mortgagee and any Receiver appointed under the terms of this Deed, in respect of all costs and expenses (including legal expenses) incurred by the Mortgagee or, as the case may be, its Receiver, in recovering possession of the Property from the Mortgagor or any other person.
- 14.2 The Mortgagor will indemnify the Mortgagee, and as a separate covenant any Receiver appointed by the Mortgagee, on demand against all existing and future rents rates taxes duties charges assessments impositions and outgoings whatsoever (whether imposed by deed or statute or otherwise and whether of the nature of capital or revenue and even though of a wholly novel character) now or at any time payable in respect of the Property or by the owner or occupier of it, and until payment by the Mortgagor the Property shall stand charged with the amounts so to be paid but the Mortgagee shall not be deemed to have taken possession of the Property by reason of such payments.
- 14.3 The Mortgagor will indemnify the Mortgagee in respect of all legal costs and disbursements (including land registry fees) incurred by the Mortgagee in connection with the negotiation preparation and registration of this Deed and any facilities secured by it.

15. Service of notices

- 15.1 A notice or other communication (including any writ or summons) may be delivered to a party under or in connection with this Deed by hand, or by sending it by pre-paid post or other next working day delivery service addressed to the Mortgagor:
- 15.1.1 at the address of the other party shown above, or
- 15.1.2 (if the Mortgagor shall be a company) at the registered office address of the Mortgagor for the time being
- 15.1.3 to the Mortgagee at its registered office for the time being
- or to any other address as is notified in writing by one party to the other from time to time.
- 15.2 Any notice served by post shall be deemed to have been served at 10 am on the day following (or if that day following is a Sunday then on the Monday immediately after) that on which it is posted; unless the notice shall be posted after the time at which the last post collection is made in which case it shall be deemed to be served at 10 am on the second day following. In proving service of any such notice it shall be sufficient to prove that the envelope containing the notice was properly addressed and stamped and put in the post by way of recorded delivery or registered letter. A demand or notice so addressed and posted to the Mortgagor shall be effective notwithstanding that it be returned undelivered.

- 15.3 Any notice delivered by hand on the Mortgagor in accordance with Clause 15.1 above will be deemed to be received at the time when it is left at such place as is described in Clause 15.1.
- 15.4 Any notice may be served on the Mortgagor by telefax to such telefax number as the Mortgagor may notify in writing to the Mortgagee for this purpose provided that such notice is put in the post addressed to the Mortgagor as described in Clause 15.1 above within 24 hours following despatch by telefax. Such notice so served by telefax will be deemed to be served on the Mortgagor at the time of transmission by telefax.
- 15.5 The methods of service described in this Clause 15 will not affect the validity of any other effective method of service.

16. Power of Attorney and covenant for further assurance

- 16.1 As security for the performance of its obligations and liabilities under this Deed the Mortgagor irrevocably appoints the Mortgagee and any Receiver appointed by the Mortgagee the attorney of the Mortgagor to execute in the name of the Mortgagor all deeds and documents and perform all acts requiring to be performed by the Mortgagor under this Deed. This will include payment of any insurance premiums, any legal fees (including solicitors' and barristers' costs and court fees) or any taxes payable by the Mortgagor and any such cost of the Mortgagor shall forthwith be recoverable by the Mortgagee from the Mortgagor and shall form part of the liabilities secured by this Deed.
- 16.2 The Mortgagor undertakes to execute and (if appropriate) register such deeds and documents and perform such acts as the Mortgagee or any Receiver appointed by the Mortgagee may consider necessary or desirable for the purpose of vesting in the Mortgagee or in the Receiver legal title to the Property or otherwise perfecting the security of the Mortgagee under this Deed.
- 16.3 The power of attorney granted by this Deed is to secure the performance of obligations owed to the donee within the meaning of the Powers of Attorney Act 1971.

17. Indulgence

- 17.1 The Mortgagee may at any time without discharging or in any way affecting the security created by this Deed or the rights of the Mortgagee against the Mortgagor under this Deed:
- 17.1.1 Grant to the Mortgagor or to any other person any time or indulgence or come to any arrangement or composition with or agreement not to sue any other person, including any person for whose liability the Mortgagor is a surety; and
- 17.1.2 Exchange, release, notify, deal with or abstain from perfecting or enforcing any securities or guarantees or other rights which it may now have or in the future acquire from or against the Mortgagor or any other person.

- 17.2 No delay or omission of the Mortgagee to exercise any right or power granted by this Deed shall impair any such right or power to be construed as a waiver of or acquiescence in any default by the Mortgagor and no express waiver given by the Mortgagee in relation to any default by the Mortgagor shall prejudice the rights of the Mortgagee under this Deed. The granting of any consent by the Mortgagee will not prejudice the right of the Mortgagee to grant or withhold as it thinks fit its consent to anything similar.

18. Consolidation

The restriction on the right of consolidation in Section 93 of the Law of Property Act 1925 shall not apply to this security.

19. Set off

In addition to all other contractual, security or general rights of set off or consolidation of accounts, the Mortgagee will have the right (both before and after demand or the appointment of a Receiver under this Deed) to debit any account of the Mortgagor with any amount paid by the Mortgagee which the Mortgagor has agreed under this Deed to reimburse to the Mortgagee.

20. Disclosure

The Mortgagee may disclose and supply any information relating to the Mortgagor or the Property or to the matters referred to in this Deed to any trade register or credit reference agency, or to any company or person associated with the Mortgagee or to any other person for the purposes of the business of the Mortgagee.

21. Joint and several covenants

- 21.1 If the Mortgagor is more than one person then all covenants and liabilities on their part shall be joint and several.
- 21.2 All covenants given by the Mortgagor given with any other person are given jointly and severally and their liability is joint and several.

22. Exclusion of liability

The Mortgagee, its Receiver, and their respective delegates and sub-delegates, will not be liable to account to the Mortgagor for anything except the Mortgagee's own actual receipts or be liable to the Mortgagor for any loss or damage arising from any realisation by the Mortgagee, its Receiver, delegates or sub-delegates of any of the Charged Property or for any act, default, omission or negligence of any of the same in relation to the Charged Property.

23. Restriction at the Land Registry

The Mortgagor applies to the Chief Land Registrar to enter on the Register the following Restriction: -

"No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge

registered before the entry of this restriction, is to be registered without a written consent signed by the proprietor for the time being of the charge dated ... in favour of Peninsula Finance Plc referred to in the charges register."

24. Choice of law and jurisdiction

This Deed and the rights under it shall be construed in accordance with English Law, and the English courts shall have exclusive jurisdiction.

25. Construction

References in this Deed to the singular include the plural, and to any gender include all other genders. The index and clause headings are for reference only and will not affect the construction of this Deed.

26. Miscellaneous

26.1 Assignment

The Mortgagee shall be entitled to assign its interest in the security created by this Deed and its rights against the Mortgagor to such person as it wishes.

26.2 Severance

If any provision (or part) of this Deed shall be found by a court or competent authority to be void or unenforceable, the invalidity or unenforceability of that provision (or the part concerned) shall not affect the other provisions of this Deed (including the part of the provision not affected) which shall remain in full force and effect.

26.3 Reference to statutory provision

Any reference in this Agreement to a statutory provision means that provision as amended or re-enacted where appropriate.

26.4 Independent security

The security created by this Deed shall be in addition to, and independent of, every other security which the Mortgagee may at any time hold from the Mortgagor or in respect of the liabilities of the Mortgagor. No prior security held by the Mortgagor over the Property or any part of it shall merge with the security created by this Deed.

26.5 Effect of unenforceable security

This Deed and the security created by it shall not be discharged or affected by the total or partial invalidity or unenforceability of, or any irregularity or defect in, any security which the Mortgagee may hold from the Mortgagor or in respect of the liabilities of the Mortgagor. The Mortgagor agrees to indemnify the Mortgagee against all loss arising from any legal limitation, disability or lack of capacity of the Mortgagor or any person acting (or purporting to act) on behalf of the Mortgagor.

26.6 Security for sole benefit of the Mortgagee

This Deed and the security created in it shall cover the full amount of the monies and liabilities from time to time owing by the Mortgagor. For so long as the security created by this Deed remains in effect the Mortgagor will not be entitled to share in or succeed to or benefit from (by subrogation or otherwise) any rights which the Mortgagee may have or any security which the Mortgagee may hold or the whole or any part of the proceeds of any such matter.

27. Notice of subsequent charge

27.1 If the Mortgagee receives notice of any subsequent charge or other security interest affecting the Property then the Mortgagee may open a new account or accounts for the Mortgagor.

27.2 If the Mortgagee does not open a new account, it shall nevertheless be treated as if it had done so at the time when it received notice under clause 26.1 above, and as from that time, all payments made by the Mortgagor to the Mortgagee shall be credited or treated as having been credited to the new account and shall not operate to reduce the amount due from the Mortgagor to the Mortgagee at the time when it received the notice.

EXECUTED AND DELIVERED as a deed by the Mortgagor on the date first shown above

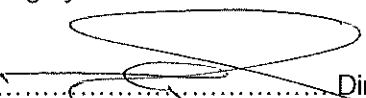
THE SCHEDULE

The Property: The freehold property registered at HM Land Registry under title number DN687647 known as Hardwick Nursery, Ridge Road, Plympton, Plymouth PL7 1UF.

EXECUTED as a DEED

By **PINNACLE WEST LIMITED**

acting by its authorised officers: a director


..... Director


..... Director/Secretary

In the presence of:

Signature of witness: 

Name of witness: KRISTA SEARLE

Address:

WOOLLCOMBE YONGE
SOLICITORS
63-65 BRETONSIDE
PLYMOUTH
PL4 0BD