



**Registration of a Charge**

Company Name: **CALLOW PROPERTY LIMITED**

Company Number: **10684420**



Received for filing in Electronic Format on the: **15/02/2024**

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**Details of Charge**

Date of creation: **09/02/2024**

Charge code: **1068 4420 0003**

Persons entitled: **JFL PROPERTY SERVICES LIMITED**

Brief description: **99 ST GEORGE'S PLACE, CHELTENHAM, GL50 3QB**

**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: **KAYLEIGH ZMAK**



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

Company number: 10684420

Charge code: 1068 4420 0003

The Registrar of Companies for England and Wales hereby certifies that a charge dated 9th February 2024 and created by CALLOW PROPERTY LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 15th February 2024 .

Given at Companies House, Cardiff on 19th February 2024

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

Date: <sup>th</sup> 9 February..... 2024

**Callow Property Limited**

**as Borrower**

**JFL Property Services Limited**

**as Lender**

## Legal Mortgage over Property

99 St Georges Place, Cheltenham GL50 3QB (Title No. GR133019) (1<sup>st</sup> Charge)

THIS DEED is dated

9<sup>th</sup> February

2024

## Parties

- (1) **Callow Property Limited** incorporated and registered in England and Wales with company number 10684420 whose registered office is at Lodge House, Severn Business Park, Rectory Road, Upton upon Severn, WR8 0LX (the "**Borrower**")
- (2) **JFL Property Services Limited** incorporated and registered in England and Wales with company number 14885963 whose registered office is at Churchway, Haccombe, Newton Abbot, Devon, United Kingdom, TQ12 4SJ (the "**Lender**")

## Background

- (A) The Lender has agreed to provide the Borrower with loan facilities on a secured basis.
- (B) The Borrower is the owner of the Property.
- (C) This deed provides security which the Borrower has agreed to give the Lender for the loan facilities made or to be made available under the Facility Letters and all liabilities and obligations arising under all other existing and future agreements, deeds or documents which the Borrower has agreed or does, in the future, agree shall be secured upon the Charged Property.

## Agreed terms

### 1. Definitions and Interpretation

#### 1.1 Definitions

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

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

"**Certificate of Title**" means any report on or certificate of title relating to the Property supplied to the Lender by or on behalf of the Borrower.

"**Charged Property**" means all the assets, property and undertaking of the Borrower from time to time which are, or are expressed to be, subject to the Security created by, or pursuant to, this deed (and references to the Charged Property shall include references to any part of them)

"**Costs**" means all fees, costs, charges, expenses, losses, taxes and liabilities of any kind, including (without limitation) legal and other professional fees, out-of-pocket expenses, and costs and damages in connection with litigation, professional fees, disbursements and any VAT charged on Costs which the Lender or any Receiver or Delegate may charge or incur.

"**Delegate**" any person appointed by the Lender or any Receiver under clause 14 and any person appointed as attorney of the Lender, or any Receiver or Delegate.

"**Encumbrance**" 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.

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

**"Environmental Law"** means all applicable laws, statutes, regulations, secondary legislation, by-laws, common law, directives, treaties and other measures, judgments and decisions of any court or tribunal, codes of practice and guidance notes insofar as they relate to or apply to the Environment.

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

**"Event of Default"** means any event which falls within the definition of an Event of Default in any of the Facility Letters.

**"Facility Letters"** means:

- (a) the facility letter dated on or around the date of this deed and made between the Lender and the Borrower for the provision of the loan facilities secured by this deed as may be amended from time to time; and
- (b) all other existing and/or future agreements, deeds or documents, as amended from time to time, by or in relation to which the Borrower has agreed, or does in future agree, in writing that the Borrower's liabilities and obligations to the Lender are to be secured upon the Charged Property.

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

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

**"Indebtedness"** means any obligation to pay or repay money, present or future, whether actual or contingent, sole or joint.

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

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

**"Permitted Encumbrance"** None

**"Property"** means the freehold property (whether registered or unregistered) owned by the Borrower as described in Schedule 1.

**"Receiver"** means a receiver or receiver and manager appointed by the Lender.

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

**"Rent Account"** means the Borrower's account for the receiving of Rental Income as that account may be numbered or designated and held from time to time.

**"Secured Liabilities"** means all present and future monies, obligations and liabilities owed by the Borrower to the Lender, whether actual or contingent and whether owed jointly or severally, as principal or surety and/or in any other capacity whatsoever under or in connection with the Facility Letters or this deed together with all interest (including, without limitation, default interest) accruing in respect of such monies, obligations or liabilities.

**"Security Period"** means the period starting on the date of this deed and ending on the date on which all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding.

**"Valuation"** means any valuation relating to the Property supplied to the Lender by or on behalf of the Borrower.

**"VAT"** means value added tax.

## 1.2 Interpretation

In this deed:

- 1.2.1 reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time, taking account of any amendment or re-enactment or extension and includes any former statute, statutory provision or subordinate legislation which it amends or re-enacts;
- 1.2.2 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- 1.2.3 unless the context otherwise requires, words in the singular include the plural and in the plural include the singular;
- 1.2.4 a reference to a clause or Schedule is to a clause of, or Schedule to, this deed and references to paragraphs are to paragraphs of the relevant Schedule, unless the context otherwise requires;
- 1.2.5 a reference to **continuing** in relation to an Event of Default means an Event of Default which has not been remedied or waived;
- 1.2.6 a reference to **this deed** (or any provision of it) or any other document shall be construed as a reference to this deed, that provision or that document as it is in force from time to time and as amended in accordance with its terms or with the agreement of the relevant parties;
- 1.2.7 a reference to a **person** shall include a reference to an individual, firm, company, partnership, corporation, unincorporated body of persons, or any state or any agency of any person;
- 1.2.8 a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and **amended** shall be construed accordingly);
- 1.2.9 a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description other than goods or personal chattels;
- 1.2.10 a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- 1.2.11 a reference to a **lease** includes a reference to a tenancy;

- 1.2.12 a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- 1.2.13 a reference to the **Borrower** or the **Lender** shall include their respective successors, permitted transferees and permitted assigns;
- 1.2.14 where the Borrower comprises more than one person the liabilities and obligations under this deed of the persons comprising the Borrower shall be joint and several;
- 1.2.15 where there is any conflict between the terms of this deed and the Facility Letters, the terms of the Facility Letters shall prevail; and
- 1.2.16 clause, Schedule and paragraph headings shall not affect the interpretation of this deed.

### **1.3 Clawback**

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

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

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

- 1.4.1 all buildings and fixtures and fittings (including trade and tenant's fixtures and fittings) and fixed plant and machinery which are situated on and form part of the Property at any time but excluding trade machinery within the meaning of s 5 of the Bills of Sale Act 1878;
- 1.4.2 the proceeds of sale of any part of the Property and any other monies paid or payable in respect of or in connection with the Property;
- 1.4.3 the benefit of any covenants for title given, or entered into, by any predecessor in title of the Borrower in respect of the Property and any monies paid or payable in respect of those covenants; and
- 1.4.4 all rights under any licence, agreement for sale or agreement for lease in respect of the Property.

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

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

### **1.6 Third party rights**

A third party (being any person other than the Borrower, the Lender and the Lender's permitted successors and assigns and any Receiver) has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce, or to enjoy the benefit of, any term of this deed.

### **1.7 Perpetuity period**

If the rule against perpetuities applies to any trust created by this deed, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).

## **1.8 Schedules**

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

## **2. Covenant to Pay**

The Borrower shall on demand pay to the Lender and discharge the Secured Liabilities when they become due.

## **3. Grant of Security**

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

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

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

3.1.2 by way of first fixed charge:

- (a) all the Borrower's rights in each Insurance Policy, including all claims, the proceeds of any claims under each Insurance Policy and all returns of premiums in connection with each Insurance Policy, 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; and
- (b) the benefit of all other contracts, guarantees, appointments, warranties relating to the Charged Property and other documents to which the Borrower is a party or which are in favour of the Borrower or of which the Borrower 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 the benefit of the Borrower 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 the benefit of the Borrower arising from any of them);
- (c) all licences, consents and authorisations (statutory or otherwise) held or required in connection with its business carried on at the Property or the use of any Charged Property, and all rights in connection with them; and
- (d) all monies from time to time standing to the credit of any Rent Account, together with all rights and benefits accruing to or arising in connection with the Rent Account (including, but not limited to, entitlements to interest).

### **3.2 Assignment**

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

- (a) all the Borrower's rights in each Insurance Policy, including all claims, the proceeds of any claims under each Insurance Policy and all returns of premiums in connection with each Insurance Policy;



- (b) the Rental Income and the benefit of any guarantee or security in respect of the Rental Income,

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

### **3.3 Two or more Borrowers**

Where there are two or more persons named as the Borrower, the security hereby constituted shall be a charge over the Charged Property and over any separate interest whether legal or equitable of each Borrower in the Charged Property or any part of it.

### **3.4 Interests less than the whole**

If the Borrower's interest in the Charged Property is less than the whole legal and equitable interest or is in respect of less than the whole of the Charged Property, then in every such case, this deed shall take effect as a Deed of Charge upon such interest, whether legal or equitable or partly legal and partly equitable, as the Borrower has in the Charged Property or any part of the Charged Property.

## **4. Perfection of Security**

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

The Borrower consents to an application being made by the Lender to the Land Registrar for the following restriction in Form P to be registered against the Borrower's title to the Property:

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the proprietor for the time being of the charge dated [ ] in favour of JFL Property Services Limited referred to in the charges register."

### **4.2 Further advances**

The security hereby constituted is made to secure further advances. The Lender covenants with the Borrower that the Lender shall perform its obligations to make an advance or advances under the Facility Letters (including any obligation to make available further advances).

### **4.3 First registration**

If the title to the Property is not registered at the Land Registry, the Borrower shall ensure that no person (other than the Borrower) shall be registered under the Land Registration Act 2002 as the proprietor of all or any part of the Property, without the prior written consent of the Lender.

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

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

## **5. Liability of the Borrower – Liability Not Discharged**

### **5.1 Liability not discharged**

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

- 5.1.1 any security, guarantee, indemnity, remedy or other right held by, or available to, the Lender that is or becomes wholly or partially illegal, void or unenforceable on any ground;
- 5.1.2 the Lender renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or
- 5.1.3 any other act or omission, which but for this clause 5.1 might have discharged, or otherwise prejudiced or affected, the liability of the Borrower.

### **5.2 Immediate recourse**

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

## **6. Representations and Warranties**

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

The Borrower makes the representations and warranties set out in this clause 6 to the Lender on the date of this deed and the representations and warranties contained in Clauses 6.2 to 6.3 (inclusive) and Clauses 6.5 to 6.13 (inclusive) are deemed to be repeated on each day of the Security Period with reference to the facts and circumstances existing at the time of repetition.

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

The Borrower is the legal and beneficial owner of the Charged Property and has good and marketable title to the Property.

### **6.3 No Encumbrances**

So far as the Borrower is or should, acting reasonably, be aware, the Charged Property is free from any Encumbrance other than Permitted Encumbrances and the Encumbrances created by this deed.

### **6.4 No adverse claims**

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

### **6.5 No adverse covenants**

So far as the Borrower is or should, acting reasonably, be aware after having made careful and prudent investigation, there are no covenants, agreements, reservations, conditions, interests, rights or other matters whatever, which materially and adversely affect the Charged Property.

**6.6 No breach of laws**

So far as the Borrower is or should, acting reasonably, be aware after having made careful and prudent investigation, there is no breach of any law or regulation which materially and adversely affects the Charged Property.

**6.7 No interference in enjoyment**

So far as the Borrower is or should, acting reasonably, be aware after having made careful and prudent investigation, no facility necessary for the enjoyment and use of the Charged Property is subject to terms entitling any person to terminate or curtail its use, save as set out in the lease of the Property where the Property is leasehold.

**6.8 No overriding interests**

So far as the Borrower is or should, acting reasonably, be aware after having made careful and prudent investigation, no person has an interest which could take priority over the Lender's interest under this deed as an overriding interest in the Property.

**6.9 No prohibitions or breaches**

There is no prohibition on the Borrower assigning his rights in any of the Charged Property referred to in clause 3.1.2 and the entry into of this deed by the Borrower does not and will not constitute a breach of any policy, agreement, instrument or obligation binding on the Borrower.

**6.10 Environmental compliance**

So far as the Borrower is or should, acting reasonably, be aware after having made careful and prudent investigation, the Borrower has, at all times, complied in all material respects with all applicable Environmental Law and Environmental Licences.

**6.11 Information for Valuations and Certificates of Title**

6.11.1 All written information supplied by or on behalf of the Borrower for the purpose of each Valuation and Certificate of Title was true and accurate in all material respects as at its date or as at the date (if any) on which it was stated to be given.

6.11.2 The information referred to in clause 6.11.1 was, as at its date or as at the date (if any) on which it was stated to be given, complete and the Borrower did not omit to supply any information which, if disclosed, would adversely affect the Valuation or Certificate of Title.

6.11.3 Nothing has occurred between the date or dates when the information referred to in clause 6.11.1 was supplied and the date of this deed which would adversely affect such Valuation or Certificate of Title.

**6.12 Avoidance of security**

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

**6.13 Enforceable security**

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

**7. Covenants**

The Borrower covenants with the Lender in the terms set out in Schedule 2.

**8. Powers of the Lender**

**8.1 Power to remedy**

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

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

8.1.3 Any monies expended by the Lender in remedying a breach by the Borrower of his obligations contained in this deed, shall be reimbursed by the Borrower to the Lender on a full indemnity basis and shall carry interest in accordance with clause 14.

8.1.4 In remedying any breach in accordance with this clause 8.1, the Lender, its agents and their respective officers, agents and employees shall be entitled to enter onto the Property and to take any action as the Lender may reasonably consider necessary or desirable including, without limitation, carrying out any repairs, other works or development.

**8.2 Exercise of rights**

8.2.1 The rights of the Lender under clause 8.1 are without prejudice to any other rights of the Lender under this deed.

8.2.2 The exercise of any rights of the Lender under this deed shall not make the Lender liable to account as a mortgagee in possession.

**8.3 Lender has Receiver's powers**

To the extent permitted by law, any right, power or discretion conferred by statute or by this deed (either expressly or impliedly) or by law on a Receiver may, after the security constituted by this deed has become enforceable, be exercised by the Lender in relation to any of the Charged Property (whether as attorney of the Borrower, in the Lender's capacity as mortgagee or otherwise) whether or not it has taken possession of any Charged Property and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

**8.4 Conversion of currency**

8.4.1 For the purpose of, or pending, the discharge of any of the Secured Liabilities, the Lender may convert any monies received, recovered or realised by it under this deed (including the proceeds of any previous conversion under this clause 8.4) from their existing currencies of denomination into such other currencies of denomination as the Lender, acting reasonably, may think fit.

8.4.2 Any such conversion shall be effected at the Lender's then prevailing spot selling rate of exchange for such other currency against the existing currency or if the Lender has no such spot rate then a spot rate reasonably selected by the Lender.

8.4.3 Each reference in this clause 8.4 to a currency extends to funds of that currency and, for the avoidance of doubt, funds of one currency may be converted into different funds of the same currency.

## **8.5 New accounts**

- 8.5.1 If the Lender receives, or is deemed to have received, notice of any subsequent Security or other interest, affecting all or part of the Charged Property, the Lender may open a new account for the Borrower in the Lender's books. Without prejudice to the Lender's right to combine accounts, no money paid to the credit of the Borrower in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.
- 8.5.2 If the Lender does not open a new account immediately on receipt of the notice, or deemed notice, referred to in Clause 8.5.1, then, unless the Lender gives express written notice to the contrary to the Borrower, all payments made by the Borrower to the Lender shall be treated as having been credited to a new account of the Borrower and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt or deemed receipt of the relevant notice by the Lender.

## **8.6 Indulgence**

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

## **9. When Security Becomes Enforceable**

### **9.1 Security becomes enforceable following certain events**

The security constituted by this deed shall be immediately enforceable if:

- 9.1.1 an Event of Default occurs; or
- 9.1.2 any of the Secured Liabilities shall not be paid or discharged when the same ought to be paid or discharged by the Borrower (whether on demand or at scheduled maturity or by acceleration or otherwise, as the case may be); or
- 9.1.3 the Borrower shall be in breach of any of its obligations under the Facility Letters, this deed or under any other agreement deed or document between the Borrower and the Lender and that breach (if capable of remedy) has not been remedied to the reasonable satisfaction of the Lender within 7 days of notice by the Lender to the Borrower to remedy the breach; or
- 9.1.4 any representation, warranty or statement made, repeated or deemed made by the Borrower in, or pursuant to, any of the Facility Letters or this deed is (or proves to have been) incomplete, untrue, incorrect or misleading in any material respect when made, repeated or deemed made; or
- 9.1.5 subject to clause 9.2:
- (a) any Indebtedness of the Borrower is not paid when due nor within any originally applicable grace period; or
  - (b) any Indebtedness of the Borrower becomes due, or capable of being declared due and payable, prior to its stated maturity by reason of an event of default howsoever described; or

- (c) any commitment, the fulfilment of which by a third party would give rise to any Indebtedness on the part of the Borrower, is cancelled or suspended as a result of an event of default however described; or
- 9.1.6 the Borrower stops or suspends payment of any of the Borrower's debts, or is unable to, or admits the Borrower's inability to, pay the Borrower's debts as they fall due; or
- 9.1.7 the Borrower commences negotiations, or enters into any composition or arrangement, with one or more of the Borrower's creditors with a view to rescheduling any Indebtedness of the Borrower (because of actual or expected financial difficulties); or
- 9.1.8 a moratorium is declared in respect of any of the Borrower's Indebtedness; or
- 9.1.9 subject to clause 9.3, any action, proceedings, procedure or step is taken for:
  - (a) the suspension of payments by the Borrower, the bankruptcy of the Borrower or the making of a voluntary arrangement or scheme of arrangement with creditors of the Borrower, or
  - (b) the appointment of a trustee in bankruptcy, receiver, administrator, compulsory manager or other similar officer in respect of the Borrower or any of the Borrower's assets; or
- 9.1.10 subject to clause 9.3, any event occurs in relation to the Borrower that is analogous to those set out in clause 9.1.9; or
- 9.1.11 the value of the Borrower's assets is less than the Borrower's liabilities (taking into account contingent and prospective liabilities); or
- 9.1.12 a distress, attachment, execution, expropriation, sequestration or other legal process is levied, enforced or sued out on, or against, the Borrower's assets having an aggregate value of not less than £5,000 and is not discharged or stayed within 21 days; or
- 9.1.13 any security on or over the assets of the Borrower becomes enforceable and is not discharged within 30 days of enforcement commencing; or
- 9.1.14 subject to clause 9.4, all or any part of any of the Facility Letters or this deed becomes invalid, unlawful, unenforceable, terminated, or ceases to have full force and effect in such a way as materially to increase the risk of non-recovery by the Lender of any of the Secured Liabilities, where it is reasonable to conclude that the extent to which that risk is so increased will be reduced by the taking of immediate steps to enforce this deed; or
- 9.1.15 the Borrower repudiates or evidences an intention to repudiate any of the Facility Letters or this deed; or
- 9.1.16 where any event occurs (or circumstances exist) which, in the reasonable opinion of the Lender, is likely to materially and adversely affect the Borrower's ability to perform all or any of its obligations under, or otherwise comply with, the terms of the any of the Facility Letters or this deed.
- 9.2 An event or circumstance such as is referred to in clause 9.1.5 shall not render the security constituted by this deed immediately enforceable if the aggregate amount of the Indebtedness or potential Indebtedness affected is less than £10,000.
- 9.3 Any such action, proceedings, procedure, step or event as is referred to in clause 9.1.9 or 9.1.10 shall not render the security constituted by this deed immediately enforceable if such action,

proceedings, procedure, step or event is frivolous or vexatious or discharged, stayed or dismissed within 14 days of commencement.

- 9.4 An event or circumstance such as is referred to in 9.1.14 shall not render the security constituted by this deed immediately enforceable if such event or circumstance occurs as a result of negligence or any unlawful act or omission on the part of the Lender.

**9.5 Discretion**

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

**Enforcement of Security**

**10.1 Enforcement powers**

- 10.1.1 For the purposes of all powers implied by statute, the Secured Liabilities are deemed to have become due and payable on the date of this deed.
- 10.1.2 The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this deed) shall arise on the execution of this deed and shall become immediately exercisable (without the restrictions contained in the LPA 1925 as to the giving of notice or otherwise) at any time after the security constituted by this deed has become enforceable under clause 9.1.
- 10.1.3 Section 103 of the LPA 1925 (restricting the power of sale) does not apply to the security constituted by this deed.

**10.2 Extension of statutory powers of leasing**

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

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

whether or not at a premium and containing such covenants on the part of the Borrower and on such terms and conditions (including the payment of money to a lessee or tenant on a surrender) as the Lender or Receiver, acting reasonably and properly for the purposes of protecting and/or realising the Lender's security under this deed, thinks fit, without the need to comply with any of the restrictions imposed by sections 99 and 100 of the LPA 1925.

**10.3 Where the Lender or Receiver takes possession of the Property**

Where the Lender or any Receiver takes possession of the Property and goods furniture chattels personal effects or other items ("**Goods**") remain at the Property the Lender or the Receiver:

- 10.3.1 may remove and store any Goods;

- 10.3.2 may dispose of the Goods by sale or otherwise, as the Lender or Receiver acting reasonably considers fit or, if Lender or the Receiver know that the Goods do not belong to the Borrower, return them to their rightful owner;
- 10.3.3 may include the Goods in any sale of the Property;
- 10.3.4 will only take the steps mentioned in clause 10.3.1, 10.3.2 or 10.3.3 if the Borrower has not removed the Goods within seven days after the Lender or the Receiver has given notice to the Borrower asking the Borrower to remove them or has failed after taking reasonable steps to trace or communicate with the Borrower;
- 10.3.5 may arrange for an appropriate organisation to remove and care for any animals found at the Property at the Borrower's cost,

provided always that nothing in this clause 10.3 gives the Lender any charge or other security interest in any Goods or animals at the Property and the Lender or the Receiver will return to the Borrower the proceeds of sale of the Goods.

#### **10.4 Prior Encumbrances**

At any time after the security constituted by this deed has become enforceable, or after any power to repossess the Charged Property or to appoint a receiver in respect of the Charged Property which is conferred by any Encumbrance having priority to this deed shall have become exercisable, the Lender may:

- (a) redeem such or any other prior Encumbrance over any Charged Property,
- (b) procure the transfer of that Encumbrance to itself, and/or
- (c) settle any account of the holder of any prior Encumbrance.

The Borrower shall pay to the Lender immediately on demand all principal, interest, costs, charges and expenses of, and incidental to, any such redemption or transfer, and such amounts shall be secured by this deed as part of the Secured Liabilities.

#### **10.5 Protection of third parties**

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

- (a) whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged,
- (b) whether any power the Lender or a Receiver or Delegate is purporting to exercise has become exercisable or is properly exercisable, or
- (c) how any money paid to the Lender or any Receiver or any Delegate is to be applied.

#### **10.6 Privileges**

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



#### **10.7 Exclusion of liability**

Neither the Lender, nor any Receiver or Delegate, shall be liable to the Borrower or any other person:

- (a) (by reason of entering into possession of a Charged Property, or for any other reason) to account as mortgagee in possession in respect of all or any of the Charged Property;
- (b) for any loss on realisation, or for any act, default or omission for which a mortgagee in possession might be liable; or
- (c) for any expense, loss or liability:
  - (i) relating to the enforcement of, or any failure to enforce or delay in enforcing, any security constituted by or pursuant to this deed;
  - (ii) relating to an exercise of rights, or by any failure to exercise or delay in exercising, rights under this deed; or
  - (iii) arising in any other way in connection with this deed,

except that this does not exempt the Lender or any Receiver or Delegate from liability for losses caused by the gross negligence, fraud or wilful misconduct of the Lender or the relevant Receiver or Delegate.

#### **10.8 Relinquishing possession**

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

#### **10.9 Conclusive discharge to purchasers**

The receipt of the Lender or any Receiver or Delegate shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Charged Property or in making any acquisition in the exercise of their respective powers, the Lender, and every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it or they think fit.

#### **10.10 Right of appropriation**

- (a) To the extent that:
  - (i) the Charged Property constitute Financial Collateral; and
  - (ii) this deed and the obligations of the Borrower under it constitute a Security Financial Collateral Arrangement,

the Lender shall have the right, at any time after the security constituted by this deed has become enforceable, to appropriate all or any of those Charged Property in or towards the payment or discharge of the Secured Liabilities in any order that the Lender may, in its absolute discretion, determine.

- (b) The value of any Charged Property appropriated in accordance with this clause shall be, in the case of cash, the amount standing to the credit of the Rent Account, together with any accrued but unpaid interest, at the time the right of appropriation is exercised.

- (c) The Borrower agrees that the method of valuation provided for in this clause are commercially reasonable for the purposes of the Financial Collateral Regulations.

## **11. Receivers**

### **11.1 Appointment**

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

### **11.2 Removal**

The Lender may, without further notice, from time to time, remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated. Such removal may be made by deed or in writing and signed by any one of the Lender's directors officers or authorised representatives.

### **11.3 Remuneration**

The Lender may fix a reasonable rate of remuneration for any Receiver appointed by it without the restrictions contained in section 109 of the LPA 1925 and, immediately on its being paid by the Lender, the reasonable remuneration of the Receiver shall become a debt which is due under and secured by this deed, to the extent not otherwise discharged.

### **11.4 Power of appointment additional to statutory powers and limitation of powers**

11.4.1 The power to appoint a Receiver conferred by this deed shall be in addition to all statutory and other powers of the Lender under the LPA 1925 or otherwise, and shall be exercisable without the restrictions contained in sections 103 and 109 of the LPA 1925.

11.4.2 The Lender may either in a Receiver's appointment or from time to time afterwards in writing exclude any one or more of the powers mentioned in clause 12 of this deed.

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

The power to appoint a Receiver (whether conferred by this deed or by statute) shall be, and remain, exercisable by the Lender despite any prior appointment in respect of all or any part of the Charged Property.

### **11.6 Agent of the Borrower**

Any Receiver appointed by the Lender under this deed shall be the agent of the Borrower and the Borrower shall be solely responsible for the contracts, engagements, acts, omissions, defaults, losses and remuneration of that Receiver and for liabilities incurred by that Receiver. The agency of each Receiver shall continue until the Borrower goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Lender.

## **12. Powers of Receiver**

### **12.1 Powers additional to statutory powers**

- 12.1.1 Any Receiver appointed by the Lender under this deed shall, in addition to the powers conferred on him by statute, have the powers set out in clause 12.2 to clause 12.19.
- 12.1.2 A Receiver has all the rights, powers and discretions conferred on a receiver (or a receiver and manager) under the LPA 1925, and shall have those rights, powers and discretions conferred on an administrative receiver under the Insolvency Act 1986 whether they are an administrative receiver or not.
- 12.1.3 If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him states otherwise) exercise all of the powers conferred on a Receiver under this deed individually and to the exclusion of any other Receiver.
- 12.1.4 If more than one person is appointed Receiver pursuant to this deed then if any one of them is removed from office, resigns, dies, or for any other reason ceases to be able to act as Receiver, the other person or persons appointed Receiver shall continue in office as Receiver with authority to exercise all the powers of a receiver given by this deed or by statute or otherwise.
- 12.1.5 Any exercise by a Receiver of any of the powers given by clause 12 may be on behalf of the Borrower, the directors of the Borrower or themselves.

### **12.2 Repair and develop the Property**

Provided that it is reasonable to do so for the purpose of protecting and/or realising the Lender's security under this deed (which shall be in the absolute discretion of the Lender or Receiver to determine), a Receiver may undertake or complete any works of repair, alteration, building or development on the Property and may apply for and maintain any planning permission, development consent, building regulation approval or any other permission, consent or licence to carry out any of the same.

### **12.3 Where the property is leasehold**

Provided that it is reasonable to do so for the purpose of protecting and/or realising the Lender's security under this deed (which shall be in the absolute discretion of the Lender or Receiver to determine), a Receiver may if the Property is leasehold vary the terms of or surrender the lease and/or take a new lease of the Property or of any part of the Property and/or exercise any rights of the Borrower to extend or renew the lease of the Property or to acquire the freehold or any superior interest in the Property (or any interest in them) on such terms as he shall reasonably think fit and so that any such new lease, freehold or superior interest (or any interest in them) in the Property shall, from its commencement or acquisition, become charged to the Lender on the terms of this deed so far as applicable and to execute a formal legal charge over any such new lease freehold or superior interest (or any interest in them) in favour of the Lender in such form as the Lender may reasonably require.

### **12.4 Vary grant or accept surrenders of leases**

A Receiver may vary, grant, or accept surrenders of, any leases or tenancies affecting the Property and may grant or vary any other interest or right over the Property on such terms and subject to such conditions as he reasonably considers appropriate for the purpose of protecting and/or realising the Lender's security under this deed.

**12.5 Employ personnel and advisers**

Provided that, in doing so, he acts reasonably and for the purpose of protecting and/or realising the Lender's security under this deed (which shall be in the absolute discretion of the Lender or Receiver to determine), a Receiver may provide services and employ, or engage, such managers, officers, servants, contractors, workmen, agents, other personnel and professional advisers on such terms and subject to such conditions as he reasonably thinks fit. Provided that it is reasonable for him to do so for the purpose of protecting and/or realising the Lender's security under this deed (which shall be in the absolute discretion of the Lender or Receiver to determine), a Receiver may discharge any such person or any such person appointed by the Borrower.

**12.6 Make and revoke VAT options to tax**

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

**12.7 Charge for remuneration**

A Receiver may charge and receive such reasonable sum by way of remuneration (in addition to all reasonable costs, charges and expenses reasonably incurred by him) as the Lender may prescribe or agree with him.

**12.8 Taking possession of and getting in the Charged Property**

12.8.1 A Receiver may take immediate possession of, collect and get in the Charged Property or any part of it in respect of which he is appointed and realise any Charged Property and make such demands and take such proceedings as he reasonably considers to be expedient for that purpose.

12.8.2 Provided that, in doing so, he acts reasonably and for the purpose of protecting and/or realising the Lender's security under this deed (which shall be in the absolute discretion of the Lender or Receiver to determine), a Receiver may, after giving the Borrower notice, buy or pay for the release of any interest which another person has in the Charged Property if that interest has (or may have) priority over this deed. Any money paid to buy or release another person's interest in the Charged Property will form part of the Secured Liabilities.

**12.9 Manage or reconstruct the Borrower's business**

Provided that, in doing so, he acts reasonably and for the purpose of protecting and/or realising the Lender's security under this deed (which shall be in the absolute discretion of the Lender or Receiver to determine), a Receiver may carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying the business of the Borrower carried out at the Property.

**12.10 Dispose of Charged Property**

Provided that, in doing so, he acts reasonably and for the purpose of protecting and/or realising the Lender's security under this deed (which shall be in the absolute discretion of the Lender or Receiver to determine), a Receiver may grant options and licences over all or any part of the Charged Property, sell, assign, lease and accept surrenders of leases of (or concur in selling, assigning, leasing or accepting surrenders of leases of) all or any of the Charged Property in respect of which he is appointed for such consideration and, in such manner (including, without limitation, by public auction or private sale) and generally on such terms and conditions as he reasonably thinks fit. A Receiver may promote, or concur in promoting, a company to purchase the Charged Property to be disposed of by them.

**12.11 Sever fixtures and fittings**

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

**12.12 Give valid receipts**

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

**12.13 Make settlements**

Provided that, in doing so, he acts reasonably and for the purpose of protecting and/or realising the Lender's security under this deed, a Receiver may make any arrangement, settlement or compromise in respect of the Charged Property between the Borrower and any other person which he may reasonably think expedient.

**12.14 Bring proceedings**

Provided that, in doing so, he acts reasonably and for the purpose of protecting and/or realising the Lender's security under this deed (which shall be in the absolute discretion of the Lender or Receiver to determine), a Receiver may bring, prosecute, enforce, defend and abandon all such actions, suits and proceedings in relation to any of the Charged Property as he reasonably thinks fit.

**12.15 Insure**

A Receiver may, if he thinks fit, but without prejudice to the indemnity in clause 15, effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the Borrower under this deed.

**12.16 Form subsidiaries**

A Receiver may form a subsidiary of the Borrower and transfer to that subsidiary any Charged Property.

**12.17 Powers under LPA 1925**

A Receiver may exercise all powers provided for in the LPA 1925 in the same way as if he had been duly appointed under the LPA 1925.

**12.18 Borrow**

Provided that, in doing so, he acts reasonably and for the purpose of protecting and/or realising the Lender's security under this deed (which shall be in the absolute discretion of the Lender or Receiver to determine), a Receiver may, for any of the purposes authorised by this clause 12, raise money by borrowing from the Lender (or from any other person) either unsecured or on the security of all or any of the Charged Property in respect of which he is appointed on such terms as he reasonably thinks fit (including, if the Lender consents, terms under which such security ranks in priority to this deed).

**12.19 Delegation**

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

**12.20 Absolute beneficial owner**

A Receiver may, in relation to any of the Charged Property, exercise all powers, authorisations and rights he would be capable of exercising, and do all such acts and things, as an absolute beneficial owner could exercise or do in the ownership and management of the Charged Property or any part of the Charged Property.

**12.21 Perform Borrower's obligations**

Provided that, in doing so, he acts reasonably and for the purpose of protecting and/or realising the Lender's security under this deed (which shall be in the absolute discretion of the Lender or Receiver to determine), a Receiver may perform any obligation of the Borrower under this deed which the Borrower has failed to perform in full and put right any matter or thing which has occurred as a result of the Borrower's breach of this deed.

**12.22 Incidental powers**

A Receiver may do all such other acts and things:

- (a) as he may reasonably consider desirable or necessary for protecting or realising any of the Charged Property;
- (b) as he may reasonably consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this deed or law; or
- (c) lawfully may or can do as agent for the Borrower.

**13. Delegation**

**13.1** The Lender or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it or them by this deed (including the power of attorney granted under clause 17).

**13.2 Terms**

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

**13.3 Liability**

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

**14. Application of proceeds**

**14.1 Order of Application of Proceeds**

All monies received by the Lender, a Receiver or a Delegate pursuant to this deed after the security constituted by this deed has become enforceable (other than sums received pursuant to any Insurance Policy), shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied in the following order of priority (but without prejudice to the Lender's right to recover any shortfall from the Borrower):

- (a) in or towards payment for any other costs, liabilities, charges and expenses incurred by or on behalf of the Lender or any Receiver, Delegate, attorney or agent appointed by it under or in accordance with this deed and of all remuneration properly due to any Receiver in accordance with this deed;
- (b) in or towards payment of the Secured Liabilities in such order and manner as the Lender determines; and
- (c) in payment of the surplus (if any) to the Borrower or other person entitled to it.

#### **14.2 Appropriation**

Neither the Lender nor any Receiver nor any Delegate shall be bound (whether by virtue of section 109(8) of the LPA 1925, which is varied accordingly, or otherwise) to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Secured Liabilities.

#### **14.3 Suspense account**

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

- (a) may, at the discretion of the Lender, Receiver or Delegate, be credited to a suspense account;
- (b) shall bear interest, if any, at the rate agreed in writing between the Lender and the Borrower; and
- (c) may be held in that account for so long as the Lender, Receiver or Delegate thinks fit.

#### **15. Costs and indemnity**

**15.1** The Borrower shall promptly on demand, pay to, or reimburse, the Lender and any Receiver or any Delegate, on a full indemnity basis, all Costs incurred by the Lender or any Receiver or any Delegate in connection with:

- (a) this deed;
- (b) the Charged Property;
- (c) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the security constituted under this deed or any of the Lender's or Receiver's or Delegate's rights under this deed;
- (d) taking proceedings for, or recovering, any of the Secured Liabilities; or
- (e) any amendment, extension, waiver, consent or suspension of rights (or any proposal for any of these) under or in connection with this deed;
- (f) any release of any security constituted by this deed;
- (g) any actual or alleged breach by any person of any law or regulation (including the investigation of that breach),

together with interest on those Costs, which shall accrue and be payable (without the need for any demand for payment being made) from the date on which the relevant Cost arose until its full discharge (whether before or after judgment) at the rate and in the manner specified in the Facility Letters.

**15.2 Indemnity**

- (a) The Borrower shall, promptly on demand, indemnify the Lender, each Receiver and each Delegate, and their respective employees and agents against any failure or delay in paying the fees, costs, charges, losses, liabilities, expenses, taxes or interest referred to in Clause 15.1 above.
- (b) Any past or present employee or agent may enforce the terms of this Clause 15.2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

**16. Further Assurance**

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

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

including, without limitation, if the Lender thinks it expedient, the execution of any mortgage, transfer, conveyance, assignment or assurance of all or any of the assets forming part of, or intended to form part of, the Charged Property (whether to the Lender or to its nominee) and the giving of any notice, order or direction and the making of any registration which, in any such case, the Lender may consider necessary or desirable.

**17. Power of Attorney**

**17.1 Appointment of attorneys**

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

- (a) the Borrower is required to execute and do under this deed; and/or
- (b) any attorney deems is proper or desirable for the purpose of facilitating the exercise of any of the rights, powers, authorities and discretions conferred by this deed or by law on the Lender or any Receiver or any Delegate.

**17.2 Ratification of acts of attorneys**

The Borrower ratifies and confirms, and agrees to ratify and confirm, anything which any of the Borrower's attorneys may do in the proper and lawful exercise of all or any of the rights, powers, authorities and discretions referred to in clause 17.1.



## **18. Release**

Subject to clause 20.3, on the expiry of the Security Period (but not otherwise), the Lender shall, at the request and cost of the Borrower, take whatever action is necessary to release the Charged Property from the security constituted by this deed.

## **19. Assignment and Transfer**

### **19.1 Assignment by Lender**

- (a) At any time, without the consent of the Borrower, the Lender may assign or transfer the whole or any part of the Lender's rights and/or obligations under this deed to any person. Any such assignment or transfer shall not cause the Borrower's rights under the Facility Letters and this deed to be reduced materially or cause the Borrower's obligations under the Facility Letters and this deed to be increased materially.
- (b) The Lender may disclose to any actual or proposed assignee or transferee such information about the Borrower, the Charged Property and this deed as the Lender considers appropriate.

### **19.2 Assignment by Borrower**

The Borrower may not assign any of the Borrower's rights, or transfer any of the Borrower's obligations, under this deed or enter into any transaction that would result in any of those rights or obligations passing to another person.

## **Further Provisions**

### **20.1 Independent security**

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

### **20.2 Continuing security**

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

### **20.3 Discharge conditional**

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

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

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

#### **20.4 Rights cumulative**

The rights and powers of the Lender conferred by this deed are cumulative, may be exercised as often as the Lender considers appropriate, and are in addition to, and not exclusive of, any of the Lender's rights and remedies provided by law.

#### **20.5 Variations and waivers**

Any waiver or variation of any right or remedy (whether arising under this deed or by law) shall only be effective if it is in writing and signed by the waiving or consenting party and shall not be deemed a waiver of any subsequent right or remedy, and applies only in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

#### **20.6 Delay**

No delay or failure by the Lender to exercise any right or remedy under this deed or provided by law shall operate as a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this deed.

#### **20.7 Single or partial exercise**

No single or partial exercise of any right or remedy under this deed or by law shall prevent any other or further exercise of that or any other right or remedy.

#### **20.8 Partial invalidity**

The invalidity, unenforceability or illegality of any provision (or part of a provision) of this deed under the laws of any jurisdiction shall not affect the validity, enforceability or legality of the other provisions. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with any modifications necessary to give effect to the commercial intention of the parties.

#### **20.9 Consolidation**

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

#### **20.10 Certificates**

Any certification or determination by the Lender of any rate or amount under this deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

## **21. Notices**

### **21.1 Service**

Each notice or other communication given under or in connection with this deed shall be in writing, delivered personally or sent by pre-paid first-class letter or email, and sent:

#### **21.1.1 to the Borrower at:**

- (a) the Property and Lodge House, Severn Business Park, Rectory Road, Upton upon Severn, WR8 0LX; or
- (b) Email to [lizbond@gmx.com](mailto:lizbond@gmx.com)

#### **21.1.2 to the Lender at:**

- (a) Churchway, Haccombe, Newton Abbot, Devon, United Kingdom, TQ12 4SJ marked for the attention of The Directors; or
- (b) Email to [ashleycox945@gmail.com](mailto:ashleycox945@gmail.com)

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

### **21.2 Receipt**

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

- (a) if sent by email, when transmitted,
- (b) if given by hand, at the time of actual delivery, and
- (c) if posted, on the second Business Day after the day it was sent by pre-paid first-class post,

provided that a notice or other communication given as described in clause 21.1.1 or clause 21.1.2 on a day which is not a Business Day, or after normal business hours, in the place to which it is sent, shall be deemed to have been received on the next Business Day.

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

#### **21.3 This clause 21 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.**

## **22. Governing Law and Jurisdiction**

### **22.1 Governing law**

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

- 22.1.2 Nothing in this clause shall limit the right of the Lender to take proceedings against the Borrower in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

**22.2 Jurisdiction**

The parties to this deed irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this deed or its subject matter or formation (including non-contractual disputes or claims).

**22.3 Other service**

The Borrower irrevocably consents to any process in any proceedings under clause 22.1 being served on it in accordance with the provisions of this deed relating to service of notices. Nothing contained in this deed shall affect the right to serve process in any other manner permitted by law.

**23. Counterparts**

- 23.1.1 This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.
- 23.1.2 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

## **Schedule 1**

### **Property**

All the freehold property known as 99 St Georges Place, Cheltenham, GL50 3QB and registered at HM Land Registry with title absolute under title number GR133019.

## **Schedule 2**

### **Covenants**

#### **Part 1 – General covenants**

##### **1. Negative Pledge and Disposal Restrictions**

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

- (a) create, purport to create or permit to subsist any Encumbrance on, or in relation to, any Charged Property other than any Encumbrance created by or in accordance with this deed or any Permitted Encumbrance;
- (b) sell, assign, transfer, part with possession of or otherwise dispose of in any manner (or purport to do so) all or any part of, or any interest in, the Charged Property; or
- (c) create or grant (or purport to create or grant) any interest in the Charged Property in favour of a third party.

##### **2. Preservation of Charged Property**

The Borrower shall not do, or permit to be done, any act or thing which would or might depreciate, jeopardise or otherwise prejudice the security held by the Lender or materially diminish the value of any of the Charged Property or the effectiveness of the security created by this deed.

##### **3. Compliance with Laws and Regulations**

The Borrower:

- (a) shall not use or permit the Charged Property to be used in any way contrary to law;
- (b) shall:
  - (i) comply with the requirements of any law and regulation relating to or affecting the Charged Property or the use of it or any part of it;
  - (ii) obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Charged Property or its use or that are necessary to preserve, maintain or renew any Charged Property; and
  - (iii) promptly effect any maintenance, modifications, alterations or repairs to be effected on or in connection with the Charged Property that are required to be made in respect of it under any law or regulation.

##### **4. Enforcement of Rights**

The Borrower shall use the Borrower's best endeavours to:

- (a) procure the prompt observance and performance by the relevant counterparty to any agreement or arrangement with the Borrower and forming part of the Charged Property of the covenants and other obligations imposed on such counterparty, and

- (b) enforce any rights and institute, continue or defend any proceedings relating to any of the Charged Property that the Lender may require from time to time.

## **5. Notice of Misrepresentations and Breaches**

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

- (a) any representation or warranty set out in clause 6 which is incorrect or misleading in any material respect when made or deemed to be repeated, and
- (b) any breach of a covenant set out in this deed.

## **6. Title Documents**

The Borrower shall, on the execution of this deed, deposit with the Lender and the Lender shall, for the duration of this deed, be entitled to hold:

- (a) all deeds and documents of title relating to the Charged Property which are in the possession or control of the Borrower (and if these are not within the possession or control of the Borrower, the Borrower undertakes to obtain possession of all these deeds and documents of title); and
- (b) each Insurance Policy.

## **7. Notices to be Given by the Borrower**

- 7.1 The Borrower shall immediately on written request by the Lender give notice to the relevant insurers of the assignment of the Borrower's rights and interest in and under each Insurance Policy (including the proceeds of any claims under that Insurance Policy) pursuant to clause 3.2 and procure that each addressee of such notice promptly provides an acknowledgement of that notice to the Lender.
- 7.2 In respect of any Rent Account, give notice to the bank, financial institution or other person (excluding the Lender) with whom the Borrower has the Rent Account that it has charged its rights and interests in the Rent Account under this deed and procure that the addressee of such notice provides to the Lender promptly an acknowledgement of that notice.
  - (a) The Borrower shall obtain the Lender's prior approval of the form of any notice or acknowledgement to be used under this paragraph 7.

## **Part 2 – Property covenants**

### **1. Repair and Maintenance**

- 1.1 The Borrower shall keep all premises, and fixtures and fittings on the Property in good and substantial repair and condition and shall keep all premises adequately and properly painted and decorated and replace any fixtures and fittings which have become worn out or otherwise unfit for use with others of a like nature and equal value; and
- 1.2 Where the Borrower lets the Property, the Borrower shall keep the premises, and fixtures and fittings on the Property in such repair and condition as to enable the Property to be let in accordance with all applicable laws and regulations.

### **2. No Alterations**

- 2.1 The Borrower shall not, without the prior written consent of the Lender:
  - 2.1.1 pull down or remove the whole or any part of any building forming part of the Property nor permit the same to occur; or
  - 2.1.2 make or permit to be made any material alterations to the Property or sever or remove or permit to be severed or removed any of its fixtures or fittings (except to make any necessary repairs or renew or replace the same in accordance with paragraph 1 of this Part 2 of Schedule 2).
- 2.2 The Borrower shall promptly give notice to the Lender if the premises or fixtures or fittings forming part of the Property are destroyed or damaged.

### **3. Development Restrictions**

The Borrower shall not, without the prior written consent of the Lender:

- (a) make or, in so far it is within his control, permit others to make any application for planning permission or development consent in respect of the Property; or
- (b) carry out or permit or suffer to be carried out on the Property any development as defined in each of the Town and Country Planning Act 1990 and the Planning Act 2008 or change or permit or suffer to be changed the use of the Property.

### **4. Insurance**

- 4.1 The Borrower shall insure and keep insured (or where, in the case of any leasehold property, insurance is the responsibility of the landlord under the terms of the lease, either procure that the landlord insures and keeps insured or, if and to the extent that the landlord does not do so, himself insure and keep insured) the Charged Property against:
  - 4.1.1 loss or damage by fire or terrorist acts, including any third-party liability arising from such acts;
  - 4.1.2 other risks, perils and contingencies that would be insured against by reasonably prudent persons carrying on the same class of business as the Borrower; and
  - 4.1.3 any other risk, perils and contingencies as the Lender may reasonably require.
- 4.2 Any such insurance must be with an insurance company or underwriters and on such terms as the Lender, acting reasonably, considers to be acceptable and must be for not less than the replacement value of the Property (meaning in the case of any premises on the Property, the total cost of entirely rebuilding, reinstating or replacing the premises in the event of their being destroyed, together with architects', surveyors', engineers' and other professional fees and charges for demolition and reinstatement) and where the Lender so requires in writing and loss of rents payable by the tenants or other occupiers of the Property for a period of at least three years.
- 4.3 The Borrower shall, if requested by the Lender, produce to the Lender the policy, certificate or cover note relating to any such insurance required by paragraph 4.1 of this Part 2 of Schedule 2 (or where, in the case of any leasehold property, such insurance is effected by the landlord, such evidence of Insurance as the Borrower is entitled to obtain from the landlord under the terms of the relevant lease).
- 4.4 The Borrower shall, if requested by the Lender, procure that a note of the Lender's interest is endorsed upon or the Lender is named as co-insured with the Borrower on each Insurance Policy maintained by the Borrower or any person on the Borrower's behalf in accordance with paragraph 4.1 of this Part 2 of Schedule 2 and that the terms of each such Insurance Policy require the



insurer not to invalidate the policy as against the Lender by reason of the act or default of any other joint or named insured and not to cancel it without giving at least 30 days' prior written notice to the Lender.

**5. Insurance Premiums**

The Borrower shall:

- (a) promptly pay all premiums in respect of each Insurance Policy and do all other things necessary to keep that policy in full force and effect; and
- (b) (if the Lender so requires) give to the Lender copies of the receipts for all premiums and other payments necessary for effecting and keeping up each Insurance Policy (or where, in the case of leasehold property, insurance is effected by the landlord, such evidence of the payment of premiums as the Borrower is entitled to obtain from the landlord under the terms of the relevant lease).

**6. No Invalidation of Insurance**

The Borrower shall not do or omit to do, or permit to be done or omitted, anything that may invalidate or otherwise prejudice any Insurance Policy.

**7. Proceeds from Insurance Policies**

All monies payable under any Insurance Policy at any time (whether or not the security constituted by this deed has become enforceable) shall (if paid to the Borrower) be held in trust for the Lender and applied in making good or recouping expenditure in respect of the loss or damage for which such monies are received provided that:

- (a) where the Property has been so seriously damaged as to be unfit for occupation or use or the means of access and egress to and from the Property rendered substantially unfit for use all such monies shall, if the Lender so directs, be applied in or towards discharge or reduction of the Secured Liabilities.
- (b) after the security constituted by this deed has become enforceable and if the Lender so directs, all such monies shall be applied in or towards discharge or reduction of the Secured Liabilities.

**8. Leases and Licences Affecting the Property**

The Borrower shall not, without the prior written consent of the Lender (which consent, in the case of paragraph 8.4 of this Part 2 of Schedule 2, is not to be unreasonably withheld or delayed in circumstances in which the Borrower may not unreasonably withhold or delay the Borrower's consent):

- (a) grant any licence or lease affecting the whole or any part of the Property, or exercise the statutory powers of leasing or of accepting surrenders under section 99 or section 100 of the LPA 1925 (or agree to grant any such licence or lease, or agree to exercise the statutory powers of leasing or of accepting surrenders under section 99 or section 100 of the LPA 1925);
- (b) in any other way dispose of, accept the surrender of, surrender or create any legal or equitable estate or interest in the whole or any part of the Property (or agree to dispose

of, accept the surrender of, surrender or create any legal or equitable estate or interest in the whole or any part of the Property);

- (c) let any person into occupation of or share occupation of the whole or any part of the Property; or
- (d) grant any consent or licence under any lease or licence affecting the Property.

**9. No Restrictive Obligations**

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

**10. Proprietary Rights**

The Borrower shall procure that no person shall become entitled to assert any proprietary or other like right or interest over the whole or any part of the Property, without the prior written consent of the Lender.

**11. Compliance With and Enforcement of Covenants**

The Borrower shall:

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

**12. Notices or Claims Relating to the Property**

The Borrower shall:

- (a) give full particulars to the Lender of any notice, order, direction, designation, resolution, application, requirement or proposal given or made by any public or local body or authority (a **Notice**) that specifically applies to the Property, or to the locality in which it is situated, within seven days after becoming aware of the relevant Notice; and
- (b) (if the Lender, acting reasonably, so requires) immediately, and at the cost of the Borrower, take all reasonable and necessary steps to comply with any Notice, and make, or join with the Lender in making, such objections or representations in respect of any such Notice as the Lender, acting reasonably, thinks fit.
- (c) The Borrower shall give full particulars to the Lender of any claim, notice or other communication served on it in respect of any modification, suspension or revocation of any Environmental Licence or any alleged breach of any Environmental Law, in each case relating to the Property.

**13. Payment of Rent and Outgoings**

The Borrower shall:

- (a) where the Property, or part of it, is held under a lease, duly and punctually pay all rents due from time to time; and
- (b) pay (or procure payment of the same) when due all charges, rates, taxes, duties, assessments and other outgoings relating to or imposed upon the Property or on its occupier.

**14. Rent Reviews**

The Borrower:

- (a) shall, if the Property is subject to occupational leases or licences, implement any upwards rent review provisions and shall not, without the prior written consent of the Lender, agree to any change in rent to less than the open market rental value of the relevant part of the Property; and
- (b) shall not, without the prior written consent of the Lender, if the Property is leasehold, agree to any change in the rent payable under the lease in excess of the open market rental value and shall only agree to any upwards rent review in accordance with the terms of the lease.

**15. Environment**

The Borrower shall in respect of the Property:

- (a) comply in all material respects with all the requirements of Environmental Law; and
- (b) obtain and comply in all material respects with all Environmental Licences.

**16. Conduct of Business on Property**

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

**17. Inspection**

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

**18. VAT Option to Tax**

The Borrower shall not, without the prior written consent of the Lender:

- (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 Lender in writing prior to the date of this deed.

**19. Rental Income Covenants**

**19.1 Collection of and dealings with rental income**

- 19.1.1 The Borrower 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 the Rent Account or into such other account as the Lender may direct from time to time. The Borrower shall, pending that payment in to the Rent Account or other account, hold all Rental Income on trust for the Lender.

19.1.2 The Borrower agrees with the Lender that any monies received by the Lender under paragraph 19.1 above shall not constitute the Lender as mortgagee in possession of the Property.

19.1.3 The Borrower agrees with the Lender 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 Lender's prior written consent.

**19.2 Notice of assignment of rental income**

The Borrower shall, promptly following the occurrence of an Event of Default, give notice to the relevant tenant, guarantor or security provider that it has assigned the Rental Income and the benefit of each guarantee and security in respect of the Rental Income under clause 3 of this deed and procure that each addressee of any such notice provide to the Lender promptly an acknowledgement of that notice.

Executed as a deed by **CALLOW PROPERTY**

**LIMITED** acting by Elizabeth Jane Bond, a director,

in the presence of:

.....

Director

.....

Witness Signature

Witness Name (print) .....


Witness Address .....

.....

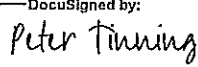
Executed as a deed by **JFL PROPERTY SERVICES**

**LIMITED** acting by Ashley Barton Cox, a director,

in the presence of:

DocuSigned by:  
  
BB2707099D1A4BF....

Director

DocuSigned by:  
  
190FE93B351A4BA... ..

Witness Signature

Peter Tinning

Witness Name (print) .....

The Old Dairy

Witness Address .....

Hacombe Barns, Newton Abbot, TQ124SJ

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