



**Registration of a Charge**

Company Name: **HURST FARM SOCIAL CLUB C.I.C.**

Company Number: **11044745**



XB104TO3

Received for filing in Electronic Format on the: **01/04/2022**

**Details of Charge**

Date of creation: **31/03/2022**

Charge code: **1104 4745 0001**

Persons entitled: **DERBYSHIRE DALES DISTRICT COUNCIL**

Brief description: **FREEHOLD PROPERTY AT HURST FARM SOCIAL CLUB, HURST FARM  
HOUSING ESTATE, MATLOCK, DERBYSHIRE**

**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: **CHRISTIE LIMB**



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

Company number: 11044745

Charge code: 1104 4745 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 31st March 2022 and created by HURST FARM SOCIAL CLUB C.I.C. was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 1st April 2022 .

Given at Companies House, Cardiff on 7th April 2022

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



**Companies House**



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

DATED 31 March 2022

LEGAL MORTGAGE

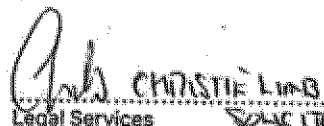
between

Hurst Farm Social Club C.I.C.

and

Derbyshire Dales District Council

Certified to be a true copy of the original seen by me

  
Legal Services  
Derbyshire Dales District Council  
Town Hall, Bank Road  
Matlock, Derbyshire DE4 3NN

1 April 2022  
Date

This deed is dated 31 March 2022

## Parties

- (1) HURST FARM SOCIAL CLUB C.I.C., a company incorporated and registered in England and Wales with company number 11044745, whose registered office is at Hurst Farm Social Club, Hazel Grove, Matlock, Derbyshire, DE4 3ED (**Borrower**)
- (2) DERBYSHIRE DALES DISTRICT COUNCIL of Town Hall, Bank Road, Matlock, Derbyshire, DE4 3NN (**Lender**)

## BACKGROUND

- (A) The Lender has agreed, under the Facility Deed, to provide the Borrower with loan facilities on a secured basis.
- (B) The Borrower owns the Property.
- (C) Under this deed, the Borrower provides security to the Lender for the loan facilities made or to be made available under the Facility Deed.

## Agreed terms

### 1. Definitions and interpretation

#### 1.1 Definitions

Terms defined in the Facility Deed shall, unless otherwise defined in this deed, have the same meaning in this deed. In addition, the following definitions apply in this deed

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

**Charged Assets:** all the assets, property and undertaking of the Borrower, which are, or are intended to be, subject to the Security created by, or pursuant to, this deed (and references to the Charged Assets shall include references to any part of them).

**Event of Default:** has the meaning given to that expression in the Facility Deed.

**Facility Deed:** the facility deed dated 31 March 2022 between the Borrower and the Lender for the provision of the loan facilities secured by this deed.

**Insurance Policy:** each contract and policy of insurance effected or maintained by the Borrower from time to time relating to the Property.

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

**Occupational Lease:** the lease of land containing Three thousand nine hundred and fifty five square yards or thereabouts dated the 14 June 1965 and made between (1) The Urban District Council of Matlock and (2) Lewis Bunting, Frank Mansell, Ivor Greenhough and Andrew McGarey the Trustees of the Hurst Farm and every document varying or supplemental or collateral to it and every licence or consent granted under it.

**Overage:** the overage deed dated 31 March 2022 made between (1) Derbyshire Dales District Council and (2) Hurst Farm Social Club C.I.C.

**Plan:** the plan annexed to this deed at ANNEX A.

**Property:** the freehold property at Land at Hurst Farm Social Club, Hurst Farm Housing Estate, Matlock, Derbyshire and shown edged red on the Plan.

**Secured Liabilities:** all present and future obligations and liabilities of the Borrower to the Lender, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity, under or in connection with the Facility Deed or this deed (including, without limitation, those arising under clause 23.3(b)), together with all interest (including, without limitation, default interest) accruing in respect of those monies, obligations or liabilities.

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

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

**Transfer:** the transfer dated 31 March 2022 made between (1) Derbyshire Dales District Council and (2) Hurst Farm Social Club C.I.C.

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

## 1.2 Interpretation

In this deed:

- (a) clause and Schedule headings shall not affect the interpretation of this deed;
- (b) a **person** includes an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality);
- (c) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- (d) unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;

- (e) a reference to a party shall include that party's successors, permitted assigns and permitted transferees and this deed shall be binding on, and enure to the benefit of, the parties to this deed and their respective personal representatives, successors, permitted assigns and permitted transferees;
- (f) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- (g) a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- (h) a reference to writing or written includes email but not fax and; *Jan*
- (i) an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- (j) a reference to this deed (or any provision of it) or to any other agreement or document referred to in this deed is a reference to this deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this deed) from time to time;
- (k) unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this deed;
- (l) any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- (m) a reference to an amendment includes a novation, re-enactment, supplement or variation (and amend and amended shall be construed accordingly);
- (n) a reference to assets includes present and future properties, undertakings, revenues, rights and benefits of every description;
- (o) a reference to an authorisation includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- (p) a reference to continuing in relation to an Event of Default means an Event of Default that has not been waived;
- (q) a reference to determines or determined means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it; and
- (r) a reference to a regulation includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

### 1.3 Clawback

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

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

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

- (a) all buildings and fixtures and fittings (including trade and tenant's fixtures and fittings) and fixed plant and machinery that are situated on or form part of the Property at any time;
- (b) the proceeds of the sale of any part of the Property and any other monies paid or payable in respect of or in connection with the Property;
- (c) 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
- (d) 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 Deed and of any side letters between any parties in relation to the Facility Deed are incorporated into this deed.

#### **1.6 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.

#### **1.7 Annex**

The reference to Annex is to the Annex of this deed.

### **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:

- (a) by way of a first legal mortgage, the Property; and
- (b) by way of a first fixed charge 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, to the extent not effectively assigned under clause 3.2

### **3.2 Assignment**

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee assigns to the Lender absolutely, in so far as such assignment is permitted or allowed by the insurance company, subject to a proviso for reassignment on irrevocable discharge in full of the Secured Liabilities all its rights in each Insurance Policy, including claims, the proceeds of all claims and all returns of premiums in connection with each Insurance Policy provided that nothing in this clause 3.2 shall constitute the Lender as mortgagee in possession.

## **4. Perfection of security**

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

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

"No disposition of the registered estate by the proprietor of the registered estate, is to be registered without a written consent signed by the proprietor for the time being of the charge dated 31 March 2022 in favour of Derbyshire Dales District Council referred to in the charges register."

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

Whether or not title to the Property is registered at the Land Registry, if any caution against first registration or any notice (whether agreed or unilateral) is registered against the Borrower's title to the Property, the Borrower shall as soon as possible after they become aware 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, on request of the Lender and at the Borrower's own expense, take such steps as the Lender may require to ensure that the caution or notice, as applicable, is withdrawn or cancelled.

## **5. Liability of the Borrower**

### **5.1 Liability not discharged**

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



- (a) 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;
- (b) 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
- (c) any other act or omission that, 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.

**6.2 Ownership of Charged Assets**

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

**6.3 No Security**

The Charged Assets are free from any Security other than the Security created by this deed and the Overage

**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 Assets or any interest in them.

**6.5 No adverse covenants**

There are no covenants, agreements, reservations, conditions, interests, rights or other matters whatever that materially and adversely affect the Charged Assets other than Overage.

**6.6 No breach of laws**

There is no breach of any law or regulation that materially and adversely affects the Charged Assets.

**6.7 No interference in enjoyment**

No facility necessary for the enjoyment and use of the Charged Assets is subject to terms entitling any person to terminate or curtail its use.

**6.8 No overriding interests**

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

**6.9 No prohibitions or breaches**

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

**6.10 Avoidance of security**

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

**6.11 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 Assets in accordance with its terms.

**7. General covenants**

**7.1 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 Security on, or in relation to, any Charged Asset other than any Security created by this deed and Overage ;
- (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 Assets; or
- (c) create or grant (or purport to create or grant) any interest in the Charged Assets in favour of a third party other than the Occupational Lease which the Borrower warrants to the Lender will be surrendered as soon as reasonably practicable after the date of this deed.

**7.2 Preservation of Charged Assets**

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

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

- (a) The Borrower shall not, without the Lender's prior written consent, use or permit the Charged Assets to be used in any way contrary to law.
- (b) The Borrower shall:
  - (i) comply with the requirements of any law or regulation relating to or affecting the Charged Assets or the use of them or any part of them;
  - (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 Assets or their use or that are necessary to preserve, maintain or renew any Charged Asset; and
  - (iii) promptly effect any maintenance, modifications, alterations or repairs that are required by any law or regulation to be effected on or in connection with the Charged Assets.

### **7.4 Enforcement of rights**

The Borrower shall use its 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 Assets 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 Assets that the Lender may require from time to time.

### **7.5 Notice of misrepresentation and breach**

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

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

### **7.6 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 Assets that 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) an electronic copy of each Insurance Policy.

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

- (a) The Borrower shall within five days of the execution of this deed give notice to the relevant insurers of the assignment of the Borrower's rights and interest in and under each Insurance Policy (including the proceeds of any claims under that Insurance Policy) under clause 3.2.
- (b) The Borrower shall obtain the Lender's prior approval of the form of any notice or acknowledgement to be used under this clause 7.7.

### **8. Property covenants**

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

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 that have become worn out or otherwise unfit for use with others of a like nature

#### **8.2 No alterations**

- (a) The Borrower shall not, without the prior written consent of the Lender:
  - (i) pull down or remove the whole or any part of any building forming part of the Property nor permit the same to occur; or
  - (ii) make or permit to be made any alterations to the Property or sever or remove, or permit to be severed or removed, any of its fixtures or fittings (except to make any necessary repairs or renew or replace the same in accordance with clause 8.1).
- (b) 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.

#### **8.3 Development restrictions**

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

- (a) make or, in so far as it is able, 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.

To be clear at the date of this deed planning permission has already been granted for the development of the property under planning permission reference 19/01152/FUL. The Lender

consents to the development of the Property carried out in accordance with the requirements of planning permission reference 19/01152/FUL.

#### 8.4 Insurance

- (a) The Borrower shall insure and keep insured the Charged Assets against:
  - (i) loss or damage by fire or terrorist acts, including any third-party liability arising from such acts;
  - (ii) 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
  - (iii) any other risk, perils and contingencies as the Lender may reasonably require.subject to such insurance being available in the London insurance market at reasonable rates.
- (b) Any such insurance must be with an insurance company or underwriters, and on such terms, as are reasonably acceptable to the Lender and must include property owners' public liability and third party liability insurance and be for not less than the replacement value of the relevant Charged Asset (meaning, in the case of any premises on the Property, the total cost of entirely rebuilding, reinstating or replacing the premises in the event of their being destroyed, together with architects', surveyors', engineers' and other professional fees and charges for shoring or propping up, demolition, site clearance and reinstatement with adequate allowance for inflation) and loss of rents payable by the tenants or other occupiers of the Property for a period of at least three years, including provision for increases in rent during the period of insurance.
- (c) The Borrower shall, if requested by the Lender, produce to the Lender each policy, certificate or cover note relating to any insurance required by clause 8.4(a).
- (d) The Borrower shall, if requested by the Lender, and subject to the approval of the insurance company procure that the Lender is named as composite insured in respect of its own separate insurable interest under each Insurance Policy (other than public liability and third party liability insurances) effected or maintained by it or any person on its behalf in accordance with clause 8.4(a) but without the Lender having any liability for any premium in relation to those Insurance Policies unless it has expressly and specifically requested to be made liable in respect of any increase in premium or unpaid premium in respect of any Insurance Policy.
- (e) The Borrower shall ensure that each Insurance Policy effected or maintained by it or any person on its behalf in accordance with clause 8.4(a) contains:
  - (i) a loss payee clause under which the Lender is named as first loss payee (other than in respect of any claim under any public liability and third-party liability insurances);

- (ii) terms ensuring that it cannot be avoided or vitiated as against the Lender by reason of the act or default of any other insured party or any misrepresentation, non-disclosure or failure to make a fair presentation of risk by any other insured party;
- (iii) a waiver of each insurer's rights of subrogation against the Borrower, the Lender and the tenants of the Property other than any such rights arising in connection with any fraud or criminal offence committed by any of those persons in respect of the Property or any Insurance Policy; and
- (iv) terms ensuring that no insurer can repudiate, rescind or cancel it, treat it as avoided in whole or in part nor treat it as expired due to non-payment of premium without giving at least 30 days' prior written notice to the Lender.

#### **8.5 Insurance premiums**

The Borrower shall:

- (a) promptly pay all premiums in respect of each Insurance Policy required by clause 8.4(a) 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 required by clause 8.4(a).

#### **8.6 No invalidation of insurance**

The Borrower shall not do or omit to do, or permit to be done or omitted, any act or thing that may invalidate or otherwise prejudice any Insurance Policy required by clause 8.4(a).

#### **8.7 Proceeds from Insurance Policies**

All monies payable under any Insurance Policy required by clause 8.4 (a) shall (whether or not the security constituted by this deed has become enforceable):

- (a) if they are paid directly to the Borrower are to be held by the Borrower as trustee of the same for the benefit of the Lender;
- (b) be applied in making good or recouping expenditure in respect of the loss or damage for which those monies were received;
- (c) if repair, rebuild and reinstate of the Property is not possible within a reasonable period of time of the damage occurring, then the Borrower shall without delay apply the monies received towards, discharge or reduction of the Secured Liabilities;
- (d) if the proceeds of the Insurance Policy are paid to the Lender, the Lender shall immediately pay such proceeds of the Insurance Policy to the Borrower, (to enable the Borrower to comply with their obligations under this Clause 8.7) such

monies are to be held by the Borrower as trustee of the same for the benefit of the Lender.

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

The Borrower shall not, without the prior written consent of the Lender (which consent, in the case of clause 8.8(d), is not to be unreasonably withheld or delayed in circumstances in which the Borrower may not unreasonably withhold or delay its consent):

- (a) grant any licence or tenancy affecting the whole or any part of the Property, or exercise the statutory powers of leasing or of accepting surrenders under section 99 or section 100 of the LPA 1925 (or agree to grant any such licence or tenancy, or agree to exercise the statutory powers of leasing or of accepting surrenders under section 99 or section 100 of the LPA 1925) save for the surrender of the Occupational Lease in accordance with clause 7.1 (c);
- (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) save for the surrender of the Occupational Lease in accordance with clause 7.1 (c);
- (c) let any person into occupation, 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.

#### **8.9 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 other than the Overage and the Transfer.

#### **8.10 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.

#### **8.11 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.

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

- (a) The Borrower shall:
  - (i) 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
  - (ii) (if the Lender so requires) immediately, and at the cost of the Borrower, take all reasonable and necessary steps to comply with any Notice, and make, or join with the Lender in making, any objections or representations in respect of that Notice that the Lender thinks fit.

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

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

#### **8.14 Conduct of business on Property**

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

#### **8.15 Inspection**

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

#### **8.16 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, before the date of this deed.

### **9. Powers of the Lender**

#### **9.1 Power to remedy**

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



- (b) The Borrower irrevocably authorises the Lender and its agents to do all things that are necessary or desirable for that purpose.
- (c) Any monies expended by the Lender in remedying a breach by the Borrower of its obligations contained in this deed shall be reimbursed by the Borrower to the Lender on a full indemnity basis and shall carry interest in accordance with clause 13.1.
- (d) In remedying any breach in accordance with this clause 9.1, 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.

## **9.2 Exercise of rights**

The rights of the Lender under clause 9.1 are without prejudice to any other rights of the Lender under this deed. The exercise of any rights of the Lender under this deed shall not make the Lender liable to account as a mortgagee in possession.

## **9.3 Indulgence**

The Lender may, at its discretion, grant time or other indulgence, or make any other arrangement, variation or release with any person not being a party to this deed (whether or not any such person is jointly liable with the 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.

## **10. When security becomes enforceable**

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

The security constituted by this deed shall become immediately enforceable if an Event of Default occurs.

### **10.2 Discretion**

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

## **11. Enforcement of security**

### **11.1 Enforcement powers**

- (a) 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.

- (b) The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this deed) shall be immediately exercisable at any time after the security constituted by this deed has become enforceable under clause 10.1.
- (c) Section 103 of the LPA 1925 does not apply to the security constituted by this deed.

#### 11.2 Extension of statutory powers of leasing

The statutory powers of leasing and accepting surrenders conferred on mortgagees under the LPA 1925 and by any other statute are extended so as to authorise the Lender 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 a lease or agreement for lease;
- (b) accept surrenders of leases; or
- (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 Borrower, and on such terms and conditions (including the payment of money to a lessee or tenant on a surrender), as the Lender thinks fit, without the need to comply with any of the restrictions imposed by sections 99 and 100 of the LPA 1925.

#### 11.3 Protection of third parties

No purchaser, mortgagee or other person dealing with the Lender 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 is purporting to exercise has become exercisable or is being properly exercised; or
- (c) how any money paid to the Lender is to be applied.

#### 11.4 Privileges

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

#### 11.5 No liability as mortgagee in possession *Exclusion of liability*

The Lender shall not be liable to the Borrower or any other person:

- (a) (by reason of entering into possession of a Charged Asset, or for any other reason) to account as mortgagee in possession in respect of all or any of the Charged Assets;

- (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 from liability for losses caused by the gross negligence, fraud or wilful misconduct of the Lender.

#### **11.6 Relinquishing possession**

If the Lender enters into or takes possession of a Charged Asset, it or he/she may at any time relinquish possession.

#### **11.7 Conclusive discharge to purchasers**

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

### **12. Application of proceeds**

#### **12.1 Order of application of proceeds**

All monies received or recovered by the Lender under this deed or in connection with the realisation or enforcement of all or part of the security constituted by this deed (other than sums received under any Insurance Policy), shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied in the following order of priority (but without prejudice to the Lender's right to recover any shortfall from the Borrower):

- (a) in or towards payment of all costs, liabilities, charges and expenses incurred by or on behalf of the Lender under or in connection with this deed;
- (b) in or towards payment of the Secured Liabilities in any order and manner that the Lender determines; and
- (c) in payment of the surplus (if any) to the Borrower or other person entitled to it.

#### **12.2 Appropriation**

The Lender shall not 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.

### **13. Costs and indemnity**

#### **13.1 Costs**

The Borrower shall, within five Business Days of demand, pay to, or reimburse, the Lender on a full indemnity basis, all costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal, printing and out-of-pocket expenses) incurred by the Lender in connection with:

- (a) the Charged Assets;
- (b) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Lender's rights under this deed;
- (c) any amendment, extension, waiver, consent or suspension of rights (or any proposal for any of these) under or in connection with this deed;
- (d) any release of any security constituted by this deed; or
- (e) taking proceedings for, or recovering, any of the Secured Liabilities,

together with interest, which shall accrue and be payable (without the need for any demand for payment being made) from the date on which the relevant cost, charge, expense, tax or liability arose until full discharge of that cost, charge, expense, tax or liability (whether before or after judgment) at the rate and in the manner specified in the Facility Deed.

#### **13.2 Indemnity**

- (a) The Borrower shall within three Business Days of demand, indemnify the Lender and their employees and agents against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by any of them arising out of or in connection with:
  - (i) the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this deed or by law in respect of the Charged Assets;
  - (ii) taking, holding, protecting, perfecting, preserving releasing or enforcing (or attempting to do so) the security constituted by this deed; or
  - (iii) any default or delay by the Borrower in performing any of its obligations under this deed.

- (b) Any past or present employee or agent may enforce the terms of this clause 13.2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

#### **14. Further assurance**

##### **14.1 Further assurance**

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

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

including, without limitation 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 Assets (whether to the Lender or to its nominee) and the giving of any notice, order or direction and the making of any filing or registration which, in any such case, the Lender may consider necessary or desirable.

#### **15. Power of attorney**

##### **15.1 Appointment of attorneys**

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

- (a) the Borrower is required to execute and do under this deed; or
- (b) any attorney deems proper or desirable in exercising any of the rights, powers, authorities and discretions conferred by this deed or by law on the Lender.

##### **15.2 Ratification of acts of attorneys**

The Borrower ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in clause 15.1.

#### **16. Release**

##### **16.1 Release**

Subject to clause 23.3, at the end of the Security Period, the Lender shall, at the request and cost of the Borrower, take whatever action is necessary to:

- (a) release the Charged Assets from the security constituted by this deed; and
- (b) reassign the Charged Assets to the Borrower.

**17. Assignment and transfer**

**17.1 Assignment by Lender**

- (a) At any time, without the consent of the Borrower, the Lender may assign any of its rights or transfer any of its rights and obligations under this deed.
- (b) The Lender may disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Borrower, the Charged Assets and this deed that the Lender considers appropriate.

**17.2 Assignment by Borrower**

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

**18. Set-off**

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

**19. Amendments, waivers and consents**

**19.1 Amendments**

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

**19.2 Waivers and consents**

- (a) A waiver of any right or remedy under this deed or by law, or any consent given under this deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any subsequent right or remedy. It only applies to the circumstances in relation to which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.
- (b) A failure by the Lender to exercise or delay by it in exercising any right or remedy provided under this deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this deed. No single or partial

exercise of any right or remedy provided under this deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this deed by the Lender shall be effective unless it is in writing.

**19.3 Rights and remedies**

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

**20. Partial invalidity**

If, at any time, any provision of this deed is or becomes invalid, illegal or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

**21. Counterparts**

**21.1 Counterparts**

- (a) 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.
- (b) No counterpart shall be effective until each party has executed and delivered at least one counterpart.

**22. Third party rights**

**22.1 Third party rights**

Except as expressly provided elsewhere in this deed, a person who is not a party to this deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this deed.

**23. Further provisions**

**23.1 Independent security**

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

**23.2 Continuing security**

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

### **23.3 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, set aside or ordered to be refunded under 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.

### **23.4 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.

### **23.5 Consolidation**

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

## **24. Notices**

### **24.1 Delivery**

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

- (a) in writing;
- (b) delivered by hand, by pre-paid first-class post or other next working day delivery service; and
- (c) sent to:
  - (i) the Borrower at:  
6 Bank Road, Matlock, Derbyshire, DE4 3AQ, United Kingdom



marked for the attention of: Glenn McClenaghan.

(ii) the Lender at:

Town Hall, Bank Road, Matlock, Derbyshire, DE4 3NN

Attention: Head of corporate services.

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

#### **24.2 Receipt by Borrower**

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

- (a) if delivered by hand, at the time it is left at the relevant address;
- (b) if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting.

A notice or other communication given as described in clause 24.2 (a) on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

#### **24.3 Receipt by Lender**

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

#### **24.4 Service of proceedings**

This clause 24 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.

#### **24.5 No notice by email**

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

### **25. Governing law and jurisdiction**

#### **25.1 Governing law**

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

#### **25.2 Jurisdiction**



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

### **25.3 Other service**

The Borrower irrevocably consents to any process in any legal action or proceedings under clause 25.2 being served on it in accordance with the provisions of this deed relating to service of notices. Nothing contained in this deed shall affect the right to serve process in any other manner permitted by law.

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

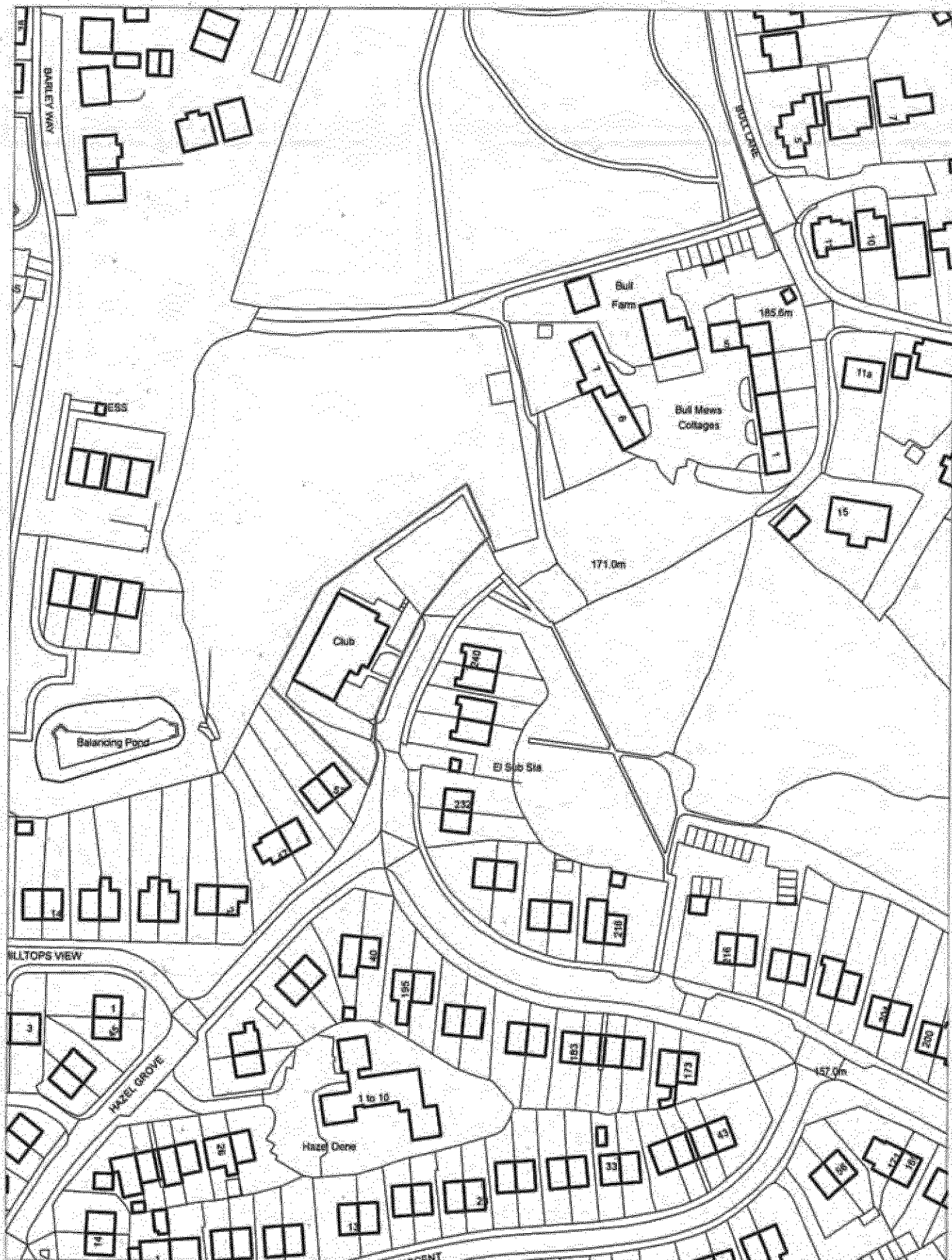
Executed as a deed by HURST FARM SOCIAL CLUB C.I.C.			
		acting by two directors	
Director name		Director signature	
Director name		Director signature	

Executed as a deed by affixing the common seal of DERBYSHIRE DALES DISTRICT COUNCIL in the presence of		
		
James McLaughlin Director of Corporate and Customer Services		
Seal number	13072	
Officer Delegated Decision-/ Committee 324119		
(Empty space for additional notes or stamps)		

---

## ANNEX A

### Plan



*Jan*



DATED 31/03/2022

LEGAL MORTGAGE


between

Hurst Farm Social Club C.I.C.

and

Derbyshire Dales District Council

Certified to be a true copy of the original seen by me

  
Christine Lind  
Legal Services  
Derbyshire Dales District Council  
Town Hall, Bank Road  
Matlock, Derbyshire DE4 3NN

1 April 2022  
Date

This deed is dated 31/03/ 2022

## Parties

- (1) HURST FARM SOCIAL CLUB C.I.C., a company incorporated and registered in England and Wales with company number 11044745, whose registered office is at Hurst Farm Social Club, Hazel Grove, Matlock, Derbyshire, DE4 3ED (**Borrower**)
- (2) DERBYSHIRE DALES DISTRICT COUNCIL of Town Hall, Bank Road, Matlock, Derbyshire, DE4 3NN (**Lender**)

## BACKGROUND

- (A) The Lender has agreed, under the Facility Deed, to provide the Borrower with loan facilities on a secured basis.
- (B) The Borrower owns the Property.
- (C) Under this deed, the Borrower provides security to the Lender for the loan facilities made or to be made available under the Facility Deed.

## Agreed terms

### 1. Definitions and interpretation

#### 1.1 Definitions

Terms defined in the Facility Deed shall, unless otherwise defined in this deed, have the same meaning in this deed. In addition, the following definitions apply in this deed

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

**Charged Assets:** all the assets, property and undertaking of the Borrower, which are, or are intended to be, subject to the Security created by, or pursuant to, this deed (and references to the Charged Assets shall include references to any part of them).

**Event of Default:** has the meaning given to that expression in the Facility Deed.

**Facility Deed:** the facility deed dated 31/03/ 2022 between the Borrower and the Lender for the provision of the loan facilities secured by this deed.

**Insurance Policy:** each contract and policy of insurance effected or maintained by the Borrower from time to time relating to the Property.

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

**Occupational Lease:** the lease of land containing Three thousand nine hundred and fifty five square yards or thereabouts dated the 14 June 1965 and made between (1) The Urban District Council of Matlock and (2) Lewis Bunting, Frank Mansell, Ivor Greenhough and Andrew McGarey the Trustees of the Hurst Farm and every document varying or supplemental or collateral to it and every licence or consent granted under it.

**Overage:** the overage deed dated 31/03/2022 made between (1) Derbyshire Dales District Council and (2) Hurst Farm Social Club C.I.C.

**Plan:** the plan annexed to this deed at ANNEX A.

**Property:** the freehold property at Land at Hurst Farm Social Club, Hurst Farm Housing Estate, Matlock, Derbyshire and shown edged red on the Plan.

**Secured Liabilities:** all present and future obligations and liabilities of the Borrower to the Lender, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity, under or in connection with the Facility Deed or this deed (including, without limitation, those arising under clause 23.3(b)), together with all interest (including, without limitation, default interest) accruing in respect of those monies, obligations or liabilities.

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

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

**Transfer:** the transfer dated 31/03/2022 made between (1) Derbyshire Dales District Council and (2) Hurst Farm Social Club C.I.C.

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

## 1.2 Interpretation

In this deed:

- (a) clause and Schedule headings shall not affect the interpretation of this deed;
- (b) a **person** includes an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality);
- (c) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- (d) unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;



- (e) a reference to a party shall include that party's successors, permitted assigns and permitted transferees and this deed shall be binding on, and enure to the benefit of, the parties to this deed and their respective personal representatives, successors, permitted assigns and permitted transferees;
- (f) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- (g) a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- (h) a reference to writing or written includes email but not fax ~~and~~; (v)
- (i) an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- (j) a reference to this deed (or any provision of it) or to any other agreement or document referred to in this deed is a reference to this deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this deed) from time to time;
- (k) unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this deed;
- (l) any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- (m) a reference to an amendment includes a novation, re-enactment, supplement or variation (and amend and amended shall be construed accordingly);
- (n) a reference to assets includes present and future properties, undertakings, revenues, rights and benefits of every description;
- (o) a reference to an authorisation includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- (p) a reference to continuing in relation to an Event of Default means an Event of Default that has not been waived;
- (q) a reference to determines or determined means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it; and
- (r) a reference to a regulation includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

### 1.3 Clawback

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

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

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

- (a) all buildings and fixtures and fittings (including trade and tenant's fixtures and fittings) and fixed plant and machinery that are situated on or form part of the Property at any time;
- (b) the proceeds of the sale of any part of the Property and any other monies paid or payable in respect of or in connection with the Property;
- (c) 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
- (d) 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 Deed and of any side letters between any parties in relation to the Facility Deed are incorporated into this deed.

#### **1.6 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.

#### **1.7 Annex**

The reference to Annex is to the Annex of this deed.

### **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:

- (a) by way of a first legal mortgage, the Property; and
- (b) by way of a first fixed charge 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, to the extent not effectively assigned under clause 3.2

### **3.2 Assignment**

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee assigns to the Lender absolutely, in so far as such assignment is permitted or allowed by the insurance company, subject to a proviso for reassignment on irrevocable discharge in full of the Secured Liabilities all its rights in each Insurance Policy, including claims, the proceeds of all claims and all returns of premiums in connection with each Insurance Policy provided that nothing in this clause 3.2 shall constitute the Lender as mortgagee in possession.

## **4. Perfection of security**

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

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

"No disposition of the registered estate by the proprietor of the registered estate, is to be registered without a written consent signed by the proprietor for the time being of the charge dated 31/03/2022 in favour of Derbyshire Dales District Council referred to in the charges register."

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

Whether or not title to the Property is registered at the Land Registry, if any caution against first registration or any notice (whether agreed or unilateral) is registered against the Borrower's title to the Property, the Borrower shall as soon as possible after they become aware 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, on request of the Lender and at the Borrower's own expense, take such steps as the Lender may require to ensure that the caution or notice, as applicable, is withdrawn or cancelled.

## **5. Liability of the Borrower**

### **5.1 Liability not discharged**

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

- (a) 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;
- (b) 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
- (c) any other act or omission that, 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.

**6.2 Ownership of Charged Assets**

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

**6.3 No Security**

The Charged Assets are free from any Security other than the Security created by this deed and the Overage.

**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 Assets or any interest in them.

**6.5 No adverse covenants**

There are no covenants, agreements, reservations, conditions, interests, rights or other matters whatever that materially and adversely affect the Charged Assets other than Overage.

**6.6 No breach of laws**

There is no breach of any law or regulation that materially and adversely affects the Charged Assets.

**6.7 No interference in enjoyment**

No facility necessary for the enjoyment and use of the Charged Assets is subject to terms entitling any person to terminate or curtail its use.

**6.8 No overriding interests**

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

**6.9 No prohibitions or breaches**

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

**6.10 Avoidance of security**

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

**6.11 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 Assets in accordance with its terms.

**7. General covenants**

**7.1 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 Security on, or in relation to, any Charged Asset other than any Security created by this deed and Overage ;
- (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 Assets; or
- (c) create or grant (or purport to create or grant) any interest in the Charged Assets in favour of a third party other than the Occupational Lease which the Borrower warrants to the Lender will be surrendered as soon as reasonably practicable after the date of this deed.

**7.2 Preservation of Charged Assets**

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

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

- (a) The Borrower shall not, without the Lender's prior written consent, use or permit the Charged Assets to be used in any way contrary to law.
- (b) The Borrower shall:
  - (i) comply with the requirements of any law or regulation relating to or affecting the Charged Assets or the use of them or any part of them;
  - (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 Assets or their use or that are necessary to preserve, maintain or renew any Charged Asset; and
  - (iii) promptly effect any maintenance, modifications, alterations or repairs that are required by any law or regulation to be effected on or in connection with the Charged Assets.

### **7.4 Enforcement of rights**

The Borrower shall use its 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 Assets 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 Assets that the Lender may require from time to time.

### **7.5 Notice of misrepresentation and breach**

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

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

### **7.6 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 Assets that 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) an electronic copy of each Insurance Policy.

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

- (a) The Borrower shall within five days of the execution of this deed give notice to the relevant insurers of the assignment of the Borrower's rights and interest in and under each Insurance Policy (including the proceeds of any claims under that Insurance Policy) under clause 3.2.
- (b) The Borrower shall obtain the Lender's prior approval of the form of any notice or acknowledgement to be used under this clause 7.7.

### **8. Property covenants**

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

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 that have become worn out or otherwise unfit for use with others of a like nature

#### **8.2 No alterations**

- (a) The Borrower shall not, without the prior written consent of the Lender:
  - (i) pull down or remove the whole or any part of any building forming part of the Property nor permit the same to occur; or
  - (ii) make or permit to be made any alterations to the Property or sever or remove, or permit to be severed or removed, any of its fixtures or fittings (except to make any necessary repairs or renew or replace the same in accordance with clause 8.1).
- (b) 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.

#### **8.3 Development restrictions**

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

- (a) make or, in so far as it is able, 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.

To be clear at the date of this deed planning permission has already been granted for the development of the property under planning permission reference 19/01152/FUL. The Lender

consents to the development of the Property carried out in accordance with the requirements of planning permission reference 19/01152/FUL.

#### 8.4 Insurance

- (a) The Borrower shall insure and keep insured the Charged Assets against:
  - (i) loss or damage by fire or terrorist acts, including any third-party liability arising from such acts;
  - (ii) 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
  - (iii) any other risk, perils and contingencies as the Lender may reasonably require.subject to such insurance being available in the London insurance market at reasonable rates.
- (b) Any such insurance must be with an insurance company or underwriters, and on such terms, as are reasonably acceptable to the Lender and must include property owners' public liability and third party liability insurance and be for not less than the replacement value of the relevant Charged Asset (meaning, in the case of any premises on the Property, the total cost of entirely rebuilding, reinstating or replacing the premises in the event of their being destroyed, together with architects', surveyors', engineers' and other professional fees and charges for shoring or propping up, demolition, site clearance and reinstatement with adequate allowance for inflation) and loss of rents payable by the tenants or other occupiers of the Property for a period of at least three years, including provision for increases in rent during the period of insurance.
- (c) The Borrower shall, if requested by the Lender, produce to the Lender each policy, certificate or cover note relating to any insurance required by clause 8.4(a).
- (d) The Borrower shall, if requested by the Lender, and subject to the approval of the insurance company procure that the Lender is named as composite insured in respect of its own separate insurable interest under each Insurance Policy (other than public liability and third party liability insurances) effected or maintained by it or any person on its behalf in accordance with clause 8.4(a) but without the Lender having any liability for any premium in relation to those Insurance Policies unless it has expressly and specifically requested to be made liable in respect of any increase in premium or unpaid premium in respect of any Insurance Policy.
- (e) The Borrower shall ensure that each Insurance Policy effected or maintained by it or any person on its behalf in accordance with clause 8.4(a) contains:
  - (i) a loss payee clause under which the Lender is named as first loss payee (other than in respect of any claim under any public liability and third-party liability insurances);



- (ii) terms ensuring that it cannot be avoided or vitiated as against the Lender by reason of the act or default of any other insured party or any misrepresentation, non-disclosure or failure to make a fair presentation of risk by any other insured party;
- (iii) a waiver of each insurer's rights of subrogation against the Borrower, the Lender and the tenants of the Property other than any such rights arising in connection with any fraud or criminal offence committed by any of those persons in respect of the Property or any Insurance Policy; and
- (iv) terms ensuring that no insurer can repudiate, rescind or cancel it, treat it as avoided in whole or in part nor treat it as expired due to non-payment of premium without giving at least 30 days' prior written notice to the Lender.

#### **8.5 Insurance premiums**

The Borrower shall:

- (a) promptly pay all premiums in respect of each Insurance Policy required by clause 8.4(a) 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 required by clause 8.4(a).

#### **8.6 No invalidation of insurance**

The Borrower shall not do or omit to do, or permit to be done or omitted, any act or thing that may invalidate or otherwise prejudice any Insurance Policy required by clause 8.4(a).

#### **8.7 Proceeds from Insurance Policies**

All monies payable under any Insurance Policy required by clause 8.4 (a) shall (whether or not the security constituted by this deed has become enforceable):

- (a) if they are paid directly to the Borrower are to be held by the Borrower as trustee of the same for the benefit of the Lender;
- (b) be applied in making good or recouping expenditure in respect of the loss or damage for which those monies were received;
- (c) if repair, rebuild and reinstate of the Property is not possible within a reasonable period of time of the damage occurring, then the Borrower shall without delay apply the monies received towards, discharge or reduction of the Secured Liabilities;
- (d) if the proceeds of the Insurance Policy are paid to the Lender, the Lender shall immediately pay such proceeds of the Insurance Policy to the Borrower, (to enable the Borrower to comply with their obligations under this Clause 8.7) such

monies are to be held by the Borrower as trustee of the same for the benefit of the Lender.

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

The Borrower shall not, without the prior written consent of the Lender (which consent, in the case of clause 8.8(d), is not to be unreasonably withheld or delayed in circumstances in which the Borrower may not unreasonably withhold or delay its consent):

- (a) grant any licence or tenancy affecting the whole or any part of the Property, or exercise the statutory powers of leasing or of accepting surrenders under section 99 or section 100 of the LPA 1925 (or agree to grant any such licence or tenancy, or agree to exercise the statutory powers of leasing or of accepting surrenders under section 99 or section 100 of the LPA 1925) save for the surrender of the Occupational Lease in accordance with clause 7.1 (c);
- (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) save for the surrender of the Occupational Lease in accordance with clause 7.1 (c);
- (c) let any person into occupation, 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.

#### **8.9 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 other than the Overage and the Transfer.

#### **8.10 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.

#### **8.11 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.

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

- (a) The Borrower shall:
  - (i) 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
  - (ii) (if the Lender so requires) immediately, and at the cost of the Borrower, take all reasonable and necessary steps to comply with any Notice, and make, or join with the Lender in making, any objections or representations in respect of that Notice that the Lender thinks fit.

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

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

#### **8.14 Conduct of business on Property**

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

#### **8.15 Inspection**

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

#### **8.16 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, before the date of this deed.

### **9. Powers of the Lender**

#### **9.1 Power to remedy**

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

- (b) The Borrower irrevocably authorises the Lender and its agents to do all things that are necessary or desirable for that purpose.
- (c) Any monies expended by the Lender in remedying a breach by the Borrower of its obligations contained in this deed shall be reimbursed by the Borrower to the Lender on a full indemnity basis and shall carry interest in accordance with clause 13.1.
- (d) In remedying any breach in accordance with this clause 9.1, 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.

## **9.2 Exercise of rights**

The rights of the Lender under clause 9.1 are without prejudice to any other rights of the Lender under this deed. The exercise of any rights of the Lender under this deed shall not make the Lender liable to account as a mortgagee in possession.

## **9.3 Indulgence**

The Lender may, at its discretion, grant time or other indulgence, or make any other arrangement, variation or release with any person not being a party to this deed (whether or not any such person is jointly liable with the 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.

## **10. When security becomes enforceable**

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

The security constituted by this deed shall become immediately enforceable if an Event of Default occurs.

### **10.2 Discretion**

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

## **11. Enforcement of security**

### **11.1 Enforcement powers**

- (a) 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.

- (b) The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this deed) shall be immediately exercisable at any time after the security constituted by this deed has become enforceable under clause 10.1.
- (c) Section 103 of the LPA 1925 does not apply to the security constituted by this deed.

#### 11.2 Extension of statutory powers of leasing

The statutory powers of leasing and accepting surrenders conferred on mortgagees under the LPA 1925 and by any other statute are extended so as to authorise the Lender 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 a lease or agreement for lease;
- (b) accept surrenders of leases; or
- (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 Borrower, and on such terms and conditions (including the payment of money to a lessee or tenant on a surrender), as the Lender thinks fit, without the need to comply with any of the restrictions imposed by sections 99 and 100 of the LPA 1925.

#### 11.3 Protection of third parties

No purchaser, mortgagee or other person dealing with the Lender 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 is purporting to exercise has become exercisable or is being properly exercised; or
- (c) how any money paid to the Lender is to be applied.

#### 11.4 Privileges

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

#### EXCLUSION OF LIABILITY

#### 11.5 ~~No~~ liability as mortgagee in possession

The Lender shall not be liable to the Borrower or any other person:

- (a) (by reason of entering into possession of a Charged Asset, or for any other reason) to account as mortgagee in possession in respect of all or any of the Charged Assets;

- (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 from liability for losses caused by the gross negligence, fraud or wilful misconduct of the Lender.

#### **11.6 Relinquishing possession**

If the Lender enters into or takes possession of a Charged Asset, it or he/she may at any time relinquish possession.

#### **11.7 Conclusive discharge to purchasers**

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

### **12. Application of proceeds**

#### **12.1 Order of application of proceeds**

All monies received or recovered by the Lender under this deed or in connection with the realisation or enforcement of all or part of the security constituted by this deed (other than sums received under any Insurance Policy), shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied in the following order of priority (but without prejudice to the Lender's right to recover any shortfall from the Borrower):

- (a) in or towards payment of all costs, liabilities, charges and expenses incurred by or on behalf of the Lender under or in connection with this deed;
- (b) in or towards payment of the Secured Liabilities in any order and manner that the Lender determines; and
- (c) in payment of the surplus (if any) to the Borrower or other person entitled to it.

#### **12.2 Appropriation**

The Lender shall not 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.

### **13. Costs and indemnity**

#### **13.1 Costs**

The Borrower shall, within five Business Days of demand, pay to, or reimburse, the Lender on a full indemnity basis, all costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal, printing and out-of-pocket expenses) incurred by the Lender in connection with:

- (a) the Charged Assets;
- (b) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Lender's rights under this deed;
- (c) any amendment, extension, waiver, consent or suspension of rights (or any proposal for any of these) under or in connection with this deed;
- (d) any release of any security constituted by this deed; or
- (e) taking proceedings for, or recovering, any of the Secured Liabilities,

together with interest, which shall accrue and be payable (without the need for any demand for payment being made) from the date on which the relevant cost, charge, expense, tax or liability arose until full discharge of that cost, charge, expense, tax or liability (whether before or after judgment) at the rate and in the manner specified in the Facility Deed.

#### **13.2 Indemnity**

- (a) The Borrower shall within three Business Days of demand, indemnify the Lender and their employees and agents against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by any of them arising out of or in connection with:
  - (i) the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this deed or by law in respect of the Charged Assets;
  - (ii) taking, holding, protecting, perfecting, preserving releasing or enforcing (or attempting to do so) the security constituted by this deed; or
  - (iii) any default or delay by the Borrower in performing any of its obligations under this deed.

- (b) Any past or present employee or agent may enforce the terms of this clause 13.2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

#### **14. Further assurance**

##### **14.1 Further assurance**

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

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

including, without limitation 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 Assets (whether to the Lender or to its nominee) and the giving of any notice, order or direction and the making of any filing or registration which, in any such case, the Lender may consider necessary or desirable.

#### **15. Power of attorney**

##### **15.1 Appointment of attorneys**

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

- (a) the Borrower is required to execute and do under this deed; or
- (b) any attorney deems proper or desirable in exercising any of the rights, powers, authorities and discretions conferred by this deed or by law on the Lender.

##### **15.2 Ratification of acts of attorneys**

The Borrower ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in clause 15.1.

#### **16. Release**

##### **16.1 Release**



Subject to clause 23.3, at the end of the Security Period, the Lender shall, at the request and cost of the Borrower, take whatever action is necessary to:

- (a) release the Charged Assets from the security constituted by this deed; and
- (b) reassign the Charged Assets to the Borrower.

## **17. Assignment and transfer**

### **17.1 Assignment by Lender**

- (a) At any time, without the consent of the Borrower, the Lender may assign any of its rights or transfer any of its rights and obligations under this deed.
- (b) The Lender may disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Borrower, the Charged Assets and this deed that the Lender considers appropriate.

### **17.2 Assignment by Borrower**

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

## **18. Set-off**

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

## **19. Amendments, waivers and consents**

### **19.1 Amendments**

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

### **19.2 Waivers and consents**

- (a) A waiver of any right or remedy under this deed or by law, or any consent given under this deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any subsequent right or remedy. It only applies to the circumstances in relation to which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.
- (b) A failure by the Lender to exercise or delay by it in exercising any right or remedy provided under this deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this deed. No single or partial

exercise of any right or remedy provided under this deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this deed by the Lender shall be effective unless it is in writing.

**19.3 Rights and remedies**

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

**20. Partial invalidity**

If, at any time, any provision of this deed is or becomes invalid, illegal or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

**21. Counterparts**

**21.1 Counterparts**

- (a) 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.
- (b) No counterpart shall be effective until each party has executed and delivered at least one counterpart.

**22. Third party rights**

**22.1 Third party rights**

Except as expressly provided elsewhere in this deed, a person who is not a party to this deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this deed.

**23. Further provisions**

**23.1 Independent security**

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

**23.2 Continuing security**

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

### **23.3 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, set aside or ordered to be refunded under 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.

### **23.4 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.

### **23.5 Consolidation**

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

## **24. Notices**

### **24.1 Delivery**

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

- (a) in writing;
- (b) delivered by hand, by pre-paid first-class post or other next working day delivery service; and
- (c) sent to:
  - (i) the Borrower at:

6 Bank Road, Matlock, Derbyshire, DE4 3AQ, United Kingdom

marked for the attention of: Glenn McClenaghan.

(ii) the Lender at:

Town Hall, Bank Road, Matlock, Derbyshire, DE4 3NN

Attention: Head of corporate services.

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

#### **24.2 Receipt by Borrower**

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

- (a) if delivered by hand, at the time it is left at the relevant address;
- (b) if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting.

A notice or other communication given as described in clause 24.2 (a) on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

#### **24.3 Receipt by Lender**

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

#### **24.4 Service of proceedings**

This clause 24 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.

#### **24.5 No notice by email**

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

### **25. Governing law and jurisdiction**

#### **25.1 Governing law**

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

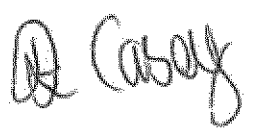

#### **25.2 Jurisdiction**

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

### **25.3 Other service**

The Borrower irrevocably consents to any process in any legal action or proceedings under clause 25.2 being served on it in accordance with the provisions of this deed relating to service of notices. Nothing contained in this deed shall affect the right to serve process in any other manner permitted by law.

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

Executed as a deed by HURST FARM SOCIAL CLUB C.I.C.			
		acting by two directors	
Director name	ANNA CASEY	Director signature	
Director name	CHRISTOPHER HOLMES	Director signature	

Executed as a deed by affixing the common seal of DERBYSHIRE DALES DISTRICT COUNCIL in the presence of		
James McLaughlin Director of Corporate and Customer Services		
Seal number		
Officer Delegated Decision / Committee		

---

## ANNEX A

### Plan



© Crown Copyright and database rights (2020) Ordnance Survey (100019785)

Derbyshire Dales District Council, Town Hall, Bank Road,  
Matlock, Derbyshire, DE4 3NN.  
Telephone: (01629) 781100.

*[Handwritten signature]*

*[Handwritten signature]*



Scale 1: 1,250

16/06/2020

WWW.DERBYSHIREDALES.GOV.UK