



Registration of a Charge

LLP name: **BREAKWELLS LLP**

LLP number: **OC301632**

Received for Electronic Filing: **21/01/2021**



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Details of Charge

Date of creation: **21/01/2021**

Charge code: **OC30 1632 0014**

Persons entitled: **4SYTE LIMITED**

Brief description: **FIRS INDUSTRIAL ESTATE, KIDDERMINSTER, DY11 7QN (HM LAND
REGISTRY TITLE NUMBER: HW158013)**

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: **BRABNERS LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

LLP number: OC301632

Charge code: OC30 1632 0014

The Registrar of Companies for England and Wales hereby certifies that a charge dated 21st January 2021 and created by BREAKWELLS LLP was delivered pursuant to Part 25 of the Companies Act 2006 as applied by The Limited Liability Partnerships (Application of Companies Act 2006) (Amendment) Regulations 2013 on 21st January 2021 .

Given at Companies House, Cardiff on 22nd January 2021

The above information was communicated by electronic means and authenticated
by the Registrar of Companies under the Limited Liability Partnership
(Application of the Companies Act 2006) Regulations 2009 SI 2009/1804



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

THIS IS AN IMPORTANT DOCUMENT YOU SHOULD TAKE
INDEPENDENT LEGAL ADVICE BEFORE SIGNING AND
SIGN ONLY IF YOU WANT TO BE LEGALLY BOUND. IF
YOU SIGN AND THE SECURITY TRUSTEE OR FUNDER IS
NOT PAID YOU MAY LOSE THE ASSET(S) CHARGED

DATED 21st January 2021 ~~2020~~

- (1) BREAKWELLS LLP
- (2) 4SYTE LIMITED AS SECURITY TRUSTEE

LEGAL CHARGE

over

1 Firs Industrial Estate, Kidderminster, DY11 7QN

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DATE 21st January 2021 ~~2020~~

PARTIES

- (1) BREAKWELLS LLP of Road No 2, Firs Industrial Estate, Kidderminster, Worcestershire, DY11 7QN (the Chargor); and
- (2) 4SYTE LIMITED (registered number 10117411) whose registered office is at 2nd Floor, Steeple House, Church Lane, Chelmsford CM1 1NH, United Kingdom in its capacity as security trustee for the Secured Parties (as defined in the Factoring Agreement defined below) (Security Trustee).

IT IS AGREED

1. DEFINITIONS AND INTERPRETATION

1.1 In this charge the following definitions apply:

Assets

present and future assets, properties, revenues and rights of every description;

Business

any business, trade, operations or activities conducted on or from the Property;

COMPANY FULL NAME, REG NUMBER AND REGISTERED ADDRESS

BREAKWELLS TRANSPORT LIMITED, a company incorporated and registered in England and Wales with registered number 12109101 and whose registered address is at Beauchamp House, 402-403 Stourport Road, Kidderminster, England, DY11 7BG;

Business Day

any day (other than a Saturday, Sunday or public holiday) during which banks in London are open for normal business;

Delegate

any delegate, agent, attorney or trustee appointed by the Security Trustee;

Environmental Claim

any claim, order, notice or other communication received by the Chargor alleging failure to comply with any Environmental Law or alleging liability under it; any indication that any charge is or may be imposed under any Environmental Law on the Property; or any indication given to the Chargor that the Property is or may be listed in any register of contaminated land or similar register;

Environmental Law

all laws, directions and regulations and all codes of practice, circulars and guidance notes issued by any competent authority or agency (whether in the United Kingdom or elsewhere and whether or not having the force of law) concerning the protection of the environment or human health, including the conservation of natural resources, the production, storage, transportation, treatment, recycling or disposal of any waste or any noxious, offensive or dangerous substance or the liability of any person, whether civil or criminal, for any damage to or pollution of the environment or its rectification or any related matters;

Environmental Permit

any permit, licence, authorisation, consent or other approval required by any Environmental Law;

Event of Default

- (a) the Chargor or BREAKWELLS TRANSPORT LIMITED fail to pay all or any of the Secured Liabilities when due following a demand for payment by the Security Trustee or the Funder;
- (b) any step is taken (including the making of an application or the giving of any notice) by BREAKWELLS TRANSPORT LIMITED or by any other person to wind up or

dissolve BREAKWELLS TRANSPORT LIMITED or to appoint an administrator, liquidator, trustee, manager or receiver, administrative receiver or similar officer of BREAKWELLS TRANSPORT LIMITED or any part of its undertaking or Assets;

- (c) the making of a request by BREAKWELLS TRANSPORT LIMITED for the appointment of a Receiver;
- (d) the Chargor and/or BREAKWELLS TRANSPORT LIMITED breaches any of the provisions of any Finance Document or an event of default (however described) occurs under any Finance Document;
- (e) either of the Chargors suffers from any Mental Incapacity or either of the Chargors has died;
- (f) either of the Chargors is unable or admits inability to pay its debts within the meaning of section 268 of the Insolvency Act 1986 or suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of his or her creditors with a view to rescheduling any of its indebtedness;
- (g) the value of the assets of the Chargor is less than his or her liabilities (taking into account contingent and prospective liabilities);
- (h) any action, legal proceedings, petition, application for or other procedure or step is taken, or notice given, in relation to either of the Chargors regarding:
 - (i) the suspension of payments, the bankruptcy of, or a debt relief order or individual voluntary arrangement in respect of him or her (or any non-statutory scheme or compromise for the benefit of creditors) or any order being made in relation to him or her under Section 252 of the Insolvency Act 1986 or any application being made for such an order
 - (ii) a composition, compromise, assignment or arrangement with any of his or her creditors;
 - (iii) the appointment of a trustee in bankruptcy, nominee or supervisor or other similar officer in respect of him or her or his or her assets;
 - (iv) the enforcement of any encumbrance over any of his OR her assets;
 - (v) or any analogous procedure or step is taken in any jurisdiction,

provided that any application which is frivolous or vexatious and is discharged, stayed or dismissed within 14 days of commencement or, if earlier, the date on which it is advertised shall not be an Event of Default;



Financing Agreement

The factoring agreement dated 23 November 2020 and made between Breakwells Transport Limited and the Funder;

Finance Document

this charge, the Financing Agreement, the Guarantee, any document, instrument or agreement under which the Funder makes monies available to BREAKWELLS TRANSPORT LIMITED or BREAKWELLS TRANSPORT LIMITED owes sums to the Funder and any document creating (or purporting to create) any Security Interest granted in favour of the Security Trustee in respect of the obligations of the Chargor to the Security Trustee from time to time;

Funder

4Syte Limited or any of its associated businesses

Mental Incapacity

means in relation to a person:

- (a) any unsoundness of mind;
- (b) any order being made or receiver appointed under the Mental Health Act 1983, the Mental Health Act 2007 or any analogous step or procedure being taken in any other jurisdiction; or
- (c) any step or procedure being taken in any jurisdiction which would restrict the capacity of the Chargor to enter into this Charge or the Finance Documents to which he or she is a party or would require the approval of any third party or authority.

LPA

the Law of Property Act 1925;

Party

a party to this charge;

Planning Acts

the Town and Country Planning Act 1990 and the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning (Consequential Provisions) Act 1990, the Planning and Compensation Act 1991, the Planning and Compulsory Purchase Act 2004, the Planning Act 2008, the Localism Act 2011, the Growth and Infrastructure Act 2013 and any other legislation from time to time regulating the use or development of land;

Property

the property described in the schedule together with the benefit of all rights, easements and privileges in relation to that property, the Rental Income and all other Assets from time to time charged or intended to be charged by or under this charge;

Receiver

any receiver, manager or receiver and manager appointed by the Security Trustee under this charge;

Rental Income

the aggregate of all amounts paid or payable to or for the account of the Chargor in connection with the letting, licence or grant of other rights of use or occupation of any part of the Property;

Secured Liabilities

all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or as principal debtor, guarantor, surety or in any other capacity) of either of the Chargors and/or BREAKWELLS TRANSPORT LIMITED to the Security Trustee or Funder, including but not limited to obligations and liabilities owed under the Finance Documents, together with (i) all interest (including default interest), fees, costs, charges and expenses which the Security Trustee may charge or incur; and (ii) any amounts which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowability of the same in any insolvency or other proceedings;

Security Interest

a mortgage, charge, pledge, lien, hypothecation or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect; and

Security and Security Trust

- (i) The Client must pay or discharge the Secured Liabilities in the manner provided for in the Finance Documents.
- (ii) All the security created under this debenture:
 - (A) is created in favour of the Security Trustee;
 - (B) is created over present and future assets of the Client;
 - (C) is security for the payment of all the Secured Liabilities; and
 - (D) is made with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994.

The Security Trustee holds the benefit of this debenture and the Security created under it on trust for the Secured Parties

Third Parties Act

the Contracts (Rights of Third Parties) Act 1999.

- 1.2 In this charge, a reference to:
 - 1.2.1 a provision of law includes a reference to that provision as replaced, modified or re-enacted from time to time and any subordinate legislation made under that statutory provision from time to time, in each case whether before or after the date of this charge;
 - 1.2.2 a person includes any individual, firm, company, corporation, government, state or agency of state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
 - 1.2.3 this charge or any provision of this charge or any other agreement, document or instrument is to this charge, that provision or that agreement, document or instrument as amended, novated, supplemented, extended or restated;
 - 1.2.4 a "Party", the "Chargor", or the "Security Trustee" will be construed so as to include its successors in title, permitted assigns and permitted transferees; and
 - 1.2.5 the "Property" means all or any part of it including land and buildings.
- 1.3 The schedule forms part of this charge and has the same effect as if expressly set out in the body of this charge and will be interpreted and construed as though it were set out in this charge.
- 1.4 Words importing the singular include the plural and vice versa and words importing a gender include every gender.
- 1.5 The words "other", "include", "including" and "in particular" do not limit the generality of any preceding words and any words which follow them will not be construed as being limited in scope to the same class as the preceding words where a wider construction is possible.
- 1.6 For the purposes of section 2 Law of Property (Miscellaneous Provisions) Act 1989, the terms of any facility or loan agreements, security documents, finance documents and of any side letters between any parties in relation to any of them are incorporated into this charge.
- 2. **COVENANT TO PAY**
 - 2.1 The Chargor covenants with the Security Trustee that it will pay or discharge on demand the Secured Liabilities when they fall due.
 - 2.2 Any amount which is not paid under this charge when due will bear interest (both before and after judgment and payable on demand) from the due date (or, in the case of costs, fees or expenses incurred, from the date they are so incurred) until the date that amount is unconditionally and irrevocably paid and discharged in full on a daily basis at a rate of 2% per annum. Such default interest will be calculated on the basis of the actual number of days elapsed and a year of 365 days and will be compounded at monthly intervals.

3. CHARGES

As a continuing security for the payment of the Secured Liabilities, the Chargor, with full title guarantee, charges and agrees to charge, in favour of the Security Trustee the following Assets which are at any time owned by the Chargor or which it is from time to time interested:

- 3.1 by way of **second legal mortgage**, the Property, together with all buildings, fixtures and fittings (including trade fixtures and fittings) at any time on or attached to the Property;
- 3.2 by way of **second fixed charge** all proceeds of sale derived from the Property or any buildings, fixtures or fittings (including trade fixtures and fittings) at any time on or attached to the Property, the benefit of all covenants given in respect of the Property or any of those buildings, fixtures or fittings and all licences to enter upon or use land and the benefit of all other agreements relating to land;
- 3.3 by way of **second fixed charge** the Rental Income;
- 3.4 by way of **second fixed charge** all goodwill in any business conducted at the Property; and
- 3.5 by way of **second fixed charge** any insurance policies in respect of the Property, the proceeds of any such policy and any refund of premium in relation to any such policy.

4. NEGATIVE PLEDGE

The Chargor will not, without the prior written consent of the Security Trustee, create, purport to create or permit to subsist any Security Interest over the Property.

5. REPRESENTATIONS AND WARRANTIES

- 5.1 The Chargor represents and warrants to the Security Trustee and acknowledges that the Security Trustee has entered into this Charge in reliance on such representations and warranties that:

- 5.1.1 they are the legal and beneficial owner of the Property;
- 5.1.2 they have complied with all Environmental Laws and Environmental Permits applicable to the Property;
- 5.1.3 there has been no discharge, spillage, release or emission of any prescribed, dangerous, noxious or offensive substance or any controlled waste on, into or from the Property or any adjoining premises and no such substances or any controlled waste have been stored or disposed of on the Property or, so far as the Chargor is aware, in any adjoining premises except in accordance with the requirements of the applicable Environmental Laws;
- 5.1.4 it is not in breach of and has not incurred or become subject to any civil or criminal liability under any Environmental Laws or the terms of any Environmental Permit and it has not done anything or omitted to do anything which could result in any liability being imposed on the Security Trustee under any Environmental Law;
- 5.1.5 both the Chargors are domiciled and resident in England and that they are a citizens of the United Kingdom;
- 5.1.6 that they are not a minor;
- 5.1.7 that they do not suffer from any Mental Incapacity;
- 5.1.8 that they have the necessary legal capacity to execute, deliver and perform its obligations under this Charge to which they are a party;
- 5.1.9 that they are acting as principal for his or her own account and not as agent or trustee or in any other capacity on behalf of any third party;
- 5.1.10 their obligations under this Charge and under the Finance Documents to which they are a party are legal, valid, binding and enforceable;
- 5.1.11 no Event of Default or Potential Event of Default has occurred and is continuing or will occur on the making of the Charge;

- 5.1.12 neither of the Chargors have not defaulted under any other agreement or instrument which is binding on them;
- 5.1.13 all information provided by the Chargor or on their behalf to the Security Trustee in relation to the Chargor, their assets, business and affairs and the Finance Documents to which the Chargor is a party was true, complete and accurate in all material respects as at the date it was provided;
- 5.1.14 the Chargor has not withheld from the Security Trustee any information which makes the information provided to the Security Trustee materially misleading, incomplete, inaccurate or untrue as at the date it was provided;
- 5.1.15 the Chargor is not the subject of any actual, pending or threatened litigation, arbitration or other court or arbitral proceedings;
- 5.1.16 each of the Chargors confirms that they have taken independent legal advice under the laws of England and Wales as to the terms and nature, effect and extent of his or her obligations under this Charge or the Finance Documents to which he or she is a party;
- 5.1.17 the Chargors each confirm that they have had due opportunity to review, consider and understand the terms of this Charge and the Finance Documents to which he or she is a party are and on the basis that this Charge is and the Finance Documents to which he or she is a party are wholly or predominantly for the purposes of business carried on or intended to be carried on by BREAKWELLS TRANSPORT LIMITED, the Finance Documents to which he or she is a party are exempt for the purposes of consumer credit and protection legislation in England and Wales;
- 5.1.18 the Chargor has not, and has never been subject to a bankruptcy order or debt relief order nor is there an outstanding bankruptcy petition or an application for a debt relief order filed or made in respect of him or her;
- 5.1.19 the Chargor is not, and has never been, subject to a bankruptcy restrictions order or undertaking, or a debt relief restrictions order or undertaking;
- 5.1.20 no individual voluntary arrangement (or non-statutory scheme or compromise for the benefit of creditors) in relation to the Chargor is currently or has ever been in effect nor has such an arrangement ever been proposed in relation to the Chargor nor has any order been made under Section 252 of the Insolvency Act 1986 (interim order) or application been made for such an order;
- 5.1.21 the Chargor is not unable to pay its debts within the meaning of Section 268 of the Insolvency Act 1986 nor has any statutory demand (as defined in Section 268(1)(a) of the Insolvency Act 1986) been served on the Chargor which remains unsatisfied and unpaid nor is the Chargor otherwise insolvent;
- 5.1.22 none of the Chargor's assets are subject to any distress, injunctive action or execution or are in the control of a trustee in bankruptcy, supervisor, receiver, manager or mortgagee in possession; and/or
- 5.1.23 the Security Trustee is not in default in respect of any financial commitment or obligation including but not limited to any guarantee, indemnity, bond or like obligation.
- 5.2 The Chargor makes the representations and warranties set out in clause 5.1 on the date of this charge and they are deemed to be repeated on each day during the continuance of the security created by this charge.
- 6. **UNDERTAKINGS**
The Chargor must:
 - 6.1 keep the Property in a good state of repair (sufficient as to enable the Property to be let in accordance with all applicable laws and regulations);
 - 6.2 duly and punctually pay all rates, rents, taxes, charges and other outgoings due by it in respect of the Property;

- 6.3 permit the Security Trustee or its representatives to have, on reasonable notice, access during normal office hours to the Property and to inspect and take copies of its records and accounts maintained in connection with it;
- 6.4 in relation to the Property, comply with all its obligations under law, statute or regulation and under any permit, approval, licence or consent and, if requested by the Security Trustee, produce to the Security Trustee, within 14 days of receipt of the same, every material notice, order or proposal given or made in relation to the Property by any competent authority and either comply with the same or make the objections and representations against them as the Security Trustee may require or approve];
- 6.5 observe and perform all covenants and stipulations from time to time affecting the Property, or the manner of use or the enjoyment of the Property and not enter into any onerous or restrictive obligations affecting the Property;
- 6.6 carry on any Business in accordance with the standards of good management from time to time current in that type of trade or business;
- 6.7 enforce its rights and perform its obligations as landlord under any lease or agreement for lease of the Property;
- 6.8 observe and perform all the lessee's covenants in any lease under which it holds the Property;
- 6.9 not, except with the prior written consent of the Security Trustee:
 - 6.9.1 dispose, part with or share possession or occupation of the Property;
 - 6.9.2 enter into any lease or agreement for lease or otherwise confer on any person any lease or other right or licence to occupy the Property or any licence to assign or sub-let the Property;
 - 6.9.3 vary, forfeit, determine, accept or agree to accept the surrender of any lease, agreement for lease or licence in relation to the Property;
 - 6.9.4 agree any rent review of any lease of the Property;
 - 6.9.5 surrender or agree to surrender any leasehold interest held by it in relation to the Property or allow that interest to be forfeited;
 - 6.9.6 create or permit to arise on the Property any interest having overriding effect; or
 - 6.9.7 permit any person to become entitled to any right, easement, covenant or other matter which might adversely affect the use, value or marketability of the Property.
- 6.10 comply with all Environmental Laws and obtain, maintain and comply with all Environmental Permits applicable to the Property and, on request, provide the Security Trustee with copies of any Environmental Permits;
- 6.11 notify the Security Trustee of any Environmental Claim made or threatened against the Chargor and any condition imposed under any Environmental Permit or Environmental Law which requires the Chargor to incur any capital expenditure or materially alter the nature or manner of conduct of the Business or which could, in the Security Trustee's opinion, materially reduce the value of the Property;
- 6.12 keep the Security Trustee informed of any steps taken or intended to be taken by the Chargor in respect of any of the matters referred to in clause 6.11 and give notice to the Security Trustee as soon as practicable of any new or additional requirements under any Environmental Law imposed on the Chargor or the Property;
- 6.13 not carry out any development within the meaning of the Planning Acts in or upon the Property without first obtaining the permissions required under or by virtue of the Planning Acts and, in the case of any development involving a substantial change in the structure or a change of use of the Property, without first obtaining the written consent of the Security Trustee;
- 6.14 in respect of the Property, apply to the Chief Land Registrar for the registration of a Restriction against the registered titles in the following terms:

"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 2020 in favour of 4Syte Limited referred to in the charges register."

- 6.15 keep the Property comprehensively insured for full replacement value in an amount and form and with an insurance company or underwriters acceptable to the Security Trustee, provided that if the Chargor fails to comply with the terms of this clause 6.15 or clause 6.16, the Security Trustee may, at the Chargor's expense, effect any insurance and generally do the things and take the action as the Security Trustee considers necessary or desirable to prevent or remedy any breach of this clause 6.15 or clause 6.16;
- 6.16 procure that [the interest of the Security Trustee is noted]/[the Security Trustee is named as co-insured] under each of the insurance policies (other than public liability and third party liability insurances) but without liability on the part of the Security Trustee for any premium in relation to those insurance policies; and
- 6.17 hold the proceeds of any insurance on trust for the Security Trustee to be applied as the Security Trustee sees fit.
- 7. **ENFORCEMENT OF SECURITY**
- 7.1 The security constituted by this charge shall become immediately enforceable upon the occurrence of an Event of Default and the Security Trustee may, in its absolute discretion, enforce all or any part of the security created by this charge in such manner as it sees fit.
- 7.2 The power of sale and other powers conferred by section 101 LPA (as varied or extended by this charge) will arise on and be exercisable without further notice at any time after the execution of this charge. Sections 93 and 103 LPA do not apply to the security created by this charge.
- 7.3 At any time after the security created under this charge has become enforceable, the Security Trustee may, at the sole cost of the Chargor (payable to the Security Trustee on demand) redeem any prior Security interest over the Property and/or procure the transfer of that Security Interest to itself and/or settle and pass the accounts of any prior mortgagee, Security Trustee or encumbrancer which once so settled and passed will be conclusive and binding on the Chargor. All money paid by the Security Trustee to such prior mortgagee, Security Trustee or encumbrancer in accordance with such accounts will form part of the Secured Liabilities.
- 7.4 At any time after the security created by this charge becomes enforceable, or if so requested by the Chargor by written notice at any time, the Security Trustee (or any Delegate on its behalf) may:
 - 7.4.1 without further notice appoint any person (or persons) to be a Receiver of the Property and/or of the income from the Property; and/or
 - 7.4.2 exercise in respect of the Property all or any of the powers and remedies given to mortgagees by the LPA, including the power to take possession of, receive the benefit of, or sell the Property.
- 7.5 The Security Trustee may remove from time to time any Receiver appointed by it and, whenever it may deem appropriate, appoint a new Receiver in the place of any Receiver whose appointment has terminated.
- 7.6 If at any time and by virtue of any such appointment there is more than one Receiver, those persons will have power to act individually (unless the contrary is stated in the deeds or other instruments appointing them).
- 7.7 If the Security Trustee enforces this charge itself under clause 7.4.2 it will have the same powers as a Receiver.
- 7.8 Any Receiver will (in addition to the powers conferred by the LPA and (notwithstanding that he is not an administrative receiver) schedule 1 to the Insolvency Act 1986 but without any of the restrictions imposed upon the exercise of those powers by those statutes) have the following powers:

- 7.8.1 the same powers to do, or to omit to do, in the name of and on behalf of the Chargor, anything which the Chargor itself could have done or omitted to do with the Property were it not the subject of this charge and the Chargor were not in insolvency proceedings;
- 7.8.2 to take possession of, collect and get in the Property and/or income in respect of which he was appointed;
- 7.8.3 to manage the Property and the Business;
- 7.8.4 to redeem any Security Interest and to borrow or raise any money and secure the payment of any money in priority to the Secured Liabilities for the purpose of the exercise of his powers and/or defraying any costs or liabilities incurred by him in such exercise;
- 7.8.5 to alter, improve, develop, complete, construct, modify, refurbish or repair any building or land and to complete or undertake or concur in the completion or undertaking (with or without modification) of any project in which the Chargor is concerned or interested prior to his appointment, being a project for the alteration, improvement, development, completion, construction, modification, refurbishment or repair of the Property;
- 7.8.6 to sell or concur in selling, leasing or otherwise disposing of the Property without the need to observe any restriction imposed by section 103 or 109 LPA and for that purpose, to enter into covenants and other contractual obligations in the name of, and so as to bind, the Chargor;
- 7.8.7 to lease, make agreements for leases, accept surrenders of leases and grant options as the Security Trustee thinks fit and without the need to comply with any of the provisions of sections 99 and 100 LPA;
- 7.8.8 to take any proceedings, in the name of the Chargor or otherwise, as he thinks fit in respect of the Property, including proceedings for recovery of rental income or other money in arrears at the date of his appointment;
- 7.8.9 to enter into or make any agreement, arrangement or compromise as he thinks fit;
- 7.8.10 to insure, and renew any insurances in respect of, the Property as he thinks fit;
- 7.8.11 to appoint and employ such managers, officers and workmen and engage such professional advisers as he thinks fit, including power to employ his partners and firm;
- 7.8.12 to operate any rent review clause in respect of the Property and to apply for any new or extended lease; and
- 7.8.13 to do all other things as may seem to him to be incidental or conducive to any other power vested in him in the realisation of the security created by this charge.
- 7.9 In making any disposal in the exercise of their respective powers, the Receiver, the Security Trustee or any Delegate may accept as consideration for that disposal, cash, shares, loan capital or other Assets on such terms (including the method of calculation and timing of payment) as the Receiver, the Security Trustee or any Delegate may agree. Any contract for any such disposal by the Receiver, the Security Trustee or any Delegate may contain conditions excluding or restricting the personal liability of that Receiver, the Security Trustee or that Delegate.
- 7.10 Any Receiver will be the agent of the Chargor and the Chargor will be solely responsible for his acts and defaults and for his remuneration.
- 7.11 Any Receiver will be entitled to remuneration for his services at a rate to be fixed by agreement between him and the Security Trustee (or failing agreement to be fixed by the Security Trustee) without the restrictions contained in section 109 LPA.

- 7.12 Only money actually paid by a Receiver to the Security Trustee in satisfaction or discharge of the Secured Liabilities will be capable of being applied by the Security Trustee in satisfaction of the Secured Liabilities.
- 7.13 Neither the Security Trustee nor any Receiver or Delegate will be liable in respect of the Property or for any loss or damage which arises out of the exercise or the attempted or purported exercise of, or the failure to exercise any of, their respective powers, unless the loss or damage is caused by its gross negligence or wilful misconduct.
- 7.14 Without prejudice to the generality of clause 7.13, entry into possession of the Property will not render the Security Trustee or the Receiver or any Delegate liable to account as mortgagee in possession. If and when the Security Trustee or any Receiver or Delegate enters into possession of the Property, it will be entitled at any time at its discretion to go out of possession.
- 7.15 All or any of the powers which are conferred by this charge on a Receiver may be exercised by the Security Trustee or any Delegate without first appointing a Receiver or notwithstanding the appointment of any Receiver.
- 7.16 Except to the extent provided by law, none of the powers described in clauses 7.8 to 7.15 will be affected by an insolvency event in relation to the Chargor.
- 7.17 No purchaser from or other person dealing with the Security Trustee or with any Receiver or Delegate will be obliged or concerned:
- 7.17.1 to enquire whether the right of the Security Trustee to appoint a Receiver or Delegate or the right of the Security Trustee or any Receiver or Delegate to exercise any of the powers conferred by this charge in relation to the Property have arisen or become exercisable by the Security Trustee or by any Receiver or Delegate; nor
- 7.17.2 with notice to the contrary, or with the propriety of the exercise or purported exercise of those powers.
- The title of such a purchaser and the position of such a person will not be impeachable by reference to any of the above matters.
- 8. CONTINUING SECURITY AND SECURITY TRUSTEE'S PROTECTIONS**
- 8.1 This charge will remain in full force and effect as a continuing security until the Security Trustee has certified in writing that the Secured Liabilities have been discharged in full. The Security Trustee may make one or more demands under this charge.
- 8.2 The Chargor's obligations under this charge will not be affected by any time, waiver or consent granted to, or composition with the Chargor or any other person.
- 8.3 This charge will be in addition to, and without prejudice to and will not merge with, any other right, remedy, guarantee or Security Interest which the Security Trustee may at any time hold in respect of any of the Secured Liabilities and this charge may be enforced without the Security Trustee first having:
- 8.3.1 recourse to any other right, remedy, guarantee or Security Interest held or available to it;
- 8.3.2 to take action or obtain judgment in any court against the Chargor or any other person;
- 8.3.3 to make or file any claim in a bankruptcy, liquidation, administration or insolvency of the Chargor or any other person; or
- 8.3.4 to make demand, enforce or seek to enforce any claim, right or remedy against the Chargor or any other person.
- 9. FURTHER ASSURANCE AND POWER OF ATTORNEY**
- 9.1 The Chargor must promptly do all acts or execute all documents (including assignments, transfers, mortgages, charges, other Security Interests or notices and instructions) as the Security Trustee may reasonably specify (and in the form the Security Trustee may reasonably require) in favour of the Security Trustee or its nominee:

- 9.1.1 to create, perfect, protect or maintain the Security Interest created or intended to be created under or evidenced by this charge or for the exercise of any rights, powers and remedies of the Security Trustee provided by law;
- 9.1.2 to ensure the Security Trustee is named as co-insured on any insurance policy relating to the Property; and/or
- 9.1.3 to facilitate the realisation of the Property.
- 9.2 Any document required to be executed by the Chargor under clause 9.1 will be prepared at the cost of the Chargor.
- 9.3 The Chargor by way of security irrevocably appoints the Security Trustee and any Receiver or Delegate (in writing under hand signed by an officer of the Security Trustee or any Receiver or Delegate) severally to be its agents and attorneys in its name and on its behalf to:
 - 9.3.1 do all things which the Chargor may be required to do under this charge;
 - 9.3.2 sign, execute, deliver and otherwise perfect any document or Security Interest required to be signed or executed under the terms of this charge; and
 - 9.3.3 sign, execute, deliver and complete any deeds, instruments or other documents and to do all acts and things which may be required by the Security Trustee or any Receiver or Delegate in the exercise of any of their powers under this charge, or to perfect or vest in the Security Trustee, any Receiver, any Delegate, its nominees or any purchaser, title to the Property or which they may deem expedient in connection with the getting in, disposal, or realisation of the Property.
- 9.4 Each agent and attorney may appoint a substitute or delegate his authority. The Chargor ratifies and confirms (and agrees to ratify and confirm) anything which an attorney does under the power of attorney conferred by clause 9.3.
- 10. **PAYMENTS**
- 10.1 Subject to clause 10.2, all payments to be made by the Chargor in respect of this charge, will be made in immediately available funds to the credit of any account as the Security Trustee may designate. All payments will be made free and clear of, and without any deduction for, or on account of, any set-off or counterclaim or, except to the extent required by law, any deduction on account of any taxes.
- 10.2 If the Chargor is required by law to withhold or deduct any taxes from any sum payable under this charge to the Security Trustee, the sum so payable by the Chargor will be increased so as to result in the receipt by the Security Trustee of a net amount equal to the full amount expressed to be payable under this charge.
- 10.3 The Security Trustee may set-off any matured obligation due from the Chargor under this charge against any matured obligation owed by the Security Trustee to the Chargor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Security Trustee may convert either obligation at a market rate of exchange reasonably determined by the Security Trustee.
- 10.4 Any demand, notification or certificate given by the Security Trustee specifying amounts due and payable under or in connection with any of the provisions of this charge will, in the absence of manifest error, be conclusive and binding on the Chargor.
- 10.5 Any release, discharge or settlement between the Chargor and the Security Trustee will be deemed conditional upon no payment or Security Interest received or held by the Security Trustee in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded under any law relating to insolvency, bankruptcy, winding-up, administration or receivership. Notwithstanding any release, discharge or settlement, the Security Trustee will be entitled to recover the value or amount of such Security Interest or payment from the Chargor or to enforce this charge as if that release, discharge or settlement had not occurred.

- 10.6 The Security Trustee may apply or refrain from applying all payments received for the Secured Liabilities as it thinks fit. All money received, recovered or realised by the Security Trustee under this charge may at the discretion of the Security Trustee be credited to any suspense account for so long as the Security Trustee determines (with interest accruing at the rate, if any, as the Security Trustee may determine for the account of the Chargor).
11. **COSTS, EXPENSES AND INDEMNITIES**
- 11.1 The Chargor must reimburse the Security Trustee, any Receiver and any Delegate for all costs and expenses, including legal fees (and any value added or similar tax thereon) incurred in connection with the enforcement, attempted enforcement or preservation of any of their respective rights under this charge, or any of the documents referred to in this charge.
- 11.2 The Chargor must on demand indemnify the Security Trustee and any Receiver or Delegate and any of its and their officers and employees (each an Indemnified Party) in respect of all costs, losses (including consequential losses), actions, claims, expenses, demands or liabilities whether in contract, tort, or otherwise and whether arising at common law, in equity or by statute which may be incurred by, or made against any of them at any time relating to or arising directly or indirectly out of:
- 11.2.1 the exercise or purported exercise of the powers contained in this charge;
 - 11.2.2 a claim of any kind made or asserted against any Indemnified Party which would not have arisen if this charge had not been executed and/or registered;
 - 11.2.3 the creation, imposition, recording or registration of any Security Interest over the Property securing the reimbursement to or recovery by any third party (including any regulatory authority or government agency) of any costs expenses or other sums incurred in consequence of a breach contravention or violation of any Environmental Law or the release discharge or emission of any harmful or hazardous material and the redemption, removal, vacation or discharge of any such Security Interest;
 - 11.2.4 the making of any Environmental Claim against any Indemnified Party or the Chargor in respect of the Property and/or the Business;
 - 11.2.5 any liability or potential liability upon any Indemnified Party to remedy clean-up or make good any breach contravention or violation of any Environmental Law by the Chargor or any harm actual or potential to the environment caused directly or indirectly by any release emission or discharge of any harmful or hazardous material from in or to the Property; or
 - 11.2.6 a breach by the Chargor of any of its obligations under this charge
- unless, in the case of clauses 11.2.1 and 11.2.2, it was caused by the negligence or wilful misconduct of the Indemnified Party.
- 11.3 No Indemnified Party will in any way be liable or responsible to the Chargor for any loss or liability of any kind arising from any act or omission by it of any kind (whether as mortgagee in possession or otherwise) in relation to the Property, except to the extent caused by its own negligence or wilful misconduct.
- 11.4 The Chargor must pay all present and future stamp, registration and similar taxes or charges which may be payable, or determined to be payable, in connection with the execution, delivery, performance or enforcement of this charge or any judgment given in connection with this charge.
12. **THIRD PARTY RIGHTS**
- 12.1 Subject to clauses 12.2 and 12.3, a person who is not a Party will have no rights under the Third Parties Act to enforce or rely upon a provision of this charge. No Party may hold itself out as trustee of any rights under this charge for the benefit of any third party unless specifically provided for in this charge. This clause 12.1 does not affect any right or remedy of any person which exists, or is available, otherwise than under the Third Parties Act.

- 12.2 Any person to whom the benefit of any provision of this charge is assigned in accordance with the terms of this charge is entitled under the Third Parties Act to enforce any term of this charge which confers (expressly or impliedly) any benefit on any such person.
- 12.3 Any Receiver or Delegate may, subject to the Third Parties Act rely on any clause of this charge which expressly confers rights on it.
- 12.4 The Security Trustee and the Chargor may, by agreement in writing, rescind or vary any of the provisions in this charge or waive or settle any right or claim under it in any way without the consent of any third party.

13. NOTICES

Any notice given under this charge must be in writing signed by, or on behalf of, the person giving it. Any notice must be delivered by hand or by prepaid recorded delivery first class post to the Party due to receive it at:

- 13.1 in the case of the 1 Firs Industrial Estate, Kidderminster, DY11 7QN
- 13.2 in the case of the Security Trustee, its registered office or at such other address as the Security Trustee may advise in writing to the Client for this purpose,

In the absence of evidence of earlier receipt, a notice served in accordance with this clause 13 will be deemed to have been received, if delivered by hand, at the time of actual delivery to the address referred to in this clause 13 or, if delivered by prepaid first class recorded delivery post, two Business Days from the date of posting. If, however, deemed receipt under this clause 13 would otherwise occur on a day which is not a Business Day or after 5.00 pm on a Business Day, the relevant notice shall be deemed to have been received at 9.00 am on the next Business Day.

14. GENERAL

- 14.1 If the Security Trustee receives notice (whether actual or otherwise) of any subsequent Security Interest affecting the Property, it may open a new account or accounts for the Chargor in its books.
- 14.2 If the Security Trustee does not open a new account immediately on receipt of notice under clause 14.1, then (unless the Security Trustee gives express written notice to the contrary to the Chargor) all payments made by the Chargor to the Security Trustee will be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt of the relevant notice by the Security Trustee.
- 14.3 The Security Trustee may assign or transfer all or any of its rights under this charge. The Chargor may not assign, transfer, charge, make the subject of a trust or deal in any other manner with this charge or any of its rights under this charge or purport to do any of the same without the prior written consent of the Security Trustee.
- 14.4 No variation to this charge will be effective unless made in writing and signed by or on behalf of all the Parties. A waiver given or consent granted by the Security Trustee under this charge will be effective only if given in writing and then only in the instance and for the purpose for which it is given.
- 14.5 Each provision of this charge is severable and distinct from the others. If at any time any provision of this charge is or becomes unlawful, invalid or unenforceable to any extent or in any circumstances for any reason, it will to that extent or in those circumstances be deemed not to form part of this charge but (except to that extent or in those circumstances in the case of that provision) the legality, validity and enforceability of that and all other provisions of this charge will not be affected in any way.
- 14.6 If any provision of this charge is found to be illegal, invalid or unenforceable in accordance with clause 14.5 but would be legal, valid or enforceable if some part of the provision were deleted, the provision in question will apply with those modifications as may be necessary to make it legal, valid or enforceable.
- 14.7 Failure or delay in exercising a right or remedy provided by this charge or by law does not constitute a waiver of that (or any other) right or remedy. No single or partial exercise, or

non-exercise or non-enforcement of any right or remedy provided by this charge or by law prevents or restricts any further or other exercise or enforcement of that (or any other) right or remedy.

14.8 The Security Trustee's rights and remedies contained in this charge are cumulative and not exclusive of any rights or remedies provided by law.

14.9 This charge may be executed in any number of counterparts each of which when executed and delivered will be an original. All the counterparts together will constitute one and the same document.

15. GOVERNING LAW AND JURISDICTION

15.1 This charge (including any associated non-contractual disputes or claims) is governed by the laws of England and Wales.

15.2 The Parties agree to submit to the non-exclusive jurisdiction of the English Courts in relation to any claim or matter (whether contractual or non-contractual) arising under this charge. This clause 15.2 is for the benefit of the Security Trustee only.

THE CHARGOR has executed this charge as a deed and delivered it on the date first set out above

SCHEDULE
The Property

1 Firs Industrial Estate, Kidderminster, DY11 7QN – Title Number HW158013

CHARGOR

EXECUTED as a Deed by
a duly appointed)
member of Breakwells LLP in the)
presence of:

Julie Breakwell
Breakwell

Witness Signature

B. Marsh

Witness Name BREKLEY JAYNE MARSH
(in BLOCK CAPITALS)

Address

102 VIVIAN RD
HARBORNE BIRMINGHAM B17 0BJ
Occupation

ACCOUNTANT

SECURITY TRUSTEE

EXECUTED AS A DEED BY NICHOLAS)
SELLARS on behalf of 4SYTE LIMITED)
SIGNED IN THE PRESENCE OF:)

Director

U

Witness

Signature

C. Morrison

Name

C. Morrison

Address

2nd floor, Steeple House

Church Lane, Essex, CM1 1NH

Occupation

Client Admin