



**Registration of a Charge**

Company name: **ATLANTIC REFRIGERATION LIMITED**

Company number: **01889800**

Received for Electronic Filing: **28/07/2017**



X6BMK72G

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**Details of Charge**

Date of creation: **14/07/2017**

Charge code: **0188 9800 0008**

Persons entitled: **JOHN HENRY GEORGE BAKER AND SARA BAKER**

Brief description: **THE FREEHOLD PROPERTY FORMING PART OF LAND AT DAEDALUS PARK, LEE-ON-THE-SOLENT, HAMPSHIRE TO BE FORMALLY KNOWN AS UNIT F4 FEARLESS, DAEDALUS PARK, LEE-ON-THE-SOLENT, HAMPSHIRE**

**Contains fixed charge(s).**

**Contains negative pledge.**

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**Authentication of Form**

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

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**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:

**CLARKE WILLMOTT LLP**



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

Company number: 1889800

Charge code: 0188 9800 0008

The Registrar of Companies for England and Wales hereby certifies that a charge dated 14th July 2017 and created by ATLANTIC REFRIGERATION LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 28th July 2017 .

Given at Companies House, Cardiff on 1st August 2017

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**

## Legal Mortgage of Property

Dated 14 JULY 2017  
(1) ATLANTIC REFRIGERATION LIMITED  
(2) JOHN HENRY GEORGE BAKER AND SARA BAKER

This Deed is made on

14 JULY

2017

**Between:**

- (1) **ATLANTIC REFRIGERATION LIMITED** a company registered in England and Wales with company number 01889800 whose registered office is at Peel Street, Northam, Southampton, Hampshire SO14 5QT (the "**Borrower**"); and
- (2) **MR JOHN HENRY GEORGE BAKER AND MRS SARA BAKER** of 24 Mayfair Gardens, Banister Park, Southampton SO15 2TW (the "**Lender**").

**Background**

- (A) The Lender has agreed under the Agreement to provide the Borrower's parent company (the "**Parent**") with the Loan on a secured basis and the Borrower has guaranteed the obligations of the Parent under the Agreement.
- (B) The Borrower is the owner of the Property.
- (C) This mortgage provides security which the Borrower has agreed to give the Lender for the Loan.
- (D) The Loan will be repaid on the Repayment Dates.
- (E) The parties wish to take advantage of one of the exceptions to the Consumer Credit Act 1974.

**It is agreed as follows:**

**1 Definitions and interpretation**

**1.1 Definitions**

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

<b>"Agreement"</b>	the Loan Note Instrument dated 3 July 2012 between the Parent and the Borrower for the provision of the guarantee of the loan secured by this mortgage;
<b>"Business"</b>	the business of the Borrower;
<b>"Business Day"</b>	a day (other than a Saturday or a Sunday) on which commercial banks are open for general business in London;
<b>"Encumbrance"</b>	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;

<b>"Environment"</b>	the natural and man-made environment including all or any of the following media, namely air, water and land (including air within buildings and other natural or man-made structures above or below the ground) and any living organisms (including man) or systems supported by those media;
<b>"Environmental Law"</b>	all applicable laws, statutes, regulations, secondary legislation, bye-laws, common law, directives, treaties and other measures, judgments and decisions of any court or tribunal, codes of practice and guidance notes insofar as they relate to or apply to the Environment;
<b>"Environmental Licence"</b>	any authorisation, permit or licence necessary under Environmental Law in respect of any of the charged Property;
<b>"Event of Default"</b>	any event or circumstance listed in Schedule 5;
<b>"Insured Risks"</b>	fire, explosion, lightning, earthquake, storm, flood, bursting and overflowing of water tanks, apparatus or pipes, escape of water or oil, impact by aircraft and articles dropped from them, impact by vehicles, riot, civil commotion, malicious damage, theft or attempted theft, falling trees and branches and aerials, subsidence, heave, landslip, collision, accidental damage to underground services, public liability to anyone else and any other risks which the Lender reasonably requires to be insured against from time to time;
<b>"Loan"</b>	the sum of £38,000 (Thirty Eight Thousand Pounds);
<b>"LPA 1925"</b>	the Law of Property Act 1925;
<b>"Permitted Encumbrance"</b>	the Legal Charge dated 28 JUNE 2017 made between (1) the Borrower and (2) HSBC Bank Plc;
<b>"Property"</b>	the freehold property forming part of Land at Daedalus Park, Lee-on-the-Solent, Hampshire to be formally known as Unit F4 Fearless, Daedalus Park, Lee-on-the-Solent, Hampshire;
<b>"Receiver"</b>	a receiver of the Property;
<b>"Repayment Dates"</b>	each of the dates for repayment as specified in Schedule 6;
<b>"Secured Liabilities"</b>	the guarantee provided by the Borrower to the Lender in accordance with the terms of the Agreement of the obligations contained in the Agreement including payment of the Loan;

<b>"Security Period"</b>	the period starting on the date of this mortgage and ending on the date on which all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding;
<b>"Valuation"</b>	any valuation relating to the Property supplied to the Lender by the Borrower (or on its behalf); and
<b>"VAT"</b>	value added tax chargeable under the Value Added Tax Act 1994 or any similar replacement or additional tax.

## 1.2 Interpretation

In this mortgage:

- 1.2.1 a reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force for the time being, taking account of any amendment or re-enactment or extension and includes any former statute, statutory provision or subordinate legislation which it amends or re-enacts;
- 1.2.2 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- 1.2.3 unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular;
- 1.2.4 a reference to a clause or Schedule is to a clause of, or Schedule to, this mortgage and references to paragraphs are to paragraphs of the relevant Schedule, unless the context otherwise requires;
- 1.2.5 a reference to **this mortgage** (or any provision of it) or any other document shall be construed as a reference to this legal mortgage, that provision or that document as it is in force for the time being and as amended in accordance with its terms or with the agreement of the relevant parties;
- 1.2.6 a reference to a **person** shall include a reference to an individual, firm, company, partnership, corporation, unincorporated body of persons, or any state or any agency of any person;
- 1.2.7 a reference to an amendment includes a novation, re-enactment, supplement or variation (and amended shall be construed accordingly); and
- 1.2.8 clause, Schedule and paragraph headings shall not affect the interpretation of this mortgage
- 1.2.9 if there is an inconsistency between a defined term in this mortgage and in the Agreement, the provisions of this mortgage shall prevail.

### **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 bankruptcy of the Borrower or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this mortgage.

### **1.4 Nature of Security over Real Property**

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

- 1.4.1 all buildings and fixtures and fittings which are situated on, or form part of, the Property at any time;
- 1.4.2 the proceeds of sale of any part of the Property and any other monies paid or payable in respect of or in connection with the Property;
- 1.4.3 the benefit of any covenants for title given, or entered into, by any predecessor in title of the Borrower in respect of the Property and any monies paid or payable in respect of those covenants; and
- 1.4.4 all rights under any licence, agreement for sale or agreement for lease in respect of the Property.

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

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

### **1.6 Third Party Rights**

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

### **1.7 Schedules**

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

## **2 Loan**

The Lender provides to the Borrower, the Loan, on the terms and subject to the conditions of this mortgage.

## **3 Purpose of Loan**

- 3.1 The Borrower shall use the Loan only for the purpose of the Business.
- 3.2 The Lender is not obliged to monitor or verify how the Loan is used.



#### **4 Covenant to Pay**

The Borrower shall, on demand, pay to the Lender and discharge the Secured Liabilities on the Repayment Dates or, if earlier, on an Event of Default.

#### **5 Grant of Security**

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower charges the Property, with full title guarantee, to the Lender by way of second legal mortgage.

#### **6 Perfection of Security**

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 *14 JULY* 2017 in favour of Mr John Henry George Baker and Mrs Sara Baker referred to in the Charges Register."

#### **7 Liability of the Borrower**

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

7.1.1 any security, guarantee, indemnity, remedy or other right held by, or available to, the Lender that is or becomes wholly or partially illegal, void or unenforceable on any ground;

7.1.2 the Lender renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or

7.1.3 any other act or omission, which but for this clause might have discharged or otherwise prejudiced or affected the liability of the Borrower.

7.2 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 mortgage against the Borrower.

#### **8 Representations and Warranties**

The Borrower represents and warrants to the Lender in the terms set out in Schedule 1 on each day during the Security Period.

#### **9 Covenants**

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

## **10 Powers of the Lender**

The Lender shall have the powers set out in Schedule 3.

## **11 When Security becomes Enforceable**

11.1 The security constituted by this mortgage shall be immediately enforceable if an Event of Default occurs.

11.2 After the security constituted by this mortgage has become enforceable, the Lender may, in its absolute discretion, enforce all or any part of that security at the time, 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 Property.

## **12 Enforcement of Security**

### **12.1 Enforcement of security**

12.1.1 The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this mortgage) shall, as between the Lender and a purchaser from the Lender, arise on and be exercisable at any time after the execution of this mortgage, but the Lender shall not exercise such power of sale or other powers until an Event of Default occurs (whether or not such an Event of Default has been remedied or waived) whereupon it shall become immediately exercisable.

12.1.2 Section 103 of the LPA 1925 (restricting the power of sale) does not apply to the security constituted by this mortgage.

### **12.2 Extension of Statutory Powers of Leasing**

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

12.2.1 grant any lease or agreement for lease;

12.2.2 accept surrenders for leases; or

12.2.3 grant any option 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 payment of money to a lessee or tenant on a surrender) as the Lender or Receiver thinks fit, without the need to comply with any of the restrictions imposed by sections 99 and 100 of the LA 1925.

### **12.3 Prior Encumbrances**

At any time after the security constituted by this mortgage has become enforceable, or after any powers conferred by any Encumbrance having priority to this mortgage shall have become exercisable, the Lender may:

- 12.3.1 redeem such or any other prior Encumbrance;
- 12.3.2 procure the transfer of that Encumbrance to itself; and/or
- 12.3.3 settle any account of the older of any prior Encumbrance.

The settlement of any such account shall be, in the absence of any manifest error, conclusive and binding on the Borrower. All monies paid by the Lender to an encumbrancer in settlement of such an account shall be, as from its payment by the Lender, due from the Borrower to the Lender on current account and be secured as part of the Secured Liabilities.

### **12.4 Protection of Third Parties**

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

- 12.4.1 whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;
- 12.4.2 whether any power of the Lender or the Receiver is purporting to exercise, has become exercisable or is properly exercisable; or
- 12.4.3 how any money paid to the Lender or any Receiver is to be applied.

### **12.5 Privileges**

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

### **12.6 No Liability as Mortgagee in Possession**

Neither the Lender nor the Receiver shall be liable to account as mortgagee in possession in respect of all or any of the Property, nor shall either of them be liable for any loss on realisation of, or for any neglect or default of any nature in connection with, all or any of the Property for which a mortgagee in possession might be liable as such.

### **12.7 Relinquishing Possession**

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

## **12.8 Conclusive Discharge to Purchasers**

The receipt of the Lender or any Receiver shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Property or in making any acquisition in the exercise of their respective powers, the Lender and the Receiver may do so for such consideration, in such manner and on such terms as he thinks fit.

## **13 Receivers**

- 13.1 At any time after the security constituted by this mortgage has become enforceable the Lender may, without further notice, appoint by way of a deed or otherwise in writing, any one or more person or persons to be a receiver or a receiver and manager, of all or any part of the Property.
- 13.2 The Lender may, without further notice (subject to section 45 of the Insolvency Act 1986), from time to time, by way of a deed or otherwise in writing, remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in place of any Receiver whose appointment may for any reason have terminated.
- 13.3 The Lender may fix the remuneration of the Receiver without the restrictions contained in section 109 of the LPA 1925 and the remuneration of the Receiver shall be a debt secured by this mortgage, which shall be due and payable immediately on its being paid by the Lender.
- 13.4 The power to appoint a Receiver conferred by this mortgage shall be in addition to all statutory and others powers of the Lender under the Insolvency Act 1986, the LPA 1925 or otherwise and shall be exercisable without the restrictions contained in sections 103 and 109 of the LPA 1925 or otherwise.
- 13.5 The power to appoint a Receiver (whether conferred by this mortgage or by statute) shall be, and remain, exercisable by the Lender despite any prior appointment in respect of all or any part of the Property.
- 13.6 Any Receiver appointed under this mortgage shall be the agent of the Borrower and the Borrower shall be solely responsible for the contracts, engagements, acts, omissions, defaults, losses and remuneration of that Receiver and for liabilities incurred by that Receiver. The agency of the Receiver shall continue until the Borrower becomes bankrupt.

## **14 Powers of Receiver**

The Receiver shall have the powers set out in Schedule 4.

## **15 Application of Proceeds**

### **15.1 Order of application**

All monies received by the Lender or the Receiver under this mortgage after the security constituted by this mortgage has become enforceable (other than any 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:

- 15.1.1 in or towards payment of, or provision for, all costs, charges and expenses incurred by or on behalf of the Lender (and any Receiver appointed by it) under or in connection with this mortgage and all remuneration due to any Receiver under or in connection with this mortgage;
- 15.1.2 in or towards payment of, or provision for, the Secured Liabilities in such order and manner as the Lender determines; and
- 15.1.3 in payment of the surplus (if any) to the Borrower or other person entitled to it.

## **15.2 Appropriation**

Neither the Lender or the Receiver shall be bound (whether by virtue of section 109(8) of the LPA 1925, which is varied accordingly, or otherwise) to pay or appropriate any receipt rather than principal or otherwise in any particular order between any of the Secured Liabilities.

## **16 Costs and Indemnity**

### **16.1 Costs**

The Borrower shall pay to, or reimburse the Lender on demand, on a full indemnity basis, all costs and liabilities incurred by the Lender, in relation to:

- 16.1.1 this mortgage or the Property;
- 16.1.2 taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Lender's or Receiver's rights under this mortgage; or
- 16.1.3 suing for, or recovering, any of the Secured Liabilities.

Including, without limitation, the costs of any proceedings in relation to this mortgage or the Secured Liabilities or incurred in or suffered by any default or delay by the Borrower in performing any of its obligations under this mortgage.

### **16.2 Indemnity**

The Borrower shall indemnify the Lender and the Receiver on a full indemnity basis in respect of all costs incurred or suffered by any of them in or as a result of:

- 16.2.1 the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this mortgage or by law in respect of the Property;
- 16.2.2 taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the security constituted by this mortgage; or

- 16.2.3 any default or delay by the Borrower in performing any of its obligations under this mortgage.

Any representative of the Lender or the Receiver may enforce the terms of this clause 17 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

## **17 Further Assurance**

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

- 17.1 Creating, perfecting or protecting the security intended to be created by this mortgage.
- 17.2 Facilitating the realisation of any of the Property.
- 17.3 Facilitating the exercise of any right, power, authority or discretion exercisable by the Lender or the Receiver in respect of any of the Property

including, without limitation, if the Lender thinks it expedient, the execution of any transfer, conveyance, assignment or assurance of all or any of the assets forming part of, or intended to form part of, the Property (whether to the Lender or its nominee) and the giving of any notice, order or direction and the making of any registration.

## **18 Release**

Subject to clause 21.3, on the expiry of the Security Period (but not otherwise), the Lender shall, at the request and cost of the Borrower, take whatever action is necessary to release the Property from the security constituted by this mortgage.

## **19 Assignment and Transfer**

### **19.1 Assignment by the Lender**

The Lender may not assign or transfer the whole or any part of the Lender's rights and/or obligations under this mortgage to any person.

### **19.2 Assignment by the Borrower**

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

## **20 Continuing Security**

### **20.1 Independent security**

This mortgage shall be in addition to, and independent of, every other security or guarantee which the Lender may hold for any of the Secured Liabilities at any time.

No prior security held by the Lender over the whole or any part of the Property shall merge in the security created by this mortgage.

**20.2 Continuing security**

This mortgage shall remain in full force and effect as a continuing security for the Secured Liabilities unless and until the Lender discharges this mortgage in writing.

**20.3 Discharge conditional**

Any release, discharge or settlement between the Borrower and the Lender shall be deemed conditional on no payment or security received by the Lender in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded under any law relating to insolvency, bankruptcy or otherwise. Despite any such release, discharge or settlement:

20.3.1 the Lender may retain this mortgage and the security created by or under it, including all certificates and documents relating to the whole or any part of the Property, for such period as the Lender deems necessary to provide the Lender with security against any such avoidance, reduction or order for refund; and

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

**20.4 Certificates**

A certificate or determination by the Lender as to any amount for the time being due to it from the Borrower, shall be, in the absence of any manifest error, conclusive evidence of the amount due.

**20.5 Rights cumulative**

The rights and powers of the Lender conferred by this mortgage are cumulative, may be exercised as often as the Lender considers appropriate, and are in addition to its rights and powers under the general law.

**20.6 Waivers**

Any waiver or variation of any right by the Lender (whether arising under this mortgage or under the general law) shall only be effective if it is in writing and signed by the Lender and applies only in the circumstances for which it was given, and shall not prevent the Lender from subsequently relying on the relevant provision.

**20.7 Further Exercise of Rights**

No act or course of conduct or negotiation by or on behalf of the Lender shall, in any way, preclude the Lender from exercising any right or power under this mortgage or constitute a suspension or variation of any such right or power.

**20.8 Delay**

No delay or failure to exercise any right or power under this mortgage shall operate as a waiver.

**20.9 Single or Partial Exercise**

No single or partial exercise of any right under this Deed shall prevent any other or further exercise of that or any other right.

**20.10 Consolidation**

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

**20.11 Partial Invalidity**

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

**20.12 Counterparts**

This mortgage may be executed and delivered in any number of counterparts, each of which is an original and which together have the same effect as if each party had signed the same document.

**21 Notices**

**21.1 Service**

Each notice or other communication required to be given under, or in connection with, this mortgage shall be:

21.1.1 in writing, delivered personally or sent by pre-paid first-class letter; and

21.1.2 sent:

(a) to the Borrower at:

Unit F4 Fearless, Daedalus Park, Lee-on-the-Solent, Hampshire

Attention: Atlantic Refrigeration Limited

(b) to the Lender at:

24 Mayfair Gardens, Banister Park, Southampton, Hampshire SO15 2TW

Attention: Mr and Mrs Baker



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

#### **21.2 Receipt by Borrower**

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

21.2.1 if given by hand, at the time of actual delivery; and

21.2.2 if posted, on the second Business Day after the day it was sent by pre-paid first-class post.

A notice or other communication given as described in clause 21.2.1 or clause 21.2.2 on a day which 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.

#### **21.3 Receipt by Lender**

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

### **22 Governing Law**

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

This document has been signed as a Deed and delivered on the date first above written

## **Schedule 1**

### **(Representations and Warranties)**

#### **1 Ownership of Property**

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

#### **2 No Encumbrances**

The Property is free from Encumbrances other than Permitted Encumbrances and the Encumbrance created by this mortgage.

#### **3 Adverse Claims**

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

#### **4 Adverse Covenants**

There are no covenants, agreements, reservations, conditions, interests, rights or other matters whatsoever, which materially adversely affect the Property.

#### **5 No Breach of Laws**

There is no breach of any law or regulation which materially adversely affects the Property.

#### **6 No Interference in Enjoyment**

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

#### **7 No Overriding Interests**

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

#### **8 Avoidance of Security**

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

#### **9 No Prohibitions or Breaches**

There is no prohibition on the Borrower assigning its rights in the Property and the entry into this mortgage by the Borrower does not and will not constitute a breach of any policy, agreement, document or instrument binding on the Borrower or its assets.

#### **10 Environmental Compliance**

The Borrower has, at all times, complied in all respects with all applicable Environmental Law and Environmental Licences.

## **11 Information for Valuations**

- 11.1 All written information supplied by the Borrower or on its behalf for the purpose of each Valuation was true and accurate in all material respects as at its date or as at the date (if any) on which it was stated to be given.
- 11.2 The information given in clause 11.1 was complete and the Borrower did not omit to supply any information which, if disclosed, would adversely affect the Valuation.
- 11.3 Nothing has occurred since the date the information referred to in clause 11.1 was supplied and the date of this Deed which would adversely affect such Valuation.

## **Schedule 2**

### **(Covenants)**

#### **Part 1**

#### **(General covenants)**

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

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

1.1.1 create or permit any Encumbrance on, or in relation to, the Property other than any Encumbrance created by this mortgage or any Permitted Encumbrance;

1.1.2 sell, assign, transfer, part with possession of or otherwise dispose of in any manner all or any part of, or any interest in, the Property; or

1.1.3 create or grant any interest in the Property in favour of a third party.

### **2 Preservation of Property**

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

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

3.1 The Borrower shall not, without the Lender's prior written consent, use or permit the Property to be used in any way contrary to law.

3.2 The Borrower shall:

3.2.1 comply with the requirements of any law and regulation relating to or affecting the Property or the use of it or any part of it;

3.2.2 promptly undertake any maintenance, modifications, alterations or repairs to be carried out on or in connection with the Property that are required to be made by it under any law or regulation.

3.3 The Borrower shall obtain and promptly renew from time to time and comply with the terms of all consents which may be necessary to enable it to preserve, maintain or renew the Property or any part of it.

### **4 Enforcement of Rights**

The Borrower shall use its reasonable endeavours to enforce any rights and start, continue or defend any proceedings relating to any of the Property which the Lender may require from time to time.

## **5 Notice of Misrepresentations or Breaches**

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

- 5.1 any representation or warranty set out in Schedule 1 which is incorrect or misleading in any material respect when made or deemed to be repeated; and
- 5.2 any breach of covenant set out in this mortgage.

## **6 Borrower's Waiver of Set-Off**

The Borrower waives any present or future right of set-off it may have in respect of the Secured Liabilities (including sums payable by the Borrower under this mortgage).

## **7 Notice of Breaches**

- 7.1 The Borrower shall, promptly on becoming aware of any of the same, give the Lender notice in writing of any breach of:
  - 7.1.1 any representation or warranty set out in Schedule 1; and
  - 7.1.2 any covenant set out in Schedule 2.

## **Part 2**

### **(Property covenants)**

## **1 Repair and Maintenance**

The Borrower shall keep all the Property and fixtures and fittings on the Property in good and substantial repair and condition and shall keep all the Property adequately and properly painted and decorated and replace any fixtures and fittings which have become worn out or otherwise unfit for use by others of a like nature and equal value.

## **2 No Alterations**

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

### **3 Development Restrictions**

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

- 3.1.1 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
- 3.1.2 carry out or permit or allow any development, as defined in each of the Town and Country Planning Act 1990 and the Planning Act 2008, to be carried out on the Property or change or permit or allow the use of the Property to be changed.

### **4 Insurance**

4.1 The Borrower shall insure and keep insured the Property against the Insured Risks.

4.2 The Borrower shall, if requested by the Lender, produce to the Lender the policy, certificate or cover note relating to any such insurance required by paragraph 4.1 of this Part 2, Schedule 2.

### **5 Insurance Premiums**

5.1 The Borrower:

- 5.1.1 shall promptly pay all premiums in respect of any insurance policy on the Property and do all other things necessary to keep such policy in full force and effect; and
- 5.1.2 shall (if the Lender so requires) produce to the Lender the receipts for all premiums and other payments necessary for effecting and keeping up the insurance policies.

### **6 No Invalidity of Insurance**

The Borrower shall not do, omit to do, permit to be done or omitted any thing that may invalidate or otherwise prejudice any insurance policies relating to the Property.

### **7 Insurance Policies' Proceeds**

7.1 All monies payable under any of the insurance policies relating to the Property at any time (whether or not the security constituted by this mortgage has become enforceable) shall:

- 7.1.1 immediately be paid to the Lender; or
- 7.1.2 if they are not paid directly to the Lender by the insurers, be held, pending such payment, by the Borrower upon trust for the Lender.

### **8 Leases and Licences affecting the Property**

8.1 The Borrower shall not, without the prior written consent of the Lender which consent, in the case of paragraph 8.1.4, is not to be unreasonably withheld or delayed in

circumstances in which the Borrower may not unreasonably withhold or delay its consent:

- 8.1.1 grant, or agree to grant, any licence or tenancy affecting the whole or any part of the Property, or exercise the statutory powers of leasing (or agreeing to lease) or of accepting (or agreeing to accept) surrenders under sections 99 or 100 of the LPA 1925; or
- 8.1.2 in any other way dispose of (or agree to dispose of), accept the surrender of (or agree to accept the surrender of), surrender (or agree to surrender) or create any legal or equitable estate or interest in the whole or any part of the Property; or
- 8.1.3 let any person into occupation of or share occupation of the whole or any part of the Property; or
- 8.1.4 grant any consent or licence under any lease or licence affecting the Property.

## **9 No Restrictive Obligations**

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

## **10 Proprietary Rights**

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

## **11 Compliance with and Enforcement of Covenants**

11.1 The Borrower shall:

- 11.1.1 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
- 11.1.2 diligently enforce all covenants, stipulations and conditions benefiting the Property and shall not (and shall not agree to) waive, release or vary any of the same.

## **12 Notices or Claims relating to the Property**

The Borrower shall:

12.1 Give full particulars to the Lender of any notice, application or requirement 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.

12.2 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, such objections or representations in respect of any such Notice as the Lender may desire.

### **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 upon the Property or on its occupier.

### **14 Conduct of Business on Property**

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

### **15 Environment**

The Borrower shall in respect of the Property:

15.1 Comply with all the requirements of Environmental Law.

15.2 Obtain and comply with all Environmental Licences.

### **16 Inspection**

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

### **17 VAT Option to Tax**

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

17.1 exercise any VAT option to tax in relation to the Property; or

17.2 revoke any VAT option to tax exercised prior to and disclosed to the Lender in writing prior to the date of this mortgage.



### **Schedule 3**

#### **(Powers of the Lender)**

##### **1 Power to Remedy**

1.1 The Lender shall be entitled (but shall not be obliged) to remedy a breach at any time by the Borrower of any of its obligations contained in this mortgage. Any monies expended by the Lender in remedying a breach by the Borrower of any of its obligations contained in this mortgage shall be reimbursed by the Borrower to the Lender on a full indemnity basis.

1.2 In remedying any breach in accordance with paragraph 1.1 of Schedule 4, the Lender and its agents 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 or other works.

##### **2 Exercise of Rights**

The rights of the Lender under paragraph 1 of this Schedule 3 are without prejudice to any other rights of the Lender under this mortgage. The exercise of those rights shall not make the Lender liable to account as a mortgagee in possession.

## **Schedule 4**

### **(Powers of the Receiver)**

#### **1 Additional Powers**

- 1.1 Any Receiver appointed by the Lender under this mortgage shall, in addition to the powers conferred on him by statute, have the powers set out in clause 1.2 to clause 12.2 of this Schedule 4.
- 1.2 If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him states otherwise) exercise all of the powers conferred on a Receiver under this mortgage individually and to the exclusion of any other Receiver.
- 1.3 Any exercise by a Receiver of any of the powers given by Schedule 5 may be on behalf of the Borrower, the directors of the Borrower himself.

#### **2 Repair and Develop**

The Receiver may undertake or complete any works of repair, alteration, building or development on the Property and may apply for and maintain any planning permission, development consent, building regulation approval or any other permission, consent or licence to carry out any of the same.

#### **3 Grant or Accept Surrender of Leases**

The Receiver may grant, or accept surrenders of any leases or tenancies affecting the Property and may grant any other interest or right over the Property on such terms and subject to such conditions as he thinks fit.

#### **4 Employ Personnel and Advisers**

The Receiver may provide services and employ, or engage, such managers, officers, servants, contractors, workmen, agents, other personnel and professional advisers on such terms and subject to such conditions as he thinks fit. The Receiver may discharge any such person or any such person appointed by the Borrower.

#### **5 Option to Tax**

The Receiver may exercise or revoke any VAT option to tax as he thinks fit.

#### **6 Remuneration**

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

**7 Realise the Property**

The Receiver may collect and get in the Property or any part of it in respect of which he is appointed and make such demands and take such proceedings as may seem expedient for that purpose, and take possession of the Property with like rights.

**8 Manage or Reconstruct the Borrower's business**

The Receiver may carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying the business of the Borrower carried out at the Property.

**9 Dispose of the Property**

The Receiver may grant options and licences over all or any part of the Property, sell, assign, lease and accept surrenders of leases of (or concur in selling, assigning, leasing or accepting surrenders of leases of) all or any of the Property in respect of which is appointed for such consideration and, in such manner (including without limitation, by public auction or private sale) and generally on such terms and conditions as he thinks fit. The Receiver may promote, or concur in promoting, a company to purchase the Property to be disposed of by him.

**10 Sever Fixtures and Fittings**

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

**11 Give Valid Receipts**

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

**12 Make settlements**

The Receiver may make any arrangement, settlement or compromise between the Borrower and any other person which he may think expedient.

**13 Bring proceedings**

The Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to any of the Property as he thinks fit.

**14 Insure**

The Receiver may, if he thinks fit, but without prejudice to the indemnity in clause 4 of Schedule 2 effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the Borrower under this mortgage.

**15 Powers under the LPA**

The Receiver may exercise all powers provided for in the LPA 1925 in the same way as if he had been duly appointed under the LPA 1925 and exercise all powers provided for an administrative receiver in Schedule 1 of the Insolvency Act 1986.

**16 Redeem Prior Charges**

The Receiver may redeem any prior Encumbrance and settle the accounts to which the Encumbrance relates. Any accounts settled in this manner shall be, in the absence of any manifest error, conclusive and binding on the Borrower, and the monies paid shall be deemed to be an expense properly incurred by the Receiver.

**17 Absolute Beneficial Owner**

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

**18 Incidental Powers**

18.1 The Receiver may do all such other acts and things:

18.1.1 he may consider desirable or necessary for realising any of the Property;

18.1.2 he may consider incidental or conducive to any of the rights or powers conferred on the Receiver under or by virtue of this mortgage or law; or

18.1.3 which he lawfully may or can do as agent for the Borrower.

## **Schedule 5**

### **(Events of Default)**

#### **1 Non-payment**

The Borrower fails to pay any sum payable by it under the Agreement or this mortgage when due, unless its failure to pay is caused solely either by:

- 1.1 An administrative error or technical problem and payment is made within five Business Days of its due date.
- 1.2 An event (not caused by, and outside the control of, either party) that materially disrupts the systems that enable payments to be made or which otherwise prevents either or both parties from complying with their obligations under the Agreement or this mortgage.

#### **2 Non-compliance**

The Borrower fails (other than a failure to pay) to comply with any provision of the Agreement or this mortgage and, if the Lender acting reasonably, considers that the default is capable of remedy, such default is not remedied within 14 Business Days of the earlier of:

- 2.1 The Lender notifying the Borrower of the default and the remedy required.
- 2.2 The Borrower becoming aware of the default.

#### **3 Misrepresentation**

Any representation, warranty or statement made by the Borrower in relation to the Agreement or this mortgage is (or proves to have been) incomplete, untrue, incorrect or misleading when made.

#### **4 Insolvency**

- 4.1 The Borrower stops or suspends payment of any of its debts or is unable to pay any of its debts as they fall due.
- 4.2 A petition for a bankruptcy order is presented or a bankruptcy order is made against the Borrower.

## **Schedule 6**

### **(Repayment)**

#### **1      Loan Notes**

The Parent will provide the Lender with Loan Notes for the value of the Loan at the date of this agreement.

#### **2      Repayment**

The Parent shall repay the Loan in weekly instalments over a 338 week period. The loan repayments shall be paid to the Lender every Friday of each week via standing order. The first repayment of the Loan shall commence on 3 August 2012. The Borrower has guaranteed the obligations of the Parent under this Agreement.

#### **3      Default in Repayment**

If for any reason, the Parent fails to meet any of the weekly re-repayments of the Loan; the Lender can demand the Borrower to pay the Loan in full immediately.

Signed as a Deed by **ATLANTIC** )  
**REFRIGERATION LIMITED** )  
acting by a director and a director )  
or its secretary )

Director



Director/Secretary



Signed as a Deed by )  
**JOHN HENRY GEORGE BAKER** )  
in the presence of )



Signature of witness



Name and address of witness

Occupation of witness

Kate Burrows  
Legal Assistant  
Paris Smith LLP  
Number 1 London Road  
Southampton SO15 2AE

Signed as a Deed by )  
**SARA BAKER** )  
in the presence of )



Signature of witness



Name and address of witness

Occupation of witness

Kate Burrows  
Legal Assistant  
Paris Smith LLP  
Number 1 London Road  
Southampton SO15 2AE