



Registration of a Charge

Company name: **SWEET STREET DESSERTS LIMITED**

Company number: **03108082**



X5MVIJ5C

Received for Electronic Filing: **29/12/2016**

Details of Charge

Date of creation: **23/12/2016**

Charge code: **0310 8082 0001**

Persons entitled: **WELLS FARGO BANK, NATIONAL ASSOCIATION**

Brief description: **2.2 CHARGED DEBT THE CHARGOR CHARGES BY WAY OF A FIRST FIXED CHARGE ALL OF ITS RIGHTS IN RESPECT OF THE CHARGED DEBT. "CHARGED DEBT" MEANS THE DEBT OWED BY THE BANK TO THE CHARGOR REPRESENTED BY THE CREDIT BALANCE. "CREDIT BALANCE" MEANS THE CREDIT BALANCE FROM TIME TO TIME ON THE COLLATERAL ACCOUNT, INCLUDING ALL INTEREST ACCRUED ON THAT BALANCE.**

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 SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION**

**FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL
INSTRUMENT.**

Certified by:

LAUREN BLABER



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 3108082

Charge code: 0310 8082 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 23rd December 2016 and created by SWEET STREET DESSERTS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 29th December 2016 .

Given at Companies House, Cardiff on 30th December 2016

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

CASH COLLATERAL DEED

23-December-2016 J.L.

THIS DEED is dated Click here to enter text. and is made BETWEEN:		
(1)	Sweet Street Desserts Limited a company incorporated in England under company number 03108082 (the Chargor)	
(2)	WELLS FARGO BANK, NATIONAL ASSOCIATION, acting through its London Branch at One Plantation Place, 30 Fenchurch Street, London EC3M 3BD (the Bank)	
Account Number:		88003752
Initial Collateral Amount:		£ 135,000

IT IS AGREED as follows:

1. INTERPRETATION

1.1 Definitions

In this Deed:

Act means the Law of Property Act 1925.

Charged Debt means the debt owed by the Bank to the Chargor represented by the Credit Balance.

Collateral Account means the account in the name of the Chargor with the Bank with the account number specified above and includes any other account which is a successor to the account on any renumbering or re-designation of accounts and any account into which all or part of a balance from the account is transferred for investment or administrative purposes.

Credit Balance means the credit balance from time to time on the Collateral Account, including all interest accrued on that balance.

an **Enforcement Event** will occur if the Chargor fails to pay any of the Secured Liabilities when due.

Financial Collateral has the meaning given to that term in the Financial Collateral Regulations.

Financial Collateral Regulations means the Financial Collateral Arrangements (No 2) Regulations 2003 (S.I. 2003/3226) or equivalent legislation in any applicable jurisdiction bringing into effect Directive 2002/47/EC on financial collateral arrangements.

Party means a party to this Deed.

Receiver means a receiver appointed pursuant to this Deed or to any applicable law, whether alone or jointly, and includes a receiver and/or manager and, if the Bank is permitted by law to appoint an administrative receiver, includes an administrative receiver.

Secured Liabilities all present and future obligations and liabilities of the Chargor to the Bank, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity and whether or not the Bank was an original party to the relevant transaction and in whatever name or style, together with all interest (including, without limitation, default interest) accruing in respect of those obligations or liabilities.

Security Financial Collateral Arrangement has the meaning given to that term in the Financial Collateral Regulations.

Security Interest means a mortgage, charge, pledge, lien or other security interest securing any obligation of any

person or any other agreement or arrangement having a similar effect.

Security Period means the period beginning on the date of this Deed and ending on the date on which all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full.

1.2 Construction

(a) Any reference in this Deed to:

(i) **assets** includes present and future properties, revenues and rights of every description;

(ii) an **amendment** includes a supplement, novation, extension (whether of maturity or otherwise), restatement, re-enactment or replacement (however fundamental and whether or not more onerous) and **amend** will be construed accordingly;

(iii) a **disposal** includes a sale, transfer, assignment, grant, lease, licence, declaration of trust or other disposal, whether voluntary or involuntary, and **dispose** will be construed accordingly;

(iv) a **person** includes one or more of that person's permitted assigns, permitted transferees or successors in title, delegates, sub-delegates and appointees and any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality);

(v) a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;

(vi) a provision of law is a reference to that provision as amended or re-enacted;

(vii) words importing the singular shall include the plural and vice versa;

(viii) an agreement or instrument includes (without prejudice to any prohibition on amendments) any amendment to that agreement or other instrument, including any change in the purpose of, any extension of or any increase in the amount of a facility or any additional facility; and

- (ix) the term **this Security** means any Security Interest created, evidenced or conferred by or under this Deed.
 - (b) Unless expressly provided to the contrary in this Deed a Clause is a reference to a clause of this Deed. The headings in this Deed are for ease of reference only and do not affect its interpretation.
 - (c) Any covenant of the Chargor under this Deed (other than a payment obligation) remains in force during the Security Period.
 - (d) If the Bank considers that an amount paid to it in respect of the Secured Liabilities is capable of being avoided or otherwise set aside on the liquidation or administration of the payer or otherwise, then that amount will not be considered to have been irrevocably paid for the purposes of this Deed.
 - (e) Unless expressly provided to the contrary in this Deed person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Deed. The consent of any person who is not a Party is not required to rescind or vary this Deed at any time.
- 2. CREATION OF SECURITY**
- 2.1 General**
- All the security created under this Deed:
- (a) is created in favour of the Bank;
 - (b) is created over present and future assets of the Chargor;
 - (c) is security for the payment, discharge and performance of all the Secured Liabilities; and
 - (d) is made with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994.
- 2.2 Charged Debt**
- The Chargor charges by way of a first fixed charge all of its rights in respect of the Charged Debt.
- 3. RESTRICTIONS ON DEALINGS**
- Except with the prior written consent of the Bank, the Chargor must not (a) create or permit to subsist any Security Interest (other than this Security) or any third party interest on or in the Charged Debt; or (b) dispose of the Charged Debt.
- 4. COLLATERAL ACCOUNT**
- 4.1 Maintenance of Collateral Account**
- The Chargor must maintain the Collateral Account with the Bank.
- 4.2 Initial Collateral Amount**
- The Chargor must ensure that the Credit Balance on the date of this Deed is not less than the Initial Collateral Amount.
- 5. REPRESENTATIONS AND WARRANTIES**
- 5.1 Binding obligations**
- The Chargor represents and warrants to the Bank that this Deed constitutes its legally valid and binding obligations enforceable in accordance with its respective terms.
- 5.2 Nature of security**
- The Chargor represents and warrants to the Bank that:

- (a) it is the sole legal and beneficial owner of the Charged Debt;
- (b) the Charged Debt is free from any Security Interest (except for those created by or under this Deed) and any other rights or interests in favour of third parties; and
- (c) this Deed creates those Security Interests it purports to create and is not liable to be avoided or otherwise set aside on its liquidation or administration or otherwise.

5.3 Times for making representations

The representations and warranties set out in this Deed (including in this Clause) are made by the Chargor on the date of this Deed. Each representation under this Deed is deemed to be made by the Chargor by reference to the facts and circumstances then existing on each date during the Security Period.

6. CREDIT BALANCE

6.1 Withdrawals

The Chargor must not withdraw any part of any Credit Balance without the prior consent of the Bank.

6.2 Notices of charge

On the date of this Deed the Chargor, by executing this Deed, notifies the Bank that it has created this Security and the Bank, by executing this Deed, acknowledges this Security and the notice referred to above.

7. PRESERVATION OF SECURITY

7.1 Continuing security

This Security is a continuing security and will extend to the ultimate balance of the Secured Liabilities, regardless of any intermediate payment or discharge in whole or in part.

7.2 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of the Chargor or any security for those obligations or otherwise) is made by the Bank in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of the Chargor under this Deed will continue or be reinstated as if the discharge, release or arrangement had not occurred.

7.3 Waiver of defences

The obligations of the Chargor under this Deed will not be affected by any act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under this Deed including (without limitation and whether or not known to it or the Bank):

- (a) any time, waiver or consent granted to, or composition with, any person;
- (b) the release of any person under the terms of any composition or arrangement with any creditor of any person;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any person;
- (d) any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;

- (e) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any person;
 - (f) any amendment of any document;
 - (g) any unenforceability, illegality, invalidity or non-provability of any obligation of any person under any document or security; or
 - (h) any insolvency or similar proceedings.
- 7.4 Immediate recourse**
- The Chargor waives any right it may have of first requiring the Bank (or any trustee or agent on its behalf) to proceed against or enforce any other right or security or claim payment from any person before claiming from the Chargor under this Deed. This waiver applies irrespective of any law or provision of any document to the contrary.
- 7.5 Appropriations**
- The Bank (or any trustee or agent on its behalf) may at any time during the Security Period (a) refrain from applying or enforcing any other moneys, security or rights held or received by the Bank (or any trustee or agent on its behalf) in respect of the Secured Liabilities, or apply and enforce them in such manner and order as it sees fit (whether against the Secured Liabilities or otherwise) and the Chargor will not be entitled to the benefit of such moneys, security or rights and (b) hold in an interest-bearing suspense account any moneys received from the Chargor or on account of the Chargor's liability under this Deed.
- 7.6 Additional security**
- This Deed is in addition to and is not in any way prejudiced by any other security now or subsequently held by the Bank. No prior security held by the Bank (in its capacity as such or otherwise) over any part of the Credit Balance will merge into this Security.
- 8. WHEN SECURITY BECOMES ENFORCEABLE**
- 8.1 Enforcement Event**
- This Security will become immediately enforceable if an Enforcement Event occurs.
- 8.2 Discretion**
- After this Security has become enforceable, the Bank may in its absolute discretion enforce all or any part of this Security in any manner it sees fit.
- 9. ENFORCEMENT OF SECURITY**
- 9.1 General**
- For the purposes of all powers implied by statute, the Secured Liabilities are deemed to have become due and payable on the date of this Deed. Section 103 of the Act (restricting the power of sale) and Section 93 of the Act (restricting the right of consolidation) do not apply to this Security.
- 9.2 No liability as mortgagee in possession**
- The Bank will not be liable, by reason of entering into possession of any part of the Credit Balance to account as mortgagee in possession or for any loss on realisation or for any default or omission for which a mortgagee in possession might be liable.
- 9.3 Privileges**
- The Bank is entitled to all the rights, powers, privileges and immunities conferred by the Act on mortgagees and receivers duly appointed under the Act, except that Section 103 of the Act does not apply.

9.4 Applying Credit Balance

The Bank may at any time after this Security becomes enforceable apply all or any part of the Credit Balance against all or any part of the Secured Liabilities.

9.5 Contingencies

If this Security is enforced at a time when no Secured Liabilities are due but at a time when amounts may or will become due, the Bank may pay the proceeds of any recoveries effected by it into a suspense account.

9.6 Financial Collateral

To the extent that this Security constitutes Financial Collateral and this Deed and the obligations of the Chargor hereunder constitute a Security Financial Collateral Arrangement, the Bank shall have the right, at any time after this Security becomes enforceable, to appropriate all or any of that part of the Credit Balance in or towards the payment and/or discharge of the Secured Liabilities in such order as the Bank in its absolute discretion may from time to time determine. The value of the Credit Balance appropriated in accordance with this clause shall be the amount of cash appropriated. The Chargor agrees that the method of valuation provided for in this clause is commercially reasonable for the purposes of the Financial Collateral Regulations.

10. APPOINTMENT AND POWER OF RECEIVERS

10.1 Method of appointment and removal

The Bank may not appoint a Receiver by reason only of a moratorium being obtained, or anything being done with a view to a moratorium being obtained, under section 1A of the Insolvency Act 1986. Every appointment or removal of a Receiver, of any delegate or of any other person by the Bank pursuant to this Deed may be made in writing under the hand of any officer or manager of the Bank (subject to any requirement for a court order in the removal of an administrative receiver).

10.2 Powers of Receiver

Every Receiver shall have all the powers (a) of the Bank under this Deed; (b) conferred by the Act on mortgagees in possession and on receivers appointed under the Act; (c) in relation to, and to the extent applicable to, the Security Assets or any of them, the powers specified in Schedule 1 of the Insolvency Act 1986 (whether or not the Receiver is an administrative receiver within the meaning of that Act); and (d) in relation to any Security Asset, which he would have if he were its only beneficial owner.

10.3 Joint or several

If two or more persons are appointed as Receivers of the same assets, they may act jointly and/or severally so that (unless any instrument appointing them specifies to the contrary) each of them may exercise individually all the powers and discretions conferred on Receivers by this Deed.

10.4 Receiver as agent

Each Receiver shall be the agent of the Chargor which shall be solely responsible for his acts and defaults and for the payment of his remuneration.

10.5 Receiver's remuneration

Every Receiver shall be entitled to remuneration for his services at a rate to be fixed by agreement between him and the Bank, and the maximum rate specified in section 109(6) of the Act shall not apply.

10.6 Delegation

The Bank and any Receiver may, for the time being and from time to time, delegate by power of attorney or in any other manner (including, without limitation, under the hand of any manager of the Bank) to any person any right, power or discretion exercisable by the Bank or such Receiver (as the case may be) under this Deed. Any such delegation may be made upon the terms (including, without limitation, power to sub delegate) and subject to any regulations which the Bank or such Receiver (as the case may be) may think fit. Neither the Bank nor any Receiver will be in any way liable or responsible to the Chargor for any loss or liability arising from any act, default, omission or misconduct on the part of any such delegate or sub delegate who shall be entitled to all the indemnities to which his appointor is entitled under this Deed.

10.7 Protection of third parties

No person dealing with the Bank or any Receiver shall be bound or concerned (a) to see or enquire whether the right of the Bank or any Receiver to exercise any of the powers conferred by this Deed has arisen or not; (b) with the propriety of the exercise or purported exercise of those powers; or (c) with the application of any moneys paid to the Bank, to any Receiver or to any other person.

10.8 Enforcement Expenses

Immediately upon demand, each Chargor shall pay all other costs and expenses (including legal fees and VAT) incurred from time to time in connection with the enforcement of or preservation of rights under this Deed by the Bank, or any Receiver, attorney, manager, agent or other person appointed by the Bank under this Deed or by statute, and keep each of them indemnified against any failure or delay in paying the same.

11. APPLICATION OF PROCEEDS

Any moneys received by the Bank or any Receiver after this Security has become enforceable must be applied in the following order of priority:

- (a) in or towards payment of or provision for all costs and expenses incurred by the Bank and any Receiver under or in connection with this Deed;
- (b) in or towards payment of or provision for the Secured Liabilities; and
- (c) in payment of the surplus (if any) to the Chargor or other person entitled to it.

This Clause is subject to the payment of any claims having priority over this Security. This Clause does not prejudice the right of the Bank to recover any shortfall from the Chargor.

12. FURTHER ASSURANCES

The Chargor must, at its own expense, take whatever action the Bank may require for (a) creating, perfecting or protecting any security intended to be created by or pursuant to this Deed; (b) facilitating the realisation of the Charged Debt or the exercise of any right, power or discretion exercisable, by the Bank or any of its delegates or sub-delegates in respect of the Charged Debt. This includes (i) the execution of any transfer, conveyance, assignment or assurance of any property, whether to the Bank or to its nominee; and (ii) the giving of any notice, order or direction and the making of any registration, which, in any such case, the Bank may think expedient.

13. POWER OF ATTORNEY

The Chargor, by way of security, irrevocably and severally appoints the Bank and each Receiver to be its attorney to take any action which the Chargor is obliged to take under this Deed. The Chargor ratifies and confirms whatever any attorney does or purports to do under its appointment under this Clause.

14. MISCELLANEOUS

14.1 Covenant to pay

The Chargor shall, on demand, pay to the Bank and discharge the Secured Liabilities when they become due.

14.2 Currencies

For the purpose of exercising any right to apply the Credit Balance to the Secured Liabilities, if all or any part of the Credit Balance and the Secured Liabilities are in different currencies, the Bank may convert either amount at a market rate of exchange in its usual course of business for the purpose of exercising that right.

14.3 No liability

The Bank will not be liable for any loss of any kind resulting from the exercise of its rights under this Deed.

14.4 Calculations and certificates

Any certification or determination by the Bank of a rate or amount under this Deed is, in the absence of manifest error, conclusive evidence of the matter to which it relates.

14.5 Rights and remedies cumulative

The rights of the Bank under this Deed may be exercised as often as necessary, are cumulative and not exclusive of its rights under the general law, and may be waived only in writing and specifically. Delay in exercising or non-exercise of any right is not a waiver of that right.

14.6 Invalidity

If, at any time, any provision of this Deed is or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired.

14.7 Changes to the Parties

The Chargor may not assign or transfer any of its rights or obligations under this Deed without the prior consent of the Bank. The Bank may assign any of its rights or transfer any of its rights or obligations under this Deed.

15. SET-OFF

The Bank may at any time set off any liability of the Chargor to the Bank against any liability of the Bank to the Chargor, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Deed. If the liabilities to be set off are expressed in different currencies, the Bank may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off. Any exercise by the Bank of its rights under this clause shall not limit or affect any other rights or remedies available to it under this deed or otherwise. The Bank is not obliged to exercise its rights under this clause.

16. RELEASE

At the end of the Security Period, the Bank shall, at the request and cost of the Chargor, take whatever action is reasonably necessary to release the Charged Debt from this Security.

17. GOVERNING LAW

This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

18. ENFORCEMENT

18.1 Jurisdiction

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (a Dispute).

- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

- (c) This Clause is for the benefit of the Bank only. As a result, to the extent allowed by law (i) the Bank will not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction; and (ii) the Bank may take concurrent proceedings in any number of jurisdictions.

THIS DEED has been entered into and executed as a deed by the Chargor with the intention that it be delivered on the date stated at the beginning of this Deed.

SIGNATORIES

Chargor

EXECUTED AS A DEED by)

Sweet Street Desserts Limited)

acting by)

Director/Secretary

) Douglas Messinger
Name

In the presence of

Witness signature:

Witness name:

Anthony M. DiGirolamo

Bank

WELLS FARGO BANK NATIONAL ASSOCIATION,
LONDON BRANCH

By: 

Name: MAUBEEU K. RIMBOWUS

Title: ASSISTANT VICE PRESIDENT