

# MR01

## Particulars of a charge



Companies House

100090/23



Go online to file this information  
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A fee is be payable with this form  
Please see 'How to pay' on the last page.

☒ **What this form is for**  
You may use this form to register  
a charge created or evidenced by  
an instrument.

☒ **What this form is NOT for**  
You may not use this form to  
register a charge where there is no  
instrument. Use form MR08.

For further information, please  
refer to our guidance at:  
[www.gov.uk/companieshouse](http://www.gov.uk/companieshouse)

This form **must be delivered to the Registrar for registration**  
**21 days** beginning with the day after the date of creation of the  
delivered outside of the 21 days it will be rejected unless it is acc  
court order extending the time for delivery.



You **must** enclose a certified copy of the instrument with this for  
scanned and placed on the public record. **Do not send the orig**



\*A909FTQ0\*

A17

06/03/2020

#192

COMPANIES HOUSE

FRIDAY

### 1 Company details

Company number ☒ 0 3 5 5 6 4 5 0 ☒

Company name in full ☒ Advance Northumberland (Commercial) Limited ☒

0 0 0 3 For official use

→ **Filling in this form**

Please complete in typescript or in  
bold black capitals.

All fields are mandatory unless  
specified or indicated by \*

### 2 Charge creation date

Charge creation date ☒ 2 5 0 2 2 0 2 0 ☒

### 3 Names of persons, security agents or trustees entitled to the charge

Please show the names of each of the persons, security agents or trustees  
entitled to the charge.

Name ☒ Northumberland County Council ☒

Name

Name

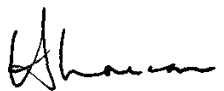
Name

If there are more than four names, please supply any four of these names then  
tick the statement below.

☐ I confirm that there are more than four persons, security agents or  
trustees entitled to the charge.

MR01

## Particulars of a charge

<b>4</b>	<b>Brief description</b>	
Brief description	<p>Please give a short description of any land, ship, aircraft or intellectual property registered or required to be registered in the UK subject to a charge (which is not a floating charge) or fixed security included in the instrument.</p> <p>Land tinted yellow, tinted mauve and hatched blue on the Title Plan ND186351</p>	<p>Please submit only a short description if there are a number of plots of land, aircraft and/or ships, you should simply describe some of them in the text field and add a statement along the lines of, "for more details please refer to the instrument".</p> <p>Please limit the description to the available space.</p>
<b>5</b>	<b>Other charge or fixed security</b>	
	<p>Does the instrument include a charge (which is not a floating charge) or fixed security over any tangible or intangible or (in Scotland) corporeal or incorporeal property not described above? Please tick the appropriate box.</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	
<b>6</b>	<b>Floating charge</b>	
	<p>Is the instrument expressed to contain a floating charge? Please tick the appropriate box.</p> <p><input type="checkbox"/> Yes Continue</p> <p><input checked="" type="checkbox"/> No Go to <b>Section 7</b></p> <p>Is the floating charge expressed to cover all the property and undertaking of the company?</p> <p><input type="checkbox"/> Yes</p>	
<b>7</b>	<b>Negative Pledge</b>	
	<p>Do any of the terms of the charge prohibit or restrict the company from creating further security that will rank equally with or ahead of the charge? Please tick the appropriate box.</p> <p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>	
<b>8</b>	<b>Trustee statement<sup>①</sup></b>	
	<p>You may tick the box if the company named in Section 1 is acting as trustee of the property or undertaking which is the subject of the charge.</p> <p><input type="checkbox"/></p>	<p><sup>①</sup> This statement may be filed after the registration of the charge (use form MR06).</p>
<b>9</b>	<b>Signature</b>	
Signature	<p>Please sign the form here.</p> <p>Signature</p> <p>X  X</p> <p>This form must be signed by a person with an interest in the charge.</p>	

# MR01

## Particulars of a charge



### Presenter information

You do not have to give any contact information, but if you do, it will help Companies House if there is a query on the form. The contact information you give will be visible to searchers of the public record.

Contact name **Legal Services**

Company name **Northumberland County Council**

Address **County Hall**

**Morpeth**

Post town

County/Region **Northumberland**

Postcode **N E 6 1 2 E F**

Country **United Kingdom**

DX

Telephone **01670 623304**



### Certificate

We will send your certificate to the presenter's address if given above or to the company's Registered Office if you have left the presenter's information blank.



### Checklist

**We may return forms completed incorrectly or with information missing.**

**Please make sure you have remembered the following:**

- ☐ The company name and number match the information held on the public Register.
- ☐ You have included a certified copy of the instrument with this form.
- ☐ You have entered the date on which the charge was created.
- ☐ You have shown the names of persons entitled to the charge.
- ☐ You have ticked any appropriate boxes in Sections 3, 5, 6, 7 & 8.
- ☐ You have given a description in Section 4, if appropriate.
- ☐ You have signed the form.
- ☐ You have enclosed the correct fee.
- ☐ Please do not send the original instrument; it must be a certified copy.



### Important information

**Please note that all information on this form will appear on the public record.**



### How to pay

**A fee of £23 is payable to Companies House in respect of each mortgage or charge filed on paper.**

Make cheques or postal orders payable to 'Companies House.'



### Where to send

**You may return this form to any Companies House address. However, for expediency, we advise you to return it to the appropriate address below:**

**For companies registered in England and Wales:**

The Registrar of Companies, Companies House,  
Crown Way, Cardiff, Wales, CF14 3UZ.  
DX 33050 Cardiff.

**For companies registered in Scotland:**

The Registrar of Companies, Companies House,  
Fourth floor, Edinburgh Quay 2,  
139 Fountainbridge, Edinburgh, Scotland, EH3 9FF.  
DX ED235 Edinburgh 1  
or LP - 4 Edinburgh 2 (Legal Post).

**For companies registered in Northern Ireland:**

The Registrar of Companies, Companies House,  
Second Floor, The Linenhall, 32-38 Linenhall Street,  
Belfast, Northern Ireland, BT2 8BG.  
DX 481 N.R. Belfast 1.



### Further information

For further information, please see the guidance notes on the website at [www.gov.uk/companieshouse](http://www.gov.uk/companieshouse) or email [enquiries@companieshouse.gov.uk](mailto:enquiries@companieshouse.gov.uk)

**This form is available in an alternative format. Please visit the forms page on the website at [www.gov.uk/companieshouse](http://www.gov.uk/companieshouse)**



**FILE COPY**

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

Company number: 3556450

Charge code: 0355 6450 0003

The Registrar of Companies for England and Wales hereby certifies that a charge dated 25th February 2020 and created by ADVANCE NORTHUMBERLAND (COMMERCIAL) LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 6th March 2020.



Given at Companies House, Cardiff on 12th March 2020



**Companies House**



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

**DATED**

*25 FEBRUARY 2020*

between

**ADVANCE NORTHUMBERLAND (COMMERCIAL) LIMITED**

and

**NORTHUMBERLAND COUNTY COUNCIL**

**LEGAL CHARGE**

Relating to premises at Station Road, Hexham,

in the County of Northumberland

*We certify this is  
a true copy of the  
original document.*

*L. Longwell*

NORTHUMBERLAND COUNTY COUNCIL  
COUNTY HALL, MORPETH,  
NORTHUMBRELAND . NE61 2EF

*05/03/2020*

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This deed is dated

25 FEBRUARY 2020

**Parties**

- (1) **ADVANCE NORTHUMBERLAND (COMMERCIAL) LIMITED** incorporated and registered in England and Wales with company number 03556450 whose registered office is at Wansbeck Workspace, Rotary Parkway, Ashington, Northumberland, NE63 8QZ (**Borrower**)
- (2) **NORTHUMBERLAND COUNTY COUNCIL** of County Hall, Morpeth, Northumberland, NE61 2EF (**Lender**)

**BACKGROUND**

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

**Agreed terms**

**1. Definitions and interpretation**

**1.1 Definitions**

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

**Certificate of Title:** any report on or certificate of title relating to the Property supplied to the Lender by the Borrower (or on its behalf).

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

**Environment:** the natural and man-made environment including all or any of the following media, namely air, water and land (including air within buildings and other

natural or man-made structures above or below the ground) and any living organisms (including man) or systems supported by those media.

**Environmental Law:** 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 in so far as they relate to or apply to the Environment.

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

**Facility Agreement:** the facility agreement dated on or around the date of this Legal Charge with Loan Reference Prud/1/01 between the Borrower and the Lender for the provision of the loan facilities secured by this deed, in the form annexed hereto at Schedule 2.

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

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

**Property:** the freehold or leasehold property (whether registered or unregistered) owned by the Borrower described in Schedule 1, which is to be subject to the Security created by, or pursuant to, this deed (and references to the Property shall include references to any part of it).

**Receiver:** a receiver or receiver and manager appointed by the Lender under clause 12.

**Secured Liabilities:** all present and future obligations and liabilities of the Borrower to the Lender, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity, under or in connection with the Facility Agreement or this deed (including, without limitation, those arising under clause 26.3.2), together with all interest (including, without limitation, default interest) accruing in respect of those monies, obligations or liabilities.

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

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



**Valuation:** any valuation relating to the Property supplied to the Lender by the Borrower (or on its behalf).

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

## **1.2 Interpretation**

In this deed:

- 1.2.1 clause and Schedule headings shall not affect the interpretation of this deed;
- 1.2.2 a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality);
- 1.2.3 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- 1.2.4 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- 1.2.5 a reference to a party shall include that party's successors, permitted assigns and permitted transferees and this deed shall be binding on, and enure to the benefit of, the parties to this deed and their respective personal representatives, successors, permitted assigns and permitted transferees;
- 1.2.6 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- 1.2.7 a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 1.2.8 a reference to **writing** or **written** excludes fax and email;
- 1.2.9 an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- 1.2.10 a reference to **this deed** (or any provision of it) or to any other agreement or document referred to in this deed is a reference to this deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this deed) from time to time;

- 1.2.11 unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this deed;
- 1.2.12 any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 1.2.13 a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and **amend** and **amended** shall be construed accordingly);
- 1.2.14 a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;
- 1.2.15 a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- 1.2.16 a reference to **continuing** in relation to an Event of Default means an Event of Default that has not been remedied or waived;
- 1.2.17 a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it; and
- 1.2.18 a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

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

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

- 1.3.1 all buildings and fixtures and fittings (including trade and tenant's fixtures and fittings) and fixed plant and machinery that are situated on or form part of the Property at any time;
- 1.3.2 the proceeds of the sale of any part of the Property and any other monies paid or payable in respect of or in connection with the Property;
- 1.3.3 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

1.3.4 all rights under any licence, agreement for sale or agreement for lease in respect of the Property.

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

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

#### **1.5 Perpetuity period**

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

#### **1.6 Schedules**

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

### **2 Covenant to pay**

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

### **3 Grant of security**

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

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

### **4 Perfection of security**

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

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

"No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the proprietor for the time being of the charge dated \_\_\_\_\_ in favour of the Northumberland County Council referred to in the charges register or their conveyancer."

#### **4.2 Further advances**

The Lender covenants with the Borrower that it shall perform its obligations to make advances under the Facility Agreement (including any obligation to make available further advances).

#### **4.3 First registration**

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

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

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

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

#### **5.1 Liability not discharged**

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

- 5.1.1 any security, guarantee, indemnity, remedy or other right held by, or available to, the Lender that is, or becomes, wholly or partially illegal, void or unenforceable on any ground;
- 5.1.2 the Lender renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any

compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or

- 5.1.3 any other act or omission that, but for this clause 5.1, might have discharged, or otherwise prejudiced or affected, the liability of the Borrower.

## **5.2 Immediate recourse**

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

## **6 Representations and warranties**

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

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

### **6.2 Ownership of Property**

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

### **6.3 No Security**

The Property is free from any Security other than Permitted Security and the Security created by this deed.

### **6.4 No adverse claims**

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

### **6.5 No adverse covenants**

There are no covenants, agreements, reservations, conditions, interests, rights or other matters whatever that materially and adversely affects the Property.

### **6.6 No breach of laws**

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

**6.7 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.

**6.8 No overriding interests**

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

**6.9 No prohibitions or breaches**

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

**6.10 Environmental compliance**

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

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

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

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

6.11.3 In the case of the first Valuation and Certificate of Title only, nothing has occurred since the date the information referred to in clause 6.11.1 was supplied and the date of this deed that would adversely affect such Valuation or Certificate of Title.

**6.12 Avoidance of security**

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

### **6.13 Enforceable security**

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

## **7 General covenants**

### **7.1 Negative pledge and disposal restrictions**

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

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

### **7.2 Preservation of Property**

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

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

- 7.3.1 The Borrower shall not use or permit the Property to be used in any way contrary to law.
- 7.3.2 The Borrower shall:
  - 7.3.2.1 comply with the requirements of any law or regulation relating to or affecting the Property or the use of them or any part of them;

7.3.2.2 obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Property or their use or that are necessary to preserve or maintain the Property; and

7.3.2.3 promptly effect any maintenance, modifications, alterations or repairs that are required by any law or regulation to be effected on or in connection with the Property.

#### **7.4 Enforcement of rights**

The Borrower shall use its best endeavours to:

7.4.1 procure the prompt observance and performance by the relevant counterparty to any agreement or arrangement with the Borrower in relation to the Property of the covenants and other obligations imposed on such counterparty; and

7.4.2 enforce any rights and institute, continue or defend any proceedings relating to any of the Property that the Lender may require from time to time.

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

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

7.5.1 any representation or warranty set out in this deed that is incorrect or misleading in any material respect when made or deemed to be repeated; and

7.5.2 any breach of any covenant set out in this deed.

#### **7.6 Title documents**

The Borrower shall, upon request from the Lender at any time following execution of this deed, deposit with the Lender and the Lender shall, for the duration of this deed, be entitled to hold all deeds and documents of title relating to the Property that are in the possession or control of the Borrower (and if these are not within the possession or control of the Borrower, the Borrower undertakes to obtain possession of all these deeds and documents of title).

### **8 Property covenants**

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



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

## **8.2 No alterations**

8.2.1 Subject to clause 8.2.2, the Borrower shall not, without the prior written consent of the Lender:

8.2.1.1 pull down or remove the whole or any part of any building forming part of the Property nor permit the same to occur; or

8.2.1.2 make or permit to be made any alterations to the Property or sever or remove, or permit to be severed or removed, any of its fixtures or fittings (except to make any necessary repairs or renew or replace the same in accordance with clause 8.1).

8.2.2 No consent of the Lender shall be required in relation to clause 8.2.1 where the proposed activities are set out within the Business Case appended to the Facility Agreement.

8.2.3 The Borrower shall promptly give notice to the Lender if the premises or fixtures or fittings forming part of the Property are destroyed or damaged.

## **8.3 Development restrictions**

8.3.1 Save in accordance with any proposed development set out within the Business Case appended to the Facility Agreement, the Borrower shall not, without the prior written consent of the Lender:

8.3.1.1 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

8.3.1.2 carry out, or permit or suffer to be carried out, on the Property any development (as defined in each of the Town and Country Planning Act 1990 and the Planning Act 2008) or change or permit, or suffer to be changed, the use of the Property.

## **8.4 Insurance**

8.4.1 The Borrower shall insure and keep insured the Property against:

- 8.4.1.1 loss or damage by fire or terrorist acts, including any third-party liability arising from such acts;
  - 8.4.1.2 other risks, perils and contingencies that would be insured against by reasonably prudent persons carrying on the same class of business as the Borrower; and
  - 8.4.1.3 any other risk, perils and contingencies as the Lender may reasonably require.
- 8.4.2 Any such insurance must be with an insurance company or underwriters, and on such terms, as are reasonably acceptable to the Lender and must include property owners' public liability and third party liability insurance and be for not less than the replacement value of the Property (meaning, in the case of any premises on the Property, the total cost of entirely rebuilding, reinstating or replacing the premises in the event of their being destroyed, together with architects', surveyors', engineers' and other professional fees and charges for shoring or propping up, demolition, site clearance and reinstatement with adequate allowance for inflation) and loss of rents payable by the tenants or other occupiers of the Property for a period of at least three (3) years, including provision for increases in rent during the period of insurance.
- 8.4.3 The Borrower shall, if requested by the Lender, produce to the Lender each policy, certificate or cover note relating to any insurance required by clause 8.4.1.
- 8.4.4 The Borrower shall, if requested by the Lender, procure that a note of the Lender's interest is endorsed on each Insurance Policy (other than public liability and third party liability insurances) effected or maintained by it or any person on its behalf in accordance with clause 8.4.1 but without the Lender having any liability for any premium in relation to those Insurance Policies unless it has expressly and specifically requested to be made liable in respect of any increase in premium or unpaid premium in respect of any Insurance Policy.

## **8.5 Insurance premiums**

The Borrower shall:

- 8.5.1 promptly pay all premiums in respect of each Insurance Policy required by clause 8.4.1 and do all other things necessary to keep that policy in full force and effect; and

8.5.2 (if the Lender so requires) give to the Lender copies of the receipts for all premiums and other payments necessary for effecting and keeping up each Insurance Policy required by clause 8.4.1.

**8.6 No invalidation of insurance**

The Borrower shall not do or omit to do, or permit to be done or omitted, any act or thing that may invalidate or otherwise prejudice any Insurance Policy required by clause 8.4.1.

**8.7 Proceeds from Insurance Policies**

All monies payable under any Insurance Policy required by clause 8.4.1 shall (whether or not the security constituted by this deed has become enforceable) at the option of the Lender, be applied in making good or recouping expenditure in respect of the loss or damage for which those monies are received or in, or towards, discharge or reduction of the Secured Liabilities.

**8.8 Leases and licences affecting the Property**

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

8.8.1 grant any licence or tenancy exceeding seven (7) years affecting the whole or any part of the Property, or exercise the statutory powers of leasing or of accepting surrenders under section 99 or section 100 of the LPA 1925 (or agree to grant any such licence or tenancy, or agree to exercise the statutory powers of leasing or of accepting surrenders under section 99 or section 100 of the LPA 1925);

8.8.2 in any other way dispose of, accept the surrender of, surrender or create any legal or equitable estate or interest in the whole or any part of the Property (or agree to dispose of, accept the surrender of, surrender or create any legal or equitable estate or interest in the whole or any part of the Property); or

8.8.3 let any person into occupation, or share occupation, of the whole or any part of the Property, save under a written tenancy agreement or licence.

**8.9 No restrictive obligations**

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

#### **8.10 Proprietary rights**

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

#### **8.11 Compliance with and enforcement of covenants**

The Borrower shall:

- 8.11.1 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
- 8.11.2 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.

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

8.12.1 The Borrower shall:

- 8.12.1.1 give full particulars to the Lender of any notice, order, direction, designation, resolution, application, requirement or proposal given or made by any public or local body or authority (a **Notice**) that specifically applies to the Property, or to the locality in which it is situated, *within seven (7) days after becoming aware of the relevant Notice*; and
  - 8.12.1.2 (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, any objections or representations in respect of that Notice that the Lender thinks fit.
- 8.12.2 The Borrower shall give full particulars to the Lender of any claim, notice or other communication served on it in respect of any modification, suspension or revocation of any Environmental Licence or any alleged breach of any Environmental Law, in each case relating to the Property.

### **8.13 Payment of outgoings**

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

### **8.14 Rent reviews**

The Borrower shall, if the Property is subject to occupational leases or licences, implement any upwards rent review provisions and shall not, without the prior written consent of the Lender, agree to any change in rent to less than the open market rental value of the relevant part of the Property.

### **8.15 Environment**

The Borrower shall in respect of the Property:

8.15.1 comply with all the requirements of Environmental Law; and

8.15.2 obtain and comply with all Environmental Licences.

### **8.16 Conduct of business on Property**

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

### **8.17 Inspection**

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

### **8.18 VAT option to tax**

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

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

8.18.2 revoke any VAT option to tax exercised, and disclosed to the Lender in writing, before the date of this deed.

## **9 Powers of the Lender**

### **9.1 Power to remedy**

- 9.1.1 The Lender shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Borrower of any of its obligations contained in this deed.
- 9.1.2 The Borrower irrevocably authorises the Lender and its agents to do all things that are necessary or desirable for that purpose.
- 9.1.3 Any monies expended by the Lender in remedying a breach by the Borrower of its obligations contained in this deed shall be reimbursed by the Borrower to the Lender on a full indemnity basis and shall carry interest in accordance with clause 16.1.
- 9.1.4 In remedying any breach in accordance with this clause 9.1, the Lender, its agents and their respective officers, agents and employees shall be entitled to enter onto the Property and to take any action as the Lender may reasonably consider necessary or desirable including, without limitation, carrying out any repairs, other works or development.

### **9.2 Exercise of rights**

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

### **9.3 Lender has Receiver's powers**

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

### **9.4 New accounts**

- 9.4.1 If the Lender receives, or is deemed to have received, notice of any subsequent Security or other interest, affecting all or part of the Property, the Lender may open a new account for the Borrower in the Lender's books. Without prejudice to the Lender's right to combine accounts, no money paid to the credit of the Borrower in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.

9.4.2 If the Lender does not open a new account immediately on receipt of the notice, or deemed notice, referred to in clause 9.4.1, then, unless the Lender gives express written notice to the contrary to the Borrower, all payments made by the Borrower to the Lender shall be treated as having been credited to a new account of the Borrower and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt or deemed receipt of the relevant notice by the Lender.

## **9.5 Indulgence**

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

## **10 When security becomes enforceable**

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

The security constituted by this deed shall become immediately enforceable if an Event of Default occurs and the Lender exercises its discretion under clause 17 of the Facility Agreement that the Secured Liabilities are immediately due and payable.

### **10.2 Discretion**

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

## **11 Enforcement of security**

### **11.1 Enforcement powers**

11.1.1 For the purposes of all powers implied by statute, the Secured Liabilities are deemed to have become due and payable on the date of this deed.

11.1.2 The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this deed) shall be immediately exercisable at any time after the security constituted by this deed has become enforceable under clause 10.1.

- 11.1.3 Section 103 of the LPA 1925 does not apply to the security constituted by this deed.

## **11.2 Extension of statutory powers of leasing**

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

- 11.2.1 grant a lease or agreement for lease;
- 11.2.2 accept surrenders of leases; or
- 11.2.3 grant any option in respect of the whole or any part of the Property with whatever rights relating to other parts of it,

whether or not at a premium and containing such covenants on the part of the Borrower, and on such terms and conditions (including the payment of money to a lessee or tenant on a surrender), as the Lender or Receiver thinks fit, without the need to comply with any of the restrictions imposed by sections 99 and 100 of the LPA 1925.

## **11.3 Redemption of prior Security**

- 11.3.1 At any time after the security constituted by this deed has become enforceable, or after any powers conferred by any Security having priority to this deed shall have become exercisable, the Lender may:
- 11.3.1.1 redeem any prior Security over the Property;
- 11.3.1.2 procure the transfer of that Security to itself; and
- 11.3.1.3 settle and pass the accounts of the holder of any prior Security (and any accounts so settled and passed shall, in the absence of any manifest error, be conclusive and binding on the Borrower).
- 11.3.2 The Borrower shall pay to the Lender immediately on demand all principal, interest, costs, charges and expenses of, and incidental to, any such redemption or transfer, and such amounts shall be secured by this deed as part of the Secured Liabilities.

## **11.4 Protection of third parties**



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

- 11.4.1 whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;
- 11.4.2 whether any power the Lender, a Receiver or Delegate is purporting to exercise has become exercisable or is being properly exercised; or
- 11.4.3 how any money paid to the Lender, any Receiver or any Delegate is to be applied.

## **11.5 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.

## **11.6 No liability as mortgagee in possession**

Neither the Lender nor any Receiver or Delegate shall be liable, by reason of entering into possession of the Property or for any other reason, to account as mortgagee in possession in respect of all or any of the Property, nor shall any of them be liable for any loss on realisation of, or for any act, default or omission for which a mortgagee in possession might be liable.

## **11.7 Relinquishing possession**

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

## **11.8 Conclusive discharge to purchasers**

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

## **12 Receivers**

### **12.1 Appointment**

At any time after the security constituted by this deed has become enforceable, or at the request of the Borrower, the Lender may, without further notice, appoint by way of deed, or otherwise in writing, any one or more persons to be a Receiver of all or any part of the Property.

## **12.2 Removal**

The Lender may, without further notice (subject to section 45 of the Insolvency Act 1986), from time to time, by way of deed, or otherwise in writing, remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

## **12.3 Remuneration**

The Lender may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the LPA 1925 and the remuneration of the Receiver shall be a debt secured by this deed, to the extent not otherwise discharged.

## **12.4 Power of appointment additional to statutory powers**

The power to appoint a Receiver conferred by this deed shall be in addition to all statutory and other powers of the Lender under the 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.

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

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

## **12.6 Agent of the Borrower**

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

## **13 Powers of Receiver**

### **13.1 Powers additional to statutory powers**

- 13.1.1 Any Receiver appointed by the Lender under this deed shall, in addition to the rights, powers and discretions conferred on him/her by statute, have the rights, powers and discretions set out in clause 13.2 to clause 13.20.
- 13.1.2 A Receiver has all the rights, powers and discretions conferred on a receiver (or a receiver and manager) under the LPA 1925, and shall have those rights, powers and discretions conferred on an administrative receiver under the Insolvency Act 1986 whether he/she is an administrative receiver or not.
- 13.1.3 If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him/her states otherwise) exercise all of the powers conferred on a Receiver under this deed individually and to the exclusion of any other Receiver.
- 13.1.4 Any exercise by a Receiver of any of the powers given by clause 13 may be on behalf of the Borrower, the directors of the Borrower or himself/herself.

### **13.2 Repair and develop the Property**

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

### **13.3 Grant or accept surrenders of leases**

A Receiver may grant, or accept, surrenders of any leases or tenancies affecting the Property on any terms, and subject to any conditions, that he/she thinks fit.

### **13.4 Employ personnel and advisers**

13.4.1 A Receiver may provide services and employ, or engage, any managers, officers, servants, contractors, workmen, agents, other personnel and professional advisers on any terms, and subject to any conditions, that he/she thinks fit.

13.4.2 A Receiver may discharge any such person or any such person appointed by the Borrower.

### **13.5 Make and revoke VAT options to tax**

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

### **13.6 Charge for remuneration**

A Receiver may charge and receive any sum by way of remuneration (in addition to all costs, charges and expenses incurred by him/her) that the Lender may prescribe or agree with him/her.

### **13.7 Take possession**

A Receiver may take immediate possession of, get in and realise the Property.

### **13.8 Manage or reconstruct the Borrower's business**

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

### **13.9 Dispose of Property**

A Receiver may grant options and licences over all or any part of the Property, grant any other interest or right over, sell, exchange, assign or lease (or concur in granting options and licences over all or any part of the Property, granting any other interest or right over, selling, exchanging, assigning or leasing) all or any of the Property in respect of which he/she is appointed for such consideration and in such manner (including, without limitation, by public auction or private sale) and generally on any terms and conditions as he/she thinks fit. A Receiver may promote, or concur in promoting, a company to purchase the Property to be disposed of by him/her.

### **13.10 Sever fixtures and fittings**

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

### **13.11 Give valid receipts**

A Receiver may give a valid receipt for all monies and execute all assurances and things that may be proper or desirable for realising any of the Property.

### **13.12 Make settlements**

A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claim, account, dispute, question or demand with or by any person who claims to be a creditor of the Borrower or relating in any way to the Property.

### **13.13 Bring legal action**

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

### **13.14 Insure**

A Receiver may, if he/she thinks fit, but without prejudice to the indemnity in clause 16.2, 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 deed.

### **13.15 Form subsidiaries**

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

### **13.16 Borrow**

A Receiver may, for whatever purpose he/she thinks fit, raise and borrow money either unsecured or on the security of all or any of the Property in respect of which he/she is appointed on any terms that he/she thinks fit (including, if the Lender consents, terms under which that security ranks in priority to this deed).

### **13.17 Redeem prior Security**

A Receiver may redeem any prior Security and settle and pass the accounts to which the Security relates. Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Borrower, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.

### **13.18 Delegation**

A Receiver may delegate his/her powers in accordance with this deed.

### **13.19 Absolute beneficial owner**

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

### **13.20 Incidental powers**

A Receiver may do any other acts and things that he/she:

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

13.20.2 may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this deed or law; or

13.20.3 lawfully may or can do as agent for the Borrower.

## **14 Delegation**

### **14.1 Delegation**

The Lender or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it or him/her by this deed (including the power of attorney granted under clause 18.1).

### **14.2 Terms**

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

### **14.3 Liability**

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

## **15 Application of proceeds**

### **15.1 Order of application of proceeds**

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

15.1.1 in or towards payment of all costs, liabilities, charges and expenses incurred by or on behalf of the Lender (and any Receiver, Delegate, attorney or agent

appointed by it) under or in connection with this deed and of all remuneration due to any Receiver under or in connection with this deed;

15.1.2 in or towards payment of the Secured Liabilities in any order and manner that 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, any Receiver nor any Delegate shall be bound (whether by virtue of section 109(8) of the LPA 1925, which is varied accordingly, or otherwise) to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Secured Liabilities.

## **15.3 Suspense account**

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

15.3.1 may, at the discretion of the Lender, Receiver or Delegate, be credited to a suspense account;

15.3.2 shall bear interest, if any, at the rate agreed in writing between the Lender and the Borrower; and

15.3.3 may be held in that account for so long as the Lender, Receiver or Delegate thinks fit.

## **16 Costs and indemnity**

### **16.1 Costs**

The Borrower shall, within five (5) Business Days of demand, pay to, or reimburse, the Lender and any Receiver, on a full indemnity basis, all costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal, printing and out-of-pocket expenses) incurred by the Lender, any Receiver or any Delegate in connection with:

16.1.1 this deed or the Property;

16.1.2 taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Lender's, a Receiver's or a Delegate's rights under this deed; or

16.1.3 taking proceedings for, or recovering, any of the Secured Liabilities,

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

## **16.2 Indemnity**

16.2.1 The Borrower shall indemnify the Lender, each Receiver and each Delegate, and their respective employees and agents against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by any of them arising out of or in connection with:

16.2.1.1 the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this deed or by law in respect of the Property;

16.2.1.2 taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the security constituted by this deed; or

16.2.1.3 any default or delay by the Borrower in performing any of its obligations under this deed.

16.2.2 Any past or present employee or agent may enforce the terms of this clause ~~16.2~~ subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

## **17 Further assurance**

### **17.1 Further assurance**

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



- 17.1.1 creating, perfecting or protecting the security created or intended to be created by this deed;
- 17.1.2 facilitating the realisation of the Property; or
- 17.1.3 facilitating the exercise of any right, power, authority or discretion exercisable by the Lender or any Receiver in respect of the Property,

including, without limitation the execution of any mortgage, transfer, conveyance, assignment or assurance of all or any of the Property (whether to the Lender or to its nominee) and the giving of any notice, order or direction and the making of any filing or registration which, in any such case, the Lender may consider necessary or desirable.

## **18 Power of attorney**

### **18.1 Appointment of attorneys**

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

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

### **18.2 Ratification of acts of attorneys**

The Borrower ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in clause 18.1.

## **19 Release**

### **19.1 Release**

Subject to clause 26.3, at the end of the Security Period, the Lender shall, at the request and cost of the Borrower, take whatever action is necessary to:

- 19.1.1 release the Property from the security constituted by this deed; and

19.1.2 reassign the Property to the Borrower.

## **20 Assignment and transfer**

### **20.1 Assignment by Lender**

20.1.1 At any time, without the consent of the Borrower, the Lender may assign or transfer any or all of its rights and obligations under this deed.

20.1.2 The Lender may disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Borrower, the Property and this deed that the Lender considers appropriate.

### **20.2 Assignment by Borrower**

The Borrower may not assign any of its rights, or transfer any of its rights or obligations, under this deed.

## **21 Set-off**

### **21.1 Lender's right of set-off**

The Lender may at any time set off any liability of the Borrower to the Lender against any liability of the Lender to the Borrower, 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 Lender may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Lender of its rights under this clause 21.1 shall not limit or affect any other rights or remedies available to it under this deed or otherwise.

### **21.2 No obligation to set off**

The Lender is not obliged to exercise its rights under clause 21.1. If, however, it does exercise those rights it must promptly notify the Borrower of the set-off that has been made.

### **21.3 Exclusion of Borrower's right of set-off**

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

## **22 Amendments, waivers and consents**

### **22.1 Amendments**

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

### **22.2 Waivers and consents**

22.2.1 A waiver of any right or remedy under this deed or by law, or any consent given under this deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

22.2.2 A failure or delay by a party to exercise any right or remedy provided under this deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this deed. No single or partial exercise of any right or remedy provided under this deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this deed by the Lender shall be effective unless it is in writing.

### **22.3 Rights and remedies**

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

## **23 Severance**

If any provision (or part of a provision) of this deed is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause 23 shall not affect the legality, validity and enforceability of the rest of this deed.

## **24 Counterparts**

24.1 This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.

- 24.2 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

**25 Third party rights**

Except as expressly provided elsewhere in this deed, a person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this deed. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

**26 Further provisions**

**26.1 Independent security**

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

**26.2 Continuing security**

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

**26.3 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, winding-up, administration, receivership or otherwise. Despite any such release, discharge or settlement:

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

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

#### **26.4 Certificates**

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

#### **26.5 Consolidation**

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

#### **27 Notices**

##### **27.1 Delivery**

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

27.1.1 in writing;

27.1.2 delivered by hand, by pre-paid first-class post or other next working day delivery service; and

27.1.3 sent to:

27.1.3.1 the Borrower at:  
Wansbeck Workspace, Rotary Parkway, Ashington,  
Northumberland, NE63 8QZ  
Attention: The Managing Director

the Lender at:  
Northumberland County Council, County Hall, Morpeth,  
Northumberland, NE61 2EF  
Attention: Monitoring Officer

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

##### **27.2 Receipt by Borrower**

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

27.2.1 if delivered by hand, at the time it is left at the relevant address; and

27.2.2 if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting;

A notice or other communication given as described in clause 27.2 on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

### **27.3 Receipt by Lender**

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

27.3.1 if delivered by hand, at the time it is left at the relevant address; and

27.3.2 if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting;

A notice or other communication given as described in clause 27.3 on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

### **27.4 Service of proceedings**

This clause 27 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

### **27.5 No notice by email or fax**

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

## **28 Governing law and jurisdiction**

### **28.1 Governing law**

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

#### **28.2 Jurisdiction**

Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this deed or its subject matter or formation. Nothing in this clause 28.2 shall limit the right of the Lender to take proceedings against the Borrower in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

#### **28.3 Other service**

The Borrower irrevocably consents to any process in any legal action or proceedings under clause 28.2 being served on it in accordance with the provisions of this deed relating to service of notices. Nothing contained in this deed shall affect the right to serve process in any other manner permitted by law.

**Schedule 1    Property**

Property:        Land tinted yellow, tinted mauve and hatched blue on the Title Plan referred to below being land on the east side of Station Road, Hexham, Northumberland, NE46 1AJ .

Title number:    ND186351

Title Plan:       attached hereto



**These are the notes referred to on the following official copy**

The electronic official copy of the title plan follows this message.

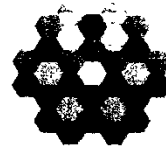
Please note that this is the only official copy we will issue. We will not issue a paper official copy.

This official copy was delivered electronically and when printed will not be to scale. You can obtain a paper official copy by ordering one from Land Registry.

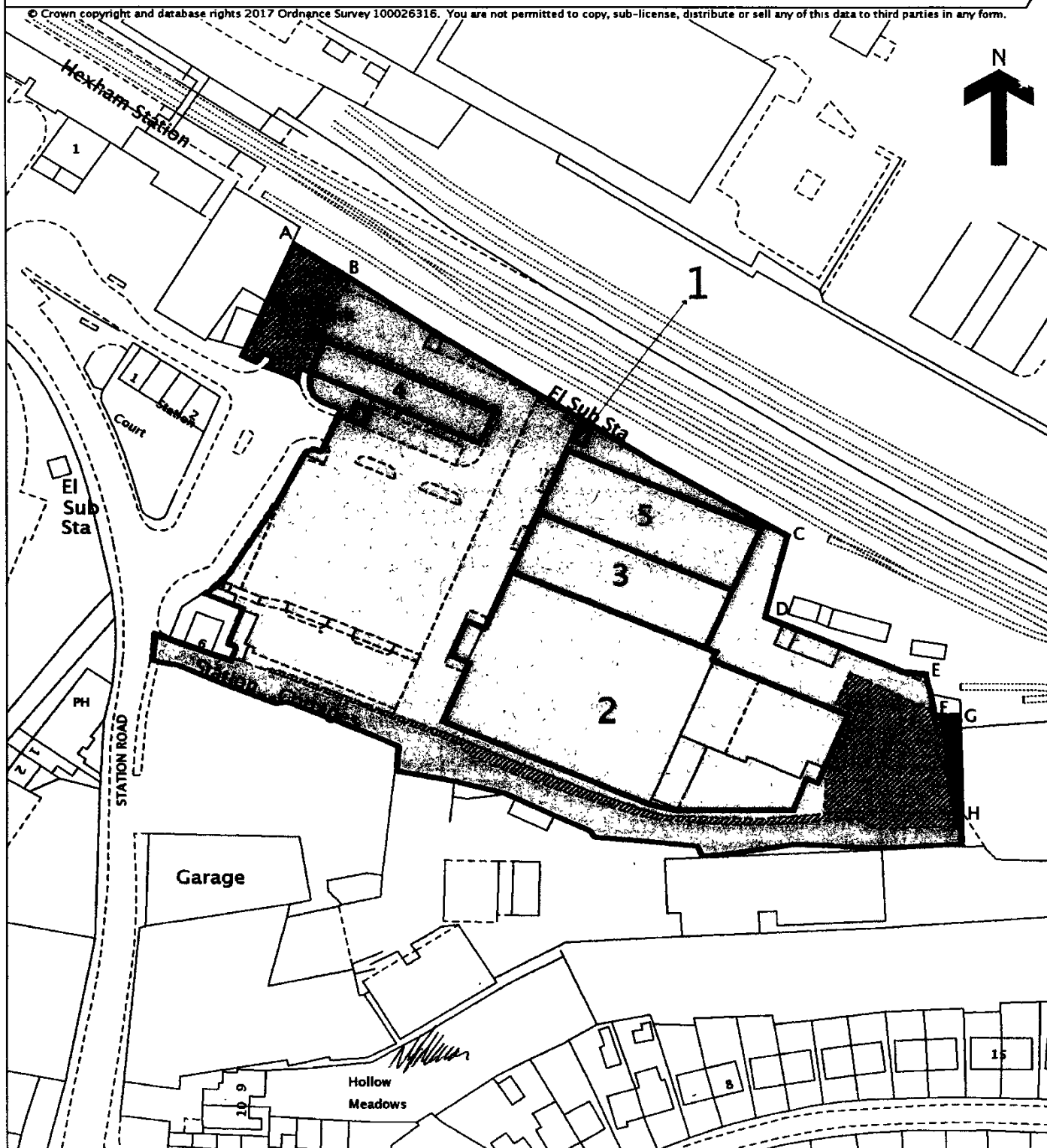
This official copy is issued on 04 May 2018 shows the state of this title plan on 04 May 2018 at 10:11:16. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002). This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. This title is dealt with by the HM Land Registry, Durham Office .

Land Registry  
Official copy of  
title plan

Title number **ND186351**  
Ordnance Survey map reference **NY9464SW**  
Scale **1:1250 enlarged from 1:2500**  
Administrative area **Northumberland**



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**Schedule 2 Facility Agreement**

Northumberland County Council and Advance Northumberland (Commercial)  
Limited

Loan Ref – Prud/1/01

**DATED**

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**FACILITY AGREEMENT**

between

**ADVANCE NORTHUMBERLAND (COMMERCIAL) Limited**

and

**NORTHUMBERLAND COUNTY COUNCIL**

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**IN RELATION TO: LOW PRUDHOE SCHEME**

**LOAN REFERENCE: Prud/1/01**

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This Facility Agreement is dated

## **Parties**

- (1) **ADVANCE NORTHUMBERLAND (COMMERCIAL) LIMITED**, incorporated and registered in England and Wales with company number 03556450 whose registered office is at Wansbeck Workspace, Rotary Parkway, Ashington, Northumberland, NE63 8QZ (**Borrower**)
- (2) **NORTHUMBERLAND COUNTY COUNCIL** of County Hall, Morpeth, Northumberland, NE61 2EF (**Lender**)

## **BACKGROUND**

- (A) The Borrower is a wholly owned subsidiary of the Lender, set up to increase economic development, housing market renewal and regeneration in the county of Northumberland.
- (B) To enable the Borrower to progress the Project it requires additional capital. The Lender has agreed to provide the Borrower with a secured term loan facility of £4,189,247.69.

## **Agreed terms**

### **1. Definitions and interpretation**

#### **1.1 Definitions**

The following definitions apply in this Facility Agreement.

**Applicable Laws:** (for so long as and to the extent that they apply to the Provider) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law;

**Available Facility:** the Commitment less any outstanding Loans.

**Availability Period:** the period from and including the date of this Facility Agreement up to and including 31 January 2022.

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

**Business Plan:** the Borrowers plan setting out the Project, and annexed hereto at Schedule 2, such Business Plan to have been approved by the Borrowers Board of Directors and to include (but not be limited to) details of the proposed use of the loan. (for example purchase of land, site development, construction, highways etc), the land to be subject to legal charge and its title number, and State aid solution.

**Commitment:** the principal amount of the Facility set out in clause 2, to the extent not cancelled or reduced under this Facility Agreement.

**Confidential Information:** all information relating to the Borrower, the Finance Documents or the Facility of which the Lender becomes aware in its capacity as Lender, which is received by the Lender from the Borrower (or any of the Borrower's advisers) in whatever form, but excluding any information:

- a) that is or becomes public information other than as a direct or indirect result of any breach by the Lender of clause 19;
- b) is identified in writing by the Borrower (or any of the Borrower's advisers) at the time of delivery as non-confidential; or
- c) is known to the Lender before it is disclosed to the Lender by the Borrower (or any of the Borrower's advisers) or is lawfully obtained by the Lender from another source, in either case, through no breach of confidentiality of which the Lender is or becomes aware.

**Controller:** as defined in the Data Protection Legislation.

**Data Protection Legislation:** the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

**Data Subject:** as defined in the Data Protection Legislation.

**Disruption Event:** either or both of:

- a) an event (not caused by, and outside the control of, either party) that materially disrupts the systems for payment or communication, to enable either payment to be made or transactions to be carried out under the Finance Documents; or
- b) any other event (not caused by, and outside the control of, the party whose operations are disrupted), that results in disruption (of a

technical or systems-related nature) to the treasury or payments operations of a party and which prevents either or both Parties from

- (i) performing its payment obligations under the Finance Documents, or
- (ii) communicating with the other party as required by the terms of the Finance Documents.

**Domestic UK Law:** means the UK Data Protection Legislation and any other law that applies in the UK.

**Drawdown Date:** the date on which a Loan is made, or is to be made.

**Drawdown Request:** a drawdown request, substantially in the form set out in Schedule 1 or such other format as may be provided by the Lender.

**Event of Default:** any event or circumstance listed in clause 17.1 to clause 17.11.

**Facility:** the term loan facility made available under this Facility Agreement.

**Facility Agreement:** this agreement for the provision of the Facility by the Lender to the Borrower.

**Final Repayment Date:** shall be the 13<sup>th</sup> anniversary the date of this Facility Agreement.

**Finance Document:** this Facility Agreement, any Drawdown Request, and any other document designated as such by the Lender and the Borrower.

**GAAP:** generally accepted accounting principles in the United Kingdom.

**GBER:** the General Block Exemption Regulation (EU) 651/2014 as amended by

- a) Commission Regulation (EU) 2017/1084; and
- b) Following the UK's withdrawal from the European Union the State aid (EU Exit) Regulations 2019 and the EU (Withdrawal) Act 2018.

**IFRS:** the International Financial Reporting Standards.

**Increased Costs:** any:

- a) reduction in the rate of return from the Facility or on the Lender's overall capital;



- b) additional or increased cost; or
- c) reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by the Lender that is attributable to the Lender having entered into the Commitment or funding or performing its obligations under any Finance Document.

**Indebtedness:** any obligation to pay or repay money, present or future, whether actual or contingent, sole or joint and any guarantee or indemnity of any of those obligations.

**Information:** has the meaning set out in section 84 Freedom of Information Act 2000.

**Interest on Borrowed Money:** for any relevant period, the combined total of all:

- a) interest;
- b) amounts in the nature of interest; and
- c) commitment, commission, guarantee fees, other fees and discounts;

**Interest Payment Date:** the last day of an Interest Period.

**Interest Period:** for any Loan, the periods of 01 April to 30 September and 01 October to 31 March each year and, for any Unpaid Amount, the period determined in accordance with clause 7.1.

**Interest Rate:** a rate of 5.4% for the initial three (3) years from the date of this Facility Agreement, followed by 5.26% for the subsequent ten (10) years.

**Legal Charge:** the legal charge in the agreed form, executed, or to be executed, by the Borrower, against title number ND186351 as Security for the Facility and / or any Loan or part thereof, in the form required by the Lender.

**Loan:** a loan made or to be made by the Lender to the Borrower under this Facility Agreement or the principal amount outstanding for the time being of that loan.

**Material Adverse Effect:** any event or circumstance which, in the opinion of the Lender:

- a) is likely to materially and adversely affect the Borrower's ability to perform or otherwise comply with all or any of its obligations under the Finance Documents;

- b) is likely to materially and adversely affect the business, operations, property, condition (financial or otherwise) or prospects of the Borrower; or
- c) is likely to result in any Finance Document not being legal, valid and binding on, and enforceable in accordance with its terms against, the Borrower and, in the case of the Legal Charge, not providing to the Lender security over the assets expressed to be subject to a security interest under the Legal Charge.

**Monitoring and Enforcement Authority:**

- a) up until the minute immediately preceding the UK's withdrawal from the European Union, the European Commission; or
- b) from the minute of the UK's withdrawal from the European Union,
  - (i) the CMA; or
  - (ii) such other competent authority as may be nominated by the UK Government from time to time.

**Permitted Security:** any security arising under:

- a) the Legal Charge;
- b) any liens arising by operation of law and in the ordinary course of the Borrower's business and not as a result of any default or omission of the Borrower;
- c) any normal title retention arrangements included in a supplier's standard conditions of supply of goods acquired by the Borrower in the ordinary course of trade;
- d) security created or outstanding with the Lender's prior written consent.

**Personal Data:** shall have the same meaning as in the Data Protection Legislation;

**Personal Data Breach:** as defined in the Data Protection Legislation.

**Potential Event of Default:** any event or circumstance specified in clause 17.1 to clause 17.11 which would, on the giving of notice, expiry of any grace period, making of any determination under the Finance Documents or satisfaction of any other condition (or any combination thereof), become an Event of Default.

**Processor:** as defined in the Data Protection Legislation.

**Project:** the project as described and set out within the Business Plan submitted by the Borrower to the Lender in support of the request for funding.

**Qualifying Lender:** a lender that is beneficially entitled to interest payable in respect of an advance under the Facility or any Loan and

- a) is a bank (as defined for the purpose of section 879 of the Income Tax Act 2007) making an advance under this Facility or any Loan and is within the charge to United Kingdom corporation tax for any payments of interest made in respect of that advance (or would be within such charge for such payments apart from section 18A of the Corporation Tax Act 2009; or
- b) that made an advance under this Facility or any Loan and was a bank for the purposes of section 879 of the Income Tax Act 2007) at the time that that advance was made and is within the charge to United Kingdom corporation tax for any payments of interest made in respect of that advance.

**Repayment Date:** each of the dates specified in the Repayment Schedule for repaying the Facility by instalments.

**Repayment Schedule:** the schedule provided by the lender to the Borrower upon each Drawdown Date detailing the repayments to be made under this Facility Agreement on each Repayment Date.

**Request for Information:** any request for Information or apparent request under the Freedom of Information Act 2000 or the Environmental Information Regulations as appropriate.

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

**State aid:** means any aid which the European Commission and / or any subsequent enforcement agency considers to be state aid pursuant to the State Aid Rules;

**State Aid Rules:** means the European Commission state aid laws set out in Article 107(1) Treaty of the Functioning of the European Union, as directly applicable in the UK for so long as the UK is a member state of the European Union and as implemented and / or amended by the European Union (Withdrawal) Act 2018 and / or such other relevant Legislation as may be enacted following the UK's withdrawal from the European Union;

**Sterling and £:** the lawful currency of the UK.

**Tax:** any tax, levy, impost, duty or other charge, fee, deduction or withholding of a similar nature (including any penalty or interest payable in connection with the failure to pay, or delay in paying, any of these).

**Tax Deduction:** a deduction or withholding for, or on account of, Tax from a payment under a Finance Document.

**Total Interest:** for any relevant period, Interest on Borrowed Money payable by the Borrower.

**UK:** the United Kingdom of Great Britain and Northern Ireland.

**UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

**Unpaid Amount:** any sum or amount which is not paid on its due date by the Borrower under this Facility Agreement or any other Finance Document.

**VAT:** value added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature.

## **1.2 Interpretation**

In this Facility Agreement:

- 1.2.1 clause, Schedule and paragraph headings shall not affect the interpretation of this Facility Agreement;
- 1.2.2 a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality);
- 1.2.3 a reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of

1.2.3.1 another person (or its nominee) by way of security or in connection with the taking of security; or

1.2.3.2 its nominee.

In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that:

1.2.3.3 references in sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and

1.2.3.4 the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights;

1.2.4 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;

1.2.5 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;

1.2.6 a reference to a party shall include that party's successors, permitted assigns and permitted transferees and this Facility Agreement shall be binding on, and enure to the benefit of, the Parties to this Facility Agreement and their respective, successors, permitted assigns and permitted transferees;

1.2.7 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;

1.2.8 a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;

1.2.9 a reference to a time of day is to London time;

1.2.10 a reference to **writing** or **written** excludes fax and email;

1.2.11 an obligation on a party not to do something includes an obligation not to allow that thing to be done;

- 1.2.12 a reference to this Facility Agreement or a Finance Document (or any provision of it) or to any other agreement or document referred to in this Facility Agreement or any Finance Document is a reference to this Facility Agreement or Finance Document, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this Facility Agreement) from time to time;
- 1.2.13 unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this Facility Agreement and a reference to a paragraph is to a paragraph of the relevant Schedule;
- 1.2.14 any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 1.2.15 a reference to **directly** or **indirectly** means (without limitation) either alone or jointly with any other person, whether on his own account or in partnership with another (or others) as the holder of any interest in or as officer, employee or agent of or consultant to any other person;
- 1.2.16 a reference to a document in **agreed form** is to that document in the form agreed by the Lender and the Borrower and initialled by or on their behalf for identification;
- 1.2.17 a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and **amended** shall be construed accordingly);
- 1.2.18 a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;
- 1.2.19 a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- 1.2.20 a reference to a **certified copy** of a document means a copy certified to be a true, complete and up-to-date copy of the original document, in writing and signed by an authorised person on behalf of the party delivering the document;
- 1.2.21 a reference to **continuing** in relation to an Event of Default means an Event of Default that has not been remedied or waived;
- 1.2.22 a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the discretion of the person making it;

- 1.2.23 a reference to a **disposal** of any asset, undertaking or business includes a sale, lease, licence, transfer, loan or other disposal by a person of that asset, undertaking or business (whether by a voluntary or involuntary single transaction or series of transactions);
- 1.2.24 a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation; and
- 1.2.25 any accounting terms that are not specifically defined in this Facility Agreement shall be construed in accordance with GAAP.

### **1.3 Schedules**

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

## **2 The Facility**

- 2.1 The Lender grants to the Borrower a secured Sterling term loan facility of a total principal amount not exceeding four million one hundred and eighty nine thousand two hundred and forty seven pounds and sixty nine pence sterling (£4,189,247.69) on the terms, and subject to
- 2.1.1 the conditions, of this Facility Agreement; and
- 2.1.2 the Borrower entering into the Legal Charge to secure the Loan, within twenty eight (28) days of the date of this Facility Agreement

## **3 Purpose and Monitoring**

### **3.1 Purpose**

The Borrower shall use all monies borrowed by it under this Facility Agreement for the Project in accordance with the Business Plan (Schedule 2) and any specific conditions set out in Schedule 3 of this Facility Agreement.

### **3.2 Monitoring**

The Lender is not obliged to monitor or verify how any amount borrowed under this Facility Agreement is used.

### **3.3 Value for Money and Procurement**

- 3.3.1 The Borrower shall have regard to the need for economy and value for money in all expenditure in relation to the Project. The Borrower shall undertake a competitive, fair, transparent and non discriminatory procurement or selection process for the award of any contract in respect of the Project in accordance with the Borrower's contracts and finance rules and the Public Contracts Regulations 2015.
- 3.3.2 The Borrower shall document its decision making process, including details as to how the requirements of Clause 3.3.1 are to be met.
- 3.3.3 Value for money shall be considered prior to the placement of any order and / or the award of any contract in respect of the Project by the Borrower. A record that describes how value for money has been considered shall be retained by the Borrower for inspection by the Lender. For the avoidance of doubt Value for Money does not require the Borrower to accept the lowest cost bid.

#### **4 Conditions precedent**

##### **4.1 Initial conditions precedent**

The Borrower may not deliver a Drawdown Request unless:

- 4.1.1 the Borrower has entered into the Legal Charge; and
- 4.1.1 it has provided, to the satisfaction of the Lender documents and evidence:
  - 4.1.1.1 that no Event of Default is continuing;
  - 4.1.2.2 that the warranties and representations in this Facility Agreement are true and correct in all material respects and are not misleading;

##### **4.2 Further conditions precedent**

The Lender's obligation to make a Loan is subject to the further conditions precedent that, on both the date of the Drawdown Request and the Drawdown Date the Borrower warrants:

- 4.2.1 the representations and warranties are true and correct in all material respects and will be true and correct in all material respects immediately after the Lender has made the proposed Loan; and
- 4.2.2 no Event of Default or Potential Event of Default is continuing or might or result from the proposed Loan.



#### **4.3 Waiver**

The conditions specified in this clause 4 are inserted solely for the Lender's benefit. The Lender may waive them, in whole or in part and with or without conditions, without prejudicing the Lender's right to require subsequent fulfilment of such conditions.

### **5 Drawdown**

#### **5.1 Maximum number of Loans**

The Borrower may utilise the Facility during the Availability Period as required. The Lender does not set a maximum number of Loans.

#### **5.2 Delivery of a Drawdown Request**

The Borrower may request a Loan by delivering a completed Drawdown Request to the Lender no less than three (3) clear Business Days before the proposed Drawdown Date or such shorter time as may be agreed in writing in advance by the Parties.

#### **5.3 Completion of a Drawdown Request**

A Drawdown Request:

5.3.1 may only specify a single Loan;

5.3.2 shall only be regarded as having been completed if:

5.3.2.1 the requested Drawdown Date is a Business Day before the end of the Availability Period;

5.3.2.2 the Loan requested is for a minimum of £100,000.00 or, if less, the Available Facility; and

5.3.2.3 the proposed Interest Period complies with clause 6; and

5.3.3 once it has been delivered, is irrevocable.

#### **5.4 Cancellation of unused Facility**

If any amount of the Facility is not drawn during the Availability Period, that undrawn amount shall be cancelled automatically at the end of the Availability Period.

## **6 Interest**

### **6.1 Calculation of interest**

Interest on each Loan shall be calculated on the outstanding balance for each Interest Period in accordance with the Interest Rate from the relevant Drawdown Date.

### **6.2 Payment of interest**

The Borrower shall pay accrued Interest on each Loan on the Interest Payment Date for each Interest Period applicable to that Loan.

### **6.3 Length of Interest Period**

The length of an Interest Period shall be three (3) calendar months.

### **6.4 Commencement date of Interest Period**

The initial Interest Period for a Loan shall start on the Drawdown Date of that Loan and shall continue until 30<sup>th</sup> June, 30<sup>th</sup> September, 31<sup>st</sup> December or 31 March, whichever is sooner. Each subsequent Interest Period for that Loan shall start on the last day of the previous Interest Period applicable to it.

### **6.5 Non-Business Days**

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period shall, instead, end on:

6.5.1 the next Business Day in that calendar month, if there is one; or

6.5.2 the preceding Business Day, if there is not.

### **6.6 Confidentiality of costs of funds**

The Borrower agrees to keep the Interest Rate confidential and not disclose it to anyone without the consent of the Lender other than:

6.6.1 to any governmental, banking, taxation or regulatory authority or similar body, or any other person to the extent that it is required to do so by any applicable law, regulation, court order or the rules of any relevant stock exchange, if the person to whom the information is given is informed that it:

6.6.1.1 is confidential; and

6.6.1.2 may be price-sensitive; and

6.6.2 to any person to whom the information is required to be disclosed in connection with, and for the purpose of, any litigation, arbitration, administrative or other investigations, proceedings or disputes, if the person to whom the information is given is informed that it:

6.6.2.1 is confidential; and

6.6.2.2 may be price-sensitive.

## **7 Default interest**

### **7.1 Default interest**

7.1.1 If the Borrower does not pay any amount it is obliged to pay under the Finance Documents when it is due, the Borrower shall pay interest on that Unpaid Amount outstanding for the period beginning on its due date and ending on the date the Lender receives it, both before and after court judgment.

7.1.2 The rate of interest applicable to the Unpaid Amount shall be the rate per annum which is 1% higher than the rate of interest which would have been applied if the Unpaid Amount had, during the period of non-payment, constituted a Loan in the currency of the Unpaid Amount for successive Interest Periods.

### **7.2 Commencement date of Interest Period for default interest**

The first Interest Period shall begin on the due date for payment of the relevant Unpaid Amount and each succeeding Interest Period shall begin on the last day of the previous Interest Period.

### **7.3 Payment of Default Interest**

Default Interest accrued under this clause 7 shall be immediately payable by the Borrower on demand by the Lender, but:

7.3.1 if not previously demanded, shall be paid on the last day of each Interest Period; and

7.3.2 if the Borrower does not pay that Default Interest when due, it shall be added to the Unpaid Amount and compounded at the end of each Interest Period applicable to that Unpaid Amount but will remain immediately due and payable.

## **8 Repayment, prepayment and cancellation**

### **8.1 Repayment of Loans**

8.1.1 The Borrower shall repay the aggregate Loans in full no later than the Final Repayment Date and in accordance with the Repayment Schedule; and

8.1.2 The Borrower shall include the Loan Reference, as detailed in this Facility Agreement, with any repayment in accordance with the Repayment Schedule or prepayment in accordance with this clause 8.

### **8.2 Voluntary prepayment**

8.2.1 Subject to clause 8.2.2, the Borrower may prepay part or all of a Loan by notifying the Lender no less than five (5) Business Days in advance. The Borrower may only do this if:

8.2.1.1 the notice specifies the Loan or Loans to be prepaid and the amount of the prepayment

8.2.1.2 the date of the prepayment is:

(a) a date after the end of the Availability Period; or

(b) if earlier,

(i) the date on which the Available Facility is zero;

or

(ii) the Borrower has confirmed in writing to the Lender no further Drawdown Request will be submitted under this Agreement); and

8.2.1.3 the prepayment does not result in an Event of Default or Potential Event of Default.

8.2.2 On prepayment of part or all of a Loan in accordance with clause 8.2.1, the Commitment shall immediately be reduced by an amount equal to the amount of the Loan prepaid.

### **8.3 Mandatory prepayment**

8.3.1 Subject to the specific conditions set out in Schedule 3 or the express written agreement of the Lender subsequently obtained and signed by the Lender's section 151 Officer in consultation with the Lender's Portfolio holder for Corporate Services confirming that this clause 8.3.1 shall not apply, the Borrower shall prepay part or all of a Loan by notifying the Lender no less than five (5) Business Days in advance in the event of:

- 8.3.1.1 the sale or disposition of any asset, or any sale or disposition registerable with HM Land Registry of any land or property purchased by the Borrower with the Loan; and / or
  - 8.3.1.2 the sale or disposition registerable with HM Land Registry of the land or property secured by Legal Charge or any part thereof.
- 8.3.2 In the event of a mandatory pre payment falling due in accordance with clause 8.3.1, the amount of the prepayment shall be:
  - 8.3.2.1 equal to the amount realised by the Borrower from the sale or disposition less any relevant sale or disposition costs; or
  - 8.3.2.2 such other sum as may be agreed by the Lender.

#### **8.4 Voluntary cancellation**

- 8.4.1 The Borrower may cancel all or part of the Available Facility by giving the Lender not less than five (5) Business Days' prior notice. The Borrower may only do this if:
  - 8.4.1.1 where only part of the Available Facility is cancelled, the amount cancelled is notified to the Lender; and
  - 8.4.1.2 no Event of Default or Potential Event of Default would result from the cancellation.
- 8.4.2 When the five (5) Business Day period referred to in clause 8.4.1 expires, the Commitment shall immediately be reduced by the amount cancelled under clause 8.4.1.

#### **8.5 Illegality**

- 8.5.1 The Lender may require the Borrower to prepay the Loans, if:
  - 8.5.1.1 any law or regulation is introduced or changed, or there is any change in the way any court or regulatory authority interprets or applies any law or regulation which;
  - 8.5.1.2 complying with any direction, request or requirement (whether or not having the force of law) of any monetary agency, central bank, or governmental or regulatory authority; or
  - 8.5.1.3 any judgment, order or direction of any court, tribunal or authority binding on the Lender,

makes it unlawful for the Lender to make any Loan, or allow any Loan to remain outstanding or fund or maintain the Commitment, or allow the Commitment to remain outstanding.

- 8.5.2 To require prepayment under clause 8.5.1, the Lender shall give notice to the Borrower demanding prepayment and giving the date for that prepayment.
- 8.5.3 The Borrower shall prepay the Loans as set out in the notice, together with accrued interest on those Loans and all other sums payable under the Finance Documents.
- 8.5.4 The Lender's obligations to make Loans shall terminate on it giving notice under clause 8.5.2, and its Commitment shall be automatically cancelled on that date.

#### **8.6 Application of partial prepayments**

Any amount to be applied in prepayment of the Facility shall be applied to satisfy the obligations in clause 8.1 in inverse order of their maturity.

#### **8.7 Repayment, prepayment and cancellation general provisions**

- 8.7.1 Any prepayment or cancellation notice that the Borrower gives under this Facility Agreement shall be irrevocable. A prepayment notice shall oblige the Borrower to prepay the relevant Loan as set out in that notice.
- 8.7.2 The Borrower may not re-borrow any part of the Facility which has either been repaid or prepaid under this Facility Agreement and no amount of the Commitment cancelled under this Facility Agreement may be reinstated.
- 8.7.3 Any prepayment under this Facility Agreement shall be made together with accrued interest on the amount prepaid, without premium or penalty.
- 8.7.4 If the Borrower does not make a prepayment on the date for prepayment specified in this Facility Agreement, or gives a prepayment notice but fails to make the prepayment on the date specified in the prepayment notice, the default interest provisions of clause 7 shall apply to the unpaid prepayment amount.
- 8.7.5 No repayment, prepayment or cancellation is permitted, except in accordance with the express terms of this Facility Agreement.

## **9 Payments**

### **9.1 Currency of account**

- 9.1.1 Subject to satisfaction of all the applicable conditions in clause 4, the Lender shall pay each Loan to the Borrower in Sterling in immediately available cleared funds on the relevant Drawdown Date to, or for the account of, the Borrower as specified in the Drawdown Request.
- 9.1.2 Subject to clause 9.1.3, the currency of account shall be Sterling and all payments that the Borrower makes under this Facility Agreement shall be made:
  - 9.1.2.1 in full, without any deduction, set-off or counterclaim; and
  - 9.1.2.2 in immediately available cleared funds on the due date to an account which the Lender may specify to the Borrower for the purpose.
- 9.1.3 The Borrower shall pay costs, expenses, Taxes and the like (and any interest payable on those amounts) in the currency in which they are incurred.

### **9.2 Business Days**

Any payment under any Finance Document which is due to be made on a day which is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one), or the immediately preceding Business Day (if there is not). Any interest or other amount accruing on a daily basis shall be calculated accordingly.

### **9.3 Disruption to payment systems**

If either the Lender determines, or the Borrower notifies the Lender, that a Disruption Event has occurred:

- 9.3.1 the Lender shall consult and agree with the Borrower the changes (if any) needed to the operation or administration of the Facility as the Lender, in its absolute discretion, deems necessary in the circumstances;
- 9.3.2 the Lender shall not be obliged to consult the Borrower about any such changes if in its opinion it is not practical to do so in the circumstances; and
- 9.3.3 any change made or agreed under this clause 9.3 shall (whether or not an event is finally determined to be a Disruption Event) be binding on the

Parties as an amendment of the Finance Documents notwithstanding the provisions of clause 22.

#### **9.4 Partial payments**

If the Lender receives a payment that is insufficient to discharge all the amounts then due and payable by the Borrower under the Finance Documents, the Lender shall apply that payment in settlement of the obligations of the Borrower in the order determined by the Lender in its absolute discretion. The provisions of this clause 9.4 shall override any appropriation made by the Borrower.

### **10 Fees, charges and expenses**

#### **10.1 Transaction expenses**

The Borrower shall, within five (5) Business Days of demand, pay to the Lender the amount of all costs and expenses (including legal, printing and out-of-pocket expenses) reasonably incurred by the Lender in connection with:

10.1.1 the negotiation, preparation, execution and perfection of the Finance Documents and the other documents referred to in them; and

10.1.2 any amendment, extension, waiver, consent or suspension of rights (or any proposal for any of these) relating to a Finance Document or a document referred to in any of them.

#### **10.2 Enforcement and preservation costs**

The Borrower shall, on demand, pay to the Lender the amount of all costs and expenses (including legal, printing and out-of-pocket expenses) incurred by the Lender in connection with enforcing, preserving any rights under, or monitoring the provisions of, any Finance Document.

### **11 Taxes**

#### **11.1 Stamp taxes**

The Borrower shall pay and, within three (3) Business Days of demand, indemnify the Lender against any cost, loss or liability that the Lender incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

#### **11.2 Value Added Tax**

11.2.1 All amounts payable by the Borrower to the Lender under a Finance Document that (in whole or in part) constitute consideration for VAT



purposes are deemed to be exclusive of VAT. Subject to clause 11.2.2, if VAT is chargeable on any supply made by the Lender to the Borrower under a Finance Document, the Borrower shall pay the Lender (in addition to, and at the same time as, paying the consideration) an amount equal to the amount of the VAT and the Lender shall promptly provide an appropriate VAT invoice to the Borrower.

- 11.2.2 Where a Finance Document requires the Borrower to reimburse the Lender for any costs or expenses, the Borrower shall, at the same time, reimburse and indemnify the Lender against all VAT incurred by the Lender in respect of those costs or expenses. The amount payable shall be the amount that the Lender reasonably determines is the amount that neither it, nor any other member of any group of which it is a member for VAT purposes, is entitled to recover from the relevant tax authority in respect of the VAT.

## **12 Increased Costs**

### **12.1 Increased Costs**

Subject to clause 12.3, within three (3) Business Days of a demand by the Lender, the Borrower shall pay the Lender the amount of any Increased Costs incurred by the Lender as a result of:

- 12.1.1 the introduction of, or any change in (or in the interpretation, administration or application of), any law or regulation by any governmental or regulatory authority; or
- 12.1.2 compliance with any law or regulation made after the date of this Facility Agreement.

### **12.2 Increased Cost claims**

- 12.2.1 If the Lender intends to make a claim under clause 12.1, it shall notify the Borrower of the event that will cause that claim.
- 12.2.2 As soon as practicable after a demand by the Borrower, the Lender shall provide a certificate confirming the amount of its Increased Costs.

### **12.3 Exceptions**

Clause 12.1 does not apply to any Increased Cost that is a Tax Deduction required to be made by the Borrower by law due to the wilful breach of any law or regulation by the Lender.

## **13 Indemnities**

### **13.1 Indemnities**

The Borrower shall indemnify the Lender within three (3) Business Days of demand against any cost, loss or liability incurred by the Lender as a result of:

- 13.1.1 the occurrence of any Event of Default or Potential Event of Default;
- 13.1.2 any prepayment of the Facility being made other than in accordance with a notice of prepayment given in accordance with the terms of this Facility Agreement;
- 13.1.3 a Loan not being made by reason of the operation of any one or more of the provisions of this Facility Agreement (other than by reason of default or negligence by the Lender) or the Borrower purporting to revoke a Drawdown Request; or
- 13.1.4 the Lender receiving or recovering all or part of a Loan or Unpaid Amount other than on the last day of the Interest Period relating to that Loan or Unpaid Amount.

### **13.2 General indemnity provisions**

- 13.2.1 The indemnity under clause 13.1 shall include any interest that the Lender would have received (as determined by the Lender) if the due payment had been received on the last day of the relevant Interest Period, less:
  - 13.2.1.1 the amount the Borrower has actually paid in respect of interest up to the date of actual payment;
  - 13.2.1.2 the amount of interest that the Lender has received by placing the principal amount (and any interest on it) paid by the Borrower on deposit, from the Business Day following receipt up to (and including) the last day of the relevant Interest Period.
- 13.2.2 Each indemnity in this Facility Agreement:
  - 13.2.2.1 is a separate and independent obligation from the other obligations in this Facility Agreement;
  - 13.2.2.2 gives rise to a separate and independent cause of action;
  - 13.2.2.3 applies whether or not any indulgence is granted by the Lender; and

- 13.2.2.4 shall continue in full force and effect despite any judgment, order, claim or proof for a liquidated amount in respect of any sum due under this Facility Agreement, or any other judgment or order.

## **14 Mitigation by Lender**

### **14.1 Mitigation**

Subject to clause 14.2, if circumstances arise which would (or would on giving of notice), result in:

14.1.1 any amount becoming payable under clause 12.1; or

14.1.2 any prepayment under clause 8.5,

the Lender shall, in consultation with the Borrower, take such reasonable steps as may be open to it to mitigate or remove the relevant circumstance, including (without limitation) transferring all its rights and obligations under this Facility Agreement to another bank or financial institution.

### **14.2 Limitation of liability**

14.2.1 The Lender does not have to take the steps set out in clause 14.1 if it believes that taking them might have an adverse effect on its business, operations or financial condition, be contrary to its banking policies or disadvantage it in any other way.

14.2.2 Any action of the Lender under clause 14.1 shall:

14.2.2.1 not limit the Borrower's obligations under the Finance Documents; and

14.2.2.2 be without prejudice to the terms of any of clause 12.1 and clause 8.5.

14.2.3 The Borrower shall promptly indemnify the Lender for all costs and expenses reasonably incurred by the Lender as a result of steps taken by it under clause 14.1.

## **15 Representations and warranties**

The Borrower makes the representations and warranties in clause 15.1 to clause 15.16 inclusive to the Lender on the date of this Facility Agreement.

### **15.1 Due incorporation**

The Borrower:

- 15.1.1 is a duly incorporated limited liability company validly existing under the law of its jurisdiction of incorporation; and
- 15.1.2 has the power to own its assets and carry on its business as it is being conducted.

## **15.2 Powers**

- 15.2.1 The Borrower has the power to enter into, deliver and perform, and has taken all necessary action to authorise its entry into, delivery and performance of, the Finance Documents and the transactions contemplated by them.
- 15.2.2 No limit on its powers will be exceeded as a result of the borrowing or grant of security contemplated by the Finance Documents.

## **15.3 Non-contravention**

The entry into and performance by it of, and the transactions contemplated by, the Finance Documents do not and will not contravene or conflict with:

- 15.3.1 the Borrower's constitutional documents;
- 15.3.2 any agreement or instrument binding on it or its assets or constitute a default or termination event (however described) under any such agreement or instrument; or
- 15.3.3 any law or regulation or judicial or official order, applicable to it.

## **15.4 Authorisations**

The Borrower has obtained all required or desirable authorisations to enable it to enter into, exercise its rights and comply with its obligations in the Finance Documents. Any such authorisations are in full force and effect.

## **15.5 Binding obligations**

- 15.5.1 the Borrower's obligations under the Finance Documents are legal, valid, binding and enforceable; and
- 15.5.2 the Legal Charge creates (or, once entered into, will create):

15.5.2.1 valid, legally binding and enforceable Security for the obligations expressed to be secured by it; and

15.5.2.2 subject to registration under the Companies Act 2006 and, in the case of real property, registration at the Land Registry, perfected Security over the assets expressed to be subject to security in it,

in favour of the Lender, having the priority and ranking expressed to be created by the Legal Charge, and ranking ahead of all (if any) Security and rights of third parties except those preferred by law.

#### **15.6 No filing or stamp taxes**

Under the law of its jurisdiction of incorporation, it is not necessary to file, record or enrol any Finance Document (other than as provided in clause 15.5) with any court or other authority in that jurisdiction or pay any stamp, registration or similar Taxes in relation to any Finance Document or any transaction contemplated by any Finance Document.

#### **15.7 No default**

15.7.1 No Event of Default and, on the date of this Facility Agreement Potential Event of Default, is continuing or might reasonably be expected to result from the making of a Loan.

15.7.2 No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination thereof, would constitute) a default or termination event (howsoever described) under any other agreement or instrument which is binding on it or to which any of its assets is subject which has or is likely to have a Material Adverse Effect.

#### **15.8 Information**

The information, in written or electronic format, supplied by, or on behalf of, the Borrower to the Lender in connection with the Facility and the Finance Documents was, at the time it was supplied or at the date it was stated to be given (as the case may be):

15.8.1 if it was factual information, complete, true and accurate in all material respects;

15.8.2 if it was a financial projection or forecast, prepared on the basis of recent historical information and on the basis of reasonable assumptions and was arrived at after careful consideration;

15.8.3 if it was an opinion or intention, made after careful consideration and was fair and made on reasonable grounds; and

15.8.4 not misleading in any material respect, nor rendered misleading by a failure to disclose other information,

except to the extent that it was amended, superseded or updated by more recent information supplied by, or on behalf of, the Borrower to the Lender.

#### **15.9 Financial statements**

Each set of financial statements delivered to the Lender by the Borrower was prepared in accordance with GAAP consistently applied unless expressly disclosed to the Lender in writing to the contrary before the date of this Facility Agreement, and gives a true and fair view of the Borrower's financial condition and operations during the relevant accounting period and was approved by the Borrower's directors in compliance with section 393 of the Companies Act 2006.

#### **15.10 No material adverse change**

There has been no material adverse change in the business, assets, financial condition, trading position or prospects of the Borrower since the date of the publication of its most recent audited financial statements.

#### **15.11 No litigation**

No litigation, arbitration or administrative proceedings are taking place, pending or, to the Borrower's knowledge, threatened against it, any of its directors or any of its assets.

#### **15.12 No breach of law**

The Borrower has not breached any law or regulation which breach has or is likely to have a Material Adverse Effect.

#### **15.13 Pari passu**

The Borrower's payment obligations under the Finance Documents rank at least pari passu with all existing and future unsecured and unsubordinated obligations (including contingent obligations), except for those mandatorily preferred by law applying to companies generally.

#### **15.14 Ownership of assets**

15.14.1 The Borrower is the sole legal and beneficial owner of, and has good, valid and marketable title to, all its assets and no Security exists over its assets except for the Permitted Security.

15.14.2 The Borrower is the sole legal and beneficial owner of the land or asset secured or to be secured by the Legal Charge and no higher ranking Security exists over that land.

#### **15.15 Centre of main interests and establishments**

For the purposes of Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast) (**Recast Insolvency Regulation**), the "centre of main interests" (as that term is used in Article 3(1) of the Recast Insolvency Regulation) of the Borrower is situated in the United Kingdom and it has no "establishment" (as that term is defined in Article 2(10) of the Recast Insolvency Regulation) in any other jurisdiction.

#### **15.16 State aid**

15.16.1 Provision of the Loan to the Borrower is made on a no-aid basis following assessment by the Borrower that the interest rates charged are in line with those that would be charged by commercial lenders and the terms of this Facility Agreement being in accordance with commercial terms. The Borrower has completed its own State aid assessment and is satisfied that the Facility therefore does not constitute State aid.

15.16.2 The Borrower and the Lender shall:

15.16.2.1 until the UK withdrawal from the European Union comply with all applicable European Union Regulations and Guidance in relation to State aid; or

15.16.2.2 following the UK's withdrawal from the European Union the Borrower and the Lender shall comply with all applicable United Kingdom Regulations and Guidance in relation to State aid, including any European Union Regulations and Guidance in relation to State aid that continue to be applicable in England and Wales,

15.16.3 No further Loan or further payment shall be made to the Borrower if it becomes subject to a recovery order following the Monitoring and Enforcement Authority, declaring any aid illegal and incompatible with the State Aid Rules, whether in relation to a Loan or any other funding agreement.

- 15.16.4 The Lender and the Borrower are jointly and individually responsible for maintaining detailed records with the information and supporting documentation necessary to establish that all the conditions set out in this Facility Agreement are fulfilled. Such records shall be maintained for ten (10) years following the date of the Facility Agreement and shall be made available to the Monitoring and Enforcement Authority, within a period of twenty (20) working days if requested.
- 15.16.5 The Lender may monitor the Borrower's compliance with the requirements of this clause 15.16 and for the avoidance of doubt any failure to comply with such requirements (where applicable) shall be deemed to be an Event of Default for the purposes of clause 17.
- 15.16.6 Further to clause 17, the Lender may vary or withhold any or all of the Loans and / or require repayment of the Loans already provided to the Borrower, together with interest from the date of Drawdown of the Loan, if the Lender is required to do so as a result of a decision by the Monitoring and Enforcement Authority, or as a result of any obligation arising under
- 15.16.6.1 European Union law for so long as the UK remains a member state of the European Union; or
- 15.16.6.2 the law of England and Wales, including any European Union law with continues applicability, after the UK withdrawal from the European Union.
- 15.16.7 The interest rate payable under clause 15.16.6 shall be no less than 100 basis points above the EU Reference Rate (or such other applicable interest rate as may be set by the Monitoring and Enforcement Agency following the UK exit from the European Union) in force on the date of payment.

#### **15.17 Repetition**

The Borrower repeats the representations and warranties in this clause 15 on:

- 15.17.1 the date of each Drawdown Request;
- 15.17.2 each Drawdown Date; and
- 15.17.3 the first day of each Interest Period,

by reference to the facts and circumstances existing on each such date.



## **16 General covenants**

The Borrower covenants with the Lender as set out in clause 16.2 to clause 16.14 and undertakes to comply with those covenants.

### **16.1 Continuing obligations**

The covenants given by the Borrower in this clause 16 shall remain in force from the date of this Facility Agreement for so long as any amount remains outstanding under the Finance Documents or any Commitment is in force.

### **16.2 Negative pledge**

16.2.1 The Borrower shall not:

- 16.2.1.1 create, or permit to subsist, any Security on or over the land or asset secured by Legal Charge or any other land or property owned by the Borrower; or
- 16.2.1.2 sell, transfer or otherwise dispose of any of its assets on terms whereby such asset is or may be leased to or re-acquired or acquired by it; or
- 16.2.1.3 sell, transfer or otherwise dispose of any of its receivables on recourse terms; or
- 16.2.1.4 enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
- 16.2.1.5 enter into any other preferential arrangement having a similar effect.

16.2.2 Clause 16.2.1 shall not apply to any security which is Permitted Security.

### **16.3 Notification of default**

- 16.3.1 The Borrower shall notify the Lender of any Potential Event of Default or Event of Default (and the steps, if any, being taken to remedy it) promptly on becoming aware of its occurrence.
- 16.3.2 The Borrower shall, promptly on request by the Lender, supply a certificate signed by two (2) of its director(s) or senior officers on its behalf certifying that no Event of Default is continuing (or, if an Event of Default is continuing, specifying the Event of Default and the steps, if any, being taken to remedy it).

#### **16.4 Tax affairs**

The Borrower shall:

- 16.4.1 file all tax returns required to be filed within the time period allowed; and
- 16.4.2 pay all Taxes shown to be due and payable on such returns or any assessments made against it within the time period allowed (other than amounts being contested in good faith in respect of which payment may be lawfully withheld and in respect of which it maintains appropriate reserves).

#### **16.5 Ranking of obligations**

The Borrower shall procure that any of its unsecured and unsubordinated obligations and liabilities under the Finance Documents rank, and will rank, at least *pari passu* in right and priority of payment with all its other unsecured and unsubordinated obligations and liabilities, present or future, actual or contingent, except for those obligations and liabilities mandatorily preferred by law of general application to companies.

#### **16.6 Authorisations**

The Borrower shall promptly obtain all consents and authorisations under any law or regulation (and do all that is needed to maintain them in full force and effect) to enable it to perform its obligations under the Finance Documents and to ensure the legality, validity, enforceability and admissibility in evidence of the Finance Documents in its jurisdiction of incorporation.

#### **16.7 Compliance with law**

The Borrower shall comply in all respects with all relevant laws to which it may be subject, if failure to do so would materially impair its ability to perform its obligations under the Finance Documents.

#### **16.8 Change of business**

The Borrower shall not make any substantial change to the general nature or scope of its business as carried on at the date of this Facility Agreement.

#### **16.9 Financial statements**

The Borrower shall supply to the Lender copies of its audited financial statements for that financial year as soon as they become available.

#### **16.10 Certification of financial statements**

Each set of financial statements delivered to the Lender by the Borrower shall be certified by a director of the Borrower as giving a true and fair view of its financial condition as at the date at which those financial statements were drawn up.

#### **16.11 Financial statements requirements**

The Borrower shall ensure that the financial statements delivered to the Lender shall:

- 16.11.1 be prepared using GAAP; and
- 16.11.2 present a true and fair view of the Borrower's assets, liabilities, financial position and profit or loss during the relevant accounting period; and
- 16.11.3 have been approved by the Borrower's directors in compliance with section 393 of the Companies Act 2006.

#### **16.12 Change in accounting practices**

- 16.12.1 In relation to any set of financial statements, the Borrower shall notify the Lender if there has been a change in accounting principles, standards or practices or financial reference periods. The Borrower shall procure that its auditors deliver to the Lender sufficient information, in form and substance as may be reasonably required by the Lender, to enable the Lender to determine whether this clause 16 has been complied with.
- 16.12.1 If the Borrower's financial statements are prepared at the date of this Facility Agreement in accordance with GAAP, the Borrower may determine after the date of this Facility Agreement that its financial statements should be prepared in accordance with IFRS but, prior to implementing that change it shall agree with the Lender, both Parties acting in good faith, the amendments to be made to the provisions of this Facility Agreement to reflect that change in accounting principles on the basis of advice received from the Borrower's auditors. To the extent practicable those amendments will be such as to ensure that the change to IFRS does not result in any material alteration in the commercial effect of the obligations in this Facility Agreement.

#### **16.13 Further information**

The Borrower shall supply to the Lender:

- 16.13.1 details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against the Borrower or any of its directors as soon as it becomes aware of them, and which might, if adversely determined, have a Material Adverse Effect; and

16.13.2 promptly, any further information about the financial condition, business and operations of the Borrower that the Lender may reasonably request.

**16.14 Know your customer**

If the Lender is obliged for any reason to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Borrower shall, promptly on the request of the Lender, supply (or procure the supply of) such documentation and other evidence as is reasonably requested in order for the Lender to carry out, and be satisfied that it has complied with, all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

**17 Events of Default**

Each of the events or circumstances set out in clause 17.1 to clause 17.11 inclusive is an Event of Default.

**17.1 Non-payment**

The Borrower fails to pay any sum payable by it under any Finance Document when due, unless its failure to pay is caused solely by:

17.1.1 an administrative error or technical problem and payment is made within three (3) Business Days of its due date; or

17.1.2 a Disruption Event and payment is made within three (3) Business Days of its due date.

**17.2 Non-compliance**

The Borrower fails to comply with any provision of the Finance Documents and (if the Lender considers, acting reasonably, that the default is capable of remedy) such default is not remedied within fourteen (14) days of the earlier of:

17.2.1 the Lender notifying the Borrower of the default and the remedy required; and

17.2.2 the Borrower becoming aware of the default.

**17.3 Misrepresentation**

Any representation, warranty or statement made, repeated or deemed made by the Borrower in, or pursuant to, the Finance Documents is (or proves to have been) incomplete, untrue, incorrect or misleading when made, repeated or deemed made.

#### **17.4 Cessation of business**

The Borrower suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business.

#### **17.5 Cross-default**

- 17.5.1 any Borrowed Money is not paid when due nor within any originally applicable grace period;
- 17.5.1 any Borrowed Money becomes due, or capable of being declared due and payable, prior to its stated maturity by reason of an event of default (howsoever described);
- 17.5.2 any commitment for any Borrowed Money is cancelled or suspended by a creditor of the Borrower by reason of an event of default (howsoever described); or
- 17.5.3 any creditor of the Borrower becomes entitled to declare any Borrowed Money due and payable prior to its stated maturity by reason of an event of default (howsoever described).

#### **17.6 Insolvency**

- 17.6.1 The Borrower stops or suspends payment of any of its debts or is unable to, or admits its inability to, pay its debts as they fall due.
- 17.6.2 The Borrower commences negotiations, or enters into any composition, compromise, assignment or arrangement, with one or more of its creditors (excluding the Lender) with a view to rescheduling any of its Indebtedness (because of actual or anticipated financial difficulties).
- 17.6.3 A moratorium is declared in respect of any Indebtedness of the Borrower.
- 17.6.4 Any action, proceedings, procedure or step is taken in relation to:
  - 17.6.4.1 the suspension of payments, a moratorium of any Indebtedness, winding up, dissolution, administration or reorganisation (using a voluntary arrangement, scheme of arrangement or otherwise) of the Borrower; or

17.6.4.2 a composition, compromise, assignment or arrangement with any creditor of the Borrower; or

17.6.4.3 the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Borrower or any of its assets.

17.6.5 Any event occurs in relation to the Borrower that is analogous to those set out in clause 17.6.1 to clause 17.6.4 (inclusive) in any jurisdiction.

17.6.6 Clause 17.6.4 shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within fourteen (14) days of commencement or, if earlier, the date on which it is advertised. The ending of any moratorium referred to in clause 17.6.3 shall not remedy any Event of Default caused by that moratorium.

#### **17.7 Creditors' process**

A distress, attachment, execution, expropriation, sequestration or other analogous legal process is levied, enforced or sued out on, or against, the Borrower's assets and is not discharged or stayed within thirty (30) days.

#### **17.8 Enforcement of security**

Any Security on or over the assets of the Borrower becomes enforceable.

#### **17.9 Illegality**

All or any part of any Finance Document becomes invalid, unlawful, unenforceable, terminated, disputed or ceases to be effective or to have full force and effect.

#### **17.10 Repudiation**

The Borrower repudiates or evidences an intention to repudiate the Finance Documents or any of them.

#### **17.11 Material adverse change**

Any event occurs (or circumstances exist) which, in the opinion of the Lender, has or is likely to have a Material Adverse Effect.

#### **17.12 Acceleration**

On and at any time after the occurrence of an Event of Default, the Lender may:

17.12.2 by notice to the Borrower:

17.12.2.1 cancel the outstanding Commitment whereupon it shall immediately be cancelled; and/or

17.12.2.2 declare that all outstanding Loans, accrued interest and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable; and/or

17.12.2.3 declare that all outstanding Loans be payable on demand, whereupon they shall immediately become payable on demand by the Lender; and/or

17.12.3 exercise any or all of its rights, remedies, powers or discretions under the Legal Charge.

## **18 Assignment and transfer**

### **18.1 Assignment and transfer by the Lender**

The Lender may, subject to clause 18.2.1:

18.1.1 assign any of its rights under the Finance Documents; or

18.1.2 transfer all of its rights or obligations by novation,

to another bank or financial institution.

### **18.2 Conditions of assignment or transfer**

18.2.1 If:

18.2.1.1 the Lender assigns any of its rights or transfers all of its rights or obligations under the Finance Documents; and

18.2.1.2 as a result of circumstances existing at the date of the assignment or transfer, the Borrower would be obliged to make a payment to any assignee or transferee under clause 12.1,

then such assignee or transferee is only entitled to receive those payments to the same extent that the Lender would have been so entitled if the assignment or transfer had not occurred.

### **18.3 Lender's right to charge, assign or create security over rights**

**18.3.1** In addition to the other rights provided to the Lender under this clause 18, the Lender may at any time and without the Borrower's consent, charge, assign or otherwise create Security in or over all or any of its rights under any Finance Document to secure its obligations, including any charge, assignment or other Security to secure obligations to a federal reserve or central bank, except that no such charge, assignment or Security shall:

**18.3.1.1** release the Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security for the Lender as a party to any of the Finance Documents; or

**18.3.1.2** require any payments to be made by the Borrower other than or in excess of, or grant to any person any more extensive rights than, those required to be made or granted to the Lender under the Finance Documents.

#### **18.4 Assignment or transfer by the Borrower**

The Borrower may not assign any of its rights or transfer any of its rights or obligations under the Finance Documents without the prior written consent of the Lender.

### **19 Information**

#### **19.1 Confidential Information**

The Lender agrees to keep all Confidential Information confidential and not disclose it to anyone other than in accordance with clause 19.2.

#### **19.2 Disclosure of confidential information**

The Lender may disclose:

**19.2.1** to any actual or potential assignee or transferee of its rights or obligations under this Facility Agreement (and any of their professional advisers), in addition to any publicly available information, such Confidential Information as the Lender shall consider appropriate, if the person to whom the information is given has entered into a Confidentiality Undertaking, except that there shall be no requirement for a Confidentiality Undertaking if the recipient is subject to professional obligations to maintain the confidentiality of the information;

**19.2.2** to any person with (or through) whom it enters into (or may enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made



by reference to, this Facility Agreement and/or the Borrower (and any of their professional advisers), in addition to any publicly available information, such Confidential Information as the Lender shall consider appropriate, if the person to whom the information is given has entered into a Confidentiality Undertaking, except that there shall be no requirement for a Confidentiality Undertaking if the recipient is subject to professional obligations to maintain the confidentiality of the information;

- 19.2.3 to any governmental, banking, taxation or regulatory authority or similar body, or any other person to the extent that it is required to do so by any applicable law, regulation, court order or the rules of any relevant stock exchange, such Confidential Information as the Lender shall consider appropriate, if the person to whom the information is given is informed that it:

19.2.3.1 is confidential; and

19.2.3.2 may be price-sensitive,

except that the Lender does not need to inform the person of clause 19.2.3.1 and clause 19.2.3.2 above, if it considers it is not practicable to do so in the circumstances;

- 19.2.4 to any person to whom information is required to be disclosed in connection with, and for the purpose of, any litigation, arbitration, administrative or other investigations, proceedings or disputes, such Confidential Information as the Lender shall consider appropriate, if the person to whom the information is given is informed that it:

19.2.4.1 is confidential; and

19.2.4.2 may be price-sensitive,

except that the Lender does not need to inform the person of clause 19.2.4.1 and clause 19.2.4.2 above, if it considers it is not practicable to do so in the circumstances;

- 19.2.5 to any person to whom or for whose benefit the Lender charges, assigns or otherwise creates Security under clause 18.3, such Confidential Information as the Lender shall consider appropriate, if the person to whom the information is given is informed that it:

19.2.5.1 is confidential; and

19.2.5.2 may be price-sensitive,

except that the Lender does not need to inform the person of clause 19.2.5.1 and clause 19.2.5.2 above, if it considers it is not practicable to do so in the circumstances.

### **19.3 Freedom of Information**

- 19.3.1 The Parties each acknowledge that they are both subject to the requirements of the Freedom of Information Act 2000 (**FOIA**) and the Environmental Information Regulations 2004 (**EIRs**).
- 19.3.2 Each party shall assist and cooperate with the other Party to enable it to comply with its Information disclosure obligations.
- 19.3.3 Each Party shall and shall procure that any sub-contractor shall:
  - 19.3.3.1 provide all necessary assistance and cooperation as reasonably requested by the Party in receipt of a Request for Information (the "**Requesting Party**") to enable the Requesting Party to respond and comply with its obligations under the FOIA and EIRs within the relevant timescale as set out in section 10 of the FOIA or regulation 5 of the EIR;
  - 19.3.3.2 transfer to the other Party all Requests for Information relating to this Facility Agreement that it receives as soon as practicable and in any event within two (2) working days of receipt; and
  - 19.3.3.3 provide the Requesting Party with a copy of all relevant information requested in the Request for Information which is in its possession or control in the form that the Requesting Party requires within five (5) working days (or such other period as the Requesting Party may reasonably specify) of the Requesting Party's request for such information.
- 19.3.4 The Party in receipt of a Request for Information shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Facility Agreement or any other agreement, whether any Information is exempt from disclosure in accordance with the provisions of the FOIA and / or EIRs.
- 19.3.5 Each Party acknowledges that the other may be required under the FOIA and / or EIRs to disclose information without consulting or obtaining consent from the other Party. When in receipt of a Request for Information a Party shall take reasonable steps to notify the other of the Request for Information to the extent that it is permissible and reasonably practical for it to do so.

#### **19.4 Data Protection**

- 19.4.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 19.4 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 19.4.2 The parties acknowledge that for the purposes of the Data Protection Legislation, in relation to any Personal Data provided by the Lender, the Lender is the Controller and the Borrower is the Processor.
- 19.4.3 Without prejudice to the generality of clause 19.4.1, each Party shall ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the other Party for the duration and purposes of this agreement.
- 19.4.4 Without prejudice to the generality of clause 19.4.1, the Borrower shall, in relation to any Personal Data processed in connection with the performance by the Borrower of its obligations under this agreement:
  - 19.4.4.1 ensure that it has in place appropriate technical and organisational measures as defined in the Data Protection Legislation, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
  - 19.4.4.2 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
  - 19.4.4.3 not transfer any Personal Data outside of the European Economic Area the following conditions are fulfilled:

- 19.4.4.3.1 the Borrower has provided appropriate safeguards in relation to the transfer;
    - 19.4.4.3.2 the data subject has enforceable rights and effective legal remedies; and
    - 19.4.4.3.3 the Borrower complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred;
  - 19.4.4.4 Assist the Lender, at the Lenders cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - 19.4.4.5 Notify the Lender without undue delay on becoming aware of a Personal Data Breach;
  - 19.4.4.6 At the written direction of the Lender, delete or return Personal Data that has been provided by the Lender and in relation to which the Lender is the Controller, and copies thereof to the Lender on termination of the Facility Agreement unless required by Applicable Law to store the Personal Data; and
  - 19.4.4.7 maintain complete and accurate records and information to demonstrate its compliance with this clause 19.4 and allow for audits by the Lender or the Lender's designated auditor.
- 19.4.5 The Lender does not consent to the Borrower appointing any third party processor of Personal Data under this Facility Agreement without the prior written consent of the Lender and the Borrower confirming that it entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 19.4 and which the Borrower undertakes reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Lender and the Borrower, the Borrower shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 19.4.5.
- 19.4.6 Either party may, at any time on not less than thirty (30) days' notice, revise this clause 19.4 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

## **19.5 Entire agreement**

This clause 19 constitutes the entire agreement between the Parties in relation to the obligations of the Lender under the Finance Documents regarding Confidential Information and supersedes any previous agreement regarding Confidential Information.

## **19.6 Continuing obligations**

19.6.1 The obligations in this clause 19 are continuing. The obligations in set out in clauses 19.1, 19.2, 19.3 and 19.5 will remain binding on the Lender for a period of twelve (12) months from the earlier of:

19.6.1.1 the date on which all amounts payable by the Borrower under or in connection with this Facility Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and

19.6.1.2 the date on which the Lender ceases to be the Lender.

19.6.2 For the avoidance of doubt the obligations in relation to clause 19.4 shall continue.

## **19 Set-off**

### **20.1 Lender may set-off**

The Lender may at any time set off any liability of the Borrower to the Lender against any liability of the Lender to the Borrower, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Facility Agreement. If the liabilities to be set off are expressed in different currencies, the Lender may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Lender of its rights under this clause 20.1 shall not limit or affect any other rights or remedies available to it under this Facility Agreement or otherwise.

### **20.2 No obligation to set-off**

The Lender is not obliged to exercise its rights under clause 20.1, but if the rights are exercised, the Lender shall promptly notify the Borrower of the set-off that has been made.

## **21 Calculations and certificates**

### **21.1 Accounts**

The Lender shall maintain accounts evidencing the amounts owed to it by the Borrower, in accordance with its usual practice. Entries in those accounts shall be prima facie evidence of the existence and amount of the Borrower's obligations as recorded in them.

## **21.2 Certificates and determinations**

If the Lender issues any certificate, determination or notification of a rate or any amount payable under this Facility Agreement, it shall be (in the absence of manifest error) conclusive evidence of the matter to which it relates.

## **21.3 Day count convention**

Any interest, commission or fee shall accrue on a day-to-day basis, calculated according to the actual number of days elapsed and a year of 365 days.

## **22 Amendments, waivers and consents**

### **22.1 Amendments**

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

### **22.2 Waivers and consents**

22.2.1 A waiver of any right or remedy under any Finance Document or by law, or any consent given under any Finance Document, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

22.2.2 A failure or delay by a party to exercise any right or remedy provided under any Finance Document or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm any Finance Document. No single or partial exercise of any right or remedy provided under any Finance Document or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm any Finance Document by the Lender shall be effective unless it is in writing.

### **22.3 Rights and remedies**

The rights and remedies provided under each Finance Document are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

## **23 Severance**

If any provision (or part of a provision) of any Finance Document is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause 23 shall not affect the legality, validity and enforceability of the rest of the relevant Finance Document.

## **24 Counterparts**

### **24.1 Counterparts**

24.1.1 Each Finance Document may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute one agreement.

24.1.2 No counterpart shall be effective until each party has executed at least one counterpart.

## **25 Third party rights**

### **25.1 Third party rights**

25.1.1 A person who is not a party to this Facility Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Facility Agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

25.1.2 The rights of the Parties to rescind or agree any amendment or waiver under this Facility Agreement are not subject to the consent of any other person.

## **26 Notices**

### **26.1 Delivery**

Any notice or other communication given to a party under or in connection with any Finance Document shall be:

26.1.1 in writing;

26.1.2 delivered by hand by pre-paid first-class post or other next working day delivery service or sent by fax; and

26.1.3 sent to:

26.1.3.1 the Borrower at:  
Wansbeck Workspace, Rotary Parkway, Ashington,  
Northumberland, NE63 8QZ  
Attention: The Managing Director

26.1.3.2 the Lender at:  
County Hall, Morpeth, Northumberland, NE61 2EF  
Attention: Monitoring Officer

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

## **26.2 Receipt by Borrower**

Any notice or other communication that the Lender gives to the Borrower under or in connection with any Finance Document shall be deemed to have been received:

26.2.1 if delivered by hand, at the time it is left at the relevant address; and

26.2.2 if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting.

A notice or other communication given as described in clause 26.2.1 on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

## **26.3 Receipt by the Lender**

Any notice or other communication that the Borrower gives to the Lender under or in connection with any Finance Document shall be deemed to have been received:

26.3.1 if delivered by hand, at the time it is left at the relevant address; and

26.3.2 if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting.

A notice or other communication given as described in clause 26.3.1 on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

## **26.4 No notice by email**



A notice or other communication given under or in connection with any Finance Document is not valid if sent by email.

**27 Governing law and jurisdiction**

**27.1 Governing law**

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

**27.2 Jurisdiction**

Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) that arises out of or in connection with this Facility Agreement or its subject matter or formation. Nothing in this clause 27 shall limit the right of the Lender to take proceedings against the Borrower in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

This Facility Agreement has been entered into on the date stated at the beginning of it.

## Schedule 1 FORM OF DRAWDOWN REQUEST

A Drawdown Request shall be emailed from the Borrowers Finance Director (or Chief Operating Officer in the absence of the Finance Director):

- addressed to [Kate.Johnstone@northumberland.gov.uk](mailto:Kate.Johnstone@northumberland.gov.uk) and copied to [Andy.stewart@northumberland.gov.uk](mailto:Andy.stewart@northumberland.gov.uk);
- including the following information:

Drawdown Request	
Name of Scheme:	
Loan Reference:	
Drawdown amount claimed:	
Claim number (where claim is the final claim please also indicate):	
Supporting Evidence (eg QS Certificate):	



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**Arch Group Board**

**Item 9c**

**Project Seeking Approval**

**Low Prudhoe (Joint Venture) Development**

**15 December 2017**

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## **Item: 9c Low Prudhoe Development Funding**

### **1.0 Introduction**

#### **1.1 Board is invited to:**

**APPROVE** funding of £5,717,740 being 50% contribution to the construction of a new development by Prudhoe Estates LLP, a 50/50 joint venture between Arch Commercial Enterprise Ltd and Northumberland Estates. The funding will be subject to "agreement for leases" being entered into by Aldi and B&M and generate an initial base income of £544,000 pa. This income will support further investment in the sites, create the platform for future scheme delivery and upon completion generate an estimated profit of £1,707,261 for Arch (Commercial Enterprise) Ltd.

### **2.0 Background and Investment Rationale**

**2.1** The development of a new occupier led scheme that will deliver an exciting new retail offer for Prudhoe, increasing amenity and reducing retail leakage into other regions.

**2.2** Underpinned by two anchor tenants the aim is to create a platform for a comprehensive development with a number of key benefits that could:

- Significantly boost the local economy, creating new jobs as well as spin-off employment in construction
- Generate spin-off trade for existing shops and services within the Town Centre
- Enhance the retail and leisure facilities available to residents of Prudhoe and the Tyne Valley
- Reduce the need for locals to travel further afield to do their main food shopping
- Give residents a greater choice in non-food shopping
- The potential to attract a hotel that will bring new overnight accommodation and restaurants to Prudhoe

- 2.3 The scheme has a forecast gross profit of £1,945,471. The net return for Arch (Commercial Enterprise) Ltd (ACEL) is £972,736 representing a 50% share of the proceeds.
- 2.4 However, including a capital receipt of £734,525 held over from the sale of land into the JV in 2014, upon completion, ACEL could realise a total profit of £1,707,261 from the scheme.
- 2.5 To achieve this, ACEL will be required to fund 50% of the development costs which, after deducting £734,525 profit from the sale of land into the JV will total £5,717,740. Debt repayment to NCC at the usual commercial rate of 5.75% and loan repayments of £328,770 pa, will generate an annual revenue surplus of £150,650 pa.

With regard to the future management of the asset, ACEL has a number of options available and can either:

1. Seek a forward sale in the investment market to generate a capital receipt upon commencement of the leases, repay the debt and realise the profit (this option will require ACEL to top up rent free income)
  2. Sell upon completion of the development (this option will also require ACEL to top up rent free income)
  3. Sell the asset at the end of the rent-free periods
  4. Hold and manage the asset, take the benefit of the annual revenue surplus and maintain loan payments to NCC
- 2.6 Options 1 and 2 are unattractive to ACEL as Option 1 will be discounted due to the forward nature of the sale and both Options require ACEL to provide a capital sum to fund the top up of the rent-free periods, reducing the proceeds of the sale.
- 2.7 If the appetite is to repay debt, Option 3 provides the optimum time to exit the asset. This ideally would be at the end of the rent free periods (when the leases still have long unexpired lease terms) and subject to favourable market conditions. However, £150,650 pa of surplus income with uplift represents an extremely valuable revenue return.

- 2.8 Board does not need to make an immediate decision on these options. The cost and benefits of all options can be considered in due course as part of prudent asset management planning. However, the indications are this is a viable scheme with a substantial number of benefits for ACEL, Prudhoe and Northumberland.
- 2.9 This includes employment, contributions to the local economy and the generation of business rates from two non-income producing, vacant sites.
- 3.0 **Background**
- 3.1 This report promotes the development of two strategically located, brownfield sites situated north of Prudhoe Town Centre, illustrated as sites A & B in the photograph in Fig 1 below.



**Fig 1: Low Prudhoe Development Sites**

- 3.2 ACEL acquired the subject sites from NCC in March 2013 for the sum of £120,000. This was funded through an additional share issue with NCC, therefore no actual debt or interest is repayable. For the purpose of this development, the sites are deemed to have nil cost to ACEL.
- 3.3 The sites lie approximately 1.5km north east of Prudhoe and north of West Wylam, south of the A695 Princess Way, in the area of Low Prudhoe Industrial Estate. Comprising a

total area of approximately 6.6 hectares (16.3 acres) the sites yield a developable area of approximately 4.92 hectares (12.15 acres).

- 3.4 The sites were occupied by West Wylam Colliery from 1899 until the early 1960s when the buildings were demolished and the site left as a spoil heap. Despite being marketed by both NCC and Arch for employment use, the sites have lain fallow for many years.
- 3.5 In 2014, ACEL recognised an opportunity to deliver a retail and leisure scheme on the site. However, title restricted the uses on the site to that of industrial and commercial through restrictive covenants held by the Duke of Northumberland.
- 3.6 The most cost effective solution was the creation of a 50:50 Joint Venture with Northumberland Estates, the development arm of the Duke of Northumberland as this would enable the release of the covenants from the land. This approach was agreed and approved by the Arch Board in 2014.
- 3.7 The land was subsequently valued at £1,825,000 and sold into a new joint venture "Prudhoe Estates LLP" providing ACEL with an immediate capital receipt of £912,500 gross (£734,525 net after capital gains tax). The primary objective of the JV was to deliver a retail led, commercially viable development on the sites and generate revenue. Outline planning consent was secured in 2016 and a development proposal is now ready to progress, with key pre-lettings to anchor retailers Aldi and B&M underpinning the scheme.
- 3.8 Board is therefore requested to approve funding for the development of a comprehensive new scheme across these two vacant sites. To assist Board in assessing the scheme a Development Viability Report and Financial Appraisal has been prepared by BNP Paribas on behalf of ACEL. This is attached in **Appendix 1** and demonstrates the financial viability of the development.
- 3.9 All rental values have been provided by Barker Proudlove and Savills, leasing advisors to the project. All costs relating to the development have been assessed by retained cost consultants, Gardiner & Theobald.

- 3.10 A key element of the commercial development process is that no major funding is committed until the agreement for leases with the anchor tenants have been fully agreed and completed. In this regard, in principle heads of terms have been agreed with the retailers and solicitors for both sides provisionally instructed to progress, subject to Arch Board approval.

#### 4.0 Location and Situation

- 4.1 Prudhoe is situated in the Tyne Valley, in the southernmost region of Northumberland and lies approximately 11 miles west of Newcastle upon Tyne and 10 miles east of Hexham. It is 5 miles east of Blaydon and the A1 and 12 miles from the industrial and retail dominant area of Gateshead.
- 4.2 Prudhoe has a railway station situated to the north west of the town with direct services to Newcastle, Carlisle, Hexham and Blaydon. Trains run approximately every 30 minutes in each direction with an average journey time to Newcastle of 25 minutes.
- 4.3 In terms of specific location, the site is located on the south side of the A695, Princess Way as illustrated in Fig 2 below:



**Fig 2: Low Prudhoe Development Sites Location Plan**



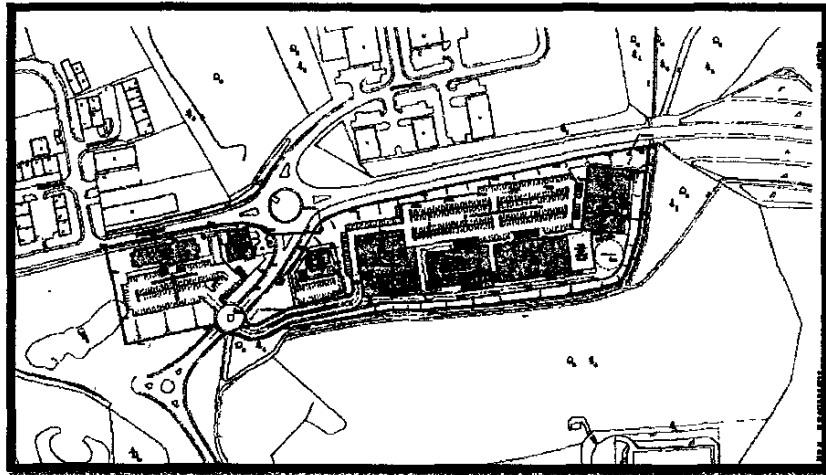
- 4.4 A roundabout provides separation between the sites and leads to Castlefield Drive which links to the housing estates around Prudhoe town centre,
- 4.5 The north side of Princess Way has been extensively developed for industrial, manufacturing and warehouse use and there are numerous engineering and manufacturing businesses in the Low Prudhoe industrial area. The major employer is Essity, formerly known as SCA Hygiene Products (UK) Ltd, with more than 400 employees. Other major employers in close proximity are Thompsons of Prudhoe, a group of companies servicing the construction sector which employs around 250 people. The Specials Laboratory, a pharmaceutical manufacturer, has around 125 employees and SCM Pharma, another pharmaceutical manufacturer in Low Prudhoe, has around 100 employees. ACEL also owns and manages two small industrial estates located west of the subject sites along the A695.
- 4.6 Ground conditions relating to the subject sites are challenging and despite having been marketed by both NCC and Arch for industrial employment use, interest in developing the sites has been limited. It is primarily for this reason that alternative, more profitable, retail and leisure use have been promoted on the sites.
- 4.7 Key to this is Prudhoe's current retail and leisure role which is comparatively small in relation to the population of the town and its other economic and social functions. As a result, the town's spending retention is low, with a significant amount of leakage to other centres in the County and in neighbouring authority areas.
- 4.8 The Northumberland Town Centre and Retail Study Update (2016) showed that of the 15 'study zones', the one encompassing Prudhoe had the second lowest market share for main food shopping with 28.3% of residents shopping within Northumberland in 2015.
- 4.9 The retention of spending within the county on 'top up' food shopping by residents around Prudhoe was also relatively low at 75.6%. However, of the spending of the Prudhoe zone residents retained within Northumberland only about 25% is spend within the Prudhoe zone itself, with further leakage to adjoining centres, Hexham in particular.

- 4.10 Similarly, retention of spending on comparison goods within the county was low at 23.1%, and only 12% is actually spent in Prudhoe. If approved, this scheme will make a significant contribution to improve that position.

**5.0 Project Description**

- 5.1 Since being formed, Prudhoe Estates LLP has completed a pre-development assessment and condition survey of the site, commissioned a retail assessment to help identify new operators and designed an effective and efficient retail-led scheme with architect, Whittam Cox.
- 5.2 Outline planning consent was secured in 2016 and following a positive public consultation, has been extremely well received by the local community.
- 5.3 Subject to Board approval, it is anticipated the development will be built over two to three phases which, overall could extend over a 3-year period with the first phase due to complete at the end of 2018. The gross internal area of the scheme proposed is 66,853 sq ft with occupiers that include:
- A 18,471 GIA sq ft supermarket for Aldi. (Terms are agreed in principle at £15.16 per sq ft (£280,020 pa) for a 15 year lease).
  - A 22,000 sqft store with adjoining garden centre for B&M. (Terms are agreed in principle at £12.00 per sq ft (£264,000 pa) for a 10 year lease).
  - Six further retail units for the likes of Pets at Home and Poundstretcher will be developed as a second phase.
  - A family pub/hotel potentially to Marstons or a regional pub hotel operator which has yet to be agreed.
  - Drive thru units expected for Greggs and Starbucks, both of which have confirmed interest in principal
  - Further units will be developed as and when pre-leases to strong tenants have been secured.
  - Agents anticipate strong interest from Pets at Home, Boyes and Poundstretcher.
- 5.4 Access to the new retail park will be off a new roundabout off Castlefields Drive so as to minimize impact on to Princess Way.

- 5.5 The design of the scheme has been carefully planned around the needs of occupiers and investors and reflects a contemporary edge of town retail development. The layout is illustrated in the plan in Fig 3 below and is also attached in A3 format in **Appendix 2**:



**Fig 3: Low Prudhoe Scheme Layout**

- 5.6 The two central units on the eastern site form the anchor units for the Aldi foodstore and B&M "general variety store". In addition to developing out the anchor units, the car park will also be constructed providing around 400 spaces.
- 5.7 This initial phase of development will create speculative plots for more retail units to be constructed and attract further investment into Prudhoe. However, it is the presence of the Aldi and B&M anchor stores that create the platform to achieve this.
- 5.8 Subject to demand, the final phases will comprise the Drive Thru elements of the scheme and land sales on the western site for the hotel and leisure offer. It is important to note that the land sales are not a prerequisite of the development on the eastern site and if achieved, will generate additional capital receipts for the JV.
- 6.0 Planning**
- 6.1 Outline planning permission was secured in December 2016 for a mixed-use development comprising Class A1 (retail development) and/or Class A3/A5 (drive-thru restaurant) and/or Class A3/A4 (family pub/restaurant) and/or Class C1

(hotel) and/or petrol station (Sui Generis) with associated access.

- 6.2 Reserved matters will be discharged subject to Arch Board approval and completion of the agreement for leases with Aldi and B&M.

**7.0 Procurement**

- 7.1 The creation of the JV with NE allows professional services to be appointed through traditional appointment procedures. If approved by Arch Board and subject to agreement for leases being agreed, the Prudhoe Estates LLP Design Team will progress the appointment of contractors to undertake the development.

- 7.2 Northumberland Estates currently cashflow development activities and as agreed, charging the JV interest of 2% on costs. However, NE currently do not charge for development management.

**8.0 Financial Appraisal**

- 8.1 At project inception in 2014, ACEL was able to secure an immediate net profit of £734,525, generated from sale of the land into the JV. At this point, Arch Board also approved feasibility funding of £75,000 as ACEL contribution to estimated initial planning and design activities of £150,000.

- 8.2 This positive start has been built upon with outline planning permission now secured and a retail scheme created that is attracting good interest from national businesses seeking to invest in Prudhoe.

- 8.3 Current spend on the project extends to £180,653 and this is included in the appraisals in the tables below.

**8.4 Construction Budget**

- 8.4.1 The development comprises the following key cost elements illustrated in Table 1 below:

<b><u>CONSTRUCTION</u></b>	
Site Treatment	£1,246,000
Site preparation and drainage	Included
Phase construction	£5,447,500
External Works	£1,881,300
Price & developers' contingency	£739,370
External services/Preliminaries/Inflation/Site entrance	£1,932,750
Architect fees	£413,721
QS, M&E and Engineer fees	£248,232
Other professional fees, DM, PM, etc	£275,814
Statutory & other costs	£71,000
<b><u>LEASING</u></b>	
Capital incentives to ingoing tenants	£0
Leasing agent, asset management & legal fees	£241,768
<b><u>FINANCE</u></b>	
External Interest Cost	£92,329
Additional loan interest cost until rent payable	£314,745
<b>TOTAL CONSTRUCTION BUDGET</b>	<b>£12,154,529</b>

**Table 1: Schedule of estimated construction costs (excluding rent free periods)**

- 8.4.2 Capital incentives are shown as nil as the advice from the leasing agents is that incoming tenants will want incentives to be in the form of rent free periods, rather than capital contributions. In this regard, Aldi have negotiated 5 months' rent free, B&M an initial 12 months' rent free, both from commencement of the lease.
- 8.4.3 The impact of both rent free periods have been factored into the financial appraisals as well as additional, anticipated rent free incentive packages and this is illustrated in **Table 3**.
- 8.4.4 There is a potential to sell land on the western site for a Marstons pub and hotel. No value for this has been incorporated into the appraisal at the present time. Once the

majority of the development is trading we expect to be able to sell this site at between £300,000 to £500,000, subject to planning and this will be in addition to the profit estimates of the existing scheme.

## 8.5 Development Income

- 8.5.1 When fully completed, the development will provide a food supermarket, seven additional retail units, a restaurant or coffee drive thru, a pub/hotel providing a total gross internal area of 66,853 sq ft. There will be a modest service charge on the park as is the norm for out of town retail development. A tenant schedule with estimated rental values is set out in **Table 2** below:

	Aldi	18,471	£15.16	£280,020
	Targeting Pets at Home	5,000	£13.50	£67,500
	Targeting Poundstretcher	5,000	£13.50	£67,500
	Initial offer from B&M	22,000	£12.00	£264,000
	Target Boyes	10,000	£12.50	£125,000
	Targeting McDonalds	4,490	£25.00	£112,250
	Greggs/Starbucks	1,892	£22.50	£42,570
	Targeting Marstons	50 Beds	£0.00	Nil value
	<b>Total (excl. Hotel)</b>	<b>66,853</b>		<b>£958,840</b>

**Table 2: Schedule of tenants and estimated rental values**

## 8.6 Estimated Development Value

- 8.6.1 On the basis of a rental income of £958,840 the anticipated investment value is approximately £14,850,000. This is based upon a net initial yield range of 6.07%, after deduction of 6.00% purchaser's costs and based upon current market conditions. Also deducted is the topping up of rent free periods to a buyer.
- 8.6.2 However, if the property is sold, once the rent free incentive period expires the sale price increases by the rent gain of

£670,495. This assumes constant market conditions and assumes a blended current market yield based upon 5.5% net initial yield for the Aldi, 5.75% for the drive thru, 6% for the B&M, assuming a 15-year lease and 7% net initial yield on the remainder.

- 8.6.3 The development appraisal in **Table 3** below provides a summary of income, costs and profit generated from the scheme. A more detailed appraisal is illustrated in **Appendix 1** within the BNPP Development Viability Report.

Low Prudhoe Retail Site Friday, 1 December 2017			
SCHEME INFORMATION			
Gross Built Area	68,524	sq. ft.	
Gross Internal Lettable Area	66,853	sq. ft.	
Development Period	15	Months	
Start date	01/03/2018	(illustrative only)	
INCOME & INVESTMENT VALUE			
Gross Income	958,840	% of Total	0.0%
Less existing income	£0		0.0%
Total Revenue	£958,840		100.0%
Gross Retail Investment Value (6.5% yield)	£15,796,382		
	£0		
Rent Free Periods/void allowance	-£670,495		
Purchasers Costs	-£947,783		
<b>Net Investment Value</b>	<b>£14,859,000</b>		
DEVELOPMENT COSTS & OUTLAY			
Acquisition	£0	% of Total	0.0%
Construction	£11,246,920		87.2%
Professional Fees	£1,008,767		7.8%
Marketing & Letting	£241,788		1.9%
Disposal	£0		0.0%
Capital Incentives	£0		0.0%
Finance	£407,074		3.2%
<b>TOTAL COSTS</b>	<b>£12,904,529</b>		100.0%
PROFIT			
	<b>£1,945,471</b>		
Performance Measures			
Total costs	On full costs		
Total costs	£12,904,529		
Total Profit	£1,945,471		
Total profit to Arch	£1,707,281	50% to each JV partner	
Profit on Cost %	15.1%	includes £734,626 land profit	
Profit on GDV %	13.10%		
Retail Development Yield %	7.4%		
Arch Income surplus after 5.75% interest	£150,680		

**Table 3: Low Prudhoe Scheme Financial Appraisal**

- 8.6.4 Table 3 demonstrates that based upon the estimated cost plan provided by Gardiner Theobald, a total investment of £12,904,529 is required to undertake the full development.
- 8.6.5 With a gross development value of £14,859,000, the scheme has an estimated profit of £1,945,471 which equates to 15.1% profit on costs.
- 8.6.6 The net return for ACEL is £972,736 representing a 50% share of the proceeds. However, including a capital receipt

of £734,525 held over from the sale of land into the JV in 2014, ACEL could realise a profit of £1,707,261 from the scheme.

- 8.6.7 In revenue terms, ACEL will be required to fund 50% of the development costs in the sum of £6,452,265. After deducting £734,525 profit from the sale of the land ACEL's contribution will be £5,717,740 and will be borrowed from NCC at the usual commercial rate of 5.75%.
- 8.6.8 Annual loan repayments to NCC will be £328,770 pa but with estimated gross income from the scheme of £958,840 pa and ACEL receiving £479,420 pa (50%), an annual revenue surplus is forecast of £150,650 pa.
- 8.6.9 If ACEL wish to repay the debt and realise the profit, the asset can be sold and this is explained in greater detail in paragraph 2.5 of this report.
- 8.6.10 There will be an interim development position in respect of Phase 1. Subject to the agreement to leases being agreed with Aldi and B&M, an initial investment of £9,430,908 will be required. ACEL contribution will be 50% of this sum at £4,715,454. This reduces to £3,980,929 after profit of £734,525 is deducted and the annual loan repayment to NCC will be £228,903 pa.
- 8.6.11 Upon completion of the first phase, Arch will receive 50% of the rental income of £544,000 and this will produce rental cover of £272,000 pa against debt to NCC of £228,903 pa.
- 8.6.12 As the scheme develops into second and third phases, it is anticipated income and capital values will increase to those forecast in the appraisal. The key benefits of this approach are that the higher costs associated with the initial ground remediation and enabling costs are funded out of the higher value more substantial anchor stores. This will reduce development costs of the later phases generating more efficient returns in terms of revenue whilst delivering an improved return on capital and reducing risk.

## **9.0 Risks**

- 9.1 Risk management is a key element of any proposed development and a professional team has been established that will mitigate and manage the key areas of risk in this project. These risks are analysed in greater detail as follows;



- Land acquisition and site possession
- Construction and other development costs
- Anchor tenant pre-letting & retail demand
- Retail unit flexibility
- Market conditions and potential change
- Finance cost
- Competition

9.2 Most of the major risks associated with this scheme have been minimised so as to represent, as close as possible, the minimum level of potential risk. We would comment on each area of risk as follows:

**10.0 Land acquisition and site conditions**

10.1 The site is now fully acquired and Prudhoe Estates has vacant possession of all land. Some additional cost for site remediation work has been forecast relating to the ground condition, and this has been incorporated into the appraisal. If following ground investigations, the site is deemed incapable of viable development, the scheme will not progress beyond this stage or be redesigned to facilitate a profitable scheme.

**11.0 Construction costs**

11.1 Gardiner & Theobald Consultants has provided a full costs schedule based upon the latest plans and specification. These costs are up to date as of November 2017. Arch has allowed for inflation and other contingencies of £926,370 as well as all usual professional fees for architects, mechanical and structural engineers, project managers and any other consultancy costs. All planning costs and fees are also included and an environmental assessment has been undertaken.

11.2 If the design remains constant the cost and construction risk appear to have been minimised as effectively as possible.

**12.0 Leasing**

12.1 Prudhoe Estates has employed Barker Proudlove and Savills as retail leasing advisors on the scheme. Barker Proudlove is perhaps the leading shopping centre leasing advisor in the north of England with over 50 town centre

schemes that it leases for a variety of institutional, property company and local authority owners.

12.2 Both Savills and Barker Proudlove have worked closely with the developer to design a scheme that will provide retail units of the correct size, layout and specification for today's demanding retailers. In addition, the team has looked closely at the retail layout and the vehicular access and provision.

12.3 The leasing team is confident that the overall scheme suits the local catchment and that the scheme will suit appropriate retailers' demands both in terms of size and rental budget.

12.4 The two largest units are pre-let to Aldi, on a 15-year lease and B&M Bargains on a 10-year lease with 5 yearly rent reviews. The total pre-let income already secured amounts to £544,000 per annum. Further phases will only be built once pre-lettings have been achieved and we are advised lettings to McDonalds, Greggs or Starbucks are progressing positively.

### **13.0 Market Conditions**

13.1 Perhaps the most difficult factor to control is a change in market conditions. In this context we are considering mainly national changes, such as a deepening recession, large rise in interest rates, or any other major influence on the willingness of retailers to take space and investors to consider the end product.

13.2 The scheme design and the already low level of rents, allied to substantial leasing incentives should overcome such risks. Until construction is completed, however, these risks will always remain. In order to minimize risk Prudhoe Estates proposes to only construct units once a pre-let is secured however, this will be reviewed and monitored as the scheme progresses and small scale speculative development could be undertaken if deemed economically efficient and economies of scale prevail.

### **14.0 Finance Costs**

14.1 The appraisal assumes a low interest rate of 2.5% during construction and then a return to the standard rate of 5.75% once the investment is completed. Total finance costs during development of £407,074 have been assumed. An increase

in interest rate to 3.5% would see this increase to around £600,000. In the context of the scheme as a whole this is a modest level of risk.

## **15.0 Competition**

- 15.1 The town of Prudhoe has relatively little by way of modern retail supply and the majority of retail comprises small shops along the main shopping street, Front Street. There is an existing Co-op situated on Oakfield Terrace, to the rear of Front Street. This is around 12,000 sq ft and has parking for approximately 100 cars.
- 15.2 Other well-known retail brands located in Front Street include Boots pharmacy, Greggs, The Original Factory Shop, Lloyds Bank, Ladbrokes and Barclays Bank. There is a Petrol Filling Station, with an associated Co-op convenience store located at the eastern end of Front Street, close to Prudhoe Waterworld, a popular swimming pool and indoor water sport centre.
- 15.3 The nearest major retail offer is located at Blaydon shopping centre, 5 miles to the east and Hexham town centre, 10 miles to the west. Local competition is assessed in more detail further in the attached BNPP Development Viability report. A major benefit of this new scheme is that it will encourage the local population to shop locally rather than to travel to other towns nearby.

## **16.0 Forward Programme**

- 16.1 If approved by Board, negotiations will progress with the anchor tenants to secure agreement for leases. This will then allow bespoke ground investigations to be undertaken and reserved matters discharged to satisfy detailed planning conditions.
- 16.2 The construction contract will be tendered and appointed on the basis of best value. This will then allow development of the first phase to commence on site and subject to all activities being successfully concluded we anticipate construction commencing in Q2 of 2018.

**17.0 Recommendations**

**17.1 Board is invited to:**

**APPROVE** funding of £5,717,740 being 50% contribution to the construction of a new development by Prudhoe Estates LLP, a 50/50 joint venture between Arch Commercial Enterprise Ltd and Northumberland Estates. The funding will be subject to "agreement for leases" being entered into by Aldi and B&M and generate an initial base income of £544,000 pa. This income will support further investment in the sites, create the platform for future scheme delivery and upon completion generate an estimated profit of £1,707,261 for Arch (Commercial Enterprise) Ltd.

### **Schedule 3    SPECIFIC CONDITIONS**

**SC1.** Clause 8.3.1 shall not apply to any disposition by the granting of a lease or licence registerable with HM Land Registry of any land or property;

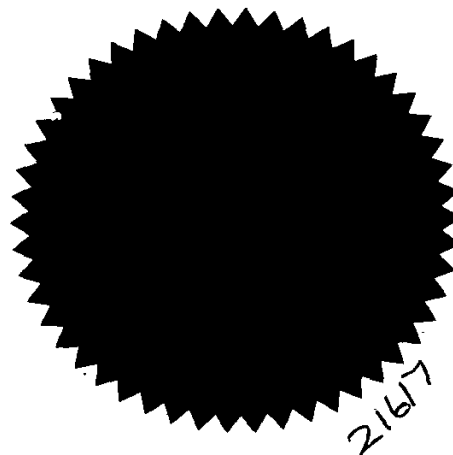
SC1.1            purchased by the Borrower with the Loan; and / or

SC1.2            secured by Legal Charge or any part thereof,

where the Lease Premium or Licence Fee received is less than £50,000.00 for the individual Lease / Licence or does not cause the cumulative Lease Premium and / or Licence Fee receipt to exceed £200,000.00 for the land or property. For the avoidance of doubt a Lease Premium or Licence Fee for the purposes of this clause SC1 shall be the capital sum received by the Borrower for the lease or licence less any relevant disposition costs.

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

The Common Seal of **NORTHUMBERLAND  
COUNTY COUNCIL** was hereunto affixed  
in the presence of:



.....  
Authorised signatory

Executed as deed by **ADVANCE NORTHUMBERLAND  
(COMMERCIAL) LIMITED** acting by

[.....], a director

in the presence of

.....  
Director

.....  
Signature of Witness

.....  
Name of Witness (in Block Capitals)

.....  
Address of Witness

.....  
Occupation of Witness

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

Executed as deed by **ADVANCE NORTHUMBERLAND (COMMERCIAL) LIMITED** acting by

[.....], a director

in the presence of

K.H.

Signature of Witness

K. HUTCHINSON

Name of Witness (in Block Capitals)

WANDSECK WORKSPACE, ROTARY PARKWAY  
ASHINGTON NE63 8QZ

Address of Witness

SENIOR INVESTMENT MANAGER

Occupation of Witness

The Common Seal of **NORTHUMBERLAND COUNTY COUNCIL** was hereunto affixed in the presence of

M. Mearns

Authorised signatory

[Signature]

Director

