



**Registration of a Charge**

Company name: **HUNGATE (YORK) REGENERATION LIMITED**

Company number: **04339730**



X6HOHAP7

Received for Electronic Filing: **23/10/2017**

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**Details of Charge**

Date of creation: **13/10/2017**

Charge code: **0433 9730 0007**

Persons entitled: **NATIONAL WESTMINSTER BANK PLC**

Brief description: **THE FREEHOLD PROPERTY KNOWN AS HUNGATE, YORK (REGISTERED AT THE LAND REGISTRY WITH TITLE NUMBER: NYK322526) AS SHOWN EDGED GREEN ON THE PLAN ANNEXED TO THE INSTRUMENT AT SCHEDULE 9.**

**Contains fixed charge(s).**

**Contains floating charge(s) (floating charge covers all the property or undertaking of the company).**

**Contains negative pledge.**

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**Authentication of Form**

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

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**Authentication of Instrument**

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **SHOOSMITHS LLP**



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

Company number: 4339730

Charge code: 0433 9730 0007

The Registrar of Companies for England and Wales hereby certifies that a charge dated 13th October 2017 and created by HUNGATE (YORK) REGENERATION LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 23rd October 2017 .

Given at Companies House, Cardiff on 25th October 2017

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



**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

DATED

13 October 2017

(1) HUNGATE (YORK) REGENERATION LIMITED

and

(2) NATIONAL WESTMINSTER BANK PLC

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DEBENTURE

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**SHOOSMITHS**

The XYZ Building  
2 Hardman Boulevard  
Spinningfields  
Manchester  
M3 3AZ  
Ref: TJM/M-00667130

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THIS AGREEMENT is made on 13 October

2017

**BETWEEN:**

1. **HUNGATE (YORK) REGENERATION LIMITED** registered in England and Wales with registered number 04339730 (the "Chargor"); and
2. **NATIONAL WESTMINSTER BANK PLC** (the "Bank").

The parties agree as follows:

**1 DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement, unless the context requires otherwise, the following definitions apply:

- |                                  |   |
|----------------------------------|---|
| <b>"Account Bank"</b>            | means a person with whom the Chargor maintains an account;  |
| <b>"Applicable Undertakings"</b> | means those undertakings set out in clauses 14.2 (Authorisations), 14.3 (Compliance with laws), 14.6 (Disposals) and 14.9 (Change of business) of the Facility Agreement.   |
| <b>"Associated Rights"</b>       | means, in relation to any asset other than the Excluded Assets, all proceeds of sale of such asset, all rights, powers, benefits, covenants, warranties, guarantees or Security given or implied in respect of such asset, all rights under any agreement for sale, agreement for lease or licence of or in respect of such asset, and any monies and proceeds paid or payable in respect of such asset.  |
| <b>"Authorisation"</b>           | means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.  |
| <b>"Bank Balances"</b>           | means all monies (including interest) from time to time standing to the credit of any and all present or future accounts (other than the Permitted Payment Account Balance) which the Chargor has, or has an interest in, with any bank, financial institution, or other person (including all monies (including interest) in the Designated Account) and any other cash cover or suspense account established pursuant to any of the Finance Documents) and all indebtedness represented by any such accounts. |
| <b>"Charged Contracts"</b>       | means: <ol style="list-style-type: none"><li>a) those contracts the particulars of which are set out in Schedule 2 (Charged Contracts);</li><li>b) any Hedging Agreement; and</li><li>c) any other document to which the Chargor is a party, which is designated as a Transaction Document (other than a Finance Document, the Specifications, the Development Appraisal or a</li></ol>   |

Collateral Warranty) in accordance with the Facility Agreement,

and where the context shall so require or permit any of such contracts or agreements and the expression "Charged Contract" shall also mean any one of such contracts or agreements.

**"Charged Debts"**

means all book and other debts and all other rights and claims charged to the Bank pursuant to Clause 3.1.9 (First Fixed Charge in respect of Book Debts).

**"COMI"**

means centre of main interests (as that term is used in Article 3(1) of the EC Regulation).

**"Companies Act"**

means the Companies Act 2006.

**"Delegate"**

means any delegate, agent, attorney or trustee appointed by the Bank.

**"Derivative Payment"**

means, in relation to an asset, any damages, compensation, remuneration, profit, bonus, royalties, fee, rent, income or other benefit which the Chargor may derive from or be awarded or entitled to in respect of such asset.

**"Designated Account"**

means:

(a) the accounts (if any) specified in Schedule 1 or the schedule to any supplemental debenture; and

(b) any account from time to time substituted for or additional to any such account (including in each case such account as redesignated and/or renumbered from time to time).

**"Designated Chattels"**

means the plant, machinery, equipment, vehicles, and other chattels (if any) owned by the Chargor and listed in Schedule 5 (Designated Chattels) and shall include any additions, modifications and/or equipment ancillary to any such plant, machinery, equipment, vehicles or other chattels.

**"Discharge Date"**

means the date with effect from which all the Secured Obligations have been unconditionally and irrevocably paid and discharged in full and all commitments of the Bank cancelled.

**"Distribution Rights"**

means all Dividends, all shares or other property derived from any relevant Investment (whether by way of conversion, consolidation, subdivision, substitution, redemption, bonus, preference, option or otherwise) and all other allotments, accretions, rights, benefits and advantages of all kinds accruing, offered or otherwise derived from or incidental to any relevant Investment.



<b>"Dividends"</b>	means all dividends, distributions, interest and other income paid or payable on or derived from any relevant Investment.
<b>"EC Regulation"</b>	means The Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings.
<b>"Enforcement Party"</b>	means any of the Bank, a Receiver or a Delegate.
<b>"Establishment "</b>	means, in relation to the Chargor, an establishment as that term is defined in relation to a debtor in Article 2 (h) of the EC Regulation.
<b>"Excluded Assets"</b>	means the Excluded Property, the Excluded Property Proceeds and the Permitted Payment Account Balance.
<b>"Excluded Property"</b>	means: <ul style="list-style-type: none"> <li>a) the freehold land and buildings at Hungate, York, being all that property registered at the Land Registry under title number NYK322526 as shown edged red on the plan attached at Part 1 of Schedule 10, save for that part as shown edged green on the plan attached at Schedule 9; and</li> <li>b) the freehold land and buildings lying to the north west of Foss Island Road, York, being all that property registered at the Land Registry under title number NYK148037 as shown edged red on the plan attached at Part 2 of Schedule 10.</li> </ul>
<b>"Excluded Proceeds"</b>	<b>Property</b> means the proceeds paid or payable to the Chargor on a disposal of the Excluded Property (or any part thereof).
<b>"Facility Agreement"</b>	means the facility agreement made on or around the date of this Deed between, amongst others, the Chargor as Borrower and National Westminster Bank plc as Lender and Original Counterparty.
<b>"Fixtures"</b>	means any fixtures (but excluding tenant's fixtures), fittings, fixed plant or machinery from time to time situated on or forming part of any Property.
<b>"Floating Charge Assets"</b>	means, at any time, all of the Secured Assets which are at that time the subject of any floating charge created by this Deed.
<b>"Insolvency Act"</b>	means the Insolvency Act 1986.

<b>"Insurance Proceeds"</b>	means the proceeds of any insurance claim received by the Chargor (after deduction of (a) any reasonable expenses incurred in relation to the relevant claim and payable by the Chargor to any person which is not an Obligor and (b) amounts paid to meet third party claims) together with the benefit of all bonuses, profits, returns of premium and other benefits of whatever nature arising by virtue of the Chargor's ownership of any insurances and all such Chargor's interest in any of the foregoing.
<b>"Insurances"</b>	means all contracts or policies of insurance of whatever nature which from time to time are taken out or maintained by or on behalf of the Chargor or (to the extent of its relevant interest) in which the Chargor has an interest.
<b>"Intellectual Property"</b>	means (a) all rights in confidential information, copyright and like rights, database rights, design rights, rights in design, knowhow, rights in inventions, patents, service marks, trade marks and all other intellectual property rights and interests, whether registered (or the subject of an application for registration) or un-registered, owned by the Chargor or in which the Chargor has an interest from time to time and (b) the benefit of the Chargor's applications and rights to use such assets, in each case throughout the world now and in the future.
<b>"Investment"</b>	means any negotiable instrument, certificate of deposit, debenture, share (including, save where the context otherwise requires, any of the Shares) or other investment (as specified for the purposes of section 22 of the Financial Services and Markets Act 2000 as at the date of this Deed) now or in the future owned by the Chargor, in each case whether held directly by, or to the order of, the Chargor or by any trustee, nominee, fiduciary or clearance system on behalf of the Chargor, and also including any rights in respect of such investment against any such trustee, nominee, fiduciary or clearing system.
<b>"LPA"</b>	means the Law of Property Act 1925.
<b>"Party"</b>	means a party to this Deed.
<b>"Permitted Payment Account Balance"</b>	means all monies (including interest) from time to time standing to the credit of the Permitted Payment Account.
<b>"Property"</b>	means the Real Property (other than the Excluded Property) from time to time owned by the Chargor or in which the Chargor has any right, title or interest. Any reference to "Property" also includes a reference to each separate part or parts of such Real Property.

<b>"Real Property"</b>	means (a) any freehold, leasehold or immovable property, wherever situated, and (b) any buildings, fixtures, fittings, fixed plant or machinery from time to time situated on or forming part of that freehold, leasehold or immovable property.
<b>"Receiver"</b>	means any one or more receivers and managers or (if the Bank so specifies in the relevant appointment) receivers appointed by the Bank pursuant to this Deed in respect of the Chargor or in respect of the Secured Assets of the Chargor.
<b>"Secured Assets"</b>	means the assets the subject of any Security created by this Deed.
<b>"Secured Obligations"</b>	means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of each Transaction Obligor to the Bank (in any capacity), whatever their nature or basis, in any currency or currencies, and however they are described, together with all costs, charges and expenses incurred by the Bank in connection with the protection, preservation or enforcement of its rights, under the Finance Documents or any other document evidencing or securing any such liabilities.
<b>"Security"</b>	means any assignment by way of security, mortgage, charge, pledge, lien or other security interest securing any obligation of any person and any other agreement or arrangement having a similar effect.
<b>"Security Period"</b>	means the period beginning on the date of this Deed and ending on the Discharge Date.
<b>"Shares"</b>	means all shares (if any) specified in Schedule 4 (Shares) and also all other stocks, shares, debentures, bonds, warrants, coupons or other securities now or in the future owned by the Chargor from time to time, or any in which it has an interest.
<b>"Specified Shares"</b>	means in relation to the Chargor the Shares specified in Schedule 4 (Shares) opposite its name.
<b>"Third Parties Act"</b>	means the Contracts (Rights of Third Parties) Act 1999.

## **1.2 Definitions contained in Facility Agreement**

1.2.1 Unless a contrary indication appears each term used in this Deed which is defined in the Facility Agreement shall have the same meaning as in the Facility Agreement.

1.2.2 This is the Security Agreement as defined in the Facility Agreement.

## **1.3 Construction**

In this Deed:

1.3.1 unless a contrary indication appears, a reference to:

- a) "assets" includes present and future properties, revenues, rights and interests of every kind and reference to an "asset" includes any part or parts of such asset;
- b) "guarantee" includes any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to pay any deposit on behalf of, or make an investment in, or loan to, any person or to purchase assets of any person, where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
- c) "indebtedness" includes any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- d) "person" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
- e) "regulation" includes any regulation, rule, official directive, request or guideline (in each case, 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;
- f) "set-off" includes analogous rights and obligations in jurisdictions other than England and Wales; and
- g) the "Bank" or any "Chargor" or "Party", shall be construed so as to include its successors in title, permitted assigns and permitted transferees;

1.3.2 where something (or a list of things) is introduced by the word "including", or by the phrase "in particular", or is followed by the phrase "or otherwise", the intention is to state an example (or examples) and not to be exhaustive (and the same applies when other similar words or phrases are used);

1.3.3 unless this Deed expressly states otherwise or the context requires otherwise, (a) each reference in this Deed to any provision of any statute or of any subordinate legislation means, at any time, the relevant provision as in force at that time (even if it has been amended or re-enacted since the date of this Deed) and (b) each reference in this Deed to any provision of any statute at any time includes any subordinate legislation made pursuant to or in respect of such provisions as in force at such time (whether made before or after the date of this Deed and whether amended or re-enacted since the date of this Deed);

1.3.4 each reference to this Deed (or to any other agreement, instrument or deed) means, at any time, this Deed (or as applicable such other agreement, instrument or deed) as amended, novated, supplemented, extended, or restated, at that time, provided that the relevant amendment, novation, supplement, extension, substitution or restatement does not breach any term of this Deed or of any of the Finance Documents;

1.3.5 the index and Clause and Schedule headings are for ease of reference only;

1.3.6 an Event of Default is "continuing" if it has not been remedied or waived; and

- 1.3.7 references to any Security "created ..... by this Deed" are to be deemed to include such Security created, constituted, given, made or extended by, under or pursuant to this Deed.

#### 1.4 Third Party Rights

No person has any right under the Third Parties Act to enforce or enjoy the benefit of any term of this Deed, other than an Enforcement Party, which may do so, or any other person, to the extent that this Deed or any other of the Finance Documents expressly provides for it to do so. No consent of any person who is not a Party is required to rescind or vary this Deed at any time. This Clause 1.4 does not affect any right or remedy of any person which exists, or is available, otherwise than pursuant to the Third Parties Act.

#### 1.5 Incorporation of other terms

- 1.5.1 The terms of the other Finance Documents under which the Secured Obligations arise and of any side letters between the Chargor and the Bank relating to the Secured Obligations are incorporated into this Deed to the extent required for any purported disposition of the Secured Assets contained in this Deed to be a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.
- 1.5.2 Without prejudice to the operation of any applicable term of the Facility Agreement or any other Finance Document, the provisions of clauses 6.3 (Interest on overdue amounts), 10.4 (Currency), 15 (Property covenants), 22 (Amendments and waivers), 29 (Counterparts) and 30 (Notices) of the Facility Agreement shall apply (mutatis mutandis) to this Deed as if set out in this Deed in full and as if any reference in any such clause to "this Agreement" were a reference to "this Deed".

### 2 COVENANT TO PAY

The Chargor, as primary obligor and not merely as surety, covenants with the Bank that it will pay, discharge and perform the Secured Obligations on demand made on or at any time after the due date for payment provided in the Finance Documents and in the manner provided in the Finance Documents.

### 3 SECURITY

#### 3.1 Fixed charges

The Chargor, as a continuing security for the payment, discharge and performance of the Secured Obligations, charges in favour of the Bank the following assets:

- 3.1.1 **First legal mortgage on specified Property** - by way of first legal mortgage, all its Property (if any) identified in Schedule 3 (Details of Property);
- 3.1.2 **First fixed charges in respect of other Property** - by way of first fixed charge, (a) all the Property from time to time owned by it (but excluding any Property which is subject to a valid legal mortgage under Clause 3.1.1), (b) any other rights, title or interest of the Chargor in Property, wherever situated, and (c) all Associated Rights in relation to its Property;
- 3.1.3 **First fixed charges in respect of rental income** - to the extent that such rental income is incapable for any reason of being effectively assigned pursuant to Clause 3.2.3 but is capable of being effectively charged, by way of first fixed charge any rental income and all sums paid or payable and any other consideration given in money or money's

worth for the disposal of an interest in all or part of any Property and the right to make demand for and receive the same;

- 3.1.4 **First fixed charges in respect of Designated Chattels** - by way of first fixed charge, (a) the Designated Chattels (if any) (but not including any of the assets which are subject to a valid legal mortgage or valid fixed charge under Clauses 3.1.1 or 3.1.2), and (b) all Associated Rights in relation to such Designated Chattels;
- 3.1.5 **First fixed charges in respect of other chattels** - by way of first fixed charge, (a) all plant, machinery, vehicles and computer equipment now or in the future owned by it (but not including any such asset which is subject to a valid legal mortgage or valid fixed charge under Clauses 3.1.1, 3.1.2 or 3.1.3 nor any chattel for the time being forming part of the Chargor's stock-in-trade or work in progress), and (b) the benefit of all Associated Rights relating to any chattel validly charged by this Clause 3.1.5;
- 3.1.6 **First fixed charge on specified Shares** - by way of first fixed charge, (a) the Shares (if any) listed in Schedule 4 (Shares) and (b) the Distribution Rights (if any) from time to time accruing to or on such Shares;
- 3.1.7 **First fixed charge on Investments** - by way of first fixed charge, (a) all Investments (but not including Shares which are subject to a valid fixed charge under Clause 3.1.6) and (b) all Distribution Rights from time to time accruing to or on such Investments;
- 3.1.8 **First fixed charges in respect of Insurances** - to the extent that the Insurances and/or the Insurance Proceeds are incapable for any reason of being effectively assigned pursuant to Clause 3.2.4 but are capable of being effectively charged, by way of first fixed charge, the Insurances owned by or written in favour of the Chargor and all Insurance Proceeds either now or in the future held by or payable to the Chargor or in which the Chargor otherwise has an interest (to the extent of such interest);
- 3.1.9 **First fixed charges in respect of book debts** - by way of first fixed charge, (a) all present and future book and other debts, revenues and monetary claims of or owing to the Chargor and (b) all rights and claims of whatever nature of the Chargor now, or which may at any time be, held or enjoyed by it against third parties and against any securities and guarantees in respect of such debts, revenues or claims;
- 3.1.10 **First fixed charge on the Designated Account** - by way of first fixed charge all of its rights in respect of any Designated Account, any amount standing to the credit of any Designated Account and the debt represented by it ;
- 3.1.11 **First fixed charge on other Bank Balances** - by way of first fixed charge, all of its Bank Balances (other than the accounts which are subject to a valid fixed charge under Clause 3.1.10);
- 3.1.12 **First fixed charge on Intellectual Property** - to the extent that such Intellectual Property is incapable for any reason of being effectively assigned pursuant to Clause 3.2.5, by way of first fixed charge, all Intellectual Property (if any) owned by the Chargor or in which the Chargor has an interest (to the extent of such interest);
- 3.1.13 **First fixed charges in respect of Authorisations** - to the extent that such Authorisations and Derivative Payments are incapable for any reason of being effectively assigned pursuant to Clauses 3.2.1 or 3.2.6 respectively but are capable of being effectively charged, by way of first fixed charge, (a) the benefit of all Authorisations held or utilised by the Chargor in connection with its business or the use of any of its assets and (b) the right to recover and receive all Derivative Payments

which may at any time become payable to the Chargor in respect of such Authorisations;

- 3.1.14 **First fixed charge on contracts** - to the extent that they do not fall within any other provision of this Clause 3.1 (Fixed Charges) and are not effectively assigned under Clause 3.2.2, by way of first fixed charge all of its rights under each agreement or document to which the Chargor is a party;
- 3.1.15 **First fixed charge on goodwill and uncalled capital** - by way of first fixed charge, all the goodwill and uncalled capital of the Chargor; and
- 3.1.16 **First fixed charge on other Associated Rights** - by way of first fixed charge, the benefit of all Associated Rights relating to any of the assets of the Chargor, in each case to the extent that such Associated Rights are capable of being made the subject of a fixed charge and are not otherwise the subject of any valid fixed charge pursuant to this Deed.

### 3.2 Assignments by way of security

As further continuing security for the payment of the Secured Obligations, the Chargor assigns absolutely to the Bank all (if any) its right, title and interest in and to the following assets (to the extent such assets are capable of assignment):

- 3.2.1 **Authorisations** - all Authorisations held or utilised by the Chargor in connection with its business or the use of any of its assets and the benefit of any Derivative Payment in respect of such Authorisations;
- 3.2.2 **Charged Contracts** - the Charged Contracts and the benefit of any Derivative Payment in respect of the Charged Contracts;
- 3.2.3 **Rental Income** - any rental income and all sums paid or payable and any other consideration given in money or money's worth for the disposal of an interest in all of part of any Property and the right to make demand for and receive the same;
- 3.2.4 **Insurances and Insurance Proceeds** - the Insurances and the benefit of all Insurance Proceeds of the Chargor;
- 3.2.5 **Intellectual Property** - the Intellectual Property (if any) owned by the Chargor or in which the Chargor has an interest (to the extent of such interest), together with the benefit of any Derivative Payments in respect of such Intellectual Property, but in the case of any such assignment of Intellectual Property the Bank shall grant to the Chargor a licence to use such Intellectual Property in the ordinary course of its business and for so long as no Event of Default exists and is continuing upon such terms as may reasonably be specified by the Bank; and
- 3.2.6 **Associated Rights and Derivative Payments** - any Associated Rights or Derivative Payment which are not the subject of a valid fixed charge pursuant to Clause 3.1 (Fixed charges) of this Deed or valid assignment pursuant to Clauses 3.2.1 to 3.2.5 and which relate to any of the assets of the Chargor, whether or not such assets are subject to a valid legal mortgage, fixed charge or assignment pursuant to this Deed.

### 3.3 Notice of charge or assignment

- 3.3.1 The Chargor shall, promptly give notice of each charge or assignment of all (if any) its right, title and interest in and to:

- a) the Insurances and Insurance Proceeds, by sending a notice in the form of Part 1 of Schedule 6 (Notices) (with such amendments as the Bank may reasonably agree and/or require) duly completed to each of the other parties to the Insurances;
- b) the Charged Contracts (other than the Lease Documents), by sending a notice in the form of Part 2 of Schedule 6 (Notices) (with such amendments as the Bank may reasonably agree and/or require) duly completed to each of the other parties to the Charged Contracts;
- c) the Designated Account, by sending a notice in the form of Part 2 of Schedule 7 (Forms of notice to bank operating secured account) (with such amendments as the Bank may reasonably agree and/or require), on each Account Bank at which a Designated Account is held and on the same date deliver to the Bank acknowledgement of the notice from the Account Bank substantially in the form of Part 2 of Schedule 7;
- d) provided a notice has not been served under Clause b) above, promptly following a request by the Bank (provided that such request may only be made after the occurrence of an Event of Default and for so long as it is continuing) give notice of each charge or assignment of all (if any) its right, title and interest in and to the Lease Documents, by sending a notice in the form of Part 2 of Schedule 6 (Notices) (with such amendments as the Bank may reasonably agree and/or require) duly completed to each of the other parties to the Lease Documents.

3.3.2 The Chargor shall use its reasonable endeavours to procure that each such other party delivers an acknowledgement to the Bank in the form of the acknowledgement of notice endorsed on a copy of the relevant notice as set out in Part 1 or Part 2 of Schedule 6 (Notices).

#### **3.4 Exercise of rights under Charged Contracts**

- 3.4.1 Whilst no Event of Default exists and is continuing, the Bank shall permit the Chargor to exercise its rights under any of the Charged Contracts to which it is party, provided that the exercise of those rights in the manner proposed would not result in an Event of Default.
- 3.4.2 Where an Event of Default exists and is continuing, the Chargor shall, if requested by the Bank, exercise its rights under the Charged Contracts only in accordance with the instructions of the Bank.

#### **3.5 Floating charge**

- 3.5.1 As further continuing security for the payment, discharge and performance to the Bank of the Secured Obligations, the Chargor charges in favour of the Bank, by way of first floating charge, all its assets and undertaking, wherever located, both present and future.
- 3.5.2 The floating charge created by Clause 3.5.1 is deferred in point of priority to all fixed Security validly and effectively created by the Chargor under any of the Security Documents in favour of the Bank as security for the Secured Obligations.

#### **3.6 Conversion of floating charge**



3.6.1 The Bank may, at any time, by notice in writing to the Chargor, convert any floating charge created by this Deed into a fixed charge as regards such assets as it shall specify in the relevant notice if:

- a) an Event of Default has occurred which is continuing; or
- b) the Bank is of the view (acting reasonably) that (a) such assets are in danger of being seized, (b) any legal process or execution is being enforced against such assets, (c) such assets are otherwise in jeopardy, or (d) steps have been taken which would, in the reasonable opinion of the Bank, lead to the appointment of an administrator or administrative receiver in relation to the Chargor (or such administrator or administrative receiver has been appointed) or to the winding-up of the Chargor.

3.6.2 By way of further assurance, the Chargor shall, promptly following service of such notice upon it, execute a fixed charge over such assets in such form as the Bank shall reasonably require.

### **3.7 Automatic conversion of floating charge**

In addition to any circumstances in which any floating charge created under this Deed will crystallise automatically under the general law, and without prejudice to the operation of Clause 3.6 (Conversion of floating charge):

- 3.7.1 if the Chargor creates (or purports to create) any Security on or over any of the Floating Charge Assets (other than a Permitted Security Interest) without the prior written consent of the Bank; or
- 3.7.2 if the Chargor convenes any meeting of its members to consider a resolution in relation to its winding up, or if a liquidator, administrative receiver, receiver, administrator, the Viscount of the Royal Court of Jersey or another similar officer is appointed in respect of the Chargor or any of its assets,

then and in any such event, any floating charge created by this Deed in relation to the Chargor shall, without any notice being given under Clause 3.6 (Conversion of floating charge) and immediately upon such event occurring, be converted into a fixed charge over all the assets which immediately prior to such conversion comprised the Floating Charge Assets of the Chargor.

### **3.8 Excluded Assets**

The Excluded Assets:

- 3.8.1 shall be excluded from the Security created by Clauses 3.1 (Fixed Charges), 3.2 (Assignments by way of security) and from the operation of the further assurance provisions set out in Clause 4 (Further assurance); and
- 3.8.2 are not excluded from the security created by Clause 3.5 (Floating charge).

### **3.9 Continuing security**

The provisions of this Deed will apply at all times (a) regardless of the date on which any of the Secured Obligations was incurred and (b) in respect of the full amount of the Secured Obligations at the relevant time even if, at some other time, the amount of the Secured Obligations has been less than the amount at the relevant time or there has been no part of the Secured Obligations outstanding.

### **3.10 Miscellaneous**

- 3.10.1 All the Security created by this Deed by the Chargor is made with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994.
- 3.10.2 Clauses 3.1.2 to 3.1.16 inclusive shall be read and construed as if each asset described, and each asset comprised within any category of asset described, in each such Clause were expressed, separately and specifically, to have been made subject to a first fixed charge; and the validity and effectiveness of each such fixed charge will not be prejudiced by any other such first fixed charge being found not to be fully valid or effective as such.
- 3.10.3 The fact that no, or incomplete, details of any particular Secured Assets are included or inserted in any relevant Schedule shall not affect the validity or enforceability of the charges created by this Deed.

## **4 FURTHER ASSURANCE**

The Chargor shall:

- 4.1 promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Bank may reasonably specify (and in such form as the Bank may reasonably require) in favour of the Bank or its nominee(s) (a) to perfect the Security created or intended to be created or evidenced by this Deed or for the exercise of any rights, powers and remedies of the Bank provided by or pursuant to this Deed; (b) to confer on the Bank Security over any property or assets of the Chargor located in England and Wales or any other jurisdiction equivalent or similar to the Security intended to be created, or expressed to be created, by this Deed; and/or (c) to facilitate the realisation of the assets which are, or are intended to be, the subject of this Deed; and
- 4.2 take all such action as is available to it (including making all filings and registrations and the payment of all fees and Taxes) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Bank by or pursuant to this Deed.

## **5 NEGATIVE PLEDGE AND DISPOSAL RESTRICTIONS**

### **5.1 Negative pledge**

During the Security Period, the Chargor shall not:

- 5.1.1 create, extend or permit to subsist any Security over any of the Secured Assets; nor
- 5.1.2 (a) sell, transfer or otherwise dispose of any of its assets on terms that they are or may be leased to or re-acquired by the Chargor (b) sell, transfer or otherwise dispose of any of its receivables on recourse terms, (c) enter into any arrangement under which money, debts or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts, or (d) enter into any preferential arrangement with any person, having a similar effect to any of the arrangements or transactions previously described in this Clause 5.1, in any case in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial indebtedness or of financing the acquisition of an asset.

### **5.2 Exceptions**

Clause 5.1 (Negative pledge) does not apply to any Permitted Security Interests.

## **6 REPRESENTATIONS AND WARRANTIES**

The Chargor represents and warrants to the Bank on the date of this Deed (a) in the terms of the Repeating Representations, in each case as if expressly set out in this Deed and so far as applicable to the Chargor or the Secured Assets and (b) as follows.

- 6.1 **No Event of Default** - No Event of Default has occurred or is continuing or might reasonably be expected to result from the execution of this Deed or from effect being given to its provisions and no person who holds any Security over any asset of the Chargor has enforced or given notice of its intention to enforce such Security.
- 6.2 **Commercial benefit** - It enters into this Deed in good faith and for the purposes of the promotion of the success of its business and has given due consideration to the terms and conditions of the documents evidencing the Secured Obligations and of this Deed and has satisfied itself that there are reasonable grounds for believing that by executing this Deed it will derive commercial benefit.
- 6.3 **Matters affecting Shares** - It does not own (either legally or beneficially) or have any interest in any stocks, shares, debentures, bonds, warrants, coupons or other securities in, issued by or relating to any other corporation.
- 6.4 **Priority of Security** - The Security created by this Deed constitutes first priority Security over the assets which are expressed to be subject to such Security and those assets are not subject to any Security other than Permitted Security Interests.
- 6.5 **Centre of main interests** - for the purposes of the EC Regulation its COMI is situated in England and it has no Establishment in any other jurisdiction.
- 6.6 **Repeated representations** - Each of the Repeating Representations and each of the further representations and warranties set out in this Clause 6 (other than that at Clause 6.2 (Commercial benefit) which is not repeated) shall be deemed to be repeated on each day during the Security Period on which representations and warranties set out in Clause 12 (Representations) of the Facility Agreement are, or are deemed to be, made or repeated.

## **7 UNDERTAKINGS**

Throughout the Security Period, the Chargor undertakes to the Bank in the terms of the Applicable Undertakings, in each case so far as applicable to the Chargor or the Secured Assets (as if expressly set out in this Deed) and also in the terms of the following provisions of this Clause 7.

- 7.1 **Perform** - It will at all times comply with the terms (express or implied) of this Deed.
  - 1.1 **Not Jeopardise Security** - Other than completion of the Development in accordance with the terms of the Facility Agreement, it will not (and, without prejudice to Clause 7.8.4, will procure that no nominee will) do or omit to do anything, or allow anything to be done or omitted, the result of which may be in any way to depreciate, jeopardise or otherwise prejudice the value to the Bank of the Security created by this Deed or the priority of its ranking as expressed in this Deed.
  - 7.2 **Observe laws** - It will not do or omit to do or allow anything to be done in relation to the Secured Assets which would infringe any laws affecting (whether directly or indirectly) the Secured Assets and will comply with all notices, orders, injunctions and mandatory proposals served on it, issued or made by any local or other authority or governmental agency, or by its landlords relating to any of the Secured Assets or its use of them, and will serve within any relevant time

limit any counter-notice necessary or desirable to preserve the value of any such Secured Assets.

- 7.3 **Effect registrations** - It will effect all registrations, make all filings or applications and pay all Taxes, rents, fees or dues necessary to keep in full force and effect, and where necessary to renew or extend, all the Secured Assets and the Chargor's right to make full use and enjoy the full benefit of the Secured Assets.

- 7.4 **Proceedings** - At its own cost and expense and provided it is (in the Chargor's reasonable opinion) commercially prudent to do so, it will use its best endeavours to enforce, institute, continue or defend all proceedings affecting the Secured Assets, their state or condition or continued use or value so as to preserve to the fullest extent the value to the Bank of the Security created by this Deed.

- 7.6 **Chattels** - Upon the occurrence of an Event of Default, which is continuing, if so requested by the Bank, it will place and maintain on each chattel of substantial value (as reasonably determined by the Bank) and which is expressed to be subject to a fixed charge under this Deed, in a conspicuous place, an identification marking in the following terms and not conceal, alter or remove such marking or permit it to be concealed, altered or removed:

"Notice of Charge - This [specify the chattel] and additions and ancillary equipment are subject to a first fixed charge in favour of National Westminster Bank PLC."

- 7.6 **Maintain Intellectual Property** - It will (a) observe and perform all covenants and stipulations from time to time affecting its Intellectual Property or the way it is used or enjoyed, (b) make all payments, carry out or seek all registrations, grants or renewals of its Intellectual Property, or of any licences or other interests affecting its Intellectual Property, (c) generally take all such steps as may be necessary to preserve, maintain and renew when necessary or desirable (and in any case promptly following a request by the Bank for it to do so) all of its Intellectual Property, present or future, and (d) not do (or fail to do) anything nor permit anything to be done, if that might infringe any Intellectual Property owned or used by it or affect the existence or value of any such Intellectual Property or its right or ability to use it.

#### 7.7 **Land Registry**

- 7.7.1 In relation to all present and future registered Property (and any unregistered Property subject to compulsory first registration at the date of this Deed), it will apply to the Land Registrar to enter on the register against the title number of or to be allocated to the relevant Property a restriction in the following terms:

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the charge dated [date of this Deed] in favour of National Westminster Bank plc referred to in the charges register, or its conveyancer"

- 7.7.2 and, where applicable, notice of an obligation to make further advances.

- 7.7.3 It shall submit the relevant applications no later than the date of submission of the initial application for registration of the Security created by this Deed (or, in the case of The Land Registry form CH2, where applicable, promptly following its later receipt of such form duly completed by the Bank), and pay all fees, costs and expenses incurred in connection with the applications.

- 7.7.4 The Bank, in its absolute discretion, may where the Chargor has failed to carry out such applications following a request in writing by the Bank, make any of the applications referred to in this Clause 7.7 in place of the Chargor. In such a case, the Chargor consents to the entry of the relevant restriction and will pay all fees, costs and expenses reasonably and properly incurred in connection with the application.
- 7.7.5 In respect of the Excluded Property, it will apply to the Land Registrar to enter on the register against the title number of or to be allocated to the relevant Excluded Property a restriction in the terms set out in the Intercreditor Agreement.

**7.8 Shares and other Investments**

- 7.8.1 It will, promptly upon receipt of them, deliver to the Bank copies of all notices, circulars, letters, reports, accounts and other communications with shareholders relating to its holding of the Shares.
- 7.8.2 It will pay all calls or other payments due and payable in respect of any of the Shares and if it fails to do so promptly upon request in writing by the Bank, the Bank may pay the calls or other payments on its behalf.
- 7.8.3 Save with the prior written consent of the Bank, it will not (a) take any action by or as a consequence of which the rights attaching to the Shares are altered or diluted or the issued capital of any of the companies whose Shares are charged by this Deed is increased, nor (b) participate in any rights issue relating to the Shares, nor (c) apply for, or consent to, the conversion of any Shares held in certificated form into uncertificated form.
- 7.8.4 Except where the Bank requires it to do so, it will not nominate another person or persons to enjoy or exercise all or any of its rights as the registered holder of the Shares.
- 7.8.5 If the Bank requires it to do so, it will take all steps within its power to procure that any of the companies to which the Shares relate will make such changes to its respective articles of association as may be necessary, pursuant to section 145 of the Companies Act 2006, to permit it to nominate the Bank or a nominee of the Bank to exercise or enjoy all of any of such Chargor's rights as a registered holder of the Shares of such company.
- 7.8.6 In respect of the Specified Shares which are held within CREST or otherwise in uncertificated form, and any further Shares in uncertificated form which it subsequently acquires, it will provide such information, give such instructions and enter into such documents as the Bank may reasonably require to perfect the Security created by this Deed over such Shares.
- 7.8.7 Immediately following the execution of this Deed it will deliver to the Bank (or as it shall direct) all bearer instruments, share certificates and other documents of title to or evidence of ownership of the Investments and/or the Distribution Rights owned by it or in which it has an interest together with (in the case of Shares, other than bearer instruments, held in certificated form) instruments of transfer in respect of each of the Shares executed in blank (except for the number and class of Shares and the name of the transferor) and left undated.
- 7.8.8 If it acquires Investments, whether pursuant to its Distribution Rights or for any other reason, after the date of this Deed, the provisions of Clause 7.8.3 and the remaining provisions of this Clause 7.8 shall apply to such Investments.

- 7.8.9 The Bank may, at any time following the occurrence of an Event of Default and while it is continuing, complete the instruments of transfer on behalf of the Chargor in favour of itself or such other person as it shall select, and the Chargor shall procure that such instruments of transfer are immediately registered in the statutory registers of the relevant company and that share certificates in the name of the Bank and/or its nominee(s) in respect of the Shares to which such instrument of transfer relates are delivered to the Bank as soon as reasonably practicable, but in any event no later than 5 days after the date upon which the Bank has delivered the relevant instrument of transfer to the Chargor. The Bank or its nominee, having been registered as the transferee of such Shares, may at any time thereafter re-transfer such Shares to the Chargor and the Chargor shall procure that the relevant instrument of transfer is forthwith registered in the relevant person and that the share certificate(s) in the name of the Chargor, together with a further instrument of transfer executed in accordance with Clause 7.8.7 relating to such Shares, are forthwith delivered to the Bank.
- 7.8.10 Until the occurrence of an Event of Default, but not after such occurrence while such Event of Default is continuing, the Chargor will be entitled to receive and retain all Dividends and will be entitled to exercise all voting and other rights and powers attaching to the Shares, provided that it will not exercise any such voting rights or powers in a manner which would prejudice the value of, or the ability of the Bank to realise, the Security created by this Deed.
- 7.8.11 It shall give to the Bank reasonable notice of the manner in which it proposes to exercise the rights and powers referred to in Clause 7.8.10.
- 7.8.12 Throughout the period following the occurrence of an Event of Default and while it is continuing (the "default period"), any Dividends will be received by the Chargor on trust for the Bank and paid into a separate account or otherwise dealt with as directed by the Bank, and the Chargor shall, if the Bank so requires, during the default period, exercise all voting and other rights and powers attaching to the Shares as the Bank shall direct.
- 7.8.13 At any time when any Investments are registered in the name of the Bank or its nominee:
- a) for so long as there is no Event of Default which is continuing, the Bank will (so far as is consistent with the Security created by this Deed) exercise any applicable voting or other rights and powers in accordance with the directions of the Chargor and account to the Chargor for any Dividends; but
  - b) upon the occurrence of an Event of Default and while it is continuing the Bank may exercise or refrain from exercising such voting or other rights and powers as it thinks fit and may retain any Dividends, but in any case the Bank will not be under any duty to ensure that any Dividends are duly and promptly paid or received by it or its nominee, nor to verify that the correct amounts are paid or received by it or its nominee, nor to take any action in connection with the taking up of any Distribution Rights in respect of or in substitution for, any of those Investments.
- 7.9 **Charged Contracts** - It will perform all its obligations under the Charged Contracts in a diligent and timely manner, not make or agree to make any amendments or modifications to the Charged Contracts, nor waive any of its rights under the Charged Contracts, nor exercise any right to terminate any of the Charged Contracts, except, in any case, in accordance with the terms of the Facility Agreement or otherwise with the prior written consent of the Bank and will promptly inform the Bank of any material disputes relating to the Charged Contracts.

- 7.10 **Access** - It will (at the risk and cost of the Chargor) permit the Bank and its professional advisers, agents and contractors and, where required by the Bank, independent valuers free access at all reasonable times and on reasonable notice and for all reasonable purposes (including carrying out physical inspections, valuations and/or the preparation or making of inventories and/or schedules and/or other records or copies) (a) to the premises, assets, books, accounts and records of the Chargor and (b) to meet and discuss matters with such senior employees as the Bank may reasonably require, and will provide and will procure that any occupiers of such premises and such employees provide all reasonable assistance to the Bank and such other persons in connection with the access obligations imposed by this Clause 7.10.
- 7.11 **Deposit of documents** - It will promptly at the Bank's request deposit with the Bank (or as the Bank directs) (a) all deeds and documents of title relating to the Property, including counterpart leases, licences and any other deeds or documents necessary or desirable to assist the Bank to enforce the Security created by this Deed, (b) copies of all policies of Insurance in respect of which the proceeds of any claims are assigned or charged pursuant to this Deed and (c) all such other documents relating to the Secured Assets as the Bank may from time to time reasonably require.
- 7.12 **Retention of documents** - The Bank may retain any document delivered to it pursuant to Clause 7.11 (Deposit of documents) or otherwise until the Discharge Date and if, for any reason, the Bank ceases to hold any such document before such time, it may, by notice to the Chargor, require that the relevant document be redelivered to it and the Chargor shall promptly comply (or procure compliance) with such notice.
- 7.13 **Power to remedy** - If the Chargor fails to comply with any of the covenants and undertakings set out or referred to in Clauses 7.1 (Perform) to 7.12 (Retention of documents) inclusive, promptly following a request from the Bank to do so, it will allow (and irrevocably authorises) the Bank and/or such persons as the Bank nominates to take on behalf of the Chargor such action (including the making of payments) as is necessary to protect any relevant assets against the consequences of such failure to comply and/or to ensure compliance with such covenants and undertakings.
- 7.14 **Indemnity** - It will indemnify the Bank and will keep the Bank indemnified against all costs, Taxes, losses and liabilities incurred by the Bank as a result of any default by the Chargor in the performance of any of the obligations expressed to be assumed by it in this Deed and in connection with the exercise by the Bank of its rights contained in Clauses 7.8.2 and 7.13 (Power to remedy). All sums the subject of this indemnity will be payable by the Chargor to the Bank on demand.

## **8 BOOK AND OTHER DEBTS**

The Chargor covenants with the Bank that save as expressly permitted by the Facility Agreement, at all times during the continuance of the security constituted by this Deed, it shall:

- 8.1 **Collection** - Get in and realise the Charged Debts in the ordinary course of its business, and not without the prior written consent of the Bank sell, assign, factor, discount or otherwise charge the Charged Debts, nor release, exchange, compound, set off or grant time or indulgence in respect of the same, in favour of any other person or purport to do so.
- 8.2 **Assignment** - If called upon to do so by the Bank following an Event of Default which is continuing, execute in favour of the Bank or as the Bank may direct, legal assignments of the whole or any part of the Charged Debts in such form as the Bank may require and take such other steps as the Bank may require to perfect any such assignment including, without limitation, giving notice of this Deed and/or any such assignment to the person(s) from whom such Charged Debts are due, owing or incurred.



- 8.3 **Payment In of proceeds** - Pay the proceeds of the Charged Debts (or such part or category thereof as the Bank may require) into the Construction Account (or into such other separate and denominated account of such Chargor as the Bank may specify from time to time, governed by a mandate in form and substance satisfactory to the Bank, with such bank or other financial institution situate in England and Wales as the Bank may from time to time reasonably require) and, pending such payment, hold all such proceeds on trust for the Bank.
- 8.4 **Withdrawals** - Without the prior written consent of the Bank not make any withdrawal or direct any payment to be made from any Account save as expressly permitted under the Facility Agreement or after the Chargor has been notified by the Bank in writing that all amounts payable pursuant to the Facility Agreement have been repaid in full.
- 8.5 **Notice** - From time to time, forthwith upon opening an account with a bank or financial institution (other than the Bank) deliver to the person with whom such account is maintained a notice substantially in the form set out in Part 1 of Schedule 7.

## 9 **ENFORCEABILITY**

For the purposes of all powers implied by the LPA or any other applicable legislation, the Secured Obligations shall be deemed to have become due and payable and this Deed will become immediately enforceable and the powers of the Bank and any Receiver will become exercisable on the date of this Deed, but, as between the Bank and the Chargor, the power of the Bank to enforce the Security created by this Deed shall be exercisable only upon the occurrence of an Event of Default and for so long as it is continuing (unless there has been a request from the Chargor to the Bank for the appointment of a Receiver, in which case it will be exercisable at any time following the making of such request).

## 10 **ENFORCEMENT OF SECURITY**

- 10.1 At any time after the Bank's power of sale has become exercisable, as between the Bank and the Chargor, the Bank may, without further notice, (a) appoint one or more than one person to be Receiver in respect of the Secured Assets or any of them and, if more than one person is appointed as Receiver, such appointees may act jointly and severally or individually, (b) take possession of the Secured Assets, and/or (c) in its absolute discretion enforce all or any part of the Security created by this Deed in such other lawful manner as it thinks fit. The Bank may remove any person from appointment as Receiver and may appoint another person as Receiver. The Bank may also appoint an additional Receiver.
- 10.2 The Receiver will, so far as the law permits, be the agent of the Chargor and the Chargor alone will be responsible for the acts or defaults of the Receiver and will be liable on any contracts or obligations made or entered into by the Receiver. The Bank will not be responsible for any misconduct, negligence or default of the Receiver. The powers of the Receiver will continue in full force and effect following any liquidation of the Chargor.
- 10.3 The remuneration of the Receiver may be fixed by the Bank but will be payable by the Chargor. The amount of the remuneration will form part of the Secured Obligations.
- 10.4 The Receiver will have the power, on behalf and at the cost of the Chargor, (a) to do or omit to do anything which he considers appropriate in relation to the Secured Assets and (b) to exercise all or any of the powers conferred on the Receiver or the Bank under this Deed or conferred upon administrative receivers by the Insolvency Act (even if he is not an administrative receiver), or upon receivers by the LPA or any other statutory provision (even if he is not appointed under the LPA or such other statutory provision) but so that if there is any ambiguity or conflict between the powers contained in such legislation and those contained in this Deed, those contained in this Deed shall prevail.



- 10.5 Without prejudice to the general powers set out in Clause 10.4, a Receiver will also have the powers and discretions set out in Schedule 8 (Receiver's specific powers).
- 10.6 The Bank or any Receiver may sever any Fixtures from the Property and sell them apart from the Property without taking possession of the Property and apply the net proceeds of such sale in or towards satisfaction of the Secured Obligations.
- 10.7 If the Bank or the Receiver obtains possession of the Property, the Bank or the Receiver may use and remove, store or sell any chattels on the Property, whether or not forming part of the Secured Assets, without being under any liability to the Chargor other than to account for their net proceeds of the sale. All costs, losses and liabilities incurred by the Bank or the Receiver in connection with the removal, storage and sale of such chattels will form part of the Secured Obligations.
- 10.8 If (notwithstanding any representation or warranty to the contrary contained in this Deed) there shall be any Security affecting the Secured Assets or any of them which ranks in priority to the Security created by this Deed and the holder of such prior Security takes any steps to enforce such Security, the Bank or any Receiver may, at its option, take a transfer of, or repay the indebtedness secured by, such Security.
- 10.9 The Bank may, at any time after this Deed has become enforceable as between the Bank and the Chargor pursuant to Clause 8 (Enforceability), exercise, to the fullest extent permitted by law, all or any of the powers, authorities and discretions conferred on a Receiver by this Deed, whether as attorney of the Chargor or otherwise and whether or not a Receiver has been appointed.
- 10.10 The Bank may, in writing, either in its appointment of a Receiver or by subsequent notice to that Receiver, restrict the right of such Receiver to exercise all or any of the powers conferred on a Receiver by this Deed.
- 10.11 Paragraph 14 of Schedule B1 to the Insolvency Act applies to the floating charges created under this Deed.

## **11 PAYMENTS, ACCOUNTS AND APPLICATION OF PROCEEDS**

- 11.1 **Right of appropriation** - Subject to the provisions of Clause 11.8 (Recoveries by Receiver), the Bank is entitled to appropriate money and/or assets to the Secured Obligations in such manner or order as it thinks fit and any such appropriation shall override any appropriation by the Chargor.
- 11.2 **No set-off by Chargor** - The Chargor shall not exercise any right of set-off or counterclaim which it might have in respect of any payment due to the Bank under this Deed.
- 11.3 **Bank's rights of set-off** - The Bank may, at any time after this Deed has become enforceable as between the Bank and the Chargor, and without notice (a) combine or consolidate all or any of the Chargor's then existing accounts with, and liabilities to, the Bank, (b) set-off or transfer any sums standing to the credit of any one or more of such accounts, and/or (c) set-off any other obligation owed by the Bank to the Chargor (whether or not matured at such time), in or towards satisfaction of any of the Secured Obligations; and if any amount is in a different currency from the amount against which it is to be set-off, the Bank may convert either amount (or both) at any reasonable time and at any reasonable rate. The Bank shall notify the Chargor in writing that any such transaction has taken place.
- 11.4 **Suspense Account** - The Bank may, at any time, credit to a suspense account any money received by it under this Deed, to be held for so long as and on such terms as the Bank may determine pending its application towards discharging the Secured Obligations.

- 11.5 **New account** - If the Bank receives notice of a subsequent mortgage or charge relating to the Secured Assets, it will be entitled to close any account and to open a new account in respect of the closed account. If the Bank does not open such new account, it will in any event be treated as if it had done so at the time when it received such notice.
- 11.6 **Time deposit** - Without prejudice to the provisions of Clause 11.3 (Bank's rights of set-off), if at any time the Chargor has made a deposit with the Bank on terms that it will be repaid on a specified date (a "Time Deposit") then: (a) if the Bank has made any demand under Clause 2 (Covenant to pay), it may vary the terms of such Time Deposit so that it becomes repayable immediately or on any other date before such specified date; or (b) if an Event of Default has arisen which is continuing but no amount of Secured Obligations has fallen due before such specified date, the Bank may renew such Time Deposit for such further maturity as the Bank in its absolute discretion determines.
- 11.7 **Calculations** - The Bank's calculation of any amount payable by the Chargor under this Deed at any time will be conclusive (unless it has made an obvious mistake).
- 11.8 **Recoveries by Receiver** - The proceeds arising from the exercise of the powers of the Receiver will, subject to any claims ranking in priority to the Secured Obligations, be applied by or at the direction of the Receiver in or towards discharging or satisfying the following amounts in the following order of priority: (a) the costs, charges and expenses of and incidental to the Receiver's appointment and the payment of his remuneration; (b) any costs, charges, expenses and liabilities of or incurred by any Enforcement Party in the exercise of any of its powers including all rents, Taxes, rates and outgoings whatever affecting the Secured Assets, all premiums on Insurances properly payable under this Deed or any applicable legislation, the cost of executing necessary or proper repairs to the Secured Assets, and the payment of annual sums or other payments, and the interest on all principal sums, having priority to the Secured Obligations; (c) the remaining Secured Obligations, in accordance with the provisions of the Finance Documents; and (d) the claims of those persons entitled to any surplus.
- 11.9 **Tax gross-up** - The provisions of clause 7.1 (Tax gross-up) of the Facility Agreement shall apply to any payments made by the Chargor under or pursuant to this Deed.
- 11.10 **Currency of payment** - No payment to the Bank (whether under any judgment or court order or otherwise) shall discharge the obligation or liability of the Chargor in respect of which it was made unless and until the Bank shall have received payment in full in the currency in which the obligation or liability was incurred. To the extent that the amount of any such payment shall, on actual conversion into such currency, fall short of such obligation or liability expressed in that currency, the Bank shall have a further separate cause of action against the Chargor and shall be entitled to enforce the Security created by this Deed to recover the amount of the shortfall.
- 11.11 **Currency conversion** - All money received or held by the Bank or any Receiver under this Deed may be converted into such other currency as the Bank considers necessary or desirable to cover the obligations and liabilities comprised in the Secured Obligations in that other currency at the Bank's spot rate of exchange then prevailing for purchasing that other currency with the existing currency.

## **12 PROTECTION OF THIRD PARTIES**

- 12.1 **No duty to enquire** - A buyer from, or other person dealing with, any Enforcement Party will not be concerned to enquire whether any of the powers which such Enforcement Party has exercised or purported to exercise has arisen or become exercisable and may assume that it is acting in accordance with this Deed.
- 12.2 **Receipt conclusive** - The receipt of the Bank or any Receiver shall be an absolute and conclusive discharge to a purchaser of the Secured Assets and shall relieve him of any

obligation to see to the application of any monies paid to or by the direction of the Bank or any Receiver.

### **13 PROTECTION OF BANK**

**13.1 Lender's receipts** - The Bank shall not be obliged to account to the Chargor, nor to any other person, for anything other than its own actual receipts which have not been distributed or paid to the person entitled (or whom the Bank, acting reasonably, believes to be entitled) in accordance with the requirements of this Deed.

#### **13.2 Exclusion of liability -**

**13.2.1** No Enforcement Party will be liable to the Chargor for any expense, loss, liability or damage incurred by the Chargor arising out of the exercise by such Enforcement Party of its rights or powers or any attempt or failure to exercise those rights or powers, except for any expense, loss, liability or damage arising from its gross negligence, fraud or wilful misconduct.

**13.2.2** No Chargor may take any proceedings against any officer, employee or agent of any Enforcement Party in respect of any claim it might have against such Enforcement Party or in respect of any act or omission of any kind by that officer, employee or agent in relation to this Deed.

**13.2.3** Any officer, employee or agent of any Enforcement Party may rely on this Clause 13 under the Third Parties Act.

**13.3 Effect of possession** - If the Bank or any Receiver enters into possession of the Secured Assets or any of them, this will not oblige either the Bank or the Receiver to account as mortgagee in possession, and if at any time the Bank enters into possession of the Secured Assets or any of them it may at any time at its discretion go out of such possession.

**13.4 Chargor's indemnity** - The Chargor agrees with the Bank to indemnify the Bank and any Receiver or Delegate on demand against any costs, Taxes, losses, liabilities or damage incurred by any of them in respect of (a) the taking, holding, protection or enforcement of the Security created by this Deed, (b) any exercise of the rights, powers, discretions or remedies of, or vested in, any Enforcement Party or any attempt or failure to exercise those rights, powers, discretions or remedies and (c) anything done or omitted to be done in the exercise or purported exercise of the powers under this Deed or under any appointment duly made under the provisions of this Deed.

### **14 POWER OF ATTORNEY**

**14.1** The Chargor irrevocably and by way of security appoints the Bank and each Receiver and any person nominated for the purpose by the Bank or the Receiver (in writing, under hand, signed by an officer of the Bank or by the Receiver) severally to be the attorney of the Chargor (with full power of substitution and delegation) for the purposes set out in Clause 14.2.

**14.2** The power of attorney granted in Clause 14.1 allows the Bank, the Receiver or the relevant nominee, in the name of the Chargor, on its behalf, as its act and deed and at its expense to perfect the Security created by the Chargor under this Deed and to execute and deliver (using the Chargor's seal where appropriate) any document or do any act or thing which the Chargor may, ought or has agreed to execute or do under this Deed but has failed to so do or which the attorney may in its absolute discretion consider appropriate in connection with the exercise of any of the rights, powers, authorities or discretions of the Bank or the Receiver under, or otherwise for the purposes of, this Deed.

- 14.3 The Chargor covenants with the Bank to ratify and confirm all acts or things made, done or executed by any attorney exercising or purporting to exercise the powers conferred in accordance with this Clause 14.

## **15 APPLICATION, VARIATION AND EXTENSION OF STATUTORY PROVISIONS**

- 15.1 The covenants set out in sections 2 to 5 of the Law of Property (Miscellaneous Provisions) Act 1994 shall extend to bind the Chargor only if, in any case, the relevant covenant imposes upon the Chargor a burden, liability or obligation that would not otherwise arise under this Deed.
- 15.2 For the purposes only of section 101 of the LPA, (but otherwise subject to the provisions of Clause 8 (Enforceability)), the conditions set out in that section, as to when the powers conferred on a mortgagee by that section arise, do not apply and the Secured Obligations become due and the statutory power of sale and other powers of enforcement arise immediately following the execution of this Deed. The Bank and any Receiver may exercise the statutory power of sale conferred by the LPA free from the restrictions imposed by section 103 of the LPA, which shall not apply to this Deed.
- 15.3 The power of sale and the other powers conferred by the LPA or otherwise are extended and varied to authorise the Bank in its absolute discretion to do all or any of the things or exercise all or any of the powers which a Receiver is empowered to do or exercise under this Deed.
- 15.4 The restriction on the consolidation of mortgages in section 93 of the LPA does not apply to this Deed nor to any Security given to the Bank pursuant to this Deed. Section 109(1) of the LPA shall not apply to this Deed. Sections 105, 107(2), 109(6) and 109(8) of the LPA will not apply to the Bank nor to a Receiver appointed under this Deed.
- 15.5 The statutory and other powers of leasing, letting, entering into agreements for leases or lettings and accepting or agreeing to accept surrenders of leases or tenancies shall not be exercisable by the Chargor in relation to the Secured Assets or any part of them. The restrictions on the powers of the Bank or the Receiver to grant leases or to accept the surrender of leases in sections 99 and 100 of the LPA do not apply to this Deed.

## **16 OTHER MISCELLANEOUS PROVISIONS**

- 16.1 Except where expressly stated to the contrary, the powers, rights and remedies provided in this Deed are in addition to (and not instead of) powers, rights and remedies under law.
- 16.2 If an Enforcement Party fails to exercise any power, right or remedy under this Deed or delays its exercise of any power, right or remedy, this does not mean that it waives that power, right or remedy. If an Enforcement Party exercises, or partly exercises, a power, right or remedy once, this does not mean that it cannot exercise such power right or remedy again, fully or in part.
- 16.3 The Bank may decide when and how to apply any payments and distributions received for its own account under this Deed, and also, as between the Bank and the Chargor, whether and, if so, when, how and to what extent (a) to exercise its rights under this Deed and (b) to exercise any other right it might have in respect of the Chargor (or otherwise) without, in any case, the Chargor having the right to control or restrict the Bank's exercise of this discretion.
- 16.4 No provision of this Deed will interfere with the Bank's right to arrange its affairs as it may in its absolute discretion decide (nor oblige it to disclose any information relating to its affairs), except as expressly stated.
- 16.5 The Chargor authorises the holder of any prior or subsequent Security to provide to the Bank, and the Bank to receive from such holder, details of the state of account between such holder and the Chargor.

- 16.6 The Chargor shall not assign, novate or otherwise deal with its rights or obligations under or interests in this Deed, except with the prior written consent of the Bank.
- 16.7 Save as otherwise provided in the Facility Agreement, the Bank may at any time assign, novate or otherwise deal with any rights or obligations under or interests in this Deed.
- 16.8 The Bank may disclose any information about the Chargor, the Secured Assets and/or this Deed to any person to whom it proposes to assign, novate or transfer (or has assigned, novated or transferred) any rights or obligations under or interests in this Deed, or with whom it proposes to enter into (or has entered into) any other dealings in relation to any such rights, obligations or interests and any person to whom the benefit of all such rights has been transferred, subject to such obligations, may enforce this Deed in the same way as if it had been an original party to this Deed.
- 16.9 If, at any time, there has been a release, settlement or discharge of the Chargor's obligations under this Deed and, as a consequence of any insolvency proceedings (or analogous proceedings) or for any other reason, (a) any payment made to any person in respect of any of the Secured Obligations is required to be repaid and/or (b) any such payment or any Security (or other right) held by the Bank in respect of any of the Secured Obligations (whether under this Deed or otherwise) is void, is set aside or is otherwise affected, then the Chargor's obligations under this Deed shall continue in effect as if there had been no such release, settlement or discharge and as if the relevant payment had not been made and/or (as applicable) the relevant Security (or other right) had not been held by the Bank; and accordingly (but without limiting the Bank's other rights under this Deed) the Bank shall be entitled to recover from the Chargor the amount of any such payment as if such payment, settlement or discharge had not occurred.
- 16.10 If the Bank, acting reasonably, considers that any amount paid by the Chargor in respect of the Secured Obligations is capable of being avoided or ordered to be refunded or reduced for the reasons set out in Clause 16.9, then for the purposes of this Deed such amount shall not be considered to have been irrevocably paid.
- 16.11 The Bank agrees to perform its obligations, to the extent arising under the Finance Documents, to make further advances. The Security created by this Deed has been made for securing such further advances.
- 16.12 To the extent that the Chargor may be entitled in any jurisdiction to claim for itself or its assets immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process of any kind wherever it might originate, or to the extent that in any such jurisdiction there may be attributed to the Chargor or its assets such immunity (whether or not claimed), it irrevocably agrees not to claim and irrevocably waives such immunity to the fullest extent permitted by the laws of such jurisdiction.
- 16.13 On the Discharge Date (but subject to Clauses 16.9 and 16.10) the Bank shall, at the request and cost of the Chargor, execute and do all deeds, acts and things as may be necessary to release the Secured Assets from the Security created by this Deed.
- 16.14 The obligations of the Chargor under Clause 2 (Covenant to pay) are unconditional and neither the provisions of this Deed nor the obligations of the Chargor will be affected by the occurrence or existence at any time of any of the following events or circumstances or by any person's knowledge or lack of knowledge as to any such matter: (a) any person's insolvency or lack of capacity, power or authority; (b) any unenforceability, illegality or invalidity of any obligation of any person; (c) any change in the constitution, membership, ownership, legal form, name or status of any person; (d) the making, amendment or termination of any other deed or agreement; (e) any amendment, novation, re-statement or substitution of, or any supplement to, any other

deed or agreement; (f) any increase or reduction in the amount of any person's indebtedness or any alteration of any term, condition or arrangement in respect of any person's indebtedness; (g) any person taking or omitting to take any steps in relation to (i) the Chargor or any other person, (ii) any of the Secured Obligations, (iii) any Security, guarantee or other financial support in respect of any indebtedness and/or (iv) any other asset; or (h) anything else which, although it could affect the liability of a surety, would not affect the liability of a principal debtor.

## **17 THIS DEED**

- 17.1 The Chargor has entered into this Deed in consideration of the Bank agreeing to provide (or to continue to provide) finance facilities to it on the terms agreed in the Finance Documents.
- 17.2 If the Parties execute this Deed in separate counterparts, this Deed will take effect as if they had all executed a single copy.
- 17.3 This Deed is intended to be a deed even if either Party's execution is not in accordance with the formalities required for the execution of deeds.
- 17.4 If there is any conflict between the provisions of this Deed and the provisions of the Facility Agreement, the provisions of the Facility Agreement shall prevail.
- 17.5 If, at any time, any provision of this Deed is or is found to have been illegal, invalid or unenforceable in any respect under the law of any jurisdiction, this does not affect the legality, validity or enforceability of the other provisions of this Deed, nor the legality, validity or enforceability of the affected provision under the law of any other jurisdiction.
- 17.6 If either Party is not bound by this Deed (or any part of it) for any reason, this does not affect the obligations of the other Party under this Deed (or under the relevant part).
- 17.7 This Deed is in addition to, and does not operate so as in any way to prejudice or affect, or be prejudiced or affected by, any other Security or guarantee which the Bank may now or at any time after the date of this Deed hold for or in respect of the Secured Obligations.
- 17.8 On each occasion that the Chargor submits this Deed or any counterpart to The Land Registry, the Chargor shall also submit a certified copy of this Deed and request the return of the original and upon the return of the original it shall deliver such original to the Bank.
- 17.9 This Deed and every counterpart is the property of the Bank.

## **18 GOVERNING LAW**

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

## **19 JURISDICTION**

The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed) and any non-contractual obligations arising out of or in connection with it (a "Dispute"). The Parties agree that the courts of England are the most appropriate and convenient courts to settle any Dispute and accordingly no Party will argue to the contrary. This Clause 19 is for the benefit of the Enforcement Parties only. As a result, no Enforcement Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, each Enforcement Party may take concurrent proceedings in any number of jurisdictions.

This document is executed as a deed and delivered on the date stated at the beginning of this Deed.

4-11-20



SCHEDULE 1

Bank accounts

	Name or designation of bank account	Number and Sort code of bank account	Name of bank at which account held
1.	Construction Account	20-00-00 325938	Barclays Bank PLC
2.	Sales Proceeds Account		National Westminster Bank plc

Redacted

Shoosmiths



## SCHEDULE 2

### Charged Contracts

	Brief description of Charged Contract	Date of Charged Contract	Parties to Charged Contract
1.	Development Agreement	13 December 2006 (as varied from time to time)	(1) The Council of the City of York (2) The Chargor (3) Land Securities Property Holdings Limited, The Crosby Group plc and White Rose (Leeds) Limited

### **SCHEDULE 3**

#### **Details of Property**

- 1 The freehold land at Hungate, York, being that part of the property registered at the Land Registry under title number NYK322526 as shown edged green on the plan attached at Schedule 9.

**SCHEDULE 4**

**Shares**

This Schedule has been intentionally left blank.

**SCHEDULE 5**

**Designated Chateils**

This Schedule has been intentionally left blank.

## **SCHEDULE 6**

### **Notices**

#### **Part 1**

##### **Notice to insurer**

**(For attachment by way of endorsement to the Insurances)**

To: [name and address of insurer]

Dated: [date]

Dear Sirs,

**Re: The policies of insurance referred to in the Schedule below (the "Policies")**

We, [Chargor] (the "**Chargor**"), give you notice that, by a debenture dated [date] (the "**Debenture**") and made by ourselves in favour of National Westminster Bank plc (the "**Bank**"), we have charged by way of fixed charge and assigned to the Bank, as first priority chargee and assignee, all of the Policies as are capable of being charged and/or assigned by law.

The assets charged and assigned include all our right, title and interest in and to the Policies (including, but not limited to, the benefit of all sums assured by the Policies and all bonuses, profits, returns of premium and other benefits of whatever nature arising by virtue of our ownership of the Policies and all interest on any of the secured money).

We irrevocably and unconditionally authorise and request you:

1. to note the Bank's interest as composite insured, first chargee, assignee and first loss payee of the proceeds of such Policies; and
2. to give the acknowledgement, undertakings and agreements required by the Bank and to act on the instructions of the Bank without any further reference to or authorisation from us. For the avoidance of doubt, you may continue to deal with us in relation to the Policies until you receive written notice to the contrary from the Bank.

Please sign the enclosed copy of this notice and deliver it to the Bank at 3<sup>RD</sup> Floor Whitehall Quay, Leeds LS1 4HR (for the attention of the Andrew Dexter) (with a further copy to us).

This notice and any non-contractual obligations arising out of or in connection with it are governed by the law of England and Wales.

Yours faithfully,

For and on behalf of Hungate (York) Regeneration Limited:

By: .....

## THE SCHEDULE

### The Policies\*

\*To be completed by the Chargor and approved by the Bank and to include all relevant policies with the named insurer

	Policy number	Name and address of Insurer	Name and address of broker	Brief description of assets insured	Date of expiry of policy#
1.	[number]				
2.	[number]				
3.	[number]				
4.	[number]				
5.	[number]				

#Not required if policies are annually renewable

Dated [date]

[to be included on copy notice]

To: National Westminster Bank plc  
3<sup>rd</sup> Floor 2 Whitehall Quay  
Leeds LS1 4HR  
(for the attention of Andrew Dexter)

Copy to: Hungate (York) Regeneration Limited

[Address]

We [name of insurer] acknowledge receipt of the above notice. We:

1. agree to note your interest as composite insured, first chargee, assignee and first loss payee of the proceeds of such Policies;
2. undertake to disclose to you, promptly following request, without any reference to or further authority from the Chargor, such information relating to the Policies as you may at any time reasonably request;
3. confirm that we have not received notice of any previous assignment or charge by the Chargor of or over any of its rights, title, interests or benefits referred to in the notice;

4. agree promptly to notify you of our intention to cancel or decline renewal of any of the Policies;  
and
5. agree promptly to notify you of any request made, or notification given, by the Chargor to us,  
to cancel the Policies, or to allow the Policies to lapse.

Terms defined in the notice apply to this endorsement, which is governed by the law of England and Wales together with any non-contractual obligations arising out of or in connection with it.

Signed:.....

for and on behalf of [name of insurer]

Dated: [date]

## Part 2

### Form of notice to counterparties of Charged Contracts

To: [name and address of counterparty]

Dated: [date]

Dear Sirs,

**Re:** [here identify relevant Charged Contract] [the "Contract"] made between (1) Hungate (York) Regeneration Limited (the "Chargor") and (2) [here insert name of counterparty]

We, the Chargor, give you notice that, by a debenture dated [date] (the "Debenture") and made by ourselves in favour of National Westminster Bank PLC (the "Bank"), we have charged by way of fixed charge and assigned to the Bank, as first priority chargee and assignee, all of our rights, title and interest in the Contract.

We further irrevocably and unconditionally:

1. notify you that we may not agree to amend, modify or terminate the Contract without the prior written consent of the Bank;
2. confirm that, subject to paragraph 1 above, you may continue to deal with us in relation to the Contract until you receive written notice to the contrary from the Bank, but authorise and instruct you that, after you have received such notice, we will cease to have any right to deal with you in relation to the Contract except in accordance with the instructions of the Bank and therefore from that time you may deal directly with the Bank;
3. authorise and instruct you to disclose information in relation to the Contract to the Bank promptly on request, without any enquiry by you as to the justification for such disclosure or reference to or further authority from us;
4. authorise and instruct you to pay or release all monies to which we are entitled under the Contract directly into [specify designated bank account] or, if the Bank so instructs you, into such other account as the Bank shall specify;
5. authorise and instruct you that, whenever you serve any notice upon us under the Contract, you should supply a copy of such notice to the Bank at its address given in the copy of this notice (or as otherwise notified to you by it from time to time); and
6. notify you that the provisions of this notice may only be revoked with the written consent of the Bank.

Please sign the copy of this notice and deliver it to the Bank (with a further copy to us).

This notice and any non-contractual obligations arising out of or in connection with it are governed by the law of England and Wales.

Yours faithfully

.....

For and on behalf of

Hungate (York) Regeneration Limited

By: .....



**[to be included on copy notice]**

To: National Westminster Bank PLC

3<sup>rd</sup> Floor 2 Whitehall Quay

Leeds LS1 4HR

For the attention of Andrew Dexter

Copy to: Hungate (York) Regeneration Limited

[Address]

We [name of counterparty] acknowledge receipt of the above notice. We:

1. accept the instructions and authorisations set out in the notice and undertake to act in accordance with such instructions and authorisations; and
2. confirm that we have not received notice that the Chargor has assigned its rights under the Contract to a third party or created any other interest (whether by way or security or otherwise) in the Contract in favour of a third party.

Terms defined in the notice apply to this endorsement, which is governed by the law of England and Wales together with any non-contractual obligations arising out of or in connection with it.

Signed:.....

for and on behalf of [name of counterparty]

Dated: [date]

## SCHEDULE 7

### Form of notice to bank operating secured account

#### Part 1

To: [name and address of account bank] (the "Account Bank")

Dated: [date]

Dear Sirs,

Re: **Account No:** [insert account number] (the "Account")

**Account Branch:** [insert branch name and address]

**Account Holder:** [name of Chargor] (the "Chargor")

We, the Chargor, give you notice that, by a debenture dated [date] (the "Debenture") and made by ourselves in favour of National Westminster Bank PLC (the "Bank"), we have charged by way of fixed charge to the Bank, as first priority chargee, all the monies (including interest) from time to time standing to the credit of the Account including any re-designation and/or re-numbering from time to time of such Account (the "Charged Account") and all indebtedness represented by the Charged Account and have assigned to the Bank all our rights and benefits in respect of the Charged Account.

We irrevocably and unconditionally authorise and instruct you:

1. to hold all monies from time to time standing to the credit of the Charged Account to the order of the Bank and accordingly to pay all or any part of those monies to the Bank (or as it may direct) promptly following receipt of written instructions from the Bank to that effect;
2. to disclose to the Bank such information relating to us and the Charged Account as the Bank may from time to time request you to provide; and
3. that all expenses relating to the maintenance of the Charged Account and your costs and expenses in complying with our instructions in accordance with this notice shall be our responsibility and in the event that these are not otherwise met by us such expenses may be debited directly by you to the Account.

We notify you that we may not withdraw any monies from the Charged Account without first having produced to you the prior written consent of the Bank to such withdrawal.

The provisions of this notice may only be revoked or varied with the prior written consent of the Bank.

Please sign the enclosed copy of this notice and deliver it to the Bank at [address ] (with a further copy to us).

This notice and any non-contractual obligations arising out of or in connection with it are governed by the law of England and Wales.

Yours faithfully,

.....  
for and on behalf of

Hungate (York) Regeneration Limited

[to be included on copy notice]

DMS-3183474 - 7.0 - 05.10.2017

To: National Westminster Bank plc

[Address]

Copy to: Hungate (York) Regeneration Limited

[Address]

We [Name of Account Bank]:

1. acknowledge receipt of the above notice;
2. agree to act in accordance with the authorisations, instructions and notifications contained or referred to in the above notice;
3. confirm that we have not received notice that the Chargor has assigned its rights to the monies standing to the credit of the Charged Account, or the indebtedness represented by them, or otherwise granted any security or other interest over those monies, or such indebtedness, in favour of any third party;
4. undertake that we will not exercise any right to combine accounts or any rights of set-off or lien or any similar rights in relation to the monies standing to the credit of the Charged Account; and
5. agree that any notice or other communication from us to the Bank will be sent or made to the address of the Bank stated above, or to such other address as the Bank may from time to time notify to us.

The agreement in paragraph 2 above is given on the basis that:

1. we may rely on any notice or other document or information believed, reasonably, by us to be genuine and correct and to have been signed or communicated by the person by whom it purports to be signed and communicated and we will not be liable for the consequences of such reliance and will have no obligation whatsoever to verify that the facts or matters stated in any such notice or document are true and correct; and
2. to the extent that an instruction for withdrawal from the Charged Account is given which would, in our reasonable opinion, cause the Charged Account to be overdrawn, we will only transfer the outstanding cleared credit balance in the Account.

Terms defined in the notice apply to this endorsement, which is governed by the law of England and Wales together with any non-contractual obligations arising out of or in connection with it.

.....  
for and on behalf of

[name and address of Account Bank]

Dated: [date]

## Part 2

To: [name and address of account bank] (the "Account Bank")

Dated: [date]

Dear Sirs,

Re: Account No: [Insert account number] (the "Account")

Account Branch: [insert branch name and address]

Account Holder: [name of Chargor] (the "Chargor")

We, the Chargor, give you notice that, by a debenture dated [date] (the "Debenture") and made by ourselves in favour of National Westminster Bank PLC (the "Bank"), we have charged by way of fixed charge to the Bank, as first priority chargee, all the monies (including interest) from time to time standing to the credit of the Account including any re-designation and/or re-numbering from time to time of such Account (the "Charged Account") and all indebtedness represented by the Charged Account and have assigned to the Bank all or rights and benefits in respect of the Charged Account.

We irrevocably and unconditionally authorise and instruct you:

1. to hold all monies from time to time standing to the credit of the Charged Account to the order of the Bank (subject to the consent of the Bank, signified by its counter-signature of this notice, for us to operate the Charged Account (the "Bank's Consent")) and accordingly to pay all or any part of those monies to the Bank (or as it may direct) promptly following receipt by you of notice of withdrawal of the Bank's Consent and of written instructions from the Bank to make such payment;
2. to disclose to the Bank such information relating to us and the Charged Account as the Bank may from time to time (whether before or after the withdrawal of the Bank's Consent) request you to provide; and
3. that all expenses relating to the maintenance of the Charged Account and your costs and expenses in complying with our instructions in accordance with this notice shall be our responsibility and in the event that these are not otherwise met by us such expenses may be debited directly by you to the Account.

Until such time as you receive from the Bank a written notice withdrawing the Bank's Consent, nothing in this notice shall prevent you from operating the Charged Account in the ordinary course of banking business including, without limitation, collecting cheques and other payment orders via any medium, electronic or otherwise and accepting monies for the credit of the Charged Account and allowing us to draw cheques and make other payments and generally to withdraw funds from the Account.

Upon withdrawal of the Bank's Consent, we may not withdraw any further monies from the Charged Account[s] without first having produced to you the prior written consent of the Bank to each such withdrawal.

The provisions of this notice may only be revoked or varied with the prior written consent of the Bank.

Please sign the enclosed copy of this notice and deliver it to the Bank at [Address] (with a further copy to us).

The provisions of this notice and any non-contractual obligations arising out of or in connection with it are governed by the law of England and Wales.

Yours faithfully

.....  
for and on behalf of

Hungate (York) Regeneration Limited

By countersigning this notice the Bank confirms that the Chargor may make withdrawals from the Charged Account until such time as the Bank shall notify you (with a copy to the Chargor) in writing that such consent is withdrawn. Such consent may be withdrawn or modified by the Bank in its absolute discretion at any time.

Countersigned by

.....  
for and on behalf of

National Westminster Bank PLC

[to be included on copy notice]

To: National Westminster Bank plc

[address]

Copy to: Hungate (York) Regeneration Limited  
[Address]

We [Name of Account Bank]:

1. acknowledge receipt of the above notice;
2. agree to act in accordance with the authorisations, instructions, confirmations and notifications contained or referred to in the above notice;
3. confirm that we have not received notice that the Chargor has assigned its rights to the monies standing to the credit of the Charged Account, or the indebtedness represented by them, or otherwise granted any security or other interest over those monies, or such indebtedness, in favour of any third party;
4. undertake that we will not exercise any right to combine accounts or any rights of set-off (other than off-setting in the ordinary course of banking transactions) or lien or any similar rights in relation to the monies standing to the credit of the Charged Account; and

5. agree that any notice or other communication from us to the Bank will be sent or made to the address of the Bank stated above, or to such other address as the Bank may from time to time notify to us.

The agreement in paragraph 2 above is given on the basis that:

1. we may rely on any notice or other document or information believed, reasonably, by us to be genuine and correct and to have been signed or communicated by the person by whom it purports to be signed and communicated and we will not be liable for the consequences of such reliance and will have no obligation whatsoever to verify that the facts or matters stated in any such notice or document are true and correct; and
2. to the extent that an instruction for withdrawal from the Charged Account is given which would, in our reasonable opinion, cause the Charged Account to be overdrawn, we shall only transfer the outstanding cleared credit balance in the Account.

Terms defined in the notice apply to this endorsement, which is governed by the law of England and Wales together with any non-contractual obligations arising out of or in connection with it.

.....  
for and on behalf of

[name and address of Account Bank]

Dated: [date]

## SCHEDULE 8

### Receiver's specific powers

The Receiver will have full power and authority:

- 1 to enter upon, and to take possession of, the Secured Assets;
- 2 to collect and get in all rents, fees, charges or other income of the Secured Assets;
- 3 generally to manage the Secured Assets and to manage or carry on, reconstruct, amalgamate, diversify or concur in carrying on the business of the Chargor or any part of it as he may think fit;
- 4 without restriction, to sell, charge, grant, vary the terms or accept surrenders of, leases or tenancies of, licences to occupy, or options or franchises over or otherwise deal with and dispose of the Secured Assets or any property acquired in exercise of its powers under this Deed;
- 5 to purchase or acquire any land and purchase, acquire or grant any interest in or right over land;
- 6 to take a lease or tenancy of any property required or convenient for the business of the Chargor or the exercise of the Receiver's powers under this Deed;
- 7 to exercise on behalf of the Chargor and without the consent of or notice to the Chargor all the powers conferred on a landlord or a tenant by any legislation from time to time in force in any relevant jurisdiction relating to leasehold property, landlord and tenant, rents, housing or agriculture in respect of the Property;
- 8 for the purpose of exercising any of the rights, powers, authorities and discretions conferred on the Receiver by or pursuant to this Deed and/or for defraying any costs, losses or liabilities which may be incurred by him in their exercise or for any other purpose, to raise or borrow moneys from the Bank or others or incur any other liability on such terms, whether secured or unsecured, as he may think fit, and whether to rank in priority to this Deed or not;
- 9 to appoint and discharge employees, officers, consultants, advisers, managers, agents, solicitors, accountants or other professionally qualified persons, workmen and others for any of the purposes of this Deed or to guard or protect the Secured Assets upon such terms as to remuneration or otherwise as he may think fit and to discharge any such persons appointed by the Chargor prior to his appointment;
- 10 in the name of the Chargor, to bring, prosecute, enforce, defend and discontinue all such actions, suits and proceedings, in relation to the Chargor, the business of the Chargor or the Secured Assets as in any case he thinks fit;
- 11 to settle, adjust, refer to arbitration or expert determination, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person or body who is or claims to be a creditor of the Chargor or relating in any way to the Secured Assets;
- 12 to give valid receipts for all moneys and execute all assurances and things which may be proper or desirable for realising the Secured Assets;
- 13 to obtain Authorisations for and to carry out on the Property any new works or complete any unfinished works of development, building, reconstruction, maintenance, repair, renewal, improvement, furnishing or equipment;

- 14 to enter into, vary, cancel or waive any of the provisions of any contracts which he shall in any case think expedient in the interests of the Chargor or the Bank;
- 15 to purchase materials, tools, equipment, goods or supplies on such terms and at such price as the Receiver in the Receiver's absolute determination thinks fit;
- 16 to insure the Secured Assets, any assets acquired by the Receiver in exercise of his powers, and any business or works, and effect indemnity insurance or other similar insurance, in every case in such amounts, against such risks and with such offices as the Receiver thinks fit, and obtain bonds and give guarantees and Security to any bondsmen;
- 17 to remove, store, sell or otherwise deal with any chattels located at the Property;
- 18 to promote or establish any company or to acquire shares in any company (whether as a Subsidiary of the Chargor or otherwise) to facilitate the exercise of his powers under this Deed, to transfer to any such company all or any of the Secured Assets or other assets acquired by the Receiver in exercise of his powers and to exercise or cause to be exercised all voting and other rights attaching to, and to charge, sell or otherwise transfer any shares in any such company;
- 19 to exercise all voting and other rights attaching to the Investments and all other stocks, shares and securities owned by the Chargor and comprised in the Secured Assets in such manner as he thinks fit;
- 20 to make, or require the directors of the Chargor to make, calls conditionally or unconditionally on the members of the Chargor in respect of uncalled capital; and take action to enforce payment of unpaid calls;
- 21 to carry into effect and complete any transaction;
- 22 to redeem any prior Security (or procure the transfer of such Security to an Enforcement Party) and settle and pass the accounts of the person entitled to the prior Security so that any accounts so settled and passed shall (subject to any manifest error) be conclusive and binding on the Chargor and the money so paid shall be deemed to be an expense properly incurred by the Receiver;
- 23 either in the name of the Chargor or in the name of the Receiver to execute documents and do all other acts or things which the Receiver may consider to be incidental or conducive to any of the Receiver's powers or to the realisation or use of the Secured Assets.



**SCHEDULE 9**

**Property Plans**

2

HUNGATE BLOCK F, YORK  
TITLE PLAN INFORMATION  
GENERAL ARRANGEMENT  
Drawn RSP Date SEPT 2017 FOR INFORMATION  
Checked DV Scale 1:1750 @ A3 16059 A0706-B  
Ref: HGF-WA-DRG-04-0706

**W WEEDON**  
architects  
W. 6128 WEA APT 1  
E. 812-423-2162



KHUNGATE  
YORK

Rev	Drawn	Date	Comment
001	ASD	12/05/2017	FIRST ISSUE - FOR ILLUSTRATIVE PURPOSES ONLY
002	ASD	12/05/2017	Updated following comments from inputs
003	ASD	03/08/2017	Updated following comments from inputs

A2705-07 Title Page Information 112150-A3

\_\_\_\_\_ American Photo Service

\_\_\_\_\_ (National interest of nation boundary for Black) while Title Page A2705-07

\_\_\_\_\_ Information Name

This document is for Maritime Services Co.,<sup>1</sup> Western Australia provide us generation of the accuracy of the Maritime Services.

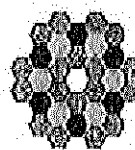
This project is based on information provided by others. This information was based on scanned title plans produced by IVE, (PACIFIC MARINE L&P and MARINE) subject to 2010/01/01.

There is a strong interest in the title plan position where are generated position for 2010/01/01.

**SCHEDULE 10**  
**Excluded Property Plans**

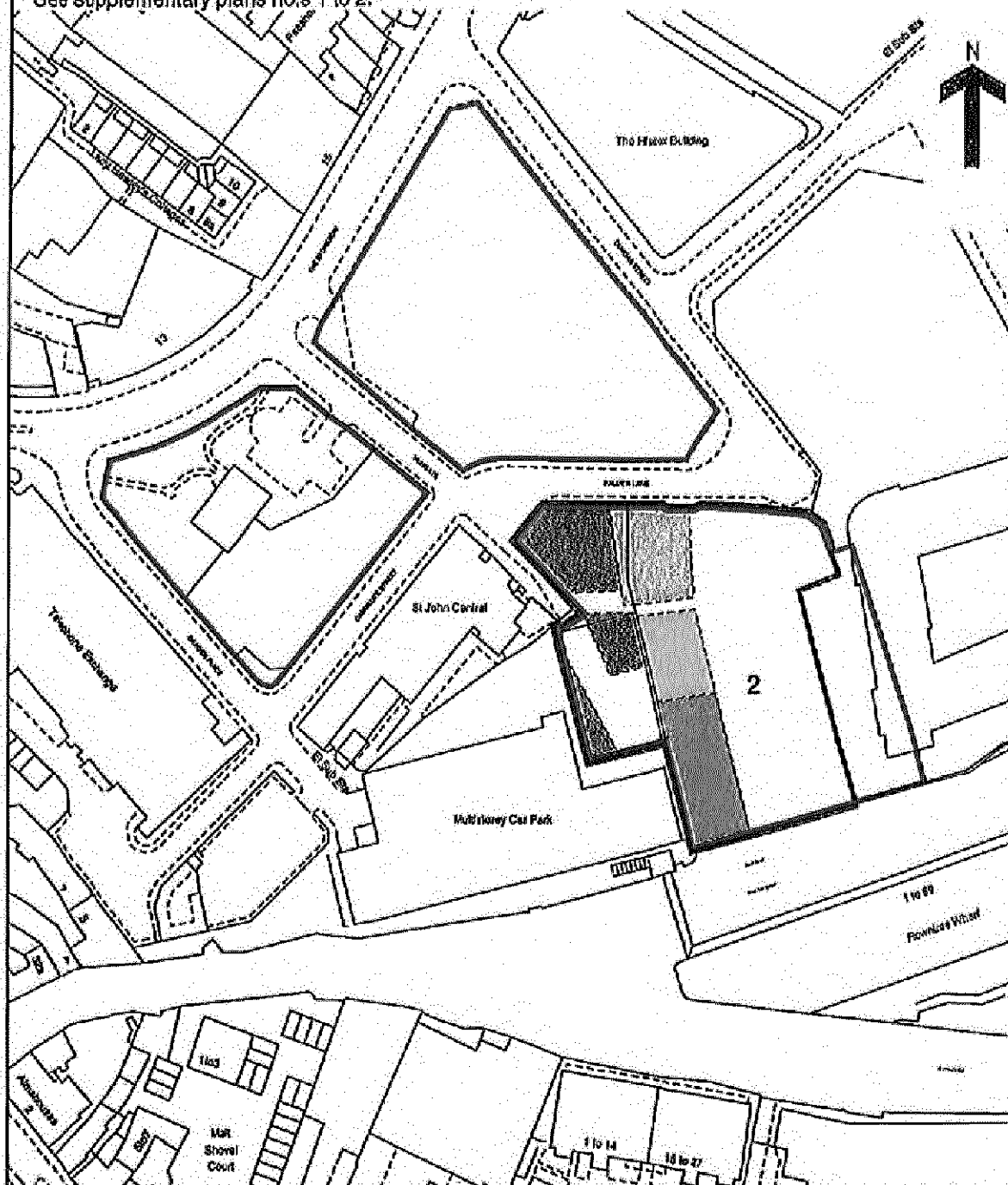
HM Land Registry  
Official copy of  
title plan

Title number NYK322526  
Ordnance Survey map reference SE6051NE  
Scale 1:1250  
Administrative area York



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See supplementary plans no.s 1 to 2.



This official copy issued on 28 July 2017 shows the state of this title plan on 6 June 2017 at 11:09:30. 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 HM Land Registry, Durham Office.



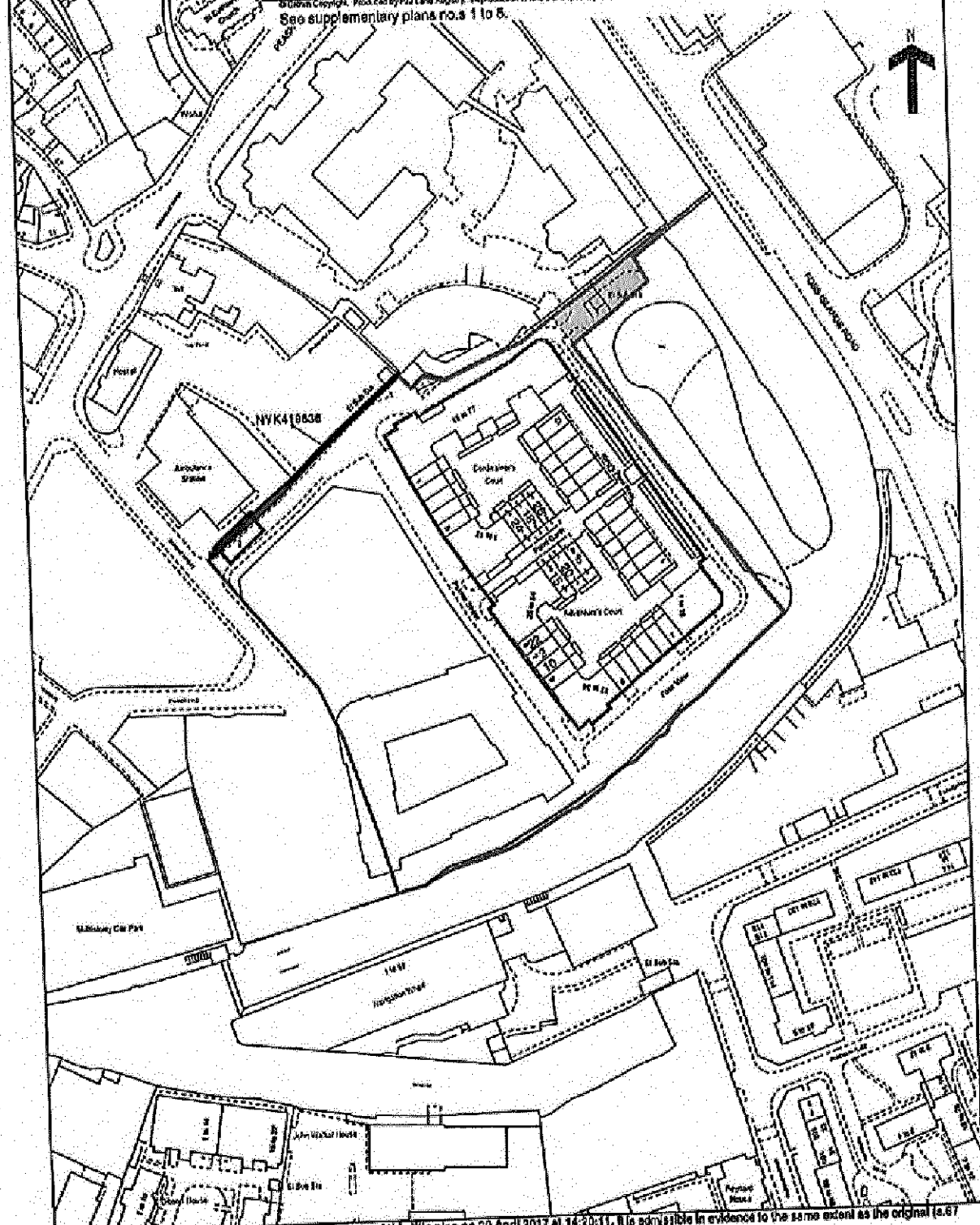
0731010020

HM Land Registry  
Official copy of  
title plan

Title number NYK148037  
Ordnance Survey map reference SE5051NE  
Scale 1:1250  
Administrative area York



See supplementary plans no.s 1 to 5.



This official copy issued on 28 June 2017 shows the state of this title plan on 20 April 2017 at 14:20:11. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002).

This official copy issued on 28 June 2017 shows the state of this title plan on 20 April 2017. It is subject to the Land Registration Act 2002.  
This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortion in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.  
This title is dealt with by HM Land Registry, Durham Office.

This title is dealt with by HM Land Registry, Durham Office.

# HM Land Registry Supplementary plan

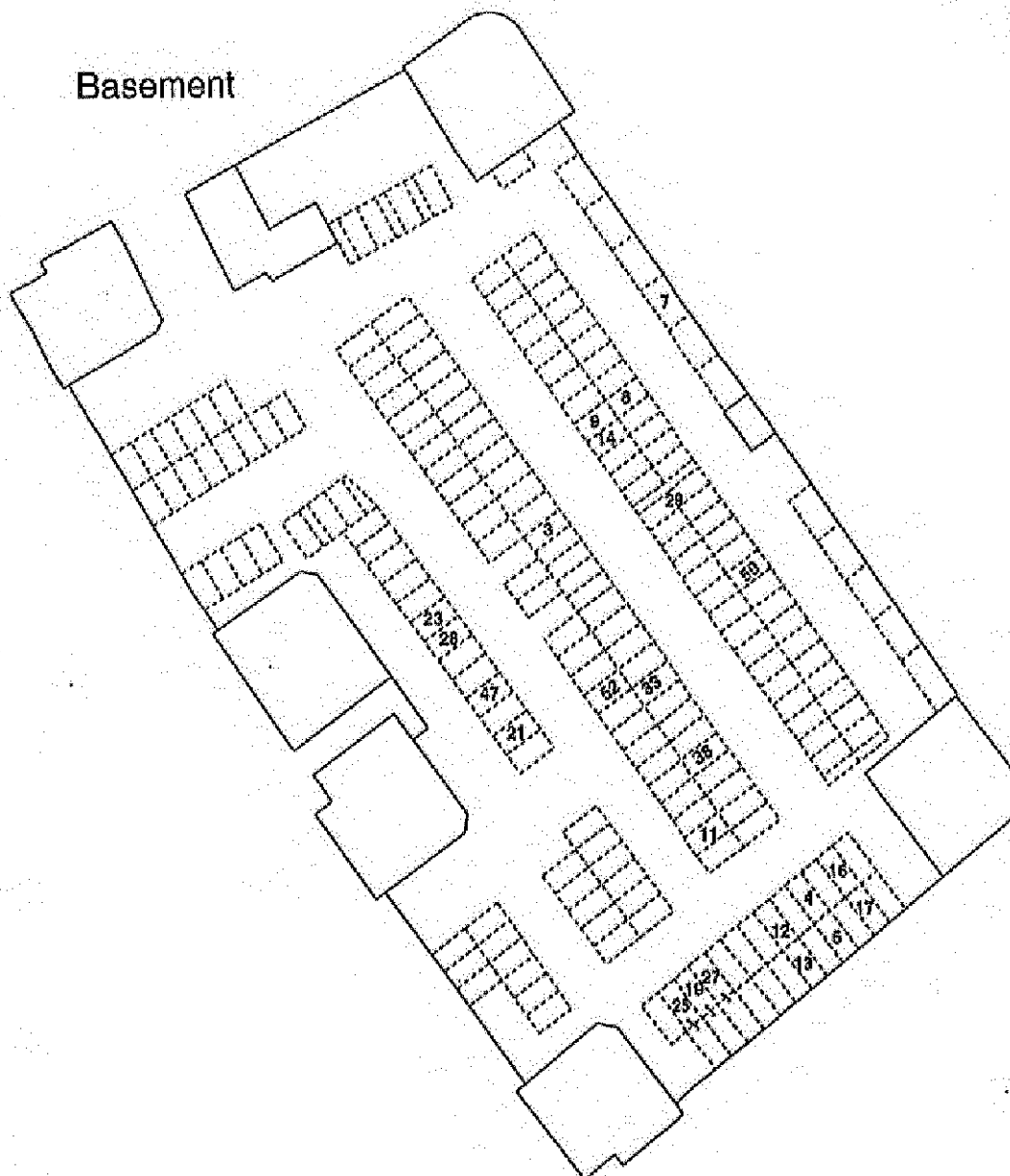
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Ordnance Survey map reference SE6051NE  
Scale 1:500 enlarged from 1:1250  
Administrative area York



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Supplementary plan no.1.



Basement



This 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.

HM Land Registry  
Supplementary  
plan

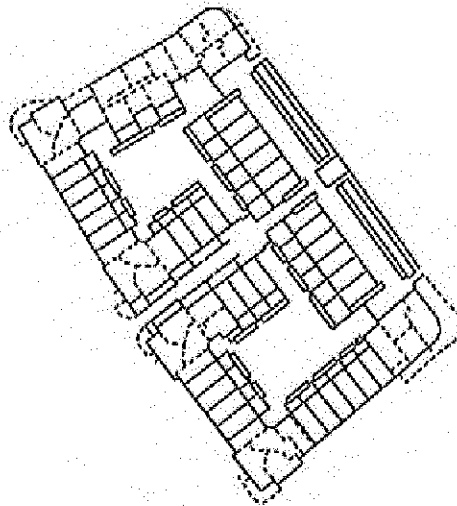
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Scale 1:1250  
Administrative area York



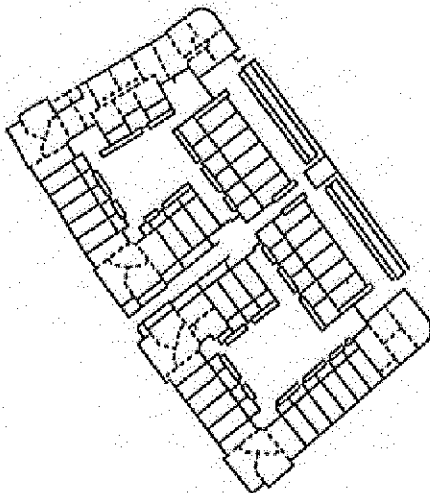
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Supplementary plan no.2.



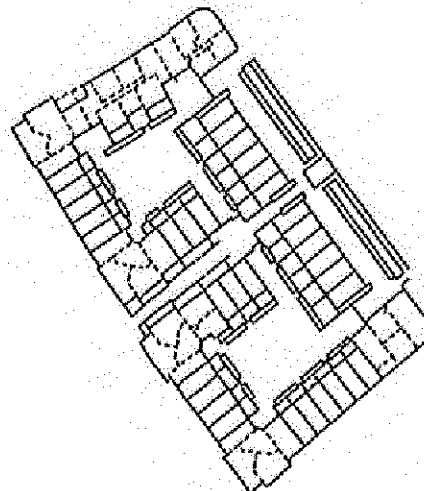
Ground Floor



First Floor



Second Floor



This 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.

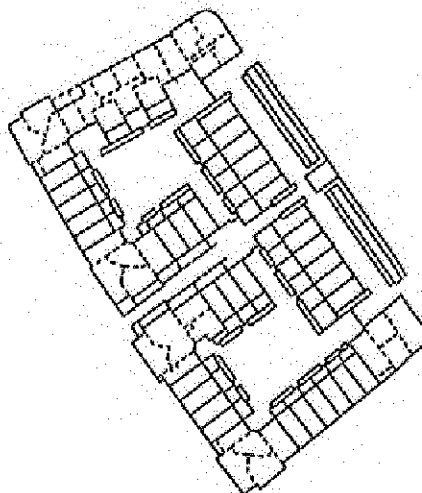
HM Land Registry  
Supplementary  
plan

Title number NYK140037  
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Scale 1:1250  
Administrative area York

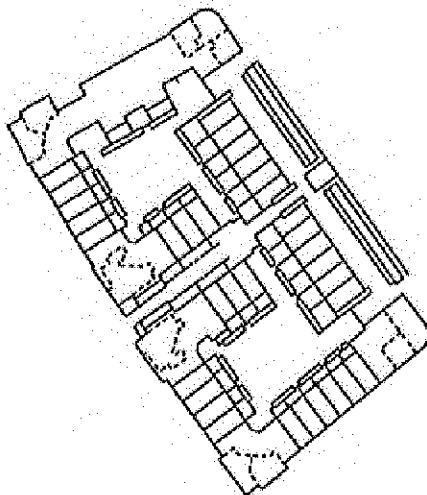


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Supplementary plan no.8.

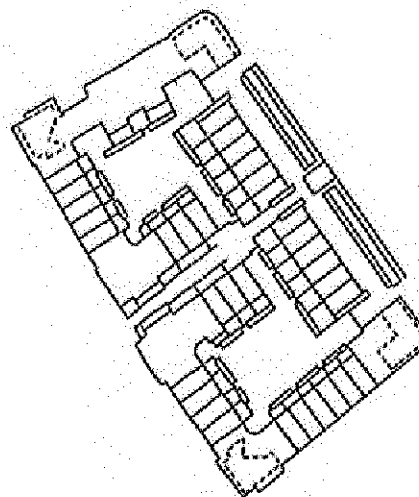
Third Floor



Fourth Floor



Fifth Floor



This 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.



HM Land Registry  
Supplementary  
plan

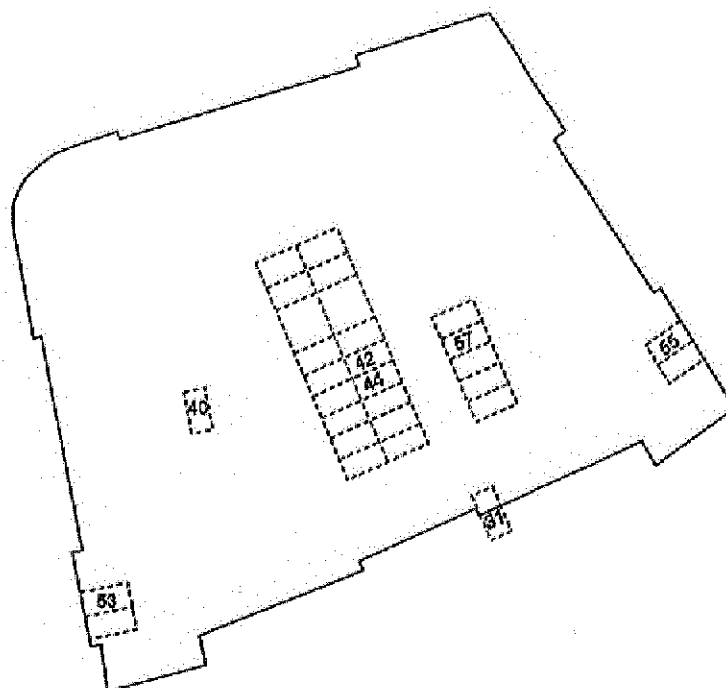
Title number NYK148037  
Ordnance Survey map reference SE8051NE  
Scale 1:800 enlarged from 1:1250  
Administrative area York



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Supplementary plan no.4.



**Basement Level**



This 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.

# HM Land Registry Supplementary plan

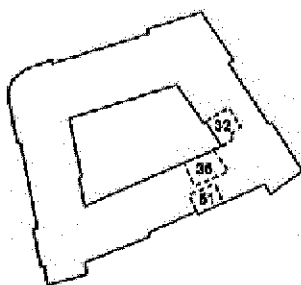
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Scale 1:1250  
Administrative area York



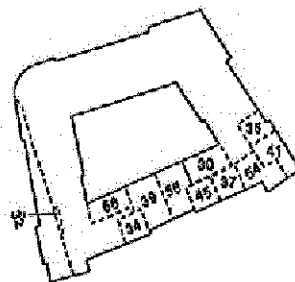
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Supplementary plan no.6.



Level 0



Levels 1 to 4



## EXECUTION

### The Chargor

EXECUTED AS A DEED by )  
HUNGATE (YORK) REGENERATION LIMITED, )  
acting by a director and its secretary or by two ) .....  
directors or by a director in the presence of a witness ) Director  
.....  
Director/Secretary

Signature of witness .....

Name .....

(In BLOCK CAPITALS) .....

Address .....

.....

.....

**The Bank**

EXECUTED AS A DEED by )

NATIONAL WESTMINSTER BANK PLC )

acting by a director )

in the presence )

of: )

Director



Signature of witness

Alrie James

Name

SOPHIE DAVIES

(In BLOCK CAPITALS)

WEST ONE

Address

114 WELLINGTON ST

LEEDS

LS1 1BA

**Communications to be delivered to:**

Address:

National Westminster Bank PLC

3<sup>rd</sup> Floor Whitehall Quay

Leeds LS1 4HR

Fax number: +44 (0) 113 307 8288

Attention: Jonathan Ellis/Andrew Dexter