



**Registration of a Charge**

Company name: **ZEST FOOD LTD**

Company number: **05070252**



X6LRKMZV

Received for Electronic Filing: **21/12/2017**

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**Details of Charge**

Date of creation: **18/12/2017**

Charge code: **0507 0252 0014**

Persons entitled: **LATIMER INVESTMENTS LIMITED**

Brief description: **FIXED & FLOATING CHARGES OVER (1) ALL FREEHOLD AND LEASEHOLD LAND AND ALL RELATED RIGHTS TO SUCH PROPERTY NOW OR IN THE FUTURE ACQUIRED, (2) THE BUSINESS OF, AND ALL OTHER ASSETS, PROPERTY AND UNDERTAKING OF THE COMPANY INCLUDING ITS GOODWILL, UNCALLED CAPITAL, EQUIPMENT, INTELLECTUAL PROPERTY, BOOK DEBTS, INVESTMENTS, AND RIGHTS IN INSURANCE POLICIES.**

**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 THE ELECTRONIC COPY INSTRUMENT  
DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION  
IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **NEIL SEBBA**



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

Company number: 5070252

Charge code: 0507 0252 0014

The Registrar of Companies for England and Wales hereby certifies that a charge dated 18th December 2017 and created by ZEST FOOD LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 21st December 2017 .

Given at Companies House, Cardiff on 22nd December 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 18 day of December 2017**

**Zest Food Ltd**

**and**

**Latimer Investments Limited**

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**DEBENTURE  
BY WAY OF THIRD PARTY SECURITY**

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**CAMERONS** 

**Camerons Solicitors LLP  
70 Wimpole Street, London  
W1G 8AX  
Tel: 020 7866 6010  
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This Deed is dated

18 December 2017.

## **PARTIES**

- (1) **ZEST FOOD LTD** incorporated and registered in England and Wales with company number 05070252 whose registered office is at 31-33 Baker Street, London W1U 8EJ (the **Chargor**); and
- (2) **LATIMER INVESTMENTS LIMITED** incorporated and registered in Jersey with company number 112602 and whose registered office is at Charter Place, 23/27 Seaton Place, St Helier, Jersey, JE1 1JY (the **Lender**).

## **BACKGROUND**

Under this deed, the Chargor provides security to the Lender for the loan facilities made available to the Borrower.

## **IT IS AGREED AS FOLLOWS:**

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

#### **1.1 Definitions**

The following definitions apply in this Deed:

<b>Administrator;</b>	an administrator appointed to manage the affairs, business and property of the Chargor pursuant to <i>clause 11.8</i> .
<b>Book Debts;</b>	all present and future book and other debts, and monetary claims due or owing to the Chargor, and the benefit of all security, guarantees and other rights of any nature enjoyed or held by the Chargor in relation to any of them.
<b>Borrowed Money;</b>	<p>any Indebtedness of the Chargor for or in respect of:</p> <p>(a) borrowing or raising money (with or without security), including any premium and any capitalised interest on that money;</p> <p>(b) any bond, note, loan stock, debenture, commercial paper or similar instrument;</p> <p>(c) any acceptances under any acceptance credit or bill discounting facility (or dematerialised equivalent) or any note purchase or documentary credit facilities;</p> <p>(d) monies raised by selling, assigning or discounting receivables or other financial assets on terms that recourse may be had to the Chargor if those receivables or financial assets are not paid when due;</p> <p>(e) any deferred payment for assets or services acquired, other than trade credit that is given in the ordinary course of trading and which does not involve</p>

any deferred payment of any amount for more than 60 days;

(f) any rental or hire charges under any finance lease (whether for land, machinery, equipment or otherwise);

(g) any counter-indemnity obligation in respect of any guarantee, bond, indemnity, standby letter of credit or other instrument issued by a third party in connection with the Chargor's performance of a contract;

(h) any other transaction that has the commercial effect of borrowing (including any forward sale or purchase agreement and any liabilities which are not shown as borrowed money on the Chargor's balance sheet because they are contingent, conditional or otherwise);

(i) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and when calculating the value of any derivative transaction, only the mark to market value shall be taken into account); and

(j) any guarantee, counter-indemnity or other assurance against financial loss given by the Chargor for any Indebtedness of the type referred to in any other paragraph of this definition incurred by any person.

When calculating Borrowed Money, no liability shall be taken into account more than once.

**Borrower;**

Tossed Holdings Limited incorporated and registered in England and Wales with company number 08422056 whose registered office is at 31-33 Baker Street, London W1U 8EJ

**Default Rate;**

4% per annum above the base rate from time to time of Barclays Bank PLC.

**Delegate;**

any person appointed by the Lender or any Receiver pursuant to *clause 16* and any person appointed as attorney of the Lender, Receiver or Delegate.

**Designated Account;**

any account of the Chargor nominated by the Lender as a designated account for the purposes of this Deed.

**Equipment;**

all present and future equipment, plant, machinery, tools, vehicles, furniture, fittings, installations and apparatus and other tangible moveable property for the time being owned by the Chargor, including any part of it and all spare parts, replacements, modifications and additions.

**Event of Default;**

any of the following events:

(a) the the Borrower or Chargor fails to pay any of the Secured Liabilities when due, unless its failure to pay is caused solely by an administrative error or technical problem and payment is made within three Business Days of its due date;

(b) the Borrower or the Chargor fails (other than a failure to pay referred to in paragraph (a) of this definition) to comply with any provision of this Deed or any document under which the Borrower or the Chargor owes obligations to the Lender and (if the Lender considers, acting reasonably, that the default is capable of remedy) such default is not remedied within 14 days of the earlier of the Lender notifying the Borrower or the Chargor of the default and the remedy required and the Borrower or the Chargor becoming aware of the default;

(c) any representation, warranty or statement made, or deemed made by the Borrower or the Chargor to the Lender is (or proves to have been) incomplete, untrue, incorrect or misleading in any material respect when made or deemed made;

(d) the Borrower or the Chargor suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a substantial part of its business; and

(e) any Borrowed Money is not paid when due or within any originally applicable grace period;

(f) any Borrowed Money becomes due, or capable of being declared due and payable prior to its stated maturity by reason of an event of default (however described);

(g) any commitment for Borrowed Money is cancelled or suspended by a creditor of the Borrower or the Chargor by reason of an event of default (however described);

(h) any creditor of the Borrower or the Chargor becomes entitled to declare any Borrowed Money due and payable prior to its stated maturity by reason of an event of default (however described);

(i) the Borrower or the Chargor stops or suspends payment of any of its debts or is unable to, or admits its inability to, pay its debts as they fall due;

(j) the Borrower or the Chargor commences negotiations, or enters into any composition, compromise, assignment or arrangement, with one or more of its creditors with a view to rescheduling any of its Indebtedness (because of actual or anticipated



financial difficulties);

(k) a moratorium is declared in respect of any Indebtedness of the Borrower or the Chargor;

(l) any action, proceedings, procedure or step is taken for the suspension of payments, a moratorium of any Indebtedness, winding up, dissolution, administration or reorganisation (using a voluntary arrangement, scheme of arrangement or otherwise) of the Borrower or the Chargor;

(m) any action, proceedings, procedure or step is taken for a composition, compromise, assignment or arrangement with any creditor of the Borrower or the Chargor;

(n) any action, proceedings, procedure or step is taken for the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Borrower or the Chargor or any of its assets;

(o) the value of the Borrower's or the Chargor's assets is less than its liabilities (taking into account contingent and prospective liabilities);

(p) any event occurs in relation to the Borrower or the Chargor similar to those set out in paragraphs (i) to (o) (inclusive) under the laws of any applicable jurisdiction;

(q) a distress, attachment, execution, expropriation, sequestration or other analogous legal process in any jurisdiction is levied, enforced or sued out on, or against, the Chargor's assets having an aggregate value of more than £100,000 (or its equivalent in other currencies) and is not discharged or stayed within 30 days;

(r) any Security in respect of Indebtedness exceeding £100,000 (or its equivalent in other currencies) on or over the assets of the Borrower or the Chargor becomes enforceable;

(s) any provision of this Deed or any document under which the Borrower or the Chargor owes obligations to the Lender is or becomes invalid, unlawful, unenforceable, terminated, disputed or ceases to be effective or to have full force and effect;

(t) the Borrower or the Chargor repudiates or shows an intention to repudiate this Deed or any document under which the Borrower or the Chargor owes obligations to the Lender; or

(u) any event occurs (or circumstances exist) which, in the reasonable opinion of the Lender, has or is likely to materially and adversely affect the Borrower's or the Chargor's ability to perform all or any of its obligations under, or otherwise comply with the terms of, this Deed or any document under which the Borrower or the Chargor owes obligations to the Lender.

**Excluded Property;**

each leasehold property held by the Borrower or the Chargor under a lease that either precludes absolutely, or requires consent of a third party to, the creation of Security over the Chargor's leasehold interest in that property.

**Financial Collateral;**

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

**Financial Collateral Regulations;**

the Financial Collateral Arrangements (No 2) Regulations 2003 (*SI 2003/3226*).

**Indebtedness;**

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

**Intellectual Property;**

the Chargor's present and future copyright and related rights, trade marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Investments;**

all present and future certificated stocks, shares, loan capital, securities, bonds and investments (whether or not marketable) for the time being owned (at law or in equity) by the Chargor, including any:

- (a) dividend, interest or other distribution paid or payable in relation to any of the Investments; and
- (b) right, money, shares or property accruing, offered or issued at any time in relation to any of the Investments by way of redemption, substitution, exchange, conversion, bonus, preference or otherwise, under option rights or otherwise.

<b>LPA 1925;</b>	the Law of Property Act 1925.
<b>Permitted Security;</b>	all Security granted to Santander UK plc for itself and as security trustee for all its subsidiaries
<b>Properties;</b>	all freehold and leasehold properties (whether registered or unregistered) and all commonhold properties, now or in the future (and from time to time) owned by the Chargor, or in which the Chargor holds an interest, and 'Property' means any of them.
<b>Receiver;</b>	a receiver, receiver and manager or administrative receiver of any or all of the Secured Assets appointed by the Lender under <i>clause 14</i> .
<b>Rights;</b>	any Security or other right or benefit howsoever arising.
<b>Secured Assets;</b>	all the assets, property and undertaking for the time being subject to the Security created by, or pursuant to, this Deed (and references to the Secured Assets shall include references to any part of them).
<b>Secured Liabilities;</b>	all present and future monies, obligations and liabilities of the Borrower or the Chargor to the Lender, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity and whether or not the Lender was an original party to the relevant transaction and in whatever name or style, together with all interest (including, without limitation, default interest) accruing in respect of those monies, obligations or liabilities.
<b>Security Financial Collateral Arrangement;</b>	has the meaning given to that expression in the Financial Collateral Regulations.
<b>Security;</b>	any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect.
<b>Security Period;</b>	the period starting on the date of this Deed and ending on the date on which the Lender is satisfied that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding.

## 1.2 Interpretation

In this Deed:

- 1.2.1 clause headings shall not affect the interpretation of this Deed and unless the context otherwise requires, a reference to a clause is to a clause of this Deed;

- 1.2.2 a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality);
- 1.2.3 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- 1.2.4 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- 1.2.5 a reference to a **party** shall include that party's successors, permitted assigns and permitted transferees and this Deed shall be binding on, and enure to the benefit of, the parties to this Deed and their respective personal representatives, successors, permitted assigns and permitted transferees;
- 1.2.6 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 1.2.7 a reference to **writing** or **written** includes fax and email;
- 1.2.8 an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- 1.2.9 a reference to **this Deed** (or any provision of it) or to any other agreement or document referred to in this Deed is a reference to this Deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this Deed) from time to time;
- 1.2.10 any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 1.2.11 a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and amended shall be construed accordingly);
- 1.2.12 a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;
- 1.2.13 a reference to **continuing** in relation to an Event of Default means an Event of Default that has not been remedied or waived;
- 1.2.14 a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it; and
- 1.2.15 a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.
- 1.3 If the Lender considers that an amount paid by the Borrower or the Chargor in respect of the Secured Liabilities is capable of being avoided or otherwise set aside on the liquidation or administration of the Borrower or the Chargor or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this Deed.
- 1.4 A reference in this Deed to a charge or mortgage of or over any Property includes:

- 1.4.1 all buildings and fixtures and fittings (including trade and tenant's fixtures and fittings) that are situated on or form part of that Property at any time;
- 1.4.2 the proceeds of the sale of any part of that Property and any other monies paid or payable in respect of or in connection with that Property;
- 1.4.3 the benefit of any covenants for title given, or entered into, by any predecessor in title of the Chargor in respect of that Property, and any monies paid or payable in respect of those covenants; and
- 1.4.4 all rights under any licence, agreement for sale or agreement for lease in respect of that Property.
- 1.5 If the rule against perpetuities applies to any trust created by this Deed, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).

## **2. Covenant to pay**

- 2.1 The Chargor shall, on demand, pay to the Lender and discharge the Secured Liabilities when they become due.
- 2.2 The Chargor covenants with the Lender to pay interest on any amounts due under clause 2.1 from day to day from the date the amount is due until full discharge (whether before or after judgment, liquidation, winding-up or administration of the Chargor) at the Default Rate, provided that, in the case of any cost or expense, such interest shall accrue and be payable as from the date on which the relevant cost or expense arose without the necessity for any demand being made for payment.

## **3. Grant of security**

- 3.1 As a continuing security for the payment and discharge of the Secured Liabilities, the Chargor with full title guarantee charges to the Lender, by way of legal mortgage each Property.
- 3.2 As a continuing security for the payment and discharge of the Secured Liabilities, the Chargor with full title guarantee charges to the Lender by way of fixed charge:
  - 3.2.1 all Properties acquired by the Chargor in the future;
  - 3.2.2 all present and future interests of the Chargor not effectively mortgaged or charged under the preceding provisions of this *clause 3* in, or over, freehold or leasehold property;
  - 3.2.3 all present and future rights, licences, guarantees, rents, deposits, contracts, covenants and warranties relating to each Property;
  - 3.2.4 all licences, consents and authorisations (statutory or otherwise) held or required in connection with the Chargor's business or the use of any Secured Asset, and all rights in connection with them;
  - 3.2.5 all its present and future goodwill;
  - 3.2.6 all its uncalled capital;
  - 3.2.7 all the Equipment;
  - 3.2.8 all the Intellectual Property;
  - 3.2.9 all the Book Debts;
  - 3.2.10 all the Investments;

- 3.2.11 all monies from time to time standing to the credit of its accounts with any bank, financial institution or other person (including each Designated Account), together with all other rights and benefits accruing to or arising in connection with each account (including, but not limited to, entitlements to interest); and
- 3.2.12 all its rights in respect of each Insurance Policy, including all claims, the proceeds of all claims and all returns of premium in connection with each Insurance Policy.
- 3.3 As a continuing security for the payment and discharge of the Secured Liabilities, the Chargor with full title guarantee assigns to the Lender absolutely, subject to a proviso for reassignment on irrevocable discharge in full of the Secured Liabilities:
  - 3.3.1 all its rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premium in connection with each Insurance Policy; and
  - 3.3.2 the benefit of all other agreements, instruments and rights relating to the Secured Assets.
- 3.4 As a continuing security for the payment and discharge of the Secured Liabilities, the Chargor with full title guarantee charges to the Lender, by way of first floating charge, all the undertaking, property, assets and rights of the Chargor at any time not effectively mortgaged, charged or assigned pursuant to *clause 3.1 to clause 3.3* inclusive.
- 3.5 Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created by *clause 3.4*
- 3.6 Subject to *clause 3.6.1 to clause 3.6.3*, the security created by *clause 3.1 to clause 3.2* shall not apply to an Excluded Property until the Chargor obtains any relevant consent, or waiver of any prohibition, to the creation of security over that Excluded Property and in relation to each Excluded Property:
  - 3.6.1 the Chargor undertakes to:
    - 3.6.1.1 apply for the relevant consent or waiver of prohibition within 20 Business Days of the date of this Deed, and to use its best endeavours to obtain that consent or waiver as soon as possible;
    - 3.6.1.2 keep the Lender informed of its progress in obtaining that consent or waiver; and
    - 3.6.1.3 immediately on receipt of the consent or waiver, provide the Lender with a copy of that consent or waiver.
  - 3.6.2 Immediately on receipt by the Chargor of the relevant consent or waiver, that Excluded Property shall become the subject of a mortgage or charge (as appropriate) pursuant to *clause 3.1 to clause 3.2*.
  - 3.6.3 If required by the Lender at any time following receipt of that consent or waiver, the Chargor shall, at its own cost, prepare and execute any further documents and take any further action the Lender may require, in its absolute discretion, for perfecting its security over that Excluded Property.
- 3.7 The floating charge created by *clause 3.4* shall automatically and immediately (without notice) convert into a fixed charge over the assets subject to that floating charge if:
  - 3.7.1 the Chargor:

- 3.7.1.1 creates, or attempts to create, without the prior written consent of the Lender, Security or a trust in favour of another person over all or any part of the Secured Assets (except as expressly permitted by the terms of this Deed); or
- 3.7.1.2 disposes, or attempts to dispose of, all or any part of the Secured Assets (other than Secured Assets that are only subject to the floating charge while it remains uncrystallised);
- 3.7.2 any person levies (or attempts to levy) any distress, attachment, execution or other process against all or any part of the Secured Assets; or
- 3.7.3 a resolution is passed or an order is made for the winding-up, dissolution, administration or re-organisation of the Chargor.
- 3.8 The Lender may, in its sole discretion, by written notice to the Chargor, convert the floating charge created under this Deed into a fixed charge as regards any part of the Secured Assets specified by the Lender in that notice if:
  - 3.8.1 an Event of Default occurs and is continuing; or
  - 3.8.2 the Lender considers those assets to be in danger of being seized or sold under any form of distress, attachment, execution or other legal process or to be otherwise in jeopardy.
- 3.9 Any asset acquired by the Chargor after any crystallisation of the floating charge created under this Deed that, but for that crystallisation, would be subject to a floating charge under this Deed, shall (unless the Lender confirms otherwise to the Chargor in writing) be charged to the Lender by way of first fixed charge.

#### **4. Liability of the Chargor**

- 4.1 The Chargor's liability under this Deed in respect of any of the Secured Liabilities shall not be discharged, prejudiced or affected by:
  - 4.1.1 any intermediate payment, settlement of account or discharge in whole or in part of the Secured Liabilities;
  - 4.1.2 any variation, extension, discharge, compromise, dealing with, exchange or renewal of any right or remedy which the Lender may now or after the date of this Deed have from or against the Borrower, the Chargor or any other person in connection with the Secured Liabilities;
  - 4.1.3 any act or omission by the Lender or any other person in taking up, perfecting or enforcing any Security, indemnity, or guarantee from or against the Borrower, the Chargor or any other person;
  - 4.1.4 any termination, amendment, variation, novation, replacement or supplement of or to any of the Secured Liabilities;
  - 4.1.5 any grant of time, indulgence, waiver or concession to the Borrower, the Chargor or any other person;
  - 4.1.6 any insolvency, bankruptcy, liquidation, administration, winding up, incapacity, limitation, disability, the discharge by operation of law, or any change in the constitution, name or style of the Borrower, the Chargor or any other person;
  - 4.1.7 any invalidity, illegality, unenforceability, irregularity or frustration of any actual or purported obligation of, or Security held from, the Borrower, the Chargor or any other person in connection with the Secured Liabilities;

- 4.1.8 any claim or enforcement of payment from the Borrower, the Chargor or any other person; or
- 4.1.9 any other act or omission which would not have discharged or affected the liability of the Chargor had it been a principal debtor or anything done or omitted by any person which, but for this *clause 4.1*, might operate to exonerate or discharge the Chargor or otherwise reduce or extinguish its liability under this Deed.
- 4.2 The Chargor waives any right it may have to require the Lender to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this Deed against the Chargor.
- 4.3 The Chargor waives any right it may have to require the Lender:
  - 4.3.1 to take any action or obtain judgment in any court against the Borrower or any other person;
  - 4.3.2 to make or file any claim in a bankruptcy, liquidation, administration or insolvency of the Borrower or any other person; or
  - 4.3.3 to make demand, enforce or seek to enforce any claim, right or remedy against the Borrower or any other person,before taking steps to enforce any of its rights or remedies under this Deed.
- 4.4 The Chargor warrants to the Lender that it has not taken or received, and shall not take, exercise or receive the benefit of any Rights from or against the Borrower, its liquidator, an administrator, co-guarantor or any other person in connection with any liability of, or payment by, the Chargor under this Deed but:
  - 4.4.1 if any of the Rights is taken, exercised or received by the Chargor, those Rights and all monies at any time received or held in respect of those Rights shall be held by the Chargor on trust for the Lender for application in or towards the discharge of the Secured Liabilities under this Deed; and
  - 4.4.2 on demand by the Lender, the Chargor shall promptly transfer, assign or pay to the Lender all other Rights and all monies from time to time held on trust by the Chargor under this *clause 4*.
- 4.5 Notwithstanding any other provision of the Finance Documents, it is expressly agreed and understood that:
  - 4.5.1 the sole recourse of the Lender to the Chargor under this deed is to the Chargor's interest in the Secured Assets; and
  - 4.5.2 the liability of the Chargor to the Lender pursuant to or otherwise in connection with the Finance Documents shall be:
    - 4.5.2.1 limited in aggregate to an amount equal to that recovered as a result of enforcement of this deed with respect to the Secured Assets; and
    - 4.5.2.2 satisfied only from the proceeds of sale or other disposal or realisation of the Secured Assets pursuant to this deed.

## **5. Representations and warranties**

- 5.1 The Chargor makes the representations and warranties set out in this *clause 5* to the Lender.



- 5.2 The Chargor is a duly incorporated limited liability company validly existing under the law of its jurisdiction of incorporation
- 5.3 The Chargor has the power
- 5.3.1 to enter into, deliver and perform, and has taken all necessary action to authorise its entry into, delivery and performance of this Deed and the transactions contemplated by it; and
- 5.3.2 to own its assets and carry on its business as it is being conducted..
- No limit on its powers will be exceeded as a result of the grant of Security contemplated by this Deed.
- 5.4 The entry into and performance by the Chargor of, and the transactions contemplated by, this Deed do not and will not contravene or conflict with:
- 5.4.1 its constitutional documents;
- 5.4.2 any agreement or instrument binding on it or its assets or constitute a default or termination event (however described) under any such agreement or instrument; or
- 5.4.3 any law or regulation or judicial or official order applicable to it.
- 5.5 The Chargor has obtained all required or desirable authorisations to enable it to enter into, exercise its rights and comply with its obligations in this Deed and to make it admissible in evidence in its jurisdiction of incorporation. Any such authorisations are in full force and effect.
- 5.6 The Chargor's obligations under this Deed are legal, valid, binding and enforceable.
- 5.7 No Event of Default or, on the date of this Deed, event or circumstance which would, on the expiry of any grace period, the giving of notice, the making of any determination, satisfaction of any other condition or any combination thereof, constitute an Event of Default has occurred and is continuing.
- 5.8 No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination, satisfaction of any other condition or any combination thereof, would constitute) a default or termination event (however described) under any other agreement or instrument which is binding on it or to which any of its assets is subject which has or is reasonably likely to have a material adverse effect on its business, assets or condition, or its ability to perform its obligations under this Deed.
- 5.9 The Chargor is the sole legal and beneficial owner of the Secured Assets.
- 5.10 The Secured Assets are free from any Security other than the Permitted Security and the Security created by this Deed.
- 5.11 There are no covenants, agreements, reservations, conditions, interests, rights or other matters whatsoever that materially and adversely affect the Secured Assets.
- 5.12 There is no breach of any law or regulation that materially and adversely affects the Secured Assets.
- 5.13 No facility necessary for the enjoyment and use of the Secured Assets is subject to terms entitling any person to terminate or curtail its use.
- 5.14 Nothing has arisen, has been created or is subsisting, that would be an overriding interest in any Property.

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

**6. General covenants**

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

6.1.1 create, purport to create or permit to subsist any Security on, or in relation to, any Secured Asset other than any Security created by this Deed or any Permitted Security;

6.1.2 sell, assign, transfer, part with possession of, or otherwise dispose of in any manner (or purport to do so), all or any part of, or any interest in, the Secured Assets (except, in the ordinary course of business, Secured Assets that are only subject to an uncrystallised floating charge); or

6.1.3 create or grant (or purport to create or grant) any interest in the Secured Assets in favour of a third party.

6.2 The Chargor shall notify the Lender of any Event of Default or event or circumstance which would, on the expiry of any grace period, the giving of notice, the making of any determination, satisfaction of any other condition or any combination thereof, constitute an Event of Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.

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

6.4 The Chargor shall comply in all respects with all laws to which it may be subject if failure to do so would materially impair its ability to perform its obligations under this Deed.

6.5 The Chargor shall not make any substantial change to the general nature or scope of its business as carried on at the date of this Deed.

6.6 The Chargor shall supply to the Lender:

6.6.1 all documents dispatched by the Chargor to its shareholders (or any class of them) or its creditors generally, at the same time as they are dispatched;

6.6.2 details of any litigation, arbitration or administrative proceedings that are current, threatened or pending against the Chargor as soon as it becomes aware of them and which might, if adversely determined, have a material adverse effect on its business, assets or condition, or its ability to perform its obligations under this Deed or any document under which the Chargor owes obligations to the Lender; and

promptly, any further information about the financial condition, business and operations of the Chargor as the Lender may reasonably request.

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

6.8 The Chargor shall not, without the Lender's prior written consent, use or permit the Secured Assets to be used in any way contrary to law.

6.9 The Chargor shall:

- 6.9.1 comply with the requirements of any law and regulation relating to or affecting the Secured Assets or the use of it or any part of them;
- 6.9.2 obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Secured Assets or their use or that are necessary to preserve, maintain or renew any Secured Asset; and
- 6.9.3 promptly effect any maintenance, modifications, alterations or repairs that are required by any law or regulation to be effected on or in connection with the Secured Assets.
- 6.10 The Chargor shall use its best endeavours to:
  - 6.10.1 procure the prompt observance and performance of the covenants and other obligations imposed on the Chargor's counterparties (including each counterparty in respect of each insurer in respect of an Insurance Policy); and
  - 6.10.2 enforce any rights and institute, continue or defend any proceedings relating to any of the Secured Assets that the Lender may require from time to time.
- 6.11 The Chargor shall, as so required by the Lender, deposit with the Lender and the Lender shall, for the duration of this Deed be entitled to hold:
  - 6.11.1 all deeds and documents of title relating to the Secured Assets that are in the possession or control of the Chargor (and if these are not within the possession or control of the Chargor, the Chargor undertakes to obtain possession of all these deeds and documents of title);
  - 6.11.2 all Insurance Policies and any other insurance policies relating to any of the Secured Assets that the Chargor is entitled to possess; and
  - 6.11.3 all deeds and documents of title (if any) relating to the Book Debts as the Lender may specify from time to time.
  - 6.11.4 The Chargor shall insure and keep insured with an insurance company or underwriters, and on such terms, as are reasonably acceptable to the Lender (including property owners' public liability and third party liability insurance) and for not less than their replacement value (or where, in the case of any leasehold property, insurance is the responsibility of the landlord under the terms of the lease, either procure that the landlord insures and keeps insured or, if and to the extent that the landlord does not do so, itself insure and keep insured) the Secured Assets against:
    - 6.11.4.1 loss or damage by fire or terrorist acts;
    - 6.11.4.2 other risks, perils and contingencies that would be insured against by reasonably prudent persons carrying on the same class of business as the Chargor;
    - 6.11.4.3 loss of rents payable by the tenants or other occupiers of the Property for a period of at least one year, including provision for increases in rent during the period of insurance; and
    - 6.11.4.4 any other risk, perils and contingencies as the Lender may reasonably require.
- 6.11.5 The Chargor shall, if requested by the Lender, produce to the Lender each policy, certificate or cover note relating to the insurance required by *clause 6.11.4* (or where, in the case of any leasehold property, that insurance is effected by the landlord, such evidence of insurance as the Chargor is entitled to obtain from the landlord under the terms of the relevant lease).

- 6.11.6 The Chargor shall, if requested by the Lender, procure that a note of the Lender's interest is endorsed upon each insurance policy (other than public liability and third party liability insurances) maintained by it or any person on its behalf in accordance with *clause 6.11.4* but without the Lender having any liability for any premium in relation to those Insurance Policies unless it has expressly and specifically requested to be made liable in respect of any increase in premium or unpaid premium in respect of any Insurance Policy.
- 6.12 The Chargor shall not do or omit to do, or permit to be done or omitted, any act or thing that may invalidate or otherwise prejudice any insurance policy maintained by it in accordance with *clause 6.11.4*.
- 6.13 All monies payable under any insurance policy maintained by it in accordance with *clause 6.11.4* at any time (whether or not the security constituted by this Deed has become enforceable) shall:
- 6.13.1 immediately be paid into a Designated Account;
- 6.13.2 if they are not paid into a Designated Account, be held, pending such payment, by the Chargor as trustee of the same for the benefit of the Lender; and
- 6.13.3 be applied in making good or recouping expenditure in respect of the loss or damage for which those monies are received or, after the security constituted by this Deed has become enforceable and if the Lender so directs, in or towards discharge or reduction of the Secured Liabilities.
- 6.14 The Chargor shall:
- 6.14.1 give the Lender such information concerning the location, condition, use and operation of the Secured Assets as the Lender may require;
- 6.14.2 permit any persons designated by the Lender and any Receiver to enter on its premises and inspect and examine any Secured Asset, and the records relating to that Secured Asset, at all reasonable times and on reasonable prior notice; and
- 6.14.3 promptly notify the Lender in writing of any action, claim, notice or demand made by or against it in connection with all or any part of a Secured Asset or of any fact, matter or circumstance which may, with the passage of time, give rise to such an action, claim, notice or demand, together with, in each case, the Chargor's proposals for settling, liquidating, compounding or contesting any such action, claim, notice or demand and shall, subject to the Lender's prior approval, implement those proposals at its own expense.
- 6.15 The Chargor shall promptly pay all taxes, fees, licence duties, registration charges, insurance premiums and other outgoings in respect of the Secured Assets and, on demand, produce evidence of payment to the Lender.
- 7. Property covenants**
- 7.1 The Chargor shall keep all premises and fixtures and fittings on each Property in good and substantial repair and condition.
- 7.2 The Chargor shall:
- 7.2.1 observe and perform all covenants, stipulations and conditions to which each Property, or the use of it, is or may be subjected, and (if the Lender so requires) produce evidence sufficient to satisfy the Lender that those covenants, stipulations and conditions have been observed and performed;

- 7.2.2 diligently enforce all covenants, stipulations and conditions benefiting each Property and shall not (and shall not agree to) waive, release or vary any of the same; and
- 7.2.3 (without prejudice to the generality of the foregoing) where a Property, or part of it, is held under a lease, duly and punctually pay all rents due from time to time, and perform and observe all the tenant's covenants and conditions.
- 7.3 The Chargor shall:
- 7.3.1 where a Property, or part of it, is held under a lease, duly and punctually pay all rents due from time to time; and
- 7.3.2 pay (or procure payment of the same) when due all charges, rates, taxes, duties, assessments and other outgoings relating to or imposed on each Property or on its occupier.
- 7.4 The Chargor shall not, without the prior written consent of the Lender, enter into any onerous or restrictive obligations affecting the whole or any part of any Property, or create or permit to arise any overriding interest, easement or right whatever in or over the whole or any part of any Property.
- 7.5 The Chargor shall permit the Lender, any Receiver and any person appointed by either of them to enter on and inspect any Property on reasonable prior notice.
- 7.6 The Chargor consents to an application being made by the Lender to the Land Registrar for the following restriction in Form P to be registered against its title to each Property:

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction is to be registered without a written consent signed by the proprietor for the time being of the charge dated [DATE] in favour of Latimer Investments Limited referred to in the charges register or its conveyancer."

## **8. Equipment covenants**

- 8.1 The Chargor shall:
- 8.1.1 maintain the Equipment in good and serviceable condition (except for expected fair wear and tear) in compliance with all relevant manuals, handbooks, manufacturer's instructions and recommendations and maintenance or servicing schedules;
- 8.1.2 at its own expense, renew and replace any parts of the Equipment when they become obsolete, worn out or damaged with parts of a similar quality and of equal or greater value; and
- 8.1.3 not permit any Equipment to be:
- 8.1.3.1 used or handled other than by properly qualified and trained persons; or
- 8.1.3.2 overloaded or used for any purpose for which it is not designed or reasonably suitable.
- 8.2 The Chargor shall promptly pay all taxes, fees, licence duties, registration charges, insurance premiums and other outgoings in respect of the Equipment and, on demand, produce evidence of such payment to the Lender.

**9. Book Debts covenants**

- 9.1 The Chargor shall as an agent for the Lender, collect in and realise all Book Debts, pay the proceeds into a Designated Account immediately on receipt and, pending that payment, hold those proceeds in trust for the Lender;
- 9.2 The Chargor shall not, without the prior written consent of the Lender, withdraw any amounts standing to the credit of any Designated Account.
- 9.3 The Chargor shall, if called on to do so by the Lender, execute a legal assignment of the Book Debts to the Lender on such terms as the Lender may require and give notice of that assignment to the debtors from whom the Book Debts are due, owing or incurred.
- 9.4 The Chargor shall not (except as provided by *clause 9.1* or with the prior written consent of the Lender) release, exchange, compound, set off, grant time or indulgence in respect of, or in any other manner deal with, all or any of the Book Debts.

**10. Intellectual Property covenants**

- 10.1 The Chargor shall take all necessary action to safeguard and maintain present and future rights in, or relating to, the Intellectual Property including (without limitation) by observing all covenants and stipulations relating to those rights, and by paying all applicable renewal fees, licence fees and other outgoings.
- 10.2 The Chargor shall use all reasonable efforts to register applications for the registration of any Intellectual Property, and shall keep the Lender informed of all matters relating to each such registration.
- 10.3 The Chargor shall not permit any Intellectual Property to be abandoned, cancelled or to lapse.

**11. Powers of the Lender**

- 11.1 The Lender shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Chargor of any of its obligations contained in this Deed.
- 11.2 The Chargor irrevocably authorises the Lender and its agents to do all things that are necessary or desirable for that purpose.
- 11.3 Any monies expended by the Lender in remedying a breach by the Chargor of its obligations contained in this Deed shall be reimbursed by the Chargor to the Lender on a full indemnity basis and shall carry interest in accordance with *clause 18.1*.
- 11.4 The rights of the Lender are without prejudice to any other rights of the Lender under this Deed.
- 11.5 The exercise of any rights of the Lender under this Deed shall not make the Lender liable to account as a mortgagee in possession.
- 11.6 At any time after the security constituted by this Deed has become enforceable, the Lender or any Receiver may, as agent for the Chargor, dispose of any chattels or produce found on any Property and without prejudice to any obligation to account for the proceeds of any disposal so made, the Chargor shall indemnify the Lender and any Receiver against any liability arising from any such disposal.

- 11.7 To the extent permitted by law, any right, power or discretion conferred by this Deed on a Receiver may, after the security constituted by this Deed has become enforceable, be exercised by the Lender in relation to any of the Secured Assets whether or not it has taken possession of any Secured Assets and without first appointing a Receiver or notwithstanding the appointment of a Receiver.
- 11.8 If the Lender receives, or is deemed to have received, notice of any subsequent Security, or other interest, affecting all or part of the Secured Assets:
- 11.8.1 the Lender may open a new account for the Chargor in the Lender's books and without prejudice to the Lender's right to combine accounts, no money paid to the credit of the Chargor in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities; and.
- 11.8.2 If the Lender does not open a new account immediately on receipt of the notice, or deemed notice, under *clause 11.8.1*, then, unless the Lender gives express written notice to the contrary to the Chargor, all payments made by the Chargor to the Lender shall be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt or deemed receipt of the relevant notice by the Lender.
- 11.9 The Lender may, at its discretion, grant time or other indulgence, or make any other arrangement, variation or release with any person not being a party to this Deed (whether or not any such person is jointly liable with the Chargor) in respect of any of the Secured Liabilities, or of any other security for them without prejudice either to this Deed or to the liability of the Chargor for the Secured Liabilities.
- 11.10 The Lender may, without notice to the Chargor, appoint any one or more persons to be an Administrator of the Chargor pursuant to Paragraph 14 of Schedule B1 of the Insolvency Act 1986 if the security constituted by this Deed becomes enforceable.
- 11.10.1 Any appointment under this *clause 11.10* shall:
- 11.10.1.1 be in writing signed by a duly authorised signatory of the Lender; and
- 11.10.1.2 take effect, in accordance with paragraph 19 of Schedule B1 of the Insolvency Act 1986.
- 11.10.2 The Lender may apply to the court for an order removing an Administrator from office and may by notice in writing in accordance with this *clause 11.10* appoint a replacement for any Administrator who has died, resigned, been removed or who has vacated office upon ceasing to be qualified.
- 11.11 The Lender covenants with the Chargor that it shall perform its obligations to make advances under any document to which the Lender and the Chargor are party (including any obligation to make available further advances).
- 12. When security becomes enforceable**
- 12.1 The security constituted by this Deed shall become immediately enforceable if an Event of Default occurs.
- 12.2 After the security constituted by this Deed has become enforceable, the Lender may, in its absolute discretion, enforce all or any part of that security at the times, in the manner and on the terms it thinks fit, and take possession of and hold or dispose of all or any part of the Secured Assets.

**13. Enforcement of security**

- 13.1 For the purposes of all powers implied by statute, the Secured Liabilities are deemed to have become due and payable on the date of this Deed.
- 13.2 The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this Deed) shall be immediately exercisable at any time after the security constituted by this Deed has become enforceable.
- 13.3 Section 103 of the LPA 1925 does not apply to the security constituted by this Deed.
- 13.4 The statutory powers of leasing and accepting surrenders conferred on mortgagees under the LPA 1925 and by any other statute are extended so as to authorise the Lender and any Receiver, at any time after the security constituted by this Deed has become enforceable, whether in its own name or in that of the Chargor, to:
- 13.4.1 grant a lease or agreement to lease;
- 13.4.2 accept surrenders of leases; or
- 13.4.3 grant any option of the whole or any part of the Secured Assets with whatever rights relating to other parts of it,
- whether or not at a premium and containing such covenants on the part of the Chargor, and on such terms and conditions (including the payment of money to a lessee or tenant on a surrender) as the Lender or Receiver thinks fit without the need to comply with any of the restrictions imposed by sections 99 and 100 of the LPA 1925.
- 13.5 At any time after the Lender has demanded payment of the Secured Liabilities or if the Chargor defaults in the performance of its obligations under this Deed or an Event of Default is continuing, the Chargor will allow the Lender or its Receiver, without further notice or demand, immediately to exercise all its rights, powers and remedies in particular (and without limitation) to take possession of any Secured Asset and for that purpose to enter on any premises where a Secured Asset is situated (or where the Lender or a Receiver reasonably believes a Secured Asset to be situated) without incurring any liability to the Chargor for, or by any reason of, that entry.
- 13.6 At all times, the Chargor must use its best endeavours to allow the Lender or its Receiver access to any premises for the purpose of *clause 13.5* (including obtaining any necessary consents or permits of other persons) and ensure that its employees and officers do the same.
- 13.7 At any time after the security constituted by this Deed has become enforceable, or after any powers conferred by any Security having priority to this Deed shall have become exercisable, the Lender may:
- 13.7.1 redeem that or any other prior Security;
- 13.7.2 procure the transfer of that Security to it; and
- 13.7.3 settle and pass any account of the holder of any prior Security.
- 13.8 The settlement and passing of any account passed shall, in the absence of any manifest error, be conclusive and binding on the Chargor. All monies paid by the Lender to an encumbrancer in settlement of any of those accounts shall, as from its payment by the Lender, be due from the Chargor to the Lender on current account and shall bear interest at the Default Rate and be secured as part of the Secured Liabilities.



- 13.9 No purchaser, mortgagee or other person dealing with the Lender, any Receiver or Delegate shall be concerned to enquire:
- 13.9.1 whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;
- 13.9.2 whether any power the Lender, a Receiver or Delegate is purporting to exercise has become exercisable or is properly exercisable; or
- 13.9.3 how any money paid to the Lender, any Receiver or any Delegate is to be applied.
- 13.10 Each Receiver and the Lender is entitled to all the rights, powers, privileges and immunities conferred by the LPA 1925 on mortgagees and receivers.
- 13.11 Neither the Lender, any Receiver, any Delegate nor any Administrator shall be liable, by reason of entering into possession of a Secured Asset or for any other reason, to account as mortgagee in possession in respect of all or any of the Secured Assets, nor shall any of them be liable for any loss on realisation of, or for any act, neglect or default of any nature in connection with, all or any of the Secured Assets for which a mortgagee in possession might be liable as such.
- 13.12 The receipt of the Lender, or any Receiver or Delegate shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Secured Assets or in making any acquisition in the exercise of their respective powers, the Lender, and every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it or he thinks fit.
- 13.13 To the extent that:
- 13.13.1 the Secured Assets constitute Financial Collateral; and
- 13.13.2 this Deed and the obligations of the Chargor under it constitute a Security Financial Collateral Arrangement,
- the Lender shall have the right, at any time after the security constituted by this Deed has become enforceable, to appropriate all or any of those Secured Assets in or towards the payment or discharge of the Secured Liabilities in any order that the Lender may, in its absolute discretion, determine.
- 13.14 The value of any Secured Assets appropriated in accordance with *clause 13.13* shall be:
- 13.14.1.1 in the case of cash, the amount standing to the credit of each of the Chargor's accounts with any bank, financial institution or other person, together with all interest accrued but unposted, at the time the right of appropriation is exercised; and
- 13.14.1.2 in the case of Investments, the price of those Investments at the time the right of appropriation is exercised as listed on any recognised market index or determined by any other method that the Lender may select (including independent valuation).
- 13.14.2 The Chargor agrees that the methods of valuation provided for in this clause are commercially reasonable for the purposes of the Financial Collateral Regulations.
- 14. Receiver**
- 14.1 At any time after the security constituted by this Deed has become enforceable, or at the request of the Chargor, the Lender may, without further notice, appoint by way of deed, or otherwise in writing, any one or more persons to be a Receiver of all or any part of the Secured Assets.

- 14.2 The Lender may, without further notice (subject to section 45 of the Insolvency Act 1986 in the case of an administrative receiver), from time to time, by way of deed, or otherwise in writing, remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.
- 14.3 The Lender may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the LPA 1925, and the remuneration of the Receiver shall be a debt secured by this Deed, to the extent not otherwise discharged.
- 14.4 The power to appoint a Receiver conferred by this Deed shall be in addition to all statutory and other powers of the Lender under the Insolvency Act 1986, the LPA 1925 or otherwise, and shall be exercisable without the restrictions contained in sections 103 and 109 of the LPA 1925 or otherwise.
- 14.5 The power to appoint a Receiver (whether conferred by this Deed or by statute) shall be, and remain, exercisable by the Lender despite any prior appointment in respect of all or any part of the Secured Assets.
- 14.6 Any Receiver appointed by the Lender under this Deed shall be the agent of the Chargor and the Chargor shall be solely responsible for the contracts, engagements, acts, omissions, defaults, losses and remuneration of that Receiver and for liabilities incurred by that Receiver. The agency of each Receiver shall continue until the Chargor goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Lender.
- 15. Powers of Receiver**
- 15.1 Any Receiver appointed by the Lender under this Deed shall, in addition to the powers conferred on it by statute, have the powers set out in *clause 15.2 to clause 15.23*.
- 15.2 If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing it states otherwise) exercise all of the powers conferred on a Receiver under this Deed individually and to the exclusion of any other Receiver.
- 15.3 Any exercise by a Receiver of any of the powers given by *clause 15* may be on behalf of the Chargor, the directors of the Chargor (in the case of the power contained in *clause 15.16*) or itself.
- 15.4 A Receiver may undertake or complete any works of repair, building or development on the Properties and may apply for and maintain any planning permission, development consent, building regulation approval or any other permission, consent or licence to carry out any of the same.
- 15.5 A Receiver may grant, or accept surrenders of, any leases or tenancies affecting any Property and may grant any other interest or right over any Property on any terms, and subject to any conditions, that it thinks fit.
- 15.6 A Receiver may provide services and employ or engage any managers, officers, servants, contractors, workmen, agents, other personnel and professional advisers on any terms, and subject to any conditions, that it thinks fit. A Receiver may discharge any such person or any such person appointed by the Chargor.
- 15.7 A Receiver may make, exercise or revoke any value added tax option to tax as it thinks fit.
- 15.8 A Receiver may charge and receive any sum by way of remuneration (in addition to all costs, charges and expenses incurred by it) that the Lender may prescribe or agree with it.

- 15.9 A Receiver may collect and get in the Secured Assets or any part of them in respect of which it is appointed, and make any demands and take any proceedings as may seem expedient for that purpose, and take possession of the Secured Assets with like rights.
- 15.10 A Receiver may carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying the business of the Chargor.
- 15.11 A Receiver may sell, exchange, convert into money and realise all or any of the Secured Assets in respect of which it is appointed in any manner (including, without limitation, by public auction or private sale) and generally on any terms and conditions as it thinks fit. Any sale may be for any consideration that the Receiver thinks fit and a Receiver may promote, or concur in promoting, a company to purchase the Secured Assets to be sold.
- 15.12 A Receiver may sever and sell separately any fixtures or fittings from any Property without the consent of the Chargor.
- 15.13 A Receiver may sell and assign all or any of the Book Debts in respect of which it is appointed in any manner, and generally on any terms and conditions, that it thinks fit.
- 15.14 A Receiver may give valid receipt for all monies and execute all assurances and things that may be proper or desirable for realising any of the Secured Assets.
- 15.15 A Receiver may make any arrangement, settlement or compromise between the Chargor and any other person that it may think expedient.
- 15.16 A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to any of the Secured Assets as it thinks fit.
- 15.17 A Receiver may make substitutions of, or improvements to, the Equipment as it may think expedient.
- 15.18 A Receiver may make calls conditionally or unconditionally on the members of the Chargor in respect of uncalled capital with (for that purpose and for the purpose of enforcing payments of any calls so made) the same powers as are conferred by the articles of association of the Chargor on its directors in respect of calls authorised to be made by them.
- 15.19 A Receiver may, if it thinks fit, but without prejudice to the indemnity in *clause 18*, effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the Chargor under this Deed.
- 15.20 A Receiver may exercise all powers provided for in the LPA 1925 in the same way as if it had been duly appointed under the LPA 1925, and exercise all powers provided for an administrative receiver in Schedule 1 to the Insolvency Act 1986.
- 15.21 A Receiver may, for any of the purposes authorised by this *clause 15*, raise money by borrowing from the Lender (or from any other person) either unsecured or on the security of all or any of the Secured Assets in respect of which it is appointed on any terms that it thinks fit (including, if the Lender consents, terms under which that security ranks in priority to this Deed).
- 15.22 A Receiver may redeem any prior Security and settle and pass the accounts to which the Security relates. Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Chargor, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.

- 15.23 A Receiver may delegate his powers in accordance with this Deed.
- 15.24 A Receiver may, in relation to any of the Secured Assets, exercise all powers, authorisations and rights it would be capable of exercising, and do all those acts and things, as an absolute beneficial owner could exercise or do in the ownership and management of the Secured Assets or any part of the Secured Assets.
- 15.25 A Receiver may do any other acts and things that it:
- 15.25.1 may consider desirable or necessary for realising any of the Secured Assets;
- 15.25.2 may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this Deed or law; or
- 15.25.3 lawfully may or can do as agent for the Chargor.
- 16. Delegation**
- 16.1 The Lender or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this Deed (including the power of attorney granted under *clause 20.1*).
- 16.2 The Lender and each Receiver may make a delegation on the terms and conditions (including the power to sub-delegate) that it thinks fit.
- 16.3 Neither the Lender nor any Receiver shall be in any way liable or responsible to the Chargor for any loss or liability arising from any act, default, omission or misconduct on the part of any Delegate.
- 17. Application of proceeds**
- 17.1 All monies received by the Lender, a Receiver or a Delegate pursuant to this Deed, after the security constituted by this Deed has become enforceable, shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied in the following order of priority:
- 17.1.1 in or towards payment of or provision for all costs, charges and expenses incurred by or on behalf of the Lender (and any Receiver, Delegate, attorney or agent appointed by it) under or in connection with this Deed, and of all remuneration due to any Receiver under or in connection with this Deed;
- 17.1.2 in or towards payment of or provision for the Secured Liabilities in any order and manner that the Lender determines; and
- 17.1.3 in payment of the surplus (if any) to the Chargor or other person entitled to it.
- 17.2 Neither the Lender, any Receiver nor any Delegate shall be bound (whether by virtue of section 109(8) of the LPA 1925, which is varied accordingly, or otherwise) to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Secured Liabilities.
- 17.3 All monies received by the Lender, a Receiver or a Delegate under this Deed:
- 17.3.1 may, at the discretion of the Lender, Receiver or Delegate, be credited to any suspense or securities realised account;
- 17.3.2 shall bear interest, if any, at the rate agreed in writing between the Lender and the Chargor; and

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

**18. Costs and indemnity**

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

18.1.1 this Deed or the Secured Assets;

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

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

together with interest, which shall accrue and be payable (without the need for any demand for payment being made) from the date on which the relevant cost or expense arose until full discharge of that cost or expense (whether before or after judgment, liquidation, winding up or administration of the Chargor) at the Default Rate.

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

18.2.1 the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this Deed or by law in respect of the Secured Assets;

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

18.2.3 any default or delay by the Chargor in performing any of its obligations under this Deed.

Any past or present employee or agent may enforce the terms of this *clause 18.2* subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

**19. Further assurance**

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

19.1.1 creating, perfecting or protecting the security intended to be created by this Deed;

19.1.2 facilitating the realisation of any Secured Asset; or

19.1.3 facilitating the exercise of any right, power, authority or discretion exercisable by the Lender or any Receiver in respect of any Secured Asset,

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

**20. Power of attorney**

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

20.1.1 the Chargor is required to execute and do under this Deed; or

20.1.2 any attorney deems proper or desirable in exercising any of the rights, powers, authorities and discretions conferred by this Deed or by law on the Lender, any Receiver or any Delegate.

20.2 The Chargor ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in *clause 20.1*.

**21. Release**

21.1 Subject to *clause 28.3* on the expiry of the Security Period (but not otherwise), the Lender shall, at the request and cost of the Chargor, take whatever action is necessary to:

21.1.1 release the Secured Assets from the security constituted by this Deed; and

21.1.2 reassign the Secured Assets to the Chargor.

**22. Assignment and transfer**

22.1 At any time, without the consent of the Chargor, the Lender may assign or transfer any or all of its rights and obligations under this Deed.

22.2 The Lender may disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Chargor, the Secured Assets and this Deed that the Lender considers appropriate.

22.3 The Chargor may not assign any of its rights, or transfer any of its rights or obligations, under this Deed.

**23. Set-off**

23.1 The Lender may at any time set off any liability of the Chargor to the Lender against any liability of the Lender to the Chargor, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Deed. If the liabilities to be set off are expressed in different currencies, the Lender may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Lender of its rights under this *clause 23* shall not limit or affect any other rights or remedies available to it under this Deed or otherwise.

23.2 The Lender is not obliged to exercise its rights under *clause 23.1*. If, however, it does exercise those rights it must promptly notify the Chargor of the set-off that has been made.

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

**24. Amendments, waivers and consents**

- 24.1 No amendment of this Deed shall be effective unless it is in writing and signed by, or on behalf of, each party (or its authorised representative).
- 24.2 A waiver of any right or remedy under this Deed or by law, or any consent given under this Deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.
- 24.3 A failure to exercise, or a delay in exercising, any right or remedy provided under this Deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this Deed. No single or partial exercise of any right or remedy provided under this Deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this Deed by the Lender shall be effective unless it is in writing.
- 24.4 The rights and remedies provided under this Deed are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

**25. Severance**

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

**26. Counterparts**

- 26.1 This Deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.
- 26.2 Transmission of the executed signature page of a counterpart of this Deed by fax or email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Deed. If either method of delivery is adopted, without prejudice to the validity of the deed thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.
- 26.3 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

**27. Third party rights**

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

## **28. Further provisions**

- 28.1 The security constituted by this Deed shall be in addition to, and independent of, any other security or guarantee that the Lender may hold for any of the Secured Liabilities at any time. No prior security held by the Lender over the whole or any part of the Secured Assets shall merge in the security created by this Deed.
- 28.2 The security constituted by this Deed shall remain in full force and effect as a continuing security for the Secured Liabilities, despite any settlement of account, or intermediate payment, or other matter or thing, unless and until the Lender discharges this Deed in writing.
- 28.3 Any release, discharge or settlement between the Chargor and the Lender shall be deemed conditional on no payment or security received by the Lender in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded pursuant to any law relating to insolvency, bankruptcy, winding-up, administration, receivership or otherwise. Despite any such release, discharge or settlement:
  - 28.3.1 the Lender or its nominee may retain this Deed and the security created by or pursuant to it, including all certificates and documents relating to the whole or any part of the Secured Assets, for any period that the Lender deems necessary to provide the Lender with security against any such avoidance, reduction or order for refund; and
  - 28.3.2 the Lender may recover the value or amount of such security or payment from the Chargor subsequently as if the release, discharge or settlement had not occurred.
- 28.4 A certificate or determination by the Lender as to any amount for the time being due to it from the Chargor under this Deed shall be, in the absence of any manifest error, conclusive evidence of the amount due.
- 28.5 The restriction on the right of consolidation contained in section 93 of the LPA 1925 shall not apply to this Deed.
- 28.6 Notwithstanding anything to the contrary in this Deed, neither the obtaining of a moratorium by the Chargor under schedule A1 to the Insolvency Act 1986 nor the doing of anything by the Chargor with a view to obtaining such a moratorium (including any preliminary decision or investigation) shall be, or be construed as:
  - 28.6.1 an event under this Deed which causes any floating charge created by this Deed to crystallise;
  - 28.6.2 an event under this Deed which causes any restriction which would not otherwise apply to be imposed on the disposal of any property by the Chargor; or
  - 28.6.3 a ground under this Deed for the appointment of a Receiver.

## **29. Notices**

- 29.1 Each notice or other communication required to be given to a party under or in connection with this Deed shall be:
  - 29.1.1 in writing;
  - 29.1.2 delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by fax or email; and
  - 29.1.3 sent to:



29.1.3.1 the Chargor at its address stated at the head of this Deed:

29.1.3.2 the Lender at its address stated at the head of this Deed:

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

29.2 Any notice or other communication given by one party to the other shall be deemed to have been received:

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

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

29.2.3 if sent by fax or email, one Business Day after the same was transmitted.

29.3 A notice or other communication given as described in *clause 29.2.1* or *clause 29.2.3* on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

29.4 This *clause 29* does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

### **30. Governing law and jurisdiction**

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

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

30.3 The Lender irrevocably appoints PraxisIFM Corporate Services (UK) Limited of Mermaid House Puddle Dock London EC4V 3DB as its agent to receive, on its behalf in England or Wales, service of any proceedings under *clause 30.2* above.

30.3.1 Such service shall be deemed completed on delivery to such agent (whether or not it is forwarded to and received by the Chargor) and shall be valid until such time as the Lender has received prior written notice from the Chargor that such agent has ceased to act as agent.

30.3.2 If for any reason such agent ceases to be able to act as agent or no longer has an address in England or Wales, the Chargor shall immediately appoint a substitute acceptable to the Lender and deliver to the Lender the new agent's name, address and fax number within England and Wales.

30.4 The Lender irrevocably consents to any process in any legal action or proceedings under *clause 30.2* being served on it in accordance with the provisions of this Deed relating to service of notices. Nothing contained in this Deed shall affect the right to serve process in any other manner permitted by law.

IN WITNESS the parties have entered into this agreement as a deed but have not delivered it until it is dated on the date first written above.

EXECUTED AS A DEED

but not delivered until dated with its authority

by Zest Food Ltd

acting by a director in the presence of

) .....  
) Director

Name of Witness:

Address of witness:

P.M. ROSS-SMITH LLB

Camerons Solicitors LLP  
70 Wimpole Street  
London W1G 8AX

.....  
Signature of WITNESS

Occupation of witness:

Solicitor

EXECUTED AS A DEED

but not delivered until dated with its authority

by Latimer Investments Limited

acting by its sole director in the presence of

) .....  
) .....  
) .....  
) .....

Name of Witness:

Address of witness:

.....  
Signature of WITNESS

Occupation of witness:

IN WITNESS the parties have entered into this agreement as a deed but have not delivered it until it is dated on the date first written above.

EXECUTED AS A DEED  
but not delivered until dated with its authority  
by Zest Food Ltd  
acting by a director in the presence of


)  
) .....  
) Director  
)  
)

Name of Witness:  
Address of witness:


.....  
Signature of WITNESS

Occupation of witness:

EXECUTED AS A DEED  
but not delivered until dated with its authority  
by Latimer Investments Limited  
acting by its sole director in the presence of

)  .....  
)  
)  
)

Name of Witness: Michelle Blampied  
Address of witness: 2nd Floor, Charter Place  
23-27 Seaton Place  
St. Helier, Jersey  
JE1 1JY

 .....  
Signature of WITNESS

Occupation of witness: Assistant Trust Manager