



**Registration of a Charge**

Company name: **HIGHTIDE ESTATES LIMITED**

Company number: **06441611**



X83HAXVU

Received for Electronic Filing: **16/04/2019**

---

**Details of Charge**

Date of creation: **12/04/2019**

Charge code: **0644 1611 0002**

Persons entitled: **CRK FINANCE LIMITED**

Brief description: **GOOSE FARM GOOSE LANE SUTTON ON THE FOREST YORK YO61 1ET**  
**Contains negative pledge.**

---

**Authentication of Form**

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

---

**Authentication of Instrument**

Certification statement: **I CERTIFY THAT THE ELECTRONIC COPY INSTRUMENT  
DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION  
IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **CHRIS BARTON**



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

Company number: 6441611

Charge code: 0644 1611 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 12th April 2019 and created by HIGHTIDE ESTATES LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 16th April 2019 .

Given at Companies House, Cardiff on 17th April 2019

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

12<sup>th</sup> APRIL

2019

HIGHTIDE ESTATES LIMITED (1)

and

CRK FINANCE LIMITED (2)

WE HEREBY CERTIFY  
THIS TO BE A TRUE COPY  
OF THE ORIGINAL  
CARTER LEMON CAMERONS LLP  
10 Aldersgate Street, London EC1A 4HJ  
15.06.19

---

## LEGAL MORTGAGE OF PROPERTY

at Goose Farm, Goose Lane, Sutton on the Forest, York, YO61 1ET

---

**Carter Lemon Camerons LLP**  
**Solicitors**

10 Aldersgate Street  
London EC1A 4HJ  
[www.cartercamerons.com](http://www.cartercamerons.com)  
(T)+44 (0) 20 7406 1000  
(F)+44 (0) 20 7406 1010

## TABLE OF CONTENTS

1.	Interpretation .....	1
2.	Loan .....	5
3.	Purpose of loan .....	5
4.	Covenant to pay .....	5
5.	Grant of security .....	5
6.	Perfection of security .....	6
7.	Cautions against first registration and notices .....	6
8.	Liabilities of the borrower .....	6
9.	Representations and warranties .....	6
10.	Covenants .....	7
11.	Powers of the Lender .....	7
12.	When security becomes enforceable .....	7
	The security constituted by this mortgage shall be immediately enforceable if an Event of Default occurs .....	7
13.	Enforcement of security .....	7
	13.1 Enforcement Powers .....	7
	13.2 When statutory powers arise .....	7
14.	Receivers .....	9
	14.1 Appointment .....	9
	14.2 Removal .....	9
	14.3 Remuneration .....	9
	14.4 Power of appointment additional to statutory powers .....	9
	14.5 Power of appointment exercisable despite prior appointments .....	9
	14.6 Agent of the Borrower .....	9
15.	Powers of Receiver .....	10
	15.1 Powers additional to statutory powers .....	10
	15.2 Repair and develop the Property .....	10
	15.3 Grant or accept surrenders of leases .....	10
	15.4 Employ personnel and advisers .....	10
	15.5 Make and revoke VAT options to tax .....	10
	15.6 Charge for remuneration .....	10
	15.7 Realise Charged Property .....	10
	15.8 Manage or reconstruct the Borrower's business .....	10
	15.9 Dispose of Charged Property .....	11
	15.10 Sever fixtures and fittings .....	11
	15.11 Give valid receipts .....	11
	15.12 Make settlements .....	11
	15.13 Bring proceedings .....	11
	15.14 Insure .....	11
	15.15 Powers under LPA 1925 .....	11
	15.16 Borrow .....	11
	15.17 Redeem prior Encumbrance .....	11
	15.18 Delegation .....	12
	15.19 Absolute beneficial owner .....	12
	15.20 Incidental powers .....	12
16.	Delegation .....	12
	16.1 Delegation .....	12
	16.2 Terms .....	12
	16.3 Liability .....	12
17.	Application of proceeds .....	12
	17.1 Order of application of proceeds .....	12
	17.2 Appropriation .....	13
	17.3 Suspense account .....	13
18.	Costs and indemnity .....	13
19.	Further assurance .....	14
20.	Power of attorney .....	14
21.	Release .....	14
22.	Assignment and transfer .....	14

	22.1	Assignment by the Lender .....	14
	22.2	Assignment by the Borrower .....	15
23.		Set-off .....	15
24.		Continuing security .....	15
	24.1	Continuing security .....	15
	24.2	Rights cumulative .....	15
	24.3	Amendments .....	15
	24.4	Waivers .....	15
	24.5	Further exercise of rights .....	15
	24.6	Delay .....	15
25.		Severance .....	16
26.		Counterparts .....	16
27.		Notices .....	16
28.		Governing law .....	17
29.		Jurisdiction .....	17
30.		Third party rights .....	17
31.		Further provisions .....	17
		SCHEDULE 1 - Property .....	19
		SCHEDULE 2 - Representations and warranties .....	20
		SCHEDULE 3 - Covenants .....	22
		PART 1 - General covenants .....	22
		PART 2 - Property covenants .....	23
		SCHEDULE 4 - Powers of the Lender .....	28
		SCHEDULE 5 - Events of Default .....	30

THIS DEED is made on the

12<sup>th</sup>

day of

APRIL

2019

**BETWEEN**

- (1) **HIGHTIDE ESTATES LIMITED** incorporated and registered in England and Wales with company number 06441611 whose registered office is at Goose Farm, Goose Lane, Sutton on the Forest, York, YO61 1ET (**Borrower**), and
- (2) **CRK FINANCE LIMITED** incorporated and registered in England and Wales with company number 07835787 whose registered office is at 116 Goodmayes Road, Ilford, England, IG3 9UZ (**Lender**).

**RECITALS**

- (A) The Lender has agreed under the Facility Agreement to provide the Borrower with the Loan on a secured basis.
- (B) The Borrower is the owner of the Property.
- (C) This mortgage provides security which the Borrower has agreed to give the Lender for the Loan.
- (D) The Loan will be repaid on the Repayment Date.
- (E) The parties wish to take advantage of one of the exceptions set out in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544) (RAO).

**IT IS HEREBY AGREED**

**1. INTERPRETATION**

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

**1.1 Definitions:**

**Borrowed Money:** any indebtedness the Borrower owes as a result of:

- (a) borrowing or raising money (with or without security), including any premium and any capitalised interest on that money;
- (b) any bond, note, loan stock, debenture, commercial paper or similar instrument;
- (c) any acceptance credit facility or dematerialised equivalent, bill-discounting, note purchase or documentary credit facilities;
- (d) monies raised by selling, assigning or discounting receivables or other financial assets on terms that recourse may be had to the Borrower if those receivables or financial assets are not paid when due;
- (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 any deferred payment of any amount for more than 60 days;
- (f) any rental or hire charges under finance leases (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 Borrower's performance of contracts;

(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 Borrower'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 assurances against financial loss that the Borrower has given for any of the items referred to in paragraphs (a) to (i) of this definition incurred by any person.

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

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

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

**Charged Property:** all the assets, property and undertaking for the time being subject to any Security created by this mortgage (and references to the Charged Property shall include references to any part of it).

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

**Encumbrance:** 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.

**Environment:** the natural and man-made environment including all or any of the following media, namely air, water and land (including air within buildings and other natural or man-made structures above or below the ground) and any living organisms (including man) or systems supported by those media.

**Environmental Law:** all applicable laws, statutes, regulations, secondary legislation, bye-laws, common law, directives, treaties and other measures, judgments and decisions of any court or tribunal, codes of practice and guidance notes in so far as they relate to or apply to the Environment.

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

**Event of Default:** any event or circumstance listed in Schedule 5.

**Facility Agreement:** the agreement dated ....21....April.....2019..... between the Borrower and the Lender for the provision of the loan secured by this mortgage.

**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.

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

**Loan:** the sum of £275,330.40

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

**Property:** the freehold or leasehold property (whether registered or unregistered) owned by the Borrower described in Schedule 1.

**Receiver:** a receiver or a receiver and manager of any or all of the Charged Property.

**Rent:** all amounts paid or payable to or for the benefit of the Borrower by way of rent, licence fee, service charge, dilapidations, ground rent and rent charge in respect of any part of the Property and other monies payable to or for the benefit of the Borrower in respect of occupation or usage of any part of the Property, including (without limitation) for display of advertisements on licence or otherwise.

**Rent Account:** the Borrower's account to be set up if so required, as that account may be numbered or designated from time to time.

**Repayment Date:** ...12...1 JANUARY 2020 (being the date nine months from the date of this mortgage) subject to the rights to extend or redeem pursuant to the Facility Agreement.

**Secured Liabilities:** all present and future monies, obligations and liabilities owed by the Borrower to the Lender, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity, under or in connection with the Loan, the Facility Agreement and this mortgage.

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

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

**VAT:** value added tax chargeable under the Value Added Tax Act 1994.

- 1.2 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.3 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.4 A reference to laws in general is a reference to all local, national and directly applicable supra-national laws as amended, extended or re-enacted from time to time and shall include all subordinate laws made from time to time under them and all orders, notices, codes of practice and guidance made under them.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, references to clauses and Schedules are to the clauses and Schedules of this mortgage and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.8 A reference to this mortgage (or any provision of it) or to any other document referred to in this mortgage is a reference to this legal mortgage, that provision or that document as it is in force for the time being and as amended in accordance with its terms or with the agreement of the relevant parties.
- 1.9 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).
- 1.10 A reference to writing or written does not include fax or email.
- 1.11 An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.12 A reference to an amendment includes a novation, re-enactment, supplement or variation (and amended shall be construed accordingly).
- 1.13 A reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description.
- 1.14 A reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution.
- 1.15 A reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it.
- 1.16 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.
- 1.17 A reference to **continuing** in relation to an Event of Default means an Event of Default that has not been remedied or waived.
- 1.18 Clause, Schedule and paragraph headings shall not affect the interpretation of this mortgage.
- 1.19 If there is an inconsistency between a defined term in this mortgage and in the Facility Agreement, the provisions of this mortgage shall prevail.
- 1.20 A reference in this mortgage to a charge or mortgage of, or over, the Property includes:
- (a) all buildings and fixtures and fittings which are situated on, or form part of, the Property at any time;
  - (b) the proceeds of sale of any part of the Property and any other monies paid or payable in respect of or in connection with the Property;
  - (c) the benefit of any covenants for title given, or entered into, by any predecessor in title of the Borrower in respect of the Property and any monies paid or payable in respect of those covenants; and
  - (d) all rights under any licence, agreement for sale or agreement for lease in respect of the Property.
- 1.21 For the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the Facility Agreement and of any side letters between any parties in relation to the Facility Agreement are incorporated into this mortgage.
- 1.22 If the rule against perpetuities applies to any trust created by this mortgage, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).
- 1.23 The Schedules form part of this mortgage and shall have effect as if set out in full in the body of this mortgage. Any reference to this mortgage includes the Schedules.

- 1.24 If the Lender considers that an amount paid by the Borrower in respect of the Secured Liabilities is capable of being avoided or otherwise set aside on the liquidation or administration of the Borrower or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this mortgage.

**2. LOAN**

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

**3. PURPOSE OF LOAN**

The Borrower shall use the Loan for the purpose outlined in the Facility Agreement.

**4. COVENANT TO PAY**

The Borrower shall, on demand, pay to the Lender and discharge the Secured Liabilities on the Repayment Date or in accordance with the repayment provisions contained in the Facility Agreement or, if earlier than the Repayment Date, on an Event of Default.

**5. GRANT OF SECURITY**

**Legal mortgage and fixed charges**

- 5.1 As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee charges to the Lender:

- (a) by way of first legal mortgage, the Property; and
- (b) by way of first fixed charge:
  - (i) all its rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premiums in connection with each Insurance Policy, the Rent and the benefit of any guarantee or security in respect of the Rent to the extent not effectively assigned under clause 5.2;
  - (ii) the benefit of all other contracts, guarantees, appointments and warranties relating to the Charged Property and other documents to which the Borrower is a party or which are in its favour or of which it has the benefit relating to any letting, development, sale, purchase, use or the operation of the Charged Property or otherwise relating to the Charged Property (including, in each case, but without limitation, the right to demand and receive all monies whatever payable to or for its benefit under or arising from any of them, all remedies provided for in any of them or available at law or in equity in relation to any of them, the right to compel performance of any of them and all other rights, interests and benefits whatever accruing to or for its benefit arising from any of them);
  - (iii) all authorisations (statutory or otherwise) held or required in connection with the Borrower's business carried on at the Property or the use of any Charged Property, and all rights in connection with them; and
  - (iv) all monies from time to time standing to the credit of the Rent Account.

**Assignment**

- 5.2 As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee assigns to the Lender absolutely, subject to a proviso for reassignment on irrevocable discharge in full of the Secured Liabilities:

- (a) all its rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premiums in connection with each Insurance Policy; and
- (b) the Rent and the benefit of any guarantee or security in respect of the Rent

provided that nothing in this clause 5.2 shall constitute the Lender as mortgagee in possession.

## **6. PERFECTION OF SECURITY**

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

"No disposition of the registered estate by the proprietor of the registered estate 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 ...12...2019... in favour of CRK Finance Limited referred to in the charges register or their conveyancer."

## **7. CAUTIONS AGAINST FIRST REGISTRATION AND NOTICES**

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

## **8. LIABILITIES OF THE BORROWER**

### **8.1 Liability not discharged**

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

- (a) any security, guarantee, indemnity, remedy or other right held by, or available to, the Lender that is, or becomes, wholly or partially illegal, void or unenforceable on any ground;
- (b) the Lender renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or
- (c) any other act or omission that, but for this clause 8.1, might have discharged, or otherwise prejudiced or affected, the liability of the Borrower.

### **8.2 Immediate recourse**

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

## **9. REPRESENTATIONS AND WARRANTIES**

The Borrower represents and warrants to the Lender in the terms set out in Schedule 2 on each day during the Security Period.

**10. COVENANTS**

The Borrower covenants with the Lender in the terms set out in Schedule 3.

**11. POWERS OF THE LENDER**

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

**12. WHEN SECURITY BECOMES ENFORCEABLE**

**12.1 Security becomes enforceable on Event of Default**

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

**12.2 Discretion**

- (a) After the security constituted by this mortgage has become enforceable, the Lender may, in its absolute discretion, enforce all or any part of that security at the 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 Charged Property.
- (b) Pursuant to clause 12.2(a), the Lender may:
  - (i) cancel all outstanding obligations of the Lender under this mortgage whereupon they shall immediately be cancelled; and/or
  - (ii) declare that the Loan (and all accrued interest and all other amounts outstanding under this mortgage or the Facility Agreement is immediately due and payable, whereupon they shall become immediately due and payable; and/or
  - (iii) declare that the Loan be payable on demand, whereupon it shall become immediately payable on demand by the Lender; and/or
  - (iv) declare the security constituted by this mortgage to be enforceable.

**13. ENFORCEMENT OF SECURITY**

**13.1 Enforcement Powers**

The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this mortgage) shall, as between the Lender and a purchaser from the Lender, arise on and be exercisable at any time after the execution of this mortgage, but the Lender shall not exercise such power of sale or other powers until an Event of Default occurs (whether or not such an Event of Default is still continuing) whereupon it shall become immediately exercisable pursuant to clause 12.1.

**13.2 When statutory powers arise**

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

**13.3 Extension of statutory powers of leasing**

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

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

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

#### **13.4 Prior Encumbrance**

- (a) At any time after the security constituted by this mortgage has become enforceable, or after any powers conferred by any Encumbrance having priority to this mortgage shall have become exercisable, the Lender may:
  - (i) redeem that or any other prior Encumbrance;
  - (ii) procure the transfer of that Encumbrance to itself; and
  - (iii) settle and pass any account of the holder of any prior Encumbrance.
- (b) The settlement and passing of any such account shall be, in the absence of any manifest error, conclusive and binding on the Borrower. All monies paid by the Lender to an encumbrancer in settlement of any of those accounts shall be, as from its payment by the Lender, due from the Borrower to the Lender on current account and shall bear interest at the default rate of interest specified in the Facility Agreement and be secured as part of the Secured Liabilities.

#### **13.5 Protection of third parties**

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

- (a) whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;
- (b) whether any power the Lender, a Receiver or Delegate is purporting to exercise has become exercisable or is properly exercisable; or
- (c) how any money paid to the Lender, any Receiver or any Delegate is to be applied.

#### **13.6 Privileges**

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

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

Neither the Lender, any Receiver nor any Delegate shall be liable, by reason of entering into possession of the Charged Property or for any other reason, to account as mortgagee in possession in respect of all or any of the Charged Property, 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 Charged Property for which a mortgagee in possession might be liable as such.

#### **14.8 Relinquishing possession**

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

**13.8 Conclusive discharge to purchasers**

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

**14. RECEIVERS**

**14.1 Appointment**

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

**14.2 Removal**

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

**14.3 Remuneration**

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

**14.4 Power of appointment additional to statutory powers**

The power to appoint a Receiver conferred by this mortgage 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 Power of appointment exercisable despite prior appointments**

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

**14.6 Agent of the Borrower**

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

**15. POWERS OF RECEIVER**

**15.1 Powers additional to statutory powers**

- (a) Any Receiver appointed by the Lender under this mortgage shall, in addition to the powers conferred on him by statute, have the powers set out in clause 15.2 to clause 15.20.
- (b) If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him states otherwise) exercise all of the powers conferred on a Receiver under this mortgage individually and to the exclusion of any other Receiver.
- (c) Any exercise by a Receiver of any of the powers given by clause 15 may be on behalf of the Borrower, the directors of the Borrower or himself.

**15.2 Repair and develop the Property**

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

**15.3 Grant or accept surrenders of leases**

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

**15.4 Employ personnel and advisers**

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

**15.5 Make and revoke VAT options to tax**

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

**15.6 Charge for remuneration**

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

**15.7 Realise Charged Property**

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

**15.8 Manage or reconstruct the Borrower's business**

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

**15.9 Dispose of Charged Property**

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

**15.10 Sever fixtures and fittings**

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

**15.11 Give valid receipts**

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

**15.12 Make settlements**

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

**15.13 Bring proceedings**

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

**15.14 Insure**

A Receiver may, if he thinks fit, but without prejudice to the indemnity in clause 18.2, effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the Borrower under this mortgage.

**15.15 Powers under LPA 1925**

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

**15.16 Borrow**

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 Charged Property in respect of which he is appointed on any terms that he thinks fit (including, if the Lender consents, terms under which that Encumbrance ranks in priority to this mortgage).

**15.17 Redeem prior Encumbrance**

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



**15.18 Delegation**

A Receiver may delegate his powers in accordance with this mortgage.

**15.19 Absolute beneficial owner**

A Receiver may, in relation to any of the Charged Property, exercise all powers, authorisations and rights he 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 all or any part of the Charged Property.

**15.20 Incidental powers**

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

- (a) may consider desirable or necessary for realising any of the Charged Property;
- (b) may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this mortgage or law; or
- (c) lawfully may or can do as agent for the Borrower.

**16. DELEGATION**

**16.1 Delegation**

The Lender or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this mortgage (including the power of attorney granted under clause 20).

**16.2 Terms**

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 Liability**

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

**17. APPLICATION OF PROCEEDS**

**17.1 Order of application of proceeds**

All monies received by the Lender, a Receiver or a Delegate under this mortgage after the security constituted by this mortgage has become enforceable (other than sums received under any Insurance Policy), shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied in the following order of priority:

- (a) 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 mortgage and of all remuneration due to any Receiver under or in connection with this mortgage;
- (b) in or towards payment of or provision for the Secured Liabilities in any order and manner that the Lender determines; and
- (c) in payment of the surplus (if any) to the Borrower or other person entitled to it.

## **17.2 Appropriation**

Neither the Lender, any Receiver nor any Delegate shall be bound (whether by virtue of section 109(8) of the LPA 1925, which is varied accordingly, or otherwise) to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Secured Liabilities.

## **17.3 Suspense account**

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

- (a) may, at the discretion of the Lender, Receiver or Delegate, be credited to any suspense or securities realised account;
- (b) shall bear interest, if any, at the rate agreed in writing between the Lender and the Borrower; and
- (c) may be held in that account for so long as the Lender, Receiver or Delegate thinks fit.

## **18. COSTS AND INDEMNITY**

### **18.1 Costs**

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

- i. this mortgage or the Charged Property.
- ii. 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 mortgage.
- iii. suing for, or recovering, any of the Secured Liabilities.

Including, without limitation, the costs of any proceedings in relation to this mortgage or the Secured Liabilities or incurred in or suffered by any default or delay by the Borrower in performing any of its obligations under this mortgage and 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 arose until full discharge of that cost (whether before or after judgement, liquidation, winding-up or administration of the Borrower) at the rate and in the manner specified in the Facility Agreement.

### **18.2 Indemnity**

- (a) The Borrower shall indemnify the Lender, each Receiver and each Delegate, and their respective employees and agents against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by any of them arising out of or in connection with:
  - (i) the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this mortgage or by law in respect of the Charged Property;
  - (ii) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the security constituted by this mortgage; or

(iii) any default or delay by the Borrower in performing any of its obligations under this mortgage.

(b) 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**

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

- (a) creating, perfecting or protecting the security intended to be created by this mortgage;
- (b) facilitating the realisation of any of the Charged Property; or
- (c) facilitating the exercise of any right, power, authority or discretion exercisable by the Lender or any Receiver in respect of any of the Charged Property,

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 Charged Property (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 Appointment of attorneys**

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

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

### **20.2 Ratification of acts of attorneys**

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

## **21. RELEASE**

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

## **22. ASSIGNMENT AND TRANSFER**

### **22.1 Assignment by the Lender**

The Lender may assign or transfer the whole or any part of the Lender's rights and/or obligations under this mortgage to any person.

**22.2 Assignment by the Borrower**

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

**23. SET-OFF**

**23.1 Lender's right of set-off**

The Lender may at any time set off any liability of the Borrower to the Lender against any liability of the Lender to the Borrower, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this mortgage. 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 23.1 shall not limit or affect any other rights or remedies available to it under this mortgage or otherwise.

**23.2 No obligation to set-off**

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 Borrower of the set-off that has been made

**24. CONTINUING SECURITY**

**24.1 Continuing security**

This mortgage 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 mortgage in writing.

**24.2 Rights cumulative**

The rights and remedies of the Lender provided under this mortgage are cumulative, may be exercised as often as the Lender considers appropriate, and are in addition to, and not exclusive of, any rights and remedies provided by law.

**24.3 Amendments**

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

**24.4 Waivers**

Any waiver of any right or remedy by the Lender under this mortgage or by law is only effective if given in writing and signed by the Lender and shall not be deemed a waiver of any other breach or default. It applies only in the circumstances for which it is given, and shall not prevent the Lender from subsequently relying on the relevant provision.

**24.5 Further exercise of rights**

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

**24.6 Delay**

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

**25. SEVERANCE**

If any provision (or part of a provision) of this mortgage 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 mortgage.

**26. COUNTERPARTS**

This mortgage 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 the one deed.

**27. NOTICES**

**27.1** Any notice or other communication given under, or in connection with, this mortgage must be in writing.

**27.2** Any notice or other communication given or delivered under this mortgage must be:

- (a) delivered by hand; or
- (b) sent by pre-paid first-class post or other next working day delivery service.

**27.3** Any notice or other communication to be given or delivered under this mortgage must be sent to the relevant party as follows:

(a) to the Borrower at:

Goose Farm Goose Lane, Sutton-On-The-Forest, York, England, YO61 1ET

(b) to the Lender at:

CRK Finance Limited, 116 Goodmayes Road, Ilford, England, IG3 9UZ

or as otherwise specified by the relevant party by notice in writing to each other party.

**27.4** Any notice or other communication that the Lender gives to the Borrower under, or in connection with, this mortgage will be deemed to have been received:

- (a) if delivered by hand, at the time it is left at the relevant address; and
- (b) if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting.

A notice or other communication given as described in clause 27.4(a) on a day which is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

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

**27.6** A notice or other communication given under or in connection with this mortgage is not valid if sent by fax or e-mail.

**27.7** This clause 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.

**28. GOVERNING LAW**

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

**29. JURISDICTION**

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

**30. THIRD PARTY RIGHTS**

- (a) Except as expressly provided elsewhere in this mortgage, a person who is not a party to this mortgage 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 mortgage. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- (b) The rights of the parties to rescind or agree any amendment or waiver under this mortgage are not subject to the consent of any other person.

**31. FURTHER PROVISIONS**

**31.1 Independent security**

The security constituted by this mortgage 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 Charged Property shall merge in the security created by this mortgage.

**31.2 Discharge conditional**

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

- (a) the Lender or its nominee may retain this mortgage and the security created by or under it, including all certificates and documents relating to the whole or any part of the Charged Property, for any period that the Lender deems necessary to provide the Lender with security against any such avoidance, reduction or order for refund; and
- (b) the Lender may recover the value or amount of such security or payment from the Borrower subsequently as if the release, discharge or settlement had not occurred.

**31.3 Certificates**

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

**31.4 Consolidation**

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

This agreement has been entered into as a deed on the date stated at the beginning of it.

### **SCHEDULE 1 - Property**

The freehold property known as Goose Farm Goose Lane, Sutton-On-The-Forest, York, England, YO61 1ET and registered at the Land Registry with title number NYK192266.



## **SCHEDULE 2 - Representations and warranties**

### **1. OWNERSHIP OF PROPERTY**

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

### **2. NO ENCUMBRANCES**

The Charged Property is free from any Encumbrances other than the Encumbrance created by this mortgage.

### **3. ADVERSE CLAIMS**

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

### **4. ADVERSE COVENANTS**

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

### **5. NO BREACH OF LAWS**

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

### **6. NO INTERFERENCE IN ENJOYMENT**

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

### **7. NO OVERRIDING INTERESTS**

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

### **8. AVOIDANCE OF SECURITY**

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

### **9. NO PROHIBITIONS OR BREACHES**

There is no prohibition on the Borrower assigning its rights in any of the Charged Property referred to in clause 5.2 and the entry into this mortgage by the Borrower does not and will not constitute a breach of any policy, agreement, document or instrument binding on the Borrower or its assets.

### **10. INFORMATION FOR VALUATIONS AND CERTIFICATES OF TITLE**

- (a) All written information supplied by the Borrower or on its behalf for the purpose of each Valuation and Certificate of Title was true and accurate in all material respects at its date or at the date (if any) on which it was stated to be given.
- (b) The information referred to in paragraph 10(a) of Schedule 2 was, at its date or at the date (if any) on which it was stated to be given, complete and the Borrower did not omit to supply any information that, if disclosed, would adversely affect the Valuation or Certificate of Title.

- (c) In the case of the first Valuation and Certificate of Title only, nothing has occurred since the date the information referred to in paragraph 10(a) of Schedule 2 was supplied and the date of this mortgage which would adversely affect such Valuation or Certificate of Title.

**11. ENVIRONMENTAL COMPLIANCE**

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

**12. ENFORCEABLE SECURITY**

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

## **SCHEDULE 3 - Covenants**

### **PART 1 - General covenants**

#### **1. NEGATIVE PLEDGE AND DISPOSAL RESTRICTIONS**

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

- (a) create or permit any Encumbrance on, or in relation to, any Charged Property other than any Encumbrance created by this mortgage;
- (b) sell, assign, transfer, part with possession of or otherwise dispose of in any manner all or any part of, or any interest in, the Charged Property; or
- (c) create or grant (or purport to create or grant) any interest in the Charged Property in favour of a third party.

#### **2. PRESERVATION OF CHARGED PROPERTY**

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

#### **3. ENFORCEMENT OF RIGHTS**

The Borrower shall use its reasonable endeavours to:

- (a) procure the prompt observance and performance by the relevant counterparty to any agreement or arrangement with the Borrower and forming part of the Charged Property of the covenants and other obligations imposed on such counterparty; and
- (b) enforce any rights and start, continue or defend any proceedings relating to any of the Charged Property which the Lender may require from time to time.

#### **4. COMPLIANCE WITH LAWS AND REGULATIONS**

- (a) The Borrower shall not, without the Lender's prior written consent, use or permit the Charged Property to be used in any way contrary to law.
- (b) The Borrower shall:
  - (i) comply with the requirements of any law or regulation relating to or affecting the Charged Property or the use of it or any part of it;
  - (ii) obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Charged Property or its use or that are necessary to preserve, maintain or renew any Charged Property; and
  - (iii) promptly effect any maintenance, modifications, alterations or repairs to be effected on or in connection with the Charged Property that are required to be made by it under any law or regulation.

#### **5. NOTICE OF BREACHES**

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

- (a) any representation or warranty set out in Schedule 2; and
- (b) any covenant set out in Schedule 3.

#### **6. NOTICES TO BE GIVEN BY THE BORROWER**

- (a) The Borrower shall within five days of the execution of this mortgage:
  - (i) give notice to the relevant insurers of the assignment of the Borrower's rights and interest in and under each Insurance Policy (including the proceeds of any claims under that Insurance Policy) under clause 5.2(a) and procure that each addressee of such notice promptly provides an acknowledgement of that notice to the Lender; and
  - (iii) if so required by the Lender give notice to the bank, financial institution or other person (excluding the Lender) with whom the Borrower has the Rent Account of the charging to the Lender of the Borrower's rights and interests in the Rent Account pursuant to clause 5.1(b)(iv) and procure that each addressee of such notice promptly provides an acknowledgement of that notice to the Lender.
- (b) The Borrower shall obtain the Lender's prior approval of the form of any notice or acknowledgement to be used under this paragraph 6.

#### **7. BORROWER'S WAIVER OF SET-OFF**

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

### **PART 2 - Property covenants**

#### **1. REPAIR AND MAINTENANCE**

- (a) The Borrower shall keep the Property and all fixtures and fittings on the Property in:
  - (i) good repair and condition and shall keep the Property adequately and properly painted and decorated and replace any fixtures and fittings which have become worn out or otherwise unfit for use by others of a like nature and equal value; and
  - (ii) such repair and condition as to enable the Property to be let in accordance with all applicable laws and regulations.
- (b) For the purposes of paragraph 1(a)(ii), a law or regulation is applicable if it is either in force or it is expected to come into force and a prudent property owner in the same business as the Borrower would ensure that the premises, and fixtures and fittings on the Property, were in such repair and condition in anticipation of that law or regulation coming into force.

#### **2. NO ALTERATIONS**

- (a) The Borrower shall not, without the prior written consent of the Lender:
  - (a) pull down or remove the whole or any part of any building forming part of the Property nor permit the same to occur; or
  - (b) make or permit to be made any material alterations to the Property or sever or remove or permit to be severed or removed any of its fixtures or fittings (except to

make any necessary repairs or renew or replace the same in accordance with paragraph 1 of this Part 2 of Schedule 3).

- (b) The Borrower shall promptly give notice to the Lender if the Property or fixtures or fittings forming part of the Property are destroyed or damaged.

### **3. DEVELOPMENT RESTRICTIONS**

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

- (a) make or, in so far as it is able, permit others to make any application for planning permission or development consent in respect of the Property; or
- (b) carry out or permit or allow any development, as defined in each of the Town and Country Planning Act 1990 and the Planning Act 2008, to be carried out on the Property or change or permit or allow the use of the Property to be changed.

### **4. INSURANCE**

- (a) The Borrower shall insure and keep insured (or where insurance is the responsibility of the landlord under the terms of the lease, procure that the landlord insures and keeps insured) the Charged Property against fire, explosion, lightning, earthquake, storm, flood, bursting and overflowing of water tanks, apparatus or pipes, escape of water or oil, impact by aircraft and articles dropped from them, impact by vehicles, riot, civil commotion, malicious damage, theft or attempted theft, falling trees and branches and aerials, subsidence, heave, landslip, collision, accidental damage to underground services, property owners' public liability and third party liability insurance to anyone else and any other risks which the Lender reasonably requires to be insured against from time to time.
- (b) Any such insurance must be with an insurance company or underwriters and on such terms as are reasonably acceptable to the Lender and be for not less than the replacement value of the relevant Charged Property (meaning in the case of any premises on the Property, the total cost of entirely rebuilding, reinstating or replacing the premises in the event of their being destroyed, together with architects', surveyors', engineers' and other professional fees and charges for demolition and reinstatement) and loss of rents payable by the tenants or other occupiers of the Property for a period of at least three years.
- (c) The Borrower shall, if requested by the Lender, produce to the Lender the policy, certificate or cover note relating to any such insurance required by paragraph 4(a) of this Part 2, Schedule 3 (or where such insurance is effected by the landlord, such evidence of insurance as the Borrower is entitled to obtain from the landlord under the terms of the relevant lease).
- (d) The Borrower shall, if requested by the Lender, procure that a note of the Lender's interest is endorsed upon each Insurance Policy maintained by it or any person on its behalf in accordance with paragraph 4(a) of this Part 2, Schedule 3 and the Lender is named as first loss payee and that the terms of each such Insurance Policy require the insurer not to invalidate the policy as against the Lender by reason of the act or default of any other joint or named insured and not to cancel it without giving at least 30 days' prior written notice to the Lender.

### **5. INSURANCE PREMIUMS**

The Borrower:

- (a) shall promptly pay all premiums in respect of any Insurance Policy on the Property and do all other things necessary to keep such policy in full force and effect; and
- (b) shall (if the Lender so requires) produce to the Lender the receipts for all premiums and other payments necessary for effecting and keeping up the Insurance Policies (or where, in the case of leasehold property, insurance is effected by the landlord, such

evidence of the payment of premiums as the Borrower is entitled to obtain from the landlord under the terms of the relevant lease).

**6. NO INVALIDATION OF INSURANCE**

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

**7. INSURANCE POLICIES' PROCEEDS**

All monies payable under any of the Insurance Policies at any time (whether or not the security constituted by this mortgage has become enforceable) shall:

- (a) immediately be paid to the Lender; or
- (b) if they are not paid directly to the Lender by the insurers, be held, pending such payment, by the Borrower upon trust for the Lender; or
- (c) at the option of the Lender, be applied in making good or recouping expenditure in respect of the loss or damage for which those monies are received or in, or towards, discharge or reduction of the Secured Liabilities.

**8. LEASES AND LICENCES AFFECTING THE PROPERTY**

The Borrower shall not, without the prior written consent of the Lender which consent, in the case of paragraph 8(d), is not to be unreasonably withheld or delayed in circumstances in which the Borrower may not unreasonably withhold or delay its consent:

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

**9. NO RESTRICTIVE OBLIGATIONS**

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

**10. PROPRIETARY RIGHTS**

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

**11. COMPLIANCE WITH AND ENFORCEMENT OF COVENANTS**

The Borrower shall:

- (a) observe and perform all covenants, stipulations and conditions to which the Property, or the use of it, is or may be subject and (if the Lender so requires) produce to the Lender evidence sufficient to satisfy the Lender that those covenants, stipulations and conditions have been observed and performed; and
- (b) diligently enforce all covenants, stipulations and conditions benefiting the Property and shall not (and shall not agree to) waive, release or vary any of the same.

## **12. NOTICES OR CLAIMS RELATING TO THE PROPERTY**

The Borrower shall:

- (a) Give full particulars to the Lender of any notice, order, direction, designation, resolution, application, requirement or proposal given or made by any public or local body or authority (Notice) that specifically applies to the Property, or to the locality in which it is situated, within seven days after becoming aware of the relevant Notice.
- (b) If the Lender so requires, immediately, and at the cost of the Borrower, take all reasonable and necessary steps to comply with any Notice, and make, or join with the Lender in making, such objections or representations in respect of any such Notice as the Lender may desire.
- (c) The Borrower shall give full particulars to the Lender of any claim, notice or other communication served on it in respect of any modification, suspension or revocation of any Environmental Licence or any alleged breach of any Environmental Law, in each case relating to the Property.

## **13. ENVIRONMENT**

The Borrower shall in respect of the Property:

- (a) comply with all the requirements of Environmental Law; and
- (b) obtain and comply with all Environmental Licences.

## **14. INSPECTION**

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

## **15. VAT OPTION TO TAX**

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

- (a) Exercise any VAT option to tax in relation to the Property.
- (b) Revoke any VAT option to tax exercised prior to and disclosed to the Lender in writing prior to the date of this mortgage.

## **16. CONDUCT OF BUSINESS ON PROPERTY**

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

## **17. RENT COVENANTS**

Collection of and dealings with Rent

- (a) The Borrower shall not deal with the Rent except by getting it in and realising it in the ordinary and usual course of its business and shall, immediately on receipt, pay all Rent into the Rent Account or into such other account as the Lender may direct from time to time. The Borrower shall, pending that payment in to the Rent Account or other account, hold all Rent on trust for the Lender.
- (b) The Borrower agrees with the Lender that any monies received by the Lender under paragraph 17(a) shall not constitute the Lender as mortgagee in possession of the Property.
- (c) The Borrower agrees with the Lender that it shall not be entitled to receive, utilise, transfer or withdraw any credit balance from time to time on the Rent Account except with the prior written consent of the Lender.

**18. NOTICE OF ASSIGNMENT OF RENT**

The Borrower shall, promptly following the occurrence of an Event of Default, give notice to the relevant tenant, guarantor or surety of the assignment under clause 5.2(b) of the Borrower's rights and interest to the Rent and each guarantee or security in respect of the Rent and procure that each addressee of such notice promptly provides an acknowledgement of that notice to the Lender.



## **SCHEDULE 4 - Powers of the Lender**

### **1. POWER TO REMEDY**

- (a) The Lender shall be entitled (but shall not be obliged) to remedy a breach at any time by the Borrower of any of its obligations contained in this mortgage.
- (b) The Borrower irrevocably authorises the Lender and its agents to do all things that are necessary or desirable for that purpose.
- (c) Any monies expended by the Lender in remedying a breach by the Borrower of any of its obligations contained in this mortgage shall be reimbursed by the Borrower to the Lender on a full indemnity basis and shall carry interest in accordance with clause 18.1.
- (d) In remedying any breach in accordance with paragraph 1(a) of Schedule 4, the Lender and its agents and their respective officers, agents and employees shall be entitled to enter onto the Property and to take any action as the Lender may reasonably consider necessary or desirable including, without limitation, carrying out any repairs or other works or development.

### **2. EXERCISE OF RIGHTS**

The rights of the Lender under paragraph 1 of this Schedule 4 are without prejudice to any other rights of the Lender under this mortgage. The exercise of those rights shall not make the Lender liable to account as a mortgagee in possession.

### **3. LENDER HAS RECEIVER'S POWERS**

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

### **4. CONVERSION OF CURRENCY**

- (a) For the purpose of, or pending, the discharge of any of the Secured Liabilities, the Lender may convert any monies received, recovered or realised by it under this mortgage (including the proceeds of any previous conversion under this paragraph 4 ) from their existing currencies of denomination into any other currencies of denomination that the Lender may think fit.
- (b) Any such conversion shall be effected at Lloyds Bank plc then prevailing spot selling rate of exchange for such other currency against the existing currency.
- (c) Each reference in this paragraph 4 to a currency extends to funds of that currency and, for the avoidance of doubt, funds of one currency may be converted into different funds of the same currency.

### **5. NEW ACCOUNTS**

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

- (b) If the Lender does not open a new account immediately on receipt of the notice, or deemed notice, referred to in paragraph 5(a), then, unless the Lender gives express written notice to the contrary to the Borrower, all payments made by the Borrower to the Lender shall be treated as having been credited to a new account of the Borrower and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt or deemed receipt of the relevant notice by the Lender.

#### **6. LENDER'S SET-OFF RIGHTS**

If the Lender has more than one account for the Borrower in its books, the Lender may at any time after:

- (a) the security constituted by this mortgage has become enforceable; or
- (b) the Lender has received, or is deemed to have received, notice of any subsequent Security or other interest affecting all or any part of the Charged Property,

transfer, without prior notice, all or any part of the balance standing to the credit of any account to any other account that may be in debit. After making any such transfer, the Lender shall notify the Borrower of that transfer.

#### **7. INDULGENCE**

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

## **SCHEDULE 5 - Events of Default**

### **1. NON-PAYMENT**

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

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

### **2. NON-COMPLIANCE**

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

- (a) the Lender notifying the Borrower of the default and the remedy required; or
- (b) the Borrower becoming aware of the default.

### **3. MISREPRESENTATION**

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

### **4. FAILURE TO PAY BORROWED MONEY**

If:

- (a) any Borrowed Money is not paid when due or within any originally applicable grace period; or
- (b) any Borrowed Money becomes due, or capable of being declared due and payable prior to its stated maturity by reason of an event of default (howsoever described);
- (c) any commitment for Borrowed Money is cancelled or suspended by a creditor of the Borrower by reason of an event of default (howsoever described); or
- (d) any creditor of the Borrower becomes entitled to declare any Borrowed Money due and payable prior to its stated maturity by reason of an event of default (howsoever described).

### **5. INSOLVENCY**

- (a) The Borrower stops or suspends payment of any of its debts or is unable to pay any of its debts as they fall due.
- (b) The value of the Borrower's assets is less than its liabilities (taking into account contingent and prospective liabilities).
- (c) A moratorium is declared in respect of any indebtedness of the Borrower.
- (d) Any action, proceedings, procedure or step is taken for:

- (i) 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
  - (ii) the composition, compromise, assignment or arrangement with any creditor; or
  - (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Borrower or any of its assets; or
  - (iv) the enforcement of any Encumbrance over any assets of the Borrower.
- (e) The Borrower 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).
- (f) Any event occurs in relation to the Borrower similar to those in sub-paragraph (a) to sub-paragraph (e) (inclusive) under the laws of any applicable jurisdiction.

#### **6. RUPUDIATION**

The Borrower repudiates or evidences an intention to repudiate this mortgage or the Facility Agreement.

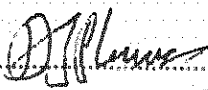
#### **7. CESSATION OF BUSINESS**

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

#### **8. INABILITY TO PERFORM OBLIGATIONS**

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 ability to perform all or any of its obligations under, or otherwise comply with the terms of, this mortgage or the Facility Agreement.

Executed as a deed by HIGHTIDE  
ESTATES LIMITED acting by a director in  
the presence of:

.....  
Director

.....  
.....

Witness Name: CHRISTOPHER D. BARTON

Witness Address: LUMBELLAND HOUSE, LUMBELLAND STREET, YORK YO1 9SK

Witness Occupation: School

Executed as a deed by CRK FINANCE  
LIMITED acting by a director in the  
presence of:

.....  
Director

.....

Witness Name: .....

Witness Address: .....

Witness Occupation: .....