



Registration of a Charge

Company name: **Grainger (Aldershot) Limited**

Company number: **07540875**



X51E49HN

Received for Electronic Filing: **23/02/2016**

Details of Charge

Date of creation: **17/02/2016**

Charge code: **0754 0875 0001**

Persons entitled: **RUSHMOOR BOROUGH COUNCIL**

Brief description: **NONE**

Contains fixed charge(s).

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

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

Certified by: **PATRICK DIXON**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 7540875

Charge code: 0754 0875 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 17th February 2016 and created by Grainger (Aldershot) Limited was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 23rd February 2016 .

Given at Companies House, Cardiff on 24th February 2016

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



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

Dated 17 February 2016

GRAINGER (ALDERSHOT) LIMITED (1)

RUSHMOOR BOROUGH COUNCIL (2)

I/We hereby certify that
this copy is a true and complete
copy of the original

K&L GATES LLP
K & L Gates LLP
One New Change
London EC4M 9AF
Our Reference:

Date: 19 February 2016

ACCOUNT CHARGE
relating to the Reserve Fund
Account for the SANGS serving
Aldershot Urban Extension

Shoosmiths
Russell House
1550 Parkway
Solent Business Park
Whiteley
PO15 7AG
JCM/M-329476

CONTENTS

1.	DEFINITIONS.....	1
2.	THE RESERVE FUND ACCOUNT.....	3
3.	CHARGE.....	3
4.	STATEMENTS.....	3
5.	BLOCKED ACCOUNT.....	4
6.	APPROPRIATION AND DEPOSIT.....	4
7.	MISCELLANEOUS.....	4
8.	FURTHER ASSURANCE.....	5
9.	REPRESENTATIONS.....	6
10.	UNDERTAKINGS.....	6
11.	RECEIVERS.....	6
12.	PRESERVATION OF SECURITY.....	9
13.	POWER OF ATTORNEY.....	10
14.	ADMINISTRATION.....	10
15.	SEVERANCE.....	11
16.	NOTICES.....	11
17.	BENEFIT OF CHARGE.....	11
18.	LIABILITY.....	11
19.	INDEMNITY.....	11
20.	MISCELLANEOUS.....	12
21.	LAW.....	13
22.	JURISDICTION.....	13

This Charge is made on

17 February

2016

Between

- (1) **GRAINGER (ALDERSHOT) LIMITED** (company number 07540875) whose registered office is at Citygate, St. James Boulevard, Newcastle upon Tyne NE1 4JE (Chargor); and
- (2) **RUSHMOOR BOROUGH COUNCIL** of Council Offices Farnborough Road Farnborough Hampshire GU14 7JU (Chargee).

Whereas

This Charge is entered into by the Chargor by way of security for the discharge by the Chargor and other parties of certain of their obligations contained in paragraph 10 of Schedule 1 of the Section 106 Agreement.

It is agreed

1. DEFINITIONS

- 1.1 In this Charge (including the introduction) unless the context otherwise requires the following expressions shall have the following meanings:

Act means the Law of Property Act 1925

Deposits means all monies from time to time during the subsistence of the security constituted by this Charge standing to the credit of the Reserve Fund Account and the debt or debts represented thereby and together with all the entitlements to interest and other rights and benefits accruing to or arising in connection with such monies

Encumbrance means any mortgage, charge, lien, pledge or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including without limitation, trust, set-off, title transfer and retention arrangements) having a similar effect

Enforcement Event means:

- (a) the failure of any of the parties referred to in paragraph 10.16 of Schedule 1 of the Section 106 Agreement to comply with a 'SANGS Default Notice' in accordance with paragraph 10.16 of Schedule 1 of the Section 106 Agreement; or

- (b) the occurrence of an Insolvency Event in relation to the Chargor

Form of Acknowledgement means the form of acknowledgement attached to the Mandate Letter and as set out in Schedule 2 of this Charge.

Insolvency Event means in relation to the Chargor that:

- (a) it is deemed unable to pay its debts as defined in the Insolvency Act 1986 section 123 (referred to as the "Act" in the remainder of this definition)

- (b) a proposal is made for a voluntary arrangement under Part I of the Act
- (c) a petition is presented for an Administration Order Under Part II of the Act
- (d) a receiver or manager is appointed whether under Part III of the Act (including an Administrative Receiver) or otherwise
- (e) it goes into liquidation as defined in section 247(2) of the Act (other than a voluntary winding up which is for the sole purpose of amalgamation or reconstruction while solvent)
- (f) a provisional liquidator is appointed under section 135 of the Act
- (g) a proposal is made for a scheme of arrangement under the Companies Act 1885 section 425 as amended

Mandate Letter means the letter addressed to the Reserve Fund Account Bank in the form set out in Schedule 1 of this Charge.

Receiver means each person appointed by the Chargee (whether pursuant to this Charge or otherwise) as an administrative receiver, a receiver and manager or a receiver of the Deposits

Reserve Fund means the monies paid into the Reserve Fund Account in compliance with the provisions of paragraph 10.7 (a) and (b) of Schedule 1 of the Section 106 Agreement

Reserve Fund Account means the account established by the Chargor in accordance with paragraph 10.7 of Schedule 1 of the Section 106 Agreement and set up as Barclays Bank Account Number [REDACTED] JEB.

Reserve Fund Account Bank means Barclays Bank PLC or such other Bank as the Chargor may have notified to the Chargee and which has provided a Form of Acknowledgement

Section 106 Agreement means the Deed dated 10 March 2014 made between (1) Rushmoor Borough Council (2) Hampshire County Council (3) Secretary of State for Defence (4) Grainger Plc (5) Grainger (Aldershot) Limited relating to the development of the Aldershot Urban Extension (Wellesley) pursuant to Section 106 of the Town and Country Planning Act 1990 (as varied)

Secured Obligations means the obligations of the parties referred to in paragraphs 10.7 (a) and (b), 10.8, 10.15 and 10.18 of Schedule 1 of the Section 106 Agreement.

Security Period means the period beginning on the date of this Charge and ending on the date on which there are no Secured Obligations outstanding.

Working Day means any day from Monday to Friday inclusive which is not Christmas Day Good Friday or a statutory bank holiday

1.2 Unless the context otherwise requires:

- (h) words importing the singular shall include the plural and vice versa
- (i) references to the "Chargee" or the "Chargor" shall be construed so as to include their successors, transferees and assigns
- (j) references to any statute shall include any statutory modification, extension or re-enactment of it or of any part of it for the time being in force and shall also include all instruments and regulations deriving validity from that statute
- (k) references to this Charge or any other deed, agreement or document shall be to this Charge or, as the case may be, such other deed, agreement or document as the same may from time to time be amended varied altered modified supplemented or novated
- (l) headings are included for ease of reference only and shall be ignored for the purposes of interpretation and
- (m) references to a Clause or a Schedule shall be to a Clause of or Schedule to this Charge
- (n) if the rule against perpetuities applies to any trust created by this Charge, the perpetuity period shall be 80 years.

2. THE RESERVE FUND ACCOUNT

- 2.1 The Chargor, shall, on the date of this Charge deliver the Mandate Letter to the Reserve Fund Account Bank and shall procure that on the date of this Charge the Reserve Fund Account Bank provides an acknowledgement to the Chargee in the form set out in Schedule 2.
- 2.2 The Chargee agrees to provide a copy of the Form of Acknowledgement to the Chargor within 5 Working Days of receipt of the same from the Reserve Fund Account Bank.

3. CHARGE

- 3.1 The Chargor hereby covenants that the Secured Obligations will be (or procure that they are) duly and punctually discharged.
- 3.2 The Chargor as beneficial owner and with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994 and as a continuing security for the payment of any expenditure reasonably incurred by the Chargee in carrying out works following an Enforcement Event, by way of first fixed charge the Reserve Fund Account.

4. STATEMENTS

The Chargor shall procure that the Reserve Fund Account Bank shall provide statements of the balance of the Reserve Fund Account to the Chargee no less frequently than once in every calendar month

5. BLOCKED ACCOUNT

- 5.1 Payment shall only be made from the Reserve Fund Account in accordance with the paragraph 10.17(c) of Schedule 1 the Section 106 Agreement and following the occurrence of an Enforcement Event in accordance with Clause 6 of this Charge but otherwise the Chargee shall not be entitled to withdraw any amount from the Reserve Fund Account.
- 5.2 Any withdrawal from the Reserve Fund Account which may be permitted as aforesaid shall not be deemed to be a release of this security over any other monies then or at any time thereafter forming part of the Reserve Fund Account.

6. APPROPRIATION AND DEPOSIT

- 6.1 Any time after an Enforcement Event has occurred in relation to the Chargor and the Chargee shall have made a demand in writing on the Chargor in accordance with paragraph 10.17(c) of Schedule 1 the Section 106 Agreement the Chargee shall be at liberty and is hereby irrevocably and unconditionally authorised without further enquiry and without even giving prior notice to the Chargor or obtaining its consent to appropriate the relevant part of the monies in the Reserve Fund Account as may be required to reimburse expenditure incurred by the Chargee pursuant to paragraph 10.17(c) of Schedule 1 of the Section 106 Agreement then accrued and where appropriate to require the Reserve Fund Account Bank forthwith to pay to the Chargee the amount to cover the expenditure.
- 6.2 If an Insolvency Event has occurred in relation to the Chargor the Chargee shall be at liberty and is hereby irrevocably and unconditionally authorised without further enquiry and without even giving prior notice to the Chargor or obtaining its consent to require the Reserve Fund Account Bank forthwith to pay to the Chargee the Reserve Fund Account.
- 6.3 Any written certification signed by or on behalf of the Chargee shall be conclusive evidence to the Reserve Fund Account Bank for all purposes of this Charge of the facts or amount so certified and the Reserve Fund Account Bank shall be neither entitled nor required to make any further or additional enquiry of the Chargee or put the Chargee to proof of the facts or amount so certified.

7. MISCELLANEOUS

- 7.1 No failure to exercise or delay on the Chargee's part in the exercising of any of its rights powers and remedies under this Charge or at law (collectively the "Chargee's Rights") shall operate or be construed as a waiver thereof nor shall any single partial or defective exercise of any of the Chargee's Rights preclude any further or other exercise of that one of the Chargee's Rights or of any other of the Chargee's Rights
- 7.2 The rights powers and remedies of the Chargee under this Charge are cumulative and are not nor are they to be construed as exclusive of any rights powers and remedies provided by law
- 7.3 The Chargee may give time or other indulgence or make any other arrangement variation or release with any person in respect of the Secured Obligations or any other security or

guarantee for the Secured Obligations without derogating from the Chargor's liabilities or the Chargee's rights powers and remedies under this Charge

8. FURTHER ASSURANCE

The Chargor shall at its own expense promptly execute and do all such assurances, acts and things (including without limitation the giving of instructions and/or authorisations to the Reserve Fund Account Bank) as the Chargee may reasonably require for creating, perfecting or protecting the security intended to be created hereby over the Reserve Fund Account or any part thereof or for facilitating the realisation thereof and in the exercise of the Chargee's Rights and all powers authorities and discretions vested in the Chargee or any Receiver or their respective delegates or sub-delegates, including the execution of any security or other document (in such form as the Chargee may reasonably require), the giving of any notice and the making of any registration which the Chargee (acting reasonably) may think expedient. The obligation of the Chargor shall be in addition to and not in substitution for any covenants for further assurance deemed to be included in this Charge by virtue of Section 76(1)(c) of the Law of Property Act 1925

9. REPRESENTATIONS

The Chargor hereby represents and warrants to and undertakes with the Chargee, on the date of this Charge and on each date during the Security Period by reference to the facts and circumstances then existing, that:

- (c) the Chargor is and will be at all times during the subsistence of the security hereby created (but subject to the security hereby created) the sole legal and beneficial owner of the Reserve Fund Account free from any Encumbrance other than the security created by this Charge;
- (d) the Chargor will not at any time during the subsistence of the security hereby created create grant extend or permit to subsist any Encumbrance on or over or sell or otherwise dispose of or agree to sell or otherwise dispose of the benefit of all or any of its right title and interest in and to the Reserve Fund Account;
- (e) this Charge is its legal, valid and binding obligation and, subject to the general principles of law limiting its obligations, is enforceable in accordance with its terms;
- (f) the Chargor does not need the consent of any other party in order to grant the security created by this Charge; and
- (g) for the purposes of the EU Regulation, the Chargor's centre of main interests (as that expression is used in Article 3(1) of the EU Regulation), is situated in England and Wales and the Chargor has no other "establishment" (as that term is used in Article 2(h) of the EU Regulations) in any other jurisdiction.

10. UNDERTAKINGS

10.1 The Chargor covenants and agrees with the Chargee that it will, during the Security Period:

- (a) Not withdraw or transfer all or any part of the Reserve Fund;
- (b) not, except with the prior written consent of the Chargee (such consent not to be unreasonably withheld or delayed), enter into any onerous or restrictive obligation affecting the Reserve Fund Account;
- (c) provide the Chargee with all information which it may reasonably request in relation to the Reserve Fund Account; and
- (d) not, without the prior written consent of the Chargee, change its centre of main interest (as that expression is used in Article 3(1) of the EU Regulation) to somewhere other than England and Wales, nor will it have any establishment (as that term is used in Article 2(h) of the EU Regulation) in any other jurisdiction.

11. RECEIVERS

11.1 Appointment of Receivers

- (a) At any time after the security created by this Charge becomes enforceable, the Chargee may without prior notice to the Chargor from time to time by writing under the hand of any officer of the Chargee appoint any person (whether or not an employee of the Chargee) to be a Receiver of the Deposits (and none of the restrictions imposed by the Act in relation to the appointment of a Receiver or to the giving of notice or otherwise shall apply)
- (b) An appointment over part only of the Deposits shall not preclude the Chargee from making any subsequent appointment of a Receiver over any other part of the Deposits
- (c) If at any time and by virtue of any appointment under this Clause (Appointment of Receivers) any two or more persons shall hold office as a Receiver, each such person shall be jointly or severally entitled (unless the contrary shall be stated in any of the deed(s) or other instrument(s) appointing them) to exercise all the powers and discretions conferred by this Charge on a Receiver individually and to the exclusion of the other or others of them

11.2 Removal

The Chargee may by writing under its hand (subject to any requirement for an order of the court in the case of an administrative receiver) remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of such Receiver

11.3 Remuneration

The Chargee may either at the time of appointment of any Receiver or at any time thereafter and from time to time fix the remuneration of such Receiver and the maximum rate specified in section 109(6) of the Act will not apply

11.4 Receiver as agent

- (a) Any Receiver so appointed shall so far as the law permits be the agent of the Chargor for all purposes, and the Chargor shall be solely responsible for such Receiver's acts, omissions, defaults, losses, liabilities, remuneration, costs, charges and expenses and liable on any contracts or engagements made or entered into by such Receiver, failing which he shall act as principal and shall not be or become agent for the Chargee
- (b) The Chargee will not incur any liability (either to the Chargor or to any other person) by reason of the appointment of a Receiver or for any other reason

11.5 Exercise of Receiver powers by Chargee

To the fullest extent allowed by law, any right, power or discretion conferred by this Charge (either expressly or impliedly) or by law on a Receiver may (after the security created by this Charge becomes enforceable) be exercised by the Chargee in relation to the Reserve Fund Account and/or the Deposits without appointing a Receiver and notwithstanding the appointment of a Receiver

11.6 Powers of Receiver

Any Receiver so appointed shall have power, whether immediately or at any later time, in addition to any powers conferred upon it by statute or common law:

- (a) to break or determine any period for which the Deposits have been deposited in whole or in part and/or to renew all or any of the Deposits for such periods as the Receiver may think fit;
- (b) to take possession of, appropriate, collect and get in the Deposits and for that purpose to take any proceedings in the name of the Chargor or otherwise;
- (c) to raise or borrow money from any person (including without limitation the Chargee) to rank for payment in priority to this security or otherwise and with or without a charge on the Deposits;
- (d) to sell, transfer, assign, exchange, lend or otherwise dispose of, deal with or realise the Deposits on such terms and for such consideration (including a consideration consisting wholly or partly of shares or securities of any other company) payable at such time or times as he may think fit (and any consideration other than cash shall on receipt be and become charged with the payment and discharge of all Secured Obligations) in the name of and on behalf of the Chargor and generally exercise all the powers and rights of an absolute

owner of the Deposits and do or omit to do anything which the Chargor could do or omit to do;

- (e) to settle, arrange, compromise and submit to arbitration any accounts, claims, questions, disputes or demands whatsoever which may arise in connection with the Deposits or in any way relating to this security and to bring, prosecute, enforce, take, defend, compromise, submit to arbitration and discontinue any actions, suits or proceedings whatsoever whether civil or criminal in relation to the matters aforesaid, to disclaim, abandon or disregard all or any of the outstanding contracts of the Chargor and to allow time for payment of any debts, either with or without security;
- (f) to give valid receipts for all moneys and execute all documents, assurances and things which may be necessary or desirable for realising the Deposits;
- (g) to do all such other acts and things as he may consider necessary or desirable in his absolute discretion for the realisation of any of the Deposits or incidental or conducive to any of the rights, powers or discretions conferred on a Receiver under or by virtue of this Charge or law;
- (h) generally to exercise all or any of the powers set out in the Insolvency Act 1986 over such part of the Deposits over which he shall have been appointed (whether or not he is an administrative receiver); and
- (i) generally to use the name of the Chargor in the exercise of all or any of the powers conferred by this Clause,

provided that any Receiver shall in the exercise of his powers, authority and discretions conform to any directions from time to time given and made by the Chargee and shall not be responsible nor shall the Chargee be responsible for any loss thereby occasioned.

The Chargee may, in writing, either in its appointment of a Receiver or by subsequent notice to that Receiver, restrict the right of such Receiver to exercise all or any of the powers conferred on Receivers by this Charge.

11.7 Application of proceeds

All moneys received by the Chargee or any Receiver after the security created by this Charge becomes enforceable shall be applied (subject to any liabilities having priority to the Secured Obligations) in the following order:

- (a) in or toward payment of the costs, losses, liabilities, charges and expenses incurred in connection with this Charge by the Chargee or any Receiver and the exercise of all or any of such party's powers and of all outgoings paid by such party (including preferential debts) and in payment to any Receiver of such remuneration as may be agreed between such Receiver and the Chargee at or at any time and from time to time after the Receiver's appointment in accordance with the terms of this Charge;

- (b) in or towards satisfaction of the amount owing under this security; and
- (c) in payment of the surplus (if any) to the Chargor or any other person entitled to it.

This Clause does not prejudice the right of the Chargee to recover any shortfall from the Chargor.

11.8 Statutory powers

The powers conferred on mortgagees or receivers by the Act shall apply to any Receiver appointed under this Charge as if such powers were incorporated into this Charge except in so far as they are expressly or impliedly excluded and, where there is any ambiguity or conflict between the powers contained in the Act and those contained in this Charge, the terms of this Charge shall prevail

12. PRESERVATION OF SECURITY

12.1 Continuing security

The security created by this Charge shall:

- (a) be a continuing security and shall not be affected by any intermediate payments or settlements of account or any part of the Secured Obligations;
- (b) not be affected or prejudiced by the bankruptcy or insolvency or liquidation of the Chargor

12.2 Appropriation and suspense account

- (a) The Chargee may:
 - (i) appropriate and apply any money or payments received in respect of the Secured Obligations in reduction of any part or parts of the Secured Obligations as it may think fit in its absolute discretion;
 - (ii) apply and enforce, or refrain from applying or enforcing, any other security or rights held or received by it in respect of the Secured Obligations, in such manner and order as it may think fit (whether against the Secured Obligations or otherwise) and the Chargor shall not be entitled to the benefit of the same.
- (b) Upon the occurrence of an Enforcement Event the Chargee may hold in a suspense or impersonal account until the Secured Obligations have been irrevocably discharged in full any money received from the Chargor or on account of the Secured Obligations.
- (c) To the extent that any of the Deposits constitute "financial collateral" and this Charge and the obligations of the Chargor hereunder constitute a "security financial collateral arrangement" (in each case as defined in, and for the purposes, of the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No 3226) (the "Regulations")) the Chargee shall have the right, at

any time after this Charge has become enforceable, to appropriate all or any part of such financial collateral in or towards payment and/or discharge of the Secured Obligations in such order as the Chargee in its absolute discretion may from time to time determine. For this purpose, the parties agree that the value of such financial collateral so appropriated shall be the amount of the Deposits, together with any accrued but unposted interest, at the time the right of appropriation is exercised. The parties further agree that the method of valuation provided for in this Charge shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.

13. POWER OF ATTORNEY

13.1 Appointment

By way of security for the performance of its obligations under this Charge the Chargor irrevocably (within the meaning of Section 4 of the Powers of Attorney Act 1971) appoints the Chargee and any Receiver jointly and severally as its attorney with full power of delegation and in its name and on its behalf and as its act and deed to sign seal execute deliver perfect and do any deed assurance agreement instrument act or thing which may be required or may properly be deemed desirable for any of the purposes set out in this Charge

13.2 Ratification

The Chargor shall ratify and confirm all things done by the attorney in the exercise or purported exercise of the attorney's powers

13.3 Irrevocable grant

The power of attorney granted under Clause 13.1 as regards the Chargee any Receiver and its or their delegates and substitutes (as the Chargor acknowledges) are granted irrevocably as part of this security to secure proprietary interests of and the performance of obligations owed to the respective donees within the meaning and for the purposes of the Powers of Attorney Act 1971

14. ADMINISTRATION

14.1 Upon an application being made to the Court for an administration order in respect of the Chargor by a person other than the Chargee (or a person connected with the Chargee) the Chargee may appoint by writing any person or persons (being qualified to act as an insolvency practitioner within the meaning of the Insolvency Act 1986) to be a receiver and manager or receivers and managers of all or any part of the Reserve Fund Account and such person or persons shall be entitled and empowered to exercise all powers conferred on a receiver by the said Act including (though without prejudice to the generality of the foregoing) the powers conferred by Schedule 1 thereof

14.2 The Chargee is not entitled to exercise its powers in relation to the assets charged by Clause 3.1 save only in accordance with Clause 14.1

15. SEVERANCE

If at any time any provision hereof is or become illegal invalid or unenforceable in any respect (or any of the security intended to be created by or pursuant to this Charge is ineffective) under the law of any jurisdiction such illegality invalidity or unenforceability shall not affect:

- ii) the legality validity or enforceability of the remaining provisions or the effectiveness of any of the remaining security under such law or
- iii) the legality validity or enforceability of such provision or the effectiveness of such security under the laws of any other jurisdiction

16. NOTICES

- 16.1 Each communication to be made under this Charge shall be made in writing and may be made by letter telex or facsimile
- 16.2 Any communication to be made or delivered by one party to the other shall be made or delivered to that other party at its address set out at the beginning of this Charge or to such other address as may from time to time be notified by one party to the other in accordance with this Clause
- 16.3 Any communication made or delivered for any purpose of this Charge shall be deemed made or delivered when dispatched in the case of a facsimile or telex or in the case of a letter when left at the relevant address or two business days after dispatch by pre-paid first class post in an envelope addressed to the relevant address

17. BENEFIT OF CHARGE

This Charge shall benefit the Chargee and its successors and assigns. The Chargee shall be entitled to impart any information concerning the Chargor to any such assignee successor or any participant or proposed assignee successor or participant. The Chargor may not assign or otherwise transfer any of its rights or obligations under this Charge

18. LIABILITY

- 18.1 The liability of the Chargor hereunder (but not under any other document to which the Chargor is a party) is limited to the Secured Obligations.
- 18.2 The Chargor shall have no liability to the extent that the Chargee shall fail or delay authorising the release of any monies from the Reserve Fund Account pursuant to this Charge to enable the same to be paid to cover the Chargee's expenditure under paragraph 10.17(c) of Schedule 1 of the Section 106 Agreement.

19. INDEMNITY

- 19.1 Indemnity

The Chargor shall, notwithstanding any release or discharge of all or any part of the security, indemnify (but only out of the Reserve Fund Account) the Chargee, its agents, attorneys and any Receiver against any action, proceeding, claim, loss, liability and cost which it may reasonably and properly sustain:

- (a) in the exercise (or purported exercise) of any of the rights, powers or discretions vested in them by this Charge (or by law); and/or
- (b) in connection with or otherwise relating to this Charge or the Reserve Fund Account.

20. MISCELLANEOUS

- (a) If the Chargee considers that an amount paid by the Chargor or any other party in respect of the Secured Obligations is capable of being avoided or otherwise set aside on the liquidation or administration of the Chargor or any other party or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this Charge
- (b) The Chargor's liability under this Charge in respect of any of the Secured Obligations shall not be discharged, prejudiced or affected by:
 - (i) any intermediate payment, settlement of account or discharge in whole or in part of the Secured Obligations;
 - (ii) any variation, extension, discharge, compromise, dealing with, exchange or renewal of any right or remedy which the Chargee may now or after the date of this Charge have from or against the Chargor or any other person in connection with the Secured Obligations;
 - (iii) any act or omission by the Chargor or any other person in taking up, perfecting or enforcing any security, indemnity, or guarantee from or against the Chargor or any other person;
 - (iv) any termination, amendment, variation, novation or supplement of or to any of the Secured Obligations;
 - (v) any grant of time, indulgence, waiver or concession to the Chargor or any other person;
 - (vi) 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 Chargor or any other person;
 - (vii) any invalidity, illegality, unenforceability, irregularity or frustration of any actual or purported obligation of, or security held from the Chargor or any other person in connection with the Secured Obligations;

(viii) any claim or enforcement of payment from the Chargor or any other person;
or

(ix) any other act or omission which would not have discharged or affected the liability of the Chargor had it been a principal debtor or by anything done or omitted by any person which, but for this provision, might operate to exonerate or discharge the Chargor or otherwise reduce or extinguish its liability under this Charge.

(c) The Chargor waives any right it may have to require the Chargee:

(i) to take any action or obtain judgment in any court against any other person;

(ii) to make or file any claim in a bankruptcy, liquidation, administration or insolvency of any other person; or

(iii) to make demand, enforce or seek to enforce any claim, right or remedy against any other person,

before taking steps to enforce any of its rights or remedies under this Charge.

(d) This Charge 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 agreement.

21. LAW

This Charge and any non contractual obligation arising in connection with it shall be governed by and construed in accordance with English law.

22. JURISDICTION

22.1 English Courts

The courts of England have exclusive jurisdiction to settle any disputes (a "Dispute") arising out of, or connected with this Charge or the non-contractual obligations arising in connection with it (including a Dispute regarding the existence, validity or termination of this Charge or the consequences of its nullity).

22.2 Convenient Forum

The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes between them and, accordingly, that they will not argue to the contrary.

22.3 Exclusive Jurisdiction

This Clause 22 is for the benefit of the Chargee only. As a result and notwithstanding Clause 22.1 (*English Courts*), it does not prevent the Chargee from taking proceedings

relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law the Chargee may take concurrent proceedings in any number of jurisdictions.

In witness whereof the Charge has been executed as a deed by the Chargor and is intended to be and is hereby delivered on the date first above written

SCHEDULE 1

MANDATE LETTER

To:

DATED:

Dear Sirs *

* We are writing on behalf of Geainger (Aldershot) Ltd which is a wholly owned subsidiary of Geainger PLC. We hold the following account with Barclays Bank. Geainger (Aldershot) Ltd re Wellesley Savings Reserve Fund - Business Premium Account
Sort Code - ~~XXXXXXXXXX~~ JEB
Account Number - ~~XXXXXXXXXX~~ JEB

We enclose a copy of the Charge (Charge) made the day of February 2016 between ourselves and Rushmoor Borough Council (Chargee) and we give you notice that we have charged in favour of the Chargee our right title and interest in all monies credited to or for the time being standing to the credit of our deposit account with you numbered ~~XXXXXXXXXX~~ (together with all interest accrued or accruing thereto and the debts represented by those sums) (Reserve Fund Account). JEB

We irrevocably and unconditionally instruct and authorise you to (notwithstanding any previous instructions whatsoever which we may have given to you to the contrary):

- (a) credit to the Reserve Fund Account all interest from time to time earned on the sums of money held in the Reserve Fund Account;
- (b) disclose to the Chargee such information relating to the Reserve Fund Account and the sums in the Reserve Fund Account as the Chargee may at any time and from time to time request;
- (c) act in accordance with any instructions received by you in writing from the Chargee to release the sums standing to the credit of the Reserve Fund Account from time to time or to allow the Chargee to withdraw the sums standing to the credit of the Reserve Fund Account from time to time, to act in accordance with such instructions,

in each case without reference to or further authority from us and without enquiry by you as to the justification for such disclosure or instructions notice. **

The instructions and authorisations which are contained in this letter shall remain in full force and effect until the Chargee gives you notice in writing revoking them when you shall act in accordance with such instructions including releasing sums credited to the Reserve Fund Account to us and we shall not be permitted to give you any other instructions with respect to the Reserve Fund Account and/or any sums outstanding to the credit of the Reserve Fund Account without the previous written consent of the Chargee

This letter shall be governed by and construed in accordance with the Laws of England

** You shall not be bound to enquire whether the right of any person (including, but not limited to, the Chargee) to withdraw any monies from the Reserve Fund Account has arisen or be concerned with: JEB

(a) the propriety or regularity of the exercise of that right;

(b) notice to the contrary; or

(c) to be responsible for the application of any monies

received by such person (including but not limited to, the Chargee)

H5206461.1

DMS-4917965-3.0-18.12.2015

Please acknowledge receipt of this notice by signing the acknowledgment on the enclosed copy letter and returning the same to the Chargee at Rushmoor Borough Council, Council Offices, Farnborough Road, Farnborough, Hampshire, GU14 7JU (marked for the attention of [Ann
) with a copy sent to us at Citygate, St. James Boulevard, Newcastle upon Tyne NE1 4JE Graves
(marked for the attention of [5])). JER.

Yours faithfully

Robin Cole JER.

For and on behalf of

GRAINGER (ALDERSHOT) LIMITED

SCHEDULE 2

FORM OF ACKNOWLEDGEMENT

To: Rushmoor Borough Council
Council Offices
Farnborough Road
Farnborough
Hampshire
GU14 7JU

From: []

DATED:

Dear Sirs

We hereby acknowledge receipt of a notice dated [2016^{JEB}] (Notice) and addressed to us by Grainger (Aldershot) Limited (Chargor) regarding the Reserve Fund Account mentioned in such letter and we accept the instructions and authorisations contained in such letter and irrevocably undertake to act in accordance and comply with the terms of such letter. We acknowledge and confirm that:

- (a) we will act in accordance with the terms of the Notice;
- (b) we will not make or exercise any claims or demands any rights of counterclaim rights of set-off combination of accounts liens or any other equities against the Chargor in respect of the Reserve Fund Account and/or the monies standing to the credit thereof;
- (c) we have not as at the date of this acknowledgement received any notice that any third party has or will have any right or interest whatsoever in or has made or will be making any claim or demand or taking any action whatsoever in or has made or will be making any claim or demand or taking any action whatsoever against the Reserve Fund Account and/or any monies deposited therein; and
- (d) we shall not assign the benefit of the sums contained within the Reserve Fund Account unless and until an Enforcement Event or Insolvency Event (as defined in the Charge) occurs.

We undertake that in the event of our becoming aware at any time that any person or entity other than yourselves has or will have any right of interest whatsoever in or has or will be making any claim or demand or taking any action whatsoever against the Reserve Fund Account and/or any monies deposited therein we will immediately give written notice thereof to you

This acknowledgement shall be governed by and construed in accordance with English law

By

For and on behalf of

[Reserve Fund Account Bank]

Executed as a deed by
GRAINGER (ALDERSHOT) LIMITED
acting by two directors or by a director and its
secretary

)
) Director
)
) Director/Secretary

EXECUTED as a DEED by affixing the
COMMON SEAL of **RUSHMOOR**
BOROUGH COUNCIL in the presence of

))
)
)
)

Head of Finance of the Council

Solicitor to the Council

By

For and on behalf of

[Reserve Fund Account Bank]

Executed as a deed by

GRAINGER (ALDERSHOT) LIMITED

acting by two directors or by a director and its
secretary

)

)

)

)

)

Director

Director/Secretary

EXECUTED as a DEED by affixing the

COMMON SEAL of **RUSHMOOR**

BOROUGH COUNCIL in the presence of

)

)

)

)



~~Head of Finance of the Council~~

Solicitor to the Council

176/15

