

MR01

Particulars of a charge

063355/23



Go online to file this information
www.gov.uk/companieshouse

A fee is payable with this form
Please see 'How to pay' on the last page.



What this form is for

You may use this form to register
a charge created or evidenced by
an instrument.



What this form is NOT for

You may not use this form to
register a charge where there is no
instrument. Use for

For further information, please
refer to our guidance at
www.gov.uk/companieshouse

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



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

WEDNESDAY



A18 15/11/2017 #103
COMPANIES HOUSE

1 Company details

Company number 08514575

Company name in full SMS Farming Limited

For official use

Filling in this form

Please complete in typescript or in
bold black capitals.

All fields are mandatory unless
specified or indicated by *

2 Charge creation date

Charge creation date 08/11/2017

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

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

Name AFP Assets Limited

Name

Name

Name

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

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

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Particulars of a charge

4

Brief description

Please give a short description of any land, ship, aircraft or intellectual property registered or required to be registered in the UK subject to a charge (which is not a floating charge) or fixed security included in the instrument.

Brief description

The property known being Ashen Copse, Longwoth,
Abingdon OX13 5HF

Please submit only a short description. If there are a number of plots of land, aircraft and/or ships, you should simply describe some of them in the text field and add a statement along the lines of, "for more details please refer to the instrument".

Please limit the description to the available space.

5

Other charge or fixed security

Does the instrument include a charge (which is not a floating charge) or fixed security over any tangible or intangible or (in Scotland) corporeal or incorporeal property not described above? Please tick the appropriate box.

☒ Yes

☐ No

6

Floating charge

Is the instrument expressed to contain a floating charge? Please tick the appropriate box.

☐ Yes Continue

☒ No Go to Section 7

Is the floating charge expressed to cover all the property and undertaking of the company?

☐ Yes

7

Negative Pledge

Do any of the terms of the charge prohibit or restrict the company from creating further security that will rank equally with or ahead of the charge? Please tick the appropriate box.

☒ Yes

☐ No

8

Trustee statement ¹

You may tick the box if the company named in Section 1 is acting as trustee of the property or undertaking which is the subject of the charge.

☐

¹ This statement may be filed after the registration of the charge (use form MR06).

9

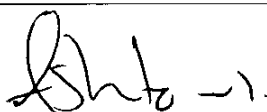
Signature

Please sign the form here.

Signature

Signature

X



X

This form must be signed by a person with an interest in the charge.

MR01

Particulars of a charge

Presenter information

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

Contact name

Company name

Ashtons Legal

Address

Trafalgar House

Meridian Way

Norwich

Post town
Norfolk

County/Region

Postcode

N R 7 O T A

Country

DX

Norwich 7 - 138522

Telephone

01603 703070

Certificate

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

Checklist

We may return forms completed incorrectly or with information missing.

Please make sure you have remembered the following:

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

Important information

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

How to pay

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

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

Where to send

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

For companies registered in England and Wales:

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

For companies registered in Scotland:

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

For companies registered in Northern Ireland:

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

Further information

For further information, please see the guidance notes on the website at www.gov.uk/companieshouse or email enquiries@companieshouse.gov.uk

This form is available in an alternative format. Please visit the forms page on the website at www.gov.uk/companieshouse



FILE COPY

CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 8514575

Charge code: 0851 4575 0006

The Registrar of Companies for England and Wales hereby certifies that a charge dated 8th November 2017 and created by S M S FARMING LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 15th November 2017.

Given at Companies House, Cardiff on 20th November 2017



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

DATED

8th November

2017

- (1) SMS Farming Limited
- (2) AFP Assets Limited

LEGAL MORTGAGE OVER LAND GIVEN BY A COMPANY

We hereby certify this to be a true and complete copy of the original document

Signed 

Full Name CHRIS BECK

Date 4.11.2017

Ashtons Legal

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This Legal Mortgage is made the 8th day of November 2017

Between:

- (1) The company named in Schedule 1 (the "**Company**"); and
- (2) **AFP ASSETS LIMITED** (company registration number 08756761) whose principal place of business is at Denmark House, St Thomas Place, Ely, Cambridgeshire, CB7 4EX ("the **Funder**").

It is agreed as follows:

1. **Definitions and interpretation**

1.1 **Definitions**

In this Mortgage the following expressions have the following meanings, unless the context otherwise requires:

"Agreements for Lease" means all agreements, contracts or options in existence from time to time for, or in relation to, any Occupational Leases.

"Agreements for Sale" means all agreements, contracts, or options in existence from time to time:

- (a) for, or in relation to, the assignment, transfer, underlease or disposal by way of sale of the whole or any part of, or of any estate or interest in, the Charged Property;
- (b) for, or in relation to, the creation of any estate or interest in the Charged Property upon the sale of the Charged Property; and
- (c) under which any consideration of a capital nature, whether monetary or otherwise, is derived, or is to be derived, from the Charged Property.

"Authorities" means all national and local governments, government departments, supranational bodies, local or public authorities, statutory undertakings, states or agencies.

"Business Day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in any part of the United Kingdom.

"Business Operator" means a person carrying out any business, process or other undertaking (whether currently operated by or under the control or with the consent of the Company, or otherwise) whether at the Charged Property or elsewhere.

"Charged Property" means the whole or any part of the property, assets, income and undertaking of the Company from time to time mortgaged, charged or assigned to the Funder pursuant to this Mortgage.

"Costs" means all costs, charges or expenses of whatsoever nature (including, without limitation, legal fees) including, without limitation, disbursements and any Value Added Tax to be charged on such costs, charges, expenses and disbursements.

"Environment" means all of the air, water and land including air within buildings and other natural or man-made structures above or below ground.

"Environmental Authorisations" means all permits, licences, consents or other authorisations or approvals required at any time under any Environmental Legislation for the operation of any Business Operator and the occupation or use of the Charged Property by any person.

"Environmental Claim" means any claim, notice of violation, prosecution, demand, action, official warning, abatement or other order (conditional or otherwise) relating to Environmental Matters and any notification or order requiring compliance with the terms of any Environmental Authorisation or Environmental Legislation.

"Environmental Legislation" means all applicable statutes, statutory instruments, common law, treaties, regulations, directives, codes of conduct, circulars, guidance notes, orders, notices, demands and other measures imposed by any Authority to which the Company or any Business Operator or the Charged Property is or has been or may be or may have been subject which relate to the pollution or protection of the Environment or the protection of the health of any living organism or the protection of public health or welfare.

"Environmental Matters" means:

- (a) the generation, deposit, disposal, keeping, treatment, transportation, transmission, handling, importation, exportation, processing, collection, sorting, presence or manufacture of any waste (as defined in the Environmental Protection Act 1990) or of any Relevant Substance;
- (b) public or private nuisance, noise, defective premises or health and safety at work;
- (c) the carrying out of any development (as defined in Section 55(1) Town and Country Planning Act 1990); and
- (d) any act, default or phenomenon which is capable of causing harm to human health or welfare or harm to any other living organism or of damaging the Environment.

"Exchange Rate" means the prevailing spot rate of exchange of the Funder (as conclusively determined by the Funder) at or around 11 a.m. on the date on which any conversion of currency is to be effected pursuant to this Mortgage.

"Fixtures" means all assets of whatsoever nature, apart from land and buildings, forming part of any freehold or leasehold property owned by the Company and deemed by law to be immovable property other than tenant's fixtures.

"Insolvency Act" means the Insolvency Act 1986.

"LPA" means the Law of Property Act 1925.

"LRA" means the Land Registration Act 1925.

"Material Environmental Effect" means any effect on the Environment which is, or is reasonably likely in the opinion of the Funder, in its sole discretion, to have a material adverse effect on:

- (a) the financial condition of the Company; or
- (b) the ability of the Company to perform its obligations under or otherwise comply with the terms of this Mortgage; or
- (c) the value or marketability of the Charged Property.

"Occupational Leases" means all leasehold interests and other occupational rights whatsoever (including, without limitation, all licences and Agreements for Lease) in existence from time to time relating to the whole or any part of the Charged Property, the immediate reversion to which is vested in the Company.

"Permitted Security Interest" means:

- (a) the security constituted by this Mortgage;
- (b) liens arising by operation of law in the ordinary course of business; and
- (c) any Security Interest permitted to subsist with the prior written consent of the Funder.

"Planning Acts" means the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning and Compensation Act 1991, the Local Government Planning and Land Act 1980 and the Ancient Monuments and Archaeological Areas Act 1979.

"Property Insurance" means the insurance referred to in clause 9.4 (Property Insurance).

"Receiver" means any receiver appointed pursuant to this Mortgage.

"Relevant Jurisdiction" in respect of any person means the jurisdiction in which such person is incorporated or, if different, has its principal place of business.

"Relevant Substance" means all substances which are defined or regulated as toxic, hazardous, flammable, highly reactive and explosive, or any of these, pursuant to any Environmental Legislation (whether in a solid or liquid form or in the form of a gas or vapour and whether alone or in combination with any other substance) and all radioactive, electrical or electromagnetic emissions which are capable of causing harm to human health or welfare or harm to any other living organism or of damaging the Environment.

"Rights" means all the Company's rights, title and interest from time to time in any lease, licence or occupational right whatsoever together with the entire benefit of all the Company's rights, title and interest from time to time in any renewal of, replacement of or variation to any such lease, licence or occupational right (including, without limitation, all its rights, title and interest in any Occupational Lease, agreement for any Occupational Lease and any associated agreements which may be granted by the Company or any person deriving title from the Company) from time to time over or in respect of the whole or any part of the Charged Property.

"Scheduled Property" means all the property short particulars of which are set out in Schedule 2 (The Scheduled Property), including, without limitation, all Fixtures on such property.

"Secured Liabilities" means all moneys, debts and liabilities from time to time due, owing or incurred by the Company to the Funder on any current or other account whatsoever or otherwise in any manner whatsoever, in each case whether present or future; whether alone or jointly with any other person; whether actual or contingent; whether as principal or as surety; in whatsoever name, firm or style; in whatsoever currency denominated; or otherwise including, without limitation, all liabilities in connection with foreign exchange transactions, accepting, endorsing or discounting notes or bills, under bonds, guarantees, indemnities, documentary or other credits or any instruments from time to time entered into by the Funder for or at the request of the Company together with interest to the date of payment at such rates and upon such terms as may from time to time be agreed and all commission, fees, costs and other charges (including, without limitation, legal fees) on a full indemnity basis.

"Security Interest" means any mortgage, charge, assignment, pledge, lien, right of set-off, hypothecation, encumbrance, priority or other security interest (whether fixed or floating) including, without limitation, any **"hold-back"** or **"flawed asset"** arrangement together with any preferential right, retention of title, deferred purchase, leasing, sale or purchase, sale and leaseback arrangement, trust agreement, declaration of trust, trust arising by operation of law, any option or agreement for any of the same or any arrangement which has substantially the same commercial or substantive effect as the creation of security.

"Subsidiary" bears the same meaning as that contained in Section 1159 of the Companies Act 2006 (Definition of **"subsidiary"**).

"Taxes" means all present and future taxes, levies, duties, charges, assessments, deductions or withholdings whatsoever, including any interest thereon, and any penalties and fines with respect thereto, wherever imposed, levied, collected or withheld pursuant to any regulation having the force of law and **"Taxation"** shall be construed accordingly.

1.2 **Interpretation**

1.2.1 In this Mortgage:

- (a) the clause headings are included for convenience only and do not affect the construction of this Mortgage;
- (b) words denoting the singular include the plural and vice versa; and
- (c) words denoting one gender include each gender and all genders.

1.2.2 In this Mortgage, unless the context otherwise requires, references to:

- (a) persons include references to natural persons, firms, partnerships, companies, corporations, associations, organisations and trusts (in each case whether or not having a separate legal personality);
- (b) documents, instruments and agreements (including, without limitation, this Mortgage and any document referred to in this Mortgage) are references to such documents, instruments and agreements as modified, amended, varied, supplemented or novated from time to time;
- (c) receivers are references to receivers of whatsoever nature including, without limitation, receivers and managers and administrative receivers;
- (d) the terms the **"Funder"** and the **"Receiver"** include, where the context so admits, references to any delegate of any such person;
- (e) a party to this Mortgage include references to its successors, transferees and assigns;
- (f) clauses and schedules are references to clauses of this Mortgage and schedules to this Mortgage; and references to this Mortgage include its schedules;
- (g) statutory provisions (where the context so admits and unless otherwise expressly provided) are construed as references to those provisions as respectively amended, consolidated, extended or re-enacted from time to time, and to any orders regulations instruments or other subordinate legislation made under the relevant statute; and
- (h) a time of day is a reference to London time.

2. Covenant to pay

The Company shall on demand pay to the Funder or discharge, as the case may be, all the Secured Liabilities when the Secured Liabilities become due.

3. Interest

The Company shall pay to the Funder interest on the Secured Liabilities (after as well as before any demand made or judgment obtained or the liquidation or administration of the Company) at the rates and upon the terms from time to time agreed with the Funder upon such days as the Funder may from time to time determine and such interest shall be compounded in the event of it not being punctually paid with quarterly rests in accordance with the usual practice of the Funder but without prejudice to the right of the Funder to require payment of such interest when due.

4. Security

By way of continuing security in favour of the Funder for the payment and discharge of the Secured Liabilities, the Company with full title guarantee hereby charges to the Funder by way of first fixed charge by way of legal mortgage, the Scheduled Property and all Rights relating to the Scheduled Property in existence at the date of this Mortgage.

5. Further assurance

The Company shall:

- 5.1 forthwith, at any time if so required by the Funder, at its own expense execute and deliver to the Funder such further legal or other mortgages, charges, assignments, securities, authorities and documents as the Funder may in its discretion require of the whole or such part of the Charged Property as the Funder may specify, in such form as the Funder may in its discretion require, to secure the payment or discharge of the Secured Liabilities, including, without limitation, in order to vest the whole or such part of the Charged Property in the Funder, the nominee of the Funder or in any purchaser from the Funder or the Receiver;
- 5.2 pending the execution and delivery of any such assignments, hold such Charged Property upon trust for the Funder subject to the provisions of this Mortgage; and
- 5.3 pending the execution and delivery of any such mortgages, charges, or other security, hold such Charged Property subject to the provisions of this Mortgage; and
- 5.4 if any works of construction or refurbishment are at any time carried out upon the Scheduled Property, at the request of the Funder assign to the Funder as further security for the Secured Liabilities, and in such form as the Funder shall require:
 - (a) the benefit of all the Company's rights and claims with regard to such work against the building contractor and any other person carrying out services for the Company in connection with such works, and their respective subcontractors and suppliers; and/or

- (b) any rights, licences, warranties, guarantees or maintenance agreements in connection with such works of which the Company has the benefit.

6. Deposit of documents and title deeds

The Company shall deposit with the Funder (and the Funder during the continuance of this security may hold and retain) all deeds and documents of title relating to the Scheduled Property including, without limitation, all Occupational Leases.

7. Negative pledge

The Company shall not:

- 7.1 create, purport to create or allow to subsist, any Security Interest over the whole or any part of the Charged Property except for any Permitted Security Interest;
- 7.2 convey, assign, transfer, or agree to convey, assign or transfer the whole or any part of the Charged Property;
- 7.3 permit or agree to any variation of the rights attaching to the whole or any part of the Charged Property; or
- 7.4 do, cause or permit to be done anything which may in the opinion of the Funder, in any way depreciate, jeopardise or otherwise prejudice the value to the Funder (whether monetary or otherwise) of the whole or any part of the Charged Property.

8. Representations and warranties

- 8.1 The Company represents and warrants to the Funder that:

8.1.1 Status

it is duly incorporated and validly existing under the laws of its Relevant Jurisdiction and is fully qualified and empowered to own its assets and carry out its business;

8.1.2 Powers

it has power to enter into this Mortgage, to exercise its rights and perform its obligations hereunder, and has taken all necessary corporate and other action to authorise the execution, delivery and performance of this Mortgage and any other documents referred to herein;

8.1.3 Authorisations

all acts, conditions, authorisations and other things required to be done, fulfilled and performed by it in order:

- (a) to enable it lawfully to enter into, exercise its rights under and perform and comply with the obligations expressed to be assumed by it in this Mortgage;
- (b) to ensure that the obligations expressed to be assumed by it in this Mortgage are legal, valid and binding; and
- (c) to make this Mortgage admissible in evidence in the Relevant Jurisdiction

have been done, fulfilled and performed and are in full force and effect;

8.1.4 *Legal validity*

the obligations expressed to be assumed by it in this Mortgage are legal and valid obligations binding on it in accordance with the terms of this Mortgage;

8.1.5 *Information*

all of the written information supplied by or on behalf of the Company to the Funder is true, complete and accurate in all material respects;

8.1.6 *Ownership of the Charged Property*

it is absolutely, solely and beneficially entitled to all the Charged Property as from the date it or any part of it falls to be charged under this Mortgage and the rights of the Company in respect of the Charged Property are free from any Security Interest of any kind other than a Permitted Security Interest;

8.1.7 *No disposal*

it has not sold or agreed to sell or otherwise disposed of, or agreed to dispose of, the benefit of all or any of the Company's right, title and interest in and to the Charged Property;

8.1.8 *Environmental compliance*

neither it nor any Business Operator has breached any Environmental Legislation and no condition exists or act or event has occurred which could give rise to any breach of or any liability of any kind under any Environmental Legislation by either the Company or any Business Operator;

8.1.9 ***Environmental Authorisations***

it and any Business Operator are in possession of all Environmental Authorisations required for the conduct of their business or operations (or any part thereof) and neither the Company or any Business Operator has breached any of the terms or conditions of any such Environmental Authorisation or received any notice from any Authority in respect of any actual or potential contravention of any Environmental Authorisation; and

8.1.10 ***Occupational Leases***

the Occupational Leases are valid, binding and enforceable in accordance with their respective provisions and the details of the Occupational Leases are true and accurate.

- 8.2 The representations and warranties set forth in this clause are given and made on and as of the date of this Mortgage, shall survive the execution of this Mortgage and other than the representation in clause 8.1.5 (Representations and warranties - Information) are continuing representations and warranties which are deemed to be repeated during the continuance of the security constituted by this Mortgage.

9. ***Undertakings***

The Company gives each of the undertakings contained in this clause to the Funder.

9.1 ***Duration***

The undertakings in this clause shall remain in force during the continuance of the security constituted by this Mortgage.

9.2 ***To comply with statutes***

The Company shall comply with all requirements of any Authority, all obligations under any statute and all byelaws and regulations relating to the whole or any part of the Charged Property.

9.3 ***To provide information***

The Company shall furnish to the Funder forthwith on demand by the Funder such information and supply such documents or papers relating to the Charged Property from time to time as the Funder may in its discretion require.

9.4 ***Property Insurance***

The Company shall insure and keep insured the Charged Property with reputable and responsible insurers previously approved by the Funder:

- 9.4.1 in such manner and to such extent as is reasonable and customary for an enterprise engaged in the same or a similar business and in the same or similar localities including, without limitation, insurance to cover loss or damage arising by fire, civil commotion, terrorism, explosion, aircraft, flood,

storm, tempest, burst pipes, public liability and such other risks and contingencies as the Funder shall from time to time request; and

- 9.4.2 in the full reinstatement cost of the Charged Property (being not less than such sum or sums (if any) as the Funder may in its discretion require) including, without limitation:
- (a) architects', surveyors' and all other professional fees, demolition and shoring-up costs;
 - (b) Value Added Tax chargeable on the cost of such reinstatement and liable to arise out of any self-supply charge; and
 - (c) loss of income from rents, licence fees or otherwise for not less than three years or such greater period as the Funder may in its discretion require, having regard to any potential increases in rent as a result of rent reviews, reversions or otherwise.

9.5 General obligations regarding insurance

The Company shall:

- 9.5.1 effect the Property Insurance and the Company shall procure that the interest of the Funder is noted on all policies of Property Insurance in such manner as the Funder may in its absolute discretion require;
- 9.5.2 duly and punctually pay all premiums and any other moneys necessary for maintaining the Property Insurance in full force and effect;
- 9.5.3 ensure that every policy of insurance relating to the Property Insurance contains a first loss payee clause and a standard mortgagee clause, whereby such insurance will not be invalidated, vitiated or avoided as against a mortgagee in the event of any misrepresentation, act, neglect or failure to disclose on the part of the insured;
- 9.5.4 produce to the Funder on request copies of all policies and all receipts for the current premiums with respect to the Property Insurance; and
- 9.5.5 immediately give notice to the Funder of any occurrence which gives rise, or might give rise, to a claim under any policy of insurance relating to the Property Insurance and, except with the prior written consent of the Funder, the Company shall not agree to settlement of any such claim.

If the Company at any time fails to perform any of its obligations contained in this clause, the Funder may effect or renew such insurance as the Funder thinks fit and the Company shall reimburse the Funder for the Costs thereby incurred on demand. Such Costs will bear interest in accordance with clause 3 (Interest) from the date of payment by the Funder until the date of reimbursement.

9.6 Insurance monies

- 9.6.1 Any monies received by virtue of any insurance relating to the whole or any part of the Charged Property (whether effected pursuant to this Mortgage or otherwise) will be deemed to be part of the Charged Property. The Company shall apply all such monies in making good, or in recouping expenditure incurred in making good, any loss or damage or, if the Funder in its discretion so requires, towards discharge of the Secured Liabilities.
- 9.6.2 The Company shall ensure that all such monies as are referred to in clause 9.6.1 which are not paid directly by the insurers to the Funder shall be held by the recipient upon trust for the Funder and be applied by the Company in accordance with clause 9.6.1.
- 9.6.3 This clause applies whether or not this Mortgage has become enforceable.

9.7 To repair

The Company shall at all times keep in good and substantial repair and condition, all buildings, erections and structures on and in the Charged Property and where it is uneconomic to repair any part of the Charged Property, replace such part by another similar asset of equal or greater quality and value.

9.8 To allow entry

The Company shall allow, and shall procure that any person occupying the whole or any part of the Charged Property under any Occupational Lease shall allow, the Funder and its agents, with or without surveyors, workmen or others authorised by it upon prior notice (except in an emergency) to enter the Charged Property in order to view the Charged Property, to carry out any repairs on the Charged Property which the Funder considers necessary or to do anything the Funder is entitled to do pursuant to clause 10.2 (Funder's performance of covenants).

9.9 Alterations

The Company shall not:

- 9.9.1 commit any waste, or in any manner lessen the value of the Charged Property;
- 9.9.2 except with the prior written consent of the Funder, make any alterations to the Charged Property or carry out any works of demolition, construction, refurbishment, addition or otherwise in or to the Charged Property; or
- 9.9.3 sever any Fixtures.

9.10 ***Title***

The Company shall:

- 9.10.1 comply with, enforce and not waive, release or vary (or agree so to do) any restrictive or other covenants or obligations affecting the Charged Property;
- 9.10.2 pay all rents, rates, Taxes and outgoings however arising payable in respect of the whole or any part of the Charged Property owed by it or by the owner or occupier of the whole or any part of the Charged Property and comply with all restrictive and other covenants and obligations to be performed by it under any lease under which it holds the whole or any part of the Charged Property;
- 9.10.3 if the Funder or the Receiver pays any such sum, reimburse the Funder or the Receiver in full, on demand, the amount of such sum together with interest calculated in accordance with clause 3 (Interest) from the date of payment by the Funder or the Receiver until the date of reimbursement;
- 9.10.4 enforce all restrictive or other covenants and obligations owed to it by any lessor under any such lease;
- 9.10.5 not waive, release or vary (or agree so to do) any obligation owed to it by any such lessor or any provision of any such lease;
- 9.10.6 not exercise any option or power to break or terminate any such lease;
- 9.10.7 not surrender or agree to surrender any such lease;
- 9.10.8 not do, or omit to do, anything under any such lease whereby such lease might be forfeited; and
- 9.10.9 except with the prior written consent of the Funder, not agree any increase in the rent payable under any such lease.

9.11 ***No creation of easements etc.***

The Company shall not grant, create, or permit to be acquired, any easement, right or privilege relating to or affecting the whole or any part of the Charged Property.

9.12 ***Leasing***

The Company shall not:

- 9.12.1 exercise any statutory or other power of leasing, agreeing to lease or accepting surrenders of leases otherwise available to the Company;
- 9.12.2 grant or agree to grant or create any Occupational Lease of any description or contractual right to occupy or use the whole or any part of the Charged Property; or
- 9.12.3 grant any licence or permission to assign, underlet or part with, or share occupation or possession, of the whole or any part of the Charged Property.

9.13 ***Occupational Leases***

The Company shall:

- 9.13.1 comply with all restrictive and other covenants and obligations, however arising, to be performed by it as lessor under any Occupational Lease;
- 9.13.2 enforce all restrictive and other covenants and obligations, however arising, owed to it as lessor under any Occupational Lease;
- 9.13.3 not waive, release or vary (or agree so to do) any Rights or any provision of any Occupational Lease;
- 9.13.4 except with the prior written consent of the Funder, not:
 - (a) exercise any option or power to break, terminate, renew or extend any Occupational Lease;
 - (b) accept or agree to accept any surrender of any Occupational Lease; or
 - (c) grant any consent or licence as lessor or grantor under any Occupational Lease; and
- 9.13.5 comply with any provisions contained in any Occupational Lease for the review of the rents thereby reserved and, except with the prior written consent of the Funder, shall not settle or agree to settle any such rent review.

9.14 ***Overriding interests***

The Company shall not without the prior written consent of the Funder permit any person to be registered as proprietor of the Scheduled Property or any part thereof or interest therein under the LRA or create or permit to arise any overriding interest affecting the Scheduled Property within the definition of the LRA.

9.15 *Agreements for Sale*

The Company shall:

- 9.15.1 enforce all obligations owed to it by any purchaser under any Agreement for Sale;
- 9.15.2 not waive, release or vary (or agree so to do) any obligation owed to it under, or any provision of, any Agreement for Sale; and
- 9.15.3 except with the prior written consent of the Funder, not exercise any power to terminate any Agreement for Sale.

9.16 *To manage*

The Company shall manage the Charged Property and any person occupying the whole or any part of the Charged Property under any Occupational Lease in accordance with the principles of good estate management and in any manner that the Funder may in its discretion require.

9.17 *Planning*

The Company shall:

- 9.17.1 comply with all the provisions of the Planning Acts;
- 9.17.2 comply with any conditions attached to any consent under the Planning Acts relating to or affecting the Charged Property;
- 9.17.3 not carry out any development (as defined in the Planning Acts) or redevelopment on or of the Charged Property;
- 9.17.4 except with the prior written consent of the Funder, not change the use of the whole or any part of the Charged Property;
- 9.17.5 except with the prior written consent of the Funder, not make any application for any consent under the Planning Acts or implement any planning permission; and
- 9.17.6 except with the prior written consent of the Funder, not enter into, or agree to enter into, any agreement under Section 106 of the Town and Country Planning Act 1990 (Agreement regulating development or use of land), Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 (Enforceability by local authorities of certain covenants relating to land) or Section 38 of the Highways Act 1980 (Power of highway authorities to adopt by agreement) Section 278 of the Highways Act 1980 (Contributions towards highway works), Section 111 of the Local Government Act 1971 (Subsidiary powers of local authorities) or any other similar act.

9.18 *Compulsory purchase*

The Company shall:

- 9.18.1 except with the prior written consent of the Funder, not consent to, or enter into any negotiations with any Authority with regard to, the acquisition of the whole or any part of the Charged Property;
- 9.18.2 if so requested by the Funder, permit the Funder or its agent or anyone engaged by the Funder to conduct such negotiations or give such consent on the Company's behalf; and
- 9.18.3 if a notice is given to the Company by an Authority that such Authority intends to acquire the whole or any part of the Charged Property and such notice contains any condition, not, at any time after the date of such notice, do or omit or suffer to be done or omitted any act or thing which may be in breach of such condition.

9.19 *To give notice*

The Company shall, forthwith after receipt of any notice, order, direction, designation, resolution, proposal or other matter given or made by any Authority (whether or not under the Planning Acts) and relating to the Charged Property or the area in which the Charged Property is situated (a "**notice**"):

- 9.19.1 give full written particulars to the Funder of such notice;
- 9.19.2 if required by the Funder forthwith, and at the Company's cost, take all necessary steps to comply with such notice; and
- 9.19.3 at the request of the Funder, and at the Company's cost, make or join with the Funder in making such objection or representation against, in respect of, or relating to, such notice as the Funder may in its discretion require.

9.20 *Investigation of title and other enquiries*

The Company shall, at its expense:

- 9.20.1 forthwith on demand provide the Funder with a report as to the title of the Company to the Charged Property and the Occupational Leases and related matters concerning the items which may properly sought to be covered by a prudent mortgagee in a solicitor's report of this nature;
- 9.20.2 on demand, grant the Funder or its solicitors all such facilities within the power of the Company to enable the Funder or such solicitors to carry out investigations of title to the Charged Property and to carry out general enquiries relating to the Charged Property; and
- 9.20.3 co-operate and comply with all other reasonable requests relating to the Charged Property.

9.21 ***Environment***

The Company shall:

- 9.21.1 and shall procure that any Business Operator shall, obtain and maintain in full force and effect all Environmental Authorisations and ensure that the Charged Property, itself and any Business Operator complies with all Environmental Legislation; and
- 9.21.2 promptly on becoming aware of it inform the Funder of any Environmental Claim which has been made or threatened against the Company or any Business Operator or any of the officers of the Company or any Business Operator or any occupier of the Charged Property or any requirement of any Authority, Environmental Authorisation or applicable Environmental Legislation to make any investment or expenditure or take or desist from taking any action which might, if substantial, have a Material Environmental Effect.

10. **Costs and Funder's performance of covenants**

10.1 ***Costs undertaking***

The Company shall on demand pay to the Funder or the Receiver, as the case may be, and discharge all Costs payable by it pursuant to this Mortgage on a full and unlimited indemnity basis, together with interest at calculated in accordance with clause 3 (Interest) from the date the relevant Cost was expended, incurred or suffered (whichever is the earlier) by the Funder or the Receiver, as the case may be, until full discharge of such Cost.

10.2 ***Funder's performance of covenants***

If the Company fails to perform any of the undertakings contained in clause 9.7 (To repair) to clause 9.20 (Environment) (inclusive), the Funder may perform any such covenant at the Company's expense and the Company shall reimburse the Funder for the Costs of such performance on demand. Nothing in this Mortgage shall oblige the Funder to perform any covenant of the Company.

11. **Default**

11.1 ***Enforcement***

This Mortgage will become enforceable on the making of a demand pursuant to clause 2 (Covenant to pay) or if the Company requests the Funder to appoint a receiver over the whole or any part of its undertaking or assets.

11.2 **Consequences of default**

On and at any time after the making of a demand pursuant to clause 2 (Covenant to pay), the Funder in its absolute discretion may by written notice to the Company:

- 11.2.1 declare the Secured Liabilities to be immediately due and payable, together with all accrued interest thereon and any other sums then owed by the Company under this Mortgage and, upon that declaration, such sums shall become immediately due and payable without demand or notice of any kind, all of which are hereby expressly waived by the Company; or
- 11.2.2 declare the Secured Liabilities to be due and payable on demand of the Funder; and/or
- 11.2.3 declare the security constituted by this Mortgage to be enforceable.

12. **Statutory power of sale**

- 12.1 For the purposes of all powers implied by statute, and in particular the power of sale under Section 101 of the LPA (Powers incident to estate or interest in a mortgage), the Secured Liabilities will be deemed to have become due when the security created by this Mortgage becomes enforceable and Section 103 of the LPA (Regulation of exercise of power of sale) and Section 93 of the LPA (Restriction on consolidation of mortgages) will not apply.
- 12.2 The statutory powers of leasing conferred on the Funder are extended so as to authorise the Funder to lease, make arrangements for leases, accept surrender of leases and grant options on such terms and conditions as the Funder may in its discretion think fit. The Funder is not obliged to comply with any of the provisions of Section 99 (Leasing powers of mortgagor and mortgagee in possession) and Section 100 (Powers of mortgagor and mortgagee in possession to accept surrenders of leases) of the LPA.
- 12.3 Each of the Funder and the Receiver may exercise such person's statutory power of sale in respect of the whole or any part of the Charged Property.

13. **Receiver**

13.1 **Appointment of Receiver**

- 13.1.1 At any time after the security constituted by this Mortgage has become enforceable, whether or not the Funder has entered into or taken possession of the whole or any part of the Charged Property pursuant to this Mortgage:
 - (a) the Funder may, by writing under the hand of any authorised officer of the Funder, appoint any person to be a receiver of the Charged Property and such person shall, with effect from the date of such appointment, be a "**Receiver**";

- (b) the Funder may, from time to time, in similar manner, remove the Receiver and appoint another in his place; and
- (c) the Funder may, either at the time of appointment or at any time thereafter, fix the remuneration of the Receiver.

None of the restrictions imposed by the LPA in relation to the appointment of receivers, the giving of notice or otherwise shall apply.

- 13.1.2 The Receiver may from time to time delegate, by power of attorney or otherwise, to any person any of his powers and discretions, whether arising by statute, the provisions of this Mortgage or otherwise, upon such terms and for such periods of time as he may in his discretion think fit and may from time to time terminate any such delegation. The Funder shall not be liable to the Company for any loss or damage arising from any such delegate's act, default, neglect or misconduct of any nature whatsoever.

13.2 ***Powers of Receiver***

The Receiver has all the powers to do or abstain from doing anything which the Company could do or abstain from doing in relation to the Charged Property including, without limitation the powers conferred by Section 109 of the LPA (Appointment, powers, remuneration and duties of receivers) and, in the case of a Receiver who is an administrative receiver, the powers conferred by Section 29 of the Insolvency Act (Definitions) and Schedule 1 to the Insolvency Act (Powers of administrator or administrative receiver), and in particular the Receiver may:

13.2.1 *Carry on business*

carry on, manage or concur in carrying on managing the whole or any part of the business of the Company as he may in his discretion think fit;

13.2.2 *Protection of assets*

- (a) manage, insure, repair, decorate, maintain, alter, improve, renew or add to the Charged Property or concur in so doing;
- (b) commence or complete any building operations on the Charged Property;
- (c) apply for and maintain any planning permissions, building regulations, approvals and any other permissions, consents or licences,

in each case as he may in his discretion think fit;

13.2.3 *Realisation of assets*

sell, exchange, convert into money and realise the Charged Property or concur in so doing by public auction or private contract and generally in such manner and on such terms as he may in his discretion think fit.

Without prejudice to the generality of the foregoing, he may do any of these things for any valuable consideration, including, without limitation, cash, shares, stock, debentures or other obligations. Any such consideration may be payable in a lump sum or by instalments spread over such period as he may in his discretion think fit;

13.2.4 *Let, hire or lease*

- (a) let, hire or lease (with or without premium) and accept surrenders of leases or tenancies or concur in so doing;
- (b) grant rights, options or easements over and otherwise deal with or dispose of, and exercise all rights, powers and discretions incidental to, the ownership of the Charged Property; and
- (c) exchange or concur in exchanging the Charged Property,

in each such case in such manner and generally on such terms as he may in his discretion think fit, with all the powers of an absolute beneficial owner. The Receiver may exercise any such power by effecting such transaction in the name or on behalf of the Company or otherwise;

13.2.5 *Rent*

- (a) without any further consent by, or notice to, the Company, exercise on its behalf, in respect of any rent, all the powers and provisions conferred on a landlord or a tenant by any legislation in force relating to such rent; and
- (b) make allowances to, and re-arrangements with, any person occupying the whole or any part of the Charged Property under any Occupational Lease from whom any rent and any profits may be receivable, and negotiate and agree, or refer to arbitration, any revision of rent under any leases in respect of which the rental may fall to be reviewed and accept service of, or serve, any notice received or required or deemed desirable in connection with any such review or with the exercise of any option;

13.2.6 *Borrowing*

for the purpose of exercising any of the powers, authorities or discretions conferred on him by or pursuant to this Mortgage or of defraying any Costs (including, without limitation, his remuneration) which are incurred by him in the exercise of such powers, authorities or discretions or for any other purpose, to raise and borrow money or incur any other liability either unsecured or secured on the Charged Property, either in priority to the security constituted by this Mortgage or otherwise, and generally on such terms as he may in his discretion think fit. No person lending such money is to be concerned to enquire as to the propriety or purpose of the exercise of such power or as to the application of any money so raised or borrowed;

13.2.7 *Make calls*

make, or require the directors of the Company to make, such calls upon the shareholders of the Company in respect of any uncalled capital of the Company as the Receiver may in his discretion require and enforce payment of any call so made by action (in the name of the Company or the Receiver as the Receiver may in his discretion think fit) or otherwise;

13.2.8 *Compromise*

- (a) settle or compromise any claim by, adjust any account with, refer to arbitration any dispute with, and deal with any question or demand from, any person who is, or claims to be, a creditor of the Company, as he may in his discretion think fit; and
- (b) settle or compromise any claim, adjust any account, refer to arbitration any dispute and deal with any question or demand relating in any way to the Charged Property, as he may in his discretion think fit;

13.2.9 *Proceedings*

bring, prosecute, enforce, defend and abandon all such actions, suits and proceedings in relation to the Charged Property as he may in his discretion think fit;

13.2.10 *Subsidiaries*

- (a) promote the formation of any Subsidiary of the Company with a view to such Subsidiary purchasing, leasing, licensing or otherwise acquiring an interest in the Charged Property;
- (b) arrange for the purchase, lease, licence or acquisition of an interest in the Charged Property by any such Subsidiary for any valuable consideration, including, without limitation, cash, shares, debentures, loan stock, convertible loan stock or other securities, profits or a sum calculated by reference to profits, turnover, royalties, licence fees or otherwise, whether or not secured on the undertaking or assets of such Subsidiary and whether or not such consideration is payable or receivable in a lump sum or at any time or any number of times by instalments spread over such period, as the Receiver may in his discretion think fit; and
- (c) arrange for such Subsidiary to trade or cease to trade as the Receiver may in his discretion think fit;

13.2.11 *Employees*

appoint and discharge any manager, officer, agent, professional adviser, employee and any other person, upon such terms as he may in his discretion think fit;

13.2.12 *Receipts*

give valid receipts for all monies and execute all assurances and things which he may in his discretion think proper or desirable for realising the Charged Property;

13.2.13 *Environment*

conduct and complete all investigations, studies, sampling and testing and all remedial, removal and other actions, whether required under Environmental Legislation or by the Funder or otherwise and comply with all lawful orders and directives of all Authorities regarding Environmental Legislation; and

13.2.14 *General powers*

do all such other acts and things as the Receiver may in his discretion consider to be incidental or conducive to any of the matters or powers set out in this Mortgage or otherwise incidental or conducive to the preservation, improvement or realisation of the Charged Property.

13.3 ***Receiver as agent of the Company***

The Receiver is at all times and for all purposes the agent of the Company. Subject to the provisions of the Insolvency Act, the Company is solely responsible for all the Receiver's acts, defaults, neglect and misconduct of any nature whatsoever and for his remuneration and Costs, to the exclusion of liability on the part of the Funder.

13.4 ***No obligation***

The Receiver is not obliged to exercise any of the powers set out in this clause.

13.5 ***Several power***

Where more than one Receiver is appointed, each Receiver has the power to act severally unless the Funder specifies otherwise in the appointment of such Receiver.

13.6 ***Powers exercisable by the Funder***

13.6.1 The Funder may exercise all powers granted to the Receiver by this Mortgage, whether as attorney of the Company or otherwise.

13.6.2 The powers of the Receiver set out above are in addition to, and without prejudice to, all statutory and other powers of the Funder as provided in clause 12 (Statutory power of sale) or otherwise and so that, inter alia, such powers are and remain exercisable by the Funder in respect of that part of the Charged Property in respect of which no appointment of a Receiver by the Funder is from time to time subsisting.

13.7 ***Application of proceeds***

The provisions of Sections 99 to 109 inclusive of the LPA are varied and extended to the extent that all monies received by the Receiver be applied in the following order:

- 13.7.1 in full payment of his remuneration and the Costs of realisation including, without limitation, all Costs of, or incidental to, any exercise of any power referred to in this Mortgage, including, without limitation, all outgoings paid by the Receiver;
- 13.7.2 providing for the matters specified in paragraphs (i) to (iii) inclusive of Section 109 (8) of the LPA (Appointment, powers, remuneration and duties of receiver);
- 13.7.3 in or towards satisfaction of any debts or other imposts which are by statute made payable in preference to the Secured Liabilities to the extent to which such debts or imposts are made so payable;
- 13.7.4 if so required by the Funder in its discretion, in or towards satisfaction of the Secured Liabilities; and
- 13.7.5 to the person entitled to any surplus.

14. **Protection of third parties**

- 14.1 Any person (including, without limitation, any purchaser, mortgagor or mortgagee) (in this clause a "**purchaser**") dealing with the Funder may assume without inquiry that:
 - 14.1.1 some part of the Secured Liabilities has become due;
 - 14.1.2 a demand for such Secured Liabilities has been duly made; and
 - 14.1.3 such Secured Liabilities have become due within the meaning of Section 101 of the LPA (Powers incident to estate or interest in a mortgage).
- 14.2 No purchaser dealing with the Receiver or the Funder is to be concerned to enquire whether any power exercised or purported to be exercised by the Receiver or the Funder has become exercisable, or as to the propriety or regularity of any sale by, or other dealing with, the Receiver or the Funder. Any such sale or dealing is deemed to be within the powers conferred by this Mortgage and to be valid and effective accordingly. All the protection to purchasers contained in Section 104 (Conveyance on sale) and Section 107 (Mortgagee's receipt, discharges etc.) of the LPA and Section 42(3) of the Insolvency Act (Prohibition upon enquiry into administrative receiver's powers) apply to any purchaser.

15. No liability as mortgagee in possession

15.1 *Mortgagee's liability*

Neither the Funder nor the Receiver is:

15.1.1 liable to account as mortgagee in possession in respect of the Charged Property; or

15.1.2 liable for any loss upon realisation or exercise of any power, authority or right of the Funder or the Receiver arising under this Mortgage, or for any act, default, neglect, or misconduct of any nature whatsoever.

15.2 *Possession*

If the Funder or the Receiver enters into possession of the Charged Property, such person may at any time go out of possession at the discretion of such person.

16. Power of attorney

16.1 The Company irrevocably appoints, by way of security the Funder, each person deriving title from the Funder and the Receiver, jointly and severally to be its attorney (with full power to appoint substitutes and to sub-delegate) for it, in its name, on its behalf and as its act and deed or otherwise to sign or execute any deed or document or do any act or thing which the Company is, or may become, obliged to sign, execute or do pursuant to this Mortgage or which the Funder, the Receiver or any person deriving title from the Funder or the Receiver may in the discretion of such person think fit in connection with the exercise of any of the powers of such person or the realisation of any security constituted by this Mortgage.

16.2 Without prejudice to the generality of the foregoing, the Company unconditionally undertakes to the Funder, and separately to the Receiver and to each person deriving title from the Funder or the Receiver that it shall ratify and confirm anything done or purported to be done by any attorney appointed pursuant to this clause.

17. Cumulative and continuing security

17.1 This Mortgage is a continuing security to the Funder regardless of any intermediate payment or discharge of the whole or any part of the Secured Liabilities and will not be prejudiced or affected by any act, omission or circumstance which, but for this clause, might affect or diminish its effectiveness.

17.2 The security constituted by this Mortgage is in addition to, is not in substitution for, is without prejudice to, and does not merge with, any rights whatsoever which the Funder may have, whether in respect of the Secured Liabilities or otherwise, including, without limitation, any rights arising under any other Security Interest, any bill, note, guarantee, contract or applicable rule of law.

17.3 Any receipt, release or discharge of the security constituted by, or of any liability arising under, this Mortgage shall not release or discharge the Company from any liability which may exist independently of this Mortgage to the Funder.

- 17.4 Where the security constituted by this Mortgage initially takes effect as a collateral or further security to any other Security Interest held by the Funder then, notwithstanding any receipt, release or discharge given in respect of such other Security Interest, this Mortgage shall take effect as an independent security for any monies, liabilities or other sums secured by such other Security Interest.

18. Avoidance of payments

- 18.1 No assurance, security or payment which may be avoided under the law or subject to an order of the court made under any law relating to bankruptcy, insolvency, administration or winding-up, including, without limitation, the Insolvency Act, and no release, settlement or discharge given or made by the Funder on the faith of any such assurance, security or payment, prejudices or affects the right of the Funder:

18.1.1 to recover any monies from the Company (including, without limitation, any monies which it is compelled to refund under Chapter X (Malpractice before and during liquidation; penalisation of companies and company officers; investigations and prosecutions) of the Insolvency Act and any Costs payable by it incurred in connection with such process); or

18.1.2 to enforce the security constituted by this Mortgage to the full extent of the Secured Liabilities.

- 18.2 The Funder may at its discretion retain the security so created as security for the Secured Liabilities for a period of one month plus any statutory period within which any such assurance, security or payment can be avoided or invalidated notwithstanding any release, settlement, discharge or arrangement given or made by the Funder.

- 18.3 If at any time within the period referred to in clause 18.2 any person takes any step whatsoever relating to (i) the winding-up or administration of the Company; or (ii) any arrangement with the creditors of the Company, the Funder may retain the whole or any part of the security constituted by this Mortgage for such further period as the Funder may in its discretion think fit. Such security will be deemed to have been held and remained held by the Funder as security for the payment to the Funder of the Secured Liabilities.

19. Prior charges

- 19.1 If there subsists any prior Security Interest against the Charged Property and either, any step is taken to exercise any power or remedy conferred by such Security Interest or the Funder or the Receiver exercises any power of sale pursuant to this Mortgage, the Funder may redeem such prior Security Interest or procure the transfer of such Security Interest to itself and may settle and pass the accounts of the person entitled to such Security Interest. Any accounts so settled and passed are conclusive and binding on the Company.

- 19.2 The Company shall reimburse the Funder for any Costs incurred by the Funder in exercise of its rights under this clause.

20. Opening a new account

- 20.1 If the Funder receives notice of any subsequent Security Interest affecting the Charged Property, the Funder may open a new account for the Company in its books.
- 20.2 If the Funder does not open such new account, then, unless the Funder gives express written notice to the contrary to the Company, all payments by or on behalf of the Company to the Funder will be treated as from the time of receipt of notice of such subsequent Security Interest by the Funder as having been credited to a new account of the Company and not as having been applied in reduction of the amount of the Secured Liabilities as at the time when the notice was received.

21. Suspense account

The Funder may, in its discretion credit to any suspense or impersonal account and hold in such account, on such terms as the Funder may in its discretion think fit, all monies received, recovered or realised by the Funder pursuant to this Mortgage (including, without limitation, the proceeds of any conversion of currency) pending the application from time to time (as the Funder may effect in its discretion) of such monies and accrued interest, if any, in or towards satisfaction of the Secured Liabilities.

22. Payments and withholding taxes

The Company shall pay and discharge the Secured Liabilities without any set-off, counterclaim, restriction or condition, without regard to any equities between the Company and the Funder and free and clear of, and without deduction or withholding for, or on account of, any Taxes, except to the extent that the Company is required by law to deduct or withhold any Taxes on any amounts payable under this Mortgage, in which case it shall pay to the Funder such additional amount as may be necessary in order to ensure that the net amount received by the Funder after the required deduction or withholding (including, without limitation, any required deduction or withholding on such additional amount) be equal to the amount that the Funder would have received had no such deduction or withholding been made. Any additional amount paid under this clause shall be treated as agreed compensation and not as interest.

23. Currency

- 23.1 All monies received or held by the Funder or any Receiver in respect of the Secured Liabilities may, from time to time after demand has been made, be converted into such other currency as the Funder in its absolute discretion considers necessary or desirable to cover the obligations and liabilities actual or contingent of the Company in that other currency at the Exchange Rate for purchasing that other currency with the existing currency.
- 23.2 If and to the extent that the Company fails to pay the amount due on demand the Funder may in its absolute discretion without notice to the Company purchase at any time thereafter so much of any currency as the Funder considers necessary or desirable to cover the obligations and liabilities of the Company in such currency

hereby secured at the Exchange Rate for purchasing such currency with sterling and the Company hereby agrees to indemnify the Funder against the full sterling cost incurred by the Funder for such purchase.

23.3 Neither the Funder nor any Receiver shall be liable to the Company for any loss resulting from any fluctuation in exchange rates before or after the exercise of the foregoing powers.

23.4 No payment to the Funder (whether under any judgment or court order or otherwise) shall discharge the obligation or liability of the Company in respect of which it was made unless and until the Funder shall have received payment in full in the currency in which such obligation or liability was incurred and to the extent that the amount of any such payment shall, on actual conversion into such currency, fall short of such obligation or liability actual or contingent expressed in that currency the Funder shall have a further separate cause of action against the Company, shall be entitled to enforce the security constituted by this Mortgage to recover the amount of the shortfall and such amount will bear interest in accordance with clause 3 (Interest) from the date of payment by the Funder until the date of reimbursement.

24. **Set-off**

The Company agrees the Funder may at any time without notice or further demand notwithstanding any settlement of account or other matter whatsoever, combine or consolidate all or any of its then existing accounts wherever situate including any accounts in the name of the Funder or of the Company jointly with others (whether current, deposit, loan or of any other nature whatsoever whether subject to notice or not and whether in sterling or in any other currency) and set-off or transfer any sum standing to the credit of any one or more such accounts in or towards satisfaction of the Secured Liabilities. Where such combination, set-off or transfer requires the conversion of one currency into another, such conversion shall be calculated at the Exchange Rate for purchasing the currency for which the Company is liable, with the existing currency.

25. **Assignment**

25.1 The Funder may assign, transfer, novate or dispose of any of, or any interest in, its rights and obligations under this Mortgage, without regard to any equities between the Company and the Funder and without the consent of the Company.

25.2 The Funder may disclose to any person with whom it is proposing to enter into (or has entered into) any kind of assignment, transfer, novation or disposal in relation to this Mortgage any information concerning the Company and its Subsidiaries (if any) as the Funder may in its discretion think fit.

25.3 The Company may not assign, transfer, novate or dispose of any of, or any interest in, its rights and obligations under this Mortgage.

26. **Waivers**

No failure or delay or other relaxation or indulgence on the part of the Funder to exercise any power, right or remedy shall operate as a waiver thereof or shall any single or partial exercise or waiver of any power, right or remedy preclude its further exercise or the exercise of any other power, right or remedy.

27. **Severability**

Each of the provisions of this Mortgage is distinct and severable from the others and if at any time one or more of such provisions is or becomes illegal, invalid or unenforceable the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

28. **Joint and several liability**

If this Mortgage is signed on behalf of the Company by more than one person for itself and on behalf of other persons (whether such person is signing on behalf of a partnership or otherwise) the expression "**Company**" shall include all such persons and the liability of the Company under this Mortgage shall be the joint and several liability of all such persons and any demand for payment by the Funder on any one or more of such persons so jointly and severally liable shall be deemed to be a demand made to all such persons.

29. **Third party rights**

Unless expressly provided in this Mortgage, no term of this Mortgage is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

30. **Land Registry**

The Company hereby applies to the Chief Land Registrar to enter a restriction in the Proprietorship Registers of the registered titles (if any) of the Scheduled Property or, in the case of the first registration of the whole or any part of the Scheduled Property, against the Scheduled Property, or both, of a restriction in the following form:

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the Charge dated [] in favour of AFP Assets Limited referred to in the Charges Register".

31. Notices

31.1 Each party may give any notice, demand or other communication under or in connection with this Mortgage by letter, facsimile or comparable means of communication addressed to the other party at the address identified with its name below. Any such communication will be deemed to be given as follows:

31.1.1 if personally delivered, at the time of delivery;

31.1.2 if by letter, at noon on the Business Day following the day such letter was posted (or in the case of airmail, seven days after the envelope containing the same was delivered into the custody of the postal authorities); and

31.1.3 if by facsimile transmission or comparable means of communication during the business hours of the addressee then on the day of transmission, otherwise on the next following Business Day.

31.2 In proving such service it shall be sufficient to prove that personal delivery was made or that such letter was properly stamped first class, addressed and delivered to the postal authorities or in the case of facsimile transmission or other comparable means of communication, that a confirming hard copy was provided promptly after transmission.

32. Law and jurisdiction

32.1 This Mortgage shall be governed by and construed in accordance with English law.

32.2 The Company agrees that any legal action or proceedings arising out of or in connection with this Mortgage against the Company or any of its assets may be brought in the High Court of Justice in England, irrevocably and unconditionally submits to the jurisdiction of such Court and irrevocably designates, appoints and empowers the person whose name and address appears in Schedule 3 (Agent for service) to receive for it and on its behalf, service of process issued out of such Court in any such legal action or proceedings. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Funder to take proceedings against the Company in whatsoever jurisdictions it thinks fit, nor shall the taking of proceedings in any one or more jurisdiction preclude the taking of proceedings in any other jurisdiction, whether concurrently or not. The Company waives objection to such Court on the grounds of inconvenient forum or otherwise as regards proceedings in connection with this Mortgage and agrees that the judgment or order of such Court in connection with this Mortgage is conclusive and binding on it and may be enforced against it in the courts of any other jurisdiction.

In witness whereof this Mortgage has been executed and delivered as a deed on the date written at the beginning of this Mortgage.

Schedule 1

The Company

Company name	Company number	Registered office
SMS Farming Limited	08514575	Field Farm, Netherton Road, Appleton, Oxon, OX13 5QW

Schedule 2

The Scheduled Property

Short Description of Property	Title Number (if any)
Ashen Copse, Longworth, Abingdon (OX13 5HF)	BK11750

Schedule 3

Agent for service

Name

Address

There is no agent

Note: If the Company is incorporated in England or is registered under Part XXIII of the Companies Act 1985 as an overseas company this Schedule need not be completed.

Executed and Delivered as a Deed
for and on behalf of
SMS Farming Limited
acting by a Director
In the presence of:

) G Morgan
)
) Gareth Morgan

Witness Details:

Signature



Name THOMAS BEES

Address 53 King Street, Manchester, M2 4LQ

Occupation Solicitor

Notice Details:

Address: Field Farm, Netherton Road,
Appleton, Oxon, OX13 5QW

Fax No: None

Telephone No: 01865 864211

Attention: Mr N Morgan

Executed and Delivered as a Deed)
for and on behalf of)
AFP Assets Limited)
acting by a Director)
In the presence of)

Witness Details:

Signature

Name

Address

Occupation

Notice Details:

Address: Denmark House, St Thomas Place,
Ely, Cambridgeshire, CB7 4EX

Fax No: 01223 967 743

Telephone No: 01223 967777

Attention: Finance

Finance@afp.uk.com