



**Registration of a Charge**

Company Name: **GARBO HOLDINGS LIMITED**

Company Number: **10697139**



Received for filing in Electronic Format on the: **31/05/2022**

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**Details of Charge**

Date of creation: **18/05/2022**

Charge code: **1069 7139 0001**

Persons entitled: **SWINDON AND WILTSHIRE LOCAL ENTERPRISE PARTNERSHIP LIMITED  
(11766448)**

Brief description: **ALL THAT FREEHOLD LAND AND BUILDINGS KNOWN AS WINDMILL  
FARM, DINTON ROAD, WYLYE, WARMINSTER, BA12 0RD AND  
REGISTERED AT HM LAND REGISTRY WITH TITLE NUMBER WT271248**

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

Certified by: **BENN RICHARDS, PARTNER AND A SOLICITOR**



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

Company number: 10697139

Charge code: 1069 7139 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 18th May 2022 and created by GARBO HOLDINGS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 31st May 2022 .

Given at Companies House, Cardiff on 6th June 2022

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



**Companies House**



**THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES**

DATED 18 May 2022

- (1) SWINDON AND WILTSHIRE LOCAL ENTERPRISE  
PARTNERSHIP LIMITED
- (2) GARBO HOLDINGS LIMITED

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**LEGAL CHARGE**

relating to

Freehold land known as Windmill Farm, Dinton Road, Wylfe, Warminster, BA12 0RD

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Michelmores 

Woodwater House  
Pynes Hill  
Exeter EX2 5WR  
DX 135608 EXETER 16  
Tel: 01392 688688  
Fax: 01392 360563

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THIS DEED is dated 18 May 2022

## **PARTIES**

- (1) **SWINDON AND WILTSHIRE LOCAL ENTERPRISE PARTNERSHIP LIMITED** a company incorporated and registered in England and Wales with company number 11766448 whose registered office is at Digital Mansion, Corsham, Pickwick Road, Corsham, Wiltshire, England, SN13 9BL (**Accountable Body**).
- (2) **GARBO HOLDINGS LIMITED** a company incorporated and registered in England and Wales with company number 10697139 whose registered office is at C/O George Arthur Ltd Suite 6b, Wentworth Lodge, Great North Road, Welwyn Garden City, Hertfordshire, England, AL8 7SR (**Guarantor**)

## **BACKGROUND**

- (A) The Accountable Body has agreed, under the Funding Agreement, to provide the Borrower with loan facilities on a secured basis.
- (B) The Guarantor owns the Property.
- (C) This deed provides security which the Guarantor has agreed to give to the Accountable Body for the loan facility made or to be made available to the Borrower under the Funding Agreement.

## **AGREED TERMS**

### **1 DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

The following definitions apply in this deed:

**Borrower:** Wylve Distillery Limited (company number 13265079) whose registered office is at C/O George Arthur Ltd Suite 6b, Wentworth Lodge, Great North Road, Welwyn Garden City, Hertfordshire, England, AL8 7SR.

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

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

**Delegate:** any person appointed by the Accountable Body or any Receiver under clause 15 and any person appointed as attorney of the Accountable Body, Receiver or Delegate.

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

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

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

**Event of Default:** has the meaning given to that expression in the Funding Agreement.

**Funding Agreement:** the Funding Agreement dated on or around the date of this deed between the Borrower and the Accountable Body for the provision of the loan facility secured by this deed.

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

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

**Property:** the freehold property owned by Garbo Holdings Limited described in Schedule 1.

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

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

**Secured Liabilities:** all present and future monies, obligations and liabilities of the Borrower to the Accountable Body, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity (including, without limitation, those arising under clause 27.3.2) together with all interest (including, without limitation, default interest) accruing in respect of those monies, obligations or liabilities.

**Security:** any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect.

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

**Valuation:** any valuation relating to the Property supplied to the Accountable Body by the Guarantor (or on its behalf).

**VAT:** value added tax.

## 1.2 Interpretation

In this deed:

- 1.2.1 clause and Schedule headings shall not affect the interpretation of this deed;
- 1.2.2 a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality);
- 1.2.3 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- 1.2.4 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- 1.2.5 a reference to a party shall include that party's successors, permitted assigns and permitted transferees and this deed shall be binding on, and enure to the benefit of, the parties to this deed and their respective personal representatives, successors, permitted assigns and permitted transferees;
- 1.2.6 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- 1.2.7 a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 1.2.8 a reference to **writing** or **written** includes fax but not email;
- 1.2.9 an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- 1.2.10 a reference to **this deed** (or any provision of it) or to any other agreement or document referred to in this deed is a reference to this deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this deed) from time to time;
- 1.2.11 unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this deed and a reference to a paragraph is to a paragraph of the relevant Schedule;
- 1.2.12 any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 1.2.13 a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and **amended** shall be construed accordingly);
- 1.2.14 a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;

- 1.2.15 a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- 1.2.16 a reference to **continuing** in relation to an Event of Default means an Event of Default that has not been remedied or waived;
- 1.2.17 a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it; and
- 1.2.18 a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

### 1.3 **Clawback**

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

### 1.4 **Nature of security over real property**

A reference in this deed to a **charge or mortgage of or over the Property** includes:

- 1.4.1 all buildings and fixtures and fittings (including trade and Landlord's fixtures and fittings where the landlord is the Guarantor) and fixed plant and machinery that are situated on or form part of the Property at any time;
- 1.4.2 the proceeds of the sale of any part of the Property and any other monies paid or payable in respect of or in connection with the Property;
- 1.4.3 the benefit of any covenants for title given, or entered into, by any predecessor in title of the Guarantor in respect of the Property and any monies paid or payable in respect of those covenants; and
- 1.4.4 all rights under any licence, agreement for sale or agreement for lease in respect of the Property.

### 1.5 **Law of Property (Miscellaneous Provisions) Act 1989**

For the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the Funding Agreement and of any side letters between any parties in relation to the Funding Agreement are incorporated into this deed.

### 1.6 **Schedules**

The Schedules form part of this deed and shall have effect as if set out in full in the body of this deed. Any reference to this deed includes the Schedules.

## **2 COVENANT TO PAY**

The Guarantor shall, on demand, pay to the Accountable Body and discharge the Secured Liabilities when they become due.

## **3 GRANT OF SECURITY**

### **3.1 Legal mortgage and fixed charges**

As a continuing security for the payment and discharge of the Secured Liabilities, the Guarantor with full title guarantee charges to the Accountable Body:

3.1.1 by way of first legal mortgage, the Property; and

3.1.2 by way of first fixed charge:

3.1.2.1 all its rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premiums in connection with each Insurance Policy, the Rent and the benefit of any guarantee or security in respect of the Rent to the extent not effectively assigned under clause 3.2;

3.1.2.2 the benefit of all other contracts, guarantees, appointments and warranties relating to the Charged Property and other documents to which the Guarantor is a party or which are in its favour or of which it has the benefit relating to any letting, development, sale, purchase, use or the operation of the Charged Property or otherwise relating to the Charged Property (including, in each case, but without limitation, the right to demand and receive all monies whatever payable to or for its benefit under or arising from any of them, all remedies provided for in any of them or available at law or in equity in relation to any of them, the right to compel performance of any of them and all other rights, interests and benefits whatever accruing to or for its benefit arising from any of them); and

3.1.2.3 all authorisations (statutory or otherwise) held or required in connection with the Guarantor's business carried on at the Property or the use of any Charged Property, and all rights in connection with them; and

3.1.2.4 all monies from time to time standing to the credit of the Rent Account.

### **3.2 Assignment**

As a continuing security for the payment and discharge of the Secured Liabilities, the Guarantor with full title guarantee assigns to the Accountable Body absolutely, subject to a proviso for reassignment on irrevocable discharge in full of the Secured Liabilities:

3.2.1 all its rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premiums in connection with each Insurance Policy; and

3.2.2 the Rent and the benefit of any guarantee or security in respect of the Rent provided that nothing in this clause 3.2 shall constitute the Accountable Body as mortgagee in possession.

#### **4 PERFECTION OF SECURITY**

##### **4.1 Registration of legal mortgage at the Land Registry**

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

"No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the proprietor for the time being of the charge dated \_\_\_\_\_ in favour of Swindon And Wiltshire Local Enterprise Partnership Limited referred to in the charges register or their conveyancer."

##### **4.2 Further advances**

The Accountable Body covenants with the Guarantor that it shall perform its obligations to make advances under the Funding Agreement (including any obligation to make available further advances).

##### **4.3 First registration**

If the title to the Property is not registered at the Land Registry, the Guarantor shall ensure that no person (other than itself) shall be registered under the Land Registration Act 2002 as the proprietor of all or any part of the Property, without the prior written consent of the Accountable Body.

##### **4.4 Cautions against first registration and notices**

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

#### **5 LIABILITY OF THE GUARANTOR**

##### **5.1 Liability not discharged**

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

- 5.1.1 any security, guarantee, indemnity, remedy or other right held by, or available to, the Accountable Body that is, or becomes, wholly or partially illegal, void or unenforceable on any ground;

5.1.2 the Accountable Body renewing, determining, varying or increasing any Funding or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or

5.1.3 any other act or omission that, but for this clause 5.1, might have discharged, or otherwise prejudiced or affected, the liability of the Guarantor.

**5.2 Immediate recourse**

The Guarantor waives any right it may have to require the Accountable Body to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this deed against the Guarantor.

**6 REPRESENTATIONS AND WARRANTIES**

**6.1 Times for making representations and warranties**

The Guarantor makes the representations and warranties set out in this clause 6 to the Accountable Body on the date of this deed.

**6.2 Ownership of Charged Property**

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

**6.3 No Security**

The Charged Property is free from any Security other than the Security created by this deed.

**6.4 No adverse claims**

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

**6.5 No adverse covenants**

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

**6.6 No breach of laws**

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

**6.7 No interference in enjoyment**

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

**6.8 No overriding interests**

Nothing has arisen, has been created or is subsisting that would be an overriding

interest in the Property.

**6.9 No prohibitions or breaches**

There is no prohibition on the Guarantor assigning its rights in any of the Charged Property referred to in clause 3.2 and the entry into of this deed by the Guarantor does not and will not constitute a breach of any policy, agreement, document, instrument or obligation binding on the Guarantor or its assets.

**6.10 Environmental compliance**

The Guarantor has, at all times, complied in all material respects with all applicable Environmental Law and Environmental Licences.

**6.11 Information for Valuations and Certificates of Title**

6.11.1 All written information supplied by the Guarantor or on its behalf for the purpose of each Valuation and Certificate of Title was true and accurate in all material respects at its date or at the date (if any) on which it was stated to be given.

6.11.2 The information referred to in clause 6.11.1 was, at its date or at the date (if any) on which it was stated to be given, complete and the Guarantor did not omit to supply any information that, if disclosed, would adversely affect the Valuation or Certificate of Title.

6.11.3 In the case of the first Valuation and Certificate of Title only, nothing has occurred since the date the information referred to in clause 6.11.1 was supplied and the date of this deed which would adversely affect such Valuation or Certificate of Title.

**6.12 Avoidance of security**

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

**6.13 Enforceable security**

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

**7 GENERAL COVENANTS**

**7.1 Negative pledge and disposal restrictions**

The Guarantor shall not at any time, except with the prior written consent of the Accountable Body:

7.1.1 create, purport to create or permit to subsist any Security on, or in relation to, any Charged Property other than any Security created by this deed;

7.1.2 sell, assign, transfer, part with possession of or otherwise dispose of in any manner (or purport to do so) all or any part of, or any interest in, the Charged Property; or

7.1.3 create or grant (or purport to create or grant) any interest in the Charged Property in favour of a third party.

Save in respect of occupational leases of part or parts of the Charged Property where such consent shall not be unreasonably withheld or delayed.

## **7.2 Preservation of Charged Property**

The Guarantor shall not do, or permit to be done, any act or thing that would or might depreciate, jeopardise or otherwise prejudice the security held by the Accountable Body or materially diminish the value of any of the Charged Property or the effectiveness of the security created by this deed.

## **7.3 Compliance with laws and regulations**

7.3.1 The Guarantor shall not, without the Accountable Body's prior written consent, use or permit the Charged Property to be used in any way contrary to law.

7.3.2 The Guarantor shall:

7.3.2.1 comply with the requirements of any law or regulation relating to or affecting the Charged Property or the use of it or any part of it;

7.3.2.2 obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Charged Property or its use or that are necessary to preserve, maintain or renew any Charged Property; and

7.3.2.3 promptly effect any maintenance, modifications, alterations or repairs to be effected on or in connection with the Charged Property that are required to be made by it under any law or regulation.

## **7.4 Enforcement of rights**

The Guarantor shall use its best endeavours to:

7.4.1 procure the prompt observance and performance by the relevant counterparty to any agreement or arrangement with the Guarantor and forming part of the Charged Property of the covenants and other obligations imposed on such counterparty; and

7.4.2 enforce any rights and institute, continue or defend any proceedings relating to any of the Charged Property that the Accountable Body may require from time to time.

## **7.5 Notice of misrepresentations and breaches**

The Guarantor shall, promptly on becoming aware of any of the same, give the Accountable Body notice in writing of:

- 7.5.1 any representation or warranty set out in this deed that is incorrect or misleading in any material respect when made or deemed to be repeated; and
- 7.5.2 any breach of any covenant set out in this deed.

## **7.6 Title documents**

The Guarantor shall, on the execution of this deed, deposit with the Accountable Body and the Accountable Body shall, for the duration of this deed, be entitled to hold:

- 7.6.1 all deeds and documents of title relating to the Charged Property that are in the possession or control of the Guarantor (and if these are not within the possession and/or control of the Guarantor, the Guarantor undertakes to obtain possession of all these deeds and documents of title); and
- 7.6.2 each Insurance Policy.

## **7.7 Guarantor's waiver of set-off**

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

# **8 PROPERTY COVENANTS**

## **8.1 Repair and maintenance**

- 8.1.1 The Guarantor shall keep all premises, and fixtures and fittings on the Property, in:
  - 8.1.1.1 good and substantial repair and condition and shall keep all premises adequately and properly painted and decorated and replace any fixtures and fittings which have become worn out or otherwise unfit for use with others of a like nature and equal value; and save for the "Works" referred to in the Funding Agreement
  - 8.1.1.2 such repair and condition as to enable the Property to be let in accordance with all applicable laws and regulations.
- 8.1.2 For the purpose of clause 8.1.1.2, a law or regulation is applicable if it is either in force or it is expected to come into force and a prudent property owner in the same business as the Guarantor would ensure that the premises, and fixtures and fittings on the Property, were in such repair and condition in anticipation of that law or regulation coming into force.

## **8.2 No alterations**

8.2.1 The Guarantor shall not, without the prior written consent of the Accountable Body and other than as anticipated by the Funding Agreement:

8.2.1.1 pull down or remove the whole or any part of any building forming part of the Property nor permit the same to occur; or

8.2.1.2 make or permit to be made any material alterations to the Property or sever or remove or permit to be severed or removed any of its fixtures or fittings (except to make any necessary repairs or renew or replace the same in accordance with clause 8.1).

8.2.2 The Guarantor shall promptly give notice to the Accountable Body if the premises or fixtures or fittings forming part of the Property are destroyed or damaged.

## **8.3 Development restrictions**

The Guarantor shall not, without the prior written consent of the Accountable Body and other than as anticipated by the Funding Agreement:

8.3.1 make or, in so far as it is able, permit others to make any application for planning permission or development consent in respect of the Property; or

8.3.2 carry out or permit or suffer to be carried out on the Property any development (as defined in each of the Town and Country Planning Act 1990 and the Planning Act 2008) or change or permit or suffer to be changed the use of the Property.

## **8.4 Insurance**

8.4.1 The Guarantor shall insure and keep insured the Charged Property against:

8.4.1.1 loss or damage by fire or terrorist acts;

8.4.1.2 other risks, perils and contingencies that would be insured against by reasonably prudent persons carrying on the same class of business as the Guarantor; and

8.4.1.3 any other risk, perils and contingencies as the Accountable Body may reasonably require.

8.4.2 Any such insurance must be with an insurance company or underwriters and on such terms as are reasonably acceptable to the Accountable Body and must be for not less than the replacement value of the relevant Charged Property (meaning in the case of any premises on the Property, the total cost of entirely rebuilding, reinstating or replacing the premises in the event of their being destroyed, together with architects', surveyors', engineers' and other professional fees and charges for demolition and reinstatement) and loss of rents payable by the tenants or other occupiers

of the Property for a period of at least three years.

8.4.3 The Guarantor shall, if requested by the Accountable Body, produce to the Accountable Body each policy, certificate or cover note relating to any insurance required by clause 8.4.1.

8.4.4 The Guarantor shall, if requested by the Accountable Body, procure that a note of the Accountable Body's interest is endorsed upon each Insurance Policy maintained by it or any person on its behalf in accordance with clause 8.4.1 and the Accountable Body is named as first loss payee and that the terms of each such Insurance Policy require the insurer not to invalidate the policy as against the Accountable Body by reason of the act or default of any other joint or named insured and not to cancel it without giving at least 30 days' prior written notice to the Accountable Body.

## **8.5 Insurance premiums**

The Guarantor shall:

8.5.1 promptly pay all premiums in respect of each Insurance Policy and do all other things necessary to keep that policy in full force and effect; and

8.5.2 (if the Accountable Body so requires) give to the Accountable Body copies of the receipts for all premiums and other payments necessary for effecting and keeping up each Insurance Policy.

## **8.6 No invalidation of insurance**

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

## **8.7 Proceeds from Insurance Policies**

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

8.7.1 be paid immediately into the Rent Account;

8.7.2 if they are not paid into the Rent Account, be held, pending such payment, by the Guarantor as trustee of the same for the benefit of the Accountable Body; and

8.7.3 at the option of the Accountable Body, be applied in making good or recouping expenditure in respect of the loss or damage for which those monies are received or in, or towards, discharge or reduction of the Secured Liabilities

## **8.8 Leases and licences affecting the Property**

The Guarantor shall not, without the prior written consent of the Accountable Body (which consent, in the case of clause 8.8.4, is not to be unreasonably withheld or delayed in circumstances in which the Guarantor may not unreasonably withhold or delay its consent):

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

#### **8.9 No restrictive obligations**

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

#### **8.10 Proprietary rights**

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

#### **8.11 Compliance with and enforcement of covenants**

The Guarantor shall:

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

#### **8.12 Notices or claims relating to the Property**

8.12.1 The Guarantor shall:

- 8.12.1.1 give full particulars to the Accountable Body of any notice, order, direction, designation, resolution, application, requirement or proposal given or made by any public or local body or authority (a **Notice**) that specifically applies to the

Property, or to the locality in which it is situated, within seven days after becoming aware of the relevant Notice; and

8.12.1.2 (if the Accountable Body so requires) immediately, and at the cost of the Guarantor, take all reasonable and necessary steps to comply with any Notice, and make, or join with the Accountable Body in making, any objections or representations in respect of that Notice that the Accountable Body thinks fit.

8.12.2 The Guarantor shall give full particulars to the Accountable Body of any claim, notice or other communication served on it in respect of any modification, suspension or revocation of any Environmental Licence or any alleged breach of any Environmental Law, in each case relating to the Property.

#### **8.13 Payment of outgoings**

The Guarantor shall pay (or procure payment of the same) when due all charges, rates, taxes, duties, assessments and other outgoings relating to or imposed upon the Property or on its occupier.

#### **8.14 Rent reviews**

The Guarantor shall, if the Property is subject to occupational leases or licences, implement any upwards rent review provisions and shall not, without the prior written consent of the Accountable Body, agree to any change in rent to less than the open market rental value of the relevant part of the Property.

#### **8.15 Environment**

The Guarantor shall in respect of the Property:

8.15.1 comply in all material respects with all the requirements of Environmental Law; and

8.15.2 obtain and comply in all material respects with all Environmental Licences.

#### **8.16 Conduct of business on Property**

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

#### **8.17 Inspection**

The Guarantor shall permit the Accountable Body and any Receiver and any person appointed by either of them to enter on and inspect the Property on reasonable prior notice.

#### **8.18 VAT option to tax**

The Guarantor shall not, without the prior written consent of the Accountable Body:

8.18.1 exercise any VAT option to tax in relation to the Property; or

- 8.18.2 revoke any VAT option to tax exercised, and disclosed to the Accountable Body in writing, before the date of this deed.

## **9 RENT COVENANTS**

### **9.1 Collection of and dealings with Rent**

- 9.1.1 The Guarantor shall not deal with the Rent except by getting it in and realising it in the ordinary and usual course of its business and shall, immediately on receipt, pay all Rent into the Rent Account or into such other account as the Accountable Body may direct from time to time. The Guarantor shall, pending that payment in to the Rent Account or other account, hold all Rent upon trust for the Accountable Body.
- 9.1.2 The Guarantor agrees with the Accountable Body that any monies received by the Accountable Body under clause 9.1.1 shall not constitute the Accountable Body as mortgagee in possession of the Property.
- 9.1.3 The Guarantor agrees with the Accountable Body that it shall not be entitled to receive, utilise, transfer or withdraw any credit balance from time to time on the Rent Account except with the prior written consent of the Accountable Body.

### **9.2 Notice of assignment of Rent**

The Guarantor shall, promptly following the occurrence of an Event of Default, give notice to the relevant tenant, guarantor or surety of the assignment under clause 3.2.2 of the Guarantor's rights and interest to the Rent and each guarantee or security in respect of the Rent and procure that each addressee of such notice promptly provides an acknowledgement of that notice to the Accountable Body.

## **10 POWERS OF THE ACCOUNTABLE BODY**

### **10.1 Power to remedy**

- 10.1.1 The Accountable Body shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Guarantor of any of its obligations contained in this deed.
- 10.1.2 The Guarantor irrevocably authorises the Accountable Body and its agents to do all things that are necessary or desirable for that purpose.
- 10.1.3 Any monies expended by the Accountable Body in remedying a breach by the Guarantor of its obligations contained in this deed shall be reimbursed by the Guarantor to the Accountable Body on a full indemnity basis and shall carry interest in accordance with clause 17.1.
- 10.1.4 In remedying any breach in accordance with this clause 10.1, the Accountable Body, its agents and their respective officers, agents and employees shall be entitled to enter onto the Property and to take any action as the Accountable Body may reasonably consider necessary or desirable including, without limitation, carrying out any repairs, other works or development.

## **10.2 Exercise of rights**

The rights of the Accountable Body under clause 10.1 are without prejudice to any other rights of the Accountable Body under this deed. The exercise of any rights of the Accountable Body under this deed shall not make the Accountable Body liable to account as a mortgagee in possession.

## **10.3 Accountable Body has Receiver's powers**

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

## **10.4 Conversion of currency**

10.4.1 For the purpose of, or pending, the discharge of any of the Secured Liabilities, the Accountable Body may convert any monies received, recovered or realised by it under this deed (including the proceeds of any previous conversion under this clause 10.4) from their existing currencies of denomination into any other currencies of denomination that the Accountable Body may think fit.

10.4.2 Any such conversion shall be effected at the prevailing spot selling rate of exchange for such other currency against the existing currency.

10.4.3 Each reference in this clause 10.4 to a currency extends to funds of that currency and, for the avoidance of doubt, funds of one currency may be converted into different funds of the same currency.

## **10.5 New accounts**

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

10.5.2 If the Accountable Body does not open a new account immediately on receipt of the notice, or deemed notice, referred to in clause 10.5.1, then, unless the Accountable Body gives express written notice to the contrary to the Guarantor, all payments made by the Guarantor to the Accountable Body shall be treated as having been credited to a new account of the Guarantor and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt or deemed receipt of the relevant notice by the Accountable Body.

## **10.6 Accountable Body's set-off rights**

If the Accountable Body has more than one account for the Guarantor in its books, the Accountable Body may at any time after:

10.6.1 the security constituted by this deed has become enforceable; or

10.6.2 the Accountable Body has received, or is deemed to have received, notice of any subsequent Security or other interest affecting all or any part of the Charged Property,

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

## **10.7 Indulgence**

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

## **11 WHEN SECURITY BECOMES ENFORCEABLE**

### **11.1 Security becomes enforceable on Event of Default**

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

### **11.2 Discretion**

After the security constituted by this deed has become enforceable, the Accountable Body may, in its absolute discretion, enforce all or any part of that security at the times, in the manner and on the terms it thinks fit, and take possession of and hold or dispose of all or any part of the Charged Property.

## **12 ENFORCEMENT OF SECURITY**

### **12.1 Enforcement powers**

12.1.1 The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this deed) shall, as between the Accountable Body and a purchaser from the Accountable Body, arise on and be exercisable at any time after the execution of this deed, but the Accountable Body shall not exercise such power of sale or other powers until the security constituted by this deed has become enforceable under clause 11.1.

12.1.2 Section 103 of the LPA 1925 does not apply to the security constituted by this deed.

### **12.2 Extension of statutory powers of leasing**

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

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

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

### **12.3 Prior Security**

- 12.3.1 At any time after the security constituted by this deed has become enforceable, or after any powers conferred by any Security having priority to this deed shall have become exercisable, the Accountable Body may:
  - 12.3.1.1 redeem that or any other prior Security;
  - 12.3.1.2 procure the transfer of that Security to itself; and
  - 12.3.1.3 settle any account of the holder of any prior Security.
- 12.3.2 The settlement of any such account shall be, in the absence of any manifest error, conclusive and binding on the Guarantor. All monies paid by the Accountable Body to an encumbrancer in settlement of such an account shall be, as from its payment by the Accountable Body, due from the Guarantor to the Accountable Body on current account and shall bear interest at the default rate of interest specified in the Funding Agreement and be secured as part of the Secured Liabilities.

### **12.4 Protection of third parties**

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

- 12.4.1 whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;
- 12.4.2 whether any power the Accountable Body, a Receiver or Delegate is purporting to exercise has become exercisable or is properly exercisable; or
- 12.4.3 how any money paid to the Accountable Body, any Receiver or any Delegate is to be applied.

### **12.5 Privileges**

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

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

Neither the Accountable Body, any Receiver nor any Delegate shall be liable to account as mortgagee in possession in respect of all or any of the Charged Property, nor shall any of them be liable for any loss on realisation of, or for any neglect or default of any nature in connection with, all or any of the Charged Property for which a mortgagee in possession might be liable as such.

#### **12.7 Relinquishing possession**

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

#### **12.8 Conclusive discharge to purchasers**

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

### **13 RECEIVERS**

#### **13.1 Appointment**

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

#### **13.2 Removal**

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

#### **13.3 Remuneration**

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

#### **13.4 Power of appointment additional to statutory powers**

The power to appoint a Receiver conferred by this deed shall be in addition to all statutory and other powers of the Accountable Body under the Insolvency Act 1986, the LPA 1925 or otherwise, and shall be exercisable without the restrictions contained in sections 103 and 109 of the LPA 1925 or otherwise.

#### **13.5 Power of appointment exercisable despite prior appointments**

The power to appoint a Receiver (whether conferred by this deed or by statute) shall be, and remain, exercisable by the Accountable Body despite any prior appointment

in respect of all or any part of the Charged Property.

### **13.6 Agent of the Guarantor**

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

## **14 POWERS OF RECEIVER**

### **14.1 Powers additional to statutory powers**

14.1.1 Any Receiver appointed by the Accountable Body under this deed shall, in addition to the powers conferred on him by statute, have the powers set out in clause 14.2 to clause 14.20.

14.1.2 If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him states otherwise) exercise all of the powers conferred on a Receiver under this deed individually and to the exclusion of any other Receiver.

14.1.3 Any exercise by a Receiver of any of the powers given by clause 14 may be on behalf of the Guarantor, the directors of the Guarantor or himself.

### **14.2 Repair and develop the Property**

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

### **14.3 Grant or accept surrenders of leases**

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

### **14.4 Employ personnel and advisers**

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

### **14.5 Make and revoke VAT options to tax**

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

### **14.6 Charge for remuneration**

A Receiver may charge and receive any sum by way of remuneration (in addition to all costs, charges and expenses incurred by him) that the Accountable Body may

prescribe or agree with him.

**14.7 Realise Charged Property**

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

**14.8 Manage or reconstruct the Guarantor's business**

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

**14.9 Dispose of Charged Property**

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

**14.10 Sever fixtures and fittings**

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

**14.11 Give valid receipts**

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

**14.12 Make settlements**

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

**14.13 Bring proceedings**

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

**14.14 Insure**

A Receiver may, if he thinks fit, but without prejudice to the indemnity in clause 17.2, effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the Guarantor under this deed.

**14.15 Powers under LPA 1925**

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

#### **14.16 Borrow**

A Receiver may, for any of the purposes authorised by this clause 14, raise money by borrowing from the Accountable Body (or from any other person) either unsecured or on the security of all or any of the Charged Property in respect of which he is appointed on any terms that he thinks fit (including, if the Accountable Body consents, terms under which that Security ranks in priority to this deed).

#### **14.17 Redeem prior Security**

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

#### **14.18 Delegation**

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

#### **14.19 Absolute beneficial owner**

A Receiver may, in relation to any of the Charged Property, exercise all powers, authorisations and rights he would be capable of exercising, and do all those acts and things, as an absolute beneficial owner could exercise or do in the ownership and management of the Charged Property or any part of the Charged Property.

#### **14.20 Incidental powers**

A Receiver may do any other acts and things:

14.20.1 that he may consider desirable or necessary for realising any of the Charged Property;

14.20.2 that he may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this deed or law; or

14.20.3 that he lawfully may or can do as agent for the Guarantor.

### **15 DELEGATION**

#### **15.1 Delegation**

The Accountable Body or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this deed (including the power of attorney granted under clause 19.1).

#### **15.2 Terms**

The Accountable Body and each Receiver may make a delegation on the terms and conditions (including the power to sub-delegate) that it thinks fit.

### **15.3 Liability**

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

## **16 APPLICATION OF PROCEEDS**

### **16.1 Order of application of proceeds**

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

- 16.1.1 in or towards payment of or provision for all costs, charges and expenses incurred by or on behalf of the Accountable Body (and any Receiver, Delegate, attorney or agent appointed by it) under or in connection with this deed and of all remuneration due to any Receiver under or in connection with this deed;
- 16.1.2 in or towards payment of or provision for the Secured Liabilities in any order and manner that the Accountable Body determines; and
- 16.1.3 in payment of the surplus (if any) to the Guarantor or other person entitled to it.

### **16.2 Appropriation**

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

### **16.3 Suspense account**

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

- 16.3.1 may, at the discretion of the Accountable Body, Receiver or Delegate, be credited to any suspense or securities realised account;
- 16.3.2 shall bear interest, if any, at the rate agreed in writing between the Accountable Body and the Guarantor; and
- 16.3.3 may be held in that account for so long as the Accountable Body, Receiver or Delegate thinks fit.

## **17 COSTS AND INDEMNITY**

### **17.1 Costs**

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

- 17.1.1 this deed or the Charged Property;
- 17.1.2 taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Accountable Body's, a Receiver's or a Delegate's rights under this deed; or
- 17.1.3 taking proceedings for, or recovering, any of the Secured Liabilities,

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

## **17.2 Indemnity**

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

- 17.2.1.1 the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this deed or by law in respect of the Charged Property;
- 17.2.1.2 taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the security constituted by this deed; or
- 17.2.1.3 any default or delay by the Guarantor in performing any of its obligations under this deed.

17.2.2 Any past or present employee or agent may enforce the terms of this clause 17.2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

## **18 FURTHER ASSURANCE**

The Guarantor shall, at its own expense, take whatever action the Accountable Body or any Receiver may reasonably require for:

- 18.1.1 creating, perfecting or protecting the security intended to be created by this deed;
- 18.1.2 facilitating the realisation of any of the Charged Property; or

18.1.3 facilitating the exercise of any right, power, authority or discretion exercisable by the Accountable Body or any Receiver in respect of any of the Charged Property,

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

## **19 POWER OF ATTORNEY**

### **19.1 Appointment of attorneys**

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

19.1.1 the Guarantor is required to execute and do under this deed; or

19.1.2 any attorney deems proper or desirable in exercising any of the rights, powers, authorities and discretions conferred by this deed or by law on the Accountable Body, any Receiver or any Delegate.

### **19.2 Ratification of acts of attorneys**

The Guarantor ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in clause 19.1.

## **20 RELEASE**

Subject to clause 27.3, on the expiry of the Security Period (but not otherwise), the Accountable Body shall, at the request and cost of the Guarantor, take whatever action is necessary to:

20.1 release the Charged Property from the security constituted by this deed; and

20.2 reassign the Charged Property to the Guarantor.

## **21 ASSIGNMENT AND TRANSFER**

### **21.1 Assignment by Accountable Body**

21.1.1 At any time, without the consent of the Guarantor, the Accountable Body may assign or transfer any or all of its rights and obligations under this deed.

21.1.2 The Accountable Body may disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Guarantor, the Charged Property and this deed that the Accountable Body considers appropriate.

## **21.2 Assignment by Guarantor**

The Guarantor may not assign any of its rights, or transfer any of its rights or obligations, under this deed.

## **22 SET-OFF**

### **22.1 Accountable Body's right of set-off**

The Accountable Body may at any time set off any liability of the Guarantor to the Accountable Body against any liability of the Accountable Body to the Guarantor, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this deed. If the liabilities to be set off are expressed in different currencies, the Accountable Body may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Accountable Body of its rights under this clause 22.1 shall not limit or affect any other rights or remedies available to it under this deed or otherwise.

### **22.2 No obligation to set off**

The Accountable Body is not obliged to exercise its rights under clause 22.1. If, however, it does exercise those rights it must promptly notify the Guarantor of the set-off that has been made.

## **23 AMENDMENTS, WAIVERS AND CONSENTS**

### **23.1 Amendments**

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

### **23.2 Waivers and consents**

23.2.1 A waiver of any right or remedy under this deed or by law, or any consent given under this deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

23.2.2 A failure to exercise or a delay in exercising any right or remedy provided under this deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this deed. No single or partial exercise of any right or remedy provided under this deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this deed by the Accountable Body shall be effective unless it is in writing.

### **23.3 Rights and remedies**

The rights and remedies provided under this deed are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

**24 SEVERANCE**

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

**25 COUNTERPARTS**

This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.

**26 THIRD PARTY RIGHTS**

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

**27 FURTHER PROVISIONS**

**27.1 Independent security**

The security constituted by this deed shall be in addition to, and independent of, any other security or guarantee that the Accountable Body may hold for any of the Secured Liabilities at any time. No prior security held by the Accountable Body over the whole or any part of the Charged Property shall merge in the security created by this deed.

**27.2 Continuing security**

The security constituted by this deed shall remain in full force and effect as a continuing security for the Secured Liabilities, despite any settlement of account, or intermediate payment, or other matter or thing, unless and until the Accountable Body discharges this deed in writing.

**27.3 Discharge conditional**

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

27.3.1 the Accountable Body or its nominee may retain this deed and the security created by or under it, including all certificates and documents relating to the whole or any part of the Charged Property, for any period that the Accountable Body deems necessary to provide the Accountable Body with security against any such avoidance, reduction or order for refund; and

27.3.2 the Accountable Body may recover the value or amount of such security or payment from the Guarantor subsequently as if the release, discharge or settlement had not occurred.

#### **27.4 Certificates**

A certificate or determination by the Accountable Body as to any amount for the time being due to it from the Guarantor under this deed and the Funding Agreement shall be, in the absence of any manifest error, conclusive evidence of the amount due.

#### **27.5 Consolidation**

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

### **28 NOTICES**

#### **28.1 Delivery**

Any notice or other communication given to a party under or in connection with this deed shall be:

28.1.1 in writing;

28.1.2 delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by fax; and

28.1.3 sent to:

28.1.3.1 the Guarantor at:

Attention: Mr William Henry Bond

Stokeford Farm, East Stoke, Wareham, Dorset, BH20 6AN

(or such address as provided to the Accountable Body by the Guarantor from time to time)

28.1.3.2 the Accountable Body at:

6<sup>TH</sup> Floor, Poole House, Fern Barrow, Poole Dorset BH12 5BB

Attention: Service Directors for Legal and Democratic Services

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

#### **28.2 Receipt by Guarantor**

Any notice or other communication that the Accountable Body gives to the Guarantor shall be deemed to have been received:

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

28.2.2 if posted by pre-paid first-class post or other next working day delivery

service, on the second Business Day after posting; and

28.2.3 if sent by fax, when received in legible form.

A notice or other communication given as described in clause 28.2.1 or clause 28.2.3 on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

**28.3 Receipt by Accountable Body**

Any notice or other communication given to the Accountable Body shall be deemed to have been received only on actual receipt.

**28.4 Service of proceedings**

This clause 28 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**28.5 No notice by email**

A notice or other communication given under or in connection with this deed is not valid if sent by email.

**29 GOVERNING LAW AND JURISDICTION**

**29.1 Governing law**

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

**29.2 Jurisdiction**

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

**29.3 Other service**

The Guarantor irrevocably consents to any process in any legal action or proceedings under clause 29.2 being served on it in accordance with the provisions of this deed relating to service of notices. Nothing contained in this deed shall affect the right to serve process in any other manner permitted by law.

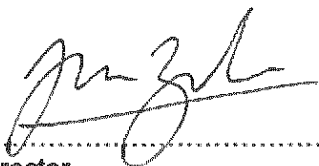
This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

## **SCHEDULE 1**

### **PROPERTY**

All that freehold land and buildings known as Windmill Farm, Dinton Road, Wylde, Warminster, BA12 0RD and registered at HM Land Registry with title number WT271248.

EXECUTED as a Deed by  
GARBO HOLDINGS LIMITED acting by  
a director, in the presence of:

  
.....  
Director

Name of Witness:

  
.....  
Signature of Witness

Address of Witness:

PETER P ROOK  
.....

Occupation of Witness:

7 HONGYCROFT WELLYN GARDEN CITY, ALB 6HR  
.....  
CHARTERED ACCOUNTANT  
.....

EXECUTED and DELIVERED as a  
Deed by  
SWINDON AND WILTSHIRE LOCAL  
ENTERPRISE PARTNERSHIP  
LIMITED  
acting by a director in the presence of:

.....  
Director

.....  
Signature of Witness

Name of Witness:

.....

Address of Witness:

.....

Occupation of Witness:

.....

**EXECUTED** as a Deed by  
**GARBO HOLDINGS LIMITED** acting by  
a director, in the presence of:

.....  
Director

Name of Witness:

.....  
Signature of Witness

Address of Witness:

Occupation of Witness:

**EXECUTED and DELIVERED** as a  
Deed by  
**SWINDON AND WILTSHIRE LOCAL  
ENTERPRISE PARTNERSHIP  
LIMITED**  
acting by a director in the presence of:

*Patrick Bradley*  
.....  
Director

*DKH*  
.....  
Signature of Witness

Name of Witness:

Address of Witness:

Occupation of Witness:

*Deborah House*  
.....

*7 Gainsborough Avenue  
Royal Wootton Bassett  
SN4 8 JN*  
.....

*Executive Assistant*

## **SCHEDULE 1**

### **PROPERTY**

All that freehold land and buildings known as Windmill Farm, Dinton Road, Wylve, Warminster, BA12 0RD and registered at HM Land Registry with title number WT271248.