



**Registration of a Charge**

Company Name: **HOMESTEAD NURSERY LIMITED**

Company Number: **11931750**



Received for filing in Electronic Format on the: **03/05/2024**

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**Details of Charge**

Date of creation: **02/05/2024**

Charge code: **1193 1750 0002**

Persons entitled: **DBW INVESTMENTS (3) LIMITED**

Brief description: **ALL OTHER FREEHOLD AND LEASEHOLD PROPERTY NOW OR IN THE FUTURE BELONGING TO THE COMPANY TOGETHER WITH ALL BUILDINGS, TRADE AND OTHER FIXTURES, FIXED PLANT AND MACHINERY OF THE COMPANY FROM TIME TO TIME ON SUCH PROPERTY AND; ALL PATENTS, COPYRIGHTS, MARKS, SERVICE MARKS, DESIGNS AND OTHER INTELLECTUAL PROPERTY RIGHTS (INCLUDING WITHOUT LIMITATION BUSINESS NAMES, KNOW-HOW, FORMULAE, INVENTIONS, CONFIDENTIAL INFORMATION, TRADE SECRETS, COMPUTER SOFTWARE, PROGRAMS AND SYSTEMS), CLAIMS AND ALL FEES, ROYALTIES AND OTHER RIGHTS OF EVERY KIND DERIVING FROM SUCH INTELLECTUAL PROPERTY NOW OR IN THE FUTURE BELONGING TO THE COMPANY.**

**Contains fixed charge(s).**

**Contains floating charge(s) (floating charge covers all the property or undertaking of the company).**

**Contains negative pledge.**

**Authentication of Form**

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

## **Authentication of Instrument**

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

Certified by: **LUCY SCALE**



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

Company number: 11931750

Charge code: 1193 1750 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 2nd May 2024 and created by HOMESTEAD NURSERY LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 3rd May 2024 .

Given at Companies House, Cardiff on 7th May 2024

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**

- (1) HOMESTEAD NURSERY LIMITED
- (2) DBW INVESTMENTS (3) LIMITED

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DEBENTURE

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**THIS DEED** is dated 2 May 2024

**PARTIES:**

- (1) **HOMESTEAD NURSERY LIMITED** (registered number 11931750) whose registered office is at Old Wrexham Road, Gresford, Wrexham, United Kingdom, LL12 8UA (the "**Chargor**")
- (2) **DBW INVESTMENTS (3) LIMITED** (registered number 05210122) whose registered office is at Unit J, Yale Business Village, Ellice Way, Wrexham LL13 7YL (the "**Lender**")

**1 DEFINITIONS**

**1.1** In this Deed:

"**Administration**" has the meaning given to it at clause 14.2;

"**Book Debts**" has the meaning given to it at 4.1(b)(iv)

"**Business Day**" means a day (not being a Saturday or Sunday) on which banks in London are open for general business;

"**Charged Assets**" means any property, assets, debts, rights and undertaking which at any time shall be or ought under any provision of this Deed to be charged or mortgaged or assigned in favour of or held by the Lender as specific security for the payment and discharge of all liabilities and references to the "**Charged Assets**" shall include references to any part of them;

"**Event of Default**" means the occurrence of any of the following events:

- (a) if any of the Secured Liabilities shall not be paid or discharged by the Chargor when due; or
- (b) if the Chargor breaches any provisions of this Deed or of any agreement containing any terms and conditions of or applicable to the Secured Liabilities; or
- (c) any other event shall take place which in the opinion of the Lender puts in jeopardy all or any part of the security created by this Deed;

"**Insolvency Act**" means the Insolvency Act 1986;

"**Insolvent**" means any of the following:-

- (a) the appointment of a receiver or administrative receiver over the whole or a substantial part of the Chargor's assets or any legal process if taken, or enforced upon any of the Chargor's assets, and any such action is not lifted or discharged within 14 days;
- (b) any step is taken by the Chargor or any other person to appoint an administrator in relation to the Chargor;
- (c) the Chargor becomes insolvent or stops or suspends payment of its debts or is (or is deemed to be) unable to pay its debts as they fall due or proposes or enters into any agreement or composition for the benefit of its creditors generally;
- (d) a petition is presented (other than a petition which is in the Lender's opinion frivolous or vexatious and which is withdrawn or stayed within 14 days) or an order is made for the winding-up or dissolution of the Chargor or the appointment of a liquidator in respect of the Chargor; or
- (e) the Chargor ceases or threatens to cease to carry on the whole or a substantial part of its business.

**"Interest Rate"** means the rate charged to the Chargor by the Lender from time to time on the Secured Liabilities;

**"LPA"** means the Law of Property Act 1925;

**"Receiver"** means a receiver, administrative receiver or manager appointed by the Lender under this Deed;

**"Secured Liabilities"** means all monies, obligations and liabilities whether principal, interest or otherwise which may now or at any time in the future be due or owing or incurred by the Chargor to the Lender (whether actual or contingent and whether incurred alone or jointly with another as principal, guarantor, surety or otherwise and in whatever name or style) together with interest, charges and other expenses; and

**"Security"** means any mortgage, charge, assignment by way of security, pledge, lien, hypothecation, leasing, hiring, hire purchase agreement, trust, arrangement, title, retention, encumbrance, assignment, rights of set-off, third party rights or other security interest right or arrangement whatsoever and whether express or arising by operation of law.



## **2        INTERPRETATION**

2.1        In the interpretation of this Deed unless the context requires otherwise:

- (a)        references to particular clauses, sub-clauses, paragraphs or schedules are to clauses, sub-clauses, paragraphs or schedules of or to this Deed;
- (b)        references to a person are to be construed to include corporations, firms, companies, partnerships, individuals, associations, states and administrative and governmental and other entities whether or not a separate legal entity;
- (c)        references to any person are to be construed to include references to their respective person's successors, transferees and assigns whether direct or indirect;
- (d)        the singular includes the plural and words in the plural shall include the singular;
- (e)        words importing any gender include every gender;
- (f)        headings are inserted for convenience only and shall be disregarded for the purposes of interpretation;
- (g)        references to any statutory provision are to be construed as references to that statutory provision as amended, supplemented, re-enacted or replaced from time to time (whether before or after the date of this Deed) and are to include any orders, regulations, instruments or other subordinated legislation made under or deriving validity from that statutory provision;
- (h)        the words "including" and "in particular" are to be construed as being by way of illustration or emphasis only and are not to be construed as, nor shall they take effect as, limiting the generality of any foregoing words;
- (i)        the "security constituted" means all security created by or in connection with this Deed and not for the time being duly released;
- (j)        references to this "Deed" include any other deed supplemental to this Deed or otherwise executed or entered into in connection with the provisions of this Deed; and
- (k)        where the "Chargor" consists of two or more parties:-

- (i) such expression shall in this Deed mean and include such two or more parties and each of them or (as the case may require) any of them;
- (ii) all covenants, charges, agreements and undertakings expressed or implied on the part of the Chargor in this Deed shall be deemed to be joint and several covenants, charges, agreements and undertakings by such parties;
- (iii) each shall be bound even if the other of them intended or expressed to be bound by this Deed shall not be so bound; and
- (iv) the Lender may release or discharge any one or more of them from all or any liability or obligation under this Deed or may make any arrangement or composition with any such person without by such action releasing any other or others of them or otherwise prejudicing any of its rights under this Deed or otherwise.

### **3 COVENANT TO PAY**

- 3.1 The Chargor shall on demand pay and discharge the Secured Liabilities when due to the Lender.
- 3.2 If not paid on their due date the Secured Liabilities (and any sums awarded to the Lender by any order or judgement obtained in connection with this Deed) shall bear interest at the Interest Rate (both before and after any demand or judgement).
- 3.3 Interest on the Secured Liabilities shall accrue (as the case may be) from whichever first occurs of:
  - (a) the date specified in this Deed as being the date upon which payment was due; or
  - (b) the date upon which they were incurred or are paid by the Lender or become due (whether at maturity, on acceleration, on demand or otherwise)

to the date of actual payment without there being any need for demand to be made for the payment of such interest and such interest shall be compounded at the Lender's option and at intervals of the Lender's choice but without prejudice to the right of the Lender to require the payment of such interest.

#### **4        GRANT OF SECURITY**

4.1        The Chargor with full title guarantee and as a continuing security for the payment and discharge of the Secured Liabilities charges to the Lender:-

- (a)        by way of legal mortgage the freehold and leasehold property referred to in the Schedule to this Deed together with all buildings, trade and other fixtures, fixed plant and machinery of the Chargor from time to time on such property;
- (b)        by way of fixed charge:
  - (i)        all other freehold and leasehold property now or in the future belonging to the Chargor together with all buildings, trade and other fixtures, fixed plant and machinery of the Chargor from time to time on such property;
  - (ii)       all plant, machinery, computers, office and other equipment now or in the future belonging to the Chargor (other than fixed plant and machinery) including all computer terminals, hard drives, keyboards, connecting leads and networks now or in the future belonging to the Chargor, together with all additions, alterations, accessories, replacements and renewals from time to time for such equipment and any component parts of such equipment from time to time;
  - (iii)      all stocks, shares and other securities now or in the future belonging to the Chargor together with all dividends and other rights deriving from such securities;
  - (iv)      all present and future book and other debts and the proceeds thereof and monetary claims due or owing to the Chargor (the "**Book Debts**") and the benefit of all security, guarantees and other rights of any nature enjoyed or held by the Chargor in relation to any of them;
  - (v)       the goodwill of the Chargor and its uncalled capital for the time being; and
  - (vi)      all patents, copyrights, marks, service marks, designs and other intellectual property rights (including without limitation business

names, know-how, formulae, inventions, confidential information, trade secrets, computer software, programs and systems), claims and all fees, royalties and other rights of every kind deriving from such intellectual property now or in the future belonging to the Chargor; and

- (c) by way of floating charge all the undertaking, property and assets of the Chargor whatsoever and wheresoever present and future not subject to a legal mortgage or fixed charge by this Deed.

4.2 The Lender may at any time by written notice to the Chargor convert the floating charge into a fixed charge as regards any Charged Assets specified by such notice.

4.3 The floating charge created by this Deed shall, unless otherwise agreed in writing by the Lender, automatically and without notice be converted into a fixed charge on any Charged Asset subject to it:

- (a) if the Chargor shall create (or attempts to create) or allow to remain in existence any Security other than this Deed over any Charged Asset; or
- (b) if the Chargor disposes (or attempts to dispose) of any Charged Asset contrary to the provisions of clause 7; or
- (c) if and when any person levies or notifies the Chargor that it intends to levy any distress, execution, sequestration or other process against any Charged Asset;
- (d) a resolution is passed or an order is made for the winding-up, dissolution, administration or re-organisation of the Chargor; or
- (e) if the Chargor ceases to carry on business or becomes Insolvent.

4.4 Any asset acquired by the Chargor after any crystallisation of the floating charge created by clause 4.1(c) which, but for such crystallisation, would be subject to a floating charge shall (unless the Lender confirms in writing to the contrary) be charged to the Lender by way of a fixed charge.

4.5 In the event that the floating charge created by clause 4.1(c) shall be converted into a fixed charge over the relevant Charged Asset (the "**Crystallised Charge**") such Crystallised Charge shall not subsequently be converted back into a floating charge unless and until the Lender shall have issued a written notice to the Chargor stating

that the Crystallised Charge has, from the date stated in the said notice, de-crystallised into a floating charge. For the purpose of this clause 4.5 no delay, inaction or conduct attributable to the Lender shall be deemed or treated as any form of agreement or consent to the de-crystallisation of the Crystallised Charge.

## **5 ASSIGNMENT**

5.1 As a continuing security for the payment and discharge of the Secured Liabilities charges to the Lender (without prejudice to the security created by the above legal mortgage and fixed charges and subject to a proviso for reassignment on irrevocable discharge in full of the Secured Liabilities) by way of assignment:

- (a) all rents and other income from time to time arising from or accruing on any property or in connection with or arising out of any lease of any property or any agreement for lease or otherwise without limitation and the benefit to the Chargor of all other rights and claims which the Chargor is now or may in the future become entitled in connection with any property;
- (b) the benefit of all guarantees, warranties and representations given or made by and any rights or remedies against all or any professional advisors now or at any time engaged by the Chargor in connection with the Charged Assets and the manufacturers, suppliers or installers of all plant, machinery, fixtures, fittings and other items now or from time to time in the buildings erected or to be erected on the Charged Assets and any other person, firm or company now or from time to time under the contract with or under a duty to the Chargor and the benefit of all sums recovered in any proceedings against all or any of such persons; and
- (c) 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,

provided that nothing in this sub-clause shall constitute the Lender as a mortgagee in possession.

5.2 If requested by the Lender, the Chargor shall deliver to each counterparty, tenant, insurer or other relevant person (as applicable) notice of the assignments in clause 5.1. in such form as the Lender may require and in each case shall use all reasonable endeavours to procure that each notice is acknowledged by the party to whom such notice of assignment is addressed.

## **6 IMMEDIATE RECOURSE**

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

## **7 DEALINGS WITH CHARGED ASSETS**

7.1 The Chargor shall not without the previous written consent of the Lender:

- (a) create, attempt or agree to create, or allow to be created, any Security in respect of any of the Charged Assets, or any right or option on the Charged Assets;
- (b) sell, convey, transfer, assign, lease or otherwise dispose of any of the Charged Assets (or any interest in them) other than disposals of assets charged under clause 4.1(c) in the ordinary course of the Chargor's business for their market value except where any Charged Asset is subject to a Crystallised Charge;
- (c) grant or accept a surrender of any lease or licence of or part with or share possession or occupation of its freehold or leasehold property or any part of it;
- (d) pull down or remove or redevelop or make any material alteration to the whole or any part of any buildings or any other substantial asset or sever, unfix or remove any fixtures or remove any plant machinery or equipment belonging to or in use by the Chargor except for the purpose of effecting repairs or replacing such asset; or
- (e) factor, assign, discount or sell any of its Book Debts or grant any interests in any of its Book Debts or enter into any agreement or arrangement which has a similar effect no matter how such agreement or arrangement is described.

7.2 The Chargor shall at any time, on written demand by the Lender, procure that all rents and other income assigned under clause 5.1(a) shall be paid directly to such account as the Lender may from time to time direct and the Chargor shall immediately upon any demand so instruct any tenant or licensee from time to time of the Property by notice in writing. Following any such demand until such payment the Chargor shall hold all such rents and other income on trust for the Lender.

## **8 LAND REGISTRY**

The Chargor certifies that this Deed does not contravene its memorandum and articles of association and has been executed in accordance with such documents and applies to the Chief Land Registrar for a restriction to be entered on the register of its title to registered properties charged by this Deed that:

*"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 [DATE] in favour of DBW Investments (3) Limited referred to in the charges register."*

## **9 PRESERVATION OF CHARGED ASSETS**

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

## **10 COVENANTS**

10.1 The Chargor covenants with the Lender that at all times during the continuance of any of the Security created by this Deed it will:

- (a) keep all Charged Assets in good repair and condition and immediately after being required to do so by the Lender make good any want of repair in such assets and permit any person nominated by the Lender free access at all reasonable times to view the state and condition of the Charged Assets;
- (b) insure and keep insured such of the Charged Assets as are insurable with such insurer and against such risks and in such amounts and otherwise in such terms as the Lender may require and will maintain such other insurances as are normally maintained by prudent companies carrying on similar businesses with the interest of the Lender noted on all policies of such insurance or, if the Lender shall require, in the joint names of the Chargor and the Lender and will produce or deposit with the Lender all such policies and receipts for all premium and other payments necessary for effecting and maintaining such insurances;
- (c) apply any insurance proceeds in making good the loss or damage or at the Lender's option in or towards the discharge of the Secured Liabilities and

pending such application the Chargor will hold such proceeds in trust for the Lender;

- (d) punctually pay all rents, taxes, duties, assessments and other outgoings and observe and perform all restrictive and other covenants under which the Charged Assets are held;
- (e) subject to the rights of any prior Lender deposit with the Lender all deeds, certificates and documents constituting or evidencing title to the Charged Assets and all insurance policies;
- (f) comply with the provisions of all present or future statutes, directives and common law rules affecting its business and its assets and every notice, order or direction made under any of the foregoing;
- (g) not (without the Lender's consent which shall not be unreasonably withheld or delayed) make any application for planning permission or implement any planning permission or omit or suffer to be omitted any act, matter or thing required to be done under the relevant planning legislation;
- (h) not release, exchange, compound, set-off, grant time or indulgence in respect of, or in any other manner deal with all or any of the Book Debts;
- (i) as agent for the Lender, collect in and realise all Book Debts, pay the proceeds into an account nominated by the Lender (the "**Account**") immediately on receipt and pending payment, hold these proceeds in trust for the Lender;
- (j) not, without the prior written consent of the Lender, withdraw any amounts standing to the credit of the Account;
- (k) if called on so to do by the Lender, execute a legal assignment of the Book Debts to the Lender in such terms as the Lender may require and give notice of that assignment to the debtors from whom the Book Debts are due, owing or incurred;
- (l) give the Lender such information concerning the location, condition, use and operation of the Charged Assets as the Lender may require;
- (m) permit any persons designated by the Lender and any Receiver to and any person appointed by either of them to enter on its premises and inspect and



examine any Charged Asset, and the records relating to that Charged Asset, at all reasonable times and on reasonable prior notice;

- (n) promptly notify the Lender in writing of any action, claim, notice or demand made by or against it in connection with all or any part of a Charged Asset or of any fact, matter or circumstance which may, with the passage of time, give rise to such an action, claim, notice or demand, together with, in each case, the Chargor's proposals for settling, liquidating, compounding or contesting any such action, claim, notice or demand and shall, subject to the Lender's prior approval, implement those proposals at its own expense; and

10.2 The Chargor shall, on the execution of this Deed, deposit with the Lender and the Lender shall, for the duration of this deed, be entitled to hold:

- (a) all deeds and documents of title relating to the Charged Assets; and
- (b) all documentation relating to each insurance policy, agreement, document or right assigned pursuant to clause 5.

and in default of any such covenant it shall be lawful for but not incumbent upon the Lender to enter on the Property and to do and pay all such acts and expenses as the Lender may deem necessary to prevent or remedy any breach and the Chargor shall on demand repay to the Lender any such money expended by the Lender with interest at the Interest Rate and until such payment such debts shall be secured on the Charged Assets.

## **11 REPRESENTATIONS AND WARRANTIES**

11.1 The Chargor makes the representations and warranties set out in this Clause 11.1 to the Lender on the date of this Deed and are deemed to be repeated on each day whilst any Secured Liabilities remain outstanding with reference to the facts and circumstances existing at the time of repetition:

- (a) the Charged Assets are free from any Security other than Security to which the Lender has provided its prior written consent and the Security created by this Deed;
- (b) the Chargor is the sole legal and beneficial owner of, and has good, valid and marketable title to, the Charged Assets;

- (c) the Chargor has not received, or acknowledged notice of, any adverse claim by any person in respect of the Charged Assets or any interest in them;
- (d) there are no covenants, agreements, reservations, conditions, interests, rights or other matters whatsoever that materially and adversely affect the Charged Assets;
- (e) there is no breach of any law or regulation that materially and adversely affects the Charged Assets;
- (f) no facility necessary for the enjoyment and use of the Charged Assets is subject to terms entitling any person to terminate or curtail its use;
- (g) it has and will at all times have the necessary power to enter into and perform its obligations under this Deed; and
- (h) this Deed constitutes and will constitute the legal, valid, binding and enforceable obligations of the Chargor, and is, and will continue to be, effective security over all and every part of the Charged Assets in accordance with its terms.

## **12 ENFORCEMENT**

### **12.1 This Deed shall become enforceable:**

- (a) after the occurrence of an Event of Default; or
- (b) upon request by the Chargor.

### **12.2 Sections 103 of the LPA shall not apply to this Deed and the statutory powers of sale and appointing a Receiver under sections 101 and 109 of the LPA (as varied and extended under this Deed) shall arise on the execution of this Deed and shall become immediately exercisable without the restrictions contained in such Act on giving of notice or otherwise at any time after this Deed has become enforceable, upon which the whole of the Secured Liabilities will become payable.**

### **12.3 At any time after this Deed shall have become enforceable or if requested by the Chargor, the Lender may without further notice and without first appointing a Receiver or an Administrator exercise all or any of the powers conferred on Lender s by the LPA as varied or extended by this Deed and all powers, authorities and discretions conferred expressly or by implication on any Receiver or Administrator in this Deed or conferred by statute or common law.**

### **13      RECEIVER'S POWERS**

- 13.1      At any time after this Deed has become enforceable or if requested by the Chargor, the Lender may in its discretion without further notice appoint in writing a Receiver or Receivers over all or any part of the Charged Assets with power (subject to the provisions of the Insolvency Act) from time to time to remove any Receiver so appointed and appoint one or more Receivers in his place. Where two or more persons are appointed as Receivers they shall have the power to act severally as well as jointly.
- 13.2      The Lender may from time to time determine the remuneration of such Receiver.
- 13.3      Every such Receiver shall be the agent of the Chargor for all purposes and the Chargor alone shall be responsible for his acts and defaults, loss or misconduct and for his remuneration and the Lender shall not incur any liability as a result of its making or consenting to his appointment as such Receiver.
- 13.4      The Receiver shall have and be entitled to exercise all powers conferred by the LPA and the Insolvency Act in the same way as if the Receiver had been duly appointed under such statutes and in particular by way of addition to but without limiting any general powers referred to above (and without prejudice to any of the Lender's powers referred to above) the Receiver shall have power in the name of the Chargor or otherwise to do the following things namely:
- (a)      take possession of, collect and get in all or any part of the property in respect of which he is appointed and for that purpose to take any proceedings;
  - (b)      carry on or concur in carrying on the business of the Chargor and to raise money from the Lender or others on the security of any of the Charged Assets;
  - (c)      purchase or acquire any land and purchase, acquire and grant any interest in or right over land;
  - (d)      sell or concur in selling, let or concur in letting and terminate or accept surrenders of leases or tenancies of any of the property charged by this Deed and to carry any such transactions into effect;
  - (e)      sell, assign, let or otherwise dispose of or concur in selling, assigning, letting or otherwise disposing of all property in respect of which he is appointed;

- (f) make any arrangement or compromise between the Chargor and any other person which he may think expedient;
- (g) make and effect all repairs, improvements and insurances;
- (h) purchase materials, tools, equipment, goods or supplies;
- (i) call up any uncalled capital of the Chargor with all the powers conferred by the articles of association of the Chargor in connection with calls;
- (j) employ, engage and appoint managers and other employees and professional advisers; or
- (k) do all such other acts and things as may be considered to be incidental or conducive to any of the above matters or powers or to the realisation of the security constituted by this Deed and which he lawfully may or can do.

#### **14 ADMINISTRATOR'S POWERS**

- 14.1 Paragraph 14 of Schedule B1 Insolvency Act 1986 applies to the floating charge created by clause 4.1(c).
- 14.2 At any time after this Deed has become enforceable or if requested by the Chargor, the Lender may without further notice to the Chargor appoint any one or more persons either singly, jointly, severally or jointly and severally to be an administrator of the Chargor (each an "**Administrator**") and except as otherwise required by statute may remove any such Administrator and appoint another or others in their place.
- 14.3 Any Administrator shall be the agent of the Chargor which shall be solely responsible for their acts and defaults and the payment of their remuneration.
- 14.4 Any Administrator shall have all the powers conferred by the Insolvency Act 1986 on administrators appointed under that Act. In addition, but without prejudice to the generality of the foregoing the Administrator shall have power (in the name of the Chargor or otherwise and in such manner and on such terms and conditions as he shall think fit) to:
  - (a) take possession of, collect and get in the property of the Chargor and for that purpose to take any proceedings;

- (b) carry on or concur in carrying on the business of the Chargor and to raise money from the Lender or others on the security of any property of the Chargor;
- (c) purchase or acquire any land and purchase, acquire and grant any interest in or right over land;
- (d) sell or concur in selling, let or concur in letting and terminate or accept surrenders of leases or tenancies of any property of the Chargor and to carry any such transactions into effect;
- (e) sell, assign, let or otherwise dispose of or concur in selling, assigning, letting or otherwise disposing of any property of the Chargor;
- (f) make any arrangement or compromise between the Chargor and any other person which he may think expedient;
- (g) make and effect all repairs, improvements and insurances;
- (h) purchase materials, tools, equipment, goods or supplies;
- (i) call up any uncalled capital of the Chargor with all the powers conferred by the articles of association of the Chargor in connection with calls;
- (j) employ, engage and appoint managers and other employees and professional advisers; and/or
- (k) do all such other acts and things as may be considered to be incidental or conducive to any of the above matters or powers or to the realisation of the security constituted by this Deed and which he lawfully may or can do.

## **15 EXCLUSION OF LIABILITY**

15.1 Neither the Lender, Receiver nor any Administrator shall in any circumstances (either by reason of any entry into, or taking of possession of, any Charged Assets, or for any other reason) be liable to account to the Chargor (as Lender in possession or otherwise) for:

- (a) any loss, damage or liability arising from any entry, possession, enforcement, or exercise of rights, in respect of any Charged Assets or from any act, default or omission in connection with such enforcement or exercise of rights; or

- (b) any loss on realisation, or for any act, default or omission for which a Lender in possession might be liable,

save for loss, damage or liability caused by gross negligence, fraud or wilful misconduct of the Lender, Receiver or Administrator (as applicable).

## **16 DELEGATION**

- 16.1 The Lender or any Receiver or Administrator 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.
- 16.2 The Lender and each Receiver or Administrator may make a delegation on the terms and conditions (including the power to sub-delegate) that it thinks fit.
- 16.3 Neither the Lender nor any Receiver or Administrator shall be in any way liable or responsible to the Chargor for any loss or liability of any nature arising from any act, default, omission or misconduct on the part of any delegate.

## **17 APPLICATION OF PROCEEDS**

- 17.1 Any monies received by the Lender, any Receiver or Administrator shall subject to the repayment of any claims having priority to the charges created by this Deed be applied in the following order but without prejudice to the right of the Lender to recover any shortfall from the Chargor:
  - (a) in the payment of all costs, charges and expenses of and incidental to the appointment of the Receiver or the Administrator and the exercise of all or any of their powers and of all outgoings paid by him;
  - (b) in the payment of the Receiver's or Administrator's remuneration;
  - (c) in or towards the payment and satisfaction of the monies, obligations and liabilities secured by this Deed in any order and manner that the Lender determines; and
  - (d) in payment of the surplus (if any) to the person or persons entitled to it.
- 17.2 All monies received, recovered or realised by the Lender under this Deed may be credited at the discretion of the Lender to a separate account and may be held in such account for so long as the Lender shall think fit pending its application from time to time in or towards the discharge of any of the Secured Liabilities.

**18 PROTECTION OF THIRD PARTIES**

No person dealing with the Chargor or any Receiver or Administrator shall be concerned to enquire whether the security created by this Deed has become enforceable or whether any power exercised or purported to be exercised under this Deed has become exercisable or whether any money remains due on the security created by this Deed or to see to the application of any money paid to the Chargor or to any such Receiver or Administrator.

**19 POWER OF ATTORNEY**

- 19.1 The Chargor irrevocably and by way of security appoints the Lender and any Receiver for the time being jointly and also severally to be its attorney or attorneys and in its name and otherwise on its behalf to do all acts and things and to sign, seal, execute, deliver, perfect and do all deeds, instruments, documents, acts and things which may be required for carrying out any obligation imposed on the Chargor by this Deed.
- 19.2 The Chargor ratifies and confirms and agrees to ratify and confirm whatever any such attorney or attorneys shall do or purport to do in the exercise or purported exercise of the power of attorney in clause 19.1 and the Chargor irrevocably acknowledges and agrees that the said power of attorney is amongst other matters given to secure the performance of such obligation to ratify and confirm owed to the Lender and any Receiver by the Chargor.

**20 FURTHER ASSURANCE**

The Chargor shall whenever requested by the Lender immediately execute and sign all such deeds and documents and do all such things as the Lender may require at the Chargor's cost for the purpose of creating, perfecting, protecting the security created or intended to be created by this Deed, or facilitating the realisation of any Charged Asset, or the exercise of any right, power, authority or discretion exercisable by the Lender or any Receiver in respect of any Charged Asset and in particular shall execute all transfers, conveyances, dispositions, assignments and assurances of the Charged Assets and shall give all notices, orders and directions which the Lender or any such Receiver or Administrator may think expedient.

**21 REMEDIES CUMULATIVE ETC**

- 21.1 The rights, powers and remedies provided by this Deed are cumulative and are not nor are they to be construed as being exclusive of any rights powers or remedies provided by law or otherwise.

- 21.2 No failure on the part of the Lender to exercise or delay on its part in exercising any of its respective rights, powers and remedies provided by this Deed or by law (collectively the "**Rights**") shall operate as a waiver of the Rights nor shall any single or partial waiver of any of the Rights preclude any further or other exercise of that one of the Rights concerned or the exercise of any other of the Rights.
- 21.3 The restriction on the right of consolidating mortgage securities contained in section 93 LPA shall not apply to this Deed.

## **22 COSTS AND INDEMNITY**

- 22.1 All costs, charges and expenses incurred by the Lender relating to this Deed or the Secured Liabilities shall be reimbursed by the Chargor to the Lender on demand on a full indemnity basis and until the Chargor is reimbursed shall carry interest at the Interest Rate from the date of payment to the date of reimbursement and be secured on the property charged by this Deed.
- 22.2 The Lender and every Receiver, Administrator, attorney or other person appointed by the Lender under this Deed and their respective employees shall be entitled to be indemnified on a full indemnity basis out of the property charged by this Deed for all liabilities and expenses incurred by any of them in or directly or indirectly as a result of the exercise or purported exercise of any of the powers, authorities or discretions vested in them under this Deed and against all actions, proceedings, losses, costs, claims and demands for any matter or thing done or omitted in any way relating to the property charged by this Deed and the Lender and any such Receiver and Administrator may retain and pay all sums for such matters out of the monies received under the powers conferred by this Deed.

## **23 PRIOR SECURITY**

- 23.1 At any time after any powers conferred by any Security having priority over the security constituted by this Deed shall have become exercisable the Lender may redeem such or any other prior Security or procure the transfer of it to itself and may settle and pass the accounts of the holder of such Security and any accounts so settled and passed shall be conclusive and binding on the Chargor.
- 23.2 All money, interest, costs, charges and expenses of or incidental to such redemption or transfer shall be paid by the Chargor to the Lender on demand, and shall be secured by this Deed as part of the Secured Liabilities.



**24      TRANSFERS**

- 24.1      This Deed is freely assignable or transferable by the Lender.
- 24.2      The Chargor may not assign or transfer any of its obligations under this Deed or enter into any transaction which would result in any of those obligations passing to another person.
- 24.3      The Lender may disclose to any person related to the Lender and/or any person to whom it is proposing to transfer or assign or has transferred or assigned this Deed any information about the Chargor.

**25      AVOIDANCE OF PAYMENTS**

- 25.1      No assurance, security or payment which may be avoided or adjusted under any enactment relating to bankruptcy or insolvency or under Part VI of the Insolvency Act 1986 or similar legislation binding on the Chargor in a jurisdiction other than England and Wales and no release, settlement or discharge given or made by the Lender on the faith of any such assurance, security or payment shall prejudice or affect the right of the Lender to recover from the Chargor (including the right to recover any monies which it may have been compelled by due process of law to refund under the provisions of the Insolvency Act 1986 and any costs payable by it or otherwise incurred in connection with such process) or to enforce the security created by or in connection with this Deed to the full extent of the Secured Liabilities.
- 25.2      Any release, settlement or discharge between the Lender and the Chargor will be conditional upon no security, disposition or payment to the Lender by the Chargor or any other person in respect of the Secured Liabilities being avoided, set aside, reduced or ordered to be refunded by virtue of any statutory provision relating to insolvency or liquidation or for any reason whatsoever.
- 25.3      If any such release, settlement or discharge is so avoided, set aside, reduced or ordered to be refunded, the liability of the Chargor under this Deed shall continue or be reinstated and the Lender shall be entitled to recover the value or amount of any such security, disposition or payment from the Chargor as if the release, settlement or discharge had not occurred.
- 25.4      Subject to Clauses 25.2 and 25.3, the Lender shall be entitled to retain this Deed after as well as before payment of all the Secured Liabilities for such period as the Lender may determine.

**26      PROVISIONS SEVERABLE**

Every provision contained in this Deed shall be severable and distinct from every other such provision and if at any time any one or more of such provisions is or becomes invalid, illegal or unenforceable the validity, legality and enforceability of the remaining such provisions shall not in any way be affected as a result.

**27      SET-OFF**

- 27.1      The Lender may at any time set off any liability of the Chargor to the Lender against any liability of the Lender to the Chargor, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Deed. If the liabilities to be set off are expressed in different currencies, the Lender may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Lender of its rights under this clause 27.1 shall not limit or affect any other rights or remedies available to it under this Deed or otherwise.
- 27.2      The Lender is not obliged to exercise its rights under clause 27.1. If it does exercise those rights it must promptly notify the Chargor of the set-off that has been made.
- 27.3      All payments made by the Chargor to the Lender under this Deed shall be made in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

**28      CONTINUING SECURITY**

- 28.1      The security constituted by this Deed shall remain in full force and effect as a continuing security, despite any settlement of account, or intermediate payment, or other matter or thing, unless and until the Lender discharges this Deed in writing.
- 28.2      The Lender may without discharging or in any way affecting the Security created by this Deed or any remedy of the Lender grant time or other indulgence or abstain from exercising or enforcing any remedies, securities, guarantees or other rights which it may now or in the future have from or against the Chargor and may make any arrangement, variation or release with any person or persons without prejudice either to this Deed or the liability of the Chargor for the Secured Liabilities.

**29      MISCELLANEOUS**

- 29.1      This Deed is in addition to any other security now or in the future held by the Lender for the Secured Liabilities and shall not merge with or prejudice such other security or any contractual or legal rights of the Lender.
- 29.2      If the rule against perpetuities applies to any trust created by this Deed, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).

**30      NOTICES**

- 30.1      A demand notice or other communication to the Chargor in connection with this Deed:-
- (a)      shall be in writing; and
  - (b)      shall be left at the Chargor's registered or principal office for the time being or a place of business of the Chargor last known to the Lender or sent to such address by first class post, or sent by email to such email address as notified by the Chargor to the Lender from time to time.
- 30.2      Any such demand, notice or other communication will if given or made in accordance with this Clause, be deemed to have been duly given or made as follows:-
- (a)      if sent by prepaid first class post on the second Business Day after the date of posting;
  - (b)      if delivered by hand on delivery at the address provided for in this Deed; or
  - (c)      if sent by email at the time of transmission

provided however that if it is delivered by hand or sent by email on a day which is not a Business Day or after 4.00 p.m. on a Business Day it will instead be deemed to have been given or made on the next Business Day.

**31      AMENDMENTS, WAIVERS AND CONSENTS**

- 31.1      No amendment of this Deed shall be effective unless it is in writing and signed by, or on behalf of, each party (or its authorised representative).
- 31.2      A waiver of any right or remedy under this Deed or by law, or any consent given under this Deed, is only effective if given in writing by the waiving or consenting party and

shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

- 31.3 A failure or delay by a party to exercise 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. 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.

**32 ELECTRONIC SIGNATURE**

The parties agree that this Deed may be executed by electronic signature (in whatever form) and that such electronic signature shall be conclusive of each party's intention to be bound by this Deed in the same way as if signed by each party in manuscript.

**33 LAW AND JURISDICTION**

This Deed shall be governed by and construed in accordance with the laws of England and Wales and the Chargor submits to the non-exclusive jurisdiction of the courts of England and Wales.

**34 COUNTERPARTS**

This Deed may be executed in any number of counterparts in which case this Deed will be as effective as if all signatures on the counterpart were on one single copy of the Deed.

This Deed has been executed as a Deed and is delivered and takes effect on the date stated at the beginning of it notwithstanding that the Lender has signed it underhand.

**Schedule 1**

**PROPERTY**

**NOT USED**

EXECUTED as a deed by **HOMESTEAD NURSERY LIMITED** acting by a director and its secretary or by two directors in the presence of:

} \_\_\_\_\_  
Director

\_\_\_\_\_  
Director /  
Secretary

I confirm that I was physically present when the above-named signatory signed this document.

Witness signature (only required if signed by one director) \_\_\_\_\_

Name  
(in block capitals) \_\_\_\_\_

Address \_\_\_\_\_

Occupation \_\_\_\_\_

SIGNED by **ROBERT KNAPP** for and on behalf of **DBW INVESTMENTS (3) LIMITED:**

} \_\_\_\_\_