



**Registration of a Charge**

Company Name: **LENHAM STORAGE (MIDLANDS) LIMITED**

Company Number: **11966930**



Received for filing in Electronic Format on the: **05/10/2021**

XAEHQFDN

**Details of Charge**

Date of creation: **30/09/2021**

Charge code: **1196 6930 0002**

Persons entitled: **FITZMAURICE HOLDINGS LIMITED**

Brief description: **UNIT 1, AVIAN WAY, NORWICH, NORFOLK**

**Contains fixed charge(s).**

**Contains negative pledge.**

**Authentication of Form**

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

**Authentication of Instrument**

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

Certified by: **ZAK VIRGIN**



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

Company number: 11966930

Charge code: 1196 6930 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 30th September 2021 and created by LENHAM STORAGE (MIDLANDS) LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 5th October 2021 .

Given at Companies House, Cardiff on 6th October 2021

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 *30th September* 2021**

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**LENHAM STORAGE (MIDLANDS) (1)  
LIMITED**

**in favour of**

**FITZMAURICE HOLDINGS LIMITED (2)**

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**LEGAL CHARGE  
relating to  
Unit 1, Avian Way, Norwich, Norfolk**

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**MILLS & REEVE**

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THIS LEGAL CHARGE is made on 30th September

2021

**BETWEEN:**

- (1) **LENHAM STORAGE (MIDLANDS) LIMITED**, a company incorporated under the laws of England and Wales with registered number 11966930 and having its registered office at Menzies LLP, Ashcombe House, 5 The Crescent, Leatherhead, Surrey, KT22 8DY (the "**Chargor**"); and
- (2) **FITZMAURICE HOLDINGS LIMITED**, a company incorporated under the laws of England and Wales with registered number 01125926 and having its registered office at Avian Way, Salhouse Road, Norwich, NR7 9AJ (the "**Chargee**").

**THIS DEED WITNESSES** as follows:

**1 Definitions and Interpretation**

- 1.1 In this Deed the following words and expressions shall have the following meanings:

"**Business Day**" means a day (other than a Saturday or Sunday) on which banks are open for general business in London;

"**Charged Property**" means the Property and all other property, assets, rights and revenues of the Chargor from time to time comprised within the security constituted by this Deed;

"**Contract Documents**" means the contract for the sale of freehold land in part subject to leases at Avian Way, Norwich, Norfolk, to be entered into on or about the date of this Deed;

"**Co-obligor**" means any person (other than the Chargor) who from time to time has any obligation to the Chargee in relation to the Secured Obligations;

"**Environmental Law**" means all legislation, common law, regulation, directives, guidance notes, orders, notices, demands and other measures for the time being in force or imposed and relating to the protection or pollution of the environment or public health or welfare;

"**Event of Default**" means any condition, act or event referred to in Schedule 1;

"**High Court**" means the High Court of Justice in England and Wales;

**"Insolvency Regulation"** means The Council of the European Union Regulation No. 2015/848 on Insolvency Proceedings (recast);

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

**"Property"** means Unit 1, Avian Way, Norwich, Norfolk together with:

- a) any fixtures thereon and the whole or any part or parts of any property comprised thereof;
- b) the proceeds of sale of any part of the Property and any other monies paid or payable in respect of or in connection with the Property; and
- c) the benefit of any covenants for title given, or entered into by any predecessor in title of the Chargor in respect of the Property and any monies paid or payable in respect of those covenants; and
- d) all rights under any licence, agreement for sale or agreement for lease in respect of the Property.

**"Secured Obligations"** means all payments due to the Chargee from the Chargor pursuant to clause 12 (*Deferred Consideration*) of the Contract Document, together with any costs charges and expenses incurred by the Chargee in enforcing its rights under this Deed;

**"Security Period"** means the period from the date of this Deed to the date on which the Secured Obligations are irrevocably and unconditionally discharged in full; and

**"VAT"** means value added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature.

1.2 In this Deed unless the context otherwise requires references to:

1.2.1 **"disposal"** means any disposition of the Property or any part of it within the meaning of section 205 Law of Property Act 1925 or section 27(2) Land Registration Act 2002 including but not limited to any disposal, sale, transfer, lease, surrender, assignment, loan, parting with or sharing of control, possession or occupation or diverting of rents or income relating to the Charged Property and any agreement, commitment or option in respect of the same and references to "dispose" shall be construed accordingly;

- 1.2.2 **"guarantee"** means any contract of guarantee, indemnity or surety or any other contract by which recourse is given to a person in relation to the performance of another person's obligations and whether as primary or secondary obligation or otherwise and howsoever described;
- 1.2.3 **"person"** shall include a company, partnership or unincorporated association and where permitted by this Deed that person's successors in title and assigns;
- 1.2.4 **"receiver"** shall be construed as a reference to any receiver, receiver and manager, administrative receiver, administrator or a creditor taking possession of or exercising a power of sale of assets or property or any other similar or equivalent appointment or taking of possession or exercise of powers in any jurisdiction;
- 1.2.5 **"security"** shall be construed as a reference to any mortgage, standard security, pledge, hypothecation, title retention, lien, charge, assignment by way of security or other arrangement howsoever described having the same or a similar effect;
- 1.2.6 any provision of law shall be deemed to include reference to such provision as amended or re-enacted from time to time whether before or after the date of this Deed; and
- 1.2.7 **"this Deed"** or to a provision of this Deed, or any other document are references to it as amended, varied, novated, supplemented, extended, restated or acceded to from time to time whether before the date of this Deed or otherwise.

1.3 In this Deed:

- 1.3.1 references to this Deed include its Schedules;
- 1.3.2 references to a clause or Schedule are (unless otherwise stated) to a clause of, or a Schedule to, this Deed;
- 1.3.3 references in a Schedule or part of a Schedule to a paragraph are (unless otherwise stated) to a paragraph of that Schedule or that part of that Schedule;

- 1.3.4 clause headings in this Deed do not affect its interpretation;
- 1.3.5 use of the singular shall include the plural and vice versa;
- 1.3.6 any term or phrase defined in the Companies Act 2006 or the Insolvency Act 1986 (as the same may be amended from time to time) shall bear the same meaning in this Deed;
- 1.3.7 unless otherwise defined in this Deed words and expressions defined in the Contract Document shall bear the same meanings when used in this Deed; and
- 1.3.8 where the expression "**Chargor**" refers to more than one person or entity:
- (i) any reference in this Deed to "Chargor" is a reference to each and every person comprising the Chargor;
  - (ii) any covenant representation or warranty required by this Deed to be given by the Chargor will be given jointly and severally by all persons or entities comprising the Chargor; and
  - (iii) the liability of the Chargor under this Deed is the joint and several liability of all persons or entities comprising the Chargor.
- 1.3.9 Clawback
- (i) In the event that an amount paid by a Chargor in respect of the Secured Obligations is avoided or otherwise set aside on the bankruptcy of any Chargor then that amount shall not be considered to have been paid and clause 7 shall apply.
- 1.3.10 Law of Property (Miscellaneous Provisions) Act 1989
- (i) For the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the TP1 signed and dated by the Chargor and Chargee are incorporated into this Deed to the extent required for any purported disposition of the Property contained in this Deed to be a valid disposition in accordance with Section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.



## **2 Covenant to pay**

- 2.1 The Chargor covenants with the Chargee to, on demand, pay and discharge the Secured Obligations when they become due.

## **3 Security**

- 3.1 The Chargor charges the Property with full title guarantee in favour of the Chargee and as security for the payment and discharge of the Secured Obligations by way of first legal mortgage.

- 3.2 To the extent not validly and/or effectively charged by way of legal mortgage pursuant to clause 3.1, the Chargor:

- 3.2.1 assigns and agrees to assign absolutely with full title guarantee to the Chargee as security for the payment and discharge of the Secured Obligations, the benefit of all of its rights, claims, title and interest in relation to the Property including without limitation:

- (i) all insurance policies in relation to the Property and all proceeds paid or payable thereunder; and
- (ii) the benefit of all agreements and contracts relating to the Property and all and any security of whatsoever nature held by the Chargor in respect of all or any of the Property (including without limitation the benefit of any rent deposits or guarantee) and all monies from time to time becoming due or owing under any such agreements, contracts or security together with all rights and remedies for enforcing the same in the name of the Chargor or otherwise;

- 3.2.2 charges by way of first fixed charge (to the extent not effectively assigned pursuant to clause 3.2.1) its rights, claims, title and interest in relation to the Property, including the items set out in clause 3.2.1(i) to 3.2.1(ii) (inclusive).

## **4 Continuing security and release**

- 4.1 The security constituted by this Deed shall operate as a continuing security and shall extend to the ultimate balance of the Secured Obligations regardless of any

intermediate payment or discharge of any of the Secured Obligations or any other matter whatsoever.

4.2 In the event that the security constituted by this Deed ceases to be a continuing security for whatever reason then the Chargee may at that time open or be deemed to have opened a new account or accounts and to credit all or any money arising from the enforcement of the security constituted by this Deed or receivable hereunder to such new account(s) and such events shall not operate to reduce the amount of the Secured Obligations nor shall the liability of the Chargor be reduced or affected by any subsequent transactions, receipts or payments.

4.3 The Chargee shall at the request and cost of the Chargor on the expiry of the Security Period release the Property from the Security constituted by this Deed.

## **5 Further assurance**

5.1 The Chargor agrees that it shall promptly upon the request of the Chargee execute and deliver at its own cost and expense any deed or document and do any act or thing or take any action required by the Chargee in order to confirm or establish the validity and enforceability of or otherwise in connection with the creation, perfection, enhancement or protection of the security intended to be created, conferred on the Chargee by or pursuant to this Deed (including without limitation) any further legal or other mortgages, charges or assignments and/or notices in favour of the Chargee, the waiver of any landlord's rights to levy distress against or enforce any similar or replacement remedy against any of the Charged Property and any instruments, instructions, transfers, renunciations and/or proxies in favour of the Chargee or such other person as the Chargee may direct together with any and all filings or registrations or notices or instructions or other steps required by the Chargee.

## **6 Preservation of rights**

6.1 The security constituted by this Deed and the obligations of the Chargor contained herein and the rights and powers and remedies conferred on the Chargee by this Deed shall be in addition to and shall not be merged with nor in any way be prejudiced or affected by any security or guarantee or judgment or order, right of recourse or other right whatsoever (whether contractual, legal or otherwise) now or at anytime hereafter held by the Chargee or any other person nor by:

- 6.1.1 any time, waiver, indulgence, consent or concession which the Chargee may grant to or the terms of any composition or agreement that the Chargee may enter into with the Chargor or any Co-obligor; or
- 6.1.2 any release or intermediate payment or discharge of the Secured Obligations; or
- 6.1.3 any amendment, novation, supplement, extension or replacement (however fundamental and whether more or less onerous) of the Secured Obligations; or
- 6.1.4 any legal limitation, disability, incapacity or lack of legal personality or power or authority on the part of the Chargor or any Co-obligor; or
- 6.1.5 any unenforceability, illegality or invalidity of the Secured Obligations or any obligations owed by the Chargor or any Co-obligor; or
- 6.1.6 any liquidation, winding up, dissolution, amalgamation, reconstruction, reorganisation, bankruptcy, administration or voluntary arrangement of the Chargor or any Co-obligor or the appointment of any receiver or liquidator or trustee in bankruptcy in respect of the property or business or assets of the Chargor or any Co-obligor (or the equivalent of such proceedings, appointments or matters in any jurisdiction) or the occurrence of any other circumstances affecting the liability of the Chargor or any Co-obligor.

## **7 Reinstatement of security**

- 7.1 If any payment or discharge or security or any arrangement made in connection with the Secured Obligations is avoided or reduced for whatever reason (including without limitation under any laws relating to liquidation or administration or bankruptcy) the liability of the Chargor and the security created by this Deed shall continue as if there had been no payment, discharge, avoidance or reduction or arrangement and the Chargee shall be entitled to recover the value or amount of the security or payment as if the payment discharge or reduction had not occurred.

## **8 Indemnities**

- 8.1 The Chargor shall indemnify and keep indemnified (on a full indemnity basis) the Chargee and any receiver upon first demand in respect of all claims, costs, expenses

and liabilities whatsoever from time to time incurred in relation to this Deed including (without limitation) all sums paid and expenses incurred by the Chargee in relation to:

- 8.1.1 all legal, professional and other fees, stamp duty, stamp duty land tax, registration fees and taxes and any interest, penalties, costs and expenses resulting from any failure to pay such taxes or fees incurred by the Chargee in connection with the preparation and execution of this Deed and any release, discharge, reconveyance or reassignment of the Charged Property and the protection, performance, preservation and enforcement of any rights under or in connection with this Deed and the transactions contemplated by it together in each case with any applicable VAT; and
- 8.1.2 all legal, professional and other fees, costs, losses, actions, claims, expenses, demands or liabilities howsoever and whenever arising which may be incurred by, or made against the Chargee or any receiver or against any manager, agent, officer or employee of any of them at any time relating to or arising directly or indirectly out of or as a consequence of anything done or omitted to be done in the exercise or purported exercise of the powers contained in this Deed.

## **9 Application to the Land Registry**

- 9.1 The Chargor and the Chargee hereby apply to the Land Registry to have a restriction noted against the title number(s) of the Property on the following terms:

"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 Legal Charge dated 30th September 2021 in favour of Fitzmaurice Holdings Limited referred to in the charges register."

- 9.2 The Chargor must lodge at the Land Registry (or procure the lodging of) their application to register the TP1 signed and dated by the Chargor and Chargee and the other applications mentioned in clause 9.3 within the priority period the land charges official search (K15) at the Land Registry obtained prior to the completion of the TP1.

- 9.3 The Chargor must ensure that the application for registration of the Chargor as the registered proprietor of the title for the Property includes within it:
- 9.3.1 Form RX1 completed so as to register the restriction in clause 9.1 on terms that the restriction has priority over any interest of a chargee under any charge by way of legal mortgage over the Property which the Chargor has created on completion of the transfer other than by way of this Deed (which for the avoidance of doubt the parties intend that the terms of this deed shall have priority over any other chargee);
  - 9.3.2 the address and reference of the Chargee's solicitors in panel 8 –Third party notification- of Land Registry form FR1.
- 9.4 In respect of the application referred to in clause 9.2 the Chargee must procure that the order of priority of applications set out in panel 4 of form FR1 is as follows:
- 9.4.1 TP1;
  - 9.4.2 this deed and the restriction referred to in this clause 9;
  - 9.4.3 any subsequent charge by way of legal mortgage which the Chargor created at completion of the transfer in favour of the Chargee (if applicable).

## **10 Undertakings**

- 10.1 During the Security Period the Chargor shall:
- 10.1.1 observe and perform all of the undertakings and indemnities set out in Schedule 2;
  - 10.1.2 not, without the prior written consent of the Chargee, create or permit to subsist any security in respect of the whole or any part of the Charged Property;
  - 10.1.3 not, without the prior written consent of the Chargee (not to be unreasonably withheld or delayed), dispose of, deal with or attempt to dispose of or deal with, the whole or any part of the Charged Property or any interest therein;

- 10.1.4 not do or cause or permit to be done anything which may in the reasonable opinion of the Chargee, in any way depreciate, jeopardise or otherwise prejudice the value to the Chargee (whether monetary or otherwise) of the whole or any part of the Charged Property;
  - 10.1.5 ensure that its centre of main interest, including (without limitation) its place of registered office, is and remains situated within the jurisdiction of the High Court for the purposes of the opening of insolvency proceedings under the Insolvency Regulation and all other applicable law;
  - 10.1.6 insure and keep the Charged Property insured to its full reinstatement value with a reputable insurer previously approved by the Chargee against such risks and to the extent from time to time required by the Chargee;
  - 10.1.7 ensure that each insurance policy relating to the Charged Property contains (i) a note as to the Chargee's interest in respect of all claims and (ii) a first loss payee clause and a standard mortgagee clause whereby such insurance will not be invalidated, vitiated or avoided against a mortgagee in the event of any misrepresentation, act, neglect or failure to disclose on the part of the insured, all in such manner as the Chargee may in its absolute discretion require;
  - 10.1.8 immediately give notice to the Chargee of any occurrence which may give rise to a claim under any insurance policy relating to the Charged Property and not without the prior written consent of the Chargee agree to settlement of any claim; and
  - 10.1.9 promptly pay all premiums and other monies payable under all its policies of insurance and promptly upon request, produce to the Chargee a copy of each policy and evidence acceptable to the Chargee of the payment of such sums.
- 10.2 The Chargee may if the Chargor is in default of clause 10.1 at the cost of the Chargor effect or maintain or renew any insurance relating to the Charged Property on such terms, in such name(s) and in such amount(s) as it considers appropriate.
- 10.3 All monies received under any insurance whatsoever and whensoever relating to the Charged Property shall, as the Chargee so directs, be applied in repairing, replacing,

restoring or rebuilding the property or assets damaged or destroyed or otherwise making good the loss or damage or in or towards the discharge of the Secured Obligations. The Chargor shall hold any such insurance monies received by it on trust for the Chargee pending payment to or direction from the Chargee and the Chargor waives any right it may have to require that any such monies are applied in any other manner than the Chargee so directs.

## **11 Representations**

11.1 The Chargor hereby represents and warrants to the Chargee on each day during the Security Period that:

- 11.1.1 it is the sole legal and beneficial owner of the whole of the Charged Property free from other security and encumbrances;
- 11.1.2 it is duly incorporated and validly existing with the power and authority to own its assets and carry on its business as presently being conducted;
- 11.1.3 all actions and conditions required in order for it to lawfully enter into and perform its obligations under this Deed as valid legally binding and enforceable obligations and for this Deed to be admissible in court have been taken, fulfilled and done;
- 11.1.4 its entry into and performance of its obligations under this Deed will not contravene any existing applicable law or result in any breach or constitute a default under any of the terms of any agreement to which it is a party nor contravene or conflict with any provision of its memorandum or articles or statutes or other constitutional documents;
- 11.1.5 no litigation, arbitration or administrative proceedings are current or pending which could have a material adverse effect on it, its assets or the performance of its obligations under this Deed;
- 11.1.6 no proceedings or other steps have been taken and not discharged for the winding up or dissolution or bankruptcy or voluntary arrangement in relation to it or for the appointment of a receiver or liquidator or trustee in bankruptcy or similar appointment in relation to it or its assets; and
- 11.1.7 its centre of main interest, including (without limitation) its place of registered office, is and remains situated within the jurisdiction of the High

Court for the purposes of the opening of insolvency proceedings under the Insolvency Regulation and all other applicable law.

**12 Interest**

- 12.1 The Chargor agrees to pay interest to the Chargee on any money demanded of it under this Deed accruing due to the Chargee on a daily basis, from day to day, from the date of first demand until payment is made in full (as well after as before judgment or any liquidation or bankruptcy), at the rate of interest agreed to be payable in accordance with the Contract Document.

**13 Amounts payable**

- 13.1 All payments by the Chargor under this Deed shall be made:

13.1.1 without set off, retention or counterclaim; and

13.1.2 free and clear of withholding or deduction of any taxes except to the extent that the Chargor is required by law to make such withholding or deduction in which case the Chargor shall pay such amount as will result in the receipt by the Chargee of the sums that would have been receivable by it in the absence of such withholding or deduction in respect of the Secured Obligations under this Deed.

- 13.2 The obligations of the Chargor to make payments under this Deed are in the currency of the Secured Obligations and shall not be discharged or satisfied by the receipt by the Chargee of any monies expressed or converted into any other currency and to the extent there is any shortfall between amounts due under this Deed in one currency and receipt by the Chargee in another currency then the Chargee shall be entitled to recover the amount of any shortfall from the Chargor and to sell any currency received for the currency due and the Chargor shall indemnify the Chargee against the full cost incurred in relation to such sale. The Chargee shall not have any liability to the Chargor in respect of any loss arising from any fluctuation in exchange rates after such sale.

- 13.3 The Chargee may (but is not obliged to) set off any obligation in respect of the Secured Obligations which is due and payable by the Chargor against any obligation (contingent or otherwise) owed by the Chargee to the Chargor and apply any money held for the account of the Chargor in such order as it shall deem in its absolute discretion appropriate.



- 13.4 Any amount due from the Chargor under the terms of this Deed but unpaid, including without limitation any interest, may, at the sole option of the Chargee, be added to the Secured Obligations and compounded in accordance with the usual practice of the Chargee.

**14 Enforcement**

- 14.1 Upon the occurrence of an Event of Default all of the Secured Obligations shall immediately become due and payable and the Chargee may, without notice to the Chargor, enforce all or any part of the security constituted by this Deed at such times, in the manner and on such terms as it thinks fit including (without limitation) the appointment of a receiver to all or any part of the Charged Property.
- 14.2 Section 103 LPA shall not apply to this Deed and the power of sale under section 101 LPA and all other powers conferred on the Chargee and any receiver by this Deed shall operate as a variation and extension of the statutory powers of sale and other powers under the LPA and such powers shall arise (and the Secured Obligations shall be deemed due and payable for these purposes) on the execution of this Deed.
- 14.3 The restrictions contained in section 93 LPA shall not apply to this Deed but the Chargee shall have the same right to consolidate this Deed and the money covenanted to be paid with any other security.
- 14.4 The statutory powers of leasing may be exercised by the Chargee at any time and the Chargee and any receiver may make any lease or agreement for lease, accept surrenders of leases and grant options on such terms as it shall think fit, without the need to comply with any restrictions imposed by sections 99 or 100 LPA.
- 14.5 The protection given to purchasers and persons dealing with a receiver in the LPA will apply to purchasers and any other persons dealing with the Chargee or any receiver and no purchaser or other person dealing with the Chargee or any receiver will be bound to see or inquire whether the right of the Chargee or any receiver to exercise any of its or his powers has arisen or become exercisable nor be concerned with any propriety or regularity on the part of the Chargee or any receiver in such exercise or dealings or whether any amount remains secured by this Deed.
- 14.6 The powers conferred by this Deed on the Chargee are in addition to and not in substitution for the powers conferred on mortgagees and mortgagees in possession

under the LPA, the Insolvency Act 1986 or otherwise by law and in the case of any conflict between the powers contained in any such Act and those conferred by this Deed the terms of this Deed will prevail.

## **15 Receivers**

- 15.1 At any time after having been requested to do so by the Chargor or after the occurrence of an Event of Default or this Deed having become enforceable the Chargee may in writing by deed or otherwise and without prior notice to the Chargor appoint one or more persons to be a receiver of the whole or any part of the Charged Property and the Chargee may, from time to time, in similar manner, remove a receiver or receivers and appoint another or others in substitution thereof.
- 15.2 Each person appointed to be a receiver pursuant to this Deed will be:
- 15.2.1 entitled to act independently or jointly with any other person appointed as a receiver except to the extent that the Chargee may specify to the contrary in the appointment;
  - 15.2.2 for all purposes deemed to be the agent of the Chargor who shall be solely responsible for his acts, defaults and liabilities and for the payment of his remuneration and at no time shall a receiver act as agent for the Chargee; and
  - 15.2.3 entitled to remuneration at a rate to be fixed by the Chargee from time to time (without being limited to any maximum rate).
- 15.3 The powers of appointment of a receiver shall be in addition to all statutory and other powers of appointment of the Chargee under the LPA (as extended by this Deed) or otherwise and such powers shall remain exercisable from time to time by the Chargee in respect of any part of the Charged Property.
- 15.4 Any receiver shall have and be entitled to exercise, in relation to the Charged Property all rights and powers as the Chargee shall see fit as though the Chargee was absolute owner of the Charged Property, including (without limitation) the rights and powers set out in Schedule 3.
- 15.5 The receipt of the Chargee or any receiver shall be conclusive discharge to any purchaser and, in making any disposal of any of the Charged Property the Chargee

or any receiver may do so for such consideration, in such manner and on such terms as the Chargee or any receiver thinks fit.

- 15.6 Neither the Chargee nor any receiver nor any officer, employee or agent of the Chargee or any receiver shall be deemed to be or in any way liable to account as mortgagee in possession in respect of all or any Charged Property or be liable in any way to the Chargor or any other person for the manner of exercise or non exercise of any powers or rights of the Chargee or any receiver or for any act or default or omission of any nature whatsoever.
- 15.7 Any liberty or power which may be exercised or any determination which may be made under this Deed by the Chargee or any receiver may be exercised or made in the Chargee's or any receiver's absolute and unfettered discretion without any obligation to give reasons.

**16 Appropriations and application of proceeds**

- 16.1 The Chargee may apply or refrain from applying any money or property received by it in or towards payment or discharge of any liability in respect of the Secured Obligations in such order or manner as it sees fit or determines and hold any money received by it in an interest bearing suspense account or on account of the Chargor's liabilities under this Deed.
- 16.2 If the Chargee (or any receiver) enforces the security constituted by this Deed at a time when no amount in respect of the Secured Obligations is due and payable, or when the amount due and payable is not ascertained, the Chargee (or any receiver) may pay the proceeds of any recoveries effected by it into an interest bearing suspense account. The Chargee may withdraw amounts standing to the credit of such suspense account for application in or towards discharge of the Secured Obligations.

**17 Immediate recourse**

- 17.1 The Chargee shall not be obliged to proceed first against, or enforce any rights or security or claim payment from any person before claiming any benefit under this Deed and the Chargor hereby waives any contrary right it may have whether arising under law or otherwise.

**18     Assignment and delegation**

- 18.1   The Chargee may (without notice to or the prior consent of the Chargor) assign or transfer all or any of its rights or powers under this Deed to any person whether in connection with an assignment or transfer or the grant of participation in respect of the Secured Obligations or otherwise and may disclose to any potential assignee, transferee or participant such confidential information about the Chargor and this Deed as it shall deem appropriate.
- 18.2   The Chargor may not assign or transfer any of its rights or obligations under this Deed.
- 18.3   The Chargee and any receiver may from time to time employ professional advisors and delegate by power of attorney or otherwise to any person any of the powers and discretions of the Chargee or any receiver whether arising by statute, the provisions of this Deed or otherwise upon such terms and for such periods of time as they may think fit (disclosing such confidential information about the Chargor or this Deed as the Chargee or any receiver sees fit) and may at any time determine any such employment or delegation. At no time will either the Chargee or any receiver be liable to the Chargor for any loss or damage arising from any act, default, omission or misconduct of any person.

**19     Miscellaneous**

- 19.1   If any term or provision of this Deed shall be determined to be or becomes invalid, illegal or unenforceable all other terms and provisions of this Deed shall nevertheless be valid, legal and enforceable to the fullest extent permitted by law.
- 19.2   No failure or delay on the part of the Chargee to exercise any right, remedy or power under this Deed or in respect of the Secured Obligations shall operate as a waiver nor shall any partial or defective exercise preclude or impair any other further exercise of that or any other right, remedy or power.
- 19.3   No failure by the Chargee to give any notice which it is required to give in respect of the Chargor or any Co-obligor shall affect or impair the liability of the Chargor to the Chargee under this Deed.
- 19.4   At any time after an Event of Default has occurred or this Deed has become enforceable the Chargee may redeem or take a transfer of any security ranking in priority to the security constituted by this Deed. The Chargee may agree the

accounts of the holder of any such prior security which agreement shall be binding and conclusive on the Chargor. Any amount paid in connection with such transfer shall be payable on demand by the Chargor to the Chargee.

- 19.5 The powers which this Deed confers on the Chargee are cumulative, without prejudice to its powers under general law, and may be exercised as often as the Chargee thinks appropriate.
- 19.6 A person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 19.7 This Deed may be executed in two or more counterparts each of which shall constitute an original but which, when taken together, shall constitute one agreement.
- 19.8 Any certificate signed as correct by the Chargee, showing the amount due under this Deed and any determination by the Chargee under this Deed shall be binding and conclusive on and against the Chargor in the absence of manifest error.
- 19.9 All notices or other communications required in connection with this Deed shall be in writing and may be delivered by hand or sent by post to the relevant address set out above or in the case of facsimile transmission to the last published number of the relevant addressee or such other address or facsimile number as the relevant party may notify to the other party. Every notice, demand or other communication shall be deemed to have been received on the second Business Day after posting or at the time of delivery by hand delivery or facsimile transmission if effected during normal business hours and if outside normal business hours at the start of the next succeeding Business Day.

## **20 Power of attorney**

- 20.1 As further security for the performance of the Chargor's obligations under this Deed, the Chargor hereby irrevocably appoints each of the Chargee (whether or not a receiver has been appointed) and also (as a separate appointment) any receiver jointly and severally to be its attorney with full power of delegation in its name and on its behalf and as the act and deed of the Chargor or otherwise:

- 20.1.1 to sign, execute, seal, complete and deliver any document, deed, agreement, instrument or act which the Chargee or any receiver may require for perfecting the title of the Chargee to the Charged Property or

for vesting the same in the Chargee, its nominees or any purchaser or generally for the purposes set out in this Deed;

- 20.1.2 to sign, execute, seal, complete and deliver any further deed or document required pursuant to clause 5.1; and
- 20.1.3 otherwise generally to sign, seal, execute and deliver all deeds, assurances, agreements and documents and to do all acts and things which may be required for the full exercise of all or any of the powers conferred on the Chargee or a receiver under this Deed or which may be deemed expedient by the Chargee or a receiver in connection with any disposal of the Charged Property, realisation or getting in of the Charged Property or any part of it or in connection with any other exercise of any power under this Deed.

## **21 Governing law and jurisdiction**

- 21.1 This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law.
- 21.2 The Chargor hereby irrevocably:
  - 21.2.1 agrees for the benefit of the Chargee that the High Court shall have exclusive jurisdiction in relation to any claim or dispute concerning this Deed and/or any non-contractual obligation arising out of or in connection with this Deed and in relation to the enforcement of any judgment relating to any such claim or dispute; and
  - 21.2.2 waives any right that it may have to object to an action being brought in the High Court or to claim *Forum Non Conveniens* or that the action had otherwise been brought in an inconvenient forum or that the High Court does not have jurisdiction.
- 21.3 The submission by the Chargor to the jurisdiction of the High Court provided above shall not give rise to any limit on the Chargee's right to bring legal proceedings in any court having competent jurisdiction or in any court which the Chargee believes to have competent jurisdiction at the time legal proceedings are issued. Legal proceedings brought by the Chargee in one or more jurisdictions shall not preclude any legal proceedings by the Chargee in any other jurisdiction or jurisdictions.

**IN WITNESS WHEREOF** this Deed has been executed as a deed by the Chargor and the Chargee and is intended to be and is hereby delivered on the date first above written.

## **Schedule 1**

### **Events of Default**

- 1 For the purposes of this Deed, it shall be an event of default if:
  - 1.1 the Chargor does not pay and discharge any part of the Secured Obligations on the due date for payment; or
  - 1.2 the Chargor commits a breach of any of the covenants and obligations contained in this Deed and where such breach is, in the opinion of the Chargee capable of remedy, it is not remedied to the satisfaction of the Chargee within seven days of the breach or any representation or warranty given in this Deed is or becomes untrue; or
  - 1.3 any preliminary step is taken for winding up or dissolution or bankruptcy or voluntary arrangement or the appointment of an administrator, a receiver or liquidator or trustee in bankruptcy in relation to the Chargor or to any of the property or assets or business of the Chargor; or
  - 1.4 any event occurs which would, in the opinion of the Chargee:
    - 1.4.1 entitle the holder of any security over any of the property or assets or business of the Chargor to:
      - (i) accelerate the payment of sums due to such holder; or
      - (ii) crystallise any floating charge granted by the Chargor; or
    - 1.4.2 cause any floating charge granted by the Chargor to crystallise automatically; or
  - 1.5 any judgment, decree or order is made against the Chargor and not complied with within seven days or if any execution, distress, sequestration, diligence or other process is levied or enforced upon or against any substantial part of the property or assets of the Chargor; or
  - 1.6 any provision of this Deed ceases in any respect to be in full force and effect or to be continuing or is or is purported to be determined or disputed or



becomes invalid, illegal or unenforceable or any part of the security constituted by this Deed is in jeopardy; or

- 1.7 the Chargor is unable to pay its debts as they fall due or the value of its assets is less than its liabilities (taking into account contingent and prospective liabilities); or
- 1.8 the Chargor ceases or threatens to cease to carry on all or a substantial part of its business or operations or sells, transfers or otherwise disposes of the whole or a substantial part of its undertaking or assets, whether by a single transaction or a number of transactions.

## Schedule 2

### Property undertakings and indemnities

1 The Chargor shall:

- 1.1 repair and keep in no worse state of repair and condition than it is in at the date of this deed to the reasonable satisfaction of the Chargee all the Charged Property including (without limitation) all buildings, erections and structures on or in the Property;
- 1.2 not at any time without the prior written consent of the Chargee sever or remove any of the fixtures forming part of the Property or any of the plant or machinery (other than stock in trade or work in progress) on or in the Charged Property (except for the purpose of any necessary repairs or replacement of it);
- 1.3 manage the Charged Property and any person occupying the whole or any part of the Charged Property under any occupational lease in accordance with the principles of good estate management and in any manner that the Chargee may in its discretion require;
- 1.4 perform and comply with its obligations as lessor under any occupational lease and shall procure that each lessee under such lease performs its obligations thereunder and shall forthwith advise the Chargee (on it coming to the knowledge of the Chargor) of any breach by such lessee;
- 1.5 not do or cause or permit to be done anything which may in any way depreciate, jeopardise or otherwise impair the value of the whole or any part of the Charged Property or the realisation thereof;
- 1.6 comply with and observe and perform (a) all covenants and conditions affecting the Charged Property, (b) all applicable requirements of all statutes, planning legislation, regulations and bye-laws relating to the Charged Property, (c) any conditions attaching to any planning permissions relating to or affecting the Charged Property and (d) any notices or other orders made by any planning, environmental or other public body in respect of all or any part of the Charged Property;

- 1.7 in relation to any lease, agreement for lease or other right to occupy to which all or any part of the Charged Property is at any time subject:
- 1.7.1 pay the rents (if the lessee) and observe and perform in all material respects the covenants, conditions and obligations imposed (if the lessor) on the lessor or, (if the lessee) on the lessee; and
  - 1.7.2 not do any act or thing whereby any lease or other document which gives any right to occupy any part of the Charged Property becomes or may become subject to determination or any right of re-entry or forfeiture prior to the expiration of its term;
- 1.8 obtain and maintain in full force and effect all Environmental Law authorisations and procure compliance with all Environmental Law matters affecting the Charged Property;
- 1.9 inform the Chargee immediately of any claim or breach in respect of Environmental Law affecting the Charged Property (whether actual, alleged or threatened) or any investigation or requirement or order made in relation to any such claim or breach and forthwith take all steps necessary to remedy any infringement of any Environmental Law affecting the Charged Property;
- 1.10 indemnify and keep indemnified (on a full indemnity basis) the Chargee in respect of all claims, costs, expenses and liability whatsoever from time to time incurred by the Chargee:
- 1.10.1 under any covenant, agreement or obligation affecting the Charged Property, whether contained in or imposed by any lease, tenancy or licence or otherwise;
  - 1.10.2 under any legislation concerning or affecting Environmental Law, Landlord and Tenant or Town and Country Planning in respect of any act, matter or thing done, omitted or suffered to be done by or on behalf of the Chargor or under any requirement or regulation of any competent authority including without limitation fines, penalties, judgments and awards, financial responsibility for clean-up activities, contributions, legal, consultancy, engineers and experts fees, costs and expenses; and

- 1.10.3 in any actual or attempted enforcement, exercise or protection of any of the rights, powers, provisions and covenants contained in this Deed.

### **Schedule 3**

#### **Powers of receivers**

- 1 All the powers to do or abstain from doing anything which the Chargor could do or abstain from doing in relation to the Charged Property including, without limitation the powers conferred by section 109 LPA and Schedule 1 to the Insolvency Act 1986 and with all the powers of an absolute beneficial owner and in particular a receiver may:
  - 1.1 carry on, manage or concur in carrying on managing the whole or any part of the business of the Chargor as he may in his discretion think fit;
  - 1.2 manage, insure, repair, decorate, maintain, alter, improve, renew or add to the Charged Property or concur in so doing as he may in his discretion think fit;
  - 1.3 commence or complete any building operations on the Charged Property as he may in his discretion think fit;
  - 1.4 apply for and maintain any planning permissions, building regulations, approvals and any other permissions, consents or licences as he may in his discretion think fit,
  - 1.5 in each case in such manner and generally on such terms as he may in his discretion think fit, (exercising any such power by effecting such transaction in the name of or on behalf of the Chargor or otherwise):
    - 1.5.1 let, hire or lease (with or without premium) and accept surrenders of leases or tenancies or concur in so doing;
    - 1.5.2 grant rights, options or easements over and otherwise deal with or dispose of, and exercise all rights, powers and discretions incidental to, the ownership of the Charged Property;
    - 1.5.3 exchange or concur in exchanging the Charged Property; and
    - 1.5.4 sell, exchange, convert into money and realise the Charged Property or concur in so doing whether by public auction or private contract or otherwise and generally in such manner and on such

terms as he may in his discretion think fit for any valuable consideration and any such consideration may be payable in a lump sum or by instalments spread over such period as he may in his discretion think fit;

- 1.6 for the purpose of exercising any of the powers, authorities or discretions conferred on him by or pursuant to this Deed or of defraying any costs which are incurred in the exercise of such powers, authorities or discretions or for any other purpose, raise and borrow money or incur any other liability either unsecured or secured on the Charged Property, either in priority to the security constituted by this Deed or otherwise, and generally on such terms as he may in his discretion think fit. No person lending such money is to be concerned to enquire as to the propriety or purpose of the exercise of such power or as to the application of any money so raised or borrowed;
- 1.7 make, or require the directors of the Chargor to make, such calls upon the shareholders of the Chargor in respect of any uncalled capital of the Chargor as the Chargee may in his discretion require and enforce payment of any call so made by action (in the name of the Chargor or a receiver may in his discretion think fit) or otherwise;
- 1.8 settle or compromise any claim by, adjust any account with, refer to arbitration any dispute and deal with any question or demand relating in any way to the Charged Property, as he may in his discretion think fit;
- 1.9 bring, prosecute, enforce, defend and abandon all such action, suits and proceedings in relation to the Charged Property as he may in his discretion think fit;
- 1.10 promote the formation of any subsidiary of the Chargor with a view to such subsidiary purchasing, leasing, licensing or otherwise acquiring an interest in the Charged Property;
- 1.11 arrange for the purchase, lease, licence or acquisition or an interest in the Charged Property by any such subsidiary for any valuable consideration or a sum calculated by reference to profits, turnover, royalties, licence fees or otherwise, whether or not secured on the undertaking or assets of such subsidiary and whether or not such consideration is payable or receivable in a

lump sum or at any time or any number of times by instalments spread over such period, as a receiver may in his discretion think fit;

- 1.12 arrange for such subsidiary to trade or cease to trade as the receiver may in his discretion think fit;
- 1.13 appoint and discharge any manager, officer, agent, professional advisor, employee and any other person, upon such terms as he may in his discretion think fit;
- 1.14 give valid receipts for all monies and execute all assurances and things which he may in his discretion think proper or desirable for selling, leasing, converting, realising or otherwise dealing with the Charged Property;
- 1.15 conduct and complete all investigations, studies, sampling and testing and all remedial, removal and other action, whether required under Environmental Law or by the Chargee or otherwise and comply with all lawful orders and directives of all authorities regarding Environmental Law; and
- 1.16 do all such other acts and things as a receiver may in his discretion consider to be incidental or conducive to any of the matters or powers set out in this Deed or otherwise incidental or conducive to the preservation, improvement or realisation of the Charged Property.

EXECUTION PAGE

CHARGOR:

Executed as a deed by **LENHAM** )  
**STORAGE (MIDLANDS) LIMITED** acting )  
by a director in the presence of: )

.....  
Director's signature

*KEITH ABREHART.*  
.....

Director's name

Witness' signature:

Witness' name:

Witness' address:

.....  
*David West*  
.....  
.....  
.....

Witness' occupation:

.....