



**Registration of a Charge**

Company Name: **HILLTOP LEAF LTD**

Company Number: **SC637928**



Received for filing in Electronic Format on the: **23/12/2021**

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**Details of Charge**

Date of creation: **22/12/2021**

Charge code: **SC63 7928 0001**

Persons entitled: **SOUTH OF SCOTLAND ENTERPRISE**

Brief description:

**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: **CMS CAMERON MCKENNA NABARRO OLSWANG LLP**



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

Company number: 637928

Charge code: SC63 7928 0001

The Registrar of Companies for Scotland hereby certifies that a charge dated 22nd December 2021 and created by HILLTOP LEAF LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 23rd December 2021 .

Given at Companies House, Edinburgh on 29th December 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**

DATE: 22<sup>nd</sup> December 2021

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**FLOATING CHARGE**

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Between

**HILLTOP LEAF LTD**

(as Chargor)

and

**SOUTH OF SCOTLAND ENTERPRISE**

(as Lender)

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THIS CHARGE is delivered on 22<sup>nd</sup> December 2021 and granted by

- (1) **HILLTOP LEAF LTD**, incorporated in Scotland with company number No. SC637928, whose registered office at the date of this Charge is situated at 5 Whitefriars Crescent, Whitefriars Crescent, Perth, Scotland, PH2 0PA (subject to clause 1.2.1 below, the “Chargor”); and

in favour of:

- (2) **SOUTH OF SCOTLAND ENTERPRISE** whose registered address at the date of this Charge is at Carmont House, The Crichton, Bankend Road, Dumfries, Scotland DG1 4TA as lender (subject to clause 1.2.1 below, the “Lender”).

**WHEREAS:**

The Board of Directors of the Chargor is satisfied that the giving of the security contained or provided for in this Charge is in the interests of the Chargor and has passed a resolution to that effect.

**NOW IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

*Definitions*

1.1 In this Charge:

“**Authorisation**” means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration;

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

“**Charged Property**” means all the assets of the Chargor which from time to time are the subject of any security created or expressed to be created in favour of the Lender by or pursuant to this Charge;

“**Default Rate**” means:

- (a) the default rate of interest payable pursuant to any agreement or instrument constituting the Secured Liabilities from time to time; or
- (b) if no such rate is specified, 2% per annum above the rate of interest payable pursuant to any agreement or instrument constituting the Secured Liabilities from time to time; or
- (c) if neither such rate is specified, 2% per annum above the base rate of the Bank of England from time to time (and 2% if that base rate is a negative number);

“**Delegate**”: means any person appointed by the Lender or any Receiver pursuant to clauses 10.2 to 10.4 (*Delegation*) and any person appointed as attorney of the Lender and/or any Receiver or Delegate;

“**Environment**” means humans, animals, plants and all other living organisms including the ecological systems of which they form part and all or any of the following media:

- (a) air (including, without limitation, air within buildings and air within other natural or man-made structures, whether above or below ground);
- (b) water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers); and
- (c) land (including, without limitation, surface and sub-surface soil and land under water);

**“Environmental Claim”**: means any claim, proceeding, formal notice or investigation by any person in respect of any Environmental Law;

**“Environmental Law”** means any applicable law or regulation which relates to:

- (a) the pollution or protection of the Environment;
- (b) the conditions of the workplace; or
- (c) the generation, handling, storage, use, release or spillage of any emission or substance which, alone or in combination with any other, is capable of causing harm to the Environment, including, without limitation, any waste;

**“Environmental Permits”** means any permit and other Authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of the Chargor conducted on or from the Real Properties owned or used by it;

**“Event of Default”** means an “Event of Default” as described in any Facility Agreement or any other document constituting any of the Secured Liabilities;

**“Expenses”** means all costs (including legal fees), charges, expenses and damages sustained or incurred by the Lender or any Receiver or Delegate at any time in connection with the Charged Property or the Secured Liabilities or in taking, holding or perfecting this Charge or in protecting, preserving, defending or enforcing the security constituted by this Charge or in exercising any rights, powers or remedies provided by or pursuant to this Charge (including any right or power to make payments on behalf of the Chargor under the terms of this Charge) or by law in each case on a full indemnity basis;

**“Facility Agreement”** means:

- (a) the Original Facility Agreement;
- (b) any other facility agreement, letter or instrument between the Chargor and the Lender relating to the Secured Liabilities;

**“Liability Period”** means the period beginning on the date of this Charge and ending on the date on which the Lender is satisfied, acting in good faith, that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full;

**“Material Adverse Effect”** means, in the opinion of the Lender a material adverse effect on:

- (a) the business, operations, property, condition (financial or otherwise) or prospects of the Chargor;
- (b) the ability of the Chargor to perform its obligations under any documents to which it and the Lender are a party; or
- (c) the validity and enforceability of, or the effectiveness or ranking of any Security granted or purported to be granted in support of the obligations of the Chargor in favour of the Lender or the rights and remedies of the Lender under any of the same;

**“Original Facility Agreement”** means the loan offer letter dated on or around the date of this Charge by the Lender to the Chargor;

**“Real Property”** means:

- (a) any freehold, heritable, commonhold, leasehold or immovable property; and



- (b) any buildings, fixtures, fittings, fixed plant or machinery from time to time situated on or forming part of that freehold, heritable, commonhold, leasehold or immoveable property,
- (c) and “**Real Properties**” shall be construed accordingly;

“**Receiver**” means a receiver or administrative receiver in each case appointed under this Charge;

“**Secured Liabilities**” means all present and future indebtedness, moneys, obligations and liabilities of the Chargor to the Lender, in whatever currency denominated, whether actual or contingent, whether owed jointly or severally or as principal or as surety or in some other capacity and whether or not the Lender was an original party to the relevant transaction and in whatever name or style, including all interest, discount, commission and fees for which the Chargor may be or become liable to the Lender, together with all Expenses and all interest under clause 2.2 (*Interest*);

“**Security**” means a mortgage, charge, pledge, lien, assignation in security, standard security or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;

“**Tax**” means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same); and

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

### ***Construction***

#### **1.2** Any reference in this Charge to:

- 1.2.1 the “**Lender**”, the “**Chargor**” or any other person shall be construed, without prejudice to any requirement to obtain the consent of the Lender to the same, so as to include its successors in title, assigns and transferees;
- 1.2.2 “**assets**” includes present and future properties, Real Properties, revenues and rights of every description;
- 1.2.3 “**indebtedness**” includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.2.4 a “**person**” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
- 1.2.5 a “**regulation**” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
- 1.2.6 a provision of law is a reference to that provision as amended or re-enacted; and
- 1.2.7 an Event of Default which is “**continuing**” is an Event of Default which is continuing and which has not been waived in writing by the Lender.

#### **1.3** Clause and schedule headings are for ease of reference only.

- 1.4 Any reference in this Charge to “**this Charge**” shall be deemed to be a reference to this Charge as a whole and not limited to the particular clause, schedule or provision in which the relevant reference appears and to this Charge as amended, novated, assigned, supplemented, extended, substituted or restated from time to time and any reference in this Charge to a “**clause**” or a “**schedule**” is, unless otherwise provided, a reference to a clause or a schedule of this Charge.
- 1.5 Any reference in this Charge to any Facility Agreement or any other agreement or other document shall be construed as a reference to that Facility Agreement or that other agreement or document as the same may have been, or may from time to time be, restated, varied, amended, supplemented, extended, substituted, novated or assigned (however fundamentally), whether or not as a result of any of the same:
- 1.5.1 there is an increase or decrease in any facility made available under that Facility Agreement or other agreement or document or an increase or decrease in the period for which any facility is available or in which it is repayable;
  - 1.5.2 any additional, further or substituted facility to or for such facility is provided;
  - 1.5.3 any rate of interest, commission or fees or relevant purpose is changed;
  - 1.5.4 the identity of the parties is changed;
  - 1.5.5 the identity of the providers of any security is changed;
  - 1.5.6 there is an increased or additional liability on the part of any person; or
  - 1.5.7 a new agreement is effectively created or deemed to be created.
- 1.6 Unless the context otherwise requires, words denoting the singular number only shall include the plural and vice versa.
- 1.7 Where any provision of this Charge is stated to include one or more things, that shall be by way of example or for the avoidance of doubt only and shall not limit the generality of that provision.
- 1.8 Any change in the constitution of the Lender or its absorption of or amalgamation with any other person or the acquisition of all or part of its undertaking by any other person shall not in any way prejudice or affect its rights under this Charge.

***Date of Delivery***

- 1.9 This Charge takes effect from the date of delivery of this Charge by the Chargor. The date of delivery of this Charge is the date on which the Chargor executes this Charge.

***Third Party Rights***

- 1.10 Unless expressly provided to the contrary in this Charge (including, but without limitation, pursuant to clause 24.1 (*Assignment*)), this Charge does not confer on any person other the Chargor and the Lender any right to enforce or otherwise invoke any term of this Charge under the Contract (Third Party Rights) (Scotland) Act 2017 or otherwise.
- 1.11 Any Receiver or Delegate may enforce or enjoy the benefit of any clause which expressly confers rights on it, subject to clause 1.10 above and the provisions of the Contract (Third Party Rights) (Scotland) Act 2017.

## **2. COVENANT TO PAY**

### ***Bond***

- 2.1 The Chargor covenants with the Lender that it shall pay, perform and discharge the Secured Liabilities as and when the same fall due for payment, performance or discharge in accordance with their terms or, in the absence of any such express terms, on demand.

### ***Interest***

- 2.2 The Chargor covenants with the Lender to pay interest on any amounts due under clause 2.1 (*Covenant to Pay*) from day to day until full discharge (whether before or after judgment, liquidation, winding-up or administration of the Chargor) at such rate as may from time to time be fixed by the Lender and, if not so fixed, at the Default Rate, on the basis that all such interest will be payable upon such days in each year as the Lender shall from time to time fix and will be compounded with rests on such days in each year in the event of it not being so paid but without prejudice to the right of the Lender to require payment of such interest on demand at any time and provided that, in the case of any Expense, such interest shall accrue and be payable as from the date on which the relevant Expense arose without the necessity for any demand being made for payment.

## **3. FLOATING CHARGE**

### ***Creation of Floating Charge***

- 3.1 The Chargor, as security for the payment, performance and discharge of all the Secured Liabilities, hereby grants a floating charge in favour of the Lender over the whole of the property (including uncalled capital) which is or may be from time to time comprised in the property and undertaking of the Chargor.

### ***Qualifying Floating Charge***

- 3.2 The provisions of paragraph 14 of schedule B1 to the Insolvency Act 1986 shall apply to the floating charge created pursuant to clause 3.1 (*Creation of Floating Charge*).

### ***Ranking***

- 3.3 In the event that the Chargor grants any Security after its execution of this Charge in breach of clause 6.2 (*Negative Pledge*) the floating charge created by clause 3.1 shall rank in priority to any such security.

## **4. FURTHER ASSURANCE**

### ***Further Assurance***

- 4.1 The Chargor shall promptly do all such acts and execute all such documents (including assignments in security, transfers, mortgages, charges, pledges, standard securities notices and instructions) as the Lender or any Receiver may reasonably specify (and in such form as the Lender or any Receiver may reasonably require in favour of the Lender or its nominee(s)) to:
- 4.1.1 perfect the security created or intended to be created in respect of the Charged Property;
  - 4.1.2 confer on the Lender Security over any property and assets of the Chargor located in any jurisdiction equivalent or similar to the security intended to be conferred by or pursuant to this Charge;

- 4.1.3 facilitate the exercise of any rights, powers and remedies of the Lender or any Receiver or Delegate provided by or pursuant to any Facility Agreement, this Charge or by law; and/or
- 4.1.4 facilitate the realisation of the assets which form part of, or are intended to form part of, the Charged Property.

***Necessary Action***

- 4.2 The Chargor shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any security conferred or intended to be conferred on the Lender by or pursuant to this Charge.

**5. REPRESENTATIONS**

***General***

- 5.1 The Chargor makes the representations and warranties set out in this clause 5 to the Lender on the date of this Charge.

***Status***

- 5.2 It is a limited liability company, duly incorporated and validly existing under the law of its jurisdiction of incorporation and it has the power to own its assets and carry on its business as it is being conducted.

***Binding Obligations***

- 5.3 The obligations expressed to be assumed by it in this Charge and each other document to which it and the Lender are a party are legal, valid, binding and enforceable obligations and (without limiting the generality of the foregoing) this Charge creates the security which it purports to create and that security is valid and effective.

***Power and Authority***

- 5.4 It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Charge and each other document to which it and the Lender are a party and the transactions contemplated by this Charge and each other document to which it and the Lender are a party.
- 5.5 No limit on its powers will be exceeded as a result of the grant of security contemplated by this Charge or the exercise of rights and performance of obligations under this Charge or any other document to which it and the Lender are a party.

***Non-conflict with Other Obligations***

- 5.6 The entry into and performance by it of, and the transactions contemplated by, this Charge and each other document to which it and the Lender are a party and the granting of the security under this Charge do not and will not conflict with:
  - 5.6.1 any law or regulation applicable to it;
  - 5.6.2 its constitutional documents; or
  - 5.6.3 any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument,

nor (except as provided in this Charge) result in the existence or imposition of, or oblige it to create, any Security in favour of any person over all or any of its assets.

***Insolvency and Centre of Main Interests and Establishments***

5.7 No corporate action, legal proceeding or other procedure or step in relation to:

5.7.1 the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise);

5.7.2 a composition, compromise, assignment or arrangement with any creditor; or

5.7.3 the appointment of a liquidator, receiver, administrative receiver, administrator, trustee or other similar officer,

(or any analogous procedure or step in any jurisdiction) has been taken or, to its knowledge, threatened in relation to it or any of its assets.

5.8 No expropriation, attachment, sequestration, distress, execution or diligence (or any analogous process in any jurisdiction) affecting any of the assets of it has been taken or, to its knowledge, threatened in relation to it.

5.9 It is not unable nor has it admitted its inability to pay its debts as they fall due (or has been deemed to or declared to be unable to pay its debts under applicable law) and it has not suspended or threatened to suspend making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commenced negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness and the value of its assets is not less than its liabilities (taking into account contingent and prospective liabilities).

***Validity and Admissibility in Evidence***

5.10 All Authorisations required or desirable to:

5.10.1 enable it lawfully to enter into, exercise its rights and comply with its obligations in this Charge and each other document to which it and the Lender are a party;

5.10.2 make this Charge and each other document to which it and the Lender are a party admissible in evidence in its jurisdiction of incorporation; and

5.10.3 enable it to create any security expressed to be created by it by or pursuant to, or, as the case may be, any security expressed to have been created by it and to be evidenced in, this Charge and each other document to which it and the Lender are a party and to ensure that such security has the priority and ranking it is expressed to have,

have been obtained or effected and are in full force and effect, except for any registrations and filings referred to in clause 5.15 below.

***Governing Law and Enforcement***

5.11 The choice of Scots law as the governing law of this Charge will be recognised and enforced in its jurisdiction of incorporation.

5.12 Any judgment obtained in the courts of Scotland in relation to this Charge (or, in the case that this Charge confers jurisdiction to settle disputes on any other courts, any judgment obtained in those other courts) will be recognised and enforced in its jurisdiction of incorporation.

- 5.13 It has entered into this Charge for private, commercial purposes and, in any proceedings taken in its jurisdiction of incorporation in relation to this Charge, it will not be entitled to claim for itself or any of its assets immunity from suit, execution, attachment or other legal process.

***No Filing or Stamp Taxes***

- 5.14 Under the law of its jurisdiction of incorporation it is not necessary that this Charge be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar taxes or fees be paid on or in relation to this Charge or the transactions contemplated by this Charge, except registration of a certified copy of this Charge at Companies House under section 859A of the Companies Act 2006 and payment of associated fees which registration and fees will be made and paid promptly after the date of this Charge.

***No Breach of Law or Default***

- 5.15 It has not breached any law or regulation which breach could or might result in any material adverse change in its financial condition, business or assets or might otherwise reasonably be expected to have a Material Adverse Effect.
- 5.16 It is not in breach under any agreement to which it is a party nor is it in default in respect of any material financial commitment or liability.

***No Misleading Information***

- 5.17 All financial and other information provided by it (including its advisers) to the Lender was true, complete and accurate in all material respects as at the date it was provided and is not misleading in any respect.

***No Proceedings Pending or Threatened***

- 5.18 No litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which, if adversely determined, could or might result in any material adverse change in its financial condition, business or assets or otherwise might reasonably be expected to have a Material Adverse Effect have (to the best of its knowledge and belief (having made due and careful enquiry)) been started or threatened against it.

***Creation of Security***

- 5.19 This Charge creates or, as applicable, evidences in favour of the Lender the security which it purports to create or evidence with the ranking and priority which it is expressed to have.
- 5.20 Without limiting clause 5.19 above, its payment obligations under this Charge rank prior to the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.
- 5.21 No Security exists over all or any of its assets.

***Good Title to Assets***

- 5.22 It has a good, valid and marketable title to, or valid leases or licences of, and all appropriate Authorisations to use, the assets necessary to carry on its business as it is being conducted.
- 5.23 It is the sole legal and beneficial owner of the assets over which it purports to grant security under this Charge.

***Environmental Laws***

- 5.24 It is in compliance with clause 6.15 (*Environmental Compliance*) and to the best of its knowledge and belief (having made due and careful enquiry) no circumstances have occurred which would



prevent such compliance in a manner or to an extent that might reasonably be expected to have a material adverse effect on its business, assets or financial condition or on its ability to comply with its obligations under this Charge or otherwise might have a Material Adverse Effect.

- 5.25 No Environmental Claim has been commenced or (to the best of its knowledge and belief (having made due and careful enquiry)) is threatened against it where that claim, if adversely determined, might reasonably be expected to have a material adverse effect on its business, assets or financial condition or on its ability to comply with its obligations under this Charge or otherwise might have a Material Adverse Effect.

***Continuing Representations***

- 5.26 The Chargor undertakes with the Lender that the representations and warranties in this clause 5 will be true and accurate throughout the continuance of this Charge by reference to the facts and circumstances existing from time to time.

**6. UNDERTAKINGS**

***General***

- 6.1 The undertakings in this clause 6 remain in force from the date of this Charge for so long as any amount is outstanding under this Charge.

***Negative Pledge***

- 6.2 The Chargor shall not create or extend or permit to arise or subsist any Security (other than any Security constituted by this Charge) over the whole or any part of the Charged Property other than with the prior written consent of the Lender.

***Restriction on Disposals***

- 6.3 The Chargor shall not enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of the whole or any part of the Charged Property, other than any disposal in the ordinary course of trading (as conducted by the Chargor at the date of this Charge) or as expressly permitted under this Charge or with the prior consent of the Lender.

***Access***

- 6.4 The Chargor shall permit the Lender and any other person nominated by it free access at all reasonable times and on reasonable notice to enter upon and/or view the state and condition of the Charged Property (without, in any case, becoming liable to account as creditor, heritable creditor or mortgagee in possession).

***Insurance***

- 6.5 The Chargor shall insure and keep insured (or where, in the case of any leasehold property, insurance is the responsibility of the landlord under the terms of the lease, either procure that the landlord insures and keeps insured or, if and to the extent that the landlord does not do so, itself insure and keep insured) the Charged Property (insofar as it is of an insurable nature) against:
- 6.5.1 loss or damage by fire or terrorist acts;
  - 6.5.2 other risks, perils and contingencies and in such amounts and on such terms as would be taken out by reasonably prudent persons carrying on the same class of business as that carried on by it; and

- 6.5.3 any other risks, perils and contingencies and in such amounts and on such terms as the Lender may reasonably require.
- 6.6 All such insurances must be with an insurance company or underwriters and on such terms as are reasonably acceptable to the Lender and must be in a sum or sums not less than the replacement value of the Charged Property (meaning, in the case of any buildings or erections from time to time forming part of the Charged Property, the total cost of entirely rebuilding, reinstating or replacing those buildings or erections in the event of their being completely destroyed, together with architects', surveyors', engineers' and other professional fees and charges for demolition and reinstatement).
- 6.7 The Chargor shall procure that the terms of each policy of insurance effected or maintained by it or any person on its behalf in accordance with clause 6.5 above require the insurer not to invalidate the policy as against the Lender by reason of the act or default of any other joint or named insured and not to cancel it without giving at least 30 days' prior written notice to the Lender.
- 6.8 The Chargor shall promptly pay all premiums and other moneys payable under or in respect of each policy of insurance effected or maintained by it or any person on its behalf in accordance with clause 6.5 above and do all other things necessary to keep each such policy in full force and effect and shall, promptly upon request, produce to the Lender receipts showing the payment of such moneys within seven days of their becoming due and payable (or where, in the case of leasehold property, insurance is effected by the landlord, such evidence of the payment of premiums as the Chargor is entitled to obtain from the landlord under the terms of the relevant lease).
- 6.9 The Chargor shall, on written demand by the Lender, produce to the Lender the policy, certificate or cover note relating to any such insurance as is required by clause 6.5 above (or where, in the case of any leasehold property, such insurance is effected by the landlord, such evidence of insurance as the Chargor is entitled to obtain from the landlord under the terms of the relevant lease). Where, in the case of leasehold property, such insurance is effected by the landlord or the terms of the relevant lease require the landlord to effect insurance, the Chargor shall use all reasonable endeavours to enforce the covenants by the landlord relating to insurance contained in that lease (including any reinstatement covenants).
- 6.10 The Chargor shall not do or cause or permit to be done or, as the case may be, not done, and shall not fail to disclose, any matter or thing which may make any such insurance as is required by clause 6.5 above void or voidable.

***Remedying Insurance Defaults***

- 6.11 If default shall be made by the Chargor in complying with clause 6.5 or clause 6.8 above, the Lender may (but shall not be obliged to) effect or renew any such insurance as is required by clause 6.5 above on such terms, in such name(s) and in such amount(s) as the Lender reasonably considers appropriate. All moneys expended by the Lender in so doing shall be reimbursed by the Chargor to the Lender on demand and until so reimbursed shall carry interest at the rate specified in clause 2.2 (*Interest*) from the date of payment by the Lender until reimbursed (after as well as before any judgment).

***Proceeds of Insurance***

- 6.12 All moneys received or receivable by the Chargor under any insurances in respect of the Charged Property of an insurable nature shall be held on trust for the Lender and applied (subject to the rights and claims of any person having prior rights thereto):



- 6.12.1 in replacing, restoring or reinstating the Charged Property destroyed or damaged or in such other manner as the Lender shall have previously approved in writing; or
- 6.12.2 after the security constituted by this Charge has become enforceable and if the Lender so directs, in or towards satisfaction of the Secured Liabilities in accordance with clause 13.1 (*Order of Application*).

***Authorisations***

- 6.13 The Chargor shall promptly obtain, comply with and do all that is necessary to maintain in full force and effect, and supply certified copies to the Lender of, any Authorisation required under any law or regulation of its jurisdiction of incorporation to enable it to perform its obligations under this Charge and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of this Charge.

***Compliance with Laws and Regulations***

- 6.14 The Chargor shall comply in all respects with all laws and regulations to which it or any Charged Property may be subject, if failure so to comply would materially impair its ability to perform its obligations under this Charge.

***Environmental Compliance***

- 6.15 Without limiting clause 6.14 (*Compliance with Laws and Regulations*), the Chargor shall:
  - 6.15.1 comply with all Environmental Law;
  - 6.15.2 obtain, maintain and ensure compliance with all requisite Environmental Permits; and
  - 6.15.3 implement procedures to monitor compliance with and to prevent liability under any Environmental Law,
  - 6.15.4 where failure to do so might reasonably be expected to have a material adverse effect on its business, assets or financial condition or on its ability to comply with its obligations under this Charge or may otherwise have a Material Adverse Effect.

***Environmental Permits and Claims***

- 6.16 The Chargor shall, promptly upon becoming aware of the same, inform the Lender in writing of:
  - 6.16.1 any claim, notice or other communication served on it in respect of any modification, suspension or revocation of any Environmental Permit; and
  - 6.16.2 any facts or circumstances which are reasonably likely to result in any modification, suspension or revocation of any Environmental Permit or in any Environmental Permit not being extended, reviewed, granted or (where necessary) transferred,
  - 6.16.3 where the modification, suspension or revocation, if implemented, or, as the case may be, the failure to extend, review, grant or transfer, might reasonably be expected to have a material adverse effect on its business, assets or financial condition or on its ability to comply with its obligations under this Charge or may otherwise have a Material Adverse Effect.
- 6.17 The Chargor shall, promptly upon becoming aware of the same, inform the Lender in writing of:
  - 6.17.1 any Environmental Claim against it which is current, pending or threatened; and
  - 6.17.2 any facts or circumstances which might reasonably be expected to result in any Environmental Claim being commenced or threatened against it,

where the claim, if determined against it, might reasonably be expected to have a material adverse effect on its business, assets or financial condition or on its ability to comply with its obligations under this Charge or may otherwise have a Material Adverse Effect.

***Acquisition of Land***

- 6.18 The Chargor shall immediately notify the Lender of any acquisition by it of any Real Property or of any agreement entered into by it or of which it has the benefit for the acquisition of any such Real Property.

***Conduct of Business***

- 6.19 The Chargor shall carry on and conduct its business in a proper and efficient manner and keep or cause to be kept proper books of account relating to its business and shall not make any substantial alteration in the nature or mode of conduct of its business.

***Payment of Outgoings***

- 6.20 The Chargor shall punctually pay or cause to be paid (except when contested on reasonable grounds) and shall indemnify the Lender and any Receiver or Delegate on demand against all present and future rents, rates, Taxes, assessments and outgoings of whatsoever nature imposed upon or payable in respect of the Charged Property or by the owner or occupier of the Charged Property upon the same becoming due and payable or within any applicable grace period. If any of the foregoing shall be paid by the Lender or any Receiver or Delegate they shall be reimbursed by the Chargor to the Lender or such Receiver or Delegate on demand and shall carry interest at the rate specified in clause 2.2 (*Interest*) from the date of payment by the Lender or such Receiver or Delegate until reimbursed (after as well as before any judgment).

***Maintenance and Repair***

- 6.21 The Chargor shall at all times, to the Lender's satisfaction, repair and keep:
- 6.21.1 all of its buildings and erections in good and substantial repair and condition and adequately and properly painted and decorated; and
  - 6.21.2 all of its fixtures (including trade fixtures and fittings and tenants' fixtures and fittings), plant, machinery, implements and other effects and chattels wherever located in a good state of repair and in good working order and condition and shall, as and when necessary, renew and replace such items when they shall become obsolete, worn out or destroyed with items of similar quality and of equal or greater value.
- 6.22 If default shall be made by the Chargor in complying with clause 6.21 above, the Lender may (but shall not be obliged to) carry out any necessary repairs with power for the Lender, its agents and their respective officers, agents and employees to enter upon and/or inspect any Charged Property for that purpose. All moneys expended by the Lender in carrying out such acts shall be reimbursed by the Chargor to the Lender on demand and until so reimbursed shall carry interest at the rate specified in clause 2.2 (*Interest*) from the date of payment by the Lender until reimbursed (after as well as before any judgment).

***Alteration to Real Properties or Use***

- 6.23 The Chargor shall not, without the prior written consent of the Lender:
- 6.23.1 sever or unfix or remove any of its fixtures (including trade fixtures and fittings and tenants' fixtures and fittings) (except for the purpose of effecting necessary repairs to

- any such items or renewing or replacing the same in accordance with clause 6.21 above);  
or
- 6.23.2 carry out or permit to be carried out any material demolition, rebuilding, reconstruction or structural alteration of any of its buildings or erections; or
- 6.23.3 change or alter the use of any of its Real Properties.
- 6.24 The Chargor shall promptly give notice to the Lender in the event of any of its buildings or erections being damaged or destroyed.

***Development***

- 6.25 The Chargor shall not, without the prior written consent of the Lender, make or, insofar as it is able, permit others to make any application for planning permission in respect of any of its Real Properties or carry out or permit to be carried out on any of its Real Properties any “**development**” within the meaning of any legislation from time to time regulating the development, use, safety and control of property (including, without limitation, the Town and Country Planning Acts and any orders or regulations made under such Acts).

***Performance of Obligations***

- 6.26 The Chargor shall:
  - 6.26.1 observe and perform all restrictive and other covenants, stipulations and obligations now or at any time affecting any of its Real Properties or the mode of user or the enjoyment of the same and shall not enter into any onerous or restrictive obligations affecting any of its Real Properties;
  - 6.26.2 diligently enforce all restrictive and other covenants, stipulations and obligations benefiting any of its Real Properties and shall not (and shall not agree to) waive, release or vary any of the same; and
  - 6.26.3 obtain and maintain for the benefit of its Real Properties and the owner and occupier thereof for the time being all party wall awards or agreements, rights of light agreements, and rights of access and supply of services, over and in respect of any adjoining or neighbouring property which in each case are necessary or expedient for the use, occupation and/or enjoyment of those Real Properties.

***Lease Obligations***

- 6.27 Without prejudice to the generality of clause 6.26 above, the Chargor shall:
  - 6.27.1 observe and perform all covenants, stipulations and obligations of the lessor, and diligently enforce the performance and observance of the covenants and obligations of the lessee, contained in any lease to which any of its Real Properties may be subject; and
  - 6.27.2 observe and perform all covenants, stipulations and obligations of the lessee, and diligently enforce the performance and observance of the covenants and obligations of the lessor, contained in any lease under which any of its Real Properties is held.

***Information***

- 6.28 The Chargor shall promptly supply to the Lender such information as the Lender may reasonably require about the Charged Property and its compliance with the terms of this Charge and such further information regarding its financial condition, assets and operations as the Lender may reasonably request.

- 6.29 The Chargor shall promptly notify the Lender in writing of any action, claim or demand made by or against it in connection with all or any part of the Charged Property or of any fact, matter or circumstance which may with the passage of time give rise to such an action, claim or demand, together with the Chargor's proposals for settling, liquidating, compounding or contesting the same and shall, subject to the Lender's approval of such proposals, implement them at its own expense.

*Notices relating to Charged Property*

- 6.30 The Chargor shall, within 14 days after the receipt by it of any application, requirement, order or notice served or given by any public or local or any other authority with respect to the whole or any part of the Charged Property:

- 6.30.1 deliver a copy to the Lender;
- 6.30.2 inform the Lender of the steps taken or proposed to be taken by it to comply with the relevant application, requirement, order or notice; and
- 6.30.3 comply with any reasonable request by the Lender to take such action as the Lender may believe necessary to preserve or protect the Charged Property or the security constituted or intended to be constituted by this Charge.

*Not Jeopardise Security*

- 6.31 The Chargor shall not do or cause or permit to be done anything which might in any way depreciate, jeopardise or otherwise prejudice the value to the Lender of the security constituted or intended to be constituted by this Charge, except to the extent expressly permitted by the terms of this Charge.

**7. ENFORCEMENT OF SECURITY**

*When Security becomes Enforceable*

- 7.1 The security constituted by this Charge shall become immediately enforceable:
- 7.1.1 at any time after a notice by the Lender demanding payment, performance and/or discharge of any of the Secured Liabilities shall have been served by the Lender on the Chargor; or
  - 7.1.2 after the occurrence of an Event of Default which is continuing; or
  - 7.1.3 at the Chargor's request, or where the Lender receives notice of intention to appoint an administrator or an administration application is made; or
  - 7.1.4 after a meeting is called or a petition is presented for liquidation of the Chargor;
  - 7.1.5 after any Security is enforced in respect of any assets of the Chargor.
- 7.2 After the security constituted by this Charge has become enforceable, the Lender may in its absolute discretion enforce all or any part of that security at the times, in the manner and on the terms it thinks fit.

*Right of Appropriation*

- 7.3 To the extent that any of the Charged Property constitutes "**financial collateral**" and this Charge and the obligations of the Chargor under this Charge constitute a "**security financial collateral arrangement**" (in each case as defined in, and for the purposes of, the Financial Collateral Arrangements (No. 2) Regulations 2003 (the "**FCA Regulations**")), the Lender shall have the

right, at any time after the security constituted by this Charge has become enforceable, to appropriate all or any part of such financial collateral in or towards discharge of the Secured Liabilities. For this purpose, the Chargor agrees that the value of such financial collateral shall be (in the case of cash) the amount standing to the credit of each bank account of the Chargor, together with any accrued but unpaid interest, at the time the right of appropriation is exercised and (in the case of company shares or equivalent securities, bonds or other tradeable capital markets debt instruments or other tradeable securities) the market price of such securities determined by the Lender by reference to a public index or by such other process as the Lender may select, including independent valuation. In each case, the Chargor agrees that the manner of valuation provided for in this clause 7.3 shall constitute a commercially reasonable manner of valuation for the purposes of the FCA Regulations.

## **8. APPOINTMENT OF RECEIVER AND ADMINISTRATOR**

### ***Appointment***

8.1 At any time after the security constituted by this Charge has become enforceable the Chargor may:

8.1.1 appoint in writing any one or more persons to be a Receiver of the whole or any part or parts of the Charged Property; or

8.1.2 appoint one or more persons to be an administrator of the Chargor,

in each case in accordance with and to the extent permitted by applicable laws.

8.2 The Lender may not appoint a Receiver solely as a result of the obtaining of a moratorium or anything done with a view to obtaining a moratorium under schedule A1 of the Insolvency Act 1986 except with leave of the court.

### ***Removal***

8.3 The Lender may by writing (or by an application to the court where required by law):

8.3.1 remove any Receiver appointed by it; and

8.3.2 appoint, whenever it deems it expedient, any one or more persons to be a new Receiver in the place of or in addition to any Receiver.

### ***Statutory Powers of Appointment***

8.4 The powers of appointment of a Receiver conferred by this Charge shall be in addition to all statutory and other powers of appointment of the Lender under applicable law and such powers shall be and remain exercisable from time to time by the Lender in respect of any part or parts of the Charged Property.

### ***Capacity of Receiver***

8.5 Each Receiver shall be deemed to be the agent of the Chargor for all purposes. The Chargor alone shall be responsible for a Receiver's contracts, engagements, acts, omissions, defaults and losses and for liabilities incurred by him.

8.6 If there is more than one Receiver holding office at the same time, each Receiver shall (unless the document appointing him states otherwise) be entitled to act (and to exercise all of the powers conferred on a Receiver under this Charge) individually or together with any other person appointed or substituted as Receiver.

### ***Remuneration of Receiver***

- 8.7 Subject to section 58 of the Insolvency Act 1986, the Lender may fix the remuneration of any Receiver appointed by it without any restriction imposed by law or otherwise and the remuneration of the Receiver shall be a debt secured by this Charge, which shall be due and payable immediately upon its being paid by the Lender.

## **9. POWERS OF RECEIVER**

### ***General***

- 9.1 Each Receiver has, and is entitled to exercise, all of the rights, powers and discretions set out below in this clause 9 in addition to those conferred by law.
- 9.2 Without prejudice to the generality of this clause 9, each Receiver shall have and be entitled to exercise in relation to the Chargor all the rights, powers conferred on him by statute, including, without limitation, all of the powers set out in schedule 2 to the Insolvency Act 1986 and, in addition to those powers will have the powers set out in clause 9.3 below.

### ***Specific Powers***

- 9.3 Each Receiver shall have the following powers (and every reference in this clause 9.3 to the “**Charged Property**” shall be read as a reference to that part or parts of the Charged Property in respect of which that Receiver was appointed):
- 9.3.1 power to purchase or acquire land and purchase, acquire or grant any interest in or right over land as he thinks fit;
  - 9.3.2 power to take immediate possession of, get in and collect any Charged Property;
  - 9.3.3 power to carry on the business of the Chargor as he thinks fit;
  - 9.3.4 power (but without any obligation to do so) to:
    - (a) make and effect all repairs, alterations, additions and insurances and do all other acts which the Chargor might do in the ordinary conduct of its business as well for the protection as for the improvement of the Charged Property;
    - (b) commence or complete any building operations on any property of the Chargor;
    - (c) apply for and maintain any planning permission, building regulation approval or any other permission, consent or licence in respect of the Charged Property; and
    - (d) negotiate for compensation with any authority which may intend to acquire or be in the process of acquiring all or any part of the Charged Property and make objections to any order for the acquisition of all or any part of the Charged Property and represent the Chargor at any enquiry to be held to consider such objections or otherwise relating to any such acquisition,in each case as he thinks fit;
  - 9.3.5 power to appoint and discharge managers, officers, agents, advisers, accountants, servants, workmen, contractors, surveyors, architects, lawyers and others for the purposes of this Charge upon such terms as to remuneration or otherwise as he thinks fit and power to discharge any such persons appointed by the Chargor (and the costs incurred by any Receiver in carrying out such acts or doing such things shall be



reimbursed to that Receiver by the Chargor on demand and until so reimbursed shall carry interest at the rate specified in clause 2.2 (*Interest*) from the date of payment by the Receiver until reimbursed (after as well as before any judgment));

- 9.3.6 power to raise and borrow money either unsecured or (with the prior consent of the Lender) on the security of any Charged Property either in priority to the security constituted by this Charge or otherwise and generally on any terms and for whatever purpose he thinks fit;
- 9.3.7 power to sell, exchange, convert into money and realise any Charged Property by public auction or private contract and generally in any manner and on any terms as he thinks fit;
- 9.3.8 power to sever and sell separately any fixtures from any property containing them without the consent of the Chargor;
- 9.3.9 power to let any Charged Property for any term and at any rent (with or without a premium) as he thinks fit and power to accept a surrender of any lease or tenancy of any Charged Property on any terms which he thinks fit (including the payment of money to a lessee or tenant on a surrender);
- 9.3.10 power to settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person who is or claims to be a creditor of the Chargor or relating in any way to any Charged Property;
- 9.3.11 power to bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to any Charged Property or in relation to the Chargor which may seem to him to be expedient;
- 9.3.12 power to give valid receipts for all moneys and execute all assurances and things which may be proper or desirable for realising any Charged Property;
- 9.3.13 power to form a subsidiary of the Chargor and transfer to that subsidiary any Charged Property;
- 9.3.14 power to do all such acts as may seem to him to be necessary or desirable in order to initiate or continue any development of any Charged Property and for these purposes to appoint and to enter into such contracts with such building and engineering contractors or other contractors and professional advisers as he may think fit;
- 9.3.15 power to call any meeting of the members or directors of the Chargor in order to consider such resolutions or other business as he thinks fit;
- 9.3.16 power to exercise in relation to any Charged Property all the powers and rights which he would be capable of exercising if he were the absolute beneficial owner of the same;
- 9.3.17 power to do all other acts and things which he may consider desirable or necessary for realising any Charged Property or incidental or conducive to any of the rights, powers or discretions conferred on a Receiver under or by virtue of this Charge; and
- 9.3.18 power to exercise any of the above powers in the name of or on behalf of the Chargor or in his own name and, in each case, at the cost of the Chargor.

#### ***Lender's Powers***

- 9.4 To the fullest extent permitted by law, any right, power or discretion conferred by this Charge (either expressly or impliedly) upon a Receiver may after the security constituted by this Charge

has become enforceable be exercised by the Lender in relation to any Charged Property, irrespective of whether or not it has taken possession of any Charged Property and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

## **10. DISCRETIONS AND DELEGATION**

### ***Discretion***

- 10.1 Any liberty or power which may be exercised or any determination which may be made under this Charge by the Lender or any Receiver may be exercised or made in its absolute and unfettered discretion without any obligation to give reasons.

### ***Delegation***

- 10.2 Each of the Lender and any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this Charge (including the power of attorney).
- 10.3 Any such delegation may be made upon such terms and conditions (including the power to sub-delegate) as the Lender or any Receiver (as the case may be) shall think fit.
- 10.4 Neither the Lender nor any Receiver shall be in any way liable or responsible to the Chargor for any loss or liability arising from any act, default, omission or misconduct on the part of any Delegate.

## **11. POWER OF ATTORNEY**

### ***Appointment and Powers***

- 11.1 The Chargor irrevocably appoints the Lender, every Receiver and every Delegate severally and independently to be its attorney and in its name, on its behalf and to execute, deliver and perfect all documents and do all things which the attorney may consider to be required or desirable for:
- 11.1.1 carrying out any obligation imposed on the Chargor by this Charge; and/or
  - 11.1.2 enabling the Lender or any Receiver or Delegate to exercise, or delegate the exercise of, any of the rights, powers, authorities and discretions conferred on it or him by or pursuant to this Charge or by law (including the exercise of any right of an owner of the Charged Property).

### ***Ratification***

- 11.2 The Chargor shall ratify and confirm whatever any attorney does or purports to do pursuant to its appointment under clause 11.1 (*Appointment and Powers*).

## **12. PROTECTION OF PURCHASERS**

### ***Consideration***

- 12.1 The receipt of the Lender or any Receiver or Delegate shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Charged Property (including a disposal by a Receiver or Delegate to any subsidiary of the Chargor) or in making any acquisition in the exercise of their respective powers, the Lender, every Receiver and every Delegate may do so for such consideration, in such manner and on such terms as it or he thinks fit.



### ***Protection of Third Parties***

- 12.2 No person (including a purchaser) dealing with the Lender, any Receiver or any Delegate shall be bound to enquire:
- 12.2.1 whether the Secured Liabilities have become payable; or
  - 12.2.2 whether any power which the Lender or any Receiver or Delegate is purporting to exercise has arisen or become exercisable; or
  - 12.2.3 whether any Secured Liabilities remain due to the Lender; or
  - 12.2.4 how any money paid to the Lender or to any Receiver or Delegate is to be applied,
- or shall be concerned with any propriety, regularity or purpose on the part of the Lender or any Receiver or Delegate in such dealings or in the exercise of any such power.

## **13. APPLICATION OF PROCEEDS**

### ***Order of Application***

- 13.1 All moneys received or recovered by the Lender, any Receiver or any Delegate pursuant to this Charge, after the security constituted by this Charge has become enforceable, shall (subject to the claims of any person having prior rights thereto) be applied in the following order (but without prejudice to the right of the Lender to recover any shortfall from the Chargor):
- 13.1.1 in or towards payment of all costs, losses, liabilities and expenses of and incidental to the appointment of any Receiver or Delegate and the exercise of any of his rights and powers, including his remuneration, and all outgoings paid by him;
  - 13.1.2 in or towards payment of all other Expenses;
  - 13.1.3 in or towards payment of all other Secured Liabilities or such part of them as is then due and payable to the Lender in such order as the Lender may select; and
  - 13.1.4 in payment of the surplus (if any) to the Chargor or other person entitled to it.
- 13.2 Clause 13.1 (*Order of Application*) will override any appropriation made by the Chargor.

### ***New Accounts***

- 13.3 If the Lender at any time receives, or is deemed to have received, notice of any subsequent Security or other interest affecting any Charged Property, the Lender may open a new account with the Chargor.
- 13.4 If the Lender does not open a new account, it shall nevertheless be treated as if it had done so at the time when it received, or was deemed to have received, such notice. As from that time all payments made by or on behalf of the Chargor to the Lender shall be credited or be treated as having been credited to the new account of the Chargor and not as having been applied in reduction of the Secured Liabilities.

### ***Currency Conversion***

- 13.5 For the purpose of or pending the discharge of any of the Secured Liabilities, the Lender may (in its absolute discretion) convert any moneys received or recovered by the Lender or any Receiver or Delegate pursuant to this Charge or any moneys subject to application by the Lender or any Receiver or Delegate pursuant to this Charge from one currency to another and any such conversion shall be made at the Lender's spot rate of exchange for the time being for obtaining such other currency with the first currency and the Secured Liabilities shall be discharged only to

the extent of the net proceeds of such conversion realised by the Lender. Nothing in this Charge shall require the Lender to make, or shall impose any duty of care on the Lender in respect of, any such currency conversion.

#### **14. NO LIABILITY**

14.1 Neither the Lender nor any Receiver or Delegate shall in any circumstances (either by reason of entering into or taking possession of any Charged Property or for any other reason and whether as creditor, heritable creditor, mortgagee in possession or on any other basis) be liable to account to the Chargor for anything, except actual receipts, or be liable to the Chargor for any costs, charges, losses, liabilities or expenses arising from the realisation of any Charged Property or from any act, default or omission of the Lender, any Receiver, any Delegate or any of their respective officers, agents or employees in relation to the Charged Property or from any exercise or purported exercise or non-exercise by the Lender or any Receiver or Delegate of any power, authority or discretion provided by or pursuant to this Charge or by law or for any other loss of any nature whatsoever in connection with the Charged Property or this Charge.

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

#### **15. SET-OFF**

15.1 Without limiting any other rights conferred on the Lender by law or by any other agreements entered into with the Chargor, the Lender may (but shall not be obliged to) set off any matured obligation due from the Chargor under this Charge (to the extent beneficially owned by the Lender) against any obligation (whether matured or not) owed by the Lender to the Chargor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Lender may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off. If the obligation owed by the Lender is unliquidated or unascertained, the Lender may set off in an amount estimated by it in good faith to be the amount of that obligation.

#### **16. EFFECTIVENESS OF SECURITY**

##### ***Continuing Security***

16.1 The security constituted by this Charge shall remain in full force and effect as a continuing security for the Secured Liabilities, unless and until discharged by the Lender, and will extend to the ultimate balance of all the Secured Liabilities, regardless of any intermediate payment or discharge in whole or in part.

##### ***Cumulative Rights***

16.2 The security constituted by this Charge and all rights, powers and remedies of the Lender provided by or pursuant to this Charge or by law shall be cumulative and in addition to, and independent of, any other guarantee or Security now or subsequently held by the Lender for the Secured Liabilities or any other obligations or any rights, powers and remedies provided by law. No prior Security held by the Lender over the whole or any part of the Charged Property shall be superseded by, or supersede or merge into, the security constituted by this Charge.

##### ***Reinstatement***

16.3 If any discharge, release or arrangement (whether in respect of the obligations of the Chargor or any Security for those obligations or otherwise) is made by the Lender in whole or in part on the

faith of any payment, Security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of the Chargor under, the security constituted by this Charge will continue or be reinstated as if the discharge, release or arrangement had not occurred.

- 16.4 The Lender may concede or compromise any claim that any payment or any discharge is liable to avoidance or restoration.

***Appropriations***

- 16.5 Until all the Secured Liabilities which may be or become payable by the Chargor under or in connection with this Charge have been irrevocably paid, performed and discharged in full, the Lender may:

16.5.1 without affecting the liability of the Chargor under this Charge:

- (a) refrain from applying or enforcing any other moneys, Security or rights held or received by it in respect of the Secured Liabilities; or
- (b) apply and enforce the same in such manner and order as it sees fit (whether against the Secured Liabilities or otherwise) and Chargor shall not be entitled to direct the appropriation of any such moneys, Security or rights or to enjoy the benefit of the same; and/or

16.5.2 hold in a suspense account any moneys received from the Chargor or on account of the Chargor's liability in respect of the Secured Liabilities. Amounts standing to the credit of any such suspense account shall bear interest at a rate considered by the Lender to be a fair market rate.

**17. PAYMENTS**

***Manner of Payments***

- 17.1 The Chargor shall make all payments required to be made by it under this Charge available to the Lender (unless a contrary indication appears in this Charge) for value on the due date at the time and in such funds specified by the Lender as being customary at the time for settlement of transactions in the relevant currency in the place of payment. Payment shall be made in the currency in which the relevant indebtedness is denominated or, if different, is expressed to be payable and to such account in the principal financial centre of the country of that currency with such bank as the Lender specifies.

***No Set-off by Chargor***

- 17.2 All payments to be made by the Chargor under this Charge shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

***Tax Gross-Up***

- 17.3 The Chargor shall make all payments to be made by it under this Charge without any deduction or withholding for or on account of Tax, unless such a deduction or withholding is required by law. The Chargor, promptly upon becoming aware that it must make such a deduction or withholding (or that there is any change in the rate or the basis of such a deduction or withholding), shall notify the Lender accordingly.

- 17.4 If a deduction or withholding for or on account of Tax from a payment under this Charge is required by law to be made by the Chargor, the amount of the payment due from the Chargor shall be increased to an amount which (after making any such deduction or withholding) leaves

an amount equal to the payment which would have been due if no such deduction or withholding had been required.

- 17.5 If the Chargor is required to make a deduction or withholding for or on account of Tax from a payment under this Charge, the Chargor shall make that deduction or withholding and any payment required in connection with that deduction or withholding within the time allowed and in the minimum amount required by law. Within thirty days of making such a deduction or withholding or any payment required in connection with that deduction or withholding, the Chargor shall deliver to the Lender evidence reasonably satisfactory to the Lender that the deduction or withholding has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

## **18. EXPENSES, STAMP TAXES AND INDEMNITIES**

### ***Expenses***

- 18.1 The Chargor shall promptly on demand pay to the Lender and each Receiver or Delegate the amount of all costs and expenses (including legal fees) reasonably incurred by any of them in connection with the negotiation, preparation, printing, execution and perfection of this Charge and any other documents referred to in this Charge and in responding to, evaluating, negotiating or complying with any request for an amendment, waiver or consent made by the Chargor in relation to this Charge.
- 18.2 The Chargor shall, within three (3) Business Days of demand, pay to the Lender and each Receiver or Delegate the amount of all costs and expenses (including legal fees) incurred by any of them in connection with the enforcement of, or the defence, protection and/or preservation of, any rights, remedies and powers under this Charge or the security constituted, or intended to be constituted, by this Charge and any proceedings instituted by or against the Lender as a consequence of taking or holding the security constituted, or intended to be constituted, by this Charge or enforcing any such rights, powers and remedies.

### ***Stamp Taxes***

- 18.3 The Chargor shall pay, and shall promptly on demand indemnify the Lender and every Receiver or Delegate against any cost, loss or liability any of them incurs in relation to, all stamp duty, registration and similar Taxes payable in connection with the entry into, performance or enforcement, of this Charge, the security constituted by this Charge or any judgment given in connection with this Charge.

### ***General Indemnity***

- 18.4 The Chargor shall, notwithstanding the release or discharge of all or any part of the security constituted by this Charge, promptly indemnify the Lender and every Receiver and Delegate against any cost, loss, liability or damage incurred by any of them as a result of:
- 18.4.1 any default or delay by the Chargor in the performance of any of the obligations expressed to be assumed by it in this Charge (including, without limitation, any arising from any actual or alleged breach by any person of any Environmental Law or Environmental Permits);
  - 18.4.2 the taking, holding, protection or enforcement of the security constituted by this Charge; and

- 18.4.3 the exercise of any of the rights, powers, discretions and remedies vested in the Lender and each Receiver and Delegate by this Charge or by law in respect of the Charged Property.

***Currency Indemnity***

- 18.5 If any sum owing by the Chargor under this Charge (a “Sum”), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the “First Currency”) in which that Sum is payable into another currency (the “Second Currency”) for the purpose of:
- 18.5.1 making or filing a claim or proof against the Chargor;
- 18.5.2 obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings, or
- 18.5.3 applying the Sum in satisfaction of any of the Secured Liabilities,
- the Chargor shall as an independent obligation, within three (3) Business Days of demand, indemnify the Lender and each Receiver or Delegate to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between:
- 18.5.4 the rate of exchange used to convert that Sum from the First Currency into the Second Currency; and
- 18.5.5 the rate or rates of exchange available to that person at the time of its receipt of any amount paid to it in satisfaction, in whole or in part, of such claim, proof, order, judgment or award.
- 18.6 The Chargor waives any right it may have in any jurisdiction to pay any amount under this Charge in a currency or currency unit other than that in which it is denominated or, if different, is expressed to be payable.

***Value Added Tax***

- 18.7 Any cost or expense referred to in this clause 18 is exclusive of any VAT that might be chargeable in connection with that cost or expense. If any VAT is so chargeable, it shall be paid by the Chargor at the same time as it pays the relevant cost or expense.

**19. CERTIFICATES AND DETERMINATIONS**

- 19.1 Any certificate or determination by the Lender of a rate or amount under this Charge is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

**20. PARTIAL INVALIDITY**

- 20.1 If, at any time, any provision of this Charge is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Charge nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired and, if any part of the security constituted, or intended to be constituted, by this Charge is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the security.

**21. REMEDIES AND WAIVERS**

- 21.1 No failure to exercise, nor any delay in exercising, on the part of the Lender, any right, remedy or power under this Charge shall operate as a waiver, nor shall any single or partial exercise of any right, remedy or power prevent any further or other exercise or the exercise of any other right,

remedy or power. The rights, remedies and powers provided in this Charge are cumulative and not exclusive of any rights, remedies or powers provided by law.

- 21.2 Any amendment, waiver or consent by the Lender under this Charge must be in writing and may be given subject to any conditions thought fit by the Lender. Any waiver or consent shall be effective only in the instance and for the purpose for which it is given.

## **22. NOTICES**

### ***Communications in writing***

- 22.1 Any communication to be made under or in connection with this Charge shall be made in writing and, unless otherwise stated, may be made by letter.

### ***Addresses***

- 22.2 The address (and the department or officer, if any, for whose attention the communication is to be made) of the Chargor and the Lender for any communication or document to be made or delivered under or in connection with this Charge is that identified with its name below:

### ***Chargor***

Address: Registered Office

For the Attention of: The Directors

### ***Lender***

Address: Carmont House,  
The Crichton,  
Bankend Road,  
Dumfries,  
Scotland  
DG1 4TA

For the Attention of: Financial Services Manager

or any substitute address or department or officer as the Chargor may notify to the Lender (or the Lender may notify to the Chargor, if a change is made by the Lender) by not less than five (5) Business Days' notice.

### ***Delivery***

- 22.3 Any communication or document made or delivered by one person to another under or in connection with this Charge will only be effective two (2) Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address and, if a particular department or officer is specified as part of its address details provided under clause 22.2 (*Addresses*), if addressed to that department or officer.
- 22.4 Any communication or document to be made or delivered to the Lender will be effective only when actually received by it and then only if it is expressly marked for the attention of the



department or officer identified with the Lender's name in clause 22.2 (*Addresses*) (or any substitute department or officer as it shall specify for this purpose).

**23. CONSENT TO REGISTRATION**

- 23.1 The Chargor consents to the registration of this Charge and each certificate referred to in clause 19 (*Certificates and Determinations*) above for preservation and execution.

**24. ASSIGNATION**

- 24.1 The Lender may assign, charge or transfer all or any of its rights under this Charge without the consent of the Chargor. The Lender may disclose any information about the Chargor and this Charge as the Lender shall consider appropriate to any actual or proposed direct or indirect successor or to any person to whom information is required to be disclosed by any applicable law or regulation.
- 24.2 The Chargor may not assign, charge, transfer or otherwise dispose of any part of the benefit or burden of this Charge or all or any of its rights under this Charge without the prior written consent of the Lender.

**25. RELEASES**

- 25.1 Upon the expiry of the Liability Period (but not otherwise) and subject to clauses 16.3 and 16.4 (*Reinstatement*), the Lender shall, at the request and cost of the Chargor, take whatever action is necessary to release the Charged Property from the security constituted by this Charge.

**26. GOVERNING LAW**

- 26.1 This Charge and any non-contractual obligations arising out of or in connection with it are governed by Scots law.

**27. ENFORCEMENT**

*Jurisdiction*

- 27.1 The courts of Scotland have exclusive jurisdiction to settle any dispute arising out of or in connection with this Charge (including a dispute regarding the existence, validity or termination of this Charge or any non-contractual obligation arising out of or in connection with this Charge) (a "**Dispute**").
- 27.2 The Chargor agrees that the courts of Scotland are the most appropriate and convenient courts to settle Disputes and accordingly it will not argue to the contrary or take proceedings relating to a Dispute in any other courts.
- 27.3 Clauses 27.1 and 27.2 above are for the benefit of the Lender only. As a result, the Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.

***Waiver of Immunity***

- 27.4 To the extent that the Chargor may in any jurisdiction claim for itself or its assets immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process and to the extent that in any such jurisdiction there may be attributed to itself or its assets such immunity (whether or not claimed), the Chargor irrevocably agrees not to claim and irrevocably waives such immunity to the fullest extent permitted by the laws of that jurisdiction.

**IN WITNESS WHEREOF** this Charge consisting of this and the preceding 25 pages is subscribed as follows:

**THE CHARGOR**

SUBSCRIBED for and on behalf of  
HILLTOP LEAF LTD  
on being signed by Charles William Ewart,  
and Neil Marcus Layard Ewart, Director:

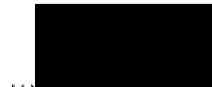
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Charles William Ewart  
Director

at Hilltopleaf office, Langholm  
on the 22 day of 12 December 2021  
(date of signature)

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Neil Marcus Layard Ewart  
Director

at Hilltop Leaf Ltd, Craig Cosme, Langholm  
on the 22<sup>nd</sup> day of December 2021  
(date of signature)