



**Registration of a Charge**

Company Name: **ALBION WATER LIMITED**

Company Number: **03102176**



Received for filing in Electronic Format on the: **11/03/2022**

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**Details of Charge**

Date of creation: **08/03/2022**

Charge code: **0310 2176 0004**

Persons entitled: **WESSEX WATER LIMITED**

Brief description: **LAND LYING TO THE SOUTH OF SMITH BARRY CIRCUS, LITTLE RISSINGTON, CHELTENHAM; TITLE NUMBER GR390096 LAND LYING TO THE SOUTHEAST OF SMITH BARRY CIRCUS, LITTLE RISSINGTON, CHELTENHAM; TITLE NUMBER GR390098 UNIT 1, KNOWLE FARM, MAYLES LANE, KNOWLE, FAREHAM (PO17 5PN); TITLE NUMBER HP393305 LAND ADJOINING KNOWLE FARM, KNOWLE, FAREHAM; TITLE NUMBER HP715017 SEWAGE TREATMENT WORKS AT KNOWLE VILLAGE, FAREHAM; TITLE NUMBER HP718283 PUMPING STATION AT, KNOWLE, FAREHAM; TITLE NUMBER HP734223 WASTE WATER TREATMENT WORKS, FIVE OAKS LANE, CHIGWELL; TITLE NUMBER BGL142788 A PUMPING STATION COMPOUND, FIVE OAKS LANE, CHIGWELL; TITLE NUMBER BGL142790**

**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: **BURGES SALMON LLP**



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

Company number: 3102176

Charge code: 0310 2176 0004

The Registrar of Companies for England and Wales hereby certifies that a charge dated 8th March 2022 and created by ALBION WATER LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 11th March 2022 .

Given at Companies House, Cardiff on 15th March 2022

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



**Companies House**



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

## Legal Mortgage

ALBION WATER LIMITED	(1)
WESSEX WATER LIMITED	(2)

Ref: HM12/RW04  
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8 March

2022

## PARTIES

- (1) **ALBION WATER LIMITED** a company incorporated and registered in England and Wales with company number 03102176 whose registered office is Operations Centre Claverton Down Road, Claverton Down, Bath BA2 7WW (the “**Mortgagor**”)
- (2) **WESSEX WATER LIMITED** a company incorporated and registered in England and Wales with company number 02366633 whose registered office is Wessex Water Operations Centre, Claverton Down Road, Claverton Down, Bath BA2 7WW (the “**Seller**”)

## BACKGROUND

- (A) Under this deed, the Mortgagor provides security to the Seller for the Buyer's obligations to pay the Deferred Consideration to the Seller under the Sale Agreement.
- (B) The Mortgagor owns the Property.
- (C) It is intended that this document takes effect as a deed notwithstanding the fact that a party may only execute this document under hand.

## AGREED TERMS

## 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

Terms defined in the Sale Agreement shall, unless otherwise defined in this deed, have the same meaning in this deed. In addition, the following definitions apply in this deed:

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

**"Buyer"** means Albion Water Holdings Limited (company number 13840186).

**"Charged Assets"** means all the assets, property and undertaking of the Mortgagor which are, or are intended to be, subject to the Security created by, or pursuant to, this deed (and references to the Charged Assets shall include references to any part of them).

**"Delegate"** means any person appointed by the Seller or any Receiver under clause 15 and any person appointed as attorney of the Seller, Receiver or Delegate.

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

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

**"Environmental Licence"** means any authorisation, permit or licence necessary under Environmental Law in respect of any of the Charged Assets.

**"Financial Collateral"** has the meaning given to that expression in the Financial Collateral Regulations.

**"Financial Collateral Regulations"** means the Financial Collateral Arrangements (No 2) Regulations 2003 (SI 2003/3226).

**"Insurance Policy"** means each contract and policy of insurance effected or maintained by the Mortgagor from time to time relating to the Property.

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

**"Property"** means the freehold or leasehold property (whether registered or unregistered) owned by the Mortgagor described in Schedule 1.

**"Receiver"** means a receiver or receiver and manager appointed by the Seller under clause 13.

**"Rental Income"** means all amounts paid or payable to or for the account of the Mortgagor in connection with the letting, licence or grant of other rights of use or occupation of all or any part of the Property.

**"Rights"** means any Security or other right or benefit whether arising by set-off, counterclaim, subrogation, indemnity, proof in liquidation or otherwise and whether from contribution or otherwise.

**"Sale Agreement"** means the agreement for the sale and purchase of the Mortgagor dated on or around the date of this deed between the Buyer and the Seller.

**"Secured Liabilities"** means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of the Buyer to pay the Deferred Consideration (and any Interest accruing thereon) to the Seller under the Sale Agreement and all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of the Mortgagor arising under or in connection with this deed.



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

**"Security Financial Collateral Arrangement"** has the meaning given to that expression in the Financial Collateral Regulations.

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

**"Unpaid Amount"** means any sum or amount of the Secured Liabilities which is not paid on its due date by the Mortgagor.

**"Valuation"** means any valuation relating to the Property supplied to the Seller by the Mortgagor (or on its behalf).

**"VAT"** means value added tax or any equivalent tax chargeable in the UK or elsewhere.

## **1.2 Interpretation**

In this deed:

- (a) clause, Schedule and paragraph headings shall not affect the interpretation of this deed;
- (b) a **person** includes an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality);
- (c) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- (d) unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- (e) a reference to a party and the **Buyer** shall include that party's or the Buyer's successors, permitted assigns and permitted transferees and this deed shall be binding on, and enure to the benefit of, the parties to this deed and their respective personal representatives, successors, permitted assigns and permitted transferees;
- (f) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;

- (g) a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- (h) an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- (i) a reference to **this deed** (or any provision of it) or to any other agreement or document referred to in this deed is a reference to this deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this deed) from time to time;
- (j) unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this deed and a reference to a paragraph is to a paragraph of the relevant Schedule;
- (k) any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- (l) a reference to an **amendment** includes a novation, supplement or variation (and **amend** and **amended** shall be construed accordingly);
- (m) a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;
- (n) a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration or resolution;
- (o) a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it; and
- (p) a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

### 1.3 Clawback

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

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

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

- (a) all buildings and fixtures and fittings (including trade and tenant's fixtures and fittings) and fixed plant and machinery that are situated on or form part of the Property at any time;
- (b) the proceeds of the sale of any part of the Property and any other monies paid or payable in respect of or in connection with the Property;
- (c) the benefit of any covenants for title given, or entered into, by any predecessor in title of the Mortgagor 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.

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

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

#### **1.6 Schedules**

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

### **2 COVENANT TO PAY**

#### **2.1 Covenant to pay**

The Mortgagor shall, on demand, pay to the Seller and discharge the Secured Liabilities when they become due.

#### **2.2 Default interest**

- (a) If the Mortgagor does not pay any amount of the Secured Liabilities when it is due, the Mortgagor shall pay interest on that Unpaid Amount from time to time outstanding for the period beginning on its due date and ending on the date the Seller receives it, both before and after judgment.
- (b) The rate of interest applicable to the Unpaid Amount shall be 5% plus the Bank of England base rate from time to time per annum.

- (c) Interest accrued under this clause 2.2 shall be immediately payable by the Mortgagor on demand by the Seller. If the Mortgagor does not pay that interest when due, it shall be added to the Unpaid Amount and compounded on the last day of each calendar month but will remain immediately due and payable.

### **3 GRANT OF SECURITY**

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

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

- (a) by way of a first legal mortgage, the Property; and
- (b) by way of a first fixed charge:
  - (i) all its rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premiums in connection with each Insurance Policy, the Rental Income and the benefit of any guarantee or security in respect of the Rental Income to the extent not effectively assigned under clause 3.2;
  - (ii) the benefit of all other contracts, guarantees, appointments and warranties relating to the Charged Assets and other documents to which the Mortgagor is a party or which are in its favour or of which it has the benefit relating to any letting, development, sale, purchase, use or the operation of the Charged Assets or otherwise relating to the Charged Assets (including, in each case, but without limitation, the right to demand and receive all monies whatever payable to or for its benefit under or arising from any of them, all remedies provided for in any of them or available at law or in equity in relation to any of them, the right to compel performance of any of them and all other rights, interests and benefits whatever accruing to or for its benefit arising from any of them); and
  - (iii) all licences, consents and authorisations (statutory or otherwise) held or required in connection with the Mortgagor's business carried on at the Property or the use of any Charged Asset, and all rights in connection with them.

#### **3.2 Assignment**

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

- (a) all its rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premiums in connection with each Insurance Policy; and
- (b) the Rental Income and the benefit of any guarantee or security in respect of the Rental Income,

provided that nothing in this clause 3.2 shall constitute the Seller as mortgagee in possession.

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

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

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

*"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the charge dated [ ] in favour of WESSEX WATER LIMITED referred to in the charges register or their conveyancer. (Standard Form P)".*

##### **4.2 First registration**

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

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

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

#### **5 LIABILITY OF THE MORTGAGOR AND SELLER'S PROTECTIONS**

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

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

- (a) any intermediate payment, settlement of account or discharge in whole or in part of the Secured Liabilities;
- (b) any variation, extension, discharge, compromise, dealing with, exchange or renewal of any right or remedy that the Seller may now or after the date of this deed have from or against the Buyer, the Mortgagor or any other person in connection with the Secured Liabilities;
- (c) any act or omission by the Seller or any other person in taking up, perfecting or enforcing any Security, indemnity, or guarantee from or against the Buyer, the Mortgagor or any other person;
- (d) any termination, amendment, variation, novation, replacement or supplement of or to any of the Secured Liabilities;
- (e) any grant of time, indulgence, waiver or concession to the Buyer, the Mortgagor or any other person;
- (f) any insolvency, bankruptcy, liquidation, administration, winding-up, incapacity, limitation, disability, the discharge by operation of law, or any change in the constitution, name or style of the Buyer, the Mortgagor or any other person;
- (g) any invalidity, illegality, unenforceability, irregularity or frustration of any actual or purported obligation of, or Security held from, the Buyer, the Mortgagor or any other person in connection with the Secured Liabilities;
- (h) any claim or enforcement of payment from the Buyer, the Mortgagor or any other person; or
- (i) any other act or omission that would not have discharged or affected the liability of the Mortgagor had it been a principal debtor or by anything done or omitted by any person which, but for this provision, might operate to exonerate or discharge the Mortgagor or otherwise reduce or extinguish its liability under this deed.

## **5.2 Immediate recourse**

The Mortgagor waives any right it may have to require the Seller:

- (a) to take any action or obtain judgment in any court against the Buyer or any other person;
- (b) to make or file any claim in a bankruptcy, liquidation, administration or insolvency of the Buyer or any other person; or
- (c) to make demand, enforce or seek to enforce any claim, right or remedy against the Buyer or any other person,

before taking steps to enforce any of its rights or remedies under this deed.

### **5.3 Non-competition**

The Mortgagor warrants to the Seller that it has not taken or received, and shall not take, exercise or receive the benefit of any Rights from or against the Buyer, its liquidator, an administrator, co-guarantor or any other person in connection with any liability of, or payment by, the Mortgagor under this deed but:

- (a) if any of the Rights is taken, exercised or received by the Mortgagor, those Rights and all monies at any time received or held in respect of those Rights shall be held by the Mortgagor on trust for the Seller for application in or towards the discharge of the Secured Liabilities under this deed; and
- (b) on demand by the Seller, the Mortgagor shall promptly transfer, assign or pay to the Seller all Rights and all monies from time to time held on trust by the Mortgagor under this clause 5.3.

## **6 REPRESENTATIONS AND WARRANTIES**

### **6.1 Times for making representations and warranties**

The Mortgagor makes the representations and warranties set out in this clause 6 to the Seller on the date of this deed and are deemed to be repeated on each day of the Security Period with reference to the facts and circumstances existing at the time of repetition.

### **6.2 Due incorporation**

The Mortgagor:

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

### **6.3 Powers**

- (a) The Mortgagor has the power to enter into, deliver and perform, and has taken all necessary action to authorise its entry into, delivery and performance of this deed and the transactions contemplated by it.
- (b) No limit on its powers will be exceeded as a result of the grant of Security contemplated by this deed.

#### **6.4 Non-contravention**

The entry into and performance by the Mortgagor of, and the transactions contemplated by, this deed do not and will not contravene or conflict with:

- (a) its constitutional documents;
- (b) any agreement or instrument binding on it or its assets or constitute a default or termination event (however described) under any such agreement or instrument; or
- (c) any law or regulation or judicial or official order applicable to it.

#### **6.5 Authorisations**

The Mortgagor has obtained all required or desirable authorisations to enable it to enter into, exercise its rights and comply with its obligations in this deed and to make it admissible in evidence in its jurisdiction of incorporation. Any such authorisations are in full force and effect.

#### **6.6 Binding obligations**

- (a) The Mortgagor's obligations under this deed are legal, valid, binding and enforceable.
- (b) This deed creates:
  - (i) valid, legally binding and enforceable Security for the obligations expressed to be secured by it; and
  - (ii) subject to registration in accordance with the Companies Act 2006 and, in the case of real property, registration at the Land Registry, perfected Security over the assets expressed to be subject to Security in it,in favour of the Seller, having the priority and ranking expressed to be created by this deed and ranking ahead of all (if any) Security and rights of third parties, except those preferred by law.

#### **6.7 No filing or stamp taxes**

It is not necessary to file, record or enrol this deed (other than as provided in clause 6.6) with any court or other authority or pay any stamp, registration or similar taxes in relation to this deed or any transaction contemplated by it (other than in connection with the registrations referred to in clause 6.6).



**6.8 No litigation**

No litigation, arbitration, administrative proceedings or investigations are taking place, pending or, to the Mortgagor's knowledge, threatened against it, any of its directors or any of the Charged Assets.

**6.9 Ownership of Charged Assets**

The Mortgagor is the sole legal and beneficial owner of the Charged Assets and has good, valid and marketable title to the Property.

**6.10 No Security**

The Charged Assets are free from any Security other than the Security created by this deed.

**6.11 No adverse claims**

The Mortgagor has not received, or acknowledged notice of, any adverse claim by any person in respect of the Charged Assets or any interest in them.

**6.12 No adverse covenants**

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

**6.13 No breach of laws**

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

**6.14 No interference in enjoyment**

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

**6.15 No overriding interests**

Nothing has arisen, has been created or is subsisting, that would be an overriding interest in the Property.

**6.16 No prohibitions or breaches**

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

#### **6.17 Environmental compliance**

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

#### **6.18 Information for Valuations and Certificates of Title**

- (a) All written information supplied by the Mortgagor or on its behalf for the purpose of each Valuation was true and accurate in all material respects at its date or at the date (if any) on which it was stated to be given.
- (b) The information referred to in clause 6.18(a) was, at its date or at the date (if any) on which it was stated to be given, complete and the Mortgagor did not omit to supply any information that, if disclosed, would adversely affect the Valuation.

#### **6.19 Avoidance of security**

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

### **7 GENERAL COVENANTS**

#### **7.1 Negative pledge and disposal restrictions**

The Mortgagor shall not at any time, except with the prior written consent of the Seller:

- (a) create, purport to create or permit to subsist any Security on, or in relation to, any Charged Asset other than any Security created by this deed;
- (b) sell, assign, transfer, part with possession of, or otherwise dispose of in any manner (or purport to do so), all or any part of, or any interest in, the Charged Assets; or
- (c) create or grant (or purport to create or grant) any interest in the Charged Assets in favour of a third party.

#### **7.2 Preservation of Charged Assets**

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

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

- (a) The Mortgagor shall not, without the Seller's prior written consent, use or permit the Charged Assets to be used in any way contrary to law.

- (b) The Mortgagor shall:
  - (i) comply with the requirements of any law or regulation relating to or affecting the Charged Assets or the use of them or any part of them;
  - (ii) obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Charged Assets or their use or that are necessary to preserve, maintain or renew any Charged Asset; and
  - (iii) promptly effect any maintenance, modifications, alterations or repairs that are required by any law or regulation to be effected on or in connection with the Charged Assets.

#### **7.4 Enforcement of rights**

The Mortgagor shall use its best endeavours to:

- (a) procure the prompt observance and performance by the relevant counterparty to any agreement or arrangement with the Mortgagor and forming part of the Charged Assets of the covenants and other obligations imposed on such counterparty; and
- (b) enforce any rights and institute, continue or defend any proceedings relating to any of the Charged Assets that the Seller may require from time to time.

#### **7.5 Notice of misrepresentation and breach**

The Mortgagor shall, promptly on becoming aware of any of the same, notify the Seller in writing of:

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

#### **7.6 Title documents**

The Mortgagor shall, on the written request of the Seller, deposit with the Seller and the Seller shall, for the duration of this deed, be entitled to hold:

- (a) all deeds and documents of title relating to the Charged Assets that are in the possession or control of the Mortgagor (and if these are not within the possession or control of the Mortgagor, the Mortgagor undertakes to obtain possession of all these deeds and documents of title); and
- (b) each Insurance Policy.

## **7.7 Notices to be given by the Mortgagor**

- (a) The Mortgagor shall within five days of the execution of this deed give notice to the relevant insurers of the assignment of the Mortgagor's rights and interest in and under each Insurance Policy (including the proceeds of any claims under that Insurance Policy) under clause 3.2(a) and it shall use reasonable endeavours to procure that each addressee of such notice promptly provides an acknowledgement of that notice to the Seller.
- (b) The Mortgagor shall obtain the Seller's prior approval of the form of any notice or acknowledgement to be used under this clause 7.7.

## **7.8 Ranking of obligations**

The Mortgagor's payment obligations under this deed will, at all times, rank in all respects in priority to all its other indebtedness, other than indebtedness preferred by operation of law in the event of its winding-up.

## **7.9 Authorisations**

The Mortgagor shall obtain all consents and authorisations necessary (and do all that is needed to maintain them in full force and effect) under any law or regulation of its jurisdiction of incorporation to enable it to perform its obligations under this deed and to ensure the legality, validity, enforceability and admissibility in evidence of this deed in its jurisdiction of incorporation.

# **8 PROPERTY COVENANTS**

## **8.1 Repair and maintenance**

- (a) The Mortgagor shall keep all premises, and fixtures and fittings on the Property, in good and substantial repair and condition and shall keep all premises adequately and properly painted and decorated and replace any fixtures and fittings that have become worn out or otherwise unfit for use with others of a like nature and equal value.
- (b) The Mortgagor shall promptly give notice to the Seller if the premises or fixtures or fittings forming part of the Property are destroyed or damaged.

## **8.2 Insurance**

- (a) The Mortgagor shall insure and keep insured the Charged Assets against:
  - (i) loss or damage by fire or terrorist acts, including any third-party liability arising from such acts;

- (ii) other risks, perils and contingencies that would be insured against by reasonably prudent persons carrying on the same class of business as the Mortgagor; and
  - (iii) any other risk, perils and contingencies as the Seller may reasonably require.
- (b) Any such insurance must be with an insurance company or underwriters, and on such terms, as are reasonably acceptable to the Seller and must include property owners' public liability and third party liability insurance and be for not less than the replacement value of the relevant Charged Asset (meaning, in the case of any premises on the Property, the total cost of entirely rebuilding, reinstating or replacing the premises in the event of their being destroyed, together with architects', surveyors', engineers' and other professional fees and charges for shoring or propping up, demolition, site clearance and reinstatement with adequate allowance for inflation) and loss of rents payable by the tenants or other occupiers of the Property for a period of at least three years, including provision for increases in rent during the period of insurance.
- (c) The Mortgagor shall, if requested by the Seller, produce to the Seller each policy, certificate or cover note relating to any insurance required by clause 8.2(a).
- (d) The Mortgagor shall, if requested by the Seller, procure that a note of the Seller's interest is endorsed on each Insurance Policy (other than public liability and third party liability insurances) effected or maintained by it or any person on its behalf in accordance with clause 8.2(a) but without the Seller having any liability for any premium in relation to those Insurance Policies unless it has expressly and specifically requested to be made liable in respect of any increase in premium or unpaid premium in respect of any Insurance Policy.

### **8.3 Insurance premiums**

The Mortgagor shall:

- (a) promptly pay all premiums in respect of each Insurance Policy required by clause 8.2(a) and do all other things necessary to keep that policy in full force and effect; and
- (b) (if the Seller so requires) give to the Seller copies of the receipts for all premiums and other payments necessary for effecting and keeping up each Insurance Policy required by clause 8.2(a).

#### **8.4 No invalidation of insurance**

The Mortgagor shall not do or omit to do, or permit to be done or omitted, any act or thing that may invalidate or otherwise prejudice any Insurance Policy required by clause 8.2(a).

#### **8.5 Proceeds from Insurance Policies**

All monies payable under any Insurance Policy required by clause 8.2(a) shall (whether or not the security constituted by this deed has become enforceable):

- (a) be paid immediately to the Seller;
- (b) if they are not paid directly to the Seller by the insurers, be held, pending such payment, by the Mortgagor as trustee of the same for the benefit of the Seller; and
- (c) be applied in making good or recouping expenditure in respect of the loss or damage for which those monies are received or, after the security constituted by this deed has become enforceable and, if the Seller so directs, in or towards discharge or reduction of the Secured Liabilities.

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

The Mortgagor shall not, without the prior written consent of the Seller:

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

#### **8.7 No restrictive obligations**

The Mortgagor shall not, without the prior written consent of the Seller, enter into any onerous or restrictive obligations affecting the whole or any part of the Property or create

or permit to arise any overriding interest, easement or right whatever in or over the whole or any part of the Property.

#### **8.8 Proprietary rights**

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

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

The Mortgagor shall:

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

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

- (a) The Mortgagor shall:
  - (i) give full particulars to the Seller of any notice, order, direction, designation, resolution, application, requirement or proposal given or made by any public or local body or authority (a **Notice**) that specifically applies to the Property, or to the locality in which it is situated, within seven days after becoming aware of the relevant Notice; and
  - (ii) (if the Seller so requires) immediately, and at the cost of the Mortgagor, take all reasonable and necessary steps to comply with any Notice, and make, or join with the Seller in making, any objections or representations in respect of that Notice that the Seller thinks fit.
- (b) The Mortgagor shall give full particulars to the Seller of any claim, notice or other communication served on it in respect of any modification, suspension or revocation of any Environmental Licence or any alleged breach of any Environmental Law, in each case relating to the Property.

#### **8.11 Payment of rent and outgoings**

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

#### **8.12 Rent reviews**

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

#### **8.13 Environment**

The Mortgagor shall in respect of the Property:

- (a) comply with all the requirements of Environmental Law; and
- (b) obtain and comply with all Environmental Licences.

#### **8.14 Conduct of business on Property**

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

#### **8.15 Inspection**

The Mortgagor shall permit the Seller, any Receiver and any person appointed by either of them to enter on and inspect the Property on reasonable prior notice.

#### **8.16 VAT option to tax**

The Mortgagor shall not, without the prior written consent of the Seller:

- (a) exercise any VAT option to tax in relation to the Property; or
- (b) revoke any VAT option to tax exercised, and disclosed to the Seller in writing, before the date of this deed.

### **9 RENTAL INCOME**

The Mortgagor shall collect in and realise all Rental Income in the ordinary and usual course of its business.



## **10 POWERS OF THE SELLER**

### **10.1 Power to remedy**

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

### **10.2 Exercise of rights**

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

### **10.3 Seller has Receiver's powers**

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

### **10.4 Conversion of currency**

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

- (b) Any such conversion shall be effected at the Bank of England's then prevailing spot selling rate of exchange for such other currency against the existing currency.
- (c) Each reference in this clause 10.4 to a currency extends to funds of that currency and, for the avoidance of doubt, funds of one currency may be converted into different funds of the same currency.

#### **10.5 New accounts**

- (a) If the Seller receives, or is deemed to have received, notice of any subsequent Security or other interest, affecting all or part of the Charged Assets, the Seller may open a new account for the Mortgagor in the Seller's books. Without prejudice to the Seller's right to combine accounts, no money paid to the credit of the Mortgagor in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.
- (b) If the Seller does not open a new account immediately on receipt of the notice, or deemed notice, referred to in clause 10.5(a), then, unless the Seller gives express written notice to the contrary to the Mortgagor, all payments made by the Mortgagor to the Seller shall be treated as having been credited to a new account of the Mortgagor and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt or deemed receipt of the relevant notice by the Seller.

#### **10.6 Indulgence**

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

### **11 WHEN SECURITY BECOMES ENFORCEABLE**

#### **11.1 Security becomes enforceable**

The security constituted by this deed shall become immediately enforceable if any of the Secured Liabilities are not paid when due.

#### **11.2 Discretion**

After the security constituted by this deed has become enforceable, the Seller may, in its absolute discretion, enforce all or any part of that security at the times, in the manner and

on the terms it thinks fit, and take possession of and hold or dispose of all or any part of the Charged Assets.

## **12 ENFORCEMENT OF SECURITY**

### **12.1 Enforcement powers**

- (a) For the purposes of all powers implied by statute, the Secured Liabilities are deemed to have become due and payable on the date of this deed.
- (b) The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this deed) shall be immediately exercisable at any time after the security constituted by this deed has become enforceable under clause 11.1.
- (c) Section 103 of the LPA 1925 does not apply to the security constituted by this deed.

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

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

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

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

### **12.3 Redemption of prior Security**

- (a) At any time after the security constituted by this deed has become enforceable, the Seller may:
  - (i) redeem any prior Security over any Charged Asset;
  - (ii) procure the transfer of that Security to itself; and

- (iii) settle and pass the accounts of the holder of any prior Security (and any accounts so settled and passed shall, in the absence of any manifest error, be conclusive and binding on the Mortgagor).
- (b) The Mortgagor shall pay to the Seller immediately on demand all principal, interest, costs, charges and expenses of, and incidental to, any such redemption or transfer, and such amounts shall be secured by this deed as part of the Secured Liabilities.

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

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

- (a) whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;
- (b) whether any power the Seller, a Receiver or Delegate is purporting to exercise has become exercisable or is being properly exercised; or
- (c) how any money paid to the Seller, any Receiver or any Delegate is to be applied.

#### **12.5 Privileges**

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

#### **12.6 Exclusion of liability**

Neither the Seller, nor any Receiver or Delegate, shall be liable to the Mortgagor or any other person:

- (a) (by reason of entering into possession of a Charged Asset, or for any other reason) to account as mortgagee in possession in respect of all or any of the Charged Assets;
- (b) for any loss on realisation, or for any act, default or omission for which a mortgagee in possession might be liable; or
- (c) for any expense, loss or liability:
  - (i) relating to the enforcement of, or any failure to enforce or delay in enforcing, any security constituted by or pursuant to this deed;
  - (ii) relating to an exercise of rights, or by any failure to exercise or delay in exercising, rights under this deed; or

- (iii) arising in any other way in connection with this deed,

except that this does not exempt the Seller or any Receiver or Delegate from liability for losses caused by the gross negligence, fraud or wilful misconduct of the Seller or the relevant Receiver or Delegate.

#### **12.7 Relinquishing possession**

If the Seller, any Receiver or Delegate enters into or takes possession of a Charged Asset, it or he/she may at any time relinquish possession.

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

The receipt of the Seller, 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 Assets or in making any acquisition in the exercise of their respective powers, the Seller, and every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it or he/she thinks fit.

#### **12.9 Right of appropriation**

- (a) To the extent that:
  - (i) the Charged Assets constitute Financial Collateral; and
  - (ii) this deed and the obligations of the Mortgagor under it constitute a Security Financial Collateral Arrangement,

the Seller shall have the right, at any time after the security constituted by this deed has become enforceable, to appropriate all or any of those Charged Assets in or towards the payment or discharge of the Secured Liabilities in any order that the Seller may, in its absolute discretion, determine.
- (b) The Mortgagor agrees that the method of valuation provided for in this clause is commercially reasonable for the purposes of the Financial Collateral Regulations.

### **13 RECEIVERS**

#### **13.1 Appointment**

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

### **13.2 Removal**

The Seller may, without further notice, from time to time, by way of deed, or otherwise in writing, remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

### **13.3 Remuneration**

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

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

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

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

The power to appoint a Receiver (whether conferred by this deed or by statute) shall be, and remain, exercisable by the Seller despite any prior appointment in respect of all or any part of the Charged Assets.

### **13.6 Agent of the Mortgagor**

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

## **14 POWERS OF RECEIVER**

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

- (a) Any Receiver appointed by the Seller under this deed shall, in addition to the rights, powers and discretions conferred on him/her by statute, have the rights, powers and discretions set out in clause 14.2 to clause 14.20.
- (b) A Receiver has all the rights, powers and discretions conferred on a receiver (or a receiver and manager) under the LPA 1925, and shall have those rights,

powers and discretions conferred on an administrative receiver under the Insolvency Act 1986 whether he/she is an administrative receiver or not.

- (c) If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him/her states otherwise) exercise all of the powers conferred on a Receiver under this deed individually and to the exclusion of any other Receiver.
- (d) Any exercise by a Receiver of any of the powers given by clause 14 may be on behalf of the Mortgagor, the directors of the Mortgagor or himself/herself.

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

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

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

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

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

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

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

A Receiver may make, exercise or revoke any VAT option to tax as he/she thinks fit.

#### **14.6 Charge for remuneration**

A Receiver may charge and receive any sum by way of remuneration (in addition to all costs, charges and expenses incurred by him/her) that the Seller may prescribe or agree with him/her.

#### **14.7 Take possession**

A Receiver may take immediate possession of, get in and realise any Charged Asset.

#### **14.8 Manage or reconstruct the Mortgagor's business**

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

#### **14.9 Dispose of Charged Assets**

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

#### **14.10 Sever fixtures and fittings**

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

#### **14.11 Give valid receipts**

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

#### **14.12 Make settlements**

A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claim, account, dispute, question or demand with or by any person who claims to be a creditor of the Mortgagor or relating in any way to any Charged Asset.

#### **14.13 Bring legal action**

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

#### **14.14 Insure**

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



#### **14.15 Form subsidiaries**

A Receiver may form a subsidiary of the Mortgagor and transfer to that subsidiary any Charged Asset.

#### **14.16 Borrow**

A Receiver may, for whatever purpose he/she thinks fit, raise and borrow money either unsecured or on the security of all or any of the Charged Assets in respect of which he/she is appointed on any terms that he/she thinks fit (including, if the Seller consents, terms under which that security ranks in priority to this deed).

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

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

#### **14.18 Delegation**

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

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

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

#### **14.20 Incidental powers**

A Receiver may do any other acts and things that he/she:

- (a) may consider desirable or necessary for realising any of the Charged Assets;
- (b) may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this deed or law; or
- (c) lawfully may or can do as agent for the Mortgagor.

### **15 DELEGATION**

#### **15.1 Delegation**

The Seller or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion

conferred on it or him/her by this deed (including the power of attorney granted under clause 19.1).

## **15.2 Terms**

The Seller and each Receiver may make a delegation on the terms and conditions (including the power to sub-delegate) that it or he/she thinks fit.

## **15.3 Liability**

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

## **16 APPLICATION OF PROCEEDS**

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

All monies received or recovered by the Seller, a Receiver or a Delegate under this deed or in connection with the realisation or enforcement of all or part of the security constituted by this deed (other than sums received under any Insurance Policy), shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied in the following order of priority (but without prejudice to the Seller's right to recover any shortfall from the Mortgagor or the Buyer):

- (a) in or towards payment of all costs, liabilities, charges and expenses incurred by or on behalf of the Seller (and any Receiver, Delegate, attorney or agent appointed by it) under or in connection with this deed and of all remuneration due to any Receiver under or in connection with this deed;
- (b) in or towards payment of the Secured Liabilities in any order and manner that the Seller determines; and
- (c) in payment of the surplus (if any) to the Mortgagor or other person entitled to it.

### **16.2 Appropriation**

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

### **16.3 Suspense account**

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

- (a) may, at the discretion of the Seller, Receiver or Delegate, be credited to a suspense account;
- (b) shall bear interest, if any, at the rate agreed in writing between the Seller and the Mortgagor; and
- (c) may be held in that account for so long as the Seller, Receiver or Delegate thinks fit.

## **17 COSTS AND INDEMNITY**

### **17.1 Costs**

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

- (a) the negotiation, preparation, execution and delivery of this deed;
- (b) the Charged Assets;
- (c) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Seller's, a Receiver's or a Delegate's rights under this deed;
- (d) any amendment, extension, waiver, consent or suspension of rights (or any proposal for any of these) under or in connection with this deed;
- (e) any release of any security constituted by this deed; or
- (f) taking proceedings for, or recovering, any of the Secured Liabilities,

together with interest, which shall accrue and be payable (without the need for any demand for payment being made) from the date on which the relevant cost, charge, expense, tax or liability arose until full discharge of that cost, charge, expense, tax or liability (whether before or after judgment) at the rate specified in clause 2.2.

### **17.2 Indemnity**

- (a) The Mortgagor shall, promptly on demand, indemnify the Seller, each Receiver and each Delegate, and their respective employees and agents against all

liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by any of them arising out of or in connection with:

- (i) the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this deed or by law in respect of the Charged Assets;
  - (ii) taking, holding, protecting, perfecting, preserving, releasing or enforcing (or attempting to do so) the security constituted by this deed; or
  - (iii) any default or delay by the Mortgagor in performing any of its obligations under this deed.
- (b) Any past or present employee or agent may enforce the terms of this clause 17.2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

## **18 FURTHER ASSURANCE**

### **18.1 Further assurance**

The Mortgagor shall promptly, at its own expense, take whatever action the Seller or any Receiver may reasonably require for:

- (a) creating, perfecting or protecting the security intended to be created by this deed;
- (b) facilitating the realisation of any Charged Asset; or
- (c) facilitating the exercise of any right, power, authority or discretion exercisable by the Seller or any Receiver in respect of any Charged Asset,

including, without limitation the execution of any mortgage, transfer, conveyance, assignment or assurance of all or any of the assets forming part of (or intended to form part of) the Charged Assets (whether to the Seller or to its nominee) and the giving of any notice, order or direction and the making of any filing or registration which, in any such case, the Seller may consider necessary or desirable.

## **19 POWER OF ATTORNEY**

### **19.1 Appointment of attorneys**

By way of security, the Mortgagor irrevocably appoints the Seller, every Receiver and every Delegate separately to be the attorney of the Mortgagor and, in its name, on its

behalf and as its act and deed, to execute any documents and do any acts and things that:

- (a) the Mortgagor is required to execute and do under this deed; or
- (b) any attorney deems proper or desirable in exercising any of the rights, powers, authorities and discretions conferred by this deed or by law on the Seller, any Receiver or any Delegate.

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

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

## **20 RELEASE**

### **20.1 Release**

Subject to clause 27.3, at the end of the Security Period, the Seller shall, at the request and cost of the Mortgagor, take whatever action is necessary to:

- (a) release the Charged Assets from the security constituted by this deed; and
- (b) reassign the Charged Assets to the Mortgagor.

## **21 ASSIGNMENT AND TRANSFER**

### **21.1 Assignment by Seller**

- (a) At any time, without the consent of the Mortgagor, the Seller may assign any of its rights or transfer any of its rights and obligations under this deed.
- (b) The Seller may disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Mortgagor, the Charged Assets and this deed that the Seller considers appropriate.

### **21.2 Assignment by Mortgagor**

The Mortgagor may not assign any of its rights, or transfer any of its rights or obligations, under this deed or enter into any transaction which would result in any of those rights or obligations passing to another person.

## **22 SET-OFF**

### **22.1 Seller's right of set-off**

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

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

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

### **22.3 Exclusion of Mortgagor's right of set-off**

All payments made by the Mortgagor to the Seller under this deed shall be made in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

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

### **23.1 Amendments**

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

### **23.2 Waivers and consents**

- (a) A waiver of any right or remedy under this deed or by law, or any consent given under this deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any subsequent right or remedy. It only applies to the circumstances in relation to which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.
- (b) A failure by the Seller to exercise, or delay by it in exercising any right or remedy provided under this deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this deed. No single or partial exercise of any right or remedy provided under this deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this deed by the Seller shall be effective unless it is in writing.

### **23.3 Rights and remedies**

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

## **24 PARTIAL INVALIDITY**

If, at any time, any provision of this deed is or becomes invalid, illegal or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

## **25 COUNTERPARTS**

### **25.1 Counterparts**

- (a) This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.
- (b) No counterpart shall be effective until each party has executed and delivered at least one counterpart.

## **26 THIRD PARTY RIGHTS**

### **26.1 Third party rights**

- (a) Except as expressly provided elsewhere in this deed, a person who is not a party to this deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this deed.
- (b) Notwithstanding any term of this deed, the consent of any person who is not a party to this deed is not required to rescind or vary this deed at any time.

## **27 FURTHER PROVISIONS**

### **27.1 Independent security**

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

### **27.2 Continuing security**

The security constituted by this deed shall remain in full force and effect as a continuing security for the Secured Liabilities, despite any settlement of account, or intermediate

payment, or other matter or thing, unless and until the Seller discharges this deed in writing.

### **27.3 Discharge conditional**

Any release, discharge or settlement between the Mortgagor and the Seller shall be conditional on no payment or security received by the Seller in respect of the Secured Liabilities being avoided, reduced, set aside or ordered to be refunded under any law relating to insolvency, bankruptcy, winding-up, administration, receivership or for any other reason. Despite any such release, discharge or settlement:

- (a) the Seller or its nominee may retain this deed and the security created by or under it, including all certificates and documents relating to the whole or any part of the Charged Assets, for any period that the Seller deems necessary to provide the Seller with security against any such avoidance, reduction or order for refund; and
- (b) the Seller may recover the value or amount of such security or payment from the Mortgagor subsequently as if the release, discharge or settlement had not occurred.

### **27.4 Certificates**

Any certification or determination by the Seller of any rate or amount under this deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

### **27.5 Consolidation**

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

## **28 NOTICES**

### **28.1 Delivery**

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

- (a) in writing;
- (b) delivered by hand, by pre-paid first-class post or other next working day delivery service; and
- (c) sent to:
  - (i) the Mortgagor at:



Clearwater House, Castlemills, Biddisham, Somerset BS26 2RE

Attention: Adam Shore

(ii) the Seller at:

Wessex Water Operations Centre, Claverton Down Road, Claverton  
Down, Bath BA2 7WW

Attention: Group General Counsel

or to any other address notified in writing by one party to the other from time to time.

## **28.2 Receipt by Mortgagor**

Any notice or other communication that the Seller gives to the Mortgagor shall be deemed to have been received:

- (a) if delivered by hand, at the time it is left at the relevant address; and
- (b) if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting.

A notice or other communication given as described in clause 28.2(a) on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

## **28.3 Receipt by Seller**

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

## **28.4 Service of proceedings**

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

## **29 GOVERNING LAW AND JURISDICTION**

### **29.1 Governing law**

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

## **29.2 Jurisdiction**

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

## **29.3 Other service**

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

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

**Schedule 1**

**Property**

<b>Postal address or description</b>	<b>Title no.</b>	<b>Freehold or leasehold</b>
Land lying to the south of Smith Barry Circus, Little Rissington, Cheltenham	GR390096	Freehold
Land lying to the southeast of Smith Barry Circus, Little Rissington, Cheltenham	GR390098	Freehold
Unit 1, Knowle Farm, Mayles Lane, Knowle, Fareham (PO17 5PN)	HP393305	Freehold
Land adjoining Knowle Farm, Knowle, Fareham	HP715017	Freehold
Sewage Treatment Works at Knowle Village, Fareham	HP718283	Freehold
Pumping station at, Knowle, Fareham	HP734223	Freehold
Waste Water Treatment Works, Five Oaks Lane, Chigwell	BGL142788	Freehold
A Pumping Station Compound, Five Oaks Lane, Chigwell	BGL142790	Freehold

EXECUTION PAGE

MORTGAGOR

**EXECUTED** as a deed by **ALBION WATER LIMITED** acting by a director, in the presence of:

  
.....  
SIGNATURE OF WITNESS

  
.....  
Director

Name of Witness

Robert Eido  
.....

Address of Witness

160000 SO, BRISTOL  
BS1 6BA  
.....

Occupation of Witness

Solicitor  
.....

SELLER

**EXECUTED** as a deed by **WESSEX WATER LIMITED** acting by a director, in the presence of:

.....  
SIGNATURE OF WITNESS

.....  
Director

Name of Witness

.....

Address of Witness

.....

Occupation of Witness

.....