



Registration of a Charge

Company name: **THE EAST MALLING TRUST**

Company number: **07168674**



X8IZIEFS

Received for Electronic Filing: **25/11/2019**

Details of Charge

Date of creation: **20/11/2019**

Charge code: **0716 8674 0005**

Persons entitled: **CHINGFORD FRUIT LIMITED**

Brief description: **BY WAY OF LEGAL MORTGAGE ALL LEGAL INTEREST IN THE FREEHOLD PROPERTY KNOWN AS 49 & 51 HIGH STREET, EAST MALLING FORMING PART OF THE FREEHOLD TITLE REGISTERED AT HM LAND REGISTRY UNDER TITLE NUMBER K163766 AND SHOWN EDGED RED ON THE PLAN ATTACHED TO THE LEGAL MORTGAGE DATED 20 NOVEMBER 2019**

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

Certification statement: **I CERTIFY THAT THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by:

IRWIN MITCHELL LLP



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 7168674

Charge code: 0716 8674 0005

The Registrar of Companies for England and Wales hereby certifies that a charge dated 20th November 2019 and created by THE EAST MALLING TRUST was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 25th November 2019 .

Given at Companies House, Cardiff on 26th November 2019

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



Companies House



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

DATED

20 November

2019

(1) THE EAST MALLING TRUST

AND

(2) CHINGFORD FRUIT LIMITED

MORTGAGE

CONTENTS

Page No.

1	DEFINITIONS AND INTERPRETATION.....	1
2	COVENANT TO PAY.....	4
3	LIMITED RECOURSE	4
4	CREATION OF SECURITY	4
5	STATUS OF LAND	5
6	MORTGAGOR REPRESENTATIONS AND WARRANTIES	5
7	MORTGAGOR'S UNDERTAKINGS AND COVENANTS.....	6
8	PERFECTION OF SECURITY	7
9	LIABILITY OF MORTGAGOR	8
10	ENFORCEMENT	9
11	APPOINTMENT AND POWERS OF A RECEIVER	9
12	OTHER POWERS EXERCISABLE BY THE MORTGAGEE	11
13	POWERS OF SALE, LEASING, ACCEPTING SURRENDERS AND SEVERANCE	11
14	NEW ACCOUNTS	12
15	ATTORNEY	12
16	PROTECTION OF THIRD PARTIES.....	12
17	CONSOLIDATION OF MORTGAGES	13
18	RIGHTS OF MORTGAGEE OR RECEIVER TO REMEDY BREACH	13
19	APPLICATION OF MONEYS RECEIVED	13
20	INDEMNITY	13
21	RELEASE	14
22	MISCELLANEOUS	15
23	NOTICES.....	16
24	GOVERNING LAW AND JURISDICTION.....	16
	SCHEDULE 1	17
	Real Property.....	17
	Part 1.....	17
	The freehold Real Property (if any).....	17
	The leasehold Real Property	17
	SCHEDULE 2	18
	List of insurance policies	18

THIS AGREEMENT is made on

20 November

2019

BETWEEN:

- (1) **THE EAST MALLING TRUST** incorporated and registered in England and Wales with company number 07168674 whose registered office is at Bradbourne House, East Malling, West Malling, England, ME19 6DZ ("**Mortgagor**"); and
- (2) **CHINGFORD FRUIT LIMITED** incorporated and registered in England and Wales with company number 03844271 whose registered office is at Thames House, Thames Road, Crayford, Kent, DA1 4QP ("**Mortgagee**").

BACKGROUND

- (A) The Mortgagee, the Borrower and the Mortgagor entered into an agreement taking effect on 1 April 2011 relating to the establishment of Sweet Sensation Pear Orchard at the site known as SS1. This agreement was varied by two further agreements dated 1 January 2012 and respectively 2 April 2013. These three agreements are collectively referred to herein as the "**First Agreement**".
- (B) The parties also entered into an agreement taking effect on 1 April 2011 relating to the establishment of Sweet Sensation Pear Orchard at the site known as SS3. This agreement was varied by two further agreements dated 1 January 2012 and respectively 2 April 2013. These three agreements are collectively referred to herein as the "**Second Agreement**".
- (C) The First Agreement and the Second Agreement are collectively referred to as the "**Agreements**". The Mortgagee, the Borrower and the Mortgagor have simultaneously with the date of this Charge entered into the Termination Agreement to terminate the Agreements.
- (D) The Mortgagor is the owner of the Property.
- (E) This legal mortgage provides security which the Borrower and the Mortgagor have agreed to ensure is provided to the Mortgagee for the sums owed by the Borrower to the Mortgagee pursuant to the Termination Agreement.
- (F) The Mortgagor has agreed to create the security required by entering into this Deed.

IT IS AGREED as follows

1 DEFINITIONS AND INTERPRETATION

- 1.1 Words and expressions defined in the Termination Agreement (defined below) will have the same meanings in this Deed unless they are expressly defined in this Deed.

- 1.2 In this Deed, unless otherwise provided:

"**Borrower**" means East Malling Limited incorporated and registered in England and Wales with company number 05046509 whose registered office is at Bradbourne House, East Malling, West Malling, England, ME19 6DZ;

"**Default Rate**" means interest at the rate of 5% above the base rate of Barclays Bank PLC;

"**Encumbrance**" means any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien or other security interest of any kind, by way of security or having similar effect to the provision of security;

"**Event of Default**" means a breach by the Borrower of clauses 3.1, 3.2 and 3.3 of the Termination Agreement;

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"Insurance Policies" means each contract or policy of insurance to which the Mortgagor is a party or in which it has an interest ~~(including those listed in Schedule 2)~~ in relation to the Real Property;

"Legal Reservations" means:

- (a) the principle that the granting or not of equitable remedies is at the discretion of a court;
- (b) the time barring of claims under any limitation acts in any relevant jurisdiction; and
- (c) any other principles of law applicable to companies generally;

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

"Real Property" means:

- (a) all or any of the freehold and/or leasehold properties specified in Schedule 1 (Property); and
- (b) any buildings, fixtures, fittings, fixed plant or machinery from time to time situated on or forming part of any of such properties;

"Receiver" means any receiver appointed pursuant to this Deed or to any applicable law, whether alone or jointly, and includes a receiver and/or manager;

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

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

"Secured Assets" means all assets; property and undertaking which are, or are intended to be, subject to the Encumbrance created by or pursuant to this deed (and references to Secured Assets shall include references to any part of them;

"Secured Liabilities" means all money, liabilities and obligations now or in the future owed or incurred by the Borrower to the Mortgagee (including those under the Termination Agreement or this Deed) whether actual or contingent, sole or joint, as principal or as surety, including (without limitation) any liability of the Borrower or the Mortgagor to a third party which subsequently becomes payable to the Mortgagee by assignment or otherwise and any interest, commission, costs, charges and expenses of the Mortgagee;

(is satisfied)
"Security Period" means the period starting on the date of this Deed and ending on the day on which the Mortgagee, acting reasonably, ~~notifies the Borrower and the Mortgagor~~ 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 *and that the compensation (as defined by the Termination Agreement) has been paid in full*

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"Termination Agreement" means the agreement dated 20 November 2019 entered into between (1) the Borrower (2) the Mortgagor and (3) the Mortgagee in relation to the termination of the Agreements; *de*

"Valuation" means any valuation relating to the Property supplied to the Mortgagee by the Mortgagor (or on its behalf); and

"VAT" means value added tax.

1.3 Unless the context otherwise requires:

1.3.1 each gender includes the others;

1.3.2 the singular and the plural are interchangeable;

1.3.3 references to clauses, Schedules or Appendices mean to clauses or Schedules of and Appendices to this Deed;

1.3.4 references to this Deed include its Schedule and Appendices, as amended;

1.3.5 references to persons include individuals, unincorporated bodies, government entities, companies and corporations;

1.3.6 including means including without limitation and general words are not limited by example;

1.3.7 clause headings do not affect their interpretation; and

1.3.8 references to legislation include any re-enactment but exclude any modification thereof after the date of this Deed.

1.4 Contract for the disposition of Real Property

The terms of any agreement or side letter entered into between the parties to this Deed in relation to this Deed or the Secured Liabilities are incorporated into this Deed to the extent required for any purported disposition of any Real Property contained in this Deed to be a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989 (LP(MP)A 1989).

1.5 Joint and Several

1.5.1 Any representations or statements being made in this Deed in relation to the Borrower or the Mortgagor shall be construed as representations or statements made separately in relation to each of the parties comprised in such expressions and as if the representation or statement was repeated separately in relation to each such party and any charging provision shall relate to property held by either or both of the Borrower or either or both of the Mortgagor; and

1.5.2 All of the indebtedness, obligations, covenants, representations, warranties or other obligations given hereunder by the Borrower or the Mortgagor ("agreed obligations") are given by each party comprised in the expression "the Borrower" or "the Mortgagor" severally and also jointly with every other of the Borrower or the Mortgagor, and each Borrower or each Mortgagor agrees and consents to be bound by the agreed obligations notwithstanding that any other or others of the Borrower or the Mortgagor which was or were intended to execute this document (or any of the same) may not do so or may not effectually be bound thereby and notwithstanding that any of such agreed obligations may be determined by any such party or may become invalid or unenforceable against that party.

2 COVENANT TO PAY

- 2.1 The Mortgagor covenants with the Mortgagee that it will pay and discharge to the Mortgagee the Secured Liabilities on demand when due.
- 2.2 The making of one demand under this Deed will not stop the Mortgagee making any further demands.
- 2.3 The Mortgagee will not make any demand unless it is entitled to do so.

3 LIMITED RECOURSE

- 3.1 Notwithstanding any other provision of the Termination Agreement it is expressly agreed that:
 - 3.1.1 the sole recourse of the Mortgagee to the Mortgagor under this deed is to be the Mortgagor's interest in the Real Property; and
 - 3.1.2 the liability of the Mortgagor to the Mortgagee pursuant or otherwise in connection with the Termination Agreement shall be:
 - 3.1.2.1 limited in aggregate to an amount equal to that recovered as a result of enforcement of this deed with respect to the Real Property; and
 - 3.1.2.2 satisfied only from the proceeds of sale or other disposal or realisation of the Real Property pursuant to this deed.

4 CREATION OF SECURITY

- 4.1 As continuing security for the payment and discharge of the Secured Liabilities the Mortgagor charges to the Mortgagee with full title guarantee:
 - 4.1.1 by way of first legal mortgage the Real Property;
 - 4.1.2 by way of first fixed charge:
 - 4.1.2.1 all its rights in any policies of insurance relating to the Property, including the proceeds of any claims under such policies, the Rent and the benefit of any guarantee or security in respect of the Rent to the extent;
 - 4.1.2.2 the benefit of all other contracts, guarantees, appointments, warranties and other documents to which the Mortgagor is a party or in its favour or of which it has the benefit relating to any letting, development, sale, purchase or the operation or otherwise relating to the Secured Assets, including, in each case, but without limitation, the right to demand and receive all monies whatsoever 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 whatsoever accruing to or for its benefit arising from any of them;
 - 4.1.2.3 all authorisations (statutory or otherwise) held or required in connection with the Mortgagor's business carried on at the Property or the use of any Secured Assets, and all rights in connection with them; and

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

5 STATUS OF LAND

- 5.1 The Property charged under this legal mortgage is held by the Mortgagor, a non-exempt charity and this charge is not one falling within section 124(9) of the Charities Act 2011 so the restrictions imposed by section 124 of that Act apply.
- 5.2 The directors of the Mortgagor, being the persons who have general control and management of its administration certify that they have power under the provisions establishing it as a charity and regulating its purposes and administration to effect the charge of the Property charged under the charge and that they have obtained and considered such advice as is mentioned in section 124(2) of the said Act.

6 MORTGAGOR REPRESENTATIONS AND WARRANTIES

- 6.1 The Mortgagor represents and warrants to the Mortgagee as follows:

6.1.1 Due incorporation

The Mortgagor:

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

6.1.2 Powers

The Mortgagor has the power and authority to execute, deliver and perform its obligations under this legal mortgage and the transactions contemplated by it. No limit on its powers will be exceeded as a result of the entry into of this legal mortgage.

6.1.3 Ownership

The Mortgagor is the legal and beneficial owner of the Secured Assets free from any Encumbrance other than the Encumbrances created by this Deed.

6.1.4 Adverse claims and covenants

The Mortgagor has not received or acknowledged notice of any adverse claim by any person in respect of the Secured Assets and there are no covenants, agreements, conditions, interests rights or other matters which may adversely affect the Secured Assets.

6.1.5 Breach of law or regulation

That no breach of any law (including environmental law), regulation or covenant or the terms of any planning permission has occurred and is continuing which has or would be reasonably likely to have a material adverse effect on the value or use of the Secured Assets.

6.1.6 Third Party Rights

The Secured Assets are not subject to terms entitling a third party to terminate or limit the use of any facility necessary for the enjoyment and use of the Secured Assets.

6.1.7 Overriding interests

Nothing has arisen, has been created or is subsisting, which would be an overriding interest over any of its Real Property.

6.1.8 No interference in enjoyment

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

6.1.9 Liquidation or administration

No Encumbrance expressed to be created by this Deed is liable to be avoided or otherwise set aside on the liquidation or administration of the Mortgagor or otherwise.

6.2 The Mortgagor repeats the representations and warranties in clause 6.1 above on each day during the Security Period.

7 MORTGAGOR'S UNDERTAKINGS AND COVENANTS

7.1 The Mortgagor covenants not, without the prior written consent of the Mortgagee, to:

7.1.1 part with possession of, or transfer, sell, lease, assign or otherwise dispose of all or any of the Secured Assets, or attempt or agree to do so;

7.1.2 create, attempt to create or allow to subsist any mortgage, debenture, charge or pledge, increase the amount secured by the Deed or permit any lien or other encumbrance to arise on or affect all or any of the Secured Assets;

7.1.3 permit any person to be registered as proprietor of any of the Secured Assets under the Land Registration Act 2002 or create or permit to arise any unregistered interest which overrides first registration affecting such property within Schedule 1 to that Act, to become entitled to any proprietary right or interest which might affect the value of any land fixtures or fixed plant and machinery charged by this Deed; or

7.1.4 do or allow any act or omission which may prejudice the value to the Mortgagee of the Secured Assets.

7.2 The Mortgagor covenants that it will, unless, in any case, the Mortgagee has given its written consent otherwise:

7.2.1 notify the Mortgagee in writing of any breach of this Deed or the Termination Agreement immediately on it becoming aware of such breach;

7.2.2 in relation to the Real Property, observe all covenants, not enter into any onerous or restrictive obligation, effect or allow any development within the Town and Country Planning Acts, do, allow or omit anything infringing any statute or regulation and maintain and keep them in good and substantial repair;

7.2.3 institute, pursue and defend proceedings relating to the Secured Assets as required to protect their value and apply moneys from such proceedings in discharge of sums due to the Mortgagee;

- 7.2.4 at its own expense, keep the Real Property insured to its full replacement value with reputable insurers against risks normally insured for assets of that type in the name of the Mortgagor;
- 7.2.5 punctually pay all insurance premiums, have the Mortgagee's interest noted on the policy and produce the insurance documents including any receipt on request of the Mortgagee. If the Mortgagor does not maintain insurance, the Mortgagee may do so at the Mortgagor's expense;
- 7.2.6 punctually pay, and indemnify the Mortgagee against, all moneys due in respect of the Secured Assets; and
- 7.2.7 comply with all statutory, regulatory and other requirements applying to the Secured Assets except where actually or potentially adverse to the Mortgagee's interest, when the Mortgagor will immediately consult the Mortgagee and make or join the Mortgagee in making such representations as the Mortgagee may request.

8 PERFECTION OF SECURITY

8.1 Title documents

The Mortgagor must:

- 8.1.1 immediately upon the execution of this Deed, deposit with the Mortgagee, all deeds, title documents, certificates and other documents constituting or evidencing title to each of the Secured Assets and all other documents relating to the Secured Assets as the Mortgagee may request; and
- 8.1.2 at any time after the execution of this Deed, deposit with the Mortgagee any further deeds, title documents, certificates and other documents constituting or evidencing title to the Secured Assets, promptly upon coming into possession of any of them.

8.2 Document delivery and other steps to perfect security

- 8.2.1 The Mortgagor must, immediately upon the execution of this Deed, execute and deliver to the Mortgagee (at the Mortgagor's expense) in such form and substance as the Mortgagee may reasonably require all documents required to perfect the Encumbrances created, or purported to be created, by or pursuant to this Deed (including any documents required in connection with any registration formalities).
- 8.2.2 The Mortgagor must take all such other action as is available to it as may be necessary or as may reasonably be requested by the Mortgagee to create, perfect, protect or maintain any of the Encumbrances created, or purported to be created, by or pursuant to this Deed or to vest title to any Secured Asset in the Mortgagee or its nominee or any purchaser, or to facilitate the realisation of any Secured Asset under this Deed or the exercise of any of the rights, powers and remedies of the Mortgagee provided by or pursuant to this Deed or by law, including:
 - 8.2.2.1 making all filings and registrations with and paying all taxes and duties to the appropriate authorities (including Companies House and HM Land Registry); and
 - 8.2.2.2 making an application to HM Land Registry for a the following restriction in Form P to be placed on the Proprietorship Register of the Mortgagor's Real Property:

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction is to be registered without a written consent signed by the proprietor for the time being of the charge dated _____ in favour of Chingford Fruit Limited referred to in the charges register or their conveyancer."

9 LIABILITY OF MORTGAGOR

9.1 The Mortgagor's liability in respect of the Secured Liabilities shall not be discharged or prejudiced by:

- 9.1.1 any intermediate payment, settlement of account or discharge in whole or in part of the Secured Liabilities; or
- 9.1.2 any variation, extension, discharge, compromise, dealing with, exchange or renewal of any right or remedy which the Mortgagee may now or after the date of this legal mortgage have from or against the Borrower, the Mortgagor or any other person in connection with the Secured Liabilities; or
- 9.1.3 any act or omission by the Mortgagee or any other person in taking up, perfecting or enforcing any Encumbrance, indemnity, or guarantee from or against the Borrower, the Mortgagor or any other person; or
- 9.1.4 any termination, amendment, variation, novation or supplement of or to any of the Secured Liabilities; or
- 9.1.5 any grant of time, indulgence, waiver or concession to the Borrower, the Mortgagor or any other person; or
- 9.1.6 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 Borrower, the Mortgagor or any other person; or
- 9.1.7 any invalidity, illegality, unenforceability, irregularity or frustration of any actual or purported obligation of, or Encumbrance held from, the Borrower, the Mortgagor or any other person in connection with the Secured Liabilities; or
- 9.1.8 any claim or enforcement of payment from the Borrower, the Mortgagor or any other person; or
- 9.1.9 any other act or omission which 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 legal mortgage.

9.2 Immediate recourse

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

- 9.2.1 to take any action or obtain judgment in any court against the Borrower or any other person; or
- 9.2.2 to make or file any claim in a bankruptcy, liquidation, administration or insolvency of the Borrower or any other person; or

9.2.3 to make demand, enforce or seek to enforce any claim, right or remedy against the Borrower or any other person,

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

9.3 Non-competition

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

9.3.1 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 Mortgagee for application in or towards the discharge of the Secured Liabilities under this legal mortgage; and

9.3.2 on demand by the Mortgagee, the Mortgagor shall promptly transfer, assign or pay to the Mortgagee all Rights and all monies from time to time held on trust by the Mortgagor under this clause 9.3.

10 ENFORCEMENT

10.1 The Mortgagee may enforce this Deed at any time after the occurrence of an Event of Default.

10.1.1

10.2 After the security constituted by this legal mortgage has become enforceable, the Mortgagee 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 Secured Assets.

11 APPOINTMENT AND POWERS OF A RECEIVER

11.1 Appointment of a Receiver

At any time:

11.1.1 after the Encumbrances created by or pursuant to this Deed have become enforceable; or

11.1.2 if so requested by the Mortgagor,

the Mortgagee may appoint by writing any person to be a Receiver of all or any part of the Secured Assets.

11.2 Powers of Receivers joint and several

Where more than one Receiver is appointed, they shall have power to act separately unless the Mortgagee in the appointment specifies to the contrary.

11.3 Remuneration of Receiver

The Mortgagee may from time to time determine the remuneration of the Receiver.

11.4 Power of the Mortgagee to remove Receiver

The Mortgagee may, subject to section 45 of the Insolvency Act 1986, remove the Receiver from the assets of which it is Receiver.

11.5 Further appointment

The appointment of a Receiver shall not preclude:

- 11.5.1 the Mortgagee from making any subsequent appointment of a Receiver over all or any of the Secured Assets over which a Receiver has not previously been appointed or has ceased to act; or
- 11.5.2 a Receiver, while continuing to act, consenting to the appointment of an additional Receiver to act with it.

11.6 Status of Receiver as agent

A Receiver shall be the agent of the Mortgagor and the Mortgagor shall be solely liable for the Receiver's acts, defaults and remuneration, unless and until the Mortgagor goes into liquidation, after which the Receiver shall act as principal and shall not become the agent of the Mortgagee.

11.7 Powers of Receiver

A Receiver shall have and be entitled to exercise in relation to the Mortgagor all the powers set out in Schedule I to the IA 1986, and in particular, by way of addition and without limiting such powers, and without prejudice to the powers of the Mortgagee, a Receiver shall have power either in its own name or in the name of the Mortgagor:

- 11.7.1 in connection with any sale or other disposition of the Secured Assets, to receive the consideration for the sale in a lump sum or in instalments and to receive shares by way of consideration;
- 11.7.2 to grant options, licences or any other interests in the Secured Assets;
- 11.7.3 to sever fixtures from, and to repair, improve and make any alterations to, the Secured Assets;
- 11.7.4 to do all other acts and things which it may consider desirable or necessary for realising any Secured Asset or incidental or conducive to any of the rights, powers or discretions conferred on a Receiver under or by virtue of this Deed; and
- 11.7.5 to exercise in relation to any of the Secured Assets all the powers, authorities and things which it would be capable of exercising if it was the absolute beneficial owner of the Secured Asset.

11.8 Limitation on Mortgagee's liability

Neither the Mortgagee nor any Receiver shall be liable:

- 11.8.1 for any loss, however caused, arising out of:

- 11.8.1.1 any sale or other disposal of any of the Secured Assets and whether or not a better price could or might have been obtained by deferring or advancing the date of such sale or other disposal; or
 - 11.8.1.2 the exercise of or failure to exercise any of the Mortgagee's powers under this Deed; or

11.8.2 to account as mortgagee in possession for any of the Secured Assets.

11.9 Section 109 of the LPA 1925

Section 109 of the LPA 1925 shall not apply to this Deed or to any of the security it creates.

12 OTHER POWERS EXERCISABLE BY THE MORTGAGEE

12.1 Mortgagee may exercise Receiver's powers

All powers of a Receiver conferred by this Deed may be exercised by the Mortgagee after the Encumbrances created by or pursuant to this Deed have become enforceable, whether as attorney of the Mortgagor or otherwise, and whether or not a Receiver has been appointed.

12.2 Mortgagee empowered to receive receivables

The Mortgagee or any manager or officer of the Mortgagee is irrevocably empowered to receive all receivables and claims that may be assigned to the Mortgagee under this Deed, on payment to give an effectual discharge for them, on non-payment to take and institute if the Mortgagee in its sole discretion so decides all steps and proceedings either in the name of the Mortgagor or in the name of the Mortgagee for their recovery, and to agree accounts and to make allowances and to give time to any surety. The Mortgagor undertakes to ratify and confirm whatever the Mortgagee or any manager or officer of the Mortgagee shall do or purport to do under this clause 12 (Other powers exercisable by the Mortgagee).

12.3 Mortgagee not obliged to take action relating to receivables

The Mortgagee shall not be obliged to:

12.3.1 make any enquiry as to the nature or sufficiency of any sums received by it in respect of any receivables or claims assigned to it under this Deed or pursuant to any of the Secured Assets;

12.3.2 make any claim or take any other action under this Deed; or

12.3.3 collect any money or enforce any of its other rights under this Deed.

12.4 Mortgagee has no obligation under the Insurance Policies

The Mortgagee shall have no obligation under the Insurance Policies and shall have no liability in the event of failure by the Mortgagor to perform its obligations under the Insurance Policies.

13 POWERS OF SALE, LEASING, ACCEPTING SURRENDERS AND SEVERANCE

13.1 Statutory power of sale to arise on execution

Section 103 of the LPA 1925 shall not apply to this Deed, but the statutory power of sale shall, as between the Mortgagee and a purchaser from the Mortgagee, arise on, and be exercisable at any time after, the execution of this Deed. However, the Mortgagee shall not exercise such power of sale until the Encumbrances created by or pursuant to this Deed become enforceable, or a Receiver has been appointed, but this provision shall not affect a purchaser or require a purchaser to ask whether a demand or appointment has been made.

13.2 Power of the Mortgagee to grant leases

13.2.1 The statutory powers of sale, leasing and accepting surrenders exercisable by the Mortgagee by virtue of this Deed shall be extended so as to authorise the Mortgagee (whether in its own name or that of the Mortgagor) after the Encumbrances created by or pursuant to this Deed have become enforceable, to grant leases of any of the Real Property on such terms and conditions as the Mortgagee shall think fit.

13.2.2 The Mortgagor must not, in connection with the Real Property, exercise any of the powers of leasing or accepting surrenders of leases conferred by sections 99 and 100 of the LPA 1925 or by common law without the Mortgagee's prior written consent.

13.3 Mortgagee may sever fixtures

The statutory power of sale exercisable by the Mortgagee is extended so as to authorise the Mortgagee to sever any fixtures from any Real Property and sell them separately.

14 NEW ACCOUNTS

14.1 On receiving notice that the Mortgagor has encumbered or disposed of any of the Secured Assets the Mortgagee may rule off the Mortgagor's account and open a new account in the name of the Mortgagor.

14.2 If the Mortgagee does not open a new account on receipt of a notice as from that time all payments made to the Mortgagee will be treated as if they had been credited to a new account and will not reduce the amount owing from the Mortgagor at the time when the notice was received.

15 ATTORNEY

15.1 By way of security the Mortgagor irrevocably appoints the Mortgagee, whether or not a Receiver has been appointed, and any Receiver separately as Mortgagor's attorney with full power to appoint substitutes and to delegate in its name and on its own behalf and as its act and deed or otherwise at any time after this security has become enforceable to execute and deliver and otherwise perfect any agreement, assurance, deed, instrument or document, or perform any act that may be required of the Mortgagor under this Deed, or may be deemed by such attorney necessary or desirable for any purpose of this Deed or to enhance or perfect the security intended to be constituted by such attorney or to convey or transfer legal ownership of any Secured Assets.

15.2 The Mortgagor will ratify and confirm all transactions entered into by the Mortgagee or Receiver in the proper exercise of their powers in accordance with this Deed and all transactions entered into by the Mortgagee or the Receiver in signing, sealing, delivering and otherwise perfecting any assignment, mortgage, charge, security, deed, assurance, document or act as aforesaid.

16 PROTECTION OF THIRD PARTIES

No person (including a purchaser) dealing with the Mortgagee or any Receiver or any of their respective nominees or agents, shall be concerned to enquire:

16.1 whether the Encumbrances created by or pursuant to this Deed have become enforceable;

16.2 whether any Receiver is validly appointed or acting within its powers;

16.3 whether any power exercised or purported to be exercised has become exercisable;

- 16.4 whether any of the Secured Liabilities remain due;
- 16.5 as to the necessity or expediency of any stipulations or conditions subject to which the sale of any Secured Asset is made, or otherwise as to the propriety or regularity of the sale of any Secured Asset; or
- 16.6 how any money paid to the Mortgagee or a Receiver, or their respective nominees or agents, is applied.

17 CONSOLIDATION OF MORTGAGES

The restrictions on consolidation of mortgages contained in section 93 of the LPA 1925 shall not apply to this Deed.

18 RIGHTS OF MORTGAGEE OR RECEIVER TO REMEDY BREACH

If the Mortgagor defaults in its performance of any of the undertakings under clause 5 (Undertakings) or other obligations in this Deed, the Mortgagee or any Receiver may (but shall not be obliged to) do whatever may be necessary to rectify the default or protect the Mortgagee's interest under this Deed (including, if applicable, entering the Real Property without becoming liable as mortgagee in possession) at the expense of the Mortgagor.

19 APPLICATION OF MONEYS RECEIVED

19.1 Any money received under this Deed will, subject to the discharge of any prior-ranking claims, be paid or applied in the following order of priority:

19.1.1 in satisfaction of all costs, charges and expenses incurred and payments made by the Mortgagee and/or the Receiver and of the remuneration of the Receiver;

19.1.2 in or towards satisfaction of the Secured Liabilities; and

19.1.3 as to the surplus, if any, to the person or persons entitled to it.

19.2 The Mortgagee may, in its absolute discretion on or at any time or times after demand and pending the payment to the Mortgagee of the whole of the Secured Liabilities, place and keep to the credit of a separate or suspense account any money received, recovered or realised by the Mortgagee by virtue of this Deed for so long and in such manner as the Mortgagee may determine without any intermediate obligation to apply it in or towards the discharge of any of the Secured Liabilities.

20 INDEMNITY

20.1 The Mortgagor will indemnify the Mortgagee against all and any costs, charges and expenses arising:

20.1.1 out of any of the assets charged or assigned pursuant to clause 3 resulting in the Mortgagor or the Mortgagee or the Receiver infringing or allegedly infringing any third party rights; and

20.1.2 in relation to any proceedings referable to the Mortgagor brought against the Mortgagee and/or the Receiver or to which the Mortgagee and/or the Receiver may be joined whether as the plaintiff or defendant that relate to any of the Secured Assets.

20.2 The Mortgagor agrees that if it fails to pay any moneys in respect of the Secured Assets or to take (or not take) any action which might diminish the value of the

Secured Assets to the Mortgagee, the Mortgagee may pay such monies or take such action and recover the cost from the Mortgagor.

- 20.3 The Mortgagor indemnifies the Mortgagee and its employees and agents fully at all times against any claim, liability, loss or expense incurred by the Mortgagee directly or indirectly as a result of any delay or failure of the Mortgagor in complying with clause 7 or with any law, regulation, directive or code of practice applicable to the Mortgagor or to its business or the Secured Assets or relating to the protection of the environment or to health and safety matters.
- 20.4 Without prejudice to the generality of this clause the costs recoverable by the Mortgagee and/or any Receiver under this Deed shall include:
- 20.4.1 all costs, whether or not allowable on a taxation by the courts, of all proceedings for the enforcement of this Deed or for the recovery or attempted recovery of the Secured Liabilities;
- 20.4.2 all money expended and all costs arising out of the exercise of any power, right or discretion conferred by this Deed; and
- 20.4.3 all costs and losses arising from any default by the Borrower or the Mortgagor in the payment when due of any of the Secured Liabilities or the performance of its obligations under this Deed.
- 20.5 Any overdue amounts secured by the Deed will carry interest at the Default Rate. Interest will accrue on a day-to-day basis to the date of repayment in full and, if unpaid, will be compounded with quarterly rates on the Mortgagee's usual quarter days. Interest shall continue to be charged and compounded on this basis after as well as before any demand or judgment.
- 20.6 Money received or held by the Mortgagee pursuant to this debenture may, from time to time after demand of all or any part of the Secured Liabilities has been made, be converted into such currency as the Mortgagee considers necessary or desirable to discharge the Secured Liabilities in that currency at the Mortgagee's then prevailing spot rate of exchange, as conclusively determined by the Mortgagee, for purchasing the currency to be acquired with the existing currency.

21 RELEASE

- 21.1 Subject to clause 21.2 below, the Mortgagee will at any time after the Security Period, at the request and cost of the Mortgagor, execute all documents as the Mortgagor may reasonably require and take whatever action as is necessary in releasing the Secured Assets from the security constituted by this Deed.
- 21.2 Any release, discharge or settlement between the Mortgagee and the Mortgagor will be conditional upon no payment or security received by the Mortgagee in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded pursuant to any law relating to insolvency, bankruptcy, winding-up, administration, receivership or otherwise and, notwithstanding any such release, discharge or settlement:
- 21.2.1 the Mortgagee or its nominee will be at liberty to retain this Deed and the security created by or pursuant to this Deed, including all certificates and documents relating to the whole or any part of the Secured Assets, for such period as the Mortgagee may deem necessary to provide the Mortgagee with security against any such avoidance, reduction or order for refund; and
- 21.2.2 the Mortgagee will be entitled to recover the value or amount of such security or payment from the Mortgagor subsequently as if such release, discharge or settlement had not occurred.

21.3

22 MISCELLANEOUS

22.1 Survival

Notwithstanding termination of this Deed, any provisions which have not been fully implemented or performed remain in full force and effect and will continue to bind, and to be enforceable against the relevant Party and will not be extinguished or affected by any other event or matter except a specific and duly authorised written waiver or release of the other Party to this Deed.

22.2 Variation

Variations to this Deed will only have effect when agreed in writing.

22.3 Severability

The unenforceability of any part of this Deed will not affect the enforceability of any other part.

22.4 Waiver

Unless otherwise agreed, no delay, act or omission by either Party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy.

22.5 Consent

Consent by a party, where required, will not prejudice its future right to withhold similar consent.

22.6 Rights of third parties

This Deed is not enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999.

22.7 Assignment and subcontracting

22.7.1 The Mortgagee may assign any of its rights under this Deed or transfer all its rights or obligations by novation to any person.

22.7.2 The Mortgagor may not assign any of its rights or transfer any rights or obligations under this Deed.

22.8 Entire agreement

This Deed and documents referred to in it represent the entire agreement between the parties and supersede all previous agreements, term sheets and understandings relating to the loan whether written or oral.

22.9 Succession

This Deed will bind and benefit each Party's successors and assignees.

22.10 Counterparts

This Deed may be signed in any number of separate counterparts. Each, when executed and delivered by a party, will be an original; all counterparts will together constitute one instrument.

23 NOTICES

23.1 Any notice or other communication given by a party under this Agreement shall:

23.1.1 be in writing and in English; and

23.1.2 be signed by or on behalf of the party giving it.

23.2 Notices will be sent to:

23.2.1 Mortgagor - Attention: Sally Flanagan at: East Malling Trust, Bradbourne House East Malling West Malling England ME19 6DZ, and

clh
23.2.2 Mortgagee - Attention: *Sally Linsell* at: *Thames House, Thames Road, Crayford, Kent DA1 4QP* "

23.3 A Party may change any of its details given in clause 24.2 by giving not less than five Business Days' notice to the other Party.

23.4 Notices may be given and will be deemed received:

23.4.1 by hand: on receipt of a signature at the time of delivery; or

23.4.2 by first class post (the "Notice") two days after posting subject an email also being sent prior to or at the same time as the Notice to attaching the Notice in PDF format and specifically identifying the same as a notice delivered under this agreement.

23.5 This clause 24 does not apply to any notice given in legal proceedings, arbitration or other dispute resolution proceedings.

24 GOVERNING LAW AND JURISDICTION

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

24.2 The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Agreement, its subject matter or formation (including non-contractual disputes or claims).

24.3 The Mortgagor irrevocably consents to any process in any proceedings under clause 24.2 being served on it in accordance with the provisions of this legal mortgage relating to service of notices. Nothing contained in this legal mortgage shall affect the right to serve process in any other manner permitted by law.

SCHEDULE 1

Real Property

Part 1

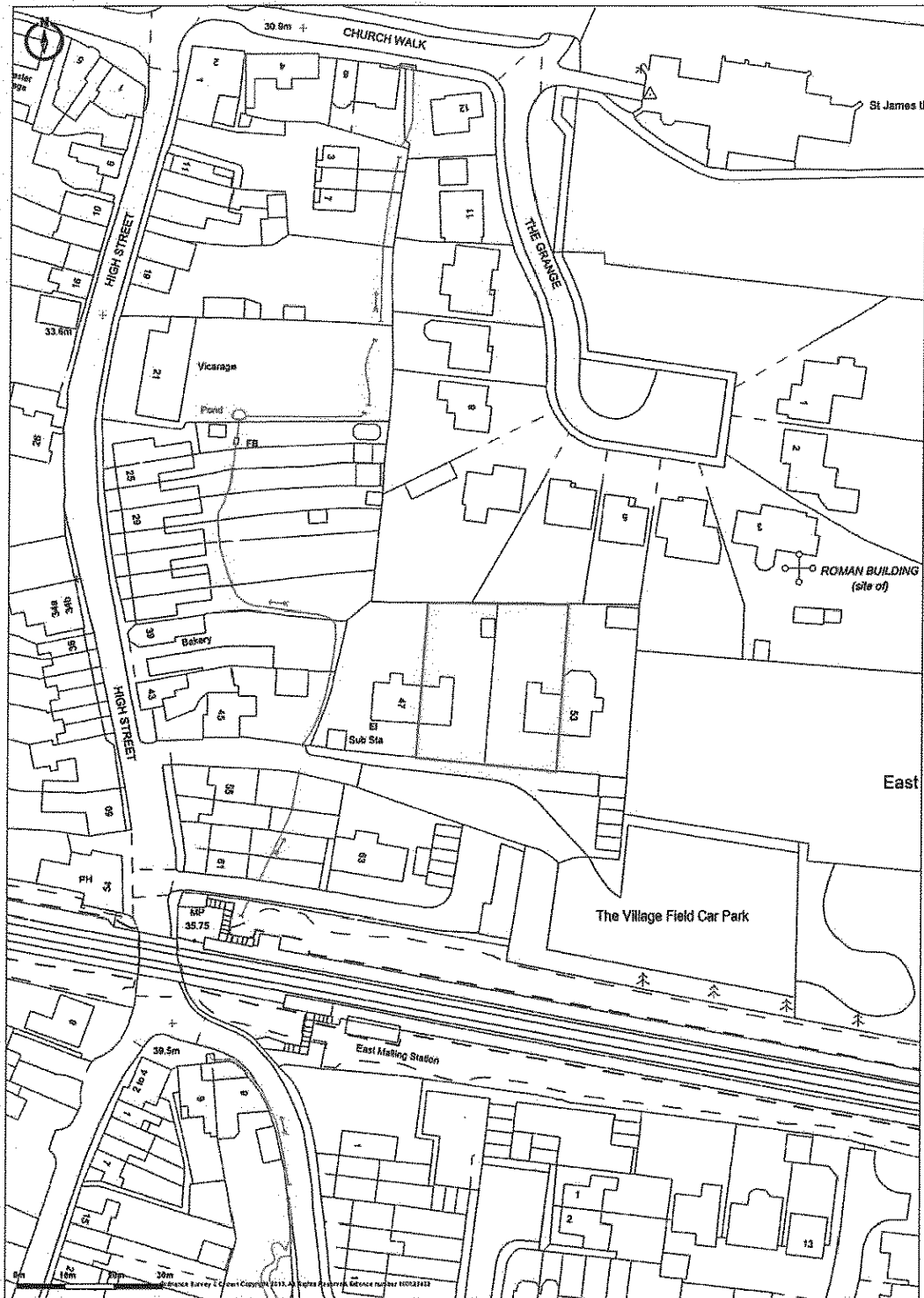
The freehold Real Property (if any)

The property known as 49 & 51 High Street, East Malling forming part of the freehold title registered at HM Land Registry under title number K163766 and shown edged red on the plan annexed hereto.

The leasehold Real Property

N/A

49 and 51, High Street, East Malling



Promapv2
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Licence number 100023432
Plotted Scale - 1:1250. Paper Size - A4

SCHEDULE 2

List of insurance policies

1. Insurance policy for the year 2018/2019

2. Insurance policy for the year 2019/2020

3. Insurance policy for the year 2020/2021

4. Insurance policy for the year 2021/2022

5. Insurance policy for the year 2022/2023

6. Insurance policy for the year 2023/2024

7. Insurance policy for the year 2024/2025

8. Insurance policy for the year 2025/2026

9. Insurance policy for the year 2026/2027

10. Insurance policy for the year 2027/2028

11. Insurance policy for the year 2028/2029

12. Insurance policy for the year 2029/2030

13. Insurance policy for the year 2030/2031

14. Insurance policy for the year 2031/2032

15. Insurance policy for the year 2032/2033

16. Insurance policy for the year 2033/2034

17. Insurance policy for the year 2034/2035

18. Insurance policy for the year 2035/2036

19. Insurance policy for the year 2036/2037

20. Insurance policy for the year 2037/2038

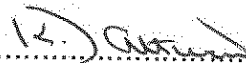
21. Insurance policy for the year 2038/2039

22. Insurance policy for the year 2039/2040

23. Insurance policy for the year 2040/2041

EXECUTION PAGE

EXECUTED as a deed by THE EAST MALLING
TRUST acting by KEVIN ATTWOOD
as director in the presence of:-


Director

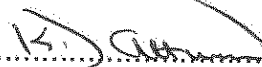
Signature of witness 

Witness

Name of witness EMMA ANDERSEN

Address of witness BRACHERS LLP
59 LONDON ROAD
MAIDSTONE
KENT ME16 8JH
TEL 01622 690691

SIGNED as a deed on behalf of the trustees of
THE EAST MALLING TRUST by KEVIN
ATTWOOD being one of their number under
an authority conferred pursuant to section 333
of the Charities Act 2011 in the presence of:-


Trustee

Signature of witness 

Witness

Name of witness EMMA ANDERSEN

Address of witness BRACHERS LLP
59 LONDON ROAD
MAIDSTONE
KENT ME16 8JH
TEL 01622 690691

SIGNED as a deed on behalf of the trustees of
THE EAST MALLING TRUST by ALLIS
BEASLEY being one of their number under
an authority conferred pursuant to section 333
of the Charities Act 2011 in the presence of:-

Signature of witness

E. Andersen

Name of witness

RHMA ANDERSEN

Address of witness

BRACHERS LLP

59 LONDON ROAD

MAIDSTONE

KENT ME16 8JH

TEL 01622 690691

Trustee

ALLIS BEASLEY

Witness

The **MORTGAGEE**

EXECUTED as a **DEED** by)

[.....] acting by)

a Director and)

[.....] a Director/)

Secretary)

LTD

.....
Director

.....
Director/Secretary