



**Registration of a Charge**

Company Name: **DEEPDALE TREES LIMITED**

Company Number: **03099056**



Received for filing in Electronic Format on the: **01/07/2021**

XA7TJNB7

**Details of Charge**

Date of creation: **14/06/2021**

Charge code: **0309 9056 0003**

Persons entitled: **JOHN MELMOE (AS SECURITY TRUSTEE FOR THE NOTEHOLDERS)**

Brief description: **THE PROPERTY KNOWN AS TITHE FARM, HATLEY ROAD, POTTON, SANDY, BEDFORDSHIRE SG19 2DX AND REGISTERED AT HM LAND REGISTRY WITH TITLE NUMBER BD202362**

**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: **WE 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: **BIRKETTS LLP**



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

Company number: 3099056

Charge code: 0309 9056 0003

The Registrar of Companies for England and Wales hereby certifies that a charge dated 14th June 2021 and created by DEEPDALE TREES LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 1st July 2021 .

Given at Companies House, Cardiff on 2nd July 2021

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



**Companies House**



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

DATED

14 June 2021

MORTGAGE OVER

TITHE FARM HATLEY ROAD, POTTON, SANDY, BEDFORDSHIRE, UNITED  
KINGDOM, SG19 2DX

between

Deepdale Trees Limited

and

John Melmoe (as security trustee for the Noteholders)

## CONTENTS

---

### CLAUSE

1. Definitions and interpretation .....	3
2. Covenant to pay.....	6
3. Grant of security .....	7
4. Perfection of security .....	7
5. Liability of the Mortgagor and Security Trustee's protections .....	7
6. General covenants.....	8
7. Property covenants.....	9
8. Powers of the Security Trustee.....	11
9. When security becomes enforceable .....	12
10. Enforcement of security.....	12
11. Receivers .....	14
12. Powers of Receiver .....	15
13. Delegation.....	18
14. Application of proceeds .....	18
15. Costs and indemnity.....	19
16. Further assurance .....	20
17. Power of attorney .....	20
18. Release.....	21
19. Assignment and transfer.....	21
20. Amendments, waivers and consents.....	21
21. Severance.....	22
22. Counterparts .....	22
23. Third party rights .....	22
24. Further provisions .....	22
25. Notices.....	23
26. Governing law and jurisdiction.....	24

### SCHEDULE

Schedule 1	Property .....	25
------------	----------------	----

This deed is dated 14 June 2021

## Parties

- (1) **DEEPDALE TREES LIMITED** incorporated and registered in England and Wales with company number 03099056 whose registered office is at Tithe Farm Hatley Road, Pottton, Sandy, Bedfordshire, United Kingdom, SG19 2DX (**Mortgagor**)
- (2) **JOHN MELMOE** of Whitegates Cottages, Copthorne Common, Copthorne, Crawley, West Sussex, RH10 3LE, in his capacity as security trustee for the Noteholders (**Security Trustee**)

## BACKGROUND

- (A) The Borrower has issued secured loan notes to the Noteholders pursuant to the Loan Notes Instrument. The Security Trustee has agreed with the Noteholders to act as security trustee on behalf of the Noteholders.
- (B) The Mortgagor owns the Property.
- (C) This deed provides security for the outstanding sums owed by the Borrower pursuant to the Notes.

## Agreed terms

### 1. Definitions and interpretation

#### 1.1 Definitions

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

**Borrower:** Deepdale Trees Holdings Limited (company number 13059333).

**Business Day:** a day other than a Saturday, Sunday or bank holiday in England.

**Charged Assets:** 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:** any person appointed by the Security Trustee or any Receiver under clause 13 and any person appointed as attorney of the Security Trustee, Receiver or Delegate.

**Event of Default:** has the meaning given to that expression in the Loan Notes Instrument.

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

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

**Insurance Policy:** an insurance policy taken out by the Mortgagor in accordance with clause 7.3(a).

**Loan Notes Instrument:** the loan notes instrument dated 28 April 2021.

**LPA 1925:** the Law of Property Act 1925.

**Noteholders:** the holders of Notes from time to time (each being a **Noteholder**).

**Notes:** the loan notes constituted by the Loan Notes Instrument.

**Permitted Security:** any security granted from time to time (whether before or after the date of this deed) in favour of National Westminster Bank Plc, including a mortgage debenture created on 2 April 1996 and a charge dated 11 August 2014.

**Property:** the property described in Schedule 1.

**Receiver:** a receiver or receiver and manager appointed by the Security Trustee under clause 11.

**Secured Liabilities:** all obligations and liabilities of the Borrower to the Noteholders under or in connection with the Loan Notes Instrument (including, without limitation, those arising under clause 24.2(b)).

**Security:** 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:** the period starting on the date of this deed and ending on the date on which the Borrower has paid and discharged the Notes in full and no further Secured Liabilities are capable of being outstanding.

**VAT:** 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 reference to a **person** shall include a reference to 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 or the **Borrower** shall include that party's or the Borrower'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 at the date of this deed;
- (g) a reference to a statute or statutory provision shall include all subordinate legislation made under that statute or statutory provision as at the date of this deed;
- (h) a reference to **writing** or **written** excludes fax and email;
- (i) an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- (j) 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;
- (k) unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this deed;
- (l) 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;
- (m) a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and **amend** and **amended** shall be construed accordingly);
- (n) a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;
- (o) a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- (p) a reference to **continuing** in relation to an Event of Default means an Event of Default that has not been remedied or waived;

- (q) 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
- (r) 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 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.

### **1.4 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 Loan Notes Instrument and of any side letters between any parties in relation to the Loan Notes Instrument are incorporated into this deed.

### **1.5 Perpetuity period**

If the rule against perpetuities applies to any trust created by this deed, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).

### **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 Security Trustee and discharge the Secured Liabilities on the occurrence of an Event of Default.



## **2.2 Limited recourse**

Notwithstanding any other provision of the Loan Notes Instrument, it is expressly agreed that:

- (a) the sole recourse of the Security Trustee to the Mortgagor under this deed is to the Mortgagor's interest in the Charged Assets; and
- (b) the liability of the Mortgagor to the Security Trustee pursuant to or otherwise in connection with the Loan Notes Instrument shall be:
  - (i) limited in aggregate to an amount equal to that recovered as a result of enforcement of this deed with respect to the Charged Assets; and
  - (ii) satisfied only from the proceeds of sale or other disposal or realisation of the Charged Assets pursuant to this deed.

## **3. Grant of security**

As a continuing security for the payment and discharge of the Secured Liabilities, the Mortgagor with full title guarantee charges to the Security Trustee by way of a second legal mortgage, the Property.

## **4. Perfection of security**

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

The Mortgagor consents to an application being made by the Security Trustee 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 or by the proprietor of any registered charge, other than 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 [DATE] in favour of John Melmoe referred to in the charges register."

## **5. Liability of the Mortgagor and Security Trustee'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 part of the Secured Liabilities;

- (b) any variation, extension, partial discharge, compromise, dealing with, exchange or renewal of any right or remedy that the Security Trustee may now or after the date of this deed have from or against the Borrower, the Mortgagor or any other person in connection with the Secured Liabilities;
- (c) any act or omission by the Security Trustee or any other person in taking up, perfecting or enforcing any Security, indemnity, or guarantee from or against the Borrower, the Mortgagor or any other person;
- (d) any 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 Borrower, 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 Borrower, 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 Borrower, the Mortgagor or any other person in connection with the Secured Liabilities; or
- (h) any claim or enforcement of payment from the Borrower, the Mortgagor or any other person.

## **6. General covenants**

### **6.1 Negative pledge and disposal restrictions**

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

- (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 or any Permitted Security; or
- (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.

### **6.2 Compliance with laws and regulations**

- (a) The Mortgagor shall not, without the Security Trustee'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.

### **6.3 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 Security Trustee may require from time to time.

### **6.4 Ranking of obligations**

Subject to any deed of priority (or similar) that provides otherwise, 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.

### **6.5 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.

## **7. Property covenants**

### **7.1 Repair and maintenance**

The Mortgagor shall keep all premises, and fixtures and fittings on the Property, in reasonable and substantial repair and condition.

### **7.2 No alterations**

The Mortgagor shall not, without the prior written consent of the Security Trustee pull down or remove the whole or any substantial part of any building forming part of the Property nor permit the same to occur; or

### **7.3 Insurance**

- (a) The Mortgagor shall insure and keep insured the Charged Assets against risks, perils and contingencies that would be insured against by prudent persons (acting commercially reasonably) carrying on the same class of business as the Mortgagor.
- (b) The Mortgagor shall, if requested by the Security Trustee, produce to the Security Trustee each policy, certificate or cover note relating to any insurance required by clause 7.3(a).
- (c) The Mortgagor shall, if requested by the Security Trustee, procure that a note of the Security Trustee's interest is endorsed on each Insurance Policy (other than public liability and third party liability insurances) but without the Security Trustee 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.
- (d) The Mortgagor shall promptly pay all premiums in respect of each Insurance Policy and do all other things necessary to keep that policy in full force and effect; and

### **7.4 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 7.3(a).

### **7.5 Proceeds from Insurance Policies**

All monies payable under any Insurance Policy required by clause 7.3(a) shall (whether or not the security constituted by this deed has become enforceable) be applied in making good or recouping expenditure in respect of the loss or damage for which those monies are received.

### **7.6 No restrictive obligations**

The Mortgagor shall not, without the prior written consent of the Security Trustee, 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.

### **7.7 Proprietary rights**

Subject to the Permitted Security, 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 Security Trustee.

#### **7.8 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
- (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.

#### **7.9 Payment of 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.

#### **7.10 Inspection**

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

### **8. Powers of the Security Trustee**

#### **8.1 Power to remedy**

- (a) The Security Trustee 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 Security Trustee and its agents to do all things that are necessary or desirable for that purpose.
- (c) Any monies expended by the Security Trustee in remedying a breach by the Mortgagor of its obligations contained in this deed shall be reimbursed by the Mortgagor to the Security Trustee on a full indemnity basis.

#### **8.2 Exercise of rights**

The rights of the Security Trustee under clause 8.1 are without prejudice to any other rights of the Security Trustee under this deed. The exercise of any rights of the Security Trustee under this deed shall not make the Security Trustee liable to account as a mortgagee in possession.

#### **8.3 Security Trustee 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 Security Trustee 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.

#### **8.4 Indulgence**

The Security Trustee 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.

### **9. When security becomes enforceable**

#### **9.1 Security becomes enforceable on Event of Default**

The security constituted by this deed shall become immediately enforceable if an Event of Default occurs.

#### **9.2 Discretion**

After the security constituted by this deed has become enforceable, the Security Trustee 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.

### **10. Enforcement of security**

#### **10.1 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 9.1.
- (c) Section 103 of the LPA 1925 does not apply to the security constituted by this deed.

#### **10.2 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

Security Trustee 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 on such terms and conditions (including the payment of money to a lessee or tenant on a surrender), as the Security Trustee or Receiver thinks fit.

### **10.3 Protection of third parties**

No purchaser, mortgagee or other person dealing with the Security Trustee, 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 Security Trustee, a Receiver or Delegate is purporting to exercise has become exercisable or is being properly exercised; or
- (c) how any money paid to the Security Trustee, any Receiver or any Delegate is to be applied.

### **10.4 Privileges**

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

### **10.5 No liability as mortgagee in possession**

Neither the Security Trustee nor any Receiver or Delegate shall be liable, 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, nor shall any of them be liable for any loss on realisation of, or for any act, default or omission for which a mortgagee in possession might be liable.

### **10.6 Relinquishing possession**

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

### **10.7 Conclusive discharge to purchasers**

The receipt of the Security Trustee, 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 Security Trustee, 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.

#### **10.8 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 Security Trustee 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 Security Trustee 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.

### **11. Receivers**

#### **11.1 Appointment**

At any time after the security constituted by this deed has become enforceable, or at the request of the Mortgagor, the Security Trustee 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.

#### **11.2 Removal**

The Security Trustee 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.

#### **11.3 Remuneration**

The Security Trustee 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.

#### **11.4 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 Security Trustee 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.

#### **11.5 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 Security Trustee despite any prior appointment in respect of all or any part of the Charged Assets.

#### **11.6 Agent of the Mortgagor**

Any Receiver appointed by the Security Trustee 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 Security Trustee.

### **12. Powers of Receiver**

#### **12.1 Powers additional to statutory powers**

- (a) Any Receiver appointed by the Security Trustee 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 12.2 to clause 12.20.
- (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 12 may be on behalf of the Mortgagor, the directors of the Mortgagor or himself/herself.

#### **12.2 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.

#### **12.3 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.

**12.4 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.

**12.5 Make and revoke VAT options to tax**

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

**12.6 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 Security Trustee may prescribe or agree with him/her.

**12.7 Take possession**

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

**12.8 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.

**12.9 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.

**12.10 Sever fixtures and fittings**

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

#### **12.11 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.

#### **12.12 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.

#### **12.13 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.

#### **12.14 Insure**

A Receiver may, if he/she thinks fit, but without prejudice to the indemnity in **Error! Bookmark not defined.**, 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.

#### **12.15 Form subsidiaries**

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

#### **12.16 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 Security Trustee consents, terms under which that security ranks in priority to this deed).

#### **12.17 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.

#### **12.18 Delegation**

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

#### **12.19 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.

#### **12.20 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.

### **13. Delegation**

#### **13.1 Delegation**

The Security Trustee 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 17.1).

#### **13.2 Terms**

The Security Trustee 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.

#### **13.3 Liability**

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

### **14. Application of proceeds**

#### **14.1 Order of application of proceeds**

All monies received or recovered by the Security Trustee, 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 Security Trustee's right to recover any shortfall from the Mortgagor or the Borrower:

- (a) in or towards payment of all costs, liabilities, charges and expenses incurred by or on behalf of the Security Trustee (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 Security Trustee determines; and
- (c) in payment of the surplus (if any) to the Mortgagor or other person entitled to it.

#### **14.2 Appropriation**

Neither the Security Trustee, 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.

#### **14.3 Suspense account**

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

#### **15. Costs and indemnity**

- (a) The Mortgagor shall indemnify the Security Trustee, each Receiver and each Delegate, and their respective employees and agents against all liabilities, costs, expenses, damages, losses, penalties, legal costs and all other professional costs and expenses (but excluding, indirect or consequential losses, loss of profit and loss of reputation) suffered or incurred by any of them arising out of or in connection with:
  - (i) taking proceedings for, or recovering, any of the Secured Liabilities;
  - (ii) 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; and
  - (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 **Error! Bookmark not defined.**<sup>15</sup> subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

## **16. Further assurance**

### **16.1 Further assurance**

The Mortgagor shall promptly, at its own expense, take whatever action the Security Trustee 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 Security Trustee 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 Security Trustee 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 Security Trustee may consider necessary or desirable.

## **17. Power of attorney**

### **17.1 Appointment of attorneys**

By way of security, the Mortgagor irrevocably appoints the Security Trustee, every Receiver and every Delegate separately, at any time after the security constituted by this deed has become enforceable, 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 Security Trustee, any Receiver or any Delegate.

### **17.2 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 **17.1**.

## **18. Release**

### **18.1 Release**

Subject to clause 24.2, at the end of the Security Period, the Security Trustee shall, at the request 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.

## **19. Assignment and transfer**

### **19.1 Assignment by Security Trustee**

- (a) At any time, without the consent of the Mortgagor, the Security Trustee may assign or transfer all (but not only some) of its rights and obligations under this deed to another Noteholder.
- (b) The Security Trustee 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 Security Trustee considers appropriate.

### **19.2 Assignment by Mortgagor**

The Mortgagor may not assign any of its rights, or transfer any of its rights or obligations, under this deed.

## **20. Amendments, waivers and consents**

### **20.1 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).

### **20.2 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 other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.
- (b) A failure or delay by a party to exercise any right or remedy provided under this deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this deed. No single or partial exercise of any right or remedy provided under this deed or by law shall prevent or restrict the

further exercise of that or any other right or remedy. No election to affirm this deed by the Security Trustee shall be effective unless it is in writing.

### **20.3 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.

### **21. Severance**

If any provision (or part of a provision) of this deed is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of this deed.

### **22. Counterparts**

#### **22.1 Counterparts**

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.

### **23. Third party rights**

#### **23.1 Third party rights**

Except as expressly provided elsewhere in this deed, a person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this deed. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

### **24. Further provisions**

#### **24.1 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 Security Trustee discharges this deed in writing.

#### **24.2 Discharge conditional**

Any release, discharge or settlement between the Mortgagor and the Security Trustee shall be deemed conditional on no payment or security received by the Security Trustee



in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded under any law relating to insolvency, bankruptcy, winding-up, administration, receivership or otherwise. Despite any such release, discharge or settlement:

- (a) the Security Trustee 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 Security Trustee deems necessary to provide the Security Trustee with security against any such avoidance, reduction or order for refund; and
- (b) the Security Trustee 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.

#### **24.3 Certificates**

A certificate or determination by the Security Trustee as to any amount for the time being due to it from the Mortgagor under this deed be, in the absence of any manifest error, conclusive evidence of the amount due.

#### **24.4 Consolidation**

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

### **25. Notices**

#### **25.1 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 its registered office for the attention of Michael Hickson.
  - (ii) the Security Trustee at the address specified at the beginning of this deed,

or to any other address or fax number as is notified in writing by one party to the other from time to time.

#### **25.2 Receipt**

Any notice or other communication 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 25.2(a) on a day that is not a Business Day, or after normal business hours (being 9am to 5pm), in the place it is received, shall be deemed to have been received on the next Business Day.

### **25.3 Service of proceedings**

This clause 25 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.

## **26. Governing law and jurisdiction**

### **26.1 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.

### **26.2 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 Security Trustee 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.

### **26.3 Other service**

The Mortgagor irrevocably consents to any process in any legal action or proceedings under clause 26.2 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**

Tithe Farm Hatley Road, Potton, Sandy, Bedfordshire, United Kingdom, SG19 2DX (Land Registry title number BD202362)

Executed as deed by DEEPDALE TREES LIMITED acting  
by two directors

.....  
Michael Hickson, Director

.....  
Andrew Fenton, Director

Executed as deed by JOHN MELMOE, in the presence of:

Signature of witness:.....

Name of witness: CHRISTOPHER Block

Address of witness: