



**Registration of a Charge**

Company name: **WHIRLOW ESTATES LIMITED**

Company number: **10192188**

Received for Electronic Filing: **19/03/2018**



X721XCNV

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**Details of Charge**

Date of creation: **14/03/2018**

Charge code: **1019 2188 0002**

Persons entitled: **NEWTONS DISCRETIONARY TRUST**

Brief description:

**Contains fixed charge(s).**

**Contains floating charge(s) (floating charge covers all the property or undertaking of the company).**

**Contains negative pledge.**

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**Authentication of Form**

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

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**Authentication of Instrument**

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

**FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL  
INSTRUMENT.**

Certified by:

**HEWITTS ACCOUNTANTS**



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

Company number: 10192188

Charge code: 1019 2188 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 14th March 2018 and created by WHIRLOW ESTATES LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 19th March 2018 .

Given at Companies House, Cardiff on 21st March 2018

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<sup>th</sup> March

2018

(1) Whirlow Estates Limited

and

(2) Newtons Discretionary Trust

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## DEBENTURE

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The logo for actons solicitors. It features the word "actons" in a lowercase, sans-serif font. Above the "o" in "actons" are three small, solid black circles. Below "actons" is the word "solicitors" in a smaller, lowercase, sans-serif font.

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THIS DEED is made on

14<sup>th</sup> March

2018

- (1) **Whirlow Estates Limited** incorporated and registered in England and Wales with company number 10192188 whose registered office is at 11 Venture One Business Park, Long Acre Close, Sheffield S20 3FR (the **Company**).
- (2) **Newtons Discretionary Trust** of 54 Whirlow Park Road, Sheffield, S11 9NP (the **Chargee**).

## 1. Interpretation

### 1.1 In this Deed:

**Act** means the Law of Property Act 1925;

**Administrator** means an administrator appointed under Schedule B1 to the Insolvency Act 1986;

**Charged Assets** means the undertaking, property, rights and assets from time to time subject to the Security created by this Deed and includes any part thereof interest therein;

**Encumbrance** means any mortgage, charge, pledge, lien, assignment, hypothecation, security, interest, preferential right, or trust arrangement or other encumbrance security agreement or arrangement of any kind or any right conferring a priority of payment;

**Land** means any freehold or leasehold property, any licence and any other estate or interest in any immovable property and in each case all buildings and structures upon and all things affixed to such property (including trade, tenant's and other fixtures and fittings) from time to time;

**Mortgaged Land** means the Land from time to time mortgaged or charged by the Company under clauses 3.1.1 or 3.1.2(a) and includes any part thereof;

**Prior Charge(s)** means the Encumbrances existing at the date of this Deed, details of which are set out in Schedule 2.

**Receiver** means each person appointed by the Chargee as an administrative receiver, a receiver and manager or a receiver of any Charged Assets;

**Secured Liabilities** means all and any moneys, obligations and liabilities which may now or at any time in the future be due, owing or incurred by the Company to the Chargee under the Loan Agreement, whether actual or contingent and whether alone, severally or jointly with any other person as principal, guarantor, surety or in any other capacity whatsoever and in whatever name or style, together with interest, commissions, fees and all legal and

other costs, charges and other expenses which the Chargee may charge the Company or incur;

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

**Loan Agreement** means the loan of even date made inter alia between the Company and the Chargee; and

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

1.2 In this Deed:

1.2.1 the terms of the other documents under which the Secured Liabilities arise and any side letters between any parties in relation to them are incorporated in this Deed to the extent required to ensure that any purported disposition of any Charged Asset contained in this Deed is a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989;

1.2.2 any grant of rights with full title guarantee shall be deemed to contain all of the covenants and warranties implied in respect of any conveyance with full title guarantee under section 1(2) of the Law of Property (Miscellaneous Provisions) Act 1994;

1.2.3 unless the context requires otherwise, references to clauses are references to clauses of this Deed;

1.2.4 unless the context otherwise requires, a reference to a Charged Asset includes the proceeds of sale of that Charged Asset; and

1.2.5 any reference to this Deed or any other document includes references to this Deed or such other document as varied, novated, extended, supplemented or restated in any manner from time to time.

**2. Covenant to Pay**

2.1 The Company, as primary obligor and not merely as surety, covenants with the Chargee that it will, on the Chargee's written demand, pay and discharge all Secured Liabilities when the same shall be or become due.

2.2 The making of one demand shall not preclude the Chargee from making any further demands.

- 2.3 The Company shall pay to the Chargee interest on any amount not paid in accordance with this Deed when due from the due date to the date of payment or discharge (as well after as before judgment and notwithstanding the liquidation or administration of the Company or any arrangement or composition with any creditors by the Company) at such rates and intervals as may be set out in the documents regulating the Secured Liabilities from time to time or at such other rates and intervals as may be agreed between the Company and the Chargee from time to time.

### **3. Charge**

- 3.1 As a continuing security for the payment and/or discharge of the Secured Liabilities, the Company:

3.1.1 charges to the Chargee by way of legal mortgage all Land described in the Schedule (Mortgaged Land);

3.1.2 charges to the Chargee by way of fixed charge:

- (a) (to the extent they are not the subject of an effective legal mortgage under clause 3.1.1 above) all Land now or in the future belonging to it, whether or not title to that Land is registered at the Land Registry;
- (b) all buildings, structures, trade, tenant's and other fixtures and fittings now or in the future belonging to it or on or annexed to any Land now or in the future belonging to it;
- (c) all plant and machinery now or in the future owned by it and its interest in any plant or machinery now or in the future in its possession or on or annexed to any Land now or in the future belonging to it;
- (d) all cash at bank, all book debts, other debts and monetary claims now or in the future due or owing to it and the benefit of all rights, securities or guarantees of any nature enjoyed or held by it in relation to any item mentioned above;
- (e) all stocks, shares and other securities now or in the future belonging to it together with all dividends and other rights deriving from them or pertaining to them and any right, money or property accruing or offered at any time in relation to it by way of redemption, substitution, exchange, bonus or preference, under option rights or otherwise;
- (f) all its goodwill, all its uncalled capital from time to time and any beneficial interest, claim or entitlement it has in any pension fund;



(g) all patents, trade marks, trade names, service marks, designs and other intellectual property rights, choses in action and claims and all fees, royalties and other rights of every kind deriving from them now or in the future belonging to it;

(h) all its rights, title and interests not effectively assigned under clause 3.1.3 below;

3.1.3 assigns absolutely to the Chargee all its rights, title and interest from time to time in and to:

(a) all present and future insurance policies to which the Company is entitled and any payments paid or payable and claims or return of premium in relation thereto; and

(b) all amounts paid or payable to or for the account of the Company in connection with the letting licence or grant or other rights of use or occupation of any part of any Land now or in the future belonging to it,

provided that (without prejudice to clause 3.1.2(h) above) to the extent that any rights, titles or interests assigned under this clause 3.1.3 are not assignable, such assignment will operate as an assignment of all proceeds received by the Company in connection therewith; and

3.1.4 charges to the Chargee by way of floating charge its undertaking and all its property, rights, assets and income not effectively mortgaged, charged by way of fixed charge or assigned under clauses 3.1.1 to 3.1.3 above both present and future (including without limitation its stock in trade and its heritable and other property, assets and rights in Scotland).

#### **4. General**

4.1 The Security created by this Deed shall rank, subject only to the Prior Charge(s), as first charges, mortgages and assignments (as applicable) and is given with full title guarantee.

4.2 Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies so that the floating charge created under clause 3.1.4 is a qualifying floating charge for the purposes of that paragraph 14.

**5. Negative pledge**

- 5.1 The Company shall not create or permit to subsist or arise any Security other than the Prior Charge(s) over any of its rights, assets, property, undertaking and revenue other than that created by this Deed or with the Chargee' prior consent.

**6. Restrictions on dealings**

- 6.1 The Company shall not sell, transfer, assign, licence, lease, hire out, grant, lend, discount, factor, exchange, compound, set-off, grant any interest in, part with possession or ownership of, grant time or indulgence in respect of or otherwise dispose of any Charged Asset or the equity of redemption therein or permit any person to do any such thing.
- 6.2 Clause 6.1 shall not apply to any dealing made with the prior written consent of the Chargee or made in the ordinary course of trade (as carried on at the date of this Deed but excluding unprecedented and exceptional dealings or transactions) in respect of any Charged Asset that is subject only to the floating charge created by 3.1.4.

**7. Conversion of floating charge**

- 7.1 Subject to clause 9, the Chargee may from time to time by notice in writing to the Company convert the floating charge created by clause 3.1.4 into a fixed charge with immediate effect. Such conversion shall take effect in respect of each Charged Asset specified in such notice and if no Charged Assets are specified it shall take effect in respect of all Charged Assets.

**8. Automatic conversion**

- 8.1 Subject to clause 9, if (without the prior written consent of the Chargee):
- 8.1.1 the Company creates any Security over or otherwise encumbers any Charged Asset or attempts to do so;
  - 8.1.2 any person levies or attempts to levy any distress, execution, sequestration, expropriation, attachment or other process against any Charged Asset;
  - 8.1.3 a resolution is passed or a petition is presented for the winding up, dissolution, administration or re-organisation of the Company;
  - 8.1.4 a receiver, an administrative receiver or a receiver and manager is appointed over any Charged Asset or any person entitled to do so gives notice of its intention to appoint a receiver, an administrative receiver or a receiver and manager over any Charged Asset or files such a notice with the court; or

- 8.1.5 an Administrator is appointed (or the Chargee receives notice of an intention to appoint an Administrator pursuant to paragraphs 15 or 26 of Schedule B1 to the Insolvency Act 1986) in respect of the Company,

the floating charge created by clause 3.1.4 shall with immediate effect and without notice automatically convert into a fixed charge over the relevant Charged Assets (or, in the case of clauses 8.1.3, 8.1.4 or 8.1.5 above, over all of the Charged Assets).

**9. Moratorium**

- 9.1 The floating charge created by clause 3.1.4 shall not be converted into a fixed charge solely by reason of the obtaining of a moratorium or anything done with a view to obtaining a moratorium under the Insolvency Act 2000.

**10. Deposit of documents**

- 10.1 The Company shall on the date of this Deed or, if later, upon becoming entitled to them, deposit (or procure the deposit) with the Chargee and the Chargee shall be entitled to hold all original deeds and documents of title in the Company's control or possession relating to any Charged Asset together with, in the case of the stocks, shares and other securities referred to in clause 3.1.2(e), stamped stock transfer forms in respect of the same executed in blank (except for the number and class of shares and the name of the transferor) and left undated. The Chargee may at any time after the date of this Deed complete the instruments of transfer on behalf of the Company in favour of themselves, their nominee or such other person as they shall select.
- 10.2 If, for any reason, the Chargee ceases to hold any such deeds or documents, they may by notice to the Company require that such deeds or documents be redelivered to them and the Company shall immediately comply with that requirement or procure that it is complied with that requirement or procure that it is complied with. In respect of any Mortgaged Land, if any such deeds or documents are at the relevant time held at the Land Registry, the Company shall promptly following a demand by the Chargee provide or procure the provision to the Chargee of such undertakings and such letters addressed to the Land Registry as the Chargee may require.

**11. Release**

- 11.1 Subject to clause 27, upon the irrevocable and unconditional discharge in full of the Secured Liabilities the Chargee shall, at the cost and request of the Company, release the Charged Assets from the Security constituted by this Deed and reassign or retransfer the Charged Assets to the Company.

## **12. Restrictions on Dealing**

12.1 The Company shall not without the prior written consent of the Chargee:

- 12.1.1 part with possession of any freehold or leasehold property or any part or parts of it (otherwise than on the determination of any lease, tenancy or licence), grant or agree to grant any option or any lease, licence, tenancy or other right of occupation to any person or exercise the powers of leasing or agreeing to lease or of accepting or agreeing to accept surrenders conferred by sections 99 and 100 of the Act or otherwise. Such restrictions shall not be construed as limitations on the powers of any Receiver nor of the Chargee, any of whom may, after the Security created under this Deed becomes enforceable, grant or accept surrenders of leases without restriction;
- 12.1.2 pull down or remove or redevelop or make any material alteration to the whole or any part of any buildings or sever unfix or remove any fixtures or remove any plant or machinery belonging to or in use by the Company except for the purpose of effecting repairs or replacing the same;
- 12.1.3 make or allow to be made any application for planning permission in respect of any part of the Mortgaged Land;
- 12.1.4 vary, surrender, cancel or dispose of, or permit to be forfeit, any leasehold interest in any of its leasehold properties; or
- 12.1.5 do or cause or permit or suffer to be done anything which may in any way materially depreciate, jeopardise or otherwise prejudice the value or marketability of any the Charged Assets.

## **13. Covenants by the Company**

13.1 The Company shall:

- 13.1.1 keep all buildings in a good state of repair and condition and adequately and properly painted and decorated and all plant, machinery, fixtures and fittings, roads, pipes, wires, cables, drains and structures in a good state of repair and in good working order and condition and permit any person or persons nominated by the Chargee free access at all times to view the state and condition of them and for that purpose to enter upon any land or buildings occupied or owned by the Company without being deemed to have gone into possession of them;
- 13.1.2 insure and keep insured such of its Charged Assets as is insurable with such reputable insurer and against such risks and in such amounts and otherwise in

such terms as the Chargee may require and shall maintain such other insurances as are normally maintained by prudent companies carrying on similar businesses (such insurances to contain such provisions for the protection of the Chargee as the Chargee may require and to be, if the Chargee shall require, in the composite names of the Company and the Chargee and with the Chargee names as first lost payee) and will produce or deposit with the Chargee all such policies and receipts for all premium and other payments necessary for effecting and maintaining such insurances (provided that where the insurance on the Charged Assets is effected by a prior chargee or some other third party the Chargee shall not require the Company to effect separate insurance on the Charged Assets so long as such insurance complies with the provisions of this Clause and is on terms reasonably satisfactory to Chargee);

- 13.1.3 pay all money received by it on any policy of insurance (other than in respect of employer's or public liability) to the Chargee and such money shall be applied towards making good the loss or damage in respect of which the money was received or, if the loss or damage has already been made good, in refinancing money expended in that connection or, subject to any obligation to do otherwise under any insurance policy, at the option of the Chargee, towards the discharge of the Secured Liabilities but subject to the rights of any prior chargee. If any money payable under any policy of insurance is paid to the Company, it shall hold the money on trust for the Chargee and shall account to the Chargee accordingly;
- 13.1.4 punctually pay or cause to be paid (and indemnify the Chargee and any Receiver against) all rents, taxes, duties, assessments and other outgoings and observe and perform all restrictive and other covenants under which any of the Charged Assets is held;
- 13.1.5 duly and punctually to pay all sums payable in respect of the Prior Charge(s) (subject to any applicable agreement or arrangement as to priorities) and from time to time to produce to the Chargee on demand the receipts for every such payment;
- 13.1.6 collect and realise its book or other debts and all licence fees, royalties and other moneys deriving from its intellectual property and pay all moneys which it may receive in respect of them into such account as the Chargee may specify and until such payment will hold all such moneys on trust for the Chargee; and shall not, without the Chargee's prior written consent, release, factor, sell at discount, charge, assign or otherwise deal with such debts, licence fees, royalties or other moneys otherwise than by getting in and paying the same into such account;

- 13.1.7 take all necessary action to safeguard and maintain present and future rights in or relating to any intellectual property rights including, without limitation, observing all covenants and obligations relating to such rights, paying all applicable renewal or licence fees, using reasonable efforts to register any intellectual property and not permitting any intellectual property to be abandoned, cancelled or to lapse;
  - 13.1.8 comply with the provisions of all present or future statutes, licences, regulations, consents and directives and every notice, order or direction made under any of the foregoing; and
  - 13.1.9 provide the Chargee with all financial and other information with respect to the assets, liabilities and affairs of the Company and its subsidiaries and associated companies (if any) that the Chargee may from time to time require.
- 13.2 If the Company does not perform any of its obligations under clause 13.1 or otherwise, then the Chargee may (but shall not be obliged to) take such steps as they consider appropriate to procure the performance of such obligation and/or remedy the failure and shall not by any step be deemed to be a mortgagee in possession and the moneys expended by the Chargee shall be reimbursed by the Company on demand and until so reimbursed shall carry interest as mentioned in clause 2.3 from the date of payment to the date of reimbursement.
- 13.3 The Company undertakes:
- 13.3.1 promptly to serve all such notices of the Chargee's interest in the Charged Assets as the Chargee may reasonably require from time to time and in such form as the Chargee may reasonably require; and
  - 13.3.2 to use its reasonable endeavours to procure that each notice served under clause 13.3.1 above is acknowledged by the recipient thereof to the satisfaction of the Chargee.

#### **14. Enforcement of Security**

- 14.1 The Security created by this Deed shall become immediately enforceable and the statutory power of sale and all other statutory powers conferred on mortgagees by section 101 of the Act (as varied and extended by this Deed) shall be exercisable:
- 14.1.1 if the Company has failed to pay all or any Secured Liabilities following a demand for payment by the Chargee;
  - 14.1.2 if a resolution is passed, any other step is taken or a petition is presented for the winding up, dissolution, administration or re-organisation of the Company;

- 14.1.3 if a receiver, administrative receiver or receiver and manager is appointed over any Charged Asset or if any person entitled to do so gives notice (or files notice with the court) of its intention to appoint such a receiver, administrative receiver or receiver and manager;
  - 14.1.4 if an Administrator is appointed (or the Chargee receives notice of an intention to appoint an Administrator pursuant to paragraphs 15 or 26 of Schedule B1 to the Insolvency Act 1986) in respect of the Company; and/or
  - 14.1.5 upon request by the Company and at any time thereafter.
- 14.2 For the purposes of all powers implied or conferred by statute (including, without limitation, the power of sale and other powers conferred by section 101 of the Act (as varied and extended by this Deed)) and all other powers conferred on a mortgagee by law, the Secured Liabilities are deemed to have become due and payable on the date of this Deed.
- 14.3 Sections 93 (restricting the right of consolidation) and 103 (restricting the power of sale) and the restrictions contained in section 109(1) (restricting the appointment of a Receiver) of the Act shall not apply to this Deed.
- 14.4 After the Security created under this Deed has become enforceable, the Chargee and any Receiver may enforce all or any part of the Security created under this Deed in any manner they see fit and neither the Chargee nor any Receiver will be liable by reason of entering into possession of any Charged Asset or the exercise of any right, to account as mortgagee in possession or for any loss on realisation of any Charged Asset or arising from the manner in which the Chargee or any Receiver enforces or refrains from enforcing the Security created under this Deed; or for any default or omission for which a mortgagee in possession might be liable.
- 14.5 At any time after the Security created under this Deed has become enforceable, the Chargee shall be entitled to:
  - 14.5.1 to complete all instruments of transfer referred to in clause 10 and otherwise have any stocks, shares and other securities referred to in clause 3.1.2(e) registered in their name or the name of their nominee;
  - 14.5.2 in the name of the Company, exercise or direct (or refrain from exercising or directing) the exercise of the voting and other rights and powers attached to any stock, shares and securities charged by clause 3.1.2(e) in such a manner as they consider fit (in their absolute discretion); and/or
  - 14.5.3 receive and retain all dividends and other distributions payable in respect of such stock, shares and securities and applied such dividends and distributions in

accordance with clause 20 and to the extent such dividends, distributions and/or other amounts are received by or on behalf of the Company such amounts shall be held on trust for the Chargee.

**15. Prior Security**

- 15.1 The Chargee may at any time after the Security created under this Deed has become enforceable redeem (or procure the transfer to itself of the benefit of) any prior Security over any Charged Asset and may settle and pass the accounts of the holder of the prior Security. Any accounts so settled and passed shall (save in respect of any manifest error) be conclusive and binding on the Company. All principal moneys, interest, costs, charges and expenses of and incidental to the redemption and transfer shall be Secured Liabilities and shall be payable by the Company to the Chargee on demand.

**16. Right of Appropriation**

- 16.1 To the extent that any Charged Asset constitutes "financial collateral" and this Deed and the Security created and the obligations of the Company under it constitute a "security financial collateral arrangement" (in each case as defined in, and for the purposes of, the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No 3226) (the "Regulations")) the Chargee shall have the right, at any time after the Security created under this Deed has become enforceable, to appropriate with immediate effect by notice in writing to the Company all or any part of such financial collateral in or towards payment and/or discharge of the Secured Liabilities in such order as the Chargee in their absolute discretion may determine.
- 16.2 The Parties agree that the value of any financial collateral appropriated under clause 16.1 shall be (i) in the case of cash, the amount standing to the credit of the relevant account, together with any accrued but unposted interest, and (ii) in other cases the price of the relevant Charged Asset as listed on any recognised market index, in each case at the time the right of appropriation is exercised, or determined by such other method as the Chargee may select (including independent valuation). The Parties agree that the methods of valuation for financial collateral set out in this Deed constitute commercially reasonable methods of valuation for the purposes of the Regulations.
- 16.3 The Chargee shall account to the Company for any amount by which the value of any appropriated Charged Assets exceeds the Secured Liabilities and the Company shall remain liable to the Chargee for any amount by which the value of any appropriated Charged Assets is less than the Secured Liabilities.



**17. Receivers and Administrators**

- 17.1 At any time after the Security created by this Deed becomes enforceable the Chargee may without prior notice to the Company from time to time by deed or otherwise in writing signed by any officer or manager of the Chargee or any person authorised for this purpose by the Chargee appoint:
- 17.1.1 any one or more persons (whether or not an employee of the Chargee) to be an administrative receiver, receiver or receiver and manager of any Charged Asset (and to the extent permitted by law none of the restrictions imposed by the Act in relation to the appointment of such persons or to the giving of notice or otherwise shall apply); or
- 17.1.2 when permitted by law and by any method permitted by law, any one or more persons to be an Administrator of the Company.
- 17.2 An appointment over part only of the Charged Assets shall not preclude the Chargee from making any subsequent appointment of a Receiver over any other Charged Asset.
- 17.3 If at any time and by virtue of any appointment under this clause 17 any two or more persons shall hold office as a Receiver, each such person shall (unless otherwise provided in any relevant deed or other instrument of appointment) be jointly and severally entitled to exercise all the powers and discretions conferred by this Deed on a Receiver.
- 17.4 The Chargee may (subject to any requirement for an order of the court in the case of an administrative receiver) remove any Receiver appointed by them and may, whenever they think fit, appoint a new Receiver in its place.
- 17.5 The Chargee may either at the time of appointment of any Receiver or at any time thereafter and from time to time fix the remuneration of such Receiver. The maximum rate specified in Section 109(6) of the Act will not apply.
- 17.6 Any Receiver appointed under this Deed shall so far as the law permits be the agent of the Company for all purposes. The Company shall be solely responsible for any Receiver's acts, omissions, defaults, losses, liabilities, remuneration, costs, charges and expenses and liable on any contracts or engagements made or entered into by any Receiver, failing which he shall act as principal and shall not be or become agent for the Chargee.
- 17.7 To the fullest extent allowed by law, any right, power or discretion conferred by this Deed (either expressly or impliedly) or by law on a Receiver in relation to any Charged Asset may (after the Security created by this Deed becomes enforceable) be exercised by the Chargee without appointing a Receiver and notwithstanding the appointment of a Receiver and irrespective of whether the Chargee has taken possession of any Charged Asset.

## **18. Powers of Receiver**

18.1 Any Receiver appointed under this Deed shall have power, in addition to any powers conferred upon it by law and in each case as he may think fit to:

- 18.1.1 enter upon, take possession of, appropriate, collect and get in all or any part of the property in respect of which he is appointed and for that purpose to take any proceedings;
- 18.1.2 manage, carry on or concur in carrying on to develop, reconstruct, amalgamate or diversify the business of the Company (or any part of it) and to raise or borrow money from the Chargee or others on the security of any Charged Asset;
- 18.1.3 purchase or acquire any land and purchase, acquire and grant any interest in or right over land;
- 18.1.4 terminate or accept surrenders of leases or tenancies of any of the property charged by this Deed and to carry any such transactions into effect;
- 18.1.5 sell, assign, let or otherwise dispose of or concur in selling, assigning, letting or otherwise disposing of or otherwise realise, any Charged Asset and any of the debts in respect of which he is appointed in any manner and on any terms which he thinks fit. The consideration for any such transaction may consist of cash, debentures or other obligations, shares, stock or other valuable consideration. Any such consideration may be payable in a lump sum or by instalments spread over any period which he thinks fit;
- 18.1.6 make any arrangement or compromise between the Company and any other person which he may think expedient;
- 18.1.7 insure, repair, improve, develop, exploit and replace any Charged Asset;
- 18.1.8 construct and complete any building on any Mortgaged Land;
- 18.1.9 call up any uncalled capital of the Company conditionally or unconditionally with all the powers conferred by the articles of association of the Company in relation to calls;
- 18.1.10 employ, engage and appoint managers and other employees and professional advisers including, without limitation, those to guard and protect any freehold or leasehold property charged by this Deed;

- 18.1.11 settle, adjust, refer to arbitration, compromise and arrange any claim, account, dispute, question or demand with or by any person who is or claims to be a creditor of the Company or relating in any way to any Charged Asset;
- 18.1.12 bring, prosecute, enforce, defend and abandon any action, suit or proceedings in relation to any Charged Asset which he thinks fit;
- 18.1.13 do all such other acts and things as he may consider:
- (a) necessary or desirable for the realisation of any Charged Asset; or
  - (b) incidental or conducive to any of the rights, powers or discretions conferred on a Receiver under or by virtue of this Deed or law;
- 18.1.14 generally to exercise any powers conferred by the Insolvency Act 1986 on administrative receivers (whether or not he is an administrative receiver, provided that if he is not an administrative receiver any powers conferred on administrative receivers under the Insolvency Act 1986 shall be exercisable by the Receiver in respect of the Charged Assets only) and/or other receivers;
- 18.1.15 generally to use the name of the Company in the exercise of any of the powers conferred by this clause 18; and/or
- 18.1.16 generally to exercise all the powers and rights of an absolute beneficial owner of the Charged Assets and do or omit to do anything which the Company could do or omit to do,

provided that any Receiver shall in the exercise of his powers, authority and discretions conform to any directions from time to time given by the Chargee and shall not be responsible to the Company or any other person nor shall the Chargee or any Receiver be responsible for any loss thereby occasioned.

- 18.2 The powers conferred on mortgages or receivers by the Act shall apply to any Receiver as if such powers were incorporated into the Deed except in so far as they are expressly excluded. If there is any ambiguity or conflict between the powers contained in the Act and those contained in this Deed, the term of this Deed shall prevail.

## **19. Set-off and Consolidation**

- 19.1 At any time after the Security constituted by this Deed becomes enforceable, in addition to any right of set-off or other general lien or similar right to which it may be entitled by law, the Chargee may (but shall not be obliged to):

19.1.1 set-off against the Secured Liabilities any amount or obligation (contingent or otherwise) owing by the Chargee to the Company;

19.1.2 set-off, combine or apply any sum or sums standing to the credit of any account to which the Company is beneficially entitled held with it (whether current, deposit or other account) in or towards the satisfaction or discharge of the Secured Liabilities as the Chargee may select,

in each case regardless of the place of payment, booking branch or currency of any such obligation or amount. If any relevant obligations or amounts are in different currencies, the Chargee may convert either obligation or amount at a market rate of exchange in its usual course of business.

## **20. Application of Proceeds**

20.1 All moneys received by the Chargee or any Receiver after the Security created by this Deed becomes enforceable shall be applied (subject to any liabilities having priority to the Secured Liabilities) in the following order:

20.1.1 in or towards payment of the costs, losses, liabilities, charges and expenses incurred in connection with this Deed by the Chargee or any Receiver and the exercise of any of such person's powers and of all outgoings paid by such person (including preferential debts) and in payment to any Receiver of such remuneration as may be agreed between that Receiver and the Chargee at, or at any time and from time to time after, the Receiver's appointment in accordance with the terms of this Deed;

20.1.2 in or towards satisfaction of the Secured Liabilities; and

20.1.3 in payment of the surplus (if any) to the Company or any other person entitled to it.

20.2 This clause 20 does not prejudice the right of the Chargee (or any Receiver) to recover any shortfall from the Company.

## **21. Protection of Third Parties**

21.1 In favour of any purchaser (as defined in section 205 of the Act) or person dealing in good faith, the Secured Liabilities shall be deemed to become due and all rights of enforcement conferred upon the Chargee by the Act, as varied and extended by this Deed, shall be deemed to arise, immediately after the execution of this Deed.

21.2 No purchaser or other person dealing with the Chargee or a Receiver shall be bound or concerned to enquire whether any power exercised or purported to be exercised under this

Deed has arisen, become exercisable or is being properly exercised or whether any money is due on the Security created by this Deed or as to the propriety or regularity of any sale by or other dealing with the Chargee or any Receiver or be concerned with notice to the contrary. Any such sale or dealing shall be deemed to be within the powers conferred by this Deed and to be valid and effective.

## **22. Further Assurance**

22.1 The Company shall, at its own expense, at any time on written demand by the Chargee or any Receiver:

22.1.1 take whatever action the Chargee or any Receiver may require to create, perfect, protect, enhance or maintain any Security created or intended to be created under this Deed;

22.1.2 take whatever action the Chargee or any Receiver may require to affix to or to endorse on any Charged Assets labels, signs, memoranda or other recognisable identification markings referring or drawing attention to the Security created under this Deed;

22.1.3 take whatever action the Chargee or any Receiver may require to create and/or perfect Security in favour of the Chargee over the Company's assets located in any jurisdiction outside England; and/or

22.1.4 to facilitate:

- (a) the realisation of any Charged Asset;
- (b) the exercise of any right, power or discretion exercisable by the Chargee or any Receiver in respect of any Charged Asset or otherwise under this Deed; and/or
- (c) the enforcement of the Security created under this Deed,

including, without limitation, the execution of any legal mortgage, charge, transfer, conveyance or assignment of any property or asset to the Chargee or their nominee and the giving of any notice, order or direction and the making of any filing or registration, in each case which the Chargee or any Receiver considers expedient.

## **23. Registered Land**

23.1 The Company consents to a restriction in the following terms being entered on the register of title of any Mortgaged Land that is now or in the future registered at the Land Registry:

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a written consent signed by the proprietor for the time being of the debenture dated [REDACTED] in favour of [REDACTED] referred to in the charges register [or their conveyancer]."

23.2 To the extent that the Chargee are under an obligation to make further advances to the Company such obligation is deemed incorporated into this Deed as if set out in this Deed in full and the Company consents to an application being made to the Land Registry for a note of such obligation to be entered on the registers referred to in clause 23.1 above.

23.3 The Company hereby certifies that the Security created by this Deed does not contravene any of the provisions of its memorandum or articles of association.

#### **24. Power of Attorney and Delegation**

24.1 The Company irrevocably and by way of security appoints the Chargee and any Receiver and any delegate acting jointly and severally as its attorney with full power of substitution in its name, on its behalf and as its act and deed to execute, seal and deliver and otherwise perfect and do any deed, assurance, agreement, instrument, act or thing which the Company is obliged to execute or do under this Deed. The Company hereby ratifies and confirms and shall ratify and confirm whatever any attorney appointed under this clause 24.1 does or purports to do under this clause 24.1.

24.2 The Chargee or any Receiver may delegate by power of attorney or in any other manner to any person any right, power or discretion exercisable by them under this Deed upon any terms (including power to sub-delegate) which the Chargee or any Receiver may think fit. Neither the Chargee nor any Receiver will be in any way liable or responsible to the Company for any loss or liability arising from any act, default, omission or misconduct on the part of any such delegate.

#### **25. Indemnities and Currencies**

25.1 The Company shall indemnify the Chargee, any Receiver and any other person duly appointed by the Chargee under this Deed immediately on demand against:

25.1.1 any losses, liabilities, costs and expenses (including, without limitation, legal fees) and any VAT thereon incurred, directly or indirectly, by any of them in the exercise or purported exercise of any of the powers, authorities or discretions vested in them under this Deed or as a result of holding the Security granted under this Deed; and

25.1.2 all actions, proceedings, costs, losses, liabilities, claims and demands in respect of any matter or thing done or omitted in any way relating to any Charged Asset, this Deed or the Security granted under this Deed,

and the Chargee and any Receiver may retain and pay all sums in respect of the same out of any moneys received under this Deed.

**26. New Account**

26.1 If the Chargee receives or is deemed to be affected by actual or constructive notice of any subsequent Security, assignment or other disposition affecting any Charged Asset, the Chargee may open a new account for the Company. If the Chargee does not open a new account then, unless they give express written notice to the contrary to the Company, they shall nevertheless be treated as if they had done so at the time when they received or was deemed to have received such notice. As from that time all payments made by or on behalf of the Company to the Chargee shall be credited or be treated as having been credited to the new account and shall not operate to reduce the Secured Liabilities.

**27. Reinstatement and Avoidance of Payments**

27.1 Any settlement or discharge between the Chargee and the Company in respect of the Secured Liabilities shall be conditional upon no Security of, or payment to, the Chargee (whether made by the Company or otherwise) being avoided, reduced or required to be refunded or paid away by virtue of any requirement (whether or not having the force of law) or enactment, whether relating to bankruptcy, insolvency, liquidation, administration or otherwise, at any time in force or by virtue of any obligation to give effect to any preference or priority.

27.2 If any settlement or discharge is so avoided, reduced, refunded or paid away the liability of the Company and the Security created under this Deed shall continue, and the Chargee shall be entitled to recover the value or amount of any such payment or Security from the Company, in each case as if such settlement, discharge, refund or payment had not occurred.

27.3 The Chargee may concede or compromise any claim that any payment, Security or other disposition is liable to avoidance or restoration.

**28. Appropriations**

28.1 The Chargee (or any Receiver) may at any time:

- 28.1.1 appropriate and apply any money or payments received in respect of the Secured Liabilities in reduction of any part or parts of the Secured Liabilities as they may think fit in their absolute discretion;
- 28.1.2 refrain from applying or enforcing any other moneys, Security or rights held or received by them (or any trustee or agent on their behalf) in respect of the Secured Liabilities, or apply and enforce the same in such manner and order as they see fit (whether against those amounts or otherwise) and the Company shall not be entitled to the benefit of the same; and
- 28.1.3 hold in an interest bearing suspense account any moneys received from the Company or otherwise on account of the Secured Liabilities.

## **29. Notices**

- 29.1 Any demand or notice under this Deed shall be in writing signed by the Chargee and may be sent by post or may be delivered to the registered office of the Company or its last known place of business.
- 29.2 If such demand or notice is sent by post it shall be deemed to have been received on the second business day following the day on which it was posted and shall be effective notwithstanding that it was not in fact delivered or was returned undelivered. If sent by facsimile it shall be deemed to have been received (whether or not actually received) at the time of dispatch.

## **30. Costs and Expenses**

- 30.1 All costs, charges and expenses (including, without limitation, legal fees) and any VAT thereon incurred by the Chargee, any Receiver, attorney, manager, agent or other person appointed by the Chargee or any Receiver under this Deed:

- 30.1.1 in the creation or discharge of or otherwise in connection with this Deed (including, without limitation, the remuneration of any Receiver) or in respect of any Charged Asset; and
- 30.1.2 in connection with the holding, preservation or enforcement (or attempted preservation or enforcement) of the Security or other rights created under this Deed or obtaining or attempting to obtain payment of any Secured Liabilities,

shall be recoverable on a full indemnity basis as a debt due from the Company and shall form part of the Secured Liabilities.



**31. General**

- 31.1 A certificate, determination, notification or opinion of the Chargee as to the amount of any of the Secured Liabilities or any other matter connected with this Deed (or the Security created by this Deed) shall, in the absence of manifest error, be conclusive evidence of the matters to which it relates.
- 31.2 The Security constituted by this Deed shall be a continuing security for the payment and discharge of the Secured Liabilities and will extend to the ultimate balance of the Secured Liabilities regardless of any intermediate payment or satisfaction of the whole or any part of the Secured Liabilities.
- 31.3 The Security created by this Deed is in addition to and is not in any way excluded or prejudiced by any other Security or any right of set-off, combination, guarantee or indemnity now or in the future held by the Chargee for any of the Secured Liabilities.
- 31.4 If, at any time any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Deed, nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.
- 31.5 No failure to exercise, nor any delay in exercising, on the part of the Chargee, any right or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise of that right or remedy or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative, and are in addition to and not exclusive of any rights or remedies provided by law.
- 31.6 This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed. Each counterpart is an original but all counterparts shall together constitute one and the same instrument.
- 31.7 Unless expressly provided to the contrary in this Deed, a person who is not a party to this Deed (other than the Chargee and their permitted successors and assignees and any Receiver) has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Deed.
- 31.8 It is intended that this Deed takes effect as a deed notwithstanding the fact that a party to it may only execute it under hand.
- 31.9 The Chargee shall have a full and unfettered right to assign or transfer in any way the whole or any part of the benefit of this Deed and its rights or rights and obligations under this Deed. The expression "the Chargee" shall include their successors, transferees and

assignees. The Chargee shall be entitled to disclose any information about the Company, this Deed and the Secured Liabilities to any actual or prospective successor, transferee or assignee or as permitted or required by law. Any successor, transferee or assignee shall be entitled to the full benefits of this Deed. The Company shall not assign any of its rights or novate or otherwise transfer any of its rights and obligations under or interests in this Deed.

**32. Governing Law**

- 32.1 This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law.

**33. Jurisdiction**

- 33.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including claims for set-off and counterclaim and any dispute regarding the existence, validity or termination) of this Deed and any non-contractual obligations arising out of or in connection with it) (a "Dispute").
- 33.2 The parties to this Deed agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.
- 33.3 This clause 33 is for the benefit of the Chargee only. As a result, neither the Chargee nor any Receiver shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Chargee and any Receiver may take concurrent proceedings in any number of jurisdictions.

**IN WITNESS** whereof this Deed has been duly executed as a deed by the Company and signed by the Chargee and is intended to be and is delivered on the date first above written.

A

**Schedule 1**

**(Mortgaged Land)**

| Description | Title Number | Freehold/Leasehold |
|-------------|--------------|--------------------|
|             |              |                    |

## Schedule 2

### The Prior Charge(s)

| Charge type | Date of Creation | Persons entitled to the benefit of the charge | Short particulars of the charge |
|-------------|------------------|---|---------------------------------|
|             |                  |   |                                 |
|             |                  |   |                                 |

Signed and delivered as a deed by  
**Whirlow Estates Limited**

Acting by its director

.....*N H NEWTON*.....

in the presence of:

Signature of witness:

.....*D. Watson*.....

Name of witness:

.....*Darren Watson*.....

Address of witness:

.....*3 Bayle Road, Todwick, S26 1HZ*.....

Witness' occupation:

.....*Accountant*.....

Signed and delivered as a deed by

**Newtons Discretionary Trust**

in the presence of:

Signature of witness:

.....*D. Watson*.....

Name of witness:

.....*Darren Watson*.....

Address of witness:

.....*3 Bayle Road, Todwick, S26 1HZ*.....

Witness' occupation:

.....*Accountant*.....