



Registration of a Charge

Company Name: **DARWEN & DEVINE LTD**

Company Number: **11632909**



XAXJZTVS

Received for filing in Electronic Format on the: **10/02/2022**

Details of Charge

Date of creation: **26/01/2022**

Charge code: **1163 2909 0021**

Persons entitled: **PAUL DEAN**

Brief description: **6A HARWOOD STREET AND LAND ADJOINING DARWEN BB3 1PE**

Contains fixed charge(s).

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

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

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

Certified by: **JANINE CATO**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 11632909

Charge code: 1163 2909 0021

The Registrar of Companies for England and Wales hereby certifies that a charge dated 26th January 2022 and created by DARWEN & DEVINE LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 10th February 2022 .

Given at Companies House, Cardiff on 11th February 2022

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



Companies House



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

EQUITABLE CHARGE

THIS DOCUMENT WHEN SIGNED WILL IMPOSE LEGAL BINDING OBLIGATIONS ON YOU. YOU ARE ADVISED TO TAKE INDEPENDENT LEGAL ADVICE ON THE EFFECT OF THIS LEGAL CHARGE AND YOUR POTENTIAL LIABILITIES. IF YOU SIGN AND THE LENDER IS NOT PAID YOU MAY LOSE THE ASSET(S) CHARGED.

THIS LEGAL CHARGE IS MADE ON

26/11

2022

PARTIES

- (1) **DARWEN & DEVINE LIMITED** of Fylde House, Skyways Commercial Campus, Amy Johnson Way, Blackpool, FY4 3RS (the "Borrower")
- (2) **PAUL DEAN** Of 93 Crescent Road, Dukinfield, Cheshire, SK16 4EY (the "Lender")

RECITALS

- A. The Borrower and the Lender have entered into a facility letter dated on or around the date of this Deed (the "Facility Letter") pursuant to which the Lender has agreed to provide a loan facility to the Borrower upon the terms and conditions contained in the Facility Letter.
- B. It is a condition of the obligations of the Borrower under the Facility Agreement to execute and deliver this Deed.

OPERATIVE PROVISIONS

1. Definitions and interpretation

Unless otherwise provided in this Deed, terms defined in the Facility Agreement shall have the same meaning where used in this Deed.

1.1 In this Deed, unless the context otherwise requires:

"Approved Works" means any development, extension or refurbishment of the Property where such development, extension or refurbishment has been approved by the Lender as a condition precedent to any drawdown under the Facility Letter;

"Business Day" means a day (other than a Saturday or a Sunday) on which banks are generally open for business in London;

"Charged Property" means all the assets for the time being subject to the Security Interests created by this Deed (and references to the Charged Property include references to any part of it);

"Deposits" means any deposit paid by a purchaser of any estate or interest in the whole or part of the Property whether to the Borrower or any agent of the Borrower or to any person or stakeholder;

"Environment" means the air (including, without limitation, the air within buildings and the air within other natural or man-made structures above or below ground), water (including, without limitation, ground and surface water) and land (including, without limitation, surface and sub-surface soil) and any other meaning given to the term under Environmental Law;

"Environmental Law" means any law concerning the protection of the Environment or human health, the condition of any Property or of any place of work or the production, storage treatment, transport or disposal of any substance capable of causing harm to any living organism or the Environment;

"Equipment" means all equipment, plant, machinery, tools, vehicles, furniture and other tangible moveable property now or at any time hereafter (and from time to time) owned by the Borrower and located at the Property and the benefit of all contracts and warranties relating to the same;

"Event of Default" has the meaning given to it in the Facility Agreement;

"Facility" has the meaning given to it in the Facility Agreement;

"Finance Documents" means the Facility Agreement, this Deed and any other document designated as such by the Lender and the Borrower;

"Guarantor" has the meaning given to it in the Facility Agreement;

"Insolvency Event" means:

- (a) the Borrower or any Guarantor suspends payment of its debts or is, or is deemed for the purposes of any applicable law to be, unable to pay its debts as they fall due or admits inability to pay its debts as they fall due or commences negotiations with all or any class of its creditors with a view to the general readjustment or rescheduling of all or any class of its indebtedness or proposes or enters into any assignment, composition or other arrangement for the benefit of its creditors generally or any class of creditors;
- (b) where the Borrower or the Guarantor is a corporate entity, a meeting of the Borrower or any Guarantor is convened for the purpose of considering any resolution for (or to petition for) its winding-up or its administration or any such resolution is passed, or any person presents a petition for the winding-up or the administration of the Borrower or any Guarantor or any order for the winding-up or administration of the Borrower or any Guarantor is made or any other step (including petition, proposal or convening a meeting) is taken with a view to the rehabilitation, administration, custodianship, liquidation, winding-up or dissolution of, or any other insolvency or moratorium proceedings involving, the Borrower or any Guarantor;
- (c) any liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer is appointed in respect of the Borrower or any Guarantor or any part of the assets of any of them or the members of the Borrower or any Guarantor request the appointment of a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer;
- (d) the Borrower or any Guarantor is declared bankrupt, compounds with its creditors or enters into a voluntary or other arrangement with its creditors or otherwise becomes unable to meet its debts and liabilities as and when they fall due or if any insolvency or bankruptcy proceedings are commenced or threatened against the Borrower or any Guarantor;
- (e) any event occurs or proceeding is taken with respect to the Borrower or any Guarantor in any jurisdiction to which it is subject which has an effect equivalent or similar to any of the events mentioned in paragraphs (a) to (d) above (inclusive);

"Insurance Policies" means all contracts and policies of insurance or assurance relating to the Charged Property and all moneys paid or payable under or pursuant to such policies and all rights and interests in such contracts and policies including the right to the refund of any premium, in each case, now or at any time hereafter (and from time to time) owned or taken out by the Borrower or in which the Borrower has an interest;

"Property" means the land shown edged red on the registered title plan being Land at 6a Harwood Street, Darwen, BB3 1PE and Land adjoining 6a Harwood Street, Darwen, BB3 1PE registered at the Land Registry with title numbers; LA539106 and LA539105 including any part of it and all buildings, structures, fixtures and fittings and the proceeds of sale of all or any part thereof;

"Property Interests" means all interests in or over the Property and all rights, licences, easements, rights of way, guarantees, rents, deposits, contracts, covenants and warranties relating to the Property, in each case, now or at any time hereafter (and from time to time) owned or held by the Borrower;

"Rent" means the aggregate of all amounts (including rent and all other sums) payable to or from the account of the Borrower in connection with the letting of all or part of the Property;

"Secured Liabilities" means all present and future moneys, obligations and liabilities owed by the Borrower to the Lender, whether actual or contingent and whether owed, as principal or surety and/or in any other capacity whatsoever together with (i) the Lender's interest, charges and/or commission at the rate(s) charged by the Lender in the Finance Documents and if not so noted, as notified to the Borrower from time to time (and whether before or after judgement) and (ii) all costs and expenses incurred in accordance with clause 18 (Costs);

"Security Interests" means any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or any other type of encumbrance or security interest securing any obligation of any person or any other agreement or arrangement having or intending to have a similar effect; and

"Security Period" means the period starting on the date of this Deed and ending on the date on which the Secured Liabilities, have in the sole opinion of the Lender, been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding; and

"Subsidiary" has the meaning given to it in Section 1159 of the Companies Act 2006 (and "Subsidiaries" shall be construed accordingly).

1.2 In this Deed (unless the context requires otherwise) any reference to:

- (a) the Borrower, the Lender or any other person shall be construed so as to include their successors in title, permitted assigns and permitted transferees;
- (b) **"assets"** includes present and future properties, revenues and rights of every description;
- (c) an **"amendment"** includes a supplement, restatement, variation, novation or re-enactment (and **"amended"** is to be construed accordingly);
- (d) an **"authorisation"** includes an authorisation, consent, licence, approval, resolution, exemption, filing, registration and notarisation;
- (e) a Finance Document or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, varied or restated from time to time;
- (f) **"including"** means "including without limitation";
- (g) **"indebtedness"** includes any obligation for the payment or repayment of money, whether as principal or as surety and whether present or future, actual or contingent;
- (h) **"owned"** includes having legal or equitable title to or a right to have legal or equitable title transferred;
- (i) a **"person"** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing;
- (j) a **"regulation"** includes any regulation, rule, official directive, request, guideline or concession (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- (k) a **"law"** includes a reference to the common law, any statute, bye-law, regulation or instrument and any kind of subordinate legislation, and any order, requirement, code of practice, circular, guidance note, licence, consent or permission made or given pursuant to any of the foregoing;
- (l) a provision of law is a reference to that provision as amended or re-enacted from time to time;
- (m) a time of day is a reference to London time;
- (n) any gender includes a reference to the other gender;
- (o) the singular includes a reference to the plural and vice versa; and
- (p) a clause is to a clause (as the case may be) of this Deed.

1.3 Clause headings are for ease of reference only.

1.4 A reference in this Deed to any freehold, leasehold or commonhold property includes:

- (a) all buildings and fixtures which are at any time situated on that property;
 - (b) the proceeds of sale of any part of that property; and
 - (c) the benefit of any covenants for title given or entered into by any predecessor in title of the Borrower in respect of that property or any monies paid or payable in respect of those covenants.
- 1.5 The terms of the Finance Documents and of any side letters between any parties in relation to the Finance Documents are incorporated in this Deed to the extent required to ensure that any purported disposition of the Charged Property contained in this Deed is a valid disposition in accordance with Section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.
- 1.6 Save as expressly provided to the contrary in a Finance Document, a third party (being any person other than the Borrower and the Lender and their permitted successors and assigns) 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.
- 1.7 The perpetuity period applicable to all trusts declared by this Deed shall be 125 years.
- 1.8 The Borrower and the Lender agree that the Lender shall not be subject to the duty of care imposed on trustees by the Trustee Act 2000.
- 1.9 Paragraph 14 of Schedule B1 of the Insolvency Act 1986 (as inserted by Section 248 of, and Schedule 16, to the Enterprise Act 2002) applies to the floating charge created by this Deed.
- 1.10 Notwithstanding any other provision of this Deed, the obtaining of a moratorium under section 1A of the Insolvency Act 1986, or anything done with a view to obtaining such a moratorium (including any preliminary decision or investigation), shall not be an event causing any floating charge created by this Deed to crystallise or causing restrictions which would not otherwise apply to be imposed on the disposal of property by the Borrower or a ground for the appointment of a Receiver (defined below).
- 1.11 References in this Deed to the Secured Liabilities shall be construed in relation to the Finance Documents so as to include (i) any increase or reduction in any amount made available thereunder and/or any alteration and/or addition to the purposes for which any such amount, or increased or reduced amount, may be used, (ii) any ancillary facilities provided in substitution for or in addition to the facilities originally made available thereunder, (iii) any rescheduling of the indebtedness incurred thereunder whether in isolation or in connection with any of the foregoing and (iv) any combination of any of the foregoing.
- 1.12 The parties intend this Deed to be delivered on the first date specified on the first page of this Deed and that this Deed shall take effect as a deed notwithstanding the fact that the Lender may only execute this Deed under hand.
- 2. Covenant to pay**
- 2.1 The Borrower hereby covenants with the Lender that it will on demand pay and discharge all Secured Liabilities when the same become due whether by acceleration or otherwise.
- 2.2 This Deed secures further advances made under or pursuant to the terms of the Finance Documents.
- 2.3 As a continuing security for the payment or discharge of the Secured Liabilities, the Borrower with full title guarantee hereby charges to the Lender:
- (a) by way of equitable charge all its right, title and interest (present and future) in and to the Property; and
 - (b) by way of fixed charge, all its:
 - (i) Property Interests;
 - (ii) Rent;
 - (iii) Equipment;

- (iv) Deposits;
 - (v) Insurance Policies; and
 - (c) (If the Borrower is a corporate entity) by way of floating charge, all the undertakings, property, assets and rights not effectively mortgaged or charged pursuant to clauses 2.3(a) and (b).
- 2.4 The Borrower shall on the execution of this Deed deposit with the Lender (and the Lender shall during the continuance of this security be entitled to hold):
- (a) all deeds and documents of title relating to the Charged Property which are in its possession or control (and, if not within its possession and/or control, the Borrower hereby undertakes to obtain possession of such deeds and documents of title); and
 - (b) all Insurance Policies.
- 2.5 Where the Borrower is a corporate entity, if:
- (a) an Event of Default has occurred; or
 - (b) the Borrower creates or attempts to create a Security Interest or any trust in favour of another person over all or any part of the Charged Property or disposes or attempts to dispose of all or any part of the Charged Property; or
 - (c) the Lender considers any Charged Property to be in danger of being seized or sold under or pursuant to any form of distress, attachment, execution or other legal process or otherwise to be in jeopardy; or
 - (d) where the Borrower is a corporate entity, the members of the Borrower convene to consider a resolution to voluntarily wind the Borrower up;
 - (e) where the Borrower is a corporate entity, the Borrower is presented with a petition for the compulsory winding up of the Borrower;
 - (f) if any administrator is appointed or the Lender receives notice of an intention to appoint an administrator; or
 - (g) any event occurs or proceeding is taken with respect to the Borrower in any jurisdiction to which it is subject which has an effect equivalent or similar to any of the events mentioned in clauses 2.5(c) to (f) (inclusive),
- the floating charge created under this Deed will automatically and immediately (without notice) be converted into a fixed charge over the relevant Charged Property.
- 2.6 Any asset acquired by the Borrower after any such crystallisation of the floating charge created under this Deed which but for such crystallisation would be subject to a floating charge shall, (unless the Lender confirms in writing to the contrary) be charged to the Lender by way of fixed charge.
3. **No other security interests or disposals**
- 3.1 The Borrower hereby covenants with the Lender that it will not at any time, except with the prior written consent of the Lender:
- (a) create or purport to create or permit to subsist any Security Interest on or in relation to the Charged Property other than in favour of the Lender; or
 - (b) sell, assign, transfer, lease, licence, share occupation of, part with possession or otherwise dispose of (or purport to sell, assign, transfer, lease, licence, share occupation of, part with possession or otherwise dispose of) all or any part of the Charged Property or of the equity of redemption of any such Charged Property or any interest in any such Charged Property; or

- (c) create or grant (or purport to create or grant) any interest in the Charged Property in favour of a third party.

4. Covenants relating to insurances

4.1 The Borrower hereby covenants with the Lender that it will effect, or procure that there will be effected from the date of this Deed:

- (a) Insurance of the Charged Property and the plant and machinery on the Charged Property including fixtures and improvements on a full reinstatement basis, including, without limitation, site clearance, professional fees, value added tax, subsidence and not less than three years' loss of rent on all occupational tenancies of the Property;
- (b) third party liability insurance;
- (c) insurance against acts of terrorism; and
- (d) such other insurance as a prudent company in the same business as the Borrower would effect,

in an amount, form, and with an insurance company or underwriters, acceptable to the Lender.

4.2 The Borrower shall procure that the Lender is named as composite insured with a separate insurable interest (or at the option of the Lender, the Lender's interest to be noted on each Insurance Policy) and for the Lender to be named as first loss payee on all Insurance Policies other than any third party policies.

4.3 Each Insurance Policy shall contain:

- (a) a standard mortgagee clause under which the insurance will not be vitiated or avoided as against the Lender as a result of any misrepresentation, act or neglect or failure to disclose on the part of any insured party or any circumstances beyond the control of an insured party; and
- (b) terms providing that it shall not, so far as the Lender is concerned, be invalidated for failure to pay any premium due without the insurer first giving to the Lender not less than 14 days written notice.

4.4 The Borrower shall use its reasonable endeavours to procure that the Lender receives any information in connection with the insurances, and copies of the Insurance Policies, as the Lender may reasonably require and shall notify the Lender of renewals made and variations or cancellations of policies made or, to the knowledge of the Borrower, threatened or pending.

4.5 The Borrower shall not do or permit anything to be done which may make void or voidable any Insurance Policy in connection with any part of the Charged Property.

4.6 The Borrower shall procure prompt payment of all premiums and all other things necessary to keep each Insurance Policy in place.

4.7 To the extent that any Insurance Policy and any occupational lease does not restrict the use of insurance proceeds, the Borrower shall apply all moneys received under any Insurance Policy towards replacing, restoring or reinstating the Charged Property, or (at the option of the Lender) to prepay the Secured Liabilities.

5. Covenants relating to the Property

The Borrower hereby covenants with the Lender that it will:

- 5.1 procure that the Property is kept in good and substantial repair and condition;
- 5.2 (other than in relation to any Approved Works) not (without the prior written consent of the Lender) pull down or remove the whole or any part of any buildings forming part of the Property or make any material alterations to the Property or sever or unfix or remove any of the fixtures thereto;

- 5.3 not, without the prior written consent of the Lender, remove or make any material alterations to any of the Equipment thereon or therein belonging to it or in use by it and will whenever any of the said Equipment is destroyed or damaged or deteriorates forthwith repair, replace and make good the same;
- 5.4 within five Business Days after becoming aware thereof give full particulars to the Lender of any notice, order, direction, designation, resolution or proposal having specific application to the Property or to the locality in which it is situated given or made by any planning authority or other public body or authority whatsoever and (if the Lender so requires) forthwith and at the cost of the Borrower take all reasonable and necessary steps to comply with any such notice, order, direction, designation or resolution and make or join with the Lender in making such objections or representations in respect of any such proposal as the Lender may consider necessary or desire;
- 5.5 observe and perform all covenants, stipulations and conditions to which the Property or the user thereof is now or may hereafter be subjected and (if the Lender so requires) produce to the Lender evidence sufficient to satisfy the Lender that such covenants, stipulations and conditions have been observed and performed and (without prejudice to the generality of the foregoing) as regards any lease under which the Property or part of the Property is held duly and punctually pay all rents due or to become due thereunder and perform and observe all the covenants and conditions on the part of the tenant which are therein contained;
- 5.6 procure the observation and performance by any tenant or licensor of all covenants and obligations in relation to any lease which the Property is subject to;
- 5.7 not without the prior written consent of the Lender grant or agree to grant any licence or tenancy affecting the Property or part of the Property nor exercise the powers of leasing or agreeing to lease or of accepting or agreeing to accept surrenders conferred by Sections 99 or 100 of the Law of Property Act 1925 ("LPA") nor in any other way dispose or agree to dispose of or surrender or create any legal or equitable estate or interest in the Property or any part thereof;
- 5.8 procure that no person shall be registered under the Land Registration Act 2002 as proprietor of the Property or any part thereof without the prior written consent of the Lender and the Borrower shall be liable for the costs incurred by the Lender in lodging from time to time cautions against first registration of the title to the Property or any part thereof;
- 5.9 (other than in relation to any Approved Works) not (without the prior written consent of the Lender) carry out or permit or suffer to be carried out on the Property any development as defined in the Town and Country Planning Act 1990 or change or permit or suffer to be changed the use of the Property;
- 5.10 properly discharge all duties of care and responsibility placed upon it by Environmental Law and observe and perform all the requirements of Environmental Law both in the conduct of its general business and in the management possession or occupation of the Property and apply for and obtain all authorisations necessary to ensure that it does not breach Environmental Law;
- 5.11 not without the prior written consent of the Lender enter into any onerous or restrictive obligations affecting the Property or any part thereof or create or permit to arise any overriding interest or easement or right (including any proprietary right) whatsoever in or over the Property or any part thereof;
- 5.12 procure that no person shall become entitled to assert any proprietary or other like right or interest over the Property or any part thereof without the prior written consent of the Lender;
- 5.13 promptly pay all taxes, fees, duties, rates, charges and other outgoings in respect of the Property and if so requested by the Lender produce evidence of payment to the Lender; and
- 5.14 permit the Lender, any Administrator or Receiver (as each of those terms is defined in clause 10.1) and any person appointed by either of them to enter upon and inspect the Property upon reasonable prior notice.

6. Covenants relating to the Equipment

The Borrower hereby covenants with the Lender as follows:

- 6.1 to maintain the Equipment in good and substantial serviceable condition and not to permit the same to be used or handled other than by persons properly qualified and trained or to be overloaded or to be used for any purpose for which the Equipment is not designed or reasonably suitable;

- 6.2 promptly to pay all taxes, fees, licence duties, registration charges, insurance premiums and other outgoings in respect of the Equipment and on demand produce evidence thereof to the Lender;
- 6.3 to give the Lender such information concerning the location, condition, use and operation of the Equipment as the Lender may require and to permit any persons designated by the Lender at all reasonable times to inspect and examine the Equipment and the records maintained in connection therewith;
- 6.4 at the expense of the Borrower, procure that the Equipment shall be covered and kept covered by insurance of a kind satisfactory to the Lender with insurers approved by the Lender (such approval not to be unreasonably withheld) for full comprehensive insurance cover, which shall include but not be limited to fire, theft and accident, in an amount agreed with the Lender, and shall if the Lender so requires procure that the interest of the Lender is noted upon all such policies of insurance or at the option of the Lender that such policies are issued in the joint names of the Lender and the Borrower. The Borrower shall with respect to third party liabilities maintain insurance in such amount and on such terms as is usual for users of the equipment of the same type as the Equipment; and
- 6.5 if so requested by the Lender, place and maintain on each item of Equipment, in a conspicuous place, a clearly legible identification plate containing the following wording:

"NOTICE OF CHARGE

*This [description of item] and ancillary equipment is subject to a fixed charge dated []
favour of Paul Dean*

7. Representations and Warranties

The Borrower represents and warrants (on the date of this Deed and on each day during the Security Period) as follows:

- 7.1 It has the power to carry on its business as it is now being and will be conducted and to own its assets.
- 7.2 It has the power to execute, deliver and perform its obligations under this Deed and no limitation on its powers to borrow money and create security will be exceeded as a result of the execution and delivery of this Deed.
- 7.3 Where the Borrower is a corporate entity, all necessary corporate, shareholder and other action has been taken in order:
- (a) to enable it to execute, deliver and perform its obligations hereunder, to create the security constituted by this Deed and to ensure that such security has the ranking specified herein; and
 - (b) to ensure that those obligations are valid, legally binding and enforceable.
- 7.4 The execution and delivery by the Borrower, and the performance of the Borrower's obligations under, this Deed do not and will not:
- (a) contravene any existing law or regulation or any judgment, decree or permit to which the Borrower is subject;
 - (b) conflict with, or result in any breach of any of the terms of, or constitute a default under, any agreement or other instrument to which the Borrower is a party or by which the Borrower or any of its property is bound;
 - (c) where the Borrower is a corporate entity, contravene or conflict with any provision of the Borrower's Memorandum or Articles of Association (or equivalent constitutional documents); or
 - (d) result in the creation or imposition of, or oblige the Borrower to create, any Security Interest on any of its assets.
- 7.5 This Deed constitutes the legal, valid, binding and enforceable obligations of the Borrower.

- 7.6 Other than registration of this Deed at the Companies Registry pursuant to the Companies Act 2006 (or any equivalent in any other jurisdiction) and/or at the Land Registry, all authorisations of, registrations with or declarations to, governmental or public bodies or authorities or courts required by the Borrower in connection with the execution, delivery, validity, performance, enforceability or admissibility in evidence of, or the transactions contemplated by, the Finance Documents have been obtained, made or effected (as appropriate) and are in full force and effect.
- 7.7 The choice of English law as the governing law of this Deed will be recognised and enforced in its jurisdiction of incorporation (in the case of a corporate entity) or residency (in the case of an individual).
- 7.8 Any judgement obtained in England in relation to a Finance Document will be recognised and enforced in the Borrower's jurisdiction of incorporation (in the case of a corporate entity) or residency (in the case of an individual).
- 7.9 Where the Borrower is a corporate entity, the obligations of the Borrower under this Deed are, and will be, its direct, general and unconditional obligations ranking ahead of all its other obligations and liabilities, present or future, actual or contingent, except for those obligations mandatorily preferred by law applying to companies generally.
- 7.10 Where the Borrower is a corporate entity, the Borrower has not taken any corporate action, nor have any other steps been taken or legal proceedings been started or (to the knowledge of the Borrower) threatened against, the Borrower for its winding-up, dissolution or reorganisation or for the appointment of a receiver, administrator, administrative receiver, trustee or similar officer of it or any or all of its assets.
- 7.11 Where the Borrower is an individual, the Borrower is not bankrupt nor have any steps been taken or legal proceedings started or (to the knowledge of the Borrower) threatened against the Borrower for the bankruptcy of the Borrower or the reorganisation of its creditors and assets and no trustee in bankruptcy, custodian or similar has been appointed in relation to the Borrower and/or over any of its assets.
- 7.12 No litigation, arbitration or administrative proceeding is taking place, pending or, to the knowledge of the Borrower, threatened against the Borrower.
- 7.13 It is and will remain the legal and beneficial owner of the Property.
- 7.14 It has not received or acknowledged notice of any adverse claim by any person in respect of the Property or any interest in it.
- 7.15 There is no breach of any law or regulation which materially adversely affects the Charged Property.
- 7.16 There are no covenants, agreements, reservations, conditions, interests, rights or other matters whatever which materially adversely affect the Charged Property.
- 7.17 No facility necessary for the enjoyment and use of the Charged Property is subject to terms entitling any person to terminate or curtail its use.
- 7.18 Nothing has arisen or has been created or is subsisting which would be an overriding interest in the Charged Property.
- 7.19 It has at all times complied in all material respects with all applicable Environmental Law.
8. **Power to remedy**
- If the Borrower is at any time in breach of any of its obligations contained in this Deed, the Lender shall be entitled (but shall not be bound) to remedy such breach and the Borrower hereby irrevocably authorises the Lender and its agents to do all such things necessary or desirable in connection therewith. The Borrower shall reimburse on demand the Lender on an indemnity basis for the expenses of the Lender in so doing together with interest as provided in the Facility Letter from the date of payment by the Lender until the date of repayment. The rights of the Lender contained in this clause 8 are without prejudice to any other rights of the Lender hereunder. The exercise by the Lender of its rights under this clause shall not make the Lender liable to account as a mortgagee in possession.
9. **Enforcement**
- 9.1 At any time after the occurrence of:

- (a) an Event of Default;
 - (b) an Insolvency Event;
 - (c) any event or the receipt by the Lender of any information or the coming to the attention of the Lender of any other matter or thing whatsoever which causes the Lender to believe (acting reasonably and properly) that all or any part of the Charged Property is in danger of seizure, distress or other legal process or that all or any part of the Security Interests created by or pursuant to this Deed is otherwise for any reason whatsoever in jeopardy; or
 - (d) a request from the Borrower to the Lender that it exercise any of its powers under this Deed
- the Security Interests created by or pursuant to this Deed are immediately enforceable and the Lender may, without notice to the Borrower or prior authorisation from any court, in its absolute discretion:
- (e) enforce all or any part of that Security Interest (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 Property (at the times, in the manner and on the terms it thinks fit (including whether for cash or non-cash consideration)); and
 - (f) whether or not it has appointed a Receiver or Administrator, exercise all or any of the rights, powers, authorities and discretions conferred by the Law of Property Act 1925 (as varied or extended by this Deed) on mortgagees and by this Deed on any Receiver or Administrator or otherwise conferred by law on mortgagees or Receivers or Administrator.
- 9.2 Section 103 of the LPA shall not apply to this Deed and the statutory powers of sale and appointing an Administrator or Receiver under Sections 101 and 109 of the LPA (as varied and extended under this Deed) shall arise on the execution of this Deed and shall become immediately exercisable without the restrictions contained in the LPA as to the giving of notice or otherwise when the security constituted by this Deed has become enforceable.
- 9.3 The statutory powers of sale, leasing and accepting surrenders exercisable by the Lender under this Deed are extended so as to authorise the Lender, whether in its own name or in that of the Borrower, to grant a lease or leases of the whole or any part or parts of the freehold and leasehold property of the Borrower with whatever rights relating to other parts of it and containing whatever covenants on the part of the Borrower and generally on such terms and conditions (including the payment of money to a lessee or tenant on a surrender) and whether or not at a premium as the Lender thinks fit.
- 9.4 No person dealing with the Lender, any Administrator or Receiver appointed hereunder, or its agents or brokers, shall be concerned to enquire whether the security constituted by this Deed has become enforceable, or whether any power exercised or purported to be exercised has become exercisable, or whether any money remains due upon this Deed, or as to the necessity or expediency of the stipulations and conditions subject to which any sale of any Charged Property shall be made, or otherwise as to the propriety or regularity of any sale of any of the Charged Property, or to see to the application of any money paid to the Lender, such Administrator or Receiver, or its agents or brokers, and such dealing shall be deemed to be within the powers hereby conferred and to be valid and effectual accordingly.
- 9.5 None of the Lender or the Administrator or Receiver shall be liable to account as mortgagee in possession in respect of all or any of the Charged Property nor shall any of them be liable for any loss upon realisation of, or for any neglect or default of any nature whatsoever in connection with, all or any of the Charged Property for which a mortgagee in possession might as such be liable.
10. **Administrator or Receiver**
- 10.1 At any time after the security constituted by this Deed becomes enforceable, or at the request of the Borrower, the Lender may without further notice, under seal or by writing under hand of a duly authorised officer of the Lender:
- (a) appoint any person or persons to be an administrator of the Borrower pursuant to the Insolvency Act 1986 (the "Administrator", which expression shall, where the context so admits, include any person substituted as administrator under the power herein contained); or
 - (b) appoint any person or persons to be a receiver or a receiver and manager of all or any part of the Charged Property or the Borrower (the "Receiver", which expression shall, where the

context so admits, include any person substituted as receiver or receiver and manager under the power herein contained); and

- (c) (subject to Section 45 of the Insolvency Act 1986) from time to time remove any person appointed to be Administrator or Receiver and appoint another in his place.

10.2 Where more than one person is appointed Administrator or Receiver, they will have power to act separately (unless the appointment by the Lender specifies to the contrary).

10.3 The powers of sale and appointing an Administrator or Receiver conferred by this Deed shall be in addition to all statutory and other powers of the Lender under the Insolvency Act 1986 and the LPA or otherwise and shall be exercisable without the restrictions contained in Sections 103 and 109 of the LPA or otherwise.

10.4 The power to appoint an Administrator or Receiver (whether conferred by this Deed or by statute) shall be and remain exercisable by the Lender notwithstanding any prior appointment in respect of all or any part of the Charged Property.

10.5 Any Administrator or Receiver shall be the agent of the Borrower and the Borrower shall be solely responsible for his acts and remuneration as well as for any defaults committed by him.

10.6 Any Administrator or Receiver shall in addition to the powers conferred on him in the LPA and (if applicable) the Insolvency Act 1986 have power to do all such acts and things as an absolute owner could do in the management of such of the Charged Property over which he is appointed and in particular:

- (a) to lease, sell or otherwise dispose of any interest in the whole or part of the Charged Property;
- (b) to undertake or complete any works of repair, building or development on the Property;
- (c) to grant or to accept surrenders of any leases or tenancies affecting the Property upon such terms and subject to such conditions as he thinks fit;
- (d) to provide services and employ or engage such managers, contractors and other personnel and professional advisors on such terms as he deems expedient;
- (e) to make such elections for value added tax purposes as he thinks fit;
- (f) to charge and receive such sum by way of remuneration (In addition to all costs, charges and expenses incurred by him) as the Lender may prescribe or agree with him;
- (g) to collect and get in such Charged Property or any part thereof and for that purpose to make such demands and take any proceedings as may seem expedient and to take possession of such Charged Property with like rights;
- (h) to carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying the business of the Borrower;
- (i) to grant options and licences over all or any part of such Charged Property, sell or concur in selling, assign or concur in assigning, lease or concur in leasing and accept or concur in accepting surrenders of leases of, all or any of such Charged Property in such manner and generally on such terms and conditions as he thinks fit (fixtures and plant and machinery may be severed and sold separately from the premises in which they are contained without the consent of the Borrower) and to carry any such sale, assignment, leasing or surrender into effect Any such sale may be for such consideration as he shall think fit and he may promote or concur in promoting a company to purchase the property to be sold;
- (j) to make any arrangement, settlement or compromise between the Borrower and any other person which he may think expedient;
- (k) to appoint managers, officers, servants, workmen and agents for the aforesaid purposes at such salaries and for such periods and on such terms as he may determine;

- (l) to make and effect such substitutions of or improvements to the Equipment as he may think expedient;
- (m) if he thinks fit, but without prejudice to the indemnity contained in clause 12, to effect with any insurer any policy or policies of insurance either in lieu or satisfaction of or in addition to such indemnity;
- (n) to exercise all powers provided for in the LPA in the same way as if he had been duly appointed thereunder;
- (o) for any of the purposes authorised by this clause to raise money by borrowing from the Lender or from any other person on the security of all or any of the Charged Property in respect of which he is appointed upon such terms (including, if the Lender shall consent, terms under which such security ranks in priority to this Deed) as he shall think fit;
- (p) to redeem any prior Security Interest and to settle and pass the accounts to which the Security Interest relates and any accounts so settled and passed will be conclusive and binding on the Borrower and the moneys so paid will be deemed to be an expense properly incurred by him; and
- (q) to do all such other acts and things as he may consider to be incidental or conducive to any of the matters or powers aforesaid or which he lawfully may or can do as agent for the Borrower.

11. Application of proceeds

11.1 The Administrator or Receiver shall apply all monies received by him (other than insurance monies):

- (a) first in paying all rents, taxes, rates and outgoings affecting any Charged Property;
- (b) secondly in paying all costs, charges and expenses of and incidental to his appointment and the exercise of his powers and all outgoings paid by him;
- (c) thirdly in paying his remuneration (as agreed between him and the Lender);
- (d) fourthly in or towards discharge of the Secured Liabilities in such order and manner as Lender shall determine; and
- (e) finally in paying any surplus to the Borrower or any other person entitled to it.

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

12. Indemnity

The Borrower hereby agrees to indemnify and hold harmless the Lender and any Administrator or Receiver from and against all actions, claims, expenses, demands and liabilities whether arising out of contract or in tort or in any other way incurred or which may at any time be incurred by him or by any manager, agent, officer, servant or workman for whose debt, default or miscarriage he may be answerable for anything done or omitted to be done in the exercise or purported exercise of his powers under the provisions of this Deed or pursuant hereto.

13. Powers of the Lender

13.1 At any time after the security constituted by this Deed shall have become enforceable the Lender or any Administrator or Receiver may dispose of any chattels or produce found on any Property as agent for the Borrower and, without prejudice to any obligation to account for the proceeds of any sale of such chattels or produce the Lender or the Administrator or Receiver shall be indemnified by the Borrower against any liability arising from such disposal.

13.2 At any time after the security constituted by this Deed shall have become enforceable or after any powers conferred by any Security Interest having priority to this Deed shall have become exercisable the

Lender may redeem such or any other prior Security Interest or procure the transfer thereof to itself and may settle and pass the accounts of the encumbrancer and any account so settled and passed shall be conclusive and binding on the Borrower and all monies paid by the Lender to the encumbrancer in accordance with such accounts shall as from such payment be due from the Borrower to the Lender on current account and shall bear interest and be secured as part of the Secured Liabilities.

- 13.3 For the purpose of or pending the discharge of any of the Secured Liabilities the Lender may convert any monies received, recovered or realised by the Lender under this Deed (including the proceeds of any previous conversion under this clause) from their existing currencies of denomination into such other currencies of denomination as the Lender may think fit and any such conversion shall be effected at the Lender's then prevailing spot selling rate of exchange for such other currency against the existing currency. Each previous reference in this clause to a currency extends to funds of that currency and for the avoidance of doubt funds of one currency may be converted into different funds of the same currency.

- 13.4 All monies received, recovered or realised by the Lender under this Deed (including the proceeds of any conversion pursuant to clause 13.3) may at the discretion of the Lender be credited to any suspense or impersonal account and shall bear interest at such rate, if any, as may be agreed in writing between the Lender and the Borrower and may be held in such account for so long as the Lender thinks fit pending the application from time to time (as the Lender shall be entitled to do as it may think fit) of such monies and accrued interest thereon (if any) in or towards the discharge of any of the Secured Liabilities.

14. Power of attorney; confirmation

- 14.1 The Borrower hereby irrevocably appoints the Lender and (jointly and severally) each and every Administrator or Receiver of this Deed to be the attorney of the Borrower and in its name and on its behalf and as its act and deed or otherwise to sign, execute, seal, deliver, complete any blanks in and otherwise perfect any deed, transfer, assurance, agreement, instrument or act which such Administrator or Receiver or the Lender may consider expedient in the exercise of any of his or its powers or in respect of the Borrower's obligations under this Deed. The power of attorney hereby granted is to secure the performance of obligations owed to the donees within the meaning of the Powers of Attorney Act 1971.

- 14.2 The Borrower covenants with the Lender and with any Administrator or Receiver that if required to do so it shall ratify and confirm:

- (a) all transactions entered into by the Lender and/or any Administrator or Receiver in the proper exercise of its or their powers in accordance with this Deed; and
- (b) all transactions entered into by the Lender and/or any Administrator or Receiver in signing, sealing, delivering and otherwise perfecting any assignment, mortgage, charge, security, document or other act.

15. Independent and continuing security

- 15.1 This Deed shall be in addition to and independent of every other security or guarantee which the Lender may at any time hold for any of the Secured Liabilities and it is hereby declared that no prior security held by the Lender over the whole or any part of the Charged Property shall merge in the security created by this Deed.

- 15.2 This Deed shall remain in full force and effect as a continuing security for the Secured Liabilities, notwithstanding any settlement of account or intermediate payment or other matter or thing whatsoever, unless and until the Lender discharges this Deed in writing.

- 15.3 Any release, discharge or settlement between the Borrower and the Lender shall be deemed conditional upon no payment or security received by the Lender in respect of the Secured Liabilities being avoided or reduced or ordered to be refunded pursuant to any provision of any enactment relating to insolvency, bankruptcy, winding-up, administration or receivership and, notwithstanding any such release, discharge or settlement:

- (a) the Lender or its nominee shall be at liberty to retain this Deed and the security created by or pursuant to this Deed, including all certificates and documents relating to the Charged Property or any part thereof, for such period as the Lender shall deem necessary to provide the Lender with security against any such avoidance or reduction or order for refund; and
- (b) the Lender shall be entitled to recover the value or amount of such security or payment from the Borrower subsequently as if such settlement, discharge or release had not occurred and

the Borrower agrees with the Lender accordingly and charges the Charged Property and the proceeds of sale thereof with any liability under this clause, whether actual or contingent.

16. Further assurance

As and when required by the Lender, the Borrower, at its own cost, shall execute such further legal or other mortgages, charges or transfers in favour of the Lender as the Lender shall from time to time require over all or any part of the Charged Property, or the property intended to be the subject of this Deed, further to secure the payment of the Secured Liabilities, such further mortgages, charges or transfers to be prepared at the cost of the Borrower and to contain a power of sale and such other clauses for the benefit of the Lender as the Lender may reasonably require.

17. Indulgence

The Lender may in its discretion grant time or other indulgence or make any other arrangement, variation or release with any person or persons not party hereto (whether or not such person or persons are jointly liable with the Borrower) in respect of any of the Secured Liabilities or of any other security therefor without prejudice either to this Deed or to the liability of the Borrower for the Secured Liabilities.

18. Costs

The Borrower shall pay or reimburse to the Lender and any Administrator or Receiver on demand, on a full indemnity basis, all costs, charges and expenses (including legal fees) in any way incurred by the Lender and/or the Administrator or Receiver in relation to this Deed or the Charged Property or in protecting, perfecting preserving or enforcing (or attempting to do so) any of the Lender's rights under this Deed or in suing for or recovering any of the Secured Liabilities (including, without limitation, the costs of any proceedings in relation to this Deed or the Secured Liabilities).

19. New accounts; set-off

19.1 If the Lender receives notice of any subsequent charge or other interest affecting all or part of the Charged Property the Lender may open a new account or accounts for the Borrower in its books and (without prejudice to the Lender's right to combine accounts) no money paid to the credit of the Borrower in any such new account will be appropriated towards or have the effect of discharging any part of the Secured Liabilities. If the Lender does not open a new account or accounts immediately on receipt of such notice then unless the Lender gives express notice to the contrary to the Borrower as from the time of receipt of such notice by the Lender all payments made by the Borrower to the Lender in the absence of any express appropriation by the Borrower to the contrary shall be treated as having been credited to a new account of the Borrower and not as having been applied in reduction of the Secured Liabilities.

19.2 If the Lender shall have more than one account for the Borrower in its books the Lender may at any time after the security constituted by this Deed has become enforceable or the Lender has received notice of any subsequent charge or other interest affecting all or any part of the Charged Property and without prior notice in that behalf forthwith transfer all or any part of the balance standing to the credit of any such account to any other such account which may be in debit but the Lender shall notify the Borrower of the transfer having been made.

19.3 The Lender may from time to time without notice and both before and after demand set off any matured obligation due from the Borrower to the Lender under the Finance Documents against any matured obligation owed by the Lender to the Borrower.

20. Miscellaneous

20.1 The benefit of this Deed will be held by the Lender on and subject to the terms of the Finance Documents as security for the Secured Liabilities.

20.2 A certificate by the Lender as to any amount for the time being due to it from the Borrower shall be conclusive evidence of the amount so due in the absence of any manifest error.

21. Notices

21.1 All notices, requests demands or other communications to or upon the respective parties hereto shall be deemed to have been duly given or made when delivered personally or by letter by first class post to the other party at its address or by fax as set out below:

(a) If to the Borrower – the address above;

(b) If to the Lender – the address below.

21.2 Proof of posting or despatch of any notice or communication shall be deemed to be proof of receipt:

(a) In the case of a letter, two Business Days after having been posted;

(b) In the case of a facsimile, when received in legible form.

21.3 In the case of any notice or communication to the Lender, such notice or communication shall only be deemed delivered when actually received by the Lender.

22. Rights cumulative

The rights and powers which this Deed confers on the Lender are cumulative, may be exercised as often as the Lender considers appropriate, and are in addition to its rights and powers under the general law. The rights of the Lender (whether arising under this Deed or under the general law) shall not be capable of being waived or varied otherwise than by an express waiver or variation in writing, and, in particular, any failure to exercise or any delay in exercising any such right shall not operate as a variation or waiver of that or any other such right; any defective or partial exercise of any such right shall not preclude any other or further exercise of that or any other such right, and no act or course of conduct or negotiation on its part or on its behalf shall in any way preclude the Lender from exercising any such right or constitute a suspension or variation of any such right.

23. Consolidation

The restriction on the right of consolidating mortgages contained in Section 93 of the LPA shall not apply to this Deed.

24. No set-off

The Borrower waives any right of set-off it may have now or at any time in the future in respect of the Secured Liabilities (including sums payable by the Borrower under this Deed).

25. Assignment and transfer

25.1 The Lender may at any time (without the consent of the Borrower), assign or transfer the whole or any part of its rights under this Deed to any person.

25.2 The Borrower may not assign any of its rights or transfer any of its obligations under this Deed or enter into any transaction which would result in any of these rights or obligations passing to another person.

26. Disclosure

The Borrower hereby consents to the disclosure by the Lender of any information about it, this Deed, the Charged Property and the Secured Liabilities:

26.1 to any person to whom the Lender has assigned or transferred or proposes or may propose to assign or transfer all or any of its rights and benefits under this Deed or the Secured Liabilities; or

26.2 to any person with whom the Lender has entered or proposes or may propose to enter into any contractual arrangements in connection with this Deed or the Secured Liabilities; or

26.3 to any subsidiary or agent of the Lender.

27. Severability

If any of the provisions of this Deed is or becomes invalid or unenforceable, the validity and enforceability of the remaining provisions shall not be affected or impaired thereby.

28. Release

Subject to clause 15.3, upon the expiry of the Security Period (but not otherwise) the Lender shall at the request and cost of the Borrower, take whatever action is necessary to release the Charged Property from the security constituted by this Deed.

29. Counterparts

This Deed may be executed in one or more counterparts all of which when taken together shall be deemed to constitute one and the same instrument.

30. Joint and several liability

If there shall be more than one person named as Borrower, then each person shall be jointly and severally liable for their respective obligations and liabilities arising under this Deed. The Lender may release or discharge any party from this (or any other) Deed or accept any composition from or make any arrangements with any of them without releasing or discharging any other party.

31. Governing law

This Deed (including any non-contractual obligations arising out of or in connection with the same) is governed by, and shall be construed in accordance with, English law.

32. Enforcement

32.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed and including any non-contractual obligations arising out of or in connection with the same) (a "Dispute").

32.2 The parties 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.

32.3 Clauses 0 to 0 (inclusive) are for the benefit of the Lender only. As a result, the Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.

IN WITNESS whereof this Deed has been executed by the Borrower and is intended to be and is hereby delivered as a deed the day and year first above written and has been signed on behalf of the Lender.

EXECUTED as a DEED and
DELIVERED by
DARWEN AND DEVINE LIMITED
acting by a Director
in the presence of:

)
)
) 

Witness signature:



Witness name:

BRIGID HALEY

Address:

22 Edward St
Blackpool

Occupation:

Solicitor

The Lender

SIGNED as a Deed by
PAUL DEAN in the presence
of:

Witness signature:

Witness name:

Address:

Occupation:
