



**Registration of a Charge**

Company name: **KINKAID LTD**

Company number: **11531435**



X8J2EK9M

Received for Electronic Filing: **26/11/2019**

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**Details of Charge**

Date of creation: **25/11/2019**

Charge code: **1153 1435 0003**

Persons entitled: **REFCAP VENTURES LIMITED**

Brief description: **ALL THAT FREEHOLD PROPERTY KNOWN AS UNITS B AND C, DEAN STREET, BRISTOL, BS2 8SF AND REGISTERED AT THE LAND REGISTRY WITH TITLE NUMBERS BL54754 AND BL41563**

**Contains fixed charge(s).**

**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 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **FREEDMAN + HILMI LLP**



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

Company number: 11531435

Charge code: 1153 1435 0003

The Registrar of Companies for England and Wales hereby certifies that a charge dated 25th November 2019 and created by KINKAID LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 26th November 2019 .

Given at Companies House, Cardiff on 27th November 2019

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



**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

Dated:

25 November

2019

# Legal Mortgage

between

**Kinkaid Ltd**

as Borrower

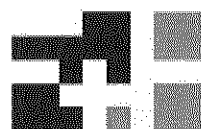
and

**Refcap Ventures Limited**

as Security Agent for Refcap Ventures Limited and Henzie Limited

relating to

**Units B and C, Dean Street, Bristol, BS2 8SF**



**Freedman+**  
**Hilmi**

## CONTENTS

### Clause

1.	Definitions and interpretation .....	5
1.1	<b>Definitions</b> .....	5
1.2	<b>Interpretation</b> .....	7
1.3	<b>Clawback</b> .....	9
1.4	<b>Nature of security over real property</b> .....	9
1.5	<b>Law of Property (Miscellaneous Provisions) Act 1989</b> .....	9
1.6	<b>Perpetuity period</b> .....	9
1.7	<b>Schedules</b> .....	9
2.	<b>Trust</b> .....	9
3.	<b>Covenant to pay</b> .....	10
4.	<b>Grant of security</b> .....	10
4.1	<b>Legal mortgage and fixed charges</b> .....	10
4.2	<b>Priority</b> .....	10
5.	<b>Perfection of security</b> .....	10
5.1	<b>Registration of legal mortgage at the Land Registry</b> .....	10
5.2	<b>First registration</b> .....	10
5.3	<b>Cautions against first registration and notices</b> .....	10
6.	<b>Liability of the Borrower</b> .....	11
6.1	<b>Liability not discharged</b> .....	11
6.2	<b>Immediate recourse</b> .....	11
7.	<b>General covenants</b> .....	11
7.1	<b>Negative pledge and disposal restrictions</b> .....	11
8.	<b>Property covenants</b> .....	11
8.1	<b>Repair and maintenance</b> .....	12
8.2	<b>No alterations</b> .....	12
8.3	<b>Development restrictions</b> .....	12
8.4	<b>Preservation of Charged Property</b> .....	12
8.5	<b>Proceeds from Insurance Policies</b> .....	13
8.6	<b>Leases and licences affecting the Property</b> .....	13
8.7	<b>No restrictive obligations</b> .....	13
8.8	<b>Proprietary rights</b> .....	14
8.9	<b>Compliance with and enforcement of covenants</b> .....	14
8.10	<b>Notices or claims relating to the Property</b> .....	14
8.11	<b>Payment of rent and outgoings</b> .....	14
8.12	<b>Rent reviews</b> .....	15
8.13	<b>Environment</b> .....	15
8.14	<b>Inspection</b> .....	15
8.15	<b>VAT option to tax</b> .....	15
9.	<b>Powers of the Security Agent</b> .....	15
9.1	<b>Power to remedy</b> .....	15
9.2	<b>Exercise of rights</b> .....	16

9.3	<b>Security Agent has Receiver's powers</b>	16
9.4	<b>Indulgence</b>	16
10.	<b>When security becomes enforceable</b>	16
10.1	<b>Security becomes enforceable on Event of Default</b>	16
10.2	<b>Discretion</b>	16
11.	<b>Enforcement of security</b>	16
11.1	<b>Enforcement powers</b>	16
11.2	<b>Extension of statutory powers of leasing</b>	17
11.3	<b>Prior Security</b>	17
11.4	<b>Protection of third parties</b>	17
11.5	<b>Privileges</b>	18
11.6	<b>No liability as mortgagee in possession</b>	18
11.7	<b>Relinquishing possession</b>	18
11.8	<b>Conclusive discharge to purchasers</b>	18
12.	<b>Receivers</b>	18
12.1	<b>Appointment</b>	18
12.2	<b>Removal</b>	18
12.3	<b>Remuneration</b>	19
12.4	<b>Power of appointment additional to statutory powers</b>	19
12.5	<b>Power of appointment exercisable despite prior appointments</b>	19
12.6	<b>Agent of the Borrower</b>	19
13.	<b>Powers of Receiver</b>	19
13.1	<b>Powers additional to statutory powers</b>	19
13.2	<b>Repair and develop the Property</b>	19
13.3	<b>Grant or accept surrenders of leases</b>	20
13.4	<b>Employ personnel and advisers</b>	20
13.5	<b>Make and revoke VAT options to tax</b>	20
13.6	<b>Charge for remuneration</b>	20
13.7	<b>Realise Charged Property</b>	20
13.8	<b>Manage or reconstruct the Borrower's business</b>	20
13.9	<b>Dispose of Charged Property</b>	20
13.10	<b>Sever fixtures and fittings</b>	20
13.11	<b>Give valid receipts</b>	21
13.12	<b>Make settlements</b>	21
13.13	<b>Bring proceedings</b>	21
13.14	<b>Insure</b>	21
13.15	<b>Powers under LPA 1925</b>	21
13.16	<b>Borrow</b>	21
13.17	<b>Redeem prior Security</b>	21
13.18	<b>Delegation</b>	21
13.19	<b>Absolute beneficial owner</b>	21
13.20	<b>Incidental powers</b>	22
14.	<b>Delegation</b>	22

14.1	<b>Delegation</b>	22
14.2	<b>Terms</b>	22
14.3	<b>Liability</b>	22
15.	Application of proceeds	22
15.1	<b>Order of application of proceeds</b>	22
15.2	<b>Appropriation</b>	23
15.3	<b>Suspense account</b>	23
16.	Costs and indemnity	23
16.1	<b>Costs</b>	23
16.2	<b>Indemnity</b>	24
17.	Further assurance	24
18.	Power of attorney	24
18.1	<b>Appointment of attorneys</b>	24
18.2	<b>Ratification of acts of attorneys</b>	25
19.	Release	25
20.	Assignment and transfer	25
20.1	<b>Assignment by Security Agent</b>	25
20.2	<b>Assignment by Borrower</b>	25
21.	Rights and remedies	25
22.	Severance	25
23.	Counterparts	25
24.	Third party rights	26
25.	Further provisions	26
25.1	<b>Independent security</b>	26
25.2	<b>Continuing security</b>	26
25.3	<b>Discharge conditional</b>	26
25.4	<b>Consolidation</b>	27
25.5	<b>Enforceable security</b>	27
26.	Notices	27
26.5	<b>Service of proceedings</b>	28
27.	Governing law and jurisdiction	28
27.1	<b>Governing law</b>	28
27.2	<b>Jurisdiction</b>	28
27.3	<b>Other service</b>	28

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Schedule

Schedule 1 Property	29
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**PARTIES**

- (1) **KINKAID LTD** incorporated and registered in England and Wales with company number 11531435 whose registered office is at The Coach House, The Square, Sawbridgeworth, Hertfordshire CM21 9AE (**Borrower**)
- (2) **REFCAP VENTURES LIMITED** incorporated and registered in England and Wales with company number 09279006 whose registered office is at 6 Stamford Square, London SW15 2BF (**Security Agent**)

**BACKGROUND**

- (A) The Lenders have agreed, under the Facility Agreement, to provide the Borrower with loan facilities on a secured basis.
- (B) The Borrower owns the Property.
- (C) Under this deed, the Borrower provides security to the Security Agent for all its present and future obligations and liabilities to the Security Agent under the Facility Agreement and for any further or additional loan facilities made to the Borrower in the future pursuant to the Facility Agreement as amended, supplemented or restated from time to time.

**Agreed terms****1. Definitions and interpretation****1.1 Definitions**

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

<b>Business Day</b>	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
<b>Certificate of Title</b>	any report on or certificate of title relating to the Property addressed to the Security Agent by the Borrower (or on its behalf).
<b>Charged Property</b>	all the assets, property and undertaking for the time being subject to any Security created by this deed (and references to the Charged Property shall include references to any part of it).
<b>Deed of Priority</b>	the subordination and priority agreement of even date made between the Security Agent, the Senior Lender and the Borrower
<b>Delegate</b>	any person appointed by the Security Agent or any Receiver under clause 14 and any person appointed as attorney of the Security

Agent, Receiver or Delegate.

<b>Environment</b>	the natural and man-made environment including all or any of the following media, namely air, water and land (including air within buildings and other natural or man-made structures above or below the ground) and any living organisms (including man) or systems supported by those media.
<b>Environmental Law</b>	all applicable laws, statutes, regulations, secondary legislation, bye-laws, common law, directives, treaties and other measures, judgments and decisions of any court or tribunal, codes of practice and guidance notes in so far as they relate to or apply to the Environment.
<b>Environmental Licence</b>	any authorisation, permit or licence necessary under Environmental Law in respect of any of the Charged Property.
<b>Event of Default</b>	has the meaning given to that expression in the Facility Agreement.
<b>Facility Agreement</b>	the facility agreement dated on or about the date hereof between the Borrower, Refcap Ventures Limited and Henzie Limited as lenders and the Security Agent as the same may be amended, supplemented or restated from time to time for the provision of loan facilities which (along with any future loan facilities pursuant to any such amendment, supplement or restatement) are secured by this deed.
<b>Insurance Policy</b>	each contract or policy of insurance effected or maintained by the Borrower from time to time in respect of the Property.
<b>LPA 1925</b>	the Law of Property Act 1925.
<b>Property</b>	the freehold or leasehold property (whether registered or unregistered) owned by the Borrower described in Schedule 1.
<b>Receiver</b>	a receiver or a receiver and manager of any or all of the Charged Property.
<b>Rent</b>	all amounts payable to or for the benefit of the Borrower by way of rent, licence fee, service charge, dilapidations, ground rent and rent charge in respect of any part of the Property and other monies payable to or for the benefit of the Borrower in respect of occupation or use of any part of the Property.



including (without limitation) for display of advertisements on licence or otherwise.

**Secured Liabilities**

all present and future monies, obligations and liabilities of the Borrower to the Security Agent, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity, under or in connection with the Facility Agreement or this deed (including, without limitation, those arising under clause 25.3.2 and those arising pursuant to any future loan facilities pursuant to any amendment, supplement or restatement of the Facility Agreement) together with all interest (including, without limitation, default interest) accruing in respect of those monies, obligations or liabilities

**Security**

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

**Security Period**

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

**Valuation**

any valuation relating to the Property supplied to the Security Agent by the Borrower (or on its behalf).

**VAT**

value added tax.

**1.2 Interpretation**

In this deed:

- 1.2.1 clause and Schedule headings shall not affect the interpretation of this deed;
- 1.2.2 a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality);
- 1.2.3 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;

- 1.2.4 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- 1.2.5 a reference to a party shall include that party's successors, permitted assigns and permitted transferees;
- 1.2.6 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- 1.2.7 a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 1.2.8 a reference to **writing** or **written** includes email but not fax;
- 1.2.9 an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- 1.2.10 a reference to **this deed** (or any provision of it) or to any other agreement or document referred to in this deed is a reference to this deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this deed) from time to time;
- 1.2.11 unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this deed;
- 1.2.12 any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 1.2.13 a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and **amended** shall be construed accordingly);
- 1.2.14 a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;
- 1.2.15 a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- 1.2.16 a reference to **continuing** in relation to an Event of Default means an Event of Default that has not been remedied or waived;
- 1.2.17 a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it; and
- 1.2.18 a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

### **1.3 Clawback**

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

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

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

- 1.4.1 all buildings and fixtures and fittings (including trade and tenant's fixtures and fittings) and fixed plant and machinery that are situated on or form part of the Property at any time;
- 1.4.2 the proceeds of the sale of any part of the Property and any other monies paid or payable in respect of or in connection with the Property;
- 1.4.3 the benefit of any covenants for title given, or entered into, by any predecessor in title of the Borrower in respect of the Property and any monies paid or payable in respect of those covenants; and
- 1.4.4 all rights under any licence, agreement for sale or agreement for lease in respect of the Property.

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

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

### **1.6 Perpetuity period**

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

### **1.7 Schedules**

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

## **2. Trust**

- 2.1 The Security Agent shall hold the benefit of this Deed on trust for the Lenders.
- 2.2 The provisions of Schedule 2 Part 1 paragraphs 2 (Duties of the Security Agent) and 5 (Rights and discretions of the Security Agent) of the Facility Agreement shall apply additionally to this deed as if set out in full in this deed and as if references therein to this agreement were to this deed.

**3. Covenant to pay**

The Borrower shall, on demand, pay to the Security Agent and discharge the Secured Liabilities when they become due.

**4. Grant of security**

**4.1 Legal mortgage and fixed charges**

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee charges to the Security Agent (as trustee for the Lenders):

4.1.1 by way of legal mortgage, the Property; and

4.1.2 by way of fixed charge all its rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premiums in connection with each Insurance Policy, the Rent and the benefit of any guarantee or security in respect of the Rent.

**4.2 Priority**

For all purposes concerning priority over the Charged Property, the Security Agent acknowledges that the charges created by clause 4.1 rank behind the Senior Lender's Security in accordance with the Deed of Priority.

**5. Perfection of security**

**5.1 Registration of legal mortgage at the Land Registry**

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

"No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the proprietor for the time being of the charge dated 25 November 2019 in favour of Refcap Ventures Limited referred to in the charges register."

**5.2 First registration**

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

**5.3 Cautions against first registration and notices**

Whether or not title to the Property is registered at the Land Registry, if any caution against first registration or any notice (whether agreed or unilateral) is registered against the Borrower's title to the Property, the Borrower shall immediately provide the Security Agent with full particulars of the circumstances relating to such caution or notice. If such caution or notice

was registered to protect a purported interest the creation of which is not permitted under this deed, the Borrower shall immediately, and at its own expense, take such steps as the Security Agent may require to ensure that the caution or notice, as applicable, is withdrawn or cancelled.

## **6. Liability of the Borrower**

### **6.1 Liability not discharged**

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

- 6.1.1 any security, guarantee, indemnity, remedy or other right held by, or available to, the Security Agent that is, or becomes, wholly or partially illegal, void or unenforceable on any ground;
- 6.1.2 the Security Agent renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or
- 6.1.3 any other act or omission that, but for this clause 6.1, might have discharged, or otherwise prejudiced or affected, the liability of the Borrower.

### **6.2 Immediate recourse**

The Borrower waives any right it may have to require the Security Agent to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this deed against the Borrower.

## **7. General covenants**

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

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

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

## **8. Property covenants**

Save for any actions of the Borrower in connection with the Agreed Plans and associated documents (including any planning applications or permissions) or as permitted by the Borrower's written business plan which is approved in writing by the Security Agent from time to time:

## **8.1 Repair and maintenance**

The Borrower shall keep all premises, and fixtures and fittings on the Property, in:

- (a) good and substantial repair and condition; and
- (b) such repair and condition as to enable the Property to be let in accordance with all applicable laws and regulations.

8.1.2 For the purpose of clause (b), a law or regulation is applicable if it is either in force or it is expected to come into force and a prudent property owner in the same business as the Borrower would ensure that the premises, and fixtures and fittings on the Property, were in such repair and condition in anticipation of that law or regulation coming into force.

## **8.2 No alterations**

8.2.1 The Borrower shall not, without the prior written consent of the Security Agent:

- (a) pull down or remove the whole or any part of any building forming part of the Property nor permit the same to occur; or
- (b) make or permit to be made any material alterations to the Property or sever or remove or permit to be severed or removed any of its fixtures or fittings (except to make any necessary repairs or renew or replace the same in accordance with clause 8.1).

8.2.2 The Borrower shall promptly give notice to the Security Agent if the premises or fixtures or fittings forming part of the Property are destroyed or damaged.

## **8.3 Development restrictions**

The Borrower shall not, without the prior written consent of the Security Agent:

8.3.1 make or, in so far as it is able, permit others to make any application for planning permission or development consent in respect of the Property; or

8.3.2 carry out or permit or suffer to be carried out on the Property any development (as defined in each of the Town and Country Planning Act 1990 and the Planning Act 2008) or change or permit or suffer to be changed the use of the Property.

## **8.4 Preservation of Charged Property**

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

## **8.5 Proceeds from Insurance Policies**

Unless payable to the Senior Security Agent pursuant to the Senior Security Agent's Security, all monies payable under any Insurance Policy at any time (whether or not the security constituted by this deed has become enforceable) shall:

- 8.5.1 be paid immediately to the Security Agent;
- 8.5.2 if they are not paid directly to the Security Agent by the insurers, be held, pending such payment, by the Borrower as trustee of the same for the benefit of the Security Agent; and
- 8.5.3 at the option of the Security Agent, be applied in making good or recouping expenditure in respect of the loss or damage for which those monies are received or in, or towards, discharge or reduction of the Secured Liabilities

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

The Borrower shall not, other than a Permitted Disposal, without the prior written consent of the Security Agent (which consent, in the case of clause 8.6.4, is not to be unreasonably withheld or delayed in circumstances in which the Borrower may not unreasonably withhold or delay its consent):

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

## **8.7 No restrictive obligations**

The Borrower shall not, without the prior written consent of the Security Agent, enter into any onerous or restrictive obligations affecting the whole or any part of the Property or create or permit to arise any overriding interest, easement or right whatever in or over the whole or any part of the Property.

## **8.8 Proprietary rights**

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

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

The Borrower shall:

8.9.1 observe and perform all covenants, stipulations and conditions to which the Property, or the use of it, is or may be subject and (if the Security Agent so requires) produce to the Security Agent evidence sufficient to satisfy the Security Agent that those covenants, stipulations and conditions have been observed and performed; and

8.9.2 diligently enforce all covenants, stipulations and conditions benefiting the Property and shall not (and shall not agree to) waive, release or vary any of the same.

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

8.10.1 The Borrower shall:

(a) give full particulars to the Security Agent of any notice, order, direction, designation, resolution, application, requirement or proposal given or made by any public or local body or authority (a Notice) that specifically applies to the Property, or to the locality in which it is situated, within seven days after becoming aware of the relevant Notice; and

(b) (if the Security Agent so requires) immediately, and at the cost of the Borrower, take all reasonable and necessary steps to comply with any Notice, and make, or join with the Security Agent in making, any objections or representations in respect of that Notice that the Security Agent thinks fit.

8.10.2 The Borrower shall give full particulars to the Security Agent of any claim, notice or other communication served on it in respect of any modification, suspension or revocation of any Environmental Licence or any alleged breach of any Environmental Law, in each case relating to the Property.

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

The Borrower shall:

8.11.1 where the Property, or part of it, is held under a lease, duly and punctually pay all rents due from time to time; and

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



## **8.12 Rent reviews**

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

8.12.2 The Borrower shall not, without the prior written consent of the Security Agent, if the Property is leasehold, agree to any change in the rent payable under the lease in excess of the open market rental value and shall only agree to any upwards rent review in accordance with the terms of the lease.

## **8.13 Environment**

The Borrower shall in respect of the Property:

8.13.1 comply in all material respects with all the requirements of Environmental Law; and

8.13.2 obtain and comply in all material respects with all Environmental Licences.

## **8.14 Inspection**

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

## **8.15 VAT option to tax**

The Borrower shall not, without the prior written consent of the Security Agent revoke any VAT option to tax exercised, and disclosed to the Security Agent in writing, before the date of this deed.

# **9. Powers of the Security Agent**

## **9.1 Power to remedy**

9.1.1 The Security Agent shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Borrower of any of its obligations contained in this deed.

9.1.2 The Borrower irrevocably authorises the Security Agent and its agents to do all things that are necessary or desirable for that purpose.

9.1.3 Any monies expended by the Security Agent in remedying a breach by the Borrower of its obligations contained in this deed shall be reimbursed by the Borrower to the Security Agent on a full indemnity basis and shall carry interest in accordance with clause 16.1.

9.1.4 In remedying any breach in accordance with this clause 9.1, the Security Agent, its agents and their respective officers, agents and

employees shall be entitled to enter onto the Property and to take any action as the Security Agent may reasonably consider necessary or desirable including, without limitation, carrying out any repairs, other works or development.

**9.2 Exercise of rights**

The rights of the Security Agent under clause 9.1 are without prejudice to any other rights of the Security Agent under this deed. The exercise of any rights of the Security Agent under this deed shall not make the Security Agent liable to account as a mortgagee in possession.

**9.3 Security Agent has Receiver's powers**

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

**9.4 Indulgence**

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

**10. When security becomes enforceable**

**10.1 Security becomes enforceable on Event of Default**

The security constituted by this deed shall be immediately enforceable if an Event of Default occurs and is continuing.

**10.2 Discretion**

After the security constituted by this deed has become enforceable, the Security Agent may, in its absolute discretion, enforce all or any part of that security at the times, in the manner and on the terms it thinks fit, and take possession of and hold or dispose of all or any part of the Charged Property.

**11. Enforcement of security**

**11.1 Enforcement powers**

11.1.1 The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this deed) shall, as between the Security Agent and a purchaser from the Security Agent, arise on and be exercisable at any time after the execution of this deed, but the Security Agent shall not exercise such power of sale or other powers until the security constituted by this deed has become enforceable under clause 10.1.

11.1.2 Section 103 of the LPA 1925 does not apply to the security constituted by this deed.

## **11.2 Extension of statutory powers of leasing**

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

11.2.1 grant a lease or agreement for lease;

11.2.2 accept surrenders of leases; or

11.2.3 grant any option in respect of the whole or any part of the Property with whatever rights relating to other parts of it,

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

## **11.3 Prior Security**

11.3.1 At any time after the security constituted by this deed has become enforceable, or after any powers conferred by any Security having priority to this deed shall have become exercisable, the Security Agent may:

(a) redeem that or any other prior Security;

(b) procure the transfer of that Security to itself; and

(c) settle any account of the holder of any prior Security.

11.3.2 The settlement of any such account shall be, in the absence of any manifest error, conclusive and binding on the Borrower. All monies paid by the Security Agent to an encumbrancer in settlement of such an account shall be, as from its payment by the Security Agent, due from the Borrower to the Security Agent on current account and shall bear interest at the default rate of interest specified in the Facility Agreement and be secured as part of the Secured Liabilities.

## **11.4 Protection of third parties**

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

11.4.1 whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;

11.4.2 whether any power the Security Agent, a Receiver or Delegate is purporting to exercise has become exercisable or is properly exercisable; or

11.4.3 how any money paid to the Security Agent, any Receiver or any Delegate is to be applied.

#### **11.5 Privileges**

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

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

Neither the Security Agent, any Receiver nor any Delegate 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 on realisation of, or for any neglect or default of any nature in connection with, all or any of the Charged Property for which a mortgagee in possession might be liable as such.

#### **11.7 Relinquishing possession**

If the Security Agent, any Receiver or Delegate enters into or takes possession of the Charged Property, it or he may at any time relinquish possession.

#### **11.8 Conclusive discharge to purchasers**

The receipt of the Security Agent or any Receiver or Delegate shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Charged Property or in making any acquisition in the exercise of their respective powers, the Security Agent, every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it or he thinks fit.

### **12. Receivers**

#### **12.1 Appointment**

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

#### **12.2 Removal**

The Security Agent may, without further notice (subject to section 45 of the Insolvency Act 1986), from time to time, by way of deed, or otherwise in writing, remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

### **12.3 Remuneration**

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

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

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

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

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

### **12.6 Agent of the Borrower**

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

## **13. Powers of Receiver**

### **13.1 Powers additional to statutory powers**

13.1.1 Any Receiver appointed by the Security Agent under this deed shall, in addition to the powers conferred on him by statute, have the powers set out in clause 13.2 to clause 13.20.

13.1.2 If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him states otherwise) exercise all of the powers conferred on a Receiver under this deed individually and to the exclusion of any other Receiver.

13.1.3 Any exercise by a Receiver of any of the powers given by clause 13 may be on behalf of the Borrower, the directors of the Borrower or himself.

### **13.2 Repair and develop the Property**

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

**13.3 Grant or accept surrenders of leases**

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

**13.4 Employ personnel and advisers**

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

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

A Receiver may exercise or revoke any VAT option to tax that he thinks fit.

**13.6 Charge for remuneration**

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

**13.7 Realise Charged Property**

A Receiver may collect and get in the Charged Property or any part of it in respect of which he is appointed and make any demands and take any proceedings as may seem expedient for that purpose, and take possession of the Charged Property with like rights.

**13.8 Manage or reconstruct the Borrower's business**

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

**13.9 Dispose of Charged Property**

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

**13.10 Sever fixtures and fittings**

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

**13.11 Give valid receipts**

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

**13.12 Make settlements**

A Receiver may make any arrangement, settlement or compromise between the Borrower and any other person that he may think expedient.

**13.13 Bring proceedings**

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

**13.14 Insure**

A Receiver may, if he thinks fit, but without prejudice to the indemnity in clause 16.2, effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the Borrower under this deed.

**13.15 Powers under LPA 1925**

A Receiver may exercise all powers provided for in the LPA 1925 in the same way as if he had been duly appointed under the LPA 1925 and exercise all powers provided for an administrative receiver in Schedule 1 to the Insolvency Act 1986.

**13.16 Borrow**

A Receiver may, for any of the purposes authorised by this clause 13, raise money by borrowing from the Security Agent (or from any other person) either unsecured or on the security of all or any of the Charged Property in respect of which he is appointed on any terms that he thinks fit (including, if the Security Agent consents, terms under which that Security ranks in priority to this deed).

**13.17 Redeem prior Security**

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

**13.18 Delegation**

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

**13.19 Absolute beneficial owner**

A Receiver may, in relation to any of the Charged Property, exercise all powers, authorisations and rights he would be capable of exercising, and

do all those acts and things, as an absolute beneficial owner could exercise or do in the ownership and management of the Charged Property or any part of the Charged Property.

#### **13.20 Incidental powers**

A Receiver may do any other acts and things:

13.20.1 that he may consider desirable or necessary for realising any of the Charged Property;

13.20.2 that he may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this deed or law; or

13.20.3 that he lawfully may or can do as agent for the Borrower.

### **14. Delegation**

#### **14.1 Delegation**

The Security Agent or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this deed (including the power of attorney granted under clause 18.1).

#### **14.2 Terms**

The Security Agent and each Receiver may make a delegation on the terms and conditions (including the power to sub-delegate) that it thinks fit.

#### **14.3 Liability**

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

### **15. Application of proceeds**

#### **15.1 Order of application of proceeds**

All monies received by the Security Agent, a Receiver or a Delegate under this deed after the security constituted by this deed has become enforceable (other than sums received under any Insurance Policy), shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied in the following order of priority:

15.1.1 in or towards payment of or provision for all costs, charges and expenses incurred by or on behalf of the Security Agent (and any Receiver, Delegate, attorney or agent appointed by it) under or in connection with this deed and of all remuneration due to any Receiver under or in connection with this deed;

15.1.2 in or towards payment of or provision for the Secured Liabilities in any order and manner that the Security Agent determines; and



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

## **15.2 Appropriation**

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

## **15.3 Suspense account**

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

15.3.1 may, at the discretion of the Security Agent, Receiver or Delegate, be credited to any suspense or securities realised account;

15.3.2 shall bear interest, if any, at the rate agreed in writing between the Security Agent and the Borrower; and

15.3.3 may be held in that account for so long as the Security Agent, Receiver or Delegate thinks fit.

## **16. Costs and indemnity**

### **16.1 Costs**

The Borrower shall, within five Business Days of demand, pay to, or reimburse, the Security Agent and any Receiver, on a full indemnity basis, all costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal, printing and out-of-pocket expenses) properly and reasonably incurred by the Security Agent, any Receiver or any Delegate in connection with:

16.1.1 this deed or the Charged Property;

16.1.2 taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Security Agent's, a Receiver's or a Delegate's rights under this deed; or

16.1.3 taking proceedings for, or recovering, any of the Secured Liabilities,

together with interest, which shall accrue and be payable (without the need for any demand for payment being made) from the date on which the relevant cost or expense arose until full discharge of that cost or expense (whether before or after judgment, liquidation, winding-up or administration of the Borrower) at the rate and in the manner specified in the Facility Agreement.

## **16.2 Indemnity**

16.2.1 The Borrower shall indemnify the Security Agent, each Receiver and each Delegate, and their respective employees and agents against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by any of them arising out of or in connection with:

- (a) the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this deed or by law in respect of the Charged Property;
- (b) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the security constituted by this deed; or
- (c) any default or delay by the Borrower in performing any of its obligations under this deed.

16.2.2 Any past or present employee or agent may enforce the terms of this clause 16.2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

## **17. Further assurance**

The Borrower shall, at its own expense, take whatever action the Security Agent or any Receiver may reasonably require for:

- 17.1 creating, perfecting or protecting the Security intended to be created by this deed;
- 17.2 facilitating the realisation of any of the Charged Property; or
- 17.3 facilitating the exercise of any right, power, authority or discretion exercisable by the Security Agent or any Receiver in respect of any of the Charged Property,

including, without limitation (if the Security Agent or Receiver thinks it expedient) the execution of any transfer, conveyance, assignment or assurance of all or any of the assets forming part of (or intended to form part of) the Charged Property (whether to the Security Agent or to its nominee) and the giving of any notice, order or direction and the making of any registration.

## **18. Power of attorney**

### **18.1 Appointment of attorneys**

By way of security, the Borrower irrevocably appoints the Security Agent, every Receiver and every Delegate separately to be the attorney of the Borrower and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things that:

- 18.1.1 the Borrower is required to execute and do under this deed; or

18.1.2 any attorney deems proper or desirable in exercising any of the rights, powers, authorities and discretions conferred by this deed or by law on the Security Agent, any Receiver or any Delegate.

**18.2 Ratification of acts of attorneys**

The Borrower ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in clause 18.1.

**19. Release**

Subject to clause 25.3, on the expiry of the Security Period (but not otherwise), the Security Agent 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.

**20. Assignment and transfer**

**20.1 Assignment by Security Agent**

20.1.1 At any time, without the consent of the Borrower, the Security Agent may assign or transfer any or all of its rights and obligations under this deed.

20.1.2 The Security Agent may disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Borrower, the Charged Property and this deed that the Security Agent considers appropriate.

**20.2 Assignment by Borrower**

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

**21. Rights and remedies**

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

**22. Severance**

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

**23. Counterparts**

23.1 This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.

23.2 Transmission of the executed signature page of a counterpart of this deed by e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this deed. If either method of delivery is adopted, without prejudice to the validity of the deed thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

23.3 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

## **24. Third party rights**

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

24.2 The rights of the parties to rescind or agree any amendment or waiver under this deed are not subject to the consent of any other person.

## **25. Further provisions**

### **25.1 Independent security**

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

### **25.2 Continuing security**

The security constituted by this deed shall remain in full force and effect as a continuing security for the Secured Liabilities, despite any settlement of account, or intermediate payment, or other matter or thing, unless and until the Security Agent discharges this deed in writing.

### **25.3 Discharge conditional**

Any release, discharge or settlement between the Borrower and the Security Agent shall be deemed conditional on no payment or security received by the Security Agent in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded under any law relating to insolvency, bankruptcy, winding-up, administration, receivership or otherwise. Despite any such release, discharge or settlement:

25.3.1 the Security Agent or its nominee may retain this deed and the security created by or under it, including all certificates and documents relating to the whole or any part of the Charged Property, for any period that the Security Agent deems necessary to provide the Security Agent with security against any such avoidance, reduction or order for refund; and

25.3.2 the Security Agent may recover the value or amount of such security or payment from the Borrower subsequently as if the release, discharge or settlement had not occurred.

#### **25.4 Consolidation**

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

#### **25.5 Enforceable security**

This deed constitutes and will constitute the legal, valid, binding and enforceable obligations of the Borrower (subject to usual qualifications at law or equity relating to rights and remedies of creditors on insolvency or otherwise) and is and will continue to be effective security over all and every part of the Charged Property in accordance with its terms.

### **26. Notices**

26.1 Each notice or other communication required to be given under, or in connection with, this deed shall be:

26.1.1 in writing, delivered personally or sent by pre-paid first-class letter; and

26.1.2 sent to the Borrower at:

(a) Address: The Coach House, The Square, Sawbridgeworth, Hertfordshire, United Kingdom, CM21 9AE

(b) Email: PK@hatchbury.com

(c) Attention: Patrick Kennedy

26.1.3 sent to the Security Agent at:

(a) Address: 6 Stamford Square, London SW15 2BF

(b) Email: sae@refcap.co.uk

(c) Attention: Steve Eades

or to such other address as is notified by one party to the other from time to time.

26.2 Any notice or communication that the Security Agent gives shall be deemed to have been received:

26.2.1 if given by hand, at the time of actual delivery; and

26.2.2 if posted, on the second Business Day after the day on which it was sent by pre-paid first-class post.

A notice or communication given as described in clause 26.2.1 on a day which is not a Business Day, or after normal business hours, in the place it

is received, shall be deemed to have been received on the next Business Day.

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

26.4 A notice sent only by email will not be effective unless the recipient, in a reply email, either expressly waives the need for a posted notice or expressly or (by actually replying or referring to the notice in the reply email) impliedly acknowledges receipt of the notice. For the purposes of this clause, automatic or out of office replies do not constitute a reply email and email footers rejecting service by email will not invalidate such an express or implied waiver.

**26.5 Service of proceedings**

This clause 26 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**27. Governing law and jurisdiction**

**27.1 Governing law**

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

**27.2 Jurisdiction**

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

**27.3 Other service**

The Borrower irrevocably consents to any process in any legal action or proceedings under clause 27.2 being served on it in accordance with the provisions of this deed relating to service of notices. Nothing contained in this deed shall affect the right to serve process in any other manner permitted by law.

**This agreement has been entered into as a deed on the date stated at the beginning of it.**

**Schedule 1**  
**Property**

All that freehold property known as Units B and C, Dean Street, Bristol, BS2 8SF and registered at the Land Registry with Title Numbers BL54754 and BL41563

Executed as a deed by **KINKAID LTD**  
acting by a Director in the presence of:

Witness Signature.....

Director

Witness Name.....

Witness Address.....

Witness Occupation.....

Executed as a deed by **REFCAP  
VENTURES LIMITED** acting by a  
Director in the presence of:

Director

Witness Signature.....

Witness Name.....

Witness Address.....

Witness Occupation.....



Executed as a deed by KINKAID LTD  
acting by a Director in the presence of:

.....  
Witness Signature..... Director

Witness Name.....

Witness Address.....  
.....

Witness Occupation.....

Executed as a deed by REFCAP  
VENTURES LIMITED acting by a  
Director in the presence of:

  
.....  
Director

Witness Signature..... 

Witness Name..... ADE FABAKA

Witness Address..... 6 STAMFORD SQUARE

LONDON, SW1E 2B5

Witness Occupation..... BROKER