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| **DATED 2018** | | | | | | |
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|  |  | **GREEN PROPERTY INVESTMENT LIMITED** |  |  |
|  |  | and |  |  |
|  | 1. ( | **THE TRUSTEES OF THE EVERGREEN PENSION SCHEME** |  |  |
|  | | | | |
| **LEGAL CHARGE**  relating to the properties known as  69 Mount Pleasant, Stanley, Crook DL15 9SG and  2 West Terrace, Billy Row, Crook DL15 9SS | | | | |
| **Hemingways Solicitors Limited**  11 Westbourne Road  Sheffield S10 2QQ  T: 0114 266 8118 F: 0114 266 3424 | | | | |

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THIS LEGAL CHARGE is dated 2018

BY:

GREEN PROPERTY INVESTMENT LIMITED a company incorporated and registered in England and Wales with company number 7933983 whose registered office is at Hawthorn House, North Roddymoor Farm, Billy Row, Crook, Durham DL15 9TB (the “Mortgagor”)

IN FAVOUR OF:

THOMAS ALAN RACE of [●] and JAMES BENJAMIN RACE of [●] as trustees of the Evergreen Pension Scheme (PSTR [●]) (the “**Mortgagee**”).

BACKGROUND

The Mortgagee has agreed, under the Loan Agreement, to provide the Mortgagor with the Loan on a secured basis.

This deed sets out the security which the Mortgagor has agreed to provide as security for the Loan.

The Mortgagor owns the Properties and has agreed to enter into this deed.

Definitions and interpretation

In this Charge the following expressions have the following meanings:

|  |  |
| --- | --- |
| “Business Day” | a day (other than Saturday, Sunday and public holidays) when banks are generally open for business in London; |
| “Charge” | this legal charge, which includes any instrument supplemental to or which is expressed to be collateral or entered into pursuant to, or in accordance with the terms of this legal charge; |
| “Event of Default” | has the meaning given to that expression in clause 7.3; |
| “Encumbrance” | any mortgage, charge, pledge, lien, assignment by way of security, hypothecation, security interest, title retentions, preferential right or trust arrangement or any other security agreement or arrangement having the effect of creating or granting security; |
| “Finance Documents” | this Charge and the Loan Agreement (each listed document being a “**Finance Document**”); |
| “Fixtures” | all fixtures (including trade fixtures), and other items for the time being attached to the Properties, whether or not constituting a fixture at law; |
| “Incapacity” | in relation to a person, the insolvency, liquidation, bankruptcy, dissolution, winding-up, administration, receivership, amalgamation, reconstruction or other incapacity of that person whatsoever (and, in the case of a partnership, includes the termination or change in the composition of the partnership); |
| “Loan Agreement” | the loan agreement between: (1) the Mortgagee and (2) the Mortgagor dated on or around the date of this deed setting out the terms of a loan of £74,250 and “**Loan**” means the loan set out in the Loan Agreement; |
| “Properties” | the freehold properties referred to in the Schedule and any part or parts of them and including all rights attached or appurtenant to them and all buildings and Fixtures from time to time situated on them, and a reference to the Properties is a reference to each property referred to in the Schedule individually; |
| “Receiver” | an administrative receiver, receiver and/or manager and any substitute for any such person and whether appointed under this Charge or pursuant to any statute or otherwise; and |
| “Secured Liabilities” | all present and future monies, obligations and liabilities owed by the Mortgagor to any of the parties to the Loan Agreement, whether actual or contingent and whether owed jointly or severally, as principal or surety and/or in any other capacity whatsoever together with all interest on such monies and liabilities. |

In this Charge:

the expressions “**Mortgagor**” and “**Mortgagee**” where the context admits, include their respective successors in title and assigns;

clause headings are for reference only and are not to affect the interpretation of this Charge;

unless a contrary indication appears, a term used in any other Finance Document or in any communication given under or in connection with any Finance Document has the same meaning in that Finance Document or communication as in this deed;

subject to clause 18, references to the parties include their respective successors and assignees or transferees;

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);

words denoting one gender include all other genders and words denoting the singular include the plural and vice versa; and

any reference in this Charge to any statute or any section of any statute shall be deemed to include reference to any statutory modification or re-enactment thereof for the time being in force.

## **Clawback**

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

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

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

### all buildings and fixtures and fittings (including trade and tenant’s fixtures and fittings) and fixed plant and machinery that are situated on or that form part of the Properties at any time;

### the proceeds of the sale of any part of the Properties and any other monies paid or payable in respect of or in connection with the Properties;

### the benefit of any covenants for title given, or entered into, by any predecessor in title of the Mortgagor in respect of the Properties and any monies paid or payable in respect of those covenants; and

### all rights under any licence, agreement for sale or agreement for lease in respect of the Properties.

## **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 Finance Documents and of any side letters between any parties in relation to the Loan Agreement are incorporated into this deed.

## **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).

## **Schedule**

The Schedule forms 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 Schedule.

# Covenant to pay

The Mortgagor shall, on demand, pay to the Mortgagee and discharge the Secured Liabilities.

Security

The Mortgagor charges to the Mortgagee, by way of first legal mortgage, the Properties with full title guarantee as a continuing security for the payment and discharge of the Secured Liabilities.

The Mortgagor shall promptly on demand execute and do all such assurances, acts and things including without limitation, execute all transfers, conveyances, assignments and give all notices, orders and directions which the Mortgagee may require for perfecting or protecting this Charge or the priority of this Charge or for the exercise of any of the rights vested in the Mortgagee or any Receiver under this Charge.

# Perfection of security

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

The Mortgagor consents to applications being made by the Mortgagee to the land registrar for the following restriction in Form P to be registered against its titles to the Properties:

“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 [*the date of this deed*] in favour of Thomas Alan Race and James Benjamin Race as trustees of the Evergreen Pension Scheme (PSTR [●]) referred to in the charges register or their conveyancer.”

## **Cautions against first registration and notices**

Whether or not the titles to the Properties are registered at the Land Registry, if any caution against first registration or any notice (whether agreed or unilateral) is registered against the Mortgagor’s titles to the Properties, the Mortgagor shall immediately provide the Mortgagee 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 Mortgagor shall immediately, and at its own expense, take such steps as the Mortgagee may require to ensure that the caution or notice, as applicable, is withdrawn or cancelled.

Restrictions

The Mortgagor shall not without the prior written consent of the Mortgagee:

### create or permit to subsist or arise any Encumbrance or any right or option on the Properties or any part thereof; or

sell, convey, assign, lease, or transfer the Properties or any interest therein, or otherwise part with or dispose of the Properties or agree to do any of the foregoing.

Covenants by the mortgagor

The Mortgagor covenants with the Mortgagee at all times during the continuance of this security:

to keep the Properties insured with such insurer and against such risks as the Mortgagee may require and to the Mortgagee’s satisfaction for their full replacement value and the Mortgagor shall pay all premiums when due;

to register with the insurer the Mortgagee’s interest in any insurance policy entered into by the Mortgagor pursuant to clause 6.1.1;

to apply any insurance proceeds in making good the loss or damage to the Properties; and

not to do or cause or permit to be done anything which would materially depreciate, jeopardise or otherwise prejudice the value or marketability of the Properties.

If the Mortgagor shall fail to comply with any of the obligations under clause 6.1 then the Mortgagee may enter upon the Properties and repair or insure the Properties or take such other steps as it considers appropriate to procure the performance of such obligation or otherwise remedy such failure and shall not thereby be deemed to be a mortgagee in possession and the moneys expended by the Mortgagee shall be reimbursed by the Mortgagor on demand.

Enforcement of this Charge

Until this Charge has become enforceable, the Mortgagor will be entitled to retain, exercise and deal with the Properties as it thinks fit, provided that it may not do or permit to be done anything which conflicts with its obligations under the terms of this Charge.

This deed shall become enforceable immediately upon the occurrence of an Event of Default which remains for the time being unwaived by the Mortgagee or unremedied.

For the purposes of this deed, the following shall be Events of Default:

### any breach of any instrument creating indebtedness owed by the Mortgagor to the Mortgagee which would entitle the Mortgagee to require immediate repayment of such indebtedness; or

### any event which would entitle the Mortgagee to charge any form of default interest (whether pursuant to clause 8 of the Loan Agreement or otherwise); or

### any of the events listed in clause 6.1 of the Loan Agreement; or

### any breach of this deed.

After this security has become enforceable, the Mortgagee may enforce all or any part of this security in such manner as it sees fit and the power of sale and other powers conferred by section 101 of the Law of Property Act 1925, as varied or amended by this Charge, shall be immediately exercisable at any time after a demand is made under this Charge.

Appointment & powers of Receiver

At any time after this Charge has become enforceable or if requested by the Mortgagor, the Mortgagee may appoint by writing any person or persons (whether an officer of the Mortgagee or not) to be a Receiver of all or any part of the Properties and where more than one Receiver is appointed they may be given power to act either jointly or severally.

The Mortgagee may from time to time determine the remuneration of the Receiver and may remove the Receiver and appoint another in his place.

The Receiver shall (so far as the law permits) be the agent of the Mortgagor (who shall alone be personally liable for his acts, defaults, omissions and remuneration) and shall have and be entitled to exercise all powers conferred by the Law of Property Act 1925 and the Insolvency Act 1986 in the same way as if the Receiver had been duly appointed thereunder and in particular by way of addition but without limiting any general powers referred to above (and without prejudice to any of the Mortgagee’s powers) the Receiver shall have power in the name of the Mortgagor or otherwise to do the following things, namely:

to take possession of, collect and get in all or any part of the Properties and to generally manage the Properties;

to commence and/or complete any building operations on the Properties and to apply for and obtain any planning permissions, building regulation approvals and any other permissions, consents or licences in each case as he may in his absolute discretion think fit;

to borrow moneys from the Mortgagee or others on the security of the Properties for the purpose of exercising any of his powers;

to purchase or acquire any land and purchase, acquire and grant any interest in or right over the land or accept surrenders of leases or tenancies of the Properties and to carry any such transaction into effect;

to sell, transfer, assign, lease or concur in selling, letting or leasing the Properties or any part of them on such terms and conditions and for such consideration and payable at such time or times as he may in his absolute discretion think fit including without limitation the power to dispose of any Fixtures separately from the Properties;

to take, continue or defend proceedings or make any arrangement or compromise between the Mortgagor and any persons which he may think expedient;

to make and effect all repairs and improvements;

to effect such insurances of or in connection with the Properties as he shall in his absolute discretion think fit;

to purchase materials, tools, equipment, goods or supplies;

to appoint managers, officers, contractors and agents for the aforesaid purposes upon such terms as to remuneration or otherwise as he may determine;

to do all such other acts and things as may be considered to be incidental or conducive to any of the matters or powers aforesaid and which he lawfully may or can do.

Provided nevertheless that the Receiver shall not be authorised to exercise any of the above powers if and in so far and so long as the Mortgagee shall in writing exclude the same whether in or at the time of his appointment or subsequently.

Any moneys received by the Receiver in the exercise of his powers under this Charge and under general law shall be (so far as the law permits) applied by him firstly in the payment of the costs, charges and expenses of and incidental to his appointment and the exercise of all or any of his powers and in payment of his remuneration, secondly in payment to the Mortgagee of money whether for principal, interest or otherwise in arrears or accruing and due under this Charge and thirdly any balance shall be paid to the person or persons entitled to it.

Mortgagee’s liability

In no circumstances shall the Mortgagee be liable to account to the Mortgagor as a mortgagee in possession or otherwise for any moneys not actually received by the Mortgagee.

In no circumstances shall the Mortgagee be liable to the Mortgagor or any other person for any costs, charges, losses, damages, liabilities, or expenses arising from or connected with any realisation of the Properties.

Protection of third parties

Any purchaser or any other person dealing with the Mortgagee or any Receiver shall not be concerned to enquire whether the Secured Liabilities have become payable or whether any power which it or he is purporting to exercise has become exercisable or whether any money is due under this Charge or as to the application of any money paid, raised or borrowed or as to the propriety or regularity of any sale by or other dealing with the Mortgagee or such Receiver. All the protection to purchasers contained in Sections 104 and 107 of the Law of Property Act 1925 shall apply to any person purchasing from or dealing with the Mortgagee or any Receiver.

Power of attorney

The Mortgagor hereby irrevocably appoints the Mortgagee and the Receiver jointly and also severally the attorney and attorneys of the Mortgagor for the Mortgagor and in the name and on behalf of the Mortgagor and as the act and deed of the Mortgagor or otherwise to sign, seal and deliver and otherwise perfect any deed, assurance, agreement, instrument or act which may be required or may be deemed proper for any of the purposes referred to in this Charge. The Mortgagor ratifies and confirms and agrees to ratify and confirm whatever any attorney appointed under this clause properly does or purports to do in the exercise of all or any of the powers, authorities and discretions granted or referred to in this Charge.

The power of attorney hereby granted is irrevocable and for value as part of the security constituted by this Charge.

The provisions of this clause 11 may only be exercised following the occurrence of an Event of Default which is continuing.

Mortgagee’s rights

At any time after this Charge becomes enforceable all powers of the Receiver may be exercised by the Mortgagee whether as attorney of the Mortgagor or otherwise.

The Mortgagor agrees that at any time after this Charge becomes enforceable:

upon any sale or other disposition in exercise of the powers contained or implied by this Charge the Mortgagee may sever any Fixtures from the Properties and sell the same apart from the Properties without taking possession of the Properties and apply the net proceeds of such sale in or towards satisfaction of the Secured Liabilities;

the Mortgagee may as agent for the Mortgagor remove and sell any chattels on the Properties.

Costs and indemnity

All costs, charges and expenses incurred by the Mortgagee in relation to the enforcement of this Charge shall be reimbursed by the Mortgagor to the Mortgagee on demand on a full indemnity basis.

The Mortgagee and every Receiver, attorney or other person appointed by the Mortgagee under this Charge and their respective employees shall be entitled to be indemnified on a full indemnity basis out of the Properties in respect of all liabilities and expenses incurred by any of them in or directly or indirectly as a result of the exercise or purported exercise of any of the powers, authorities or discretions vested in them under this Charge and against all actions, proceedings, losses, costs, claims and demands in respect of any matter or thing done or omitted in any way relating to the Properties and the Mortgagee and any such Receiver may retain and pay all sums in respect of the same out of the monies received under the powers conferred by this Charge.

Continuing security

This Charge shall be a continuing security to the Mortgagee until such time as the Mortgagor has complied with its obligations to fully repay the Secured Liabilities under the terms of the Loan Agreement, at which time it will be fully discharged.

This Charge shall be in addition to and shall not prejudice or affect or be prejudiced or affected by any security relating to the Properties or to any other property or any other security which the Mortgagee may now or at any time in the future hold in respect of the Secured Liabilities or any of them and shall continue in full force and effect as a continuing security until discharged.

Application of proceeds

Any moneys received by the Mortgagee or any Receiver shall be applied in the following order of priority:

first in the payment of all costs, charges and expenses of and incidental to the appointment of the Receiver and the exercise of all or any of his powers and of all outgoings paid by him;

secondly in the payment of remuneration due to the Receiver hereunder;

thirdly in or towards the payment and discharge of the Secured Liabilities;

fourthly the surplus (if any) shall be paid to the Mortgagor or other person entitled to it.

Neither the Mortgagee nor any Receiver shall be bound (whether by virtue of section 109(8) of the Law of Property Act, 1925, 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 Secured Liabilities.

Any moneys received under the powers and rights hereby conferred may (whether before or after any Incapacity of the Mortgagor or any other person liable), at the discretion of the Mortgagee, be placed in a suspense account with a view to preserving the rights of the Mortgagee to prove for the whole of its claims against the Mortgagor or any other person liable and may be kept there for so long as the Mortgagee thinks fit.

Bills of sale

For the avoidance of doubt, nothing in this Charge is intended to create a charge over a chattel which would constitute a bill of sale under the Bills of Sale Act 1878.

Notices

Each communication to be made under this letter shall, unless otherwise stated, be made in writing but, unless otherwise stated, may be made by letter.

Any communication or document to be made or delivered by either party to the other pursuant to this deed shall (unless that other has by 5 Business Days’ written notice to the first such party specified another address) be made or delivered to the Mortgagor or the Mortgagee (as appropriate) at its address set out in this letter.

Each such communication or document shall be deemed to have been made or delivered when left at that address or, as the case may be, 2 Business Days after being deposited in the post, first class postage prepaid in an envelope addressed to it at that address.

Transfers

The Mortgagor shall not, without the prior written consent of the Mortgagee, assign or transfer any of his rights or obligations under this Charge or enter into any transaction which would result in any of those obligations passing to another person.

Miscellaneous

The Mortgagee’s rights under this Charge are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Mortgagee deems expedient.

Any waiver by the Mortgagee of any terms of this Charge or any consent or approval given by the Mortgagee under it shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.

If at any time any one or more of the provisions of this Charge is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction neither the legality, validity and enforceability of the remaining provisions of this Charge nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall be in any way affected or impaired as a result.

Any release, discharge or settlement between the Mortgagor and the Mortgagee shall be conditional upon no security, disposition or payment to the Mortgagee by the Mortgagor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition is not fulfilled the Mortgagee shall be entitled to enforce this Charge as if such release, discharge or settlement had not occurred and any such payment had not been made.

Third party rights

The Mortgagor and the Mortgagee hereby agree that for the purpose of the Contract (Rights of Third Parties) Act 1999 no person other than the Mortgagor and the Mortgagee shall have any rights in respect of or may enforce any term of this Charge.

Law & jurisdiction

This Charge 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.

IN WITNESS whereof this Charge has been duly executed as a deed and is intended to be and is delivered on the date first above written.

The Schedule

The Properties

|  |  |
| --- | --- |
| **Property** | **Land Registry title number** |
| All that freehold land known as 69 Mount Pleasant, Stanley, Crook DL15 9SG | DU307751 |
| All that freehold land known as 2 West Terrace, Billy Row, Crook DL15 9SS | DU239202 |

|  |  |  |
| --- | --- | --- |
| **EXECUTED** and **DELIVERED** as a **DEED** | | ) |
| by **GREEN PROPERTY INVESTMENT LIMITED** | | ) |
| acting by a director, in the presence of: | | ) ……………………………………………… |
|  | | Director |
|  |  | |
| Witness signature: | …………………………………………………… | |
| Name: | …………………………………………………… | |
| Address: | …………………………………………………… | |
|  | …………………………………………………… | |
| Occupation: | …………………………………………………… | |