Companies House

MR01 (ef)

Registration of a Charge

Company name: **HORTONS' ESTATE LIMITED**

Company number: **00490726**

Received for Electronic Filing: **13/05/2019**

X85DWU7E

Details of Charge

Date of creation: **10/05/2019**

Charge code: **0049 0726 0023**

Persons entitled: **HSBC BANK PLC (AS HEDGING COUNTERPARTY)**

Brief description: **1. LAND AND BUILDINGS ON THE SOUTH SIDE OF NEW STREET, BIRMINGHAM KNOWN AS THE BURLINGTON, NEW STREET, BIRMINGHAM, REGISTERED AT HM LAND REGISTRY WITH TITLE NUMBER WM607672; 2. LAND AND BUILDINGS KNOWN AS 128 NEW STREET, BIRMINGHAM, B2 4DB REGISTERED AT HM LAND REGISTRY WITH TITLE NUMBER WM550238; 3. LAND AND BUILDINGS ON THE SOUTH SIDE OF QUEEN STREET, WOLVERHAMPTON KNOWN AS CASTLE YARD BLOCK, 63 QUEEN STREET, WOLVERHAMPTON, WV1 3BY REGISTERED AT HM LAND REGISTRY WITH TITLE NUMBERS WM912019, WM941854, P93864 AND P170588; 4. LAND ON THE EAST SIDE OF BOSTOCKS LANE, SANDIACRE, NOTTINGHAM AND OCTAVIA HOUSE, INTERCHANGE 25 BUSINESS PARK, BOSTOCKS LANE, SANDIACRE, NOTTINGHAM NG10 5QG TOGETHER KNOWN AS INTERCHANGE 25 BUSINESS PARK, EAST OF BOSTOCKS LANE, SANDIACRE, NOTTINGHAM, NG10 5QG REGISTERED AT HM LAND REGISTRY WITH TITLE NUMBERS DY343595 AND DY343596; 5. WAYSIDE HOUSE, WILSONS LANE, COVENTRY CV6 6NY KNOWN AS WAYSIDE BUSINESS PARK, COVENTRY REGISTERED AT HM LAND REGISTRY WITH TITLE NUMBER WK188528; 6. PICCADILLY ARCADE, 105 TO 108 NEW STREET, BIRMINGHAM, B2 4DH REGISTERED AT HM LAND REGISTRY WITH TITLE NUMBER WM32197; 7. 5 TO 9 (INCLUSIVE) LOWER TEMPLE STREET AND 16 STEPHENSON STREET, BIRMINGHAM, B2 4JD REGISTERED AT HM LAND REGISTRY WITH TITLE NUMBER WM292127; 8. WHITE HOUSE BLOCK, 109 TO 113 NEW STREET AND 1 AND 2 LOWER TEMPLE STREET, BIRMINGHAM, B2 4EU**

REGISTERED AT HM LAND REGISTRY WITH TITLE NUMBER WM859008; 9. LATHAM HOUSE, 33 AND 34 PARADISE STREET, PARADISE CIRCUS, BIRMINGHAM, B1 2AJ REGISTERED AT HM LAND REGISTRY WITH TITLE NUMBER WM423893; 10. HARTLEBURY DISTRIBUTION PARK, CURSLEY LANE, SHENSTONE, KIDDERMINSTER, DY10 4DU REGISTERED AT HM LAND REGISTRY WITH TITLE NUMBER WR84899; 11. LAND ON THE SOUTH EAST SIDE OF QUEEN STREET AND ON THE NORTH EAST SIDE OF MARKET STREET, WOLVERHAMPTON WV1 3AE KNOWN AS CHAPEL COURT REGISTERED AT HM LAND REGISTRY WITH TITLE NUMBER SF72181; 12. LAND LYING TO THE WEST OF PARK WAY, RUBERY, B45 9PZ KNOWN AS 1 THE LIMES/DOOSAN HOUSE REGISTERED AT HM LAND REGISTRY WITH TITLE NUMBER WM691598.

Contains fixed charge(s).

Contains floating charge(s) .

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 SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **PINSENT MASONS LLP**

CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 490726

Charge code: 0049 0726 0023

The Registrar of Companies for England and Wales hereby certifies that a charge dated 10th May 2019 and created by HORTONS' ESTATE LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 13th May 2019 .

Given at Companies House, Cardiff on 14th May 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 10 May 2019

(1) HORTONS' ESTATE LIMITED

and

(2) HSBC BANK PLC

LEGAL CHARGE

relating to

the Properties

HSBC

HSBC Bank plc

E1.262977

CONTENTS

Clause		Page
1	DEFINITIONS AND INTERPRETATION	1
2	COVENANT TO PAY	4
3	NATURE OF SECURITY	4
4	GRANT OF SECURITY	5
5	REPRESENTATIONS	7
6	GENERAL UNDERTAKINGS	9
7	INSURANCE UNDERTAKINGS	10
8	PROPERTY UNDERTAKINGS	13
9	FURTHER ASSURANCE	16
10	ENFORCEMENT	16
11	RECEIVER	17
12	POWERS OF RECEIVER	17
13	APPROPRIATION OF RECEIPTS	19
14	SET-OFF	20
15	CURRENCY CONVERSION	20
16	NEW ACCOUNT	20
17	DELEGATION AND APPOINTMENT OF ATTORNEYS	20
18	REDEMPTION OF PRIOR SECURITY INTERESTS	21
19	RELEASES	21
20	CONTINUING SECURITY	22
21	THIRD PARTY PROTECTION	22
22	INDEMNITIES	22
23	CALCULATIONS AND CERTIFICATES	23
24	PARTIAL INVALIDITY	23
25	REMEDIES AND WAIVERS	23
26	AMENDMENTS AND WAIVERS	23
27	TRANSFER AND CONFIDENTIALITY	23
28	MANAGEMENT TIME	24

29 COUNTERPARTS 24

30 NOTICES 24

31 PARALLEL SECURITY DOCUMENTS 25

32 GOVERNING LAW 25

33 ENFORCEMENT 25

SCHEDULE 1 - THE PROPERTIES 26

SCHEDULE 2 - FORM OF NOTICE TO AND ACKNOWLEDGEMENT BY TENANT 27

SCHEDULE 3 - FORM OF NOTICE OF ASSIGNMENT OF INSURANCE 30

THIS DEED is made on 10 May 2019

BETWEEN:

(1) **HORTONS' ESTATE LIMITED**, a company incorporated and registered under the laws of England and Wales with registered number 00490726 whose registered office is at Latham House 4th Floor, 33-34 Paradise Street, Birmingham, United Kingdom, B1 2AJ (the "**Borrower**"); and

(2) **HSBC BANK PLC** (the "**Hedging Counterparty**").

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed:

"**Affiliate**"	means a Subsidiary of a company, a Holding Company of that company or any other Subsidiary of that Holding Company
"**Assigned Insurances**"	means the Insurances (if any) in relation to the Properties (including any renewal, substitution or replacement of such Insurance)
"**Authorisations**"	means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration
"**Default**"	has the meaning given to that term in the Facility Agreement
"**Event of Default**"	has the meaning given to that term in the Facility Agreement
"**Facility Agreement**"	means the LIBOR revolving loan facility agreement entered into between the Borrower and the Lender on or around the date of this Deed or any replacement or additional facility agreement entered into between the Lender and the Borrower from time to time
"**Finance Document**"	has the meaning given to that term in the Facility Agreement
"**General Account**"	has the meaning given to that term in the Facility Agreement
"**Headlease**"	means a lease pursuant to which a Property is held
"**Hedging Agreement**"	means any master agreement, confirmation, schedule or other agreement entered into or to be entered into by the Borrower, to which the Hedging Counterparty is a counterpart, for the purpose of hedging interest rate liabilities and/or exchange rate or other risks in relation to all or part of the Secured Liabilities and shall include all trades conducted thereunder
"**Holding Company**"	has the meaning given in section 1159 of the Companies Act 2006
"**Interest Rate**"	means the rate of interest payable on any facility secured by the Security

"Insurances"	means any contracts and policies of insurance or assurance taken out by or on behalf of the Borrower or (to the extent of its interest) in which the Borrower has an interest excluding, in each case, contracts and policies of insurance or assurance which relate to liabilities to third parties
"Land"	has the meaning given to that term in section 205(1) of the Law of Property Act 1925 but for these purposes **"Land"** excludes heritable property situated in Scotland
"Lease"	means any lease, underlease, tenancy, licence or other right of occupation to which the Properties are from time to time subject together with any related guarantee or other security for the performance of the lessee's obligations
"Lender"	means HSBC UK Bank PLC
"Parallel Security Document"	means any security document in respect of any asset secured under this Deed entered into by the Borrower in favour of the Lender.
"Properties"	means all the Land specified in Schedule 1 (*The Properties*) each a **"Property"**
"Receiver"	means a receiver and/or manager of any or all of the Borrower's assets appointed by the Hedging Counterparty under the Security
"Secured Liabilities"	means all monies from time to time due or owing and all other actual or contingent liabilities from time to time incurred by the Borrower to the Hedging Counterparty (including any under any Hedging Agreement)
"Security"	means the Security Interests created or intended to be created by or pursuant to this Deed
"Security Assets"	means all the Borrower's assets from time to time the subject of Security
"Security Interest"	means a mortgage, charge, assignment, pledge, lien, standard security, assignation or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect
"Subsidiary"	has the meaning given in section 1159 of the Companies Act 2006
"VAT"	means value added tax as provided for in the Value Added Tax Act 1994 and any similar or substitute tax

1.2 **Construction**

1.2.1 Unless a contrary indication appears, any reference in this Deed to:

(a) **"assets"** includes present and future properties, revenues and rights of every description;

(b) the **"Hedging Counterparty"**shall be construed to include its successors in title, permitted assigns and permitted transferees;

(c) a **"disposal"** includes a lease, licence, transfer, sale or other disposal of any kind;

(d) **"includes"** or **"including"** shall be read and construed as including the phrase **"without limitation"**;

(e) this **"Deed"** or any other agreement or instrument is a reference to this Deed, or other agreement or instrument as amended, supplemented, extended, restated, novated and/or replaced in any manner from time to time (however fundamentally and even if any of the same increases the Borrower's obligations or provides for further advances);

(f) a provision of law is a reference to that provision as amended or re-enacted;

(g) the singular includes the plural and vice versa;

(h) any Land includes:

(i) all or any part of it;

(ii) all buildings, fixtures (including trade fixtures), fittings and fixed plant or machinery at any time on that property;

(iii) all easements, servitudes, rights and agreements in respect of that property;

(iv) all rents from and proceeds of sale of that property; and

(v) the benefit of all covenants given in respect of that property.

1.2.2 When any provision of this Deed refers to an approval or consent by the Hedging Counterparty that provision shall be construed so as to require that consent or approval to be given in writing.

1.2.3 References to clauses and paragraphs are to be construed, unless otherwise stated, as references to clauses and paragraphs of this Deed.

1.2.4 Clause headings are for ease of reference only and shall not affect the construction of this Deed.

1.2.5 If the Hedging Counterparty reasonably considers that an amount paid by the Borrower is capable of being avoided or otherwise set aside on the bankruptcy, liquidation or administration of the Borrower, then that amount shall not be considered to have been irrevocably paid for the purposes of this Deed.

1.2.6 Where there is a conflict between the terms of this Deed and the Facility Agreement (including additional caveats or thresholds for consent to any matter required under the Facility Agreement, consent for which matter is also required from the Hedging Counterparty under this Deed) then the terms of the Facility Agreement shall prevail and those caveats and thresholds apply to the consent required from the Hedging Counterparty under this Deed.

1.3 **Third party rights**

Only a Receiver has any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed.

1.4 **Law of Property (Miscellaneous Provisions) Act 1989**

The terms of all other documents entered into between the Borrower and the Hedging Counterparty are incorporated in this Deed to the extent required to ensure that any disposition of the Properties contained in this Deed is a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

1.5 **Delivery**

The parties intend this Deed to be delivered on the first date specified on page 1 of this Deed and that this document shall take effect as a deed notwithstanding the fact that the Hedging Counterparty may only execute this document under hand.

2. COVENANT TO PAY

2.1 **Covenant to pay**

The Borrower shall pay and discharge each of the Secured Liabilities when the same fall due for payment.

2.2 **Further advances**

This Deed is made to secure any further advances or other facilities but it does not create any obligation on the Hedging Counterparty to make any further advances or make other facilities available.

2.3 **Default interest**

2.3.1 Any amount which is not paid under this Deed when due shall bear interest (both before and after judgment and payable on demand) from the due date until the date on which such amount is unconditionally and irrevocably paid and discharged in full on a daily basis at the rate that is two per cent above the Interest Rate from time to time to the extent that default interest has not already accrued on such sum under another provision of a Finance Document.

2.3.2 Default interest will accrue from day to day on a year of 365 days and will be compounded at such intervals as the Hedging Counterparty considers are appropriate.

3. NATURE OF SECURITY

3.1 **Nature of security**

All Security and dispositions created or made by or pursuant to this Deed are created or made in favour of the Hedging Counterparty with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994 as security for the discharge of the Secured Liabilities.

3.2 **Qualifying floating charge**

3.2.1 Paragraph 14 of schedule B1 to the Insolvency Act 1986 applies to any floating charge created by or pursuant to this Deed.

3.2.2 Each floating charge created by this Deed is a qualifying floating charge for the purposes of the Insolvency Act 1986.

3.3 **Trust**

If or to the extent that for any reason the assignment or charging of any Security Asset is prohibited, the Borrower shall:

3.3.1 hold it on trust for the Hedging Counterparty as security for the payment and discharge of the Secured Liabilities; and

3.3.2 take such steps as the Hedging Counterparty may require to remove the impediment to assignment or charging it.

3.4 **Ranking**

The Borrower consents to the Hedging Counterparty and the Lender entering into priority, intercreditor or other similar arrangements (to which the Borrower shall not be party) to regulate the ranking of the security granted by the Borrower under this Deed and any Parallel Security Document.

4. GRANT OF SECURITY

4.1 Charges

The Borrower charges and agrees to charge in favour of the Hedging Counterparty:

4.1.1 by way of first legal mortgage all the Borrower's present and future right, title and interest in or to the Properties; and

4.1.2 by way of first fixed charge:

(a) all licences to enter upon or use land and the benefit of all other agreements relating to land in each case in connection with the Properties;

(b) the benefit of any rental deposit given or charged to the Borrower by any occupier of the Properties; and

(c) the proceeds of sale of the Properties,

4.1.3 by way of first fixed charge (insofar as not mortgaged by Clause 4.1.1 or charged by Clause 4.1.2):

(a) all present and future rents and other sums due to the Borrower under any Lease;

(b) all plant and machinery at the Properties and the benefit of all contracts, licences and warranties relating to the same; and

4.1.4 by way of floating charge all moveable plant, machinery, implements, utensils, furniture and equipment owned by the Borrower now or from time to time placed on or used in or upon the Properties and the benefit of all licences, contracts and warranties in connection with the same.

4.2 Security assignments

4.2.1 The Borrower assigns and agrees to assign absolutely (subject to a proviso for reassignment on the irrevocable discharge in full of the Secured Liabilities) all of its present and future right, title and interest in and to (to the extent not assigned under any Parallel Security Document):

(a) (to the extent not mortgaged or charged by Clause 4.1 (*Charges*)) all present and future rents and other sums due to the Borrower under any Lease;

(b) all claims under the Assigned Insurances and all proceeds of claims under the Assigned Insurances;

(c) all present and future book debts and other debts, royalties, fees, VAT and monetary claims and all other amounts at any time recoverable or receivable by the Borrower or due or owing to it in respect of the Properties (whether actual or contingent and whether arising under contract or in any other manner whatsoever);

(d) the benefit of all rights, guarantees, Security Interests and remedies relating to any of the foregoing; and

(e) all proceeds of any of the foregoing not otherwise assigned under this Clause 4.2.

4.2.2 To the extent that any right referred to in Clause 4.2.1 is not assignable, the assignment which that clause purports to effect shall operate as an assignment of all the Borrower's present and future rights and claims to any proceeds of such rights.

4.3 **Notice of Security**

4.3.1 The Borrower must give notice of the grant of the Security to:

(a) each tenant under a Lease, in the form set out in Schedule 2 (*Form of notice to and acknowledgement by tenant*);

(b) each insurer under any Assigned Insurance in which it has an interest in the form set out in Schedule 3 (*Form of notice of assignment of Insurance*)

and it shall use its reasonable endeavours to procure that the recipient of each notice acknowledges it in writing.

4.3.2 A notice pursuant to Clause 4.3.1 must be given:

(a) in respect of each insurance policy in existence at the date of this Deed or entered into in the future in the form prescribed by this Deed on the Hedging Counterparty's request at any time following the occurrence of an Event of Default which is continuing; and

(b) in respect of each Lease on the Hedging Counterparty's request at any time following the occurrence of an Event of Default which is continuing.

4.4 **Preservation of assets**

The Hedging Counterparty is not obliged to take any steps necessary to preserve any of the Borrower's assets, to enforce any term of any contract or to make any enquiries as to the nature or sufficiency of any payment received by it pursuant to this Deed.

4.5 **Conversion of floating charge**

4.5.1 The Hedging Counterparty may, by written notice to the Borrower, convert the floating charge created under this Deed into a fixed charge as regards all or any of the Borrower's assets specified in the notice if:

(a) an Event of Default is continuing; or

(b) the Hedging Counterparty considers those assets to be in danger of being seized or sold under any form of distress, attachment, execution or other legal process or to be otherwise in jeopardy.

4.5.2 The floating charge created under this Deed shall not convert into a fixed charge solely by reason of a moratorium being obtained in respect of the Borrower under Schedule A1 of the Insolvency Act 2000 (or anything done with a view to obtaining such a moratorium).

4.5.3 The floating charge created under this Deed shall (in addition to the circumstances in which the same will occur under general law) automatically and without notice convert into a fixed charge:

(a) in relation to any asset which is subject to a floating charge if:

(i) the Borrower creates or attempts or purports to create any Security Interest on or over the relevant asset without the prior consent of the

Hedging Counterparty (other than a Security Interest created under a Parallel Security Document); or

(ii) any third party levies or attempts to levy any distress, execution, attachment or other legal process against any such asset; or

(iii) any step is taken (including the presentation of a petition, the passing of a resolution or the making of an application) to appoint a liquidator, provisional liquidator or receiver in respect of the Borrower, over all or any part of its assets, or if such person is appointed; or

(iv) any other floating charge over the Security Assets is crystallised; and

(b) over all the Borrower's assets which are subject to a floating charge if an administrator under the Insolvency Act 1986 is appointed in respect of the Borrower or the Hedging Counterparty receives notice of intention to appoint such an administrator.

4.5.4 The giving of a notice by the Hedging Counterparty pursuant to Clause 4.5.1 in relation to any class of the Borrower's assets shall not be construed as a waiver or abandonment of the rights of the Hedging Counterparty to serve similar notices in respect of any other class of assets or of any other right of the Hedging Counterparty.

4.6 Assets acquired post-crystallisation

Any assets placed on or used in or upon the Properties that are acquired by the Borrower after crystallisation has occurred (and that are not effectively charged by way of legal mortgage or fixed charge, or assigned under this Deed), shall become subject to the floating charge created by Clause 4.1.4 so that the crystallisation shall be effective as if such assets were owned by the Borrower at the date of crystallisation.

4.7 De-crystallisation of floating charge

Any charge that has crystallised under this Clause may by notice in writing (given at any time by the Hedging Counterparty to the Borrower), be reconverted into a floating charge in relation to the assets or class of assets specified in that notice.

5. REPRESENTATIONS

5.1 General

The Borrower makes the representations and warranties set out in this Clause 5 (*Representations*) to the Hedging Counterparty on the date of this Deed and on each day the Secured Liabilities are outstanding.

5.2 Status

5.2.1 It is a limited liability corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation.

5.2.2 It has the power to own its assets and carry on its business as it is being conducted.

5.3 Binding obligations

5.3.1 Its obligations in this Deed are legal, valid, binding and enforceable obligations.

5.3.2 The Security Interests which this Deed purports to create are valid and effective and are not liable to be avoided or otherwise set aside on its liquidation or administration.

5.4 **Non-conflict with other obligations**

The entry into and performance by the Borrower of its obligations under this Deed and the granting of the Security do not and will not conflict with:

5.4.1 any law or regulation applicable to it;

5.4.2 its constitutional documents; or

5.4.3 any agreement or instrument binding upon the Borrower or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument.

5.5 **Power and authority**

5.5.1 The Borrower has the power to enter into, perform and deliver, and have taken all necessary action to authorise its entry into, performance and delivery of, this Deed and the grant of the Security.

5.5.2 No limit on the Borrower's powers will be exceeded as a result of the grant of the Security.

5.6 **Validity and admissibility in evidence**

All Authorisations required or desirable to enable it lawfully to enter into, and comply with its obligations under this Deed and to grant the Security have been obtained or effected and are in full force and effect.

5.7 **Solvency**

As at the date of this Deed, the Borrower is able to meet its debts as they fall due and is not deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986.

5.8 **Environmental Laws**

5.8.1 In relation to the Properties the Borrower is complying with any applicable law or regulation which relates to:

(a) the pollution or protection of the environment;

(b) the conditions of the workplace; or

(c) the generation, handling, storage, use, release or spillage of any substance which, alone or in combination with any other, is capable of causing harm to the environment, including, any waste.

5.8.2 The Borrower is not aware of any claim which has been commenced or is threatened against it in respect of any breach or alleged breach of any such laws or regulations, so far as they relate to the Properties.

5.8.3 So far as the Borrower is aware no dangerous substance has been used, disposed of, generated, stored, dumped, released, deposited, buried or emitted at, on, from or under the Properties.

5.9 **Security**

5.9.1 No Security Interest exists over the Security Assets other than pursuant to a Parallel Security Document or a Finance Document or as permitted by this Deed.

5.9.2 The Security has or will have first ranking priority and it is not subject to any prior ranking or pari passu ranking Security Interest (other than pursuant to any Parallel Security Document or a Finance Document).

5.9.3 The Borrower has a good and marketable title to and is the sole legal and beneficial owner of the Security Assets.

5.10 **Centre of main interest and establishments**

For the purposes of Regulation (EU) 2015/848 of 20 May 2015 on insolvency proceedings (recast) (the "**Regulation**"), the Borrower's "*centre of main interest*" (as that term is used in article 3(1) of the Regulation) is situated in England and Wales and it has no "*establishment*" (as that term is used in article 2(10) of the Regulation) in any other jurisdiction.

6. **GENERAL UNDERTAKINGS**

6.1 **Negative pledge**

The Borrower shall not create or permit to subsist any Security Interest over the Security Assets other than a Security Interest created under any Parallel Security Document or any Finance Document without the consent of the Hedging Counterparty.

6.2 **No disposals**

Unless the Hedging Counterparty consents, the Borrower shall not make any disposal of any Security Assets even if the disposal is involuntary.

6.3 **Covenants and payments**

The Borrower must:

6.3.1 observe and perform, in all material respects, all covenants and other obligations and matters (whether or not contained in any agreement or other document) from time to time affecting any of the Security Assets or their use or enjoyment and on the Hedging Counterparty's reasonable request produce evidence to satisfy the Hedging Counterparty that the Borrower is complying with this obligation;

6.3.2 promptly inform the Hedging Counterparty if it becomes aware of any steps taken or proceedings commenced by any person with a view to obtaining forfeiture of or determining any lease, underlease, tenancy or licence comprised in the Security Assets (other than as a result of the expiry of the contractual term or the exercise of a contractual break right or otherwise in accordance with the contractual terms of the relevant lease, underlease, tenancy or licence);

6.3.3 not permit any breach of any bye-laws, other laws and regulations affecting any of the Security Assets; and

6.3.4 pay or procure the payment of all rents, rates, taxes, charges, assessments, impositions and other outgoings of any kind which are from time to time payable (whether by the owner or the occupier) in respect of any of the Security Assets.

6.4 **Enforcement of rights**

The Borrower must:

6.4.1 use its best endeavours to ensure prompt observance and performance of the terms of each lease under which it holds the Properties by the lessor; and

6.4.2 use its best endeavours to enforce any rights and institute, continue or defend any proceedings relating to any of the Security Assets which the Hedging Counterparty may require from time to time,

in each case at the Borrower's cost.

7. INSURANCE UNDERTAKINGS

7.1 Maintenance of insurance

7.1.1 The Borrower must ensure that at all times it benefits from insurance against third party and public liability risks and that each Property is insured against:-

(a) loss or damage by fire, storm, tempest, flood, earthquake, lightning, explosion, impact, aircraft (other than hostile aircraft) and other aerial devices and articles dropped from them, riot, terrorism, civil commotion and malicious damage, bursting or overflowing of water tanks, apparatus or pipes and subsidence; and

(b) such other risks and contingencies as are insured against in accordance with sound commercial practice or which the Hedging Counterparty may direct from time to time to the full reinstatement value thereof with adequate provision also being made for:-

(i) the cost of clearing the site, demolition, shoring or propping up and architects', engineers', surveyors' and other professional fees incidental thereto (together with provision for future inflation); and

(ii) the loss of rents or prospective rents for a period of not less than three years or such other period as the Hedging Counterparty may direct and having regard to any potential increases in rent as a result of reviews.

7.1.2 The Borrower must ensure at all times that all insurance policies in respect of the Properties:-

(a) contain a mortgagee clause whereby such insurance policy will not be vitiated or avoided as against a mortgagee or security holder in the event of or as a result of any circumstances beyond the control of that insured party or any misrepresentation, breach of any policy term or condition, act or neglect or failure to make disclosure on the part of any other insured party or any agent of any other insured party;

(b) name the Hedging Counterparty as co-insured on a composite basis in respect of its own separate insurable interest (other than in respect of any professional indemnity, public liability and third party liability insurance policies) but without:

(i) any liability on the part of the Hedging Counterparty for any premium in relation to those insurance policies (unless the Hedging Counterparty has expressly and specifically requested to be made liable in respect of any increase in premium or unpaid premium in respect of any of those insurance policies); or

(ii) any obligation on the part of the Hedging Counterparty to make any disclosure to any insurer or any insurance broker in relation to those insurance policies unless and until the Hedging Counterparty becomes a mortgagee in possession of any Property, in which circumstance an obligation shall apply on the part of the Hedging Counterparty to make disclosure to any insurer or any insurance broker in relation to the insurance policy or policies in respect of that Property pursuant to the terms of that insurance policy or policies;

(c) contain a loss payee clause under which the Hedging Counterparty is named as first loss payee along with any person which is a secured party under a Parallel Security Document in respect of any claim or series of connected claims in excess of £500,000 (other than in respect of any claim under any public liability and third party liability insurances);

(d) contain a "*tenant's clause*" in the following or similar terms:-

"*The insurance hereby effected shall not be prejudiced by any act or omission unknown to or beyond the control of the insured on the part of any tenant occupying or using the premises, provided that the insured immediately on becoming aware thereof shall give notice to the insurers and pay an additional premium if required*";

(e) contain terms providing that the insurer must give at least 30 days' notice to the Hedging Counterparty if it proposes to:-

(i) repudiate, rescind or cancel any insurance policy;

(ii) treat any insurance policy as avoided in whole or in part;

(iii) treat any insurance policy as expired due to non-payment of premium; or

(iv) otherwise decline any claim under any insurance policy by or on behalf of any insured party in excess of £100,000,

and, in respect of Clause 7.1.2(e)(iii) above, must in the notice give the Hedging Counterparty the opportunity to rectify any such non-payment of premium within the notice period;

(f) contain terms providing that the Hedging Counterparty shall have no duty of disclosure to the insurance company or underwriters unless and until the Hedging Counterparty becomes a mortgagee in possession of any Property, in which circumstance an obligation shall apply on the part of the Hedging Counterparty to make any disclosure to any insurer or any insurance broker in relation to the insurance policy or policies in respect of that Property pursuant to the terms of that insurance policy or policies;

(g) contains terms providing that the Hedging Counterparty shall have no liability to pay any unpaid premium;

(h) contain a waiver of the rights of subrogation of the insurer as against the Borrower, the Hedging Counterparty and the tenants, other than any such rights arising in connection with any fraud or criminal offence committed by any those persons in respect of the Properties or any Policy or any such right as against a tenant arising in connection with the obligation of the tenant to contribute to the insurance premiums or to pay for any damage to the Properties caused by any wilful misconduct of that tenant;

(i) are in an amount and form acceptable to the Hedging Counterparty; and

(j) are with an insurance company or underwriters acceptable to the Hedging Counterparty.

7.1.3 The Borrower must be free to assign or otherwise grant Security Interests over all amounts payable to it under each insurance policy in respect of the Properties and all its rights in connection with those amounts in favour of the Hedging Counterparty.

7.1.4 If the Hedging Counterparty requests, the Borrower must promptly provide a copy of each insurance policy in respect of the Properties together with evidence of payment of the premiums and such other information in connection with such insurance policies as the Hedging Counterparty requests.

7.1.5 If the Hedging Counterparty considers that the amount insured, or the risks covered, by any insurance policy in respect of the Properties are inadequate, the Borrower must increase the amount insured by it and/or require the category of risks covered to be amended to such extent and in such manner as the Hedging Counterparty may consider appropriate.

7.1.6 The Borrower must:-

(a) comply with the terms of the insurance policies in respect of the Properties;

(b) ensure that all things necessary to keep all the insurance policies in respect of the Properties in force are done promptly including the punctual payment of premiums; and

(c) notify the Hedging Counterparty of renewals made, material variations and cancellations of insurance policies in respect of the Properties made or, to the knowledge of the insured, threatened or pending and within 30 days of becoming aware of a claim, any claim or any actual or threatened refusal of a claim, under any of the insurance policies in respect of the Properties (or any renewal thereof) in excess of £25,000.

7.1.7 The Borrower must not allow anything to occur which may make any insurance policy in respect of the Properties void or voidable.

7.1.8 If the Borrower does not comply the Hedging Counterparty may (without any obligation to do so) effect or renew any such insurance policy in respect of the Properties either in its own name, or together with the Borrower in such sum and on such terms as which the Hedging Counterparty may reasonably think expedient and all monies expended by the Hedging Counterparty will be deemed to be properly paid by the relevant person and shall be reimbursed by the Borrower on demand.

7.2 **Application of insurance monies**

The Borrower must apply sums received under any insurance policy in respect of the Properties as follows:-

7.2.1 if the Borrower is required as the basis of settlement under any such insurance policy or by the terms of a Lease to apply the sums in a particular way then it must do so;

7.2.2 amounts received under liability policies held by the Borrower which are required by it to satisfy established liabilities of the Borrower to third parties must be used to satisfy these liabilities;

7.2.3 the proceeds of any loss of rent insurance will be treated as rental income and applied in such manner as the Hedging Counterparty (acting reasonably) requires to have effect as if it were rental income received over the period of the loss of rent;

7.2.4 otherwise the Borrower must pay all sums received into the General Account and, at the option of the Hedging Counterparty (but at all times in accordance with any terms or conditions applied to payment of such insurance proceeds by the relevant insurer), either:-

(a) apply the sums towards making good the loss or damage to which they relate; or

(b) apply the sums towards the prepayment of the Secured Liabilities.

8. PROPERTY UNDERTAKINGS

8.1 Property management

8.1.1 The Borrower must diligently manage or procure the management of the Properties in accordance with the principles of good estate management and promptly notify the Hedging Counterparty of any material default by any lessee or other occupier of the Properties and use all reasonable endeavours to enforce the performance and observance of the obligations on the part of any lessee under any Lease.

8.1.2 If the Borrower fails, or the Hedging Counterparty considers that it has failed, at any time to comply with the obligations in Clause 8.1.1 above, it shall be lawful for the Hedging Counterparty to carry out such works and take such steps as it may determine (acting reasonably) are necessary to remedy and rectify the failure, the fees, costs and expenses of such action to be reimbursed by the Borrower to the Hedging Counterparty upon demand.

8.1.3 The Borrower must promptly notify the Hedging Counterparty in writing if it becomes aware of any proceedings commenced by any person with a view to obtaining

(a) forfeiture of any Headlease; or

(b) surrender of any other Lease (other than a Headlease) where:-

(i) the rent under that Lease at that Property is £100,000 per annum or more; and

(ii) the term of that Lease is more than five years,

other than as a result of expiry of the contractual term or the exercise of a contractual break right or otherwise in accordance with the contractual terms of the relevant Lease.

8.1.4 Nothing in this Clause shall render the Hedging Counterparty liable to account as mortgagee in possession.

8.2 Leases

In addition to the restrictions in Clause 6.2 (*No disposals*) the Borrower must not:-

8.2.1 grant any Lease;

8.2.2 terminate (whether by surrender, forfeiture or otherwise) any Lease;

8.2.3 vary any terms of or waive any rights it has under any Lease;

8.2.4 agree to any change of use under, or rent reviews or any concession or reduction of rent in respect of, any Lease;

8.2.5 grant any access right to or over the Properties or any part of it; or

8.2.6 consent to any assignment or sub-letting of any lessee's interest (or any assignment of a sub-tenant's interest) under any Lease,

without the Hedging Counterparty's prior consent and may not enter into any agreement to do so.

8.3 Works

The Borrower must ensure that no person:-

8.3.1 demolishes any buildings or erections on any of the Properties;

8.3.2 makes any structural alteration to any of the Properties; or

8.3.3 removes any fixtures from any of the Properties,

without the prior consent of the Hedging Counterparty.

8.4 **Repair**

8.4.1 The Borrower must ensure that all buildings and erections from time to time upon the Properties and all fittings, plant and machinery on the Properties are in, and maintained in:-

(a) good and substantial repair and condition and, as appropriate, in good working order; and

(b) such repair, condition and, as appropriate, good working order as to enable them to be let in accordance with all applicable laws and regulations,

and when necessary the Borrower shall replace, or procure the replacement of, the same with items of similar quality and value.

8.4.2 The Borrower must carry out any energy efficiency improvements necessary, or take any other steps necessary, to ensure that at all times each part of any Property which is designed and intended by the Borrower to be let can be let or can continue to be let without breaching any applicable laws or regulations in respect of minimum levels of energy efficiency for properties.

8.5 **Pay outgoings**

The Borrower must ensure all rates, rents, outgoings and other sums payable out of or in respect of the Properties are promptly paid, save where those are being contested in good faith.

8.6 **Development of Property**

8.6.1 Without the prior consent of the Hedging Counterparty, the Borrower must not:-

(a) carry out or permit to be carried out any development on the Properties (including change of use of) for which planning permission is required;

(b) make (or permit others to make) any application for planning permission relating to the Properties; or

(c) implement any planning permission relating to the Properties.

8.6.2 The Borrower shall comply in all material respects with all planning laws, permissions, agreements and conditions to which the Properties are subject.

8.7 **Registration at the Land Registry**

8.7.1 The Borrower must do all things to facilitate the registration of this Deed against any relevant title registered at the Land Registry.

8.7.2 The Borrower consents to an application being made by the Hedging Counterparty to the Land Registrar for the following restriction to be registered against its title to each Property in the following terms:-

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the charge dated [DATE], in favour of HSBC Bank plc referred to in the charges register".

8.7.3 The Borrower must not permit any other person to be registered at the Land Registry as proprietor of any of the Properties, except under any Parallel Security Document or Finance Document in respect of the Properties.

8.7.4 The Borrower must not, without the prior written consent of the Hedging Counterparty, create or permit to arise any interest which falls within any of the paragraphs of schedule 3 of the Land Registration Act 2002 or any interest preserved by the transitional provisions of schedule 12 of the Land Registration Act 2002 to the extent and for so long as any interest is so preserved in or over the Properties.

8.8 **Title documents**

The Borrower must deposit with the Hedging Counterparty immediately all title documents, planning and statutory consents from time to time relating to the Security Assets. The Borrower shall be deemed to have complied with this Clause if it has complied with the equivalent clause of any Parallel Security Document or any other Finance Document relating to the same Security Assets.

8.9 **VAT**

The Borrower will provide the Hedging Counterparty with written notice of any alteration of the VAT status of the Properties.

8.10 **Notices received**

The Borrower must:-

8.10.1 provide to the Hedging Counterparty a copy of any notice or order (or any proposal for a notice or order) of a material nature given, issued or made by any local or other authority relating to any of the Security Assets;

8.10.2 take all necessary steps to comply with that notice, order or proposal; and

8.10.3 make or join in making any representations which the Hedging Counterparty requests in respect of the notice, order or proposal.

8.11 **Entry**

8.11.1 The Hedging Counterparty (and anyone authorised by the Hedging Counterparty) may enter the Property to verify that the Borrower has performed all of its obligations under this Deed and to undertake any works that it reasonably believes is necessary as a result of a failure by the Borrower to comply with its obligations under, or remedy any breach of the provisions of this Deed.

8.11.2 Subject to Clause 8.11.4 the right to enter may be exercised at all times when a Default is continuing, subject to the terms of any relevant Lease and within normal working hours upon reasonable notice and may be made with or without workmen, plant and materials.

8.11.3 Exercise of the right of entry shall not cause the Hedging Counterparty or any person authorised by it to be liable as a mortgagee in possession.

8.11.4 The right to entry may be made at any time without notice in the case of emergency and if the Hedging Counterparty does enter a Property in an emergency it will comply with health and safety laws applicable to it.

9. FURTHER ASSURANCE

The Borrower shall at its own expense ensure any documents are executed and any acts and things are done which the Hedging Counterparty may reasonably require from time to time for:

9.1 giving effect to, perfecting or protecting the Security;

9.2 facilitating the realisation of any Security Asset;

9.3 facilitating the exercise of all powers, authorities and discretions vested in the Hedging Counterparty or in any Receiver; or

9.4 perfecting any Security over any assets acquired by the Borrower after the date of this Deed.

10. ENFORCEMENT

10.1 Remedying defaults

The Hedging Counterparty or a Receiver may (but is not obliged to) take any action to remedy a failure by the Borrower to observe and perform the provisions of this Deed at the Borrower's cost.

10.2 Timing of enforcement

10.2.1 The Secured Liabilities are deemed to have become due on the date of this Deed.

10.2.2 The Security shall become enforceable on the earlier of:

(a) the date the Hedging Counterparty demands repayment of any of the Secured Liabilities;

(b) the date the Borrower breaches a provision of this Deed or any document evidencing the facilities to which the Secured Liabilities relate;

(c) the occurrence of any event causing, or purporting to cause, the floating charge created by this Deed to become fixed in relation to any Security Asset; or

(d) any Security Interest created pursuant to a Parallel Security Document becoming enforceable; or

(e) the Borrower's request.

10.2.3 Neither section 93(1) nor section 103 of the Law of Property Act 1925 shall apply to this Deed.

10.3 Powers of the Hedging Counterparty

10.3.1 At any time after the Security becomes enforceable or if requested by the Borrower, the Hedging Counterparty may without further notice (unless required by law):

(a) appoint any person (or persons) to be a receiver, receiver and manager or administrative receiver of all or any part of the Security Assets and/or of the income of the Security Assets; and/or

(b) appoint or apply for the appointment of any person as the Borrower's administrator (if the Borrower is a company); and/or

(c) exercise all or any of the powers conferred on mortgagees by the Law of Property Act 1925 (as amended or extended by this Deed) and/or all or any of

the powers which are conferred by this Deed on a Receiver, in each case without first appointing a Receiver or notwithstanding the appointment of any Receiver.

10.3.2 The Hedging Counterparty is not entitled to appoint a Receiver in respect of any Security Assets which are subject to Security which (as created) was a floating charge solely by reason of a moratorium being obtained under Schedule A1 to the Insolvency Act 1986 or anything done with a view to obtaining such a moratorium.

10.4 **No liability**

Neither the Hedging Counterparty nor any Receiver shall be liable as a mortgagee in possession or otherwise to account in relation to the Security Assets for any loss on realisation or for any other default or omission. No exercise of the right in Clause 10.1 (*Remedying defaults*) shall render the Hedging Counterparty or a Receiver a mortgagee in possession.

11. RECEIVER

11.1 **Removal and replacement**

The Hedging Counterparty may from time to time remove any Receiver appointed by it (subject, in the case of an administrative receivership, to section 45 of the Insolvency Act 1986) and, whenever it may deem appropriate, may appoint a new Receiver in the place of any Receiver whose appointment has terminated.

11.2 **Multiple Receivers**

If at any time there is more than one Receiver of all or any part of the Security Assets and/or the income of the Security Assets, each Receiver shall have power to act individually (unless otherwise stated in the appointment document).

11.3 **Remuneration**

Any Receiver shall be entitled to remuneration for his services at a rate to be fixed by agreement between him and the Hedging Counterparty (or, failing such agreement, to be fixed by the Hedging Counterparty) and section 109(6) of the Law of Property Act 1925 shall not apply.

11.4 **Payment by Receiver**

Only monies actually paid by a Receiver to the Hedging Counterparty in relation to the Secured Liabilities shall be capable of being applied by the Hedging Counterparty in discharge of the Secured Liabilities.

11.5 **Borrower's agent**

Any Receiver shall be the Borrower's agent and the Borrower shall (subject to the Companies Act 2006 and the Insolvency Act 1986) be solely responsible for his acts and defaults and for the payment of his remuneration. The Hedging Counterparty shall not incur any liability (either to the Borrower or to any other person) by reason of the appointment of a Receiver or for any other reason.

12. POWERS OF RECEIVER

12.1 **General powers**

Any Receiver shall have:

12.1.1 all the powers which are conferred by the Law of Property Act 1925 on mortgagees in possession and receivers appointed under that Act but without the restrictions contained in sections 103 or 109(1) of that Act;

12.1.2 (whether or not he is an administrative receiver) all the powers which are listed in schedule 1 of the Insolvency Act 1986; and

12.1.3 all powers which are conferred by any other law conferring power on receivers.

12.2 **Additional powers**

In addition to the powers referred to in Clause 12.1 (*General powers)*, a Receiver shall have the following powers:

12.2.1 to take possession of, collect and get in all or any part of the Security Assets and/or income in respect of which he was appointed;

12.2.2 to manage the Security Assets as he thinks fit;

12.2.3 to redeem any Security Interest and to borrow or raise any money and secure the payment of any money in priority to the Secured Liabilities for the purpose of the exercise of his powers and/or defraying any costs or liabilities incurred by him in such exercise;

12.2.4 to enter into, terminate or vary any Hedging Agreement;

12.2.5 to sell or concur in selling, leasing or otherwise disposing of all or any part of the Security Assets in respect of which he was appointed without the need to observe the restrictions imposed by section 103 of the Law of Property Act 1925, and, without limitation:

(a) fixtures may be severed and sold separately from the Properties containing them, without the Borrower's consent;

(b) the consideration for any such transaction may consist of cash, debentures or other obligations, shares, stock or other valuable consideration (and the amount of such consideration may be dependent upon profit or turnover or be determined by a third party); and

(c) any such consideration may be payable in a lump sum or by instalments spread over such period as he thinks fit;

12.2.6 to alter, improve, develop, complete, construct, modify, refurbish or repair any building or land and to abandon, complete or undertake or concur in the completion or undertaking (with or without modification) of any project in which the Borrower was concerned or interested before his appointment (being a project for the alteration, improvement, development, completion, construction, modification, refurbishment or repair of any building or land);

12.2.7 to carry out any sale, lease or other disposal of all or any part of the Security Assets by conveying, transferring, assigning or leasing the same in the Borrower's name and, for that purpose, to enter into covenants and other contractual obligations in the Borrower's name and so as to bind it;

12.2.8 to take any such proceedings in the Borrower's name as he shall think fit in respect of the Security Assets and/or income in respect of which he was appointed (including proceedings for recovery of rent or other monies in arrears at the date of his appointment);

12.2.9 to enter into or make any such agreement, arrangement or compromise as he shall think fit in respect of the Security Assets;

12.2.10 to insure, and to renew any insurances in respect of, the Security Assets as he shall think fit (or as the Hedging Counterparty shall direct);

12.2.11 to appoint and employ such managers, officers and workmen and engage such professional advisers as he shall think fit (including, without prejudice to the generality of the foregoing power, to employ any firm, partner, company or other entity with which he is associated) in respect of the Security Assets;

12.2.12 to form one or more subsidiaries of the Borrower and to transfer to any such subsidiary all or any part of the Security Assets;

12.2.13 to operate any rent review clause in any Lease or lease under which the Properties are held in respect of which he was appointed and to apply for any new or extended lease; and

12.2.14 to:

(a) give valid receipts for all monies and to do all such other things as may seem to him to be incidental or conducive to any other power vested in him or necessary or desirable for the realisation of any Security Asset;

(b) exercise in relation to each Security Asset all such powers and rights as he would be capable of exercising if he were the absolute beneficial owner of the Security Assets; and

(c) use the Borrower's name for any of the above purposes.

12.3 **Limitation**

12.3.1 The Hedging Counterparty may in the instrument by which a Receiver is appointed limit the powers of the Receiver.

12.3.2 The Receiver shall be under no duty to the Borrower to exercise any power he may have and shall not incur any liability to the Borrower either by virtue of the exercise of such powers or by virtue of a failure to exercise such powers.

13. APPROPRIATION OF RECEIPTS

13.1 **Application**

13.1.1 Subject to Clause 13.2 (*Suspense account*), any monies received by the Hedging Counterparty in respect of the Security (subject to the payment of any claims having priority to the Security, but in substitution for section 109(8) of the Law of Property Act 1925) shall be applied in the following order of priority:

(a) in discharging the remuneration of any Receiver and all costs, charges and expenses of and incidental to his or her appointment;

(b) in or towards payment or discharge of the Secured Liabilities; and

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

13.1.2 The Hedging Counterparty may apply sums received towards the payment or discharge of the Secured Liabilities in reduction of any part of the Secured Liabilities in any order or manner as it thinks fit. The Hedging Counterparty may override any appropriation made by the Borrower.

13.2 **Suspense account**

Any monies received by the Hedging Counterparty or any Receiver may be placed in an interest bearing suspense or securities realised account and kept there for so long as the Hedging Counterparty considers prudent.

14. SET-OFF

14.1 The Hedging Counterparty may (but shall not be obliged to) set off any obligation which is due and payable by the Borrower and unpaid or any contingent obligation from the Borrower against any obligation (whether or not matured) owed by the Hedging Counterparty or any of its Affiliates to the Borrower, regardless of the place of payment, booking branch or currency of either obligation.

14.2 If either obligation is unliquidated or unascertained, the Hedging Counterparty may set off in an amount estimated by it in good faith to be the amount of that obligation.

15. CURRENCY CONVERSION

All monies received or held by the Hedging Counterparty or any Receiver under this Deed may be converted from their existing currency into such other currency as the Hedging Counterparty or the Receiver considers necessary or desirable to cover the obligations and liabilities comprised in the Secured Liabilities in that other currency at the Hedging Counterparty's spot rate of exchange.

16. NEW ACCOUNT

If the Hedging Counterparty receives or is deemed to be affected by notice (whether actual or constructive) of any subsequent Security Interest affecting some or all of the Security Assets or their proceeds of sale, then the Hedging Counterparty may open a new account for the Borrower. If it does not do so, it shall nevertheless be treated as if it had done so at the time when it received, or was deemed to have received, the notice. As from that time, any payment made to the Hedging Counterparty for the Borrower's account shall be credited (or be treated as having been credited) to the new account and shall not operate to reduce the amount for which the Security applies.

17. DELEGATION AND APPOINTMENT OF ATTORNEYS

17.1 Delegation

17.1.1 The Hedging Counterparty may delegate to any person or persons all or any of the powers, authorities and discretions which are exercisable under this Deed. A delegation may be made in any manner (including by power of attorney) in and on any terms (including power to sub-delegate) which the Hedging Counterparty thinks fit.

17.1.2 The Hedging Counterparty shall not be liable or responsible to the Borrower for any loss or damage arising from any act, default, omission or misconduct on the part of any of its delegates or sub-delegates.

17.2 Attorneys

17.2.1 By way of security, the Borrower irrevocably appoints the Hedging Counterparty, every Receiver and every delegate or sub-delegate appointed under Clause 17.1 (*Delegation*) separately to be its attorney on its behalf, in its name:

(a) to execute and do any documents, acts and things which the Borrower is required to execute and do under this Deed or any other document relating to the Secured Liabilities; and

(b) to execute and do any documents, acts and things which any attorney may deem proper or desirable in exercising any powers, authorities and discretions conferred by this Deed, any other document relating to the Secured Liabilities or by law on the Hedging Counterparty or any Receiver.

17.2.2 The Borrower ratifies and confirms anything which any of its attorneys does in the proper and lawful exercise or purported exercise of all or any of the powers, authorities and discretions referred to in this Clause 17.2 (*Attorneys*).

18. REDEMPTION OF PRIOR SECURITY INTERESTS

18.1 Redemption

The Hedging Counterparty may at any time redeem, or procure the transfer to it of, any prior Security Interest over any Security Assets at the Borrower's cost.

18.2 Costs of redemption

All principal monies, interest, costs, charges and expenses incurred in and incidental to any redemption or transfer under Clause 18.1 (*Redemption*) shall be paid by the Borrower on demand, in each case together with interest calculated in the manner referred to in Clause 22 (*Indemnities*).

19. RELEASES

19.1 Releases conditional

19.1.1 Any release, settlement, discharge, re-assignment or arrangement in respect of the Security (in this Clause 19 (*Releases*), a "**release**") made by the Hedging Counterparty on the faith of any assurance, security or payment shall be conditional on that assurance, security or payment not being avoided, reduced, clawed back or ordered to be repaid under any law relating to liquidation, bankruptcy or insolvency.

19.1.2 If any avoidance, reduction, or clawback occurs or any order is made as referred to in Clause 19.1.1, then the release shall have no effect and shall not prejudice the Hedging Counterparty's right to enforce the Security in respect of the Secured Liabilities. As between the Borrower and the Hedging Counterparty, the Security shall (notwithstanding the release) be deemed to have remained at all times in effect and held by the Hedging Counterparty as security for the Secured Liabilities.

19.2 Retention

19.2.1 If and for so long as any assurance, security or payment as is mentioned in Clause 19.1 (*Releases conditional*) remains in the reasonable opinion of the Hedging Counterparty susceptible of being avoided, reduced, clawed back or ordered to be repaid under any law relating to liquidation, bankruptcy or insolvency, the Hedging Counterparty may in its absolute discretion retain all or part of the Security and other rights under this Deed as security for the Secured Liabilities after they have been paid and discharged in full.

19.2.2 If, at any time while all or part of the Hedging Counterparty's rights under this Deed are so retained:

(a) an application is made to a competent court for a winding-up or bankruptcy order to be made in respect of the Borrower;

(b) steps are taken to wind the Borrower up or make the Borrower bankrupt;

(c) an application is made to a competent court for an administration order to be made in respect of the Borrower;

(d) a notice of intention to appoint an administrator to the Borrower is filed at court; or

(e) the appointment of an administrator to the Borrower takes effect,

then the Hedging Counterparty may continue to retain all or part of its rights under this Deed for any further period as the Hedging Counterparty may determine in its absolute discretion.

20. CONTINUING SECURITY

20.1 Continuing security

The Security is continuing security and shall secure the ultimate balance of the Secured Liabilities, notwithstanding:

20.1.1 intermediate payment or discharge of the whole or part of the Secured Liabilities;

20.1.2 the Borrower's liquidation or other incapacity or any change in its constitution, name or style;

20.1.3 any change in the Hedging Counterparty's constitution, name or style, its absorption in or amalgamation with any other person or the acquisition of all or part of its undertaking by any other person; or

20.1.4 any other event, matter or thing.

20.2 Additional to other rights

The Security is in addition to (and shall not merge with, otherwise prejudice or affect or be prejudiced or affected by) any other remedy, guarantee, indemnity, Security Interest or other right which may be or have been created (by the Borrower or otherwise) in favour of the Hedging Counterparty. Accordingly, the Borrower's liability under this Deed shall not be prejudiced or affected by, and this Deed may be enforced notwithstanding:

20.2.1 the existence or invalidity of all or any of those rights; or

20.2.2 at any time, the Hedging Counterparty exchanging, releasing, varying, abstaining from perfecting or enforcing or otherwise dealing or omitting to deal with all or any of those rights.

21. THIRD PARTY PROTECTION

No purchaser, mortgagee or other person dealing with the Hedging Counterparty or a Receiver shall be concerned:

21.1 to enquire whether any of the Secured Liabilities have become due or payable or remain unpaid or undischarged;

21.2 whether the power which the Hedging Counterparty or Receiver is purporting to exercise has become exercisable; or

21.3 to see to the application of any money paid to the Hedging Counterparty or to a Receiver.

22. INDEMNITIES

The Borrower agrees to fully indemnify the Hedging Counterparty and any Receiver (and in the case of legal costs and expenses on a solicitor and own client basis) on demand against all liabilities, losses, claims, actions, damages, costs and expenses incurred by, made or brought against the Hedging Counterparty or Receiver (or any manager or agent appointed by the Hedging Counterparty or Receiver):

22.1 as a result of the Borrower's failure to perform any of its obligations under this Deed;

22.2 in the exercise (or purported exercise) of any of the powers or other rights conferred by this Deed;

22.3 in respect of any costs, charges or expenses incurred in connection with Clause 15 (*Currency Conversion*);

22.4 in respect of the redemption of any prior Security Interest over any Security Asset under Clause 18 (*Redemption of Prior Security Interests*)

22.5 as a result of the Borrower's breach of any current or other obligation or matter relating to the Properties; or

22.6 in respect of any other matter or thing done or omitted relating to the Security Assets,

together in each case with interest at the Interest Rate calculated on a daily basis from the date it is incurred or becomes payable to the Hedging Counterparty or the Receiver until the date of payment, whether before or after any judgment to the extent that default interest has not already accrued on such amounts under another provision of a Finance Document.

23. CALCULATIONS AND CERTIFICATES

Any certificate of or determination by the Hedging Counterparty specifying the amount of the Secured Liabilities is, in the absence of manifest error, conclusive evidence against the Borrower of the matters to which it relates.

24. PARTIAL INVALIDITY

All the provisions of this Deed are severable and distinct from one another and if at any time any provision is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of any of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

25. REMEDIES AND WAIVERS

No failure to exercise nor any delay in exercising any right or remedy under this Deed against the Borrower shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise, or the exercise of any other right or remedy. The rights and remedies provided are cumulative and not exclusive of any rights or remedies provided by law.

26. AMENDMENTS AND WAIVERS

Any provision of this Deed may be amended only if the Borrower and the Hedging Counterparty agree in writing and any breach of this Deed may be waived before or after it occurs only if the Hedging Counterparty so agrees in writing. A waiver given or consent granted by the Hedging Counterparty under this Deed will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

27. TRANSFER AND CONFIDENTIALITY

27.1 Transfer

27.1.1 The Hedging Counterparty may assign and/or transfer its rights and obligations under this Deed.

27.1.2 The Borrower shall not assign any of its rights or transfer any of its obligations under this Deed.

27.2 Confidentiality

The Hedging Counterparty may disclose to:

27.2.1 any transferee or potential transferee;

27.2.2 any assignee or potential assignee;

27.2.3 any person with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to or including the Secured Liabilities;

27.2.4 any ratings agency;

27.2.5 any of the officers, directors, employees, professional advisers, auditors, partners and representatives of the persons referred to in sub-clauses 27.2.1 to 27.2.4;

27.2.6 any of its Affiliates and to any of its or their officers, directors, employees, professional advisers, auditors, partners and representatives; and

27.2.7 any person to whom information is required or requested to be disclosed by any court of a competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;

27.2.8 any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes; and

27.2.9 any insurance company or underwriters in relation to the insurance of the Properties,

such confidential information as the Hedging Counterparty shall consider appropriate if any person to whom the confidential information is to be given is informed in writing of its confidential nature.

28. MANAGEMENT TIME

After the Security constituted by this Deed has become enforceable, or on investigating any event which it reasonably believes is a Default, the Hedging Counterparty reserves the right to charge for its management time or other resources (which will be calculated on the basis of such reasonable daily or hourly rates as the Hedging Counterparty may notify to the Borrower from time to time).

29. COUNTERPARTS

This Deed may be executed in any number of counterparts, all of which, taken together, shall constitute one and the same instrument and any party may enter into this Deed by executing a counterpart.

30. NOTICES

30.1 Communications in writing

Any communication to be made under or in connection with this Deed shall be made in writing in the English language and, unless otherwise stated, must be made by letter.

30.2 Addresses

The Hedging Counterparty may deliver any communication, document or notice to the Borrower relating to this Deed to its registered office, to any address to which a notice under any facility relating to the Secured Liabilities might be sent or any additional address the Borrower may notify to the Hedging Counterparty by not less than five business days' notice.

30.3 Delivery

30.3.1 Any communication or document made or delivered by one person to another under or in connection with this Deed will only be effective when it has been left at the relevant

address or five business days after being deposited in the post, postage prepaid, in an envelope addressed to it at that address.

30.3.2 Any communication or document to be made or delivered to the Hedging Counterparty will be effective only when actually received by the Hedging Counterparty and then only if it is expressly marked for the attention of the department or officer identified with Hedging Counterparty's signature below (or any substitute department or officer as the Hedging Counterparty shall specify for this purpose).

31. PARALLEL SECURITY DOCUMENTS

The Borrower may at any time enter into a Parallel Security Document. Entry into and performance of the terms of a Parallel Security Document shall not breach any term of this Deed.

32. GOVERNING LAW

This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

33. ENFORCEMENT

33.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including disputes regarding the existence, validity or termination of this Deed, the Security Interests intended to be created by it or any non-contractual obligations arising out of or in connection with it) (a "**Dispute**").

33.2 The Borrower agrees that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly it will not argue to the contrary.

33.3 This Clause 33.1 is for the benefit of the Hedging Counterparty only. The Hedging Counterparty may take proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Hedging Counterparty may take concurrent proceedings in any number of jurisdictions.

IN WITNESS whereof the Borrower has executed this Deed as a deed the year and date appearing on the first page of it.

SCHEDULE 1

THE PROPERTIES

Address	Title number(s)
Land and buildings on the south side of New Street, Birmingham known as The Burlington, New Street, Birmingham	WM607672
Land and buildings known as 128 New Street, Birmingham, B2 4DB	WM550238
Land and buildings on the south side of Queen Street, Wolverhampton known as Castle Yard Block, 63 Queen Street, Wolverhampton, WV1 3BY	WM912019, WM941854, P93864 and P170588
Land on the east side of Bostocks Lane, Sandiacre, Nottingham and Octavia House, Interchange 25 Business Park, Bostocks Lane, Sandiacre, Nottingham NG10 5QG together known as Interchange 25 Business Park, east of Bostocks Lane, Sandiacre, Nottingham, NG10 5QG	DY343595 and DY343596
Wayside House, Wilsons Lane, Coventry CV6 6NY known as Wayside Business Park, Coventry	WK188528
Piccadilly Arcade, 105 to 108 New Street, Birmingham, B2 4DH	WM32197
5 to 9 (inclusive) Lower Temple Street and 16 Stephenson Street, Birmingham, B2 4JD	WM292127
White House Block, 109 to 113 New Street and 1 and 2 Lower Temple Street, Birmingham, B2 4EU	WM859008
Latham House, 33 and 34 Paradise Street, Paradise Circus, Birmingham, B1 2AJ	WM423893
Hartlebury Distribution Park, Cursley Lane, Shenstone, Kidderminster, DY10 4DU	WR84899
Land on the South East Side of Queen Street and on the North East side of Market Street, Wolverhampton WV1 3AE known as Chapel Court	SF72181
Land lying to the west of Park Way, Rubery, B45 9PZ known as 1 The Limes/Doosan House	WM691598

SCHEDULE 2

FORM OF NOTICE TO AND ACKNOWLEDGEMENT BY TENANT

To: [*Insert name and address of tenant*]

Date: [ ]

Dear Sirs,

We (the "**Company**") have granted a legal charge dated [ ] to HSBC Bank plc in its capacity as ("**Hedging Counterparty**") [and a legal charge dated [ ] to HSBC UK Bank plc in its capacity as ["**Lender**"]] (the "**Legal Charge[s]**"). In terms of [those] Legal Charge[s] we have assigned by way of security and/or charged to the Hedging Counterparty [and the Lender] all rents and other sums due to us under the lease dated [ ] (the "**Lease**").

With effect from your receipt of this notice:-

1. you must pay all moneys due by you to the Company pursuant to, under or in connection with the Lease into our account entitled [Rent Account] with [insert address] (Account number [ ], Sort Code [ ]), unless and until you receive written notice from the Hedging Counterparty [or the Lender] to the contrary, in which event you should make all future payments as then directed by the Hedging Counterparty [or the Lender] (as applicable)];

2. we irrevocably authorise and instruct you:

   2.1 to disclose to the Hedging Counterparty [and the Lender] at our expense, such information relating to the Lease as the Hedging Counterparty [or the Lender] may from time to time request;

   2.2 to pay or release all or any part of the sums from time to time due and payable by you to us under the Lease only in accordance with this notice or the written instructions given to you by the Hedging Counterparty [or the Lender] from time to time;

   2.3 without requiring further approval from us, to provide the Hedging Counterparty [or the Lender] with such information relating to the Lease as it may from time to time request and to send it copies of all notices issued by you under the Lease to the Hedging Counterparty [or the Lender] as well as to us; and

   2.4 to send copies of all notices and other information given or received under the Lease to the Hedging Counterparty [or the Lender];

3. the Company remains liable to perform all the obligations assumed by it under the Lease; and

4. all rents and other sums accruing to or for the benefit of the Company arising from the Lease belong to the Hedging Counterparty and the Lender.

These instructions may not be revoked, nor may the terms of the Lease be amended, varied or waived without the prior written consent of the Hedging Counterparty [and the Lender].

This notice and any non-contractual obligations arising out of or in connection with it are governed by English law.

Please acknowledge receipt of this notice by signing the acknowledgement on the enclosed copy letter and returning it to the Hedging Counterparty at HSBC Bank plc, 6th Floor, 120 Edmund Street, Birmingham, B3 2QZ marked for the attention of Richard Holland [and the Lender at HSBC UK Bank plc, 6th Floor, 120 Edmund Street, Birmingham, B3 2QZ marked for the attention of Richard Holland].

Yours faithfully,

for and on behalf of
HORTONS' ESTATE LIMITED

[On copy only:]

To: HSBC Bank plc
[*insert address*]

FAO: [*insert details of the Relationship Manager*]; and

To: HSBC UK Bank plc
[*insert address*]

FAO: [*insert details of the Relationship Manager*].

We acknowledge receipt of a notice in the terms set out above and confirm that we have not received notice of any previous assignments or charges of or over any of the right and remedies in connection with the Lease other than a notice from HSBC UK Bank plc or HSBC Bank plc and that we will comply with the terms of that notice.

We further confirm that:-

1. we have made all necessary arrangements for all future payments under the Lease to be made to the account specified in paragraph 1 of this notice; and

2. we will not exercise any right to terminate the Lease or take any action to amend or supplement the Lease without the prior written consent of the Hedging Counterparty [and the Lender].

for and on behalf of
[INSERT TENANT'S DETAILS]

By: [ ]

Dated: [ ]

SCHEDULE 3

FORM OF NOTICE OF ASSIGNMENT OF INSURANCE

To: [*Insurer*]

Date: [ ]

Dear Sirs

[DESCRIPTION OF RELEVANT INSURANCE POLIC[Y][IES] INCLUDING POLICY NUMBER] (THE "POLIC[Y][IES]") [*refer to an attached schedule if there are a number of policies*]

1. We give you notice that we have entered into a legal charge dated [ ] in favour of HSBC Bank plc (the "**Hedging Counterparty**") [and a legal charge dated [ ] in favour of HSBC UK Bank plc (the "**Lender**")] (the "**Legal Charge[s]**").

2. We give you notice that, pursuant to the terms of the Legal Charge[s], we have assigned (and, to the extent not validly or effectively assigned, we have charged by way of fixed charge) to the Hedging Counterparty [and the Lender] by way of security all of our rights, title, interest and benefits relating to claims or proceeds of claims due to us under the Polic[y][ies].

3. With effect from the date of receipt of this notice, we instruct you to:

1.1 name the Hedging Counterparty [and the Lender] as loss payee in respect of [each of] the Polic[y][ies] in respect of claims in excess of £500,000];

1.2 name the Hedging Counterparty [and the Lender] as [composite] insured in respect [each of] the Polic[y][ies] (other than in respect of any professional indemnity, public liability and third party liability insurance policies);

1.3 promptly inform the Hedging Counterparty [and the Lender], without further approval from us, of any default in the payment of any premium or failure to renew [the][any] Policy;

1.4 advise the Hedging Counterparty [and the Lender] promptly of any proposed cancellation of [the][any] Policy and in any event at least 30 days before the cancellation is due to take place;

1.5 if the insurance cover under [the][any] Policy is to be reduced or any insured risks are to be restricted, advise the Hedging Counterparty [and the Lender] at least 30 days before the reduction or restriction is due to take effect; and

1.6 disclose to the Hedging Counterparty [and the Lender], without further approval from us, such information regarding the Polic[y][ies] as the Hedging Counterparty [or the Lender] may from time to time request and to send it copies of all notices issued by you under the Polic[y][ies].

4. The authority and instructions contained in this notice cannot be revoked or varied by us without the prior written consent of the Hedging Counterparty [and the Lender].

5. By countersigning this letter, you confirm that:

5.1 you have not received notice of any previous assignments or charges of or over any of the rights, title and interests and benefits referred to in this notice other than a notice from HSBC UK Bank plc or HSBC Bank plc;

1.7 you will not, without the Hedging Counterparty's [and the Lender's] prior written consent, exercise any right of set-off or counterclaim in relation to any amounts owed under or in connection with [the][any] Policy.

2. This notice, and any dispute or claim arising out of or in connection with it, shall be governed by and construed in accordance with English law.

Please accept this notice and your acknowledgement of the matters and instructions set out above within [5] days of receipt by signing, dating and returning the enclosed copy of this letter to the Hedging Counterparty at HSBC Bank plc, 6th Floor, 120 Edmund Street, Birmingham, B3 2QZ marked for the attention of Richard Holland [and the Lender at HSBC UK Bank plc, 6th Floor, 120 Edmund Street, Birmingham, B3 2QZ marked for the attention of Richard Holland].

Yours faithfully,

for and on behalf of
HORTONS' ESTATE LIMITED

Acknowledged:

.....

For and on behalf of

[*Name of insurer*]

EXECUTION PAGE

THE BORROWER

EXECUTED as a Deed)
(but not delivered until dated) by)
HORTONS' ESTATE LIMITED)
acting by a Director)
in the presence of:-)

Signature of witness:

Name of witness: AMELIA VILLIERS-STUART

Address:

Occupation: TRAINEE SOLICITOR

THE HEDGING COUNTERPARTY

SIGNED for and on behalf of)

HSBC BANK PLC)]

Communications to the Hedging Counterparty are to be delivered to:

Address:

For the attention of:Richard Holland