



Registration of a Charge

Company name: **HULME AND GIBSON LIMITED**

Company number: **00914978**



X4IX0R75

Received for Electronic Filing: **27/10/2015**

Details of Charge

Date of creation: **21/10/2015**

Charge code: **0091 4978 0006**

Persons entitled: **BIRNAM VILLA LP**

Brief description:

Contains fixed charge(s).

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

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

Certification statement: **I CERTIFY THAT 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:

SQUIRE PATTON BOGGS (UK) LLP



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 914978

Charge code: 0091 4978 0006

The Registrar of Companies for England and Wales hereby certifies that a charge dated 21st October 2015 and created by HULME AND GIBSON LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 27th October 2015 .

Given at Companies House, Cardiff on 28th October 2015

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

21 October

2015

**(1) BIRNAM VILLA LP
as the Noteholder**

- and -

**(2) THE COMPANIES NAMED IN THIS DEED AS SECURITY OBLIGORS
as Security Obligors**

**COMPOSITE GUARANTEE AND
DEBENTURE**

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THIS COMPOSITE GUARANTEE AND DEBENTURE is made on 21 October 2015

BETWEEN

- (1) **BIRNAM VILLA LP**, a limited partnership registered under the laws of Scotland, with the number SL011696 and with its registered office at 15 Atholl Crescent, Edinburgh EH3 8HA (the "Noteholder"); and
- (2) **THE COMPANIES LISTED IN SCHEDULE 1 TO THIS DEED** (the "Security Obligors").

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed:

- (a) terms defined in, or construed for the purposes of, the Loan Note Instrument (as defined below) have the same meanings when used in this Deed (unless the same are otherwise defined in this Deed); and
- (b) the following terms have the following meanings:

"Act" means the Law of Property Act 1925;

"Assigned Assets" means the Security Assets expressed to be assigned pursuant to clause 5.2 (*Security assignments*);

"Authorisation" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration;

"Commencement Date" means the date of the commencement of this Deed which is the date on which the Noteholder confirms to the Obligor that all required conditions to lending have been satisfied or waived (as the case may be), being the date of the Loan Note Instrument;

"Charged Investments" means the Charged Securities and all present and future Securities Rights accruing to all or any of the Charged Securities;

"Charged Securities" means the Securities specified in part 3 of schedule 3 (*Details of Security Assets*);

"Collateral" means, in relation to the Obligor and any Security Obligor, all property and assets, whether real or personal, tangible or intangible, in which the Obligor and/or any Security Obligor may, at any time, have any right, title or interest;

"Contract of Sale" means a contract for the supply of goods, or work done, or materials supplied, or hiring, or any other contract recording a commercial trading relationship, which may now or hereafter be entered into between an Obligor and a Debtor;

"Debtor" means any person, including anybody of persons corporate or unincorporated, incurring any payment obligation to an Obligor (whether under a present, future or prospective Contract of Sale or otherwise) and where the context so permits the person having the duty to administer the Debtor's estate upon death or Insolvency;

"Environmental Claim" means any claim, proceeding, formal notice or investigation by any person in respect of any Environmental Law;

"Environmental Law" means any applicable law or regulation which relates to:

- (i) the pollution or protection of the environment;
- (ii) harm to or the protection of human health;
- (iii) the conditions of the workplace; or
- (iv) any emission or substance capable of causing harm to any living organism or the environment;

"Event of Default" has the meaning ascribed to it in the Loan Note Instrument;

"Finance Documents" has the meaning ascribed to it in the Intercreditor Agreement;

"Financial Year" means any period of 12 calendar months;

"Guarantee" means the guarantee and indemnity contained in clause 2 (*Guarantee and indemnity*) as extended by schedule 2 (*The Guarantee*);

"Insurances" means all policies of insurance (and all cover notes) which are at any time held by, or written in favour of, a Security Obligor or in which a Security Obligor from time to time has an interest;

"Intellectual Property" means all present and future Intellectual Property Rights;

"Intellectual Property Rights" means:

- (a) any patents, trade marks, service marks, designs, business names, copyrights, design rights, moral rights, inventions, confidential information, know-how and other intellectual property rights and interests whether registered or unregistered; and
- (b) the benefit of all applications and rights to use such assets of each Security Obligor;

"Intercreditor Agreement" means the intercreditor ^{and} agreement dated on or around the date of this Deed between, among others, (1) Shawbrook Bank Limited; (2) Scott Walker; (3) the Noteholder; (4) Mave (UK) Ltd; (5) Hulme ~~and~~ Gibson Limited; (6) Crosshall Engineering Limited; (7) HG Rewinds Limited; (8) Silva Industries Limited; and (9) Wainwright and Gibson (Services) Limited;

"Inventory Insurances" means those policies of insurance (if any) specified in part 5 of schedule 3 (*Details of Security Assets*) and any other policies of insurance which may replace those policies of insurance;

"Loan Note Instrument" means up to £800,000 12% fixed rate secured loan notes 2020 constituted by an instrument entered into by HG Rewinds Limited on or around the date of this Deed;

"Material Adverse Effect" means a material adverse effect on:

- (a) the business, assets, financial condition or operation of the Obligor; or
- (b) the ability of the Obligor or a Security Obligor to perform its payment or other obligations arising under the Finance Documents; or
- (c) the ability of the Obligor or a Security Obligor to comply with any Finance Document to which it is a party;

"Party" means a party to this Deed;

"Permitted Encumbrance" means:

- (a) any Security Interest created or expressed to be created in favour of the Noteholder pursuant to the Finance Documents;
- (b) any lien arising by operation of law and in the ordinary course of trading and not as a result of any default or omission by any member of the Group;
- (c) any Security Interest created pursuant to the Shawbrook Facility; and
- (d) any Security Interest previously approved in writing by the Noteholder;

"P&M Insurances" means those policies of insurance (if any) specified in part 6 of schedule 3 (*Details of Security Assets*) and any other policies of insurance which may replace those policies of insurance;

"Real Property" means all estates and interests in freehold, leasehold and other immovable property (wherever situated) now or in future belonging to an Obligor, or in which the Obligor has an interest at any time, together with:

- (i) all buildings and fixtures (including trade fixtures) and fixed P&M at any time thereon;
- (ii) all easements, rights and agreements in respect thereof; and
- (iii) the benefit of all covenants given in respect thereof;

"Real Property Insurances" means those policies of insurance (if any) specified in part 7 of schedule 3 (*Details of Security Assets*) and any other policies of insurance which may replace those policies of insurance;

"Receivables" means all present and future book debts and other debts, rentals, royalties, fees, VAT and monetary claims and all other amounts at any time recoverable or receivable by, or due or owing to, any Security Obligor (whether actual or contingent and whether arising under contract or in any other manner whatsoever) together with:

- (a) the benefit of all rights, guarantees, Security Interests and remedies relating to any of the foregoing (including, without limitation, negotiable instruments, indemnities,

reservations of property rights, rights of tracing and unpaid vendor's liens and similar associated rights); and

- (b) all proceeds of any of the foregoing;

"Receiver" means any receiver or receiver and manager appointed by the Noteholder under this Deed;

"Relevant Jurisdiction" means, in relation to the Obligor or a Security Obligor:

- (d) its jurisdiction of incorporation;
- (e) any jurisdiction where any asset subject to or intended to be subject to the Security Documents to be created by it is situated; and
- (f) any jurisdiction where it conducts its business;

"Secured Obligations" means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or alone or in any other capacity whatsoever) of any member of the Group to the Noteholder under or pursuant to any Finance Document (including all monies covenanted to be paid under this Deed);

"Securities" means all stocks, shares, debentures, bonds, warrants, coupons, negotiable instruments, certificates of deposit or other securities or *"investments"* (as defined in part II of schedule II to the Financial Services and Markets Act 2000 as in force at the date of this Deed) now or in future owned (legally or beneficially) by a Security Obligor, held by a nominee on its behalf or in which such Security Obligor has an interest at any time;

"Securities Rights" means:

- (a) all dividends, distributions and other income paid or payable on the relevant Securities or Charged Securities or on any asset referred to in paragraph (b) of this definition;
- (b) all rights, monies or property accruing or offered at any time in relation to such Securities or Charged Securities whether by way of redemption, substitution, exchange, bonus or preference, under option rights or otherwise;

"Security" means the Security Interests created by or pursuant to this Deed;

"Security Assets" means all property and assets from time to time mortgaged, charged or assigned (or expressed to be mortgaged, charged or assigned) by or pursuant to this Deed;

"Security Interest" means any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, trust, trust arrangement for the purposes of providing security, assignment, assignment by way of security, tracing or other equitable right, or:

- (i) any other agreement or arrangement having the effect of conferring security (including any such interest arising under or in connection with any letter of credit);
- (ii) any other security interest of any kind or preferring any obligation of any person; or
- (iii) any other guarantee, indemnity, warranty, agreement or arrangement having the effect of conferring security;

"Security Period" means the period beginning on the date of this Deed and ending on the date on which:

- (a) all the Secured Obligations have been unconditionally and irrevocably paid and discharged in full;
- (b) the Loan Note Instrument has been terminated according to its terms; and
- (c) the Noteholder has no further commitment, obligation or liability under or pursuant to the Finance Documents;

"Shawbrook Facility" means the facility agreement dated on or around the date of this Deed and made between (1) the Security Obligors and (2) Shawbrook Bank Limited.

"Specified P&M" means the P&M (if any) specified in part 2 of schedule 3 (*Details of Security Assets*); and

"Specified Real Property" means the estates and interests in freehold, leasehold and other immovable property (if any) specified in part 1 of schedule 3 (*Details of Security Assets*), together with:

- (a) all buildings and fixtures (including trade fixtures) and fixed P&M at any time thereon;
- (b) all easements, rights and agreements in respect thereof;
- (c) the benefit of all covenants given in respect thereof; and
- (d) any other Real Property which the Noteholder may designate as **"Specified Real Property"**;

"Tax" means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same); and

1.2 Interpretation

- (a) Unless a contrary indication appears, any reference in this Deed to:
 - (i) the **"Obligor"**, a **"Security Obligor"** or the **"Noteholder"** shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
 - (ii) **"this Deed"**, the **"Loan Note Instrument"**, any other **"Finance Document"** or any other agreement or instrument shall be construed as a reference to this Deed, the Loan Note Instrument, such other Finance Document or such other agreement or instrument as varied, 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 obligations of any member of the Group or provides for further advances);
 - (iii) **"assets"** includes any present and future properties, revenues and rights of every description and includes uncalled capital;

- (iv) an Event of Default that is "**continuing**" shall be construed as meaning an Event of Default that has not been waived in writing by the Noteholder or remedied, to the satisfaction of the Noteholder, and any waiver given by the Noteholder, shall only apply to the specific occurrence of the specific event referred to in such waiver;
 - (v) "**including**" or "**includes**" means including or includes without limitation;
 - (vi) "**Secured Obligations**" includes obligations and liabilities which would be treated as such but for the liquidation or dissolution of or similar event affecting any member of the Group;
 - (vii) a provision of law is a reference to that provision as amended or re-enacted; and
 - (viii) the singular includes the plural and vice versa.
- (b) References to clauses, paragraphs and schedules are to be construed, unless otherwise stated, as references to clauses, paragraphs and schedules of and to this Deed and references to this Deed include its schedules.
 - (c) Clause and schedule headings are for convenience only and shall not affect the construction of this Deed.
 - (d) Each undertaking of any Security Obligor contained in this Deed must be complied with at all times during the Security Period.
 - (e) The terms of the other Finance Documents and of any side letters between any of the parties thereto in relation to any Finance Document are incorporated in this Deed to the extent required to ensure that any disposition of the property contained in this Deed is a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.
 - (f) If the Noteholder reasonably considers that an amount paid by any Security Obligor to it under a Finance Document is capable of being avoided or otherwise set aside on the liquidation or administration of such Security Obligor, then that amount shall not be considered to have been irrevocably paid for the purposes of this Deed.
 - (g) The liabilities and obligations of each Security Obligor under this Deed shall be joint and several. Each Security Obligor agrees to be bound by this Deed notwithstanding that any other Security Obligor which was intended to sign or be bound by this Deed did not so sign or is not bound by this Deed.
 - (h) The Parties intend that this document shall take effect as a deed notwithstanding the fact that a Party may only execute this document under hand.

1.3 Third party rights

A person who is not a Party shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed.

1.4 Intercreditor Agreement

This Deed should be read and construed subject to the terms of the Intercreditor Agreement. In the event of any inconsistency between the terms of this Deed and the Intercreditor Agreement, the terms of the Intercreditor Agreement shall prevail.

2. GUARANTEE AND INDEMNITY

2.1 Guarantee and indemnity

Each Security Obligor irrevocably and unconditionally:

- (a) guarantees in favour of the Noteholder punctual performance by each member of the Group of all obligations of each member of the Group under the Finance Documents;
- (b) undertakes in favour of the Noteholder that whenever a member of the Group does not pay any amount when due under, or in connection with, any Finance Document, such Security Obligor shall immediately on demand pay that amount as if it were the principal obligor; and
- (c) indemnifies the Noteholder immediately on demand against any cost, loss or liability suffered by the Noteholder, if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal. The amount of the cost, loss or liability shall be equal to the amount which the Noteholder would otherwise have been entitled to recover.

2.2 Extension of guarantee

The guarantee set out in this clause 2 is given subject to and with the benefit of the provisions set out in schedule 2 (*The Guarantee*).

3. COVENANT TO PAY

3.1 Covenant to pay

Each Security Obligor, as principal obligor and not merely as surety, covenants in favour of the Noteholder that it will pay and discharge the Secured Obligations from time to time when they fall due.

3.2 Default interest

- (a) 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 and in the manner agreed in the Finance Document under which such amount is payable and, in the absence of such agreement, at the Default Rate from time to time.
- (b) Default interest will accrue from day to day and will be compounded at such intervals as the Noteholder states are appropriate.

4. GRANT OF SECURITY

4.1 Nature of security

All Security Interests and dispositions created or made by or pursuant to this Deed are created or made:

- (a) in favour of the Noteholder;
- (b) with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994;
- (c) as continuing security for payment of the Secured Obligations; and
- (d) in accordance with the terms of the Intercreditor Agreement.

4.2 Qualifying floating charge

Paragraph 14 of schedule B1 to the Insolvency Act 1986 applies to any floating charge created by or pursuant to this Deed (and each such floating charge is a qualifying floating charge for the purposes of the Insolvency Act 1986).

5. FIXED SECURITY

5.1 Fixed charges

Each Security Obligor charges and agrees to charge all of its present and future right, title and interest in and to the following assets which are at any time owned by it, or in which it from time to time has an interest:

- (a) by way of legal mortgage the Specified Real Property;
- (b) by way of fixed charge:
 - (i) all Real Property and all interests in Real Property not charged by clause 5.1(a));
 - (ii) all licences to enter upon or use land and the benefit of all other agreements relating to land; and
 - (iii) the proceeds of sale of all Real Property other than Specified Real Property;
- (c) by way of fixed charge all Specified P&M;
- (d) by way of fixed charge the benefit of all contracts, licences and warranties relating to the Specified P&M;
- (e) by way of fixed charge all P&M (not charged by clauses 5.1(a), 5.1(b) or 5.1(c)) and the benefit of all contracts, licences and warranties relating to the same;
- (f) by way of fixed charge:
 - (i) all computers, vehicles, office equipment and other equipment (not charged by clause 5.1(c)); and

- (ii) the benefit of all contracts, licences and warranties relating to the same,
other than any which are for the time being part of any Security Obligor's Inventory;
- (g) by way of fixed charge the Charged Securities;
- (h) by way of fixed charge all Securities Rights from time to time accruing to the Charged Securities;
- (i) by way of fixed charge all rights which a Security Obligor may have at any time against any clearance or settlement system or any custodian in respect of any Charged Securities;
- (j) by way of fixed charge all Securities (not charged by clause 5.1(g));
- (k) by way of fixed charge (A) all Securities Rights from time to time accruing to those Securities and (B) all rights which such Security Obligor may have at any time against any clearance or settlement system or any custodian in respect of any Securities;
- (l) by way of fixed charge the Intellectual Property (if any) specified in part 4 of schedule 3 (*Details of Security Assets*);
- (m) by way of fixed charge all Intellectual Property (if any) not charged by clause 5.1(q);
- (n) to the extent that any Assigned Asset is not effectively assigned under clause 5.2 (*Security assignments*), by way of fixed charge, such Assigned Asset;
- (o) by way of fixed charge (to the extent not otherwise charged or assigned in this Deed):
 - (i) the benefit of all licences, consents, agreements and authorisations held or used in connection with the business of such Security Obligor or the use of any of its assets; and
 - (ii) any letter of credit issued in favour of such Security Obligor and all bills of exchange and other negotiable instruments held by it; and
- (p) by way of fixed charge all of the goodwill and uncalled capital of such Security Obligor.

5.2 Security assignments

Subject to the terms of the Intercreditor Agreement, each Security Obligor assigns and agrees to assign absolutely (subject to a proviso for reassignment on redemption) all its present and future right, title and interest in and to:

- (a) the proceeds of the sale of any Specified Real Property;
- (b) the proceeds of the sale of any Specified P&M;
- (c) the proceeds of the sale of any Charged Securities;

- (d) the proceeds of the sale of any Intellectual Property specified in part 4 of schedule 3 (*Details of Security Assets*);
- (e) the Inventory Insurances, all claims under the Inventory Insurances and the proceeds of the Inventory Insurances;
- (f) the P&M Insurances, all claims under the P&M Insurances and the proceeds of the P&M Insurances;
- (g) the Real Property Insurances, all claims under the Real Property Insurances and the proceeds of the Real Property Insurances;
- (h) the Insurances, all claims under the Insurances and all proceeds of the Insurances; and
- (i) the Receivables (not assigned under clauses 5.2(a) to 5.2(h) (inclusive) above).

To the extent that any Assigned Asset described in clauses 5.2(a) to 5.2(i) inclusive is not assignable, the assignment which that clause purports to effect shall operate as an assignment of all present and future rights and claims of such Security Obligor to any proceeds of an Assigned Asset.

5.3 Assigned Assets

The Noteholder is not obliged to take any steps necessary to preserve any Assigned Asset, or to make any enquiries as to the nature or sufficiency of any payment received by it pursuant to this Deed.

6. FLOATING CHARGE

Each Security Obligor charges and agrees to charge by way of floating charge all of its present and future:

- (a) assets and undertaking (wherever located) which are not effectively charged by way of fixed mortgage or charge or assigned pursuant to clause 5.1 (*Fixed charges*), clause 5.2 (*Security assignments*) or any other provision of this Deed; and
- (b) (whether or not effectively so charged or assigned) heritable property and all other property and assets in Scotland.

7. CONVERSION OF FLOATING CHARGE

7.1 Conversion by notice

The Noteholder may, by written notice to a Security Obligor, convert the floating charge created under this Deed into a fixed charge as regards all or any of the assets of such Security Obligor specified in the notice if:

- (a) an Event of Default has occurred and is continuing; or
- (b) the Noteholder (acting reasonably) considers any Security Assets (whether or not those specified in the notice) 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.

7.2 Small companies

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

7.3 Automatic conversion

The floating charge created under this Deed shall (in addition to the circumstances in which the same will occur under general law) automatically convert into a fixed charge:

- (a) in relation to any Security Asset which is subject to a floating charge if:
 - (i) such Security Obligor creates (or attempts or purports to create) any Security Interest on or over the relevant Security Asset without the prior written consent of the Noteholder; or
 - (ii) any third party levies or attempts to levy any distress, execution, attachment or other legal process against any such Security Asset; and
- (b) over all Security Assets of a Security Obligor which are subject to a floating charge if an administrator is appointed in respect of such Security Obligor or the Noteholder receives notice of intention to appoint such an administrator.

7.4 Partial conversion

The giving of a notice by the Noteholder pursuant to clause 7.1 (*Conversion by notice*) in relation to any class of assets of any Security Obligor shall not be construed as a waiver or abandonment of the rights of the Noteholder to serve similar notices in respect of any other class of assets or of any other right of the Noteholder.

8. CONTINUING SECURITY

8.1 Continuing security

The Security is continuing and will extend to the ultimate balance of the Secured Obligations regardless of any intermediate payment or discharge in whole or in part. This Deed shall remain in full force and effect as a continuing security for the duration of the Security Period.

8.2 Additional and separate security

This Deed is in addition to, without prejudice to, and shall not merge with, any other right, remedy, guarantee or Security Interest which the Noteholder may at any time hold for any Secured Obligation.

8.3 Right to enforce

This Deed may be enforced against each or any Security Obligor without the Noteholder first having recourse to any other right, remedy, guarantee or Security Interest held by or available to it.

9. LIABILITY OF SECURITY OBLIGORS RELATING TO SECURITY ASSETS

Notwithstanding anything contained in this Deed or implied to the contrary, each Security Obligor remains liable to observe and perform all conditions and obligations assumed by it in relation to the Security Assets. The Noteholder is under no obligation to perform or fulfil any such condition or obligation or to make any payment in respect of any such condition or obligation.

10. ACCOUNTS

No monies at any time standing to the credit of any account (of any type and however designated) of any Security Obligor with the Noteholder or in which any Security Obligor has an interest (and no rights and benefits relating thereto) shall be capable of being assigned to any third party.

11. REPRESENTATIONS

11.1 General

Each Security Obligor makes the representations and warranties set out in this clause 11 to the Noteholder.

11.2 No Security Interests

Its Security Assets are, or when acquired will be, beneficially owned by such Security Obligor free from any Security Interest other than:

- (a) as created by this Deed; and
- (b) as permitted by the Loan Note Instrument or the Inter-creditor Agreement.

11.3 No avoidance

This Deed creates the Security Interests which it purports to create and is not liable to be avoided or otherwise set aside on the liquidation or administration of any Security Obligor or otherwise.

11.4 Ownership of Security Assets

Each Security Obligor is the sole legal and beneficial owner of all the Security Assets identified against its name in schedule 3 (*Details of Security Assets*) except in respect of those Charged Securities (if any) which are held by a nominee for a Security Obligor, in which case such Security Obligor is the beneficial owner only of such Charged Securities.

11.5 No proceedings pending or threatened

Each Security Obligor hereby gives the representation set out at clause 10(e) (*Enforcement Proceedings*) of the Loan Note Instrument as if the same were set out in this Deed, save that the reference to the Obligor is a reference to the relevant Security Obligor.

11.6 Charged Securities

- (a) All Securities (including any Charged Securities) are fully paid.

- (b) If any Charged Securities are listed in part 3 of schedule 3 (*Details of Security Assets*) those Charged Securities constitute the entire share capital owned by each Security Obligor in the relevant company.

11.7 Time when representations made

- (a) All the representations and warranties in this clause 11 are made by each Security Obligor on the date of this Deed and are also deemed to be made by each Security Obligor on the date of each Notification.
- (b) Each representation or warranty deemed to be made after the date of this Deed shall be deemed to be made by reference to the facts and circumstances existing at the date the representation or warranty is deemed to be made.

12. UNDERTAKINGS BY SECURITY OBLIGORS

12.1 General warranties and representations

On the Commencement Date, and until the end of the Security Period, in addition to and without affecting any other warranty or representation given elsewhere in this Deed the Obligor warrants that:

- (i) Status

It is a limited partnership duly incorporated and validly existing under the laws of Scotland and has the power to own its property and assets and carry on its business as it is now being and will be conducted.

- (ii) Power and authority

It has the full power to enter into and perform its obligations under the Finance Documents to which it is a party and has taken all necessary action (corporate or otherwise) to authorise the unconditional execution, delivery and performance of its obligations under each such document in accordance with their respective terms.

- (b) Authorisations

- (i) All Authorisations required or desirable:

- (A) to enable it lawfully to enter into, exercise its rights in and comply with its obligations in the Finance Documents to which it is a party; and

- (B) to make the Finance Documents to which it is a party admissible in evidence in the Relevant Jurisdiction,

have been obtained or effected and are in full force and effect.

- (ii) All Authorisations necessary for the conduct of the business, trade and ordinary activities of members of the Group have been obtained or effected and are in full force and effect and any requirements thereof have been or will be at the appropriate time complied with or fulfilled.

(c) Binding obligations

The Finance Documents constitute legal, valid, binding and enforceable obligations of the persons party thereto.

(d) Non-violation

The entry into and performance of the Finance Documents and the transactions contemplated hereby and thereby do not and will not conflict with (a) any law or regulation or any official or judicial order; or (b) the memorandum or articles of association of the Obligor; or (c) any agreement or document to which the Obligor is a party or which is binding upon the Obligor or its Collateral.

(e) Litigation

Save as disclosed to the Noteholder in writing, no litigation, arbitration or administrative proceeding or claim exists (or is current or pending or, to the best of the knowledge of the Obligor, threatened against it) which might reasonably be expected to cause, by itself or together with any other such proceeding or claim, a Material Adverse Effect.

(f) Good title to assets

The Obligor has a good, valid and marketable title to, or valid leases or licences of and all appropriate Authorisations to use, the assets necessary to carry on its business as presently conducted.

(g) Unencumbered Collateral

Save for any Permitted Encumbrance or as disclosed to the Noteholder in writing, no disposition or Security Interest (whether created by the Obligor or otherwise) affects or may affect any of the Collateral.

(h) Existing Security Interests

Save for any Permitted Encumbrance or as disclosed in writing to the Noteholder:

(i) all of the Obligor's Collateral is unencumbered (save in favour of the Noteholder) or, if subject to a Security Interest other than to the Noteholder, is subject to intercreditor arrangements in a form and substance satisfactory to the Noteholder; and

(ii) no agreement is in place which could oblige the Obligor to create any Security Interest of the Obligor's Collateral.

(i) No default

It is not in breach or default under any contract affecting its assets or any agreement or arrangement or any statutory or legal requirement to an extent or in a manner which has or is reasonably likely to have a Materially Adverse Effect and no Event of Default has occurred.

(j) Tax

It has filed all tax returns and other reports required to be filed and has paid all Tax, rates and rent imposed on it or upon any of its Collateral that are due and payable.

(k) Deductions and withholdings

It is not required to make any deduction or withholding from any payment it may make under this Deed.

(l) Pari passu ranking

Its payment obligations under the Finance Documents rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

12.2 General covenants

(a) Restrictions

Throughout the duration of this Deed the Obligor shall not without the Noteholder's prior written consent:

- (i) create or permit to subsist any Security Interest over any of its Collateral (except pursuant to the Security Documents or Permitted Encumbrances); or
- (ii) make any loans or otherwise make credit (other than normal trade credit permitted pursuant to the terms of a Contract of Sale) available to any person; or
- (iii) sell, transfer, lease, lend or otherwise dispose of (whether by a single transaction or a number of transactions and whether related or not) the whole or any part of its interest in any Collateral except for the sale at full market value of stock in trade in the usual course of trading as conducted by the Obligor at the Commencement Date; or
- (iv) do or omit to do anything which would cause a breach of the Security Documents.

(b) Information and access

Throughout the duration of this Deed the Obligor shall comply and (where necessary) procure compliance at all times with all provisions contained within the Finance Documents, and shall provide to the Noteholder all such information and physical access to premises or locations owned or under the control of the Obligor as the Noteholder may require (acting reasonably) from time to time.

(c) Collateral Reporting and Monitoring Requirements

The Obligor shall comply with all the Collateral Reporting and Monitoring Requirements of Shawbrook Bank Limited (as that term is defined in the Shawbrook Facility) or such other requirements of Shawbrook Bank Limited (acting reasonably) which Shawbrook Bank Limited may notify in writing to the Obligor from time to time.

(d) Notification of default

The Obligor shall promptly notify the Noteholder of any Event of Default or Potential Event of Default (as that term is defined in the Shawbrook Facility).

(e) Distributions

Save for any dividend or other distribution declared, paid or made upon or in respect of any shares or other securities of the Obligor when it is made or to be made solely in an amount necessary to allow such Permitted Payment or payment of any amount of the Annual Sum or any Consultancy Payment (as each such term is defined in the Intercreditor Deed) to be paid, no dividend or other distribution may be declared, paid or made upon or in respect of any shares or other securities of the Obligor other than as permitted by the Noteholder in writing (which shall not be unreasonably withheld or delayed).

12.3 General undertakings

(a) Authorisations

The Obligor shall promptly obtain, comply with and do all that is necessary to maintain in full force and effect any Authorisation required under any law or regulation of a Relevant Jurisdiction to:

- (i) enable it to perform its obligations under the Finance Documents;
- (ii) ensure the legality, validity, enforceability or admissibility in evidence of any Finance Document; and
- (iii) carry on its business where failure to do so has or is reasonably likely to have a Material Adverse Effect.

(b) Compliance with laws

The Obligor shall comply in all respects with all laws to which it may be subject, if failure so to comply has or is reasonably likely to have a Material Adverse Effect.

(c) Continuing disclosure

The Obligor undertakes the Noteholder to disclose promptly to the Noteholder any fact or matter of which the Obligor becomes aware during the currency of this Deed, any actual or prospective Change of Control (as that term is defined in the Loan Note Instrument) whether in relation to the Obligor or of any surety, guarantor or indemnifier of the Obligor's obligations to the Noteholder or any prospective Security Interest to be created by the Obligor affecting any of its Collateral.

(d) Insolvency Regulation

For the purposes of The Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings (the "**Regulation**"), its 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(h) of the Regulation) in any other jurisdiction.

(e) **Change in Financial Year**

The Obligor shall advise the Noteholder should it change its Financial Year for any reason.

(f) **Conduct of business**

The Obligor shall conduct and carry on its business in a proper and efficient manner and keep or cause or procure to be kept proper books of account and not make any material alteration in the nature or mode of conduct of any such business.

(g) **Insurance**

Without prejudice to any particular requirements of the Noteholder, the Obligor shall maintain product and public liability insurances and such other insurances on and in relation to its business and assets against those risks and to the extent as is usual for companies carrying on the same or substantially similar business.

All insurances must be with reputable independent insurance companies or underwriters.

12.4 Restrictions on dealing

No Security Obligor shall do or agree to do any of the following without the prior written consent of the Noteholder:

- (a) create or permit to subsist any Security Interest on any Security Assets except a Security Interest which is permitted by the Loan Note Instrument;
- (b) sell, transfer, lease, lend or otherwise dispose of (whether by a single transaction or a number of transactions and whether related or not) the whole or any part of its interest in any Security Asset except for the sale at full market value of stock in trade in the usual course of trading as conducted by such Security Obligor at the Commencement Date.

12.5 Security Assets generally

Each Security Obligor shall:

- (a) permit the Noteholder (or its designated representatives), on reasonable written notice:
 - (i) access during normal office hours to any documents and records relating to the Security Assets; and
 - (ii) to inspect, take extracts from, and make photocopies of, the same,

and to provide (at the expense of the Obligor), such clerical and other assistance which the Noteholder may reasonably require to do this;

- (b) notify the Noteholder of every notice, order, application, requirement or proposal given or made by any competent authority:
 - (i) in relation to any Security Asset specified in schedule 3 (*Details of Security Assets*), immediately upon receipt; and
 - (ii) within 14 days of receipt of every notice, order, application, requirement or proposal given or made in relation to any Security Assets other than Security Asset specified in schedule 3 (*Details of Security Assets*),

and (if required by the Noteholder) immediately provide it with a copy of the same and either (A) comply with such notice, order, application, requirement or proposal or (B) make such objections to the same as the Noteholder may require or approve **PROVIDED ALWAYS** that notices in respect of limb (a) of the definition of Securities Rights shall be dealt with in accordance with clause 12.3(b)(i) above following the exercise by the Noteholder of its rights in accordance with clause 12.7(b);
- (c) duly and punctually pay all rates, rents, Taxes and other outgoings owed by it in respect of the Security Assets; and
- (d) in addition to any provisions of the Loan Note Instrument or this Deed relating to specific Security Assets:
 - (i) comply in all material respects with all obligations in relation to the Security Assets under any present or future law, regulation, order or instrument or under any bye-laws, regulations or requirements of any competent authority or other approvals, licences or consents;
 - (ii) comply with all material covenants and obligations affecting the Security Assets (or their manner of use);
 - (iii) not, except with the prior written consent of the Noteholder, enter into any onerous or restrictive obligation affecting any Security Asset;
 - (iv) provide the Noteholder with all information which it may reasonably request in relation to the Security Assets; and
 - (v) not do, cause or permit to be done anything which may in any way depreciate, jeopardise or otherwise prejudice the value or marketability of any Security Asset (or make any omission which has such an effect).

12.6 Specified P&M

Each Security Obligor undertakes that it is the owner, with full title guarantee, of the Specified P&M listed by its name in schedule 3 (*Details of Security Assets*) and in relation to that Specified P&M, that it shall at all times comply with paragraphs 6(c)(i), 6(e), 6(f), 6(g)(i) of Schedule 4 (*Real Property Facility terms and conditions*) to the Shawbrook Facility as if those paragraphs were set out in this Deed mutatis mutandis and references to the "Obligor" in those paragraphs and the definitions used in those paragraphs are deemed to be references to the relevant Security Obligor.

12.7 Specified Real Property

Each Security Obligor undertakes that it is the owner, with full title guarantee, of the Specified Real Property listed by its name in schedule 3 (*Details of Security Assets*) and in relation to that Specified Real Property, that it shall at all times comply with paragraphs 6(c)(i), 6(e), 6(f), 6(g)(i) of schedule 4 (*Real Property Facility terms and conditions*) to the Shawbrook Facility as if those paragraphs were set out in this Deed mutatis mutandis and references to the "Obligor" in those paragraphs and the definitions used in those paragraphs are deemed to be references to the relevant Security Obligor.

12.8 Charged Securities

- (a) In relation to any Charged Securities, each Security Obligor shall, immediately upon execution of this Deed or (if later), as soon as is practicable after its acquisition of any such Charged Securities in certificated form, by way of security for the Secured Obligations:
 - (i) deposit with the Noteholder or as the Noteholder may direct, all certificates and other documents of title or evidence of ownership to such Charged Securities and their Securities Rights; and
 - (ii) execute and deliver to the Noteholder pre-stamped instruments of transfer in respect of such Charged Securities (executed in blank and left undated) and/or such other documents as the Noteholder shall require to enable it (or its nominees) to be registered as the owner of or otherwise to acquire a legal title to such Charged Securities and their Securities Rights (or to pass legal title to any purchaser).
- (b) In relation to any Charged Securities, each Security Obligor shall:
 - (i) promptly give notice to any custodian of any agreement with such Security Obligor in respect of any such Charged Securities and all present and future Securities Rights accruing to all or any of such Charged Securities, in a form the Noteholder may require; and
 - (ii) use its reasonable endeavours to ensure that the custodian acknowledges that notice in a form the Noteholder may require.
- (c) Without prejudice to the rest of this clause 12.8, the Noteholder may, at the expense of the relevant Security Obligor, take whatever action is required for the dematerialisation or rematerialisation of any Charged Securities and all present and future Securities Rights accruing to all or any of such Charged Securities.
- (d) Each Security Obligor shall promptly pay all calls or other payments which may become due in respect of Charged Securities and all present and future Securities Rights accruing to all or any of such Charged Securities.
- (e) Each Security Obligor shall immediately upon a request from the Noteholder comply with the provisions of this clause 12.8 in relation to any Securities other than the Charged Securities and their Securities Rights.

12.9 Rights in respect of Securities, Charged Securities and Securities Rights

- (a) Until an Event of Default occurs, each Security Obligor shall be entitled to:
 - (i) receive and retain all dividends, distributions and other monies paid on or derived from its Securities and its Charged Securities; and
 - (ii) exercise all voting and other rights and powers attaching to its Securities and its Charged Securities, provided that it must not do so in a manner which (A) has the effect of changing the terms of the Securities or the Charged Securities (or any class of them) or of any Securities Rights or (B) which is prejudicial to the interests of the Noteholder.
- (b) Subject to the terms of the Intercreditor Agreement, at any time following the occurrence of an Event of Default which is continuing, Noteholder may complete the instrument(s) of transfer for all or any Securities or Charged Securities on behalf of any Security Obligor in favour of itself or such other person as it may select.
- (c) Subject to the terms of the Intercreditor Agreement, at any time when any Securities or Charged Securities are registered in the name of the Noteholder or its nominee, the Noteholder shall be under no duty to:
 - (i) ensure that any dividends, distributions or other monies payable in respect of such Securities or Charged Securities are duly and promptly paid or received by it or its nominee; or
 - (ii) verify that the correct amounts are paid or received; or
- (d) take any action in connection with the taking up of any (or any offer of any) Securities Rights in respect of or in substitution for any such Securities or Charged Securities.

12.10 Intellectual Property

Unless the Noteholder is of the opinion that the relevant Intellectual Property is of minor importance to the Group each Security Obligor shall:

- (a) do all acts as are reasonably practicable to maintain, protect and safeguard (including, without limitation, registration with all relevant authorities) its Intellectual Property and not discontinue the use of any of its Intellectual Property; and
- (b) take all such reasonable steps, including the commencement of legal proceedings, as may be necessary to safeguard and maintain the validity, reputation, integrity, registration or subsistence of its Intellectual Property.

12.11 Proceeds of the sale of certain Charged Securities, Specified P&M, Real Property and Intellectual Property

The Security Obligors undertake to deal with the proceeds of sale of the Security Assets referred to at clauses 5.2(a) to (d) inclusive in accordance with the terms of the Loan Note Instrument or otherwise, in accordance with the terms of any consent issued by the Noteholder to a Security Obligor in relation to any such Security Asset.

12.12 Insurance

In relation to any Insurances, each Security Obligor shall at all times comply with the provisions of the Shawbrook Facility as if the same were set out in this Deed and references to "**Obligor**" in these paragraphs and the definitions used in these paragraphs are found to be references to each Security Obligor.

12.13 Further Borrowings

Each Security Obligor shall procure that none of the Subsidiaries shall enter into any borrowing or other funding facility or grant security with or to any third party other than with the Noteholder's prior written consent.

13. POWER TO REMEDY

13.1 Power to remedy

If at any time a Security Obligor does not comply with any of its obligations under this Deed, the Noteholder (without prejudice to any other rights arising as a consequence of such non-compliance) shall be entitled (but not bound) to rectify that default. The relevant Security Obligor irrevocably authorises the Noteholder and its employees and agents by way of security to do all things (including entering the property of such Security Obligor) which are necessary or desirable to rectify that default.

13.2 Mortgagee in possession

The exercise of the powers of the Noteholder under this clause 13 shall not render it liable as a mortgagee in possession.

13.3 Monies expended

The relevant Security Obligor shall pay to the Noteholder on demand any monies which are expended by the Noteholder in exercising its powers under this clause 13, together with interest at the Default Rate from the date on which those monies were expended by the Noteholder (both before and after judgment) and otherwise in accordance with clause 3.2 (*Default interest*).

14. WHEN SECURITY BECOMES ENFORCEABLE

14.1 When enforceable

This Security shall become immediately enforceable upon the occurrence of an Event of Default and shall remain so for so long as such Event of Default is continuing.

14.2 Statutory powers

The power of sale and other powers conferred by section 101 of the Act (as amended or extended by this Deed) shall be immediately exercisable upon and at any time after the occurrence of any Event of Default and for so long as such Event of Default is continuing.

14.3 Enforcement

After this Security has become enforceable, the Noteholder may in its absolute discretion enforce all or any part of the Security in such manner as it sees fit.

15. ENFORCEMENT OF SECURITY

15.1 General

For the purposes of all powers implied by statute, the Secured Obligations are deemed to have become due and payable on the date of this Deed. Sections 93 and 103 of the Act shall not apply to the Security. The statutory powers of leasing conferred on the Noteholder are extended so as to authorise the Noteholder to lease, make agreements for leases, accept surrenders of leases and grant options as the Noteholder may think fit and without the need to comply with section 99 or 100 of the Act.

15.2 Powers of the Noteholder

- (a) At any time after the Security becomes enforceable, the Noteholder may without further notice (unless required by law):
 - (i) (or if so requested by any Security Obligor by written notice at any time may) appoint any person or persons to be a receiver or receiver and manager of all or any part of the Security Assets and/or of the income of the Security Assets; and/or
 - (ii) appoint or apply for the appointment of any person who is appropriately qualified as administrator of a Security Obligor; and/or
 - (iii) exercise all or any of the powers conferred on mortgagees by the Act (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; and/or
 - (iv) exercise (in the name of any Security Obligor and without any further consent or authority of such Security Obligor) any voting rights and any powers or rights which may be exercised by the person(s) in whose name the Charged Investments are registered, or who is the holder of any of them.
- (b) The Noteholder is not entitled to appoint a Receiver in respect of any Security Assets of any Security Obligor which are subject to a charge which (as created) was a floating charge solely by reason of a moratorium being obtained under the Insolvency Act 2000 (or anything done with a view to obtaining such a moratorium) in respect of such Security Obligor.

15.3 Redemption of prior mortgages

At any time after the Security has become enforceable, the Noteholder may:

- (a) redeem any prior Security Interest against any Security Asset; and/or
- (b) procure the transfer of that Security Interest to itself; and/or
- (c) settle and pass the accounts of the holder of any prior Security Interest and any accounts so settled and passed shall be conclusive and binding on each Security Obligor.

All principal, interest, costs, charges and expenses of and incidental to any such redemption and/or transfer shall be paid by the relevant Security Obligor to the Noteholder on demand.

15.4 Privileges

Each Receiver and the Noteholder is entitled to all the rights, powers, privileges and immunities conferred by the Act on mortgagees and receivers when such receivers have been duly appointed under the Act, except that section 103 of the Act does not apply.

15.5 No liability

- (a) Neither the Noteholder nor any Receiver shall be liable (i) in respect of all or any part of the Security Assets or (ii) for any loss or damage which arises out of the exercise or the attempted or purported exercise of, or the failure to exercise any of, its or his respective powers (unless such loss or damage is caused by its or his gross negligence or wilful misconduct).
- (b) Without prejudice to the generality of clause 15.5(a), neither the Noteholder nor any Receiver shall be liable, by reason of entering into possession of a Security Asset, to account as mortgagee in possession or for any loss on realisation or for any default or omission for which a mortgagee in possession might be liable.

15.6 Protection of third parties

No person (including a purchaser) dealing with the Noteholder or any Receiver or its or his agents will be concerned to enquire:

- (a) whether the Secured Obligations have become payable; or
- (b) whether any power which the Noteholder or the Receiver is purporting to exercise has become exercisable; or
- (c) whether any money remains due under any Finance Document; or
- (d) how any money paid to the Noteholder or to the Receiver is to be applied.

16. RECEIVER

16.1 Removal and replacement

The Noteholder 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.

16.2 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).

16.3 Remuneration

Any Receiver shall be entitled to remuneration for his services at a rate to be fixed by agreement between him and the Noteholder (or, failing such agreement, to be fixed by the Noteholder).

16.4 Payment by Receiver

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

16.5 Agent of Security Obligors

Any Receiver shall be the agent of the Security Obligors in respect of which it is appointed. Such Security Obligor 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 Noteholder shall incur no liability (either to such Security Obligor or to any other person) by reason of the appointment of a Receiver or for any other reason.

17. POWERS OF RECEIVER

17.1 General powers

Any Receiver shall have:

- (a) all the powers which are conferred by the Act on mortgagees in possession and receivers appointed under the Act;
- (b) (whether or not he is an administrative receiver) all the powers which are listed in schedule 1 to the Insolvency Act 1986; and
- (c) all powers which are conferred by any other law conferring power on receivers.

17.2 Additional powers

In addition to the powers referred to in clause 17.1 (*General powers*), a Receiver shall have the following powers:

- (a) 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;
- (b) to manage the Security Assets and the business of any Security Obligor as he thinks fit;
- (c) to redeem any security and to borrow or raise any money and secure the payment of any money in priority to the Secured Obligations for the purpose of the exercise of his powers and/or defraying any costs or liabilities incurred by him in such exercise;
- (d) 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 Act. Fixtures may be severed and sold separately from the Real Property containing them, without the consent of any Security Obligor. 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). Any such consideration may be payable in a lump sum or by instalments spread over such period as he thinks fit;

- (e) to alter, improve, develop, complete, construct, modify, refurbish or repair any building or land and to complete or undertake or concur in the completion or undertaking (with or without modification) of any project in which any Security Obligor 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);
- (f) 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 name of the relevant Security Obligor and, for that purpose, to enter into covenants and other contractual obligations in the name of, and so as to bind, such Security Obligor;
- (g) to take any such proceedings (in the name of any of the relevant Security Obligors or otherwise) 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);
- (h) to enter into or make any such agreement, arrangement or compromise as he shall think fit;
- (i) to insure, and to renew any insurances in respect of, the Security Assets as he shall think fit (or as the Noteholder shall direct);
- (j) 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 his partners and firm);
- (k) to form one or more Subsidiaries of any Security Obligor, and to transfer to any such Subsidiary all or any part of the Security Assets;
- (l) to operate any rent review clause in respect of any Real Property in respect of which he was appointed (or any part thereof) and to apply for any new or extended lease; and
- (m) to:
 - (i) 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;
 - (ii) 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
 - (iii) use the name of any Security Obligor for any of the above purposes.

18. APPLICATION OF PROCEEDS

18.1 Application

All monies received by the Noteholder or any Receiver after the Security has become enforceable shall (subject to the rights and claims of any person having a security ranking in priority to the Security) be applied in the following order:

- (a) *first*, in satisfaction of, or provision for, all costs, charges and expenses incurred, and payments made by the Noteholder or any Receiver and of all remuneration due to the Receiver in connection with this Deed or the Security Assets;
- (b) *secondly*, in or towards satisfaction of the remaining Secured Obligations; and
- (c) *thirdly*, in payment of any surplus to any Security Obligor or other person entitled to it.

18.2 Contingencies

If the Security is enforced at a time when no amounts are due under the Finance Documents (but at a time when amounts may become so due), the Noteholder or a Receiver may pay the proceeds of any recoveries effected by it into a blocked suspense account.

19. SET-OFF

19.1 Set-off

- (a) The Noteholder may (but shall not be obliged to) set off any obligation (contingent or otherwise under the Finance Documents or which has been assigned to the Noteholder) against any obligation (whether or not matured) owed by the Noteholder to the Security Obligor, regardless of the place of payment, booking branch or currency of either obligation.
- (b) If the obligations are in different currencies, the Noteholder may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.
- (c) If either obligation is unliquidated or unascertained, the Noteholder may set off in an amount estimated by it in good faith to be the amount of that obligation.

19.2 Time deposits

Without prejudice to clause 19.1 (*Set-off*) if any time deposit matures on any account which any Security Obligor has with the Noteholder at a time when:

- (a) this Security has become enforceable; and
- (b) no Secured Obligation is due and payable,

such time deposit shall automatically be renewed for such further maturity as the Noteholder in its absolute discretion considers appropriate unless the Noteholder otherwise agrees in writing.

20. DELEGATION

Each of the Noteholder and any Receiver may delegate, by power of attorney (or in any other manner) to any person, any right, power or discretion exercisable by it under this Deed upon any terms (including power to sub-delegate) which it may think fit. Neither the Noteholder nor any Receiver shall be in any way liable or responsible to any Security Obligor for any loss or liability arising from any act, default, omission or misconduct on the part of any such delegate or sub-delegate.

21. FURTHER ASSURANCES

21.1 Further action

Each Security Obligor shall, at its own expense, promptly take whatever action the Noteholder or a Receiver may require for:

- (a) creating, perfecting or protecting the Security Interests intended to be created by this Deed; and
- (b) facilitating the realisation of any Security Asset or the exercise of any right, power or discretion exercisable by the Noteholder or any Receiver or any of its or his delegates or sub-delegates in respect of any Security Asset,

including the execution of any transfer, conveyance, assignment or assurance of any property whether to the Noteholder or to its nominees, the giving of any notice, order or direction and the making of any registration which in any such case the Noteholder may think expedient.

21.2 Specific security

Without prejudice to the generality of clause 21.1 (*Further action*), each Security Obligor shall forthwith at the request of the Noteholder execute a legal mortgage, charge, assignment, assignation or other security over any Security Asset which is subject to or intended to be subject to any fixed security created by this Deed in favour of the Noteholder (including any arising or intended to arise pursuant to clause 7 (*Conversion of floating charge*)) in such form as the Noteholder may require.

22. POWER OF ATTORNEY

Each Security Obligor, by way of security, irrevocably and severally appoints the Noteholder, each Receiver and any of its or his delegates or sub-delegates to be its attorney to take any action which such Security Obligor is obliged to take under this Deed, including under clause 21 (*Further assurances*). Each Security Obligor ratifies and confirms whatever any attorney does or purports to do pursuant to its appointment under this clause.

23. PAYMENTS

23.1 Payments

Subject to clause 23.2 (*Gross-up*), all payments to be made by a Security Obligor in respect of this Deed shall be made:

- (a) in immediately available funds to the credit of such account as the Noteholder may designate; and
- (b) without (and free and clear of, and without any deduction for or on account of):
 - (i) any set-off or counterclaim; or
 - (ii) except to the extent compelled by law, any deduction or withholding for or on account of Tax.

23.2 Gross-up

If any Security Obligor is compelled by law to make any deduction or withholding from any sum payable under this Deed to the Noteholder, the sum so payable by such Security Obligor shall be increased so as to result in the receipt by the Noteholder of a net amount equal to the full amount expressed to be payable under this Deed.

23.3 Loan Note Instrument

Without prejudice to the provisions of clause 2 (*Guarantee and indemnity*) and each Security Obligor's obligations in accordance with this Deed, the Noteholder may at any time discharge a Security Obligor's obligation to make payment of any sums due by a Security Obligor to the Noteholder by debiting such sum to any account held by the Noteholder in relation to the Obligor.

24. STAMP DUTY

Each Security Obligor shall:

- (a) pay all present and future stamp, registration and similar Taxes or charges which may be payable, or determined to be payable, in connection with the execution, delivery, performance or enforcement of this Deed or any judgment given in connection therewith; and
- (b) indemnify the Noteholder and any Receiver on demand against any and all costs, losses or liabilities (including, without limitation, penalties) with respect to, or resulting from, its delay or omission to pay any such stamp, registration and similar Taxes or charges.

25. COSTS AND EXPENSES

25.1 Transaction and amendment expenses

Each Security Obligor shall promptly on demand pay to the Noteholder the amount of all reasonable costs, charges and expenses (including, without limitation, reasonable legal fees, valuation, accountancy and consultancy fees (and any VAT or similar Tax thereon)) incurred by the Noteholder in connection with:

- (a) the negotiation, preparation, printing, execution, registration, perfection and completion of this Deed, the Security or any document referred to in this Deed; or
- (b) any actual or proposed amendment or extension of, or any waiver or consent under, this Deed.

25.2 Enforcement and preservation costs

Each Security Obligor shall promptly on demand pay to the Noteholder and any Receiver the amount of all costs, charges and expenses (including (without limitation) legal fees (and any VAT or similar Tax thereon)) incurred by any of them in connection with the enforcement, exercise or preservation (or the attempted enforcement, exercise or preservation) of any of their respective rights under this Deed or any document referred to in this Deed or the Security (including all remuneration of the Receiver).

26. CURRENCIES

26.1 Conversion

All monies received or held by the Noteholder or any Receiver under this Deed may be converted from their existing currency into such other currency as the Noteholder or the Receiver considers necessary or desirable to cover the obligations and liabilities comprised in the Secured Obligations in that other currency at the Spot Rate of Exchange. Each Security Obligor shall indemnify the Noteholder against all costs, charges and expenses incurred in relation to such conversion. Neither the Noteholder nor any Receiver shall have any liability to any Security Obligor in respect of any loss resulting from any fluctuation in exchange rates after any such conversion.

26.2 Currency indemnity

No payment to the Noteholder (whether under any judgment or court order or in the liquidation, administration or dissolution of any Security Obligor or otherwise) shall discharge the obligation or liability of any Security Obligor in respect of which it was made, unless and until the Noteholder shall have received payment in full in the currency in which the obligation or liability was incurred and, to the extent that the amount of any such payment shall on actual conversion into such currency fall short of such obligation or liability expressed in that currency, the Noteholder shall have a further separate cause of action against any Security Obligor and shall be entitled to enforce the Security to recover the amount of the shortfall.

27. INDEMNITY

Each Security Obligor shall indemnify the Noteholder, any Receiver and any attorney, agent or other person appointed by the Noteholder under this Deed and the Noteholder's officers and employees (each an "**Indemnified Party**") on demand against any cost, loss, liability or expense (however arising) incurred by any Indemnified Party as a result of or in connection with:

- (a) anything done or omitted in the exercise or purported exercise of the powers contained in this Deed;
- (b) the Security Assets or the use or occupation of them by any person (including any Environmental Claim); or
- (c) any breach by any Security Obligor of any of its obligations under this Deed.

28. MISCELLANEOUS

28.1 Appropriation and suspense account

- (a) The Noteholder may apply all payments received in respect of the Secured Obligations in reduction of any part of the Secured Obligations as it thinks fit. Any such appropriation shall override any appropriation by any Security Obligor.
- (b) All monies received, recovered or realised by the Noteholder under, or in connection with, this Deed may at the discretion of the Noteholder be credited to a separate interest bearing suspense account for so long as the Noteholder determines (with interest accruing thereon at such rate, if any, as the Noteholder may determine for the account of the relevant Security Obligor) without the Noteholder having any

obligation to apply such monies and interest or any part thereof in or towards the discharge of any of the Secured Obligations.

28.2 New accounts

If the Noteholder receives, or is deemed to be affected by, notice, whether actual or constructive, of any subsequent Security Interest affecting any Security Asset and/or the proceeds of sale of any Security Asset or the Guarantee ceases to continue in force, it may open a new account or accounts for any Security Obligor. If it does not open a new account, it shall nevertheless be treated as if it had done so at the time when it received or was deemed to have received such notice. As from that time all payments made to the Noteholder will be credited or be treated as having been credited to the new account and will not operate to reduce any amount of the Secured Obligations.

28.3 Changes to the Parties

- (a) No Security Obligor may assign any of its rights under this Deed.
- (b) The Noteholder may assign or transfer all or any part of its rights under this Deed. Each Security Obligor shall, immediately upon being requested to do so by the Noteholder, enter into such documents as may be necessary or desirable to effect such assignment or transfer.

28.4 Memorandum and articles

Each Security Obligor certifies that the Security does not contravene any of the provisions of the memorandum or articles of association of that Security Obligor.

28.5 Amendments and waivers

Any provision of this Deed may be amended only if the Noteholder and the Security Obligors so agree in writing and any breach of this Deed may be waived before or after it occurs only if the Noteholder so agrees in writing. A waiver given or consent granted by the Noteholder 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.

28.6 Calculations and certificates

A certificate of the Noteholder specifying the amount of any Secured Obligation due from a Security Obligor (including details of any relevant calculation thereof) shall be prima facie evidence of such amount against each Security Obligor in the absence of manifest error.

28.7 Waiver, rights and remedies

No failure to exercise, nor any delay in exercising, on the part of the Noteholder, any right or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise 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.

29. NOTICES

29.1 Communications in writing

The provisions of clauses 11 to 13 inclusive of Schedule 3 to the the Loan Note Instrument shall apply to this Deed as if the same were set out in this Deed, provided that:

- (a) reference to "**each Party**" shall be deemed to be references to each party to this Deed; and
- (b) references to the "**Obligor**" shall be deemed to be references to each Security Obligor.

29.2 Electronic communications

No communication to be made under this Deed shall be made electronically.

29.3 Agent for service

Each Security Obligor (other than the Obligor) by its execution of this Deed irrevocably appoints the Obligor to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:

- (a) the Obligor on its behalf to supply all information concerning itself contemplated by this Deed to the Noteholder and to give all notices and instructions to make such agreements and to effect the relevant amendments, supplements and variations capable of being given, made or effected by any Security Obligor notwithstanding that they may affect the Security Obligor, without further reference to or the consent of that Security Obligor; and
- (b) the Noteholder to give any notice, demand or other communication to be given to that Security Obligor pursuant to the Finance Documents to the Obligor,

and in each case the Security Obligor shall be bound as though the Security Obligor itself had given the notices and instructions or executed or made the agreements or effected the amendments, supplements or variations, or received the relevant notice, demand or other communication.

30. 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.

31. RELEASE

Upon the expiry of the Security Period (but not otherwise) the Noteholder shall, at the request and cost of the Security Obligors, take whatever action is necessary to release or re-assign (without recourse or warranty) the Security Assets from the Security.

32. COUNTERPARTS

This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures (and seals, if any) on the counterparts were on a single copy of this Deed.

33. GOVERNING LAW

This Deed is governed by English law.

IN WITNESS of which this Deed has been duly executed by each Security Obligor as a deed and duly executed by the Noteholder and has been delivered on the first date specified on page 1 of this Deed.

SCHEDULE 1

Security Obligors

SPB

Company name	Company number
Hulme and Gibson Limited	00914978
Crosshall Engineering Limited	04048592
Wainwright and Gibson (Services) Limited	07872626
HG Rewinds Limited	08911097
Silva Industries Limited	04683243

SCHEDULE 2

The Guarantee

1. Continuing guarantee

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any Security Obligor under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

2. Reinstatement

If any payment by a Security Obligor, or any discharge given by the Noteholder (whether in respect of the obligations of any Security Obligor or any security for those obligations or otherwise) is avoided or reduced as a result of insolvency or any similar event:

- (a) the liability of each Security Obligor under this Deed shall continue as if the payment, discharge, avoidance or reduction had not occurred; and
- (b) the Noteholder shall be entitled to recover the value or amount of that security or payment from each Security Obligor, as if the payment, discharge, avoidance or reduction had not occurred.

3. Waiver of defences

The obligations of each Security Obligor under this Deed will not be affected by an act, omission, matter or thing which, but for this Deed, would reduce, release or prejudice any of its obligations under this Deed (without limitation and whether or not known to it or to the Noteholder) including:

- (a) any time, waiver or consent granted to, or composition with, any Security Obligor or other person;
- (b) the release of any other Security Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Security Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of a Security Obligor or any other person;
- (e) any amendment, novation, supplement, extension (whether of maturity or otherwise), restatement or replacement (in each case, however fundamental and of any nature whatsoever including, without limitation, which results in any increase in any amount due or owing under any Finance Document or in the rate of interest or any other sum payable under any Finance Document) of a Finance Document or any other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or

(g) any insolvency, administration or similar proceedings.

4. Immediate recourse

Each Security Obligor waives any right it may have of first requiring the Noteholder to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Security Obligor under this schedule 2. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

5. Appropriations

Until all amounts which may be or become payable during the Security Period by the Security Obligors under or in connection with the Finance Documents have been irrevocably paid in full, the Noteholder may:

- (a) refrain from applying or enforcing any other monies, security or rights held or received by the Noteholder in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Security Obligor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any monies received from any Security Obligor or on account of any Security Obligor's liability under this schedule 2.

6. Deferral of guarantors' rights

Until all amounts which may be or become payable during the Security Period by the Security Obligors under, or in connection with, the Finance Documents have been irrevocably paid in full and unless the Noteholder otherwise directs, no Security Obligor will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents:

- (a) to be indemnified by a Security Obligor;
- (b) to claim any contribution from any other guarantor of any Security Obligor's obligations under the Finance Documents; and/or
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Noteholder under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by the Noteholder.

7. Additional security

This guarantee is in addition to, and is not in any way prejudiced by, any other guarantee or security at the date of this guarantee or subsequently held by the Noteholder.

SCHEDULE 3

Details of Security Assets

Part 1 - Specified Real Property

Registered land				
Security Obligor	Address	Administrative Area		Title Number
Crosshall Engineering Limited	251 Cleveland Street, Birkenhead CH41 3SB	Wirral, Merseyside		MS47763
Unregistered land				
Security Obligor	Address	Document describing the Property		
		Date	Document	Parties
[]	[]	[]	[]	[]

Part 2 - Specified P&M

Security Obligor	P&M
[]	[]

Part 3 - Charged Securities

Security Obligor	Name of company in which shares are held	Class of shares held	Number of shares held	Issued share capital
H G Rewinds Limited	Hulme and Gibson Limited	Ordinary	3,750	3,750
H G Rewinds Limited	Silva Industries Limited	'A' ordinary 'B' ordinary	100 'A's 100 'B's	200
Silva Industries Limited	Crosshall Engineering Limited	Ordinary	20,000	20,000
Silva Industries Limited	Wainwright and Gibson (Services) Limited	Ordinary	100	100

Security Obligor	Name of company in which shares are held	Class of shares held	Number of shares held	Issued share capital
H G Rewinds Limited	H G Rewinds Limited	'A' ordinary 'B' ordinary Preference	10,000 'A's 10,000 'B's 32,500	52,500

Part 4 - Intellectual Property

Intellectual Property
☐

Part 5 - Inventory Insurances

Security Obligor	Insurer	Insured risks	Policy number
☐	☐	☐	☐
☐	☐	☐	☐

Part 6 - P&M Insurances

Security Obligor	Insurer	Insured risks	Policy number
Silva Industries Limited Crosshall Engineering Limited Wainwright and Gibson (Services) Limited	Aviva Insurance	Motor Fleet	47MF171995454

Part 7 - Real Property Insurances

Security Obligor	Insurer	Insured risks	Policy number
Silva Industries Limited Crosshall Engineering Limited Wainwright and Gibson (Services)	Aviva Insurance	Commercial Combined	25056122CCI

Limited			
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EXECUTION PAGE

BIRNAM VILLA LP

Executed as a deed, but not delivered until the)
first date specified on page 1, by JOHN)
SULLEY, a partner the presence of:)

)

JOHN SULLEY - PARTNER

Witness Signature _____

Witness Name HALINA ABSALOM

Address 37 BATH ROAD

EMSWORTH HANTS

PO10 7ER

Occupation FLORIST

THE SECURITY OBLIGORS

Executed as a deed, but not delivered until the)
first date specified on page 1, by HULME &)
GIBSON LIMITED acting by a director in the)
presence of:)

) Director

AND

Witness Signature _____

Witness Name _____

Address _____

Occupation _____

SPB

EXECUTION PAGE

BIRNAM VILLA LP

Executed as a deed, but not delivered until the)
first date specified on page 1, by JOHN)
SULLEY, a partner the presence of:)
)

JOHN SULLEY - PARTNER

Witness Signature _____

Witness Name _____

Address _____

Occupation _____

THE SECURITY OBLIGORS

Executed as a deed, but not delivered until the)
first date specified on page 1, by HULME &)
GIBSON LIMITED acting by a director in the)
presence of:)

AND

) Director

Witness Signature _____

Witness Name Richard Underwood

Address _____

Legal Clarity Solicitors
Avebury House
55 Newhall Street
Birmingham B3 3RB
Tel: 08456 800727

LEGAL
CLARITY
SOLICITORS

Occupation _____

Executed as a deed, but not delivered until the)
first date specified on page 1, by **CROSSHALL**)
ENGINEERING LIMITED acting by a director)
in the presence of:) Director

Witness Signature

Witness Name

Address

Legal Clarity Solicitors

Avebury House

55 Newhall Street

Birmingham B3 3RB

Tel: 08456 800727

LEGAL
CLARITY
SOLICITORS

Occupation

Executed as a deed, but not delivered until the)
first date specified on page 1, by)
WAINWRIGHT AND GIBSON (SERVICES))
LIMITED acting by a director in the presence) Director
of:

Witness Signature

Witness Name

Address

Legal Clarity Solicitors

Avebury House

55 Newhall Street

Birmingham B3 3RB

Tel: 08456 800727

Occupation

Executed as a deed, but not delivered until the)
first date specified on page 1, by **HG REWINDS**)
LIMITED acting by a director in the presence)
of:)

Director

Witness Signature

Witness Name

Richard Underwood

Address

Legal Clarity Solicitors
Avebury House
55 Newhall Street
Birmingham B3 3RB
Tel: 08456 800727

LEGAL
CLARITY
SOLICITORS

Occupation

Executed as a deed, but not delivered until the)
first date specified on page 1, by **SILVA**)
INDUSTRIES LIMITED acting by a director in)
the presence of:)

Director

Witness Signature

Witness Name

Richard Underwood

Address

Legal Clarity Solicitors
Avebury House
55 Newhall Street
Birmingham B3 3RB
Tel: 08456 800727

LEGAL
CLARITY
SOLICITORS

Occupation