

MR01

Particulars of a charge

111914-13



A fee is payable with this form
Please see 'How to pay' on the
last page

You can use the WebFiling service to file this form online
Please go to www.companieshouse.gov.uk

☒ **What this form is for**
You may use this form to register
a charge created or evidenced by
an instrument

☒ **What this form is NOT for**
You may not use this form to
register a charge where there is no
instrument. Use form MR08

For further information, please
refer to our guidance at
www.companieshouse.gov.uk

This form **must be delivered to the Registrar for registration** within
21 days beginning with the day after the date of creation of the charge.
If the form is delivered outside of the 21 days it will be rejected unless it is accompanied by a
court order extending the time for delivery

☒ You **must** enclose a certified copy of the instrument with this form
scanned and placed on the public record. **Do not send the original**



A31 12/12/2014 #12
COMPANIES HOUSE

1 Company details

Company number 02012379
Company name in full Thomas Cook Airlines Limited
(as "Mortgagor")

95 For official use

→ **Filling in this form**
Please complete in typescript or in
bold black capitals
All fields are mandatory unless
specified or indicated by *

2 Charge creation date

Charge creation date 05/12/2014

3 Names of persons, security agents or trustees entitled to the charge

Please show the names of each of the persons, security agents or trustees
entitled to the charge

Name DVB Bank SE, London Branch, Park House, 16-18 Finsbury
Circus EC2M 7EB (as Security Trustee for the Secured Parties)

Name

Name

Name

If there are more than four names, please supply any four of these names then
tick the statement below

☐ I confirm that there are more than four persons, security agents or
trustees entitled to the charge

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4

Brief description

Please give a short description of any land, ship, aircraft or intellectual property registered or required to be registered in the UK subject to a charge (which is not a floating charge) or fixed security included in the instrument

Please submit only a short description if there are a number of plots of land, aircraft and/or ships, you should simply describe some of them in the text field and add a statement along the lines of, "for more details please refer to the instrument"

Please limit the description to the available space

Brief description

The mortgaged property being one (1) Boeing 757-200 aircraft bearing manufacturer's serial number 28674, two (2) Rolls-Royce RB211-535E4 engines bearing engine serial numbers 31455 and 31445 and the Technical Records.

Please refer to the instrument for further details.

5

Other charge or fixed security

Does the instrument include a charge (which is not a floating charge) or fixed security over any tangible or intangible or (in Scotland) corporeal or incorporeal property not described above? Please tick the appropriate box

☐ Yes

☒ No

6

Floating charge

Is the instrument expressed to contain a floating charge? Please tick the appropriate box

☐ Yes Continue

☒ No Go to **Section 7**

Is the floating charge expressed to cover all the property and undertaking of the company?

☐ Yes

7

Negative Pledge

Do any of the terms of the charge prohibit or restrict the company from creating further security that will rank equally with or ahead of the charge? Please tick the appropriate box

☒ Yes

☐ No

8

Trustee statement ①

You may tick the box if the company named in Section 1 is acting as trustee of the property or undertaking which is the subject of the charge

☐

① This statement may be filed after the registration of the charge (use form MR06)

9

Signature

Please sign the form here

Signature

Signature

X

Clifford Chance LLP

X

This form must be signed by a person with an interest in the charge

MR01

Particulars of a charge

**Presenter information**

You do not have to give any contact information, but if you do, it will help Companies House if there is a query on the form. The contact information you give will be visible to searchers of the public record.

Contact name **Bola Coker**Company name
Clifford Chance LLPAddress **10 Upper Bank Street**Post town **London**

County/Region

Postcode **E 1 4 5 J J**Country **United Kingdom**DX **149120 Canary Wharf 3**Telephone **020 7006 1000****Certificate**

We will send your certificate to the presenter's address if given above or to the company's Registered Office if you have left the presenter's information blank.

**Checklist**

We may return forms completed incorrectly or with information missing.

Please make sure you have remembered the following:

- ☐ The company name and number match the information held on the public Register
- ☐ You have included a certified copy of the instrument with this form
- ☐ You have entered the date on which the charge was created
- ☐ You have shown the names of persons entitled to the charge
- ☐ You have ticked any appropriate boxes in Sections 3, 5, 6, 7 & 8
- ☐ You have given a description in Section 4, if appropriate
- ☐ You have signed the form
- ☐ You have enclosed the correct fee
- ☐ Please do not send the original instrument, it must be a certified copy

**Important information**

Please note that all information on this form will appear on the public record.

**How to pay**

A fee of £13 is payable to Companies House in respect of each mortgage or charge filed on paper.

Make cheques or postal orders payable to 'Companies House'.

**Where to send**

You may return this form to any Companies House address. However, for expediency, we advise you to return it to the appropriate address below.

For companies registered in England and Wales:

The Registrar of Companies, Companies House,
Crown Way, Cardiff, Wales, CF14 3UZ
DX 33050 Cardiff

For companies registered in Scotland:

The Registrar of Companies, Companies House,
Fourth floor, Edinburgh Quay 2,
139 Fountainbridge, Edinburgh, Scotland, EH3 9FF
DX ED235 Edinburgh 1
or LP - 4 Edinburgh 2 (Legal Post)

For companies registered in Northern Ireland

The Registrar of Companies, Companies House,
Second Floor, The Linenhall, 32-38 Linenhall Street,
Belfast, Northern Ireland, BT2 8BG
DX 481 N R Belfast 1

**Further information**

For further information, please see the guidance notes on the website at www.companieshouse.gov.uk or email enquiries@companieshouse.gov.uk

This form is available in an alternative format. Please visit the forms page on the website at www.companieshouse.gov.uk



FILE COPY

CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 2012379

Charge code: 0201 2379 0095

The Registrar of Companies for England and Wales hereby certifies that a charge dated 5th December 2014 and created by THOMAS COOK AIRLINES LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 12th December 2014.

Given at Companies House, Cardiff on 18th December 2014



Companies House



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

DATED 5 December 2014

THOMAS COOK AIRLINES LIMITED
AS MORTGAGOR

AND

DVB BANK SE
AS SECURITY TRUSTEE

AIRCRAFT MORTGAGE
IN RESPECT OF ONE (1) BOEING 757-200 AIRCRAFT
MANUFACTURER'S SERIAL NUMBER 28674
REGISTRATION MARK G-WJAN AND TWO (2)
ROLLS-ROYCE RB211-535E4
ENGINES BEARING SERIAL NUMBER 31445 AND
31455

We hereby certify this
to be a true copy of the
original Signed _____



Clifford Chance LLP
10 Upper Bank Street
Canary Wharf
E14 5JJ

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THIS MORTGAGE is made on 5 December 2014

BETWEEN

- (1) **THOMAS COOK AIRLINES LIMITED**, a limited liability company incorporated and existing under the laws of England and Wales registered with company registration number 02012379 and having its registered office at The Thomas Cook Business Park, Coningsby Road, Peterborough, PE3 85B England (the "**Mortgagor**"), and
- (2) **DVB BANK SE** in its capacity as security trustee for and on behalf of the Secured Parties (the "**Security Trustee**")

WHEREAS

- (A) Under the terms of a loan agreement dated 4 December 2014 (the "**Loan Agreement**") between the Mortgagor, as borrower, the Security Trustee, the Facility Agent and the Lenders, the Lenders have agreed to make certain loan facilities available to the Mortgagor upon the terms and conditions set out therein in order to assist the Mortgagor to re-finance in part the acquisition of the Aircraft
- (B) Under the terms of the Original Sale Agreement the Mortgagor acquired title to the Aircraft
- (C) As security for the Secured Obligations, the Mortgagor has agreed to grant this mortgage over the Aircraft

THIS DEED WITNESSES as follows

1 INTERPRETATION

1.1 In this Deed

"**Aircraft**" means the Airframe together with, as the context may require, the Engines (whether or not any of the Engines may from time to time be installed on the Airframe) and the Technical Records and, unless otherwise provided herein, shall mean, as the context may require, the Aircraft as a whole and any part thereof,

"**Airframe**" means the one (1) Boeing 757-200 aircraft bearing manufacturer's serial number 28674 (excluding the Engines or any other engines from time to time installed thereon) and all Parts installed thereon or attached thereto at the Delivery Date together with any and all Parts which are from time to time thereafter incorporated therein or installed thereon or attached thereto and title to which is vested in the Mortgagor as owner in accordance with the terms of the Loan Agreement and any and all Parts which have been removed therefrom and all substitutions, replacements, renewals and additions made to any of the foregoing in accordance with the terms of the Loan Agreement,

"**Delivery Date**" means 5 December 2014,

"Effective Time" means, in respect of the Airframe and each Engine, the time at which the requirements in Clause 3 2 (*Mortgage*) are satisfied and as specifically stated in the Mortgage Supplement relating thereto,

"Engine" means

- (a) each of the two (2) Rolls-Royce RB211-535E4 engines bearing manufacturer's serial numbers 31455 and 31445 or any Replacement Engine which may replace such engines on or prior to the Delivery Date pursuant to the terms of the Loan Agreement whether or not they have been removed from the Airframe and installed on any other airframe or aircraft, and
- (b) any Replacement Engine which may replace any of the engines referred to in paragraph (a) above after the Delivery Date pursuant to the terms of Sub-paragraphs 2 1 11 (*Substitute Engines*) and 3 3 (*Total Loss of an Engine*) of Schedule 4 of the Loan Agreement,

and shall include, in each case, any and all Parts installed thereon or attached thereto at the Delivery Date together with any and all Parts which are from time to time incorporated therein or installed thereon or attached thereto thereafter and title to which is vested in the Morgagor in accordance with the terms of the Original Sale Agreement and (for as long as title thereto shall remain vested in the Morgagor in accordance with the terms of the Original Sale Agreement any and all Parts which have been removed therefrom and all substitutions, replacements, renewals and additions made to any of the foregoing in accordance with the terms of the Original Sale Agreement,

"Facility Agent" has the meaning ascribed to it in the Loan Agreement,

"Intercreditor Deed" the Intercreditor Deed dated on or before the date hereof between the Morgagor, the Guarantor and the Secured Parties in respect of the Aircraft,

"Lenders" has the meaning ascribed to it in the Loan Agreement,

"Loan" has the meaning given to such term in the Loan Agreement,

"Lien" has the meaning ascribed thereto in the Loan Agreement,

"Mortgaged Property" means all the property from time to time mortgaged to the Security Trustee in Clauses 3 1 and 3 2 hereof,

"Mortgage Supplement" means each supplement to this Mortgage, the form of which is set out in Schedule 1 (*Form of Mortgage Supplement*) which, when executed shall form part of this Mortgage,

"Original Sale Agreement" means the aircraft sale agreement dated 23 April 2013 between Alcludia Leasing Limited as seller and Thomas Cook Airlines Limited as buyer,

"Other Borrowers" has the meaning given to such term in the Intercreditor Deed,

"Other Loan" has the meaning given to such term in the Intercreditor Deed,

"Other Loan Agreements" has the meaning given to such term in the Intercreditor Deed,

"Other Relevant Event" has the meaning given to such term in the Intercreditor Deed

"Other Secured Parties" has the same meaning given to the term **"Other Finance Parties"** in the Intercreditor Deed,

"Part" means any part, component, appliance, accessory, instrument or other item of equipment (other than complete Engines) for the time being installed in or attached to the Airframe or an Engine,

"Permitted Lien" has the meaning ascribed to such term in the Loan Agreement,

"Receiver" means any receiver or receiver and manager appointed by the Security Trustee or any of the Secured Parties hereunder or under any statutory power,

"Relevant Event" has the meaning given to such term in the Loan Agreement,

"Replacement Engine" means any engine replaced for an Engine in accordance with the terms of the Operative Documents,

"Secured Obligations" means all moneys, liabilities and obligations which are now or at any time hereafter may be expressed to be due, owing or payable by the Mortgagor, the Guarantor or any Other Borrowers to any of the Secured Parties or the Other Secured Parties, as the case may be, in any currency, actually or contingently, with another or others, as principal or surety, on any account whatsoever under any of the Operative Documents or the Other Operative Documents or, as a consequence of any breach, non-performance, disclaimer or repudiation by the Mortgagor, the Guarantor or, as the case maybe, any of the Other Borrowers (or by a liquidator, receiver, administrative receiver, administrator, examiner, or any similar officer in respect of the Mortgagor, the Guarantor or, as the case maybe, any of the Other Borrowers of any of the Mortgagor, the Guarantor or, as the case maybe, any of the Other Borrowers' respective obligations under any of the Operative Documents or the Other Operative Documents (and any and all such moneys, liabilities and obligations of the Mortgagor shall form part of the Secured Obligations whether or not the Mortgagor is personally liable for the same and whether or not any recourse may be had with respect thereto against the Mortgagor and/or its assets and (without limiting the foregoing) notwithstanding the limited recourse, or similar, provisions of any Operative Document),

"Secured Parties" means, together, the Security Trustee, the Facility Agent and the Lenders,

"Security Interest" means any encumbrance or security interest whatsoever, howsoever created or arising including (without prejudice to the generality of the foregoing) any right of ownership, security, mortgage, charge, lease, encumbrance, pledge, lien, assignment, statutory rights in rem, title retention, levy, claim, detention, hypothecation, right of set-off, right or any agreement or arrangement having the

effect of creating a security interest other than a right of set-off arising by operation of law,

"Technical Records" means all technical data, manuals, computer records, logbooks and other records (whether kept or to be kept in compliance with any applicable law or any requirement for the time being of the Aviation Authority or otherwise) relating to the Aircraft and/or the Engines or any part thereof, and

"Trigger Event" means any of the events referred to in Clause 6.1

1.2 In this Deed

- (a) words and phrases not otherwise defined in this Deed shall, save as expressly stated herein to the contrary, bear the meaning ascribed to them in the Loan Agreement (whether expressly or by incorporation),
- (b) references to this Agreement or any other agreements or deeds shall be construed as including references to this Agreement, such agreements or deeds (as the case may be) as amended and/or supplemented from time to time by agreement between the parties thereto,
- (c) a reference to a Clause or Schedule is to be construed a reference to a clause or schedule hereof,
- (d) words importing the plural shall include the singular and vice versa,
- (e) clause headings are for ease of reference only, and
- (f) references herein to the **"Mortgagor"**, the **"Guarantor"**, the **"Security Trustee"**, the **"Facility Agent"** any **"Lender"** the **"Other Borrowers"** and the **"Other Secured Parties"** or any other person shall include any permitted assign, transferee or successor in title

2 MORTGAGOR'S COVENANT

The Mortgagor hereby acknowledges to the Security Trustee and each of the other Secured Parties that the amount secured by this Deed and in respect of which this Deed and the security hereby created is enforceable is the full amount of the Secured Obligations for the time being and from time to time and hereby covenants with the Security Trustee and each of the other Secured Parties that the property hereby mortgaged is so mortgaged for the full payment, performance and discharge of the Secured Obligations for the time being and from time to time. The Mortgagor hereby acknowledges to the Security Trustee and each of the other Secured Parties that certain of the Secured Obligations are obligations owed by the Guarantor to the Secured Parties or are obligations owed by the Other Borrowers to the Other Secured Parties and agrees that it shall secure the discharge of the same pursuant to this Deed as a third party security. Notwithstanding the foregoing, the liability of the Mortgagor hereunder in respect of the Secured Obligations shall be limited to the same extent as provided for in Clause 35 (*Limited Recourse*) of the Loan Agreement.

3 MORTGAGE

- 3 1 As a continuing security for the payment of the Secured Obligations, the Mortgagor hereby mortgages with full title guarantee to the Security Trustee, as security trustee for the Secured Parties, all its interest right, title, present and future, in and to the Airframe and each Engine by way of first priority legal mortgage, such mortgage in respect of the Airframe and each Engine taking effect from the relevant Effective Time
- (a) The first priority legal mortgage in respect of the Airframe and each Engine shall take effect at the time when
- (i) the Airframe or Engine (as applicable) is first located in England, and
- (ii) the Mortgagor has provided to the Security Trustee an executed Mortgage Supplement in respect of the Airframe or such Engine in substantially the form set out in Schedule 1 (*Form of Mortgage Supplement*)
- (b) The Mortgagor hereby covenants to the Security Trustee to execute and deliver the Mortgage Supplement(s) in accordance with paragraph (a) above at such time as the Airframe or Engine (as applicable) is first located in England
- 3 2 If, in accordance with the Loan Agreement (a) a Replacement Engine has been substituted for an Engine then (i) such Replacement Engine shall upon such substitution become subject to this Deed and (ii) such replaced engine shall thereupon cease to be subject to this Deed, or (b) a replacement Part has been substituted for a Part, then (i) such replacement Part shall upon such substitution become subject to this Deed and (ii) such replaced part shall thereupon cease to be subject to this Deed
- 3 3 The Security Trustee shall, on the date on which the Secured Obligations have been paid in full or otherwise discharged to the satisfaction of the Secured Parties and the Other Secured Parties, at the expense of the Mortgagor, and if requested to do so by the Mortgagor, release to the Mortgagor without recourse or warranty, such right, title and interest as the Secured Parties and the Other Secured Parties may then have in and to the Mortgaged Property free and clear of all Security Interests created by, or by persons claiming through, the Secured Parties or the Other Secured Parties in respect of such Mortgaged Property
- 3 4 Notwithstanding Clause 3 3, on the date on which the Secured Obligations to the extent owed by the Mortgagor or the Guarantor in favour of the Secured Parties relating to the Loan Agreement and the Operative Documents have been paid in full or otherwise discharged to the satisfaction of the Secured Parties, provided that the conditions pursuant to clause 21 2 (*Release of Security*) of the Intercreditor Deed have been satisfied the Security Trustee shall, at the expense of the Mortgagor, and if requested to do so by the Mortgagor, release to the Mortgagor without recourse or warranty, such right, title and interest as the Secured Parties and the Other Secured Parties may have in and to the Mortgaged Property free and clear of all Security Interests created by, or by persons claiming through, the Secured Parties and the Other Secured Parties in respect of such Mortgaged Property

4 REPRESENTATIONS AND WARRANTIES

The Mortgagor represents and warrants to the Secured Parties that

- (a) it is the holder of full legal title to the Aircraft free and clear of all Security Interests,
- (b) it is a limited liability company duly incorporated and validly existing under the laws of England and Wales and has the corporate power and authority to own its properties and to enter into and perform its obligations under this Deed,
- (c) the execution, delivery and performance of this Deed have been duly authorised by all necessary corporate action on the part of the Mortgagor and constitute the legal, valid and binding obligations of the Mortgagor enforceable in accordance with their terms and this deed does not violate or conflict with any applicable laws in England and Wales and provisions of it constitutional documents, or any agreements, contract or instrument to which the Mortgagor is a party, and
- (d) it has not previously mortgaged, charged, pledged or encumbered the Aircraft or if it has so mortgaged, charged, pledged or encumbered the Aircraft such mortgage, charge, pledge or encumbrance over the Aircraft has been duly released, reassigned and/or discharged

5 COVENANTS

The Mortgagor hereby covenants with the Security Trustee that at all times during the loan term

- (a) it shall not create or permit to subsist any Lien in respect of the Mortgaged Property or any part thereof or any interest therein (other than any Permitted Lien),
- (b) without prejudice to the provisions of Clause 5(a), it shall duly and promptly at its own cost and expense pay or cause to be paid all sums required and take such other action as may be necessary to discharge any such Lien (other than the Security Interest constituted by this Deed and any Permitted Lien) so created or permitted to subsist by it as aforesaid,
- (c) it shall not sell, transfer or otherwise dispose of the Aircraft or any part thereof, and
- (d) it shall from time to time promptly sign, seal, execute, acknowledge, deliver, file and register all such additional documents, instruments, agreements, certificate, consents and assurances and do all such other things as may be reasonably necessary or as the Security Trustee may reasonably request from time to time in order to preserve, maintain, establish, protect and perfect the security granted or intended to be granted by this Deed in respect of the Aircraft

6 DEFAULT AND REMEDIES

6 1 A Trigger Event shall occur if

- (a) any Loan Event of Termination shall have occurred,
- (b) the Loan has become due and payable under the Loan Agreement and has not been paid when due and remains unpaid for a period of five (5) Banking Days after the date the Loan becomes due and payable, or
- (c) any Other Loan has become due and payable under any Other Loan Agreement and has not been paid when due and remains unpaid for a period of five (5) Banking Days after the date and Other Loan becomes due and payable

6 2 Without prejudice to any of its other rights, upon the occurrence of any Trigger Event and for so long as the same is continuing, the Security Trustee may by written notice to the Mortgagor declare the Mortgagor to be in default hereunder and such notice shall be conclusive for the purposes of this Deed and thereafter the Security Trustee shall be entitled, without further notice and without the restrictions contained in Section 103 of the Law of Property Act 1925

- (a) to apply to any authority in the country in which the Mortgaged Property or any part thereof is located for an enforcement and attachment order in respect of the Mortgaged Property or any such part thereof,
- (b) to apply to any court of competent authority for an order for foreclosure absolute so as to vest all the Mortgagor's right, title and interest in the Mortgaged Property or any part thereof in the Security Trustee as security trustee for the Secured Parties,
- (c) to take possession of the Mortgaged Property or any part thereof and for that purpose to enter upon any premises where the Mortgaged Property or such part thereof may be located,
- (d) to sell, call in, collect and convert into money the Mortgaged Property or any part thereof by public or private contract at any place in the world with or without advertisement or notice to the Mortgagor with all such powers in that respect as are conferred by law and by way of extension thereof such sale, calling in, collection and conversion may be made for such consideration as the Secured Parties shall deem reasonable, whether the same shall consist of cash or shares or debentures in some other company or companies or other property of whatsoever nature or partly of one and partly of some other species of consideration and whether such consideration shall be presently payable or by instalments or at some future date and whether such deferred or future payments shall be secured or not in all other respects and manner and for any other consideration as the Secured Parties shall think fit and so that Section 103 of the Law of Property Act 1925 shall not apply to this Deed or to the power of sale, calling in, collecting or conversion herein contained, without being liable to account for any loss of or deficiency in such consideration,

- (e) to repair and keep in repair the Aircraft and to restore it to the condition and repair required to be maintained by the terms of the Loan Agreement,
- (f) to insure the Aircraft against loss or damage in such sums as the Security Trustee shall think fit,
- (g) to settle, arrange, compromise or submit to arbitration any accounts, claims, questions or disputes whatsoever which may arise in connection with the Mortgaged Property or in any way relating to this Deed and execute releases or other discharges in relation thereto,
- (h) to bring, take, defend, compromise, submit to arbitration or discontinue any actions, suits or proceedings whatsoever, civil or criminal, in relation to the Mortgaged Property,
- (i) to lease or charter the Aircraft for such terms, at such rents and generally in such manner and upon such conditions and stipulations as the Security Trustee shall think fit,
- (j) to execute and do all such acts, deeds and things which are necessary for or in relation to any of the purposes aforesaid, and
- (k) to appoint a Receiver of all or any part of the Mortgaged Property upon such terms as to remuneration and otherwise as the Secured Parties shall deem fit and the Secured Parties may from time to time remove any receiver so appointed and appoint another in his stead and to fix (at or after the time of his appointment) the remuneration of any such Receiver. A Receiver so appointed shall be the agent of the Mortgagor in respect of the Mortgaged Property but not otherwise. Nothing herein contained shall render any of the Secured Parties liable to any such Receiver for his remuneration, costs, charges or expenses or otherwise.

6.3 The proceeds of any enforcement of this Deed pursuant to Clause 6.2 shall be applied in or towards payment of the Secured Obligations in the order of priority set out in the Intercreditor Deed.

6.4 Sections 109(6) and 109(8) of the Law of Property Act 1925 shall not apply in relation to any Receiver appointed under Clause 6.2.

6.5 Without limiting, and as an addition to, the powers conferred upon the Security Trustee or any Secured Parties by the laws of England or of any other jurisdiction, the Security Trustee (on behalf of itself and the other Secured Parties) may at any time after the occurrence of a Trigger Event and for so long as the same is continuing exercise against or in respect of the Mortgaged Property any of the rights, powers, privileges or discretion conferred from time to time by the laws of the State of Registration or any other applicable jurisdiction upon mortgagees of property such as the Mortgaged Property.

7 POWERS OF RECEIVER

7 1 Any Receiver appointed under Clause 6 2 shall have all the powers conferred on a receiver by law (save that Section 103 of the Law of Property Act 1925 shall not apply) and by way of addition and variation to but without limiting those powers

- (a) the Receiver shall have all the powers given to the Secured Parties hereunder of taking possession of, calling in, collecting, converting into money and selling, leasing and dealing with the Mortgaged Property or any part thereof and generally shall be entitled to the same protection and to exercise the same powers and discretion as are given to the Secured Parties hereunder and shall also have such other of the powers and discretion given to the Secured Parties hereunder as the Secured Parties may from time to time confer on him,
- (b) the remuneration of the Receiver may be fixed by the Secured Parties (and may be or include a commission calculated by reference to the gross amount of all money received or otherwise), but shall, in any event, be secured on the Mortgaged Property under this Deed,
- (c) the Receiver shall have power to make any payment and incur any expenditure which the Secured Parties are by this Deed expressly or implicitly authorised to make or incur Any expenses incurred by the Receiver in the exercise of any of his powers hereunder may be paid or retained by him out of any moneys coming into his hands as receiver as may be paid by the Secured Parties in which case they shall be treated as expenses properly incurred by the Secured Parties,
- (d) the Receiver shall in the exercise of his powers, authorities and discretion conform with the reasonable directions from time to time made and given by the Secured Parties,
- (e) the Secured Parties may at any time require security to be given for the due performance of the Receiver's duties as receiver and the cost of such security shall be secured on the Mortgaged Property under this Deed, and
- (f) the Secured Parties may from time to time determine what funds the Receiver shall be at liberty to keep in hand with a view to the performance of his duties as receiver

7 2 Other than as required by applicable law, none of the Secured Parties nor the Receiver shall be liable to account to the Mortgagor in any circumstances either by reason of any entry into or by reason of any taking of possession of the Mortgaged Property or any part thereof for any reason whatsoever and whether as a mortgagee in possession of the Aircraft or on any other basis and none of the Secured Parties nor any Receiver shall be liable for any loss arising from or in connection with the realisation of the Mortgaged Property or otherwise for any act, neglect, default or omission for which a mortgagee in possession might be liable as such

7 3 The foregoing powers of appointment of a Receiver shall be in addition and variation to any statutory or other powers of the Secured Parties under the Law of Property Act, 1925 and the Receiver shall in any event have and be entitled to exercise all the rights,

powers and remedies conferred upon the Secured Parties by this Deed and by law with respect to the Mortgaged Property

8 THIRD PARTIES

8 1 Subject to applicable law, no person dealing with the Security Trustee, or any Receiver or any other Mortgagee shall be concerned to enquire whether a Trigger Event has occurred or is continuing or whether the power which the Security Trustee or such Receiver (or any other Mortgagee) is purporting to exercise has become exercisable or whether any money remains due on the security of this Deed or otherwise as to the propriety or regularity of any sale or other dealing by the Security Trustee or such Receiver (or any other Mortgagee) with the Mortgaged Property and all the protection to purchasers conferred by law shall apply to such persons dealing with the Security Trustee or such Receiver (or any other Mortgagee)

8 2 The receipt of the Security Trustee or such Receiver or any other Mortgagee for the purchase moneys shall effectively discharge the purchaser who shall not be concerned with the manner of application of the same or be in any way answerable therefor

9 POWER OF ATTORNEY

9 1 The Mortgagor hereby irrevocably for value and by way of security to secure the Security Interest constituted by this Deed and the performance of the obligations owed to the Secured Parties and the Other Secured Parties by the Mortgagor, the Guarantor or any Other Borrower (as the case may be) appoints the Security Trustee and every Receiver and any person nominated for such purpose by the Security Trustee in writing under hand by an officer of the Security Trustee, severally as attorney of the Mortgagor for the Mortgagor and in its name and on its behalf and as its act and deed to execute, seal and deliver (using the company seal of the Mortgagor where appropriate) and otherwise perfect and do any charge, mortgage, assignment, deed, assurance, agreement, conveyance, instrument, act or thing which the Mortgagor has failed to execute and do under the covenants, undertakings and provisions contained herein or in any Operative Document or which may be required or deemed proper in the exercise of any rights or powers hereunder or otherwise for any of the purposes of the security created hereby, and the Mortgagor hereby covenants with the Security Trustee to ratify and confirm all acts or things made done or executed or purportedly made, done or executed by such attorney as aforesaid **provided that** the Security Trustee shall not exercise the authority in this Clause 9 1 unless a Trigger Event has occurred and is continuing and the Security Trustee and/or any Secured Agent has given notice thereof to the Mortgagor

10 DELEGATION; CONSOLIDATION

The Security Trustee (on behalf of itself and the other Secured Parties) shall be entitled at any time and as often as it may deem expedient to delegate all or any of the powers and discretion vested in it by or in connection with this Deed in such manner, upon such terms and conditions (including power to sub-delegate) and to such persons as the Security Trustee (on behalf of itself and the other Secured Parties) in its absolute discretion may think fit **provided that** the Security Trustee will only so delegate any of its powers and discretion following a consultation with the Lenders and **provided further that** the Security Trustee shall not delegate any of its powers

and discretions hereunder without giving the Mortgagor notice of such delegation and the terms thereof This Deed shall be additional to any other security which may be given in the future by the Mortgagor to any Mortgagee

11 WAIVER AND INVALIDITY

- 11 1 No failure to exercise and no delay in exercising on the part of the Security Trustee (on behalf of itself and the other Secured Parties) any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege preclude the further exercise of such one or any other right, power or privilege The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law
- 11 2 If at any time any one or more of the provisions of this Deed becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby

12 CONTINUING AND INDEPENDENT SECURITY

- 12 1 This Deed and the security hereby created shall be a continuing security and in particular but without limitation shall not be, nor be considered as, satisfied by any intermediate discharge or payment on account of any liabilities or any settlement of accounts between the Mortgagor, the Guarantor, any Other Borrowers and the Security Trustee and the other Secured Parties or any Other Secured Parties or any of them Any settlement or discharge between the Security Trustee, the other Secured Parties, the Other Secured Parties or any of them and the Mortgagor, the Guarantor, or any Other Borrowers shall be conditional upon no security or payment to the Security Trustee, the other Secured Parties or any Other Secured Parties or any of them by the Mortgagor, the Guarantor, any Other Borrowers or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any provision or enactment relating to bankruptcy, liquidation, insolvency, winding-up, dissolution, reorganisation or other analogous event or proceedings for the time being in force
- 12 2 This Deed and the security hereby created shall, subject to applicable law, be in addition to and not in substitution for or derogation of any other security (whether given by the Mortgagor, the Guarantor or any Other Borrower, or otherwise) now or from time to time hereafter held by the Security Trustee, an Other Secured Trustee or any other person in respect of or in connection with any or all of the moneys and liabilities hereby secured and shall continue in full force and effect notwithstanding the invalidity or unenforceability of any of the obligations of the Mortgagor, the Guarantor, any Other Borrower, or any other document and any time or indulgence which may be granted to the Mortgagor, the Guarantor, any Other Borrower, or any other matter which might otherwise exonerate the Mortgagor, the Guarantor or any Other Borrower
- 12 3 Neither the Security Trustee nor, if relevant, any other Secured Party any Other Secured Party, before exercising any of the rights, powers or remedies conferred upon it by this Deed or by law, (i) take action or obtain judgment against the Mortgagor, the Guarantor, any Other Borrower, or any other person in any court, (ii) make or file any claim or proof in a winding-up or liquidation of the Mortgagor, the Guarantor, any

Other Borrower, or of any other person or (iii) enforce or seek to enforce the recovery of the moneys and liabilities hereby secured or any other security

- 12 4 The Security Trustee (on behalf of itself and the other Secured Parties) may in its discretion (i) grant time or other indulgence or make any other arrangement in respect of any of the moneys and liabilities hereby secured or of any other security therefor or of any other company or companies, person or persons not parties hereto or (ii) vary, in accordance with the terms thereof, any provision of the Loan Agreement or any other Operative Document without prejudice to this security, and the security created by this Deed shall not be in any way discharged or impaired by reason of any other circumstance which might (but for this provision) constitute a legal or equitable discharge of such security

13 FURTHER ASSURANCES

The Mortgagor agrees to do or execute any further assurances and documents as may be required by law, or as the Security Trustee may reasonably consider necessary, to establish, maintain and protect the rights of the parties secured under this Deed, and generally to carry out the true intent of this Deed

14 SUCCESSORS IN TITLE

This Deed shall be binding upon and enure to the benefit of each of the parties hereto and their successors, permitted transferees and permitted assigns, and if, pursuant to the provisions of the Loan Agreement, any of the Lenders or the Other Secured Party transfers all or any part of its rights and obligations thereunder to another bank or financial institution (a "Transferee") then all references in this Deed to such Lender or Other Secured Party shall, thereafter, be read and construed as references to such Lender or Other Secured Party and/or its Transferee(s) to the extent of their respective interests. The Mortgagor shall at no cost to the Mortgagor execute any further assurance or document as may be required by law, or as the Security Trustee may reasonably consider necessary, to establish, maintain or protect the rights of any such Transferee. The Mortgagor may not assign any of its rights or transfer or purport to transfer any of its obligations hereunder without the express prior written consent of the Security Trustee

15 NOTICES

Each communication to be made hereunder shall be made in accordance with the provisions of Clause 26 (*Notices*) of the Loan Agreement

16 COSTS AND INDEMNITIES

- 16 1 The Security Trustee and every Receiver, attorney, manager, agent or other person appointed by the Security Trustee (on behalf of itself and the other Secured Parties) hereunder shall be entitled to be indemnified out of the Mortgaged Property in respect of all liabilities and expenses (including without limitation legal fees, travel expenses, copying costs and communications expenses) together with any VAT thereon and also any reasonable fees and disbursements of any Receivers, lawyers, accountants or other experts for any advice or services which the Security Trustee (on behalf of itself and the other Secured Parties) may deem necessary or expedient to obtain in

connection with the preservation and/or enforcement of the security hereby created incurred by it, him or them in the execution or purported execution of any powers, authorities or discretion vested in it, him or them hereby or pursuant hereto, and the same shall be secured upon the Mortgaged Property under this Deed

- 16 2 If, at any time, the Mortgagor fails to do any act which it is obliged to do hereunder or to make any payment which it is obliged to make hereunder (other than a payment to the Security Trustee, any Secured Agent or any Secured Lender or an Other Secured Party), the Security Trustee may (but shall not be bound to) do such act or procure its doing or make such payment itself. The Mortgagor will pay to the Security Trustee on demand the amount of payment made and/or reasonable costs and expenses incurred by the Security Trustee in doing any act pursuant to this Clause 16 2 together with interest thereon calculated from the date of demand by the Security Trustee until the date of payment by the Mortgagor at the rate applicable to overdue sums under the Loan Agreement

17 CAPACITY OF THE SECURITY TRUSTEE

- 17 1 The Security Trustee shall hold legal title to the Mortgaged Property pursuant to this Mortgage as trustee for itself and on behalf of the Secured Parties
- 17 2 The other Secured Parties and the Other Secured Parties acknowledge that the Security Trustee is entitled and authorised to exercise all such rights, powers, authorities and discretion in relation to the property mortgaged and assigned pursuant to this Deed as if the Security Trustee were beneficially entitled thereto (including, without limitation, the grant of an indemnity to any person or persons appointed as a receiver pursuant to any such security)

18 JURISDICTION

- 18 1 This Deed, and all non-contractual obligations arising from or connected with it, shall be governed by and construed in accordance with the laws of England
- 18 2 The parties irrevocably agree that the courts of England shall have jurisdiction to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with this Deed and, for such purposes, irrevocably submits to the jurisdiction of such courts
- 18 3 Each party irrevocably waives any objection which it might now or hereafter have to the courts referred to in Clause 18 2 being nominated as the forum to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with this Deed and agrees not to claim that any such court is not a convenient or appropriate forum
- 18 4 If the Security Trustee exercises any right to enforce its rights under and in accordance with the terms of this Deed, the parties agree that the courts of England and (if different) the State of Registration and of any jurisdiction where the Aircraft or any Engine or part thereof may for the time being be situated shall have jurisdiction in relation to any suit, action or proceedings and settle any dispute relating to the arrest, delivery up or repossession of the Aircraft or such part thereof

18 5 The Mortgagor hereby consents generally in respect of any legal action or proceeding arising out of or in connection with this Deed to the giving of any relief or the issue of any process in connection with such action or proceeding including, without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such action or proceeding

18 6 To the extent that the Mortgagor may in any jurisdiction claim for itself or its assets immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process and to the extent that in any such jurisdiction there may be attributed to itself or its assets such immunity (whether or not claimed), the Mortgagor hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction

19 **THIRD PARTIES**

Other than the Other Secured Parties, a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any provision of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999

IN WITNESS whereof this Deed has been executed and is intended to be and is hereby delivered the day and year first above written

**SCHEDULE 1
FORM OF MORTGAGE SUPPLEMENT**

To DVB Bank SE (the "Security Trustee")

From Thomas Cook Airlines Limited (the "Mortgagor")

One (1) Boeing 757-200 Aircraft bearing Manufacturer's Serial Number 28674 (the "Airframe") with two (2) Rolls-Royce RB211-535E4 engines bearing manufacturer's serial numbers 31455 and 31445 (the "Engines")

- 1 We refer to the English law mortgage dated _____ 2014 between the Mortgagee and the Mortgagor in respect of the Airframe and the Engines (the "Mortgage") This Mortgage Supplement is supplemental to and forms part of the Mortgage
- 2 We hereby confirm that at _____ [time zone] on _____ (the "Effective Time") the [Airframe] [Engines] [Engine bearing ESN [•]] was located at _____
England
- 3 In order to secure the payment, performance and discharge of the Secured Obligations, we have, and we hereby, mortgage to the Mortgagee with full title guarantee, all of our right, title and interest, present and future in and to the [Airframe] [Engines] [Engine bearing ESN [•]] by way of first priority legal mortgage
- 4 This Mortgage Supplement, and all non-contractual obligations arising from or in connection with it, shall be governed by and construed in accordance with the laws of England
- 5 Clause 18 of the Mortgage shall apply to this Mortgage Supplement *mutatis mutandis*, as though the same were set out in full herein and as though references therein to "this Mortgage" were references to this Mortgage Supplement

IN WITNESS WHEREOF this Mortgage Supplement has been executed by the Mortgagor as a deed and is intended to be and is delivered as a deed on the day and year first above written

SIGNATURE PAGE TO MORTGAGE SUPPLEMENT (MSN 28674)

The Mortgagor

EXECUTED as a Deed)
by)
its duly authorised signatory)
for and on behalf of)
THOMAS COOK AIRLINES LIMITED)
in the presence of)

Name
Title

EXECUTION PAGE

AIRCRAFT MORTGAGE - MSN 28674

The Mortgagor

EXECUTED as a Deed)

by T-A Oldham)

its duly authorised signatory)

for and on behalf of)

THOMAS COOK AIRLINES LIMITED)

in the presence of)

T-A Oldham

GAIL MCG

Name.

Title.

GAIL MCG

The Security Trustee


SIGNED by)

for and on behalf of)

DVB BANK SE)

AIRCRAFT MORTGAGE - MSN 28674

Name.	Title
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Bjorn Batenburg
Senior Vice President