



Registration of a Charge

Company name: **KINGSWAY ASSET FINANCE LTD**

Company number: **03072782**

Received for Electronic Filing: **02/01/2019**



X7WBT3NY

Details of Charge

Date of creation: **21/12/2018**

Charge code: **0307 2782 0014**

Persons entitled: **ADRIAN JAMES ANTHON AND MARTIN DAVID HARRISON (AS SECURITY TRUSTEES)**

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:

BRABNERS LLP



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 3072782

Charge code: 0307 2782 0014

The Registrar of Companies for England and Wales hereby certifies that a charge dated 21st December 2018 and created by KINGSWAY ASSET FINANCE LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 2nd January 2019 .

Given at Companies House, Cardiff on 4th January 2019

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



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

DATED 21 December 2018

- (1) EACH CHARGOR NAMED HEREIN
- (2) ADRIAN JAMES ANTHON AND MARTIN DAVID HARRISON

GUARANTEE AND DEBENTURE

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DATE 21 December 2018

PARTIES

- (1) **THE ENTITIES LISTED IN PART 1 OF SCHEDULE 1 TO THIS DEED** (each a **Chargor** and together the **Chargors**); and
- (2) **MARTIN DAVID HARRISON** of Richmond, 72b Macclesfield Road, Prestbury, SK10 4BH and **ADRIAN JAMES ANTHON** of Greylands, 45 Carrwood Road, Bramhall, Stockport, SK7 3LR together as security trustees for the Secured Parties (the **Security Trustees**).

IT IS AGREED

1. { TC "1 DEFINITIONS AND INTERPRETATION" \11 } **DEFINITIONS AND INTERPRETATION**

- 1.1 In this deed the following definitions will apply:

Administrator

any person the Security Trustees appoint to be an administrator of a Chargor under Schedule B1 Insolvency Act;

Assets

present and future property, revenues and rights of every description;

BBI Senior Facility

means the revolving credit facility agreement dated 19 July 2016 as amended from time to time and made between British Business Investments Ltd as lender, Kingsway Finance Limited as borrower, Kingsway Asset Finance Limited as servicer and KFGH as parent and guarantor;

BBI Subordination Deed

means the subordination deed dated on or about the date of this Guarantee and Debenture and made between British Business Investments Ltd as senior lender, the Security Trustees as subordinated creditors and KFGH as debtor;

Business Day

any day (other than a Saturday, Sunday or public holiday) during which clearing banks in the City of London are open for normal business;

Certificate

each certificate in respect of the Notes;

Charged Assets

all property and assets from time to time charged by or pursuant to this deed (and references to the Charged Assets shall include any part of them);

Claim

any action, proceeding, right, claim or demand of any nature, whether actual or contingent or otherwise;

Collections Accounts

has the meaning given to that term in clause 13.4.4;

Companies Act

the Companies Act 2006;

Debtor

any person who is liable (whether as principal debtor or as surety and whether actually or contingently) to discharge or pay a Receivable;

Default Interest

any interest accruing in accordance with clause 4;

Default Rate

2% per annum;

Delegate

any delegate, agent, attorney or co-trustee appointed by the Security Trustees;

Environmental Claim

- (a) any claim, order, notice or other communication received by a Chargor alleging failure to comply with any Environmental Law or alleging liability under it; or
- (b) any indication that any charge is or may be imposed under any Environmental Law on the Charged Assets; or
- (c) any indication given to a Chargor that the Charged Assets are or may be listed in any register of contaminated land or similar register;

Environmental Law

all laws, directions and regulations and all codes of practice, circulars and guidance notes issued by any competent authority or agency (whether in the United Kingdom or elsewhere and whether or not having the force of law) concerning the protection of the environment or human health, including the conservation of natural resources, the production, storage, transportation, treatment, recycling or disposal of any waste or any noxious, offensive or dangerous substance or the liability of any person, whether civil or criminal, for any damage to or pollution of the environment or its rectification or any related matters;

Environmental Permit

any permit, licence, authorisation, consent or other approval required by any Environmental Law;

Equipment

all present and future equipment, plant, machinery, tools, vehicles, furniture, fittings, installations, apparatus and other tangible moveable property for the time being owned by a Chargor, including any part of it and all spare parts, replacements, modifications and additions;

Event of Default

has the meaning given to that term in the Instrument;

Financial Collateral

shall have the meaning given to that expression in the Financial Collateral Regulations;

Financial Collateral Regulations

the Financial Collateral Arrangements (No 2) Regulations 2003 (SI 2003/3226);

Guarantee

the parent company guarantee and indemnity dated on or about the date of this deed and entered into between PAF Group Limited and the Security Trustees;

Indemnified Party

- (a) the Security Trustees;
- (b) any Receiver;
- (c) any Administrator; and/or
- (d) any Delegate;

and any of their officers and employees;

Insolvency Act

the Insolvency Act 1986;

Instrument

the instrument dated on or about the date of this deed executed by KFGH to constitute the Notes;

Insurances

any policies of insurance in which a Chargor has an interest from time to time;

Intellectual Property

all intellectual property rights or equivalent, including:

- (a) patents, utility models, trademarks and service marks, business names, domain names, rights in get-up and trade dress, goodwill and right to sue for passing off or unfair competition, copyright and neighbouring and related rights, moral rights, rights in designs, rights in and to inventions, plant variety rights, database rights, rights in computer software and topography rights;
- (a) registrations and applications for any or all of the rights in (a) above, together with the right to apply for registration of and be granted, renewals, extensions and right to claim priority from such rights; and
- (b) rights to use and protect the confidentiality of confidential information (including, know-how, trade secrets, technical information, customer and supplier lists) and any other proprietary knowledge and/or information of whatever nature and howsoever arising,

in each case whether registered or unregistered and together with any rights or types of protection of the same or of a similar nature to those listed in (a), (b) or (c) which subsist or may subsist in the future anywhere in the world and in each case for their full term (including any reversions or extensions) and/or effect;

KFGH

Kingsway Financial Group Holdings Limited, a company incorporated in England and Wales with company number 03442629;

Losses

any loss, cost, damage, award, charge, penalty, fine, expense or any other liability which any of the Indemnified Parties have incurred or suffered, or may, directly or indirectly, incur or suffer, including legal costs and any value added tax or similar tax on any of those;

LPA

the Law of Property Act 1925;

Material Contracts

any contracts specified in schedule 3;

NatWest Senior Facility

means the revolving credit facility dated 15 May 2015 as amended from time to time and made between National Westminster Bank plc as lender, KFGH as parent and guarantor, the Chargor as servicer and guarantor and Kingsway Leasing Limited as borrower and guarantor;

NatWest Subordination Deed

means the subordination deed dated on or about the date of this Guarantee and Debenture and made between National Westminster Bank plc as senior lender, the Security Trustees as subordinated creditors, KFGH as debtor and the Chargor as chargor;

Noteholders

the Original Noteholders and each other holder from time to time of Notes;

Notes

the £3,400,000 fixed rate secured Series E loan notes 2021 of KFGH;

Original Noteholders

the persons listed in Part 2 of schedule 1;

Party

a party to this deed;

Permitted Disposal

a disposal that is not prohibited by the terms of any Transaction Document of any Charged Asset charged by way of uncrystallised floating charge only for market value in the ordinary course of business;

Permitted Security

- (a) liens and rights of set-off securing obligations which are not overdue beyond their standard payment dates, arising by operation of law in the ordinary and usual course of trading over property other than land;
- (b) any Security Interest arising out of title retention provisions in a supplier's standard conditions of supply of goods acquired in the ordinary and usual course of trading;
- (c) any Security Interest granted in terms of the Transaction Documents or with the prior written approval of the Security Trustees or in favour of the Security Trustees; or
- (d) any Prior Charge;

Planning Acts

the Town and Country Planning Act 1990 and the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning (Consequential Provisions) Act 1990, the Planning and Compensation Act 1991, the Planning and Compulsory Purchase Act 2004, the Planning Act 2008, the Localism Act 2011, the Growth and Infrastructure Act 2013 and any other legislation from time to time regulating the use or development of land;

Prior Charges

the Security Interests described in schedule 4;

Property

any freehold and leasehold property that is a Charged Asset including without limitation, any property specified in schedule 2;

Receivables

- (a) all present and future book and other debts, Rental Income, royalties, fees, VAT and monetary claims due or owing to a Chargor and all other amounts recoverable or receivable by a Chargor from other persons or due or owing to a Chargor (whether actual or contingent and whether arising under contract or in any other manner whatsoever);
- (b) the benefit of all rights and remedies of any nature relating to any of the foregoing including claims for damages and other remedies for non-payment of the same, all entitlements to interest, negotiable instruments, guarantees, indemnities, Security Interests, reservations of property rights, rights of tracing and unpaid vendor's liens and similar associated rights; and
- (c) all proceeds of any of the foregoing;

Receiver

any receiver, manager or receiver and manager appointed by the Security Trustees under this deed;

Related Rights

in relation to any Securities, means all dividends, distributions and other income paid or payable on such Securities (as the case may be), together with (a) all shares or other property derived from such Securities (as the case may be) and (b) all other allotments, accretions, rights, benefits and advantages of all kinds accruing, offered or otherwise derived from or incidental to such Securities (whether by way of dividend, distribution, conversion, redemption, bonus, preference, warrant, option to acquire or subscribe or otherwise);

Relevant Jurisdiction

in relation to a Chargor:

- (a) its jurisdiction of incorporation or organisation;
- (b) any jurisdiction where any Charged Asset is situated; and
- (c) any jurisdiction where it conducts its business;

Rental Income

the aggregate of all amounts paid or payable to or for the account of a Chargor in connection with the letting, licence or grant of other rights of use or occupation of any part of a Property;

Required Insurance

any contract of insurance required under clause 12;

Secured Liabilities

all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity) of the Chargors and KFGH to the Secured Parties under the Transaction Documents (including under this deed) together with any amounts which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowability of the same in any insolvency or other proceedings;

Secured Parties

the Security Trustees, the Noteholders and any Receiver or Delegate;

Securities

all present and future stocks, shares, loan capital, investments, debentures, bonds, warrants, coupons or other securities (whether or not marketable) held by a Chargor (at law or in equity) together with all Related Rights;

Security Interest

a mortgage, charge (whether fixed or floating, legal or equitable), pledge, trust, assignment by way of security, lien, hypothecation or other encumbrance, arrangement or security interest securing any obligation of any person or any other agreement or arrangement having a similar effect or any title retention rights or set-off rights created by agreement;

Security Document

has the meaning given to that expression in the Trust Deed;

Security Financial Collateral Arrangement

has the meaning given to that expression in the Financial Collateral Regulations;

Spot Rate of Exchange

the market rate of exchange for the purchase of the relevant currency by the Security Trustees;

Subordination Deeds

means the NatWest Subordination Deed and the BBI Subordination Deed;

Third Parties Act

the Contracts (Rights of Third Parties) Act 1999;

Transaction Documents

- (a) this deed;
- (b) the Trust Deed;
- (c) each other Security Document;
- (d) each Certificate;
- (e) the Instrument;
- (f) the Guarantee; and
- (g) any other document designated as such by the Security Trustees and KFGH; and

Trust Deed

the security trustee deed dated on or about the date of this deed and entered into between the Security Trustees, the Chargor listed in Schedule 1 Part 1 of this deed and the Original Noteholders.

1.2 In this deed, a reference to:

- 1.2.1 a clause or a schedule is, unless otherwise stated, a reference to a clause of, or a schedule to, this deed;
- 1.2.2 a paragraph is, unless otherwise stated, a reference to a paragraph of a schedule;
- 1.2.3 a provision of law includes a reference to that provision as replaced, modified or re-enacted from time to time and any subordinate legislation made under that statutory provision from time to time, in each case whether before or after the date of this deed;
- 1.2.4 a person includes any individual, firm, company, corporation, government, state or agency of state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
- 1.2.5 a "Party", a "Chargor", the "Security Trustees", any "Noteholder" or any "Secured Party" shall be construed so as to include its successors in title, permitted assigns and permitted transferees and, in the case of the Security Trustees, any person for the time being appointed as Security Trustee or Security Trustees in accordance with the Transaction Documents;
- 1.2.6 "disposal" includes any sale, transfer, assignment, grant, lease, licence, declaration of trust or other disposal, whether voluntary or involuntary and "dispose" will be construed accordingly;
- 1.2.7 a company shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.8 writing shall, subject to clause 33, include any mode of reproducing words in a legible and non-transitory form;
- 1.2.9 this deed or any provision of this deed or any other agreement, document or instrument is to this deed, that provision or that agreement, document or instrument as amended, novated, supplemented, extended or restated;
- 1.2.10 "this Security" means any Security Interest created or intended to be created by this deed; and

- 1.2.11 a time of day is a reference to London time.
- 1.3 The schedules form part of this deed and have the same effect as if expressly set out in the body of this deed and shall be interpreted and construed as though they were set out in this deed.
- 1.4 The contents table and headings in this deed are for convenience only and do not affect the interpretation or construction of this deed.
- 1.5 Words importing the singular include the plural and vice versa and words importing a gender include every gender.
- 1.6 The words "other", "include", "including" and "in particular" do not limit the generality of any preceding words and any words which follow them shall not be construed as being limited in scope to the same class as the preceding words where a wider construction is possible.
- 1.7 For the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the Instrument, the other Transaction Documents and of any side letters between any parties in relation to any Transaction Document are incorporated into this deed.
- 1.8 "£" and "sterling" denotes lawful currency of the United Kingdom.

1.9 Conflict

This deed shall at all times be subject to the provisions of the Subordination Deeds and, in the event of any conflict between the terms of this deed and the Subordination Deeds, the terms of the Subordination Deeds shall at all times prevail.

2. { TC "2 COVENANT TO PAY" \1 } COVENANT TO PAY

Each Chargor covenants with the Security Trustees that it will pay or discharge on demand the Secured Liabilities when they fall due.

3. { TC "3 GUARANTEE AND INDEMNITY" \1 } GUARANTEE AND INDEMNITY

Each Chargor irrevocably and unconditionally jointly and severally:

- 3.1 guarantees to the Security Trustees (on behalf of each Secured Party) punctual performance by KFGH of all Secured Liabilities owing by KFGH;
- 3.2 undertakes with the Security Trustees (on behalf of each Secured Party) that whenever KFGH does not pay any amount when due under or in connection with any Transaction Document, it shall immediately on demand pay that amount as if it was the principal obligor; and
- 3.3 agrees with the Security Trustees (on behalf of each Secured Party) that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify the Security Trustees (on behalf of each Secured Party) immediately on demand against any cost, loss or liability it incurs as a result of KFGH not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Transaction Document on the date when it would have been due.

4. { TC "4 DEFAULT INTEREST" \1 } DEFAULT INTEREST

- 4.1 Any amount which is not paid under this deed when due shall bear interest (both before and after judgment and payable on demand) from the due date (or, in the case of costs, fees or expenses incurred, from the date they are so incurred) until the date on which such amount is unconditionally and irrevocably paid and discharged in full on a daily basis at the Default Rate.
- 4.2 Default Interest will be calculated on the basis of the actual number of days elapsed and a year of 365 days and will be compounded at quarterly intervals.
- 4.3 The Security Trustees (in their capacity as Security Trustees and Original Noteholders) shall not be entitled to recover any amount in respect of interest under both this deed and any other Transaction Document.

5. { TC "5 FIXED AND FLOATING CHARGES AND ASSIGNMENT" \1 } **FIXED AND FLOATING CHARGES AND ASSIGNMENT**

5.1 **Fixed charges**

As a continuing security for the payment of the Secured Liabilities each Chargor, with full title guarantee, charges, and agrees to charge, in favour of the Security Trustees the following assets which are at any time owned by that Chargor or in which it is from time to time interested:

- 5.1.1 by way of **first legal mortgage** all the freehold and leasehold property (if any) vested in or charged to that Chargor including any property specified in schedule 2, together with all buildings and fixtures (including trade fixtures) at any time thereon;
- 5.1.2 by way of **first fixed charge** all other interests (not being charged by clause 5.1.1) in any freehold or leasehold property vested in or charged to that Chargor including the buildings and fixtures and fittings (including trade fixtures and fittings) at any time on or attached to such property;
- 5.1.3 by way of **first fixed charge** all proceeds of sale derived from any Property or any buildings, fixtures or fittings (including trade fixtures and fittings) at any time on or attached to any Property, the benefit of all covenants given in respect of any Property or any such buildings, fixtures or fittings and all licences to enter upon or use land and the benefit of all other agreements relating to land;
- 5.1.4 by way of **first fixed charge** all Equipment and all spare parts, replacements, modifications and additions for or to that Equipment and the benefit of all manuals, instructions, warranties, licences and maintenance agreements relating to it;
- 5.1.5 by way of **first fixed charge** all the Securities;
- 5.1.6 by way of **first fixed charge** all rights and interests of that Chargor in, and claims under, the Insurances and all proceeds of such Insurances held by, or written in favour of, that Chargor or in which that Chargor is otherwise interested;
- 5.1.7 by way of **first fixed charge** all its right, title, interest and benefit in and to the Collections Accounts, all monies standing to the credit of the Collections Accounts, all interest accrued on monies standing to the credit of the Collections Accounts and all rights of that Chargor to repayment of any of the foregoing;
- 5.1.8 by way of **first fixed charge** all monies standing to the credit of that Chargor from time to time on any and all accounts with any bank, financial institution, or other person;
- 5.1.9 by way of **first fixed charge** all Intellectual Property of that Chargor;
- 5.1.10 to the extent not effectively assigned pursuant to clause 5.2.2 by way of **first fixed charge** all Material Contracts;
- 5.1.11 by way of **first fixed charge** the benefit of all licences, consents, agreements and authorisations held or utilised by that Chargor in connection with its business or the use of any of its assets;
- 5.1.12 to the extent not effectively assigned pursuant to clause 5.2.3 by way of **first fixed charge** all Receivables; and
- 5.1.13 by way of **first fixed charge** all the goodwill and uncalled capital of that Chargor.

5.2 **Assignment**

As a continuing security for the payment of the Secured Liabilities each Chargor, with full title guarantee, **assigns and agrees to assign** absolutely (subject to a proviso for

reassignment on irrevocable discharge in full of the Secured Liabilities) in favour of the Security Trustees all the rights, title, interest and benefit of that Chargor in and to:

- 5.2.1 the Insurances (together with all proceeds of such Insurances);
- 5.2.2 the Material Contracts and the benefit of any guarantee or Security Interest for the performance of a Material Contract; and
- 5.2.3 the Receivables.

5.3 Floating charge

As a continuing security for the payment of the Secured Liabilities each Chargor charges with full title guarantee in favour of the Security Trustees by way of **first floating charge** all its assets and undertaking whatsoever and wherever situated both present and future not effectively mortgaged, charged or assigned pursuant to the provisions of clause 5.1 and clause 5.2, including heritable property and all other property and assets in Scotland.

5.4 Qualifying floating charge

Paragraph 14 of schedule B1 Insolvency Act 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).

5.5 Prior Charges

The security created by this deed shall rank subject only to the Prior Charges (if any).

6. { TC "6 CONVERSION OF FLOATING CHARGE" \11 } CONVERSION OF FLOATING CHARGE

6.1 Conversion of floating charge by notice

The Security Trustees may, by written notice to a Chargor convert the floating charge created by this deed into a fixed charge as regards all or any of the Chargors' assets specified in the notice if:

- 6.1.1 an Event of Default has occurred and is continuing; or
- 6.1.2 the Security Trustees in their reasonable opinion consider those assets to be in danger of being seized or sold under any form of distress, attachment, execution or other legal process or to be otherwise in jeopardy.

6.2 Automatic conversion of floating charge

The floating charge created by the Chargors under this deed shall (in addition to the circumstances in which the same will occur under general law) automatically be converted into a fixed charge in relation to any of the Charged Assets subject to the floating charge created by clause 5.3 (a **Floating Charge Asset**):

- 6.2.1 if, without the Security Trustees' prior written consent, a Chargor creates or attempts to create any Security Interest (other than a Permitted Security) over all or any Floating Charge Asset;
- 6.2.2 if any person levies or attempts to levy any distress, execution, attachment or other process against all or any Floating Charge Asset;
- 6.2.3 if any person presents a petition to wind up a Chargor or applies for an administration order; or
- 6.2.4 upon the enforcement of this deed.

6.3 No waiver

The giving by the Security Trustees of a notice pursuant to clause 6.1 in relation to any class of assets of a Chargor shall not be construed as a waiver or abandonment of the rights of the Security Trustees to serve similar notices in respect of any other class of assets or of any of the other rights of the Security Trustees.

7. { TC "7 DEFERRAL OF RIGHTS" \1 } **DEFERRAL OF RIGHTS**

7.1 Each Chargor warrants to the Security Trustees that it has not taken or received, and agrees not to take, exercise or receive the benefit of any Security Interest or other right or benefit (whether by set-off, counterclaim, subrogation, indemnity, claim in insolvency, proof in liquidation or otherwise and whether from contribution or otherwise, all together **Rights**) from or against any other Chargor, its liquidator, an administrator, any surety or any other person in respect of any liability of or payment by it under this deed or otherwise in connection with this deed or the Secured Liabilities.

7.2 If any Rights are taken, exercised or received by a Chargor, that Chargor declares that such Rights and all monies at any time received or held in respect of such Rights shall be held by it on trust for the Security Trustees (on behalf of the Secured Parties) for application in or towards the discharge of the Secured Liabilities.

7.3 Each Chargor agrees that all other Rights and all monies from time to time held on trust by it for the Security Trustees (on behalf of the Secured Parties) under or pursuant to clause 7.2 shall be transferred, assigned or, as the case may be, paid to the Security Trustees, promptly following the Security Trustees' demand.

7.4 This clause 7 shall apply regardless of whether or not the Chargors have performed their obligations under this deed.

8. { TC "8 MULTIPLE CHARGORS" \1 } **MULTIPLE CHARGORS**

8.1 The liability of each Chargor to the Security Trustees shall be joint and several.

8.2 For the avoidance of doubt, the incapacity or insolvency of any Chargor shall not discharge or affect the liability of any other Chargor.

8.3 Until the Secured Liabilities are paid or discharged in full in accordance with the terms of the Transaction Documents each Chargor irrevocably and unconditionally postpones all of its rights of contribution from any other Chargor.

8.4 The Security Trustees may, in their absolute discretion, release or accept any composition from or make any arrangements with any Chargor at any time from its obligations and liabilities to the Security Trustees under this deed or otherwise in respect of the Secured Liabilities without the consent of any other Chargor and without releasing, discharging or otherwise affecting the liability of any other Chargor. The Security Trustees shall not be obliged to notify any other Chargor of such release or composition.

9. { TC "9 NEGATIVE PLEDGE" \1 } **NEGATIVE PLEDGE**

Each Chargor covenants with the Security Trustees that, during the continuance of the security created by this deed, it shall not without the prior written consent of the Security Trustees:

9.1 create, purport to create or permit to subsist any Security Interest (other than a Permitted Security) upon any of the Charged Assets; or

9.2 sell, transfer, lease, licence, lend, part possession with, grant any interest in, 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 the Charged Assets save for a Permitted Disposal.

10. { TC "10 REPRESENTATIONS AND WARRANTIES" \1 } **REPRESENTATIONS AND WARRANTIES**

10.1 Each Chargor represents and warrants to the Security Trustees that:

10.1.1 **Status**

- (a) it is a limited company duly organised, validly existing and registered under the relevant laws of its jurisdiction of incorporation;
- (b) it has the power to own its assets and carry on its business as it is being conducted;

10.1.2 Authority

it is empowered to enter into and perform its obligations contained in this deed and has taken all necessary action to authorise the execution, delivery and performance of this deed, to create the security to be constituted by this deed and to observe and perform its obligations under this deed;

10.1.3 Binding obligations

the obligations expressed to be assumed by it in this deed are legal, valid, binding and enforceable obligations;

10.1.4 Non-conflict with other obligations

the entry into and performance by it of, and the transactions contemplated by, this deed and the granting of this deed and security constituted by this deed do not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) its constitutional documents; or
- (c) any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument;

10.1.5 Property

schedule 2 identifies all freehold and leasehold properties beneficially owned by that Chargor as at the date of this deed; and

10.1.6 Securities

- (a) it is the legal and beneficial owner of the Securities listed against its name in schedule 5;
- (b) it has provided any and all information in respect of the Securities that it is required to provide under Part 21A Companies Act and the Securities are not subject to restrictions under Schedule 1B Companies Act;

10.1.7 Environmental matters

- (a) it has complied with all Environmental Laws and Environmental Permits applicable to the Charged Assets and its business;
- (b) there has been no discharge, spillage, release or emission of any prescribed, dangerous, noxious or offensive substance or any controlled waste on, into or from any Charged Asset or any adjoining premises and no such substances or any controlled waste have been stored or disposed of on any Charged Asset or, so far as that Chargor is aware, in any adjoining premises except in accordance with the requirements of the applicable Environmental Laws; and
- (c) it is not in breach of and has not incurred or become subject to any civil or criminal liability under any Environmental Laws or the terms of any Environmental Permit and it has not done anything or omitted to do anything which could result in any liability being imposed on the Security Trustees under any Environmental Law.

10.2 Matters represented

Each of the representations and warranties in clause 10.1 will be correct and complied with in all material respects at all times during the continuance of this Security.

11. { TC "11 GENERAL COVENANTS OF THE CHARGORS" \11 }GENERAL COVENANTS OF THE CHARGORS

Each Chargor hereby covenants with the Security Trustees that it will:

11.1 Maintenance, use and preservation

- 11.1.1 keep all buildings and erections forming part of the Charged Assets in a good state of repair and keep all Equipment, fixtures, fittings, drains, pipes, sanitary, water and other effects and services to or forming part of the Charged Assets in good working order and condition and ensure that the same is properly serviced in accordance with any relevant warranties or manuals;
- 11.1.2 not do or permit to be done anything which would or might depreciate, jeopardise or otherwise prejudice this Security or materially diminish the value of any Charged Asset or the effectiveness of this Security;

11.2 Outgoings

duly and punctually pay all rates, rents, taxes, charges and other outgoings due by it in respect of the Charged Assets;

11.3 Inspection

- 11.3.1 permit the Security Trustees or its designated representatives to have, on reasonable notice, access during normal office hours to its accounts and accounting records and to any books and records relating to the Charged Assets, to inspect and take extracts from and make photocopies of the same and each Chargor shall provide, at its cost and expense, such clerical and other assistance as the Security Trustees may reasonably request;
- 11.3.2 permit the Security Trustees or its designated representatives to have, on reasonable notice, access during normal office hours to any property or Equipment forming part of the Charged Assets to view, inspect, examine and photograph it and all records maintained in connection with it;

11.4 Comply with statutes

in relation to the Charged Assets, comply with all obligations under any present or future statute, regulation, order and instrument or under any by-laws, regulations or requirements of any competent authority or other approvals, licences or consents and, if requested by the Security Trustees, produce to the Security Trustees, within 14 days of receipt of the same, every material notice, order or proposal given or made in relation to the Charged Assets by any competent authority and either comply with the same or make such objections and representations against the same as the Security Trustees may require or approve;

11.5 Comply with covenants

observe and perform all covenants and stipulations from time to time affecting any part of the Charged Assets, or the manner of use or the enjoyment of the same and shall not, except with the prior written consent of the Security Trustees, enter into any onerous or restrictive obligations affecting any part of the Charged Assets;

11.6 Conduct of business

carry on its trade and business on those parts (if any) of the Charged Assets as are used for the purposes of trade or business in accordance with the standards of good management from time to time current in such trade or business;

11.7 Leases and Licences

- 11.7.1 enforce its rights as landlord under any lease of any Property and perform its obligations as landlord under any lease of any Property and observe and perform all the lessee's covenants in any lease under which it holds any Property;
- 11.7.2 not, except with the prior written consent of the Security Trustees:
 - (a) part with or share possession or occupation of any Property or confer on any person any lease or other right or licence to occupy any land or

buildings forming part of any Property or any licence to assign or sub-let any part of any Property;

- (b) forfeit, determine, accept or agree to accept the surrender of any lease in relation to any Property or vary the terms of any lease or licence in relation to any Property;
- (c) agree any rent review of any lease or licence any Property;
- (d) surrender or agree to surrender any leasehold interest held by it in relation to any Property or allow such interest to be forfeited; or
- (e) create or permit to arise on any Property any interest having overriding effect or permit any person to become entitled to any right, easement, covenant or other matter which might adversely affect the use, value or marketability of any Property;

11.8 Environmental Law and Permits

11.8.1 comply with all Environmental Laws and obtain, maintain and comply with all Environmental Permits applicable to the Charged Assets and its business and on the Security Trustees' request, provide it with copies of any Environmental Permits;

11.8.2 upon becoming aware of the same, notify the Security Trustees of any Environmental Claim made or threatened against it and any condition imposed pursuant to any Environmental Permit or Environmental Law which requires it to incur any capital expenditure or materially alter the nature or manner of conduct of its business or which could, in the Security Trustees' opinion, materially reduce the value of the Charged Assets (or any of them) and will keep the Security Trustees informed of any steps taken or intended to be taken by that Chargor in respect of any of the matters referred to in this clause 11.8.2 and give notice to the Security Trustees as soon as practicable of any new or additional requirements under any Environmental Law imposed on that Chargor or any Charged Asset;

11.9 Planning Acts

not carry out any development within the meaning of the Planning Acts in or upon the Charged Assets or any part of the Charged Assets without first obtaining such permissions as may be required under or by virtue of the Planning Acts and, in the case of any development involving a substantial change in the structure or a change of use of the Charged Assets or any part of the Charged Assets, without first obtaining the written consent of the Security Trustees;

11.10 Material Contracts

notify the Security Trustees of any material breach of a Material Contract by a Chargor or a counterparty and observe and perform all its obligations under each Material Contract and enforce the obligations of each counterparty to a Material Contract;

11.11 Deposit of documents and Securities transfers

11.11.1 unless the Security Trustees otherwise confirms in writing, immediately on entering into this deed or, if later, promptly on receipt of the same, deposit with the Security Trustees all certificates, deeds and documents of title relating to or representing the Charged Assets, original copies of all Material Contracts and all planning consents, building regulation approvals and like documents relating to each Property, together with duly executed transfers or assignments in respect of the Securities with the name of the transferee left blank;

11.11.2 immediately on entering into this deed or, if later, promptly on receipt of the same, provide the Security Trustees with a copy of any report, notices, circulars, accounts, invoice, certificate or other material communication received in respect of or in connection with the Charged Assets;

- 11.11.3 permit the Security Trustees at any time to complete the instruments of transfer in respect of the Securities and register the Securities either in its own name or in the name of any nominee or (following an Event of Default) any transferee selected by it;

11.12 Intellectual Property

- 11.12.1 observe and comply with all material obligations and laws to which it is subject in its capacity as registered proprietor, beneficial owner, user, licensor or licensee of its Intellectual Property or any part of its Intellectual Property;
- 11.12.2 do all acts as are reasonably practicable to maintain, protect and safeguard its Intellectual Property and not discontinue the use of any of its Intellectual Property, nor allow it to be used in such a way that it is put at risk by becoming generic allowing any applicable registrations to lapse or by being identified as disreputable in any material way;
- 11.12.3 take all necessary action (including obtaining all necessary registrations and paying all applicable renewal and licence fees) to ensure that the Intellectual Property to which it is or may become entitled is valid and subsisting and remains owned by it and not allow any Intellectual Property to be abandoned, cancelled or to lapse; if any Intellectual Property at any time lapses or becomes void, it will do everything necessary to restore such Intellectual Property to itself;

11.13 Property acquisitions

- 11.13.1 notify the Security Trustees promptly upon the acquisition by it of any freehold or leasehold property (or, if in Scotland, heritable property); and
- 11.13.2 on demand made to it by the Security Trustees, execute and deliver to the Security Trustees any legal mortgage (or, in the case of property situated in Scotland, standard security) in favour of the Security Trustees of any freehold or leasehold property (or, if in Scotland, heritable property) which becomes vested in it after the date of this deed and all fixtures and fittings thereon to secure the payment or discharge of the Secured Liabilities, such legal mortgage or standard security to be in such form as the Security Trustees may reasonably require. Any security document required to be executed by a Chargor pursuant to this clause will be prepared at the cost of that Chargor and will contain terms and conditions that are no more onerous than those contained herein.

11.14 The Land Registry

in respect of any freehold or leasehold land specified in schedule 2 or which it may hereafter acquire and which is registered land (or unregistered land subject to compulsory first registration), apply to the Chief Land Registrar for the registration of a Restriction against the registered titles in the following terms:

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the charge dated 20[•] in favour of ADRIAN JAMES ANTHON AND MARTIN DAVID HARRISON (in their capacity as Security Trustees) referred to in the charges register."

12. { TC "12 INSURANCE" \11 }INSURANCE

12.1 Each Chargor hereby covenants with the Security Trustees that it will ensure that at all times Required Insurances are maintained in full force and effect, which:

- 12.1.1 insure that Chargor's interests in the Charged Assets, (including each Property and the plant and machinery on each Property and also including fixtures and improvements) for their full replacement value (being the total cost of entirely rebuilding, reinstating or replacing the relevant asset if it is completely destroyed, together with all related fees and demolition costs) against such risks as a prudent company (or, as the case may be, limited liability partnership) in the same business as that Chargor would insure;

- 12.1.2 include property owners' public liability and third party liability insurance; and
- 12.1.3 in each case are in an amount, and in form, and with an insurance company or underwriters, acceptable at all times to the Security Trustees.
- 12.2 Each Chargor must:
 - 12.2.1 comply with the terms of the Required Insurances and not do or permit anything to be done which may make void or voidable any of the Required Insurances;
 - 12.2.2 comply with all reasonable risk improvement requirements of its insurers.
 - 12.2.3 ensure that each premium for the Required Insurances is paid promptly and in any event prior to the commencement of the period of insurance for which that premium is payable;
 - 12.2.4 ensure that all other things necessary are done so as to keep each of the Required Insurances in force; and
 - 12.2.5 ensure that a copy of each policy in respect of each Required Insurance is supplied to the Security Trustees promptly on request, together with the current premium receipts relating to it.
- 12.3 If a Chargor fails to comply with any term of this clause upon request in writing, the Security Trustees may, at the expense of that Chargor effect any insurance and generally do such things and take such other action as the Security Trustees may reasonably consider necessary or desirable to prevent or remedy any breach of this clause.
- 12.4 Except as provided below, the proceeds of any Required Insurances must, if the Security Trustees so require, be applied in reduction of the Secured Liabilities in such order as the Security Trustees see fit.
- 13. **{ TC "13 RECEIVABLES" \1 }RECEIVABLES**
- 13.1 The Security Trustees hereby appoint each Chargor as agent of the Security Trustees for the purposes of:
 - 13.1.1 administering and collecting all of that Chargor's Receivables; and
 - 13.1.2 at that Chargor's own expense, taking such enforcement action and legal or other proceedings as may be necessary or as the Security Trustee may require for collection of Receivables

in each case for the benefit of the Security Trustees and other Secured Parties and in accordance with any directions given by the Security Trustees from time to time and each Chargor hereby accepts such appointment.
- 13.2 The Security Trustees may terminate any agency appointment under clause 13.1 at any time.
- 13.3 For as long as the agency in clause 13.1 continues, no Chargor will hold itself out to third parties as agent of the Security Trustees or any other Secured Party other than for the purposes for which it has been appointed.
- 13.4 Each Chargor hereby covenants and undertakes:
 - 13.4.1 without prejudice to clause 9 but in addition to the restrictions in that clause, not, without the prior written consent of the Security Trustees, to exercise (or allow any other person to exercise) set-off against any Receivables nor to sell, assign, charge, factor or discount or in any other manner deal with any of the Receivables;
 - 13.4.2 to collect all Receivables in the ordinary course of trading as agent for the Security Trustees in accordance with any directions given by the Security Trustees from time to time;

- 13.4.3 not to extend the due date for payment of any Receivable nor to waive any right of recovery or do or omit to do anything which may delay or prejudice recovery of any Receivable;
 - 13.4.4 if requested by the Security Trustees, to open such bank accounts (including separate designated accounts, blocked accounts or trust accounts) in the name of that Chargor with such mandates as the Security Trustees may specify (such account(s) together with all additions to or renewals or replacements of such accounts (in whatever currency) being the **Collections Accounts**) and to procure that all monies which it may receive in respect of its Receivables are paid into such Collections Accounts as the Security Trustees may specify from time to time and pending such payment, to hold all such monies so received upon trust for the Security Trustees and only deal with the monies in any Collections Account in accordance with the written directions of the Security Trustees from time to time (subject only to such rights as the bank at which the account is held may have);
 - 13.4.5 promptly on request by the Security Trustees deliver to the bank with which the relevant Collections Account is maintained a notice to that bank and procure that that bank has signed and delivered to the Security Trustees a letter of acknowledgement of such notice in each case in form and content acceptable to the Security Trustees;
 - 13.4.6 upon crystallisation of the floating charge granted in accordance with clause 5.3 not pay or otherwise deal with the monies in any of its bank accounts except in accordance with any written directions the Security Trustees may give from time to time (subject to any rights which the bank at which the account is held, may have); and
 - 13.4.7 to deliver to the Security Trustees such information as to the amount and nature of its Receivables as the Security Trustees may from time to time reasonably require, taking into account the requirements of the Transaction Documents.
- 13.5 A Chargor may withdraw (or direct any transfer of) all or any part of the monies in the Collections Accounts for its general working capital purposes until notified otherwise by the Security Trustees. Immediately on receipt of such notification and thereafter, no Chargor will attempt or be entitled to withdraw (or direct any transfer of) all or any part of the monies in the Collections Accounts without the prior written consent of the Security Trustees and the Security Trustees shall be entitled in their absolute discretion to refuse to permit any such withdrawal or transfer. If there shall from time to time be any credit balance on any other account of a Chargor with the Security Trustees into which any proceeds of Receivables are paid or transferred, the Security Trustees shall be entitled in its absolute discretion to refuse to permit such credit balance to be utilised or withdrawn by a Chargor (whether in whole or in part) for so long as any of the Secured Liabilities are outstanding.
14. { TC "14 SECURITIES" \1 } **SECURITIES**
- 14.1 Until this Security becomes enforceable:
- 14.1.1 each Chargor will be entitled to receive and retain any dividends, distributions and other monies paid on or derived from the Securities; and
 - 14.1.2 each Chargor will be entitled to exercise all voting and other rights and powers attaching to the Securities, **provided** that it will not exercise any such voting rights or powers in a manner prejudicial to the interests of the Security Trustees under this deed including to have the effect of changing the terms of the Securities (or any class of them).
- 14.2 At any time after this Security becomes enforceable, the provisions of clause 19 shall apply.
- 14.3 The Security Trustees will not be under any duty to ensure that any dividends, distributions or other monies payable in respect of those Securities are duly and promptly paid or received by it or its nominee or to verify that the correct amounts are paid or received or to take any action in connection with the taking up of any (or any offer of any) stocks, shares,

rights, monies or other property paid, distributed, accruing or offered at any time by way of interest, dividend, redemption, bonus, rights, preference, option, warrant or otherwise on or in respect of or in substitution for, any of those Securities.

- 14.4 It is expressly agreed that, notwithstanding anything to the contrary contained in this deed, each Chargor shall remain liable to observe and perform all of the conditions and obligations assumed by it in respect of the Securities.

15. { TC "15 RIGHT OF APPROPRIATION" \11 } **RIGHT OF APPROPRIATION**

- 15.1 To the extent that:

15.1.1 any of the Charged Assets constitute Financial Collateral; and

15.1.2 this deed and the obligations of the Chargors under this deed constitute a Security Financial Collateral Arrangement

the Security Trustees shall have the right, at any time after this Security has become enforceable, to appropriate all or any of those Charged Assets in or towards the payment or discharge of the Secured Liabilities in such order as the Security Trustees may, in their absolute discretion, determine.

- 15.2 The value of any Charged Assets appropriated in accordance with clause 15 shall be the price of that Charged Asset at the time the right of appropriation is exercised as listed on any recognised market index, or determined by such other method as the Security Trustees may select (including independent valuation) or, in the case of cash, shall be the amount of cash appropriated.

- 15.3 Each Chargor agrees that any Charged Assets that are Financial Collateral may, at the Security Trustee's option, be held or designated so as to be under the control of the Security Trustees for all purposes of the Financial Collateral Regulations.

- 15.4 Each Chargor agrees that the methods of valuation provided for in clause 15.2 are commercially reasonable for the purposes of the Financial Collateral Regulations.

16. { TC "16 ENFORCEMENT OF SECURITY" \11 } **ENFORCEMENT OF SECURITY**

- 16.1 The security created by this deed becomes immediately enforceable on an Event of Default occurring and the Security Trustees may, in its absolute discretion, enforce all or any part of it as it considers suitable.

- 16.2 The power of sale and other powers section 101 LPA confers (as varied or extended by this deed) will arise on and be exercisable without further notice immediately after this deed is executed. Sections 93 and 103 LPA do not apply to the security created by this deed.

17. { TC "17 REDEMPTION OF PRIOR SECURITY" \11 } **REDEMPTION OF PRIOR SECURITY**

When the security created by this deed has become enforceable, the Security Trustees may, at the sole cost of the Chargors (payable to the Security Trustees on demand):

17.1.1 redeem any prior Security Interest over any Charged Asset; and/or

17.1.2 procure the transfer of that Security Interest to itself; and/or

17.1.3 settle and pass the accounts of any prior mortgagee, chargee or encumbrancer which, once so settled and passed, will be final and binding on the Chargors.

All money the Security Trustees pays to that prior mortgagee, chargee or encumbrancer under those accounts will form part of the Secured Liabilities.

18. { TC "18 APPOINTMENT AND POWERS OF RECEIVER AND ADMINISTRATOR" \11 } **APPOINTMENT AND POWERS OF RECEIVER AND ADMINISTRATOR**

- 18.1 When the security created by this deed becomes enforceable, or if the Chargor owning the relevant Charged Assets so requests by written notice at any time, the Security Trustee (or any Delegate on its behalf) may:

18.1.1 appoint any person to be a Receiver of the Charged Assets;

- 18.1.2 appoint any person to be an Administrator; and/or
- 18.1.3 exercise all or any of the powers and remedies of a mortgagee in respect of the Charged Assets;
- 19. When the security created by this deed becomes enforceable:
 - 19.1.1 provided that the Security Trustees has given notice to the relevant Chargor that they intend to exercise its rights under this clause, the Security Trustees may exercise in the name of the relevant Chargor any voting rights and any other powers or rights exercisable by the registered holder or bearer of the Securities; and
 - 19.1.2 all dividends, distributions, interest and other sums declared, payable, paid or made in respect of the Securities received by or on behalf of that Chargor will be held on trust for the Security Trustees and may be applied as though they were the proceeds of sale.
- 19.2 The Security Trustees may, subject to any necessary approval from the court, end the appointment of an Administrator and appoint a replacement for any Administrator whose appointment ends for any reason.
- 19.3 The Security Trustees may remove any Receiver appointed by it and appoint a new Receiver in his place. If there is more than one Receiver, they will have power to act individually (unless the deeds or other instruments appointing them say otherwise).
- 19.4 An Administrator will have all the powers given to him under the Insolvency Act.
- 19.5 A Receiver will have the following powers, as well as the powers conferred by the LPA and, although he is not an administrative receiver, by schedule 1 to the Insolvency Act (but without any of the restrictions imposed on the exercise of those powers by those statutes):
 - 19.5.1 the same powers to do, or to omit to do, in the name of and on behalf of that Chargor, anything which that Chargor itself could have done or omitted to do with those Charged Assets if they were not the subject of this Security;
 - 19.5.2 to take possession of, collect and get in the Charged Assets and/or income in respect of which he was appointed;
 - 19.5.3 to manage the Charged Assets and the business of the Chargor;
 - 19.5.4 to redeem any Security Interest;
 - 19.5.5 to borrow or raise any money and secure the payment of any money in priority to the Secured Liabilities for the exercise of his powers and/or defraying any costs or liabilities incurred by him in such exercise;
 - 19.5.6 to alter, develop, complete, construct, refurbish or repair any Charged Asset;
 - 19.5.7 to complete or agree to the completion or undertaking (with or without modification) of any project in which the relevant Chargor is interested before his appointment, being a project for the alteration, development, completion, construction, refurbishment or repair of any Charged Asset;
 - 19.5.8 to sell or agree to dispose of the Charged Assets over which he was appointed without being limited by any restriction section 103 or 109 LPA imposes and for that purpose, to enter into covenants and other contractual obligations in the name of, and to bind, the Chargor;
 - 19.5.9 to lease, make agreements for leases, accept surrenders of leases and grant options as the Security Trustees consider suitable and without the need to comply with any of the terms of sections 99 and 100 LPA;
 - 19.5.10 to take any proceedings, in the name of the relevant Chargor or otherwise in respect of the Charged Assets including proceedings for recovery of Rental Income on his appointment;
 - 19.5.11 to insure, and renew any insurances over, the Charged Assets in such manner as he considers suitable or as the Security Trustees direct;

- 19.5.12 to appoint and employ managers, officers and workmen and engage professional advisers he considers suitable, including power to employ his partners and firm;
 - 19.5.13 to operate any rent review clause for any Property in respect of which he was appointed and to apply for any new or extended lease; and
 - 19.5.14 to agree any arrangement or compromise he considers suitable and to do all other things incidental or conducive to any other power vested in him to realise the Charged Assets.
- 19.6 In making any disposal the Receiver, the Security Trustees or any Delegate may accept, as consideration, cash, shares, loan capital or other Assets, including consideration fluctuating according to or dependent upon profit or turnover and consideration the amount of which is to be determined by a third party. Any such consideration may be receivable in a lump sum or by instalments and upon receipt by the Receiver, the Security Trustees or any Delegate, shall be and become charged with the payment of the Secured Liabilities. Any contract for disposal may contain conditions excluding or restricting the personal liability of the Receiver, the Security Trustees and any Delegate.
- 19.7 Any Receiver will be the agent of the relevant Chargor and the Chargors will be solely responsible for his acts and defaults and for his remuneration.
- 19.8 Any Receiver will be entitled to remuneration for his services at a rate to be fixed by agreement between him and the Security Trustees (or failing agreement to be fixed by the Security Trustees) without the limits contained in section 109 LPA.
- 19.9 Only money actually paid by a Receiver to the Security Trustees in satisfaction or discharge of the Secured Liabilities may be applied by the Security Trustees in satisfaction of the Secured Liabilities.
- 19.10 Neither the Security Trustees nor any Receiver or Delegate will be liable:
- 19.10.1 in respect of the Charged Assets; or
 - 19.10.2 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, their respective powers, unless the loss or damage is caused by his gross negligence or wilful misconduct.
- 19.11 Neither the Security Trustees nor any Receiver or Delegate must take any particular action in relation to the Charged Assets nor will they be liable to any Chargor for the manner in which it collects or fails to collect any Receivable.
- 19.12 Without prejudice to the generality of clause 19.10, entry into possession of the Charged Assets will not make the Security Trustees, the Receiver or any Delegate liable to account as mortgagee in possession. If the Security Trustees, any Receiver or any Delegate enters into possession of the Charged Assets, it may, at any time at its discretion, go out of possession.
- 19.13 All or any of the powers which are conferred by this deed on a Receiver may be exercised by the Security Trustees or any Delegate without first appointing a Receiver or despite the appointment of any Receiver.
- 19.14 Except to the extent provided by law, an insolvency event for any Chargor will not affect any of the powers described in clauses 19.5 to 19.13.
- 19.15 No person dealing with the Security Trustees or with any Receiver or Delegate need:
- 19.15.1 enquire whether the right:
 - (a) of the Security Trustees to appoint a Receiver or Delegate; or
 - (b) of any person to exercise any of the powers conferred by this deed
 has arisen or become exercisable by the Security Trustees or by any such Receiver or Delegate;

- 19.15.2 be concerned with notice to the contrary, or with the propriety of the exercise or purported exercise of any of those powers. The title of such a buyer and the position of such a person will not be impeachable by reference to any of the above matters.
20. { TC "20 APPLICATION OF PROCEEDS" \1 } **APPLICATION OF PROCEEDS**
- 20.1 All monies received by the Security Trustees or any Receiver or Delegate appointed under this deed shall (subject to the rights and claims of any person having a Security Interest ranking in priority to the Security Interest constituted by this deed) be applied in accordance with the terms of the Trust Deed.
- 20.2 The provisions of clause 20.1 shall take effect as and by way of variation and extension to the provisions of section 109 LPA, which provisions as so varied and extended shall be deemed incorporated in this deed.
21. { TC "21 CLAWBACK" \1 } **CLAWBACK**
- 21.1 Any release, discharge or settlement between any Chargor and the Security Trustees shall be deemed conditional upon no payment or security received by the Security Trustees or any other Secured Party in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded pursuant to any law relating to insolvency, bankruptcy, winding-up, administration or receivership and, notwithstanding any such release, discharge or settlement the Security Trustees shall be entitled to recover the value or amount of such Security Interest or payment from any Chargor as if such release, discharge or settlement had not occurred.
- 21.2 If any claim of the kind referred to in clause 21.1 is made against the Security Trustees under insolvency laws, the Security Trustees may agree the claim or settle it on any terms it chooses without asking for any Chargor's agreement. If the Security Trustees do agree or settle the claim, the Chargors will be liable under this deed as if a court order had been made containing the terms the Security Trustees have agreed. The Chargors will be responsible for all costs and expenses the Security Trustees properly incur defending such a claim.
22. { TC "22 INTENT" \1 } **INTENT**
- Without prejudice to the generality of clause 23, each Chargor expressly confirms that it intends that the guarantee contained in this deed shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Transaction Documents and/or any facility or amount made available under any of the Transaction Documents for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; increasing the amount of any loan notes or issuing new loan notes; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities or existing loan notes; refinancing any other indebtedness; making facilities available to new borrowers or issuing new loan notes to new noteholders; any other variation or extension of the purposes for which any such facility, loan notes or amount might be made available or issued from time to time; and any fees, costs and/or expenses associated with any of the foregoing.
23. { TC "23 WAIVER OF RIGHTS" \1 } **WAIVER OF RIGHTS**
- 23.1 The obligations of the Chargors under this deed will not be affected by:
- 23.1.1 any time, waiver or consent granted to, or composition with any Chargor or any other person;
- 23.1.2 any incapacity or lack of power, authority or legal personality of or change in the members or status of any Chargor or any other person or any defective or excessive exercise of any Chargor's powers or authority;
- 23.1.3 any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) termination or replacement of the Secured Liabilities or any document, guarantee or Security Interest related to the Secured Liabilities including any change in the purpose of, any extension

- of or increase in any facility or the addition of any new facility or other document, guarantee or Security Interest;
- 23.1.4 any unenforceability, illegality, invalidity, irregularity or frustration of any obligation (actual or purported) of any person under this deed or any other document, guarantee or Security Interest held in connection with the Secured Liabilities;
- 23.1.5 any insolvency, bankruptcy, liquidation, administration, winding-up, dissolution, limitation, disability, the discharge by operation of law or any similar proceedings in respect of a Chargor or any other person; or
- 23.1.6 any other act, omission or circumstance which but for this provision, might operate to exonerate or discharge a Chargor or otherwise reduce or extinguish its liability under this deed.
- 23.2 Without prejudice to the generality of clause 23.1, each Chargor expressly confirms that it intends that the guarantee and indemnity and the Security Interest contained in this deed shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Transaction Documents and/or any loan or amount made available under any of the Transaction Documents for any purposes, and any fees, costs and/or expenses associated with any of the foregoing.
24. **{ TC "24 CONTINUING SECURITY AND SECURITY TRUSTEES' PROTECTIONS" \1 } CONTINUING SECURITY AND SECURITY TRUSTEES' PROTECTIONS**
- 24.1 This deed shall remain in full force and effect as a continuing security, and, in the case of clause 3 as a continuing guarantee and indemnity, until the Security Trustees shall have certified in writing that the Secured Liabilities have been discharged in full.
- 24.2 The Security Trustees may make one or more demands under this deed.
- 24.3 This deed may be enforced without any Secured Party first having:
- 24.3.1 recourse to any other right, remedy, guarantee or Security Interest held or available to it;
- 24.3.2 to take action or obtain judgment in any court against any Chargor or any other person;
- 24.3.3 to make or file any claim in a bankruptcy, liquidation, administration or insolvency of any Chargor or any other person; or
- 24.3.4 to make demand, enforce or seek to enforce any claim, right or remedy against any Chargor or any other person.
25. **{ TC "25 FURTHER ASSURANCE AND POWER OF ATTORNEY" \1 } FURTHER ASSURANCE AND POWER OF ATTORNEY**
- 25.1 **Further assurance**
- 25.1.1 Each Chargor shall promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Trustees may reasonably specify (and in such form as the Security Trustees may reasonably require in favour of the Security Trustees or its nominee(s)):
- (a) to perfect the Security Interest created or intended to be created under or evidenced by this deed (which may include the execution of a mortgage, charge, assignment or other Security Interests over all or any of the assets which are, or are intended to be, the subject of this deed) or for the exercise of any rights, powers and remedies of the Security Trustees or any other Secured Party provided by or pursuant to the Transaction Documents or by law;
- (b) to confer on the Security Trustees or any other Secured Party Security over any property and assets of that Chargor located in any jurisdiction

equivalent or similar to the Security Interest intended to be conferred by or pursuant to this deed; and/or

- (c) to facilitate the realisation of the assets which are, or are intended to be, the subject of this deed.

25.1.2 Each Chargor shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security Interest conferred or intended to be conferred on the Security Trustees or the Secured Parties by or pursuant to the Transaction Documents.

25.1.3 Any security document required to be executed by a Chargor pursuant to this clause 25.1 will be prepared at the cost of the Chargors and will contain terms and conditions which are no more onerous than those contained herein.

25.1.4 Each Chargor, as registered proprietor, hereby appoints the Security Trustees as its agent to apply for the particulars of this deed and of the interest of the Security Trustees in the Intellectual Property and any other or future trademarks or trade mark applications registered or to be registered in the United Kingdom in the name of that Chargor to be made on the Register of Trade Marks under section 25(1) of the Trade Marks Act 1994 and each Chargor hereby agrees to execute all documents and forms required to enable such particulars to be entered on the Register of Trade Marks.

25.2 Power of attorney

25.2.1 Each Chargor by way of security irrevocably appoints the Security Trustees and any Receiver or Delegate (in writing under hand signed by an officer of the Security Trustees or any Receiver or Delegate) severally to be its agents and attorneys in its name and on its behalf to, upon the occurrence of an Event of Default which is continuing:

- (a) do all things which that Chargor may be required to do under this deed;
- (b) sign, execute (using the company seal where appropriate), deliver and otherwise perfect any Security Interest required to be signed or executed pursuant to the terms of this deed; and
- (c) sign, execute (using the company seal where appropriate), deliver and complete any deeds, instruments or other documents and following an Event of Default and for so long as the same is continuing to do all acts and things which may be required by the Security Trustees or any Receiver or Delegate in the exercise of any of their powers under this deed, or to perfect or vest in the Security Trustees, any Receiver or Delegate its nominees or any purchaser, title to any Charged Assets or which they may deem expedient in connection with the getting in, disposal, or realisation of any Charged Assets.

25.2.2 Each agent and attorney may appoint a substitute or delegate his authority. Each Chargor ratifies and confirms (and agrees to ratify and confirm) anything which an attorney does under the power of attorney conferred by clause 25.2.1.

26. { TC "26 NOTICE OF SUBSEQUENT SECURITY – NEW ACCOUNTS" \1 } NOTICE OF SUBSEQUENT SECURITY – NEW ACCOUNTS

26.1 If the Security Trustees receive notice (whether actual or otherwise) of any subsequent Security Interest affecting any part of the Charged Assets and/or the proceeds of sale of the Charged Assets, or the guarantee and indemnity or Security Interest contained in this deed ceases to be continuing for any reason whatsoever it may open a new account or accounts for any Chargor in its books.

26.2 If the Security Trustees do not open a new account immediately on receipt of notice under clause 26.1, then (unless the Security Trustees give express written notice to the contrary to the relevant Chargor) all payments made by that Chargor to the Security Trustees shall be treated as having been credited to a new account of that Chargor and not as having been

applied in reduction of the Secured Liabilities, as from the time of receipt of the relevant notice by the Security Trustees.

27. { TC "27 CURRENCY AND SET-OFF" \1 } **CURRENCY AND SET-OFF**

27.1 The Security Trustees may set-off any obligation due from a Chargor under this deed against any obligation owed by the Security Trustees (in their capacity as agent and trustee of the Secured Parties) to that Chargor, regardless of the place of payment of either obligation.

27.2 The liabilities referred to in this clause 27 may be actual, contingent, primary, collateral, several or joint liabilities.

27.3 If the relevant obligation or liability is unliquidated or unascertained the Security Trustees may set-off the amount they estimate (in good faith) will be the final amount of such obligation or liability once it becomes liquidated or ascertained.

28. { TC "28 APPROPRIATION AND SUSPENSE ACCOUNT" \1 } **APPROPRIATION AND SUSPENSE ACCOUNT**

28.1 Subject to clause 20 and clause 28.2 and to the terms of the Instrument, the Security Trustees may apply all payments received for the Secured Liabilities to reduce any part of those liabilities as it thinks fit.

28.2 All monies received, recovered or realised by the Security Trustees under this deed may at the discretion of the Security Trustees be credited to any suspense account for so long as the Security Trustees determine (with interest accruing thereon at such rate, if any, as the Security Trustees may determine for the account of the Chargors) without the Security Trustees having any obligation to apply such monies or any part of them in or towards the discharge of any of the Secured Liabilities.

29. { TC "29 PAYMENTS" \1 } **PAYMENTS**

29.1 Subject to clause 29.2, all payments to be made by a Chargor in respect of this deed, shall be made in immediately available funds to the credit of such account as the Security Trustees may designate. All such payments shall be made free and clear of, and without any deduction for, or on account of, any set-off or counterclaim or, except to the extent compelled by law, any deduction on account of any taxes.

29.2 If a Chargor is compelled by law to withhold or deduct any taxes from any sum payable under this deed to the Security Trustees, the sum so payable by that Chargor shall be increased so as to result in the receipt by the Security Trustees of a net amount equal to the full amount expressed to be payable under this deed.

29.3 Any demand, notification or certificate given by the Security Trustees specifying amounts due and payable under or in connection with any of the provisions of this deed shall, in the absence of manifest error, be conclusive and binding on the Chargors.

30. { TC "30 COSTS, EXPENSES AND INDEMNITIES" \1 } **COSTS, EXPENSES AND INDEMNITIES**

30.1 The Chargors must reimburse the Security Trustees, any Receiver, any Delegate and any Administrator in respect of all reasonable expenses, including reasonable legal, valuation, accountancy and consultancy fees (and any value added or similar tax on them) incurred by the Security Trustees, any Receiver, any Delegate or any Administrator in connection with any actual or proposed amendment, replacement, restatement or extension of, or any waiver or consent under, this deed which is required by or on behalf of any Chargor.

30.2 The Chargors must reimburse the Security Trustees, any Receiver, any Delegate and any Administrator, on demand, for all Losses incurred in connection with the enforcement, attempted enforcement or preservation of any of their rights under:

30.2.1 this deed; or

30.2.2 any of the documents referred to in this deed.

30.3 The Chargors must, on demand, jointly and severally indemnify the Indemnified Parties for all Claims and Losses which may be incurred by or made against any of them at any time relating to or arising directly or indirectly out of:

30.3.1 the exercise or purported exercise of the powers contained in this deed;

30.3.2 a claim of any kind made or asserted against any Indemnified Party which would not have arisen if this deed had not been executed and/or registered;

30.3.3 the creation, imposition, recording or registration of any Security Interest over any Charged Asset securing the repayment to or recovery by any third party of any costs, expenses or other sums incurred because of:

(a) a breach, contravention or violation of any Environmental Law; or

(b) the release, discharge or emission of any harmful or hazardous material; and

(c) the redemption, removal, vacation or discharge of any Security Interest;

30.3.4 any Environmental Claim against any Indemnified Party or a Chargor in respect of any Charged Asset and/or any business operation of a Chargor;

30.3.5 any liability or potential liability on any Indemnified Party to cure, clean-up or make good:

(a) any breach, contravention or violation of any Environmental Law by a Chargor; or

(b) any harm, actual or potential, to the environment caused, directly or indirectly, by any release, emission or discharge of any harmful or hazardous material from in or to the Charged Assets; or

30.3.6 any breach by a Chargor of any of its obligations under this deed;

unless, in the case of clauses 30.3.1 and 30.3.2, it was caused by the negligence or wilful misconduct of the Indemnified Party.

30.4 No Indemnified Party will in any way be liable or responsible to any Chargor for any loss or liability of any kind arising from any act or omission by it (whether as mortgagee in possession or otherwise) in relation to the Charged Assets, except to the extent caused by its own negligence or wilful misconduct.

30.5 The Chargors must 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 with this deed.

31. { TC "31 ASSIGNMENT AND TRANSFER" \11 } **ASSIGNMENT AND TRANSFER**

The Security Trustees may assign or transfer all or any part of its rights under this deed in accordance with and subject to the provisions of the Trust Deed. No Chargor may assign, transfer, charge, make the subject of a trust or deal in any other manner with this deed or any of its rights under this deed or purport to do any of the same without the prior written consent of the Security Trustees.

32. { TC "32 THIRD PARTY RIGHTS" \11 } **THIRD PARTY RIGHTS**

32.1 Subject to clauses 32.2, 32.3 and 32.4, a person who is not a Party will have no rights under the Third Parties Act to enforce or rely on a provision of this deed. No Party may hold itself out as trustee of any rights under this deed for the benefit of any third party unless specifically provided for in this deed. This clause 32.1 does not affect any right or remedy of any person which exists, or is available, other than under the Third Parties) Act.

32.2 Subject to the terms of the Instrument, the Secured Parties are entitled under the Third Parties Act and with the prior written consent of the Security Trustees to enforce any term of this deed which confers (expressly or impliedly) any benefit on that Secured Party.

- 32.3 Any person to whom the benefit of any term of this deed is assigned under the terms of the Transaction Documents may under the Third Parties Act enforce any term of this deed which confers (expressly or impliedly) any benefit on any such person.
- 32.4 Any Receiver or Delegate may, subject to the Third Parties Act rely on any clause of this deed which expressly confers rights on it.
- 32.5 The Security Trustees and the Chargors may, by agreement in writing, rescind, terminate or vary any of the terms in this deed or waive or settle any right or claim under it in any way without the consent of any third party.
33. { TC "33 NOTICES" \11 } **NOTICES**
- The provisions of clause 11 of the Trust Deed shall be deemed to be incorporated into this deed, *mutatis mutandis*, as if the same were set out in full herein.
34. { TC "34 GENERAL" \11 } **GENERAL**
- 34.1 No variation to this deed shall be effective unless made in writing and signed by or on behalf of all the parties to this deed. A waiver given or consent granted by the Security Trustees 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.
- 34.2 Each provision of this deed is severable and distinct from the others. If at any time any provision of this deed is or becomes unlawful, invalid or unenforceable to any extent or in any circumstances for any reason, it shall to that extent or in those circumstances be deemed not to form part of this deed but (except to that extent or in those circumstances in the case of that provision) the legality, validity and enforceability of that and all other provisions of this deed shall not be affected in any way.
- 34.3 If any provision of this deed is found to be illegal, invalid or unenforceable in accordance with clause 34.2 but would be legal, valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it legal, valid or enforceable.
- 34.4 The failure or delay in exercising a right or remedy provided by this deed or by law does not constitute a waiver of that (or any other) right or remedy. No single or partial exercise, or non-exercise or non-enforcement of any right or remedy provided by this deed or by law prevents or restricts any further or other exercise or enforcement of that (or any other) right or remedy.
- 34.5 The Security Trustees' rights and remedies contained in this deed are cumulative and not exclusive of any rights or remedies provided by law.
- 34.6 This deed may be executed in any number of counterparts each of which when executed and delivered shall be an original. All the counterparts together shall constitute one and the same document.
35. { TC "35 GOVERNING LAW AND JURISDICTION" \11 } **GOVERNING LAW AND JURISDICTION**
- 35.1 This deed and any non-contractual obligations arising out of or in connection with it are governed by English law.
- 35.2 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this deed (including a dispute relating to the existence, validity or termination of this deed or any non-contractual obligation arising out of or in connection with this deed) (a **Dispute**).
- 35.3 The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- 35.4 Notwithstanding clause 35.2 above, the Security Trustees shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Security Trustees may take concurrent proceedings in any number of jurisdictions.

EACH CHARGOR has executed this deed as a deed and delivered it on the date first set out above

SCHEDULE 1{ TC "Schedule 1 - The Parties" \11 }

The Parties

Part 1{ TC "Part 1 – The Chargors" \11 } – The Chargors

Name	Place of Incorporation	Registered Number	Registered Office	Notice Details
Kingsway Asset Finance Limited	England and Wales	03072782	Barons Court Manchester Road Wilmslow Cheshire SK9 1BQ	Address: Registered office from time to time Attention: the Directors

Part 2{ TC "Part 2 – The Original Noteholders" \11 } – The Original Noteholders

Name and company number (if relevant)	Address or registered office
Martin David Harrison	Richmond, 72b Macclesfield Road, Prestbury, SK10 4BH
Adrian James Anthon	Greylands, 45 Carrwood Road, Bramhall, Stockport, SK7 3LR

SCHEDULE 2{ TC "Schedule 2 - Property" \1 }
Property

Intentionally blank

SCHEDULE 3{ TC "Schedule 3 - Material Contracts" M1 }

Material Contracts

Intentionally blank

SCHEDULE 4(TC "Schedule 4 - Prior Charges" \11)

Prior Charges

1. Debenture granted by Kingsway Asset Finance Limited in favour of National Westminster Bank PLC dated 15 May 2015
2. Debenture granted by Kingsway Asset Finance Limited in favour of National Westminster Bank PLC dated 2 October 2017
3. Deed of Charge granted by Kingsway Asset Finance Limited in favour of Investec Asset Finance Plc dated 5 March 2018
4. Any further Security Interest granted by Kingsway Asset Finance Limited in favour of National Westminster Bank plc in connection with the NatWest Senior Facility.
5. Any Security Interest granted by Kingsway Asset Finance Limited in favour of British Business Investments Ltd in connection with the BBI Senior Facility.

SCHEDULE 5{ TC "Schedule 5 - Securities" \1 }

Securities

Intentionally blank

CHARGOR

EXECUTED as a DEED by KINGSWAY)
ASSET FINANCE LIMITED acting by a)
director in the presence of:)

Director

Witness Signature

Daniel Finn

Witness Name

DANIEL FINN

(in BLOCK CAPITALS)

Address

55 KING ST
MANCHESTER
M2 4LR

Occupation

SOLICITOR

SECURITY TRUSTEES

EXECUTED and DELIVERED as a DEED)
by ADRIAN JAMES ANTHON in the)
presence of:)

Director

Director

Witness Signature

Daniel Finn

Witness Name

DANIEL FINN

Address

55 KING ST
MANCHESTER
M2 4LR

Occupation

SOLICITOR

EXECUTED and DELIVERED as a DEED)
by MARTIN DAVID HARRISON in the)
presence of:)

*** *****

Witness Signature: Daniel Finn

Witness Name: DANIEL FINN

Address: 55 KING ST
MANCHESTER
M2 4LR

Occupation: SOLICITOR

