

MR01

Particulars of a charge

V097536/13



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

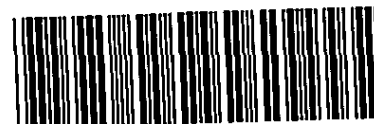
☒ **What this form is NOT for**
You may not use this form to
register a charge where there is no
instrument Use form MR08

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 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. This will be scanned and placed on the public record

WEDNESDAY



A34GLKY8
A25 26/03/2014 #19
COMPANIES HOUSE

1 Company details

Company number 0 5 1 6 0 1 6 7

Company name in full AUDLEY COURT LIMITED

1 2 For official use

→ **Filing 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 d 2 d 4 m 0 m 3 y 2 y 0 y 1 y 4

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 WATES CONSTRUCTION LIMITED

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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Description

Please give a short description of any land (including buildings), ship, aircraft or intellectual property registered (or required to be registered) in the UK which is subject to this fixed charge or fixed security

Continuation page

Please use a continuation page if you need to enter more details

Description

N/A

5

Fixed charge or fixed security

Does the instrument include a fixed 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 chargor from creating any further security that will rank equally with or ahead of the charge? Please tick the appropriate box

☒ Yes

☐ No

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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

CMS CAMERON MCKEUNA LLP

X

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

MR01

Particulars of a charge

**Presenter information**

We will send the certificate to the address entered below. All details given here will be available on the public record. You do not have to show any details here but, if none are given, we will send the certificate to the company's Registered Office address.

Contact name BEYE/SEGA/123457 00058

Company name CMS Cameron McKenna LLP

Address Mitre House

160 Aldersgate Street

London

Post town

County/Region

Postcode E C 1 A 4 D D

Country

DX DX 135316 BARBICAN 2

Telephone 020 7367 3000

**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: 5160167

Charge code: 0516 0167 0012

The Registrar of Companies for England and Wales hereby certifies that a charge dated 24th March 2014 and created by AUDLEY COURT LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 26th March 2014

DT

Given at Companies House, Cardiff on 28th March 2014



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

Dated

24/03/2014

- (1) AUDLEY COURT LIMITED
- (2) WATES CONSTRUCTION LIMITED

Legal charge over shares

CERTIFIED TO BE A TRUE AND
COMPLETE COPY OF THE ORIGINAL

CMS CAMERON MCKENNA *up*

DATE 25/3/2014

CMS Cameron McKenna LLP
Mitre House, 160 Aldersgate Street
London EC1A 4DD

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This deed is made on

between:

- (1) **Audley Court Limited** a company incorporated in England and Wales with company number 05160167 of Swan Court, Kingsbury Crescent, Staines, Middlesex TW18 3BN (the "**Chargor**"); and
- (2) **Wates Construction Limited** a company incorporated in England and Wales with company number 01977948 of Wates House, Station Approach, Leatherhead, Surrey KT22 7SW (the "**Lender**");

RECITALS

- (A) Pursuant to the terms of the facility agreement dated 11 May 2012 between (1) Audley Binswood Limited (as Borrower) and (2) Wates Construction Limited (as Lender), the Borrower covenanted to ensure that the share capital of the management company incorporated in relation to the Development be secured by way of a charge in favour of the Lender.
- (B) Audley Binswood Management Limited (the Manager) is the management company in relation to the Development and its shareholder, the parent of the Borrower, hereby charge the shares in the management company in accordance with the Borrower's obligations under the Facility Agreement

1. INTERPRETATION

1.1 Terms defined in Facility Agreement

Except where this deed expressly states otherwise, each term used in this deed which is defined in the Facility Agreement has the same meaning as in the Facility Agreement, construed in accordance with the Facility Agreement.

1.2 Terms expressly defined in this deed

In this deed:

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

"Costs" all costs, charges, expenses and liabilities of any kind including, without limitation, costs and damages in connection with litigation, professional fees, disbursements and any value added tax charged on Costs.

"Debenture" means a debenture dated 11 May 2012 made between (1) Audley Binswood Limited and (2) Wates Construction Limited and entered into pursuant to the Facility Agreement.

"Delegate" means any delegate, agent, attorney or trustee appointed by the Lender.

"Default Rate" means one per cent. per annum above the highest rate of Interest ordinarily applicable to the Secured Liabilities from time to time.

"Discharge Date" means the date with effect from which all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and all relevant commitments of the Lender cancelled.

"Distribution Rights" means:

- (a) all dividends, distributions, interest and other income paid or payable on any Share;
- (b) all shares or other property derived from any Shares (whether by way of conversion, consolidation, subdivision, substitution, redemption, bonus, preference, option or otherwise); and
- (c) all other allotments, accretions, rights, benefits and advantages of all kinds accruing, offered or otherwise derived from or incidental to any Share.

"Enforcement Party" means any of the Lender, a Receiver or a Delegate.

"Event of Default" means the occurrence of any of the events or circumstances defined in the Facility Agreement as an Event of Default but shall also include any breach by the Chargor of or non-compliance by the Chargor with the provisions of this deed.

"Facility Agreement" means a facility agreement dated 11 May 2012 made between (1) Audley Binswood Limited and (2) Wates Construction Limited for the provision of a term loan facility.

"Insolvency Act" means Insolvency Act 1986.

"Interest" means interest at the rate provided and calculated and compounded in accordance with Clause 6 of the Facility Agreement both before and after judgement

"LPA" means Law of Property Act 1925.

"Manager" means Audley Binswood Management Limited incorporated and registered in England and Wales with company number 08275524 whose registered office is at Swan Court, Watermans Business Park, Kingsbury Crescent, Staines, Middlesex TW18 3BA

"Party" means a party to this deed.

"Receiver" means any one or more receivers and managers or (if the Lender so specifies in the relevant appointment) receivers appointed by the Lender pursuant to this deed in respect of the Chargor or in respect of the Secured Property or any of them.

"Secured Liabilities" all present and future monies, obligations and liabilities owed by the Borrower or the Manager to the Lender, whether actual or contingent and whether owed jointly or severally, as principal or surety and/or in any other capacity whatsoever, under or in connection with the Facility Agreement, the Finance Documents or the Debenture (including, without limitation, those arising under clause 13.3 of the Debenture) together with all Costs and interest (including, without limitation, default interest) accruing in respect of such monies or liabilities.

"Secured Property" means the assets charged at clause 3 (*Charging clause*) and includes any part or parts of them.

"Security Period" means the period beginning on the date of this deed and ending on the Discharge Date.

"Shares" means all shares (if any) specified in Schedule 1 (*Shares*).

"Third Parties Act" means the Contracts (Rights of Third Parties) Act 1999.

1.3 Construction

In this deed:

1.3.1 any reference to:

1.3.1.1 the word **"assets"** includes present and future property, revenue rights and interests of every kind;

1.3.1.2 the word **"guarantee"** includes any guarantee or indemnity and any other financial support (including any participation or other assurance against loss and any deposit or payment) in respect of any person's indebtedness;

1.3.1.3 the word **"indebtedness"** includes any obligation for the payment or repayment of money, whatever the nature or basis of the relevant obligation (and whether present or future, actual or contingent);

1.3.1.4 the word **"law"** includes law established by or under statute, constitution, treaty, decree, regulation or judgment, common law and customary law and the word **"lawful"** and similar words and phrases are to be construed accordingly;

1.3.1.5 the word **"person"** includes any individual, company, corporation, firm, government, state or any agency of a state and any association, partnership or trust (in each case, whether or not it has separate legal personality);

1.3.1.6 the word **"regulation"** includes all guidelines, official directives, regulations, requests and rules (in each case, whether or not having the force of law) of any governmental, inter-governmental or supranational agency, body or department or of any regulatory or other authority or organisation (whether statutory or non-statutory, governmental or non-governmental);

1.3.1.7 the word **"security"** includes any assignment by way of security, charge, lien, mortgage, pledge or other security interest securing any obligation of any person and any other agreement or arrangement having a similar effect;

1.3.1.8 the word **"set-off"** includes analogous rights and obligations in other jurisdictions;

1.3.1.9 the word **"tax"** includes any tax, duty, impost or levy and any other charge or withholding of a similar nature (including any interest or penalty for late payment or non-payment);

- 1.3.2 where something (or a list of things) is introduced by the word **"including"**, or by the phrase **"In particular"**, or is followed by the phrase **"or otherwise"**, the intention is to state an example (or examples) and not to be exhaustive (and the same applies when other similar words or phrases are used);
- 1.3.3 each reference to the **"Chargor"** or to the **"Lender"** includes its successors in title and its permitted assignees or permitted transferees;
- 1.3.4 unless this deed expressly states otherwise, (a) each reference in this deed to any provision of any statute or of any subordinate legislation means, at any time, the relevant provision as in force at that time (even if it has been amended or re-enacted since the date of this deed) and (b) each reference in this deed to any provision of any statute at any time includes any subordinate legislation made pursuant to or in respect of such provisions as in force at such time (whether made before or after the date of this deed and whether amended or re-enacted since the date of this deed);
- 1.3.5 each reference to this deed (or to any other agreement or deed) means, at any time, this deed (or as applicable such other agreement or deed) as amended, novated or supplemented, at that time, provided that the relevant amendment, novation or supplement does not breach any term of this deed or of any Finance Document;
- 1.3.6 each reference to the singular includes the plural and vice versa, as the context permits or requires;
- 1.3.7 the index and each heading in this deed is for convenience only and does not affect the meaning of the words which follow it;
- 1.3.8 each reference to a clause or Schedule is (unless expressly provided to the contrary) to be construed as a reference to the relevant clause of or Schedule to this deed;
- 1.3.9 wherever this deed states that the Chargor must not take a particular step without the consent of the Lender, the Lender has discretion whether to give its consent and can impose conditions on any such consent it gives; and
- 1.3.10 an Event of Default is **"continuing"** if it has not been remedied or waived.

1.4 Third Party Rights

- 1.4.1 A person who is not an Enforcement Party has no right under the Third Parties Act to enforce or enjoy the benefit of any term of this deed except to the extent that this deed or any of the Finance Documents expressly provides for it to do so.
- 1.4.2 No consent of any person who is not a Party is required to rescind or vary this deed at any time.
- 1.4.3 This clause 1.4 does not affect any right or remedy of any person which exists, or is available, otherwise than pursuant to the Third Parties Act.

2. CHARGING CLAUSE

2.1 Grant of security

The Chargor, as a continuing security for the payment, discharge and performance of the Secured Liabilities, charges and agrees to charge in favour of the Lender:

- 2.1.1 by way of first legal mortgage, the Shares;
- 2.1.2 by way of first equitable mortgage, the Distribution Rights from time to time accruing to or on the Shares; and
- 2.1.3 to the extent not validly and effectively charged by way of mortgage pursuant to clauses 3.1.1 or 3.1.2, by way of first fixed charge, the Shares and the Distribution Rights from time to time accruing to or on the Shares.

2.2 Full title guarantee and implied covenants

All the security created or given under this deed is made with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994.

2.3 Release

On the Discharge Date the Lender will, at the request and cost of the Chargor, release the Secured Property from the security constituted by this deed.

3. DEPOSIT OF CERTIFICATES AND TRANSFERS

3.1 The Chargor must:

- 3.1.1 promptly deposit with the Lender on the date of this deed (or, in relation to any Secured Property acquired by it, or in which it has acquired an interest, after the date of this deed, on the date that it beneficially acquires such Secured Property or interest) all share certificates or other documents of title or evidence of ownership in relation to any Shares or to the Distribution Rights; and
- 3.1.2 at the same time that it deposits the certificates or documents referred to in clause 3.1.1, deliver to the Lender instruments of transfer in respect of the relevant Shares executed in blank (except for the number and class of Shares and the name of the transferor) and left undated.

3.2 The Lender may retain any certificates, documents or instruments of transfer delivered to it pursuant to this deed until the Discharge Date and if, for any reason it ceases to hold any such certificate, document or instrument before such time, it may by notice to the Chargor require that the relevant certificate, document or instrument be redelivered to it and the Chargor must immediately comply (or procure compliance) with such notice.

3.3 The Lender may at any time following the occurrence of an Event of Default which is continuing complete the instruments of transfer on behalf of such Chargor in favour of itself or such other person as it shall select, and such Chargor shall procure that such instruments of transfer are forthwith registered in the relevant company and that share certificates in the name of the Lender

and/or its nominee(s) in respect of the Shares to which such instrument of transfer relates are delivered to the Lender as soon as reasonably practicable, but in any event no later than 5 days after the date upon which the Lender has delivered the relevant instrument of transfer. The Lender or its nominee, having been registered as the transferee of such Shares, may at any time thereafter re-transfer such Shares to the Chargor and the Chargor shall procure that the relevant instrument of transfer is forthwith registered in the relevant company and that the share certificate(s) in the name of the Chargor, together with a further instrument of transfer executed in accordance with clause 3.1.2 relating to such Shares, are forthwith delivered to the Lender.

4. NEGATIVE PLEDGE AND DISPOSAL RESTRICTIONS

4.1 Negative pledge

The Chargor is not to create, extend or permit to subsist any security over any of the Secured Property.

4.2 Restrictions on disposals

The Chargor is not to sell, transfer or otherwise dispose of its interests (whether legal or beneficial) in the Secured Property.

4.3 Exceptions

Clauses 4.1 (*Negative pledge*) and 4.2 (*Restrictions on disposals*) do not apply:

4.3.1 to the security created or required to be created by this deed;

4.3.2 to any security or transaction to which the Lender has given its written consent; or

4.3.3 to any other security or transaction which is permitted pursuant to the terms of the Facility Agreement.

5. REPRESENTATIONS AND WARRANTIES

The Chargor represents and warrants to the Lender on the date of this deed and on each subsequent date upon which the representations and warranties set out in the Facility Agreement are repeated and upon which there are Secured Liabilities outstanding as follows:

5.1 Status

It is a limited liability company, duly incorporated and validly existing under the laws of England and Wales and has the power to own its assets and carry on its business and other activities as they are being conducted;

5.2 Power and enforceability

the Chargor has the power to enter into this deed and to perform its obligations and exercise its rights under it and the obligations expressed to be assumed by it under this deed are (and at all relevant times have been) legal, valid, binding and enforceable obligations (subject to the principle that equitable remedies are discretionary and to any applicable insolvency laws);

5.3 No Event of Default

5.3.1 no Event of Default has occurred or is continuing or might reasonably be expected to result from the execution of this deed or from effect being given to its provisions;

5.3.2 no person who holds any other security over the Secured Property or over any other asset of the Chargor has enforced or given notice of its intention to enforce such security;

5.4 Non-conflict with other obligations

neither the execution of this deed by the Chargor, nor the Chargor's compliance with its terms will:

5.4.1 conflict with or result in any breach of any law or regulation applicable to it;

5.4.2 cause any limitation on any of its powers or on the right or ability of its directors to exercise those powers to be exceeded; nor

5.4.3 constitute a default, acceleration of payment or termination event (however described) under any agreement or instrument binding upon it;

5.5 Authorisations

all Authorisations required or desirable for the execution, delivery, issue, validity or enforceability of this deed or of the performance of the Chargor's obligations or the exercise of its rights under this deed have been obtained and have not been (and the Chargor is not aware of any circumstance having arisen whereby they might be) withdrawn;

5.6 Priority of security

the legal and equitable mortgages and fixed charges contained in clause 3.1 (*Grant of security*) constitute first priority security over the assets which are expressed to be secured by such mortgages and charges and those assets are not subject to any prior or pari passu security; and

5.7 Matters relating to the Shares

5.7.1 the Shares specified in Schedule 1 (*Shares*) are at the date of this deed the only Shares legally and beneficially owned by it;

5.7.2 it is and will remain the sole beneficial owner of the Secured Property and (save where the Shares have been registered in the name of the Lender or its nominee pursuant to the provisions of this deed) it and/or its nominee is and will remain the absolute legal owner of the Shares subject to the provisions of this deed;

5.7.3 the Shares are fully paid and none of the Secured Property is subject to any lien, charge, equity, encumbrance, option to purchase or similar rights of any person other than the Lender;

5.7.4 the Lender is entitled to be registered or to require a nominee to be registered as member of each of the relevant companies to which the Shares relates without any right of the board of directors of any such

company to refuse registration or to consent to such registration only subject to satisfaction of conditions; and

- 5.7.5 it has not nominated another person or persons to enjoy or exercise all or any of its rights as the registered holder of the Shares.

6. UNDERTAKINGS

The Chargor undertakes to the Lender in the terms of the following provisions of this clause 6, all such undertakings to commence on the date of this deed and to continue throughout the Security Period:

6.1 Matters relating to Shares

- 6.1.1 It will as soon as reasonably practicable upon receipt of the same deliver to the Lender copies of all notices, circulars, letters, reports accounts and other communications with shareholders relating to its holding of the Shares;
- 6.1.2 it will pay all calls or other payments due and payable in respect of any of the Secured Property;
- 6.1.3 save with the prior written consent of the Lender it will not.
- 6.1.3.1 take any action whereby or as a consequence whereof the rights attaching to the Shares are altered or diluted or the issued capital of any of the companies whose Shares is charged by this deed increased;
- 6.1.3.2 participate in any rights issue relating to the Shares;
- 6.1.3.3 apply for, or consent to, the conversion of any Shares held in certificated form into uncertificated form; or
- 6.1.3.4 nominate another person or persons to enjoy or exercise all or any of its rights as the registered holder of the Shares.

6.2 Not to jeopardise security

it will not do anything or allow anything to be done which may in any way have a Material Adverse Effect on the value to the Lender of the security constituted by this deed or the priority of its ranking as expressed in this deed;

6.3 Further assurance

it will at all times (and forthwith upon the Lender's written request) but at the Chargor's own expense take all steps (including the making of all filings and registrations and the payment of all fees and taxes) and execute all documents necessary or, in the reasonable opinion of the Lender, desirable (a) to render effective and valid any security or any right or power created or intended to be created or evidenced under or by this deed but which is or may be ineffective or invalid, (b) to perfect, protect or improve any such security or to facilitate its enforcement or realisation, (c) to protect the Lender's position under this deed or any other deed or document entered into pursuant to this deed or (d) in connection with the exercise of any of any rights or powers by any Enforcement Party under or in relation to this deed, and so that any security document

required to be executed pursuant to this clause will be in such form and will contain such provisions as the Lender may reasonably require;

6.4 Power to remedy

If the Chargor fails to comply with any of the covenants and undertakings set out or referred to in clauses 6.1 to 6.3 inclusive it will allow (and hereby irrevocably authorises) the Lender and/or any other Enforcement Party to take such action (including the making of payments) on behalf of the Chargor as is necessary to ensure that such covenants are complied with; and

6.5 Costs

It will pay all Costs on demand. If it does not do so, the Costs will bear Interest at the Default Rate from and including the date of demand to and including the date of actual payment.

7. DIVIDENDS AND VOTING RIGHTS

7.1 Until the occurrence of an Event of Default but not thereafter while such Event of Default is continuing, the Chargor:

7.1.1 will be entitled to receive and retain all dividends, distributions, interest and other monies paid on or derived from the Shares;

7.1.2 will be entitled to exercise all voting and other rights and powers attaching to the Shares, provided that it will not exercise any such voting rights or powers in a manner which would prejudice the value of, or the ability of the Lender to realise the security created by this deed; and

7.1.3 shall give to the Lender reasonable notice of the manner in which it proposes to exercise the rights and powers referred to in clause 7.1.2.

7.2 At any time when any Shares are registered in the name of the Lender or its nominee, and for such period as there is no Event of Default which is continuing, the Lender will (so far as is consistent with the security created by this deed) exercise any applicable voting or other rights and powers in accordance with the directions of the Chargor and account to the relevant Chargor for any dividends, payments or other distributions attributable to such Shares, but upon the occurrence of an Event of Default and so long as it is continuing the Lender may exercise or refrain from exercising such voting or other rights and powers as it thinks fit and may retain any such dividends, payments or other distributions, but in any case the Lender will not be under any duty to ensure that any dividend, distributions or other monies payable in respect of those Shares are duly and promptly paid or received by it or its nominee or to verify that the correct amounts are paid or received by it or its nominee 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 Shares.

7.3 After the occurrence of an Event of Default, and while such Event of Default is continuing, and in the event that any Shares are registered in the name of the Chargor or its nominee, the Chargor shall and shall procure that its nominee shall:

- 7.3.1 comply with the directions of any Enforcement Party in respect of the exercise of the voting and other rights and powers attaching to the Shares and shall deliver to such Enforcement Party as directed such forms of proxy or other Authorisation as may be appropriate to allow any Enforcement Party to exercise such rights and powers; and
- 7.3.2 hold in trust for and promptly pay or deliver to the Lender any Distribution Rights received by it.

8. ENFORCEABILITY

For the purposes of all powers implied by the LPA or any other applicable statute the Secured Liabilities shall be deemed to have become due and payable and this deed will become immediately enforceable and the powers of the Lender and any Receiver will become exercisable on the date of this deed, but, as between the Lender and the Chargor, the power of sale and other powers conferred by this deed shall be exercisable only upon the occurrence of an Event of Default and for so long as it is continuing (unless it is expressly provided to the contrary otherwise than in this clause or there has been a request from the Chargor to the Lender for the appointment of a Receiver, in which case they shall be exercisable when so provided or at any time following the making of such request as the case may be).

9. ENFORCEMENT OF SECURITY

- 9.1 At any time after the Lender's power of sale has become exercisable, the Lender may appoint one or more than one Receiver in respect of the Secured Property and if more than one Receiver is appointed the Receiver may act jointly and severally or individually.
- 9.2 The Lender may remove the Receiver and appoint another Receiver and the Lender may also appoint an alternative or additional Receiver.
- 9.3 The Receiver will, so far as the law permits, be the agent of the Chargor and the Chargor alone will be responsible for the acts or defaults of the Receiver and will be liable on any contracts or obligations made or entered into by the Receiver. The Lender will not be responsible for any misconduct, negligence or default of the Receiver.
- 9.4 The powers of the Receiver will continue in full force and effect following the liquidation of the Chargor.
- 9.5 The remuneration of the Receiver may be fixed by the Lender but will be payable by the Chargor. The amount of the remuneration will form part of the Secured Liabilities.
- 9.6 The Receiver will have the power on behalf and at the cost of the Chargor:
 - 9.6.1 to do or omit to do anything which he considers appropriate in relation to the Secured Property; and
 - 9.6.2 to exercise all or any of the powers conferred on the Receiver or the Lender under this deed or conferred upon administrative receivers by the Insolvency Act (even if he is not an administrative receiver), or upon receivers by the LPA or any other statutory provision (even if he is not appointed under the LPA or such other statutory provision).

9.7 Without prejudice to the general powers set out in clause 9.6 a Receiver will also have the powers and discretions set out in Schedule 2 (*Receiver's specific powers*).

9.8 If (notwithstanding any representation or warranty to the contrary contained in this deed) there shall be any security affecting the Secured Property which ranks in priority to the security created by this deed and the holder of such prior security takes any steps to enforce such security, the Lender or any Receiver may, at its option, take a transfer of, or repay the Indebtedness secured by, such security.

9.9 The Lender may, at any time after this deed has become enforceable pursuant to clause 8 (*Enforceability*), exercise, to the fullest extent permitted by law, all or any of the powers authorities and discretions conferred on a Receiver by this deed, whether as attorney of the Chargor or otherwise and whether or not a Receiver has been appointed.

9.10 The Lender may, in writing, either in its appointment of a Receiver or by subsequent notice to that Receiver, restrict the right of such Receiver to exercise all or any of the powers conferred on Receivers by this deed.

10. APPLICATION OF PROCEEDS

10.1 Recoveries by Receiver

The proceeds arising from the exercise of the powers of the Receiver will, subject to any claims ranking in priority to the Secured Liabilities, be applied by or at the direction of the Receiver in or towards discharging or satisfying, in the following order of priority:

10.1.1 the costs, charges and expenses of and incidental to the Receiver's appointment and the payment of his remuneration;

10.1.2 any costs, charges, expenses and liabilities of or incurred by any Enforcement Party in the exercise of any of its powers, including all taxes, and outgoings whatever affecting the Secured Property, all premiums on Insurances properly payable under this deed or any applicable statute, and the payment of annual sums or other payments, and the interest on all principal sums, having priority to the Secured Liabilities:

10.1.3 the Secured Liabilities, in accordance with the provisions of the Facility Agreement and otherwise in such order as the Lender may determine; and

10.1.4 the claims of those persons entitled to any surplus.

10.2 Right of appropriation

The Lender is entitled to appropriate money and/or assets to Secured Liabilities in such manner or order as it thinks fit and any such appropriation shall override any appropriation by the Chargor.

10.3 Suspense Account

The Lender may place (for such time as it thinks prudent) any money received by it pursuant to this deed to the credit of a suspense account (without liability

to account for interest thereon) for so long and in such manner as the Lender may from time to time determine without having any obligation to apply that money or any part of it in or towards discharge of the Secured Liabilities.

11. PROTECTION OF THIRD PARTIES

11.1 No duty to enquire

A buyer from or other person dealing with any Enforcement Party will not be concerned to enquire whether any of the powers which such Enforcement Party has exercised or purported to exercise have arisen or become exercisable and may assume that such Enforcement Party is acting in accordance with this deed.

11.2 Receipt conclusive

Receipt by the Lender or any Receiver shall be an absolute and a conclusive discharge to a purchaser of the Secured Property and shall relieve such purchaser of any obligation to see to the application of any monies paid to or by the direction of the Lender or any Receiver.

12. PROTECTION OF LENDER

12.1 Lender's receipts

The Lender's obligation to account (whether to the Chargor or to any other person) shall be limited to the Lender's own actual receipts which the Lender must distribute or pay to the person entitled (or who the Lender, acting reasonably, believes to be entitled) in accordance with the requirements of this deed.

12.2 Exclusion of liability

12.2.1 No Enforcement Party will be liable to the Chargor for any expense, loss liability or damage incurred by the Chargor arising out of the exercise of its rights or powers or any attempt or failure to exercise those rights or powers except any expense, loss, liability or damage arising from its gross negligence, fraud or wilful misconduct.

12.2.2 The Chargor may not take any proceedings against any officer, employee or agent of the Lender in respect of any claim it might have against the Lender or in respect of any act or omission of any kind by that officer, employee or agent in relation to this deed. Any officer, employee or agent of the Lender may rely on this clause 12 under the Third Parties Act.

12.3 Effect of possession

If the Lender or any Receiver registers itself or any nominee as the holder of the Shares or otherwise enters into possession of the Secured Property this will not oblige either the Lender or the Receiver to account as mortgagee in possession.

13. POWER OF ATTORNEY

13.1 Grant of power

13.1.1 Subject to clause 13.1.2 as security for the performance of the obligations of the Chargor under this deed, the Chargor, irrevocably

appoints the Lender, each Receiver and any person nominated by the Lender or the Receiver (in writing, under hand, signed by an officer of the Lender or by the Receiver) severally to be the attorney of the Chargor, with full power of substitution and delegation, for the purposes set out in clause 13.2.

- 13.1.2 Notwithstanding the grant of power in clause 13.1.1 the powers set out in this clause 13 are only exercisable after the occurrence of an Event of Default which is continuing.

13.2 Extent of power

The power of attorney granted in clause 13.1 allows the Lender, the Receiver or the relevant nominee in the name of the Chargor and on its behalf and at its expense:

- 13.2.1 to perfect the security given by the Chargor under this deed; and
- 13.2.2 to sign, execute and deliver any document or do any act or thing that the Chargor may, ought or has agreed to execute or do under this deed or which the Lender, the Receiver or the relevant nominee may in their absolute discretion consider appropriate in connection with the exercise of any of the rights, powers, authorities or discretions of the Lender or the Receiver under or otherwise for the purposes of this deed.

13.3 Ratification

The Chargor covenants with the Lender to ratify and confirm all acts or things made, done or executed by any attorney exercising the powers conferred in accordance with this clause 13.

14. APPLICATION, VARIATION AND EXTENSION OF STATUTORY PROVISIONS

14.1 Conditions applicable to power of sale etc.

- 14.1.1 For the purposes only of section 101 of the LPA, (but otherwise subject to the provisions of clause 8 (*Enforceability*)), the conditions set out in that section as to when such powers arise do not apply and the Secured Liabilities become due and the statutory power of sale and other powers of enforcement arise immediately following the execution of this deed.
- 14.1.2 The Lender and any Receiver may exercise the statutory power of sale conferred by the LPA free from the restrictions imposed by section 103 of the LPA, which shall not apply to this deed.

14.2 Extension of powers of sale, etc.

- 14.2.1 The power of sale and the other powers conferred by the LPA or otherwise are extended and varied to authorise the Lender in its absolute discretion to do all or any of the things or exercise all or any of the powers which a Receiver is empowered to do or exercise under this deed.

14.2.2 The Lender and any Receiver shall also have and enjoy all the other powers, privileges, rights and protections conferred by the LPA and the Insolvency Act on mortgagees, receivers or administrative receivers (each as amended and extended by this deed and whether or not a receiver or administrative receiver has been appointed) but so that if there is any ambiguity or conflict between the powers contained in such statutes and those contained in this deed, those contained in this deed shall prevail.

14.3 Consolidation of mortgages

The restriction on the consolidation of mortgages in Section 93 of the LPA does not apply to this deed nor to any security given to the Lender pursuant to this deed.

14.4 LPA provisions relating to appointment of Receiver

Section 109(1) of the LPA shall not apply to this deed.

14.5 Application of proceeds

Sections 105, 107(2), 109(6) and 109(8) of the LPA will not apply to the Lender nor to a Receiver appointed under this deed.

15. OTHER MISCELLANEOUS PROVISIONS

15.1 Powers, rights and remedies cumulative

The powers, rights and remedies provided in this deed are in addition to (and not instead of), powers, rights and remedies under law.

15.2 Exercise of powers, rights and remedies

If an Enforcement Party fails to exercise any power, right or remedy under this deed or delays its exercise of any power, right or remedy, this does not mean that it waives that power, right or remedy. If an Enforcement Party exercises, or partly exercises, a power, right or remedy once, this does not mean that it cannot exercise such power right or remedy again, fully or in part.

15.3 Discretion

15.3.1 The Lender may decide:

15.3.1.1 whether and, if so, when, how and to what extent (i) to exercise its rights under this deed and (ii) to exercise any other right it might have in respect of the Chargor (or otherwise); and

15.3.1.2 when and how to apply any payments and distributions received for its own account under this deed,

and the Chargor has no right to control or restrict the Lender's exercise of this discretion.

15.3.2 No provision of this deed will interfere with the Lender's right to arrange its affairs as it may decide (or oblige it to disclose any information relating to its affairs), except as expressly stated.

15.4 Set-off and combination of accounts

15.4.1 No right of set-off or counterclaim may be exercised by the Chargor in respect of any payment due to the Lender under this deed.

15.4.2 The Lender may at any time after this deed has become enforceable and without notice to the Chargor:

15.4.2.1 combine or consolidate all or any of the Chargor's then existing accounts with, and liabilities to, the Lender;

15.4.2.2 set off or transfer any sums standing to the credit of any one or more of such accounts; and/or

15.4.2.3 set-off any other obligation owed by the Lender to the Chargor (whether or not matured at such time),

in or towards satisfaction of any of the Secured Liabilities. The Lender is to notify the Chargor in writing that such a transfer has been made.

15.4.3 If any amount is in a different currency from the amount against which it is to be set off, the Lender may convert either amount (or both) at any reasonable time and at any reasonable rate.

15.5 Power to establish new account

If the Lender receives notice of a subsequent mortgage or charge relating to the Secured Property, it will be entitled to close any bank account and to open a new bank account in respect of the closed account. If the Lender does not open such new account, it will in any event be treated as if it had done so at the time when it received such notice.

15.6 Other security

The Chargor authorises the holder of any prior or subsequent security to provide to the Lender, and the Lender to receive from such holder details of the state of account between such holder and the Chargor.

15.7 No assignment by Chargor

The Chargor must not assign, novate or otherwise deal with its rights or obligations under or interests in this deed, except with the prior written consent of the Lender.

15.8 Transfer by Lender

15.8.1 Save as otherwise provided in the Facility Agreement the Lender may at any time assign, novate or otherwise deal with any rights or obligations under or interests in this deed

15.8.2 The Lender may disclose any information about the Chargor, the Secured Property and/or this deed to any person to whom it proposes to assign or novate or transfer (or has assigned, novated or transferred) any rights or obligations under or interests in this deed; or with whom it proposes to enter into (or has entered into) any other dealings in relation to any such rights, obligations or interests.

- 15.8.3 Any person to whom the benefit of all such rights has been transferred, subject to such obligations, may enforce this deed in the same way as if it had been a Party.

15.9 Avoidance of settlements and other matters

- 15.9.1 Any payment made by the Chargor, or settlement or discharge between the Chargor and the Lender, is conditional upon no security or payment to the Lender by the Chargor 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, insolvency, administration or liquidation for the time being in force and accordingly (but without limiting the Lender's other rights under this deed) the Lender shall be entitled to recover from the Chargor the value which the Lender has placed upon such security or the amount of any such payment as if such payment, settlement or discharge had not occurred.
- 15.9.2 If the Lender, acting reasonably, considers that any amount paid by the Chargor in respect of the Secured Liabilities is capable of being avoided or ordered to be refunded or reduced for the reasons set out in clause 15.9.1, then for the purposes of this deed such amount shall not be considered to have been irrevocably paid.

16. COMMUNICATIONS

- 16.1 Each notice, consent and other communication in respect of this deed will be effective only if made by letter or fax, delivered to the relevant address or fax number specified on the execution page(s) of this deed (or to any substitute address or fax number notified in writing by the relevant Party for this purpose) and marked for the attention of the specified department/individual, if applicable. Each communication by letter will be effective only if delivered by hand, sent by first class post (if sent from and to an address in the UK) or sent by airmail (if sent from or to an address elsewhere).
- 16.2 Each communication will become effective as follows (references to times are to times in the place of delivery of the communication):
- 16.2.1 a hand-delivered letter will be effective as soon as it is delivered (or, if it is delivered after 5pm or on a day that is not a Business Day, it will be effective at 9am on the next Business Day);
- 16.2.2 a letter sent by post from and to an address in the UK will be effective at 9am on the second Business Day after it is posted and a letter sent by airmail from or to an address elsewhere will be effective at 9am on the tenth Business Day after it is posted; and
- 16.2.3 a fax will be effective one hour after the sending fax machine (or other system) generates a confirmation that the communication has been sent in full (or, if this occurs after 5pm or on a day that is not a Business Day, it will be effective at 9am on the next Business Day).

17. GOVERNING LAW AND JURISDICTION

- 17.1 Governing law**

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

18. THIS DEED

18.1 Consideration

The Chargor has entered into this deed in consideration of the Lender agreeing to provide (or to continue to provide) the facility to its subsidiary, Audley Binswood Limited, the Borrower under the Facility Agreement, on the terms agreed between them.

18.2 Finance Document

The Parties designate this Deed as a Finance Document.

18.3 Execution of this deed - counterparts

If the Parties execute this deed in separate counterparts, this deed will take effect as if they had all executed the same single copy.

18.4 Execution of this deed - formalities

This deed is intended to be a deed even if any Party's execution is not in accordance with the formalities required for the execution of deeds.

18.5 Conflict

If there is any conflict between the provisions of the Facility Agreement and the provisions of this deed, the provisions of the Facility Agreement shall prevail.

18.6 Partial invalidity

18.6.1 If, at any time, any provision of this deed is or is found to have been illegal, invalid or unenforceable in any respect under the law of any jurisdiction, this does not affect the legality, validity or enforceability of the other provisions of this deed, nor the legality, validity or enforceability of the affected provision under the law of any other jurisdiction.

18.6.2 If any Party is not bound by this deed (or any part of it) for any reason, this does not affect the obligations of any other Party under this deed (or under the relevant part).

18.7 Other security

This deed is in addition to, and does not operate in any way to prejudice or affect, or be prejudiced or affected by, any other security or guarantee which the Lender may now or at any time after the date of this deed hold for or in respect of the Secured Liabilities.

18.8 Ownership of this deed

This deed and every counterpart is the property of the Lender.

This document is executed as a deed and delivered on the date stated at the beginning of this Deed.

SCHEDULE 1

The Shares

	Name of company in which Shares are held	Jurisdiction of registration and company number	Number and class of Shares (and where held by nominees names of nominees)
1	Audley Binswood Management Company Limited	England and Wales (08275524)	1 Ordinary Share of £ 1

SCHEDULE 2

Receiver's specific powers

The Receiver will have full power and authority:

19. POSSESSION

- 19.1 to enter upon, take possession of and generally operate and manage the Secured Property;
- 19.2 to collect and get in all the Distribution Rights;

20. SALE AND DISPOSAL

without restriction, to sell, charge, grant or vary the terms or accept surrenders of options or rights over, or otherwise deal with and dispose of the Secured Property or any assets acquired in the exercise of its powers under this deed;

21. ACQUISITION

to purchase or acquire any assets or rights required or convenient for the exercise of the Receiver's powers under this deed;

22. BORROWING

for the purpose of exercising any of the rights, powers, authorities and discretions conferred on the Receiver by or pursuant to this deed and/or for defraying any losses or Costs which may be incurred by him in their exercise or for any other purpose, to raise or borrow any money from the Lender or others or to incur any other liability on such terms, whether secured or unsecured, as he may think fit, and whether to rank in priority to this security or not;

23. APPOINTMENTS, ETC.

to appoint and discharge employees, officers, consultants, advisers, managers, agents, solicitors, accountants or other professionally qualified persons, workmen and others for any of the purposes of this deed or to protect the Secured Property upon such terms as to remuneration or otherwise as he may think fit and to discharge any such persons appointed by the Chargor prior to his appointment;

24. LEGAL ACTIONS AND COMPROMISES

- 24.1 In the name of the Chargor, to bring, prosecute, enforce, defend and discontinue all such actions, suits and proceedings, in relation to the Chargor, the Secured Property or any business carried on from the Property, as in any case he thinks fit;
- 24.2 to settle, adjust, refer to arbitration or expert determination, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person or body who is or claims to be a creditor of the Chargor or relating in any way to the Secured Property;

25. RECEIPTS

to give valid receipts for all moneys and execute all assurances and things which may be proper or desirable for realising the Secured Property;

26. CONTRACTS

to enter into, vary, cancel or waive any of the provisions of any contracts relating to the Secured Property which he shall in any case think expedient in the interests of the Chargor or the Lender;

27. INSURANCES AND BONDS

to insure the Secured Property, any assets acquired by him in the exercise of his powers, and effect indemnity insurance or other similar insurance, in every case in such amounts, against such risks and with such offices as he thinks fit, and obtain bonds and give indemnities and security to any bondsmen;

28. FORM COMPANY

28.1 to promote or establish any company or to acquire shares in any company (whether as a subsidiary of the Chargor or otherwise) to facilitate the exercise of his powers under this deed;

28.2 to transfer to any such company all or any of the Secured Property or other assets acquired by him in the exercise of his powers;

28.3 to exercise or cause to be exercised all voting and other rights attaching to, and to charge, sell or otherwise transfer any shares in any such company;

29. VOTING RIGHTS

to exercise all voting and other rights attaching to the Shares and all other stocks, shares and securities owned by the Chargor and comprised in the Secured Property in such manner as he may think fit;

30. TRANSACTION

to carry into effect and complete any transaction;

31. REDEEM SECURITY

to redeem any prior security (or procure the transfer of such security to himself) and settle and pass the accounts of the person entitled to the prior security so that any accounts so settled and passed shall (subject to any manifest error) be conclusive and binding on the Chargor and the money so paid shall be deemed to be an expense properly incurred by the Receiver, and

32. GENERAL

either in the name of the Chargor or in the name of the Receiver to execute documents and do all other acts or things which the Receiver may consider to be incidental or conducive to any of the Receiver's powers or to the realisation or use of the Secured Property.]

EXECUTION

The Chargor

Executed as a deed by **AUDLEY COURT LIMITED,**
acting by a director and its secretary
or by two directors

Director 

Director/Secretary 

Communications to be delivered to:

Address:


Fax number:

Attention:

The Lender

Executed as a deed by **WATES CONSTRUCTION LIMITED**
acting by a director and its secretary
or by two directors

Director 

Director/Secretary 

Address.

Fax number:

Attention: