

# MR01

## Particulars of a charge

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](http://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](http://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  
scanned and placed on the public record



A19 01/05/2014 #85  
COMPANIES HOUSE

THURSDAY

### 1 Company details

Company number 0 5 6 2 2 8 2 1

Company name in full Spectrum Alpha General Partner Limited ✓

18 For official use

→ **Filling in this form**  
Please complete in typescript or in  
bold black capitals

All fields are mandatory unless  
specified or indicated by \*

### 2 Charge creation date

Charge creation date 2 4 0 4 2 0 1 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 Nationwide Building Society as agent and Security Trustee for itself  
and each of the Lenders ✓

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

Not applicable

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

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**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 Addleshaw Goddard LLP

X

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

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**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 JONEK/313794-223

Company name Addleshaw Goddard LLP

Address 100 Barbirolli Square

Post town Manchester

County/Region Greater Manchester

Postcode M 2 3 A B

Country United Kingdom

DX 14301 Manchester

Telephone 0161 934 6000



**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](http://www.companieshouse.gov.uk) or email [enquiries@companieshouse.gov.uk](mailto: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](http://www.companieshouse.gov.uk)**

CHFP025

04/13 Version 1 0



## **CERTIFICATE OF THE REGISTRATION OF A CHARGE**

Company number: 5622821

Charge code: 0562 2821 0018

The Registrar of Companies for England and Wales hereby certifies that a charge dated 24th April 2014 and created by SPECTRUM ALPHA GENERAL PARTNER LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 1st May 2014.

Given at Companies House, Cardiff on 6th May 2014



**Companies House**



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

DATED 24 April 2014

# Nationwide Building Society

(as agent and Security Trustee for itself and each of the Lenders defined herein)

## COMPOSITE SHARE CHARGE AND GUARANTEE AND INDEMNITY

Chargor: SPECTRUM ALPHA PROPERTY PARTNERS  
LIMITED PARTNERSHIP  
SPECTRUM ALPHA GENERAL PARTNER LIMITED

Borrower: SPECTRUM ALPHA PROPERTY PARTNERS  
LIMITED PARTNERSHIP  
AND  
HAWKBOND PROPERTIES LIMITED

WE HEREBY CERTIFY THAT THIS IS  
A TRUE COPY (AS REDACTED) OF  
THE ORIGINAL

Addleshaw Goddard LLP

DATE 29/4/14  
ADDLESHAW GODDARD LLP

THIS GUARANTEE AND CHARGE dated 24 April 2014 is made BY the Chargor IN FAVOUR OF NATIONWIDE BUILDING SOCIETY as agent and security trustee for itself and each of the Lenders and whose chief office is at Nationwide House, Pipers Way, Swindon, SN38 1NW (in this capacity the "Security Trustee")

## 1 MEANING OF CERTAIN WORDS

### 1.1 Definitions

In this Guarantee and Charge, unless the context otherwise requires

<b>Authority</b>	means any governmental body, agency, department or regulatory, self-regulatory or other authority including, without limitation, local and public authorities and statutory undertakings,
<b>Borrower</b>	means each of the entities whose details appear in Part A of the Schedule,
<b>Chargor</b>	means each of the companies whose details appear in Part B of the Schedule,
<b>Default Rate</b>	means the default interest rate specified in clause 8.3 of the Facility Agreement,
<b>Disposal</b>	means a sale, transfer, assignment, or other disposal (including by way of lease, tenancy or loan) by a person of all or part of its assets, whether by one transaction or a series of transactions and whether at the same time or over a period of time and "dispose" shall be construed accordingly,
<b>Enforcement Date</b>	means the date on which the Security Trustee demands the payment or discharge of all or any part of the Indebtedness or after the occurrence of an Event of Default or, if earlier, the date on which an application for an administration order is presented or any other formal step is taken with a view to appointing an administrator in relation to the Chargor,
<b>Event of Default</b>	has the meaning given to it in the Facility Agreement,
<b>Facility Agreement</b>	means the facility agreement dated 22 December 2005 novated pursuant to an amendment, restatement and novation agreement dated 24 February 2006 as amended and restated on 31 March 2010 and as further amended, restated and novated on or about the date of this Guarantee and Charge and made between, amongst others, Spectrum Alpha Property Partners Limited Partnership, acting through the Chargor (1), the Chargor (2) Nationwide Building Society as arranger of the Term Loan Facilities (3), Nationwide Building Society as agent for the Lenders (4), Nationwide Building Society as Security Trustee for the Finance Parties (5) and the Lenders (6) pursuant to which the Lenders agree to make available to the Borrower the Term Loan Facilities,
<b>Finance Documents</b>	has the meaning given it in the Facility Agreement,
<b>Finance Parties</b>	has the meaning given it in the Facility Agreement,
<b>Indebtedness</b>	means all moneys, obligations and liabilities owing by the Borrower to the Lenders referred to in clause 2,
<b>Lenders</b>	has the meaning given to it in the Facility Agreement,
<b>New Lenders</b>	has the meaning given to it in the Facility Agreement,
<b>Permitted Security Interests</b>	has the meaning given in the Facility Agreement,
<b>Receiver</b>	means any one or more receivers and/or managers or administrative receivers appointed by the Security Trustee pursuant to this Guarantee and Charge in respect of the Chargor or over all or any of the Securities,
<b>Secretary</b>	means the company secretary of the Chargor for the time being,
<b>Securities</b>	means the securities detailed in Part C of the Schedule and any further securities substituted or added from time to time with the consent of the Security Trustee

<b>Security Right</b>	means any mortgage, debenture, charge (whether fixed or floating), pledge, lien, hypothecation, standard security, assignment by way of security or other security interest or arrangement of any kind having the effect of conferring security of any kind,
<b>Status Change</b>	means <ul style="list-style-type: none"> <li>• an amalgamation of a Lender or of the Security Trustee which is a building society with one or more other building societies pursuant to section 93 of the Building Societies Act 1986, or</li> <li>• a transfer of all or substantially all its engagements (including all the obligations of a Lender or of the Security Trustee under this Charge) to another building society pursuant to section 94 of the Building Societies Act 1986, or</li> <li>• a transfer of the whole of a Lender's or the Security Trustee's business to a company pursuant to section 97 of the Building Societies Act 1986, or</li> <li>• an alteration in the status of a Lender or the Security Trustee by virtue of any statute or statutory provisions which alters, or permits the alteration of, the status of building societies generally or building societies which meet specified criteria to that of an institution authorised under the Financial Services and Markets Act 2000 or to a body which is regulated on a similar basis to an institution authorised under the Financial Services and Markets Act 2000,</li> </ul> and "Successor" means the resulting building society, company, institution or body,
<b>Transfer</b>	has the meaning set out in clause 25 11(b),
<b>Transferee</b>	has the meaning set out in clause 25 11(b),
<b>Term Loan Facilities</b>	the term loan facilities made available by the Lenders pursuant to clause 2 1 of the Facility Agreement,

## 2 COVENANT TO PAY

### 2.1 *Indebtedness*

The Chargor hereby covenants that it will pay to the Security Trustee for the account of the Lenders and the Security Trustee all moneys and discharge all obligations and liabilities now or in the future due owing or incurred under the Finance Documents by the Borrower and the Chargor to the Lenders or any of them or the Security Trustee when the same become due for payment or discharge whether by acceleration or otherwise. The moneys, obligations or liabilities under the Finance Documents which are due, owing or incurred to the Lenders or any of them or the Security Trustee may be

- express or implied,
- present, future or contingent,
- joint or several,
- incurred as principal or under a guarantee or indemnity to the Security Trustee and/or the Lenders (or any of them),
- originally owing to the Lenders or any of them and/or the Security Trustee or purchased or otherwise acquired by them,
- denominated in Sterling or in any other currency,
- incurred on any banking or other account or in any other manner whatsoever,
- incurred with or without the Chargor's knowledge or consent

### 2.2 *Other liabilities*

The liabilities referred to in clause 2 1 shall, without limitation, include



- (a) the Term Loan Facilities,
- (b) all liabilities arising under any Finance Document and under this Guarantee and Charge including without limitation under clause 13,
- (c) all liabilities under or in connection with foreign exchange transactions, interest rate swaps and other arrangements entered into for the purpose of limiting exposure to fluctuations in interest or exchange rates, and
- (d) interest (both before and after judgement) to date of payment at such rates and upon such terms specified in the Facility Agreement, commission, fees and other charges (including interest rate breakage costs) and all legal and all other costs, charges and expenses (including any internal management, monitoring or enforcement costs, charges and expenses of the Lenders or any of them or the Security Trustee) on a full and unqualified indemnity basis which may be incurred by the Lenders or any of them or the Security Trustee in relation to any of the Indebtedness or any guarantee in respect of any part of the Indebtedness or otherwise in respect of the Chargor or any guarantor of any part of the Indebtedness

### **3 GUARANTEE AND INDEMNITY**

#### **3.1 Guarantee**

In consideration of the Lenders granting or continuing the facilities under the Facility Agreement to the Borrower, the Chargor guarantees on demand to pay to the Security Trustee for the account of the Lenders and the Security Trustee the whole and every part of the Indebtedness when the same becomes due for payment or discharge whether by acceleration or otherwise

#### **3.2 Liability as principal debtor**

As a separate and independent obligation and liability, the Chargor agrees that if any purported obligation or liability of the Borrower which would have been the subject of this Guarantee and Charge had it been valid and enforceable is not and is or becomes void, voidable, invalid or unenforceable against the Borrower on any grounds whatsoever whether or not known to the Lender or any of them and/or the Security Trustee the Chargor shall nevertheless be liable to the Lenders or any of them and/or the Security Trustee in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Chargor were the principal debtor in respect of such purported obligation and liability

#### **3.3 Indemnity**

As a separate and independent obligation and liability, the Chargor agrees to indemnify and keep indemnified on demand the Lenders or any of them and/or the Security Trustee against all damages, losses, costs, charges and expenses arising from any failure of the Borrower to perform or discharge any purported obligation or liability of the Borrower which would have been the subject of this Guarantee and Charge had it been valid and enforceable

#### **3.4 Limited Recourse**

Without prejudice to the liability of the Chargor for any breach of any covenant, undertaking, representation or warranty contained in this Guarantee and Charge, the recourse of the Lenders and/or the Security Trustee to the Chargor under clauses 3.1, 3.2 and 3.3 shall be limited to the rights, remedies, obligations and powers of the Lenders and/or the Security Trustee under the charge created by this Guarantee and Charge

### **4 CHARGES**

#### **4.1 Fixed charges**

The Chargor with full title guarantee as a continuing security for the payment and discharge of the Indebtedness hereby charges as a fixed first charge to the Security Trustee (as agent and security trustee for the Lenders and the Security Trustee) the following property and assets, both present and future, from time to time owned by the Chargor or in which the Chargor may have an interest (whether such interest arises by virtue of trust or otherwise)

- (a) all Securities, and their proceeds of sale,
- (b) all dividends, interest and other distributions (whether in cash or in specie and whether of a capital or income nature) declared, paid or made in respect of the Securities at any time,

- (c) all accretions, rights, benefits, money or property accruing, issued or offered in respect of the Securities at any time, whether by way of rights, bonus, capitalisation, conversion, exchange, pre-emption, option, redemption or otherwise

#### **4.2 Representations and Warranties**

The Chargor represents and warrants to the Security Trustee (as agent and security trustee for the Lenders and the Security Trustee) that

- (a) it is the legal and beneficial owner of the Securities,
- (b) it has not created or granted any Security Right over the Securities to any other person, and
- (c) it has not entered and will not enter into any agreement to sell, dispose of or grant any Security Right over the Securities

#### **4.3 Negative Pledge**

The Chargor undertakes to the Security Trustee and each of the Lenders that during the continuance of this security the Chargor will not without the prior written consent of the Security Trustee create or purport to create or permit to subsist any Security Right over the whole or any part of the Securities (other than a lien arising by operation of law in the ordinary course of the Chargor's business and any Permitted Security Interests)

### **5 DEPOSIT OF DOCUMENTS**

#### **5.1 Deposit of Documents**

The Chargor will on the date of this Guarantee and Charge (or on the date of issue where any Securities are issued subsequently), deliver to the Security Trustee (or its nominee) all certificates (or such other evidence of title as the Security Trustee may require) together with undated signed transfers in favour of the Security Trustee (or its nominee) for all Securities

#### **5.2 Registration**

The Chargor irrevocably authorises the Security Trustee to arrange, at any time following the Enforcement Date, for any of the Securities to be registered in the name of the Security Trustee (or its nominee)

#### **5.3 Receipt of Monies**

The Chargor shall pay into such account of the Chargor as the Security Trustee may direct, all monies which it may receive in respect of the Securities immediately on receipt

### **6 VOTING RIGHTS AND RIGHTS AND OBLIGATIONS ATTACHED TO THE SECURITIES**

#### **6.1 Voting**

Unless and until this Guarantee and Charge becomes enforceable, or the Security Trustee directs otherwise

- (a) all voting and other rights attaching to the Securities shall continue to be exercised by the Chargor for so long as the Chargor remains their registered owner, and
- (b) if the Securities are registered in the name of the Security Trustee or its nominee, all voting and other rights attaching to them shall be exercised by the Security Trustee or its nominee in accordance with instructions in writing from time to time received by the Chargor, and in the absence of such instructions, the Security Trustee or the nominees shall refrain from exercising any such rights

#### **6.2 Notices**

If the Chargor wishes to receive copies of notices and communications in relation to any or all of the Securities, the Security Trustee must be given prior written notice of such request

## **7 RIGHTS EXERCISABLE BY THE SECURITY TRUSTEE**

### **7.1 *Exercise of Rights***

At any time on or after the Enforcement Date, the Security Trustee is authorised, without prior notice to the Chargor

- (a) to exercise all voting or other powers pertaining to the Securities in any manner which the Security Trustee may consider appropriate,
- (b) to receive and retain all dividends, interest or other money or assets accruing on or in respect of the securities under and subject to the terms of this Guarantee and Charge and any such dividends, interest or money or assets received by the Chargor after such time shall be held in trust by the Chargor for the Security Trustee and paid or transferred to the Security Trustee on demand,
- (c) to sell or realise the Securities in any manner which the Security Trustee may consider appropriate, the costs of such sale or realisation constituting part of the Indebtedness

### **7.2 *No Liability***

The Lenders and Security Trustee shall incur no liability for any loss arising out of a sale pursuant to clause 7.1 above from whatever cause and whether or not a better price could have been obtained on the sale of any Securities by deferring or advancing the date of such sale or otherwise. They shall incur no liability for any loss arising out of the modus chosen, either public auction or private deed, for the sale of the shares

## **8 CERTAIN POWERS OF THE SECURITY TRUSTEE**

### **8.1 *Powers on enforcement***

Section 103 of the Law of Property Act 1925 shall not apply. At any time on or after the Enforcement Date or if requested by the Chargor, the Security Trustee may, without further notice, and whether or not a Receiver shall have been appointed, exercise all the powers conferred upon mortgagees by the Law of Property Act 1925 as varied or extended by this Guarantee and Charge and all the powers and discretions conferred by this Guarantee and Charge on a Receiver either expressly or by reference. In the event of any conflict between the powers contained in the Law of Property Act 1925 and those conferred by this Guarantee and Charge, the terms of this Guarantee and Charge shall prevail.

### **8.2 *Subsequent Security Rights***

If the Security Trustee receives or has notice (actual or constructive) of any subsequent Security Right affecting the Securities in whole or in part or if the continuing nature of this Guarantee and Charge is determined for any reason, the Security Trustee may open a new account for the Chargor. If it does not do so then, unless the Security Trustee gives express written notice to the contrary to the Chargor for the purposes of this Guarantee and Charge, the Security Trustee shall nevertheless be treated as if it had opened a new account at the time when it received or had such notice and as from that time all payments made by or on behalf of the Chargor to the Security Trustee shall be credited or be treated as having been credited to the new account and shall not operate to reduce the amount due from the Chargor to the Lenders and/or the Security Trustee at the time when it received such notice.

### **8.3 *Settlement of accounts***

Any sale or other disposition by the Security Trustee or by a Receiver may be made either subject to or discharged from any prior charge or upon such terms as to indemnity as the Security Trustee or such Receiver may think fit. The Security Trustee or the Receiver may settle and pay the accounts of any person in whom any prior charge may from time to time be vested and any accounts so settled and paid shall as between the Lenders, the Security Trustee, the Receiver and the Chargor be deemed to be properly settled and paid and shall be binding on the Chargor accordingly. The money so expended by the Security Trustee or the Receiver shall be repayable by the Chargor to the Security Trustee or the Receiver on demand, shall constitute part of the Indebtedness and shall bear interest at the Default Rate from the date of payment by the Security Trustee.

### **8.4 *Contingencies***

If the Security Trustee enforces the security constituted by this Guarantee and Charge at a time when no amount in respect of the Indebtedness is due and payable, or when the amount due and payable is not ascertained, the Security Trustee (or the Receiver) may pay the proceeds of any recoveries effected by it into an interest-bearing suspense account. The Security Trustee may withdraw amounts standing to the credit of such suspense account for application in accordance with clause 12.

## **8.5 Power to remedy**

If the Chargor at any time defaults in complying with any of its obligations contained in this Guarantee and Charge, the Security Trustee shall, without prejudice to any other rights arising as a consequence of such default, be entitled (but not bound) to make good such default and the Chargor hereby irrevocably authorises the Security Trustee and its employees and agents by way of security to do all such things necessary or desirable in connection therewith. Any moneys so expended by the Security Trustee shall be repayable by the Chargor to the Security Trustee on demand together with interest at the Default Rate from the date of payment by the Security Trustee until such repayment, both before and after judgement. No exercise by the Security Trustee of its powers under this clause 8.5 shall make it liable to account as a mortgagee in possession.

## **9 APPOINTMENT AND POWERS OF RECEIVER**

### **9.1 Appointment**

At any time on or after the Enforcement Date or if requested by the Chargor, or if the security created by this Guarantee and Charge shall in the Security Trustee's reasonable opinion be in jeopardy, the Security Trustee may by instrument in writing executed as a deed or under the hand of any director or other duly authorised officer appoint any person to be a Receiver of the Securities or any part of them. Where more than one Receiver is appointed, each joint Receiver shall have power to act severally, independently and to the exclusion of any other joint Receivers, except to the extent that the Security Trustee may specify to the contrary in the appointment. The Security Trustee may (subject, where relevant, to section 45 of the Insolvency Act 1986) remove any Receiver so appointed and appoint another in his place.

### **9.2 Receiver as agent**

Any Receiver shall be the agent of the Chargor and the Chargor shall be solely responsible for his acts or defaults and liable on any contracts and engagements made or entered into by him and shall alone be responsible for his remuneration.

### **9.3 Powers of Receiver**

Any Receiver shall have all the powers conferred from time to time on receivers by statute (in the case of powers conferred by the Law of Property Act 1925, without the restrictions contained in section 103 of that Act) and power on behalf, and at the expense, of the Chargor (notwithstanding the liquidation of the Chargor) to do or omit to do anything which the Chargor could do or omit to do in relation to the Securities or any part of them. In particular (but without limitation) a Receiver shall have power to do all or any of the following acts and things:

- (a) to sell, exchange, surrender, redeem or otherwise dispose of or in any way deal with the Securities and to transfer all or any of the Securities to any other person or persons, including a company formed or acquired for the purpose, in each case for such consideration (if any), including cash or stock or any other consideration, and on such terms, as he may think fit and whether for a lump sum or for a consideration payment in instalments,
- (b) to exercise all voting and other rights attaching to the Securities and to pay all calls and other payments which may become due in respect of any Securities,
- (c) to take all such steps and give all such notices and instructions in relation to the Securities as the Receiver considers appropriate for any of the above purposes,
- (d) to do all other such acts and things as may be considered by the Receiver to be incidental or conducive to any of the above matters or powers or to the preservation or realisation of the Securities.

### **9.4 Remuneration**

The Security Trustee may from time to time determine the remuneration of any Receiver and section 109(6) of the Law of Property Act 1925 shall be varied accordingly. A Receiver shall be entitled to remuneration appropriate to the work and responsibilities involved upon the basis of charging from time to time adopted by the Receiver in accordance with the current practice of his firm.

### **9.5 No liability**

Neither the Security Trustee nor any Receiver shall be liable for any involuntary losses that may occur in exercise of the rights, liberties and powers contained in this Guarantee and Charge or be liable to account as mortgagee in possession.

## **10 RIGHTS ATTACHING TO SECURITIES**

### **10.1 *Payment of Calls***

The Chargor will pay promptly all calls or other payments, and will discharge all other obligations which may become due in respect of any Securities and, if the Chargor fails to do so, the Security Trustee may if it thinks fit make such payments or discharge such obligations on behalf of the Chargor. Any sums so paid by the Security Trustee shall be repayable by the Chargor to the Security Trustee on demand. The Security Trustee may debit such amounts to any account that the Chargor may hold with the Security Trustee (or, if no account is held, to open an account in the Chargor's name for this purpose) and any such amounts will form part of the Indebtedness.

### **10.2 *Exercise of Rights***

The Security Trustee shall have no duty to ensure that any dividends, interest or other money and assets or rights receivable in respect of the Securities are duly and punctually paid, received or collected or exercised when they become due and payable or exercisable, or to ensure the taking up of any (or any offer of any) stocks, shares, rights, money or other property paid, distributed, accruing or offered at any time by way of redemption, bonus, rights, reference or to otherwise in respect of the Securities.

## **11 EFFECT OF ENFORCEMENT DATE**

### **11.1 *Enforcement Date***

From the Enforcement Date, the Security Trustee and the Lenders shall cease to be under any further commitment to the Chargor. The Indebtedness (other than contingent liabilities) not otherwise so payable shall immediately become payable on demand.

## **12 APPLICATION OF PROCEEDS**

### **12.1 *Application of proceeds***

Any moneys received by the Security Trustee or by any Receiver appointed by it pursuant to this Guarantee and Charge and/or under the powers conferred by this Guarantee and Charge shall be applied for the following purposes and, unless otherwise determined by the Security Trustee or such Receiver, in the following order of priority:

- (a) in the payment of all costs, charges and expenses of and incidental to the Receiver's appointment and the payment of his remuneration,
- (b) in the payment and discharge of any liabilities incurred by the Receiver on the Chargor's behalf in the exercise of any of the powers of the Receiver,
- (c) in or towards payment of any debts or claims which are by statute payable in preference to the Indebtedness but only to the extent that those debts or claims have that preference,
- (d) in or towards satisfaction of the Indebtedness, and
- (e) any surplus shall be paid to the Chargor or any other person who may be entitled to it.

### **12.2 *Suspense account***

Any moneys received, recovered or realised under the powers conferred under this Guarantee and Charge may, at the discretion of the Security Trustee, be placed in a suspense account (with a view to preserving the rights of the Lenders and the Security Trustee to prove for the whole of its claim against the Borrower or any other person liable) and kept there for so long as the Security Trustee thinks fit pending application from time to time (as the Security Trustee shall be entitled to do as it may think fit) of such moneys in or towards discharge of the Indebtedness.

### **12.3 *Law of Property Act 1925***

The provisions of clauses 12.1 and 12.2 shall take effect as and by way of variation and extension to the provisions of section 109 of the Law of Property Act 1925 which provisions as so varied and extended shall be deemed incorporated in this Guarantee and Charge.

#### **12.4 Protection of purchasers**

- (a) Any person (including, without limitation, any purchaser, mortgagor or mortgagee) (in this clause a "purchaser") dealing with the Security Trustee may assume without inquiry that
  - (i) some part of the Indebtedness has become due,
  - (ii) a demand for such Indebtedness has been duly made, and
  - (iii) such Indebtedness has become due within the meaning of section 101 of the Law of Property Act 1925
- (b) No purchaser dealing with the Receiver or the Security Trustee is to be concerned to enquire whether any power exercised or purported to be exercised by the Receiver or the Security Trustee has become exercisable, or as to the propriety or regularity of any sale by, or other dealing with, the Receiver or the Security Trustee. Any such sale or dealing is deemed to be within the powers conferred by this Guarantee and Charge and to be valid and effective accordingly. All the protection to purchasers contained in section 104 and section 107 of the Law of Property Act 1925 and section 42(3) of the Insolvency Act 1986 apply to any purchaser

### **13 INDEMNITIES AND COSTS AND EXPENSES**

#### **13.1 Enforcement costs**

The Chargor hereby undertakes with the Security Trustee and each of the Lenders to pay on demand all costs, charges and expenses including, without limitation, all legal and all other costs, charges and expenses (including any internal management, monitoring or enforcement costs, charges and expenses of the Security Trustee and such Lenders) on a full and unqualified indemnity basis which may be incurred by the Security Trustee or such Lenders in or incidental to the enforcement, attempted enforcement, preservation or attempted preservation of any of the security created by or pursuant to this Guarantee and Charge or any of the Securities or in the administration and management of the Chargor's accounts with the Security Trustee or such Lenders or in the collection of the Indebtedness, together with interest at the Default Rate from the date on which such costs, charges or expenses are incurred until the date of payment by the Chargor (both before and after judgment). Any taxation of such costs, charges and expenses shall be on an indemnity basis.

#### **13.2 Indemnity from Securities**

The Security Trustee and any Receiver, attorney, agent or other person appointed by the Security Trustee or any Receiver under this Guarantee and Charge and the Security Trustee's officers and employees (each an "Indemnified Party") shall be entitled to be indemnified out of the Securities in respect of all costs, losses, actions, claims, expenses, demands or liabilities whether in contract, tort, delict or otherwise and whether arising at common law, in equity or by statute which may be incurred by, or made against, any of them (or by or against any manager, agent, officer or employee for whose liability, act or omission any of them may be answerable) at any time relating to or arising directly or indirectly out of or as a consequence of

- (a) anything done or omitted in the exercise or purported exercise of the powers contained in this Guarantee and Charge, or
- (b) any breach by the Chargor of any of its obligations under this Guarantee and Charge,

and the Chargor shall indemnify the Security Trustee and any Receiver against any such matters

### **14 POWER OF ATTORNEY**

#### **14.1 Power of attorney**

The Chargor by way of security hereby irrevocably appoints each of the Security Trustee and any Receiver jointly and severally to be its attorney with full power of delegation in its name and on its behalf

- (a) to sign, execute, seal, complete and deliver any document, deed, agreement, instruments or act which the Security Trustee or such Receiver may require for perfecting the title of the Security Trustee to the Securities or for vesting the same in the Security Trustee, its nominees or any purchaser or generally for any of the purposes set out in this Guarantee and Charge,
- (b) to sign, execute, seal, complete and deliver and otherwise perfect any further security document referred to in clause 17, and

- (c) otherwise generally to sign, seal, execute and deliver all deeds, assurances, agreements and documents and to do all acts and things which may be required for the full exercise of all or any of the powers conferred on the Security Trustee or a Receiver under this Guarantee and Charge or which may be deemed expedient by the Security Trustee or a Receiver in connection with any Disposal, realisation or getting in by the Security Trustee or such Receiver of the Securities or any part thereof or in connection with any other exercise of any power under this Guarantee and Charge

#### **14.2 Ratification**

The Chargor shall ratify and confirm all transactions entered into by the Security Trustee, any Receiver or any delegate of the Security Trustee in the exercise or purported exercise of the Security Trustee's or the Receiver's respective powers and all things done by the Security Trustee, such Receiver or delegate by virtue of any power of attorney given by this clause 14

#### **14.3 Irrevocable**

The Chargor hereby acknowledges that the power of attorney hereby granted to the Security Trustee, any Receiver and its delegates and substitutes is granted irrevocably and for value as part of the security constituted by this Guarantee and Charge to secure the proprietary interests of and the performance of obligations owed to the respective donees within the meaning and for the purposes of the Powers of Attorney Act 1971

### **15 DURATION AND CONTINUING SECURITY**

#### **15.1 Duration**

This Guarantee and Charge shall continue in effect until the whole and every part of the Indebtedness has been paid in full, notwithstanding any interim settlement of account or other matter

#### **15.2 This Guarantee and Charge and the obligations of the Chargor under this Guarantee and Charge shall**

- (a) secure the Indebtedness owing to the Lenders or any of them and/or the Security Trustee by the Borrower and shall be a continuing security notwithstanding any payment or settlement of account or other matter whatsoever,
- (b) be in addition to, and not prejudice or affect, any present or future guarantee, indemnity, Security Right, right or remedy held by or available to the Security Trustee (as agent and security trustee for the Lenders and the Security Trustee),
- (c) not merge with or be in any way prejudiced or affected by the existence of any such guarantees, indemnities, Security Rights, rights or remedies or by the same being or becoming wholly or in part void, voidable or unenforceable on any ground whatsoever or by the Lenders or any of them and/or the Security Trustee dealing with, exchanging, releasing, varying or failing to perfect or enforce any of the same, or giving time for payment or indulgence or compounding with any other person liable,
- (d) not be discharged or affected by any failure of, or defect in, any agreement given by or on behalf of the Borrower in respect of any Indebtedness nor by any legal limitation in any matter in respect of any Indebtedness or by any other fact or circumstances (whether known or not to the Chargor or the Lenders or any of them and/or the Security Trustee) as a result of which any Indebtedness may be rendered illegal, void or unenforceable by the Security Trustee

#### **15.3 Other security**

None of the Lenders nor the Security Trustee shall be obliged to resort to any guarantees, indemnities, Security Rights or other means of payment now or hereafter held by or available to it before enforcing this Guarantee and Charge and no action taken or omitted by the Lenders or any of them and/or the Security Trustee in connection with any such guarantees, indemnities, Security Rights or other means of payment shall discharge, reduce, prejudice or affect the liability of the Chargor or the Indebtedness, nor shall any of the Lenders and/or the Security Trustee be obliged to account for any money or other property received or recovered in consequence of any enforcement or realisation of any such guarantees, indemnities, Security Rights or other means of payment

#### **15.4 Release of Securities**

Upon being satisfied that the Indebtedness has been unconditionally and irrevocably paid and discharged in full, the Security Trustee will, on request, release the Securities to the Chargor. The Chargor shall pay all and any reasonable costs or expenses incurred by the Security Trustee in relation to any such release

### **15.5** *Settlements conditional*

Any release, discharge of the Guarantee and Charge or settlement of the Indebtedness shall be conditional upon no security, disposition or payment to the Security Trustee or any of the Lenders by the Chargor or any other person being void, set aside, reduced or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Lenders and the Security Trustee shall be entitled to enforce this Guarantee and Charge and any other rights it would have been entitled to exercise subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made

## **16** **CURRENCIES**

### **16.1** *Conversion of currencies*

All moneys received or held by the Security Trustee, any Lender or by a Receiver under this Guarantee and Charge at any time on or after the Enforcement Date in a currency other than a currency in which the Indebtedness is denominated may from time to time be sold for such one or more of the currencies in which the Indebtedness is denominated as that Lender, the Security Trustee or any Receiver considers necessary or desirable and the Chargor shall indemnify that Lender, the Security Trustee or any Receiver against the full cost (including all costs, charges and expenses) incurred in relation to such sale. The Security Trustee, any Lender or any Receiver shall not have any liability to the Chargor in respect of any loss resulting from any fluctuation in exchange rates after any such sale

### **16.2** *Currency indemnity*

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

## **17** **FURTHER ASSURANCE**

### **17.1** *Further assurance*

The Chargor shall if and when at any time required by the Security Trustee

- (a) execute such further Security Rights and assurances in favour of the Security Trustee (for the benefit of the Lenders) and do and deliver all such acts and things as the Security Trustee shall from time to time require over or in relation to all or any of the Securities to secure the Indebtedness or to perfect or protect the security intended to be created by this Guarantee and Charge over the Securities or any part of them, and
- (b) at any time on or after the Enforcement Date do and execute all acts, deeds and documents which the Security Trustee may then require to facilitate the realisation of the Securities

### **17.2** *Certain documentary requirements*

Such further assurances shall be prepared by or on behalf of the Security Trustee at the expense of the Chargor and shall contain (a) an immediate power of sale without notice, (b) a clause excluding section 93 of the Law of Property Act 1925 and the restrictions contained in section 103 of the Law of Property Act 1925 and (c) such other clauses for the benefit of the Security Trustee as the Security Trustee may require

## **18** **SECURITY TRUSTEE PROTECTION**

### **18.1** *Chargor's liability not affected*

The Chargor's liability under this Guarantee and Charge shall not be discharged in whole or in part or otherwise be affected in any way by reason of

- (a) the Lenders or any of them and/or the Security Trustee giving the Borrower time or any other concession or taking, holding, varying or making arrangements in respect of the Indebtedness and/or any present or future guarantee, indemnity, Security Right, right or remedy held by or made available to the Lenders or any of them and/or the Security Trustee or realising or not enforcing any such guarantees, indemnities, Security Rights, rights or remedies,



- (b) the Lenders or any of them and/or the Security Trustee extending, increasing, renewing, determining or varying the Term Loan Facilities,
- (c) any neglect of the Lenders or any of them and/or the Security Trustee, or by any agent or receiver appointed by the Lenders or any of them and/or the Security Trustee, in connection with the realisation of any such guarantees, indemnities, Security Rights, rights or remedies,
- (d) the invalidity or unenforceability of the obligations of the Borrower to the Lenders and/or the Security Trustee, or
- (e) any other act or omission of a Lender or the Security Trustee or any other circumstances which, but for this provision, would discharge the Chargor

## **19 THE CHARGOR'S WARRANTY**

### **19.1 *Security warranty and undertaking***

The Chargor warrants that it has not taken or received, and agrees that until the Indebtedness has been paid or discharged in full it will not take or receive, the benefit of any security from the Borrower or from any member of any group of companies to which the Borrower belongs in respect of any obligation or liability of or payment by the Chargor under this Guarantee and Charge

### **19.2 *Security Trustee trust***

Any security taken by the Chargor in breach of clause 19.1 and all moneys at any time received in respect of any such breach shall be held on trust for the Security Trustee as agent and security trustee for the Lenders and the Security Trustee as security for the liability of the Chargor under this Guarantee and Charge

## **20 THE CHARGOR'S PRIMARY OBLIGATION AND ENFORCEMENT**

### **20.1 *Liability as primary obligor***

The obligations and liabilities agreed to by the Chargor under this Guarantee and Charge are those of primary obligor and not merely as a surety

### **20.2 *Enforcement of Guarantee***

The Security Trustee as agent and security trustee for the Lenders and the Security Trustee may enforce this Guarantee and Charge without first making demand on, or taking any proceedings against, the Borrower or resorting to any present or future guarantee, indemnity, Security Right, right or remedy held by or available to the Security Trustee as agent and security trustee for the Lenders and the Security Trustee (or any of them) or other means of payment. No action (or inaction) by the Security Trustee as in respect of such guarantees, indemnities, Security Rights, rights or remedies or other means of payment shall prejudice or affect the liability of the Chargor under this Guarantee and Charge

## **21 RECOVERY RESTRICTIONS**

### **21.1 *The Chargor's restrictions***

The Chargor shall not, until the Indebtedness has been paid in full and the Security Trustee has released this Guarantee and Charge (notwithstanding whether or not there is a limit on the Chargor's liability under the terms of clause 3.4), without the prior written consent of the Security Trustee

- (a) benefit (by subrogation or otherwise) from any rights the Lenders or any of them and/or the Security Trustee may have or any present or future guarantee, indemnity, Security Right, rights or remedy held by or available to the Lenders or any of them and/or the Security Trustee in respect of the Indebtedness,
- (b) exercise or enforce (or attempt to do so) any rights which the Chargor may have against the Borrower or any other person (including without limitation the Lenders and/or the Security Trustee) which arise by reason of payment of the Indebtedness,
- (c) take the benefit of, share in or enforce any such guarantees, indemnities, Security Rights, rights or remedies or indemnity of the Indebtedness or any part of it, or
- (d) claim any set-off or counterclaim against the Borrower or prove in the bankruptcy or liquidation of the Borrower

## **21.2 Security Trustee trust**

Without prejudice to the terms of clause 21.1, the Chargor agrees that any money or asset it receives in contravention of clause 21.1 or by virtue of the rights specified in clause 21.1 will be held by the Chargor on trust for the Security Trustee (as agent and security trustee for the Lenders and the Security Trustee) to be applied as if such money or asset was received by the Security Trustee under this Guarantee and Charge

## **22 PAYMENTS GENERALLY**

### **22.1 Chargor payments**

All payments by the Chargor under this Guarantee and Charge shall be made in full, without set-off, condition or counterclaim and, subject as provided as below, free and clear of any deductions or withholdings whatsoever in immediately available, freely transferable, cleared funds for value on the due date to the account notified to the Chargor by the Security Trustee. Save where the Facility Agreement specifically provides for a payment to be made for the account of a particular Lender in which case the Security Trustee shall distribute the relevant payment to the Lender concerned, payments to be made by the Chargor under this Guarantee and Charge shall be for the account of all the Lenders and the Security Trustee shall forthwith distribute such payments in like funds as are received by the Security Trustee to the Lenders rateably in accordance with their commitments under the Facility Agreement

### **22.2 Deductions and withholdings**

If at any time the Chargor is required by law to make any deduction or withholding in respect of any taxes, duties or other charges or withholdings from any payment due under this Guarantee and Charge, the sum due from the Chargor in respect of such payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Security Trustee receives on the due date and retains (free of any liability in respect of any deduction or withholding) a net sum at least equal to the sum which it would have received had no such deduction or withholding been required to be, or had in fact been, made. The Chargor shall promptly deliver or procure the delivery to the Security Trustee of all receipts issued to it evidencing each deduction and withholding which it has made

### **22.3 Set-off**

Each of the Lenders and the Security Trustee shall, with the irrevocable authority of the Chargor (such authority constituted hereby) and, in addition to and without prejudice to any rights they may have whether

- (a) arising by operation of law or otherwise in consequence of the relationship between the parties to this Guarantee and Charge, or
- (b) by way of rights of general lien or set-off or as otherwise exist,

be entitled without notice at any time and from time to time to set-off or transfer any sum or sums standing to the credit of any account of the Chargor with that Lender or the Security Trustee at any of its branches, of whatever nature and in whatever currency denominated, in or towards satisfaction of any sums due and payable from the Chargor to that Lender or those Lenders or the Security Trustee under this Guarantee and Charge

### **22.4 Appropriations**

The Chargor shall not and may not direct the application by the Security Trustee of any sums received by the Security Trustee from the Chargor under, or pursuant to, any of the terms of this Guarantee and Charge or under, or pursuant to, any of the terms of any other present or future guarantee, indemnity, Security Right, right or remedy held by or available to the Security Trustee in respect of the Indebtedness

## **23 DECLARATION OF TRUST**

### **23.1 Declaration of Trust**

The Security Trustee hereby declares itself trustee of the covenants of the Chargor contained in this Guarantee and Charge and the security and other rights, titles and interests constituted by this Guarantee and Charge to the Security Trustee or held by the Security Trustee or received or recovered by the Security Trustee pursuant to or in connection with this Guarantee and Charge with effect from the date of this Guarantee and Charge to hold the same on trust for the Lenders and to apply the same as follows

- (a) first as to a sum equivalent to the Indebtedness outstanding from time to time for the Lenders and the Security Trustee absolutely, and

- (b) secondly as to the balance (if any) for the Chargor or whoever else is entitled to such balance absolutely

**23.2 Duration**

The trusts constituted by this Guarantee and Charge shall remain in full force and effect until whichever is the earlier of

- (a) the expiration of a period of 80 years from the date of this Guarantee and Charge, and
- (b) receipt by the Security Trustee of confirmation in writing from all the Lenders that the Indebtedness has been repaid or discharged to the satisfaction of the Lenders and that none of the Lenders is under any obligation to permit any Indebtedness to be incurred,

and the parties to this Guarantee and Charge declare that the perpetuity period applicable to this Guarantee and Charge shall for the purposes of the Perpetuities and Accumulations Act 1964 be the period of 80 years

**24 CONCERNING THE SECURITY TRUSTEE**

**24.1 Deemed entitlement**

The Security Trustee may deem and treat each Lender as the person entitled to the benefit of this Guarantee and Charge in respect of the proportion of the Indebtedness which in accordance with the information provided to the Security Trustee pursuant to clause 24.2 is owing or incurred by the Chargor to such Lender for all purposes of this Guarantee and Charge unless and until a written notice of assignment or transfer of all or part of such Lender's share shall have been filed with the Security Trustee

**24.2 Directions for realisation**

Each Lender shall provide the Security Trustee with all necessary directions in writing so as to enable the Security Trustee to apply the proceeds of realisation of the security as contemplated by this Guarantee and Charge and such other information as it may reasonably require for the purposes of carrying out its duties and obligations under this Guarantee and Charge

**24.3 Limit on Security Trustee's Responsibility**

The Security Trustee shall not have any responsibility to any Lender (a) to ascertain whether all deeds and documents which should have been deposited with it under or pursuant to this Guarantee and Charge have been so deposited or (b) to investigate or make any enquiry into the title of the Chargor to the Securities or any part thereof or (c) for the failure to register this Guarantee and Charge with the Registrar of Companies or (d) for the failure to register this Guarantee and Charge in accordance with the provisions of the documents of title of the Chargor to any of the Securities or (e) for the failure to take or require the Chargor to take any steps to render this Guarantee and Charge effective as regards Securities outside England or Wales or to secure the creation of any ancillary charge under the laws of the jurisdiction concerned or (f) for acting (or, as the case may be, refraining from acting) in accordance with the directions of any of the Lenders given pursuant to clause 24.2

**24.4 Deposit of documents**

The Security Trustee shall be entitled to place all deeds, certificates and other documents relating to the Securities deposited with it under or pursuant to this Guarantee and Charge in any safe deposit, safe or receptacle selected by the Security Trustee or with any solicitor or firm of solicitors and may make any such arrangements as it thinks fit for allowing the Chargor or its solicitors or auditors access to or possession of, such documents when necessary or convenient and the Security Trustee shall not be responsible for any loss incurred in connection with any such deposit, access or possession

**24.5 Security Trustee's duty of care**

Nothing in this Guarantee and Charge shall in any case where the Security Trustee has failed to show the degree of care and diligence required of it as a trustee having regard to the provisions of this Guarantee and Charge exempt the Security Trustee from or indemnify it against any liability for breach of trust or any liability which by virtue of any rule of law would otherwise attach to it in respect of any negligence, default, breach of duty or breach of trust of which it may be guilty in relation to its duties under this Guarantee and Charge

## **25 MISCELLANEOUS**

### **25.1 Remedies cumulative**

No failure or delay on the part of the Security Trustee or any of the Lenders to exercise any power, right or remedy shall operate or be construed as a waiver. Any single or any partial exercise or waiver of any power, right or remedy shall not preclude its further exercise or the exercise of any other power, right or remedy. The powers, rights and remedies provided by this Guarantee and Charge are cumulative and are not exclusive of any powers, rights and remedies provided by law.

### **25.2 Preservation of rights**

The Security Trustee and/or any of the Lenders may, in its absolute discretion, grant time or other indulgence or make any other arrangement, variation or release with any person not a party to this Guarantee and Charge or affecting or concerning any such person in respect of the Indebtedness or in respect of any Security Right or any guarantee for the Indebtedness, without in any such case prejudicing, affecting or impairing the security hereby constituted, or any of the rights, powers or remedies of the Security Trustee and/or any of the Lenders or the exercise of the same, or the Indebtedness or other liability of the Chargor to the Security Trustee and/or the Lenders.

### **25.3 Unfettered discretion**

Any liability or power which may be exercised or any determination which may be made under this Guarantee and Charge by the Security Trustee or a Lender may be exercised or made in its absolute and unfettered discretion and it shall not be obliged to give any reasons.

### **25.4 Provisions severable**

- (a) Each of the provisions of this Guarantee and Charge is severable and distinct from the others and if at any time one or more of such provisions is or becomes invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions of this Guarantee and Charge shall not in any way be affected or impaired thereby.
- (b) If any invalid or unenforceable clause (or part of a clause) would not be invalid or unenforceable if its drafting or effect were modified in any way, the Chargor agrees that the Security Trustee can require such clause to be modified so as to be valid and enforceable.

### **25.5 Nature of Chargor's Obligations**

The obligations and liabilities of each Chargor under this document are joint and several and each representation, warranty and agreement by the Chargor under this document shall be deemed to be made severally by the Chargor as well as jointly with the other Chargors (if any).

### **25.6 Binding Nature**

The Chargor agrees to be bound by this Guarantee and Charge notwithstanding that any other Chargor intended to be a party to this Guarantee and Charge does not become effectively bound for any reason whatsoever.

### **25.7 Benefit and burden**

This Guarantee and Charge shall be binding upon the Chargor and its successors in title and shall enure for the benefit of the Security Trustee, for the benefit each of the Lenders and the Security Trustee, and their respective successors in title and (in the case of the Lenders) New Lenders. The Chargor expressly acknowledges and accepts the provisions of clause 25 of the Facility Agreement and agrees that any New Lender which becomes party to the Facility Agreement in accordance with clause 25 of the Facility Agreement shall be entitled to the benefit of this Guarantee and Charge.

### **25.8 Consolidation**

Section 93 of the Law of Property Act 1925 shall not apply to the security created by this Guarantee and Charge or to any security given to the Security Trustee pursuant to this Guarantee and Charge.

### **25.9 Reorganisation**

For these purposes and without prejudice to the provisions of clause 25.7, this Guarantee and Charge shall remain binding on the Chargor notwithstanding any change in the constitution of the Lenders or any of them or the Security Trustee or their or its absorption in, or amalgamation with, or the acquisition of all or part of their or its undertaking or assets by, any other person, or any reconstruction or reorganisation of any kind including, without limitation, any Status Change. The security

granted by this Guarantee and Charge shall remain valid and effective in all respects in favour of any assignee, transferee or other successor in title of the Lenders and the Security Trustee in the same manner as if such assignee, transferee or other successor in title had been named in this Guarantee and Charge as a party instead of, or in addition to, the relevant Lender or the Security Trustee, as the case may be and notwithstanding any Status Change

#### **25.10 Disclosure of information**

Any Lender may disclose to a prospective assignee or transferee or to any other person who may propose entering into contractual relations with such Lender in relation to the Facility Agreement such information about the Chargor as such Lender shall consider appropriate, subject to the provision by the recipient of a confidentiality undertaking acceptable to the Chargor (acting reasonably)

#### **25.11 Transfer of rights**

- (a) The Chargor may not assign or otherwise transfer any of its rights or obligations under this Guarantee and Charge
- (b) The Security Trustee may at any time sell, assign, novate, securitise or otherwise transfer all or any part of its rights or obligations under this Guarantee and Charge including, without limitation, in connection with a Status Change (a "Transfer") to any person at any time including, without limitation, a Successor (a "Transferee") The Chargor consents to the disclosure by any Lender or the Security Trustee of any information and documentation concerning the Chargor to any prospective Transferee
- (c) If there is a Transfer by the Security Trustee the Chargor will be bound to the Transferee and the rights and obligations of the Chargor under this Guarantee and Charge will remain the same The Transferee will have the same powers, rights, benefits and obligations of the Security Trustee to the extent that they are sold, assigned, novated or otherwise transferred to the Transferee and the outgoing Security Trustee will be released from its obligations to the Chargor to the extent that those obligations are assumed by the Transferee The Chargor will enter into all documents necessary to give effect to any such Transfer

#### **25.12 Credit balances**

The Chargor irrevocably and unconditionally agrees that if there shall from time to time be any credit balance on any of its accounts with the Security Trustee or any Lender, the Security Trustee or that Lender shall have the absolute right to refuse to permit such credit balance to be utilised or withdrawn by the Chargor whether in whole or in part if at that time there is outstanding any of the Indebtedness which is due for payment

### **26 NOTICES**

#### **26.1 Notices by Chargor**

- (a) Any notice, certificate or other correspondence required to be sent or given by the Chargor to the Security Trustee shall be addressed to the Security Trustee and sent by first class post to the address specified below or to such other address or for the attention of such other person or department as may from time to time be notified by the Security Trustee to the Chargor for this purpose

Business Finance

Nationwide Building Society

Kings Park Road

Moulton Park

Northampton

NN3 6NW

Attention Louise Towler

- (b) Any such notice or other correspondence shall only be effective when actually received by the Security Trustee

**26.2 Notices by Security Trustee**

Any notice, correspondence or demand for payment by the Security Trustee under this Guarantee and Charge shall, without prejudice to any other effective mode of making the same, be deemed to have been properly served on the Chargor if served on any process agent appointed by it under this Guarantee and Charge or on any Director or on its Secretary or delivered or sent by post to the Chargor at its registered office or any of its principal places of business for the time being or any other address from time to time notified by the Chargor to the Security Trustee

**26.3 Time of service**

Any such notice, correspondence or demand shall be deemed to have been served (if delivered personally) when delivered personally (if sent by post) at 9 00am on the second day (not being a Saturday, Sunday or public holiday) following the day of posting (notwithstanding that it be undelivered or returned undelivered) In proving the giving of a notice such method of service shall be conclusive evidence

**26.4 Notices conclusive**

Any such notice or demand or any certificate as to the amount at any time secured by this Guarantee and Charge shall be conclusive and binding upon the Chargor if signed by an officer of the Security Trustee

**27 INTERPRETATION**

**27.1 Successors and assigns**

The expressions "Lenders", "Security Trustee", "Chargor" and "Borrower" include, where the context admits, their respective successors and, in the case of the Security Trustee such other person as may from time to time be appointed security trustee for the Lenders, and in the case of the Lenders, their respective transferees and assignees, whether immediate or derivative

**27.2 Construction of certain terms**

In this Guarantee and Charge, unless the context otherwise requires

- (a) words importing the singular include the plural and vice versa,
- (b) where the
- (c) reference to (or to any specified provision of) this Guarantee and Charge, the Facility Agreement or any other document shall be construed as references to this Guarantee and Charge or Facility Agreement, that provision or that document as in force for the time being and as amended in accordance with its terms or, as the case may be, with the agreement of the relevant parties and (where the consent of the Security Trustee is, by the terms of this Guarantee and Charge or the relevant document, required to be obtained as a condition to such amendment being permitted) the prior written consent of the Security Trustee,
- (d) references to a person shall be construed as including references to an individual, firm, company, body corporate, corporation, unincorporated body of persons, Authority, building society or partnership (whether or not having separate legal personality) or any combination of the foregoing, and
- (e) references to statutory provisions shall be construed as references to those provisions as replaced, amended or re-enacted from time to time and any order, instrument, regulation or bye-law made or issued thereunder

**27.3 Effect as a deed**

This Guarantee and Charge is intended to take effect as a deed notwithstanding that the Security Trustee may have executed it under hand only.

**27.4 No restriction on interpretation**

In construing this Guarantee and Charge the interpretation of general words shall not be restricted by being preceded by words indicating a particular class of acts, matters or things or by being followed by particular examples

**28      LAW**

**28.1    *English law***

This Guarantee and Charge shall be governed by and shall be construed in accordance with English law

**28.2    *Jurisdiction***

The Chargor hereby irrevocably submits to the jurisdiction of the English Courts. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Security Trustee or any of the Lenders to take proceedings against the Chargor in any other court of competent jurisdiction outside England, nor shall the taking of proceedings in any jurisdiction preclude the taking of proceedings in any other jurisdiction whether concurrently or not

**IN WITNESS** of the above this Guarantee and Charge has been executed and delivered by or on behalf of the parties on the date stated at the beginning of this Guarantee and Charge

## Schedule

### Part A

#### The Borrower

Spectrum Alpha Property Partners Limited Partnership, a limited partnership organised under the laws of England with number LP11049, acting through its general partner Spectrum Alpha General Partner Limited (Company No 5022821) and whose address for service is The Edge, Clowes Street, Manchester M3 5NB marked for the attention of David Lockhart (fax no 0161-8330956)

and

Hawkbond Properties Limited (Company No 5420435) and whose address for service is The Edge, Clowes Street, Manchester M3 5NB marked for the attention of David Lockhart (fax no 0161-8330956)

### Part B

#### The Chargor

Spectrum Alpha Property Partners Limited Partnership, a limited partnership organised under the laws of England with number LP11049, acting through its general partner Spectrum Alpha General Partner Limited (Company No 5022821) and whose address for service is The Edge, Clowes Street, Manchester M3 5NB marked for the attention of David Lockhart (fax no 0161-8330956)

Spectrum Alpha General Partner Limited (Company No 5022821) and whose address for service is The Edge, Clowes Street, Manchester M3 5NB marked for the attention of David Lockhart (fax no 0161-8330956)

### Part C

#### The Securities

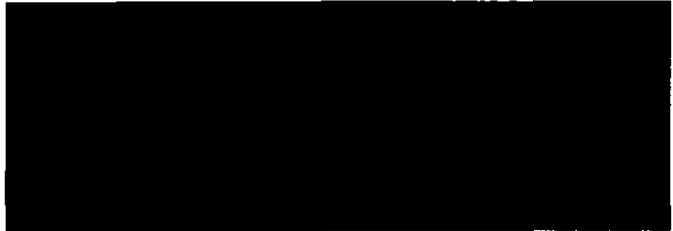
- 1 One £1 ordinary share in Spectrum Alpha Nominees (No 1) Limited (Company No 5656777),
- 2 One £1 ordinary share in Spectrum Alpha Nominees (No 2) Limited (Company No 5656794),
- 3 One £1 ordinary share in Spectrum Alpha Nominees (No 3) Limited (Company No 5656810),
- 4 One £1 ordinary share in Spectrum Alpha Nominees (No 4) Limited (Company No 5656825)
- 5 One £1 ordinary share in Spectrum Alpha Nominees (No 5) Limited (Company No 5656860)
- 6 One £1 ordinary share in Spectrum Alpha Nominees (No 6) Limited (Company No 5656879)



EXECUTED and DELIVERED as a Deed  
by SPECTRUM ALPHA GENERAL PARTNER LIMITED  
acting by

Director )

Director/Secretary )



SIGNED for and on behalf )  
of NATIONWIDE BUILDING SOCIETY )  
(as agent and security trustee for itself and each )  
of the Lenders) )

DATED 24 April 2014

# Nationwide Building Society

(as agent and Security Trustee for itself and each of the Lenders defined herein)

## COMPOSITE SHARE CHARGE AND GUARANTEE AND INDEMNITY

Chargor.	SPECTRUM ALPHA PROPERTY PARTNERS LIMITED PARTNERSHIP  SPECTRUM ALPHA GENERAL PARTNER LIMITED
Borrower.	SPECTRUM ALPHA PROPERTY PARTNERS LIMITED PARTNERSHIP  AND  HAWKBOND PROPERTIES LIMITED

WE HEREBY CERTIFY THAT THIS IS  
A TRUE COPY (AS REDACTED) OF  
THE ORIGINAL

Addlesha Goddard LLP

DATE 29/4/14  
ADDLESHAW GODDARD LLP

THIS GUARANTEE AND CHARGE dated 24 April 2014 is made BY the Chargor IN FAVOUR OF NATIONWIDE BUILDING SOCIETY as agent and security trustee for itself and each of the Lenders and whose chief office is at Nationwide House, Pipers Way, Swindon, SN38 1NW (in this capacity the "Security Trustee")

# 1 MEANING OF CERTAIN WORDS

## 1.1 Definitions

In this Guarantee and Charge, unless the context otherwise requires

<b>Authority</b>	means any governmental body, agency, department or regulatory, self-regulatory or other authority including, without limitation, local and public authorities and statutory undertakings,
<b>Borrower</b>	means each of the entities whose details appear in Part A of the Schedule,
<b>Chargor</b>	means each of the companies whose details appear in Part B of the Schedule,
<b>Default Rate</b>	means the default interest rate specified in clause 8.3 of the Facility Agreement,
<b>Disposal</b>	means a sale, transfer, assignment, or other disposal (including by way of lease, tenancy or loan) by a person of all or part of its assets, whether by one transaction or a series of transactions and whether at the same time or over a period of time and "dispose" shall be construed accordingly,
<b>Enforcement Date</b>	means the date on which the Security Trustee demands the payment or discharge of all or any part of the Indebtedness or after the occurrence of an Event of Default or, if earlier, the date on which an application for an administration order is presented or any other formal step is taken with a view to appointing an administrator in relation to the Chargor,
<b>Event of Default</b>	has the meaning given to it in the Facility Agreement,
<b>Facility Agreement</b>	means the facility agreement dated 22 December 2005 novated pursuant to an amendment, restatement and novation agreement dated 24 February 2006 as amended and restated on 31 March 2010 and as further amended, restated and novated on or about the date of this Guarantee and Charge and made between, amongst others, Spectrum Alpha Property Partners Limited Partnership, acting through the Chargor (1), the Chargor (2) Nationwide Building Society as arranger of the Term Loan Facilities (3), Nationwide Building Society as agent for the Lenders (4), Nationwide Building Society as Security Trustee for the Finance Parties (5) and the Lenders (6) pursuant to which the Lenders agree to make available to the Borrower the Term Loan Facilities,
<b>Finance Documents</b>	has the meaning given it in the Facility Agreement,
<b>Finance Parties</b>	has the meaning given it in the Facility Agreement,
<b>Indebtedness</b>	means all moneys, obligations and liabilities owing by the Borrower to the Lenders referred to in clause 2,
<b>Lenders</b>	has the meaning given to it in the Facility Agreement,
<b>New Lenders</b>	has the meaning given to it in the Facility Agreement,
<b>Permitted Security Interests</b>	has the meaning given in the Facility Agreement,
<b>Receiver</b>	means any one or more receivers and/or managers or administrative receivers appointed by the Security Trustee pursuant to this Guarantee and Charge in respect of the Chargor or over all or any of the Securities,
<b>Secretary</b>	means the company secretary of the Chargor for the time being,
<b>Securities</b>	means the securities detailed in Part C of the Schedule and any further securities substituted or added from time to time with the consent of the Security Trustee

<b>Security Right</b>	means any mortgage, debenture, charge (whether fixed or floating), pledge, lien, hypothecation, standard security, assignment by way of security or other security interest or arrangement of any kind having the effect of conferring security of any kind,
<b>Status Change</b>	means <ul style="list-style-type: none"> <li>• an amalgamation of a Lender or of the Security Trustee which is a building society with one or more other building societies pursuant to section 93 of the Building Societies Act 1986, or</li> <li>• a transfer of all or substantially all its engagements (including all the obligations of a Lender or of the Security Trustee under this Charge) to another building society pursuant to section 94 of the Building Societies Act 1986, or</li> <li>• a transfer of the whole of a Lender's or the Security Trustee's business to a company pursuant to section 97 of the Building Societies Act 1986, or</li> <li>• an alteration in the status of a Lender or the Security Trustee by virtue of any statute or statutory provisions which alters, or permits the alteration of, the status of building societies generally or building societies which meet specified criteria to that of an institution authorised under the Financial Services and Markets Act 2000 or to a body which is regulated on a similar basis to an institution authorised under the Financial Services and Markets Act 2000,</li> </ul> and "Successor" means the resulting building society, company, institution or body,
<b>Transfer</b>	has the meaning set out in clause 25 11(b),
<b>Transferee</b>	has the meaning set out in clause 25 11(b),
<b>Term Loan Facilities</b>	the term loan facilities made available by the Lenders pursuant to clause 2 1 of the Facility Agreement,

## **2 COVENANT TO PAY**

### **2 1 Indebtedness**

The Chargor hereby covenants that it will pay to the Security Trustee for the account of the Lenders and the Security Trustee all moneys and discharge all obligations and liabilities now or in the future due, owing or incurred under the Finance Documents by the Borrower and the Chargor to the Lenders or any of them or the Security Trustee when the same become due for payment or discharge whether by acceleration or otherwise. The moneys, obligations or liabilities under the Finance Documents which are due, owing or incurred to the Lenders or any of them or the Security Trustee may be

- express or implied,
- present, future or contingent,
- joint or several,
- incurred as principal or under a guarantee or indemnity to the Security Trustee and/or the Lenders (or any of them),
- originally owing to the Lenders or any of them and/or the Security Trustee or purchased or otherwise acquired by them,
- denominated in Sterling or in any other currency,
- incurred on any banking or other account or in any other manner whatsoever,
- incurred with or without the Chargor's knowledge or consent

### **2 2 Other liabilities**

The liabilities referred to in clause 2 1 shall, without limitation, include

- (a) the Term Loan Facilities,
- (b) all liabilities arising under any Finance Document and under this Guarantee and Charge including without limitation under clause 13,
- (c) all liabilities under or in connection with foreign exchange transactions, interest rate swaps and other arrangements entered into for the purpose of limiting exposure to fluctuations in interest or exchange rates, and
- (d) interest (both before and after judgement) to date of payment at such rates and upon such terms specified in the Facility Agreement, commission, fees and other charges (including interest rate breakage costs) and all legal and all other costs, charges and expenses (including any internal management, monitoring or enforcement costs, charges and expenses of the Lenders or any of them or the Security Trustee) on a full and unqualified indemnity basis which may be incurred by the Lenders or any of them or the Security Trustee in relation to any of the Indebtedness or any guarantee in respect of any part of the Indebtedness or otherwise in respect of the Chargor or any guarantor of any part of the Indebtedness

### **3 GUARANTEE AND INDEMNITY**

#### **3.1 Guarantee**

In consideration of the Lenders granting or continuing the facilities under the Facility Agreement to the Borrower, the Chargor guarantees on demand to pay to the Security Trustee for the account of the Lenders and the Security Trustee the whole and every part of the Indebtedness when the same becomes due for payment or discharge whether by acceleration or otherwise

#### **3.2 Liability as principal debtor**

As a separate and independent obligation and liability, the Chargor agrees that if any purported obligation or liability of the Borrower which would have been the subject of this Guarantee and Charge had it been valid and enforceable is not and is or becomes void, voidable, invalid or unenforceable against the Borrower on any grounds whatsoever whether or not known to the Lender or any of them and/or the Security Trustee the Chargor shall nevertheless be liable to the Lenders or any of them and/or the Security Trustee in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Chargor were the principal debtor in respect of such purported obligation and liability

#### **3.3 Indemnity**

As a separate and independent obligation and liability, the Chargor agrees to indemnify and keep indemnified on demand the Lenders or any of them and/or the Security Trustee against all damages, losses, costs, charges and expenses arising from any failure of the Borrower to perform or discharge any purported obligation or liability of the Borrower which would have been the subject of this Guarantee and Charge had it been valid and enforceable

#### **3.4 Limited Recourse**

Without prejudice to the liability of the Chargor for any breach of any covenant, undertaking, representation or warranty contained in this Guarantee and Charge, the recourse of the Lenders and/or the Security Trustee to the Chargor under clauses 3.1, 3.2 and 3.3 shall be limited to the rights, remedies, obligations and powers of the Lenders and/or the Security Trustee under the charge created by this Guarantee and Charge

### **4 CHARGES**

#### **4.1 Fixed charges**

The Chargor with full title guarantee as a continuing security for the payment and discharge of the Indebtedness hereby charges as a fixed first charge to the Security Trustee (as agent and security trustee for the Lenders and the Security Trustee) the following property and assets, both present and future, from time to time owned by the Chargor or in which the Chargor may have an interest (whether such interest arises by virtue of trust or otherwise)

- (a) all Securities, and their proceeds of sale,
- (b) all dividends, interest and other distributions (whether in cash or in specie and whether of a capital or income nature) declared, paid or made in respect of the Securities at any time,

- (c) all accretions, rights, benefits, money or property accruing, issued or offered in respect of the Securities at any time, whether by way of rights, bonus, capitalisation, conversion, exchange, pre-emption, option, redemption or otherwise

#### **4.2 Representations and Warranties**

The Chargor represents and warrants to the Security Trustee (as agent and security trustee for the Lenders and the Security Trustee) that

- (a) it is the legal and beneficial owner of the Securities,
- (b) it has not created or granted any Security Right over the Securities to any other person, and
- (c) it has not entered and will not enter into any agreement to sell, dispose of or grant any Security Right over the Securities

#### **4.3 Negative Pledge**

The Chargor undertakes to the Security Trustee and each of the Lenders that during the continuance of this security the Chargor will not without the prior written consent of the Security Trustee create or purport to create or permit to subsist any Security Right over the whole or any part of the Securities (other than a lien arising by operation of law in the ordinary course of the Chargor's business and any Permitted Security Interests)

### **5 DEPOSIT OF DOCUMENTS**

#### **5.1 Deposit of Documents**

The Chargor will on the date of this Guarantee and Charge (or on the date of issue where any Securities are issued subsequently), deliver to the Security Trustee (or its nominee) all certificates (or such other evidence of title as the Security Trustee may require) together with undated signed transfers in favour of the Security Trustee (or its nominee) for all Securities

#### **5.2 Registration**

The Chargor irrevocably authorises the Security Trustee to arrange, at any time following the Enforcement Date, for any of the Securities to be registered in the name of the Security Trustee (or its nominee)

#### **5.3 Receipt of Monies**

The Chargor shall pay into such account of the Chargor as the Security Trustee may direct, all monies which it may receive in respect of the Securities immediately on receipt

### **6 VOTING RIGHTS AND RIGHTS AND OBLIGATIONS ATTACHED TO THE SECURITIES**

#### **6.1 Voting**

Unless and until this Guarantee and Charge becomes enforceable, or the Security Trustee directs otherwise

- (a) all voting and other rights attaching to the Securities shall continue to be exercised by the Chargor for so long as the Chargor remains their registered owner, and
- (b) if the Securities are registered in the name of the Security Trustee or its nominee, all voting and other rights attaching to them shall be exercised by the Security Trustee or its nominee in accordance with instructions in writing from time to time received by the Chargor, and in the absence of such instructions, the Security Trustee or the nominees shall refrain from exercising any such rights

#### **6.2 Notices**

If the Chargor wishes to receive copies of notices and communications in relation to any or all of the Securities, the Security Trustee must be given prior written notice of such request

## **7 RIGHTS EXERCISABLE BY THE SECURITY TRUSTEE**

### **7.1 Exercise of Rights**

At any time on or after the Enforcement Date, the Security Trustee is authorised, without prior notice to the Chargor

- (a) to exercise all voting or other powers pertaining to the Securities in any manner which the Security Trustee may consider appropriate,
- (b) to receive and retain all dividends, interest or other money or assets accruing on or in respect of the securities under and subject to the terms of this Guarantee and Charge and any such dividends, interest or money or assets received by the Chargor after such time shall be held in trust by the Chargor for the Security Trustee and paid or transferred to the Security Trustee on demand,
- (c) to sell or realise the Securities in any manner which the Security Trustee may consider appropriate, the costs of such sale or realisation constituting part of the Indebtedness

### **7.2 No Liability**

The Lenders and Security Trustee shall incur no liability for any loss arising out of a sale pursuant to clause 7.1 above from whatever cause and whether or not a better price could have been obtained on the sale of any Securities by deferring or advancing the date of such sale or otherwise. They shall incur no liability for any loss arising out of the modus chosen, either public auction or private deed, for the sale of the shares

## **8 CERTAIN POWERS OF THE SECURITY TRUSTEE**

### **8.1 Powers on enforcement**

Section 103 of the Law of Property Act 1925 shall not apply. At any time on or after the Enforcement Date or if requested by the Chargor, the Security Trustee may, without further notice, and whether or not a Receiver shall have been appointed, exercise all the powers conferred upon mortgagees by the Law of Property Act 1925 as varied or extended by this Guarantee and Charge and all the powers and discretions conferred by this Guarantee and Charge on a Receiver either expressly or by reference. In the event of any conflict between the powers contained in the Law of Property Act 1925 and those conferred by this Guarantee and Charge, the terms of this Guarantee and Charge shall prevail.

### **8.2 Subsequent Security Rights**

If the Security Trustee receives or has notice (actual or constructive) of any subsequent Security Right affecting the Securities in whole or in part or if the continuing nature of this Guarantee and Charge is determined for any reason, the Security Trustee may open a new account for the Chargor. If it does not do so then, unless the Security Trustee gives express written notice to the contrary to the Chargor for the purposes of this Guarantee and Charge, the Security Trustee shall nevertheless be treated as if it had opened a new account at the time when it received or had such notice and as from that time all payments made by or on behalf of the Chargor to the Security Trustee shall be credited or be treated as having been credited to the new account and shall not operate to reduce the amount due from the Chargor to the Lenders and/or the Security Trustee at the time when it received such notice.

### **8.3 Settlement of accounts**

Any sale or other disposition by the Security Trustee or by a Receiver may be made either subject to or discharged from any prior charge or upon such terms as to indemnity as the Security Trustee or such Receiver may think fit. The Security Trustee or the Receiver may settle and pay the accounts of any person in whom any prior charge may from time to time be vested and any accounts so settled and paid shall as between the Lenders, the Security Trustee, the Receiver and the Chargor be deemed to be properly settled and paid and shall be binding on the Chargor accordingly. The money so expended by the Security Trustee or the Receiver shall be repayable by the Chargor to the Security Trustee or the Receiver on demand, shall constitute part of the Indebtedness and shall bear interest at the Default Rate from the date of payment by the Security Trustee.

### **8.4 Contingencies**

If the Security Trustee enforces the security constituted by this Guarantee and Charge at a time when no amount in respect of the Indebtedness is due and payable, or when the amount due and payable is not ascertained, the Security Trustee (or the Receiver) may pay the proceeds of any recoveries effected by it into an interest-bearing suspense account. The Security Trustee may withdraw amounts standing to the credit of such suspense account for application in accordance with clause 12.

**8 5      *Power to remedy***

If the Chargor at any time defaults in complying with any of its obligations contained in this Guarantee and Charge, the Security Trustee shall, without prejudice to any other rights arising as a consequence of such default, be entitled (but not bound) to make good such default and the Chargor hereby irrevocably authorises the Security Trustee and its employees and agents by way of security to do all such things necessary or desirable in connection therewith. Any moneys so expended by the Security Trustee shall be repayable by the Chargor to the Security Trustee on demand together with interest at the Default Rate from the date of payment by the Security Trustee until such repayment, both before and after judgement. No exercise by the Security Trustee of its powers under this clause 8 5 shall make it liable to account as a mortgagee in possession.

**9            *APPOINTMENT AND POWERS OF RECEIVER***

**9 1      *Appointment***

At any time on or after the Enforcement Date or if requested by the Chargor, or if the security created by this Guarantee and Charge shall in the Security Trustee's reasonable opinion be in jeopardy, the Security Trustee may by instrument in writing executed as a deed or under the hand of any director or other duly authorised officer appoint any person to be a Receiver of the Securities or any part of them. Where more than one Receiver is appointed, each joint Receiver shall have power to act severally, independently and to the exclusion of any other joint Receivers, except to the extent that the Security Trustee may specify to the contrary in the appointment. The Security Trustee may (subject, where relevant, to section 45 of the Insolvency Act 1986) remove any Receiver so appointed and appoint another in his place.

**9 2      *Receiver as agent***

Any Receiver shall be the agent of the Chargor and the Chargor shall be solely responsible for his acts or defaults and liable on any contracts and engagements made or entered into by him and shall alone be responsible for his remuneration.

**9 3      *Powers of Receiver***

Any Receiver shall have all the powers conferred from time to time on receivers by statute (in the case of powers conferred by the Law of Property Act 1925, without the restrictions contained in section 103 of that Act) and power on behalf, and at the expense, of the Chargor (notwithstanding the liquidation of the Chargor) to do or omit to do anything which the Chargor could do or omit to do in relation to the Securities or any part of them. In particular (but without limitation) a Receiver shall have power to do all or any of the following acts and things:

- (a) to sell, exchange, surrender, redeem or otherwise dispose of or in any way deal with the Securities and to transfer all or any of the Securities to any other person or persons, including a company formed or acquired for the purpose, in each case for such consideration (if any), including cash or stock or any other consideration, and on such terms, as he may think fit and whether for a lump sum or for a consideration payment in instalments,
- (b) to exercise all voting and other rights attaching to the Securities and to pay all calls and other payments which may become due in respect of any Securities,
- (c) to take all such steps and give all such notices and instructions in relation to the Securities as the Receiver considers appropriate for any of the above purposes,
- (d) to do all other such acts and things as may be considered by the Receiver to be incidental or conducive to any of the above matters or powers or to the preservation or realisation of the Securities.

**9.4      *Remuneration***

The Security Trustee may from time to time determine the remuneration of any Receiver and section 109(6) of the Law of Property Act 1925 shall be varied accordingly. A Receiver shall be entitled to remuneration appropriate to the work and responsibilities involved upon the basis of charging from time to time adopted by the Receiver in accordance with the current practice of his firm.

**9 5      *No liability***

Neither the Security Trustee nor any Receiver shall be liable for any involuntary losses that may occur in exercise of the rights, liberties and powers contained in this Guarantee and Charge or be liable to account as mortgagee in possession.



## **10 RIGHTS ATTACHING TO SECURITIES**

### **10.1 *Payment of Calls***

The Chargor will pay promptly all calls or other payments, and will discharge all other obligations which may become due in respect of any Securities and, if the Chargor fails to do so, the Security Trustee may if it thinks fit make such payments or discharge such obligations on behalf of the Chargor. Any sums so paid by the Security Trustee shall be repayable by the Chargor to the Security Trustee on demand. The Security Trustee may debit such amounts to any account that the Chargor may hold with the Security Trustee (or, if no account is held, to open an account in the Chargor's name for this purpose) and any such amounts will form part of the Indebtedness.

### **10.2 *Exercise of Rights***

The Security Trustee shall have no duty to ensure that any dividends, interest or other money and assets or rights receivable in respect of the Securities are duly and punctually paid, received or collected or exercised when they become due and payable or exercisable, or to ensure the taking up of any (or any offer of any) stocks, shares, rights, money or other property paid, distributed, accruing or offered at any time by way of redemption, bonus, rights, reference or to otherwise in respect of the Securities.

## **11 EFFECT OF ENFORCEMENT DATE**

### **11.1 *Enforcement Date***

From the Enforcement Date, the Security Trustee and the Lenders shall cease to be under any further commitment to the Chargor. The Indebtedness (other than contingent liabilities) not otherwise so payable shall immediately become payable on demand.

## **12 APPLICATION OF PROCEEDS**

### **12.1 *Application of proceeds***

Any moneys received by the Security Trustee or by any Receiver appointed by it pursuant to this Guarantee and Charge and/or under the powers conferred by this Guarantee and Charge shall be applied for the following purposes and, unless otherwise determined by the Security Trustee or such Receiver, in the following order of priority:

- (a) in the payment of all costs, charges and expenses of and incidental to the Receiver's appointment and the payment of his remuneration,
- (b) in the payment and discharge of any liabilities incurred by the Receiver on the Chargor's behalf in the exercise of any of the powers of the Receiver,
- (c) in or towards payment of any debts or claims which are by statute payable in preference to the Indebtedness but only to the extent that those debts or claims have that preference,
- (d) in or towards satisfaction of the Indebtedness, and
- (e) any surplus shall be paid to the Chargor or any other person who may be entitled to it.

### **12.2 *Suspense account***

Any moneys received, recovered or realised under the powers conferred under this Guarantee and Charge may, at the discretion of the Security Trustee, be placed in a suspense account (with a view to preserving the rights of the Lenders and the Security Trustee to prove for the whole of its claim against the Borrower or any other person liable) and kept there for so long as the Security Trustee thinks fit pending application from time to time (as the Security Trustee shall be entitled to do as it may think fit) of such moneys in or towards discharge of the Indebtedness.

### **12.3 *Law of Property Act 1925***

The provisions of clauses 12.1 and 12.2 shall take effect as and by way of variation and extension to the provisions of section 109 of the Law of Property Act 1925 which provisions as so varied and extended shall be deemed incorporated in this Guarantee and Charge.

#### **12 4 Protection of purchasers**

- (a) Any person (including, without limitation, any purchaser, mortgagor or mortgagee) (in this clause a "purchaser") dealing with the Security Trustee may assume without inquiry that
  - (i) some part of the Indebtedness has become due,
  - (ii) a demand for such Indebtedness has been duly made, and
  - (iii) such Indebtedness has become due within the meaning of section 101 of the Law of Property Act 1925
- (b) No purchaser dealing with the Receiver or the Security Trustee is to be concerned to enquire whether any power exercised or purported to be exercised by the Receiver or the Security Trustee has become exercisable, or as to the propriety or regularity of any sale by, or other dealing with, the Receiver or the Security Trustee. Any such sale or dealing is deemed to be within the powers conferred by this Guarantee and Charge and to be valid and effective accordingly. All the protection to purchasers contained in section 104 and section 107 of the Law of Property Act 1925 and section 42(3) of the Insolvency Act 1986 apply to any purchaser

### **13 INDEMNITIES AND COSTS AND EXPENSES**

#### **13 1 Enforcement costs**

The Chargor hereby undertakes with the Security Trustee and each of the Lenders to pay on demand all costs, charges and expenses including, without limitation, all legal and all other costs, charges and expenses (including any internal management, monitoring or enforcement costs, charges and expenses of the Security Trustee and such Lenders) on a full and unqualified indemnity basis which may be incurred by the Security Trustee or such Lenders in or incidental to the enforcement, attempted enforcement, preservation or attempted preservation of any of the security created by or pursuant to this Guarantee and Charge or any of the Securities or in the administration and management of the Chargor's accounts with the Security Trustee or such Lenders or in the collection of the Indebtedness, together with interest at the Default Rate from the date on which such costs, charges or expenses are incurred until the date of payment by the Chargor (both before and after judgment). Any taxation of such costs, charges and expenses shall be on an indemnity basis.

#### **13 2 Indemnity from Securities**

The Security Trustee and any Receiver, attorney, agent or other person appointed by the Security Trustee or any Receiver under this Guarantee and Charge and the Security Trustee's officers and employees (each an "Indemnified Party") shall be entitled to be indemnified out of the Securities in respect of all costs, losses, actions, claims, expenses, demands or liabilities whether in contract, tort, delict or otherwise and whether arising at common law, in equity or by statute which may be incurred by, or made against, any of them (or by or against any manager, agent, officer or employee for whose liability, act or omission any of them may be answerable) at any time relating to or arising directly or indirectly out of or as a consequence of

- (a) anything done or omitted in the exercise or purported exercise of the powers contained in this Guarantee and Charge, or
- (b) any breach by the Chargor of any of its obligations under this Guarantee and Charge,

and the Chargor shall indemnify the Security Trustee and any Receiver against any such matters

### **14 POWER OF ATTORNEY**

#### **14 1 Power of attorney**

The Chargor by way of security hereby irrevocably appoints each of the Security Trustee and any Receiver jointly and severally to be its attorney with full power of delegation in its name and on its behalf

- (a) to sign, execute, seal, complete and deliver any document, deed, agreement, instruments or act which the Security Trustee or such Receiver may require for perfecting the title of the Security Trustee to the Securities or for vesting the same in the Security Trustee, its nominees or any purchaser or generally for any of the purposes set out in this Guarantee and Charge,
- (b) to sign, execute, seal, complete and deliver and otherwise perfect any further security document referred to in clause 17, and

- (c) otherwise generally to sign, seal, execute and deliver all deeds, assurances, agreements and documents and to do all acts and things which may be required for the full exercise of all or any of the powers conferred on the Security Trustee or a Receiver under this Guarantee and Charge or which may be deemed expedient by the Security Trustee or a Receiver in connection with any Disposal, realisation or getting in by the Security Trustee or such Receiver of the Securities or any part thereof or in connection with any other exercise of any power under this Guarantee and Charge

#### **14 2 Ratification**

The Chargor shall ratify and confirm all transactions entered into by the Security Trustee, any Receiver or any delegate of the Security Trustee in the exercise or purported exercise of the Security Trustee's or the Receiver's respective powers and all things done by the Security Trustee, such Receiver or delegate by virtue of any power of attorney given by this clause 14

#### **14 3 Irrevocable**

The Chargor hereby acknowledges that the power of attorney hereby granted to the Security Trustee, any Receiver and its delegates and substitutes is granted irrevocably and for value as part of the security constituted by this Guarantee and Charge to secure the proprietary interests of and the performance of obligations owed to the respective donees within the meaning and for the purposes of the Powers of Attorney Act 1971

### **15 DURATION AND CONTINUING SECURITY**

#### **15 1 Duration**

This Guarantee and Charge shall continue in effect until the whole and every part of the Indebtedness has been paid in full, notwithstanding any interim settlement of account or other matter

#### **15 2 This Guarantee and Charge and the obligations of the Chargor under this Guarantee and Charge shall**

- (a) secure the Indebtedness owing to the Lenders or any of them and/or the Security Trustee by the Borrower and shall be a continuing security notwithstanding any payment or settlement of account or other matter whatsoever,
- (b) be in addition to, and not prejudice or affect, any present or future guarantee, indemnity, Security Right, right or remedy held by or available to the Security Trustee (as agent and security trustee for the Lenders and the Security Trustee),
- (c) not merge with or be in any way prejudiced or affected by the existence of any such guarantees, indemnities, Security Rights, rights or remedies or by the same being or becoming wholly or in part void, voidable or unenforceable on any ground whatsoever or by the Lenders or any of them and/or the Security Trustee dealing with, exchanging, releasing, varying or failing to perfect or enforce any of the same, or giving time for payment or indulgence or compounding with any other person liable,
- (d) not be discharged or affected by any failure of, or defect in, any agreement given by or on behalf of the Borrower in respect of any Indebtedness nor by any legal limitation in any matter in respect of any Indebtedness or by any other fact or circumstances (whether known or not to the Chargor or the Lenders or any of them and/or the Security Trustee) as a result of which any Indebtedness may be rendered illegal, void or unenforceable by the Security Trustee

#### **15 3 Other security**

None of the Lenders nor the Security Trustee shall be obliged to resort to any guarantees, indemnities, Security Rights or other means of payment now or hereafter held by or available to it before enforcing this Guarantee and Charge and no action taken or omitted by the Lenders or any of them and/or the Security Trustee in connection with any such guarantees, indemnities, Security Rights or other means of payment shall discharge, reduce, prejudice or affect the liability of the Chargor or the Indebtedness, nor shall any of the Lenders and/or the Security Trustee be obliged to account for any money or other property received or recovered in consequence of any enforcement or realisation of any such guarantees, indemnities, Security Rights or other means of payment

#### **15 4 Release of Securities**

Upon being satisfied that the Indebtedness has been unconditionally and irrevocably paid and discharged in full, the Security Trustee will, on request, release the Securities to the Chargor. The Chargor shall pay all and any reasonable costs or expenses incurred by the Security Trustee in relation to any such release

**15.5** *Settlements conditional*

Any release, discharge of the Guarantee and Charge or settlement of the Indebtedness shall be conditional upon no security, disposition or payment to the Security Trustee or any of the Lenders by the Chargor or any other person being void, set aside, reduced or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Lenders and the Security Trustee shall be entitled to enforce this Guarantee and Charge and any other rights it would have been entitled to exercise subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made

**16** **CURRENCIES**

**16.1** *Conversion of currencies*

All moneys received or held by the Security Trustee, any Lender or by a Receiver under this Guarantee and Charge at any time on or after the Enforcement Date in a currency other than a currency in which the Indebtedness is denominated may from time to time be sold for such one or more of the currencies in which the Indebtedness is denominated as that Lender, the Security Trustee or any Receiver considers necessary or desirable and the Chargor shall indemnify that Lender, the Security Trustee or any Receiver against the full cost (including all costs, charges and expenses) incurred in relation to such sale. The Security Trustee, any Lender or any Receiver shall not have any liability to the Chargor in respect of any loss resulting from any fluctuation in exchange rates after any such sale.

**16.2** *Currency indemnity*

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

**17** **FURTHER ASSURANCE**

**17.1** *Further assurance*

The Chargor shall if and when at any time required by the Security Trustee

- (a) execute such further Security Rights and assurances in favour of the Security Trustee (for the benefit of the Lenders) and do and deliver all such acts and things as the Security Trustee shall from time to time require over or in relation to all or any of the Securities to secure the Indebtedness or to perfect or protect the security intended to be created by this Guarantee and Charge over the Securities or any part of them, and
- (b) at any time on or after the Enforcement Date do and execute all acts, deeds and documents which the Security Trustee may then require to facilitate the realisation of the Securities.

**17.2** *Certain documentary requirements*

Such further assurances shall be prepared by or on behalf of the Security Trustee at the expense of the Chargor and shall contain (a) an immediate power of sale without notice, (b) a clause excluding section 93 of the Law of Property Act 1925 and the restrictions contained in section 103 of the Law of Property Act 1925 and (c) such other clauses for the benefit of the Security Trustee as the Security Trustee may require.

**18** **SECURITY TRUSTEE PROTECTION**

**18.1** *Chargor's liability not affected*

The Chargor's liability under this Guarantee and Charge shall not be discharged in whole or in part or otherwise be affected in any way by reason of

- (a) the Lenders or any of them and/or the Security Trustee giving the Borrower time or any other concession or taking, holding, varying or making arrangements in respect of the Indebtedness and/or any present or future guarantee, indemnity, Security Right, right or remedy held by or made available to the Lenders or any of them and/or the Security Trustee or realising or not enforcing any such guarantees, indemnities, Security Rights, rights or remedies,

- (b) the Lenders or any of them and/or the Security Trustee extending, increasing, renewing, determining or varying the Term Loan Facilities,
- (c) any neglect of the Lenders or any of them and/or the Security Trustee, or by any agent or receiver appointed by the Lenders or any of them and/or the Security Trustee, in connection with the realisation of any such guarantees, indemnities, Security Rights, rights or remedies,
- (d) the invalidity or unenforceability of the obligations of the Borrower to the Lenders and/or the Security Trustee, or
- (e) any other act or omission of a Lender or the Security Trustee or any other circumstances which, but for this provision, would discharge the Chargor

## **19 THE CHARGOR'S WARRANTY**

### **19.1 *Security warranty and undertaking***

The Chargor warrants that it has not taken or received, and agrees that until the Indebtedness has been paid or discharged in full it will not take or receive, the benefit of any security from the Borrower or from any member of any group of companies to which the Borrower belongs in respect of any obligation or liability of or payment by the Chargor under this Guarantee and Charge

### **19.2 *Security Trustee trust***

Any security taken by the Chargor in breach of clause 19.1 and all moneys at any time received in respect of any such breach shall be held on trust for the Security Trustee as agent and security trustee for the Lenders and the Security Trustee as security for the liability of the Chargor under this Guarantee and Charge

## **20 THE CHARGOR'S PRIMARY OBLIGATION AND ENFORCEMENT**

### **20.1 *Liability as primary obligor***

The obligations and liabilities agreed to by the Chargor under this Guarantee and Charge are those of primary obligor and not merely as a surety

### **20.2 *Enforcement of Guarantee***

The Security Trustee as agent and security trustee for the Lenders and the Security Trustee may enforce this Guarantee and Charge without first making demand on, or taking any proceedings against, the Borrower or resorting to any present or future guarantee, indemnity, Security Right, right or remedy held by or available to the Security Trustee as agent and security trustee for the Lenders and the Security Trustee (or any of them) or other means of payment. No action (or inaction) by the Security Trustee as in respect of such guarantees, indemnities, Security Rights, rights or remedies or other means of payment shall prejudice or affect the liability of the Chargor under this Guarantee and Charge

## **21 RECOVERY RESTRICTIONS**

### **21.1 *The Chargor's restrictions***

The Chargor shall not, until the Indebtedness has been paid in full and the Security Trustee has released this Guarantee and Charge (notwithstanding whether or not there is a limit on the Chargor's liability under the terms of clause 3.4), without the prior written consent of the Security Trustee

- (a) benefit (by subrogation or otherwise) from any rights the Lenders or any of them and/or the Security Trustee may have or any present or future guarantee, indemnity, Security Right, rights or remedy held by or available to the Lenders or any of them and/or the Security Trustee in respect of the Indebtedness,
- (b) exercise or enforce (or attempt to do so) any rights which the Chargor may have against the Borrower or any other person (including without limitation the Lenders and/or the Security Trustee) which arise by reason of payment of the Indebtedness,
- (c) take the benefit of, share in or enforce any such guarantees, indemnities, Security Rights, rights or remedies or indemnity of the Indebtedness or any part of it, or
- (d) claim any set-off or counterclaim against the Borrower or prove in the bankruptcy or liquidation of the Borrower

## **21.2** *Security Trustee trust*

Without prejudice to the terms of clause 21.1, the Chargor agrees that any money or asset it receives in contravention of clause 21.1 or by virtue of the rights specified in clause 21.1 will be held by the Chargor on trust for the Security Trustee (as agent and security trustee for the Lenders and the Security Trustee) to be applied as if such money or asset was received by the Security Trustee under this Guarantee and Charge

## **22** **PAYMENTS GENERALLY**

### **22.1** *Chargor payments*

All payments by the Chargor under this Guarantee and Charge shall be made in full, without set-off, condition or counterclaim and, subject as provided as below, free and clear of any deductions or withholdings whatsoever in immediately available, freely transferable, cleared funds for value on the due date to the account notified to the Chargor by the Security Trustee. Save where the Facility Agreement specifically provides for a payment to be made for the account of a particular Lender in which case the Security Trustee shall distribute the relevant payment to the Lender concerned, payments to be made by the Chargor under this Guarantee and Charge shall be for the account of all the Lenders and the Security Trustee shall forthwith distribute such payments in like funds as are received by the Security Trustee to the Lenders rateably in accordance with their commitments under the Facility Agreement

### **22.2** *Deductions and withholdings*

If at any time the Chargor is required by law to make any deduction or withholding in respect of any taxes, duties or other charges or withholdings from any payment due under this Guarantee and Charge, the sum due from the Chargor in respect of such payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Security Trustee receives on the due date and retains (free of any liability in respect of any deduction or withholding) a net sum at least equal to the sum which it would have received had no such deduction or withholding been required to be, or had in fact been, made. The Chargor shall promptly deliver or procure the delivery to the Security Trustee of all receipts issued to it evidencing each deduction and withholding which it has made

### **22.3** **Set-off**

Each of the Lenders and the Security Trustee shall, with the irrevocable authority of the Chargor (such authority constituted hereby) and, in addition to and without prejudice to any rights they may have whether

- (a) arising by operation of law or otherwise in consequence of the relationship between the parties to this Guarantee and Charge, or
- (b) by way of rights of general lien or set-off or as otherwise exist,

be entitled without notice at any time and from time to time to set-off or transfer any sum or sums standing to the credit of any account of the Chargor with that Lender or the Security Trustee at any of its branches, of whatever nature and in whatever currency denominated, in or towards satisfaction of any sums due and payable from the Chargor to that Lender or those Lenders or the Security Trustee under this Guarantee and Charge

### **22.4** *Appropriations*

The Chargor shall not and may not direct the application by the Security Trustee of any sums received by the Security Trustee from the Chargor under, or pursuant to, any of the terms of this Guarantee and Charge or under, or pursuant to, any of the terms of any other present or future guarantee, indemnity, Security Right, right or remedy held by or available to the Security Trustee in respect of the Indebtedness

## **23** **DECLARATION OF TRUST**

### **23.1** *Declaration of Trust*

The Security Trustee hereby declares itself trustee of the covenants of the Chargor contained in this Guarantee and Charge and the security and other rights, titles and interests constituted by this Guarantee and Charge to the Security Trustee or held by the Security Trustee or received or recovered by the Security Trustee pursuant to or in connection with this Guarantee and Charge with effect from the date of this Guarantee and Charge to hold the same on trust for the Lenders and to apply the same as follows

- (a) first as to a sum equivalent to the Indebtedness outstanding from time to time for the Lenders and the Security Trustee absolutely, and

(b) secondly as to the balance (if any) for the Chargor or whoever else is entitled to such balance absolutely

**23 2 Duration**

The trusts constituted by this Guarantee and Charge shall remain in full force and effect until whichever is the earlier of

- (a) the expiration of a period of 80 years from the date of this Guarantee and Charge, and
- (b) receipt by the Security Trustee of confirmation in writing from all the Lenders that the Indebtedness has been repaid or discharged to the satisfaction of the Lenders and that none of the Lenders is under any obligation to permit any Indebtedness to be incurred,

and the parties to this Guarantee and Charge declare that the perpetuity period applicable to this Guarantee and Charge shall for the purposes of the Perpetuities and Accumulations Act 1964 be the period of 80 years

**24 CONCERNING THE SECURITY TRUSTEE**

**24 1 Deemed entitlement**

The Security Trustee may deem and treat each Lender as the person entitled to the benefit of this Guarantee and Charge in respect of the proportion of the Indebtedness which in accordance with the information provided to the Security Trustee pursuant to clause 24 2 is owing or incurred by the Chargor to such Lender for all purposes of this Guarantee and Charge unless and until a written notice of assignment or transfer of all or part of such Lender's share shall have been filed with the Security Trustee

**24 2 Directions for realisation**

Each Lender shall provide the Security Trustee with all necessary directions in writing so as to enable the Security Trustee to apply the proceeds of realisation of the security as contemplated by this Guarantee and Charge and such other information as it may reasonably require for the purposes of carrying out its duties and obligations under this Guarantee and Charge

**24 3 Limit on Security Trustee's Responsibility**

The Security Trustee shall not have any responsibility to any Lender (a) to ascertain whether all deeds and documents which should have been deposited with it under or pursuant to this Guarantee and Charge have been so deposited or (b) to investigate or make any enquiry into the title of the Chargor to the Securities or any part thereof or (c) for the failure to register this Guarantee and Charge with the Registrar of Companies or (d) for the failure to register this Guarantee and Charge in accordance with the provisions of the documents of title of the Chargor to any of the Securities or (e) for the failure to take or require the Chargor to take any steps to render this Guarantee and Charge effective as regards Securities outside England or Wales or to secure the creation of any ancillary charge under the laws of the jurisdiction concerned or (f) for acting (or, as the case may be, refraining from acting) in accordance with the directions of any of the Lenders given pursuant to clause 24 2

**24 4 Deposit of documents**

The Security Trustee shall be entitled to place all deeds, certificates and other documents relating to the Securities deposited with it under or pursuant to this Guarantee and Charge in any safe deposit, safe or receptacle selected by the Security Trustee or with any solicitor or firm of solicitors and may make any such arrangements as it thinks fit for allowing the Chargor or its solicitors or auditors access to or possession of, such documents when necessary or convenient and the Security Trustee shall not be responsible for any loss incurred in connection with any such deposit, access or possession

**24 5 Security Trustee's duty of care**

Nothing in this Guarantee and Charge shall in any case where the Security Trustee has failed to show the degree of care and diligence required of it as a trustee having regard to the provisions of this Guarantee and Charge exempt the Security Trustee from or indemnify it against any liability for breach of trust or any liability which by virtue of any rule of law would otherwise attach to it in respect of any negligence, default, breach of duty or breach of trust of which it may be guilty in relation to its duties under this Guarantee and Charge

## **25 MISCELLANEOUS**

### **25.1 Remedies cumulative**

No failure or delay on the part of the Security Trustee or any of the Lenders to exercise any power, right or remedy shall operate or be construed as a waiver. Any single or any partial exercise or waiver of any power, right or remedy shall not preclude its further exercise or the exercise of any other power, right or remedy. The powers, rights and remedies provided by this Guarantee and Charge are cumulative and are not exclusive of any powers, rights and remedies provided by law.

### **25.2 Preservation of rights**

The Security Trustee and/or any of the Lenders may, in its absolute discretion, grant time or other indulgence or make any other arrangement, variation or release with any person not a party to this Guarantee and Charge or affecting or concerning any such person in respect of the Indebtedness or in respect of any Security Right or any guarantee for the Indebtedness, without in any such case prejudicing, affecting or impairing the security hereby constituted, or any of the rights, powers or remedies of the Security Trustee and/or any of the Lenders or the exercise of the same, or the Indebtedness or other liability of the Chargor to the Security Trustee and/or the Lenders.

### **25.3 Unfettered discretion**

Any liability or power which may be exercised or any determination which may be made under this Guarantee and Charge by the Security Trustee or a Lender may be exercised or made in its absolute and unfettered discretion and it shall not be obliged to give any reasons.

### **25.4 Provisions severable**

- (a) Each of the provisions of this Guarantee and Charge is severable and distinct from the others and if at any time one or more of such provisions is or becomes invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions of this Guarantee and Charge shall not in any way be affected or impaired thereby.
- (b) If any invalid or unenforceable clause (or part of a clause) would not be invalid or unenforceable if its drafting or effect were modified in any way, the Chargor agrees that the Security Trustee can require such clause to be modified so as to be valid and enforceable.

### **25.5 Nature of Chargor's Obligations**

The obligations and liabilities of each Chargor under this document are joint and several and each representation, warranty and agreement by the Chargor under this document shall be deemed to be made severally by the Chargor as well as jointly with the other Chargors (if any).

### **25.6 Binding Nature**

The Chargor agrees to be bound by this Guarantee and Charge notwithstanding that any other Chargor intended to be a party to this Guarantee and Charge does not become effectively bound for any reason whatsoever.

### **25.7 Benefit and burden**

This Guarantee and Charge shall be binding upon the Chargor and its successors in title and shall enure for the benefit of the Security Trustee, for the benefit each of the Lenders and the Security Trustee, and their respective successors in title and (in the case of the Lenders) New Lenders. The Chargor expressly acknowledges and accepts the provisions of clause 25 of the Facility Agreement and agrees that any New Lender which becomes party to the Facility Agreement in accordance with clause 25 of the Facility Agreement shall be entitled to the benefit of this Guarantee and Charge.

### **25.8 Consolidation**

Section 93 of the Law of Property Act 1925 shall not apply to the security created by this Guarantee and Charge or to any security given to the Security Trustee pursuant to this Guarantee and Charge.

### **25.9 Reorganisation**

For these purposes and without prejudice to the provisions of clause 25.7, this Guarantee and Charge shall remain binding on the Chargor notwithstanding any change in the constitution of the Lenders or any of them or the Security Trustee or their or its absorption in, or amalgamation with, or the acquisition of all or part of their or its undertaking or assets by, any other person, or any reconstruction or reorganisation of any kind including, without limitation, any Status Change. The security



granted by this Guarantee and Charge shall remain valid and effective in all respects in favour of any assignee, transferee or other successor in title of the Lenders and the Security Trustee in the same manner as if such assignee, transferee or other successor in title had been named in this Guarantee and Charge as a party instead of, or in addition to, the relevant Lender or the Security Trustee, as the case may be and notwithstanding any Status Change

**25 10 Disclosure of information**

Any Lender may disclose to a prospective assignee or transferee or to any other person who may propose entering into contractual relations with such Lender in relation to the Facility Agreement such information about the Chargor as such Lender shall consider appropriate, subject to the provision by the recipient of a confidentiality undertaking acceptable to the Chargor (acting reasonably)

**25 11 Transfer of rights**

- (a) The Chargor may not assign or otherwise transfer any of its rights or obligations under this Guarantee and Charge
- (b) The Security Trustee may at any time sell, assign, novate, securitise or otherwise transfer all or any part of its rights or obligations under this Guarantee and Charge including, without limitation, in connection with a Status Change (a "Transfer") to any person at any time including, without limitation, a Successor (a "Transferee") The Chargor consents to the disclosure by any Lender or the Security Trustee of any information and documentation concerning the Chargor to any prospective Transferee
- (c) If there is a Transfer by the Security Trustee the Chargor will be bound to the Transferee and the rights and obligations of the Chargor under this Guarantee and Charge will remain the same The Transferee will have the same powers, rights, benefits and obligations of the Security Trustee to the extent that they are sold, assigned, novated or otherwise transferred to the Transferee and the outgoing Security Trustee will be released from its obligations to the Chargor to the extent that those obligations are assumed by the Transferee The Chargor will enter into all documents necessary to give effect to any such Transfer

**25 12 Credit balances**

The Chargor irrevocably and unconditionally agrees that if there shall from time to time be any credit balance on any of its accounts with the Security Trustee or any Lender, the Security Trustee or that Lender shall have the absolute right to refuse to permit such credit balance to be utilised or withdrawn by the Chargor whether in whole or in part if at that time there is outstanding any of the Indebtedness which is due for payment

**26 NOTICES**

**26 1 Notices by Chargor**

- (a) Any notice, certificate or other correspondence required to be sent or given by the Chargor to the Security Trustee shall be addressed to the Security Trustee and sent by first class post to the address specified below or to such other address or for the attention of such other person or department as may from time to time be notified by the Security Trustee to the Chargor for this purpose

Business Finance

Nationwide Building Society

Kings Park Road

Moulton Park

Northampton

NN3 6NW

Attention Louise Towler

- (b) Any such notice or other correspondence shall only be effective when actually received by the Security Trustee

**26 2    *Notices by Security Trustee***

Any notice, correspondence or demand for payment by the Security Trustee under this Guarantee and Charge shall, without prejudice to any other effective mode of making the same, be deemed to have been properly served on the Chargor if served on any process agent appointed by it under this Guarantee and Charge or on any Director or on its Secretary or delivered or sent by post to the Chargor at its registered office or any of its principal places of business for the time being or any other address from time to time notified by the Chargor to the Security Trustee

**26 3    *Time of service***

Any such notice, correspondence or demand shall be deemed to have been served (if delivered personally) when delivered personally (if sent by post) at 9 00am on the second day (not being a Saturday, Sunday or public holiday) following the day of posting (notwithstanding that it be undelivered or returned undelivered) In proving the giving of a notice such method of service shall be conclusive evidence

**26 4    *Notices conclusive***

Any such notice or demand or any certificate as to the amount at any time secured by this Guarantee and Charge shall be conclusive and binding upon the Chargor if signed by an officer of the Security Trustee

**27       *INTERPRETATION***

**27 1    *Successors and assigns***

The expressions "Lenders", "Security Trustee", "Chargor" and "Borrower" include, where the context admits, their respective successors and, in the case of the Security Trustee such other person as may from time to time be appointed security trustee for the Lenders, and in the case of the Lenders, their respective transferees and assignees, whether immediate or derivative

**27 2    *Construction of certain terms***

In this Guarantee and Charge, unless the context otherwise requires

- (a) words importing the singular include the plural and vice versa,
- (b) where the
- (c) reference to (or to any specified provision of) this Guarantee and Charge, the Facility Agreement or any other document shall be construed as references to this Guarantee and Charge or Facility Agreement, that provision or that document as in force for the time being and as amended in accordance with its terms or, as the case may be, with the agreement of the relevant parties and (where the consent of the Security Trustee is, by the terms of this Guarantee and Charge or the relevant document, required to be obtained as a condition to such amendment being permitted) the prior written consent of the Security Trustee,
- (d) references to a person shall be construed as including references to an individual, firm, company, body corporate, corporation, unincorporated body of persons, Authority, building society or partnership (whether or not having separate legal personality) or any combination of the foregoing, and
- (e) references to statutory provisions shall be construed as references to those provisions as replaced, amended or re-enacted from time to time and any order, instrument, regulation or bye-law made or issued thereunder

**27 3    *Effect as a deed***

This Guarantee and Charge is intended to take effect as a deed notwithstanding that the Security Trustee may have executed it under hand only

**27 4    *No restriction on interpretation***

In construing this Guarantee and Charge the interpretation of general words shall not be restricted by being preceded by words indicating a particular class of acts, matters or things or by being followed by particular examples

**28      LAW**

**28.1      *English law***

This Guarantee and Charge shall be governed by and shall be construed in accordance with English law

**28.2      *Jurisdiction***

The Chargor hereby irrevocably submits to the jurisdiction of the English Courts. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Security Trustee or any of the Lenders to take proceedings against the Chargor in any other court of competent jurisdiction outside England, nor shall the taking of proceedings in any jurisdiction preclude the taking of proceedings in any other jurisdiction whether concurrently or not

**IN WITNESS** of the above this Guarantee and Charge has been executed and delivered by or on behalf of the parties on the date stated at the beginning of this Guarantee and Charge

## Schedule

### Part A

#### The Borrower

Spectrum Alpha Property Partners Limited Partnership, a limited partnership organised under the laws of England with number LP11049, acting through its general partner Spectrum Alpha General Partner Limited (Company No 5022821) and whose address for service is The Edge, Clowes Street, Manchester M3 5NB marked for the attention of David Lockhart (fax no 0161-8330956)

and

Hawkbond Properties Limited (Company No 5420435) and whose address for service is The Edge, Clowes Street, Manchester M3 5NB marked for the attention of David Lockhart (fax no 0161-8330956)

### Part B

#### The Chargor

Spectrum Alpha Property Partners Limited Partnership, a limited partnership organised under the laws of England with number LP11049, acting through its general partner Spectrum Alpha General Partner Limited (Company No 5022821) and whose address for service is The Edge, Clowes Street, Manchester M3 5NB marked for the attention of David Lockhart (fax no 0161-8330956)

Spectrum Alpha General Partner Limited (Company No 5022821) and whose address for service is The Edge, Clowes Street, Manchester M3 5NB marked for the attention of David Lockhart (fax no 0161-8330956)

### Part C

#### The Securities


- 1 One £1 ordinary share in Spectrum Alpha Nominees (No 1) Limited (Company No 5656777),
- 2 One £1 ordinary share in Spectrum Alpha Nominees (No 2) Limited (Company No 5656794),
- 3 One £1 ordinary share in Spectrum Alpha Nominees (No 3) Limited (Company No 5656810),
- 4 One £1 ordinary share in Spectrum Alpha Nominees (No 4) Limited (Company No 5656825)
- 5 One £1 ordinary share in Spectrum Alpha Nominees (No 5) Limited (Company No 5656860)
- 6 One £1 ordinary share in Spectrum Alpha Nominees (No 6) Limited (Company No 5656879)

EXECUTED and DELIVERED as a Deed  
by SPECTRUM ALPHA GENERAL PARTNER LIMITED  
acting by

Director )

Director/Secretary )

SIGNED for and on behalf  
of NATIONWIDE BUILDING SOCIETY  
(as agent and security trustee for itself and each  
of the Lenders)

)  
)  
)   
) ABDUL KASHIM  
)