



Registration of a Charge

Company name: **KNIGHT DRAGON INVESTMENTS LIMITED**

Company number: **06231628**



X93XTNY0

Received for Electronic Filing: **28/04/2020**

Details of Charge

Date of creation: **17/04/2020**

Charge code: **0623 1628 0022**

Persons entitled: **THE BANK OF EAST ASIA, LIMITED (ACTING THROUGH ITS LONDON BRANCH)**

Brief description:

Contains fixed charge(s).

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 6231628

Charge code: 0623 1628 0022

The Registrar of Companies for England and Wales hereby certifies that a charge dated 17th April 2020 and created by KNIGHT DRAGON INVESTMENTS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 28th April 2020 .

Given at Companies House, Cardiff on 29th April 2020

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



Companies House



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

DATED 17 April 2020

- (1) **KNIGHT DRAGON INVESTMENTS
LIMITED**
(as Assignor)
- (2) **THE BANK OF EAST ASIA, LIMITED**
(ACTING THROUGH ITS LONDON
BRANCH)
(as Security Agent)

SUBORDINATED CREDITOR'S SECURITY AGREEMENT
(in respect of subordinated loans to Upper Riverside Residential Limited)



CONTENTS

Clause		Page
1.	INTERPRETATION	1
2.	FIXED SECURITY	4
3.	REPRESENTATIONS AND WARRANTIES	5
4.	UNDERTAKINGS	7
5.	WHEN SECURITY BECOMES ENFORCEABLE	9
6.	ENFORCEMENT OF SECURITY	10
7.	RECEIVER	12
8.	POWERS OF RECEIVER	12
9.	APPLICATION OF PROCEEDS	13
10.	EXPENSES AND INDEMNITY	14
11.	DELEGATION	15
12.	FURTHER ASSURANCES	15
13.	POWER OF ATTORNEY	16
14.	PRESERVATION OF SECURITY	17
15.	MISCELLANEOUS	21
16.	RELEASE	24
17.	NOTICES	25
18.	GOVERNING LAW	26
19.	JURISDICTION	26
20.	COUNTERPARTS	27
21.	THIRD PARTY RIGHTS	27
	SCHEDULE 1: Form of Notice and Acknowledgement	28

THIS DEED is made on

17 April

2020

BETWEEN:

- (1) **KNIGHT DRAGON INVESTMENTS LIMITED**, a limited liability company incorporated in England and Wales (with registered number 06231628) whose registered office is at Level 9, 6 Mitre Passage, Greenwich Peninsula, London, England, SE10 0ER (the "**Assignor**"); and
- (2) **THE BANK OF EAST ASIA, LIMITED (acting through its London Branch)**, a company incorporated in Hong Kong with limited liability and registered in England and Wales in accordance with Part 34 of the Companies Act 2006 (Reg. Co. No. FC15033) and having a branch established at 75 Shaftesbury Avenue, London W1D 5BB (registered number BR001344), as security trustee for the Secured Parties (as defined below) (the "**Security Agent**", which expression shall include all successors, assignees and transferees from time to time).

WHEREAS:

- (A) The Assignor enters into this Deed to secure the payment, performance and discharge of the Secured Liabilities (as defined below).
- (B) The Assignor's directors are satisfied that entering into and performing this Deed is in the best interests, and for the commercial purposes and corporate benefit, of the Assignor's business.
- (C) It is intended by the parties hereto that this document take effect as a deed notwithstanding the fact that the Security Agent may only execute this document under hand.

NOW THIS DEED WITNESSES AND IT IS AGREED as follows:

1. INTERPRETATION

1.1 Definitions

In this Deed:

"Act"	means the Law of Property Act 1925;
"Authorisations"	a certificate, licence, permit, consent or other authorisation;
"Assigned Assets"	means the assets of the Assignor charged or assigned (or intended to be charged or assigned) by or pursuant to this Deed, and " Assigned Asset " shall be construed accordingly;
"Borrower"	means Upper Riverside Residential Limited, a limited liability company registered in England and Wales (registered number 12294488) whose registered address is at Level 9, 6 Mitre Passage, Greenwich Peninsula, London, England, SE10 0ER;
"Default Rate"	means the rate of interest calculated in accordance with the default interest provisions contained in clause 8.4 (<i>Default Interest</i>) of the Facility Agreement except that

references to an Obligor are to be construed as references to the Assignor;

"Facility Agreement"	means the facility agreement dated on or about the date hereof between, among others, (1) the Borrower and (2) The Bank of East Asia, Limited as Arranger, Agent, Security Agent and Original Lender (as varied, amended, restated, novated, supplemented, extended, modified and/or replaced from time to time);
"Finance Document"	has the meaning ascribed to it in the Facility Agreement (and for the avoidance of doubt includes this Deed), and "Finance Documents" shall be construed accordingly;
"Finance Parties"	has the meaning ascribed to such term in the Facility Agreement;
"Receiver"	means a receiver and manager or (if the Security Agent so specifies in the relevant appointment) a receiver, in either case, appointed under this Deed or pursuant to any statute;
"Secured Liabilities"	means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of the Assignor and each Transaction Obligor to the Secured Parties in whatever capacity, under or in connection with each Finance Document (including, without limitation, this Deed);
"Secured Parties"	has the meaning ascribed to such term in the Facility Agreement;
"Security Period"	means the period beginning on the date of this Deed and ending on the date on which the Security Agent is satisfied that the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full;
"Subordinated Debt"	means, at any time, any and all past, present and future sums, liabilities and obligations payable or owing by the Borrower (whether actual or contingent, jointly or severally or otherwise howsoever) to the Assignor at such time;
"Subordination Agreement"	means the Subordination Agreement entered into by the Assignor as subordinated creditor, the Borrower as subordinated debtor and the Security Agent as lender; and
"Subordinated Documentation"	means all written agreements evidencing or recording the terms of the Subordinated Debt disclosed to the Security Agent prior to the date hereof or entered into after the date hereof (including the shareholder loan agreement dated on or about the date of this Deed made between Assignor (as lender) and the Borrower (as borrower)).

1.2 Construction

- 1.2.1 Capitalised terms defined in the Facility Agreement have the same meaning when used in this Deed unless otherwise defined herein.
- 1.2.2 The provisions of clause 1.2 (*Construction*) of the Facility Agreement apply to this Deed as if they were set out in full in this Deed, except that references to the Agreement therein will be construed as references to this Deed.
- 1.2.3 Any reference in this Deed to a mortgage, charge or assignment of any asset or property shall be construed so as to include:
- 1.2.3.1 the proceeds of sale of any part of that asset or property, and any other monies paid or payable in respect of or in connection with that asset or property; and
 - 1.2.3.2 the benefit of any covenants for title given or entered into by any predecessor in title in respect of that asset or property and all other rights, benefits, claims, contracts, warranties, remedies, Security or indemnities in respect of that asset or property.
- 1.2.4 Any reference in this Deed to any party or person includes any person deriving title from it or any permitted successor, transferee or assignee (whether immediate or derivative).
- 1.2.5 References in this Deed to Clauses and Schedules are references to the clauses of and schedules to this Deed, unless the context otherwise requires.
- 1.2.6 Pursuant to, and in accordance with, the definition of "**Security Document**" in the Facility Agreement, the parties hereto hereby agree and confirm that this Deed shall be a Finance Document for all purposes.
- 1.2.7 If there is any conflict between any provisions of this Deed and the relevant provisions of the Facility Agreement, the relevant provisions of the Facility Agreement shall prevail, save for the definition of "**Secured Liabilities**" where the definition in this Deed shall prevail for the purposes of this Deed.
- 1.2.8 This Deed secures amounts due to the Security Agent in whatever capacity including, without limitation, in its capacities as Lender and hedge counterparty under the Finance Documents.
- 1.2.9 "**Secured Liabilities**" includes, without limitation:
- 1.2.9.1 any refinancing, further advances, novation, deferral, or extension;
 - 1.2.9.2 obligations and liabilities which the Secured Parties may have acquired or may in the future acquire (whether by assignment, novation, transfer, purchase, security or otherwise);
 - 1.2.9.3 any claim for (a) breach of representation, warranty or undertaking or on any event of default or under any indemnity or (b) damages or restitution;
 - 1.2.9.4 obligations and liabilities which would be treated as such but for the liquidation, administration or dissolution of, or similar event affecting, the Borrowers or any other person, including without limitation:
 - 1.2.9.4.1 any claim as a result of any recovery by the Borrowers or any other person of a payment on the grounds of preference or otherwise; and

- 1.2.9.4.2 any amounts which would be included as Secured Liabilities but for any discharge, non-provability, unenforceability or non-allowance of those amounts in any such insolvency, dissolution or other proceedings.

1.3 Avoidance

If the Security Agent considers (following instructions from the Majority Lenders (acting reasonably)) that any amount paid by the Assignor, the Borrowers or any other Transaction Obligor or any other person in connection with the satisfaction of the Secured Liabilities is capable of being avoided or otherwise set aside on the liquidation, bankruptcy or administration (whether out of court or otherwise) of the Assignor, the Borrowers or any other Transaction Obligor or any other person, as applicable, or otherwise, then (a) the security constituted by this Deed shall continue and (b) that amount shall not be considered to have been irrevocably paid for the purpose of this Deed.

2. FIXED SECURITY

2.1 Assignments

- 2.1.1 The Assignor, in the manner specified in Clause 2.3 (*Title Guarantee*), and as continuing security for the payment, performance and discharge of the Secured Liabilities, assigns and agrees to assign to the Security Agent absolutely, subject to re-assignment on the expiry of the Security Period in accordance with Clause 16 (*Release*), all of its right, title, benefit and interest (both present and future) in, to and under:

- 2.1.1.1 the Subordinated Debt;
- 2.1.1.2 the Subordinated Documentation;
- 2.1.1.3 all monies payable and all monies paid to it under or in connection with the Subordinated Debt; and
- 2.1.1.4 all present and future rights, claims, causes of action, payments and proceeds in respect thereof.

- 2.1.2 To the extent that any such right, title, benefit and interest described in Clause 2.1.1 is not assignable or capable of assignment, such assignment purported to be effected by Clause 2.1.1 shall operate, as continuing security for the payment, discharge, performance and satisfaction of the Secured Liabilities, as an assignment of any and all proceeds of such right, title, benefit or interest paid or payable thereunder save for any proceeds or other amounts properly payable to any third party and to which the Assignor has no right, title, benefit or interest.

2.2 Charges

The Assignor, in the manner specified in Clause 2.3 (*Title Guarantee*), and to the extent not subject to a valid assignment under Clause 2.1 (*Assignments*), and as continuing security for the payment, performance and discharge of the Secured Liabilities, charges in favour of the Security Agent by way of first fixed charge all of its right, title, benefit and interest (both present and future) in, to and under:

- 2.2.1 the Subordinated Debt;
- 2.2.2 the Subordinated Documentation;

- 2.2.3 all monies payable and all monies paid to it under or in connection with the Subordinated Debt; and
- 2.2.4 all present and future rights, claims, causes of action, payments and proceeds in respect thereof.

2.3 Title Guarantee

- 2.3.1 Every disposition effected by this Deed is made with full title guarantee.
- 2.3.2 The following provisions of the Law of Property (Miscellaneous Provisions) Act 1994 will not apply to Clause 2.1 or 2.2, being:
 - 2.3.2.1 the words "other than any charges, encumbrances or rights which that person does not and would not reasonably be expected to know about" in section 3(1);
 - 2.3.2.2 the words "except to the extent that" and all the words thereafter in section 3(2); and
 - 2.3.2.3 section 6(2).
- 2.3.3 The other terms of this Deed do not limit or extend any of the covenants implied by virtue of Part 1 of the Law of Property (Miscellaneous Provisions) Act 1994 but create separate and independent obligations having effect cumulatively with those implied covenants.

2.4 Continuation of liabilities

The Security Agent shall not be under any obligation in relation to any of the Assigned Assets as a consequence of this Deed, and the Assignor shall remain liable to observe and perform all obligations expressed to be assumed by it in respect of the Assigned Assets and the Subordinated Documentation.

3. REPRESENTATIONS AND WARRANTIES

3.1 Making of representations and warranties

The Assignor makes the representations and warranties set out in this Clause 3 to the Security Agent. The representations and warranties so set out are made on the date of this Deed and are deemed to be repeated by the Assignor on each day that representations and warranties are repeated under clause 18.29 (*Repetition*) of the Facility Agreement throughout the Security Period with reference to the facts and circumstances then existing.

3.2 Status

- 3.2.1 It is a limited liability company validly existing under the laws of its jurisdiction of incorporation.
- 3.2.2 It has the power to own its assets and carry on its business, as it is being conducted.
- 3.2.3 It possesses the capacity to sue and be sued in its own name.

3.3 Binding obligations

- 3.3.1 The Assignor's obligations under this Deed are legal, valid, binding and subject to the Legal Reservations, enforceable; and

3.3.2 this Deed creates:

3.3.2.1 valid, legally binding and, subject to the Legal Reservations, enforceable Security for the obligations expressed to be secured by it; and

3.3.2.2 subject to any registration required under the laws of its Original Jurisdiction, perfected Security over the assets referred to in this Deed,

in favour of the Lender having the priority and ranking expressed to be created by this Deed and ranking ahead of all (if any) Security and rights of third parties except those preferred by law.

3.4 Non-conflict with other obligations

3.4.1 The entry into and performance by it of, and the transactions contemplated by this Deed do not and will not contravene or conflict with:

3.4.1.1 any law or regulation applicable to it;

3.4.1.2 its constitutional documents;

3.4.1.3 any agreement or instrument binding on it or its assets or constitute a default or termination event (howsoever described) under any such agreement or instrument.

3.5 Power and authority

3.5.1 The Assignor has the power to enter into, perform and deliver, and has taken all necessary actions to authorise its entry into, delivery and performance of this Deed and the transactions contemplated by it; and

3.5.2 no limit on its powers will be exceeded as a result of its entry into this Deed.

3.6 Validity and admissibility in evidence

The Assignor has obtained or effected all required or desirable authorisations to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed and to make this Deed in evidence in its Relevant Jurisdictions. All such authorisations are in full force and effect.

3.7 No proceedings

3.7.1 No litigation, arbitration or administrative proceedings or investigations of, or before, any Court, arbitral body or agency which, if adversely determined, are reasonably likely to have a Material Adverse Effect have (to the best of its knowledge and belief (having made due and careful enquiry)) been started or threatened against it.

3.7.2 No judgment in order of a Court, arbitral body or agency which is reasonably likely to have a Material Adverse Effect has (to the best of its knowledge and belief (having made due and careful enquiry)) been made against it.

3.8 Title to Assets

3.8.1 It is the sole, legal and beneficial owner of, and has good, marketable and valid title (which was acquired with full title guarantee) to, the Assigned Assets.

- 3.8.2 Subject to the effect of this Deed, the Assigned Assets are within and shall remain within, the Assignor's own disposition and control and free from any restrictions on transfer.

3.9 Subordinated Debt and Subordinated Documentation

- 3.9.1 There is no prohibition on assignment or charging in favour of the Security Agent in the Subordinated Documentation.
- 3.9.2 There is no breach, dispute, repudiation or disclaimer of liability under the Subordinated Documentation.
- 3.9.3 No circumstances subsist whereby the Subordinated Documentation would be, or be rendered or adjudged to be, void, unenforceable or capable of rescission or revocation.
- 3.9.4 The Subordinated Documentation has not been amended, released, surrendered, assigned, novated or terminated, in each case without the prior written consent of the Security Agent.
- 3.9.5 The Assignor is the sole legal and beneficial owner of the Subordinated Debt and of the benefits of the Subordinated Documentation free from any Security, option or subordination in favour of any person (other than the Security Agent), other than anything permitted under the Finance Documents.
- 3.9.6 The Subordinated Debt is not subject to any set-off, counterclaim or other defence.

3.10 Security

- 3.10.1 This Deed creates the Security it purports to create (with the priority it purports to confer) and is not liable to be avoided or otherwise set aside on the bankruptcy, insolvency, liquidation or administration of the Assignor or otherwise.
- 3.10.2 Subject to the Finance Documents, the Assigned Assets are free from any Security.

3.11 Stamp duty

No stamp or registration duty or similar tax or charge is payable in its jurisdiction of incorporation in respect of this Deed.

4. UNDERTAKINGS

4.1 Duration

The undertakings in this Clause 4 shall remain in force throughout the Security Period and are given by the Assignor to the Security Agent.

4.2 Compliance with laws in respect of Assigned Assets

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

4.3 Authorisations

- 4.3.1 The Assignor shall promptly obtain, comply with and do all that is necessary to maintain in full force and effect, and supply certified copies to the Agent of, any Authorisation required under any law or regulation of a Relevant Jurisdiction to:

- 4.3.1.1 enable it to perform its obligations under this Deed and to ensure the legality, validity, enforceability or admissibility in evidence of this Deed; or
- 4.3.1.2 own its assets and carry on its business as it is being conducted.

4.4 Restrictions on dealing

The Assignor shall not, save as otherwise expressly permitted by or consented to under the Finance Documents:

- 4.4.1 create or purport to create or permit to subsist any Security of whatsoever nature on or in relation to any Assigned Asset other than any Security created by this Deed;
- 4.4.2 (whether by a single transaction or a number of related transactions, and whether at the same time or over a period of time) sell, transfer, novate, grant (including granting any option), declare a trust of, or otherwise dispose of (or purport to do any of the foregoing) any Assigned Asset or any part thereof or permit the same to occur; nor
- 4.4.3 do or cause or permit to be done anything which may in any way depreciate, jeopardise or otherwise prejudice the value to the Security Agent of the Security constituted hereby and/or the value of the Assigned Assets.

4.5 Assignor's waiver of set-off

The Assignor waives any present or future right of set-off they may have in respect of the Secured Liabilities (including sums payable by the Assignor under this Deed).

4.6 Subordinated Debt and Subordinated Documentation

- 4.6.1 The Assignor shall inform the Security Agent promptly upon becoming aware of any occurrence or circumstance which might result in a breach of any Subordinated Documentation by any party thereto or any other person.
- 4.6.2 The Assignor shall provide the Security Agent with copies of the Subordinated Documentation, and all notices and other communications received or given by it under or in respect of any Subordinated Documentation.
- 4.6.3 The Assignor shall provide the Security Agent with such information as it shall reasonably require in respect of any Subordinated Debt and any Subordinated Documentation (and in particular on the satisfaction of any unfulfilled obligation of any party under any Subordinated Documentation).
- 4.6.4 The Assignor shall comply with the provisions of, and perform each of its obligations under, the Subordinated Documentation, and (save where the Security Agent directs otherwise) shall diligently and promptly preserve its rights, enforce all obligations, and pursue any claims and remedies arising under the Subordinated Documentation.
- 4.6.5 The Assignor shall not, without the prior written consent of the Security Agent:
 - 4.6.5.1 amend, vary, waive, release, rescind, surrender, novate, terminate, or give consent or approval under, or exercise any discretion under, the Subordinated Documentation;
 - 4.6.5.2 make or agree to any claim that any Subordinated Documentation is frustrated in whole or in part;

- 4.6.5.3 accept any breach or default under any of the Subordinated Documentation as repudiatory; nor
- 4.6.5.4 take any action in respect of the Subordinated Debt other than as expressly permitted by the Subordination Deed.

4.6.6 The Assignor shall promptly and efficiently (and at its own cost) take all action required to ensure that all amounts paid to it under any Subordinated Documentation or in respect of any Subordinated Debt and received by it other than as expressly permitted by the Subordination Deed, are paid into such separate and denominated account as the Security Agent may designate from time to time (and pending payment into such account, shall hold such monies upon trust for the Security Agent).

4.7 Notice of security

Save to the extent notice is contained in the Subordination Agreement, the Assignor shall, on the date hereof, give notice of the Security contained herein to the Borrower in the form specified in Schedule 1 hereto and shall procure that the Borrower acknowledges on the date hereof that notice in the form specified in Schedule 1 hereto.

4.8 Perfection of Security

The Assignor will take such action as is available to it:

- 4.8.1 to perfect and protect the Security constituted or intended to be constituted under this Deed;
- 4.8.2 to maintain the Security constituted or intended to be constituted under this Deed; and
- 4.8.3 to make all filings and registrations and to take all such other steps as may be necessary in connection with the creation, perfection or protection of the Security constituted or intended to be constituted under this Deed.

4.9 Deposit of Title Deeds

The Assignor shall immediately upon the execution of this Deed (or upon coming into the possession of the Assignor at any time) deposit with the Security Agent all deeds, certificates and other documents constituting or evidencing title to the Assigned Assets (if any).

4.10 Covenant to perform

The Assignor shall at all times comply with the express terms of this Deed and the other Finance Documents to which it is a party.

5. WHEN SECURITY BECOMES ENFORCEABLE

The security constituted by this Deed shall become immediately enforceable and the power of sale and other powers conferred by section 101 of the Act, as varied or amended by this Deed, shall be immediately exercisable upon and at any time after the occurrence of any Event of Default which is continuing after which the Security Agent may in its absolute discretion enforce all or any part of the security in any manner it sees fit or in accordance with the provisions of the Finance Documents. Without limiting any powers of the Security Agent hereunder, the Security Agent shall be entitled (without any further consent or authority on the part of the Assignor and irrespective of any direction given by the Assignor) to:

- 5.1 exercise in relation to the Subordinated Documentation and the Subordinated Debt all of the rights of an absolute owner;
- 5.2 assign any or all of the Assigned Assets to any person on such terms as the Security Agent considers appropriate (acting on the instructions of the Majority Lenders); and/or
- 5.3 collect, recover or compromise, and give a good discharge for, any monies paid or payable to the Assignor under or in respect of the Assigned Assets (including without limitation any proceeds thereunder), and enforce (in any way whatsoever, including (without limitation) by way of instituting proceedings in the Assignor's name) any rights or claims arising under or in respect of the Assigned Assets.

6. ENFORCEMENT OF SECURITY

6.1 General

- 6.1.1 For the purposes of all powers implied by statute, the Secured Liabilities are deemed to have become due on the date of this Deed.
- 6.1.2 Section 103 of the Act (restricting the power of sale) and section 93 of the Act (restricting the right of consolidation) do not apply to the security constituted by this Deed.

6.2 Contingencies

If the Security Agent enforces the security constituted by this Deed (whether by the appointment of a Receiver or otherwise howsoever) at a time when no amounts are due under the Finance Documents but at a time when amounts may or will become so due, the Security Agent (or the Receiver) may pay the proceeds of any recoveries effected by it into an interest bearing account opened and maintained with the Security Agent or otherwise as directed by the Security Agent but if such proceeds received by the Security Agent are enough to discharge the Secured Liabilities in full the Security Agent must, if so required by the Assignor, apply such proceeds in discharge of the Secured Liabilities.

6.3 No liability as mortgagee in possession

Neither the Security Agent nor any Receiver will be liable, by reason of entering into possession of an Assigned Asset, to account as mortgagee in possession or for any loss on realisation or for any default or omission for which a mortgagee in possession might otherwise be liable.

6.4 Privileges

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

6.5 Protection of third parties

No person (including a purchaser) dealing with the Security Agent or a Receiver or its or his agents need enquire:

- 6.5.1 whether the Secured Liabilities have become payable; or

- 6.5.2 whether any power which the Security Agent or that Receiver may purport to exercise has become exercisable or is being properly exercised; or
- 6.5.3 whether any money remains due; or
- 6.5.4 how any money paid to the Security Agent or to the Receiver is to be applied.

6.6 Redemption of prior mortgages

- 6.6.1 At any time after the security constituted by this Deed has become enforceable, the Security Agent may, at the sole cost and expense of the Assignor (payable to the Security Agent on demand):
 - 6.6.1.1 redeem any prior form of Security on or relating to any Assigned Asset; and/or
 - 6.6.1.2 procure the transfer of that form of Security to itself; and/or
 - 6.6.1.3 settle and pass the accounts of any prior mortgagee, chargee or encumbrancer which once so settled and passed shall be conclusive and binding on the Assignor.
- 6.6.2 The Assignor shall on demand pay to the Security Agent all principal monies and interest and all costs, expenses and losses incidental to any such redemption or transfer made pursuant to this Clause 6.6.

6.7 Exercise of rights

Subject to the terms of this Deed, and to the provisions of the Subordination Deed, the Assignor shall be entitled to exercise all rights and powers which arise under or in respect of the Subordinated Documentation until notified in writing by the Security Agent that the Security constituted by this Deed has become enforceable. The Security Agent shall be entitled, upon giving such notice, to exercise all such rights and powers when they arise (without requiring any consent or authority on the part of the Assignor and irrespective of any direction given by the Assignor).

6.8 Discharge

Without prejudice to:

- 6.8.1 any other provision of this Deed (and the Security constituted or intended to be constituted hereby); and
- 6.8.2 any rights or powers conferred or intended to be conferred by the Subordination Deed or any other Finance Document;

if, pursuant to an enforcement of a charge over shares or otherwise, the Security Agent (or a Receiver, nominee or agent on its behalf) sells or otherwise disposes of (or permits any sale or other disposal of) all of the shares in the capital of the Borrower, the Security Agent is hereby irrevocably and unconditionally authorised by the Assignor to execute and deliver a release and discharge of the Borrower from all past, present and future liabilities (both actual and contingent) to the Assignor (including the Subordinated Debt).

7. RECEIVER

7.1 Appointment of Receiver

At any time after the security constituted by this Deed becomes enforceable, or at any time if the Assignor so requests the Security Agent in writing, the Security Agent may, without further notice, appoint in writing under seal or in writing under its hand any one or more persons to be a Receiver of all or any part of the Assigned Assets as if the Security Agent had become entitled under the Act to exercise the power of sale conferred under the Act.

7.2 Removal

The Security Agent may by writing under its hand:

7.2.1 remove any Receiver appointed by it; and

7.2.2 whenever it deems it expedient, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

7.3 Remuneration

The Security Agent may, subject to section 36 of the Insolvency Act 1986, fix the remuneration of any Receiver appointed by it without being limited to the maximum rate specified in section 109(6) of the Act.

7.4 Agent of the Assignor

For all purposes each Receiver is deemed to be the agent of the Assignor and accordingly is deemed to be in the same position as a Receiver duly appointed by a mortgagee under the Act. The Assignor alone shall be responsible for the Receiver's contracts, engagements, acts, commissions, omissions, defaults and losses and for liabilities incurred by him, and the Security Agent shall not incur any liability of whatsoever nature (either to the Assignor or to any other person) by reason of the Security Agent making his appointment as a Receiver or for any other reason. The agency of the Receiver shall continue until the Assignor shall go into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Security Agent.

7.5 Relationship with Security Agent

To the fullest extent permitted by law, any right, power or discretion conferred by this Deed (be it express or implied) or by law upon a Receiver or mortgagee of any Assigned Asset may, after the security created by this Deed has become enforceable, be exercised by the Security Agent in relation to any Assigned Asset without first appointing a Receiver or notwithstanding the appointment of a Receiver.

8. POWERS OF RECEIVER

8.1 General

8.1.1 In addition to those conferred by the Act on any receiver appointed under the Act, each Receiver has, and is entitled to exercise, all of the rights, powers, remedies and discretions set out below in this Clause 8 or otherwise conferred under this Deed.

8.1.2 If there is more than one Receiver holding office at the same time, unless the document appointing him states otherwise, each Receiver may exercise all of the

powers conferred on a Receiver under this Deed individually and to the exclusion of any other Receivers.

8.1.3 Every Receiver for the time being holding office by virtue of an appointment made by the Security Agent under this Deed shall have all the rights, powers and discretions conferred by the Act, the Insolvency Act 1986 and otherwise by law.

8.1.4 A Receiver may, in the name of the Assignor if he so wishes:

8.1.4.1 do all acts and things which he may consider expedient for realising any Assigned Asset or incidental or conducive to any of the rights, powers or discretions conferred on a Receiver under or by virtue of this Deed or by law; and

8.1.4.2 exercise in relation to any Assigned Asset all the powers, authorities and things which he would be capable of exercising as if he were its absolute beneficial owner.

8.2 Possession

A Receiver may take immediate possession of, get in and collect any Assigned Assets.

8.3 Sale of assets

A Receiver may sell, exchange, grant an option over, convert into money and realise, or otherwise dispose of any Assigned Asset by public auction or private contract in any manner and on any terms which he thinks proper. The consideration for any such transaction may be nil, or may consist of cash, shares of profits or sums calculated by reference to profits or turnover, debentures or other obligations, shares, stock or other valuable consideration and any such consideration may be payable in a lump sum or by instalments spread over such period as he thinks fit. Any such sale, exchange, grant, conversion, realisation or disposal may be on terms excluding or limiting liability of the Security Agent and/or the Receiver.

8.4 Delegation

A Receiver may delegate his powers in accordance with Clause 11 (*Delegation*).

8.5 Appoint Co-trustee

A Receiver may appoint a second trustee or co-trustee of all or any part of the Assigned Assets.

8.6 Administrative costs

A Receiver may pay the proper administrative charges of the Security Agent in respect of time spent by their agents and employees in dealing with matters raised by the Receiver, or relating to the receivership of the Assignor or any Assigned Assets.

8.7 Assigned Assets

A Receiver may exercise all voting and other rights attaching to the Assigned Assets.

9. APPLICATION OF PROCEEDS

9.1 Subject to clause 15.1 (*Order of Application*) of the HCA Intercreditor Agreement and Clause 9.4 of this Deed, any monies received or recovered by the Security Agent or

any Receiver after this Deed has become enforceable, or in connection with the realisation or enforcement of all or any part of this Deed (for the purpose of this Clause 9, the "**Recoveries**"), shall be applied (and the parties hereto shall direct or request any administrator to apply such monies) in the following order of priority (but without prejudice to the right of the Security Agent to recover any shortfall from the Assignor):

- 9.1.1 in discharging any sums (including remuneration) owing to the Security Agent, any Receiver or any Delegate;
- 9.1.2 in payment of all costs and expenses incurred by the Security Agent in connection with any realisation or enforcement of the Transaction Security taken in accordance with the terms of this Deed, the Facility Agreement and the other Finance Documents;
- 9.1.3 in payment to the Security Agent for application in payment of, or provision for, the Secured Liabilities in accordance with clause 31.5 (*Partial payments*) of the Facility Agreement; and
- 9.1.4 (upon termination of the Security Period) in payment of the surplus (if any) to the Assignor or other person entitled to it.

9.2 Clause 9.1 overrides any appropriation made by the Assignor.

9.3 Clause 9.1 is subject to the claims of any person having at law prior rights thereto, and is by way of variation of the provisions of the Act.

9.4 Subject to clause 9.5, the Security Agent may (on the instructions of the Majority Lenders) hold any amount of the Recoveries in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Majority Lenders shall think fit (the interest being credited to the relevant account) for later application under Clause 9.1 in respect of:

- 9.4.1 any sum to the Security Agent, any Receiver or any Delegate; and
- 9.4.2 any part of the Secured Liabilities,

that the Security Agent (acting on the instructions of the Majority Lenders) reasonably considers, in each case, might become due or owing at any time in the future.

9.5 Where such amount of the Recoveries received by the Security Agent is enough to discharge the Secured Liabilities in full the Security Agent must, if so required by the Assignor, apply such amount in discharge of the Secured Liabilities.

10. EXPENSES AND INDEMNITY

10.1 The Assignor shall, within five Business Days of demand, pay to the Security Agent and every Receiver or Delegate (a "**Relevant Person**") the amount of all costs and expenses (including legal fees, valuers' fees, and consulting and other professional fees) incurred by that Relevant Person in connection with the enforcement of, or the preservation of any rights under, this Deed or the security constituted hereby and with any proceedings instituted by or against that Relevant Person as a consequence of it entering into this Deed, taking or holding the security constituted hereby, or enforcing those rights.

10.2 The Assignor shall promptly indemnify each Relevant Person against any cost, loss or liability incurred by any of them as a result of:

- 10.2.1 any failure by the Assignor to comply with its obligations under Clause 10.1;
 - 10.2.2 the holding, protection or enforcement of the security constituted by this Deed;
 - 10.2.3 the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent and/or each Receiver and Delegate by this Deed or by law;
 - 10.2.4 any default by the Assignor in the performance of any of the obligations expressed to be assumed by it in this Deed;
 - 10.2.5 acting as Security Agent, Receiver or Delegate (as the case may be) under this Deed or which otherwise relates to any of the Security Property constituted by or in connection with this Deed (otherwise, in each case, than by reason of the Relevant Person's gross negligence or wilful misconduct).
- 10.3 The Assignor shall pay interest at the Default Rate on the sums payable under this Clause 10 from the date on which the liability was incurred to the date of actual payment (both before and after judgement).
- 10.4 Each Relevant Person may, in priority to any payment to Security Agent, indemnify itself out of the Assigned Assets in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 10 and shall have a lien on the Assigned Assets and the proceeds of the enforcement of the Assigned Assets for all moneys payable to it.

11. DELEGATION

The Security Agent and any Receiver may delegate by power of attorney or in any other manner to any person any right, power or discretion exercisable by the Security Agent or any Receiver under this Deed. Any such delegation may be made upon the terms (including power to sub-delegate) and subject to any regulations which the Security Agent or such Receiver (as the case may be) may think fit (in the case of the Security Agent, acting on the instructions of the Majority Lenders). Neither the Security Agent nor any Receiver will be in any way liable or responsible to the Assignor for any loss or liability arising from any act, default, omission or misconduct on the part of any such delegate or sub-delegate. References in this Deed to a Receiver or Security Agent shall be deemed to include delegates appointed in accordance with this Clause 11.

12. FURTHER ASSURANCES

- 12.1 Without prejudice to, and not in substitution for, the provisions of Section 2 of the Law of Property (Miscellaneous Provisions) Act 1994, and to the other provisions of this Deed, the Assignor shall promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent may specify (and in such form as the Security Agent may require in favour of the Security Agent or its nominee(s)):
- 12.1.1 to create, perfect, protect and maintain the Security created or intended to be created under or evidenced by this Deed (which may include the execution or re-execution of a mortgage, charge, assignment or other Security over all or any of the Assigned Assets or for the exercise of any rights, powers and remedies of the Security Agent or a Receiver provided by or pursuant to this Deed or by law; and/or;

- 12.1.2 (if an Event of Default is continuing) to facilitate the realisation of the assets (including the Assigned Assets) which are, or are intended to be, the subject of this Deed and the Transaction Security created hereunder.
- 12.2 The Assignor shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent by or pursuant to this Deed.
- 12.3 The obligations of the Assignor under this Clause 12 shall be in addition to and not in substitution for the covenants for further assurance deemed to be included herein by virtue of section 2(1)(b) of the Law of Property (Miscellaneous Provisions) Act 1994.

13. POWER OF ATTORNEY

- 13.1 The Assignor by way of security hereby irrevocably appoints the following, namely:

- 13.1.1 the Security Agent;
- 13.1.2 each and every person to whom the Security Agent shall from time to time have delegated the exercise of the power of attorney conferred by this Clause; and
- 13.1.3 any Receiver appointed hereunder and for the time being holding office as such,

jointly and also severally to be its attorney or attorneys with full power of substitution and in its name and otherwise on its behalf (in respect of (b) to (e) below at any time after the occurrence of an Event of Default which is continuing), to do all acts and things and to sign, seal, execute, deliver, perfect and do all deeds, instruments, documents, acts and things which may be necessary for:

- (a) carrying out any obligation imposed on the Assignor by or pursuant to this Deed (including but not limited to the obligations of the Assignor under Clause 12 (*Further Assurances*) and the statutory covenant referred to in such Clause);
- (b) carrying out any sale, lease or other dealing by the Security Agent, its delegates, any Receiver or any administrator into effect;
- (c) transferring ownership or title in the Assigned Assets or other property or assets or otherwise howsoever;
- (d) the purposes of the Security Agent or such Receiver or any administrator appointing a second trustee or co-trustee of all or part of the Assigned Assets;
- (e) getting in the Assigned Assets (if applicable); and
- (f) generally for enabling the Security Agent, its delegates, any Receiver and any administrator to exercise the respective powers conferred on them by or pursuant to this Deed or by law.

- 13.2 The Security Agent shall have full power to delegate the power conferred on it by this Clause, but no such delegation shall preclude the subsequent exercise of such power by the Security Agent itself or preclude the Security Agent from making a subsequent delegation thereof to some other person; any such delegation may be revoked by the Security Agent at any time.

13.3 The power of attorney hereby granted is as regards the Security Agent, its delegates, any Receiver and any administrator (and as the Assignor hereby acknowledges) granted irrevocably and for value as part of the security constituted by this Deed to secure proprietary interests in and the performance of obligations owed to the respective domes within the meaning of the Powers of Attorney Act 1971.

13.4 The Assignor hereby ratifies and confirms, and agrees to ratify and confirm, whatever any such attorney shall do or purport to do in the exercise or purported exercise of the power of attorney contained in this Clause 13.

14. PRESERVATION OF SECURITY

14.1 Additional Security

The security constituted by this Deed is in addition to and not in substitution for, and is not in any way to be merged into or in any way excluded or prejudiced by (nor shall it prejudice):

- 14.1.1 any other security now or subsequently held by the Security Agent for any of the Secured Liabilities or any other amount due by the Borrower or any Transaction Obligor to the Security Agent;
- 14.1.2 the subordination of the Subordinated Debt to the Secured Liabilities under or pursuant to the Subordination Deed; nor
- 14.1.3 any rights, powers or remedies of the Security Agent under or pursuant to the Subordination Deed or any other Finance Documents.

14.2 Continuing Security

The security constituted by this Deed is continuing and shall extend to the ultimate balance of all the Secured Liabilities, regardless of any intermediate payment, performance or discharge in whole or in part, and shall continue in full force and effect until the end of the Security Period.

14.3 Reinstatement

14.3.1 If any payment by the Assignor or any other person or any release, discharge or arrangement given by the Security Agent (whether in respect of the obligations of the Borrower, any Obligor or any Transaction Obligor, or any other person, or any security for those obligations or otherwise) is avoided or reduced or must be restored as a result of liquidation, administration, bankruptcy or insolvency or any similar event, or otherwise howsoever (in each case whether in whole or part):

- 14.3.1.1 the liability of the Assignor shall continue or be reinstated as if the payment, discharge, avoidance, reduction or restoration had not occurred;
- 14.3.1.2 the Security Agent shall be entitled to recover the value or amount of that security or payment from the Assignor, as if the payment, discharge, avoidance, reduction or restoration had not occurred; and
- 14.3.1.3 any liability under this Clause 14.3 shall be secured by this Deed.

14.3.2 The Security Agent may freely concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration.

14.4 Waiver of defences

The obligations of the Assignor under this Deed, the security constituted by this Deed, and the rights, powers and remedies of the Security Agent hereunder or at law, shall in each case not be discharged, impaired or otherwise affected by (without limitation, and whether or not known to the Assignor or the Security Agent):

- 14.4.1 any time, indulgence, waiver (in whole or in part, and howsoever fundamental) or consent granted to, or composition with, the Borrower, any Transaction Obligor or any other person;
- 14.4.2 any delay or forbearance by the Security Agent in exercising its rights or remedies under any Finance Document;
- 14.4.3 the release of the Borrower, any Transaction Obligor or any other person under the terms of any composition, compromise or arrangement with any creditor of the Borrower, any Transaction Obligor or any other person;
- 14.4.4 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the Borrower, any Transaction Obligor or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- 14.4.5 any incapacity, disability, or lack of power, authority or legal personality of or dissolution or change in the members, constitution, identity, control, function or status of the Borrower, any Transaction Obligor or any other person;
- 14.4.6 any amendment, notation, supplement, extension (whether of maturity or otherwise howsoever) or restatement (in each case, however fundamental and of whatsoever nature and whether or not more onerous) or replacement of a Finance Document or any other document or security;
- 14.4.7 any change in the constitution or identity of the Security Agent, including (without limitation): (a) the absorption or amalgamation by or of the Security Agent with any person; (b) the acquisition of all or part of the Security Agent's undertaking or assets by any other person; (c) any reconstruction or reorganisation of the Security Agent of any kind; or (d) any assignment, transfer, notation, participation or other disposal (whether in whole or part) of the Security Agent's rights and/or obligations under the Finance Documents or any of them;
- 14.4.8 any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security, to the intent that the Assignor's obligations under this Deed shall remain in full force, as if there were no such unenforceability, illegality or invalidity;
- 14.4.9 any postponement, discharge, reduction, non-provability or other similar circumstance affecting any obligation of any other person under or in connection with any Finance Document or any other document or security resulting from any insolvency, liquidation, administration, bankruptcy or dissolution proceedings or similar proceedings or from any law, regulation or order so that each such obligation shall for the purposes of the

Assignor's obligations under this Deed be construed as if there were no such circumstance;

- 14.4.10 any other act, omission, matter or thing (whether or not known to the Assignor or the Security Agent) which, but for this Clause 14.4, might reduce, release, diminish, discharge, impair, prejudice or otherwise affect the obligations of the Assignor under this Deed, the security constituted by this Deed, and/or the rights, powers and remedies conferred upon the Security Agent by any Finance Document or at law.

14.5 Confirmations

Without prejudice to the generality of Clause 14.4 (*Waiver of Defences*), the Assignor hereby expressly confirms that it intends that the Security constituted by (or intended to be constituted by) this Deed shall, in each case, extend from time to time to any (however fundamental and whether or not more onerous) variation, increase, extension or addition to or of any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purpose of or in connection with (without limitation) any of the following:

- 14.5.1 business or property acquisitions of any nature;
- 14.5.2 increasing working capital;
- 14.5.3 enabling investor distributions to be made;
- 14.5.4 carrying out restructurings;
- 14.5.5 refinancing any other indebtedness;
- 14.5.6 increasing or decreasing any facility or increasing or decreasing the period for which any facility is available, or in which it or the Secured Liabilities are payable;
- 14.5.7 the changing of the identity of any party or parties (including, without limitation, the identity of the providers of any security, guarantees or indemnities);
- 14.5.8 any other variation or extension of the purposes for which any such facility or amount might be available from time to time;
- 14.5.9 any other variation, renewal, payment, compromise, discharge, extension or release, in whole or in part, of any Finance Document or any modifications to the terms thereof; and/or
- 14.5.10 any fees, costs and/or expenses (including, without limitation, legal, accountancy, consultancy, and/or valuation expenses) reasonably incurred associated with any of the foregoing.

14.6 Immediate recourse

- 14.6.1 The Assignor waives and abandons any rights it may at any time have of first requiring the Security Agent to:
 - 14.6.1.1 proceed against, or claim or demand payment from, any person; or
 - 14.6.1.2 enforce any other rights or security, guarantees or indemnities; or

- 14.6.1.3 take any action or obtain judgment in any court against any person; or
- 14.6.1.4 require that any person be made a party to any proceedings against the Assignor; or
- 14.6.1.5 have recourse first to any assets of any person; or
- 14.6.1.6 file any proof or claim in any insolvency, administration, bankruptcy, liquidation or similar proceedings relating to any other person;

in each case before claiming from, or proceeding or taking any such action against or in respect of, the Assignor under this Deed.

- 14.6.2 The waivers contained in Clause 14.6.1 apply irrespective of any law or any provision in any Finance Document to the contrary.
- 14.6.3 For the avoidance of doubt, the Assignor shall be bound by this Deed whether or not made a party to any legal or other proceedings against the Borrower, any Transaction Obligor or any other person for the recovery of any monies in respect of the Secured Liabilities and whether or not any formalities at any time required by the laws of England with regard to the rights or obligations of sureties shall or shall not have been observed.

14.7 Appropriations

During the Security Period the Security Agent (or any trustee or agent on its behalf) may:

- 14.7.1 refrain from applying or enforcing any other monies, security or rights held or received by the Security Agent (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Assignor shall not be entitled to the benefit of the same; and
- 14.7.2 hold in an interest bearing suspense account any monies received from the Assignor or on account of the Assignor's liability under this Deed, save that where such monies received by the Assignor are enough to discharge the Secured Liabilities in full the Security Agent must, if so required by the Assignor, apply such amount in discharge of the Secured Liabilities.

14.8 Non-competition

- 14.8.1 During the Security Period, the Assignor shall not (unless the Security Agent otherwise directs, in which case it shall), after a demand or claim has been made or by virtue of any payment, performance or discharge by it under this Deed or any other Finance Document:
 - 14.8.1.1 take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights, guarantees, security or monies held, received or receivable by the Security Agent (or any trustee or agent on its behalf), nor exercise any other rights or remedies which the Assignor may have in respect thereof;
 - 14.8.1.2 be entitled to any right of contribution or indemnity from the Borrower, any other Transaction Obligor or any other person in respect of any payment

made or monies received on account of the Assignor's liability under this Deed or the other Finance Documents;

- 14.8.1.3 claim, rank, prove or vote as a creditor of the Borrower, any other Transaction Obligor or any other person or its estate, or in any liquidation or administration or similar proceedings, in each case in competition with the Security Agent (or any trustee or agent on its behalf);
- 14.8.1.4 bring any legal or other proceedings for an order requiring the Borrower, any other Transaction Obligor or any other person to make any payment, or perform any obligation, in respect of which the Assignor has given any guarantee, undertaking or indemnity under the Finance Documents; nor
- 14.8.1.5 receive, claim or have the benefit of any payment, distribution or security from or on account of the Borrower, any other Transaction Obligor or any other person, or exercise any right of set-off or counterclaim as against any such person.

- 14.8.2 The Assignor shall hold in trust for, and forthwith pay or transfer to, the Security Agent any payment, distribution, contribution or benefit received by it either contrary to Clause 14.8.1 or as a result of a direction of the Security Agent under Clause 14.8.1.

14.9 Security held by Assignor

The Assignor shall not hold any security from any other person in respect of the Assignor's liability under this Deed and/or the other Finance Documents. The Assignor shall hold any security held by it in breach of this Clause 14.9 on trust for the Security Agent.

14.10 Voluntary arrangements

Without prejudice to the Security Agent's rights to recover such sums as a secured creditor under any Finance Document, on the approval of any voluntary arrangement in respect of any Transaction Obligor (or the implementation of any compromise or scheme of arrangement or any analogous procedure to any of the foregoing in any other jurisdiction) under which any Transaction Obligor's obligations to the Security Agent are compromised in any way, the Assignor shall as principal obligor be liable to the Security Agent for, and hereby undertakes to the Security Agent (as a separate and additional covenant) immediately on demand from time to time to pay to the Security Agent, amounts equal to the sums that would have been payable to the Security Agent by any Transaction Obligor, or any guarantor of any Transaction Obligor, had such compromise not occurred, and so that payment shall be made by the Assignor to the Security Agent under this Clause 14.10 in the amounts and at the times at which but for the said compromise any Transaction Obligor would have been obliged to make payment to the Security Agent. The Assignor's liability under this Clause 14.10 shall, without prejudice to the generality of Clause 14.4 (*Waiver of defences*), not be affected in any way by the Security Agent voting in favour of (if the Security Agent choose to do so) any voluntary arrangement, compromise, scheme of arrangement or analogous procedure proposed by or in respect of any Transaction Obligor.

15. MISCELLANEOUS

15.1 Covenant to Pay

- 15.1.1 The Assignor covenants with the Security Agent that it shall on demand pay, perform or discharge all the Secured Liabilities on the due date therefor, save that the liability

of the Assignor pursuant to this Clause 15.1.1 shall be limited to the aggregate of the proceeds of sale or other disposal or realisation at market value of the Assigned Assets of the Assignor (including, without limitation, the Assigned Assets under this Deed and the Assigned Assets of the Assignor that form the subject of each of the Shareholder's Security Agreements and each of the other Subordinated Creditor's Security Agreements).

- 15.1.2 The Assignor covenants with the Security Agent to pay interest on the Secured Liabilities (to the extent not otherwise charged pursuant to the Facility Agreement) on demand until full discharge (whether before or after judgement, liquidation, winding-up, bankruptcy or administration (whether out of court or otherwise)), such interest to accrue from day to day (on the basis of a 365 day year) calculated at the Default Rate of interest. The Security Agent may compound interest if it is not paid when due.

15.2 New accounts

If the Security Agent receives, or is deemed to be affected by, notice, whether actual or constructive, of any subsequent charge or other interest affecting any Assigned Asset and/or the proceeds of sale of any Assigned Asset, the Security Agent may open a new account with the Assignor. If the Security Agent does not open a new account, it shall nevertheless be treated as if it had done so at the time when it received or was deemed to have received notice. As from that time all payments made to the Security Agent will be credited or be treated as having been credited to the new account and will not operate to reduce any amount for which this Deed is security.

15.3 Further advances

The obligation (if any) on the part of the Security Agent to make further advances to the Borrower under the Facility Agreement is deemed to be incorporated in this Deed as if set out in this Deed.

15.4 Evidence and calculations

Any certification or determination by the Security Agent of a rate or amount under the Finance Documents is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

15.5 Stamp duties

The Assignor shall pay, and forthwith on demand indemnify the Security Agent against any liability it incurs in respect of, any stamp, registration and/or similar tax which is or becomes payable in connection with the entry into, performance or enforcement of this Deed.

15.6 Collateral Security

Where any security constituted under this Deed initially takes effect as a collateral or further security to another security intended to be constituted under this Deed or which otherwise secures all or any part of the Secured Liabilities to which the Assignor is a party then, despite any receipt, release or discharge indorsed on or given in respect of or under the second mentioned security, the first mentioned security will operate as an independent security.

15.7 Suspense Accounts

All monies received, recovered or realised by the Security Agent under this Deed (including the proceeds of any conversion of currency) may in the discretion of the Security Agent be credited to any interest bearing suspense or impersonal account and may be held in such account for so long as the Security Agent (acting on the instructions of the Majority Lenders) may think fit pending their application from time to time (as the Security Agent is entitled to do in its discretion) in or towards the discharge of any of the Secured Liabilities and save as provided herein no party will be entitled to withdraw any amount at any time standing to the credit of any suspense or impersonal account referred to above, save that where such monies received by the Security Agent are enough to discharge the Secured Liabilities in full the Security Agent must, if so required by the Assignor, apply such amount in discharge of the Secured Liabilities.

15.8 Exercise of Powers

Any liberty or power which may be exercised or any determination which may be made under this Deed by the Security Agent or any Receiver may be exercised or made at his absolute and unfettered discretion without any obligation to give reasons for doing so.

15.9 Constitutional documents

The Assignor hereby certifies that its creation by this Deed of security in favour of the Security Agent does not contravene any of the provisions of its constitutional or organisational documents.

15.10 Assignment

15.10.1 The Assignor may not assign, transfer, novate or otherwise dispose of, or declare any trust of, any of its rights and/or obligations under this Deed, in each case without the prior written consent of the Security Agent. This Deed shall be binding on the successors, transferees or assigns of the Assignor.

15.10.2 The Security Agent may at any time assign, transfer, charge or otherwise dispose of all or any of its rights and benefits under this Deed to any person to whom it may assign, transfer, charge or otherwise dispose of all or any part of its rights and benefits under the Facility Agreement. The Security Agent may at any time resign or retire as Security Agent in accordance with the terms of the Facility Agreement (and the appointment of any successor shall be governed by the terms of the Facility Agreement).

15.11 Partial Invalidity

Every provision contained in this Deed shall be severable and distinct from every other provision, and if at any time any one or more of such provisions is, or becomes, invalid, illegal or unenforceable in any jurisdiction, that shall not affect:

15.11.1 the validity, legality or enforceability in that jurisdiction of any other provision of this Deed; nor

15.11.2 the validity, legality or enforceability in any other jurisdiction of that or any other provision of this Deed.

15.12 Remedies, waivers, amendments and consents

- 15.12.1 No failure on the part of the Security Agent or any Receiver to exercise, and no delay on its part in exercising, any right, power or privilege under this Deed shall operate as a waiver thereof nor shall any single or partial exercise of any right preclude any other or further exercise thereof or any other right, power or privilege. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided at law.
- 15.12.2 Any provision of this Deed may be amended, supplemented or novated only if the Security Agent agrees in writing. Any waiver of, and any consent or approval by the Security Agent under, any provision of this Deed shall not be effective unless it is in writing, and may be given subject to any conditions thought fit by the Security Agent, may be withdrawn or modified at any time, and shall be effective only in the instance, and for the purpose, for which it is given.

15.13 Delivery

The signature or sealing of this Deed by or on behalf of a party shall constitute an authority to the solicitors, or an agent or employee of the solicitors, acting for that party in connection with this Deed, and, in the case of the Assignor, the Security Agent's solicitors to date it and to deliver it as a deed on behalf of that party.

15.14 Set-off

The Security Agent may set off any matured obligation due from the Assignor under the Finance Documents (including this Deed) (to the extent beneficially owned by the Security Agent) against any matured obligation owed by the Security Agent to the Assignor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Security Agent may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

15.15 No withholding

The Assignor shall make all payments under or in respect of this Deed without set-off or counterclaim and free and clear of any withholding or deduction, save as may be required by law in which event the amount payable shall be increased so that after such withholding or deduction the Security Agent shall receive a net amount equal to what the Security Agent would have received in the absence of such withholding or deduction.

15.16 Perpetuity

The perpetuity period applicable to the trusts constituted by this Deed shall (if relevant) be 125 years.

16. RELEASE

Upon the expiry of the Security Period (but not otherwise without the prior written consent of the Security Agent in its absolute discretion), and subject to Clauses 1.3 (*Avoidance*) and 14.3 (*Reinstatement*), the Security Agent shall, at the request and cost of the Assignor, take whatever action is necessary to release and re-assign the applicable Assigned Assets from the security constituted by this Deed.

17. NOTICES

17.1 Communications in writing

Any communication to be made under or in connection with this Deed shall be made in writing and, unless otherwise stated, may be made by fax or letter.

17.2 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each party to this Deed for any communication or document to be made or delivered under or in connection with this Deed is that identified with its name below in the execution block or any substitute address, fax number or department or officer as a party to this Deed may notify to the other party by not less than five Business Days' notice.

17.3 Delivery

17.3.1 Subject to Clause 17.5, any communication or document made or delivered to the Assignor under or in connection with this Deed will only be effective:

17.3.1.1 if by way of fax, when received in legible form; or

17.3.1.2 if by way of letter, when it has been delivered personally to the relevant address or two Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address;

and, if a particular department or officer is specified as part of its address details provided under Clause 17.2, if addressed to that department or officer.

17.3.2 Any communication or document to be made or delivered to the Security Agent will be effective only when actually received by the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Security Agent's signature below in the execution block (or any substitute department or officer as the Security Agent shall specify for this purpose).

17.4 Electronic communications

17.4.1 Any communication to be made between the parties to this Deed under or in connection with this Deed may be made by electronic mail, posting to a secure website or other electronic means, if the parties to this Deed:

17.4.1.1 agree that, unless and until notified to the contrary, this is to be an accepted form of communication;

17.4.1.2 notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and

17.4.1.3 notify each other of any change to their address or any other such information supplied by them.

17.4.2 Any electronic communication made between the parties to this Deed will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by the Assignor to the Security Agent only if it is addressed in such a manner as the Security Agent shall specify for this purpose.

17.4.3 Any electronic communication which becomes effective, in accordance with Clause 17.4.1 or 17.4.2, after 5:00 p.m. in the place of receipt shall be deemed only to become effective on the next following Business Day.

17.4.1 The Assignor hereby notifies the Security Agent that its electronic mail address for the purposes of this Clause 17.4 is the electronic mail address identified below in the Assignor's execution block.

17.5 Proof of service on the Assignor

In proving service of a notice, communication or other document on the Assignor, it shall be sufficient to prove that either:

17.5.1 the envelope containing such notice was addressed to the address of the Assignor as set out in the execution block below and delivered either:

17.5.1.1 to that address; or

17.5.1.2 into the custody of the postal authorities as a prepaid first class letter; or

17.5.2 that the notice was transmitted by facsimile to the fax number of the Assignor set out in the execution block below.

17.6 English language

Any notice or other document given under or in connection with this Deed must be in English.

18. GOVERNING LAW

This Deed (and all non-contractual obligations arising out of or in connection with it) are governed by, and shall be construed in accordance with, English law.

19. JURISDICTION

19.1.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed or any non-contractual obligations arising out of or in connection with it) (a "**Dispute**").

19.1.2 The parties to this Deed agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no party to this Deed will argue to the contrary.

19.1.3 This Clause 19 is for the benefit of the Security Agent only. As a result, the Security Agent shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Security Agent may take concurrent proceedings in any number of jurisdictions.

19.1.4 The Assignor hereby irrevocably and unconditionally:

19.1.4.1 waives any objection to the jurisdiction of the English courts dealing with (and agrees not to raise or claim immunity from) any proceedings for such enforcement of this Deed (and shall ensure that no such claim is made on its behalf);

19.1.4.2 consents to the issue of any process, or the giving of any relief, in connection with those proceedings;

19.1.4.3 waives all immunity from suit, attachment and/or execution, that it or its assets may now or in the future have; and

19.1.4.4 expressly consents to and acknowledges the terms of this Clause 19.

20. COUNTERPARTS

This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed; and any party may enter into this Deed by executing a counterpart.

21. THIRD PARTY RIGHTS

21.1 Nothing in this Deed is intended to confer on any person any right to enforce any provision of this Deed which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999, save as set out in Clause 21.2 below.

21.2 Any Receiver appointed by the Security Agent, any Relevant Person and any lawful delegate or sub-delegate of the Security Agent or Receiver may take the benefit of:

21.2.1 any covenant or provision in this Deed by which the Assignor is expressed to give an undertaking or indemnity to, or to release or waive any claim against, that person; and/or

21.2.2 any covenant or provision of this Deed which confers, or purports to confer, any power, right, remedy or benefit upon that person;

provided that:

21.2.3 until the Secured Liabilities have been discharged in full, no such person may exercise or otherwise enforce any such right without the prior written consent of the Security Agent; and

21.2.4 notwithstanding such rights, this Deed may be restated, varied amended, supplemented, or substituted in any respect by the Security Agent and the Assignor whether to remove such rights in whole or in part or otherwise whatsoever or novated, or assigned, released or discharged by the Security Agent without, in any such case, notice to or consent from any such person.

IN WITNESS of which this document has been duly executed and delivered as a deed by each of the parties on the day and the year first stated above.

SCHEDULE 1

Form of Notice and Acknowledgement

Form of Notice

[On Headed Notepaper of Assignor]

[Date]

[Borrower]

Dear Sirs

Re: Subordinated Loan[s]

- (1) We refer to the loan[s] made between [] (as lender) and [Borrower] (as borrower) from time to time (the "**Intercompany Loan[s]**").
- (2) We, Knight Dragon Investments Limited (the "**Assignor**"), give you notice that by a deed of security assignment (as amended, varied, supplemented or replaced from time to time) (the "**Deed of Assignment**") dated on or about the date of this letter between ourselves as assignor (1) and The Bank of East Asia, Limited (the "**Security Agent**") (2) we assigned (by way of security) and/or charged, inter alia, all rights, title and interest in and to the Intercompany Loan[s] and (in particular) the monies from time to time due to us arising in respect of the loan[s] owed by you to the Assignor (and assigned to the Security Agent pursuant to the Deed of Assignment) to the Security Agent upon the terms set out in the Deed of Assignment.
- (3) We irrevocably and unconditionally instruct and authorise you (notwithstanding any previous instructions which we may have given to the contrary):
 - (i) if so requested by the Security Agent, to pay all sums payable by you to us in respect of the Intercompany Loan[s] to such account as the Security Agent may direct;
 - (ii) to disclose to the Security Agent without further reference to or authority from us and without enquiry by you as to the justification of such disclosure, such information relating to the Intercompany Loan[s] as the Security Agent may request you to disclose; and
- (4) Please note that:
 - (i) we shall remain liable to you to perform all obligations assumed by us in respect of the Intercompany Loan[s], and the Security Agent, its agents and/or delegates, any receiver or any other similar person is under no obligation of any kind whatsoever thereunder; and
 - (ii) we may not amend, agree to amend or waive the terms of, or assign or transfer our interest in, or give any consent or approval in respect of the Intercompany Loan[s], in each case without the prior written consent of the Security Agent.
- (5) Save as noted above, and subject to the terms of the Subordination Agreement, we will remain entitled to exercise all our rights, powers and discretions in respect of the

Intercompany Loan[s], unless and until you receive notice from the Security Agent to the contrary. In this event, all the rights, powers, remedies and discretions will be exercisable by (or at the direction of), and notices must be given to, the Security Agent or as it directs.

The instructions in this letter may not be revoked or amended without the prior written consent of the Security Agent.

Please acknowledge receipt of this letter by signing the attached form of acknowledgement and returning it to the Security Agent at The Bank of East Asia, Limited, London Branch, 75 Shaftesbury Avenue, London, W1D 5BB for the attention of: Katherine Cheng.

This letter (and all non-contractual obligations arising out of or in connection with it) are governed by, and shall be construed in accordance with, English law.

Yours faithfully

.....
For and on behalf of
Knight Dragon Investments Limited

Form of Acknowledgement

Date: The Bank of East Asia, Limited, London Branch
75 Shaftesbury Avenue, London, W1D 5BB

For the attention of: Katherine Cheng

Dear Sirs

Re: Subordinated Loans

We acknowledge receipt of a notice (the "**Notice**") dated _____ and addressed to us by Knight Dragon Investments Limited (the "**Assignor**") regarding the Intercompany Loan[s] (as defined in the Notice) mentioned in such Notice and we accept the instructions and authorisations contained in, and agree to comply with the terms of, such Notice.

We hereby acknowledge and confirm that:

- (a) we waive all rights of set-off that we have or will have arising out of or in connection with the Intercompany Loan[s]) other than rights of netting and set-off provided for in the Agreement in relation to transactions thereunder;
- (b) we hereby consent to the creation of the assignment (by way of security) and/or charge in respect of the Intercompany Loan[s] as referred to in the Notice;
- (c) as at the date of this Acknowledgement, we have not received any notice that any third party has or will have any right or interest in, or has made or will be making any claim or demand or taking any action in respect of the rights of the Assignor under or in respect of the Intercompany Loan[s];
- (d) we will pay all sums due, and give notices, in respect of the Intercompany Loan[s] as directed in the Notice; and
- (e) the Assignor may not agree to amend, waive the terms of, or assign or transfer its interest in, or give any consent or approval in respect of the Intercompany Loan[s] without your prior written consent.

This letter (and all non-contractual obligations arising out of or in connection with it) are governed by, and shall be construed in accordance with, English law.

Yours faithfully

.....
For and on behalf of
[Borrower]

SIGNATORIES

The Assignor

Executed as a deed by
**KNIGHT DRAGON INVESTMENTS
LIMITED**

acting by two Directors or a Director in the
presence of a witness:

Director

Print name JONATHAN RANA

Director

Print name

Witness Signature:

Witness name (BLOCK CAPITALS):

Witness occupation (BLOCK CAPITALS):

Witness address (BLOCK CAPITALS):

EMMA RANBY

WITNESS

Address for notices:

Address: Level 9, 6 Mitre Passage, Greenwich Peninsula, London, England, SE10 0ER

FAO: Farlane Harris

E-mail: fharris@knightdragon.com

The Security Agent

THE BANK OF EAST ASIA, LIMITED (acting through its London Branch)

By:



Address for notices:

Address: 75 Shaftesbury Avenue, London, W1D 5BB

Attention: Katherine Cheng

Email: chengk@hkbea.co.uk