



**Registration of a Charge**

Company name: **CONSORTIUM CORPORATE HOLDINGS LIMITED**

Company number: **06574828**



X8FOETRL

Received for Electronic Filing: **08/10/2019**

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**Details of Charge**

Date of creation: **04/10/2019**

Charge code: **0657 4828 0005**

Persons entitled: **BANK OF LONDON AND THE MIDDLE EAST PLC**

Brief description: **2 SHARES IN ROCHESTER HOTEL GENERAL PARTNER LIMITED (COMPANY NO. 10756460) £1 EACH IN THE GENERAL PARTNER AND 2 SHARES IN ROCHESTER HOTEL NOMINEE LIMITED (COMPANY NO.10756559) £1 EACH IN THE GENERAL PARTNER. PLEASE SEE INSTRUMENT FOR MORE DETAILS.**

**Contains negative pledge.**

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**Authentication of Form**

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

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**Authentication of Instrument**

Certification statement: **I CERTIFY THAT THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **CLYDE & CO LLP**



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

Company number: 6574828

Charge code: 0657 4828 0005

The Registrar of Companies for England and Wales hereby certifies that a charge dated 4th October 2019 and created by CONSORTIUM CORPORATE HOLDINGS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 8th October 2019 .

Given at Companies House, Cardiff on 9th October 2019

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



**Companies House**



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

**CONSORTIUM CORPORATE HOLDINGS LIMITED**  
(the Chargor)

and

**BANK OF LONDON AND THE MIDDLE EAST PLC**  
(the Chargee)

**DEED – SHARE CHARGE**  
in respect of a  
Murabaha Facility Agreement

Execution Version

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## Deed – Share Charge

Dated 4<sup>th</sup> October 2019

### Between:

- (1) **CONSORTIUM CORPORATE HOLDINGS LIMITED**, a limited liability company incorporated and existing under the laws of England and Wales with registration number 06574828 whose registered office is at 81 Wimpole Street, London W1G 9RE United Kingdom (the **Chargor**); and
- (2) **BANK OF LONDON AND THE MIDDLE EAST PLC**, a public limited liability company incorporated and existing under the laws of England and Wales (registered in England and Wales No. 05897786) whose registered office is at Cannon Place, 78 Cannon Street, London EC4N 6HL (the **Chargee**).

### Background

- (A) Pursuant to the Murabaha Facility Agreement (defined below), the Chargee granted to the Limited Partnership a commodity murabaha facility.
- (B) In order to secure its obligations which may be, from time to time, owed by the Limited Partnership to the Chargee pursuant to the Facility Documents, the Chargor, by executing this Deed, grants to the Chargee the security in relation to its assets as more particularly described in this Deed.

### It is agreed as follows:

#### 1 Definitions and Interpretation

##### 1.1 Definitions

Terms and expressions used but not defined in this Deed shall have the meanings given to them in the Murabaha Facility Agreement and, unless the context requires otherwise, in this Deed:

**Limited Partnership** means ROCHESTER HOTEL L.P., a limited partnership established and existing under the laws of England and Wales with registration number LP018019 whose registered office is at 81 Wimpole Street, London W1G 9RE acting by its general partner ROCHESTER HOTEL GENERAL PARTNER LIMITED, a limited liability company incorporated and existing under the laws of England and Wales with registration number 10756460 whose registered office is at 81 Wimpole Street, London W1G 9RE;

**LPA 1925** means the Law of Property Act 1925;

**Murabaha Facility Agreement** means the master Murabaha agreement dated on or about the date of this Deed between the Limited Partnership (as the Customer) and the Chargee (as the Bank);

**Party** means a party to this Deed;

**Receiver** means any receiver appointed under this Deed or pursuant to any applicable law, whether alone or jointly, and includes a receiver and/or manager;

**Related Rights** means all of the present and future rights to:

- (a) dividends, distributions, profit and other income from the Shares and Investments;
- (b) allotments, rights, money or property arising from the Shares and Investments by way of conversion, exchange, redemption, bonus, preference, option or otherwise;
- (c) stock, shares and securities offered in addition to or substitution for the Shares and Investments; and
- (d) proceeds of, or from, the disposal of, or other dealing with, any Shares and Investments;

**Secured Assets** means all of the:

- (a) Shares and Investments; and
- (b) Related Rights;

**Secured Obligations** means all present and future obligations and liabilities (whether actual or contingent, whether incurred alone, jointly or severally, whether as principal or surety and/or in any other capacity whatsoever and regardless of how they arise) owed by the Limited Partnership to the Bank under or in connection with the Facility Documents together with all losses, costs, charges, expenses and liabilities including profit incurred by the Bank on them in connection with the protection, preservation or enforcement of its rights under the Facility Documents or any other document evidencing or securing any such liabilities;

**Security Interest** means any charge, pledge, mortgage, lien or other security interest securing any obligations of any person or any other arrangement of any type whatsoever having the effect of conferring security or a similar effect;

**Security Period** means the period beginning on the date of this Deed and ending on the date on which the Bank is satisfied that the Secured Obligations have been unconditionally and irrevocably discharged in full and that no further Secured Obligations are capable of being outstanding;

**Shares and Investments** means:

- (a) all of the present and future:
  - (i) shares owned or held by the Chargor, or any nominee on behalf of the Chargor, in the General Partner; and
  - (ii) stocks, debentures, securities and certificates of deposit held by the Chargor or by any nominee on behalf of the Chargor in the General Partner,
- (b) the specific shares and investments specified in the Schedule 1 (*Shares and Investments*).

## 1.2 Interpretation

Unless otherwise defined in this Deed or unless the context requires otherwise, terms and expressions defined in the Murabaha Facility Agreement shall have the same meaning when used in this Deed. The

provisions of Clause 1.2 (*Interpretation*) of the Murabaha Facility Agreement shall apply to this Deed as if set out in full in this Deed except that references to "this Agreement" shall be construed as references to this Deed and references to the "Bank" shall be construed as references to the "Chargee".

### **1.3 Third Party Rights**

1.3.1 Except as expressly provided for in this Deed, a person who is not a Party (other than a Receiver or any of its delegates or sub-delegates) shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of this Deed. This does not affect any right or remedy of such a person that exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.

1.3.2 The Parties may terminate or rescind this Deed, or agree to any variation, waiver or settlement in connection with it, without the consent of any third party, whether or not it extinguishes or alters any entitlement they may have to enforce any of the provisions of this Deed.

### **1.4 Clawback**

If the Chargee considers that an amount paid by the Chargor in respect of the Secured Obligations is capable of being avoided or otherwise set aside on the liquidation or administration of the Chargor, or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this Deed.

## **2 Covenant to Pay**

The Chargor covenants with the Chargee that it shall, on written demand by the Chargee, pay and discharge all the Secured Obligations when due, (together with all profit, fees, costs and expenses charged by or incurred by the Chargee in connection with the Chargor's obligations to pay and discharge the Secured Obligations), provided that the liability of the Chargor under this Deed is limited to the total amount of all the enforcement proceeds from the Secured Assets.

## **3 Fixed Charge**

The Chargor, with full title guarantee, charges by way of fixed charge, in favour of the Chargee, as security for the payment and discharge of the Secured Obligations, all of the Chargor's rights, title and interest from time to time in and to:

3.1 the Shares and Investments; and

3.2 the Related Rights arising in connection with the Shares and Investments.

## **4 Representations and Warranties**

4.1 The Chargor makes the following representations and warranties to and for the benefit of the Chargee on the date of this Deed and acknowledges that the Chargee has entered into the Facility Documents in reliance on such representations and warranties:

4.1.1 it is a company duly incorporated and validly existing under the laws of England and Wales;

- 4.1.2 it has the corporate power to carry on its business as it is now being conducted and own its assets;
- 4.1.3 its obligations under this Deed are legal, valid, binding and enforceable;
- 4.1.4 this Deed creates the Security Interests that it purports to create and each such Security Interest constitutes a legal, valid and effective Security Interest with first ranking priority;
- 4.1.5 the entry into, delivery and performance by it of this Deed, will not involve or result in a contravention of:
- (a) its constitutional documents;
  - (b) any law or regulation applicable to it; or
  - (c) any contractual or other obligation or restriction that is binding on it or any of its assets;
- 4.1.6 it has taken the necessary corporate action to allow it to enter into, deliver and perform its obligations under this Deed and it does not exceed any limit on its powers in so doing;
- 4.1.7 all authorisations, consents and licences necessary to enable it to enter into, deliver and perform its obligations under this Deed and to enable it to conduct its business in its current form have been obtained;
- 4.1.8 its payment obligations under this Deed rank at least *pari passu* with all its other present and future unsecured and unsubordinated payment obligations, apart from payment obligations mandatorily preferred by law;
- 4.1.9 all information provided by it or on its behalf to the Chargee in relation to it, the Secured Assets or this Deed was true, complete and accurate in all material respects as at the date it was provided;
- 4.1.10 it has not withheld from the Chargee any information which makes the information provided to the Chargee materially misleading, incomplete, inaccurate or untrue as at the date it was provided;
- 4.1.11 no corporate action, legal proceedings or other procedures or steps have been taken against it for its winding-up, dissolution, administration or re-organisation or for the appointment of a receiver, administrator, administrative receiver, trustee or similar officer of it or of any or all of its assets or revenues;
- 4.1.12 no Security Interest subsists over any of the Secured Assets except for the Security Interests created by or pursuant to this Deed and no person holds an interest in any of the Secured Assets other than the Chargee under this Deed;
- 4.1.13 it is the sole legal and beneficial owner of all of the Secured Assets;
- 4.1.14 all of the Shares and Investments owned or held by the Chargor on the date of this Deed are identified in the Schedule 1 (*Shares and Investments*);
- 4.1.15 the Secured Assets are duly authorised, validly issued, fully called up, fully paid and not subject to any option to purchase or similar right; and



4.1.16 any transfer of any of the Secured Assets as a result of the creation or enforcement of this Deed is and will not be restricted in any way by the constitutional documents of the General Partner.

4.2 The representations contained in this Clause 4 are deemed to be repeated by the Chargor by reference to the facts and circumstances then existing on each day during the Security Period.

## **5 Undertakings**

5.1 The undertakings in this Clause 5 remain in effect throughout the Security Period.

5.2 The Chargor must:

5.2.1 ensure that it has all authorisations, consents and licences necessary to enable it to enter into, deliver and perform its obligations under this Deed and to enable it to conduct its business in its current form;

5.2.2 comply with all laws and regulations applicable to it;

5.2.3 maintain, preserve, protect and keep good and marketable title to all of the Secured Assets;

5.2.4 maintain and preserve the Security Interests created by or pursuant to this Deed and the first-ranking priority of such Security Interests;

5.2.5 promptly pay when due all calls on any of its Secured Assets that, despite Clause 4.1.15, are not fully paid; and

5.2.6 provide the Chargee with any notices, reports, accounts, circulars and other documents relating to the Secured Assets promptly when they are received.

5.3 The Chargor must not:

5.3.1 create or permit to subsist any Security Interest over any of the Secured Assets other than the Security Interests created by or pursuant to this Deed;

5.3.2 either in a single transaction or in a series of transactions sell, transfer, grant any option in respect of or otherwise dispose of all or any part of the Secured Assets or agree or attempt to do so;

5.3.3 make any nomination under section 145 of the Companies Act 2006 in connection with any of the Secured Assets;

5.3.4 convert any of the Secured Assets from certificated to uncertificated form;

5.3.5 cause or permit any of the Secured Assets to be consolidated, sub-divided or converted and must take such action as the Chargee may direct in respect of any proposed compromise, arrangement, capital organisation, conversion, exchange, repayment or takeover offer affecting any of the Secured Assets or any proposal to vary or abrogate any rights attaching to any of the Secured Assets;

5.3.6 permit any document relating to the Secured Assets or the articles of association of the General Partner to be amended or modified in any way that would be adverse to the interests of the Chargee or adversely affect the Security Interests created, or purported to be created, by or pursuant to this Deed; or

- 5.3.7 exercise any voting or other rights in respect of the Secured Assets in any way that is likely to prejudice the value of the Secured Assets or otherwise jeopardise the Security Interests created, or purported to be created, by or pursuant to this Deed.

## **6 Voting Rights, Dividends and Profit**

### **6.1 Before this Deed Becomes Enforceable**

Unless and until the Security Interests created by or pursuant to this Deed become enforceable:

- 6.1.1 all voting and other rights (including the right to receive dividends, distributions and profit) attaching to any of the Secured Assets shall continue to be exercised by the Chargor; and
- 6.1.2 the Chargor shall be free to deal with all the dividends, distributions and profit and other money paid on the Secured Assets.

### **6.2 After this Deed Becomes Enforceable**

At any time after the Security Interests created by or pursuant to this Deed become enforceable:

- 6.2.1 the Chargee may in the name of the Chargor or otherwise and without any further consent or authority on the part of the Chargor, exercise any or all voting and other rights attaching to the Secured Assets and any rights attaching to the Secured Assets to nominate or remove a director as if the Chargee were the sole beneficial owner of the Secured Assets;
- 6.2.2 all the Related Rights shall, if received by the Chargor be held on trust for, and shall be paid or transferred to, the Chargee;
- 6.2.3 the Chargor must accept short notice for and attend any meeting of the holders of any of the Secured Assets, appoint proxies and exercise voting and other rights and powers exercisable by the holders of the Secured Assets as the Chargee may direct from time to time; and
- 6.2.4 the Chargee may without notice to the Chargor:
- (a) deal with the documents referred to in Clause 7.1 (*Title Documents*) and complete any transfers of any of the Secured Assets as if it was the absolute and unencumbered owner of such Secured Assets; and
  - (b) in exercising a power of sale, deliver the documents referred to in Clause 7.1 (*Title Documents*) to a purchaser of the Secured Assets to which they relate.

## **7 Perfection of Security**

### **7.1 Title Documents**

The Chargor must:

- 7.1.1 immediately upon the execution of this Deed (and promptly upon the acquisition of any Secured Assets after the date of this Deed), deposit with the Chargee, all deeds, title documents, certificates and other documents constituting or evidencing title to each of the Secured Assets; and

- 7.1.2 at any time after the execution of this Deed, deposit with the Chargee any further deeds, title documents, certificates and other documents constituting or evidencing title to the Secured Assets, promptly upon coming into possession of any of them.

**7.2 Document Delivery and Other Steps to Perfect Security<sup>1</sup>**

- 7.2.1 The Chargor must, immediately upon the execution of this Deed execute and deliver to the Chargee (at the Chargor's expense) in such form and substance as the Chargee may reasonably require:

- (a) all documents required to perfect the Security Interests created, or purported to be created, by or pursuant to this Deed (including any documents required in connection with any registration formalities); and
- (b) stock transfer forms or other instruments of transfer (executed by the Chargor with the details of the transferee and the date left blank) in relation to each of the Secured Assets.

- 7.2.2 The Chargor must take all such other action as is available to it as may be necessary or as may reasonably be requested by the Chargee to create, perfect, protect or maintain any of the Security Interests created, or purported to be created, by or pursuant to this Deed or to vest title to any Secured Asset in the Chargee or its nominee or any purchaser, or to facilitate the realisation of any Secured Asset under this Deed or the exercise of any of the rights, powers and remedies of the Chargee provided by or pursuant to this Deed or by law, including making all filings and registrations with and paying all taxes and duties (including all stamp duties) to the appropriate authorities (including Companies House).

**8 Further Assurance**

- 8.1 The Chargor must, if requested by the Chargee, execute in favour of the Chargee (or as the Chargee directs) such further legal or other assignments or mortgages of, or charges on, the Secured Assets as the Chargee requires to secure the payment and discharge of the Secured Obligations.
- 8.2 The assignments, mortgages or charges shall be prepared by or on behalf of the Chargee at the cost of the Chargor, and shall contain such provisions as the Chargee may require.

**9 Enforcement**

- 9.1 The Security Interests created by or pursuant to this Deed shall become immediately enforceable at any time after the occurrence of an Event of Default.
- 9.2 After the Security Interests created by or pursuant to this Deed have become enforceable, the Chargee may in its absolute discretion enforce all or any part of this Deed in any manner it sees fit.

**10 Right of Appropriation**

To the extent that the provisions of the Financial Collateral Arrangements (No 2) Regulations 2003, SI 2003/3226 apply to a Secured Asset, the

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<sup>1</sup> Share Certificates and stamped stock transfer form will be Conditions Precedent.

Chargee shall have the right to appropriate all or any part of that Secured Asset in or towards the payment or discharge of the Secured Obligations. For this purpose, a commercially reasonable method of valuing a Secured Asset shall be:

- 10.1 in the case of cash, the amount standing to the credit of the relevant bank account, together with any accrued profit, at the time of appropriation; and
- 10.2 in the case of any other Secured Asset, its market value determined by the Chargee by reference to a public index, independent valuation or by such other process as the Chargee may select.

## **11 Appointment and Powers of a Receiver**

### **11.1 Appointment of a Receiver**

At any time:

- 11.1.1 after the Security Interests created by or pursuant to this Deed have become enforceable; or
- 11.1.2 if so requested by the Chargor,

the Chargee may appoint, by writing, any person to be a Receiver of all or any part of the Secured Assets.

### **11.2 Powers of Receivers Joint and Several**

Where more than one Receiver is appointed, they shall have power to act separately unless the Chargee in the appointment specifies to the contrary.

### **11.3 Remuneration of Receiver**

The Chargee may from time to time determine the remuneration of the Receiver.

### **11.4 Power of the Chargee to Remove Receiver**

The Chargee may, subject to section 45 of the Insolvency Act 1986, remove the Receiver from the assets of which it is Receiver.

### **11.5 Further Appointment**

The appointment of a Receiver shall not preclude:

- 11.5.1 the Chargee from making any subsequent appointment of a Receiver over all or any of the Secured Assets over which a Receiver has not previously been appointed or has ceased to act; or
- 11.5.2 a Receiver, while continuing to act, consenting to the appointment of an additional Receiver to act with it.

### **11.6 Status of Receiver as Agent**

A Receiver shall be the agent of the Chargor and the Chargor shall be solely liable for the Receiver's acts, defaults and remuneration, unless and until the Chargor goes into liquidation, after which the Receiver shall act as principal and shall not become the agent of the Chargee.

## **11.7 Powers of Receiver**

A Receiver shall have and be entitled to exercise in relation to the Chargor all the powers set out in Schedule I to the Insolvency Act 1986, and in particular, by way of addition and without limiting such powers, and without prejudice to the powers of the Chargee, a Receiver shall have power either in its own name or in the name of the Chargor:

- 11.7.1 in connection with any sale or other disposition of the Secured Assets, to receive the consideration for the sale in a lump sum or in instalments and to receive shares by way of consideration;
- 11.7.2 to grant options or any other interests in the Secured Assets;
- 11.7.3 to exercise any voting rights belonging to the Chargor;
- 11.7.4 to do all other acts and things which it may consider desirable or necessary for realising any Secured Asset or incidental or conducive to any of the rights, powers or discretions conferred on a Receiver under or by virtue of this Deed; and
- 11.7.5 to exercise in relation to any of the Secured Assets all the powers, authorities and things which it would be capable of exercising if it was the absolute beneficial owner of the Secured Asset.

## **11.8 Limitation on Chargee's Liability**

Neither the Chargee nor any Receiver shall be liable:

- 11.8.1 for any loss, however caused, arising out of:
  - (a) any sale or other disposal of any of the Secured Assets and whether or not a better price could or might have been obtained by deferring or advancing the date of such sale or other disposal; or
  - (b) the exercise of or failure to exercise any of the Chargee's powers under this Deed; or
- 11.8.2 to account as mortgagee in possession for any of the Secured Assets.

## **11.9 Section 109 of the LPA 1925**

Section 109 of the LPA 1925 shall not apply to this Deed.

## **12 Power of Attorney**

### **12.1 Power of Attorney**

The Chargor, by way of security, irrevocably appoints the Chargee (whether or not a Receiver has been appointed) and any Receiver separately, to be the attorney of the Chargor with full power to appoint substitutes and to delegate, for the Chargor in its name and on its behalf, and as its act and deed or otherwise, to execute, deliver and otherwise perfect any document, or perform any act:

- 12.1.1 that may be required of the Chargor under this Deed and that the Chargor has failed to do within seven days of being notified by the Chargee that it is required; or

- 12.1.2 that may be deemed by the attorney necessary or desirable for any purpose of this Deed (including, after the Security Interests created by or pursuant to this Deed have become enforceable, to transfer legal ownership of any of the Secured Assets).

**12.2 Ratification**

Without prejudice to the generality of Clause 12.1 (*Power of Attorney*), the Chargor covenants with the Chargee and separately with any Receiver to ratify:

- 12.2.1 all transactions entered into by any attorney in the proper exercise of its powers in accordance with this Deed; and
- 12.2.2 all transactions entered into by any attorney in signing, sealing or delivering any deed, assurance or document, perfecting any Security Interest or performing any act, in each case in the proper exercise of its powers in accordance with this Deed.

**13 Chargee May Exercise Receiver's Powers**

All powers of a Receiver conferred by this Deed may be exercised by the Chargee after the Security Interests created by or pursuant to this Deed have become enforceable, whether as attorney of the Chargor or otherwise, and whether or not a Receiver has been appointed.

**14 Statutory Power of Sale to Arise on Execution**

Section 103 of the LPA 1925 shall not apply to this Deed, but the statutory power of sale shall, as between the Chargee and a purchaser from the Chargee, arise on, and be exercisable at any time after, the execution of this Deed. However, the Chargee shall not exercise such power of sale until the Security Interests created by or pursuant to this Deed become enforceable, or a Receiver has been appointed, but this provision shall not affect a purchaser or require a purchaser to ask whether a demand or appointment has been made.

**15 Protection of Third Parties**

No person (including a purchaser) dealing with the Chargee or any Receiver or any of their respective nominees or agents, shall be concerned to enquire:

- 15.1 whether the Security Interests created by or pursuant to this Deed have become enforceable;
- 15.2 whether any Receiver is validly appointed or acting within its powers;
- 15.3 whether any power exercised or purported to be exercised has become exercisable;
- 15.4 whether any of the Secured Obligations remain due;
- 15.5 as to the necessity or expediency of any stipulations or conditions subject to which the sale of any Secured Asset is made, or otherwise as to the propriety or regularity of the sale of any Secured Asset; or
- 15.6 how any money paid to the Chargee or a Receiver, or their respective nominees or agents, is applied.

**16 Consolidation of Mortgages**

The restrictions on consolidation of mortgages contained in section 93 of the LPA 1925 shall not apply to this Deed.

**17 Rights of Chargee or Receiver to Remedy Breach**

If the Chargor defaults in its performance of any of the undertakings under Clause 5 (*Undertakings*) or other obligations in this Deed, the Chargee or any Receiver may (but shall not be obliged to) do whatever may be necessary to rectify the default or protect the Chargee's interest under this Deed at the expense of the Chargor.

**18 Application of Money Received by the Chargee or a Receiver**

**18.1 Application of Recoveries**

Any money received under this Deed shall, subject to the discharge of any prior-ranking claims, be paid or applied in the following order of priority:

- 18.1.1 in payment of the remuneration of the Receiver and the costs of realisation incurred by the Chargee and/or the Receiver including all costs, charges and expenses of or incidental to any exercise of any power conferred by this Deed;
- 18.1.2 in or towards the payment of any debts or other amounts which are by statute made payable in preference to the Secured Obligations, to the extent that such debts or other amounts are made so payable;
- 18.1.3 in or towards satisfaction of the Secured Obligations in such order as the Chargee determines, in its absolute discretion; and
- 18.1.4 as to the surplus, if any, to the Chargor or to any other person or persons entitled to it.

**18.2 Credit to a Suspense Account**

The Chargee may, in its absolute discretion on or at any time or times after demand and pending the payment to the Chargee of the whole of the Secured Obligations, place and keep to the credit of a non interest-bearing separate or suspense account any money received, recovered or realised by the Chargee under or in connection with this Deed for so long and in such manner as the Chargee may determine without any intermediate obligation on its part to apply the same or any part of such money in or towards the discharge of any of the Secured Obligations.

**19 Late Payment**

**19.1 Late Payment Amount**

If any sum due and payable by the Purchaser hereunder, under a Purchase Agreement or any other Facility Document is not paid on the due date therefor in accordance with the provisions thereof (the balance thereof for the time being unpaid being herein referred to as an **unpaid amount**), the Purchaser undertakes to make a payment in respect of such unpaid amount calculated in accordance with Clause 19.2 (*Calculation of Late Payment Amount*). Such amounts shall:

- (a) accrue on a daily basis from the due date for payment of such unpaid amount up to the date that the Purchaser's obligation to pay the same is irrevocably discharged (the **Overdue Period**); and
- (b) be payable by the Purchaser to the Seller immediately upon a demand being made by the Seller which the Seller shall be entitled to make from time to time.

## 19.2 Calculation of Late Payment Amount

The payment in respect of an unpaid amount for any period relating thereto as referred to in Clause 19.1 (*Late Payment Amount*) shall be an amount equal to the result obtained upon application of the formula:

$$\frac{A \times B \times C}{365}$$

Where:

- A** means the amount of such unpaid amount;
- B** means the aggregate of (i) the Profit Rate as determined by the Seller and (ii) three per cent. per annum; and
- C** means the number of days of the Overdue Period or (without double counting) the number of days in any period forming part of the Overdue Period.

## 19.3 Distribution of Late Payment Amount

Any payment received by the Seller under this Clause 19.1 (*Late Payment Amount*) shall be applied towards any actual and reasonable costs and expenses incurred by the Seller and any remaining amount shall be donated by the Seller (on behalf of the Purchaser) to charity as is selected by the Seller in its sole discretion and in all cases under the supervision of its *Sharia'a* Supervisory Board.

## 20 Costs, Expenses and Indemnity

- 20.1 The Chargor must, within three Business Days of demand by the Chargee, procure the General Partner to promptly pay all costs and expenses (including legal fees) together with VAT on such amounts incurred by the Chargee arising at any time in connection with:
  - 20.1.1 the negotiation, preparation, execution or perfection of this Deed (or the Security Interests created by it) including pursuant to Clauses 7 (*Perfection of Security*) and 8 (*Further Assurance*); and/or
  - 20.1.2 responding to, considering or implementing any request for a consent, amendment or waiver to this Deed.
- 20.2 The Chargor must, within three Business Days of demand by the Chargee, pay to the Chargee on a full indemnity basis all costs, losses and liabilities (including legal fees) together with VAT on such amounts incurred by or on behalf of the Chargee arising at any time as a result of or in connection with:



- 20.2.1 the occurrence of an Event of Default under the Murabaha Facility Agreement; or
- 20.2.2 the preservation and/or enforcement of any of the rights of the Chargee under this Deed.
- 20.3 The Chargor shall, notwithstanding any release or discharge of all or any part of this Deed, indemnify the Chargee against any action, proceeding, claim, loss, liability and cost which it may sustain in connection with or otherwise relating to this Deed.

## **21 Payments**

- 21.1 All sums payable by the Chargor under this Deed must be paid in Sterling in full without any set-off or counterclaim and in cleared funds no later than 11 am on the day in question to such account as the Chargee may have specified for this purpose.
- 21.2 Where the day on or by which any payment is to be made is not a Business Day, that payment must be made on or by the preceding Business Day.

## **22 Set-off**

### **22.1 Retention and Set-off**

The Chargee may retain any money standing to the credit of any of the Chargor's bank accounts with the Chargee (in any currency) as cover for any of the Secured Obligations and/or may at any time, without notice to the Chargor, combine or consolidate all or any of such money with all or such part of the Secured Obligations as the Chargee may select, whether presently payable or not, and the Chargee may purchase with any such money any other currency required to effect such combination.

### **22.2 Power to Sign Documents**

The Chargor irrevocably authorises the Chargee in its name and at its expense to perform such acts and sign such documents as may be required to give effect to any set-off or transfer pursuant to Clause 22.1 (*Retention and Set-off*), including the purchase with the money standing to the credit of any such bank account of such other currencies as may be necessary to effect such set-off or transfer.

### **22.3 No Security**

This Clause 22 gives to the Chargee a contractual right of set-off only, and does not create any equitable charge or other Security Interest over any credit balance of the Chargor.

## **23 Transfers**

### **23.1 Right of Chargee to Transfer**

The Chargee is entitled at any time to assign its rights or otherwise transfer all or any part of its rights or obligations under this Deed to any party to whom it has assigned its rights or otherwise transferred its rights or obligations under the Murabaha Facility Agreement.

## **23.2 No Right of Chargor to Transfer**

The Chargor is not entitled to assign its rights or otherwise transfer all or any part of its rights or obligations under this Deed.

## **23.3 Disclosure**

The Chargor irrevocably authorises the Chargee to disclose any information concerning the Chargor, this Deed or the Secured Obligations to:

- 23.3.1 any prospective assignee or transferee referred to in Clause 23.1 (*Right of Chargee to Transfer*) and any other person considered by the Chargee to be concerned in the prospective assignment or transfer; and
- 23.3.2 any person who, as part of the arrangements made in connection with any transaction referred to in Clause 23.1 (*Right of Chargee to Transfer*), reasonably requires such information after the transaction has been effected.

## **24 Notices**

### **24.1 In Writing**

- 24.1.1 Any communication in connection with this Deed must be in writing and, unless otherwise stated, may be given:

- (a) in person, by post, or
- (b) to the extent agreed by the Parties making and receiving communication, by e-mail or other electronic communication.

- 24.1.2 For the purpose of this Deed, an electronic communication will be treated as being in writing.

- 24.1.3 Unless it is agreed to the contrary, any consent or agreement required under this Deed must be given in writing.

### **24.2 Contact Details**

- 24.2.1 Except as provided below, the contact details of each Party for all communications in connection with this Deed are those set below.

- (a) in the case of the Chargor:

Address: 81 Wimpole Street  
London W1G 9RE  
Attention: Trevor Mackney  
Email: trevor.mackney@consortium-im.com

- (b) in the case of the Chargee:

Address: Bank of London and The Middle East plc  
Cannon Place  
78 Cannon Street  
London EC4N 6HL  
Attention: Head of Operations

Fax Number: +44 20 7618 0001

Email: operations@blme.com

- 24.2.2 Any Party may change its contact details by giving five Business Days' notice to the other Party.

**24.3 Effectiveness**

- 24.3.1 Except as provided below, any communication in connection with this Deed will be deemed to be given as follows:

- (a) if delivered in person, at the time of delivery;
- (b) if posted, five (5) days after being deposited in the post, postage prepaid, in a correctly addressed envelope; and
- (c) if by e-mail or any other electronic communication, when received in legible form.

- 24.3.2 A communication given under Clause 24.3.1 above, but received on a non-working day or after business hours in the place of receipt will only be deemed to be given on the next working day in that place.

- 24.3.3 A communication to the Chargee will only be effective on actual receipt by it.

**24.4 Publicity**

No press or other public statement or circular shall be made or issued in connection with the subject matter of this Deed unless previously approved in writing by the Chargee and the Chargor (unless required by any law or any regulator or competent authority).

**25 Amendments**

No amendment, waiver or variation of any of the terms of this Deed will be valid or effective unless made in writing and executed by or on behalf of the Parties.

**26 Remedies and Waivers**

- 26.1 No failure, delay or omission by the Chargee in exercising any right, power or remedy provided by law or under this Deed shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

- 26.2 No single or partial exercise of any right, power or remedy provided by law or under this Deed shall prevent any future exercise of it or the exercise of any other right, power or remedy.

- 26.2.1 The Chargee's rights, powers and remedies under this Deed are cumulative and they do not exclude any rights or remedies that arise by law.

- 26.2.2 Any release, waiver or discharge of the whole or any part of the Secured Obligations or any consent, approval or waiver given by the Chargee in relation to this Deed shall only be effective for that specific purpose and for the terms and conditions upon which it was granted.

**27 Continuing and Additional Security**

- 27.1 This Deed is a continuing security for the Secured Obligations in favour of the Chargee and shall extend to cover the ultimate balance due at any time from the Limited Partnership to the Chargee under the Facility Documents, notwithstanding any intermediate payment or settlement of account (whether in whole or in part) or any other matter whatever.
- 27.2 The Security Interests constituted by this Deed are in addition to and do not prejudice, nor are they in any way prejudiced by, any other Security Interest, guarantee or right of set-off, combination or other rights exercisable by the Chargee against the Chargor or any Security Interest, guarantee, indemnity and/or negotiable instrument now or in the future held by the Chargee.

**28 Waiver of Defences**

The obligations of the Chargor under this Deed will not be affected by any act or omission which would otherwise have a prejudicial effect on this Deed or the obligations of the Chargor under this Deed, including:

- 28.1 any giving of time or any indulgence, consent or waiver granted in favour of the Limited Partnership, Chargor or any other person;
- 28.2 any release of the Limited Partnership, Chargor or any other person under the terms of any composition or arrangement with its creditors;
- 28.3 any variation or release of or failure to perfect or enforce rights (including security rights) over the assets of the Limited Partnership, Chargor or any other person or any other act or omission which diminishes the benefit or value of any such rights;
- 28.4 any lack of power, authority or legal personality of, any incapacity of or the insolvency of or any similar proceedings against the Limited Partnership, Chargor or any other person;
- 28.5 any change in the status or identity (including any dissolution) of the Chargee, the Limited Partnership, the Chargor or any other person;
- 28.6 any amendment or supplement to or novation, restatement or replacement of any of the Facility Documents or any other document, in each case, of whatever nature and however fundamental (including any increase in the Facility, the provision of any new facility or any change to the purpose for which any proceeds raised by the Facility are made available);
- 28.7 any illegality, unenforceability or invalidity of any obligation of the Limited Partnership, the Chargor or any other person under the Facility Documents or any other document; or
- 28.8 any other matter or thing, whether or not in the knowledge of the Chargee, the Limited Partnership, the Chargor or any other person.

**29 Immediate Recourse**

- 29.1 The Chargee may enforce this Deed without first:
- 29.1.1 having recourse to any other Security Interest, guarantee or rights of set-off;

- 29.1.2 making or filing any claim or proof in a winding-up, dissolution or bankruptcy of any other person; or
- 29.1.3 taking any steps or proceedings against the Limited Partnership or any other person.
- 29.2 The Chargor waives any right it may have to require or request the Chargee to take any steps set out in Clauses 29.1.1 to 29.1.3 prior to enforcing this Deed.

### **30 No Competition**

- 30.1 During the Security Period, the Chargor shall not:
    - 30.1.1 exercise any right of indemnity, set-off or counterclaim against the Limited Partnership or any other party to any Security Interest created by or pursuant to any Facility Document;
    - 30.1.2 bring proceedings for an order of the court compelling the Limited Partnership to pay the Secured Obligations to the Chargee;
    - 30.1.3 claim or prove in the winding-up or dissolution of the Limited Partnership or any other party to any Security Interest created by or pursuant to any Facility Document;
    - 30.1.4 exercise any right of subrogation to the Chargee's rights under the Facility Documents;
    - 30.1.5 claim any contribution from the Limited Partnership or any other party to any Security Interest created by or pursuant to any Facility Document;
    - 30.1.6 claim payment of any other monies due to it by the Limited Partnership or any other party to any Security Interest created by or pursuant to any Facility Document by reason of the performance of its obligations under this Deed or on any account whatsoever or exercise any other right or remedy or enforce any Security Interest, guarantee, indemnity or other assurance against loss which it has in respect of such monies; or
    - 30.1.7 negotiate, assign, charge or otherwise dispose of:
      - (a) any monies, obligations or liabilities now or in the future due or owing to it by the Limited Partnership or any other party to any Security Interest created by or pursuant to any Facility Document; or
      - (b) any Security Interest, guarantee, indemnity or other assurance in respect of any such monies, obligations or liabilities.
  - 30.2 If the Chargor receives any sums in contravention of this Clause 30, it shall hold them on trust to be applied by the Chargee in or towards satisfaction of the Secured Obligations in such order or manner as the Chargee may specify.
- ### **31 Opening of New Accounts**
- 31.1 If the Chargee receives notice (whether actual or constructive) that the Chargor has created a Security Interest over any of the Secured Assets, the Chargee may rule off the Limited Partnership's account or accounts and open one or more new accounts with the Limited Partnership.

- 31.2 If the Chargee does not open any such new account or accounts, it shall nevertheless be treated as if it had done so at the time when it received such notice and, from that time, all payments made to the Chargee shall be treated as having been credited to such new account or accounts and shall not operate to reduce the Secured Obligations.

**32 No Prejudice**

The Security Interests created, or intended to be created, by or pursuant to this Deed shall not be prejudiced by any unenforceability or invalidity of any other agreement or document.

**33 No Merger**

Nothing contained in this Deed shall operate so as to merge or otherwise prejudice, affect or exclude any other Security Interest which the Chargee may for the time being hold for the Secured Obligations or would have but for this Deed.

**34 Evidence of Debt**

- 34.1 A copy of any entry in the Chargee's accounts shall in any legal proceedings arising out of or in connection with any of the Facility Documents be *prima facie* evidence of the matters, transactions and accounts to which it relates.

- 34.2 A certificate by the Chargee as to any sum payable to it under any of the Facility Documents shall, in the absence of manifest error, be conclusive evidence of the matters, transactions and accounts to which it relates.

**35 Redemption of Security and Releases**

Subject to and without prejudice to Clause 36 (*Conditional Discharge*), on the irrevocable and unconditional payment and discharge in full of the Secured Obligations, the Chargee shall, at the request and cost of the Chargor:

- 35.1 take whatever action is necessary to release and cancel the Security Interests created by or pursuant to this Deed; and

- 35.2 return all documents of title delivered to the Chargee under this Deed, in each case without recourse to, or any representation or warranty by, the Chargee or any of its nominees.

**36 Conditional Discharge**

- 36.1 Any release, settlement or discharge between the Chargee and the Chargor will be conditional upon no security, disposition or payment to the Chargee by the Chargor or any other person in respect of the Secured Obligations being avoided, set aside, reduced or ordered to be refunded by virtue of any statutory provision relating to insolvency or liquidation or for any reason whatsoever.

- 36.2 If any such release, settlement or discharge is so avoided, set aside, reduced or ordered to be refunded, the liability of the Chargor under this Deed shall continue or be reinstated and the Chargee shall be entitled to recover the value or amount of any such security, disposition or payment

from the Chargor as if the release, settlement or discharge had not occurred.

- 36.3 Subject to Clauses 36.1 and 36.2, the Chargee shall be entitled to retain this Deed after as well as before payment of all the Secured Obligations for such period as the Chargee may determine.

### **37 Partial Invalidity**

- 37.1 If any provision of this Deed (or part of any provision of this Deed) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this Deed (or other part of that provision of this Deed) shall not be affected.

- 37.2 If any provision of this Deed (or part of any provision of this Deed) is or becomes illegal, invalid or unenforceable but would be legal, valid or enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable.

### **38 Counterparts**

- 38.1 This Deed may be executed in any number of separate counterparts and this has the same effect as if the signatures on those counterparts were on a single copy of this Deed.

- 38.2 Each Party may evidence their execution of this Deed by emailing an executed signature page of this Deed in PDF format together with the final version of this Deed in PDF or Word format, which shall constitute an original executed counterpart of this Deed. Each Party adopting this method of execution will, following circulation by email, provide the original, hard copy executed signature page to the other Party as soon as reasonably practicable.

### **39 Governing Law and Jurisdiction**

#### **39.1 Governing Law**

This Deed and any dispute or claim arising out of, or in connection with it, its subject matter or formation (including non-contractual disputes or claims) (a Dispute) shall be governed by, and construed in accordance with English law.

#### **39.2 Jurisdiction**

The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

#### **39.3 Waiver of Immunity**

The Chargor irrevocably and unconditionally:

- 39.3.1 agrees not to claim any immunity from proceedings brought by the Chargee against it in relation to a Facility Document and to ensure that no such claim is made on its behalf;
- 39.3.2 consents generally to the giving of any relief or the issue of any process in connection with those proceedings; and

39.3.3 waives all rights of immunity in respect of it or its assets.

**39.4 Interest**

The Parties recognise and agree that the principle of the payment of interest is contrary to the *Sharia'a* and accordingly, to the extent that any legal system would (but for the provisions of this Clause 39.4) impose (whether by contract or by statute) any obligation to pay interest, the Parties hereto hereby irrevocably and unconditionally expressly waive and reject any entitlement to recover interest from each other.

This Deed has been executed and delivered as a deed and is intended to take effect as a deed by the Parties on the date written at the beginning of this Deed.



**Schedule 1**  
**Shares and Investments**

Number of shares and/or other investments	Details of shares and/or investments	
2	Rochester Hotel General Partner Limited (Company No. 10756460)	£1 each in the General Partner
2	Rochester Hotel Nominee Limited (Company No. 10756559)	£1 each in the General Partner

## Execution Page

### Share Charge

#### The Chargor

Executed as a Deed for and behalf of )  
CONSORTIUM CORPORATE )  
HOLDINGS LIMITED )

Signature:



Print Name:

B. HOBBS

Position:

DIRECTOR

Signature:



Print Name:

J DAVIES

Position:

Director of corporate  
deeds

#### The Chargee

Executed as a Deed for and behalf of )  
BANK OF LONDON AND THE )  
MIDDLE EAST PLC )

Signature:

Print Name:

Position:

Signature:

Print Name:

Position:

## Execution Page

### Share Charge

#### The Chargor

Executed as a Deed for and behalf of )  
CONSORTIUM CORPORATE )  
HOLDINGS LIMITED )

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Position: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Position: \_\_\_\_\_

#### The Chargee

Executed as a Deed for and behalf of )  
BANK OF LONDON AND THE )  
MIDDLE EAST PLC )

Signature: \_\_\_\_\_

Print Name: Paul J. Cross

Position: HEAD OF REAL ESTATE

Signature: \_\_\_\_\_

Print Name: Paul R. O'Connor

Position: COO