

# MR01

## Particulars of a charge



VO83573/13

A fee is payable with this form.  
Please see 'How to pay' on the  
last page

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Please go to [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

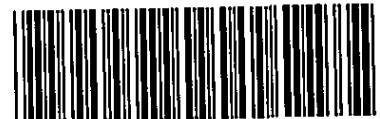
☒ **What this form is for**  
You may use this form to register  
a charge created or evidenced by  
an instrument

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

For further information, please  
refer to our guidance at  
[www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

This form **must be delivered to the Registrar for registration within 21 days** beginning with the day after the date of creation of the charge. If delivered outside of the 21 days it will be rejected unless it is accompanied by a court order extending the time for delivery

You **must** enclose a certified copy of the instrument with this form. This must be scanned and placed on the public record



A44 03/05/2013 #102  
COMPANIES HOUSE

FRIDAY

### 1 Company details

Company number 8 1 6 7 5 0 4  
Company name in full Porthaven Properties No 2 Limited

3 For official use

→ **Filling in this form**  
Please complete in typescript or in  
bold black capitals  
All fields are mandatory unless  
specified or indicated by \*

### 2 Charge creation date

Charge creation date 2 9 10 4 2 0 1 3

### 3 Names of persons, security agents or trustees entitled to the charge

Please show the names of each of the persons, security agents or trustees  
entitled to the charge

Name HSBC Bank Plc

Name

Name

Name

If there are more than four names, please supply any four of these names then  
tick the statement below

☐ I confirm that there are more than four persons, security agents or  
trustees entitled to the charge

# MR01

## Particulars of a charge

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### Description

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

#### Continuation page

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

Description

5

### Fixed charge or fixed security

Does the instrument include a fixed charge or fixed security over any tangible or intangible (or in Scotland) corporeal or incorporeal property not described above? Please tick the appropriate box

☒ Yes

☐ No

6

### Floating charge

Is the instrument expressed to contain a floating charge? Please tick the appropriate box

☐ Yes Continue

☒ No Go to **Section 7**

Is the floating charge expressed to cover all the property and undertaking of the company?

☐ Yes

7

### Negative Pledge

Do any of the terms of the charge prohibit or restrict the chargor from creating any further security that will rank equally with or ahead of the charge? Please tick the appropriate box

☐ Yes

☒ No

CHFP025

04/13 Version 1.0

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Particulars of a charge

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**Trustee statement ①**

You may tick the box if the company named in Section 1 is acting as trustee of the property or undertaking which is the subject of the charge

☐

① This statement may be filed after the registration of the charge (use form MR06)

9

**Signature**

Please sign the form here

Signature

Signature

X CMS Cameron McKenna LLP X

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

MR01

Particulars of a charge



**Presenter information**

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

Contact name Andrew Parsons

Company name CMS Cameron McKenna LLP

Address Mitre House

160 Aldersgate Street

London

Post town

County/Region

Postcode E C 1 A 4 D D

Country

DX DX 135316 BARBICAN 2

Telephone 020 7367 3544



**Certificate**

We will send your certificate to the presenter's address if given above or to the company's Registered Office if you have left the presenter's information blank.



**Checklist**

**We may return forms completed incorrectly or with information missing**

**Please make sure you have remembered the following:**

- ☐ The company name and number match the information held on the public Register
- ☐ You have included a certified copy of the instrument with this form
- ☐ You have entered the date on which the charge was created
- ☐ You have shown the names of persons entitled to the charge
- ☐ You have ticked any appropriate boxes in Sections 3, 5, 6, 7 & 8
- ☐ You have given a description in Section 4, if appropriate
- ☐ You have signed the form
- ☐ You have enclosed the correct fee
- ☐ Please do not send the original instrument, it must be a certified copy



**Important information**

**Please note that all information on this form will appear on the public record.**



**How to pay**

**A fee of £13 is payable to Companies House in respect of each mortgage or charge filed on paper.**

Make cheques or postal orders payable to 'Companies House'



**Where to send**

**You may return this form to any Companies House address. However, for expediency, we advise you to return it to the appropriate address below:**

**For companies registered in England and Wales**  
The Registrar of Companies, Companies House,  
Crown Way, Cardiff, Wales, CF14 3UZ  
DX 33050 Cardiff

**For companies registered in Scotland**  
The Registrar of Companies, Companies House,  
Fourth floor, Edinburgh Quay 2,  
139 Fountainbridge, Edinburgh, Scotland, EH3 9FF  
DX ED235 Edinburgh 1  
or LP - 4 Edinburgh 2 (Legal Post)

**For companies registered in Northern Ireland:**  
The Registrar of Companies, Companies House,  
Second Floor, The Linenhall, 32-38 Linenhall Street,  
Belfast, Northern Ireland, BT2 8BG  
DX 481 N R Belfast 1



**Further information**

For further information, please see the guidance notes on the website at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk) or email [enquiries@companieshouse.gov.uk](mailto:enquiries@companieshouse.gov.uk)

**This form is available in an alternative format. Please visit the forms page on the website at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)**



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*[Handwritten signature]*

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

Company number: 8167504

Charge code: 0816 7504 0003

The Registrar of Companies for England and Wales hereby certifies that a charge dated 29th April 2013 and created by PORTHAVEN PROPERTIES NO 2 LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 3rd May 2013

Given at Companies House, Cardiff on 9th May 2013



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

DATED

29 April

2013

(1) PORTHAVEN PROPERTIES NO. 2 LIMITED

- and -

(2) HSBC BANK PLC

**SECURITY OVER BENEFIT OF  
CONSTRUCTION DOCUMENTATION**

in connection with the Developments  
(as defined in the Facility Letter)

CERTIFIED AS A TRUE AND  
COMPLETE COPY OF THE  
ORIGINAL SAVE FOR  
REDACTIONS UNDER S.  
859G COMPANIES ACT 2006

.....*CMS Cameron McKenna LLP*.....

Date: *03 May 2013*.....

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

HSBC 

HSBC Bank plc  
70 Pall Mall, London, SW1Y 5EZ

THIS DEED is made on

29 April 2013

BETWEEN.

- (1) **PORTHAVEN PROPERTIES NO. 2 LIMITED**, a company incorporated and registered under the laws of England and Wales with number 8167504 with its registered office at 1 High Street, Windsor, Berkshire, SL4 1ID (You), and
- (2) **HSBC BANK PLC (Lender)**

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Deed

**Business Day** means a day (other than a Saturday or Sunday) on which banks are open for general business in London,

**Charged Property** means the assets charged to the Lender pursuant to clause 3 (*Charge*) and each and every part of it,

**Contract** means each of the documents listed in schedule 1 (*Documents*),

**Contractor** means each of the contractors, sub-contractors, consultants and other professionals referred to in the documents listed in schedule 1 (*Documents*),

**Facility Letter** means the facility letter dated 28 Mar 2013 and made between (1) the Borrower and (2) the Lender pursuant to which the Lender agreed to make certain facilities available to the Borrower, together with any subsequent amendments to it or restatements of it,

**Finance Document** means any document designated as such pursuant to the Facility Letter,

**Interest Rate** means the rate of interest payable on any facility secured by the Security,

**Liabilities** means all monies from time to time due or owing and all other actual or contingent liabilities from time to time incurred by you to the Lender,

**Property** means the freehold property situated at Land at Thirlestaine Hall, Thirlestaine Road, Cheltenham, GL53 7AL, registered at the Land Registry under part of the title number GR363571,

**Receiver** means an administrative receiver, a receiver and/or manager of any or all of your assets appointed by the Lender under the Security,

**Security** means the Security Interests created or intended to be created by or pursuant to this Deed,

**Security Interest** means a mortgage, charge, assignment, pledge, lien, standard security, assignation or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect,

## 1.2 Interpretation

Unless a contrary indication appears, any reference in this Deed to

- (a) **assets** includes present and future properties, revenues and rights of every description,
- (b) a **disposal** includes a lease, licence, transfer, sale or other disposal of any kind,
- (c) **includes** or **including** shall be read and construed as including the phrase "without limitation",
- (d) when any provision of this Deed refers to an approval or consent by the Lender that provision shall be construed so as to require that consent or approval to be given in writing, and
- (e) any real property includes
  - (i) all or any part of it,
  - (ii) all buildings, fixtures (including trade fixtures), fittings and fixed plant or machinery at any time on that property,
  - (iii) all easements, servitudes, rights and agreements in respect of that property,
  - (iv) all rents from and proceeds of sale of that property, and
- (f) the benefit of all covenants given in respect of that property

- 1.3 To the extent that there is any conflict between any provision contained in the Facility Letter and any provision contained in this Deed the provisions of the Facility Letter shall prevail

## 1.4 Third party rights

Only a Receiver has any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed

## 1.5 Delivery

The parties intend this Deed to be delivered on the first date specified on page 1 of this Deed and that this Deed shall take effect as a deed notwithstanding the fact that the Lender may only execute this Deed under hand

## 2. REPRESENTATIONS AND WARRANTIES

You make the following representation and warranties set out in this clause 2 (*Representations*) to the Lender on the date of this Deed and on each day the Liabilities are outstanding



- 2 1 the Contract is in full force and effect in accordance with its terms, it has been validly executed and is enforceable (subject to this Deed) by you against the Contractor and vice versa,
- 2 2 neither you nor (to the best of your knowledge and belief) the Contractor is in breach of or in default of any of the terms and conditions of the Contract,
- 2 3 you have not assigned, charged other than by way of this Deed, mortgaged or otherwise created any encumbrance over the Charged Property or any part of it or otherwise disposed of any benefit or interest in the Charged Property or any part of it, and
- 2 4 you are entitled under the Contract and in law to create security over the Contract in the manner set out in this Deed,
- 2 5 the Contract is capable of being assigned to the Lender,
- 2 6 you will use all reasonable endeavours to obtain the consent of the Contractor to the assignment of the Contract to the Lender (if so required by the Lender)

### **3. CHARGE**

- 3 1 You, as security for the repayment of the Liabilities, hereby charge by way of a first fixed legal charge -
- (a) your present and future rights title and interest in and to the Contract,
  - (b) sums which shall from time to time become payable to you by the Contractor or otherwise under the Contract or any provision of it,
  - (c) your rights arising out of or in connection with any breach or default by the Contractor or any other party to the Contract of or under any of the terms, obligations, covenants, undertakings or conditions of the Contract whether in respect of the Property or otherwise,
  - (d) the benefit of all sums recovered in any proceeding against the Contractor
- 3 2 If at any time the Liabilities have been fully discharged and repaid and you have no actual or contingent liability to the Lender then the Lender shall (at the request and cost) release to you the Charged Property (which has been charged to the Lender pursuant to this Deed) without recourse warranty
- 3 3 You hereby confirm that there are no restrictions preventing the charging or assigning of the Charged Property and hereby undertake forthwith on demand to assign to the Lender absolutely or as the Lender shall direct the Charged Property and rights and remedies available to you under it to the extent that the Charged Property shall not be fully and effectively charged to the Lender by this Deed. You shall do all such things as may be necessary to effect such a charge

### **4. CONTINUING OBLIGATIONS**

Notwithstanding anything contained in this Deed -

- 4 1 you shall at all times remain liable to the Contractor to perform your duties and obligations under the Contract,

- 4 2 the exercise by the Lender of any of the rights confirmed by this Deed shall not release you from any of your duties or obligations under the Contract,
- 4 3 the Lender shall not be under any obligation or liability under the Contract to the Contractor or any other party by reason of this Deed or anything done or omitted to be done by the Lender pursuant to it, and
- 4 4 the Lender shall not be obliged to -
- (a) assume or be under any obligation in any manner to perform or fulfil any of your obligations under or pursuant to the Contract, or
  - (b) make any payment under it, or
  - (c) enforce against the Contractor any term, obligation, covenant, undertaking or condition of the Contract, or
  - (d) make any enquiry as to the nature or sufficiency of any payment received under or pursuant to this Deed

## **5. COVENANTS AND UNDERTAKINGS**

### **5 1 You covenant with the Lender that you shall -**

- (a) diligently take all steps necessary or advisable or any steps the Lender may properly request to be taken to procure the due performance by the Contractor of all your obligations under the Contract in accordance with the terms of it,
- (b) promptly and diligently -
  - (i) perform all the obligations on your part contained in the Contract,
  - (ii) notify the Lender immediately in writing of any breach of or default under the Contract on your part or on the part of the Contractor or any other party to the Contract,
  - (iii) institute and prosecute completely at your own expense all such proceedings as may be necessary or advisable to preserve or protect your own interests and those of the Lender in the Charged Property,
  - (iv) if the Lender shall by written notice to you so require forthwith upon receipt of the same send to the Lender a copy of each instruction, professional fee, invoice, certificate, variation, order, notice, insurance policy or other document issued or served upon it or by it pursuant to under or in connection with the Contract,
  - (v) upon receipt of the same remit to the Lender all sums which shall from time to time become payable to you in respect of the Charged Property,
  - (vi) provide the Lender with such information as it may request in relation to the Contract or in respect of any aspect of it or the progress of the Development and in any event not later than seven Business Days from the Lender making the request,

- (vii) upon the Lender's request give notice to the Contractor and any other relevant person in the form of Schedule 2 (*Notice of Charge*) and procure that the recipient(s) of such notice issue a letter to the Lender substantially in the form of Schedule 3 (*Acknowledgment of Charge*) and in any event no later than seven Business Days from the Lender making the request,
  - (viii) will keep the Lender fully and effectively indemnified from and against any and all actions, losses, claims, proceedings, costs, demands and liabilities which may be suffered or incurred by the Lender under or by virtue of the Facility Letter any Finance Document or this Deed or otherwise in respect of the Property,
- (c) not during the currency of this Deed without the prior written consent of the Lender -
- (i) make or vary or consent to any modification or variation of the terms of the Contract,
  - (ii) consent or agree to any waiver or release of any obligation of the Contractor or of any other relevant person under the Contract,
  - (iii) give or agree to give any time or other indulgence to the Contractor in respect of its obligations in respect of the Contract,
  - (iv) make or agree to any claim that the Contract is in any manner frustrated, rescinded, terminated, repudiated or otherwise at an end or that the Contract is in any way waived or discharged,
  - (v) rescind, cancel or terminate the Contract or accept any breach of it or default thereunder as repudiatory,
  - (vi) further assign or create any charge, mortgage or other encumbrance over the Charged Property,
  - (vii) take or omit to take any action the taking or omission of which would or might result in any impairment of the Charged Property, and
- (d) comply at all times with the terms (expressed or implied) of this Deed and execute deliver and perform or procure the execution delivery and performance of all such documents as may be necessary or desirable to secure to the Lender the full benefit of this Deed or the rights powers and remedies herein conferred on the Lender

5.2 You irrevocably and unconditionally undertake to deposit with the Lender (to the intent that the same shall be subject in all respects to the provisions of this Deed) all and any originals of any deeds, documents, instruments or material evidencing or constituting the Charged Property

## 6. FURTHER ASSURANCE

You shall at your own expense ensure any documents are executed and any acts and things are done which the Lender may reasonably require from time to time for

- (a) giving effect to, perfecting or protecting the Security,
- (b) facilitating the realisation of the Charged Property,

- (c) facilitating the exercise of all powers, authorities and discretions vested in the Lender or in any Receiver, or
- (d) perfecting any Security over any assets acquired by you after the date of this Deed

## **7. ENFORCEMENT**

### **7.1 Remedying defaults**

The Lender or a Receiver may (but is not obliged to) take any action to remedy a failure by you to observe and perform the provisions of this Deed at your cost

### **7.2 Timing of enforcement**

- (a) The Liabilities are deemed to have become due on the date of this Deed
- (b) The Security shall become enforceable on the earlier of
  - (i) the date the Lender demands repayment of any of the Liabilities,
  - (ii) the date you breach a provision of this Deed or any document evidencing the facilities to which the Liabilities relate,
  - (iii) your request
- (c) Neither section 93(1) nor section 103 of the Law of Property Act 1925 shall apply to this Deed

### **7.3 Powers of the Lender**

- (a) At any time after the Security becomes enforceable or if requested by you, the Lender may without further notice (unless required by law)
  - (i) appoint any person (or persons) to be a receiver, receiver and manager or administrative receiver of all or any part of the Charged Property and/or of the income of the Charged Property, and/or
  - (ii) appoint or apply for the appointment of any person who is appropriately qualified as your administrator, and/or
  - (iii) exercise all or any of the powers conferred on mortgagees by the Law of Property Act 1925 (as amended or extended by this Deed) and/or all or any of the powers which are conferred by this Deed on a Receiver, in each case without first appointing a Receiver or notwithstanding the appointment of any Receiver, and/or
  - (iv) exercise (in your name) any voting rights and any powers or rights which may be exercised by you in relation to the Charged Property
- (b) The Lender is not entitled to appoint a Receiver in respect of the Charged Property which is subject to Security which (as created) was a floating charge solely by reason of a moratorium being obtained under the Insolvency Act 2000 or anything done with a view to obtaining such a moratorium

#### **7.4 No liability**

Neither the Lender nor any Receiver shall be liable as a mortgagee in possession or otherwise to account in relation to the Charged Property for any loss on realisation or for any other default or omission. Neither the Lender nor the Receiver is under any obligation to exercise any power or discretion enjoyed by it in relation to the Charged Property.

### **8. RECEIVER**

#### **8.1 Removal and replacement**

The Lender may from time to time remove any Receiver appointed by it and, whenever it may deem appropriate, may appoint a new Receiver in the place of any Receiver whose appointment has terminated.

#### **8.2 Multiple Receivers**

If at any time there is more than one Receiver of all or any part of the Charged Property and/or the income of the Charged Property, each Receiver shall have power to act individually (unless otherwise stated in the appointment document).

#### **8.3 Remuneration**

Any Receiver shall be entitled to remuneration for his services at a rate to be fixed by agreement between him and the Lender (or, failing such agreement, to be fixed by the Lender).

#### **8.4 Payment by Receiver**

Only monies actually paid by a Receiver to the Lender in relation to the Liabilities shall be capable of being applied by the Lender in discharge of the Liabilities.

#### **8.5 Your agent**

Any Receiver shall be your agent and you shall (subject to the Companies Act 1985 or the Companies Act 2006, as applicable, and the Insolvency Act 1986) be solely responsible for his acts and defaults and for the payment of his remuneration. The Lender shall not incur any liability (either to you or to any other person) by reason of the appointment of a Receiver or for any other reason.

### **9. POWERS OF RECEIVER**

#### **9.1 General powers**

Any Receiver shall have

- (a) all the powers which are conferred by the Law of Property Act 1925 on mortgagees in possession and receivers appointed under that Act,
- (b) (whether or not he is an administrative receiver) all the powers which are listed in schedule 1 of the Insolvency Act 1986, and
- (c) all powers which are conferred by any other law conferring power on receivers.

## 9.2 Additional powers

In addition to the powers referred to in clause 9 1 (*General powers*), a Receiver shall have the following powers

- (a) to take possession of, collect and get in all or any part of the Charged Property and/or income in respect of which he was appointed,
- (b) to manage the Charged Property as he thinks fit,
- (c) proceed to completion of the Contract and satisfy your obligations and liabilities under the Contract,
- (d) exercise in relation to the Charged Property all such rights as you might exercise in relation to the Charged Property as if the same were unencumbered by this Deed or otherwise,
- (e) require the Lender to lend him as your agent (so that such loan shall be deemed to be a further advance to you) such monies as in his opinion shall be properly required to realise the Charged Property Any such monies loaned shall be immediately owing by you to the Lender and secured by this Deed,
- (f) to redeem any Security Interest and to borrow or raise any money and secure the payment of any money in priority to the Liabilities for the purpose of the exercise of his powers and/or defraying any costs or liabilities incurred by him in such exercise,
- (g) to sell or concur in selling, leasing or otherwise disposing of all or any part of the Charged Property in respect of which he was appointed without the need to observe the restrictions imposed by section 103 of the Law of Property Act 1925, and, without limitation
  - (i) the consideration for any such transaction may consist of cash, debentures or other obligations, shares, stock or other valuable consideration (and the amount of such consideration may be dependent upon profit or turnover or be determined by a third party), and
  - (ii) any such consideration may be payable in a lump sum or by instalments spread over such period as he thinks fit,
- (h) to alter, improve, develop, complete, construct, modify, refurbish or repair any building or land and to abandon, complete or undertake or concur in the completion or undertaking (with or without modification) of any project in which you were concerned or interested before his appointment (being a project for the alteration, improvement, development, completion, construction, modification, refurbishment or repair of any building or land),
- (i) to carry out any sale, lease or other disposal of all or any part of the Charged Property by conveying, transferring, assigning or leasing the same in your name and, for that purpose, to enter into covenants and other contractual obligations in your name and so as to bind you,
- (j) to take any such proceedings in your name as he shall think fit in respect of the Charged Property and/or income in respect of which he was appointed (including

proceedings for recovery of rent or other monies in arrears at the date of his appointment),

- (k) to exercise any voting rights attached to any part of the Charged Property,
- (l) to enter into or make any such agreement, arrangement or compromise as he shall think fit,
- (m) to insure, and to renew any insurances in respect of, the Charged Property as he shall think fit (or as the Lender shall direct),
- (n) to appoint and employ such managers, officers and workmen and engage such professional advisers as he shall think fit (including, without prejudice to the generality of the foregoing power, to employ any firm, partner, company or other entity with which he is associated),
- (o) to form one or more subsidiaries of you and to transfer to any such subsidiary all or any part of the Charged Property,
- (p) to
  - (i) give valid receipts for all monies and to do all such other things as may seem to him to be incidental or conducive to any other power vested in him or necessary or desirable for the realisation of any part of the Charged Property,
  - (ii) exercise in relation to each part of the Charged Property all such powers and rights as he would be capable of exercising if he were the absolute beneficial owner of the Charged Property, and
  - (iii) use your name for any of the above purposes

### **9.3 Limitation**

- (a) The Lender may in the instrument by which a Receiver is appointed limit the powers of the Receiver
- (b) The Receiver shall be under no duty to you to exercise any power he may have and shall not incur any liability to you either by virtue of the exercise of such powers or by virtue of a failure to exercise such powers

## **10. APPROPRIATION OF RECEIPTS**

### **10.1 Application**

- (a) Subject to clause 10.2 (*Suspense account*), any monies received by the Lender in respect of the Security (subject to the payment of any claims having priority to the Security, but in substitution for section 109(8) of the Law of Property Act 1925) shall be applied in the following order of priority
  - (i) in discharging the remuneration of any Receiver and all costs, charges and expenses of and incidental to his or her appointment, together with interest on that remuneration and those costs, charges and expenses at the Interest Rate,
  - (ii) in or towards payment or discharge of the Liabilities, and

(iii) in payment of the surplus (if any) to you or other person entitled to it

- (b) The Lender may apply sums received towards the payment or discharge of the Liabilities in reduction of any part of the Liabilities in any order or manner as it thinks fit. The Lender may override any appropriation made by you

## **10.2 Suspense account**

Any monies received by the Lender or any Receiver may be placed in an interest bearing suspense or securities realised account and kept there for so long as the Lender considers prudent

## **11. SET-OFF**

- (a) The Lender may (but shall not be obliged to) set off any obligation which is due and payable by you and unpaid or any contingent obligation from you against any obligation (whether or not matured) owed by the Lender to you, regardless of the place of payment, booking branch or currency of either obligation
- (b) If either obligation is unliquidated or unascertained, the Lender may set off in an amount estimated by it in good faith to be the amount of that obligation

## **12. CURRENCY CONVERSION**

All monies received or held by the Lender or any Receiver under this Deed may be converted from their existing currency into such other currency as the Lender or the Receiver considers necessary or desirable to cover the obligations and liabilities comprised in the Liabilities in that other currency at the Lender's spot rate of exchange

## **13. NEW ACCOUNT**

If the Lender receives or is deemed to be affected by notice (whether actual or constructive) of any subsequent Security Interest affecting some or all of the Charged Property or its proceeds of sale, then the Lender may open a new account for you. If it does not do so, it shall nevertheless be treated as if it had done so at the time when it received, or was deemed to have received, the notice. As from that time, any payment made to the Lender for your account shall be credited (or be treated as having been credited) to the new account and shall not operate to reduce the amount for which the Security applies

## **14. DELEGATION AND APPOINTMENT OF ATTORNEYS**

### **14.1 Delegation**

- (a) The Lender may delegate to any person or persons all or any of the powers, authorities and discretions which are exercisable under this Deed. A delegation may be made in any manner (including by power of attorney) in and on any terms (including power to sub-delegate) which the Lender thinks fit
- (b) The Lender shall not be liable or responsible to you for any loss or damage arising from any act, default, omission or misconduct on the part of any of its delegates or sub-delegates



## **14.2 Attorneys**

- (a) By way of security, you irrevocably appoint the Lender, every Receiver and every delegate or sub-delegate appointed under clause 14 1 (*Delegation*) separately to be your attorney on your behalf, in your name
  - (i) to execute and do any documents, acts and things which you are required to execute and do under this Deed, the Contract or any other document relating to the Charged Property, and
  - (ii) to execute and do any documents, acts and things which any attorney may deem proper or desirable in exercising any powers, authorities and discretions conferred by this Deed any documents relating to the Liabilities or by law on the Lender or any Receiver
- (b) You must ratify and confirm and agree to ratify and confirm anything which any of your attorneys may do in the proper and lawful exercise or purported exercise of all or any of the powers, authorities and discretions referred to in this clause 14 2 (*Attorneys*)

## **15. REDEMPTION OF PRIOR SECURITY INTERESTS**

### **15.1 Redemption**

The Lender may at any time redeem, or procure the transfer to it of, any prior Security Interest over the Charged Property at your cost

### **15.2 Costs of redemption**

All principal monies, interest, costs, charges and expenses incurred in and incidental to any redemption or transfer under clause 15 1 (*Redemption*) shall be paid by you on demand, in each case together with interest calculated and in the manner referred to in clause 19 (*Indemnities*)

## **16. RELEASES**

### **16.1 Releases conditional**

- (a) Any release, settlement, discharge, re-assignment or arrangement in respect of the Security (in this clause 16 (*Releases*), a **release**) made by the Lender on the faith of any assurance, security or payment shall be conditional on that assurance, security or payment not being avoided, reduced, clawed back or ordered to be repaid under any law relating to liquidation, bankruptcy or insolvency
- (b) If any avoidance, reduction, or clawback occurs or any order is made as referred to in clause 16 1 (*Releases conditional*), then the release shall have no effect and shall not prejudice the Lender's right to enforce the Security in respect of the Liabilities. As between you and the Lender, the Security shall (notwithstanding the release) be deemed to have remained at all times in effect and held by the Lender as security for the Liabilities

## **16.2 Retention**

- (a) If and for so long as any assurance, security or payment as is mentioned in clause 16.1 (*Releases conditional*) remains in the reasonable opinion of the Lender susceptible of being avoided, reduced, clawed back or ordered to be repaid under any law relating to liquidation, bankruptcy or insolvency, the Lender may in its absolute discretion retain all or part of the Security and other rights under this Deed as security for the Liabilities after they have been paid and discharged in full
- (b) If, at any time while all or part of the Lender's rights under this Deed are so retained
  - (i) an application is made to a competent court for a winding-up order to be made in respect of you,
  - (ii) steps are taken to wind you up,
  - (iii) an application is made to a competent court for an administration order to be made in respect of you,
  - (iv) a notice of intention to appoint an administrator to you is filed at court, or
  - (v) the appointment of an administrator to you takes effect,

then the Lender may continue to retain all or part of its rights under this Deed for any further period as the Lender may determine in its absolute discretion

## **17. CONTINUING SECURITY**

### **17.1 Continuing security**

The Security is continuing security and shall secure the ultimate balance of the Liabilities, notwithstanding

- (a) intermediate payment or discharge of the whole or part of the Liabilities,
- (b) your liquidation or other incapacity or any change in your constitution, name or style,
- (c) any change in the Lender's constitution, name or style, its absorption in or amalgamation with any other person or the acquisition of all or part of its undertaking by any other person, or
- (d) any other event, matter or thing

### **17.2 Additional to other rights**

The Security is in addition to (and shall not merge with, otherwise prejudice or affect or be prejudiced or affected by) any other remedy, guarantee, indemnity, Security Interest or other right which may be or have been created (by you or otherwise) in favour of the Lender. Accordingly, your liability under this Deed shall not be prejudiced or affected by, and this Deed may be enforced notwithstanding

- (a) the existence or invalidity of all or any of those rights, or

- (b) at any time, the Lender exchanging, releasing, varying, abstaining from perfecting or enforcing or otherwise dealing or omitting to deal with all or any of those rights

#### **18. THIRD PARTY PROTECTION**

No purchaser, mortgagee or other person dealing with the Lender or a Receiver shall be concerned

- (a) to enquire whether any of the Liabilities have become due or payable or remain unpaid or undischarged,
- (b) whether the power which the Lender or Receiver is purporting to exercise has become exercisable, or
- (c) to see to the application of any money paid to the Lender or to a Receiver

#### **19. INDEMNITIES**

You agree to fully indemnify the Lender and any Receiver (and in the case of legal costs and expenses on a solicitor and own client basis) on demand against all liabilities, losses, claims, actions, damages, costs and expenses incurred by, made or brought against the Lender or Receiver (or any manager or agent appointed by the Lender or Receiver)

- (a) as a result of your failure to perform any of your obligations under this Deed,
- (b) in the exercise (or purported exercise) of any of the powers or other rights conferred by this Deed,
- (c) in respect of any costs, charges or expenses incurred in connection with clause 12 (*Currency conversion*),
- (d) in respect of the redemption of any prior Security Interest over the Charged Property under clause 15 (*Redemption of prior Security Interests*),
- (e) as a result of your breach of any current or other obligation or matter relating to the Charged Property, or
- (f) in respect of any other matter or thing done or omitted relating to the Charged Property,

together in each case with interest at the Interest Rate calculated on a daily basis from the date it is incurred or becomes payable to the Lender or the Receiver until the date of payment, whether before or after any judgment

#### **20. CALCULATIONS AND CERTIFICATES**

Any certificate of or determination by the Lender specifying the amount of the Liabilities is, in the absence of manifest error, conclusive evidence against you of the matters to which it relates

#### **21. PARTIAL INVALIDITY**

All the provisions of this Deed are severable and distinct from one another and if at any time any provision is or becomes illegal, invalid or unenforceable in any respect under any law of

any jurisdiction, neither the legality, validity or enforceability of any of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired

## **22. REMEDIES AND WAIVERS**

No failure to exercise nor any delay in exercising any right or remedy under this Deed against you shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise, or the exercise of any other right or remedy. The rights and remedies provided are cumulative and not exclusive of any rights or remedies provided by law.

## **23. AMENDMENTS AND WAIVERS**

Any provision of this Deed may be amended only if you and the Lender agree in writing and any breach of this Deed may be waived before or after it occurs only if the Lender so agrees in writing. A waiver given or consent granted by the Lender under this Deed will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

## **24. TRANSFER AND CONFIDENTIALITY**

### **24.1 Transfer**

- (a) The Lender may assign and/or transfer its rights and obligations under this Deed
- (b) You shall not assign any of your rights or transfer any of your obligations under this Deed

### **24.2 Confidentiality**

The Lender may disclose to

- (a) any transferee or potential transferee,
- (b) any assignee or potential assignee,
- (c) any person with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to or including the Liabilities,
- (d) any ratings agency,
- (e) any of its or the officers, directors, employees, professional advisers, auditors, partners and representatives of the persons referred to in sub-clauses 24.2(a) to (d), and
- (f) any person to whom information is required or requested to be disclosed by any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation

such confidential information as the Lender shall consider appropriate if any person to whom the confidential information is to be given is informed in writing of its confidential nature

## **25. MANAGEMENT TIME**

The Lender reserves the right to charge for its management time or other resources (which will be calculated on the basis of such reasonable daily or hourly rates as the Lender may notify to you from time to time)

## **26. COUNTERPARTS**

This Deed may be executed in any number of counterparts, all of which, taken together, shall constitute one and the same instrument and any party may enter into this Deed by executing a counterpart

## **27. NOTICES**

### **27.1 Communications in writing**

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

### **27.2 Addresses**

The Lender may deliver any communication, document or notice to you relating to this Deed to your registered office (for the attention of John Storey), to any address to which a notice under any facility relating to the Liabilities might be sent or any additional address you may notify to the Lender by not less than five business days' notice

### **27.3 Delivery**

- (a) Any communication or document made or delivered by one person to another under or in connection with this Deed will only be effective when it has been left at the relevant address or five business days after being deposited in the post, postage prepaid, in an envelope addressed to it at that address
- (b) Any communication or document to be made or delivered to the Lender will be effective only when actually received by the Lender and then only if it is expressly marked for the attention of the department or officer identified with Lender's signature below (or any substitute department or officer as the Lender shall specify for this purpose)

## **28. GOVERNING LAW**

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

## **29. ENFORCEMENT**

### **29.1 Jurisdiction**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including disputes regarding the existence, validity or termination of this Deed) the Security Interests intended to be created by it and any non-contractual obligations arising out of or in connection with it (a **Dispute**)

- (b) You agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly you will not argue to the contrary
- (c) This clause 29.1 is for the benefit of the Lender only. The Lender may take proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.

**IN WITNESS** of which this Deed has been duly executed by each of the Borrower as a deed and duly signed on behalf of the Lender and has been delivered on the first date specified on page 1 of this Deed

## SCHEDULE 1

### Documents

	Document	Parties
1	Building Contract	(1) Porthaven Properties No 2 Limited and (2) Castlemead Group Limited
2	Appointment of the Employer's Agent and CDM Coordinator	(1) Porthaven Properties No 2 Limited and (2) Chessmann Consulting Limited
3	Performance Bond	(1) National Westminster Bank PLC, (2) Castlemead Group Limited and (3) Porthaven Properties No 2 Limited

## SCHEDULE 2

### Notice of Charge

To<sup>1</sup>

Dated

Dear Sirs

We hereby give notice that, by a Deed dated [◆] a copy of which is attached hereto, we charged to HSBC Bank Plc (the **Lender**) all of our rights, title and interest in and to the contract dated [◆] between [◆] (the **Contract**)

Please note, inter alia, that -

- 1 the duties and obligations have not been novated and thus we are still responsible to you for all such duties and obligations as set out in the Contract,
- 2 henceforth we may not without the prior written consent of the Lender
  - (a) make or agree to any modification variation or amendment of the terms of the Contract, or
  - (b) consent or agree to any waiver or release of any of your obligations under the Contract, or
  - (c) make or agree to any claim that the Contract is frustrated in whole or in part,
- 3 henceforth you should remit to the Lender all sums due and owing to us under or pursuant to the Contract, and
- 4 henceforth these instructions may not be varied save with the written consent of the Lender

We shall be grateful if you will acknowledge receipt of this notice within seven days by completing the attached acknowledgement and returning it direct to the Lender's solicitors, [◆] (Ref [◆])

Yours faithfully<sup>2</sup>

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<sup>1</sup> This notice should be completed for all Documents listed in Schedule 1 and addressed to the counterparty other than the borrower who is party to that document. For example the contractor under a building contract or the professional providing the collateral warranty

<sup>2</sup> This notice will be signed by the borrower as provider of this charge and should be obtained as part of the conditions precedent under the facility letter



### SCHEDULE 3

#### Acknowledgment of Charge

To HSBC Bank Plc  
c/o [

]

(Ref [◆ ]) )

Dated

Dear Sirs

At the request of \_\_\_\_\_ (the **Chargor**) and in consideration of you affording banking facilities to the Chargor we write to confirm and agree that -

- 1 we have received from the Chargor a notice dated [◆ ] of a Deed (the **Deed**) dated [◆ ] given by the Chargor to you relating to the construction contract referred to therein (the **Contract**) with a copy of the Deed attached,
- 2 we have noted the contents of the said notice and the Deed,
- 3 we have not received any other notices of charge or assignment regarding the Contract,
- 4 we consent to the Deed taking effect in accordance with its terms,
- 5 we shall remit to you all sums due and owing to the Chargor under or pursuant to the Contract,
- 6 the benefit of the Contract and the rights and remedies under it are capable of assignment and capable of being charged and we shall not under any circumstances withhold our consent (if such consent is required under the terms of the Contract) to any assignment or charging of the Contract to you, and
- 7 we acknowledge and agree that you have no obligations or liabilities or duties to us under the terms of the Contract or otherwise and whether before or after the date of this letter

Yours faithfully<sup>3</sup>

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<sup>3</sup> This acknowledgment will be attached to the notice given at schedule 2 and will in each case be signed by the addressee of the notice to which it is attached

**EXECUTION PAGE**

**THE BORROWER**

Signed as a deed for and on behalf of

**PORTHAVEN PROPERTIES NO 2 LIMITED**

by

[REDACTED]

Name

[REDACTED]

Capacity

[REDACTED]

Witnessed by.

[REDACTED]

Witness name

[REDACTED]

Witness address

[REDACTED]

**THE LENDER**

**SIGNED** as a deed for and on behalf of

)

**HSBC BANK plc**

)

**EXECUTION PAGE**

**THE BORROWER**

Signed as a deed for and on behalf of

**PORTHAVEN PROPERTIES NO 2 LIMITED**

by

Name

Capacity

Witnessed by

Witness name

Witness address

**THE LENDER**

SIGNED as a deed for and on behalf of

**HSBC BANK plc**

)  
)